



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, ALASKA
P.O. BOX 6898
ELMENDORF AFB, ALASKA 99506-0898

Environmental Resources Section

Honorable Denise Michels
Mayor
City of Nome
P.O. Box 281
Nome, AK 99762

AUG 24 2011

RECEIVED

AUG 31 2011

CITY OF NOME
CLERKS DEPARTMENT

Dear Mayor Michels:

Enclosed please find an original, signed copy of the final draft of the *Memorandum of Agreement Among the U.S. Army Corps of Engineers, Alaska State Historic Preservation Officer, City of Nome, and Nome Eskimo Community, Regarding the Nome Navigation Improvements Project at Nome, Alaska*. The purpose of the memorandum of agreement is to mitigate for adverse effects to the National Register eligible archaeological site NOM-00146 that occurred during excavation of a harbor channel through the Snake River Sandspit and placement of rock along that channel.

As per Stipulation XIII, this MOA is now effective and will remain in effect until terminated in accordance with Stipulation X or until August 12, 2016 (five years after execution). If you have any questions, please contact Corps archaeologist Ms. Kelly Eldridge at (907) 753-2641 or by e-mail: kelly.a.eldridge@usace.army.mil.

Sincerely,

Michael R. Salyer
Chief, Environmental Resources Section

Enclosure

Original, signed copy of the *Memorandum of Agreement Among the U.S. Army Corps of Engineers, Alaska State Historic Preservation Officer, City of Nome, and Nome Eskimo Community, Regarding the Nome Navigation Improvements Project at Nome, Alaska*

Cc w/out Enclosure

Josie Bahnke, City Manager, City of Nome
Laura Samuelson, Museum Director, City of Nome

**Memorandum of Agreement
Among the U.S. Army Corps of Engineers,
Alaska State Historic Preservation Officer,
City of Nome, and Nome Eskimo Community,
Regarding the Nome Navigation Improvements Project
at Nome, Alaska.**

- 1 WHEREAS, the U.S. Army Corps of Engineers, Alaska District (Corps) and the City of Nome (City) undertook the construction of harbor improvements in Nome, Alaska; and
- 2 WHEREAS, the Corps determined the area of potential effects (APE) in compliance with Section 106 of the National Historic Preservation Act [36 CFR § 800.4(a)(1)]; and
- 3 WHEREAS, in 1998 the Corps determined that construction of these harbor improvements had no potential to affect historic properties on or eligible for listing in the National Register of Historic Places (NRHP), and the Alaska State Historic Preservation Officer (SHPO) concurred; and
- 4 WHEREAS, in 2005 the Corps discovered an archaeological site, NOM-00146 (Snake River Sandspit Site), within the APE during the course of the project; and
- 5 WHEREAS, the Corps notified the SHPO, the Nome Eskimo Community (NEC), and the City of the discovery and of the Corps' determination that NOM-00146 was not eligible for the NRHP, and the SHPO concurred; and
- 6 WHEREAS, in 2006 additional loci of NOM-00146 were discovered by the Corps during the course of the project within the APE; and
- 7 WHEREAS, the Corps assumed NOM-00146 eligible for the NRHP under criterion D [36 CFR § 800.13(c)]; and
- 8 WHEREAS, the Corps determined that the entrance channel and the placement of a rock revetment along the entrance channel over the top of NOM-00146 would constitute an adverse effect; and
- 9 WHEREAS, the Corps notified the SHPO, NEC and the City of the discovery and of the Corps' determination of adverse effect [36 CFR § 800.13(b)(3)]; and
- 10 WHEREAS, construction had already commenced and the Corps determined that archaeological data recovery in the form of excavation would minimize adverse effects [36 CFR § 800.13(b)(3)]; and
- 11 WHEREAS, in 2006 NOM-00146 was excavated by the Corps and community volunteers utilizing applicable standard methods outlined in the 'Secretary of the Interior's Standards and Guidelines for Archeological Documentation' [48 FR 44716]; and

- 12 WHEREAS, a formal determination of the eligibility of NOM-00146 for the NRHP was made in 2007 in consultation with the SHPO, NEC, and the City; and
- 13 WHEREAS, the Corps notified the Advisory Council on Historic Preservation (ACHP) regarding the adverse effects on the properties eligible for the NRHP and the ACHP declined to participate in this memorandum of agreement (MOA); and
- 14 WHEREAS, NOM-00146 was excavated on City property, and the City has been invited to be a signatory to this MOA and has accepted; and
- 15 WHEREAS, the Carrie M. McLain Memorial Museum, which is operated by the City, is the current repository for artifacts excavated from NOM-00146 and all accompanying documents; and
- 16 WHEREAS, in 2007 Scott Carrlee, the Curator of Museum Services for the Alaska State Museum and a Fellow of the American Institute for Conservation, viewed the storage of the collection of artifacts from NOM-00146 and provided curation advice to the Carrie M. McLain Memorial Museum; and
- 17 WHEREAS, in 2007 the Carrie M. McLain Memorial Museum researched, designed and completed an exhibit on NOM-00146, taking the curation advice provided by Scott Carrlee into consideration; and
- 18 WHEREAS, the NEC, a federally recognized tribe and the Tribe culturally affiliated with NOM-00146 and the items recovered from it, has been invited to be an invited signatory to this MOA and has accepted; and
- 19 WHEREAS, Bering Straits Native Corporation, an Alaska Native organization which provides services throughout the Bering Straits Region, has been invited to participate in the development of this MOA and has accepted; and
- 20 WHEREAS, Kawerak, Incorporated, an Alaska Native organization which provides services throughout the Bering Straits region, has been invited to participate in the development this MOA and has declined; and
- 21 WHEREAS, Sitnasuak Native Corporation, an Alaska Native organization which provides services throughout the Bering Straits region, has been invited to participate in the development this MOA and has accepted; and
- 22 WHEREAS, NOM-00146 was a post-review discovery and the Corps is therefore required to provide the SHPO, NEC and the ACHP with a report of the actions taken to resolve the adverse effect on NOM-00146 once they are completed [36 CFR § 800.13(b)(3)]; and

- 23 WHEREAS, in 2009 the City, Corps and University of Alaska Anchorage (UAA) entered into a loan agreement involving the faunal remains recovered from NOM-00146 in which it was agreed that UAA would not restore, repair, fumigate, or perform destructive testing on the faunal remains; and
- 24 WHEREAS, in 2009 the City and NEC entered into agreement that, in the event human remains are discovered by UAA over the course of their studies, the City will immediately transfer ownership and physical possession of the remains to NEC; and
- 25 WHEREAS, this MOA applies only to the Nome Navigation Improvements Project in Nome, Alaska;
- 26 NOW, therefore, the Corps, NEC, SHPO, and City agree that the following stipulations will be met in order to resolve the adverse effects that the undertaking had on NOM-00146 [36 CFR § 800.13(b)(3)].

STIPULATIONS

The signatories will ensure that the following stipulations are implemented:

I. DATA RECOVERY REPORT

- A. The Corps will prepare a data recovery report outlining the excavation, analysis, interpretation, and importance of NOM-00146. The Corps shall ensure that the report is responsive to professional standards and to the *Secretary of the Interior's Format Standards for Final Reports of Data Recovery Programs* [42 CFR § 5377-79]. A draft outline of the report can be found in Appendix A.
1. The City will provide access to the archaeological collection for analysis. For the purposes of this report, NEC shall be consulted prior to the loaning or destructive testing of any materials in the collection.
 2. The NEC will share information regarding the history, purpose, use and meaning of the objects in the archaeological collection in order to increase understanding of NOM-00146 and the people that inhabited it.
 3. A summary of results from archaeological monitoring in 2005 and 2006 will be included as an appendix in the final data recovery report.
- B. The Corps will update the Alaska Heritage Resource Survey (AHRS) record for NOM-00146 after completion of the data recovery report. A draft of the AHRS record will be sent to the signatories for review prior to its filing.

II. CURATION

- A. The City shall ensure that all artifacts, faunal remains, original field notes, and related materials be accessioned to the Carrie M. McLain Memorial Museum.

- B.** The City and the Carrie M. McLain Memorial Museum shall curate the archaeological collection from NOM-00146 currently in its possession in accordance with the Secretary of Interior's professional standards [36 CFR § 79] to the best of their ability to ensure the integrity of the collection.
- C.** In consultation with the City and NEC, the Corps will provide for an accredited museum conservator to visit the museum and provide expert advice on the conservation and curation of the NOM-00146 artifacts on display in the updated exhibit at the Carrie M. McLain Memorial Museum (Stipulation III).

 - 1. A summary of the conservator's activities at the museum will be provided to the parties of this agreement by the Corps in its annual report for that year (Stipulation VII).
- D.** A Corps archaeologist will assist the City with the accessioning of artifacts from NOM-00146 during analysis for the Data Recovery Report. The Corps will complete the following:

 - 1. Bag all artifacts and faunal remains in acid-free polyethylene bags with zip-lock-type closures,

 - a) With the exception of any artifacts or faunal remains larger than the largest manufactured acid-free polyethylene bag.
 - 2. Catalog the artifacts from NOM-00146.
 - 3. Photograph the artifacts from NOM-00146.
 - 4. Catalog the faunal remains from NOM-00146.

III. MUSEUM EXHIBIT

- A.** The City and NEC will be responsible for updating the museum exhibit currently on display in the Carrie M. McLain Memorial Museum. The City and NEC may determine if an alternate location will be used.

 - 1. The Corps will provide a display case to the Carrie M. McLain Memorial Museum to be used solely for exhibit of the NOM-00146 artifacts while this MOA is in effect. The City will provide the artifacts for the display. The display case will provide for adequate humidity and temperature control. The Corps will consult with and receive approval from the City on display case construction and design. Upon its arrival in Nome, the display case will become City property.
 - 2. Data garnered from additional analyses and interviews (as available in the Data Recovery Report) will be incorporated, in consultation with NEC,

with the original research completed by the Carrie M. McLain Memorial Museum in 2007 for exhibit in the new display case.

a) NEC and the City will cooperatively determine text for labels.

IV. PUBLIC OUTREACH ACTIVITIES

A. Public/Educational Presentations

1. A Corps archaeologist will, in consultation with NEC, the City, and SHPO, present information learned from NOM-00146 to the general public in Nome via a public lecture before the expiration of this MOA.
2. A Corps archaeologist will, in consultation with NEC, the City, and SHPO, prepare a summary of the information learned from NOM-00146 in such a manner that the manuscript can be used by Nome teachers to present to students in grades 5-12.

B. Professional Presentation

1. A Corps archaeologist will, in consultation with NEC and the City, present information learned from NOM-00146 to a conference of peers, such as the Annual Meeting of the Society for American Anthropology, the Annual Meeting of the Alaska Anthropological Association, or an equivalent venue.

C. Professional Publication

1. A Corps archaeologist will, in consultation with NEC, SHPO and the City, submit an article about NOM-00146 for publication in a peer-reviewed journal.
 - a) If the article is not accepted for publication in a peer-reviewed journal, it will be published elsewhere.

V. TIMING AND SUBMITTALS

A. Archaeological Data Recovery Report:

1. The Corps shall submit one printed and one digital copy of the draft archaeological data recovery report to each of the signatories to this agreement no later than December 2011. One digital copy shall be submitted to the concurring parties. Upon receipt, the parties to this agreement shall have 45 days to review the draft and submit comments to the Corps.
2. The Corps shall take into consideration comments by NEC, the City, and SHPO, as well as comments by the concurring parties.

3. Submittal of the final data recovery report will occur no later than 90 days after receipt of comments. Final report submittals will consist of:

- a)** Three printed color copies and one digital copy submitted to each of the SHPO, City, and NEC; and
- b)** Two printed color copies and one digital copy submitted to both Bering Straits Native Corporation and Sitnasuak Native Corporation; and
- c)** Two printed color copies submitted to each of the following: Alaska State Library, Alaska Resource Library and Information Service, Kegoayah Kozga Library.

4. With the above timeline taken into consideration, the Corps shall submit the final data recovery report to the signatories and concurring parties to this MOA no later than June 2012.

B. Museum Exhibit:

- 1.** The City and the Corps will ensure that the updated museum exhibit goes on display before the expiration of this agreement.

C. Public Outreach Activities

- 1.** The Corps will commence with the public presentation as described in stipulation IV of this agreement, within 60 days of submittal of the final data recovery report.

- a)** Before commencement, NEC will have the opportunity to redact any culturally sensitive information from the public presentations.

- 2.** The Corps shall submit one printed and one digital copy of the draft journal article to the signatories to this agreement no later than 30 days after submittal of the final archaeological data recovery report. Upon receipt, the signatories to this agreement shall have 45 days to review the draft and submit comments to the Corps.

- a)** The Corps shall take into consideration comments by NEC, SHPO, and the City. NEC will have the opportunity to redact any culturally sensitive information from the article.

- b)** The Corps will submit one hard copy each of the journal containing the peer-reviewed article to all parties to this agreement upon its publication.

- 3.** The Corps shall submit one printed and one digital copy of the draft teacher summary to each of the signatories to this agreement no later than

30 days after submittal of the final archaeological data recovery report. Upon receipt, the signatories to this agreement shall have 45 days to review the draft and submit comments to the Corps.

VI. PROFESSIONAL STANDARDS

All work pursuant to this MOA will be developed by or under the supervision of a person or persons meeting the minimum professional qualifications as appropriate, listed in the *Secretary of the Interior's Professional Qualification Standards [36 CFR § 61, Appendix]*.

VII. ANNUAL REPORTING REQUIREMENTS

The Corps will provide the parties to this agreement an annual report that summarizes the Corps' actions under this MOA by December 31 for every year this MOA is in effect.

A. Annual reports will include the following information

1. A printed copy of the yearly interim report outlining the efforts and accomplishments of the year.
2. Summary of all actions taken under this MOA, including status of meeting all stipulations.
3. List of actions scheduled for coming year.
4. Signature of preparer of document.
5. Recommendations to amend this MOA or improve communications among the parties.

B. Review of Annual Report: The parties to this agreement may review each report and provide review comments to the Corps.

1. The parties to this agreement may request additional documentation or further explanations from the Corps.
2. The parties to this agreement must comment and/or request additional documentation within 45 calendar days of receipt of the Corps' report, otherwise, acceptance will be presumed. Received comments will be used by the Corps to determine if the MOA requires amendment.

VIII. RESOLVING OBJECTIONS

- ### **A. Should any party to this MOA object in writing to the Corps regarding any action carried out or proposed with respect to the implementation of this MOA, the Corps shall consult with the objecting party and other parties.**

1. If after initiating such consultation the Corps determines that the objection cannot be resolved through consultation, it shall forward all documentation relevant to the objection to the ACHP, including the Corps' proposed response to the objection.
 2. Within 30 calendar days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:
 - a) Advise the Corps that the ACHP concurs with the Corps' proposed response to the objection, whereupon the Corps will respond to the objection accordingly.
 - b) Provide the Corps with recommendations, which the Corps shall take into account in reaching a final decision regarding its response to the objection.
 - c) Notify the Corps that the objection will be referred to the ACHP membership for formal comment and proceed to refer the objection and comment within 45 calendar days. The Corps shall take the resulting comment into account.
 3. Should the ACHP not exercise one of the above options within 30 calendar days after receipt of the pertinent documentation, the Corps may assume the ACHP's concurrence in its proposed response to the objections.
- B.** The Corps shall take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; the Corps' responsibility to carry out all actions under this MOA that are not the subjects of the objection shall remain unchanged.
- C.** At any time during implementation of any stipulation in this MOA, should an objection to any such stipulation or its manner of implementation be raised by a member of the public, the Corps shall take the objection into account and consult as needed with the objecting party, the ACHP, and the SHPO to address the objection.

IX. AMENDMENT

Any signatory to this MOA may request that this MOA be amended, whereupon all signatories will consult with Corps in accordance with *36 CFR § 800.6 (c)(7)* to consider such amendment.

- A.** In particular, the parties will consider the information developed in Corps' reports under Stipulation VII to determine if the Corps can effectively or efficiently carry out activities to support its mission through amendment to this MOA.
- B.** No amendment shall take effect until the Council and the other signatories have signed and executed the amendment.

X. TERMINATION

Any signatory to this MOA may propose to terminate this MOA by providing 30-calendar days notice to the other signatories explaining the reasons for the proposed termination.

- A. The Corps will consult with the other parties during this period to seek agreement on amendments or other actions that will avoid termination.
- B. In the event of termination, the Corps will request comments of the ACHP under *36 CFR § 800.7(a)(1)*.

XI. ANTI-DEFICIENCY ACT

All requirements set forth in this MOA requiring the expenditure of Corps funds are expressly subject to the availability of appropriations and the requirements of the Anti-Deficiency Act (31 U.S.C. Section 1341). No obligation undertaken by the Corps under the terms of this MOA will require or be interpreted to require a commitment to expend funds not obligated for a particular purpose.

- A. If the Corps cannot perform any obligations set forth in the MOA due to the unavailability of funds, the parties to this MOA intend the remainder of the agreement to be executed.
- B. In the event that any obligation under the MOA cannot be performed due to the unavailability of funds, the Corps agrees to utilize its best efforts to renegotiate the provision.

XII. MUTUAL AGREEMENTS AND UNDERSTANDINGS

- A. Neither the signatures nor content of this MOA has any bearing on the ownership of the objects recovered from NOM-00146 or any party's position on that issue.
- B. Points of Contact for Signatories and Concurring Parties are as follows

U.S. Army Corps of Engineers

Mr. Aaron Wilson

District Archaeologist

U.S. Army Corps of Engineers, Alaska District

CEPOA-EN-CW-ER (Wilson)

P.O. Box 6898

Joint Base Elmendorf Richardson, Alaska 99506

Phone: (907) 753-2631

Email: aaron.k.wilson@usace.army.mil

Alaska SHPO

Ms. Judith Bittner
Alaska State Historic Preservation Officer
Alaska Department of Natural Resources
Office of History and Archaeology
550 W. 7th Avenue, Suite 1310
Anchorage, Alaska 99501
Phone: (907) 269-8721
Email: judy.bittner@alaska.gov

City of Nome

Ms. Josie Bahnke
City Manager
City of Nome
P.O. Box 281
Nome, Alaska 99762
Phone: (907) 443-6601
Email: jbahnke@nomealaska.org

Nome Eskimo Community

Ms. Denise Barengo
Executive Director
Nome Eskimo Community
P.O. Box 1090
Nome, Alaska 99762
Phone: (907) 443-2246
Email: dbarengo@gci.net

Bering Straits Native Corporation

Mr. Matt Ganley
Land and Resources
Bering Straits Native Corporation
P.O. Box 1008
Nome, Alaska 99762
Phone: (907) 443-5252
Email: matt@beringstraits.com

Sitnasuak Native Corporation

Ms. Crystal Andersen-Booth
Chairman
Sitnasuak Native Corporation
P.O. Box 905
Nome, Alaska 99762
Phone: (907) 443-2632
Email: cabooth@snc.org

XIII. DURATION

This MOA shall become effective upon execution by the signatories to this MOA and shall remain in effect until terminated in accordance with Stipulation X or until five years after it becomes effective.

Execution of this Memorandum of Agreement and implementation of its terms is evidence that the Corps has afforded the parties to this agreement an opportunity to comment on the Nome Navigation Improvements project and its effects on historic properties, and that the Corps has taken into account the effects of the project on historic properties.

SIGNATORIES:



12 Aug 11

Reinhard W. Koenig
Colonel, Corps of Engineers
District Commander, Alaska District



6-2-2011

Judith Bittner
Alaska State Historic Preservation Officer

INVITED SIGNATORIES:



8/2/11

Denise Michels
Mayor
City of Nome



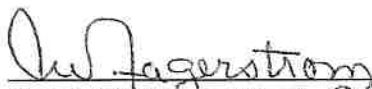
Cynthia Ahwinona
President
Nome Eskimo Community

CONCURRING PARTIES:



8/4

Gail Schubert
President and CEO
Bering Straits Native Corporation



~~Crystal Andersen Booth~~ CHARLES W. FAGERSTROM
~~Chairperson and Acting President/CEO~~
Sitnasuak Native Corporation

APPENDIX A
Archaeological Data Recovery Report, Draft Outline

- I Introduction
- II Environment
 - a. Physical
 - b. Biological
- III Culture History
 - a. Culture history
 - b. Previous archaeological and anthropological work in area
- IV Methods
 - a. Research design
 - b. Monitoring plan
 - c. Excavation methods
 - d. Laboratory methods
 - e. Analytical methods
- V Site Description
 - a. Site maps, features, excavation area
- V Artifact Analysis (Stone/Ivory/Antler/Bone/Wood Tools, Ceramics)
 - a. Distribution
 - b. Frequencies
 - c. Photographs and artifact illustrations
- VI Faunal Analysis
 - a. Taxa
 - b. Distribution
- VII Discussion
 - a. Seasonality, diet, hunting technology, mobility, etc.
 - b. Identify and describe groups of similar artifacts and their use in Inupiaq culture
 - c. Importance of the site to Inupiaq culture and the prehistory of the Bering Strait region
- VIII Conclusion

REFERENCES CITED

APPENDIX A – Artifact catalog
APPENDIX B – Photographic plates and illustrations