APPENDIX J
DRAFT PROGRAMMATIC AGREEMENT

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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

Docket No. FD 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 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), hereafter "historic properties"; and,

WHEREAS, the STB consulted with the Advisory Council on Historic Preservation (ACHP); Federal Railroad Administration (FRA); and the Alaska State Historic Preservation Officer (SHPO), pursuant to Section 800.14(b) of the regulations (36 C.F.R. Part 800) implementing Section 106; and,

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

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

WHEREAS, the Knik Tribal Council is an Invited Signatory pursuant to 36 C.F.R. § 800.6(c)(2) because it is a Federally Recognized Tribe pursuant to 73 FR 66, and has a responsibility under this agreement; 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 Knikatnu, Incorporated, an Alaska Native Village Corporation pursuant to ANSCA; are Concurring Parties pursuant to 36 C.F.R. § 800.6(c)(3); and,

WHEREAS, the STB has consulted with and continues to consult with other Indian Tribes and Alaska native corporations (Tribes) listed in Attachment A.3 of this Agreement who may want to consult on ways to avoid, minimize, and mitigate effects on the Dena'ina archaeological sites

[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.

that could be affected by the Undertaking and these Tribes have been invited to participate in this Agreement as Concurring Parties; and,

WHEREAS, the Matanuska-Susitna Borough (MSB) is a Concurring Party pursuant to 36 C.F.R. § 800.6(c)(3) because it is a certified local government under the NHPA (16 U.S.C. § 470a(c)); and,

WHEREAS, the State of Alaska's Department of Natural Resources (ADNR) is a Concurring Party pursuant to 36 C.F.R. § 800.6(c)(3) because it is a major land holder in the study area and may need to grant rights-of-way associated with the Undertaking; and,

WHEREAS, the Happy Trails Kennels (HTK) and Willow Dog Mushers Association (WDMA) are Concurring Parties pursuant to 36 C.F.R. § 800.6(c)(3) because they regularly use a historic property; and,

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

WHEREAS, the STB, in consultation with the SHPO, has established the Undertaking's Area of Potential Effects (APE), as defined at 36 C.F.R. § 800.16(d). The APE is outlined and identified in Stipulation II.C of this Agreement; and,

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

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

WHEREAS, FRA intends to make a *de minimis* impact finding for the Iditarod Dog Sledding Historic District based on avoidance, minimization, and mitigation measures developed in the EIS and this Agreement to address use as defined in Section 4(f) of the Department of Transportation Act and to comply with 23 C.F.R. § 771; and,

WHEREAS, the STB has identified 82 historic properties within the APE for the purposes of comparing impacts in the EIS, and,

WHEREAS, the STB has deferred, until after the STB licenses an alternative, the final assessment of effect and consideration of alternatives to avoid, minimize, or mitigate effects to historic properties that may be affected by this Undertaking; and,

NOW, THEREFORE, the Signatories and Invited Signatories to this Agreement consent that the proposed Undertaking shall be implemented in accordance with the following stipulations in order to consider the effect of the Undertaking on historic properties.

J.2 Stipulations

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

I. Administrative Considerations

A. The Signatories shall attach this Agreement or the measures (stipulations) called for in this Agreement to any Record(s) of Decision (ROD), approved permit(s), or other condition(s) issued for this Undertaking so that this Agreement and its requirements become legally enforceable and binding on those actions.

B. This Agreement and all of its requirements shall be binding on ARRC, as the current applicant for the STB authorization, and on its heirs, successors, and assignees.

C. The Signatories shall enforce the terms of this Agreement, approvals, and other conditions that incorporate this Agreement and its terms. Each shall notify the others if any of them becomes aware of an instance of possible non-compliance with the terms and conditions of this Agreement or permit or conditions as they relate to this Agreement. In such case, the Signatories shall ensure compliance consistent with their legal authorities and consult with the other agencies, as needed.

II. Applicability of this Agreement and Area of Potential Effects

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

B. The STB shall ensure that all work carried out pursuant to this Agreement will be done by or under the direct supervision of historic preservation professionals who meet the appropriate Secretary of the Interior's Professional Qualifications Standards (36 CFR 61 Appendix A).

C. The STB, in consultation with the SHPO, has established the APE as follows: The APE for direct effects would include the 200-foot-wide right-of-way as well as areas where the ground will be disturbed such as staging areas, work camps, cut and fill areas, material sources/gravel quarries, overburden disposal areas, associated buildings/structures (e.g., sidings, bridges, etc.) and associated infrastructure (e.g., communication towers, power lines, etc.). Indirect effects may include an APE larger than the 200-foot right-of-way, may include vibration, noise, and access to trails and traditional use areas, and are dependent on the frequency of railroad traffic and the sensitivity of the historic property. The APE for visual effects may extend beyond the 200-foot right-of-way, and is dependent on topography, vegetation and the built environment beyond the right-of-way, the visual sensitivity of the historic property,

and whether that portion of the Undertaking would be constructed at-grade or above-grade.

III. Tribal Consultation

The STB initiated consultation with the Tribes listed in Attachment A.3 of this Agreement regarding the Section 106 process, in conjunction with the preparation of the EIS. Specific consultation will continue as the terms of this Agreement are carried out, as follows:

A. Training
   1. The KTC will conduct training in coordination with ARRC's archaeologist and other individuals knowledgeable in Dena'ina history to recognize artifacts and the training will be given to ARRC's construction and other project-related personnel.
   2. ARRC's archaeologist will train KTC individuals on how to conduct interviews with Tribal elders and other knowledgeable individuals.

B. Oral History
   1. The ARRC will provide funding for the KTC to conduct up to twenty interviews to supplement the Dena'ina history included in the *Port MacKenzie Rail Extension Project: Report of 2009 Cultural Resources Fieldwork.*
   2. The KTC will identify candidates to be interviewed, provide assistance to contact those candidates and set up the interviews, and determine when the interviews are satisfactorily completed. Interviews will be completed no later than two years after the execution of this Agreement.

C. Future Consultation

The KTC, NVE, CIRI, Knikatnu, Inc. and all other Tribes that are concurring parties will receive for their review and comment, the report(s) described in Stipulation VII.A. for historic properties that would be affected by the alternative licensed by the STB.

IV. Evaluation and Treatment of Historic Properties Not Previously Evaluated

Evaluation efforts for historic properties affected by the alternative licensed by the STB will be required as follows:

A. Any areas of surface/subsurface disturbance related to this Undertaking and within the jurisdiction of STB authority, including rail alignments as well as associated facilities, staging areas, and borrow areas, which are outside the 200-foot-wide APE surveyed in the Port MacKenzie Rail Extension Project Report of 2008 Cultural Resources Fieldwork (the 2008 Field Survey).

B. If an archaeological property is identified and STB and SHPO agree it is eligible for the NRHP under Criterion D for its information potential, adverse effect will be assumed and the standard mitigation will be applied in this order:

   1. Avoidance

2. Data Recovery

3. If data recovery is not appropriate then public education

4. If none of these apply, appropriate mitigation will be identified in consultation with the SHPO

V. Treatment of Iditarod Dog Sledding Historic District

A. Workshop

1. STB will hold a workshop with HTK, WDMA, and other parties interested in the Iditarod Dog Sledding Historic District to delineate the boundaries of contributing features within the APE of the alternative licensed by the STB; discuss which are still used for their historic function; and determine how that historic function could be maintained during and following construction of the Undertaking.
2. ARRC will submit plans for grade separation and other mitigation measures specified in the STB's licensing decision (i.e., ROD) for review and discussion during the workshop.
3. Any design changes, modifications, and refinements of the Undertaking proposed during the workshop shall endeavor to avoid, mitigate, or minimize adverse effects on historic properties.

B. Develop Implementation Plan

STB will summarize the outcomes of the workshop, develop an Implementation Plan in consultation with ARRC, and submit this information to signatories and interested consulting parties, who shall have a 30-day review and comment period. The STB shall incorporate comments as appropriate

C. ARRC Execution of Implementation Plan

For contributing elements of the Iditarod Dog Sledding Historic District, treatment would include grade separations or relocation of trails and other mitigation to keep historic long distance dog sled trails that are still used for their historic function intact and maintain access and connectivity. If recordation and documentation is described in the treatment plan, methods shall conform to the *Secretary of the Interior's Standards for Architectural and Engineering Documentation* (48 FR 44730-44734) or other standards specified by the SHPO

VI. Curation

A. ARRC shall ensure that all artifacts, faunal remains, samples, records and field notes, and related materials collected during activities covered by this Agreement are deposited in the University of Alaska Museum of the North in Fairbanks. The

curatorial facility shall meet requirements found in 36 CFR Part 79, *Curation of Federally Owned and Administered Archaeological Collections*.

B. ARRC shall develop a curation agreement with their chosen facility prior to ground disturbing activity and append it to this Agreement when completed.

C. Consistent with 36 CFR Part 79, collections shall be packaged in archival quality materials and in a manner appropriate to the material type. Collection preparation and packaging shall be acceptable to the SHPO and receiving institution, and consultation in advance is recommended.

D. Materials collected in conjunction with recovery actions under this Agreement will remain the property of the landowner unless a gift or purchase agreement is negotiated.

VII. Annual Reports

A. ARRC or their designated consultant shall prepare an annual report on the progress of implementation of the stipulations of this Agreement, and shall distribute it to all parties to this Agreement. The annual report shall include the following:

1. A description of the tasks accomplished during the preceding year and anticipated upcoming efforts for identification, evaluation, mitigation, and protection of historic properties. This can include descriptions of sites, artifacts encountered, or other archaeological or historic materials encountered, including representative photographs and illustrations;
2. A description of the progress of the Undertaking and any known or expected changes to the Undertaking;
3. An evaluation of the effectiveness of this Agreement and whether any amendments or changes are needed based on deficiencies or project modifications.
4. ARRC shall supply to the STB and the SHPO a list of employees and contractors who attended the annual training, and procedures through which the information was conveyed to employees and contractors who did not attend.

VIII. Inadvertent or Unanticipated Discoveries

A. Upon the inadvertent discovery of a potential historic property, all work in the vicinity shall immediately cease and ARRC shall protect the discovery site against further disturbance.

B. Upon the inadvertent discovery of human remains, sacred objects, or mortuary objects in any activity's APE, all work in the vicinity shall immediately cease and a plan of action for the treatment of human remains (Attachment A) shall be implemented. ARRC shall ensure that any and all human remains, sacred objects, and objects of cultural patrimony discovered as a result of activities related to the Undertaking will be treated with dignity and respect.

C. Upon the unanticipated discovery of cultural resources during construction that are not human remains, the Unanticipated Discoveries Plan shall be followed (Attachment A.2)..

IX. Treatment of Human Remains

A. It is the intent of this Undertaking to avoid the disturbance or removal of any human remains. No activity will knowingly disturb human graves or human remains.

B. If human remains, sacred objects, or mortuary objects are inadvertently discovered during the course of construction or operation, all activities in the vicinity shall immediately cease and the Plan of Action (POA) for the treatment of human remains (Attachment A) shall be implemented.

C. The STB and ARRC shall ensure that any and all human remains, sacred objects, and objects of cultural patrimony discovered as a result of the Undertaking shall at all times be treated with dignity and respect:

X. Training

A. On an annual basis, ARRC will ensure that on-site supervisory-level employees and contractors are trained in procedures for identifying and reporting historic properties that may potentially be discovered during the course of their work. The training shall be developed with sensitivity to concerns of Tribes in Attachment A.3 and offer the opportunity for a tribal representative to meet in person with employees and contractors if a Tribe so requests. Minimally, the training shall include guidelines for identification of cultural resources, and notification procedures when archaeological materials, human remains, and historic period sites are discovered.

B. ARRC shall also ensure that its supervisory-level contractors and employees are advised against the illegal collection of historic and prehistoric materials, including human remains, and are familiarized with the scope of applicable laws and regulations.

C. Prior to the implementation of training, the curriculum shall be reviewed and approved by the STB, the SHPO, Tribes in Attachment A.3, and MSB.

D. Training shall be conducted by a KTC tribal official and an archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards (36 CFR Part 61).

E. However, ARRC's supervisory level employees and contractors may attend the above training and convey the information to staff unable to attend, but only to those staff who are not involved in surveying, grading, or ground disturbing activities.

XI. Dispute Resolution

Should any party to this Agreement object to any treatment plan, report, or action pursuant to this Agreement, the STB and the SHPO shall consult with the objecting party to resolve the objection.

A. If the STB and/or the SHPO determine that the objection cannot be resolved, the STB shall forward all documentation relevant to the dispute and a plan to resolve the objection to the ACHP. Within 30 days after receipt of all pertinent documentation, the ACHP will either:

    1. Provide the STB with recommendations, which the agency will take into account in reaching a final decision regarding the dispute; or

    2. Notify the STB that it will comment pursuant to 36 CFR 800.7, and proceed to comment. Any ACHP comment provided in response to such a request shall be taken into account by the STB with reference to the subject of the dispute. The STB will provide a copy of its written response to ACHP comments or final decision on any dispute to all parties to the Agreement before proceeding. Any recommendation or comment provided by the ACHP shall be understood to pertain to the subject of the dispute; the STB's responsibility to carry out all actions under this Agreement that are not the subjects of the dispute shall remain the same.

B. At any time during implementation of the measures stipulated in this Agreement, should an objection to any such measure or its manner of implementation be raised by a member of the public, the STB shall take the objection into account and consult as needed with the objecting party, the SHPO, or the ACHP to resolve the objection.

XII. Amendments

Any Signatory or Invited Signatory to this Agreement may make a request to the STB that the other Signatories consider amending it, whereupon the parties shall consult to consider the amendment(s). Amendments will be executed in the same manner as the original Agreement. Concurring Parties may suggest proposed amendments to the Signatories and Invited Signatories, who shall consult to consider them.

XIII. Termination

Any Signatory or Invited Signatory to this Agreement may terminate it by providing 30 days notice to the other parties explaining the reasons for the termination. The Signatory or Invited Signatory shall consult during this period to seek agreement on amendments or other actions that will avoid termination. In the event of termination, the STB will comply with 36 CFR 800.3 through 800.6 on remaining Undertaking components, activities, or outstanding issues.

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Any Signatory or Invited Signatory to this Agreement may make a request to the STB that the other Signatories consider amending it, whereupon the parties shall consult to consider the amendment(s). Amendments will be executed in the same manner as the original Agreement. Concurring Parties may suggest proposed amendments to the Signatories and Invites Signatories, who shall consult to consider them.

XV. Termination

Any Signatory or Invited Signatory to this Agreement may terminate it by providing 30 days notice to the other parties explaining the reasons for the termination. The Signatory or Invited Signatory shall consult during this period to seek agreement on amendments or other actions that will avoid termination. In the event of termination, the STB will comply with 36 CFR 800.1 through 800.7 on remaining Undertaking components, activities, or outstanding issues.

XVI. Duration

This Agreement shall become effective upon execution by the STB, FRA, the ACHP and the SHPO, and shall remain in effect for a term of five years from its date of execution, at which point the Agreement may be renewed.

XVII. Execution and Implementation

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

J.3 Signatories

J.3.1 Participating 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

Federal Railroad Administration

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

J.3.2 Invited Signatories

Tribes

Knik Tribal Council

By: _____ Date: _____
Jack Alcorn, Executive Director

Applicant

Alaska Railroad Corporation

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

J.3.3 Concurring Parties

Agencies

State of Alaska, Department of Natural Resources

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

Matanuska-Susitna Borough Historical Commission

By: _____ Date: _____
Fran Seager-Boss, Cultural Resources Specialist

Tribes

Chickaloon Village Traditional Council

By: _____ Date: _____
Gary Harrison, Chief

Native Village of Eklutna

By: _____ Date: _____
Dorothy Cook, President

Native Village of Tyonek

By: _____ Date: _____
Angela Sandstol, President

J.4 References

ADNR, OHA (Alaska Department of Natural Resources, Office of History and Archaeology). Not dated. Alaska Heritage Resources Survey. Anchorage, AK: Database on File with State Office of History and Archaeology.

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ADNR, OHA. 2003a. Determination of Eligibility. Historic Preservation Series Number 7.

ADNR, OHA. 2003b. Review and Compliance Program Guidelines for Section 106 Consultation with the State Historic Preservation Office. Historic Preservation Series Number 8.

ADNR, OHA. 2004. SURF Database. Anchorage, AK: On file with State Office of History and Archaeology.

HDR Alaska, Inc. and TNH-Hanson, LLC. 2008. Preliminary Environmental and Alternatives Report for the Port MacKenzie Rail Extension Project. 4 Volumes. Prepared for the Matanuska-Susitna Borough and the Alaska Railroad Corporation, Anchorage, AK.

NPS (National Park Service). Not dated. Archaeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines [As Amended and Annotated], Secretary of the Interior's Standards for Archeological Documentation. Online at http://www.cr.nps.gov/local-law/arch_stnds_7.htm

NPS (National Park Service). Not dated. National Register of Historic Places. Online at: http://www.cr.nps.gov/nr/nrlist.htm

NPS. 1997. How to Apply the National Register Criteria for Evaluation. National Register Bulletin 15. U.S. Department of the Interior, National Park Service, National Register, History and Education. Online at: http://www.cr.nps.gov/nr/publications/bulletins/nrb15/

Parker, P. L., and T. F. King. 1998. Guidelines for Evaluating and Documenting Traditional Cultural Properties. National Register Bulletin (revised). U.S. Department of the Interior, National Park Service, National Register, History and Education, National Register of Historic Places.

SRB&A. 2008. Port MacKenzie Rail Extension Project Report of 2008 Cultural Resources Fieldwork. Prepared for Surface Transportation Board. Washington, DC.

J.5 Glossary of Terms and 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 the 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: In order to be eligible for the National Register the property must have been either formally determined as such in accordance with regulations of the Secretary of the Interior and/or 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 36 CFR 800 Subpart B. 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 Entitled *Cultural Resources Work Plan: Proposed Port MacKenzie Rail Extensions Project, Port MacKenzie to Willow, Alaska STB Finance Docket No.* 35095 (ID Plan) approved by the SHPO with comment on July 23, 2008.

Indian Tribe: As presently defined in 36 CFR 800.16(m), 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 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 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:

- that are associated with the events that have made a significant contribution to the broad patterns of our history; or
- that are associated with the lives of persons significant in our past; or
- 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
- 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.

DPA: Draft 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. This includes 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 the Matanuska-Susitna Borough and a point between Wasilla and north of Willow, 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

The Native American Graves Protection and Repatriation Act (NAGPRA) regulations (43 CFR 10), do not apply to the Undertaking because it would not occur on Federal lands. The following steps must be taken if human remains, or suspected human remains, are discovered:

1. Should human burials be encountered, work will be stopped at once in the locality and the STB, the SHPO and the Alaska State Troopers (AST) shall be contacted immediately. See below for contact numbers.
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. If the human remains are not Native American, and a determination has been made by the AST and Alaska SME that a death investigation is not warranted, then the STB in consultation with the Alaska SME, will attempt to identify, locate and inform descendants of the deceased. If the human remains are to be moved, then the STB shall obtain any required permits from the Alaska State Bureau of Vital Statistics, and reinter the remains in a designated area.
5. The ARRC Project Manager should contact the following people or agencies within 24 hours of uncovering the remains (notification should include available information regarding the nature and extent of the remains and an accurate and precise location including GPS coordinates):

A. State Historic Preservation Officer (SHPO)

Judith Bittner
State Historic Preservation Officer
Alaska Department of Natural Resources
550 W. 7th Ave., Suite 1310
Anchorage, AK 99501-3565
Phone: (907) 269-8721
Fax: (907) 269-8908

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

Dorothy Cook
President
Native Village of Eklutna
26339 Eklutna Village Road
Chugiak, Alaska 99567
Phone: 907-688-6020
Fax: 907-688-6021

Curtis McQueen
Chief Executive Officer
Eklutna, Incorporated
16515 Centerfield Dr., Suite 201
Eagle River, AK 99577
Phone: 907-696-2828
Fax: 907-696-2845

Debra Call
Knik Tribal Council President
PO Box 871565
Wasilla, Alaska 99687-1565
Phone: 907-373-7991
Fax: 907-373-2161
dcall@kniktribe.org
dcall@alaskanative.net

Delia Call
Knik Tribal Council Secretary Treasurer
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President and Chief Executive Officer
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Margaret L. Brown
President and Chief Executive Officer
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2525 C Street, Suite 500
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Anchorage, AK 99509-3330
907 274-8638

E. The Alaska State Troopers

Communications Center Manager
Phone: (907) 451-5100
Fax: (907) 451-5165

6. The ARRC Project Manager should contact the following people, though not necessarily within the first 24 hours:

A. Alaska State Medical Examiner's Office

Dr. Katherine Raven, Chief Medical Examiner
Phone: (907) 334-2200
Fax: (907) 334-2216
Email: Stanton.kessler@alaska.gov

Kenneth Cramer, Death Investigator
Phone: (907) 334-2200
Fax: (907) 334-2216
Email: Kenneth.Cramer@alaska.gov

B. Alaska Bureau of Vital Statistics

Phillip Mitchell, Chief
Phone: (907) 465-8643
Fax: (907) 465-3618
Email: Phillip.Mitchell@alaska.gov

Janet Shea
Phone: (907) 465-8608
Fax: (907) 465-4689
Email: Janet L Shea janet.brown@alaska.gov

Aaron Leggett
Dena'ina Cultural Historian
Alaska Native Heritage Center
8800 Heritage Center Drive
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Fax: 907-330-8030
info@alaskanative.net

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Fran Seager-Boss
Matanuska Susitna Borough Historic Commission
Matanuska Susitna Borough
Cultural Resources Specialist
350 East Dahlia Avenue
Palmer, Alaska 99645
fseagerboss@matsugov.us

A.2. Plan for Unanticipated Discoveries

In the event that cultural materials are discovered, this plan shall be followed, and implemented in compliance with the National Historic Preservation Act (NHPA) of 1966, as amended (16 U.S.C. § 470) as well as implementing regulations (36 CFR 800).

If archaeological or historic materials are encountered the following series of steps must be followed:

1. Stop all work in the immediate vicinity of any historic properties or suspected cultural resources.
2. Mark the area in which the resources are located, as well as a minimum buffer area with a radius of 20 meters surrounding them. 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 parties.[2]
3. ARRC's Project Manager should contact the people or agencies in the previous list at A.1(6)(a) through (e) within 24 hours of discovering the resources.

   Notification of unanticipated discoveries should include available information regarding the nature and extent of the historic properties and an accurate and precise location including GPS coordinates.

   The discovery shall be investigated by a professional meeting the appropriate qualification standards, such as a consulting archaeologist, no longer than seventy-two (72) hours from discovery. The STB, the SHPO, ARRC and land managing agency (as appropriate) shall consult, by telephone or other means, on the nature of the discovery and whether any additional investigation is warranted. The STB shall contact the appropriate Tribal representative if necessary. A decision shall be provided to ARRC within five (5) working days. If the parties agree that the discovery is not significant, verbal authorization to proceed may be given by the SHPO, and the 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 Stipulation III.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. Tribes and Alaska Native Organization Contact List

Federally Recognized Tribes

Gary Harrison, Chief
Chickaloon Village Traditional Council
Send information to:
Jennifer Harrion, Executive Director
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Other Organizations

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info@alaskanative.net

ATTACHMENT B
PLAN FOR TRIBAL CONSULTATION

B.1. 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 Port MacKenzie Rail Extension 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 Port MacKenzie Rail Extension has the potential to directly affect the environment, resources and rights of Tribes and Alaska native corporations located in Southcentral Alaska in the vicinity of the Knik Arm, Big Lake and the Little Susitna 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.

B.1.1 Federally Recognized Tribal Governments in the Project Area

The U.S. Department of Interior, Bureau of Indian Affairs (BIA) maintains a list of 561 Federally Recognized Tribes (73 FR 66, April 4, 2008). Alaska Tribes in proximity to the proposed Port MacKenzie Rail Extension have been identified from this list. Proximity is defined as in or near the Little Susitna River and Knik Arm watersheds. The following Tribes, Tribal groups and Native corporations were notified by letter dated February 12, 2008 of the scoping process for the Port MacKenzie Rail Extension EIS, and have been advised that further information regarding government-to-government coordination would be forthcoming.

Federally Recognized Tribes

- Chickaloon Village Traditional Council
- Knik Tribal Council
- Native Village of Eklutna
- Native Village of Tyonek

Alaska Native Corporations

- Chickaloon-Moose Creek Native Association, Inc.
- Cook Inlet Region, Inc.
- Eklutna, Incorporated
- Knikatnu, Incorporated
- Tyonek Native Corporation

B.1.2 Completed Consultation

The STB initiated consultation with the Tribes listed in Attachment A 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 June 18, 2009, identifies the Tribes who were notified by letter, of the scoping process for the EIS on February 12, 2008. Attachment A. of this Agreement lists the Tribes and Alaska native organizations who have remained in consultation with the STB after the scoping process. On February 5, 2009, the STB sent a letter to all of the Tribes and Alaska native organizations notifying them of the initiation of the Section 106 consultation process, asking them for assistance in identifying cultural resources in the project area, and asking if they were interested in participating as a consulting party to this Agreement. Consultation completed with specific Tribes and Alaska native organizations included:

- August 20, 2008, **Knikatnu, Inc.** requested a meeting with the STB and cooperating agencies at a tribal facility and indicated they want to continue to receive project information by mail and participate in the public involvement process. A follow-up phone call was made on December 9, 2008, and while an immediate meeting was not necessary, the request was made that the Knikatnu, Inc. be informed if the Houston route is selected. The Knikatnu, Inc. would like to receive project information by mail and participate in the public involvement process, and may request a meeting with the STB at a later date.
- September 3, 2008, **Native Village of Tyonek** indicated they want to continue to receive project information by mail and participate in the public involvement process.
- April 1, 2009, **Eklutna, Inc.** indicated they have no interest in the project and further consultation is not required.
- February 27, 2009, a consultation meeting was held with the **Knik Tribal Council** and the **Matanuska-Susitna Borough (MSB) Historical Commission** with STB's consultant archaeologist, Stephen R. Braun & Associates. The majority of the meeting focused on Knik Tribal Council's desire to have the discussion of Dena'ina be broadened to a cultural landscape level and focus on not only prehistoric and ethnographic resources, but also the contemporary cultural practices of the Dena'ina and how these practices reflect their past as well as show the Dena'ina as a living part of the landscape today. The MSB Historical Commission representatives agreed with the Knik Tribal Council's concerns regarding documentation of Dena'ina cultural resources and that they be expanded to a broader cultural landscape discussion.

- November 13, 2009, follow-up phone calls were made to all Tribes and Alaska native organizations to confirm their role in the Agreement as a consulting party or to continue to be included in the document circulation and contact lists.

B.1.3 Continuing Consultation

STB consultation with the Tribes will remain open throughout the duration of the Project and as the terms of this Agreement are carried out. Copies of the Project's Draft EIS and Final EIS shall be sent to all of these Tribes and Alaska native organizations for review. Both documents shall contain the draft Agreement as an appendix. 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.

B.1.4 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 Federal Railroad 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 Port MacKenzie 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.

B.2. 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. The STB gave Tribal Governments an opportunity to consult at the start of the project and gave opportunities to consult prior to decision making. The STB shall ensure that additional coordination will take place as determined necessary or desirable by the Signatories and Tribes.

B.2.1 Completed Actions

The STB has completed the following sequence of actions:

1. Contacted each Tribal entity (as listed in Attachment A) 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.

B.2.2 Future Actions

The STB plans the following actions to facilitate carrying out the terms of this Agreement:

1. The STB shall send all Tribes 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, the 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 of this Agreement.
3. The STB shall notify the Tribes of meetings being held and reports being prepared in accordance with Stipulations VIII A. and B. and VIII D. of this Agreement

B.2.3 Native Allotments

In 1906, the Alaska Native Allotment Act authorized the Secretary of the Interior to allot individual Alaska Natives (Native) a homestead of up to 160 acres. The Department of the Interior's (Interior) Bureau of Land Management (BLM) and Bureau of Indian Affairs (BIA) are responsible for granting rights-of-way and handling disputes between allotees and holders of rights-of-way. If the STB licenses an alternative that may directly affect a Native Allotment, the STB shall notify BLM and BIA of the decision and provide detailed maps of the proposed railroad right-of-way to ensure that the allotees are properly notified, treated with respect, and their lawful rights observed as prescribed in 25 CFR Part 169.

ATTACHMENT C
IDENTIFICATION PLAN (ID PLAN)

CULTURAL RESOURCES WORK PLAN

PORT MACKENZIE RAIL EXTENSION PROJECT
PORT MACKENZIE TO WILLOW, ALASKA

Prepared for
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423
202-245-0245

and
ICF International
9300 Lee Highway
Fairfax, Virginia 22031
703-934-3603

5 June 2008

Stephen R. Braund & Associates
P.O. Box 1480
Anchorage, Alaska
907-276-8222
907-276-6117 (fax)
srba@alaska.net

C.1. Executive Summary

The Alaska Railroad Corporation (ARRC) intends to file a petition with the Surface Transportation Board (STB) requesting authority to construct and operate a new rail line from Matanuska-Susitna Borough's Port MacKenzie to the existing ARRC mainline between Wasilla and north of Willow in south-central Alaska. STB is the Federal agency responsible for granting authority for the construction and operation of the proposed new rail line. The Section of Environmental Analysis (SEA) is the office within the STB responsible for preparing the appropriate National Environmental Policy Act (NEPA) documentation for railroad construction and operation cases that come before the Board. SEA has issued a Notice of Intent to prepare an Environmental Impact Statement (EIS) for the Port Mackenzie Rail Extension, a draft scope of study, and a notice of scoping meetings.

STB, through ICF International (ICF), has engaged Stephen R. Braund & Associates (SRB&A) to prepare the cultural resources portion of the EIS. The EIS will identify cultural resources in the project area, evaluate the impacts of the proposed action on the cultural resources for each of the alternatives, and recommend mitigation measures, as appropriate. On March 5, 2008, SEA, ICF, ENTRIX, Inc., SRB&A, and the State Historic Preservation Office met to discuss a methodology for assessing effects to cultural resources caused by the proposed action. This cultural resources work plan is a result of that meeting and includes a brief description of the project and project area, NEPA and NHPA regulations regarding assessment of effects to cultural resources from proposed projects, consultation with parties knowledgeable about cultural resources in the proposed project area, and existing knowledge including documented cultural resources and previous surveys in the project area. The work plan also includes a description of the methods proposed for assessing effects to cultural resources from the proposed project for both the NEPA and Section 106 process.

C.2. List of Acronyms and Abbreviations

ACHP	Advisory Council on Historic Preservation
ADNR	Alaska Department of Natural Resources
AHPA	Alaska Historic Preservation Act
AHRS	Alaska Heritage Resources Survey
AIRFA	American Indian Religious Freedom Act
ANCSA	Alaska Native Claims Settlement Act
APE	Area of Potential Effect
ARRC	Alaska Railroad Corporation
ARPA	Archaeological Resources Protection Act
BP	Before Present
CFR	Code of Federal Regulations
CMT	Culturally Modified Tree
DOE	Determination of Eligibility
DOT&PF	Alaska Department of Transportation and Public Facilities
EIS	Environmental Impact Statement
GIS	Geographic Information Systems
IRA	Indian Reorganization Act
MSB	Matanuska-Susitna Borough
NAGPRA	Native American Graves Protection and Repatriation Act
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NPS	National Park Service
NRHP	National Register of Historic Places
OHA	Office of History and Archaeology
SEA	Section of Environmental Analysis
SHPO	State Historic Preservation Office(r)
SRB&A	Stephen R. Braund & Associates
STB	Surface Transportation Board
USGS	U.S. Geological Survey

C.3. Introduction

The Alaska Railroad Corporation (ARRC) intends to file a petition with the Surface Transportation Board (STB) requesting authority to construct and operate a new rail line from Matanuska-Susitna Borough's (MSB) Port MacKenzie to the existing ARRC mainline between Wasilla and north of Willow in south-central Alaska. STB is the Federal agency responsible for granting authority for the construction and operation of the proposed new rail line. The Section of Environmental Analysis (SEA) is the office within the STB responsible for preparing the appropriate National Environmental Policy Act (NEPA) documentation for railroad construction and operation cases that come before the Board. ICF International is serving as the independent third-party consultant to SEA to assist with the NEPA review process. SEA has issued a Notice of Intent to prepare an Environmental Impact Statement (EIS) for the Port Mackenzie Rail Extension, a draft scope of study, and a notice of scoping meetings.

STB, through ICF International (ICF), has engaged Stephen R. Braund & Associates (SRB&A) to prepare the cultural resources portion of the EIS. The EIS will identify cultural resources in the project area, evaluate the impacts of the proposed action on the cultural resources for each of the alternatives, and recommend mitigation measures, as appropriate. On March 5, 2008, SEA, ICF, ENTRIX, Inc., SRB&A, and the State Historic Preservation Office (SHPO) met to discuss a methodology for assessing effects to cultural resources caused by the proposed action. This cultural resources work plan is a result of that meeting and includes a brief description of the project and project area, NEPA and National Historic Preservation Act (NHPA) regulations regarding assessment of effects to cultural resources from proposed projects, consultation with parties knowledgeable about cultural resources in the proposed project area, and existing knowledge including documented cultural resources and previous surveys in the project area. The work plan also includes a description of the methods proposed for assessing effects to cultural resources from the proposed project for both the NEPA EIS and Section 106 process.

C.3.1 Project Description and Area of Potential Effects

Under NHPA, the area of potential effect (APE) includes those areas where cultural resources will be directly or indirectly affected by the proposed undertaking (36 CFR 800.16(d)). To effectively meet the obligations under Section 106 of the NHPA, which requires federal agencies to take the effects of federal undertakings on historic properties into account, the NEPA process will be coordinated with the Section 106 process as recommended at 36 CFR 800.8. Identification of cultural resources within and near the proposed route alternatives, the APE, will be conducted to assess the effects of the proposed project on cultural resources.

The proposed Port MacKenzie Rail Extension would involve the construction and operation of a new rail line connecting Port MacKenzie to a point on the ARRC main line between Wasilla and north of Willow, Alaska (Figure J-1). The proposed rail line would provide freight services between the Port and Interior Alaska and would support the Port's continuing development as an intermodal and bulk material resources export and import facility. Major elements of the proposed rail extension would include between 30 and 45 miles of new railroad track; a 200-foot-wide right-of-way (100 feet on either side of the center line); crossings of local roads,

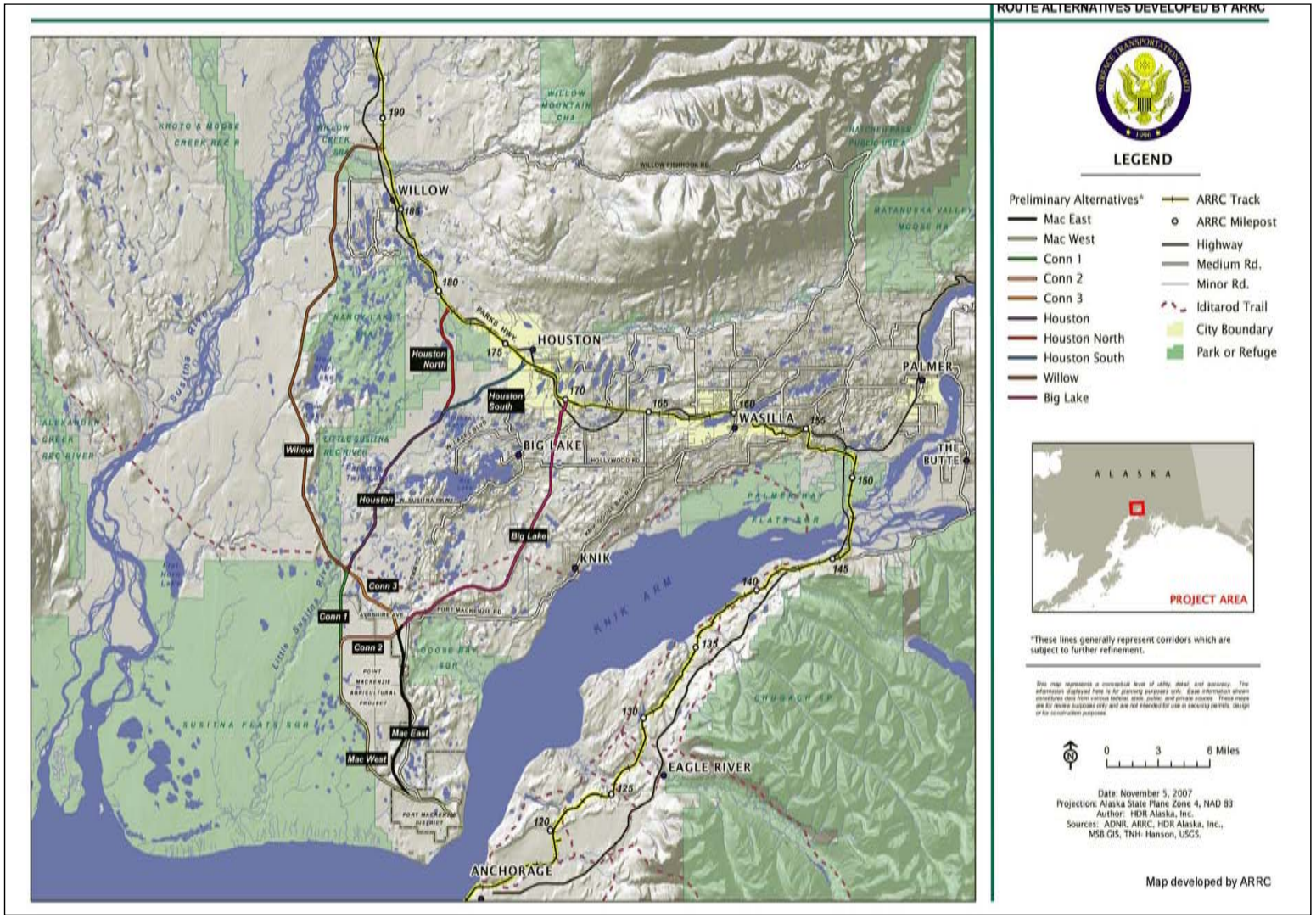

Figure J-1. Port MacKenzie Rail Extension Project, Southcentral Alaska

streams, trails, and utility corridors; sidings; and ancillary facilities. The anticipated train traffic would be two trains daily on average, with one train per day traveling in each direction. 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 could include a larger area than the 200 foot right of way.

C.3.2 Cultural Resources Regulations: The National Environmental Policy Act and Section 106 of the National Historic Preservation Act

NEPA requires a review of project and program impacts on the cultural environment, which generally includes historic structures, archaeological sites, historic districts, traditional cultural properties, anthropogenic landscapes, and other culturally valued places, as well as cultural use of a biophysical environment, and sociocultural attributes (e.g., social cohesion, social institutions, lifeways, religious practices, and/or other cultural institutions).

Direct effects to cultural resources are impacts to the characteristics of a cultural resource's quality, integrity, and association (36 CFR Part 800.5; 40 CFR 1508.8). Examples of direct effects to cultural resources from construction and/or operation of the proposed facilities could include physical destruction of or damage to all or part of the resource, removal of the resource from its original location, change of the character of the resource's use or of physical features within the resource's setting that contribute to its historic significance, change in access to traditional use sites by users, or loss of cultural identity with a resource. Indirect effects to cultural resources include those impacts resulting from the action that occur later in time or further removed in distance but still reasonably foreseeable (40 CFR 1508.8). Indirect effects on cultural resources could include modifications to the visual or aesthetic setting of an NRHP-eligible property. It also includes increased access to and close proximity of project components to culturally sensitive areas. This could result in a greater vulnerability of cultural resources to damage caused by project personnel and equipment during construction and operation of facilities and infrastructure.

NEPA requires consideration of context and intensity of an impact when describing its significance (40 CFR 1508.27). Context includes the affected society (e.g., local, regional, national), the affected region, the affected interests and the setting (or locality) of the proposed action (e.g., local, regional or national). Intensity includes consideration of geographic extent of the effect (e.g., limited, local or extensive), duration (e.g., one-time, intermittent or chronic), magnitude or amount of an impact, and likelihood or probability of an impact (e.g., certain, expected or actual). In the case of cultural resources, context applies to cultural resources located within the project area. Intensity for cultural resources includes the unique qualities of the resource, such as its eligibility for or listing on the NRHP, and the cumulative aspects of project impacts.

Compliance with Section 106 of the NHPA (16 USC 470) is required by law for all federal undertakings. Section 106 outlines the process for evaluating the effects of an undertaking on

historic properties. The process involves consultation with the SHPO, the Advisory Council on Historic Preservation (ACHP), Native American tribes, and other interested parties to determine the effects of federal actions; coordinating with other reviews (e.g., NEPA, Native American Graves Protection and Repatriation Act [NAGPRA], American Indian Religious Freedom Act [AIRFA], and Archaeological Resources Protection Act [ARPA]), identifying the SHPO, tribes, and other likely consulting parties, and planning to involve the public; identifying historic properties using the Secretary of the Interior's Standards and Guidelines (as outlined in 36 CFR 800.4; National Park Service [NPS] not dated); and evaluating all historic properties for NRHP eligibility on the basis of their significance (e.g., historical, archaeological, and/or cultural; see 36 CFR 60.4). The NEPA process generally involves partial completion of the Section 106 process by initiating consultation with agencies, tribes, and stakeholders, and by identifying cultural resources in the proposed project area to the extent that potential impacts of the proposed project can be reasonably determined.

NHPA defines historic properties as prehistoric and historic districts, sites, buildings, structures, and objects listed or eligible for inclusion on the NRHP including artifacts, records, and material remains related to the property (16 USC 470w, Sec. 301.5). A determination of eligibility (DOE) for the NRHP is based on a description and evaluation of a cultural resource, a statement of significance, and a selected list of sources, maps, photographs, or other illustrations. Consideration is given to both the criteria of significance and integrity of the site condition. The evaluation considers the historic context of the property, including its relation to other known historic properties (Alaska Department of Natural Resources, Office of History and Archaeology [ADNR, OHA] 2003a). For a cultural resource (districts, sites, buildings, structures and objects) to be eligible for the NRHP, it must possess integrity of location, design, setting, materials, workmanship, feeling and/or association. The NRHP (36 CFR 60.4) outlines the criteria for determining the eligibility for a historic property as follows:

> The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and
>
> (a) that are associated with 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 values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
>
> (d) that have yielded, or may be likely to yield, information important in prehistory or history. (36 CFR 60.4)

An effect, for both Section 106 and NEPA, is when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the NRHP. The effect is considered adverse if it would impact the property in a manner that would diminish the property's integrity (location, design, setting, materials, workmanship, feeling, association) and/or its association under Criteria A-D, thus rendering it ineligible for the NRHP. There are several ways to minimize or mitigate effects to cultural resources. Mitigation under NEPA (40 CFR 1508.20), as it applies to cultural resources, involves:

- Avoiding the impact altogether by not taking a certain action or parts of an action (e.g., relocating a project component to avoid impact on an archeological site, a historic district, or an area of traditional use)
- Minimizing impacts by limiting the degree or magnitude of the action and its implementation (e.g., altering the design of a project to reduce impacts)
- Rectifying the impact by repairing, rehabilitating, or restoring the affected environment (e.g., restoring impacted sites, landscapes, or buildings)
- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action
- Compensating for the impact by replacing or providing substitute resources or environments (e.g., rehabilitating some buildings in exchange for demolishing others, conducting archeological data recovery or replacing areas used for cultural activities by providing access to other similar areas)

C.3.3 Consultation

As part of the preliminary environmental assessment for the Port MacKenzie project, the applicant contacted the SHPO, the Knik Tribal Council, the Knik Tribal Council Cultural and Historic Preservation Committee, and the MSB Cultural Resources Office to identify potential cultural resources in the project area. Responses from these organizations are included in the preliminary environmental report (HDR Alaska, Inc. and TNH-Hanson, LLC 2008). STB published a Notice of Intent in the Federal Register on February 12, 2008 and requested scoping input from the SHPO and local tribes at that time. STB intends to conduct consultation with SHPO, appropriate tribes, and other concerned parties throughout the project. STB, ICF International, ENTRIX, Inc., SRB&A, and the SHPO met on March 5, 2008 to discuss a methodology for assessing effects to cultural resources caused by the proposed project. This cultural resources work plan is a result of that meeting.

C.3.4 Existing Knowledge

There are more than 100 recorded cultural resource sites in the project area based on a preliminary review of the Alaska Heritage Resources Survey (AHRS) maintained by the ADNR, OHA (ADNR, OHA not dated). Cultural resource sites include archaeological, ethnographic, and historic sites. The project area was traditionally used by the Dena'ina, and a portion of the area is where the greatest density of Dena'ina population lived during the prehistoric and historic periods. Therefore, this is an area that is likely to encompass numerous Dena'ina cultural resource sites including villages, hunting and fishing camps, traditional locations where raw materials and subsistence resources were collected, sacred areas, and burial locations. In addition to Dena'ina uses, non-Native people used the area historically for fur farming, agriculture, homesteading, dog mushing, and recreation. One notable historic resource that would be affected by the proposed project is the Iditarod National Historic Trail, which was designated a National Historic Trail by the U.S. Congress in 1978.

There have been few cultural resource surveys conducted in the vicinity of the project area. In order to conduct a preliminary assessment of impacts to cultural resources from this project, the MSB Cultural Resources Office developed a model to predict areas of high probability for archaeological sites within the project area. Probability was based on the attributes and context of recorded sites (e.g., terrain, topography, distance to water). The probability model did not include post-twentieth century historical data on the built environment (HDR Alaska, Inc. and TNH-Hanson, LLC 2008).

C.4. Methods Proposed for Assessing Effects to Cultural Resources under NEPA and Section 106

Several types of cultural resources could be affected by the proposed Port MacKenzie Rail Extension including archaeological resources, historic structural resources, ethnographic resources, and cultural landscapes. Archaeological resources are prehistoric Native American cultural resources and historic archaeological resources of Native American and Euro-American origins. Archaeological resources that have been found, or can be expected to occur are diverse and include villages, fishing sites and weirs, hunting and gathering sites (e.g., camps, processing sites, lookouts, kill sites), collapsed log cabins, trails, horticulture sites, evidence of culturally modified trees (CMT), buried sites, major/multicomponent sites, and cemeteries or burials. Historic structural resources are standing structures that possess historic qualities, either for the people who occupied them or for the quality and integrity of workmanship. If the building has collapsed or is otherwise open to the elements, it falls into the archaeological resources category. Historic structural resources that may be found in the project area include homesteading cabins and related buildings, recreational cabins, and agricultural buildings. Ethnographic resources are tangible and intangible elements of the environment associated with cultural traditions, such as special places in the natural world, structures or sites with cultural associations, naturally occurring materials, and subsistence activities. Examples of ethnographic resources that may occur in the project area include traditional fishing and/or hunting locations, locations traditionally used for gathering materials used in utilitarian and craft items, locations associated with oral traditions, and traditionally used trails. Ethnographic resources also include traditional cultural properties. A traditional cultural property is eligible for inclusion in the NRHP because of its association with cultural practices or beliefs of a living community that are (1) rooted in that community's history, and (2) important in maintaining the continuing cultural identity of the community (Parker and King 1998). The cultural landscape is an extension of the ethnographic resource. Cultural landscapes are a geographic area, including both natural and cultural resources, associated with historic events, activities, and/or people. Landscapes are "intertwined patterns of things both natural and constructed", and are a "reflection of human adaptation and use of natural resources which are often expressed in the way land is organized and divided, patterns of settlement, land use, systems of circulation, and the types of structures that are built" (NPS 1997). At the broadest scale, the ethnographic resource encompasses entire landscapes. During the March 5, 2008 meeting, the SHPO recommended that the assessment of cultural resources for the Port MacKenzie Rail Extension include an analysis of potential cultural landscapes for agriculture, dog mushing, and recreation in addition to the Dena'ina cultural landscape.

SRB&A proposes that the Section 106 and NEPA EIS processes for the proposed undertaking be integrated and conducted concurrently, as recommended in 36 CFR 800.8, so that information on potential impacts to cultural resources can be evaluated as part of the EIS. The following describes the proposed methodology for assessing impacts to cultural resources from the Port MacKenzie Rail Extension including methods to be used during the EIS preparation and the completion of Section 106 responsibilities.

C.5. NEPA Assessment of Potential Impacts

The NEPA review will begin with a literature review and background research, including review of the AHRS maintained by ADNR, OHA (not dated); the NRHP maintained by NPS (not dated); existing archaeological, historic, and ethnographic literature for the project area; and reports regarding previous surveys in the project area. The section of the EIS that discusses the affected environment for cultural resources will include a description of known archaeological, historic, and ethnographic resources as well as cultural landscapes in the project area. In addition, the affected environment coverage will include a discussion of cultural resources likely to be found in the project area based on the probability model, as well as cultural resources found during Summer 2008 ground truthing surveys. The probability method and ground truthing survey are described below.

For the purposes of comparing potential impacts to cultural resources in the EIS, all known cultural resources within the project area will be considered potentially eligible for the NRHP unless previously determined otherwise. As described above, an adverse effect to cultural resources would be found when an undertaking would alter, directly or indirectly, any of the characteristics of that resource that would qualify the property for inclusion in the NRHP such as the resource's integrity (location, design, setting, materials, workmanship, feeling, association) and/or its association under Criteria A-D. The cultural resources environmental consequences chapter in the EIS will include an assessment of direct and indirect affects to known cultural resources for each proposed project alternative. The environmental consequences chapter will also include a comparison of effects on cultural resources by alternative based on probability modeling, including ground truthing field work, described below.

The EIS will also include cumulative effects to cultural resources (known and planned) from the proposed action and mitigation measures for addressing adverse effects to cultural resources from the proposed project.

C.5.1 Probability Methodology

A probability method for predicting the presence or absence of cultural resources was recently developed for the project area by the MSB Cultural Resources Division Planning and Land Use Department (HDR Alaska, Inc. and TNH-Hanson, LLC 2008). This probability methodology – or predictive modeling – can be used to guide where focused cultural resource investigations should be conducted prior to ground disturbing activity. In addition, predictive modeling can be used to compare effects to cultural resources from proposed alternatives during the NEPA process. For the Port MacKenzie Rail Extension Project, SRB&A will tier off of the MSB

probability model. The current model focuses on the probability of prehistoric archaeological sites, but SRB&A will revise the model to add the probability for encountering historic sites. The MSB Cultural Resources office recommended field surveys prior to construction for areas identified as high probability for containing archaeological sites and included emphasis on the following features:

- confluence of a river with a lake,
- confluence of two rivers,
- bluffs above major waterways,
- promontories that may have provided good lookouts for prehistoric camps,
- promontories near or adjacent to swamps where waterfowl might have congregated, and
- bluffs surrounding inland lakes and streams (HDR Alaska, Inc. and TNH-Hanson, LLC 2008).

SRB&A suggests four levels of probability based on archaeological, ethnographic and historic information; known cultural resource site location information; topographic feature distributions; and other resource distribution data. These four levels of probability include:

1. **Known Site Location:** Includes a small area around identified sites, features, or artifact finds. Activities represented by sites/features/artifacts are rarely confined to the physical limits of a feature.
2. **High Probability:** Indicated by proximity to where clear water streams enter silty rivers, high ground near an important resource, proximity to travelways (trails/streams), high prominences above surrounding terrain usable as lookouts for game, bluffs above major waterways as well as lakes and streams, inlets or outlets of lakes, confluences of two rivers/streams or a river/stream with a lake, proximity to Euroamerican settlements, and areas where remains have been reported but have not been confirmed.
3. **Medium Probability:** Includes areas with some prospect of finding cultural resources but less likelihood than high probability areas such as along high river banks, dry land with no topographic prominence relative to the surrounding terrain, topographic prominences away from the rivers, and high dry banks along the shores of lakes.
4. **Low Probability:** Includes swampy areas, intertidal marshes, very recent geological features such as active river floodplain or islands, areas with steep inclines, areas where previous ground surface and subsurface has been destroyed or heavily disturbed and/or culture bearing soils have been removed, dry lake or stream beds, bare bedrock outcrops, areas previously surveyed with negative results, areas known to have no historic significance, and areas determined not suitable for occupation or where there is a low potential for site preservation.

SRB&A will create a Geographic Information Systems (GIS) probability model for the proposed project area based on archaeological, ethnographic and historic information; known cultural resource sites; the MSB probability model; topography; and hydrography. This GIS probability model will help to refine the four probability levels described above and will be used to create a map that will be used to choose possible survey locations for the ground truthing survey. The

GIS probability model will only evaluate areas within one mile of proposed project alternatives. The study area will be divided into 100-meter squares and scored based on the following criteria:

- within 500 feet of an AHRS or other cultural resource site (+1)
- designated as a high probability area for cultural resources by MSB (+1)
- within one mile of the coast (+1)
- within one-quarter mile of a river, stream, or lake (+1)
- a surficial geology type of any of the following (+1):
  - moraines and other unsorted glacial drift
  - proglacial lake and associated fluvial deposit
  - sand dune and other eolian deposit
- previous survey data by section:
  - positive survey (+1)
  - negative survey (-1)
  - no survey (0)

Based on the above scoring method used in the GIS probability model, which was informed by the four probability levels described above, each 100-meter square could receive a maximum score of six. If the 100-meter square's end score was a four through six, SRB&A would designate it as high probability. If the 100-meter square's end score was a two or three, SRB&A would designate it as medium probability. If the 100-meter square's end score was a one, SRB&A would designate it as low probability. If the 100-meter square's end score was a zero or negative one, SRB&A would remove it from further consideration. SRB&A will use the results of the probability method to create a map that will be used to choose possible locations for the ground truthing survey and to assess the various route alternatives.

C.5.2 Ground Truthing Survey

Based on the probability method described above, SRB&A would conduct ground truthing surveys in the project area. A sample of each proposed alternative would be surveyed, with survey efforts concentrated in areas determined to be high or medium probability for cultural resources. Ground truthing would include a pedestrian survey along transects determined by ground conditions, as well as the excavation of test units in high and/or medium probability areas. To the extent possible, the cultural resources ground truthing survey will be coordinated with other field studies conducted for the EIS during Summer 2008. Following completion of the ground truthing field effort, a report describing the probability method, ground truthing survey methods and results will be submitted to SHPO. The SHPO will have a minimum of 30 days to review and respond to this report. The ground truthing survey will help to further refine the probability method that will be used for the Section 106 assessment.

C.6. Completion of the Section 106 Process

Following completion of the EIS process and STB's choice of an alternative for construction, the Section 106 assessment of cultural resources will be completed. The completion of Section 106 responsibilities is expected to be guided by a programmatic agreement (PA) developed for the

Port MacKenzie project, with all fieldwork, reporting, and approvals obtained prior to construction. This phase of analysis will tier off of the data collected for the EIS, which included a review of the AHRS maintained by ADNR, OHA; the NRHP maintained by NPS; existing archaeological, historic, and ethnographic literature for the project area; and reports regarding previous surveys in the project area, and included the application and ground truthing of the probability method for the route alternatives. This phase of the work will include consultation with SHPO, appropriate Native organizations, user groups (e.g., dog mushers, farmers, snow machiners, recreationists, etc.) and other knowledgeable parties (e.g., the Matanuska-Susitna Borough, Bureau of Land Management, Alaska Division of Parks and Outdoor Recreation, etc.) regarding cultural resources and cultural landscapes in the project area for the alternative chosen for construction at the close of the NEPA process.

This phase of analysis will include a pedestrian survey and subsurface testing of the APE for the selected (preferred) route alternative prior to any ground disturbing activities, whereas only a sample of each proposed alternative would be surveyed as part of ground truthing during the NEPA process. These survey efforts will be concentrated in areas not surveyed during the ground truthing surveys that are determined to be high or medium probability for cultural resources. If any significant cultural resource is identified, a determination of eligibility for the NRHP will be completed and submitted as part of the final report. The final report will include a description of the project, APE, and environment in the project area. The report will also include a description, based on a review of available literature, AHRS and NRHP, of known cultural resources and previous cultural investigations in the project area; a description of the prehistory, ethnography, and history of the project area; a description of cultural landscapes in the project area; a description of consultation methods and results; a description of field survey methods and results; determinations of eligibility for cultural resources that will be affected by the proposed project; completed AHRS forms for any cultural resources identified during the field survey; and recommendations based on the results of the archival and literature review, cultural resource compliance surveys and consultation. This report will be submitted to STB who will submit it to SHPO for their review and concurrence. The SHPO will have a minimum of 30 days to review and respond to this report. Ground disturbing activities may not start until SHPO has completed its review and concurred with STB's findings regarding the proposed project's effect on historic properties.

C.7. Summary and Recommendations

Cultural resource assessments associated with the proposed Port MacKenzie Rail Extension project, a federal undertaking, would involve an integrated process for satisfying NEPA and Section 106. The NEPA documentation would include a description of the affected environment, based on predictive modeling, with a description of direct, indirect, and cumulative effects from the proposed project on cultural resources. This level of analysis would provide an effective means for comparing the potential impacts of different project alternatives and provide mitigation strategies for addressing adverse impacts to cultural resources from the proposed project. As part of the NEPA process, a ground truthing survey will be conducted in Summer 2008. The ground truthing survey will focus on a sample of areas with high and/or medium potential for cultural resources for all proposed project alternatives. A report describing the probability method, ground truthing survey method and survey results will be submitted to

SHPO following completion of the surveys. The results will be the basis for the EIS chapters on affected environment and environmental consequences. The subsequent completion of the Section 106 assessment will include a review of available information regarding cultural resources, consultation, field surveys with subsurface testing in areas not surveyed during ground truthing, and determinations of eligibility for the NRHP for any cultural resource that could be affected by the proposed project. This report will be submitted to SHPO for their review and concurrence prior to the start of any project construction.

SRB&A recommends that Native organizations be invited to participate in the ground truthing and Section 106 surveys and be allowed to review documents regarding cultural resources prior to submittal to STB. SRB&A recommends that STB, in cooperation with SHPO, create a Draft Programmatic Agreement to outline methods to assess impacts to cultural resources from the proposed project. This Draft Programmatic Agreement would be included in the EIS. Because all proposed alternatives would likely affect the Iditarod National Historic Trail, SRB&A also recommends that STB, in cooperation with SHPO and BLM, compose a Memorandum of Agreement to outline mitigation strategies for impacts to the Iditarod National Historic Trail from the proposed project.