



FD 35095: Executed Working Group MOU  
kusske.floyd.kathryn to: judy.bittner, rutsonv  
Cc: David.Navecky

12/19/2011 03:38 PM

History: This message has been forwarded.

1 attachment



PMRE-PA\_WGMOU\_Final-120511-signed.pdf

Hi Judy and Vicki,

I am enclosing for your records a copy of the executed Working Group MOU. It has been signed by all parties.

Two minor changes were made to the MOU since your last review (the 9/19/2011 version). They are:

- Section 8.C (p. 7), last sentence revised as follows: "In the event that STB and SHPO approve termination of the MOU, In the event that the MOU is terminated, STB shall comply with Stipulation XII (Amendments) of the Agreement."
- Attachment B, Section A.7 (p. 10) revised as follows: "Culturally Modified Trees (CMTs) and/or Trees of Interest (TOI)"

These minor changes were requested by MSB, were agreed to by all other parties to the MOU and were previously approved by SHPO.

Please let me know if you have any questions.

Happy holidays,

Kathryn

Kathryn Kusske Floyd  
Partner

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**Port MacKenzie Rail Extension Project**  
**MEMORANDUM OF UNDERSTANDING**  
**Implementing the Section 106 Programmatic Agreement**  
**Regarding the Alaska Railroad Corporation Construction and**  
**Operation of a Rail Line Extension to Port MacKenzie, Alaska**

**WHEREAS**, the purpose of this Memorandum of Understanding (MOU) is to facilitate or carry out Stipulations II.D (Delineation of the APE), III.C and IX (Training), III.D (Future Consultation), VI (Curation), and VII (Annual Reports), and to support Stipulation IV (Evaluation and Treatment of Historic Properties) of the Port MacKenzie Rail Extension Project (Undertaking) Programmatic Agreement (Agreement), executed June 15, 2011, pursuant to Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470; herein NHPA), and its implementing regulations (36 CFR Part 800), and to establish the respective responsibilities and commitments of the parties for such implementation; and

**WHEREAS**, the Surface Transportation Board (STB) is the Lead Federal Agency responsible for compliance with Section 106 of NHPA and its implementing regulations (36 CFR 800); and

**WHEREAS**, the State Historic Preservation Officer (SHPO) is a Signatory to the Agreement pursuant to 36 CFR 800.6(c)(1); and

**WHEREAS**, the Alaska Railroad Corporation (ARRC), the Applicant for the Undertaking, is an Invited Signatory to the Agreement pursuant to 36 CFR 800.6(c)(2) and shall act as the main point of contact for the Working Group; and

**WHEREAS**, the Knik Tribal Council (KTC), a Federally Recognized Tribe recognized as the traditional people residing in the area being crossed by the Undertaking who shall act as a point of contact for Tribes identified in Attachment A.2 (Tribes and Alaska Native Organization Contact List) of the Agreement, is an Invited Signatory to the Agreement pursuant to 36 CFR 800.6(c)(2); and

**WHEREAS**, the Matanuska-Susitna Borough (MSB), the certified local government under the NHPA (16 USC 470a(c)) in the area being crossed by the Undertaking, is providing significant funding to ARRC for construction of the Undertaking and is an Invited Signatory to the Agreement pursuant to 36 CFR 800.6(c)(2); and

**WHEREAS**, MSB, ARRC, and KTC, in consultation with the STB and SHPO have formed a Working Group (Agreement Stipulation III.A) and are working together to continue a positive and productive partnership for this Undertaking; and

**WHEREAS**, ARRC, in coordination with the Working Group, consulted with Happy Trails Kennels (HTK), Willow Dog Musers Association (WDMA), Iditarod Historic Trail Alliance (IHTA), and other interested consulting parties to develop a refined proposed APE for the Undertaking; and

**WHEREAS**, all activities and work products prepared pursuant to the MOU are subject to the oversight, review, and approval of Signatories to the Agreement as the Signatories deem appropriate; and

**WHEREAS**, Attachment A of this MOU includes a summary and schedule of Working Group and ARRC tasks identified in the Agreement; and

**WHEREAS**, Attachment B of this MOU includes a summary of standard and nonstandard processes and treatments for historic properties (36 CFR 800.16[1]) identified during surveys for this Undertaking; and

**NOW, THEREFORE**, ARRC, MSB, and KTC hereby promise and agree by and between each other as follows:

**1. PURPOSE**

The purpose of this MOU is to describe and reinforce the Working Group's objectives by identifying roles and responsibilities; developing a summary of tasks and deliverables for completing responsibilities; developing review and consultation procedures; and establishing the appropriate level of effort for identification, evaluation, and mitigation.

**2. OBJECTIVES**

The objectives of the Working Group are to facilitate avoidance, minimization, and mitigation of historic properties that could be affected by the Undertaking; facilitate and continue the positive working relationship between ARRC, MSB and KTC; and facilitate and promote consultation between the Working Group members, Signatories, Concurring Parties and other interested parties to the Agreement.

**3. ROLES AND RESPONSIBILITIES**

In addition to all other promises and agreements in this MOU, the specific duties and responsibilities of the Working Group shall be as follows:

- (A) Consult and collaborate with Signatories and Concurring Parties throughout the five (5) year period of the Agreement
- (B) Actively participate and meet as needed to address the needs and objectives of the Agreement and this MOU
- (C) Carry out the tasks outlined in the Agreement and this MOU (see Sections 4 through 6 of this MOU for Scopes of Work for these tasks), in consultation with STB, SHPO, and interested Concurring Parties

- (D) Participate on the following tasks that are assigned to ARRC in the Agreement:
  - (1) Consult on the Iditarod Dog Sledding Historic District (IDSHD) Workshop and on measures to avoid, mitigate, or minimize adverse effects on the IDSHD
  - (2) Consult on and participate in developing the *Annual Training Curriculum* and participate in conducting the annual training
  - (3) Consult on treatment of historic properties (36 CFR 800.16[I])
  - (4) Consult on and participate in documenting the results of work conducted under the Agreement and MOU in the *Annual Reports*

#### **4. DELINEATION OF PROPOSED FINAL APE**

- (A) The Working Group shall refine the APE based on the definition provided in Stipulation II.C of the Agreement (Applicability of this Agreement and Area of Potential Effects) to reflect ARRC's final project design
  - (1) The APE for direct effects shall include the 200 foot right of way and other ground disturbance areas (e.g., staging and material sources/borrow areas, overburden disposal areas, etc.)
  - (2) The APE for indirect effects shall include an area up to one mile from the right of way centerline to include potential effects such as vibration, noise, and access to trails and traditional use areas
- (B) ARRC shall submit the proposed final APE, developed in consultation with IDSHD Workshop participants and the Working Group, to STB and SHPO for a 15-day review period and comment period no later than 60 days after STB issues a license for the Undertaking
- (C) ARRC shall revise the APE per STB and SHPO comment, as appropriate, and shall submit the final APE to all Signatories, Invited Signatories, interested Concurring Parties, and other identified consulting parties as appropriate
- (D) The final APE shall be delineated prior to beginning of construction
- (E) If alterations to project design include an area outside of the APE, ARRC, in coordination with the Working Group, shall revise the APE as appropriate and submit updated APE map(s) to STB, SHPO, interested Concurring Parties, and other identified consulting parties as appropriate
- (F) ARRC, in coordination with the Working Group, shall document efforts to delineate the APE in the IDSHD Workshop *Summary and Implementation Plan* (Agreement Stipulation V.B) and the *Annual Report(s)* (Agreement Stipulation VII)

#### **5. IDENTIFICATION, EVALUATION, AND TREATMENT OF HISTORIC PROPERTIES IN APE**

- (A) The Working Group shall review data provided by STB from Section 106 identification and evaluation efforts conducted to date and shall identify locations requiring further investigation within the final APE

- (B) All surveys shall be conducted within the final APE for direct effects
  - (1) All surveys shall be conducted in moderate to high probability areas, and some low probability areas identified during consultation between Working Group members, that have not yet been surveyed
- (C) Surveys shall be conducted in phases as project segments/components are identified for construction; it is anticipated that surveys associated with the Undertaking shall be completed within two field seasons (2011 and 2012)
- (D) All identification and evaluation efforts shall be conducted by or under the direct supervision of professionals who meet Secretary of Interior's (SOI) Professional Qualifications Standards (36 CFR Part 61, Appendix A) in the appropriate field
- (E) Identification, evaluation, and treatment/mitigation efforts for each project segment/component shall be completed prior to the beginning of construction of that project segment/component
- (F) The methodology to be used for the additional surveys shall include:
  - (1) Conducting reconnaissance level pedestrian surveys
  - (2) Excavating shovel tests at the professional's discretion
  - (3) Identifying the boundaries of cultural resources identified during pedestrian surveys and/or subsurface testing
  - (4) Assessing the eligibility of cultural resources identified during surveys for the National Register of Historic Places (NRHP)
- (G) Materials collected during survey activities in the APE shall be covered under the *Curation Policy and Agreement* (see Section 6)
- (H) The Principal Investigator, or designated representative, shall provide weekly updates to the Working Group during field surveys to report on survey results and consult regarding additional survey/testing associated with cultural resources identified during survey efforts
- (I) The professionals shall prepare a survey report(s) at the completion of each field season (Agreement Stipulation III.B.4) that shall meet SOI Standards for documentation and Alaska Office of History and Archaeology (OHA)/SHPO requirements for reporting, and shall include:
  - (1) A brief description of the survey area and survey methodology including maps illustrating the refined APE
  - (2) As appropriate, relevant historical documentation/background research tiered off of historical documentation/research completed to date
  - (3) Results of survey including maps illustrating areas surveyed and locations of identified cultural resources in the APE
  - (4) Recommendations regarding eligibility for the NRHP for cultural resources identified in the APE
  - (5) As appropriate, preliminary assessment of effects to historic properties

- (6) As appropriate, recommendations regarding standard and/or nonstandard treatments for historic properties that would be adversely affected (see Attachment B)
  - (7) Photographs of the survey area and cultural resources identified in the APE
  - (8) As appropriate, completed Alaska Heritage Resource Survey (AHRS) forms for cultural resources identified in the APE
- (J) Within 30 days of completion of surveys for that field season, ARRC in coordination with the Working Group shall submit any information developed regarding these sites to STB and SHPO for review, comment, and consideration (Agreement Stipulation III.B.4) with the understanding that the information submitted is preliminary and a full report will be submitted as soon as possible
- (K) A draft report(s) (see Section 5.I) shall be developed following completion of field surveys for that season
  - (1) Reports may be submitted as surveys for each project segment/component are completed
  - (2) The draft report(s) shall be submitted to the Working Group for review and discussion within 60 days of completion of surveys
  - (3) Following Working Group review and approval of the report(s), ARRC shall submit the report(s) to STB and SHPO for review, comment, and consideration
- (L) The Working Group shall revise draft reports to address STB and SHPO comments and ARRC shall provide final survey reports to Signatories, interested Concurring Parties, and other identified consulting parties as appropriate (note: Concurring Parties and other interested parties shall receive redacted reports with sensitive archaeological site information removed)
- (M) ARRC, in coordination with the Working Group, shall include summary discussion of identification and evaluation efforts in the Annual Report.

## **6. DEVELOPMENT OF A CURATION POLICY AND AGREEMENT**

- (A) The Working Group shall develop a *Curation Policy and Agreement* with a curatorial facility that meets requirements found in 36 CFR 79 (*Curation of Federally Owned and Administered Archaeological Collections*) in consultation with STB, SHPO, Tribes, identified landowners, and the identified curatorial facility as deemed appropriate
- (B) The *Curation Policy and Agreement* shall include or address:
  - (1) A brief summary of pertinent laws, regulations, permit requirements/land owner policies, and curatorial facility policy as well as consultation conducted during development of the document
  - (2) Field collection guidelines
  - (3) Post-Field curation of collections guidelines (i.e., all artifacts, faunal remains, samples, records and field notes, and related materials are

- packaged in archival quality materials and in a manner appropriate to the material type consistent with 36 CFR 79)
- (4) Ownership of materials (e.g., Deed of Gift for collections from private lands)
- (5) Access to collections (e.g., access for educational purposes, loans of collections, etc.)
- (C) ARRC, in coordination with the Working Group, shall submit a draft *Curation Policy and Agreement* to STB and SHPO for a 30-day review and comment period
- (D) The final *Curation Policy and Agreement* shall be provided to Signatories and Concurring Parties to the Agreement and shall be appended to the Agreement (Agreement Stipulation VI.A)
- (E) The *Curation Policy and Agreement* shall be completed prior to the beginning of construction

## 7. GENERAL CONSULTATION PROCEDURES

- (A) Consulting parties may include Signatories, Invited Signatories, and Concurring Parties to the Agreement as well as other individuals and organizations with a demonstrated interest in the Undertaking and/or who have expressed interest during consultation on MOU tasks
- (B) Consultation may occur via email, letter, telephone, or meetings as deemed appropriate by the Working Group in consultation with STB and SHPO
- (C) Consultation efforts, including identification of additional consulting parties and meetings or correspondence, that have occurred in coordination with tasks outlined in the Agreement and this MOU shall be documented and summarized for inclusion in the *Annual Report*
- (D) Schedules/deadlines for review and comment on deliverables submitted to consulting parties shall be clearly stated in transmittals
- (E) Discussion/agendas for consultation meetings may combine MOU tasks as appropriate
- (F) Procedures for identifying and consulting other interested parties beyond those identified in the Agreement (Stipulation III.A.3) shall include:
  - (1) Consult with Signatories and Concurring Parties to determine if additional parties have expressed an interest in being a consulting party
  - (2) Add information to the Project website regarding consultation opportunities (e.g., meetings, document review, etc.) and how to be added to the consulting party list
  - (3) Provide sign-up sheets for people interested in becoming a consulting party at Project meetings/workshops
  - (4) Contact potential additional identified parties to confirm their interest in being a consulting party, and in coordination with STB, invite them in writing to participate in consultation

**8. MONITORING, AMENDMENTS, TERMINATION, AND CONSISTENCY WITH THE AGREEMENT**

- (A) **Monitoring.** All tasks carried out under the MOU are subject to oversight, review, and approval by the Signatories to the Agreement (STB, SHPO, and the Advisory Council on Historic Preservation [ACHP]) as the Signatories deem appropriate.
- (B) **Amendments.** Any party to this MOU may request that it be amended. Amendments shall be submitted in writing to MOU parties for consideration and inclusion in the MOU. The revised MOU shall be submitted to STB and SHPO for review and comment.
- (C) **Termination.** Any party to this MOU may terminate it by providing 30 days written notice to the other parties. ARRC shall notify STB and SHPO of consultation to avoid termination and invite them to participate. Parties to the MOU shall consult with STB and SHPO during this 30-day period, per Agreement Stipulation XI (Dispute Resolution), to seek agreements on amendments or other actions that would avoid termination. In the event that the MOU is terminated, STB shall comply with Stipulation XII (Amendments) of the Agreement.
- (D) **Consistency with the Agreement.** Wherever this MOU contradicts or is inconsistent with the Agreement, the provisions of the Agreement shall govern exclusively and such contradiction or inconsistency shall have no force or effect.

FINAL, December 5, 2011

**SIGNATORIES**

**ALASKA RAILROAD CORPORATION**

By: T. Brooks  
Tom Brooks, Vice President and Chief Engineer

Date: 12/6/11

**KNIK TRIBAL COUNCIL**

By: \_\_\_\_\_  
Debra Call, President

Date: \_\_\_\_\_

**MATANUSKA SUSITNA BOROUGH**

By: \_\_\_\_\_  
John Moosey, MSB Manager

Date: \_\_\_\_\_

FINAL, December 5, 2011

**SIGNATORIES**

**ALASKA RAILROAD CORPORATION**

By: \_\_\_\_\_  
Tom Brooks, Vice President and Chief Engineer

Date: \_\_\_\_\_

**KNIK TRIBAL COUNCIL**

By: Debra Call  
Debra Call, President

Date: 12/6/11

**MATANUSKA SUSITNA BOROUGH**

By: \_\_\_\_\_  
John Moosey, MSB Manager

Date: \_\_\_\_\_

FINAL, December 5, 2011

**SIGNATORIES**

**ALASKA RAILROAD CORPORATION**

By: \_\_\_\_\_  
Tom Brooks, Vice President and Chief Engineer

Date: \_\_\_\_\_

**KNIK TRIBAL COUNCIL**

By: \_\_\_\_\_  
Debra Call, President

Date: \_\_\_\_\_

**MATANUSKA SUSITNA BOROUGH**

By: \_\_\_\_\_  
John Moosey, MSB Manager

Date: 12-8-11

|                                                                                                      |               |                                                                                            |                                                                                                   |                                                          |                                                                         |                                                                                      |
|------------------------------------------------------------------------------------------------------|---------------|--------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|----------------------------------------------------------|-------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| <b>ing (MOU)</b><br>with Working Group<br>IPO                                                        | Working Group | Working Group in<br>consultation with<br>STB & SHPO                                        | MOU                                                                                               | 15 days                                                  | STB & SHPO                                                              | No later than 45 days<br>after STB licensing of<br>Alternative                       |
| <b> District (IDSHD) Workshop</b><br>Working Group                                                   | ARRC          | ARRC in<br>consultation with<br>STB, SHPO, &<br>Working Group                              | Agenda and Materials                                                                              | 15 days                                                  | STB, SHPO, Working<br>Group                                             | Within 60 days after<br>STB licensing of<br>Alternative                              |
| <b> Implementation Plan</b><br>ies, Invited Signatories, & interested                                | ARRC          | ARRC in<br>consultation with<br>STB, SHPO, &<br>Working Group                              | Summary and<br>Implementation Plan                                                                | 30 days                                                  | Signatories, Invited<br>Signatories, & interested<br>consulting parties | Within 60 days after<br>IDSHD Workshop                                               |
| ) 3<br>) & STB<br>HPO & STB (if needed)<br>atories, Invited Signatories, & Interested                | Working Group | Working Group,<br>HTK, WDMA, and<br>other consulting<br>parties interested in<br>the IDSHD | Proposed Final APE                                                                                | 15 days                                                  | Signatories, Invited<br>Signatories, & Interested<br>Concurring Parties | No later than 60 days<br>after STB licensing of<br>Alternative                       |
|                                                                                                      |               |                                                                                            | Revised Final APE (if<br>needed)                                                                  | 15 days (if needed)                                      |                                                                         | Within 30 days of<br>ARRC's receipt of<br>license/permit altering<br>APE (if needed) |
| it<br>s, & Concurring Parties                                                                        | Working Group | Working Group in<br>consultation with<br>STB & SHPO                                        | Curation Policy &<br>Agreement                                                                    | 30 days                                                  | Draft to STB and SHPO                                                   | Prior to ground-<br>disturbing activity                                              |
|                                                                                                      |               |                                                                                            |                                                                                                   |                                                          | Final to Signatories,<br>Invited Signatories, &<br>Concurring Parties   |                                                                                      |
| s<br>kept by supervisory personnel                                                                   | ARRC          | ARRC in<br>consultation with<br>STB, SHPO, &<br>Working Group                              | Annual Training<br>Curriculum                                                                     | 30 days (no review<br>period stipulated in<br>Agreement) | STB, SHPO, MSB, and<br>Tribes in Attachment<br>A.2 of Agreement         | Annually                                                                             |
| <b> Historic Properties in APE</b>                                                                   | Working Group | Working Group in<br>consultation with<br>STB & SHPO                                        | Results of Survey<br>(includes<br>recommendations on<br>eligibility and effect as<br>appropriate) | 30 days (no review<br>period stipulated in<br>Agreement) | STB & SHPO                                                              | Information submitted<br>within 30 days of<br>investigating any sites i<br>final APE |
| <b> Historic Properties (STB)</b><br>ories, & Interested Concurring Parties<br><b>covery Reports</b> | STB           | STB in consultation<br>with Working Group<br>& SHPO                                        | Evaluation and<br>Treatment of Potential<br>Historic Properties in<br>the APE                     | 30 days                                                  | SHPO                                                                    |                                                                                      |
|                                                                                                      |               |                                                                                            |                                                                                                   | 15 days                                                  | Signatories, Invited<br>Signatories, & Interested<br>Concurring Parties |                                                                                      |
|                                                                                                      | ARRC          | ARRC in<br>consultation with<br>Working Group                                              | Inadvertent or<br>Unanticipated<br>Discovery Reports                                              | 5 days                                                   | STB, SHPO, Tribes, and<br>land managing agency<br>(as appropriate)      | Within 72 hours of<br>discovery                                                      |
|                                                                                                      | ARRC          | ARRC in                                                                                    | Annual Report                                                                                     | 30 days (no review                                       | Signatories, Invited                                                    | Annually                                                                             |

**ATTACHMENT B: STANDARD AND NONSTANDARD PROCESSES/TREATMENTS  
FOR HISTORIC PROPERTIES IDENTIFIED DURING SURVEY EFFORTS**

- (A) Typical cultural resources (alone or in combination), not including human remains, likely to be identified during reconnaissance surveys and/or subsurface testing that may be found eligible for the NRHP and may be recommended for treatment/mitigation could include:
  - (1) House or cache pits/depressions
  - (2) Artifacts (stone, animal bone, etc.)
  - (3) Structures (e.g., bridges, hunting blinds, outhouses, building ruins, etc.)
  - (4) Buildings (e.g., cabins, houses, roadhouses, etc.)
  - (5) Trails/Roads
  - (6) Culturally Modified Trees (CMTs)
  - (7) Debris (cans, bottles, concrete fragments, 50-gallon drums, vehicle remains, etc.)
- (B) Human remains (including graves, burials, and associated funerary objects) identified during reconnaissance surveys and/or subsurface testing shall be treated as required under the *Plan of Action for the Treatment of Human Remains, Graves and Historic Properties* (Agreement Attachment A)
- (C) Recommendations on treatment/mitigation for historic properties identified during reconnaissance surveys and/or subsurface testing that will be adversely affected by the Undertaking will be developed in consultation with STB, SHPO and the appropriate consulting parties
- (D) Recommendations on standard treatments for historic properties could be based on the Advisory Council on Historic Preservation's *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites* (<http://www.achp.gov/archguide.html#archsites>) and SOI's *Standards and Guidelines*, specifically "Architectural and Engineering Documentation" ([http://www.nps.gov/history/local-law/arch\\_stnds\\_6.htm](http://www.nps.gov/history/local-law/arch_stnds_6.htm)) and "Archaeological Documentation" ([http://www.nps.gov/history/local-law/arch\\_stnds\\_7.htm](http://www.nps.gov/history/local-law/arch_stnds_7.htm))
- (E) Standard and nonstandard treatment/mitigation of historic properties (individual or groups/collections) could include (see Agreement Stipulation IV.B):
  - (1) Developing a data recovery program (e.g., research design, data recovery plan, controlled excavation, reporting) for archaeological resources
  - (2) Developing a documentation plan (e.g., Historic American Building Survey/Historic American Engineering Record [HABS/HAER] documentation, archival photography) for built environment resources
  - (3) Developing local historic preservation plans and/or ordinances
  - (4) Developing educational materials/curriculum and web sites
  - (5) Conducting interviews with Tribal Elders and/or other knowledgeable individuals

- (6) Acquiring and preserving historic properties away from the project area in return for doing little or no direct mitigation on sites within the APE
- (7) Preserving selected historic properties and incorporating them into heritage tourism plans while allowing others to be lost
- (8) Burying eligible archaeological resources under fill or incorporating other historic properties into the Undertaking
- (9) Relocating historic properties
- (10) Developing historic property management plans
- (11) Developing a Tribal cultural resource mapping program
- (12) Developing interpretative signage/displays
- (13) Facilitating development of trail easements