

EO - 1684



FW: Alaska RR, Port MacKenzie PA, revised preamble

Starzak, Richard to: Najah Duvall-Gabriel
Cc: "David.Navecky@stb.dot.gov", "Summerville, Alan"

01/07/2011 01:28 PM

From: "Starzak, Richard" <RStarzak@icfi.com>
To: Najah Duvall-Gabriel <ngabriel@achp.gov>
Cc: "David.Navecky@stb.dot.gov" <David.Navecky@stb.dot.gov>, "Summerville, Alan" <ASummerville@icfi.com>

1 attachment



STB draft whereas 12 15 tak.docx

Hi Najah,

Here is the last of the three e-mails, with Alaska SHPO's track changes to the revised preamble. We would like to keep the 4(f) compliance Whereas for FRA's use, and I was hoping you might take a look at it and suggest how we might revise it rather than delete it.

One of the key themes we got from our consultation with SHPO was to simplify the PA, so I hope you see that we've tried to do that, esp. with the stipulations and removal of some of the attachments.

Thanks,

Rick Starzak
ICF International
office tel: 213 627-5376 x 222
mobile: 213 840-7480

From: Krauthoefer, Tracie A (DNR) [mailto:tracie.krauthoefer@alaska.gov]
Sent: Wednesday, December 15, 2010 5:14 PM
To: Starzak, Richard
Cc: Gasek, Douglas F (DNR); David.Navecky@stb.dot.gov; Summerville, Alan
Subject: RE: Alaska RR, Port MacKenzie PA, revised preamble

Hi Rick,

Doug and I sat down and went over the whereas clauses.....don't be too frustrated, it looks really blue but a lot of that is because we moved things around. This track changes version incorporates both of our comments.

Also, remember that you'll need to involve the ACHP and other signatories at some point for input/review. We are happy to help get it to a certain point and beyond the rough/outline phase, but then the other parties should be consulted, particularly the ARRC and Knik TC (and you may already be doing this individually, I don't know). I was in a meeting with ARRC on Monday and they did inquire as to the status of the PA and consultation so you may want to check back in with the invited signatories and let them know where the project is and what the timeline is for review and ultimately signature.

Let me know if you have any questions and we look forward to the stipulations-

Tracie

Tracie Krauthoefer

Archaeologist, Review and Compliance

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From: Starzak, Richard [mailto:RStarzak@icfi.com]

Sent: Wednesday, December 15, 2010 7:25 AM

To: Krauthoefer, Tracie A (DNR)

Cc: Gasek, Douglas F (DNR); David.Navecky@stb.dot.gov; Summerville, Alan

Subject: Alaska RR, Port Mackenzie PA, revised preamble

Hi Tracie,

Per our discussion on Monday, attached is the preamble section of the revised PA for your review and comment. The file is in track changes from the version of the draft PA that was in the March 2010 DEIS. I'll be working on the revisions to the Stipulations today for you. Please note I've limited the parties being cc'ed for these separate section reviews, following your suggestion that we can circulate to all the other parties after we're done.

Thanks very much for your time and cooperation.

Rick

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In January, ICF Jones & Stokes became ICF International.

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APPENDIX J
DRAFT PROGRAMMATIC AGREEMENT
REVISED DRAFT 12-15-2010

DRAFT 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 Finance Docket No. 35095

4. The fourth part of the document outlines the consequences of failing to comply with the record-keeping requirements, including the possibility of fines and imprisonment.

7. The seventh part of the document outlines the specific requirements for the storage and disposal of records, including the need to ensure that all records are properly labeled and dated.

9. The ninth part of the document outlines the specific requirements for the recovery of records in the event of a disaster, including the need to ensure that all records are properly documented and stored in a secure location.

J.1 Draft Programmatic Agreement

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 the proposed rail line to connect the Port MacKenzie District in Matanuska-Susitna Borough (MSB) to a point on the existing ARRC main line between Wasilla and north of Willow, Alaska (Undertaking); and,

Comment [TAK1]: Is STB truly the lead as per 36 CFR 800.2(a)(2), if not need to figure this out

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), ~~i.e., "historic properties" as defined at 36 CFR 800.16 (1)(1), and~~

~~WHEREAS, the STB has deferred, until after the STB licenses an alternative, the final evaluation, assessment of effect and consideration of alternatives to avoid, minimize, or mitigate effects to historic properties~~
~~the full extent of which will not be known until after execution of this Agreement; and,~~

WHEREAS, the STB ~~consulted in consultation 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 CFR Part 800) implementing Section 106; and,~~

WHEREAS, the STB, ACHP, FRA, and the SHPO are Signatories pursuant to 36 CFR 800.6(c)(1) and have authority to execute, amend or terminate this Draft Programmatic Agreement (Agreement); 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 CFR 800.6(c)(2) and has the same authority to amend or terminate this Agreement as Signatories; and,

WHEREAS, the Knik Tribal Council is an Invited Signatory pursuant to 36 CFR 800.6(c)(2) because it is a Federally Recognized Tribe pursuant to 25 U.S.C. 66, ~~attaches a religious and/or cultural significance to the Denaina cultural landscape archaeological sites that may could be affected by the Undertaking and has the same authority to amend or terminate this Agreement as Signatories; and~~ and has a responsibility under this agreement;

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.

WHEREAS, the Native Village of Eklutna (NVE), a Federally Recognized Tribe; the Cook Inlet Region, Incorporated (CIRI), an Alaska Native Regional Corporation pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA, P.L. 92-203); and the Kikikanni Incorporated an Alaska Native Village Corporation pursuant to ANCSA; are Concurring Parties pursuant to 36 CFR 800.6(c)(3) because they have expressed an interest to consult on ways to avoid, minimize, and mitigate effects on the Denaina archaeological sites that could be affected by the Undertaking; and;

WHEREAS, the STB has consulted with and continues to consult with other Indian Tribes and Alaska native corporations (Tribes) listed in Attachment A of this Agreement who may want to consult on ways to avoid, minimize, and mitigate effects on the Denaina archaeological sites that could be affected by the Undertaking and these Tribes have been invited to participate in this Agreement as Concurring Parties; and;

Comment [TAK2]: Are there any other tribes, if so they should be named in a whereas clause otherwise no need to really say this. Also, if there are other tribes, you should combine all into the same whereas clause above

WHEREAS, the ARRC is an Invited Signatory pursuant to 36 CFR 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 a Concurring Party pursuant to 36 CFR 800.6(c)(3) because it is a certified local government under the NHPA (16 U.S.C. 470a(c))

WHEREAS, the State of Alaska's Department of Natural Resources (ADNR) is a Concurring Party pursuant to 36 CFR 800.6(c)(3) because it is a major land holder in the study area and may for some alternatives and if the STB licenses an alternative that crosses ADNR land, ADNR would need to grant right-of-ways associated with the Undertaking; and

WHEREAS, the STB has consulted with and continues to consult with the Indian Tribes and Alaska native corporations (Tribes) listed in Attachment A of this Agreement who may attach a religious and/or cultural significance to properties that may 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 CFR 800.6(c)(3) because it is a certified local government under the NHPA (16 U.S.C. 470a(c)) and therefore has the ability to manage its own historic properties; and

WHEREAS, the Happy Trails Kennels and Willow Dog Musters Association are Concurring Parties pursuant to 36 CFR 800.6(c)(3) because they regularly use a historic property, the Iditarod Dog Sledding Historic District, and have agreed to consult on ways to avoid, minimize, and mitigate effects on the 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 CFR 800.16(d) as the following: The APE is outlined and identified in Appendix A 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

Comment [TAK3]: This is in regulation, can fall back on that if necessary, does not need to be in agmt

Comment [TAK4]: Simplify by putting ape description into an appendix

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; and;

WHEREAS, the STB, a lead Federal agency, in conjunction with the IRA 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, the STB, in consultation with the Signatories and Invited Signatories, developed a *Cultural Resources Work Plan: Proposed Port MacKenzie Rail Extensions Project, Port MacKenzie to Willow, Alaska STB Finance Docket No. 35095 (ID Plan)* for inventory of potentially-eligible historic properties prior to construction; and has conducted potentially-eligible historic properties inventories for a range of alternatives, which were subsequently narrowed down for inclusion in the EIS; 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, in the event FRA provides grant funding to ARRC for the Undertaking, the 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 CFR 771.1, and;

WHEREAS, the STB has made a reasonable and good faith effort to identify and evaluate identified 82 historic properties within the APE for the purposes of comparing impacts in the EIS, including 59 prehistoric archaeological sites, cultural resources and 23 historic archaeological sites, cultural resources related to the Denaina cultural landscape and the Iditarod National Historic Trail and Iditarod Race cultural landscape; and;

WHEREAS, the STB has deferred, until after the STB licenses an alternative, the final identification, evaluation, assessment of effect and consideration of alternatives to avoid, minimize, or mitigate effects to historic properties that may be affected by this Undertaking, and the Signatories have agreed to develop this Agreement in accordance with 26 CFR 800.14(h)(1)(ii) to provide for the phased identification of historic properties and evaluate effects to historic properties caused by construction of the Undertaking that cannot be fully

Comment [TAK5]: What is the purpose of including this in the whereas clause? I know we talked about whether or not to include, but now I'm loggy ... probably don't need in a whereas clause, unless somewhere else in the agmt we refer to this plan for evaluations for example

Comment [TAK6]: If 4f needs to be dealt with at a later date, we'll deal with it then, can't have it in here if it's just intended

assessed at this time; 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,

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.

Comment [TAK7]: For purposes of NEPA or for 106 see comment in first whereas clause

Comment [TAK8]: Should these agencies have a role in this part as well?