

1 **PROGRAMMATIC AGREEMENT**

2 By and Among

3 The U.S. Army Corps of Engineers,
4 U. S. Bureau of Land Management,
5 Advisory Council on Historic Preservation,
6 Alaska State Historic Preservation Officer,
7 Alaska Department of Natural Resources,

8 and

9 Donlin Gold, LLC

10 Regarding the

11 Donlin Gold Project

12 **WHEREAS**, the Alaska District, U.S. Army Corps of Engineers (USACE) receives and
13 considers applications for permits under Section 10 of the Rivers and Harbors Act of 1899
14 (Section 10) (33 U.S.C. § 403) and Section 404 of the Clean Water Act (Section 404) (33
15 U.S.C. § 1251 et. seq.); and

16 **WHEREAS**, the USACE received a permit application pursuant to Section 10 and Section
17 404 from Donlin Gold, LLC (Donlin Gold) to develop and operate an open pit, hardrock
18 gold mine located 10 miles north of the village of Crooked Creek, Alaska with related
19 facilities located near Bethel, Jungjuk Creek on the Kuskokwim River, and extending to
20 the Cook Inlet; and

21 **WHEREAS**, the Donlin Gold Project (Project) includes construction, operation,
22 maintenance, and reclamation activities proposed to occur over approximately 34.5 years
23 (if authorized), and would consist of the open pit mine, tailings storage, waste rock facility,
24 mill, 315-mile pipeline, power plant, and transportation facilities that include an airstrip,
25 roads, barge landing, and barge terminal; and

26 **WHEREAS**, the USACE has determined that evaluation and/or issuance of Clean Water
27 Act Section 404 and Rivers and Harbors Act Section 10 permits for the proposed Project
28 make it an undertaking subject to review pursuant to Section 106 of the National Historic
29 Preservation Act (NHPA) (54 U.S.C. § 306108) and its implementing regulations,
30 "Protection of Historic Properties" (36 C.F.R. part 800), and under USACE's regulations at
31 33 C.F.R. Part 325, Appendix C; and

32 **WHEREAS**, the U.S. Bureau of Land Management (BLM) has determined that approving
33 the Project's pipeline and fiber optic cable to cross federal lands administered by the BLM
34 would require authorization under Section 28 of the Mineral Leasing Act of 1920, 30 U.S.C
35 § 185, as amended; and

36 **WHEREAS**, the BLM approvals of these project crossings in areas under its jurisdiction is
37 a federal action associated with the undertaking that require the BLM to comply with
38 Section 106 of the NHPA (Section 106) and 36 C.F.R. Part 800; and

39 **WHEREAS**, the State of Alaska Department of Natural Resources (State) is a landowner
40 for a majority of the pipeline alignment. To address its obligations to protect State-owned
41 historic, prehistoric, or archaeological resources as provided under Alaska Statute (AS)
42 41.35.200(a) and 11 Alaska Administrative Code (AAC); the State has been invited to
43 participate in this PA as an Invited Signatory; and

1 **WHEREAS**, the State has determined that approving the Project on State lands
2 administered by the State would require a variety of land use authorizations from the
3 department; and

4 **WHEREAS**, the State has determined that Donlin Gold’s pipeline and its related facilities
5 on State lands would require authorization under AS 38.35; and

6 **WHEREAS**, Section 106 of the NHPA requires each federal agency, prior to any federal
7 or federally assisted or funded undertaking, to take into account the effect of its proposed
8 undertaking on any property included in or eligible for inclusion in the National Register of
9 Historic Places (NRHP) (hereafter called historic properties); and

10 **WHEREAS**, the USACE, as the lead federal agency and in consultation with the BLM,
11 Alaska State Historic Preservation Officer (SHPO), State, and Donlin Gold, LLC, has
12 established the undertaking’s Area of Potential Effects (APE), as defined in 36 C.F.R. §
13 800.16(d), which encompasses direct and indirect effects on historic properties for
14 agency-permitted alternatives carried forward for detailed analysis in the Environmental
15 Impact Statement (EIS) prepared pursuant to the National Environmental Policy Act
16 (NEPA) (42 U.S.C § 4321 et. seq.). The APE description and figures are contained in
17 Appendix A of this Programmatic Agreement (PA); and

18 **WHEREAS**, cultural resources identification, evaluation, and effects assessment efforts to
19 date are summarized in Section 3.20 of the EIS and Appendix D of this PA (Cultural
20 Resources Management Plan); and

21 **WHEREAS**, the USACE has determined that construction, operation, maintenance, and
22 reclamation of the Project will cause adverse effects on historic properties included in or
23 eligible for inclusion in the NRHP, or which the USACE, BLM, and SHPO agree to treat as
24 eligible for inclusion in the NRHP; and

25 **WHEREAS**, the USACE, BLM, SHPO, and Advisory Council on Historic Preservation
26 (ACHP) have determined that a PA for the Project is appropriate because the effects on
27 historic properties cannot be fully determined prior to agency permit decisions and historic
28 properties may be discovered during project implementation; and to record the terms and
29 conditions agreed upon to resolve known and potential adverse effects of the Project on
30 historic properties pursuant to 36 C.F.R. § 800.14(b); and

31 **WHEREAS**, the USACE and the BLM recognize the government-to-government obligation
32 to consult with Native American tribes that may attach religious and cultural significance to
33 historic properties that may be affected by the proposed undertaking and will continue to
34 consult with such potentially affected tribes regarding their concerns under Section 106; in
35 addition, the BLM and USACE will comply with the American Indian Religious Freedom
36 Act, Native American Graves Protection and Repatriation Act (NAGPRA) as it applies to
37 lands under federal control, and Executive Orders 13007 and 13175; and

38 **WHEREAS**, the USACE has invited potentially affected federally recognized Indian tribes
39 as defined in 36 C.F.R. § 800.16(m) and listed in Appendix C1 of this PA to participate in
40 consultation; and

41 **WHEREAS**, the USACE has invited Alaska native villages, regional corporations, and
42 village corporations as defined in Section 3 of the Alaska Native Claims Settlement Act
43 (43 U.S.C. § 1602) and listed in Appendix C2 of this PA to participate in consultation
44 consistent with 36 C.F.R. § 800.16(m); and

1 **WHEREAS**, the USACE has provided Indian tribes, as well as Alaska native villages,
2 regional corporations, and village corporations the opportunity to provide information
3 about historic properties of concern to Indian tribes within the Project APE; and

4 **WHEREAS**, the USACE invited Indian tribes as well as Alaska native villages, regional
5 corporations, and village corporations that participated in consultation to sign as
6 Concurring Parties to this PA, consistent with 36 C.F.R. §§ 800.2(c)(2) and 800.6(c)(3);
7 and

8 **WHEREAS**, the USACE, in consultation with the BLM and SHPO, has identified
9 representatives of local governments and other entities with jurisdiction over the area in
10 which effects of the undertaking may occur, Tribes, landowners, and individuals and
11 organizations with a demonstrated interest in the Project and its potential effects on
12 historic properties, and has invited identified agencies and interested groups to participate
13 in the development of this PA. A list of these parties is included in Appendices C2 and C3;
14 and

15 **WHEREAS**, the Project will cause adverse effects on a minimum of seven historic
16 properties included in or eligible for inclusion in the NRHP, or which the USACE, BLM,
17 and SHPO agree to treat as eligible for inclusion in the NRHP, including two historic
18 cabins (IDT-00260 and TYO-00215), the Iditarod National Historic Trail (INHT), and four
19 prehistoric occupation sites or lithic scatters (SLT-00094, IDT-00288, MCG-00071, and
20 TYO-00277), and

21 **WHEREAS**, the Project will adversely affect the nationally significant INHT, which was
22 designated by the U.S. Congress under the National Trails System Act (Public Law 90-
23 543 as amended) on non-federal lands, and the BLM is the designated federal trail
24 administrator for the INHT; and

25 **WHEREAS**, the INHT comprises a trail system, roughly 2400 miles long, that
26 encompasses the INHT primary route and connecting trails as represented in the adopted
27 Interagency *Iditarod National Historic Trail Comprehensive Management Plan* of 1986;
28 and

29 **WHEREAS**, the Project will adversely affect the INHT on State lands, and the State has
30 management responsibility of those segments of the trail; and

31 **WHEREAS**, the State manages the INHT on State lands, and the BLM, as the trail
32 administrator for the INHT, has cooperated with the State to operate, develop, and
33 maintain portions of the INHT located outside the boundaries of federally administered
34 areas in accordance with the *INHT Comprehensive Management Plan* (1986) and as
35 agreed to in the “Memorandum of Agreement Between the State of Alaska and Bureau of
36 Land Management, U.S. Department of Interior Concerning the Iditarod National Historic
37 Trail” (1987), and pursuant to the requirements of Public Law 90-543 (as amended); and

38 **WHEREAS**, the USACE has invited the Iditarod Historic Trail Alliance to consult on the
39 potential for Project effects to the INHT; and

40 **WHEREAS**, in accordance with 36 C.F.R. § 800.6(a)(1), the USACE has notified the
41 ACHP of its adverse effect determination with specified documentation, and the ACHP
42 has chosen to participate in the consultation pursuant to 36 C.F.R. § 800.6(a)(1)(iii); and

43 **WHEREAS**, Donlin Gold, LLC has participated in consultation per 36 C.F.R. § 800.2(c)(4),
44 and through signature to this PA, Donlin Gold, LLC, and/or its assignees agrees to carry

1 out the stipulations herein under the oversight of the USACE and is an Invited Signatory to
2 this PA; and

3 **WHEREAS**, the USACE has provided the public with information about the undertaking
4 and its potential effects on historic properties and sought public comment and input
5 consistent with the requirements of Section 106 of the NHPA and 33 C.F.R. Part 325; and

6 **NOW THEREFORE**, the USACE, BLM, SHPO, ACHP, State and Donlin Gold agree that
7 the Project shall be implemented in accordance with the following stipulations in order to
8 take into account the potential effects of the Project on historic properties listed in or
9 eligible for listing in the NRHP thus satisfying the requirements of Section 106 of the
10 NHPA and the AHPA.

11 **STIPULATIONS**

12 The USACE and the BLM, as appropriate, shall ensure that the following measures are
13 carried out:

14 **I. THE PROJECT**

15 A. The proposed Project is the development of an open pit, hardrock gold
16 mine located 10 miles north of the village of Crooked Creek in western
17 Alaska. Major project components include excavation of an open pit mine
18 that ultimately would be approximately 2.2 miles long by 1 mile wide by
19 1,850 feet deep; a tailings storage facility approximately 1 mile long, and
20 ultimately covering approximately 2,350 acres; a waste rock facility
21 covering approximately 2,300 acres; a mill facility processing
22 approximately 59,000 short tons of ore per day; a natural gas-fired power
23 plant with a total connected load of 227 megawatts, supplied by an
24 approximately 315-mile, small-diameter (14-inch) pipeline from the west
25 side of Cook Inlet to the mine site; and transportation infrastructure
26 including a 5,000-foot airstrip, a 30-mile-long road from the mine site to a
27 new barge landing near Jungjuk Creek on the Kuskokwim River, and barge
28 terminal facilities in Bethel (Appendix A of this PA).

29 **II. ADMINISTRATIVE CONSIDERATIONS**

30 A. The USACE, the BLM, and the State shall attach this PA or the stipulations
31 listed in this legally enforceable PA to agency-specific permits, so that
32 appropriate provisions of this PA and its requirements become binding on
33 the permittee, so long as the underlying PA remains in effect for the area
34 covered by the relevant permit. The permittee shall comply with this PA as
35 implemented through these measures and failure to do so could result in
36 suspension, modification, or revocation of the applicable agency's permit.

37 B. If the proposed Project is permitted, this PA and all of its requirements shall be
38 binding on Donlin Gold as permittee, its successors, and assigns. Donlin Gold
39 shall include a provision requiring compliance with the PA in any contract of sale
40 or transfer of ownership or management of the Project or components thereof.

41 C. Because of both singular and overlapping legal authorities and responsibilities
42 among the USACE and the BLM (agencies) regarding individual components or
43 activities, one or more of these agencies may be responsible for ensuring that the

1 terms of this PA are carried out for a given component or activity. For certain
2 larger components and activities, all involved agencies may carry out the terms of
3 this PA, so long as doing so is within the scope of their legal authorities under
4 Section 106 of the NHPA. Nothing in this PA is intended to expand the jurisdiction
5 of the USACE or the BLM beyond that afforded by Section 106 and its respective
6 regulations.

7 D. The USACE, the BLM, and the State shall enforce the terms of this PA as is
8 appropriate within each agency's scope with regard to permits, and other
9 conditions that incorporate this PA and its terms. Each shall notify the others if
10 any of them becomes aware of an instance of possible non-compliance with the
11 terms and conditions of this PA or permit or conditions as they relate to this PA. In
12 such case, the responsible agency shall ensure compliance consistent with its
13 legal authorities and consult with the other Signatories, as needed. USACE, as
14 lead federal agency, is responsible for the stipulations to be carried out,
15 regardless of the participation and/or actions of other permitting agencies.

16 E. Historic properties, APEs, and the applicability of this PA:

17 1. This PA shall apply to the Donlin Gold Project and all of its
18 components, including those not known at this time or not specified
19 in the permits, permit applications, or other project documents so
20 long as they are within the jurisdiction of the USACE, the BLM,
21 and/or the State.

22 2. In Stipulation IV and Appendix A of the PA, the USACE and BLM, in
23 consultation with SHPO, have determined the APE for the Project
24 and its components, as defined at 36 C.F.R. § 800.16(d), and
25 pursuant to USACE jurisdictional authority for the "Permit Area" as
26 defined at 33 C.F.R. Part 325, Appendix C(1)(g).

27 III. ROLES AND RESPONSIBILITIES

28 A. The USACE will make determinations of eligibility (DOEs) and findings of effect in
29 coordination with the BLM, and will seek SHPO concurrence consistent with the
30 requirements of 36 C.F.R. § 800.4 and 36 C.F.R. § 800.5. In addition, the USACE
31 and BLM will ensure that copies of their DOEs and findings of effect are sent to
32 Consulting Parties with interests within the ANCSA regional corporation
33 boundaries within which the affected site is located (as listed in Appendix C of this
34 PA). The USACE and the BLM, at their discretion, may expand this list to include
35 adjacent interested parties not within the ANCSA boundaries. They will allow a
36 30-day comment period at the time DOEs and findings of effect are submitted to
37 SHPO for review and concurrence. Any timely comments received will be taken
38 into account in the final decision. The USACE and BLM are responsible for
39 consultation with Tribes, including a) identifying Tribes that attach religious and/or
40 cultural significance to historic properties potentially affected by the Project; and
41 b) through consultation, providing Tribes a full opportunity to express any
42 concerns about the Project, their views on identification efforts, and NRHP
43 eligibility of any properties to which such Tribes attach religious and cultural
44 significance; and c) allowing Tribe(s) to express their views on the assessment of
45 effects and resolution of adverse effects to historic properties.

- 1 B. The USACE and BLM are responsible for identifying individuals and organizations
2 with a demonstrated or known interest and expertise in historic properties and
3 preservation issues in the Project Area, and have notified them about the Section
4 106 review of the Project and the opportunity to be a Consulting Party to this PA.
5 The USACE and BLM have invited such persons or organizations to participate in
6 the Section 106 review (see Appendix C of this PA).
- 7 C. The USACE, the BLM, and the State shall ensure that requirements of this PA
8 have been met for that part of the undertaking under their respective jurisdictions.
9 The agencies shall coordinate consultation to ensure that each agency
10 independently satisfies its respective regulatory requirements under 36 C.F.R.
11 Part 800, 33 C.F.R. Part 325 Appendix C, and AS 41.35.200(a). The USACE shall
12 ensure that all work conducted as a result of this PA will be performed in
13 accordance with the Secretary of the Interior's Standards for Archeology and
14 Historic Preservation (Standards and Guidelines) (48 Fed. Reg. 44716-44742).
- 15 D. Following consultation amongst the Signatories, as described below, Donlin Gold
16 will be responsible for funding and overseeing, either directly or through qualified
17 consultants or contractors, work that is determined necessary to ensure
18 compliance with Section 106 and the terms of the PA.
- 19 E. The USACE, in consultation with the Signatories and Consulting Parties, shall
20 oversee compliance with the terms of the PA and related work completed by
21 Donlin Gold, including identification and evaluation of historic properties, records
22 research, inventory, archaeological and above-ground surveys, assessments of
23 effects, mitigation, pre- and post-construction data recovery, report preparation,
24 required monitoring of construction, and curation of artifacts.
- 25 F. Donlin Gold, with oversight by the USACE, and BLM and the State as applicable,
26 will ensure that all such activities undertaken under this PA are conducted in a
27 professional manner and consistent with the stipulations of this PA. The
28 consultation process for the work noted above is described in Stipulations III-XVII
29 of this agreement document.
- 30 G. Donlin Gold, as project proponent, will ensure that persons supervising cultural
31 resources work on their behalf hold any appropriate BLM, USACE, or State
32 permits and/or authorizations as appropriate for archaeological inventory,
33 monitoring, and other archaeological investigations, and meet the Standards and
34 Guidelines, as well as the Secretary of the Interior's Professional Qualification
35 Standards (36 C.F.R. Part 61) for the applicable discipline.
- 36 H. Donlin Gold, as project proponent, may apply for permits, authorizations or
37 approvals for individual project segments, facilities, or groups or portions of
38 segments or facilities, on a phased or segmented basis, so long as all such
39 activities are conducted in accordance with this PA and no other law, rule or
40 regulation precludes such phasing in the applicable permit application process.

41

1 I. The USACE, the BLM, and the State shall ensure that no ground disturbance
2 or other activities that may affect historic properties may take place in that
3 project segment and/or component until identification, evaluation, and
4 resolution of adverse effects have been completed for the area, taking into
5 account project phasing.

6 **IV. AREA OF POTENTIAL EFFECTS**

7 A. The USACE, in consultation with the BLM, SHPO, and other Consulting
8 Parties, has determined and documented the APE for the Project (see
9 Appendix A of this PA). The USACE will also, as it deems appropriate,
10 seek information from Consulting Parties and other individuals and
11 organizations likely to have knowledge of, or concerns with, historic
12 properties in the APE, as provided in Stipulation III.B, above.

13 B. The USACE will seek to gather information from Tribes to assist in
14 identifying historic properties, including those to which each such Tribe
15 attaches religious and cultural significance, recognizing that such Tribes
16 may be reluctant to divulge specific information regarding the location,
17 nature, or activities associated with such sites or properties.

18 C. Consistent with the confidentiality requirements in 36 C.F.R. § 800.11(c)
19 and Section 304 of the NHPA, the USACE shall withhold from public
20 disclosure information about the location, character, or ownership of a
21 historic property when disclosure may cause a significant invasion of
22 privacy, risk harm to the historic property, or impede the use of a traditional
23 religious site by practitioners.

24 D. This PA addresses the following three types of effects that may be deemed
25 to be adverse to historic properties: 1) direct effects; 2) indirect effects
26 (e.g., visual, atmospheric, noise, vibratory); and 3) reasonably foreseeable
27 effects that may occur later in time, be farther removed in distance, or be
28 cumulative. The APE for the Project covers all areas where these project
29 effects may occur.

30 E. For purposes of any required Section 106 review, previously unsurveyed
31 areas added to the Project in the future, whether or not subject to
32 additional or supplemental NEPA review, will be identified in project plans
33 and subject to the terms of this PA. Project facilities added in the future and
34 located on previously surveyed lands will be reviewed under the terms of
35 this PA. The USACE, in consultation with the Signatories, will determine
36 whether these additional facilities would require re-survey.

37 F. USACE may propose to enlarge or diminish the APE for a given project
38 facility or segment as the USACE determines is reasonable and
39 appropriate under the terms of this PA. This change shall require
40 consultation with the Signatories to this PA, and documentation of their
41 agreement with the change, in writing. The USACE will provide 30 calendar
42 days prior notification of such action to the Signatories, Consulting Parties,
43 and Tribes that attach religious and cultural significance to known historic
44 properties in the area encompassed by or excluded by the alteration of the
45 APE.

1 **V. CULTURAL RESOURCES MANAGEMENT PLAN**

2 A. Donlin Gold has prepared a Cultural Resources Management Plan (CRMP)
3 to guide compliance with the stipulations in this PA. At time of Execution, a
4 draft version of the CRMP is attached to Appendix D of this PA. The CRMP
5 will be finalized and approved by the USACE, in consultation with the
6 Signatories within six months of the Effective Date of this PA.

7 B. The CRMP contains:

- 8
- 9 1. Methods for identification and evaluation of historic properties,
 - 10 2. Mitigation plans,
 - 11 3. Standard mitigation options,
 - 12 4. An inadvertent discovery plan,
 - 13 5. A plan for the treatment of human remains,
 - 14 6. Curation protocol, and
 - 15 7. A monitoring plan.
- 16

17 C. The Signatories will review the CRMP every year at the annual meeting.

18 D. The CRMP may be updated without amendment in accordance with
19 Stipulation VII.A to include mitigation plans for newly identified historic
20 properties over the period of this agreement.

21 E. Any changes to processes or protocols of the CRMP would require
22 following the amendment process outlined in Stipulation XV.

23 **VI. IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES AND**
24 **ASSESSMENT OF EFFECTS**

25 A. Previously Completed Identification, Evaluation, and Assessment of Effect

26 1. Donlin Gold has conducted 10 Phase I identification survey and
27 Phase II site evaluation studies focusing on project areas that have
28 the potential to be directly affected by project activities. Reports for
29 all previous investigations have been submitted to the USACE, BLM,
30 and SHPO, as referenced in the CRMP (Appendix D of this PA).
31 Investigations conducted to date identified a total of 72 cultural
32 resources; 49 of those are located within the APE.

33 2. Of the 49 resources identified in the APE, USACE and SHPO
34 concurred that 14 sites are eligible to the NRHP and an additional 7
35 will be treated-as-eligible for the purposes of Section 106, for a total
36 of 21 historic properties. SHPO concurrence for DOEs for known
37 resources was received on 5/25/2016 and 10/25/2016. Cultural
38 resources identified after this date will need to be evaluated for
39 NRHP eligibility.

40 3. As currently proposed, construction, operation, maintenance, and
41 reclamation of the Project will cause adverse effects on a minimum of
42 seven historic properties included in or eligible for inclusion in the
43 NRHP, or which the USACE, BLM, and SHPO agree to treat-as-
44 eligible for inclusion in the NRHP, including two historic cabins (IDT-

1 00260 and TYO-00215), the INHT, and four prehistoric occupation
2 sites or lithic scatters (SLT-00094, IDT-00288, MCG-00071, and
3 TYO-00277).

4 B. Future Identification, Evaluation, and Assessment of Effects

- 5
- 6 1. Additional archaeological survey will be conducted in accordance
7 with this PA prior to the initiation of construction or other ground
8 disturbing activities that have the potential to affect as yet
9 unidentified sites within any project areas not yet inventoried.
- 10 2. Identification efforts need to be conducted for proposed pipeline
11 ancillary facilities for locations outside the previously surveyed 300-
12 foot-wide corridor, and the North Route pipeline corridor.
- 13 3. Prior to the conclusion of identification and evaluation efforts for any
14 particular activity zone or area not previously inventoried, Donlin
15 Gold shall implement guidance received from the USACE, BLM, and
16 SHPO regarding the level and scope of efforts. The level and scope
17 of additional identification efforts shall be consistent and
18 commensurate with the predictive models previously prepared for the
19 Project and outlined in CRMP Section 3.0 - Previous Research and
20 Cultural Resources Identified in the Project Area.
- 21 4. If Donlin Gold and the agencies disagree as to what constitutes
22 adequate identification and evaluation efforts, the federal agencies,
23 in consultation with SHPO, shall arrive at a determination.
- 24 5. Where construction modifications consist of corridors or large land
25 areas, Donlin Gold will use a phased process, as per 36 C.F.R. §
26 800.4(b)(2) to conduct further identification and evaluation. This will
27 facilitate project modifications, and may eliminate the need to
28 prepare determinations of eligibility for sites that will not be affected.
29 Such identification efforts shall be conducted in accordance with the
30 principles, standards, and guidelines contained in Standards and
31 Guidelines and follow the procedures set forth in 36 C.F.R. § 800.4.
- 32 6. Donlin Gold shall provide the agencies with documentation of these
33 identification and evaluation efforts in a cultural resource report and
34 shall provide recommendations for determinations of eligibility of
35 those properties that will be reviewed by the BLM or USACE, as
36 appropriate, and sent to the SHPO for concurrence. BLM will be
37 responsible for coordination under this part for BLM lands. USACE
38 will remain the responsible federal agency for all other land owners.
39 In addition, the USACE or BLM, as appropriate, will ensure that
40 copies of their DOEs and findings of effect are sent to all Consulting
41 Parties with interests within the ANCSA regional corporation
42 boundaries within which the affected site is located (as listed in
43 Appendix C of the PA). The USACE and the BLM at their discretion,
44 may expand this list to include adjacent interested parties not within
45 the ANCSA boundaries. They will allow a 30-day comment period at
46 the time DOEs and findings of effect are submitted to SHPO for

1 review and concurrence. Any timely comments received will be taken
2 into account in the final decision. This information will be summarized
3 in the annual PA report described in Stipulation XIII.

- 4 7. Any disagreements regarding NRHP eligibility will be resolved by
5 requesting a determination of eligibility from the Keeper of the
6 National Register, the National Park Service, in accordance with 36
7 C.F.R. Part 63, whose determination shall be final. The USACE, in
8 consultation with SHPO and in accordance with 36 C.F.R. § 800.5,
9 shall make an assessment of whether a component or activity may
10 have an adverse effect on historic properties. The USACE will
11 coordinate with BLM and the State on properties under BLM or State
12 jurisdiction respectively.

13 VII. TREATMENT OF HISTORIC PROPERTIES

14 A. General Considerations

- 15 1. Donlin Gold shall ensure, to the extent practicable, the avoidance of
16 all known historic properties, including archaeological and historical
17 sites, districts, historic buildings, structures, traditional cultural
18 properties, and landscapes.
- 19 2. Mitigation plans will be created for every adversely affected historic
20 property, as outlined in CRMP Section 4. Mitigation plans will be
21 created through consultation with the USACE, BLM, State, SHPO,
22 Tribes, and other affected parties. The Signatories shall also
23 determine if additional public involvement is warranted during the
24 preparation of mitigation plans.
- 25 3. Methods of recording and documentation described in the mitigation
26 plan shall use the Standards and Guidelines (48 Fed. Reg. 44730-
27 44734) or other standards in consultation amongst BLM, USACE,
28 and SHPO. The mitigation plan will provide a schedule for when
29 activities will occur, when deliverables will be finalized, and the
30 dissemination of those deliverables.
- 31 4. Donlin Gold will submit draft mitigation plans to the USACE for
32 distribution to the Signatories and Consulting Parties for 30-day
33 review for comments, unless a reduced review period is agreed upon
34 by all Signatories. The USACE will take into account any timely
35 comments before approving the final mitigation plan.
- 36 5. Donlin Gold will submit mitigation deliverables to Signatories for
37 review and approval, unless otherwise stated in the mitigation plan.

38 B. Known Adverse Effects

- 39 1. Mitigation of adverse effects will be required for a minimum of seven
40 historic properties, including two historic cabins (IDT-00260 and
41 TYO-00215), the INHT, and four prehistoric occupation sites or lithic
42 scatters (SLT-00094, IDT-00288, MCG-00071, and TYO-00277).
43 Additional historic properties may be located during additional
44 inventory efforts or construction activities.

- 1 2. Should USACE identify additional adverse impacts for the historic
2 properties discussed in this stipulation, USACE, in coordination with
3 the Signatories, and Consulting Parties, shall determine whether
4 additional treatment is necessary.
- 5 3. Phase III Excavation and Data Recovery shall be conducted at two
6 prehistoric sites with the highest data-recovery potential (MCG-
7 00071, TYO-00277), and two historic cabin sites (TYO-00215 and
8 IDT-00260). Recovered materials will receive analysis and the results
9 will be documented in a cultural resource report consistent with
10 Stipulation XIII.B.2 and Section 6.4 of the CRMP.
- 11 4. Lithic materials previously collected from one lithic scatter (IDT-
12 00288) will receive additional analysis and the results will be
13 documented in a cultural resource report.
- 14 5. USACE, SHPO, and the Crooked Creek Traditional Council will
15 coordinate on one prehistoric site (SLT-00094), located in close
16 proximity to the planned Jungjuk Port site, to determine if additional
17 Phase II testing is needed to better ascertain and delineate the
18 extent of site deposits and to determine potential additional data
19 recovery and/or mitigation needs. This coordination will occur within
20 one year of execution of this PA.
- 21 6. The results of archaeological survey, testing, data recovery, and
22 analysis will be used to create a product for the general public. The
23 Signatories, will determine the final format and content at the annual
24 meeting after the mitigation plans for the sites discussed in
25 Stipulation VII.B.I are finalized.
- 26 7. INHT
 - 27 i. As a layered historic property, the INHT has evolved over
28 time beginning with surviving segments of the 1910 Iditarod
29 (Goodwin) Trail, and then later trails (e.g., Iditarod National
30 Historic Trail and Iditarod Race Trail) in the Project APE.
31 The cultural and recreational uses of the trail, and the
32 impacts to them, are intertwined to the extent that the
33 Signatories agree that the impacts to the trail and trail
34 corridors are best addressed in a holistic fashion.
 - 35 ii. Photographic Documentation – Donlin Gold will document
36 viewshed(s) photographically in winter conditions before
37 construction, collect and curate current and historic
38 photographs, and produce a professional report presenting
39 this information in a historic context.

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- iii. Video Documentation - Donlin Gold will collect video documentation of the INHT scenic area during winter conditions from the Skwentna Crossing to Three-mile Creek, and at Egypt Mountain. The documentation effort will be recorded in a cultural resources report (Stipulation XIII.B.2. and Section 6.5.1 of the CRMP. The video will be georeferenced, edited, and made available to the public for a minimum of 10 years, such as posting to the internet. In addition, the edited video and raw data will be stored at an archival repository, such as ARLIS, the Alaska State Library, or the UA Museum of the North.

 - iv. Safety Cabins – Donlin Gold will provide for the construction of four, non-exclusive, safety cabins in the general vicinity of the impacted sections of the INHT. This process will be initiated no later than the start of pipeline construction. These cabins will be owned and maintained by another party to be identified.
 - 1. Donlin Gold will propose specific locations of the cabins and cabin design to be reviewed and approved by the State, SHPO, and other appropriate and/or affected parties as necessary. Prior to placement of the cabins, the selected locations must be authorized by the State. The BLM Iditarod National Historic Trail Administrator will be available for technical assistance, as requested.
 - 2. Donlin Gold will provide the materials needed, arrange for labor to construct the cabins, and provide transportation and installation.
 - 3. Donlin Gold will generate a quit-claim deed to the State, relinquishing ownership of the safety cabins upon receipt of a copy of the State authorization, such as a management agreement or easement, that may involve a local government or non-profit to hold the authorization transferring management to allow the operation of the safety cabins on State land.
 - 4. Donlin Gold shall incorporate cabin inspections into their annual pipeline maintenance schedule.

 - v. Visual Impacts Minimization – Donlin Gold, as practicable with constraints for pipeline construction, operation, and safety, will minimize adverse impacts to the INHT by using landscaping where the pipeline ROW will cross the trail and placing surface infrastructure at inconspicuous locations to avoid or minimize their view from the INHT. Landscaping may include narrowing and/or feathering the pipeline ROW upon approval by the State, in consultation with the SHPO.

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- vi. Creative Mitigation – Donlin Gold shall complete one of the following types of creative mitigation projects every year while the pipeline is in Operation, beginning with the first full calendar year of pipeline operations. These options will be rotated annually in sequence unless modified by mutual agreement by the USACE, SHPO, Donlin Gold, and the State at the annual meeting. The selected option will be subject to mitigation plans to include a schedule of activities, a timeline for finalization of deliverables, and dissemination of those deliverables. The BLM Iditarod National Historic Trail Administrator will be available for technical assistance on any of the options listed below, if requested.
 - 1. Brush Clearing: Prior to conducting its pipeline ROW maintenance brushing, Donlin Gold will coordinate with trail management groups to identify if any of the INHT trail from Skwentna to Nicolai are in need of brushing. Under this measure, Donlin Gold shall provide or support local efforts for brush clearing along the INHT for 10 to 20 miles of trail. Donlin Gold can provide trail brushing and support in-kind as part of their pipeline ROW brushing operations.
 - 2. iTREC Teacher Sponsorship: Donlin Gold will sponsor a rural community teacher to attend the year-long Iditarod Trail in Every Classroom (iTREC) training program. Sponsorship will include all travel costs and necessary expenses to attend workshops, which may include tuition and/or supplies. Teacher recruitment will be done in consultation with the iTREC program coordinator.
 - 3. Interpretive Kiosk with Community Engagement: In a rural community along the INHT, Donlin Gold, SHPO, and, upon request, the BLM INHT Administrator shall work with the community to develop and install an interpretive kiosk associated with that community’s connection to the trail. The priority communities are Skwentna, Nicolai, McGrath and Takotna (the communities closest to the pipeline); however any community along the trail shall be eligible to participate. Donlin Gold will incur all costs related to kiosk development, including fabrication and installation. The kiosk will include no less than 2 panels. Kiosk content will be developed in consultation with the community, the State, and SHPO.
 - 4. Cabin Maintenance: Donlin Gold shall provide or support the routine maintenance on the shelter cabins constructed under Stipulation VII.B.7.iv.

1 5. Alternative Mitigation Option: Any of the Signatory
2 Parties may propose an alternative creative mitigation
3 idea at the annual meeting to be approved by USACE
4 in consultation with the SHPO, Donlin Gold, and the
5 State at the annual meeting.

6 C. Standard Mitigation

7 1. If the property is solely archaeological in nature, mitigation or
8 treatment may include, but not be limited to:

- 9 i. Developing community archaeology and/or cultural
10 resource recordation programs;
- 11 ii. Assisting with tribal artifacts or human remains repatriation
12 efforts;
- 13 iii. Preparation of a research design with provisions for data
14 recovery and recordation;
- 15 iv. Analysis, reporting, and curation of resulting collection and
16 records in an institution as outlined in Stipulation XII
17 (Collection and Curation); and
- 18 v. Data recovery (See CRMP, Section 6.4.2 Methods for
19 Historic Sites with High Data-Recovery Potential; Section
20 6.4.3 Methods for Sites with High Data-Recovery Potential;
21 Section 6.4.5 Lithic Scatters – Methods for Spatial and
22 Laboratory Analysis; and Section 6.4.4 Sites Requiring
23 Further Phase II Testing). Archaeological recovery,
24 analysis, and reporting shall use the Secretary of Interior's
25 Standards and Guidelines for Archaeological
26 Documentation (Archaeological Documentation Guidelines)
27 (48 Fed. Reg. 44734-44737).

28 2. If the historic property is a building, structure, traditional cultural
29 property, or landscape, the mitigation plan shall specify approaches
30 for the mitigation or treatment of the property in accordance with the
31 principles, standards, and guidelines contained in Standards and
32 Guidelines (48 Fed. Reg. 44716-44742), the Secretary of the Interior
33 Standards for the Treatment of Historic Properties as codified in 36
34 C.F.R. Part 68, and the Secretary of the Interior's Standards and
35 Guidelines for Architectural and Engineering Documentation for
36 acceptance into the Historic American Building Survey/Historic
37 American Engineering Record, or Historic American Landscapes
38 Survey. Other mitigation measures could include, but not be limited
39 to:

- 40 i. Relocating a historic property;
- 41 ii. Re-landscaping to reduce effects;
- 42 iii. Public interpretation;
- 43 iv. Ethnographic documentation; and

- 1 v. Prescribing use of a project component or activity in such a
2 way as to minimize effects to historic properties, or to those
3 concerned about the effects of that component or activity.

4 **VIII. PROCEDURES FOR INADVERTENT DISCOVERIES AND UNANTICIPATED**
5 **EFFECTS (NOT INCLUDING HUMAN BURIALS, REMAINS, OR FUNERARY**
6 **GOODS)**

7 A. If an inadvertent discovery of potential cultural materials is made, Donlin
8 Gold shall stop work in the immediate vicinity of the discovery and the
9 USACE shall implement the Inadvertent Discovery Plan as contained in the
10 CRMP (Appendix D of this PA). Donlin Gold shall proceed consistent with
11 this plan:

- 12 1. Ensure construction activities that may affect the resource will cease
13 without delay; work that does not affect the resource may continue.
- 14 2. Protect the discovery site against further disturbance pending the
15 following actions.
- 16 3. Donlin Gold's field coordinator will immediately notify the Donlin Gold
17 environmental/regulatory manager and cultural resources specialist
18 of the discovery.
- 19 4. The Donlin Gold cultural resources specialist will notify the USACE,
20 the SHPO, local tribal entities, and appropriate landowner(s) (parties)
21 of the discovery within one business day.
- 22 5. The Donlin Gold cultural resource specialist will evaluate the find,
23 assess its potential significance (eligibility for the NRHP), and notify
24 the parties as to the nature and potential significance of the discovery
25 within three business days of the discovery.
- 26 6. The parties shall consult, by telephone or other means, on the nature and
27 potential significance of the discovery and whether any additional
28 investigation is warranted. A decision shall be provided to Donlin Gold no
29 later than two business days following notification of the determination as
30 outlined in Stipulation VIII.A.5.
- 31 i. If the USACE determines, in consultation with the SHPO and
32 the landowner, that the discovery is not significant (not eligible
33 for the NRHP) and the SHPO concurs, verbal authorization to
34 proceed may be given by the USACE. USACE shall provide
35 written authorization to Donlin Gold within 2 business days
36 following notification.
- 37 ii. If the USACE determines that additional investigation is
38 warranted, the Signatories, and Consulting Parties will
39 continue to consult to determine an appropriate level of effort
40 to determine the NRHP eligibility of the discovery.

41 B. If the discovery is determined to be eligible, Signatories will determine
42 whether effects to it may be avoided or minimized sufficiently to not
43 adversely affect the historic property. If the property will be adversely
44 affected, the USACE, in consultation with the Signatories and Consulting

1 Parties, will determine acceptable mitigation to offset the adverse effects
2 anticipated, considering the nature and extent of the historic property.
3 Signatories may choose to utilize the standard mitigation as outlined in
4 Stipulation VII.C, with additional details in Section 6.4 of the CRMP. A
5 decision on significance and use of standard mitigation shall be provided to
6 Donlin Gold by USACE no later than within two working days following
7 receipt of appropriate documentation as noted in Stipulation VIII.A.5
8 pursuant 36 C.F.R. § 800.11(e).

9 C. The USACE will treat the newly discovered property as eligible for the
10 NRHP for the purposes of Section 106 pursuant to 36 C.F.R. § 800.13(c)
11 until the appropriate cultural resource assessment is completed. The
12 USACE shall make a final decision in regard to NRHP eligibility and project
13 effects. If there is a dispute between the USACE and SHPO concerning the
14 NRHP eligibility of a resource, it would be resolved consistent with the
15 requirements in Stipulation VI.B.7 of this agreement.

16 D. If Standard Mitigation is not chosen, USACE will initiate expedited
17 consultation with BLM and Consulting Parties, that retain interests within
18 the ANCSA regional corporation boundaries where the affected site is
19 located (as listed in Appendix C of the PA). The Signatory Parties and
20 Consulting Parties will provide input to the USACE on appropriate
21 mitigation. The USACE and the BLM at their discretion, may expand the
22 Consulting Parties list to include adjacent interested parties not within the
23 ANCSA boundaries. The USACE will provide the final mitigation decision
24 no later than 30 days after initiating consultation. Construction may not
25 resume in the site protection/avoidance buffer (no less than 100 feet from
26 the site limits) until onsite mitigation work, if required, has been completed.

27 E. Following consultation amongst the Signatories, the USACE may revoke or
28 modify stop work orders, as determined appropriate and consistent with the
29 stipulations of this PA and its originating laws and regulations. The USACE
30 and the BLM, as applicable, shall have the right to issue, modify, and
31 revoke stop work orders with respect to their respective permits, right-of-
32 way grants, or other actions under their jurisdiction to ensure that
33 requirements of this PA have been met for that part of the undertaking
34 under their jurisdiction. USACE, or BLM as applicable, will document stop
35 work decisions to demonstrate how requirements of the PA have been met.

36 IX. TREATMENT OF HUMAN REMAINS

37 If human remains are discovered on federal lands, the USACE or the BLM will follow
38 the provisions of applicable state and local laws and NAGPRA (25 U.S.C. § 3001). If
39 human remains are discovered on state or private lands, provisions of the Human
40 Remains Plan of Action shall be followed. These procedures are included in Section
41 7.1 of the CRMP (Appendix D); as appropriate, a NAGPRA Plan of Action will be
42 prepared in accordance with this PA. Table 7.3 of the CRMP provides all necessary
43 contact information.

44 A. Prior to project ground-disturbing activities, all project personnel will
45 receive appropriate training that includes guidance on proper reporting of
46 inadvertent discovery of human remains.

- 1 B. If human remains are found during any phase of project-related work, as
2 soon as safe to do so, work will cease in their immediate vicinity and a 100-
3 foot buffer zone will be flagged or fenced off to protect the remains. Donlin
4 Gold's Cultural Resource Specialist (CRS), agencies, landowners, and
5 tribal entities will be immediately notified as per the provisions of the
6 CRMP.
- 7 C. The CRS will notify a peace officer (Alaska State Trooper) and the Alaska
8 SME immediately after the discovery, as stipulated in AS 12.65.005. If the
9 remains appear to be recent (less than 50 years old) in the judgment of the
10 CRS, a State Trooper and medical examiner will determine whether the
11 remains are of a forensic nature and/or subject to criminal investigation.
12 The local Village Public Safety Officer (VPSO) may also be notified.
- 13 D. The Alaska SHPO will also be notified of any discovery unless
14 circumstances indicate that the death or burial is less than 50 years old
15 and that there is a need for a criminal investigation or legal inquiry by the
16 coroner.
- 17 E. If the human remains are found to be historic in nature, a qualified
18 professional physical anthropologist with experience in the analysis of
19 human remains will examine them to determine racial identity. The physical
20 anthropologist shall document, analyze, and photograph the remains so
21 that an independent assessment of racial identity can be made. The
22 physical anthropologist shall be afforded no more than 30 days to conduct
23 his or her analysis.
- 24 F. For human remains and/or associated Native American cultural items on
25 federal or tribal lands, this plan of action will include consultation with the
26 appropriate tribe as mandated by 43 C.F.R. §10.5. Consultation will
27 facilitate proposed treatment of the human remains and determine who is
28 entitled to custody of the human remains and other cultural items under
29 NAGPRA so that the disposition process can be completed.
- 30 G. If the unanticipated discovery consists of Native Alaskan human remains,
31 Donlin Gold will consult with the Alaska SHPO, USACE, BLM, and
32 appropriate Alaska Native organizations regarding measures to respectfully
33 handle such a discovery. If it can be adequately determined that the
34 identified human remains have affinity to any federally recognized Tribe(s),
35 a reasonable effort will be made to identify, locate, and notify the Tribe.
36 The appropriate Alaska Native regional corporations also will be contacted.
- 37 H. If the human remains are not Native Alaskan, and a determination has
38 been made by the Trooper and Medical Examiner that a death
39 investigation is not warranted, Donlin Gold, in consultation with the medical
40 examiner, will attempt to identify, locate and inform descendants of the
41 deceased.

42 X. EMPLOYEE AND CONTRACTOR CULTURAL RESOURCES TRAINING

- 43 A. As discussed in the CRMP (Appendix D), Donlin Gold shall provide cultural
44 training to project personnel, contractors, and subcontractors. As
45 practicable, the training will be conducted in concert with existing

1 environmental, health and safety training, on the project during
2 construction and operations. The cultural resource training component will
3 inform project personnel of their responsibilities under the law, and clearly
4 list procedures to follow in the event they encounter previously
5 undiscovered cultural resources.

6 **XI. MONITORING AND STOP WORK ORDERS**

- 7 A. Donlin Gold shall ensure that an archaeologist meeting the qualifications of
8 the Standards and Guidelines (48 Fed. Reg. 44738-44739) is present in
9 areas of ground disturbing activity designated as high potential and
10 indicated on Exhibit C of the CRMP, consistent with the CRMP and
11 Stipulation V. Work in areas requiring archaeological monitoring will not
12 proceed without an archaeological monitor. The archaeologist will have
13 authority to halt ground-disturbing and construction activities as soon as is
14 practicable considering worker safety in the immediate vicinity of the
15 discovery in a manner consistent with Stipulations VIII and IX. The
16 archaeologist will be responsible for reporting the results of monitoring and
17 any recommendation that work be stopped at any point to protect historic
18 properties.
- 19 B. The results of monitoring shall be included in a report to the USACE, BLM,
20 and SHPO. This report shall be developed annually and can be included as
21 an appendix to the annual PA report.

22 **XII. COLLECTION AND CURATION**

- 23 A. Materials collected under this PA are the property of the appropriate state
24 or federal land managing agency, or landowner if collected from privately
25 owned property.
- 26 B. Donlin Gold shall incur all standard costs necessary to ensure curation of
27 materials collected in conjunction with actions taken under this PA, unless
28 other arrangements have been made, as per Exhibit A of the CRMP.
29 Curation costs may include, but are not limited to, curation fees charged by
30 approved institutions, acquisition of archival materials, shipping, and
31 conservation actions.
- 32 C. Donlin Gold, and associated contractors, will safeguard collections from
33 theft and damage by providing adequate interim storage facilities and
34 conservation actions, as necessary and in consultation with approved
35 repository and landowners or land managing agency.
- 36 D. All collections will be returned to their owners or deposited in the approved
37 repository 6 months after approval of the final report or within 1 year of
38 completion of the fieldwork that generated the collection. All collections will
39 be curation-ready, as determined by the approved repository, unless
40 otherwise stipulated per Exhibit A of the CRMP.
- 41 E. Federal agencies will curate any artifacts, materials, or records resulting
42 from archaeological identification and mitigation conducted on federal
43 lands under their jurisdiction in accordance with 36 C.F.R. Part 79,
44 "Curation of Federally-Owned and Administered Archaeological

1 Collections.” Federal agencies with jurisdiction over the federal lands will
2 consult with Indian tribes consistent with 36 C.F.R. Part 79.

3 F. On federally controlled or owned properties, the federal agency will
4 determine the disposition of human burials, human remains, and funerary
5 objects in accordance with applicable federal law, inclusive of NAGPRA.

6 G. Artifacts, faunal materials, and/or samples collected on State lands during
7 activities covered by this PA shall be deposited in the University of Alaska
8 Museum of the North, along with records, field notes, and related materials
9 in accordance with their curation procedures and requirements in force at
10 the time of submission of materials. A provisional curation agreement for
11 collections will be established during the State Archaeological Permitting
12 process and finalized prior to submission of collections to the University of
13 Alaska Museum of the North.

14 H. Donlin Gold will encourage and assist private landowners in donating any
15 returned artifacts to University of Alaska Museum of the North (Fairbanks)
16 in accordance with an agreement negotiated between landowners and the
17 Museum.

18 **XIII. ANNUAL REVIEW AND REPORTS**

19 A. Meetings

20 1. Annual Meeting: Donlin Gold will hold a meeting among all
21 Signatories annually, no later than April 15, to discuss each previous
22 year’s activities and activities scheduled for the upcoming year. The
23 parties may be linked by telephone or other means of electronic
24 communication by which each participant can communicate to and
25 receive communications from all other participants (e.g., web-based
26 multi-party conference services).

27 2. The draft annual report for the previous calendar year (see
28 Stipulation XIII.B shall be submitted by Donlin Gold to the other
29 Signatories by February 1 or at least 30 days prior to the annual
30 meeting.

31 3. Additional Meetings: If any Signatory deems a meeting necessary in
32 addition to the annual meeting described above, that party shall
33 inform the other Signatories, who shall consider the request in
34 consultation with the other parties. USACE will make the final
35 decision as to whether an additional meeting will be called.

36 4. Meeting Minutes: Donlin Gold shall provide the other Signatories a
37 draft of the meeting minutes within 15 calendar days of the date of
38 the meeting(s). The other Signatories can provide comments on the
39 minutes within 15 calendar days following the meeting. Donlin Gold
40 will revise the minutes and make available to the other Signatories
41 and Consulting Parties (upon request) the minutes of the meetings
42 described above within 15 calendar days following the end of the
43 comment period. If no comments are received then the draft
44 comments will be considered final.

1 5. The Signatories shall consult no later than on the five-year
2 anniversary from the Effective Date of this PA to review the
3 effectiveness of the PA and its implementation, and evaluate whether
4 the scope should be amended. The Signatories will conduct follow-up
5 consultation every five years thereafter to monitor the effectiveness
6 of the PA and identify any amendments necessary for continued
7 effectiveness.

8 B. Reports

- 9 1. Annual Report: Each year, prior to the annual meeting, Donlin Gold
10 will prepare and provide to the other Signatories a written report of
11 previous and upcoming activities as they relate to compliance with
12 the stipulations of this agreement. Consistent with 36 C.F.R. §
13 800.11(c) and Section 304 of the NHPA, sensitive cultural resources
14 information shall be confidential. The report will include the following:
- 15 i. A description of the past year's activities, including
16 presentation of and revisions to training materials;
 - 17 ii. A projection of the upcoming year's activities, including
18 information about possible permit modifications;
 - 19 iii. A summary of the past year's and anticipated upcoming efforts
20 to identify, evaluate, and protect historic properties, including
21 references for cultural resource reports;
 - 22 iv. A summary of any historic properties affected, as well as any
23 testing, remediation, or mitigation efforts;
 - 24 v. A summary of artifacts or other archaeological or historic
25 materials encountered, including representative photographs
26 or drawings, a description of analyses, and other recordation
27 documents as appropriate;
 - 28 vi. A summary of artifacts sent to an approved facility for curation,
29 or returned to the landowner, as appropriate;
 - 30 vii. Clear maps of areas surveyed or monitored, cultural resources
31 identified, and alternative routes to be followed to avoid any
32 identified historic properties; and
 - 33 viii. An evaluation of this PA and recommendations for any
34 amendments or changes.
 - 35 ix. An updated list of Signatories, Concurring Parties, and
36 Consulting Parties.
- 37 2. Cultural resource activities, such as archaeological surveys, site
38 evaluations, excavations, data recovery for mitigation, and
39 monitoring, will be documented in technical reports subject to review
40 by all Signatories. The scope and time parameters for these reports
41 shall be determined on a case-by-case basis through consultation
42 among the Signatories, but will be submitted for review no later than
43 1 year after completion of fieldwork or analysis.

- 1 3. Donlin Gold shall submit report drafts for annual and cultural
2 resource technical reports to the other Signatories for review and the
3 other Signatories will provide comments within 30 days of receipt by
4 other Signatories. Donlin Gold will revise reports based on
5 comments provided by the other Signatories and will submit final
6 reports to all Signatories within 30 days after the close of the
7 comment period. Subject to the confidentiality requirements of 36
8 C.F.R. § 800.11(c), the BLM or USACE may provide Consulting
9 Parties with copies of reports upon request.

10 **XIV. DISPUTE RESOLUTION**

- 11 A. Should any of the Signatories to this PA object at any time to any actions
12 proposed or the manner in which the terms of this PA are implemented, the
13 USACE will consult with such party to resolve the objection. If it is
14 determined that such objection cannot be resolved, the USACE will:
- 15 1. Forward all documentation relevant to the dispute, including the
16 USACE's proposed resolution, to the other Signatories. The
17 Signatories will consult to resolve the dispute within 30 calendar days
18 of receiving adequate documentation.
 - 19 2. If the dispute cannot be resolved through consultation among the
20 Signatories, then USACE will forward all documentation relevant to
21 the dispute to the ACHP. The ACHP will provide the appropriate
22 federal agency with its advice on the resolution of the objection within
23 30 calendar days of receiving adequate documentation. Prior to
24 reaching a final decision on the dispute, the appropriate federal
25 agency will prepare a written response that takes into account any
26 timely advice or comments regarding the dispute from the
27 Signatories, and provide them with a copy of this written response.
28 The USACE will then proceed according to its final decision.
 - 29 3. If the ACHP does not provide its advice regarding the dispute within
30 the 30 calendar-day time period, the USACE may make a final
31 decision on the dispute and proceed accordingly. Prior to reaching
32 such a final decision, the appropriate federal agency will prepare a
33 written response that takes into account any timely comments
34 regarding the dispute from the Signatories, and provide them and the
35 ACHP with a copy of such written response.
- 36 B. Concurring Parties and Consulting Parties (which includes members of the public)
37 may bring objections or concerns to any of the Signatories who may then utilize
38 the objections process outlined in Stipulation XIV.A.
- 39 C. All other actions subject to the stipulations of this PA, and that are not the subject
40 of the dispute, will continue to be carried out as provided for by this PA.

41 **XV. AMENDMENTS**

- 42 A. Any of the Signatories may request that the other Signatories consider
43 amending it, whereupon the Signatories shall consult to consider the
44 amendment(s). Amendments will be executed in the same manner as the

1 original PA. Concurring Parties may suggest proposed amendments to the
2 Signatories. The Signatories shall consult to consider them.

3 B. Appendix E of the PA has been reserved to log amendments, which will be
4 provided to the Signatories following each amendment.

5 C. Agreement Appendices: The Signatories may agree to amend the
6 appendices to this Agreement through consultation without requiring
7 amendment to the body of the Agreement, unless the Signatories, through
8 such consultation, decide otherwise.

9 1. Amendments to the PA appendices are allowed with written approval
10 of the Signatories. Amendments to the CRMP shall follow the
11 process outlined in Stipulation V.D. and V.E.

12 2. If the Signatories agree to amend an Agreement appendix, Donlin
13 Gold will obtain the written concurrences on the amendment from the
14 other Signatories, and the USACE will append the written
15 concurrences to the Agreement. USACE shall notify the Signatories
16 of the amendment within thirty (30) calendar days of the amendment
17 approval date.

18 **XVI. TERMINATION**

19 A. If any of the Signatories to this PA determines that its terms will not or
20 cannot be carried out, that Signatory shall immediately consult with the
21 other Signatories to attempt to develop an amendment or agreement on
22 other actions that would avoid termination. If within 30 calendar days after
23 the initiation of such consultation an amendment or agreement on other
24 actions that would avoid termination cannot be reached, any of the
25 Signatories may terminate the PA upon written notification to the other
26 Signatories.

27 B. If the PA is terminated, and prior to work continuing on the undertaking, the
28 USACE must either (a) execute an MOA pursuant to 36 CFR § 800.6 or
29 (b) request, take into account, and respond to the comments of the ACHP
30 in accordance with 36 C.F.R. § 800.7. The USACE will notify the
31 Signatories, Concurring Parties, and Consulting Parties as to the
32 determined course of action.

33 **XVII. CLOSING OUT THE AGREEMENT**

34 A. If prior to any physical work associated with the undertaking actually
35 beginning, the USACE decides not to permit the proposed undertaking, it
36 may no longer have any Section 106 responsibilities. If so, the USACE
37 may elect to vacate the agreement by sending written notice to all
38 Signatories, Concurring Parties, and Consulting Parties of the change in
39 circumstances and its decision to vacate the agreement.

40 B. If work related to the undertaking has already begun, the Signatories
41 cannot vacate the PA as provided in Stipulation XVII.A. and instead must
42 seek to amend its terms as provided in Stipulation XVI.A. to provide for the
43 changed circumstances. In this event, the Signatories will determine the

- 1 extent and duration of additional data collection activities and post-
2 fieldwork activities prior to closure of this PA.
- 3 C. When all of the terms of the PA have been carried out and the PA has
4 expired in accordance with its duration clause (Stipulation XXI), the
5 USACE will send written notice to the Signatories, Concurring Parties, and
6 Consulting Parties informing them to that effect.
- 7 D. If the terms of the PA have been met but the PA remains in effect due to a
8 longer duration clause, USACE should consider amending the agreement
9 to alter its duration clause, recognize the work completed, and provide for
10 the completion of its Section 106 responsibilities, following the amendment
11 process outlined in Stipulation XV.

12 XVIII. COORDINATION WITH OTHER FEDERAL REVIEWS

- 13 A. In the event that another federal agency not initially a party to or subject to
14 this PA receives an application for funding/license/permit for the
15 undertaking as described in this agreement, that agency may fulfill its
16 Section 106 responsibilities by stating in writing it concurs with the terms of
17 this PA and notifying the USACE, SHPO, and the ACHP that it intends to
18 do so.

19 XIX. COMMUNICATIONS

- 20 A. Electronic mail (email) will serve as the official correspondence method for
21 all communications regarding this Agreement and its provisions, unless
22 otherwise requested.
- 23 B. Donlin Gold will maintain the contact information list of Signatories,
24 Concurring Parties, and Consulting Parties as best practicable. Donlin Gold
25 will provide an updated list at each annual meeting.
- 26 C. It is the responsibility of each Signatory Party, Concurring Party, or
27 Consulting Party to immediately inform Donlin Gold of any change in name,
28 address, email address, or phone number of any point-of-contact. Donlin
29 Gold will forward this information to the Signatories by email.

30 XX. DURATION OF THIS PA

- 31 A. Unless otherwise amended, terminated, or closed in accordance with Stipulations
32 XV, XVI, or XVII, respectively, this PA will expire 30 years from the Effective Date.
33 Prior to expiration, the Signatories will consult to determine whether a new PA
34 should be developed or if the PA should be extended.

35 XXI. EFFECTIVE DATE

36 This PA shall be effective as of the date (the Effective Date) when it has been signed
37 (Executed) by the date of the last Signatory.

38 **EXECUTION** of this PA by the USACE, BLM, SHPO, and ACHP, and implementation of
39 its terms, evidences that the USACE and the BLM have taken into consideration the
40 effects of the Project on historic properties and afforded the ACHP an opportunity to
41 comment. By fulfilling the terms of this PA, these entities have satisfied their Section 106

1 responsibilities for all activities associated with the Donlin Gold Project, and the State has
2 satisfied its responsibilities under the Alaska Historic Preservation Act pursuant to AS
3 41.35.

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SIGNATORY SIGNATURE PAGE

PROGRAMMATIC AGREEMENT

PURSUANT TO SECTION 106 OF THE
NATIONAL HISTORIC PRESERVATION ACT

REGARDING THE
DONLIN GOLD PROJECT

U.S. Army Corps of Engineers

By:



Date:

6-12-18

David S. Hobbie, Chief Regulatory Program
U.S. Army Corps of Engineers

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SIGNATORY SIGNATURE PAGE

PROGRAMMATIC AGREEMENT

PURSUANT TO SECTION 106 OF THE
NATIONAL HISTORIC PRESERVATION ACT

REGARDING THE
DONLIN GOLD PROJECT

United States Department of the Interior, Bureau of Land Management

By:  Date: 6-19-18
Karen Mouritsen, Acting State Director, BLM Alaska
Bureau of Land Management

1 **SIGNATORY SIGNATURE PAGE**

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3 **PROGRAMMATIC AGREEMENT**

4
5 PURSUANT TO SECTION 106 OF THE
6 NATIONAL HISTORIC PRESERVATION ACT

7
8 REGARDING THE
9 DONLIN GOLD PROJECT

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12 Advisory Council on Historic Preservation

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15 By: _____



Date: _____

6/28/18

16 John M. Fowler, Executive Director
17 Advisory Council on Historic Preservation

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INVITED SIGNATORY SIGNATURE PAGE

PROGRAMMATIC AGREEMENT

PURSUANT TO SECTION 106 OF THE
NATIONAL HISTORIC PRESERVATION ACT

REGARDING THE
DONLIN GOLD PROJECT

Alaska Department of Natural Resources

By:  Date: 6/19/18
Andrew T. Mack, Commissioner
Alaska Department of Natural Resources

1 INVITED SIGNATORY SIGNATURE PAGE

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3 PROGRAMMATIC AGREEMENT

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5 PURSUANT TO SECTION 106 OF THE
6 NATIONAL HISTORIC PRESERVATION ACT

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8 REGARDING THE
9 DONLIN GOLD PROJECT

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12 Donlin Gold, LLC

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15 By: _____

16 Andy Cole, General Manager
17 Donlin Gold, LLC

Date: June 15, 2018

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CONCURRING PARTY SIGNATURE PAGE

PROGRAMMATIC AGREEMENT

PURSUANT TO SECTION 106 OF THE
NATIONAL HISTORIC PRESERVATION ACT

REGARDING THE
DONLIN GOLD PROJECT

Calista Corporation

By:  _____ Date: 6-18-18
Rosie Barr, VP Lands and Natural Resources
Calista Corporation

1 APPENDIX A: PROJECT AREA OF POTENTIAL EFFECTS

1 **APPENDIX B : DEFINITIONS**

2 Area of Potential Effects: The geographic area or areas within which an undertaking may
3 directly or indirectly cause alterations in the character or use of historic properties, if any
4 such properties exist. The area of potential effects is influenced by the scale and nature of
5 an undertaking and may be different for different kinds of effects caused by the
6 undertaking [as noted in 36 C.F.R. § 800.16(d)].

7 Concurring Parties: The signatory parties may agree to invite others (concurring parties) to
8 concur in the PA. The refusal of any party invited to concur in the PA does not invalidate
9 the PA, (as noted in 36 C.F.R. § 800.6(c)(3)).

10 Consultation: The process of seeking, discussing, and considering the views of other
11 participants, and, where feasible, seeking agreement with them regarding matters arising
12 in the section 106 process. The Secretary of the Interior’s “Standards and Guidelines for
13 Federal Agency Preservation Programs pursuant to the National Historic Preservation Act”
14 provide further guidance on consultation (36 C.F.R. § 800.16(f)).

15 Consulting Parties: Parties that have consultative roles in the Section 106 process, as
16 defined in 36 C.F.R. § 800.2(c). These include the SHPO, Indian Tribes (which include
17 native village, regional corporation, or village corporation, as those terms are defined in
18 section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. § 1602)), representatives
19 of local governments, Donlin Gold, individuals and organizations with a demonstrated
20 interest in the undertaking, and the public.

21 Cultural Resource: Locations of human activity, occupation, or usage that contain
22 materials, structures, or landscapes that were used, built, or modified by people.

23 Effect: Alteration to the characteristics of a historic property qualifying it for inclusion in or
24 eligibility for the NRHP (see 36 C.F.R. § 800.16(i)).

25 Eligible for inclusion in the National Register: This term includes both properties formally
26 determined as such in accordance with regulations of the Secretary of the Interior and all
27 other properties that meet the National Register criteria.

28 Environmental Impact Statement: An analysis of a major federal action’s environmental
29 impacts conducted under the auspices of NEPA.

30 Historic Property: Any prehistoric or historic district, site, building, structure, or object
31 included in, or eligible for inclusion in, the NRHP maintained by the Secretary of the
32 Interior pursuant to the criteria for evaluation set forth in 36 C.F.R. § 60.4.

33 Indian Tribe: An Indian tribe, band, nation, or other organized group or community,
34 including a native village, regional corporation or village corporation, as those terms are
35 defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. § 1602), which
36 is recognized as eligible for the special programs and services provided by the United
37 States to Indians because of their status as Indians,

38 Invited Signatory: The agency official may invite additional parties to be signatories to a
39 PA; any such party that signs the PA shall have the same rights with regard to seeking
40 amendment or termination of the agreement as other Signatories. The USACE has invited
41 Donlin Gold and the State to be a Signatory to this PA pursuant to 36 C.F.R. § 800.6(c)(2).
42 The refusal of any party invited to become a Signatory pursuant to paragraph (c)(2) does
43 not invalidate the PA.

1 National Register: The National Register of Historic Places maintained by the Secretary of
2 the Interior.

3 Qualified Archaeologist: An archaeologist that meets the Secretary of the Interior's
4 Standards and Guidelines for archeology (36 C.F.R. Part 61), which consist of, at a
5 minimum, a graduate degree in archeology, anthropology, or closely related field plus, at
6 least one year of full-time professional experience or equivalent specialized training in
7 archeological research, administration or management; at least four months of supervised
8 field and analytic experience in general North American archeology, demonstrated ability
9 to carry research to completion, and at least one year of full-time professional experience
10 at a supervisory level in the study of prehistoric or historic period archeology.

11 Signatories: In accordance with 36 C.F.R. § 800.6(c)(1), signatories have the sole
12 authority to execute, amend, or terminate the agreement.

13 State: In this document the term is used to specifically identify the Alaska
14 Department of Natural Resources.

15 Traditional Cultural Property: A property that is eligible for inclusion in the NRHP based on
16 its associations with the cultural practices, traditions, beliefs, lifeways, arts, crafts, or social
17 institutions of a living community. Traditional Cultural Properties (TCPs) are rooted in a
18 traditional community's history and are important in maintaining the continuing cultural
19 identity of the community. See <https://www.nps.gov/history/tribes/Documents/TCP.pdf>.

20 Undertaking: A project, activity, or program funded in whole or in part under the direct or
21 indirect jurisdiction of a federal agency, including those carried out by or on behalf of a
22 federal agency; those carried out with federal financial assistance; and those requiring a
23 federal permit, license or approval.

1 **APPENDIX C1: LIST OF FEDERALLY RECOGNIZED TRIBES INVITED TO**
2 **PARTICIPATE IN CONSULTATION (* indicates a response that they will**
3 **participate)**

4
5

6 **Calista Region**

7 Akiachak Native Community
8 Akiak Native Community
9 Village of Alakanuk*
10 Yupiit of Andreefski
11 Village of Aniak
12 Village of Atmoutluak
13 Orutsaramuit Native Village (aka
14 Bethel)*
15 Village of Bill Moore's Slough
16 Village of Chefornek
17 Chevak Native Village*
18 Native Village of Chuathbaluk*
19 Chuloonawick Native Village
20 Village of Crooked Creek*
21 Native Village of Eek
22 Emmonak Village
23 Native Village of Georgetown*
24 Native Village of Goodnews Bay
25 Native Village of Hamilton
26 Native Village of Hooper Bay*
27 Village of Kalskag*
28 Village of Lower Kalskag*
29 Kasigluk Traditional Elders Council
30 Native Village of Kipnuk
31 Native Village of Kongiganak
32 Village of Kotlik
33 Organized Village of Kwethluk*
34 Native Village of Kwigillingok
35 Lime Village
36 Native Village of Marshall (aka Fortuna
37 Ledge)*
38 Native Village of Mekoryuk
39 Asa'carsarmiut Tribe
40 Native Village of Napaimute
41 Native Village of Napakiak
42 Native Village of Napaskiak
43 Newtok Village
44 Native Village of Nightmute

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45 Native Village of Nunam Iqua
46 Native Village of Nunapitchuk*
47 Village of Ohogamiut*
48 Oscarville Traditional Village*
49 Native Village of Paimiut
50 Pilot Station Traditional Village
51 Native Village of Pitka's Point
52 Platinum Traditional Village
53 Native Village of Kwinhagak (aka
54 Quinhagak)
55 Village of Red Devil
56 Iqurmuit Traditional Council
57 Algaaciq Native Village (St. Mary's)
58 Native Village of Scammon Bay
59 Village of Sleetmute
60 Village of Stony River
61 Nunakauyarmiut Tribe
62 Tuluksak Native Community
63 Native Village of Tuntutuliak
64 Native Village of Tununak
65 Umkumiut Native Village

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67 **Doyon Region**

68 Anvik Village
69 Organized Village of Grayling
70 Holy Cross Village
71 McGrath Native Village
72 Nikolai Village
73 Shageluk Native Village
74 Takotna Village
75 Telida Village

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77 **Cook Inlet Region**

78 Knik Tribe*
79 Native Village of Tyonek*

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81 **Ahtna Region**

82 Tazlina Native Village*

1 **APPENDIX C2: LIST OF ALASKA NATIVE CORPORATIONS INVITED TO**
2 **PARTICIPATE IN CONSULTATION (* indicates a response that they will participate)**

3
4
5 **Calista Region**

- 6 Akiakchak Limited Corporation
7 Alakanuk Native Corporation*
8 Arviq Incorporated (Platinum)
9 Askinuk Corporation (Scammon Bay)
10 Atmautluak Limited Corporation
11 Azachorok Incorporated (Mountain Village)
12 Bethel Native Corporation*
13 Calista Corporation*
14 Chefarmute Incorporated (Cheformak)
15 Chevak Company
16 Chinuruk Incorporated (Nightmute)
17 Chuloonawick Corporation Deloycheet, Incorporated
18 Emmonak Corporation*
19 Iqfijouaq Company (Eek)
20 Kasiglukm Incorporated
21 Kokarmuit Corporation*
22 Kongnikilnomuit Yuita Corporation (Kotlik)
23 Kotlik Yupik Corporation
24 Kugkaktlik, Limited (Kipnuk)
25 Kuitsarak, Incorporated (Goodnews Bay)
26 Kwethluk Incorporated*
27 Kwik Incorporated (Kwigillingok)
28 Lime Village Company
29 Maserculiq, Incorporated (Marshall)*
30 Napakiak Corporation
31 Nerklikmute Native Corporation*
32 Newtok Native Corporation
33 Nima Corporation (Mekoryuk)
34 Nunakauiak Yupik Corporation (Toksook Bay)
35 Nunapigllurtaq Corporation (Kotlik)
36 Nunapitchuk Limited
37 Ohog Incorporated (Lower Kalskag)
38 Oscarville Native Corporation (Napaskiak)
39 Paimiut Corporation (Hooper Bay)
40 Pilot Station, Incorporated
41 Pitka's Point Native Corporation (St. Mary's)
42 Qanirtuuq, Incorporated (Quinhagak)
43 Qemirtalek Coast Corporation (Kongiganak)
44 Russian Mission Native Corporation*
45 Sea Lion Corporation (Hooper Bay)*
46 St. Mary's Native Corporation
47 Swan Lake Corporation (Nunam Iqua)
48 The Kuskokwim Corporation*
49 Tulkisamute Incorporated (Tuluksak)

- 1 Tuntutuliak Land Limited Corporation
- 2 Tununmiut Rinit Corporation (Tununak)*

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5 **Doyon Region**

- 6 Deloy Ges Incorporated (Anvik)
- 7 Doyon, Limited*
- 8 Hee-Yea-Lingde Corporation (Grayling)
- 9 MTNT, Limited (McGrath)*
- 10 Zho-Tse, Incorporated (Shageluk)

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13 **Cook Inlet Region**

- 14 Alexander Creek Native Corporation*
- 15 Cook Inlet Regional Incorporated*
- 16 Knikatu Incorporated (Knik)*
- 17 Tyonek Native Corporation*

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1 **APPENDIX C3: OTHER INVITED CONSULTING PARTIES (* indicates a response that**
2 **they will participate)**

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5 **Calista Region**

- 6 Association of Village Council Presidents*
- 7 City of Akiak
- 8 City of Alakanuk
- 9 City of Bethel*
- 10 City of Chefornak
- 11 City of Chevak
- 12 City of Chuathbaluk*
- 13 City of Eek
- 14 City of Emmonak
- 15 City of Goodnews Bay
- 16 City of Hooper Bay
- 17 City of Lower Kalskag
- 18 City of Upper Kalskag
- 19 City of Kotlik*
- 20 City of Kwethluk
- 21 City of Marshall
- 22 City of Mekoryuk
- 23 City of Mountain Village
- 24 City of Napakiak
- 25 City of Nightmute
- 26 City of Nunam Iqua
- 27 City of Nunapitchuk
- 28 City of Pilot Station
- 29 City of Platinum
- 30 City of Quinhagak
- 31 City of Russian Mission
- 32 City of Scammon Bay
- 33 City of St. Mary's
- 34 City of Toksook Bay
- 35 Yupiit Piciryarait Cultural Center

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38 **Doyon Region**

- 39 Alaska Native Language Center
- 40 Anvik Historical Society
- 41 City of Grayling
- 42 City of Holy Cross
- 43 City of McGrath
- 44 City of Nikolai
- 45 City of Shageluk
- 46 Tochak Historical Society

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49 **Cook Inlet Region**

- 1 Alaska Historical Society
- 2 Matanuska-Susitna Borough
- 3 Cook Inlet Historical Society
- 4 Iditarod Historic Trail Alliance*
- 5 Kenai Peninsula Borough
- 6 National Park Service, Alaska Regional Office
- 7

1 **APPENDIX D: CULTURAL RESOURCES MANAGEMENT PLAN**
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1 Appendix E (Reserved – Amendments)