

E0-1336



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10/14/2009 01:06 PM

To <judith.bittner@alaska.gov>, "Ludwig, Stefanie L (DNR)"
<stefanie.ludwig@alaska.gov>
cc <David.Navecky@stb.dot.gov>, "Summerville, Alan"
<ASummerville@icfi.com>, "Peter Bowers"
<pmb@northernlanduse.com>

bcc

Subject Conference call today at 3:30PM EST / 11:30AM Alaska time
to discuss Alaska RR Northern Rail Extension PA

Hi Judy and Stefanie,

For our call today, attached are the most recent version of the PA for Northern Rail Extension, which was revised to address your comments on 10-2-2009. In particular, please take a look at the changes to Stipulations IV (Identification and Effects), Stipulation V (Treatment) and Attachment C (the draft Plan for Tribal Consultation). For your convenience, attached are a "clean" version of the revised PA, one with track changes, and the 9-9-09 version with your 10-2-09 comments. I will also set up an Outlook calendar note for the call, but just in case, here is the telephone conference info:

Call In Number: 800-504-8071, Passcode: 9343616

The call will be at 3:30PM EST and 11:30 Alaska time, and we are looking forward to the discussion.

Sincerely,
Rick

Richard Starzak
Senior Architectural Historian/Principal

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**DRAFT PROGRAMMATIC AGREEMENT
AMONG
SURFACE TRANSPORTATION BOARD,
ADVISORY COUNCIL ON HISTORIC PRESERVATION,
FEDERAL RAILROAD ADMINISTRATION,
U.S. BUREAU OF LAND MANAGEMENT, ALASKA STATE OFFICE, AND
ALASKA STATE HISTORIC PRESERVATION OFFICER
REGARDING
THE ALASKA RAILROAD CORPORATION, NORTHERN RAIL EXTENSION
BETWEEN NORTH POLE AND DELTA JUNCTION, ALASKA**

STB Finance Docket No. 34658

WHEREAS, the Surface Transportation Board (STB)¹, the lead Federal agency, has received an application for the construction and operation of a rail line from the Alaska Railroad Corporation (ARRC or applicant), to extend its existing system between North Pole and Delta Junction, Alaska (Undertaking); and,

WHEREAS, the STB has determined that the proposed project is an Undertaking which may have an effect upon properties included on or eligible for inclusion on the National Register of Historic Places (NRHP), i.e., "historic properties" as defined at 36 CFR 800.16 (l)(1), the full extent of which will not be known until after execution of this Agreement; and,

WHEREAS, the STB is in consultation with the Advisory Council on Historic Preservation (ACHP); Federal Railroad Administration (FRA); the United States Department of the Interior - Bureau of Land Management, Alaska State Office (BLM); and the Alaska State Historic Preservation Officer (SHPO), pursuant to Section 800.14(b) of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA); and,

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

WHEREAS, the FRA is a Signatory because it has provided grant funding to ARRC for preliminary engineering and environmental analysis for the Undertaking and could provide future grant funding; and,

WHEREAS, the BLM is a Signatory because it is a land holder and has authority to issue a linear right-of-way grant for the Undertaking to pass through those Federally managed lands; and,

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 Northern Rail Extension Project.

WHEREAS, the U.S. Department of Defense, Alaskan Command (ALCOM); U.S. Air Force, 354th Fighter Wing, Eielson Air Force Base (AFB, 354th Fighter Wing); and ARRC are Invited Signatories pursuant to 36 CFR 800.6(c)(2) and have the same authority to amend or terminate this Agreement as Signatories. If ALCOM or the 354th Fighter Wing choose to use this Agreement to satisfy its Section 106 review responsibilities for actions associated with this undertaking and the selected alternative, it will request that the Signatories amend this Agreement under Stipulation XIII, elevate its status from Invited Signatory to Signatory, and sign the amended Agreement. The refusal of any party invited to become a signatory to this Agreement does not invalidate the Agreement; and,

WHEREAS, the ALCOM is an Invited Signatory because any alternative segment of the Undertaking located on military training areas would require ALCOM service component concurrence; and,

WHEREAS, the 354th Fighter Wing is an Invited Signatory because the Undertaking would pass through Eielson AFB, and would require permission from Eielson AFB for construction; and,

WHEREAS, the State of Alaska's Department of Natural Resources (ADNR) is a Concurring Party pursuant to 36 CFR 800.6(c)(3) because they are a major land holder in the study area and would need to grant right-of-ways associated with the Undertaking. The refusal of any party invited to concur with this Agreement does not invalidate the Agreement; and,

WHEREAS, the STB has consulted with and continues to consult with the Indian Tribes and Alaska native corporations (Tribes) listed in Attachment A.3 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 STB, in consultation with SHPO, has established the Undertaking's Area of Potential Effects (APE), as defined at 36 CFR 800.16(d), as the area potentially disturbed by the actual railbed (100 feet on either side of the track centerline) plus an expanded area of 328 feet (100 meters) on either side of the rail centerline to accommodate the proposed mainline track, any ancillary support facilities and the potential indirect impacts that could result from construction and operation of the rail line; and,

WHEREAS, the STB, as lead Federal agency, in conjunction with the FRA, BLM, U.S. Army Corps Of Engineers, Alaska District (USACE), ALCOM, 354th Fighter Wing, ADNR, 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 an Identification Plan (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 has made a reasonable and good faith effort to identify and evaluate historic properties within the APE for the purposes of comparing impacts in the EIS; and,

WHEREAS, the STB has made determinations of eligibility for the National Register of Historic Places (NRHP) for certain historic properties within the APE; and,

WHEREAS, the applicable requirements of the NHPA, the American Indian Religious Freedom Act, 42 U.S.C. 1996 et. seq. (AIRFA), and the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 et. seq. and 43 CFR 10 (NAGPRA), have been considered in the development of the ID plan and this Agreement does not waive the responsibilities of the Signatories and Invited Signatories under these acts and regulations; 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 through the establishment of this Agreement; 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 and to satisfy all Section 106 NHPA responsibilities for all aspects of the Undertaking.

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 STB authorization, and on its heirs, successors, and assignees.
- C. Because of both singular and overlapping legal authorities and purviews among the Signatories regarding individual Undertaking components or activities, any or all of these agencies may be responsible to carry out the terms of this Agreement for a given Undertaking component or activity. This is described in Attachment B, Agency Consultation and Coordination Plan (ACCP). That agency or agencies that has/have purview over a given Undertaking component or activity is referred to in this Agreement as the "responsible agency(ies)," hereinafter. To promote coordination among the agencies and to expedite the conduct of tasks pursuant to this Agreement, the responsible agency(ies) can make informal arrangements

among themselves regarding the implementation of this Agreement so long as the substance of this Agreement is followed. If an agency that is party to this Agreement is designated as the lead for a specific task under the terms of the Agreement, all parties to this Agreement shall be notified by STB of this arrangement. However, if there is more than one agency with purview over a given Undertaking component or activity, all involved agencies shall cooperate and keep each other aware of the substance, progress, and any problems with implementing this Agreement for that Undertaking component or activity and remain involved to prevent and resolve problems. For certain larger Undertaking components and activities, it may be advisable for all involved agencies to carry out the terms of this Agreement jointly. The responsible agency(ies) shall have purview over a given Undertaking component or activity and specific associated tasks under the terms of this Agreement based on land ownership, as follows:

1. STB and FRA on Eielson AFB and state and private lands, and
 2. BLM, STB and FRA on other Federal lands and military training grounds.
- D. No later than 60 days after issuance of any STB Final Decision granting ARRC the authority to construct and operate the Undertaking, STB and the SHPO shall consult and finalize the ACCP, Attachment B. The ACCP outlines how the agencies shall coordinate with each other in carrying out the terms of this Agreement. The ACCP includes a list of anticipated Undertaking components and activities and which agency will be the “responsible agency(ies)” for each. The ACCP may be amended as needed by these parties. Finalizing of the ACCP may begin prior to any STB decision to license an alternative.
- E. 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 “responsible agency(ies)” shall ensure compliance consistent with its/their legal authorities and consult with the other agencies, as needed.
- F. Consultation shall be an ongoing process throughout the construction phase of the Undertaking. The parties to this Agreement may consult at any time in writing, including e-mail, or telephone. Formal contacts and reviews will be established in the ACCP and Plan for Tribal Consultation in Stipulation III.

II. Applicability of this Agreement and Area of Potential Effects:

- A. This Agreement shall apply to the Undertaking licensed by STB and all components of it, including the APE, actions specified in the EIS, permits and approvals, or other documents so long as they are within the jurisdiction of the responsible agency(ies).
- B. STB will provide final determinations of eligibility for the National Register and findings of effect to the SHPO for concurrence for only those sites that are identified within the APE for the alternative licensed by STB, if any. Any future refinements to an APE in conjunction with this Undertaking shall be made in consultation with the SHPO, consistent with 36 CFR 800.4.

III. Tribal Consultation:

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. Consultation will continue as the terms of this Agreement are carried out. No later than 60 days after issuance of any STB Final Decision granting ARRC the authority to construct and operate the Undertaking, and prior to the initiation of construction, STB, in consultation with the SHPO and Tribes, shall develop a Plan for Tribal Consultation (PTC) that outlines procedures for agencies to consult with tribal organizations in carrying out the terms of this Agreement. STB shall submit this PTC to the Tribes and provide them an opportunity to comment and decide if the terms are acceptable. The PTC shall describe when and how Tribes shall be consulted, the contact names and information for each organization (Attachment A.3), procedures for review of treatment plans (as appropriate), and other matters. A draft of the PTC is included as Attachment C to this Agreement and the PTC may be amended as needed. The procedures in the PTC will be integrated into the ACCP and the agencies' implementation of this Agreement as necessary. All Federal agencies who endorse the Agreement will be provided with a copy of the PTC and agree to implement its terms.

IV. Identification of Historic Properties and Assessment of Effects:

- A. Additional identification and evaluation efforts for historic properties may be required as the activities related to this Undertaking progress, including (but not limited to):
 - 1. Any areas of surface/subsurface disturbance related to this Undertaking and within the jurisdiction of STB authority, including rail alignments as well as ancillary facilities, staging areas, and borrow areas, which are outside the area surveyed in 2006-2007.
 - 2. Portions of any alternative or alignment for which ARRC has received authority from STB to construct and operate that were not surveyed during the 2006-2007 investigations, such as portions of the Salchaket Village that were not surveyed due to the presence of private property and native allotments.

3. Previously identified sites within the surveyed APE, and along the alignments that may receive authorization from STB to construct and operate, which require additional evaluation to establish boundaries and/or to determine the effects of the Undertaking.
- B. Additional identification and evaluation efforts shall follow the administrative and consultation procedures established in the ACCP and PTC, as described in Stipulations I.D., III, and IV.C. through IV.F. Additional identification and evaluation shall conform with Federal and state guidelines for fieldwork in Alaska, be compatible with previous investigations for this Undertaking, follow the *Site Location Model and Survey Strategy for Cultural Resources in the Alaska Railroad Northern Rail Extension Project Area* (ID Plan) approved by SHPO on September 5, 2006, and may include a phased approach to testing and evaluation. Based on consultation between STB and SHPO on April 5 and May 9, 2006, the ground survey is defined as the minimum level of effort to meet Level II (Evaluation Phase) survey requirements by the SHPO (i.e., gathering sufficient data for a determination of eligibility to the National Register).
- C. The responsible agency(ies) identified in Stipulation I.C. shall evaluate properties identified in the APE according to the level of effort described in the ID Plan already developed and prepare a Level II Testing and Evaluation Report (TER) for each segment of the alternative licensed by STB, if any. The TER(s) shall include the results of Evaluation Phase survey and testing of archaeological sites that would be directly affected by construction of the alternative licensed by STB and the results of research and evaluations of above ground resources within the APE. The responsible agency(ies) shall distribute the TER(s) to Invited Signatories and Tribes, who shall have a 30-day review and comment period. Comments shall address the adequacy of the Evaluation Phase assessments and provide their recommendations for determination of eligibility based on National Register criteria (36 CFR 60.4). Based on the comments received, the responsible agency(ies) may revise the TER(s) or may conduct additional Evaluation Phase surveys or testing or both. Any revised TER shall be submitted by the responsible agency(ies) to the Invited Signatories and Tribes for a second 15-day review. If any reviewing party has an objection to the TER, they shall notify the responsible agency(ies) within 15 days of receiving the reports for review or the TER shall be considered complete.
- D. Upon completion of reviews by Invited Signatories and Tribes, STB, as the lead agency, shall provide the TER(s) to the SHPO for review of adequacy and for concurrence with determinations of National Register eligibility for sites within the APE of the alternative licensed by STB, if any. All determinations of National Register eligibility shall take into account the professional standards, guidance, and research of both the cultural resources and railroad design professions, including the Secretary of the Interior's Professional Qualifications Standards (48 FR 44734-44737). The SHPO shall have 30 days for review and comment on the adequacy of the TER and concurrence with National Register

eligibility.

- E. If after full review by the Invited Signatories, Tribes, and SHPO, no historic properties were identified within the APE for a segment, and the results of the TER for that segment have been accepted by all reviewing parties, then construction of the proposed project in this segment may be allowed by STB upon concurrence by SHPO with a finding of no historic properties affected for that segment.
- F. If the studies result in the identification of properties that are eligible for the National Register, the responsible agency(ies) shall assess adverse effects in accordance with 36 CFR 800.5 and distribute a Finding of Effect Report for each segment where historic properties were identified within the APE. The Finding of Effect Report(s) shall describe the assessment of potential adverse effects to historic properties that would result from the construction or operation of the project, and identify mitigation measures that would eliminate or minimize effects to be incorporated into the design and construction documents of the Undertaking. Consistent with 36 C.F.R. § 800.4(d)(1), STB may determine that there are historic properties within the APE, but that the Undertaking will have no effect on them. The responsible agency(ies) shall distribute the Finding of Effect Report(s) to Invited Signatories and Tribes, who shall have a 30-day review and comment period. STB, as lead agency, shall ensure that comments are responded to prior to finalizing the Finding of Effect Report(s) for submission to SHPO for review, comment, and concurrence. The SHPO shall have 30 days for review and comment on the adequacy of the Finding of Effect Report(s) and concurrence with the findings therein.

V. Treatment of Historic Properties:

- A. Any design changes, modifications, and refinements of the Undertaking shall endeavor to avoid impacts to historic properties.
- B. For historic properties that cannot be avoided by the Undertaking and when STB has made an adverse effect finding, ARRC shall develop treatment plans to minimize or mitigate the effects. Treatment plans shall be developed in consultation with STB, SHPO, the responsible agency(ies), and Tribes that may attach religious and/or cultural significance to the identified property. During the preparation of treatment plans, STB shall circulate a Draft Treatment Plan to these parties, who will have 30 days to review and provide comments. STB shall consider the comments of these parties received within 30 days and revise the Treatment Plan, if necessary. All treatment plans must be approved by STB, SHPO, the responsible agency(ies), and any Tribes participating in the development of the treatment plan prior to implementation. Under 43 CFR 7.7(a) "Protection of Archaeological Resources," tribes that consider any sites on public lands within the APE as having sacred or cultural importance have 30 days within which to comment on the treatment plans.

1. Most historic properties identified through the 2006 and 2007 surveys are archaeological sites. For historic properties that are archaeological in nature and significant for their research data potential (criterion D), the treatment measures may follow standard mitigation through data recovery. Treatment plans for data recovery shall include, at a minimum, a research design with provisions for data recovery and recordation, analysis, reporting, and curation of resulting collection and records, and shall be consistent with the *Secretary of Interior's Standards and Guidelines* (48 FR 44734-44737). Treatment plans must be consistent with easement and permit requirements of other agencies, when applicable. To the extent possible, treatment plans should group related sites or areas, so that the treatment of related historic properties can be considered in context, and to minimize the burden of review and approval by agencies.
 2. A number of the historic properties identified during the 2006 and 2007 surveys were sites relating to the historic period, or were significant for values other than their potential research value (e.g., eligible under criteria A, B, or C), including those related to the Salchaket Village site. Treatment plans for such properties, if warranted, shall specify approaches for treatment or mitigation of the property in accordance with the principles, standards, and guidelines appropriate to the property's significance. This may include, but not be limited to, use of such approaches as relocating a historic property, re-landscaping to minimize indirect effects, public interpretation, ethnographic recordation, oral history, archival research, or modification of the Undertaking to minimize adverse effects. Methods of recordation and documentation described in the treatment plan shall conform to the *Secretary of the Interior's Standards for Architectural and Engineering Documentation* (48 FR 44730-44734) or other standards specified by SHPO.
- C. In lieu of standard mitigation approaches described above, treatment plans may adopt other alternative approaches to avoid, minimize or mitigate effects to historic properties, including, but not limited to, assisting in the development of tribal historic preservation plans, developing detailed historic contexts for the region, developing educational materials, purchasing properties containing historic resources, or developing historic property management plans.
- D. Disputes or objections to treatment plans shall be resolved in accordance with stipulation XII below.

VI. Monitoring:

- A. If stipulated as part of a treatment plan, when the probability to uncover unidentified archaeological or historic materials is determined likely by the consulting archaeologist or SHPO, ARRC shall ensure that an archaeologist meeting the Secretary of the Interior's Standards and Guidelines (*36 CFR § 61, Appendix A, hereafter Standards and Guidelines*) is present to monitor specific ground-disturbing activities.
- B. The results of monitoring shall be included in a report to STB and SHPO and made available to all parties to this Agreement. This report shall be developed, within 3 months of fieldwork and be acceptable to both the "responsible agency(ies)" and the SHPO.
- C. If sites are discovered during monitoring, ARRC shall follow the procedures outlined in Stipulation IX of this Agreement.
- D. If human remains are discovered during monitoring, ARRC shall follow the procedures outlined in Stipulation X and the Plan of Action (Attachment A).

VII. Curation:

- 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, or another repository or institution approved by the SHPO. The curatorial facility shall meet requirements found in 36 CFR Part 79, *Curation of Federally Owned and Administered Archaeological Collections*.
- B. Curation arrangements between ARRC, or their cultural resources consultant, and an approved institution must be part of any treatment plan.
- C. ARRC shall incur all reasonable costs charged by the approved institution for curation of materials collected in conjunction with recovery actions under this Agreement. "Reasonable costs" shall be determined by the curatorial facility and approved by SHPO, and be consistent with professionally acceptable curatorial standards.
- D. 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 SHPO, and receiving institution and/or Tribe, and consultation in advance is recommended.
- E. 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.

VIII. Annual Meeting and Reports:

A. Annual Meeting

Annual Meeting: STB shall hold a meeting of the Signatories and Invited Signatories, as well as the Concurring Parties if they so wish, shall be held within one year of any STB final decision granting ARRC the authority to construct and operate the Undertaking, and each year by that same date, thereafter, to discuss the previous year's activities, and activities scheduled for the upcoming year. The meeting shall be held in Anchorage at the Alaska Office of History and Archaeology, or at another location by consensus of the Signatories and Invited Signatories. The parties may participate by telephone if they so desire, and minutes of the meetings will be distributed as soon as possible afterwards.

B. Additional Meetings

The ACCP may establish an additional meeting schedule among all or some of the parties to this Agreement. If any party deems a meeting necessary in addition to the annual meeting described above their request shall be considered in consultation with the other parties.

C. Annual Report

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 at least 45 days prior to the Annual Meeting.

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; and
3. An evaluation of the effectiveness of this Agreement and whether any amendments or changes are needed based on deficiencies or project modifications.

D. Additional Reporting

Implementation of this Agreement shall include administrative reporting on progress as well as the preparation of technical reports on resource investigations. The reporting shall use the following procedures unless modifications to this

reporting structure are agreed to by the Signatories and Invited Signatories and reflected in the ACCP.

1. Progress reports. Progress reports shall be submitted quarterly by ARRC to STB for the duration of the construction portion of the Undertaking following execution of this Agreement. Progress reports may be in letter format and shall describe fieldwork activities for historic properties as well as relevant construction progress that was initiated, underway, or completed for the most recent performance period, and identify steps to be initiated, continued, or completed in the next quarter. These reports may be combined with other STB reporting requirements.
2. Progress summaries. Progress summaries shall be submitted by STB to the Signatories and Invited Signatories every six months for the duration of the construction portion of the Project. The first progress summary shall be distributed six months following execution of this Agreement, with subsequent summaries following each six months thereafter until the construction portion of the Undertaking is completed. The progress summaries shall identify steps initiated, underway, or completed for the most recent performance period and identify steps to be initiated, continued, or completed in the next six-month period.
3. Preliminary field reports. Preliminary reports on the progress of historic property fieldwork shall be prepared by ARRC that demonstrate the completion of data recovery, or other procedures, investigations and site treatments approved in the treatment plans. The use of preliminary field reports is designed to facilitate a phased approach to resource evaluation and mitigation, as provided for in 36 CFR 800, and to facilitate reasonable construction planning and progress. ARRC shall distribute preliminary reports to STB, SHPO, and the appropriate land managing agency(ies), and those parties will have twenty (20) business days to review the report and either concur or request additional fieldwork, after which concurrence will be presumed. Construction may proceed, in the area of the completed fieldwork, after STB, SHPO, and appropriate land managing agency(ies) concur with the preliminary field report. If additional work is deemed necessary the parties will consult with ARRC to determine the nature and scope of that work.
4. Technical reports. Technical reports describing the results of background research, fieldwork activities, and laboratory analyses shall be prepared according to the standards and permit guidelines appropriate to the resource, including final report standards for archaeological excavation. The extent of report distribution as well as procedures for review of draft and final technical reports shall be in accordance with Stipulations IV, V and VI. ARRC shall issue final technical reports no later than two years from the completion of fieldwork activities and, in consultation with the SHPO, shall prepare

sufficient copies for dissemination to the Concurring Parties, appropriate public libraries, educational institutions, and other repositories.

IX. Procedures for Inadvertent or Unanticipated Discoveries:

- A. Upon the inadvertent discovery of a potential historic property in any activity's APE, 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 historic properties during construction that are not human remains, the Unanticipated Discoveries Plan shall be followed (Attachment A.2).

X. Treatment of Human Remains:

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. 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. 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. Notification and consultation with tribes shall be conducted in accordance with the PTC described above in Stipulation III.

XI. Training:

- A. On an annual basis, ARRC shall 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 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 historic properties, 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 STB, SHPO, and Tribes.
- D. Training shall be conducted by an archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards. However, ARRC's supervisory level employees and contractors may attend the above training and convey the information to staff unable to attend.
- E. On an annual basis and included in the annual report prepared under Stipulation VIII.C, ARRC shall supply to STB and 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.

XII. Dispute Resolution:

Should any party to this agreement object within 30 days of any treatment plan or report provided for review or actions proposed pursuant to this Agreement, STB and the SHPO shall consult with the objecting party to resolve the objection.

- A. If STB and/or SHPO determine that the objection cannot be resolved, STB shall forward all documentation relevant to the dispute to the ACHP. Within 30 days after receipt of all pertinent documentation, the ACHP will either:
 - (1) Provide STB with recommendations, which the agency will take into account in reaching a final decision regarding the dispute; or
 - (2) Notify 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 STB with reference to the subject of the dispute. 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.
 - (3) Any recommendation or comment provided by the ACHP shall be understood to pertain to the subject of the dispute; 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, STB shall take the objection into account and consult as needed with the objecting party, SHPO, or the ACHP to resolve the objection.

XIII. Amendments:

Any Signatory or Invited Signatory to this Agreement may make a request to STB, as

lead agency, 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.

XIV. Termination:

Any Signatory or Invited Signatory to this agreement may terminate it by providing thirty (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, STB will comply with 36 CFR 800.1 through 800.7 on remaining Undertaking components, activities, or outstanding issues.

XV. Duration:

This Agreement shall become effective upon execution by STB, FRA, BLM, ACHP, and 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.

XVI. Execution and Implementation:

Execution and implementation of this Agreement evidences that STB, FRA, and BLM have satisfied responsibilities under Section 106 of the National Historic Preservation Act pursuant to 36 CFR 800.

A. SIGNATORIES

Surface Transportation Board

By: _____ Date: _____
Victoria Rutson, Chief, Section 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

Cooperating Federal Agencies

U. S. Department of Interior - Bureau of Land Management, Alaska State Office

By: _____ Date: _____
Shelly Jacobson, Central Yukon Field Manager

Federal Railroad Administration

By: _____ Date: _____
Mark Yachmetz, Associate Administrator for Railroad Development

B. INVITED SIGNATORIES

Federal Agencies

U.S. Department of Defense, Alaska Command

By: _____ Date: _____
Dana T. Atkins, Lieutenant General, USAF, Commander

U.S. Air Force 354th Fighter Wing, Eielson Air Force Base

By: _____ Date: _____
Michael J. Jordan, Colonel, USAF 354th Fighter Wing, Commander

Applicant

Alaska Railroad Corporation

By: _____ Date: _____
Patrick K. Gamble, President

C. CONCURRING PARTIES

Agencies

State of Alaska, Department of Natural Resources

By: _____ Date: _____
Director, Division of Mining, Land, and Water

Tribes

Healy Lake Village

By: _____ Date: _____
(Name, Title)

Village of Dot Lake

By: _____ Date: _____
(Name, Title)

Northway Village

By: _____
(Name, Title)

Date: _____

Native Village of Tetlin

By: _____
(Name, Title)

Date: _____

Native Village of Tanacross

By: _____
(Name, Title)

Date: _____

Native Village of Eagle

By: _____
(Name, Title)

Date: _____

Nenana Native Association

By: _____
(Name, Title)

Date: _____

Native Village of Minto

By: _____
(Name, Title)

Date: _____

Tok Native Association

By: _____
(Name, Title)

Date: _____

Indian Organizations

Tanana Chiefs Conference, Inc.

By: _____
(Name, Title)

Date: _____

Doyon, Ltd.

By: _____
(Name, Title)

Date: _____

Upper Tanana Inter-Tribal Coalition

By: _____
(Name, Title)

Date: _____

Glossary of Terms/Acronyms

Adverse Effect: When an undertaking may alter, directly or indirectly, the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

Area of Potential Effects: The Area of Potential Effects (APE) means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking. Determination of the APE may take into account the professional standards, guidance, and research of both the historic properties and railroad design professions.

Borrow Area(s): An excavated area where material has been or will be dug for use as fill at another location.

Consulting Parties: Consulting parties include SHPO, Indian tribes, representatives of local governments, applicants for Federal assistance, permits, licenses and other approvals, and certain individuals and organizations with a demonstrated interest in the undertaking.

Cultural Resource: any tangible or observable evidence of past human activity, regardless of significance, found in direct association with a geographic location, including tangible properties possessing intangible traditional cultural values.

Curation: The preservation of material remains that are excavated or removed during a survey, excavation, or other study of a prehistoric or historic resource, and associated records that are prepared or assembled in connection with the survey, excavation or other study.

Days: Calendar days.

Eligible for the National Register of Historic Places: The term eligible for the National Register includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

Federal Agency(s): Any Federal entity with a statutory obligation to fulfill the requirements of Section 106 who has jurisdiction over an undertaking and takes legal and financial responsibility for Section 106 compliance in accordance with Subpart B 36 CFR 800. The Federal Agency(s) has approval authority for the undertaking and can commit the Federal agency to take appropriate action for a specific undertaking as a result of Section 106 compliance.

Historic Property: Any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian Tribe and that meet the National Register criteria.

Human Remains: The physical remains of a human body.

ID Plan: Identification Plan.

Indian Tribe: An Indian Tribe, band, nation, or other organized group or community, including a Federally-recognized Native Village, Regional Corporation or Village Corporation, as those terms are defined in Section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602) which is recognized as eligible for the special programs and serviced provided by the United States to Indians because of their status as Indians.

Keeper of the National Register: The Keeper is the individual who has been delegated the authority by the National Park Service (NPS) to list properties and determine their eligibility for the National Register. The Keeper may further delegate this authority as he or she deems appropriate.

NAGPRA: Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et. seq.).

National Register: The National Register means the National Register of Historic Places maintained by the Secretary of the Interior.

National Register Criteria: National Register criteria means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR 60). The National Register of Historic Places criteria are listed below:

The quality of significance in American history, architecture, archaeology, and culture is present in districts, sites, buildings, structures, and objects of state and local importance that possess integrity of location, design, setting, materials, workmanship and feeling and:

- a. that are associated with the events that have made a significant contribution to the broad patterns of our history; or
- b. that are associated with the lives of persons significant in our past; or
- c. that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic value, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- d. that yielded, or may be likely to yield, information on prehistory or history.

Criteria considerations: ordinarily cemeteries, birthplaces, or graves of historical figures; properties owned by religious institutions or used for religious purposes; structures that have been moved from their original locations, commemorative in nature; and properties that have achieved their significance within the past 50 years shall not be considered eligible for the National Register of Historic Places (36 CFR 60.4).

NRHP: National Register of Historic Places.

PA: Programmatic Agreement.

SHPO: State Historic Preservation Officer.

Site: Site definition is different for each state but is generally defined by Willey and Phillips (1958:18), as any reasonably definable spatial unit that contains features or is fairly continuously covered with artifacts that are indicative of an occupation 50 years or older. A site may be defined as "a spatial cluster of cultural features, or items, or both" (Binford 1972:46). These definitions apply to both prehistoric and historic sites. Archaeological context may be defined by the inclusion of any of the following: soil staining, associated fire-cracked rock, ceramics, features, or a concentration of materials within a reasonably defined spatial boundary.

STB: Surface Transportation Board.

Traditional Cultural Properties: A Traditional Cultural Property can be defined generally as an object, site, landscape feature, or other form of feature that is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that communities' history, and (b) are important in maintaining the continuing cultural identity of the community. For additional information, reference Parker and King 1995.

Treatment Plan: A proposal for the mitigation of effects upon any historic property that a project would affect. It can include data recovery, documentation, restoration or other measures.

Undertaking: An undertaking is a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit; license or approval; and those subject to state or local regulation pursuant to a delegation or approval by a Federal agency. For this Agreement, the Undertaking refers to STB's review of an application for the construction and operation of a rail line by the ARRC, extending its existing system between North Pole and Delta Junction, Alaska

Attachment A

Plan of Action for the Treatment of Unanticipated Discovery of Human Remains, Graves and Historic Properties

A.1. Human Remains and Graves

As set forth in Native American Graves Protection and Repatriation Act (NAGPRA) regulations (43 CFR 10), a specific plan of action is required in the event that human remains are uncovered on Federal lands during survey or construction of the Alaska Railroad Corporation (ARRC) proposed Northern Rail Extension (i.e., Undertaking). NAGPRA does not apply to the portions of the Undertaking on state land. The following steps must be taken if human remains, or suspected human remains, are discovered on Federal lands:

1. Should human burials be encountered, work will be stopped at once in the locality and STB, SHPO and the Alaska State Troopers (AST) shall be contacted immediately. See below for contact numbers.
2. If the human remains appear recent in the judgment of the archaeologists, STB
3. 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.
4. 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.
4. If the human remains are on Federal land and determined to be of Native American origin, 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 STB in consultation with the Alaska SME, will identify, locate and inform descendants of the deceased.
5. If the human remains are to be moved, then STB shall obtain any required permits from the Alaska State Bureau of Vital Statistics, and reinter the remains in a designated area.
6. The ARRC Project Manager should contact the following people or agencies within 24 hours of uncovering the remains.

- (a) **State Historic Preservation Officer (SHPO):**
Judith Bittner
Alaska Department of Natural Resources
Office of History and Archaeology
550 West 7th Avenue
Anchorage, AK 99501-3561
Phone: (907) 269-8721
Fax: (907) 269-8908
- (b) **Federal agency official in charge:**
Victoria Rutson
Chief, Section of Environmental Analysis
Surface Transportation Board
395 E Street SW
Washington, DC 20423
Phone: (202) 245-0295
Fax: (202) 245-0454
- (c) The appropriate land managing agency contact for the relevant parcel.
- (d) The responsible Native representative for the area of discovery.
Gary Lee
Doyon Ltd.
1 Doyon Place, Suite 300
Fairbanks, AK 99701
Phone: (907) 459-2037
Fax: (907) 459-2062
- and
- Robert Sattler
Tanana Chiefs Conference, Inc.
122 1st Avenue, Suite 600
Fairbanks, AK 99701
Phone: (907) 452-8251, ext. 3343
Fax: (907) 459-3936
- and
- (e) Alaska State Troopers
Communications Center Manager
Phone: (907) 451-5100
Fax: (907) 451-5165

Notification should include available information regarding the nature and extent of the remains and an accurate and precise location including GPS coordinates.

NAGPRA dictates that work in the immediate vicinity of the remains cannot proceed until 30 days after the reply from the Federal agency in charge or appropriate Native group that the documents regarding the finding were received, unless a written and binding agreement is issued from the Federal agency in charge and the affiliated Native American group(s) (NAGPRA 25 U.S.C. 3002 Sec 3(d)).

The remains will then be assessed and treated based on the guidance of the Federal agency in charge and the appropriate Native group as defined by NAGPRA.

Other contacts (not necessarily within the first 24 hours)

Alaska State Medical Examiner's Office:

Dr. Katherine Raven, Chief Medical Examiner

Phone: (907) 334-2200

Fax: (907) 334-2216

e-mail: Stanton.kessler@alaska.gov

Kenneth Cramer, Death Investigator

Phone: (907) 334-2200

Fax: (907) 334-2216

e-mail: Kenneth.Cramer@alaska.gov

Alaska Bureau of Vital Statistics

Phillip Mitchell, Chief

Phone: (907) 465-8643

Fax: (907) 465-3618

e-mail: Phillip.Mitchell@alaska.gov

Janet Shea

Phone: (907) 465-8608

Fax: (907) 465-4689

e-mail: Janet L Shea janet.brown@alaska.gov

A.2 Plan for Unanticipated Discoveries

Historic properties may be encountered above ground and below ground during work on the Undertaking, and might include historic and prehistoric materials as well as Traditional Cultural Properties. In the event that cultural materials are discovered, this plan shall be followed, and implemented in compliance with both NAGPRA and 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. 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.
- (3) ARRC's Project Manager should contact the people or agencies in the previous list at A.1(6)(a) through (d) 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. STB, 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. STB shall contact the appropriate Tribal representative if necessary. A decision shall be provided to ARRC within five (5) working days. If the parties agree that the discovery is not significant, verbal authorization to proceed may be given by the SHPO, and SHPO shall provide written confirmation to the parties within five (5) working days. A report of the investigation shall be provided by the investigator, following the guidelines for Monitoring described in Stipulation VI. If additional investigation is agreed to, the guidelines for Additional Investigations described in Stipulations IV.B. shall be followed, unless modified evaluation and reporting are agreed to.

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.

A.3 List of contacts for Native Alaskan representatives

Eight Federally Recognized Tribal Governments have been in consultation with STB for this Undertaking:

1. Dot Lake Village Council
2. Native Village of Eagle
3. Healy Lake Village (Tribal Council)
4. Northway Village (Tribal Council)
5. Native Village of Tanacross (Tanacross Village Council)
6. Native Village of Tetlin (Tetlin Village Council)
7. Native Village of Minto
8. Nenana Native Association (Nenana Native Council)

Following is a list of their representatives:

Common Name: Dot Lake
President, William Miller
Village of Dot Lake
P.O. Box 2279
Dot Lake, Alaska 99737
Voice: (907)-882-2695 Fax: (907)-882-5558

Common Name: Healy Lake
President, Fred Kirsteatter
Healy Lake Village
P.O. Box 60300
Fairbanks, Alaska 99706
Voice: (907)-876-5018 Fax: (907)-876-5013

Common Name: Minto
Chief, Roy Charles
Native Village of Minto
P.O. Box 26
Minto, Alaska 99758
Voice: (907)-789-7112 Fax: (907)-798-7627

Common Name: Nenana
Chief, Mitch Demientieff
Nenana Native Association
P.O. Box 356
Nenana, Alaska 99760
Voice: (907)-832-5461 Fax: (907)-832-1077

Common Name: Northway
President, Gerald Albert
Northway Village

P.O. Box 516
Northway, Alaska 99764
Voice: (907)-778-2311 Fax: (907)-778-2220

Common Name: Tanacross
Executive Director, Jerry Isaac
Native Village of Tanacross
P.O. Box 76009
Tanacross, Alaska 99776
Voice: (907)-883-4496 Fax: (907)-883-4497

Common Name: Tetlin
President, Bently Mark, Sr.
Native Village of Tetlin
P.O. Box TTI
Tetlin, Alaska 99780
Voice: (907)-324-2130 Fax: (907)-324-2131

Common Name: Eagle Village
President, David Howard
Native Village of Eagle
P.O. Box 19
Eagle, Alaska 99738
907-547-2271

The Upper Tanana Inter-Tribal Coalition consists of six of the eight Federally recognized Tribal Governments as follows:

Tribe: Village of Dot Lake
ANSCA Corporation: Dot Lake Native Corporation
Phone: 907-882-2695

Tribe: Native Village of Eagle
ANSCA Corporation: Hungwitchin Corporation
Phone: 907-547-2271

Tribe: Healy Lake Village
ANSCA Corporation: Mandas Chaag Native Corporation
Phone: 907-876-5055, 907-876-5018

Tribe: Northway Village
ANSCA Corporation: Northway Natives Incorporated
Phone: 907-778-2311

Tribe: Native Village of Tanacross
ANSCA Corporation: Tanacross Incorporated

Phone: 907-883-5024

Tribe: Native Village of Tetlin

ANSCA Corporation: Tetlin Native Corporation

Phone: 907-324-2130

Attachment B

Agency Consultation and Coordination Plan

Consultation procedures and timing are included in the body of the Agreement, however this attachment provides additional detail. Table B.1 indicates which of the Signatories or Invited Signatories have responsibilities for individual Undertaking components or activities on each segment. Figures B.1 through B.7 illustrate the geographic purview of each responsible agency. Figure B.8 provides a procedural flow chart for the Agreement.

Table B.1: Alternative Segments, Responsible Agencies, and Cultural Resources in Proximity to Main Track Alternative Segments

<i>Segment</i>	<i>Federal Agencies or Federally-Recognized Tribes/Tribal Groups/Alaska Native Corporations</i>	<i>State Agency(ies)</i>	<i>Identified Cultural Resources within the APE</i>	<i>Identified Cultural Resources within 1,312 feet of APE***</i>
North Common	STB, 354 th Fighter Wing, BLM, ACHP, FRA	ADNR SHPO		
Eielson 1	STB, 354 th Fighter Wing, ACHP, FRA	ADNR SHPO		FAI-071*
Eielson 2 or Eielson 3	STB, 354 th Fighter Wing, ACHP, FRA	SHPO ADNR		
Salcha 1	BLM, ALCOM, STB, ACHP, FRA	ADNR SHPO		FAI-1607
Salcha 2	Upper Tanana Inter-Tribal Coalition BLM, ALCOM, STB, ACHP, FRA	ADNR SHPO	2(FAI-1751, XBD-293**)	5(FAI-156*, XBD-027, XBD-067, XBD-294**, XBD-296)
Central Alternative 1 or Central Alternative 2	BLM, ALCOM, STB, ACHP, FRA	ADNR SHPO		
Donnelly 1	BLM, ALCOM, STB, ACHP, FRA	ADNR SHPO	8(XBD-335-336, 338-343)	17(XBD-188*, 189*, 297-309, 312, 337)
Donnelly 2	STB, ACHP, FRA	ADNR SHPO	4(XBD-291, 313, 320-321)	11 (XBD-287-289, 314-319, 325-326)
South Common	STB, ACHP, FRA	ADNR SHPO		1 (XBD-322)
Delta 1	STB, ALCOM, ACHP, FRA	ADNR SHPO		1 (XBD-091*)
Delta 2	STB, ALCOM, ACHP, FRA	ADNR SHPO	1 (XBD-281)	1 (XBD-282, XBD-129)

*Sites have not undergone final determinations of eligibility for listing on the National Register.

**Sites related to Salchaket Village require more data for a determination of eligibility for listing on the National Register, and would likely be eligible.

*** It was assumed in the EIS that historic properties up to 1,312 feet (400 meters) from the APE would not likely be affected by the right-of-way, but could be affected by the final design of ancillary features and their access roads.

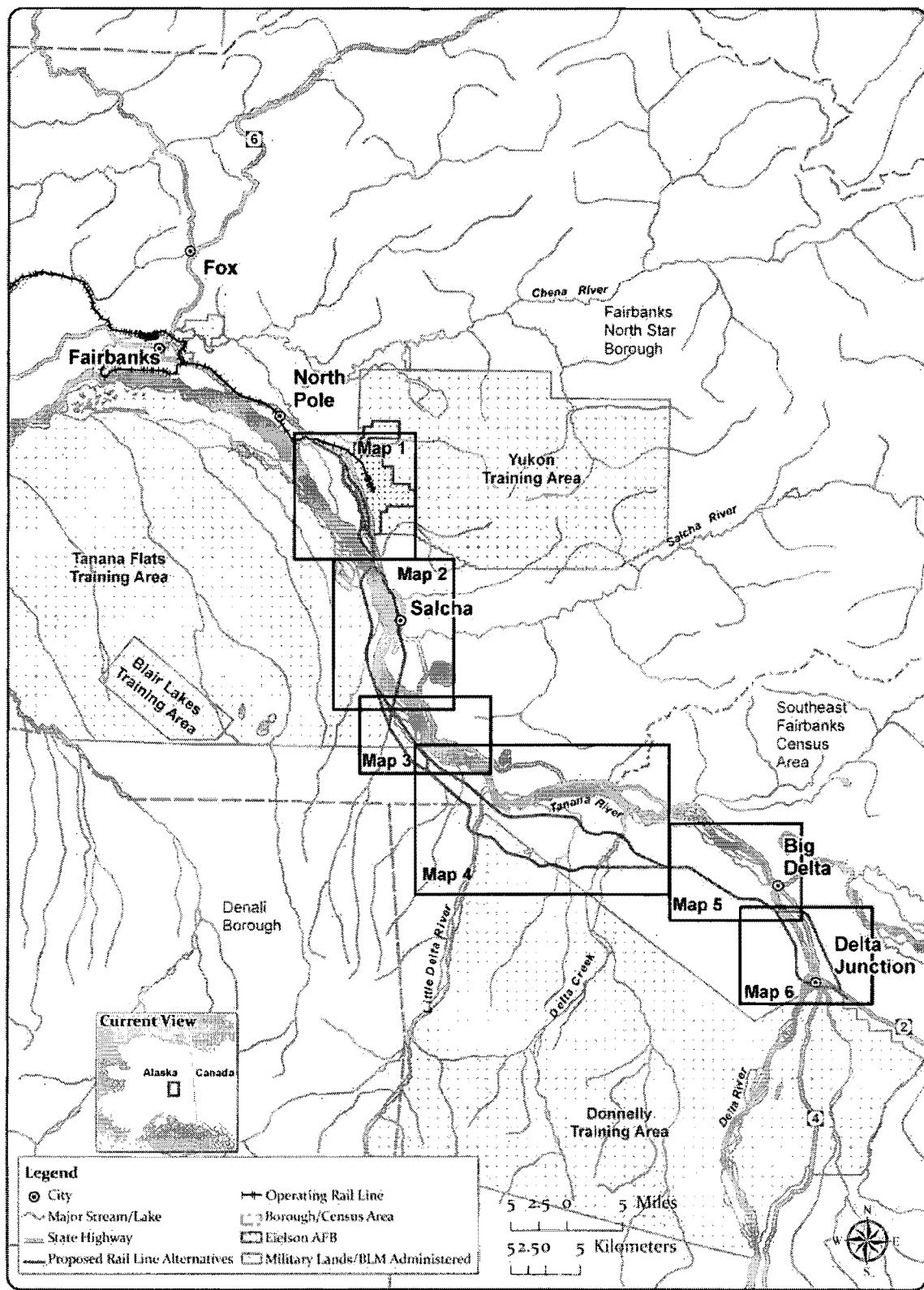


Figure B.1 – Map Key for Areas along the Proposed Northern Rail Extension

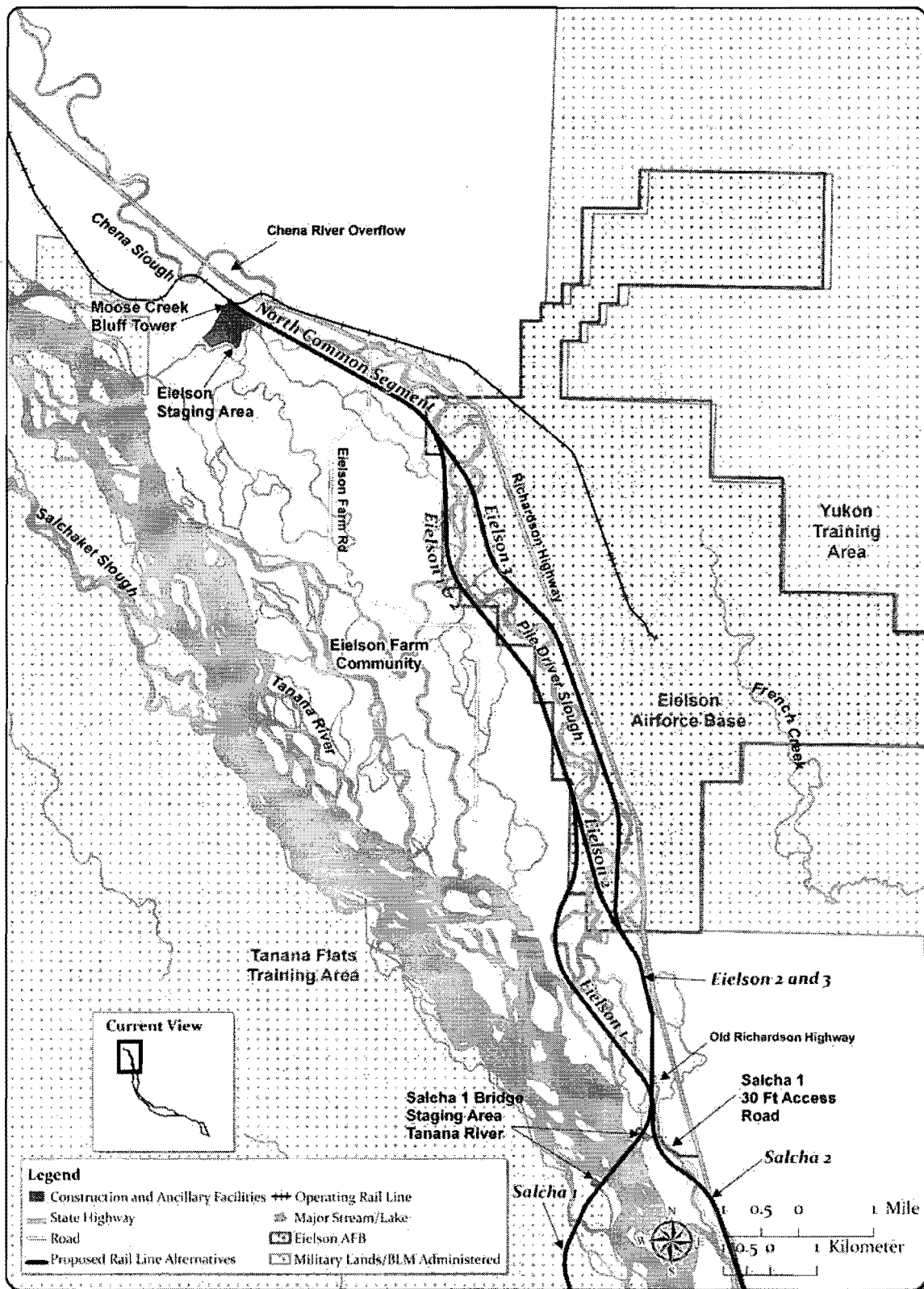


Figure B.2 – North Common Segment and Eielson Alternative Segments within Map Area

1

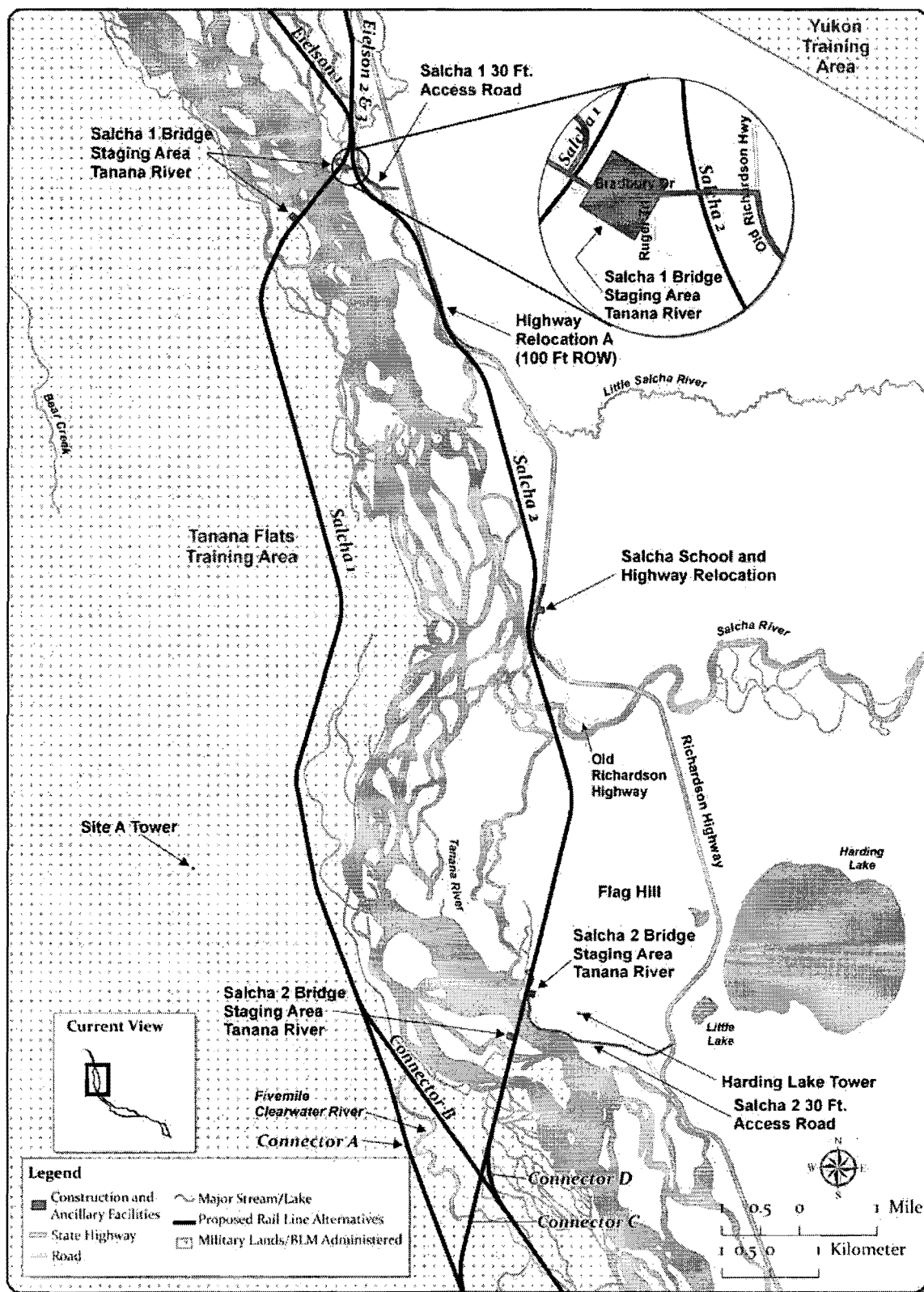


Figure B.3 – Salcha Alternative Segments within Map Area 2

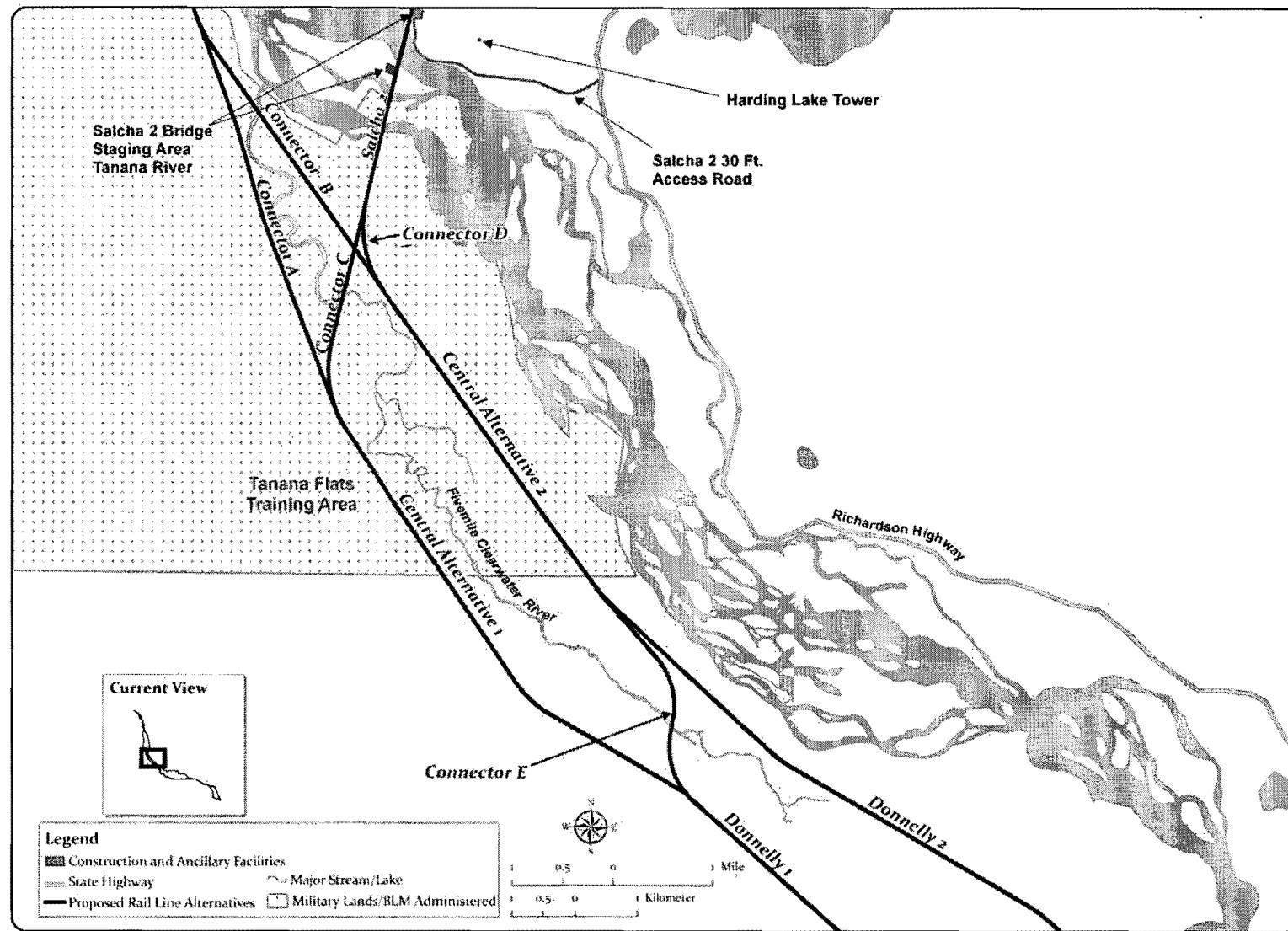


Figure B.4 – Central Alternative Segments and Adjoining Alternative Segments within Map Area 3

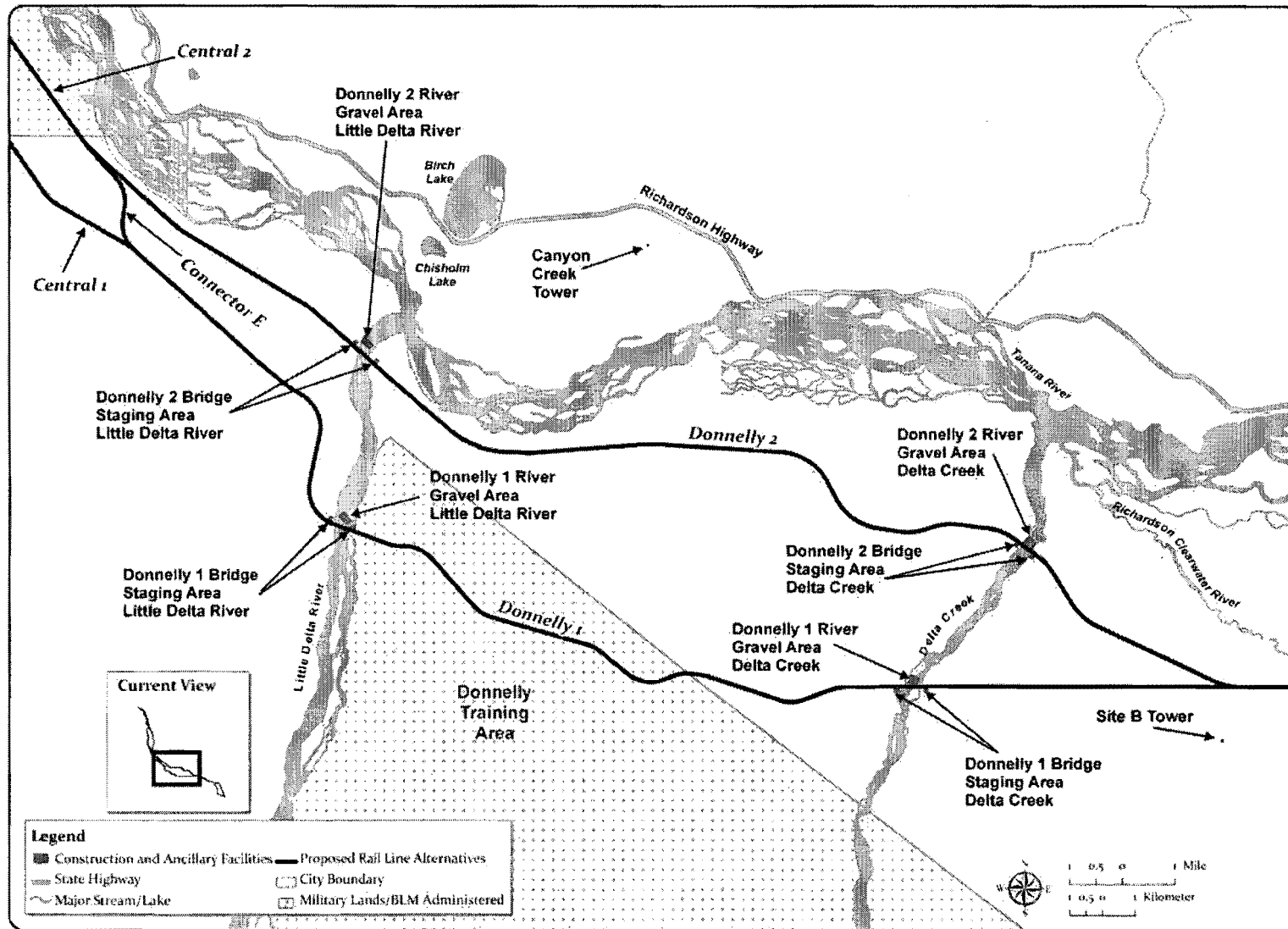


Figure B.5 – Donnelly Alternative Segments within Map Area 4

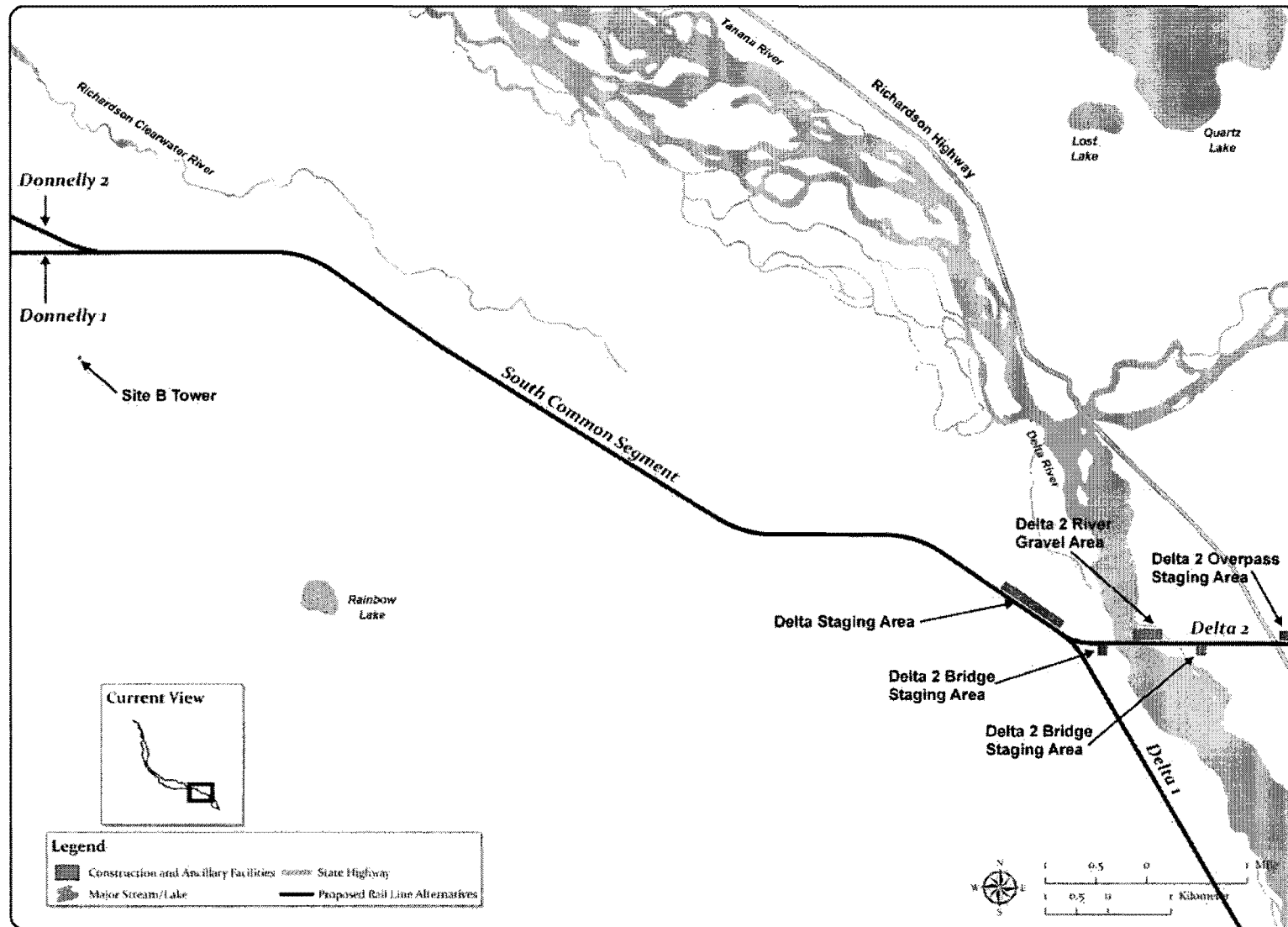


Figure B.6 – South Common Segment and Alternative Segments within Map Area 5

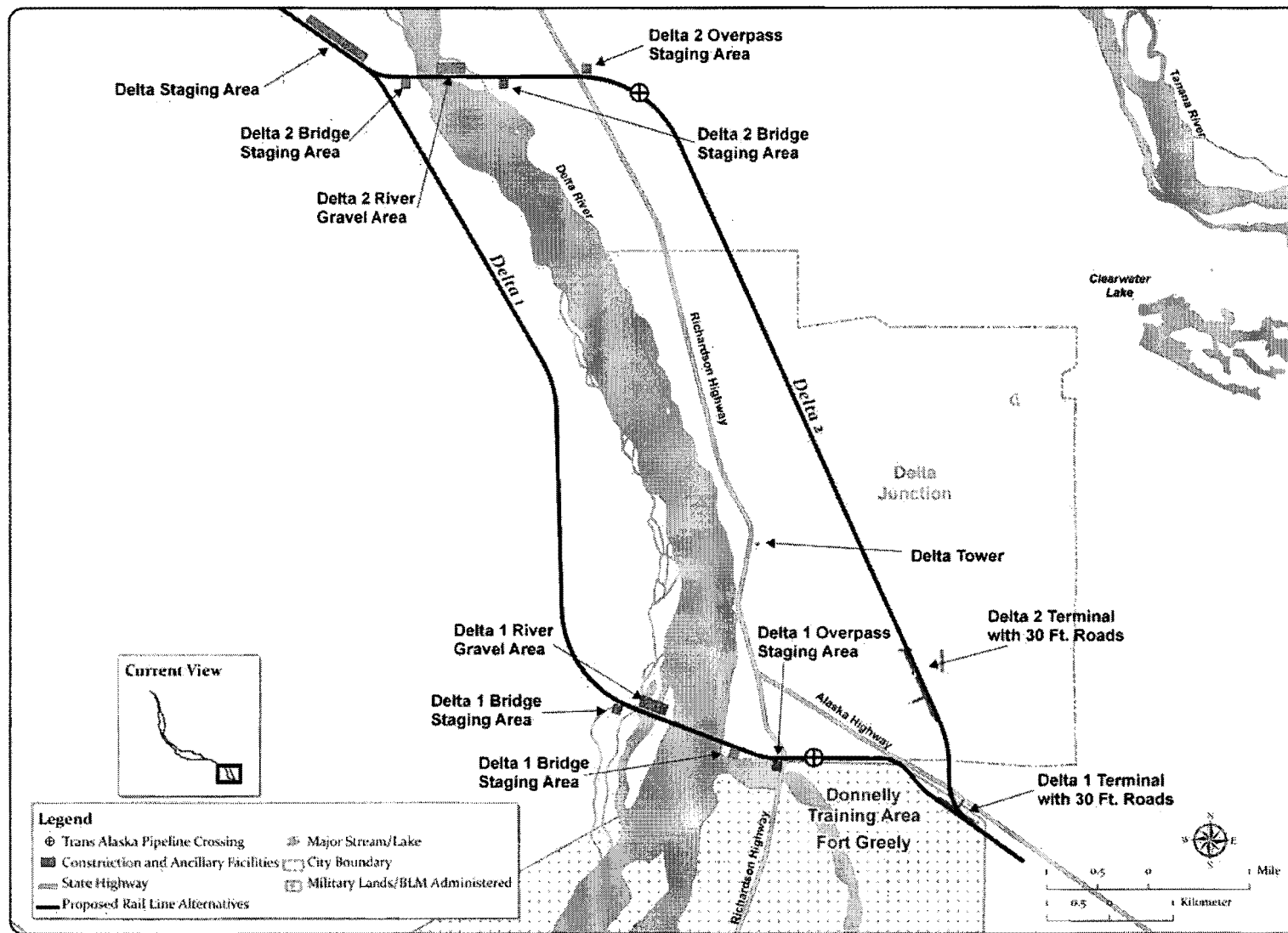
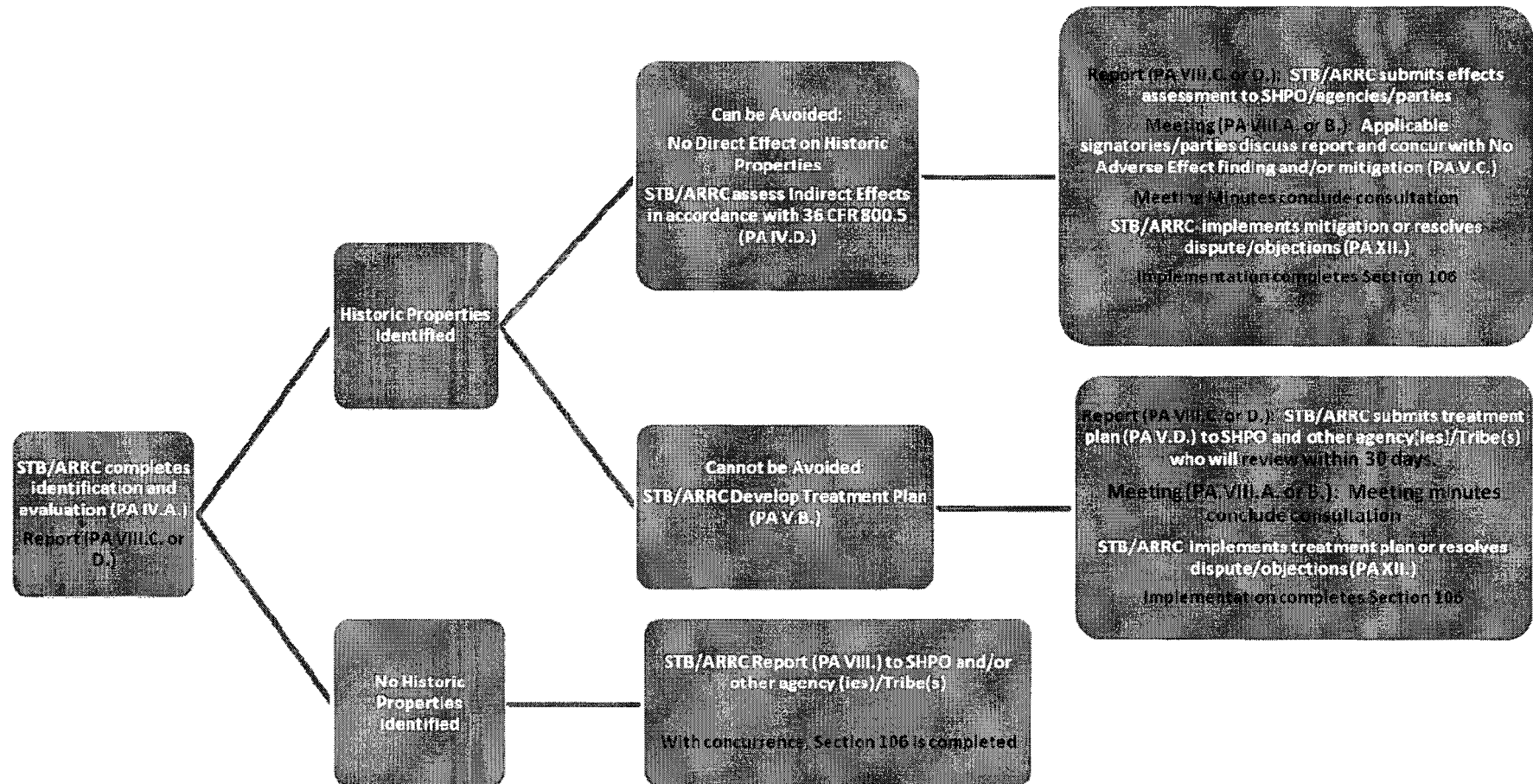


Figure B.7 – Delta Alternative Segments within Map Area 6

Figure B.8 Programmatic Agreement Procedural Flow Chart



Agency Involvement and Contact List

Federal Agencies

STB—Surface Transportation Board. *Role:* Federal Lead Agency reviewing application for the Undertaking.

Contact: David Navecky
Section of Environmental Analysis
Surface Transportation Board
Washington, D.C. 20403
Phone: (202) 245-0294. Fax: (202) 565-9000.
E-mail: David.Navecky@stb.dot.gov

ACHP—Advisory Council on Historic Preservation. *Role:* Consultation pursuant to Section 106 of the National Historic Preservation Act (NHPA).

Contact: Blythe Semmer
Program Analyst, Office of Federal Agency Programs
Federal Permitting, Licensing and Assistance Section
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue NW, Suite 809
Washington, D.C. 20004
Phone: (202) 606-8552. Fax: (202) 606-8647.
E-mail: bsemmer@achp.gov

FRA—Federal Railroad Administration. *Role:* FRA is providing grant funding to ARRC for preliminary engineering and environmental analysis for the proposed Undertaking.

Contact: John Winkle
Amtrak and Penn Station Grants, Office of Railroad Development
Federal Railroad Administration
1200 New Jersey Ave SE, MS-20
Washington, D.C. 20590
Phone: (202)493-6067. Fax: (202)493-6330.
Email: john.winkle@dot.gov

BLM—U.S. Department of the Interior--Bureau of Land Management, Alaska State Office. *Role:* Federal land holder with authority to issue a linear ROW grant for the proposed Undertaking to pass through Federally-managed lands.

Contact: Tim Hammond
Central Yukon Field Office
U.S. Department of the Interior Bureau of Land Management,
1150 University Avenue
Fairbanks, Alaska 99709
Phone: (907) 474-2210. Fax: (907) 786-7652.
E-mail: tim_hammond@ak.blm.gov

ALCOM—U.S. Department of Defense, Alaskan Command. *Role:* Any alternative segment of the Undertaking located on military training areas would require ALCOM service component concurrence.

Contact: Lt. Col. Marc Hoffmeister
Chief, ALCOM/J42, Engineering Division
US Department of Defense Alaska Command
10471 20th Street, Suite 301
Elmendorf Air Force Base, Alaska, 99506-2100
Phone: (907) 552-3683.
E-mail: marc.hoffmeister@elmendorf.af.mil

354th Fighter Wing—U.S. Air Force, 354th Fighter Wing, Eielson Air Force Base. *Role:* The proposed Undertaking would pass through Eielson AFB, requiring permission from the 354th Fighter Wing for construction.

Contact: Malcolm H. Nason, YC-02, DAF
Chief, Asset Management
354 CES/CEA
2310 Central Avenue Suite 100
Eielson AFB, Alaska 99702-2225
Phone: (907) 377-4342. Fax: (907) 377-3367.
E-mail: Malcolm.nason@eielson.af.mil

Tribes (See Attachment A.3)

Upper Tanana Inter-Tribal Coalition. *Role:* Consultation pursuant to Section 106 of the NHPA.

Contact: See Agreement Attachment A.3.

State Agencies

SHPO—Alaska State Historic Preservation Officer. *Role:* Consultation pursuant to Section 106 of the NHPA.

Contact: Judith Bittner
Alaska Department of Natural Resources
Office of History and Archaeology
550 West 7th Ave, Suite 1310
Anchorage, AK 99501-3565
(907) 269-8721. Fax: (907) 269-8908.
E-mail: judy.bittner@alaska.gov

ADNR—Alaska Department of Natural Resources. *Role:* ADNR is a major land holder and would need to grant ROWs associated with the proposed Undertaking.

Contact: Don Perrin
Alaska Department of Natural Resources
Office of Project Management and Permitting
550 West 7th Avenue, Suite 705
Anchorage, AK 99501-3568
Phone: (907) 269-7476. Fax: (907) 269-8913.
E-mail: donald.perrin@alaska.gov

Applicant

ARRC—Alaska Railroad Corporation. *Role:* Applicant to construct and operate a rail line extending its existing system between North Pole and Delta Junction, Alaska (Undertaking).

Contact: Kathryn Kusske Floyd
Mayer Brown LLP
1909 K Street, N.W.
Washington, D.C. 20006-1101
Phone: (202) 263-3223. Fax: (202) 2630-5223.
E-mail: kkusskefloyd@mayerbrown.com

Attachment C

Plan for Tribal Consultation

Introduction

Executive Order (EO) 13175 (65 FR 218), Consultation and Coordination with Indian Tribal Governments (November 6, 2000) directs Federal agencies to establish regular and meaningful consultation and collaboration with officials of Federally recognized Tribal Governments (Tribes) in the development of Federal policies or decisions that have Tribal implications. The Environmental Impact Statement (EIS) for Alaska Railroad Corporation's (ARRC) Proposed Northern Rail Extension Project will culminate in a Final Decision (i.e., Record of Decision) by the Surface Transportation Board (STB) and, as appropriate, subsequent permit decisions by other Federal agencies that constitute Federal decisions subject to the provisions of EO 13175.

The proposed ARRC Northern Rail Extension Project has the potential to directly affect the environment, resources and rights of Indian Tribes and Alaska native corporations located in Interior Alaska in the vicinity of the Tanana River. Potential effects to Tribal lands, rights, resources, religious or cultural sites and subsistence activities need to be identified, evaluated and discussed with Tribal Governments in order to comply with EO 13175, Section 106 of the National Historic Preservation Act of 1966 (see also 36 CFR Part 800, August 5, 2001) and other Federal regulations and policies

STB initiated consultation with the Tribes listed in Attachment A.3 of this Agreement regarding the Section 106 process during the early scoping stages of the preparation of the EIS. The Government to Government Consultation and Coordination Plan prepared for this Undertaking on April 10, 2006, identifies the Tribes who were notified by letter of the scoping process for the EIS, and Attachment A.3. of this Agreement lists the eight Tribes who have remained in consultation with STB after the scoping process. Copies of the Project's Draft EIS and Final EIS have been sent to all of these Tribes for review. Both documents contain the draft Agreement as an appendix. The STB also consulted with the Tanana Chiefs Conference and this consultation included several meetings and distribution of the Draft and Final Scopes of Study and Draft and Final EISs.

The STB consultation with the Tribes will remain open throughout the duration of the Project and as the terms of this Agreement are carried out. If further research or analysis results in the identification of other Tribes with interests or cultural ties to the Project, they will also be added to the list of consulting Tribes. Consultation methods will vary depending on the requests from the Tribes. Consultation types may vary from letters, phone calls, on-site meetings and various levels of documentation for review, to jointly developing site specific treatment plans and/or agreement documents. Consultation may also vary according to the type of resource involved, the periods when the various tribes are known to have occupied the project vicinity, and which alternative is ultimately licensed by the STB.

Objectives of Consultation and Coordination

Consultation and coordination is the process of seeking, discussing, and considering the views of Tribes. Two-way communication that works toward consensus and reflects the concerns of the

affected Tribes is the primary objective for the STB's consultation and coordination plan. Tribal sovereignty, culture, traditional values and customs will be respected during the consultation process.

The STB, U.S. Coast Guard and U.S. Department of Interior, Bureau of Land Management, Federal Railroad Administration, and Federal Transit Administration do not have specific guidance documents for consultation and coordination with Tribal Governments. Established guidance documents from the U.S. Department of Defense, U.S. Army Corps of Engineers - Alaska District, U.S. Environmental Protection Agency - Region 10, and State of Alaska were considered in development and implementation of the consultation and coordination plan for the Northern Rail Extension Project EIS. Specific objectives for consultation include:

1. Engage all potentially affected Tribes early in the EIS process to identify issues that should be researched and analyzed in the EIS.
2. Maintain open and active communications with Tribes throughout the EIS process to identify places of traditional religious or cultural importance and potential effects to Tribal lands, rights, resources or subsistence activities in the vicinity of the proposed project.
3. Report to the Tribes in a credible and understandable manner on issues and concerns raised during the scoping process.
4. Respond to issues raised by the Tribes during scoping and on the Draft EIS.
5. Respond to issues raised by the Tribes on the Final EIS.

Implementation Plan

Providing Tribes with the opportunity to participate in the public scoping process is not the same as government-to-government consultation and coordination. Tribal Governments were given an opportunity to consult at the start of the project and were given opportunities prior to decision making. Additional coordination will take place as determined necessary or desirable by the Signatories and Tribes. The following sequence of actions has been completed:

1. Contacted each Tribal entity (as listed in Attachment A.3) by telephone to confirm the name, title and address of current leadership.
2. Transmitted a Tribal Consultation Initiation letter and Consultation Questionnaire to each Tribal entity describing the EIS and government-to-government consultation and coordination process, describing the proposed project and soliciting Tribal input on potential effects of the proposed project on Tribal lands, rights, resources, religious or cultural sites and subsistence activities. The consultation questionnaire offered several options for Tribal consultation.
 - a. Face-to-face meetings with the Signatories at a Tribal facility,
 - b. Scheduled teleconferences with the Signatories,
 - c. No further involvement in government-to-government consultation during the EIS process, or
 - d. Continued receipt of project information by mail and participation through the public involvement process.
3. Conducted initial meetings or teleconferences with interested Tribes and developed an agreement and process for continued consultation and coordination throughout EIS development.
4. Documented the government-to-government coordination with each Tribe that has occurred thus far and included it in the Draft, Final EIS and Administrative Record.

The following actions are planned to facilitate carrying out the terms of this Agreement:

1. All Tribes shall be sent this Agreement and their ideas and preferences will be solicited concerning all parts of this Agreement that are Tribal-related. The Tribes will be able to send comments via mail, email, or phone.
2. As appropriate, STB shall solicit Tribal review of all identification efforts, assessments of effect, and treatment plans via mail, email, or phone in accordance with Stipulations IV and V. of this Agreement and the list of contacts identified in Attachment A.3. of this Agreement.
3. The Tribes shall be notified of meetings being held and reports being prepared in accordance with Stipulations VIII A. and B. and VIII D. of this Agreement

**DRAFT PROGRAMMATIC AGREEMENT
AMONG
SURFACE TRANSPORTATION BOARD,
ADVISORY COUNCIL ON HISTORIC PRESERVATION,
FEDERAL RAILROAD ADMINISTRATION,
U.S. BUREAU OF LAND MANAGEMENT, ALASKA STATE OFFICE, AND
ALASKA STATE HISTORIC PRESERVATION OFFICER
REGARDING
THE ALASKA RAILROAD CORPORATION, NORTHERN RAIL EXTENSION
BETWEEN NORTH POLE AND DELTA JUNCTION, ALASKA**

STB Finance Docket No. 34658

WHEREAS, the Surface Transportation Board (STB)¹, the lead Federal agency, has received an application for the construction and operation of a rail line from the Alaska Railroad Corporation (ARRC or applicant), to extend its existing system between North Pole and Delta Junction, Alaska (Undertaking); and,

WHEREAS, the STB has determined that the proposed project is an Undertaking which may have an effect upon properties included on or eligible for inclusion on the National Register of Historic Places (NRHP), i.e., "historic properties" as defined at 36 CFR 800.16 (l)(1), the full extent of which will not be known until after execution of this Agreement; and,

WHEREAS, the STB is in consultation with the Advisory Council on Historic Preservation (ACHP); Federal Railroad Administration (FRA); the United States Department of the Interior - Bureau of Land Management, Alaska State Office (BLM); and the Alaska State Historic Preservation Officer (SHPO), pursuant to Section 800.14(b) of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA); and,

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

WHEREAS, the FRA is a Signatory because it has provided grant funding to ARRC for preliminary engineering and environmental analysis for the Undertaking and could provide future grant funding; and,

WHEREAS, the BLM is a Signatory because it is a land holder and has authority to issue a linear right-of-way grant for the Undertaking to pass through those Federally managed lands; and,

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 Northern Rail Extension Project.

WHEREAS, the U.S. Department of Defense, Alaskan Command (ALCOM); U.S. Air Force, 354th Fighter Wing, Eielson Air Force Base (AFB, 354th Fighter Wing); and ARRC are Invited Signatories pursuant to 36 CFR 800.6(c)(2) and have the same authority to amend or terminate this Agreement as Signatories. If a Federal agency ALCOM or the 354th Fighter Wing chooses to use this PA Agreement to satisfy its Section 106 review responsibilities for actions associated with this undertaking and the selected alternative, it will request that the Signatories amend this Agreement under Stipulation XIII, elevate its status from Invited Signatory to Signatory, and sign the amended Agreement. The refusal of any party invited to become a signatory to this Agreement does not invalidate the Agreement; and,

WHEREAS, the ALCOM is an Invited Signatory because any alternative segment of the Undertaking located on military training areas would require ALCOM service component concurrence; and,

WHEREAS, the 354th Fighter Wing is an Invited Signatory because the Undertaking would pass through Eielson AFB, and would require permission from Eielson AFB for construction; and,

WHEREAS, the State of Alaska's Department of Natural Resources (ADNR) is a Concurring Party pursuant to 36 CFR 800.6(c)(3) because they are a major land holder in the study area and would need to grant right-of-ways associated with the Undertaking. The refusal of any party invited to concur with this Agreement does not invalidate the Agreement; and,

WHEREAS, the STB has consulted with and continues to consult with the Indian Tribes and Alaska native corporations (Tribes) listed in Attachment A.3 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 STB, in consultation with SHPO, has established the Undertaking's Area of Potential Effects (APE), as defined at 36 CFR 800.16(d), as the area potentially disturbed by the actual railbed (100 feet on either side of the track centerline) plus an expanded area of 328 feet (100 meters) on either side of the rail centerline to accommodate the proposed mainline track, any ancillary support facilities and the potential indirect impacts that could result from construction and operation of the rail line; and,

WHEREAS, the STB, as lead Federal agency, in conjunction with the FRA, BLM, U.S. Army Corps Of Engineers, Alaska District (USACE), ALCOM, 354th Fighter Wing, Alaska DNR, 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 an Identification Plan (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 has made a reasonable and good faith effort to identify and evaluate historic properties within the APE for the purposes of comparing impacts in the EIS; and,

WHEREAS, the STB has made determinations of eligibility for the National Register of Historic Places (NRHP) for certain historic properties within the APE and SHPO has concurred with most of those findings; and,

WHEREAS, the applicable requirements of the NHPA, the American Indian Religious Freedom Act, 42 U.S.C. 1996 et. seq. (AIRFA), and the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 et. seq. and 43 CFR 10 (NAGPRA), have been considered in the development of the ID plan and this Agreement does not waive the responsibilities of the Signatories and Invited Signatories under these acts and regulations; 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 through the establishment of this Agreement; 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 and to satisfy all Section 106 NHPA responsibilities for all aspects of the Undertaking.

STIPULATIONS

The STB shall ensure that the following measures are carried out:

I. Administrative Considerations:

- A. The STB and 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 STB authorization, and on its heirs, successors, and assignees.
- C. Because of both singular and overlapping legal authorities and purviews among the Signatories regarding individual Undertaking components or activities, any or all of these agencies may be responsible to carry out the terms of this Agreement for a given Undertaking component or activity. This is described in Attachment B, Agency Consultation and Coordination Plan (ACCP). That agency or agencies that has/have purview over a given Undertaking component or activity is referred to in this Agreement as the "responsible agency(ies)," hereinafter. To promote

coordination among the agencies and to expedite the conduct of tasks pursuant to this Agreement, the responsible agency(ies) can make informal arrangements among themselves regarding the implementation of this Agreement so long as the substance of this Agreement is followed. If an lead agency that is party to this Agreement is designated as the lead for a specific task under the terms of the PA Agreement, all responsible agency(ies) parties to this Agreement shall be notified by STB of this arrangement. However, if there is more than one agency with purview over a given Undertaking component or activity, all involved agencies shall cooperate and keep each other remain aware of the substance, progress, and any problems with implementing this Agreement for that Undertaking component or activity and remain involved to prevent and resolve problems. For certain larger Undertaking components and activities, it may be advisable for all involved agencies to carry out the terms of this Agreement jointly. The responsible agency(ies) shall have purview over a given Undertaking component or activity and specific associated tasks under the terms of this Agreement PA based on land ownership, as follows:

1. STB and FRA on Eielson Air Force Base and state and private lands, and
2. BLM, STB and FRA on other Federal lands, Eielson Air Force Base, and military training grounds.

- D. No later than 60 days after issuance of any STB Final Decision granting ARRC the authority to construct and operate the Undertaking, ~~the STB and the SHPO~~ shall consult and finalize the ACCP, Attachment B. The ACCP outlines how the agencies shall coordinate with each other in carrying out the terms of this Agreement. The ACCP includes a list of anticipated Undertaking components and activities and which agency will be the “responsible agency(ies)” for each. ~~The finalized ACCP should also include procedures for review and approval of resource determinations, treatment plans, any preliminary field reports, and final technical reports, according to the reporting structure described in Stipulation VII(C) and VIII(D) of this Agreement.~~ The ACCP may be amended as needed by these parties. Finalizing of the ACCP may begin prior to any STB decision to license an alternative.
- E. 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 “responsible agency(ies)” shall ensure compliance consistent with its/their legal authorities and consult with the other agencies, as needed.
- F. Consultation shall be an ongoing process throughout the construction phase of the Undertaking. ~~The parties to this Agreement STB, SHPO, Indian tribes and Native Alaska Corporations. Signatories, Invited Signatories and the ACHP may consult~~

at any time in writing, including e-mail, or telephone. Formal contacts and reviews will be established in the ACCP and Plan for Tribal Consultation in Stipulation III.

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 approvals, or other documents so long as they are within the jurisdiction of the responsible agency(ies) and Invited Signatories.
- B. STB will provide final determinations of eligibility for the National Register and findings of effect to the SHPO for concurrence for only those sites that are identified within the APE for the alternative licensed by the STB, if any. Any future refinements to an APE in conjunction with this Undertaking shall be made in consultation with the SHPO, consistent with 36 CFR 800.4.

~~All determinations of eligibility and of the effects of the Undertaking shall take into account the professional standards, guidance, and research of both the cultural resources and railroad design professions, including the Secretary of the Interior's Professional Qualifications Standards (48 FR 44734-44737). Consistent with 36 C.F.R. § 800.4(d)(1), the STB may determine that there are historic properties within the APE, but that the Undertaking will have no effect on them.~~

III. Tribal Consultation:

STB initiated consultation with the Tribes and Indian organizations listed in Attachment A.3 of this Agreement regarding the Section 106 process, in conjunction with the preparation of the EIS. Consultation will continue as the terms of this Agreement are carried out. No later than 60 days after issuance of any STB Final Decision granting ARRC the authority to construct and operate the Undertaking, and prior to the initiation of construction, STB, in consultation with the SHPO and ~~tribal organizations~~ Tribes, shall develop a Plan for Tribal Consultation (PTC) that outlines procedures for agencies to consult with tribal organizations in carrying out the terms of this Agreement. STB shall submit this PTC to the Tribes and provide them an opportunity to comment and decide if the terms are acceptable. The PTC shall be acceptable to the tribal organizations Tribes and describe when and how these organizations Tribes shall be consulted, the contact names and information for each organization (Attachment A.3), procedures for review of treatment plans (as appropriate), and other matters. A draft of the PTC is included as in the ACCP (Attachment C to this AgreementB) and the This PTC may be amended as needed. The procedures in the PTC will be integrated into the ACCP and the agencies' implementation of this Agreement as necessary. All Federal agencies who endorse the PA Agreement will be provided with a copy of the PTC and agree to implement its terms.

IV. Identification of Plan for Historic Properties and Assessment of Effects:

- A. Additional identification and evaluation efforts for historic properties may be required as the activities related to this Undertaking progress, including (but not limited to):
 - 1. Any areas of surface/subsurface disturbance related to this Undertaking and

within the jurisdiction of the STB authority, including rail alignments as well as ancillary facilities, staging areas, and borrow areas, which are outside the area surveyed in 2006-2007.

2. Portions of any alternative or alignment for which ARRC has received authority from the STB to construct and operate that were not surveyed during the 2006-2007 investigations, such as portions of the Salchaket Village that were not surveyed due to the presence of private property and native allotments.
3. Previously identified sites within the surveyed APE, and along the alignments that may receive authorization from the STB to construct and operate, which require additional evaluation to establish boundaries and/or to determine the effects of the Undertaking.

B. Additional identification and evaluation efforts shall follow the administrative and consultation procedures established in the ACCP and PTC, as described in Stipulations I.(D), II, and III, and IV.C. through IV.F. Additional identification and evaluation shall conform with Federal and state guidelines for fieldwork in Alaska, be compatible with previous investigations for this Undertaking; follow the *Site Location Model and Survey Strategy for Cultural Resources in the Alaska Railroad Northern Rail Extension Project Area* (ID Plan) approved by SHPO on September 5, 2006, and may include a phased approach to testing and evaluation, as described in 36 CFR 800.4b2 and 800.5a3. Based on consultation between STB and SHPO on April 5 and May 9, 2006, the ground survey is defined as the minimum level of effort to meet Level II (Evaluation Phase) survey requirements by the SHPO (i.e., gathering sufficient data for a determination of eligibility to the National Register).

C. The STB, as the lead agency, and the responsible agency(ies) identified in Stipulation I.C. shall evaluate properties identified in the APE through such studies according to the level of effort described in the ID Plan already developed and prepare a Level II Testing and Evaluation Report (TER) for each segment of the alternative licensed by the STB, if any. The TER(s) shall include the results of Evaluation Phase survey and testing of archaeological sites that would be directly affected by construction of the alternative licensed by STB and the results of research and evaluations of above ground resources within the APE. The responsible agency(ies) shall distribute the TER(s) to Invited Signatories and Tribes, who shall have a 30-day review and comment period. Comments shall address the adequacy of the Evaluation Phase assessments and provide their recommendations for determination of eligibility based on National Register criteria (36 CFR 60.4). Based on the comments received, the responsible agency(ies) may revise the TER(s) or may conduct additional Evaluation Phase surveys or testing or both. Any revised TER shall be submitted by the responsible agency(ies) to the Invited Signatories and Tribes for a second 15-day review. If any reviewing party has an objection to the TER, they shall notify the

responsible agency(ies) within 15 days of receiving the reports for review or the TER shall be considered complete.

- D. Upon completion of reviews by Invited Signatories and Tribes, STB, as the lead agency, shall provide the TER(s) to the SHPO for review of adequacy and for concurrence with determinations of National Register eligibility for sites within the APE of the alternative licensed by the STB, if any. All determinations of National Register eligibility shall take into account the professional standards, guidance, and research of both the cultural resources and railroad design professions, including the Secretary of the Interior's Professional Qualifications Standards (48 FR 44734-44737). The SHPO shall have 30 days for review and comment on the adequacy of the TER and concurrence with National Register eligibility. ~~and distribute for review and comment the report and findings to the ACHP, SHPO and any appropriate consulting parties as described in Stipulation VIII.B. or VIII.C.~~
- E. If after full review by the Invited Signatories, Tribes, and SHPO, no historic properties were identified within the APE for a segment, and the results of the TER for that segment have been accepted by all reviewing parties, then construction of the proposed project in this segment may be allowed by STB upon concurrence by SHPO with a finding of no historic properties affected for that segment.
- F. If the studies result in the identification of properties that are eligible for the National Register, the responsible agency(ies) STB shall assess adverse effects in accordance with 36 CFR 800.5 and distribute a Finding of Effect Report for each segment where historic properties were identified within the APE. The Finding of Effect Report(s) shall describe the assessment of potential adverse effects to historic properties that would result from the construction or operation of the project, and identify mitigation measures that would eliminate or minimize effects to be incorporated into the design and construction documents of the Undertaking. Consistent with 36 C.F.R. § 800.4(d)(1), STB may determine that there are historic properties within the APE, but that the Undertaking will have no effect on them. The responsible agency(ies) shall distribute the Finding of Effect Report(s) to Invited Signatories and Tribes, who shall have a 30-day review and comment period. STB, as lead agency, shall ensure that comments are responded to prior to finalizing the Finding of Effect Report(s) for submission to SHPO for review, comment, and concurrence. The SHPO shall have 30 days for review and comment on the adequacy of the Finding of Effect Report(s) and concurrence with the findings therein. ~~review and comment the report and findings to the ACHP, SHPO and any appropriate consulting parties as described in Stipulation VIII.B. or VIII.C. and the ACCP.~~

V. Treatment of Historic Properties:

- A. Any design changes, modifications, and refinements of the Undertaking shall endeavor to avoid impacts to historic properties.
- B. For historic properties that cannot be avoided by the Undertaking and when STB has made an adverse effect finding, ARRC shall develop treatment plans to minimize or mitigate the effects. Treatment plans shall be developed in consultation with STB, SHPO, the responsible agency(ies), and ~~tribal organizations~~ Tribes that may attach religious and/or cultural significance to the identified property. During the preparation of treatment plans, the STB shall circulate a Draft Treatment Plan to these parties, who will have 30 days to review and provide comments. STB shall consider the comments ~~views of these parties received within 30 days and revise the Treatment Plan, if necessary~~ the public. All treatment plans must be approved by STB, SHPO, the responsible agency(ies), and any Tribes (as appropriate) participating in the development of the treatment plan prior to implementation. Under 43 CFR 7.7(a) "Protection of Archaeological Resources," tribes that consider any sites on public lands within the APE as having sacred or cultural importance have 30 days within which to comment on the treatment plans.
1. Most historic properties identified through the 2006 and 2007 surveys are archaeological sites. For historic properties that are archaeological in nature and significant for their research data potential (criterion D), the treatment measures may follow standard mitigation through data recovery. Treatment plans for data recovery shall include, at a minimum, a research design with provisions for data recovery and recordation, analysis, reporting, and curation of resulting collection and records, and shall be consistent with the *Secretary of Interior's Standards and Guidelines* (48 FR 44734-44737). Treatment plans must be consistent with easement and permit requirements of other agencies, when applicable. To the extent possible, treatment plans should group related sites or areas, so that the treatment of related ~~resources~~ historic properties can be considered in context, and to minimize the burden of review and approval by agencies.
 2. A number of the ~~resources~~ historic properties identified during the 2006 and 2007 surveys were sites relating to the historic period, or were significant for values other than their potential research value (e.g., eligible under criteria A, B, or C), including those related to the "potentially eligible" Salchaket Village site. Treatment plans for such ~~resources~~ properties, if warranted, shall specify approaches for treatment or mitigation of the property in accordance with the principles, standards, and guidelines appropriate to the ~~resource~~ property's significance. This may include, but not be limited to, use of such approaches as relocating a historic property, re-landscaping to ~~reduce~~ minimize indirect effects, public interpretation, ethnographic recordation, oral history, archival research, or ~~prescribing use of a component or activity of this Undertaking in such a way as to minimize effects to historic properties or to those concerned about the effects of that component~~

~~or activity modification of the Undertaking to minimize adverse effects.~~

Methods of recordation and documentation described in the treatment plan shall conform ~~with~~to the *Secretary of the Interior's Standards for Architectural and Engineering Documentation* (48 FR 44730-44734) or other standards specified by SHPO.

~~C. C.~~ In lieu of standard mitigation approaches described above, treatment plans may adopt other alternative approaches to avoid, minimize or mitigate effects to historic properties, including, but not limited to, assisting in the development of tribal historic preservation plans, developing detailed historic contexts for the region, developing educational materials, purchasing properties containing historic resources, or developing historic property management plans.

~~C. Such alternative options must be approved in writing by all Signatories and the Invited Signatories to the Agreement.~~

~~C.D. D.~~ Treatment plans shall be reviewed according to the procedures established in the ACCP and PTC. Disputes or objections to treatment plans shall be resolved in accordance with stipulation XII below.

VI. Monitoring:

- A. If stipulated as part of a treatment plan, when the probability to uncover unidentified archaeological or historic materials is determined likely by the consulting archaeologist or SHPO, ARRC shall ensure that an archaeologist meeting the Secretary of the Interior's Standards and Guidelines (*36 CFR § 61, Appendix A, hereafter Standards and Guidelines*) is present to monitor specific ground-disturbing activities.
- B. The results of monitoring shall be included in a report to the STB and SHPO and made available to all parties to this Agreement. This report shall be developed, within 3 months of fieldwork and be acceptable to both the "responsible agency(ies)" and the SHPO.
- C. If sites are discovered during monitoring, ARRC shall follow the procedures outlined in Stipulation IX of this Agreement.
- D. If human remains are discovered during monitoring, ARRC shall follow the procedures outlined in Stipulation X and the Plan of Action (Attachment A).

VII. Curation:

- 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, or another repository or institution approved by the SHPO. The curatorial facility shall meet requirements found in 36 CFR Part 79, Curation of Federally Owned and Administered Archaeological Collections.
- B. Curation arrangements between ARRC, or their cultural resources consultant, and an approved institution must be part of any treatment plan.
- C. ARRC shall incur all reasonable costs charged by the approved institution for curation of materials collected in conjunction with recovery actions under this Agreement. "Reasonable costs" shall be determined by the curatorial facility and approved by SHPO, and be consistent with professionally acceptable curatorial standards.
- D. 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 SHPO, and receiving institution and/or Tribe, and consultation in advance is recommended.
- E. 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.

VIII. Annual Meeting and Reports:

A. Annual Meeting

Annual Meeting: ~~STB shall hold a~~A meeting of the STB, ACHP, SHPO, Signatories, and Invited Signatories, as well as the Concurring Parties if they so wish, shall be held within one year of any STB final decision granting ARRC the authority to construct and operate the Undertaking, and each year by that same date, thereafter, to discuss the previous year's activities, and activities scheduled for the upcoming year. The meeting shall be held in Anchorage at the Alaska Office of History and Archaeology, or at another location by consensus of the Signatories and Invited Signatories. The parties may participate by telephone if they so desire, and minutes of the meetings will be distributed as soon as possible afterwards.

B. Additional Meetings

The ACCP may establish an additional meeting schedule among all or some of the parties to this Agreement. If any party deems a meeting necessary in addition to the annual meeting described above their request shall be considered in consultation with the other parties.

C. Annual Report

ARRC or their designated consultant shall prepare an annual report on the progress of ~~cultural resources activities as they relate to compliance with the~~ implementation of the stipulations of this Agreement, and shall distribute it to all parties to this Agreement at least 45 days prior to the Annual Meeting.

The annual report shall include the following:

1. ~~(a)~~ A description of the ~~past year's effort~~ 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. ~~(b)~~ A description of the progress of the Undertaking and any known or expected changes to the Undertaking; and
3. ~~(c)~~ An evaluation of the effectiveness of this Agreement and whether any amendments or changes are needed based on deficiencies or project modifications.

D. Additional Reporting

Implementation of this Agreement shall include administrative reporting on progress as well as the preparation of technical reports on resource investigations.

The reporting shall use the following procedures unless modifications to this reporting structure are agreed to by the STB, ACHP, SHPO, Signatories and Invited Signatories and reflected in the ACCP.

1. ~~(a)~~ Progress reports. Progress reports shall be submitted quarterly by ARRC to the STB for the duration of the construction portion of the Undertaking following execution of this Agreement. Progress reports may be in letter format and shall describe fieldwork activities for historic properties as well as relevant construction progress that was initiated, underway, or completed for the most recent performance period, and identify steps to be initiated, continued, or completed in the next quarter. These reports may be combined with other STB reporting requirements.
2. ~~(b)~~ Progress summaries. Progress summaries shall be submitted by the STB to the Signatories and Invited Signatories every six months for the duration of the construction portion of the Project. The first progress summary shall be distributed six months following execution of this Agreement, with subsequent summaries following each six months thereafter until the construction portion of the Undertaking is completed. The progress summaries shall identify steps initiated, underway, or completed for the most recent performance period and identify steps to be initiated, continued, or completed in the next six-month period.
3. ~~(c)~~ Preliminary field reports. Preliminary reports on the progress of historic property fieldwork shall be prepared by ARRC that demonstrate the completion of data recovery, or other procedures, investigations and site treatments approved in the treatment plans. The use of preliminary field reports is designed to facilitate a phased approach to resource evaluation and mitigation, as provided for in 36 CFR 800, and to facilitate reasonable construction planning and progress. ARRC shall distribute preliminary reports to the STB, SHPO, and the appropriate land managing agency(ies), and those parties will have twenty (20) business days to review the report and either concur or request additional fieldwork, after which concurrence will be presumed. Construction may proceed, in the area of the completed fieldwork, after the STB, SHPO, and appropriate land managing agency(ies) concur with the preliminary field report. If additional work is deemed necessary the parties will consult with ARRC to determine the nature and scope of that work.
4. ~~(d)~~ Technical reports. Technical reports describing the results of background research, fieldwork activities, and laboratory analyses shall be prepared according to the standards and permit guidelines appropriate to the resource, including final report standards for archaeological excavation. The extent of report distribution as well as procedures for review of draft and final technical reports shall be in accordance with Stipulations IV, V and VI established in the ACCP. ARRC shall issue final technical reports no later than two years from

the completion of fieldwork activities and, in consultation with the SHPO, shall prepare sufficient copies for dissemination to the Concurring Parties, appropriate public libraries, educational institutions, and other repositories.

IX. Procedures for Inadvertent or Unanticipated Discoveries:

- A. Upon the inadvertent discovery of a potential historic property in any activity's APE, 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 historic properties during construction that are not human remains, the Unanticipated Discoveries Plan shall be followed (Attachment A.2).

X. Treatment of Human Remains:

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. 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. 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. Notification and consultation with tribes shall be conducted in accordance with the PTC described above in Stipulation III.

XI. Training:

- A. On an annual basis, ARRC shall 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 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 historic properties, 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 the STB, SHPO, ~~and Tribes and Indian Organizations.~~
- D. Training shall be conducted by an archaeologist meeting the Secretary of the Interior's Professional Qualifications of the Standards and Guidelines. However, ARRC's supervisory level employees and contractors may attend the above training and convey the information to staff unable to attend.
- E. On an annual basis and included in the annual report prepared under Stipulation VIII.C, ARRC shall supply to the STB and 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.

XII. Dispute Resolution:

Should any party to this agreement object within 30 days of any treatment plan or report provided for review or actions proposed pursuant to this Agreement, STB and the SHPO shall consult with the objecting party to resolve the objection.

- A. If the STB and/or SHPO determine that the objection cannot be resolved, the STB shall forward all documentation relevant to the dispute 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. 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.
 - (3) 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, SHPO, or the ACHP to resolve the objection.

XIII. Amendments:

Any Signatory or Invited Signatory to this Agreement may make a request to STB, as lead agency, 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.

XIV. Termination:

Any Signatory or Invited Signatory to this agreement may terminate it by providing thirty (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 800.1 through 800.7 on remaining Undertaking components, activities, or outstanding issues.

XVI. Duration:

This Agreement shall become effective upon execution by ~~the~~ STB, FRA, BLM, ACHP, and 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.

XVII. Execution and Implementation:

Execution and implementation of this Agreement evidences that ~~the~~ STB, FRA, and BLM have satisfied responsibilities under Section 106 of the National Historic Preservation Act pursuant to 36 CFR 800.

A. SIGNATORIES

Surface Transportation Board

By: _____ Date: _____
(Victoria Rutson, Chief, Section of Environmental Analysis)

Advisory Council on Historic Preservation

By: _____ Date: _____
(Name, Title) John M. Fowler, Executive Director

Alaska State Historic Preservation Officer

By: _____ Date: _____
Judith E. Bittner,
State Historic Preservation Officer

Cooperating Federal Agencies

U. S. Department of Interior - Bureau of Land Management, Alaska State Office

By: _____ Date: _____
Shelly Jacobson, Central Yukon Field Manager

Federal Railroad Administration

By: _____ Date: _____
Mark Yachmetz, Joseph Szabo, Associate Administrator for
Railroad Development.

B. INVITED SIGNATORIES

Federal Agencies

U.S. Department of Defense, Alaska Command

By: _____ Date: _____
Dana T. Atkins, Lieutenant General, USAF, Commander

U.S. Air Force 354th Fighter Wing, Eielson Air Force Base

By: _____ Date: _____
| ~~Mark W. Graper, Brig Gen~~ Michael J. Jordan, Colonel, USAF 354th Fighter Wing,
Commander

Applicant

Alaska Railroad Corporation

By: _____ Date: _____
Patrick K. Gamble, President

C. CONCURRING PARTIES

Agencies

State of Alaska, Department of Natural Resources

By: _____ Date: _____
Director, Division of Mining, Land, and Water

Tribes

Healy Lake Village

By: _____ Date: _____
(Name, Title)

Village of Dot Lake

By: _____ Date: _____
(Name, Title)

Northway Village

By: _____
(Name, Title)

Date: _____

Native Village of Tetlin

By: _____
(Name, Title)

Date: _____

Native Village of Tanacross

By: _____
(Name, Title)

Date: _____

Native Village of Eagle

By: _____
(Name, Title)

Date: _____

Nenana Native Association

By: _____
(Name, Title)

Date: _____

Native Village of Minto

By: _____
(Name, Title)

Date: _____

Tok Native Association

By: _____
(Name, Title)

Date: _____

Indian Organizations

Tanana Chiefs Conference, Inc.

By: _____
(Name, Title)

Date: _____

Doyon, Ltd.

By: _____
(Name, Title)

Date: _____

Upper Tanana Inter-Tribal Coalition

By: _____
(Name, Title)

Date: _____

Glossary of Terms/Acronyms

Adverse Effect: When an undertaking may alter, directly or indirectly, the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

Area of Potential Effects: The Area of Potential Effects (APE) means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking. Determination of the APE may take into account the professional standards, guidance, and research of both the historic properties and railroad design professions.

Borrow Area(s): An excavated area where material has been or will be dug for use as fill at another location.

Consulting Parties: Consulting parties include SHPO, Indian tribes, representatives of local governments, applicants for Federal assistance, permits, licenses and other approvals, and certain individuals and organizations with a demonstrated interest in the undertaking.

Cultural Resource: any tangible or observable evidence of past human activity, regardless of significance, found in direct association with a geographic location, including tangible properties possessing intangible traditional cultural values.

Curation: The preservation of material remains that are excavated or removed during a survey, excavation, or other study of a prehistoric or historic resource, and associated records that are prepared or assembled in connection with the survey, excavation or other study.

Days: Calendar days.

Eligible for the National Register of Historic Places: The term eligible for the National Register includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

Federal Agency(s): Any Federal entity with a statutory obligation to fulfill the requirements of Section 106 who has jurisdiction over an undertaking and takes legal and financial responsibility for Section 106 compliance in accordance with Subpart B 36 CFR 800. The Federal Agency(s) has approval authority for the undertaking and can commit the Federal agency to take appropriate action for a specific undertaking as a result of Section 106 compliance.

Historic Property: Any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian Tribe and that meet the National Register criteria.

Human Remains: The physical remains of a human body.

ID Plan: Identification Plan.

Indian Tribe: An Indian Tribe, band, nation, or other organized group or community, including a Federally-recognized Native Village, Regional Corporation or Village Corporation, as those terms are defined in Section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602) which is recognized as eligible for the special programs and serviced provided by the United States to Indians because of their status as Indians.

Keeper of the National Register: The Keeper is the individual who has been delegated the authority by the National Park Service (NPS) to list properties and determine their eligibility for the National Register. The Keeper may further delegate this authority as he or she deems appropriate.

NAGPRA: Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et. seq.).

National Register: The National Register means the National Register of Historic Places maintained by the Secretary of the Interior.

National Register Criteria: National Register criteria means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR 60). The National Register of Historic Places criteria are listed below:

The quality of significance in American history, architecture, archaeology, and culture is present in districts, sites, buildings, structures, and objects of state and local importance that possess integrity of location, design, setting, materials, workmanship and feeling and:

- a. that are associated with the events that have made a significant contribution to the broad patterns of our history; or
- b. that are associated with the lives of persons significant in our past; or
- c. that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic value, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- d. that yielded, or may be likely to yield, information on prehistory or history.

Criteria considerations: ordinarily cemeteries, birthplaces, or graves of historical figures; properties owned by religious institutions or used for religious purposes; structures that have been moved from their original locations, commemorative in nature; and properties that have achieved their significance within the past 50 years shall not be considered eligible for the National Register of Historic Places (36 CFR 60.4).

NRHP: National Register of Historic Places.

PA: Programmatic Agreement.

SHPO: State Historic Preservation Officer.

Site: Site definition is different for each state but is generally defined by Willey and Phillips (1958:18), as any reasonably definable spatial unit that contains features or is fairly continuously covered with artifacts that are indicative of an occupation 50 years or older. A site may be defined as "a spatial cluster of cultural features, or items, or both" (Binford 1972:46). These definitions apply to both prehistoric and historic sites. Archaeological context may be defined by the inclusion of any of the following: soil staining, associated fire-cracked rock, ceramics, features, or a concentration of materials within a reasonably defined spatial boundary.

STB: Surface Transportation Board.

Traditional Cultural Properties: A Traditional Cultural Property can be defined generally as an object, site, landscape feature, or other form of feature that is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that communities' history, and (b) are important in maintaining the continuing cultural identity of the community. For additional information, reference Parker and King 1995.

Treatment Plan: A proposal for the mitigation of effects upon any historic property that a project would affect. It can include data recovery, documentation, restoration or other measures.

Undertaking: An undertaking is a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit; license or approval; and those subject to state or local regulation pursuant to a delegation or approval by a Federal agency. For this Agreement, the Undertaking refers to STB's review of an application for the construction and operation of a rail line by the ARRC, extending its existing system between North Pole and Delta Junction, Alaska

Attachment A

Plan of Action for the Treatment of Unanticipated Discovery of Human Remains, Graves and Historic Properties

A.1. Human Remains and Graves

As set forth in Native American Graves Protection and Repatriation Act (NAGPRA) regulations (43 CFR 10), a specific plan of action is required in the event that human remains are uncovered on Federal lands during survey or construction of the Alaska Railroad Corporation (ARRC) proposed Northern Rail Extension (i.e., Undertaking). NAGPRA does not apply to the portions of the Undertaking on State land. The following steps must be taken if human remains, or suspected human remains, are discovered on Federal lands:

1. Should human burials be encountered, work will be stopped at once in the locality and ~~the~~ STB, SHPO and the Alaska State Troopers (AST) shall be contacted immediately. See below for contact numbers.
- ~~2.~~ 3. 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.
- ~~3-4.~~ 4. 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.
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 identify, locate and inform descendants of the deceased.
5. 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.
6. The ARRC Project Manager should contact the following people or agencies within 24 hours of uncovering the remains.

(a) **State Historic Preservation Officer (SHPO):**

Judith Bittner
Alaska Department of Natural Resources
Office of History and Archaeology
550 West 7th Avenue
Anchorage, AK 99501-3561
Phone: (907) 269-872145
Fax: (907) 269-8908

(b) **Federal agency official in charge:**

Victoria Rutson
Chief, Section of Environmental Analysis
Surface Transportation Board
395 E Street SW
Washington, DC 20423
Phone: (202) 245-0295
Fax: (202) 245-0454

(c) The appropriate land managing agency contact for the relevant parcel.

(d) The responsible Native representative for the area of discovery.

Gary Lee
Doyon Ltd.
1 Doyon Place, Suite 300
Fairbanks, AK 99701
Phone: (907) 459-2037
Fax: (907) 459-2062

and

Robert Sattler
Tanana Chiefs Conference, Inc.
122 1st Avenue, Suite 600
Fairbanks, AK 99701
Phone: (907) 452-8251, ext. 3343
Fax: (907) 459-3936

and

(e) Alaska State Troopers
Communications Center Manager
Phone: (907) 451-5100
Fax: (907) 451-5165

Notification should include available information regarding the nature and extent of the remains and an accurate and precise location including GPS coordinates.

NAGPRA dictates that work in the immediate vicinity of the remains cannot proceed until 30 days after the reply from the Federal agency in charge or appropriate Native group that the documents regarding the finding were received, unless a written and binding agreement is issued from the Federal agency in charge and the affiliated Native American group(s) (NAGPRA 25 U.S.C. 3002 Sec 3(d)).

The remains will then be assessed and treated based on the guidance of the Federal agency in charge and the appropriate Native group as defined by NAGPRA.

Other contacts (not necessarily within the first 24 hours)

Alaska State Medical Examiner's Office:

Dr. Katherine Raven, Chief Medical Examiner

Phone: (907) 334-2200

Fax: (907) 334-2216

e-mail: Stanton.kessler@alaska.gov

Kenneth Cramer, Death Investigator

Phone: (907) 334-2200

Fax: (907) 334-2216

e-mail: Kenneth.Cramer@alaska.gov

Alaska Bureau of Vital Statistics

Phillip Mitchell, Chief

Phone: (907) 465-8643

Fax: (907) 465-3618

e-mail: Phillip.Mitchell@alaska.gov

Janet Shea

Phone: (907) 465-8608

Fax: (907) 465-4689

e-mail: Janet L Shea janet.brown@alaska.gov

A.2 Plan for Unanticipated Discoveries

Historic properties may be encountered above ground and below ground during work on the Undertaking, and might include historic and prehistoric materials as well as Traditional Cultural Properties. In the event that cultural materials are discovered, this plan shall be followed, and implemented in compliance with both NAGPRA and 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. 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.
- (3) ARRC's Project Manager should contact the people or agencies in the previous list at A.1(6)(a) through (d) 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, 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. If the parties agree that the discovery is not significant, verbal authorization to proceed may be given by the SHPO, and SHPO shall provide written confirmation to the parties within five (5) working days. A report of the investigation shall be provided by the investigator, following the guidelines for Monitoring described in Stipulation VII. If additional investigation is agreed to, the guidelines for Additional Investigations described in Stipulations IV.(B.) shall be followed, unless modified evaluation and reporting are agreed to.

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.

A.3 List of contacts for Native Alaskan representatives

Eight Federally Recognized Tribal Governments have been in consultation with STB for this Undertaking:

1. Dot Lake Village Council
2. Native Village of Eagle
3. Healy Lake Village (Tribal Council)
4. Northway Village (Tribal Council)
5. Native Village of Tanacross (Tanacross Village Council)
6. Native Village of Tetlin (Tetlin Village Council)
7. Native Village of Minto
8. Nenana Native Association (Nenana Native Council)

Following is a list of their representatives:

Common Name: Dot Lake
President, William Miller
Village of Dot Lake
P.O. Box 2279
Dot Lake, Alaska 99737
Voice: (907)-882-2695 Fax: (907)-882-5558

Common Name: Healy Lake
President, Fred Kirsteatter
Healy Lake Village
P.O. Box 60300
Fairbanks, Alaska 99706
Voice: (907)-876-5018 Fax: (907)-876-5013

Common Name: Minto
Chief, Roy Charles
Native Village of Minto
P.O. Box 26
Minto, Alaska 99758
Voice: (907)-789-7112 Fax: (907)-798-7627

Common Name: Nenana
Chief, Mitch Demientieff
Nenana Native Association
P.O. Box 356
Nenana, Alaska 99760
Voice: (907)-832-5461 Fax: (907)-832-1077

Common Name: Northway
President, Gerald Albert
Northway Village

P.O. Box 516
Northway, Alaska 99764
Voice: (907)-778-2311 Fax: (907)-778-2220

Common Name: Tanacross
Executive Director, Jerry Isaac
Native Village of Tanacross
P.O. Box 76009
Tanacross, Alaska 99776
Voice: (907)-883-4496 Fax: (907)-883-4497

Common Name: Tetlin
President, Bently Mark, Sr.
Native Village of Tetlin
P.O. Box TTI
Tetlin, Alaska 99780
Voice: (907)-324-2130 Fax: (907)-324-2131

Common Name: Eagle Village
President, David Howard
Native Village of Eagle
P.O. Box 19
Eagle, Alaska 99738
907-547-2271

The Upper Tanana Inter-Tribal Coalition consists of six of the eight Federally recognized Tribal Governments ~~tribes~~ as follows:

Tribe: Village of Dot Lake
ANSCA Corporation: Dot Lake Native Corporation
Phone: 907-882-2695

Tribe: Native Village of Eagle
ANSCA Corporation: Hungwitchin Corporation
Phone: 907-547-2271

Tribe: Healy Lake Village
ANSCA Corporation: Mandas Chaag Native Corporation
Phone: 907-876-5055, 907-876-5018

Tribe: Northway Village
ANSCA Corporation: Northway Natives Incorporated
Phone: 907-778-2311

Tribe: Native Village of Tanacross
ANSCA Corporation: Tanacross Incorporated
Phone: 907-883-5024

Tribe: Native Village of Tetlin
ANSCA Corporation: Tetlin Native Corporation
Phone: 907-324-2130

Attachment B

Agency Consultation and Coordination Plan

Consultation procedures and timing are included in the body of the Agreement, however this attachment provides additional detail. Table B.1 indicates which of the Signatories or Invited Signatories have responsibilities for individual Undertaking components or activities on each segment. Figures B.1 through B.7 illustrate the geographic purview of each responsible agency. Figure B.8 provides a procedural flow chart for the Programmatic Agreement.

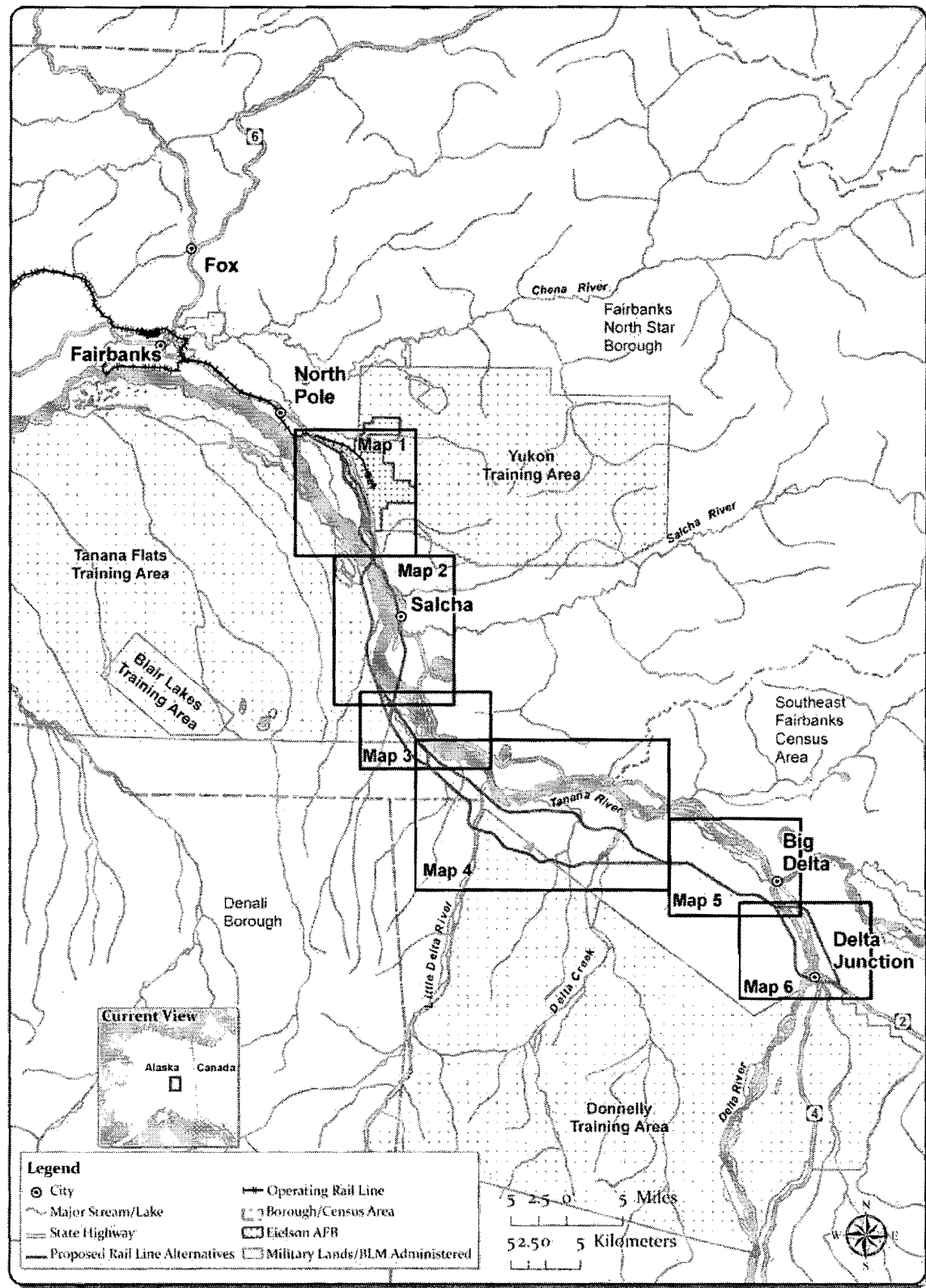
Table B.1: Alternative Segments, Responsible Agencies, and Cultural Resources in Proximity to Main Track Alternative Segments

<i>Segment</i>	<i>Federal Agencies or Federally-Recognized Tribes/Tribal Groups/Alaska Native Corporations</i>	<i>State Agency(ies)</i>	<i>Identified Cultural Resources within the APE</i>	<i>Identified Cultural Resources within 1,312 feet of APE***</i>
North Common	STB , 354 th Fighter Wing, BLM, STB , ACHP, FRA	ADNR SHPO		
Eielson 1	STB , 354 th Fighter Wing, STB , ACHP, FRA	ADNR SHPO		FAI-071*
Eielson 2 or Eielson 3	STB , 354 th Fighter Wing, STB , ACHP, FRA	SHPO ADNR		
Salcha 1	BLM , ALCOM, BLM , STB , ACHP, FRA	ADNR SHPO		FAI-1607
Salcha 2	Upper Tanana Inter-Tribal Coalition BLM , ALCOM, BLM , STB , ACHP, FRA	ADNR SHPO	2(FAI-1751, XBD-293**)	5(FAI-156*, XBD-027, XBD-067, XBD-294**, XBD-296)
Central Alternative 1 or Central Alternative 2	BLM , ALCOM, BLM , STB , ACHP, FRA	ADNR SHPO		
Donnelly 1	BLM , ALCOM, BLM , STB , ACHP, FRA	ADNR SHPO	8(XBD-335-336, 338-343)	17(XBD-188*, 189*, 297-309, 312, 337)
Donnelly 2	STB , ACHP, FRA	ADNR SHPO	4(XBD-291, 313, 320-321)	11 (XBD-287-289, 314-319, 325-326)
South Common	STB , ACHP, FRA	ADNR SHPO		1 (XBD-322)
Delta 1	STB , ALCOM, STB , ACHP, FRA	ADNR SHPO		1 (XBD-091*)
Delta 2	STB , ALCOM, STB , ACHP, FRA	ADNR SHPO	1 (XBD-281)	1 (XBD-282, XBD-129)

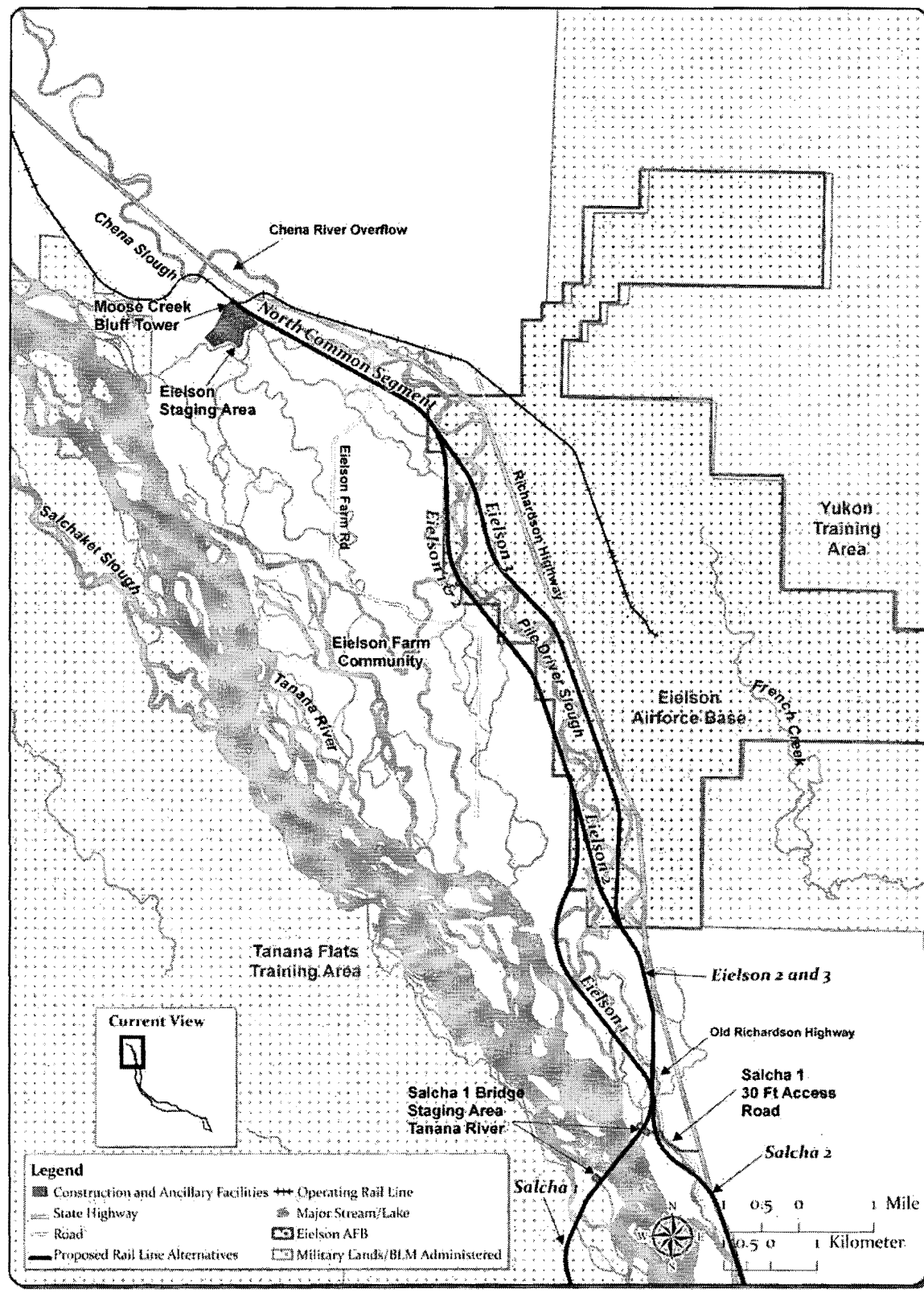
*Sites have not undergone final determinations of eligibility for listing on the National Register.

**Sites related to Salchaket Village require more data for a determination of eligibility for listing on the National Register, and would likely be eligible.

*** It was assumed in the EIS that historic properties up to 1,312 feet (400 meters) from the APE would not likely be affected by the right-of-way, but could be affected by the final design of ancillary features and their access roads.



FigureMap B.1 – Map Key for Areas along the Proposed Northern Rail Extension



Insert maps here, showing military land under BLM primary responsibility and all others under

STB primary responsibility. Figure B.2 – North Common Segment and Eielson Alternative
Segments within Map Area 1

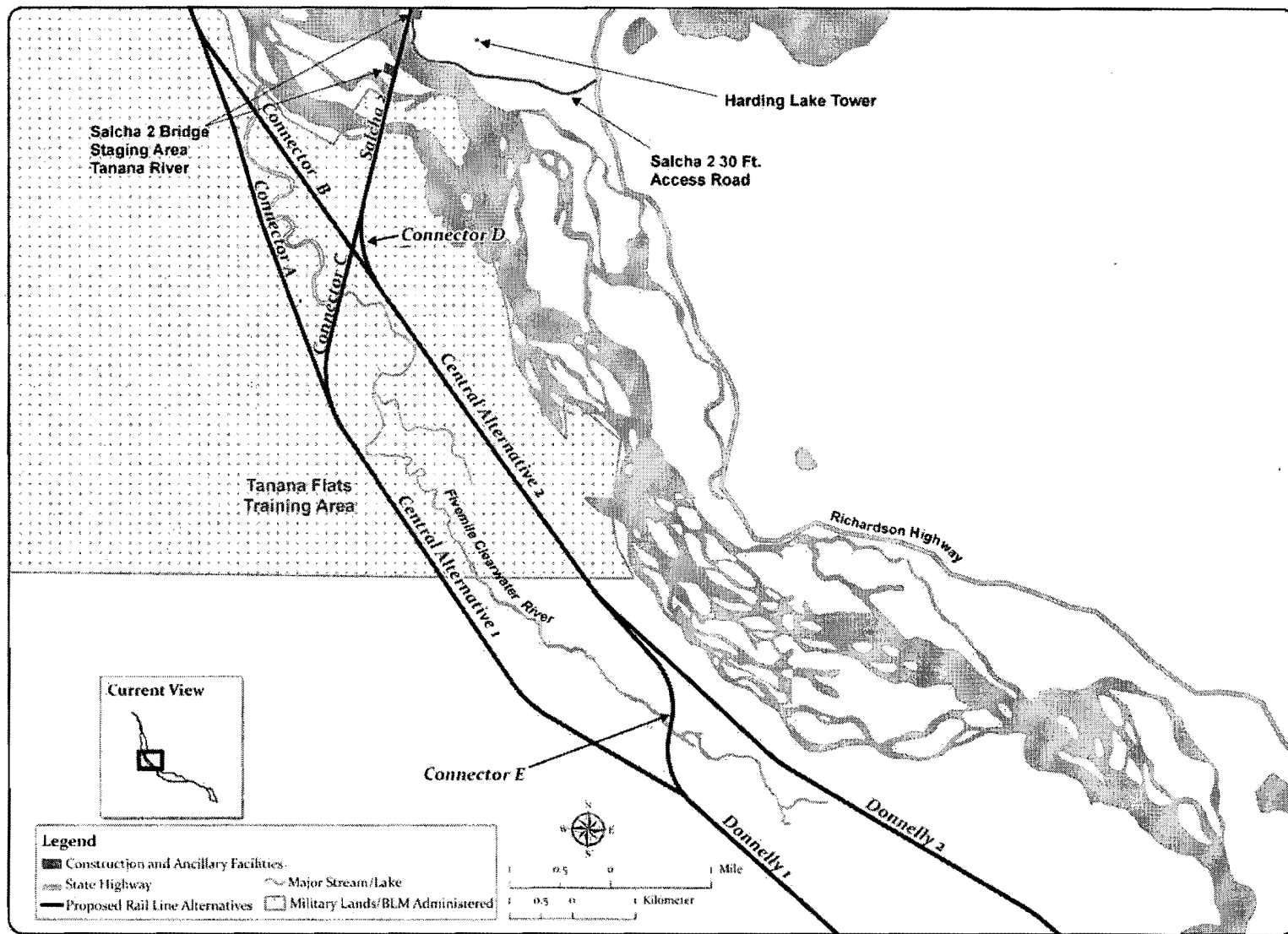


Figure B.4 – Central Alternative Segments and Adjoining Alternative Segments within Map Area 3

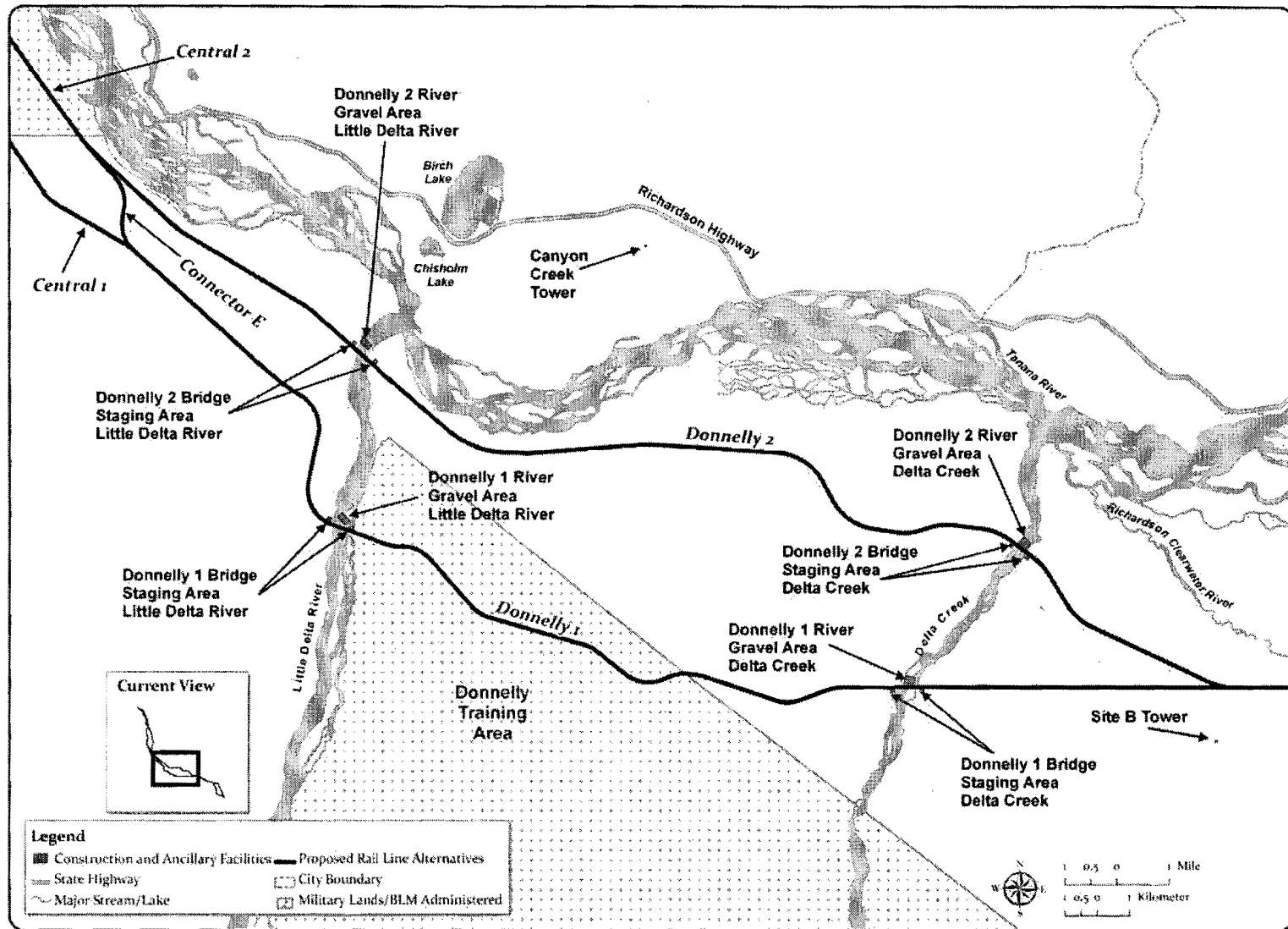


Figure B.5 – Donnelly Alternative Segments within Map Area 4

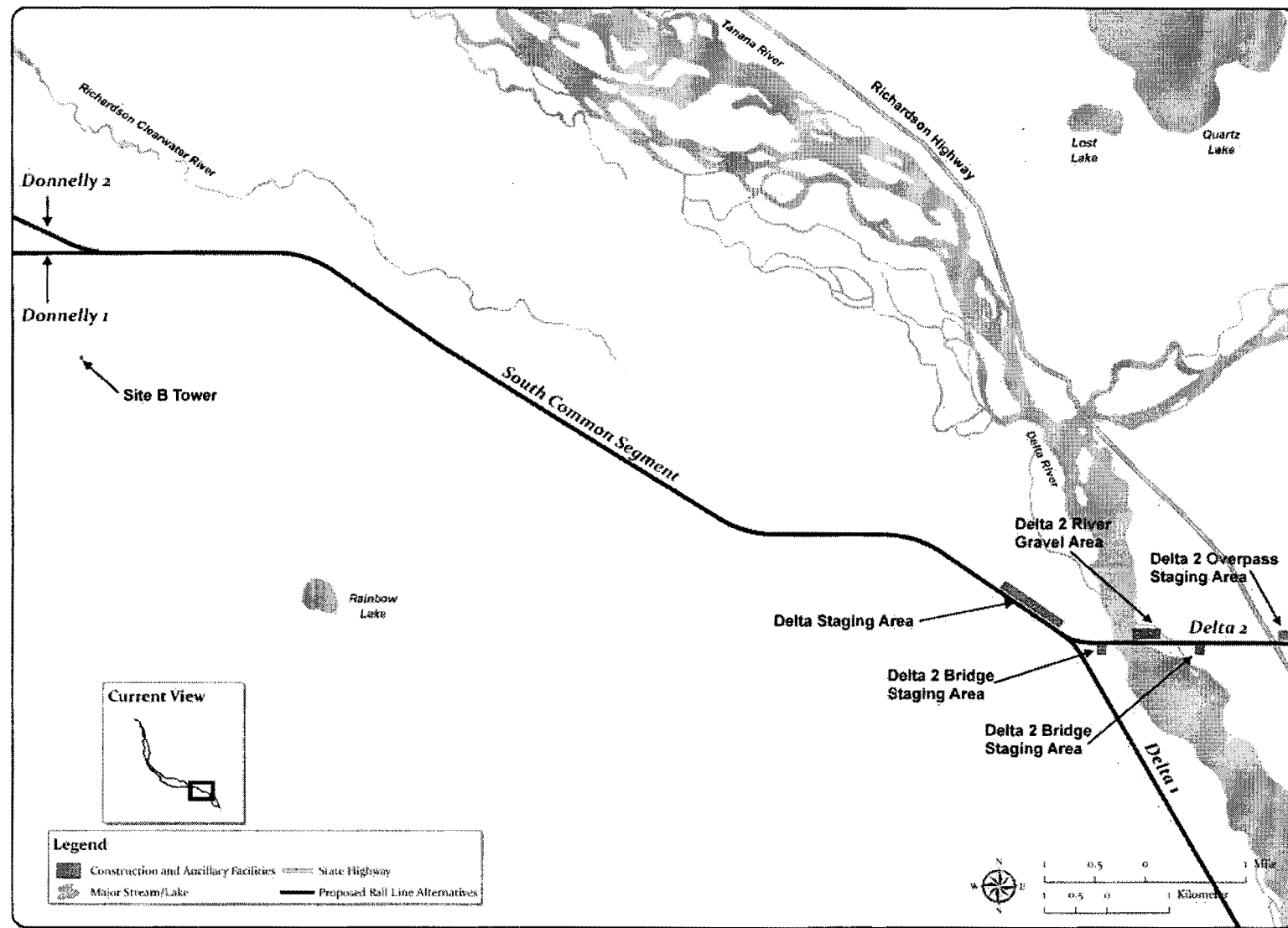


Figure B.6 – South Common Segment and Alternative Segments within Map Area 5

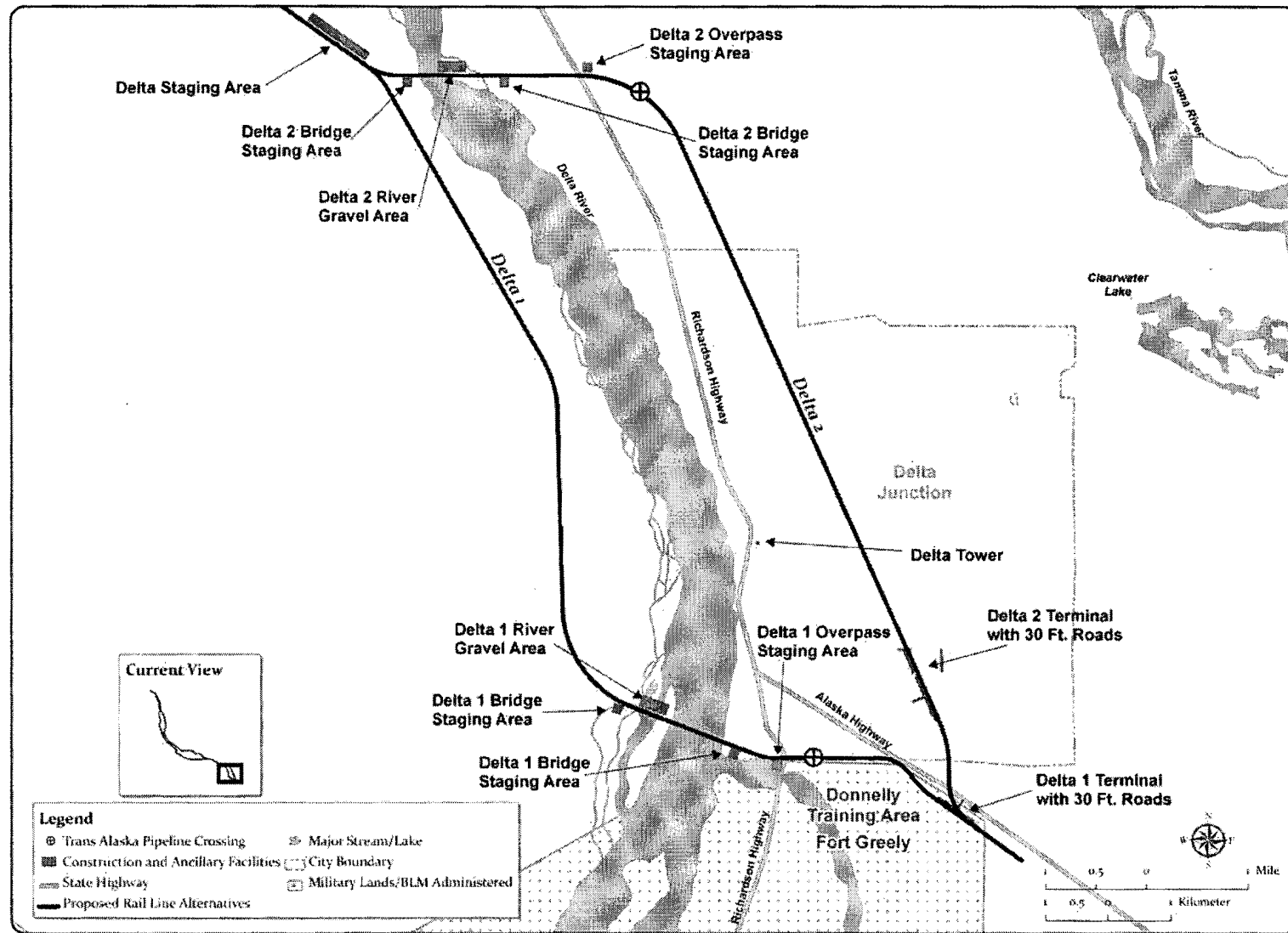
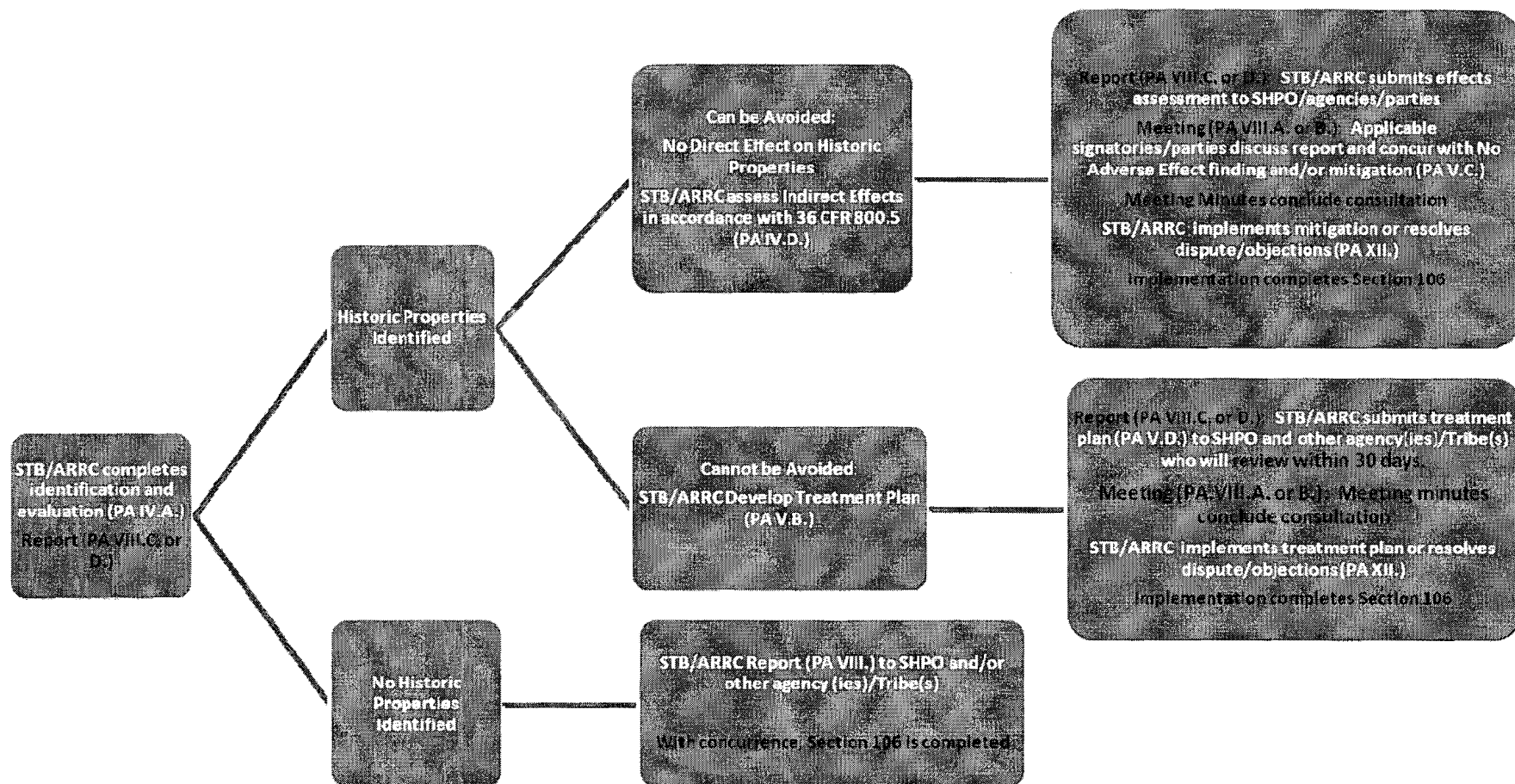


Figure B.7 – Delta Alternative Segments within Map Area 6

Figure B.81 Programmatic Agreement Procedural Flow Chart



Agency Involvement and Contact List

Federal Agencies

STB—Surface Transportation Board. *Role:* Federal Lead Agency reviewing application for the Undertaking.

Contact: David Navecky
Section of Environmental Analysis
Surface Transportation Board
Washington, D.C. 20403
Phone: (202) 245-0294. Fax: (202) 565-9000.
E-mail: David.Navecky@stb.dot.gov

ACHP—Advisory Council on Historic Preservation. *Role:* Consultation pursuant to Section 106 of the National Historic Preservation Act (NHPA).

Contact: Blythe Semmer
Program Analyst, Office of Federal Agency Programs
Federal Permitting, Licensing and Assistance Section
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue NW, Suite 809
Washington, D.C. 20004
Phone: (202) 606-8552. Fax: (202) 606-8647.
E-mail: bsemmer@achp.gov

FRA—Federal Railroad Administration. *Role:* FRA is providing grant funding to ARRC for preliminary engineering and environmental analysis for the proposed Undertaking.

Contact: John Winkle
Amtrak and Penn Station Grants, Office of Railroad Development
Federal Railroad Administration
1200 New Jersey Ave SE, MS-20
Washington, D.C. 20590
Phone: (202)493-6067. Fax: (202)493-6330.
Email: john.winkle@dot.gov

BLM—U.S. Department of the Interior--Bureau of Land Management, Alaska State Office. *Role:* Federal land holder with authority to issue a linear ROW grant for the proposed Undertaking to pass through Federally-managed lands.

Contact: Tim Hammond
Central Yukon Field Office
U.S. Department of the Interior Bureau of Land Management,
1150 University Avenue
Fairbanks, Alaska 99709
Phone: (907) 474-2210. Fax: (907) 786-7652.
E-mail: tim_hammond@ak.blm.gov

ALCOM—U.S. Department of Defense, Alaskan Command. *Role:* Any alternative segment of the Undertaking located on military training areas would require ALCOM service component concurrence.

Contact: Lt. Col. Marc Hoffmeister
Chief, ALCOM/J42, Engineering Division
US Department of Defense Alaska Command
10471 20th Street, Suite 301
Elmendorf Air Force Base, Alaska, 99506-2100
Phone: (907) 552-3683.
E-mail: marc.hoffmeister@elmendorf.af.mil

354th Fighter Wing—U.S. Air Force, 354th Fighter Wing, Eielson Air Force Base. *Role:* The proposed Undertaking would pass through Eielson AFB, requiring permission from the 354th Fighter Wing for construction.

Contact: Malcolm H. Nason, YC-02, DAF
Chief, Asset Management
354 CES/CEA
2310 Central Avenue Suite 100
Eielson AFB, Alaska 99702-2225
Phone: (907) 377-4342. Fax: (907) 377-3367.
E-mail: Malcolm.nason@eielson.af.mil

Tribes (See Attachment A.3)

Upper Tanana Inter-Tribal Coalition. *Role:* Consultation pursuant to Section 106 of the NHPA.

Contact: See Agreement Attachment A.3.

State Agencies

SHPO—Alaska State Historic Preservation Officer. *Role:* Consultation pursuant to Section 106 of the NHPA.

Contact: Judith Bittner~~Stefanie Ludwig~~
Alaska Department of Natural Resources
Office of History and Archaeology
550 West 7th Ave, Suite 1310
Anchorage, AK 99501-3565
(907) 269-8721. Fax: (907) 269-8908.
E-mail: judy.bittner@alaska.gov~~stefanie.ludwig@alaska.gov~~

ADNR—Alaska Department of Natural Resources. *Role:* ADNR is a major land holder and would need to grant ROWs associated with the proposed Undertaking.

Contact: Don Perrin
Alaska Department of Natural Resources
Office of Project Management and Permitting
550 West 7th Avenue, Suite 705
Anchorage, AK 99501-3568
Phone: (907) 269-7476. Fax: (907) 269-8913.
E-mail: donald.perrin@alaska.gov

Applicant

ARRC—Alaska Railroad Corporation. *Role:* Applicant to construct and operate a rail line extending its existing system between North Pole and Delta Junction, Alaska (Undertaking).

Contact: Kathryn Kusske Floyd
Mayer Brown LLP
1909 K Street, N.W.
Washington, D.C. 20006-1101
Phone: (202) 263-3223. Fax: (202) 2630-5223.
E-mail: kkusskefloyd@mayerbrown.com

Attachment C

Plan for Tribal Consultation

Introduction

Executive Order (EO) 13175 (65 FR 218), Consultation and Coordination with Indian Tribal Governments (November 6, 2000) directs Federal agencies to establish regular and meaningful consultation and collaboration with officials of Federally recognized Tribal Governments (Tribes) in the development of Federal policies or decisions that have Tribal implications. The Environmental Impact Statement (EIS) for Alaska Railroad Corporation's (ARRC) Proposed Northern Rail Extension Project will culminate in a Final Decision (i.e., Record of Decision) by the Surface Transportation Board (STB) and, as appropriate, subsequent permit decisions by other Federal agencies that constitute Federal decisions subject to the provisions of EO 13175.

The proposed ARRC Northern Rail Extension Project has the potential to directly affect the environment, resources and rights of Indian Tribes and Alaska native corporations located in Interior Alaska in the vicinity of the Tanana River. Potential effects to Tribal lands, rights, resources, religious or cultural sites and subsistence activities need to be identified, evaluated and discussed with Tribal Governments in order to comply with EO 13175, Section 106 of the National Historic Preservation Act of 1966 (see also 36 CFR Part 800, August 5, 2001) and other Federal regulations and policies

STB initiated consultation with the Tribes listed in Attachment A.3 of this Agreement regarding the Section 106 process during the early scoping stages of the preparation of the EIS. The Government to Government Consultation and Coordination Plan prepared for this Undertaking on April 10, 2006, identifies the Tribes who were notified by letter of the scoping process for the EIS, and Attachment A.3. of this Agreement lists the eight Tribes who have remained in consultation with STB after the scoping process. Copies of the Project's Draft EIS and Final EIS have been sent to all of these Tribes for review. Both documents contain the draft Agreement as an appendix. The STB also consulted with the Tanana Chiefs Conference and this consultation included several meetings and distribution of the Draft and Final Scopes of Study and Draft and Final EISs.

The STB consultation with the Tribes will remain open throughout the duration of the Project and as the terms of this Agreement are carried out. If further research or analysis results in the identification of other Tribes with interests or cultural ties to the Project, they will also be added to the list of consulting Tribes. Consultation methods will vary depending on the requests from the Tribes. Consultation types may vary from letters, phone calls, on-site meetings and various levels of documentation for review, to jointly developing site specific treatment plans and/or agreement documents. Consultation may also vary according to the type of resource involved, the periods when the various tribes are known to have occupied the project vicinity, and which alternative is ultimately licensed by the STB.

Objectives of Consultation and Coordination

Consultation and coordination is the process of seeking, discussing, and considering the views of Tribes. Two-way communication that works toward consensus and reflects the concerns of the

affected Tribes is the primary objective for the STB's consultation and coordination plan. Tribal sovereignty, culture, traditional values and customs will be respected during the consultation process.

The STB, U.S. Coast Guard and U.S. Department of Interior, Bureau of Land Management, Federal Railroad Administration, and Federal Transit Administration do not have specific guidance documents for consultation and coordination with Tribal Governments. Established guidance documents from the U.S. Department of Defense, U.S. Army Corps of Engineers - Alaska District, U.S. Environmental Protection Agency - Region 10, and State of Alaska were considered in development and implementation of the consultation and coordination plan for the Northern Rail Extension Project EIS. Specific objectives for consultation include:

1. Engage all potentially affected Tribes early in the EIS process to identify issues that should be researched and analyzed in the EIS.
2. Maintain open and active communications with Tribes throughout the EIS process to identify places of traditional religious or cultural importance and potential effects to Tribal lands, rights, resources or subsistence activities in the vicinity of the proposed project.
3. Report to the Tribes in a credible and understandable manner on issues and concerns raised during the scoping process.
4. Respond to issues raised by the Tribes during scoping and on the Draft EIS.
5. Respond to issues raised by the Tribes on the Final EIS.

Implementation Plan

Providing Tribes with the opportunity to participate in the public scoping process is not the same as government-to-government consultation and coordination. Tribal Governments were given an opportunity to consult at the start of the project and were given opportunities prior to decision making. Additional coordination will take place as determined necessary or desirable by the Signatories and Tribes. The following sequence of actions has been completed:

1. Contacted each Tribal entity (as listed in Attachment A.3) by telephone to confirm the name, title and address of current leadership.
2. Transmitted a Tribal Consultation Initiation letter and Consultation Questionnaire to each Tribal entity describing the EIS and government-to-government consultation and coordination process, describing the proposed project and soliciting Tribal input on potential effects of the proposed project on Tribal lands, rights, resources, religious or cultural sites and subsistence activities. The consultation questionnaire offered several options for Tribal consultation.
 - a. Face-to-face meetings with the Signatories at a Tribal facility.
 - b. Scheduled teleconferences with the Signatories.
 - c. No further involvement in government-to-government consultation during the EIS process, or
 - d. Continued receipt of project information by mail and participation through the public involvement process.
3. Conducted initial meetings or teleconferences with interested Tribes and developed an agreement and process for continued consultation and coordination throughout EIS development.
4. Documented the government-to-government coordination with each Tribe that has occurred thus far and included it in the Draft, Final EIS and Administrative Record.

The following actions are planned to facilitate carrying out the terms of this Agreement:

1. All Tribes shall be sent this Agreement and their ideas and preferences will be solicited concerning all parts of this Agreement that are Tribal-related. The Tribes will be able to send comments via mail, email, or phone.
2. As appropriate, STB shall solicit Tribal review of all identification efforts, assessments of effect, and treatment plans via mail, email, or phone in accordance with Stipulations IV and V. of this Agreement and the list of contacts identified in Attachment A.3. of this Agreement.
3. The Tribes shall be notified of meetings being held and reports being prepared in accordance with Stipulations VIII A. and B. and VIII D. of this Agreement