



REPLY TO
ATTENTION OF:

FWA-PA-1003

DEPARTMENT OF THE ARMY
INSTALLATION MANAGEMENT COMMAND
HEADQUARTERS, U.S. ARMY GARRISON FORT WAINWRIGHT
1060 GAFFNEY ROAD #6000
FORT WAINWRIGHT, ALASKA 99703-6000

**PROGRAMMATIC AGREEMENT
BETWEEN
THE UNITED STATES DEPARTMENT OF THE ARMY,
AND
THE ALASKA STATE HISTORIC PRESERVATION OFFICER
REGARDING**

**MONITORING AND TREATMENT PLAN OF ARCHAEOLOGICAL SITES LOCATED
WITHIN THE SURFACE DANGER ZONE (SDZ) OF THE A BATTLE AREA COMPLEX
(BAX) TRAINING FACILITY AT FORT WAINWRIGHT, DONNELLY TRAINING AREA**

WHEREAS, the United States Department of the Army (the "Army"), acting through the United States Army Garrison Fort Wainwright (USAG FWA), proposes to establish a Surface Danger Zone (SDZ) associated with the Battle Area Complex (BAX) and Combined Arms Collective Training Facility (CACTF) at Fort Wainwright's Donnelly Training Area (DTA) (hereafter referred to as "the Undertaking"); and

WHEREAS, the Undertaking entails establishing 23,741 acres downrange of the BAX complex as a restricted area in order to protect human health and safety from potential stray rounds resulting from live fire exercises at the BAX; and

WHEREAS, 136 archaeological sites that are eligible or may be eligible for listing in the National Register of Historic Places are located within the proposed SDZ and identified in Exhibit 1 hereto; and

WHEREAS, no construction or training activities will take place in the SDZ, no targets will be set up within the SDZ and no archaeological sites are within the direct line of fire; potential adverse effects to historic properties will likely be limited to impacts of stray rounds from live fire training activities at the BAX; and

WHEREAS, archaeological excavation of the 29 archaeological sites closest to the BAX range (Exhibit 1) in accordance with the research design and methods detailed in *U.S. Army Alaska's Monitoring and Data Recovery Plan for Cultural Resources within the Battle Area Complex Surface Danger Zone, Fort Wainwright, Donnelly Training Area, 2009* (Section 8.0) was completed during the 2009 field season; and

WHEREAS, USAG FWA has consulted with the Alaska State Historic Preservation Officer (SHPO) pursuant to 36 CFR part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470 f) and SHPO has concurred with a finding of no adverse effect provided that a monitoring and data recovery program is implemented; and

WHEREAS, USAG FWA invited the Advisory Council on Historic Preservation (Council) to participate, and the Council declined; and

WHEREAS, USAG FWA consulted the FWA Cultural Resources Working Group, and the Tanana-Yukon Historical Society; and

WHEREAS, USAG FWA has consulted with Alaska Native tribes from the Village of Dot Lake, Native Village of Eagle, Healy Lake Village, Northway Village, Native Village of Tanacross, and Native Village of Tetlin; and will continue to consult during the management process; and

WHEREAS, this Programmatic Agreement (PA) has been prepared in consultation with the Alaska SHPO and in accordance with 36 CFR 800. 14 (b)(1)(v); and

NOW, THEREFORE, USAG FWA and Alaska SHPO agree that upon USAG FWA's decision to proceed with the establishment of the BAX SDZ, USAG FWA shall ensure that the following stipulations are implemented in order to take into account the effects of the Undertaking on historic properties, and to satisfy USAG FWA's NHPA Section 106 responsibilities.

STIPULATIONS

USAG FWA shall ensure that the following stipulations are implemented:

I. MONITORING

- A. Monitoring: Monitoring will be conducted in accordance with the research design and methods detailed in Exhibit 1 *U.S. Army Alaska's Monitoring and Data Recovery Plan for Cultural Resources within the Battle Area Complex Surface Danger Zone, Fort Wainwright, Donnelly Training Area, 2009* (Section 7.0). Monitoring started in August of 2009, and will last for a period of no longer than 10 years, to be determined in consultation with the SHPO.
- B. If monitoring activities identify adverse effects to any of the 136 known archaeological sites, or any other historic properties, located within the BAX SDZ, then Alaska SHPO will be contacted directly via email or telephone within seven days. A report of the sites affected, as well as nature and extent of effects will be submitted to the SHPO within 60 days. USAG FWA will then develop a plan to mitigate adverse effects to affected archaeological sites in consultation with the Alaska SHPO and interested Native groups and agencies.
- C. If mortar full range training rounds are used in the BAX, USAG FWA Cultural Resources staff will help site the impact area and monitor the retrieval of rounds within the BAX SDZ¹.

II. DATA RECOVERY

- A. Data Analysis: Data analysis of recovered materials from the 2009 fieldwork will be completed in accordance with the research design and methods detailed in *U.S. Army Alaska's Monitoring and Data Recovery Plan for Cultural Resources within the Battle Area Complex Surface Danger Zone, Fort Wainwright, Donnelly Training Area, 2009* (Section 8.0).

III. CULTURAL RESOURCE AWARENESS TRAINING

To prevent disturbance of archaeological sites by Soldiers training at the BAX range complex, as well as other Army lands in Alaska, USGA FWA will develop an educational program designed to increase Soldier awareness of cultural resources on Army lands and the laws that protect these resources. This Soldier educational program will consist of three parts:

- A. Updating the USAG FWA Archaeological Resource Protection Act (ARPA) tri-fold handout, and ensuring that they are available to Soldiers at newcomer briefings.

¹ Currently, USAG FWA has no plans to use mortar full range training rounds. Mortar training crews plan to use short range training rounds that do not have the range to leave the BAX construction footprint to impact the SDZ.

- B. Development of a graphical and textual display to increase Soldiers' awareness of cultural resources on the BAX SDZ and other Army lands. This display will be presented in the form of, at a minimum, one poster to be displayed at Range Control, and one interpretive panel placard to be displayed at an informational kiosk located at the BAX range.
- C. Development of a Cultural Resource Awareness Powerpoint presentation to be given to Soldiers and contractors to increase knowledge of cultural resource concerns and responsible actions, and knowledge of Alaskan Native communities. The presentation will be given to relevant personnel at newcomer briefings, and prior to training or working on the BAX range. This presentation will be given throughout the duration of this PA.

IV. SUBMITTALS

- A. Report of Monitoring Findings: USAG FWA will submit to Alaska SHPO, the results of monitoring on an annual basis. This will be included as part of the USAG FWA annual Cultural Resources report.
 - 1. The BAX SDZ monitoring section of the annual report will include: a list of sites monitored; dates of site monitoring activities; a detailed description of the current overall site condition and integrity; a comparison of the site's current condition to past condition assessments; and photographs of the site. Reports of monitoring findings will include data obtained from the field site monitoring form detailed in *U.S. Army Alaska's Monitoring and Data Recovery Plan for Cultural Resources within the Battle Area Complex Surface Danger Zone, Fort Wainwright, Donnelly Training Area, 2009* (Appendix 1)
 - 2. Provided that no adverse effects occur to the sites in question as a result of use of the BAX SDZ, the FWA DTA monitoring report will be submitted to Alaska SHPO, Bureau of Land Management BLM² and interested Native Groups no later than May of the year following monitoring activities. If adverse effects are noted, they will be reported to SHPO in accordance with I. B.
- B. Report of Excavation Findings: USAG FWA will submit to Alaska SHPO the results of the data recovery and subsequent data analysis. The following reports will be submitted:
 - 1. A preliminary interim report detailing the field work and initial findings will be submitted to Alaska SHPO no later than April 2010. If data recovery extends past 2009, then an interim report will be submitted to Alaska SHPO by the April following each year of fieldwork. Upon receipt of the documentation, Alaska SHPO shall provide USAG FWA with review comments no later than 45 days.

² Army Standard Operating Procedures requires exchange of information between the Army and BLM; BLM oversees third party permitting on Army lands.

2. A final report will be submitted to Alaska SHPO no later than June two (2) years following the end of all data recovery fieldwork. Upon receipt of the documentation, Alaska SHPO shall provide USAG FWA with review comments no later than 45 days. Final submittal, taking into consideration Alaska SHPO comments, shall be no later than 60 days after receipt of review comments.
- C. Submittal of updated USAG FWA ARPA tri-fold, poster, and placard: as each mitigation project is funded and subsequently initiated USAG FWA will provide drafts of the updated ARPA tri-fold, poster, and placard to Alaska SHPO within two years of the execution of this agreement. All products will be complete within three (3) years of the execution of this Agreement.
1. SHPO shall have sixty (60) days from hard copy receipt of each draft document to review and provide input.
 2. USAG FWA shall consider any timely input received in developing a second submittal of the draft mitigation projects within ninety (90) days from the close of the review period.
 3. USAG FWA shall provide the second submittal to SHPO within (90) days from the close of the review period.
 4. SHPO shall have thirty (30) days from receipt of the draft documentation to review and provide input on the second submittal.
- D. All reports will be provided to the Bureau of Land Management cultural resource staff and appropriate staff or personnel from interested Alaska Native tribes. Copies of the reports will be made available upon request to other interested parties. Sensitive site information will not be released to the public.

V. INADVERTANT DISCOVERIES

- A. If cultural remains are inadvertently discovered or there are inadvertent adverse effects as a result of training or other activities associated with this undertaking, USAG FWA shall initiate consultation pursuant to 36 C. F. R. § 800.13 to resolve unforeseen the effect.
- B. If any sacred objects, funerary objects, or objects of cultural patrimony are inadvertently encountered, the area will be avoided. Training will cease in the vicinity of the find, measures will be taken to protect objects, and the Cultural Resource Manager will be notified immediately so that appropriate action can be taken in order to follow regulations set forth in 43 CFR 10 Native American Graves Protection and Repatriation Act (NAGPRA).
- C. If human remains are encountered, then the following actions will be taken:

- a. Training/work will be stopped immediately in the locality and USAG FWA, SHPO, and the Alaska State Troopers (AST) shall be contacted immediately (Alaska Statutes 12.65.5);
- b. If the remains appear recent in the judgment of the anthropologist, USAG FWA shall defer to the opinion of the AST and Alaska State Medical Examiner (SME) for a determination of whether the remains are of a forensic nature and/or subject to criminal investigation;
- c. If the ethnic/cultural identity of any human remains is in question, a qualified anthropologist experienced in human remains analysis shall examine the remains. This examination will take place within 30 days of discovery;
- d. If Native American remains are encountered in the archaeological excavations, USAG FWA will follow NAGPRA regulations set forth in 43 CFR 10;
- e. If the remains are not Native American and a determination is made by the AST and Alaska SME that a death investigation is not warranted, then USAG FWA, in consultation with the Alaska SME, will inform the known descendents of the deceased. If no descendents are found, then the remains shall be re-interred in a designated area.

VI. CURATION OF MATERIALS

All recovered artifacts will be curated at the University of Alaska Fairbanks Museum in accordance with an existing Memorandum of Understanding (MOU). Data processing of artifacts will follow curation guidelines set by Department of Defense and the University of Alaska Museum.

VII. PROFESSIONAL STANDARDS

All work pursuant to this PA will be developed by or under the supervision of a person or persons meeting the minimum professional qualifications of an archaeologist as included in "Secretary of the Interior's Historic Preservation Professional Qualification Standards" (Federal Register Vol. 62, No.119, pp. 33719).

VIII. DISPUTE RESOLUTION

- A. Should any Signatory to this PA object to the manner in which the terms of this PA are implemented, USAG FWA shall consult with the objecting party to resolve the objection. If USAG FWA cannot resolve the objection, the following shall apply:
 1. USAG FWA shall forward all documentation concerning the dispute to the SHPO. The SHPO shall provide USAG FWA with a proposed resolution to the dispute within thirty (30) days of receiving adequate documentation. If USAG FWA agrees with the SHPO's resolution, then the proposed undertaking may proceed accordingly.
 2. If the SHPO does not provide its advice regarding the dispute within the thirty (30) day time period, or USAG FWA and the SHPO cannot resolve the dispute, then USAG FWA shall forward all documentation relevant to the dispute, including USAG FWA's proposed resolution, to the ACHP. The ACHP shall provide USAG

FWA with its advice on the resolution of the objection within forty-five (45) days of receiving adequate documentation;

3. If the ACHP does not provide its advice regarding the dispute within the forty-five (45) day time period, USAG FWA may make a final decision on the dispute and proceed accordingly;
 4. Prior to reaching a final decision on the dispute, USAG FWA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the SHPO, ACHP, Signatories and Concurring Parties, and provide them with a copy of this written response.
 5. USAG FWA's responsibilities to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.
- B. Should any signatory to this PA object in writing to USAG FWA regarding any action carried out or proposed with respect to the implementation of this PA, USAG FWA shall consult with the objecting party. If after initiating such consultation USAG FWA determines that the objection cannot be resolved through consultation, it shall forward all documentation relevant to the objection to ACHP, including USAG FWA's proposed response to the objection. Within 30 calendar days after receipt of all pertinent documentation, ACHP shall provide recommendation or comment on the objection.
- C. Should the Council not provide comment within 30 calendar days after receipt of the pertinent documentation, USAG FWA may assume ACHP's concurrence in its proposed response to the objections.
- D. USAG FWA shall take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; USAG FWA responsibility to carry out actions under this MOA not the subject of the objection shall remain unchanged.
- E. At any time during implementation of any stipulation in this PA, should an objection to any such stipulation or its manner of implementation be raised by a member of the public, USAG FWA shall take the objection into account and consult as needed with the objecting party, ACHP and Alaska SHPO to address the objection.

IX. NOTICES

All notices, submissions, consents, demands, requests, or other communications which may or are required to be given hereunder to any Signatory shall be sent by (a) hand delivery (which shall be deemed to have been received upon delivery), (b) reputable overnight courier (which shall be deemed to have been received one business day after the date sent), (c) United States mail, registered or certified, return receipt requested, postage prepaid (which shall be deemed to have been received upon receipt by the sender of the return receipt), (d) facsimile, with a copy sent by reputable overnight courier (which shall be deemed to have been received when the sender receives a confirmation of successful transmission of the facsimile) or (e) electronic mail (which shall be

deemed to have been received when the sender received a confirmation of successful transmission). Such documents shall be sent to the following addresses:

If to USAG FWA:

Garrison Commander
U.S. Army Garrison Fort Wainwright
Fort Wainwright, AK 99703

with a copy to:

Directorate of Public Works
Attn: IMPC-FWA-PWE (CR Manager)
1060 Gaffney Road, #4500
Fort Wainwright, AK 99703-4500

If to SHPO:

State Historic Preservation Officer
Office of History and Archaeology
550 West 7th Avenue, Suite 1310
Anchorage, AK 99501

X. AMENDMENT

USAG FWA or Alaska SHPO may request that this PA be amended, whereupon they will consult in accordance with 36 CFR § 800 to consider such amendment. In particular, they will consider the information developed in USAG-AK's reports under Stipulations I and II to determine if USAG-AK can effectively or efficiently carry out activities to support its mission through revisions to this MOA. No amendment shall take effect until it has been executed by USAG-AK and Alaska SHPO.

XI. TERMINATION

USAG FWA or Alaska SHPO may propose to terminate this PA by providing 30-calendar days notice to the other two as well as other signatories explaining the reasons for the proposed termination. Alaska SHPO and USAG FWA will consult during this period to seek agreement on amendments or other actions that will avoid termination. In the event of termination, USAG FWA will comply with 36 CFR Part 800 with regard to individual undertakings covered by this PA and not completed at time of termination.

XII. FAILURE TO CARRY OUT AGREEMENT

In the event USAG FWA does not carry out the terms of this PA or if the Council determines under 36 CFR § 800 that the terms of this PA are not being carried out, USAG FWA will comply with 36 CFR § 800.3 through 800.7 with regard to individual undertakings covered by this PA.

XIII. ANTI-DEFICIENCY ACT

- A. All requirements set forth in this PA requiring the expenditure of USAG FWA funds are expressly subject to the availability of appropriations and the requirements of the Anti-Deficiency Act (31 U.S.C. Section 1341). No obligation undertaken by USAG FWA under the terms of this MOA will require or be interpreted to require a commitment to expend funds not obligated for a particular purpose.
- B. If USAG FWA cannot perform any obligations set forth in the PA due to the unavailability of funds, USAG FWA, Alaska SHPO, and ACHP intend the remainder of the agreement to be executed. In the event that any obligation under the PA cannot be performed due to the unavailability of funds, USAG FWA agrees to utilize its best efforts to renegotiate the provision, and may require that the parties initiate consultation to develop an amendment to this PA when appropriate.

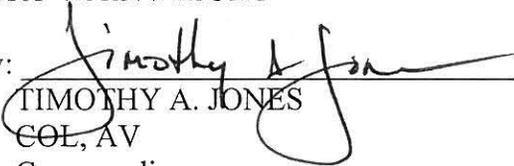
XIV. DURATION

This PA shall become effective upon execution by USAG FWA and the Alaska SHPO and shall remain in effect until terminated in accordance with Stipulation XI or 10 years after it becomes effective. If training activities on the BAX range are ongoing during that time, then USAG FWA and Alaska SHPO will review and extend this PA as necessary.

EXECUTION AND IMPLEMENTATION of this Programmatic Agreement evidences that USAG FWA has satisfied its Section 106 and Section 110(f) responsibilities for this undertaking.

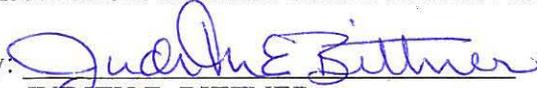
Signatories:

UNITED STATES DEPARTMENT OF THE ARMY
FORT WAINWRIGHT

By: 
TIMOTHY A. JONES
COL, AV
Commanding

Date: 29 January 2010

ALASKA STATE HISTORIC PRESERVATION OFFICER

By: 
JUDITH E. BITTNER
State Historic Preservation Officer

Date: 5 February 2010

Exhibit 1

Robertson, A.R.

2009 *U.S. Army Alaska's Monitoring and Data Recovery Plan for Cultural Resources within the Battle Area Complex Surface Danger Zone, Fort Wainwright, Donnelly Training Area, 2009.*
Edited by E.P. Gaines. Colorado State University, Center for Environmental Management of Military Lands