

**\*\*DRAFT\*\***  
**PROGRAMMATIC AGREEMENT**

BY AND AMONG  
THE U.S. ENVIRONMENTAL PROTECTION AGENCY,  
THE U.S. ARMY CORPS OF ENGINEERS,  
THE ALASKA STATE HISTORIC PRESERVATION OFFICER,  
THE STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES,  
THE KENAI PENINSULA BOROUGH,  
THE NATIVE VILLAGE OF TYONEK,  
THE KENAITZE TRIBE,  
THE KNIK TRIBE,  
THE TYONEK NATIVE CORPORATION,  
THE ALASKA MENTAL HEALTH TRUST AUTHORITY,  
COOK INLET REGION, INC., AND  
PACRIM COAL, LP

REGARDING

**THE CHUITNA COAL PROJECT**

**I. BACKGROUND**

- 1.1 **WHEREAS**, the purpose of this Programmatic Agreement (“PA”) is to record the terms and conditions agreed upon to resolve the potential adverse effects of the proposed Chuitna Coal Project (“Project”) on historic properties pursuant to 36 CFR 800.14(b).
- 1.2 **WHEREAS**, PacRim Coal, LP (“Applicant”), proposes to develop and operate the Project, a surface coal mine and export project, located approximately 45 miles west of Anchorage, and approximately 2.5 miles north of the Native Village of Tyonek. Construction and development activities are proposed to occur over a two to three year period, and potentially throughout the course of the operation and reclamation phase of the Project. The duration of operation and reclamation activities is expected to be twenty-five (25) years.
- 1.3 **WHEREAS**, the proposed Project includes three major components: (1) the Chuitna Coal Mine, which includes a surface coal mine, located within the Logical Mining Unit 1 (“LMU\_1”), and associated support facilities; (2) the Chuitna Project Infrastructure, which includes mine access for delivery of materials and personnel, coal transport system, electric transmission line, personnel housing, and air strip facility; and (3) the Ladd Landing Development, which includes a logistics center and coal export facility for loading ocean-going ships.
- 1.4 **WHEREAS**, the U.S. Environmental Protection Agency (“EPA”) and the U.S. Army Corps of Engineers (“COE”) are reviewing permit applications pursuant to the Clean Water Act and the Rivers and Harbors Act submitted by the Applicant and to otherwise consider the environmental effects of these proposed activities pursuant to the National

Environmental Policy Act (“NEPA”) (42 U.S.C. 4321 et seq.).

- 1.5 **WHEREAS**, the terms of this PA shall apply to all lands and intertidal/subtidal zones affected by the proposed Project.

## II. PARTIES TO THE PROGRAMMATIC AGREEMENT

**Signatory Parties.** The following parties have National Historic Preservation Act (“NHPA”) Section 106 obligations and are entering into this PA to satisfy those requirements as provided in 36 CFR 800.6(c)(1).

- 2.1 EPA shall be the lead federal agency responsible for preparing a Supplemental Environmental Impact Statement (“SEIS”) pursuant to NEPA, as implemented by the Council on Environmental Quality (“CEQ”) Regulations at 40 CFR 1500-1508, Executive Order (“EO”) 13175 on Consultation and Cooperation with Tribal Governments, and EO 12898 on Environmental Justice (February 1994). In addition to being the lead federal agency for the SEIS, EPA will have lead and overall responsibility for ensuring compliance with the NHPA in coordination with the NEPA process, including consultation under Section 106, as provided in 30 CFR 800.8(c). As the lead federal agency, EPA is participating in this PA as a Signatory Party pursuant to 36 CFR 800.6(c)(1)(i).
- 2.2 For activities subject to new or modified COE permits, COE shall be the lead agency on behalf of the federal agencies and ADNR for ensuring compliance with the NHPA, including consultation under Section 106.

Proposed activities subject to the COE permit jurisdiction may include but are not limited to the following (dependent upon final project description): mechanized land clearing of mine area, housing complex, and airstrip facility; road, conveyor, and powerline construction; Ladd Landing, bulkhead, and trestle construction; and material source sites land clearing and overburden stockpiles.

As a federal agency with NHPA compliance responsibilities, COE is participating in this PA as a Signatory Party pursuant to 36 CFR 800.6(c)(1)(i).

- 2.3 In a letter dated March 10, 2008, EPA invited the Advisory Council on Historic Preservation (“Council”) to participate as a Signatory Party to the PA. On May 2, 2008, the Council declined to participate in the PA.
- 2.4 The State Historic Preservation Officer (“SHPO”) for the State of Alaska has been consulted by EPA and COE and is a Signatory Party to this PA pursuant to 36 CFR 800.6(c)(1)(i).

**Invited Signatory Parties.** The following parties have been invited by EPA and COE to be signatories to the PA, who may have responsibilities under the PA, and who will have the same rights as other signatories. The terms “Signatory,” “Signatories,” “Signatory Party” or

“Signatory Parties” in this agreement shall be interpreted to include “Invited Signatory Parties.”

- 2.5 The State of Alaska Department of Natural Resources (“ADNR”), as a Landowner and regulatory agency, proposes to issue permits to the Applicant pursuant to its State statutory authorities in a timely and consistent manner in coordination with EPA and COE. ADNR, in order to comply with authorities under AS 41.35 and 11 AAC 16, shall ensure that the Applicant complies with the terms of the PA throughout the life of the Project as a condition of State permits. ADNR is a Signatory Party to this PA as provided in 36 CFR 800.6(c)(2)(iii).
- 2.6 PRC, as the Applicant and Permittee, is a Signatory Party to this PA as provided in 36 CFR 800.6(c)(2)(iii).
- 2.7 The Kenai Peninsula Borough (“KPB”), as a Landowner and local government with jurisdiction over the Project, is a Signatory Party to this PA as provided in 36 CFR 800.6(c)(2)(iii).
- 2.8 The Native Village of Tyonek, as federally recognized Indian Tribe that has direct cultural ties to the historical site at Ladd Landing Development area (see Section 3.2, below), is a Signatory Party to this PA as provided in 36 CFR 800.6(c)(2)(ii).
- 2.9 The Kenaitze Tribe and the Knik Tribe, as federally recognized Indian Tribes that have cultural ties to the historical site at Ladd Landing Development area (see Section 3.2, below), are Signatory Parties to this PA as provided in 36 CFR 800.6(c)(2)(ii).
- 2.10 The Tyonek Native Corporation (“TNC”), a native village corporation, whose shareholder owners attach religious and/or cultural significance to properties that may be affected by the Project, and which owns property that may be affected by the Project, is a Signatory Party to this PA as provided in 36 CFR 800.6(c)(2)(iii).

**Concurring Parties.** The following parties have a demonstrated interest in the Project and its potential effects on historic properties, and agree to the process set out in this PA.

- 2.11 Cook Inlet Region, Inc. (“CIRI”) and the Alaska Mental Health Trust Authority (“AMHTA”), as other landowners, have been invited by EPA and COE to participate in this PA as Concurring Parties and have agreed to do so.
- 2.12 Seven (7) other Federally-recognized Indian tribes in the Cook Inlet area, who may attach religious and/or cultural ties to the historical site at Ladd Landing Development area, have also been invited by EPA to be Concurring Parties. These tribes include: Salamatof Tribal Council, Ninilchik Village, Seldovia Village Tribe, Native Village of Eklutna, Chickaloon Native Village, Native Village of Port Graham, and the Native Village of Nanwalek. EPA also invited the Lime Village to be a Concurring Party to the PA.
- 2.13 In a letter dated July 28, 2008 to EPA, the Chuitna Citizens NO-COALition (“Chuitna Citizens”) requested to be considered an additional consulting party pursuant to 36 CFR 800.2(c)(5) and a Concurring Party to the PA. EPA denied the Chuitna Citizen’s request on September 5, 2008.

### III. CONSULTATION ACTIVITIES AND KNOWN HISTORICAL EFFECTS

- 3.1 EPA and COE have consulted with the Council and SHPO and will continue to consult pursuant to 36 CFR 800.14(b) of the regulations implementing Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f).
- 3.2 The archaeological field surveys conducted in the 1980s, in 2006, and in 2007 identified 49 pre-contact Native house pits in sixteen clusters (TYO-114 through TYO-129), and 377 cache pits, at the proposed Ladd Landing Development area. On February 1, 2007, EPA and COE determined, and the SHPO concurred, that these sites are eligible for the National Register of Historic Places (“NRHP”) under criterion D. SHPO determined the sites comprise the *Ch’u’itnu* Archaeological District (TYO-132). TYO-114 through TYO-129 are contributing properties to TYO-132. On May 10, 2008, EPA made a finding of historic properties affected, pursuant to 36 CFR 800.4(d)(2), for the Ladd Landing Development area.
- 3.3 EPA and COE have determined and the SHPO concurred that based on field archaeological surveys, no known historical properties will be affected by construction of the proposed Housing and Airstrip facilities, the mine area, the Beluga Highway-Pan Am Highway Public Intertie, or the revised Mine Access Road/Coal Transport Conveyor.
- 3.4 EPA, COE, and ADNR have consulted with and will continue to consult with the Native Village of Tyonek, which has the most direct cultural ties to the area potentially affected by the Project, nine (9) other Federally-recognized Indian Tribes in the Cook Inlet area, and the Lime Village Traditional Council, who may attach religious and/or cultural significance to properties that may be affected by the Project. The list of potentially affected Tribal Governments is included as Appendix 1 to this PA. A Draft Government-to-Government Consultation Plan has been developed by EPA for the Project and will be adhered to by EPA, COE, and ADNR during development of the SEIS.

### IV. STIPULATIONS

EPA, COE, ADNR, and SHPO, as Signatory Parties, agree that the Project shall be administered in accordance with the following stipulations to satisfy their Section 106 responsibilities:

#### 4.1 Administrative Considerations

- 4.1.1 To satisfy the NHPA public participation requirements in 36 CFR 800.2(d), EPA and COE will use the parallel approach to coordinate public involvement in the NHPA and NEPA processes.
- 4.1.2 This PA shall take effect once executed by the Council under 36 CFR 800.14(b)(2)(iii). To the extent it is within their authority, COE, EPA, and ADNR will attach this PA or the stipulations listed in this PA to the Record of Decision(s) (ROD) for this project, to permits, and to other conditions issued ensuring that this PA and its requirements are binding on the Applicant/Permittee. The Applicant/Permittee shall comply with this PA and failure to do so will result in suspension, modification, or revocation of the applicable

agency's permit(s).

- 4.1.3 The Applicant shall notify the Signatory Parties of any changes in Project ownership. The Signatory Parties intend for any new owners to comply with the terms of this PA, and will use their existing permitting or other authorities to impose these requirements on any new owners. Changes in ownership may result in an amendment to the PA pursuant to Stipulation 4.14, below.
- 4.1.4 Because of both singular and overlapping legal authorities and purviews among EPA, COE, and ADNR regarding individual Project components or activities, one or more of these agencies may be responsible for carrying out the terms of this PA for a given Project component or activity. For certain larger Project components and activities, all involved agencies may carry out the terms of this PA jointly. (See 2.1, 2.2, and 2.5, above.)
- 4.1.5 EPA, COE, and ADNR shall enforce the terms of this PA as is appropriate within each agency's scope with regard to permits, and other conditions that incorporate this PA 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 PA or permit or conditions as they relate to this PA. In such case, the agency(ies) shall ensure compliance consistent with its/their legal authorities and consult with the other agencies and Signatory Parties.

As part of its compliance with 11 AAC 90.091 Protection of Public Parks and Historic Places, ADNR will incorporate the mitigation, monitoring, and inadvertent discovery guidelines outlined and developed as a result of this PA into its findings and decision for all Alaska Surface Coal Mining Control and Reclamation Act ("ASCMCRA") permits issued for this Project. ADNR will consult with SHPO on any new permit, renewal or revision as mandated by the Alaska Historic Preservation Act. Throughout the life of the project, ADNR in coordination with SHPO, will develop inspection guidelines for the Chuitna Coal Project.

- 4.1.6 The Applicant shall develop and comply with the Mitigation Plan for the *Ch'u'itnu* Archaeological District, as approved by the Signatory Parties. Prior to approval of the Mitigation Plan, EPA, COE and ADNR will consult with the Tribal Governments, as appropriate. The Mitigation Plan shall be developed in concert with the SEIS process and shall be completed prior to completion of the Draft SEIS and will be incorporated into the Agencies' RODs.
- 4.1.7 The Applicant shall not initiate or support any actions that may jeopardize a historic property or the completion of PA tasks without the prior written approval of all the Signatory Parties.

## **4.2 Historic Properties, Areas of Potential Effect, and the Applicability of this PA**

- 4.2.1 This PA shall apply to the Project and all components of it, including those not known at this time or not specified in the permits, permit applications or other project documents, so long as they are within the jurisdiction of EPA, COE, and/or ADNR.

4.2.2 EPA, COE, and ADNR, in consultation with SHPO, the Signatory Parties, and the affected Tribes, shall determine the Areas of Potential Effect of the Project and its components, using the concepts and definitions for Area of Potential Effect (“APE”), Historic Property, Effect, Adverse Effect, etc. as outlined in 36 CFR 800.16. For the purpose of this PA, a Historic Property is defined as: a district, site, building, structure or object, including landscape, that meets eligibility requirements for the NRHP under 36 CFR 60.4 including properties to which a tribal government or other party attaches religious and/or cultural significance in accordance with *National Register Bulletin #38*.

### **4.3 Tribal Consultation**

EPA, COE, and ADNR shall consult with the Tribal Governments who demonstrated an interest in the historical sites in carrying out the terms of this PA throughout the life of the mine project and the agencies’ permit duration. Consultation shall be an on-going process and consistent with *Consultation with Indian Tribes in the Section 106 Review Process: A Handbook* (Council, November 2008). Tribal Governments, Signatory and Concurring Parties, and the Council may consult at any time in person or in writing, including e-mail, or over the phone.

### **4.4 Identification and Evaluation of Historic Properties and Assessment of Adverse Effects**

4.4.1 The Applicant has and shall continue to make a reasonable and good faith effort to identify historic properties within each Project activity or component’s APE, and shall make recommendations to the Signatory Parties regarding NRHP eligibility.

4.4.2 The Applicant shall implement guidance received from the Signatory Parties regarding the level and scope of efforts for the identification and evaluation of historic properties. In determining the level of identification and evaluation efforts necessary for a Project activity or component and its APE, the Applicant and the Signatory Parties shall consider such factors as past planning, research and studies, the magnitude and nature of the proposed activities, the extent of potential effects on historic properties, and the nature and location of historic properties.

4.4.3 Where construction or Project alternatives involve corridors or large land areas, the Applicant may use a phased process, as per 36 CFR 800.4(b)(2). When it is determined that a phased process will be used, Signatory Parties will be consulted.

4.4.4 If the Applicant and the Signatory Parties disagree as to what constitutes adequate identification and evaluation efforts, the Signatory Parties shall consult to arrive at a determination. If a dispute or objection remains on this issue, these parties shall resolve it in accordance with Stipulation 4.12, Dispute Resolution, below.

4.4.5 Identification efforts may include background research, consultation, ethnographic research, oral history interviews, field surveys, probabilistic sampling, subsurface testing, and other types of tasks. Such efforts shall be conducted in accordance with the principles, standards, and guidelines contained in Archeology and Historic Preservation: Secretary of the Interior’s Standards and Guidelines (Standards and Guidelines) (48 FR

44716-44742) and follow the procedures set forth in 36 CFR 800.4. The Applicant shall provide the COE, EPA, ADNR, and SHPO with documentation of the methods that meets the Standards and Guidelines and is sufficient to determine the eligibility of properties to the NRHP.

- 4.4.6 Archaeological fieldwork on State land will require an Archaeological Field Permit.
- 4.4.7 All archaeological and historical investigations shall be conducted by anthropologists, archaeologists, historians, architectural historians, and/or historical architects meeting the qualifications of the *Secretary of the Interior's Standards and Guidelines (48 FR 44738-44739)*. The technical expertise of the professional shall be appropriate to the nature of the investigation and expected type and significance of historic properties.
- 4.4.8 EPA and COE shall apply the NRHP criteria (36 CFR 60.4) to identified properties, in consultation with the SHPO, the Native Village of Tyonek (which has the most direct cultural and religious ties to the area) and any other Tribal Government(s) that may attach religious and/or cultural significance to the identified property. In accordance with 36 CFR 63, the Signatory Parties shall resolve disagreements regarding NRHP eligibility by requesting a determination of eligibility from the Keeper of the National Register, National Park Service, whose determination shall be final.
- 4.4.9 EPA and COE in consultation with the Signatory Parties and the potentially affected Tribal Governments, in accordance with 36 CFR 800.5, shall make an assessment of whether a Project component or activity may have an adverse effect on historic properties and the necessary treatment of the historic property as outlined in Stipulation 4.5, Treatment of Historic Properties, below.

#### **4.5 Treatment of Historic Properties**

- 4.5.1 The Applicant, in consultation with the Signatory Parties, shall avoid, to the maximum extent possible, adverse impacts to all known historic properties, including archaeological and historical sites, historic buildings, structures, objects, and landscapes, including cessation of Project activities, so as to protect the cultural heritage of the Dena'ina Athabascan Indians.
- 4.5.2 If any historic property or property eligible for the NRHP may be adversely affected, the Applicant, in consultation with the Signatory and Concurring Parties, will develop a Mitigation Plan to reduce to the maximum extent possible any adverse impacts on the cultural heritage of the Dena'ina Athabascan Indians. The Mitigation Plan shall require the approval of the Signatory Parties, whose approval shall not be unreasonably withheld.
- 4.5.3 If the property is archaeological in nature, the Mitigation Plan shall include a research design with provisions for data recovery and recordation, analysis, reporting, and curation of resulting collection and records in an institution as outlined in Stipulation 4.8, Collection and Curation, below. Archaeological recovery, analysis, and reporting shall be in conformance with the *Secretary of Interior's Standards and Guidelines for Archaeological Documentation (Archaeological Documentation Guidelines) (48 FR 44734-44737)*.

4.5.4 If the property is a building, structure, object, landscape, or not otherwise significant for the data that it contains, the Mitigation Plan shall specify approaches for the mitigation or treatment of the property in accordance with the principles, standards, and guidelines contained in *Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines (Standards and Guidelines) (48 FR 44716-44742)*. This may include but not be limited to use of such approaches as: adjusting project layout to avoid historic properties, relocating a historic property, re-landscaping to reduce effects, public interpretation, ethnographic recordation, prescribing design or use of a Project component or activity in such a way as to minimize effects to historic properties or to those concerned about the effects of that component or activity. Methods of recordation and documentation described in the mitigation plan shall be in conformance with the *Secretary of the Interior's Standards for Architectural and Engineering Documentation (48 FR 44730-44734)* or other standards specified by SHPO.

#### **4.6 Treatment of Human Remains**

It is the intent of the Applicant to avoid the disturbance or removal of any human remains. If human remains or funerary objects are inadvertently discovered during the course of activities, all activities in the immediate vicinity shall immediately cease and the attached Plan of Action ("POA") (Appendix 2) for the treatment of human remains shall be implemented in compliance with applicable Federal and State laws.

#### **4.7 Monitoring**

4.7.1 Prior to commencing construction activities and in concert with the SEIS development process, the Applicant shall develop a Monitoring Plan, to be approved by the Signatory Parties, in consultation with the Tribal Governments listed in Appendix 1. Such approval by the Signatory Parties shall not be unreasonable withheld. The Applicant shall ensure that an archaeologist meeting the qualifications of the *Secretary of the Interior's Standards and Guidelines (48 FR 44738-44739)* is present to monitor in areas of ground disturbing activity when the probability to uncover unidentified archaeological or historical materials is determined likely by EPA, COE, ADNR, or SHPO.

4.7.2 The results of monitoring shall be included in a report to the Signatory Parties. This report shall be developed in accordance with Stipulation 4.9, Annual Reports and Meetings, below.

#### **4.8 Collection and Curation**

4.8.1 Artifacts, faunal materials, and/or samples along with photographs, field notes and other related material (materials) collected in conjunction with recovery actions under this PA are the property of the owner of the land (ADNR, KPB, CIRI, TNC, AMHTA) from which the artifacts were collected.

4.8.2 Materials found on ADNR and AMHTA (*AS 38.05.801.*) land belong to the State and are subject to *AS 41.35.020* and will be accessioned to the University of Alaska Fairbanks ("UAF") under the Curation Agreement already in place for the Project (see Appendix--).

The Applicant shall incur any and all reasonable costs charged by Museum of the North for curation of materials collected in conjunction with recovery actions under this PA. The Applicant shall ensure that collected materials are conserved and packaged in a manner acceptable to UAF museum.

- 4.8.3 Although title to materials from ADNR and AMHTA land belong to the State, Cook Inlet area Tribes may obtain materials from their culture from the State provided they demonstrate that they have adequate capability to store and maintain the materials in safekeeping as defined by *AS 41.35.020(b)*.
- 4.8.4 The house pits and caches pits comprising the Ch'u'itnu *Archaeological District (TYO-132)* is on KBP land. KPB agrees to transfer ownership of artifacts to NVT, which will be curated at UAF. The Applicant shall pay the curation costs associated with recovery actions under this PA.
- 4.8.5 Materials collected from TNC and CIRI land shall .....

#### **4.9 Annual Reports and Meetings**

##### **4.9.1 Reports**

4.9.1.1 Annual Report. Each year, prior to July 31, the Applicant shall provide the Signatory Parties a written report of previous and upcoming activities as they relate to compliance with the stipulations of this PA. The report will include the following:

- (a) A description of the past year's activities;
- (b) A projection of the upcoming year's activities, including information about anticipated Project components and activities and possible Project changes;
- (c) A summary of past year's and anticipated upcoming efforts of identification, evaluation, and protection of historic properties;
- (d) Descriptions of any historic properties affected, as well as any testing, remediation, or mitigation efforts;
- (e) Descriptions of artifacts or other archaeological or historic materials encountered, including representative photographs or drawings, a description of analyses, and other recordation documents as appropriate;
- (f) Clear illustrations of areas surveyed or monitored, cultural resources identified, and alternative routes to be followed to avoid any identified historic properties;
- (g) An evaluation of the effectiveness of the PA and whether any amendments or changes are needed; and
- (h) A list of personnel who received training under Stipulation 4.11, below.

4.9.1.2 Individual Report. Certain archaeological surveys, special excavations, and/or testing efforts may require individual reports outside the normal reporting cycle in order to facilitate decision making processes. The scope and time parameters for these reports shall be determined on a case-by-case basis through consultation

among the Applicant, EPA, COE, ADNR, NVT and SHPO. Any individual reports prepared shall be provided to the Signatory Parties.

#### 4.9.2 Meetings

4.9.2.1 Annual Meeting: If determined to be appropriate by the Signatory Parties, in consultation with Concurring Parties, one meeting per year shall be scheduled by the Applicant to discuss the previous year's activities, and activities scheduled for the upcoming year. The meeting shall commence between thirty (30) and ninety (90) days after receipt of the Annual Report.

4.9.2.2 Meeting Minutes: The Applicant shall provide all attendees and Signatory and Concurring Parties the minutes of the meetings described above within fifteen (15) calendar days of the date of the meeting(s).

4.9.2.3 Additional Meetings: Any Signatory or Concurring Party may submit a request to EPA, COE, or ADNR for additional meetings to discuss individual reports or activities at the Project site. Thirty (30) days notice is required prior to scheduling an additional meeting.

#### 4.10 Procedures for Inadvertent Discoveries

4.10.1 Upon the inadvertent discovery of a potential historic property in any activity's APE, work in the immediate vicinity that could harm the historic property shall cease and the Applicant shall protect the discovery site against further disturbance.

4.10.2 By the end of the next business day, the Applicant shall notify SHPO, EPA, COE, NVT and ADNR of the discovery. Within 24 hours, the agencies shall initiate consultation with the Signatory and Concurring Parties and potentially affected Tribal Governments regarding the discovery within one week of the discovery.

4.10.3 The agencies, in consultation with SHPO and the Signatory and Concurring Parties, will make a final determination on how to proceed. If the Signatory Parties agree that the discovery may be significant, the Applicant shall proceed in accordance with Stipulation 4.5, Treatment of Historic Properties, or 4.6, Treatment of Human Remains, of this PA, as appropriate.

#### 4.11 Training

4.11.1 On an annual basis, or more frequently as circumstances require, the Applicant shall ensure that its contractors and employees are:

4.11.1.1 Advised against the illegal collection and disturbance of historic and prehistoric materials, including human remains, and are familiarized with the scope of applicable laws and regulations.

4.11.1.2 Trained in identifying and reporting historic properties, archaeological materials, human remains, and historic buildings or structures that may potentially be discovered during the course of their work.

4.11.2 The advice and training in Stipulations 4.11.1.1 and 4.11.1.2 above shall be provided by an archaeologist meeting the qualifications of the *Secretary of the Interior's Standards and Guidelines* (48 FR 44738-44739).

## **4.12 Dispute Resolution**

Should any of the Signatory Parties object within thirty (30) days of any action taken pursuant to this PA, the parties shall consult among themselves and resolve the objection. To the extent that there is any ongoing work that threatens the site, such work shall be suspended pending timely resolution of the objection.

4.12.1 If EPA, COE, ADNR, or SHPO determines that the objection cannot be resolved, EPA shall immediately forward all documentation relevant to the dispute to the Council. Within thirty (30) days after receipt of all pertinent documentation, the Council will either:

4.12.1.1. Provide EPA and COE with recommendations, which they will take into account in reaching a final decision regarding the dispute; or

4.12.1.2 Notify EPA and COE that it will comment pursuant to 36 CFR 800.6(b), and proceed to comment. Any Council comment provided in response to such a request shall be taken into account by EPA and COE with reference to the subject of the dispute.

4.12.1.3 Any recommendation or comment provided by the Council shall be understood to pertain to the subject of the dispute; EPA's and COE's responsibilities to carry out all actions under this agreement that are not the subjects of the dispute shall remain the same.

4.12.2 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 Tribe or a member of the public, EPA and COE shall fully consider the objection and consult with the objecting party, the Signatory Parties, and the Council, as appropriate. Any party, may at any time, independently request the Council to participate in the dispute resolution pursuant to 36 CFR 800.6(a)(1)(ii).

## **4.13 Confidentiality**

Pursuant to 36 CFR 800.11(c), EPA and COE shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy, risk harm to the historic property, or impede the use of a traditional religious site by practitioners.

## **4.14 Amendments**

Any Signatory Party to this PA may request that the other parties consider amending it, whereupon the parties shall consult to consider the amendment(s). Amendments will be executed in the same manner as the original PA. Concurring Parties may suggest proposed amendments to the Signatory Parties, who shall consider them. The PA may undergo a review every five (5) years if so requested by a Signatory Party.

#### **4.15 Termination**

Any Signatory Party to this PA may terminate it by providing thirty (30) days notice to the other parties explaining the reasons for the termination. The Signatory Parties will consult during this period to seek agreement on amendments or other actions that will avoid termination. In the event of termination, EPA and COE will comply with 36 CFR 800.1 through 800.7 and ADNR will comply with AS 41.35 on remaining Project undertakings, components, activities, or outstanding issues.

#### **4.16 Duration**

This PA shall become effective upon execution by the Signatory Parties and the Council, and shall remain in effect throughout the duration of the undertaking, which is estimated to be 25 years, unless terminated as provided in paragraph 4.14.

#### **4.17 Execution and Implementation**

Execution and implementation of this PA evidences that EPA and COE have satisfied responsibilities under Section 106 of the National Historic Preservation Act pursuant to 36 CFR 800, and that ADNR has satisfied responsibilities under the Alaska Historic Preservation Act pursuant to AS 41.35.

#### **4.18 No Private Right of Action**

This PA does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this agreement, against the Signatory and Concurring Parties, their officers or employees, or any other person. This PA does not direct or apply to any person outside of the Signatory and Concurring Parties.

**A. Signatory Parties**

U. S. Environmental Protection Agency

By: \_\_\_\_\_  
Michelle Pirzadeh  
Acting Regional Administrator, Region 10

Date: \_\_\_\_\_

U. S. Army Corps of Engineers

By: \_\_\_\_\_  
Name  
Colonel, Corps of Engineers  
Alaska District Engineer

Date: \_\_\_\_\_

Alaska State Historic Preservation Officer

By: \_\_\_\_\_  
Judith E. Bittner  
State Historic Preservation Officer

Date: \_\_\_\_\_

**B. Invited Signatory Parties**

State of Alaska, Department of Natural Resources

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Tom Irwin  
Commissioner, Alaska Department of Natural Resources

PacRim Coal, LP

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Kenai Peninsula Borough

By: \_\_\_\_\_ Date: \_\_\_\_\_  
John J. Williams  
Mayor

Native Village of Tyonek

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Angela Sandstol  
President

Kenaitze Tribe

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Rosalie Tepp  
Chairperson

Knik Tribal Council

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Michael Tucker  
President

Tyonek Native Corporation

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Tom Harris  
Chief Executive Officer

Alaska Mental Health Trust Authority

By: \_\_\_\_\_  
Name  
Title

Date: \_\_\_\_\_

Cook Inlet Region, Inc.

By: \_\_\_\_\_  
Hazel J. Felton  
Special Projects Manager

Date: \_\_\_\_\_

**C. Concurring Parties**

Lime Village Traditional Council

By: \_\_\_\_\_  
Jennifer John  
President

Date: \_\_\_\_\_

Salamatof Tribal Council

By: \_\_\_\_\_  
Penny Carty  
President

Date: \_\_\_\_\_

Ninilchik Traditional Council

By: \_\_\_\_\_  
Richard G. Encelewski  
President

Date: \_\_\_\_\_

Seldovia Village Tribe

By: \_\_\_\_\_  
Don Kashevaroff  
President

Date: \_\_\_\_\_

Native Village of Eklutna

By: \_\_\_\_\_  
Dorothy Cook  
President

Date: \_\_\_\_\_

Chickaloon Native Village

By: \_\_\_\_\_  
Gary Harrison  
Traditional Chief

Date: \_\_\_\_\_

Native Village of Port Graham

By: \_\_\_\_\_  
Patrick Norman  
Tribal Chief

Date: \_\_\_\_\_

Native Village of Nanwalek

By: \_\_\_\_\_  
Wally Kvasnikoff  
Chief

Date: \_\_\_\_\_

## Appendix 1: Tribal Governments

Chickaloon Native Village  
Gary Harrison, Traditional Chief  
PO Box 1105  
Chickaloon, Alaska 99674  
(907) 745-0707  
[cadmin@chickaloon.org](mailto:cadmin@chickaloon.org), [cvepp@chickaloon.org](mailto:cvepp@chickaloon.org)

Kenaitze Tribe  
Rosalie Tepp, Chairperson  
PO Box 988  
Kenai, Alaska 99611  
(907) 283-3633  
[kenaitze@alaska.org](mailto:kenaitze@alaska.org)

Knik Tribal Council  
Michael Tucker, President  
PO Box 871565  
Wasilla, Alaska 99687  
(907) 373-3153  
[kniktrib@mtaonline.net](mailto:kniktrib@mtaonline.net)

Native Village of Eklutna  
Dorothy Cook, President  
26339 Eklutna Village Road  
Chugiak, Alaska 99567  
(907) 688-6020  
[nve@eklutna-nsn.gov](mailto:nve@eklutna-nsn.gov)

Native Village of Nanwalek  
Wally Kvasnikoff, Chief  
PO Box 8326  
Nanwalek, Alaska 99603  
(907) 281-2274  
[nanwalek@yahoo.com](mailto:nanwalek@yahoo.com)

Native Village of Port Graham  
Patrick Norman, Tribal Chief  
PO Box 5510  
Port Graham, Alaska 99603  
(907) 284-2227  
[pnormanvc@hotmail.com](mailto:pnormanvc@hotmail.com)

Native Village of Tyonek  
Angela Sandstol, President  
PO Box 82009  
Tyonek, Alaska 99682  
(907) 583-2201  
[Angela\\_s@tyonek.net](mailto:Angela_s@tyonek.net)

Ninilchik Traditional Council  
Richard G. Encelewski, President  
PO Box 39070  
Ninilchik, Alaska 99639  
(907) 567-4394  
[ntc@ninilchiktribe-nsn.gov](mailto:ntc@ninilchiktribe-nsn.gov)

Salamatof Tribal Council  
Penny Carty, President  
150 N. Willow Street #29  
Kenai, Alaska 99611  
(907) 283-7864  
[snainc@alaska.com](mailto:snainc@alaska.com)

Seldovia Village Tribe  
Don Kashevaroff, President  
Drawer L  
Seldovia, Alaska 99663  
(907) 234-7898  
[kash@kash.net](mailto:kash@kash.net)

Lime Village Traditional Council  
Jennifer John, President  
P.O. Box LVD  
Lime Village VIA  
McGrath, Alaska 99627-8999

## **Appendix 2: Chuitna Coal Project Programmatic Agreement Plan of Action for the Treatment of Human Remains and Graves**

### ***Purpose:***

The purpose of this document is to establish procedures for the treatment of human remains and graves in the event of inadvertent discoveries in conjunction with the Chuitna Coal Project.

### ***Preface:***

The treatment of human remains following inadvertent discovery is governed by state and federal laws, land status, postmortem interval (time since death), and biological/cultural affiliation. On all lands in Alaska, the intentional and unauthorized destruction or removal of any human remains or intentional disturbance of a grave or associated objects is a violation of AS 11.46.482(a)(6), a class C felony. The disturbance of "historic, prehistoric and archeological resources," including graves, on State lands is a violation of AS 41.35.200, a class A misdemeanor.

In Alaska, the State Medical Examiner ("SME") has jurisdiction over all human remains (with rare exceptions, such as deaths resulting from military aircraft incidents or certain shared Federal/State jurisdictions), regardless of age (AS 12.65.005 to 100). The Alaska State Troopers ("AST") require notification when any human remains, including ancient remains, are discovered. Because the Chuitna Coal Project, as currently proposed, is situated on State lands, Archaeological Resources Protection Act ("ARPA") and Native American Graves Protection and Repatriation Act ("NAGPRA") do not apply except with regard to the exceptions cited above. If the Project changes in the future to affect Federal lands, then the protections ensured by ARPA and NAGPRA would apply.

### **A. Discovery, initial treatment, and notification:**

1. No project personnel or project related activity shall knowingly disturb human graves or remains.
2. If human graves or remains are discovered during any activity associated with the Chuitna Coal Project, the Applicant shall insure that work stops in the vicinity of the discovery and shall make efforts to protect the grave, remains, and/or associated materials from further disturbance.
3. All human remains shall be treated with care, dignity, and respect.
4. Following the inadvertent discovery of human remains, the Applicant shall immediately (within the hour) notify the Alaska State Troopers (including Investigator David Hanson and the SHPO). If the human remains are determined or believed to be Native American, the Applicant shall notify the Tribes(s) with the nearest geographic, cultural, or ethnic affinity within 24 hours of the determination. Additionally, the Applicant shall notify the State Medical Examiner's Office within 24 hours of determining that the remains are believed to be less than 100 years old. Specific contact information may be found at the end of this document in Contact Information for Agency Officials Referenced in the Human Remains POA.

5. Following the Applicant's completion of the requirements of the POA, the SHPO shall determine if the Applicant has complied with the POA and will provide the Applicant with a notice to proceed with actions in the Treatment Plan (described below). However, if the AST or SME choose to investigate, any actions will be at their discretion.

**B. Investigation and Reporting:**

1. If any human remains or graves are discovered and avoided during Chuitna Coal Project activities, the Applicant's project archaeologist shall document the nature and location of those discoveries by non-intrusive investigation. The information shall be recorded in a Report of Findings, which shall include photos and maps as appropriate. Copies of this report shall be supplied to EPA, COE, ADNR SHPO, AST, and SME within ten (10) work days from the time of discovery. Copies of the report will also be distributed to affected Tribal governments and may be distributed to Concurring Parties, local governments, as well as other parties who may have an interest in the remains through lineal or cultural ties within fifteen (15) work days from the time of the discovery. Due to the confidential and sensitive nature of this information, distribution of the report to any organization other than EPA, COE, ADNR, SHPO, AST, SME, and affected Tribal governments shall be done in consultation with the SHPO and affected Tribal governments. To insure that the remains will not be inadvertently disturbed at a later date, the Applicant field personnel shall be notified on a "need to know" basis.
2. If the AST and/or SME choose to investigate, the Applicant shall continue to preserve the integrity of the scene and shall only conduct further documentation at the direction of the AST and/or SME.
3. If the AST and SME decline involvement in the investigation, and it is not economically possible to leave the remains or grave in undisturbed condition, the Applicant's project archaeologist shall develop a Treatment Plan in consultation with EPA, COE, ADNR, SHPO, applicable Tribal governments and/or Concurring Parties, local governments and other affected parties. If information in the Report of Findings is insufficient to characterize the grave or remains with regard to cultural or lineal affinity, the SHPO shall require that the Applicant conduct or sponsor a respectful non-destructive investigation of the remains and associated funerary objects by a qualified professional to ascertain estimations of postmortem interval, race, sex, biological age, trauma, disease, cause of death, and cultural practices. The primary purpose of this investigation is to facilitate the identification of lineal and cultural descendants of the deceased. The findings of this investigation shall be documented in a Report of Osteological Examination that includes the above information, DNA analysis, along with basic measurements<sup>1</sup> and photographs. The Report of Osteological Examination shall be attached or appended to the Treatment Plan prior to distribution. Copies of the Treatment Plan shall be supplied to EPA, COE, ADNR, and SHPO, along with applicable Tribal governments, Signatory Parties, Concurring Parties, local governments, and other interested parties within thirty (30) days of discovery or within forty-five (45) days of the

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<sup>1</sup> Osteometric measurements shall minimally include those reported in "Data Collection Procedures for Forensic Skeletal Material," by Peer M. Moore-Jansen, Stephen D. Ousley, and Richard L. Jantz, the University of Tennessee, Department of Anthropology, Report of Investigations No. 48, 1994. These are standard measurements used in forensic osteological investigations conducted by/for the Alaska State Medical Examiner's office, and will provide consistency in reporting.

discovery if a Report of Osteological Examination is required. In either case, the receiving parties shall have ten business days to review the treatment plan and provide comments to the Applicant, who shall incorporate the comments into the final Treatment Plan.

**C. Final Treatment and Disposition:**

1. Upon concurrence and approval of the treatment plan by EPA, COE, ADNR, affected Tribal governments and SHPO, the Applicant shall follow the procedures outlined in the Treatment Plan. No response by the federal agencies, ADNR, Tribal governments or interested parties may be taken as concurrence to the procedures outlined in the Treatment Plan. However, regardless of the absence of comments by the Signatory or Concurring Parties, the Applicant shall obtain SHPO approval of the Treatment Plan prior to implementation. The SHPO may provide a copy of the Treatment Plan to the SME and AST.
2. Any removal or re-interment of human remains shall be done in consultation with EPA, COE, ADNR, SHPO, affected Tribal Governments and affected parties. The District Magistrate or Registrar of Vital Statistics shall be consulted regarding the need for a disinterment-reinterment permit or a burial transit permit.

## **Contact Information for Agency Officials Referenced in the Human Remains POA**

### ***Alaska State Troopers:***

Investigator David B. Hanson, Alaska Bureau of Investigations

Phone (907) 269-5643

Fax: (907) 338-7243

E-mail: [david.hanson@alaska.gov](mailto:david.hanson@alaska.gov)

### ***Alaska State Medical Examiner's Office:***

Dr. Franc G. Fallico, Acting Chief Medical Examiner

Phone: (907) 334-2200

Fax: (907) 334-2216

E-mail: [franc.fallico@alaska.gov](mailto:franc.fallico@alaska.gov)

Kenneth Cramer, Death Investigator

Phone: (907) 334-2200

Fax: (907) 334-2216

E-mail: [Kenneth.Cramer@alaska.gov](mailto:Kenneth.Cramer@alaska.gov)

### ***Alaska Bureau of Vital Statistics:***

Phillip Mitchell, Chief

Phone: (907) 465-8604

Fax: (907) 465-3618

E-mail: [Phillip.Mitchell@alaska.gov](mailto:Phillip.Mitchell@alaska.gov)

Janet Shea

Phone: (907) 465-8608

Fax: (907) 465-4689

E-mail: [janet.brown@alaska.gov](mailto:janet.brown@alaska.gov)

### ***Alaska Office of History and Archaeology (State Historic Preservation Office):***

Judith E. Bittner, Chief/ State Historic Preservation Officer (OHA/SHPO)

Phone: (907) 269-8715

Fax: (907) 269-8908

E-mail: [judy.bittner@alaska.gov](mailto:judy.bittner@alaska.gov)

Dave McMahan, State Archaeologist/ Deputy SHPO/ Forensic Consultant (OHA/SHPO)

Phone: (907) 269-8723

Fax: (907) 269-8908

E-mail: [dave.mcmahan@alaska.gov](mailto:dave.mcmahan@alaska.gov)

Joan Dale, Archaeologist/ Forensic Consultant (OHA/SHPO)

Phone: (907) 269-8718

Fax: (907) 269-8908

### ***U.S. Environmental Protection Agency:***

Hanh Shaw, Chuitna Project Manager

Phone: (206) 553-0171

Fax: (206) 553-0165

E-mail: [shaw.hanh@epa.gov](mailto:shaw.hanh@epa.gov)

***U.S. Army Corps of Engineers, Alaska District:***

Skip Joy, Project Manager

Phone: (907) 753-2744

Fax: (907) 753-5567

Email: [Irvin.t.joy@poa02.usace.army.mil](mailto:Irvin.t.joy@poa02.usace.army.mil)

***Alaska Department of Natural Resources:***

Ed Fogels, Director, Office of Project Management and Permitting

Phone: (907) 269-8423

Fax: (907) 269-8930

E-mail: [ed.fogels@alaska.gov](mailto:ed.fogels@alaska.gov)

***Tribal Governments:***

See Appendix 1 for a list of Tribal Government contacts

### Appendix 3: Definitions & Acronyms

ADNR	State of Alaska Department of Natural Resources
AMHTA	Alaska Mental Health Trust Authority
APE	Area of Potential Effect
Applicant	PacRim Coal, LP
ARPA	Archeological Resources Protection Act
CEQ	Council on Environmental Quality
CIRI	Cook Inlet Region, Inc.
COE	U.S. Army Corps of Engineers
Concurring Party	Party that agrees to the process set out in this PA
Council	Advisory Council on Historic Preservation
EO	Executive Order
EPA	U.S. Environmental Protection Agency
Historic Properties	District, site, building, structure or object, including landscape, that meets eligibility requirements for NRHP under 36 CFR 60.4, including properties to which a tribal government or other party attaches religious and/or cultural significance in accordance with <i>National Register Bulletin #38</i> .
Invited Signatory	Parties invited by EPA and COE to be signatories to the PA, who may have responsibilities under the PA, and who will have the same rights with regard to seeking amendment or termination of the PA as other signatories.
KPB	Kenai Peninsula Borough
LMU_1	Logical Mining Unit 1
Mitigation Plan	Plan that addresses how the adverse effects to historic properties, including how the Ch'u'itnu <i>Archaeological District</i> are resolved
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NPDES	National Pollutant Discharge Elimination System
NRHP	National Register of Historic Places
NVT	Native Village of Tyonek
Landowners	ADNR, KPB, CIRI, TNC and the Alaska Mental Health Trust Authority
NAGPRA	Native American Graves Protection and Repatriation Act
PA	Programmatic Agreement
Permittee	PacRim Coal, LP
POA	Plan of Action
PRC	PacRim Coal, LP (Applicant/Permittee)
Project	Chuitna Coal Project
ROD	Record of Decision
SEIS	Supplemental Environmental Impact Statement
SHPO	State Historic Preservation Officer
Signatory Party	Party subject to the statutory requirements of the NHPA Section 106, and signing this PA to satisfy those statutory requirements.
SME	State Medical Examiner
TNC	Tyonek Native Corporation
UAF	University of Alaska Fairbanks