

APPENDIX C: PROGRAMMATIC AGREEMENT

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This appendix contains a copy of the Programmatic Agreement executed between the FAA, the Alaska State Historic Preservation Officer, and the City and Borough of Juneau regarding phased identification of archaeological resources and completion of the Section 106 process of the National Historic Preservation Act.

PROGRAMMATIC AGREEMENT

between

**the Federal Aviation Administration,
the Alaska State Historic Preservation Officer,
and the City and Borough of Juneau
Pursuant to 36 CFR Part 800.6(b)1(iv)**

**Regarding the Juneau International Airport Environmental Impact Statement
Project; Federal/State Project No. AIP 3-02-0133-3000**

Whereas, the Federal Aviation Administration (FAA), through a grant to the City and Borough of Juneau (CBJ) proposes to improve runway safety areas, aviation facilities, snow removal equipment facilities, and fuel farm access and to take action to reduce wildlife hazards at the Juneau International Airport in Juneau, Alaska; and

Whereas, the proposed work shall be funded with federal financial assistance made available through the FAA and constitutes a federal undertaking; and

Whereas, the FAA has consulted with the State Historic Preservation Officer (SHPO), and Sealaska Corporation, Sealaska Heritage Foundation, Goldbelt, Inc. and the Tlingit and Haida Indian Tribes of Alaska pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470); and

Whereas, the FAA and SHPO, being signatory parties to this Programmatic Agreement (PA; Agreement), have determined that the general project area, includes areas of high site potential areas (e.g., level terrain, areas along the tidal shore, and areas near creeks) that are covered by dense vegetation and/or sediment deposited by either man-made or natural causes; and

Whereas, the FAA and the SHPO agree that the specific area of potential effects (APE) for cultural resources, as defined at 36 CFR § 800.16(d), will not be determined until such time as a record of decision (ROD) is issued documenting FAA's decision on preferred alternatives for the proposed actions; although preliminary reconnaissance level surface inspections of general project areas have been undertaken by qualified consultants preparing the EIS; and

Whereas the FAA, in consultation with the SHPO has determined that the proposed undertaking in areas of high site potential with obscured natural ground surfaces (including the Northwest Development Area, the Duck Creek corridor, the banks of the Mendenhall River, and the eastern Runway Safety Area; see Attachment A) require additional archeological site investigation to determine if historic properties not available for surface inspection (e.g., subsurface resources or resources obscured by vegetation may be present within the APE); and

Whereas the National Historic Preservation Act, 16 U.S.C. § 470 (NHPA), and its implementing regulations (36 CFR Part 800.4(b)(2)) allow for the phased identification

of historic properties in situations where the specific nature of an undertaking and its potential scope and effect have not yet been completely defined prior to the initiation of the Section 106 process of the NHPA; and

Whereas, the FAA has invited the Advisory Council on Historic Preservation (Council) to participate in this Agreement and the Council has declined to participate; and

Whereas, no federally-recognized Tribe has expressed concern about the proposed undertakings under consideration in the Final EIS; and

Whereas, CBJ, as landowner and project sponsor, is the responsible party to carry out stipulations of this Agreement, and is an invited signatory to this PA;

Now, therefore, FAA and SHPO agree that upon the issuance of a ROD for the Juneau International Airport EIS and prior to any physical ground disturbance associated with any undertaking identified in the ROD for areas of high potential for subsurface or obscured sites (e.g., the Northwest Development Area, the Duck Creek corridor, the banks of the Mendenhall River, and the eastern Runway Safety Area), the stipulations outlined in this Agreement shall be implemented in order to take into account the effects the undertaking may have on any historic properties that were not available for surface identification during the reconnaissance surveys conducted for the EIS.

STIPULATIONS

FAA shall ensure that the following stipulations are implemented, tasking CBJ to fulfill the stipulations:

I. Project Schedule

- A. Archaeological site identification efforts targeting potential subsurface cultural resources and cultural resources obscured by dense vegetation shall be completed in advance of construction activities in those portions of the Northwest Development Area, the Duck Creek corridor, the banks of the Mendenhall River (see Attachment A), and the eastern Runway Safety Area not modified after 1957, with the commencement date for the identification efforts subject to approval of an Archaeological Resource Identification Plan as outlined in Stipulation II.A.
- B. Project construction is estimated to commence in spring 2008 and is anticipated to take approximately 5 years to complete.

II. Archaeological Resource Identification Plan

- A. Prior to any physical ground disturbance related to any undertaking (as identified in the ROD) in those portions of the Northwest Development Area, the Duck Creek corridor, the banks of the Mendenhall River, and the eastern Runway Safety Area not modified after 1957, a cultural resource identification plan

outlining measures to identify archaeological resources that may be present below the modern ground surface or otherwise obscured by dense vegetation will be developed and implemented.

1. The plan will be developed in consultation with the SHPO, and the SHPO will have an opportunity of no less than 30 calendar days to review and provide comment on the draft and final versions of the plan. The comments of the SHPO shall be taken into account when preparing the final plan, and the concurrence of both the FAA and the SHPO is required before the plan may be implemented.
2. At a minimum the plan shall
 - a. clearly identify in graphic format those areas subject to activities that could impact archaeological resources; and
 - b. clearly identify in graphic format and supporting text those areas identified for specific investigative procedures. Areas to be investigated will be based upon a combination of site potential and potential for ground disturbance associated with the implementation of actions included in the Final EIS; and
 - c. provide a description of the methods to be used to identify those archaeological resources that may be located below the ground surface or obscured by dense vegetation and a justification for why those methods are appropriate; and
 - d. describe the methods for curation of any artifacts collected during identification efforts and provide a copy of a valid curation agreement for an appropriate repository in Alaska.

III. Human Remains and Funerary Objects

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

- A. Should human burials be encountered, work will be stopped at once in the locality and the FAA, AKSHPO and the Alaska State Troopers (AST) shall be contacted immediately. See Attachment B for contact numbers.
- B. If the human remains appear recent in the judgment of the archaeologists, the FAA and CBJ 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.

- C. 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.
- D. If the human remains are determined to be of Native American origin, the FAA will follow the spirit of the regulations and procedures set forth in the Native American Graves Protection and Repatriation Act (43 CFR 10).
- E. 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 CBJ, under the direction of the FAA, and in consultation with the Alaska SME, will identify, locate and inform descendants of the deceased. If no descendants are found, CBJ, under the direction of the FAA, shall obtain a Burial Transit Permit from the Alaska State Bureau of Vital Statistics, and reinter the remains in a designated area.

IV. Reporting

- A. Upon completion of the activities outlined in the approved archaeological resources identification plan, a report or reports summarizing the methods employed for resource identification, the results of those efforts, evaluations of any identified resources relative to the criteria of the National Register of Historic Places (NRHP), and an assessment of the potential effects upon any resources recommended eligible for the NRHP.
 - 1. As appropriate, separate reports may be prepared for investigations in the Northwest Development Area, the Duck Creek corridor, the banks of the Mendenhall River, and the eastern Runway Safety Area, and concurrence with the findings of each report may be requested separately.
 - 2. CBJ shall ensure that the report(s) meet(s) contemporary professional standards and the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48 FR 44734-44737).
 - 3. CBJ shall ensure that the draft report(s) as described in Stipulation IV.A. is(are) provided to the FAA within 3 months after completion of fieldwork.
- B. FAA shall make a determination of eligibility relative to the criteria of the NRHP for all identified resources.
- C. FAA shall make a finding of effect for all historic properties (eligible resources).

D. FAA shall submit the report or reports to the SHPO within 6 months after completion of the fieldwork. All cover pages, AHRS site records, and other supporting documentation required by the SHPO will be submitted along with the report. The FAA shall seek the concurrence of the SHPO on the agency's determinations of eligibility and findings of effect for all resources identified during field investigations.

1. The SHPO shall have 30 days to provide comment on and/or concurrence with the FAA's determinations and findings of the summary report, and CBJ shall ensure that all SHPO comments are addressed prior to the commencement of any activities associated with the proposed undertakings in the areas identified for archaeological site identification.
2. If adverse effects to historic properties are identified as a result of consultation carried out as part of Stipulation IV.C, and if the SHPO concurs with this finding, FAA shall consult with the SHPO and appropriate additional parties as necessary to execute a Memorandum of Agreement to resolve said effects.
3. If a determination of either No Historic Properties Affected or No Adverse Effect is made by the FAA and concurred with by the SHPO, CBJ is authorized by execution of this agreement to begin ground-disturbing activities upon receipt of written confirmation from the FAA of said determination.

V. Professional Qualifications

All archeological fieldwork shall be conducted by archeologists meeting the qualifications of the Secretary of the Interior's Standards and Guidelines (FR Vol.48, No.190, pp. 44738-44739). The technical expertise of the professional shall be an appropriate match for the fieldwork.

VI. Dispute Resolution

- A. Should any changes occur to the stipulations of this PA or to the archaeological resource identification plan, or should any party to this agreement object within 30 days to any report provided for review or actions proposed pursuant to this agreement, FAA shall notify the concurring parties prior to implementing such changes. If any concurring party objects to the changes, the FAA shall consult with the objecting party to resolve the objection. If the FAA determines that the objection cannot be resolved through consultation, the FAA shall forward all documentation relevant to the objection to the Council, including the FAA's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, the Council shall exercise one of the following options:
 1. Advise the FAA that the Council concurs with the FAA's proposed final decision, whereupon the FAA will respond to the objection accordingly; or

2. Provide the FAA with recommendations, which the FAA shall take into account in reaching a final decision regarding its response to the objection.
- B. Should the Council not exercise one of the above options within 30 days after receipt of all pertinent documentation, the FAA may assume the Council's concurrence in the FAA's proposed response to the objection.
 - C. 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, FAA shall take the objection into account and consult as needed with the objecting party, SHPO, or the Council to resolve the objection.

VIII. Amendment

Any signatory party to this PA may request that the other signatories consider an amendment, whereupon they shall consult to consider such amendment. Amendments shall be executed in the same manner as the original PA.

IX. Expiration

This PA shall continue in full force and effect until July 2008. At any time in the six-month period prior to the expiration date, CBJ may request FAA and SHPO in writing to review CBJ's project schedule and consider an extension or modification of this PA. No extension or modification shall be effective unless all parties to the PA have agreed to it in writing.

X. Termination

Any signatory party to this PA may terminate it by providing 30 days notice to the other parties, provided that the other parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, FAA will, again, seek the comments of the Council pursuant to 36 CFR 800.5 through 800.7.

Execution and Implementation

Execution of this PA by FAA and SHPO and CBJ and its submission to the Council in accordance with 36 CFR 800.6(b)(1)(iv), shall, pursuant to 36 CFR 800.6(c), be considered to be an agreement with the Council for the purposes of Section 110(l) of NHPA. Execution and submission of this PA, and implementation of its terms is evidence that FAA has afforded the Council an opportunity to comment on the Project and its

effects on historic properties, and that FAA has taken into account the effects of the Project on historic properties.

SIGNATORIES:

FEDERAL AVIATION ADMINISTRATION

By: Patricia A. Sullivan July 2 '07
Patricia A. Sullivan, Environmental Program Manager, Airports Division Date

ALASKA STATE HISTORIC PRESERVATION OFFICER

By: Judith E. Bittner July 2, 2007
Judith Bittner, Alaska SHPO Date

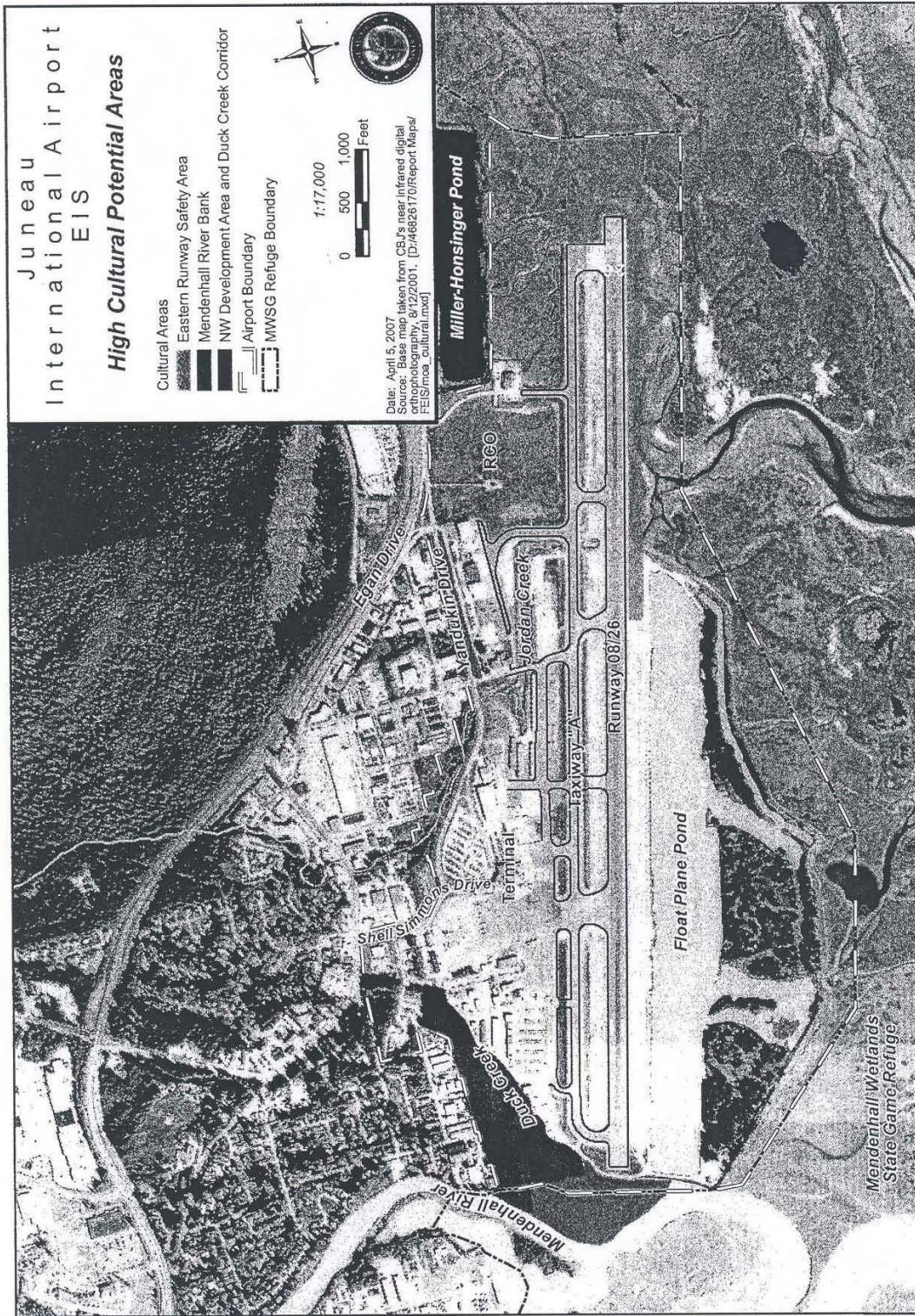
INVITED SIGNATORIES:

CITY AND BOROUGH OF JUNEAU

By: David R. Palmer July 6, 2007
ACTING FOR David R. Palmer, Manager, Juneau International Airport Date

ATTACHMENT A

Figure showing location of areas with high site potential



Location of areas of high potential for subsurface or obscured cultural resources.

ATTACHMENT B

Contact Information for Agency Officials Involved with Human Remains Consultation

Agency/Contact Person	Address/Phone Number
Federal Aviation Administration	
Patti Sullivan, Lead Environmental Manager	Alaskan Region, Airports Division 222 West 7th Avenue Anchorage, Alaska 99513
Alaska State Historic Preservation Office	
Judith Bittner, State Historic Preservation Officer	
State Medical Examiner	
Dr. Frank Fallico	4500 S. Boniface Pkwy Anchorage, Alaska 99508-1264 Phone: (907) 334-2214 Fax: (907) 334-2216
Alaska State Troopers, Juneau	
	Phone: (907) 465-4000
AST Criminal Investigation Bureau	
	Phone: (907) 269-5611
Alaska Bureau of Vital Statistics, Juneau	
Philip Mitchell, Chief	Bureau of Vital Statistics 5441 Commercial Blvd. PO Box 110675 Juneau, Alaska 99801 Phone: (907) 465-8604 Fax: (907) 465-3618
Janet Shea	Phone: (907) 465-8608 Fax: (907) 465-4689