

APPENDIX E

**PROGRAMMATIC AGREEMENT
AMONG
THE ENVIRONMENTAL PROTECTION AGENCY,
FOREST OIL CORPORATION
AND
THE ALASKA STATE HISTORIC PRESERVATION OFFICER,
REGARDING IMPLEMENTATION OF THE REDOUBT SHOALS OIL
EXPLORATION AND PRODUCTION PROGRAM**

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Whereas, Forest Oil Corporation (FOC) proposes to explore for, and develop oil reserves (the activity/activities) thought to be in the vicinity of the Redoubt Shoals of Cook Inlet, Alaska; and

Whereas, Federal permits, including a National Pollutant Discharge and Elimination System Permit (NPDES) and a Storm Water Construction Permit, are to be issued by the Environmental Protection Agency (EPA), this is considered a Federal undertaking; and

Whereas, the EPA is the lead federal agency responsible for the undertaking; and

Whereas, the area of potential affect includes those properties that Forest Oil activities will take place on, and adjacent properties that will be collaterally affected by those activities, in the general vicinity of the West Forelands of Cook Inlet - extending from the West McArthur River Production Facility at the southern end of Trading Bay to the southern tip of the West Forelands (specifically properties within T8N, R14W and T7N, R14W, Seward Meridian, U.S.G.S. Quadrangles Kenai C-5 and D-5); and

Whereas, these activities will include but are not limited to the construction of structures, roads, pipelines, drill pads, material sources, or other activities that will disturb the surface of the ground or otherwise have an effect on known or yet undiscovered historic properties; and

Whereas, it has been determined that these activities may have an effect upon properties included in, or eligible for inclusion in the National Register of Historic Places, including KEN-034 - the village of Kustatan; and

Whereas, the EPA consulted with the Advisory Council on Historic Preservation (Council) pursuant to Section 800.13 of the regulations (36 CFR 800) implementing Section 106 of the National Historic Preservation Act (16 USC 470f), and the EPA invited the Council to participate in the development of this Programmatic Agreement on May 24, 2000, and the Advisory Council on Historic Preservation declined in writing to participate in the development of this Programmatic Agreement on May 31, 2000; and

Whereas, as per Section 101(d)(6)(B) of the National Historic Preservation Act (NHPA) and the American Indian Religious Freedom Act (42 U.S.C. 1996; hereinafter AIRFA, the EPA has invited the Native Village of Tyonek , the Kenaitze Indian Tribe, Eklutna Native Village (IRA), the Knik Tribe, Chickaloon Native Village and Cook Inlet Regional, Inc. to participate in the consultation and to concur in this Programmatic Agreement); and

Whereas, EPA is also responsible for Government to Government Consultation with Federally recognized Tribal Governments in conjunction with Section 106 of the NHPA pursuant to Executive Order 13175, entitled Consultation and Cooperation with Tribal Governments (Nov 6, 2000); Executive Order 13007 entitled Sacred Sites; and Executive Order 12898 entitled Environmental Justice; and

Whereas, Salamatof Native Association, Inc.(SNA), as a landowner wishes to be considered a concurring party to in this Programmatic Agreement; and

Whereas, the Native Village of Tyonek (NVT), an affected Federally recognized Tribe, wishes to be considered a concurring party in this Programmatic Agreement; and

Whereas, the Kenaitze Indian Tribe (KIT), an affected Federally recognized Tribe, wishes to be considered a concurring in this Programmatic Agreement; and

Whereas, Cook Inlet Region, Inc. (CIRI), an Alaska Native corporation as provided by under the Alaska Native Claims Settlement Act of 1971 (ANCSA) wishes to be considered a concurring party in this Programmatic Agreement; and

Whereas, Eklutna Native Village (ENV), an affected Federally recognized Tribe, wishes to be considered a concurring party in this Programmatic Agreement; and

Whereas, Knik Tribe (KT), an affected Federally recognized Tribe, wishes to be considered a concurring party in this Programmatic Agreement; and

Whereas, Chickaloon Native Village (CNV), an affected Federally recognized Tribe, wishes to be considered a concurring party in this Programmatic Agreement; and

Whereas public participation in this agreement has been solicited and encouraged; and

Now, therefore, EPA, SHPO, FOC, SNA, NVT, KIT, CIRI, ENV, KT, CNV agree that the activities shall be administered in accordance with the following stipulations to satisfy EPA's Section 106 of the 1966 National Historic Preservation Act (*16 U.S.C 470f* - 36 CFR § 800) responsibility for all individual activities.

Stipulations

EPA will ensure that the following measures are implemented:

- I. Meetings/Briefings
 - A. Initial yearly meeting - A meeting of the EPA, SHPO, FOC and other interested parties shall be held in Anchorage each year to discuss the previous year's activities, and activities scheduled for the upcoming year. FOC will provide EPA, SHPO, and other concurring parties a written report of previous and upcoming activities as they relate to the EPA's Section 106 responsibilities. The parties may be linked by telephone if they so desire.
 - B. If any party deems a meeting necessary other than what is described above, that party shall inform the EPA, and they shall consider the request in consultation with SHPO.
 - C. FOC shall provide all signatories and interested parties the minutes of the meeting in a timely manner.

- II. Education
 - A. Yearly staff training
 1. Pertinent FOC Project Managers shall attend a yearly training session on the procedures regarding the identification of historic properties and cultural resources.
 2. The agenda of this training shall include, at a minimum, identification, discovery, and notification procedures when archaeological materials, human remains, historic buildings, structures, or parts thereof, are encountered.
 3. Additional training may be held to emphasize particular points or brief personnel who were unable to attend the original training.
 4. The training shall be conducted and attended by FOC's project archaeologist.
 5. FOC shall ensure that its contractors and personnel are advised against the illegal collection of historic and prehistoric materials, including human remains, and are familiarized with the scope of all applicable State and Federal laws and regulations.
 - B. Field training
 1. FOC shall ensure that all field staff receive an initial cultural resource briefing as part of their initial indoctrinational training, and receive recurrent training when working in areas that may be culturally sensitive.
 2. The briefing shall cover identification, discovery and notification procedures as per Stipulation XI (Discovery and Notification).
 3. The briefing shall be conducted by the project archaeologist or by field supervisors that have been trained by the project archaeologist.
 - C. Copies of Certificates of Training

FOC shall supply EPA as a supplement to the annual reports a list of personnel who received training and the types of training they received as per stipulation II A and B.

- III. Professional Qualifications

FOC shall ensure all archaeological and historical work is conducted by an archaeologist,

historian, architectural historian and/or historical architect meeting the qualifications of the Secretary of Interior's Standards and Guidelines (FR Vol. 48, No. 190, pp. 44738-44739). The technical expertise of the professional shall be an appropriate match for the field work

IV. Areas, Activities and Methods Requiring and Not Requiring Consultation

- A. FOC shall be required to consult with SHPO and EPA in any area where activities are to take place and have not been previously examined, or where EPA in deliberation with SHPO have determined the need for more extensive examination.
- B. FOC shall consult with SHPO and EPA for activities that include but are not limited to the construction of structures, roads, pipelines, drill pads, material sources, or other activities that disturb the surface of the ground or have an effect on historic properties in any area where activities are to take place and have not been previously examined, or where EPA in deliberation with SHPO have determined the need for more extensive examination.
- C. FOC shall not be required to consult with SHPO and EPA for activities that include, but are not limited to, trash removal, cadastral surveys, maintenance to existing facilities, and other activities that do not disturb the surface of the ground or have an effect on historic properties.
- D. FOC is not required to consult with SHPO and EPA for activities that take place in areas that EPA in deliberation with SHPO have determined to have previously received an adequate degree of examination.

V. Historic Property Identification and Assessment of Effect

- A. FOC shall make appropriate efforts to identify historic properties in those areas where FOC activities could affect historic properties and will follow the procedures and stipulations as set forth in 36 CFR § 800.4. These efforts may include, but are not limited to, background research, consultation, oral history interviews, and an appropriate level of field investigation.
- B. FOC's identification efforts shall be conducted under the supervision of the project archaeologist.
- C. When necessary, the EPA shall ensure that necessary field surveys are undertaken to identify historic properties that might meet the criteria for listing on the National Register of Historic Places (36 CFR § 63), and shall apply the criteria to each identified property. Surveys shall be conducted in consultation with the EPA and SHPO and will take into account the Secretary of the Interior's Standards and Guidelines for Identification and Evaluation (48 FR 44720-26).
- D. All discoveries of archaeological or historical materials or properties will be documented by FOC, and submitted to EPA and SHPO for review and consultation within three working days of the discovery.
- E. If a historic property has been determined eligible for inclusion on the National Register of Historic Places (NRHP), the EPA will make an assessment of adverse effect as per 36 CFR § 800.5. Written authorization from EPA will be required prior to FOC starting or resuming work in the area of the historic property. If EPA is unresponsive, then permission to precede may be given by the SHPO.

VI. Monitoring

- A. FOC shall ensure that an archaeologist will be present in areas of ground disturbing activity when the probability to uncover unidentified archaeological or historic sites is determined likely by the project archaeologist or SHPO.
- B. FOC's archaeological monitoring will be conducted under the supervision of the project archaeologist.
- C. Monitoring results will be included in an archaeological report to the EPA and to SHPO.
- D. FOC shall not be required to undertake archaeological monitoring for activities that occur in areas that EPA in consultation with SHPO have determined to have been adequately examined and are deemed unlikely to contain historical properties.

VII. Treatment of Archaeological and Historical Sites

- A. FOC shall ensure to the extent possible the avoidance of all known archaeological and historical sites.
- B. If disturbance is unavoidable, FOC's project archaeologist shall consult with EPA, SHPO, and other signatories of this PA as applicable within three working days of the discovery, on the extent of testing and/or recordation necessary to make a Determination of Eligibility to the national Register of Historic Places as per 36 CFR § 800.4, and then carry out that action.
- C. If the site is determined eligible for the NRHP and an effect is identified as per 36 CFR § 800.5 and 36 CFR § 800.9 a Mitigation Plan shall be developed by FOC's project archaeologist in consultation with SHPO and EPA. This Mitigation Plan shall include a research design with provisions for data recovery and recordation, analysis, reporting and curation.
- D. The SHPO and the EPA shall be given an appropriate time to review the mitigation plan and within 30 days of receipt of the mitigation plan shall provide written comments to FOC who shall incorporate these comments into the final version of the of the Mitigation Plan,
- E. Human remains and grave goods shall be handled by FOC's project archaeologist as per Stipulation IX (Human Remains and Grave Goods).
- F. FOC's archaeological analysis and reporting shall be in conformance with the Secretary of Interior's Standards and Guidelines for Archaeological Documentation (FR Vol. 48, No. 190, pp. 44734-44737).
- G. FOC's reports shall follow the provisions in Stipulation XV (Annual Review and Reports).
- H. FOC's project archaeologist shall ensure that recovered artifacts and archaeological materials are curated as per Stipulation X (Curation).

VIII. Treatment of Historic Structures and Buildings

- A. FOC shall ensure to the extent possible that all known historic buildings, structures or parts thereof shall be avoided.
- B. If it is impossible to avoid a known historic building or structure, or one is discovered in an activity's area of potential effect, the EPA will determine if it meets any of the criteria for listing on the National Register of Historic Places (as per 36 CFR § 63), and shall

apply the criteria to each identified property.

- C. If the building or structure is determined eligible for inclusion on the National Register of Historic Places, the EPA will make an assessment of adverse effect as per 36 CFR § 800.5 .
 - 1. If necessary, EPA shall direct FOC to develop a plan in consultation with EPA and SHPO to lessen the potential adverse effect.
 - 2. As per 36 CFR § 800, the Advisory Council shall be notified if the structure is eligible and shall be given the opportunity to comment on the proposed treatment.
 - 3. FOC shall be required to obtain written authorization from EPA prior to starting or resuming work in the area of the structure. If EPA is unresponsive, then permission to resume may be given by the SHPO.

IX. Human Remains and Grave Goods

- A. FOC shall ensure that no activity will knowingly disturb human burials or human remains, including fragmentary or isolated human remains.
- B. If human remains or graves are inadvertently discovered during the course of activities, all FOC activities in the immediate area shall cease until the remains are investigated by FOC's project archaeologist and consultation has taken place per items D and E below.
- C. Human remains shall be treated with dignity and respect.
- D. Following the inadvertent discovery of human remains, FOC shall immediately consult with the EPA, SHPO, and Alaska State Medical Examiner (SME) to determine the treatment and disposition of the remains.
- E. If the remains are believed to be recent or the result of criminal activities, FOC shall also immediately contact the Alaska State Troopers.
- F. If FOC's project archaeologist is not on site, FOC's field manager shall also immediately notify FOC's project archaeologist that human remains have been discovered.
- G. If any human remains or graves are discovered and avoided by FOC, the location of those discoveries shall be documented by FOC's project archaeologist and the information shall be conveyed to the EPA, SHPO, and applicable FOC field staff to avoid disturbance of the remains at a later date.
- H. FOC shall not disturb or re-enter any human remains until consultation as per items D and E has taken place and applicable state laws have been met.
- I. If, following consultation, the State Medical Examiner declines involvement in the investigation, the disposition of the remains shall be determined through consultation with the EPA, SHPO, and appropriate tribal and local governments.
- J. FOC's project archaeologist shall document all human remains and graves in a report of findings which shall include photos and maps as appropriate. Copies of the report shall be supplied to the EPA, who will distribute it to SHPO and the State Medical Examiner to facilitate consultation regarding the identification and disposition of the remains. If the State Medical Examiner and/or Alaska State Troopers choose to investigate, FOC shall preserve the integrity of the scene, and documentation shall only proceed under the direction of the State Medical Examiner and/or Alaska State Troopers.
- K. If it is not feasible to leave the remains in place in an undisturbed condition, FOC shall conduct or sponsor an investigation of the remains and associated grave goods to

ascertain estimations of postmortem interval, race, sex, biological age, trauma, disease, cause of death, and cultural practices. A report that includes the above information, along with basic measurements¹ and photographs, shall be provided to the EPA, SHPO, and SME to facilitate consultation regarding the final disposition of the remains and identification of additional consulting parties.

- L. If examination reveals that the remains are, or likely are Native-American, and are on Federal or Federal Trust lands, FOC shall comply with the provisions of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002 - 43 CFR §10: NAGPRA).

X. Curation

- A. The owners of the land where any artifact, other than grave goods, is found has first refusal rights of possession of that artifact after it has been documented by FOC's project archaeologist. FOC's project archaeologist will encourage private landowners to allow placement of the recovered artifacts in an appropriate repository and, at the discretion of the private landowner, will assist in locating an appropriate repository.
- B. FOC shall ensure that all artifacts, copies of field notes and other archaeological materials (other than grave goods as covered by Stipulation IX, B, 5 and privately owned artifacts as covered by Stipulation X, A) shall be curated in a repository that meets Federal standards as per 36 CFR § 79.

XI. Discovery and Notification

- A. Upon the discovery of a potential historic property, the FOC field manager will contact FOC's project archaeologist within 3 working days. Work shall immediately cease in the area of discovery and no work shall occur in the area until it is evaluated by FOC's project archaeologist.
- B. All discoveries of archaeological or historical properties or materials will be documented by FOC, and notification of these finds given to EPA and SHPO within 3 working days after the FOC's project archaeologist has evaluated the discovery.
- C. Once informed, FOC's project archaeologist, EPA and SHPO will consult on the discovery.
- D. If it is determined that the discovery is a historic property or human remains, then the provisions set forth in Stipulation VII (Treatment of Archaeological and Historical Sites), Stipulation VIII (Treatment of Historic Structures and Buildings) or Stipulation IX (Human Remains and Grave Goods) shall be followed as applicable by FOC.

¹ 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.

- E. FOC shall be required to obtain written authorization from EPA to resume work in the area of the discovery. If EPA is unresponsive, then permission to resume may be given by the SHPO.

XII. Dispute Resolution

- A. Should any party to this agreement object within 30 days of any report provided or actions proposed pursuant to this agreement, the EPA shall consult with the objecting party to resolve the objection. If the EPA determines that the objection cannot be resolved, the EPA shall forward all documentation to the Advisory Council. Within 30 days after receipt of all the pertinent documentation, the Advisory Council will either:
 - 1. Provide the EPA with recommendations, that the EPA will take into account in reaching a final decision regarding the dispute; or
 - 2. Notify the EPA that it will comment pursuant to 36 CFR § 800.6 (b). Any Advisory Council comment provided in response to such a request shall be taken into account by the EPA in accordance with 36 CFR § 800.6 (c) (2) with reference to the subject of the dispute.
- B. Any recommendation or comment provided by the Advisory Council shall be understood to pertain to the subject of the dispute; the EPA's responsibility to carry out all actions under this agreement that are not the subject of this dispute shall remain the same.
- C. At any time during implementation of the measures stipulated in this agreement, should an objection to any such measure or its manner of implementation be raised by a member of the public, the EPA shall take the objection into account, and consult as needed with the objecting party, the SHPO, FOC or the Advisory Council to resolve the objection.

XIII. Amendment

Any signatory party to this agreement may request the other signatories consider amending it, where then the parties will consider the proposed amendments. Amendments will be executed in the same manner as the original Programmatic Agreement.

XIV. Modification

In the event that modifications to this agreement are suggested that are considered minor, these modifications can be submitted to SHPO by the EPA. If SHPO concurs that these modifications are indeed minor and follow the treatment plan as outlined in this agreement, they can be incorporated into the agreement without the complete concurrence of all the signatories. If SHPO does not concur that these modifications are indeed minor and/or they do not follow the treatment plan as outlined in this agreement then consultation will be required between all signatories.

XV. Annual Review and Reports

- A. FOC will prepare an interim briefing document outlining FOC compliance with this PA 6 months after its implementation. Thereafter, FOC will prepare a complete report annually. FOC will submit the reports to the EPA, who will insure that the SHPO and other applicable parties receive copies at least one week prior to the annual meeting.
- B. This report will relate the past year's activities and a projection of the upcoming year's planned activities in their relationship to historic properties that are, or may be in the area

of potential effect.

- C. It shall include a description of any historic properties affected, along with any pertinent testing, remediation or mitigation efforts undertaken.
- D. If artifacts or other archaeological or historic materials were encountered the report will include their description, representative photographs or drawings, a summary of their analysis, and a report of their ultimate deposition or recordation..
- E. The SHPO will review the annual reports and provide comments to the EPA. At the request of any party to this agreement, a meeting or meetings will be held to facilitate review and comment, to resolve questions, or to resolve comments that are adverse.
- F. Based on this review, the parties will determine whether this agreement will continue in force, be amended or be terminated.
- G. Certain archaeological surveys and special excavation or testing efforts may require individual reports not within the normal reporting cycle in order to facilitate decision making processes. The time frame for these reports will be determined on a case-by-case basis by the EPA in consultation with the SHPO and FOC.

XVI. Expiration

This PA shall continue in full force until December 31, 2005. At any time in the six-month period prior to this date, the EPA may request the Advisory Council, SHPO and FOC in writing to review the EPA's program and consider an extension or modification of this PA. No extension or modification will be effective unless all parties to the PA have agreed to it in writing.

XVII. Termination

EPA, SHPO or FOC may terminate this PA by providing thirty (30) days notice to the other parties, provided that the other parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the EPA will, again, seek the comments of the Advisory Council pursuant to 36 CFR § 800.4 through § 800.6.

XVIII. Forest Oil Concurrence to Programmatic Agreement

As a signatory to this agreement, FOC hereby acknowledges and commits to implement all mitigation measures to protect cultural and historic properties outlined in this Programmatic Agreement, or those that may be deemed necessary by the Section 106 process of the National Historic Preservation Act. If the applicant does not follow through with any mitigation measures deemed warranted by this PA or through the Section 106 process, or initiates the process resulting in the termination of this PA, the EPA may terminate the permits issued to Forest Oil pursuant to 40 CFR 122.64(A) (2).

XVIII. Sunset Stipulation

If the terms of this agreement have not been implemented by June 1, 2004 this agreement shall be considered null and void. In such event the EPA shall notify the parties to this agreement, and if it chooses to continue with the undertaking shall reinstate review of undertaking in accordance with 36 CFR 800.

Execution and implementation of this Programmatic Agreement evidences that EPA has satisfied its Section 106 responsibilities for all individual undertakings of the program.

Environmental Protection Agency	Date
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Alaska State Historic Preservation Officer	Date
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Forest Oil Corporation	Date
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Concur:

Kenaitze Indian Tribe (IRA)	Date
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Cook Inlet Regional, Inc.	Date
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Eklutna Native Village	Date
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Knik Tribe	Date
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Chickaloon Native Village	Date
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Salamatof Native Association, Inc.	Date
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