



E1-18593

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 Knikatnu, 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.

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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.

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Letter to David Navecky Comments of Draft Programmatic Agreement

Sincerely,

A handwritten signature in black ink, appearing to be "Brian Lindamood", with a small dot above the "i".

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(c)); 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, 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 these 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

STBARRC 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 STBARRC 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. The 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 these 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
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Fax: 907-696-2845~~

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President
~~Knik Tribal Council President~~
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Phone: 907-373-7991
Fax: 907-373-2161
dcall@kniktribe.org
dcall@alaskanative.net

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~~Fax: 907-376-2847~~

Frank Standifer
President
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Fax: 907-583-2442

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Chief
Chickaloon Village Traditional Council

DRAFT, February 10, 2011

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Phone: 907-745-0707
Fax: 907-745-0709

Michaeleene Stephan
President
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Phone: 907-272-0707
Fax: 907-274-7125

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President
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Phone: 907-373-1145
Fax: 907-373-1004

Gloria O'Neill
President and Chief Executive Officer
Cook Inlet Tribal Council
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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
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Janet Shea

Gloria O'Neill
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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
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Matanuska-Susitna Borough Historic Commission
Matanuska-Susitna Borough
Cultural Resources Specialist
350 East Dahlia Avenue
Palmer, Alaska 99645
fseagerboss@mtsu.gov.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 VIV.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
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Phone: 907-373-7991
Fax: 907-373-2161
dcall@kniktribe.org
dcall@alaskanative.net

Delia Call, Secretary Treasurer
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Jack Alcorn, Executive Director
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Other Organizations

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