

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF PARKS AND OUTDOOR RECREATION
OFFICE OF HISTORY AND ARCHAEOLOGY

SARAH PALIN, GOVERNOR

550 W. 7TH AVENUE, SUITE 1310
ANCHORAGE, ALASKA 99501-3565
PHONE: (907) 269-8721
FAX: (907) 269-8908

July 8, 2009

Rec'd 7/21/09

EI - 17874

File No.: 3480 STB/Northern Rail Extension

SUBJECT: Northern Rail Extension, Eielson Air Force Base (North Pole) to Fort Greely (Delta Junction), Alaska

Dave Navecky, Project Manger
Surface Transportation Board
Office of Economics, Environmental Analysis & Administration
Washington, DC 20423

Dear Mr. Navecky,

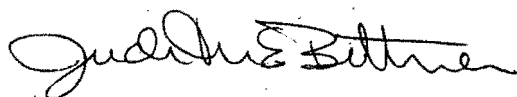
The State Historic Preservation Office (SHPO) has reviewed your latest version (received June 16, 2009) of the *[Draft] Programmatic Agreement among Surface Transportation Board, Advisory Council on Historic Preservation, Alaska State Historic Preservation Officer, U. S. Bureau of Land Management, Alaska State Office, U. S. Army Corps of Engineers, Alaska District, U. S. Department of Defense, Alaska Command, U. S. Air Force 35th Fighter Wing, Eielson Air Force Base, Federal Railroad Administration, and U. S. Coast Guard, Seventeenth Coast Guard District regarding the Alaska Railroad Corporation, Northern Rail Extension between North Pole and Delta Junction, Alaska (PA).*

We appreciate STB incorporating most of our earlier comments. Based on previous consultation with the Advisory Council on Historic Preservation regarding other large undertakings in Alaska, we continue to recommend that the other federal agencies involved be given full signatory status. BLM and ALCOM own land within the APE. As such, they have Section 110 responsibilities for inventory and management of historic properties on their lands. BLM and ALCOM must be involved in the decision making regarding adverse affects to historic properties under their jurisdiction. Likewise, FRA should be a full signatory because as a funding agency they have Section 106 responsibilities. If there are adverse effects to historic properties as a result of this project, or if alternative Section 106 procedures are being implemented, then FRA must either be a full signatory on this agreement or on a separate Section 106 agreement.

The current version of Appendix A implies that all finds of human remains are subject to NAGPRA. This is not the case. NAGPRA does not apply to finds on state land or finds of non-Native American human remains. Human remains in Alaska are addressed by *Alaska Statutes 12.65.5; 11.46.482(a)(3); 41.35.200; and 18.50.250*. For your reference, we have inserted standard language regarding human remains from our Section 106 agreements template and recommend rewriting Appendix A to incorporate this language.

In addition we have specific editing comments which are noted on the attached copy of the draft PA; we will also email you an electronic version. Please consider these recommendations when revising the PA and send us another draft for review. You may contact Stefanie Ludwig at 907-269-8720 if you have any questions or if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Judith E. Bittner", written in a cursive style.

Judith E. Bittner
State Historic Preservation Officer

JEB:sll

Attachment: draft PA with SHPO comments

**DRAFT PROGRAMMATIC AGREEMENT
AMONG
SURFACE TRANSPORTATION BOARD,
ADVISORY COUNCIL ON HISTORIC PRESERVATION, 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 (f)(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); U.S. Department of Defense, Alaskan Command (ALCOM); U.S. Air Force, 354th Fighter Wing, Eielson Air Force Base (354th Fighter Wing); 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 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, BLM, ALCOM, 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. The refusal of any party invited to become a signatory to this Agreement does not invalidate the Agreement; and,

WHEREAS, the FRA is an invited signatory because they have 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 an invited signatory because they are a land holder and have authority

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.

Comment [SLL1]: We recommend deleting this Whereas because it is redundant with the following four Whereas statements.

Comment [SLL2]: As a federal agency that is providing funding, FRA has Section 106 responsibilities. If there are adverse effects to historic properties as a result of this project, or if alternative Section 106 procedures are implemented, then FRA must be a full signatory on either this or a separate Section 106 agreement. Note: "Cooperating agency" is defined differently under NEPA than it is under Section 106.

to issue a linear right-of-way grant for the Undertaking to pass through those Federally managed lands; 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, STB has consulted with and continues to consult with the Indian Tribes and Alaska native corporations outlined in Appendix 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, USACE, ALCOM, 354th Fighter Wing, Alaska DNR, and 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,

Comment [SLL3]: BLM as a federal landowning agency has Section 110 responsibilities for historic properties on their lands. They have review and veto power regarding adverse effects to historic properties and mitigation methods. Note: "Cooperating agency" is defined differently under NEPA than it is under Section 106.

Comment [SLL4]: See comment for BLM.

Comment [SLL5]: Has the Fairbanks North Star Borough been consulted as an affected local government? What about local historic preservation groups?

WHEREAS, the STB has deferred, until after STB licenses an alternative, the final identification, evaluation, assessment of effect and mitigation of historic properties that may be affected by this Undertaking through the establishment of this Agreement;

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 Invited 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 and Invited 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. 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. However, if there is more than one agency with purview over a given Undertaking component or activity, all involved agencies shall 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.
- 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 develop an Agency Consultation and Coordination Plan (ACCP) that outlines how the agencies shall coordinate with each other in carrying out the terms of this Agreement. The ACCP shall include a list of anticipated Undertaking components and activities and which agency will be the "responsible agency(ies)" for each. The 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. This ACCP may be amended as needed by these parties. Drafting of the ACCP may begin prior to any STB decision to license an alternative.

- E. The Signatories and Invited 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 STB, SHPO, Indian tribes and Native Alaska Corporations, 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 Effect:

- A. This Agreement shall apply to the Undertaking licensed by the STB and all components of it, including actions specified in the EIS, permits and approvals, or other documents so long as they are within the jurisdiction of the STB 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. 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.

Comment [SLL6]: Recommend defining APE in PA (perhaps in an appendix) rather than referring reader to EIS.

III. Tribal Consultation:

STB initiated consultation with the Tribes and Indian organizations outlined in Appendix 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 in an area previously identified through the section 106 process as being eligible to the NRHP, STB, in consultation with the SHPO and tribal organizations, 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. This PTC

shall be acceptable to the tribal organizations and describe when and how these organizations shall be consulted, the contact names and information for each organization, procedures for review of treatment plans (as appropriate), and other matters. 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.

IV. Identification 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) and III. Additional identification and evaluation shall conform with Federal and state guidelines for fieldwork in Alaska, be compatible with previous investigations for this Undertaking, and may include a phased approach to testing and evaluation, as described in 36 CFR 800.4b2 and 800.5a3.
- C. The STB, as the lead agency, and BLM shall evaluate properties identified through such studies in accordance with 36 CFR 800.4(c).
- D. If the studies result in the identification of properties that are eligible for the National Register, STB shall assess adverse effects in accordance with 36 CFR 800.5.

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, ARRC shall develop treatment plans to minimize or mitigate the effects. Treatment plans shall be developed in consultation with STB, SHPO, the Invited Signatories, and tribal organizations that may attach religious and/or cultural significance to the identified property. During the preparation of treatment plans, the STB shall consider the views of these parties and the public. All treatment plans must be

Comment [SLL7]: This section simply restates standard procedures under 36 CFR 800.

approved by STB, SHPO, any land managing agencies (as appropriate to their jurisdiction), and any tribes (as appropriate) 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 can be considered in context, and to minimize the burden of review and approval by agencies.
 2. A number of the resources 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, if warranted, shall specify approaches for treatment or mitigation of the property in accordance with the principles, standards, and guidelines appropriate to the resource. This may include, but not be limited to, use of such approaches as relocating a historic property, re-landscaping to reduce 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. Methods of recordation and documentation described in the treatment plan shall conform with 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. Such alternative options must be approved in writing by all Signatories and Invited Signatories to the Agreement.
- 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) qualifications of the 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. 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 (Appendix 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 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 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 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: A meeting of the STB, ACHP, SHPO, 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 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:

- (a) A description of the past year's effort 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;
- (b) A description of the progress of the Undertaking and any known or expected changes to the Undertaking;
- (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 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, SHPO, and Invited Signatories and reflected in the ACCP.

- (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.

- (b) Progress summaries. Progress summaries shall be submitted by the STB to the SHPO 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.
- (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.
- (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 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 (Appendix 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 (Appendix 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 (Appendix 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. 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 and SHPO.
- D. Training shall be conducted by an archaeologist meeting the 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, 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 request 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.

XV. Failure to Carry Out Agreement:

If the STB does not ensure that the terms of this Agreement are carried out, or if the ACHP determines that the terms of this Agreement are not carried out, the STB shall comply with 36 CFR Part 800.1 through 800.7 with regard to individual Undertakings covered by this Agreement.

XVI. Duration:

Review Draft- Administratively Confidential

This Agreement shall become effective upon execution by the STB, the 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 has satisfied responsibilities under Section 106 of the National Historic Preservation Act pursuant to 36 CFR 800, and that SHPO has satisfied responsibilities under the Alaska Historic Preservation Act pursuant to AS 41.35.

A. SIGNATORIES

Surface Transportation Board

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

Advisory Council on Historic Preservation

By: _____ Date: _____
(Name, Title)

Alaska State Historic Preservation Officer

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

Review Draft- Administratively Confidential

B. INVITED SIGNATORIES

Cooperating Agencies and Applicant

Cooperating Federal Agencies

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

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

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

By: _____ Date: _____
Mark W. Graper, Brig Gen, USAF 354th Fighter Wing, Commander

U.S. Department of Defense, Alaska Command

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

Federal Railroad Administration

By: _____ Date: _____
Joseph Szabo, Administrator

Applicant

Alaska Railroad Corporation

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

C. Concurring Parties

Agencies

State of Alaska, Department of Natural Resources

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

Date: _____

Tribes

Healy Lake Village

By: _____
(Name, Title)

Date: _____

Village of Dot Lake

By: _____
(Name, Title)

Date: _____

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

Review Draft- Administratively Confidential

By: _____ Date: _____
(Name, Title)

Native Village of Minto

By: _____ Date: _____
(Name, Title)

Tok Native Association

By: _____ Date: _____
(Name, Title)

Indian Organizations

Tanana Chiefs Conference, Inc.

By: _____ Date: _____
(Name, Title)

Doyon, Ltd.

By: _____ Date: _____
(Name, Title)

Upper Tanana Inter-Tribal Coalition

By: _____ Date: _____
(Name, Title)

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 Effect: The Area of Potential Effect (APE) is the geographic area within which the project may cause physical, visual or audible effects to the character or use of historic properties. It includes all areas of construction, such as rights-of-way (ROW), staging areas, extra work spaces, yards, access roads, borrow areas, and other ancillary facilities. 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 the 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 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 eligible for the special programs and services 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 lists properties formally determined eligible for the National Register of Historic Places.

National Register Criteria: National Register criteria are 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 PA, the Undertaking refers to the 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

Appendix A.

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

A.1. Human Remains and Graves

The project area is not expected to contain human remains, associated or unassociated funerary objects, sacred objects, or items of cultural patrimony as defined by the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001).

1. Should human burials be encountered, work will be stopped at once in the locality and the STB, AKSHPO 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, 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. 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.
5. 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.
6. 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.

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). The following steps must be taken if human remains, or suspected human remains, are discovered:

Comment [SLL8]: The current version of Appendix A does not address situations in which NAGPRA does not apply: on State land or if the human remains are not Native Alaskan. We have inserted our template for your reference.

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Comment [SLL9]: What about State land? NAGPRA only applies to federal land.

- (1) Stop all work in the immediate vicinity of the remains.
- (2) Mark the area in which the remains are located, as well as a minimum buffer area with a radius of 20 meters surrounding the remains. This buffer area may be larger if there is the possibility of more remains in the area or in the case of slopes or cut banks where work located nearby may impact the site of the remains. Make sure that the remains are protected from possible impacts while contacting the appropriate parties².
- (3) If remains are found that are not clearly human, but are suspected to be so, a specialist must be called in for identification³.
- (4) The ARRC Project Manager should contact the following people or agencies within 24 hours of uncovering the remains.
 - (a) The 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) 269-8715
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

Comment [SLL10]: A physical anthropologist may need to be called in to determine if the remains are Native. NAGPRA only applies to Native American remains.

Alaska State Troopers:

Sgt. David B. Hanson, Missing Persons Bureau

Phone (907) 269-5643

Fax: (907) 338-7243

e-mail: david.hanson@alaska.gov

(cc to Paula Goforth paula.goforth@alaska.gov)

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² Ways of protecting the remains 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 remains.

³ The specialist must meet the professional qualifications for the NHPA as set forth in 36 CFR 61, section 112 (a)(1).

(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

(d) The 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

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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@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 parties⁴.
- (3) ARRC's Project Manager should contact the following people or agencies within 24 hours of discovering the resources.
 - (a) See previous list at A.1(4).

⁴ 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.

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- (3) ARRC's Project Manager should contact the following people or agencies within 24 hours of discovering the resources.
 - (a) See previous list at A.1(4).

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.

A.3 List of contacts for Native Alaskan representatives

⁴ 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.

423

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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

224

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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 Federally recognized tribes:

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

23
25