

EO - 1678



Alaska RR, Port MacKenzie PA, revised preamble

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1 attachment



Whereas only, 12-15-2010.doc

Hi Tracie,

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

Thanks very much for your time and cooperation.

Rick

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

DRAFT PROGRAMMATIC AGREEMENT

Among

**Surface Transportation Board,
Advisory Council on Historic Preservation,
Federal Railroad Administration, and
Alaska State Historic Preservation Officer,**

Regarding

**The Alaska Railroad Corporation Construction and Operation of a Rail Line Extension to
Port MacKenzie, Alaska**

STB Finance Docket No. 35095

J.1 Draft Programmatic Agreement

WHEREAS, the Surface Transportation Board (STB)¹, the lead Federal agency, has received an application from the Alaska Railroad Corporation (ARRC or applicant) to construct and operate approximately 30 to 45 miles of the proposed rail line to connect the Port MacKenzie District in Matanuska-Susitna Borough (MSB) to a point on the existing ARRC main line between Wasilla and north of Willow, Alaska (Undertaking); and,

WHEREAS, the STB has determined that the proposed project is an Undertaking subject to Section 106 of the National Historic Preservation Act, (Section 106) 16 U.S.C. 470(f), which may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places (NRHP), *i.e.*, "historic properties" as defined at 36 CFR 800.16 (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); and the Alaska State Historic Preservation Officer (SHPO), pursuant to Section 800.14(b) of the regulations (36 CFR Part 800) implementing Section 106; and,

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

WHEREAS, the FRA is a Signatory because it may provide grant funding to ARRC for the Undertaking; and,

WHEREAS, the Knik Tribal Council is an Invited Signatory pursuant to 36 CFR 800.6(c)(2) because it is a -Federally Recognized Tribe pursuant to 73 FR 66, attaches a religious and/or cultural significance to the Dena'ina cultural landscape archaeological sites that may could be affected by the Undertaking and has the same authority to amend or terminate this Agreement as Signatories; and,

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

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

WHEREAS, the ARRC is an Invited Signatory pursuant to 36 CFR 800.6(c)(2) and has the same authority to amend or terminate this Agreement as Signatories; and,

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

WHEREAS, the STB has consulted with and continues to consult with the Indian Tribes and Alaska native corporations (Tribes) listed in Attachment A of this Agreement who may attach a religious and/or cultural significance to properties that may be affected by the Undertaking and these Tribes have been invited to participate in this Agreement as Concurring Parties; and

WHEREAS, the Matanuska-Susitna Borough (MSB) is a Concurring Party pursuant to 36 CFR 800.6(c)(3) because it is a certified local government under the NHPA (16 U.S.C. 470a(c)) and therefore has the ability to manage its own historic properties; and

WHEREAS, the Happy Trails Kennels and Willow Dog Musers Association are Concurring Parties pursuant to 36 CFR 800.6(c)(3) because they regularly use a historic property, the Iditarod Dog Sledding Historic District, and have agreed to consult on ways to avoid, minimize, and mitigate effects on the historic property; and,

WHEREAS, the refusal of any party invited to concur with this Agreement does not invalidate the Agreement; and,

WHEREAS, the STB, in consultation with the SHPO, has established the Undertaking's Area of Potential Effects (APE), as defined at 36 CFR 800.16(d), as the following: The APE for direct effects would include the 200-foot-wide right-of-way as well as areas where the ground will be disturbed such as staging areas, work camps, cut and fill areas, material sources/gravel quarries, overburden disposal areas, associated buildings/structures (e.g., sidings, bridges, etc.) and associated infrastructure (e.g., communication towers, power lines, etc.). Indirect effects may include an APE larger than the 200-foot right-of-way, may include vibration, noise, and access to trails and traditional use areas, and are dependent on the frequency of railroad traffic and the sensitivity of the historic property. The APE for visual effects may extend beyond the 200 foot right-of-way, and is dependent on topography, vegetation and the built environment beyond the right-of-way, the visual sensitivity of the historic property, and whether that portion of the Undertaking would be constructed at-grade or above-grade; and,

WHEREAS, the STB, as lead Federal agency, in conjunction with the FRA the United States Army Corps of Engineers, Alaska District (USACE); and U.S. Coast Guard, Seventeenth Coast Guard District (USCG) (i.e., cooperating agencies) has prepared an Environmental Impact Statement (EIS) in accordance with the requirements of the National Environmental Policy Act (NEPA) to address the potential impacts of the Undertaking on a variety of human and natural resources; and,

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

WHEREAS, the STB determined the Iditarod Dog Sledding Historic District eligible for listing in the NRHP under Criterion A at the national level of significance, and SHPO concurred with this determination for the period of significance of 1967-1978; and,

WHEREAS, in the event FRA provides grant funding to ARRC for the Undertaking, the FRA intends to make a *de minimis* impact finding for the Iditarod Dog Sledding Historic District based on avoidance, minimization, and mitigation measures developed in the EIS and this Agreement to address use as defined in Section 4(f) of the Department of Transportation Act and to comply with 23 CFR 771; 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, including ~~59 prehistoric archaeological sites~~cultural resources and, ~~23 historic archaeological sites~~cultural resources related to the Dena'ina cultural landscape and the Iditarod National Historic Trail and Iditarod Race cultural landscape; and,

WHEREAS, the STB has deferred, until after the STB licenses an alternative, the final ~~identification, evaluation, assessment of effect and consideration of alternatives to avoid, minimize, or mitigate effects to historic properties that may~~could be affected by this Undertaking, and the Signatories have agreed to develop this Agreement in accordance with 36 CFR 800.14(b)(1)(ii) ~~to provide for the phased identification of historic properties and evaluate effects to historic properties caused by construction of the Undertaking that cannot be fully assessed at this time; 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.