

Preserving America's Heritage

El- 17945

Rec'd 11/6/09
via email

November 6, 2009

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

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

Dear Mr. Navecky:

The Surface Transportation Board (STB) recently requested that the Advisory Council on Historic Preservation (ACHP) review a revised draft Programmatic Agreement (PA) for the referenced undertaking. The ACHP is actively participating in consultation under 36 CFR 800.6(b)(2) of our regulations, "Protection of Historic Properties" (36 CFR Part 800).

The ACHP and the Alaska State Historic Preservation Officer (SHPO) jointly reviewed the draft PA with an emphasis on those sections added to Stipulations IV and V. We believe that sections of the procedure for the identification of historic properties and the assessment of effects described in the additions to these stipulations should be revised to provide greater clarity and specificity with respect to the level of effort for phased identification and the process through which the SHPO and other consulting parties will share their views on the eligibility of historic properties and the assessment of effects. The following revisions and clarifications should address our remaining concerns with the PA draft.

- As Native Allotments are located within Salchaket Village, what is STB's plan for consulting with the Bureau of Indian Affairs as needed?
- The professional qualifications statement, which appears to have been deleted, should be reinstated in Stipulation I (Administrative Considerations). Boilerplate language for such a stipulation usually includes: "[Agency] shall ensure that all work carried out pursuant to this PA 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)."
- Stipulation IV.A. should begin with a statement that "Additional identification and evaluation efforts will be required as follows..." Historic farming landscapes should be added as a reference in IV.A.2. as these were not previously surveyed.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

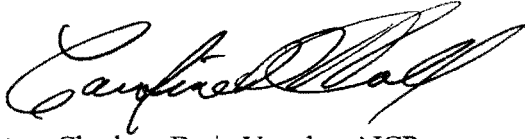
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- The ID Plan (or a summary/flow chart explaining it) should be included as an appendix to the PA since it is not readily available. The stipulation should clarify that additional archaeological survey work will follow the ID Plan's model in terms of determining the method of survey to be employed in various areas of the APE. Given that the ID Plan was for archaeological survey, a statement should be added to Stipulation IV.B. about how a scope of work for any phased identification of non-archaeological historic properties will be developed in consultation.
- In Stipulation IV.C., the STB should delineate a procedure for deciding on the scope of archaeological testing efforts to establish the boundaries of eligible historic properties located through archaeological survey per the ID Plan. It is our understanding that the ID Plan does not specify a methodology for testing to determine National Register boundaries. The comments of SHPO and consulting parties, including Indian tribes, should be taken into consideration before detailed evaluation testing takes place. SHPO should receive information on STB's findings and be asked to concur with determinations of eligibility at the same time as other consulting parties. At present, the stipulation reads that other consulting parties and Indian tribes will comment on STB's eligibility evaluations prior to this information being shared with the SHPO.
- Similarly, the process in Stipulations IV.D. and E. should be combined so that the STB advances its effect findings to all consulting parties, including SHPO, for comments and concurrence at the same time.
- Regarding the development of treatment plans, in the first paragraph of Stipulation V.B., include a statement that the STB will incorporate any comments provided by the SHPO and consulting parties in the development of a final treatment plan. The stipulation should describe a clear procedure for determining whether a treatment plan is final, whether that includes STB final approval, the review and concurrence of the SHPO, or both.
- Stipulation VIII.D.3. refers to field reports from archaeological data recovery or other treatment activities. As the SHPO and land managing agencies have an opportunity to request additional fieldwork following submission of these reports, this consultation procedure should instead be included in Stipulation V (Treatment of Historic Properties). Under what circumstances will STB conduct additional fieldwork based on the responses it receives to these reports? How will the final scope of data recovery or other treatment measures be determined?

Finally, we must clarify that other federal agencies that have or may have Section 106 responsibilities in the future (such as for an approval to cross federal land) should be signatories to the PA. If an agency's role at the time of execution remains undetermined and that agency believes its signature would be premature, a stipulation can be included that allows other federal agencies to accept the terms of the PA without the laborious process of amendment. Please revise the whereas clauses and signature pages accordingly. The ACHP also awaits STB's response to our question about how review of the PA has been coordinated with Indian tribes. What entity will carry out the actions called for in the plan for tribal consultation (Attachment C)? As written, the assignment of this responsibility is unclear.

Should you have any questions or wish to discuss these comments, please contact Blythe Semmer at (202) 606-8552 or via email at bsemmer@achp.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Charlene Dwin Vaughn". The signature is fluid and cursive, with the first name "Charlene" being more prominent.

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