



Preserving America's Heritage

E1- 17937

July 17, 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. STB has determined that this undertaking may have an adverse effect on historic properties listed in and eligible for the National Register of Historic Places. The ACHP is actively participating in the Section 106 consultation process in accordance with 36 CFR §800.6(b)(2) of the ACHP's regulations, "Protection of Historic Properties," and submit our comments accordingly.

The following comments and recommendations are submitted to STB for its consideration. Please note, however, that STB should revise the draft PA to reflect its response to our comments and those of other consulting parties before finalizing the document.

- The preamble should include language explaining that if other federal agencies choose to use the PA to satisfy their Section 106 review responsibilities for actions associated with this undertaking and the selected alternative, they will sign the PA.
- In the final whereas clause, delete "mitigation of" and replace with "consideration of alternatives to avoid, minimize, or mitigate adverse effects to."
- The description of overlapping federal agency responsibilities in Stipulation I.C. should be clarified. A procedure allowing the option to designate a lead agency for a specific task under the terms of the PA when more than one federal agency may have oversight responsibilities could be helpful in this regard.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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- While an Agency Consultation and Coordination Plan (ACCP) may be developed to clarify and disclose to consulting parties the specific oversight responsibilities of federal agencies following selection of an alternative, consultation procedures should be developed now and included in the body of the PA. These procedures should include protocols for identification and evaluation, assessment of effects, and development of treatment measures in stipulations IV and V. They should also specify the party responsible (even if that information is later augmented by the specific assignments to be included in the ACCP), the documentation to be provided for review, timeframes for consultation with SHPO, tribes, and other consulting parties, and how STB will arrive at final determinations for each of these steps in the process.
- In Stipulation III, delete the phrase "in an area previously identified through the Section 106 process as being eligible to the NRHP" as the participation of tribes in additional identification and evaluation efforts should be facilitated by the Plan for Tribal Consultation. The stipulation should note that all federal agencies who endorse the agreement will be provided with a copy of the Plan for Tribal Consultation and agree to implement its terms.
- Procedures for the identification and evaluation of historic properties, the assessment of effects, and the consideration of alternatives to avoid, minimize, or mitigate adverse effects should provide for the involvement of consulting parties.
- In Stipulation V, "Treatment of Historic Properties," please ensure that treatment plans are only being prepared when an adverse effect finding has been made by STB.
- In Stipulation V.B., please provide details about when data recovery plans will be prepared and how STB will take into consideration the comments of SHPO and other consulting parties in revising and finalizing the plans.
- In Stipulation V.C., what is the rationale for the requirement that alternative mitigation approaches must be approved in writing by all signatories and invited signatories? Alternative mitigation approaches ideally should be as easy to develop and implement as data recovery.
- Training (Stipulation XI) should be developed in consultation with the SHPO and tribes. Who will develop the training, and how will it be reviewed? The training should be developed with sensitivity to concerns of tribes and offer the opportunity for a tribal representative to meet in person with employees and contractors if a tribe so requests.
- Reporting on training (Stipulation XI.E.) could be included in the preparation of the annual report (VIII.C.).
- Delete Stipulation XV and the reference to state law included in Stipulation XVII.
- Finally, ACHP recommends against expanding on or diverging from definitions for terms included in 36 CFR 800.16 in the glossary attached to the PA.

We appreciate the opportunity to review the draft PA and to share with STB and other consulting parties the ACHP's views regarding how to avoid, minimize, or mitigate adverse effects from this undertaking. We look forward to working with STB to continue the Section 106 consultation process and to reviewing a revised draft of the PA in the near future. Should you have any questions or wish to discuss this matter further, please contact Blythe Semmer at (202) 606-8552 or via email at bsemmer@achp.gov.

Sincerely,

A handwritten signature in cursive script, reading "Charlene Dwin Vaughn".

Charlene Dwin Vaughn, AICP

Assistant Director

Office of Federal Agency Programs

Federal Permitting, Licensing, and Assistance Section