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June 27, 2011

VIA MESSENGER

Victoria J. Rutson
Director
Office of Environmental Analysis
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Finance Docket No. 35095, The Alaska Railroad Corp. – Petition for Exemption From 49 U.S.C. § 10901 To Construct And Operate A Rail Line Extension To Port MacKenzie, Alaska

Dear Director Rutson:

I am writing on behalf of the Alaska Railroad Corporation (ARRC) and the Matanuska-Susitna Borough (MSB) in response to the Office of Environmental Analysis (OEA)'s request for a written response to issues raised in comments on the Final Environmental Impact Statement (EIS) for the Port MacKenzie Rail Extension Project. The key issues are addressed in the body of this letter, and additional responses are contained in an Appendix. In addition, as requested in your letter, I am providing copies of various permit application packages that ARRC has submitted in connection with the project.

Terminal Reserve Location

Several commenters note that ARRC recently has proposed a change in the location of the "terminal reserve" for the Mac East Variant, which the Final EIS selected as the preferred alternative for the project.¹ These commenters argue, among other things, that the Board should prepare a Supplemental EIS addressing the new location of the terminal reserve.

Background

It is true that ARRC has proposed moving the terminal reserve from the location in the Port District identified in the Final EIS to a new location approximately 2.2 miles to the north. This new location is within the Point MacKenzie Agricultural Area, rather than the Port District. ARRC identified this new location while working to obtain a Section 404 Clean Water Act permit

¹ The Mac East Variant included in the Final EIS was developed when OEA, in response to comments received following publication of the Draft EIS, asked ARRC to consider alignments between the original Mac East and Mac West alternatives. Final EIS at 2-11, 2-13.

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from the U.S. Army Corps of Engineers (the Corps). In cooperation with the Corps, ARRC has determined that moving the terminal reserve will reduce impacts to waters of the U.S. by approximately 34 acres. Indeed, ARRC understands that the Corps is prepared to declare the Mac East Variant with the new terminal reserve location the least environmentally damaging practicable alternative (LEDPA). This is precisely the role that the Final EIS envisions for the Corps. See Final EIS at S-48.

Some commenters suggest that because the new location of the terminal reserve is within the Agricultural Area, it will automatically represent a significant change in land use. That assumption is unfounded. At the present time, the acreage that is proposed for the new location of the terminal reserve largely consists of active and fallow hay fields. Moreover, to the extent that commenters are complaining about their land being taken for another use—an understandable concern—they are raising an issue that will be resolved through the land acquisition process. OEA has provided for land owner protection in these right-of-way measures with the recommendation of mitigation measure #44 binding the ARRC to pursue right-of-way in accordance with the Federal Uniform Relocation Act, the Real Property Acquisition Policy Act, and reasonable portions of state statutes.

When considering any of the comments concerning the terminal reserve location, it is vital to recognize that the terminal reserve is not going to be a 200-acre, full time, full service rail yard. To accommodate all reasonably foreseeable future traffic, ARRC plans to construct a passing track, three short sidings, and a crew-change/maintenance building to provide shelter for minor running repairs. Activities on the reserve will be far from frequent; ARRC anticipates that the running repairs will be infrequent, and the sidings will be used primarily for the storage of excess unit-train equipment rather than the active classification of freight. The remainder of the reserve will provide an adequate buffer zone between these activities and the surrounding community, and would allow room for possible expansion should unforeseeable traffic develop.

Even without considering the limited scope of activities that will occur on the terminal reserve, it is clear that a change in its location will not lead to significant noise or other environmental impacts. With respect to potential noise impacts, ARRC's consultants have prepared a map showing the location of all potential sensitive receptors in the vicinity of the relocated terminal reserve (see Attachment 1).² As that map indicates, two of the structures are within the new reserve location, and therefore will be addressed during the right-of-way acquisition process.

The Board's environmental rules establish certain thresholds for noise analysis,³ as shown below:

² For the purposes of identifying potential sensitive receptors, all structures visible on aerial photographs were evaluated, regardless of whether or not they were residences.

³ 49 CFR § 1105.7(e)(6).

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System Component	Noise Analysis Threshold
Rail Line Segments	Increase of 8 trains per day, or 100 percent increase in annual gross ton-miles
Rail Yards, Facilities	100 percent increase in carload activity per day
Truck Traffic	Increase of 50 trucks per day, or 10 percent increase in average daily traffic volumes on any affected road segment

Source 49 CFR 1105.7(e)(6)

If these activity thresholds are exceeded, the Board requires a determination as to whether the Proposed Transaction will cause an incremental noise-level increase of at least 3 dB on an Ldn basis, or the noise level rises to 65 dB (Ldn) or more. If either of these thresholds is met, the Board requires that sensitive receptors (e.g., schools, libraries, hospitals, residences, retirement communities, and nursing homes) in the area be identified, and the projected noise increase for these receptors be determined. See 49 C.F.R. § 1105.7(e)(6)

HDR reviewed digital aerial photographs in an attempt to determine the location of noise-sensitive land uses within the study area. HDR also performed windshield surveys to determine if additional receptors exist in the study area that were not on the aerial photographs, see Attachment 2. Based on the proposed volume of traffic, HDR calculated the distances representing a 3-dBA increase and also the 65 dBA Ldn for both wayside and locomotive horn noise. Those distances are:

Noise Contour of Interest	Distance from rail line (and total width) in feet	
	Wayside Noise	Horn Noise at Grade Crossing
65 dBA Ldn	80 (160)	215 (430)
3 dBA increase	234 (468)	630 (1,260)

Based on a review of aerial photographs and windshield surveys of the study area, analysis results indicate that no noise-sensitive receptors (as defined by STB) are projected to experience a 3-dBA increase and an Ldn of 65 dBA due to the proposed project.

The various comment letters also allege that the relocation of the terminal reserve would have land use impacts. In fact, the right-of-way for the terminal reserve would encompass approximately 246 additional acres of land in the Agricultural Area (only a fraction of which is proposed for development in the foreseeable future). ARRC is currently working with the affected property owners as part of the right-of-way process. And while access at Reddane Avenue through the proposed terminal reserve area will no longer exist, adequate access will be provided so property owners can still access portions of their lands bisected by the relocated terminal reserve. In the event that access cannot be adequately provided, they are protected as they entitled to just compensation under federal and state relocation policies as prescribed in mitigation measure #44 recommended by OEA.

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Certain comments also claimed that moving the terminal reserve would have an impact on air traffic operation. There are four private airstrips—three wheel plane runways and one sea plane base on Falcon Lake—that are registered with the FAA within the vicinity of the terminal reserve (see Attachment 2). Pursuant to *FAA Part 77 Section 13 (a)(5), Construction or Alteration Requiring Notice*, these airstrips are neither listed for public use, nor do they appear in the FAA directory. Therefore, no official notification is required. In any case, assuming that the height of the embankment and rail line in the terminal reserve would not exceed 30 feet, and that all utility lines would be buried (a permit-level change that ARRC has already committed to), each of the airstrips would have at least 70 feet of clearance above the terminal reserve, as shown below (see Attachment 2 for the location of each airstrip):

AirStrip	Distance from Terminal Reserve	Clearance over Terminal Reserve	Airstrip Direction	Impact
1	1420	75 foot	Northeast/Southwest	None
2	3120	N/A	North/South	None
3	5220	261 foot	East/West	None
4	1400	N/A	North/South	None
4	1400	70 foot	East/West	None

Legal Authority

As relevant here, the Council on Environmental Quality (CEQ) regulations implementing NEPA require supplementation of a Draft or Final EIS when a federal agency makes substantial changes in its proposed action that are relevant to environmental concerns. 40 C.F.R. § 1502.9(c). In determining whether such a “change[] in the proposed action” requires supplementation of an EIS, courts consider (1) whether the environmental impacts associated with the change may be “substantial” or “significant”; and (2) whether the impacts are different from those considered in the existing NEPA analysis or are uncertain. *North Idaho Comm. Action Network v. U.S. Dep’t of Transp.*, 545 F.3d 1147, 1153-54, 1157 (9th Cir. 2008) (requiring supplement if change “may result in significant environmental impacts in a manner not previously evaluated and considered”); see also *Price Rd. Neighborhood Assoc. v. U.S. Dep’t of Transp.*, 113 F.3d 1505, 1508-09 (9th Cir. 1997) (requiring supplementation if environmental impacts are “significant or uncertain” and not evaluated in earlier EIS).

Moreover, when the change in question minimizes the project’s impacts on the environment, the responsible agency “is not automatically required to redo the entire environmental analysis.” *Sierra Club v. U.S. Army Corps of Eng’rs*, 295 F.3d 1209, 1221 (11th Cir. 2002). Rather, “[a] supplemental EIS is required only when . . . changes in the project will have a significant impact on the environment that has not previously been covered by the original EIS.” *Id.* (internal brackets and quotation marks omitted). In other words, supplementation of an EIS is not required unless a change in the proposed action “may result in **significant** environmental impacts . . . not previously evaluated and considered.” *North Idaho*,

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545 F.3d at 1157 (emphasis added; internal quotation marks omitted). To determine whether significant impacts requiring preparation of a supplement are possible, "an agency may prepare an environmental report (such as a reevaluation)" *Id.*

Summary

The terminal reserve is being moved to reduce impacts to waters of the U.S. The new location is along the Mac East Variant right-of-way that was selected as the preferred alternative in the Final EIS. A reevaluation of potential noise and land use impacts performed by ARRC shows that the new location of the reserve will not have significant environmental impacts. Thus, the Board is not required to prepare a supplemental EIS document.

Modified Connector 3 Location

As contemplated by the mitigation measures in the Final EIS, several other minor permit-level design modifications have also been proposed to avoid or minimize impacts to wetlands and their ecological/hydrological functions. One of those refinements was made along a remote section of Modified Connector 3 of the Preferred Alternative (see Attachment 3). The route was realigned in a more direct and easterly location than presented in the EIS to lessen wetland and anadromous fish stream impacts. By straightening the alignment, the 3 mile section was reduced in length by 0.5 miles, accounting for a 4 acre reduction in wetland impacts and providing a more suitable (i.e., lower impact) stream crossing location with fewer areas of sensitive, off-channel salmon rearing habitat.

Considering the environmental and social impacts evaluated under the EIS, the realigned section of Connector 3 offers no new significant impacts. It is within close proximity and generally parallels the EIS corridor. Notable differences include:

- By using a more direct route, the length is reduced by approximately 0.5 miles
- The same stream is crossed, in a location generally similar in both size and character, but approximately one mile upstream. Additional field studies in 2010 indicate that the EIS crossing is situated in a highly sinuous location where numerous off-channel pools support salmon rearing habitat, whereas the new location is less sinuous and has fewer areas available for rearing, making it a more desirable location in terms of lessening impacts to both the water body itself and the wetland complexes located immediately adjacent to the water body.

Many of the same contiguous wetland complexes are crossed. The types are similar and their associated functions are similar in performance.

Noise-sensitive receptors (as defined by the Board) in the vicinity of Modified Connector 3 were identified by reviewing digital aerial photographs and also performing windshield surveys of the study area (see Attachment 3). The results of that review indicate that no noise-sensitive

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receptors are projected to experience a 3-dBA increase and an Ldn of 65 dBA due to alignment shift in Modified Connector 3.⁴

Additional permitting level changes to the alignment of Modified Connector 3 were made following working with individual property owners in the area. Meetings with Cook Inlet Regional Corporation coupled with an unhappy property owner whose dog training and hunting operation would be bisected by the rail line led to the southernmost shift in this alignment. This southern alignment shift of Modified Connector 3 also impacts less private property and more MSB owned property.

There are no significant changes to land use or property ownership in the vicinity of the northernmost Modified Connector 3 shift. No private lands are impacted by either alignment. The northern shift, however, has fewer wetlands impacts, as discussed further in other portions of this letter.

Cumulative and Indirect Impacts from Coal Exports and Coal Transport

One comment letter, signed by Sierra Club and several other environmental groups, focuses most of its attention on the EIS's supposed failure to address cumulative and indirect impacts associated with the potential shipment of coal through Port MacKenzie. According to this letter, the Port MacKenzie Rail Extension project "would cause additional mining and resource extraction . . . and a subsequent increase in coal burning and export." In addition, the Sierra Club letter claims that the "[t]ransportation of coal over long distances also has significant environmental impacts," including the burning of fuel, mercury pollution from coal-fired power plants, and coal dust contamination. A closer examination of these claims, however, reveals that none is supported by enough evidence to justify Sierra Club's request for a Supplemental EIS.

Additional Coal Mining

As an initial matter, Sierra Club incorrectly asserts that construction of the rail extension would lead to additional coal mining—and eventually additional coal burning. In support of this claim, Sierra Club points first to a sentence on page 1-4 of the Final EIS indicating MSB's belief that the project "would make the development of existing natural resources . . . more economically feasible." But Sierra Club's conclusion that the project would cause more coal mining does not follow from the statement it cites in the Final EIS.

NEPA requires consideration of environmental impacts that "are caused by the action and are later in time or farther removed in distance, but still reasonably foreseeable." 40 C.F.R. § 1508.8(b). When an effect is "neither imminent nor inevitable," however, it is not reasonably foreseeable for purposes of NEPA. *Airport Impact Relief, Inc. v. Wykle*, 192 F.3d 197, 206 (1st

⁴ One structure is located approximately 390 feet from the proposed grade crossing at Ayrshire Avenue within the 630 foot range for Horn Noise at Grade Crossings. This parcel is owned by the Alaska Pipeline Company and supports a small structure not used as a residence.

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Cir. 1999); see also *Ground Zero Center for Non-Violent Action v. U.S. Dep't of Navy*, 383 F.3d 1082, 1090 (9th Cir. 2004). Furthermore, it is not enough that the project in question is part of a long-term master plan (see *Airport Neighbors Alliance, Inc. v. United States*, 90 F.3d 426, 431 (10th Cir. 1996)), or is an item in the long-term capital budget of a municipality (see *Northwest Bypass Group v. U.S. Army Corps of Eng'rs*, 552 F. Supp. 2d 97, 127 (D.N.H. 2008)). As the First Circuit has explained, a project that is "contingent on several events that may or may not occur" in a several year time frame is not reasonably foreseeable for purposes of NEPA's requisite indirect impact analysis. *Airport Impact Relief, Inc.*, 192 F.3d at 206.

The belief that this project will make mining more economically feasible does not mean that increased mining is a **reasonably foreseeable** result of the project. The Final EIS is simply explaining that a new rail line will lower some of the economic hurdles to resource development in the Alaska interior. Obviously, the fact that mining would become somewhat easier does not mean that new mining projects are either "imminent" or "inevitable." Indeed, even with the rail extension in place, any increase in mining is contingent on so many uncertain events that it does not begin to approach the "reasonably foreseeable" threshold.⁵

The cases cited by Sierra Club do not call for a different conclusion. The Eight Circuit's decision in *Mid-States Coalition for Progress v. Surface Transportation Board*, 345 F.3d 520 (8th Cir. 2003), involved construction of a rail line specifically intended to haul coal from existing mines. Indeed, the planned rail line at issue in *Mid-States* would have taken 100 million tons of coal annually from the Powder River Basin to numerous coal-fired power plants in the Midwest. *Id.* at 548. Here, as stated above, the transport of coal from new sources is not reasonably foreseeable, and the transport of such vast quantities of coal is completely inconceivable. The other case cited by Sierra Club—which involved indirect impacts from the actual operation of power plants (see *Border Plant Working Group v. Department of Energy*, 260 F. Supp. 2d 997 (S.D. Cal. 2003))—is even further afield. Neither case compels the Board to perform additional environmental analysis in the present circumstances.

Coal Dust

Citing studies performed by BNSF Railway, Sierra Club argues that construction of the Port MacKenzie Rail Extension would result in coal dust contamination. But Sierra Club ignores the numerous, important ways in which the climate and other conditions in Alaska differ from the conditions under which coal is normally shipped in the lower 48 states. For example, the coal transport trains operated by ARRC typically travel at speeds between 30 and 40 miles-per-hour, approximately half of the speeds used elsewhere. In addition, the coal in Alaska comes out of the ground wet, and remains wet while it is being shipped by rail. Both of these factors tend to

⁵ Sierra Club quotes from MSB's Port MacKenzie Master Plan update to support its argument, even though that document merely says that coal shipments "could" be transported over the rail extension. In any case, under the applicable legal authority, the Master Plan is insufficient to support the conclusion that increased coal shipments are reasonably foreseeable. The newspaper article cited by Sierra Club is an even less reliable source for predicting future shipments on the rail line.

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reduce the amount of coal dust generated during shipment. ARRC consequently has not experienced significant depositions of coal dust along its existing right-of-way—a fact that OEA implicitly recognized in response to earlier comments regarding coal dust. See Final EIS at 23-190 (“OEA is not aware of any environmental problems resulting from ARRC’s current bulk material transport practices and, therefore, sees no reason to expect such problems in association with the proposed rail line.”).

Moreover, for reasons discussed above and in the Final EIS, “the commodities to be shipped” on the proposed rail extension “are unknown at this time.” Final EIS at 23-190. The market for Port MacKenzie includes bulk materials like wood chips, cement, sand and gravel; iron and steel materials; vehicles; heavy equipment; and modular buildings. *Id.* at 1-3. Because MSB, which operates the Port, has requested that ARRC provide rail service, ARRC is responding to the needs of a customer in constructing the proposed rail line extension. These factors do not imply that an increase in coal mining or change in the routing of existing coal shipments is presently anticipated. Accordingly, it is speculation to claim that the project will result in new or significant impacts from coal dust.

Conclusion

The changes that ARRC has made to the preferred alternative identified in the Final EIS are intended solely to reduce the impacts of the Port MacKenzie Rail Extension project. For all the reasons discussed above, ARRC and MSB are convinced that these changes do not represent a substantial change to the project, nor will they have any significant impact on the environment. Accordingly, ARRC and MSB do not believe that it is necessary for the Board to perform a supplemental environmental review.

Should you have any questions about the material in or attached to this letter, or about the permit application package that was submitted separately, please do not hesitate to contact us.

Sincerely,


Kathryn Kusske Floyd

Encl

cc: Brian Lindamood
Elizabeth Gray

APPENDIX

EPA Concerns

Wetlands Impacts

As noted above, ARRC has been working closely with both the Corps and EPA during the permit application process to address concerns related to impacts to waters of the U.S., as well as aquatic resources. In accordance with Section 404(b)(1) of the Clean Water Act, ARRC and its consultant have developed an analysis for the project to evaluate which alternative might be the LEDPA. Drafts of this analysis were submitted to both the Corps and EPA in January and March 2011 for review and comment. The Section 404 Permit Application was determined complete by the COE and went out for public notice on May 12, 2011. On June 9 the USACE issued an extension of the public notice to end on July 13, 2011.

ARRC continues to work with the Corps to address EPA's concerns. Recent meetings have unveiled that EPA's concerns have less to do with the accountancy of gross areas of impact, and more with the data interpretation associated with the functional assessment. Such analytical detail is beyond the scope of the EIS (see Final EIS at S-48), and has been appropriately noted by OEA. The regulatory responsibility for wetland impact evaluation lies with the Corps, and that agency has considered the work performed by ARRC to date sufficient to post the permit application for public comment. EPA's concerns should and will be addressed by Corps during the project permit process—and in fact, that is already happening.

Rationale for Including Access/Maintenance Road in Project Design

In its May 2, 2011, comment letter on the Final EIS, EPA expressed "serious concerns regarding . . . the absence of analysis of an alternative without a full-length permanent access road."

As it has explained before, a full-length access or maintenance road is a critical element of the new rail line, essential for both construction and maintenance. Access roads or widened embankments are a standard part of any new rail line construction for two primary purposes. First, a 40-foot roadway embankment top width is essential for the construction of the new line. Second, after construction, the wider roadway surface provided ARRC with a parallel maintenance road immediately adjacent to the track structure. Either of these functions more than justifies the construction of the 40-foot roadway bed top width, but when considered together it is simply not practicable and not reasonable to build and operate the rail line without the full-length access/maintenance road. Therefore, the EIS appropriately screened out alternatives that did not meet ARRC design standards.

Construction Requirements

Modern railroad construction includes a roadway earth filled embankment, upon which subballast is placed. The actual track structure consisting of track, ties, and ballast is then constructed on the subballast. This design is able to accommodate the very heavy loads typically on today's railroads. The typical cross section for a single track railroad requires a roadway embankment top width of approximately 28 feet. The means, the methods and the equipment used in modern railroad construction are vastly different than those used decades

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ago when the original Alaska Railroad was constructed. Today railroad construction requires the use of very large earthmoving and track laying machinery. A railroad is narrow corridor, and construction typically commences at one (or more) location and proceeds in a linear fashion. In essence it can be thought of as an assembly line that moves or progresses along the railroad corridor. There are specific steps, such as clearing, grading, roadbed construction, building and installing drainage structures, subballast installation, and track construction that all are ongoing at the same time at different locations along the new rail line. Because of the linear nature of the construction and since equipment staging, material stockpiling, and access for construction workers are at limited locations along the new rail corridor, it is essential that the construction zone allow for the two way movement of worker, materials, and equipment. ARRC will accomplish this two way traffic during the construction by adding essentially 12 feet to the edge of the minimum necessary footprint required for the just the track structure. Absent this 12 foot shoulder, ARRC would be required to construct a new parallel temporary construction access road near the new rail line. This construction access road would require a top width of approximately 24 feet and depending on the soils and roadway depth would generally have an overall foot print of a minimum of 30 feet. The temporary access road would potentially have far greater impacts than incorporating the construction access road into the railroad embankment.

Maintenance Requirements

It is standard practice to leave those roads or widened portion of embankment in place after the rail line is complete, because access to the rail line is needed for maintenance of the track and rail bed, emergency access to the line, and other miscellaneous needs. Absent a maintenance road, ARRC would be either limited to track mounted equipment to maintain the railroad, or would be required to construct a new access road. However, it is important to note that not all of the regular maintenance work on the track necessary for safe operation can be performed using rail-mounted equipment. Using track mounted equipment means that when maintenance occurs no trains can operate on the railroad. In other words the capacity of the new rail line is substantially decreased as a result of maintenance activities. A parallel maintenance access road decreases the amount of time that maintenance equipment occupies the new rail line and preserves the capacity of the new line. Most new rail line construction incorporates a maintenance road into the design of the new rail line. For example, both UP Railroad and BNSF Railway standard designs include a maintenance road and specific roadbed top widths of between 40 and 42 feet. A widened embankment in lieu of a road results in fewer environmental impacts and makes operation of the adjacent rail line more efficient and safer for all involved.

Construction and Maintenance

Wide embankments for the existing rail line do not exist in most locations for the simple reason that constructing a widened embankment in Alaska's terrain at the time of initial railroad construction was logistically and technically impracticable, and there have been no significant rail extension construction projects since the mid 1940s. Other new rail lines across the country

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typically include construction of a widened embankment sometimes in excess of 40 feet for safety and maintenance purposes.

The lack of an access road or wider embankment on the existing mainline has increased maintenance costs and negatively affected ARRC's ability to respond to emergency situations. In response, permanent access roads have been constructed in selected locations adjacent to the existing mainline track over the past 20+ years, and a permanent access road or widened embankment is now standard practice for new ARRC rail construction. Not only is the widened embankment used during initial construction it is vital to conducting regular maintenance activities. For all of these reasons, the Corps should not alter the preferred alternative with regard to the need for a widened embankment.

In the same manner that ADOT&PF cannot design roads to 1920 standards due to a heightened awareness of safety and significant changes in vehicle designs, ARRC cannot be held to the design and construction practices and standards of a facilities constructed over 90 years ago.

If a portion of the proposed 40-foot top of embankment is removed following the construction of the rail line, there may be a need to construct portions of roadway or periodically construct temporary work pads along the alignments for maintenance and emergency line repairs. Continual building and removal of work pads and roadways could represent a greater impact to wetlands and other resources along the rail corridor which increases projects costs and impacts to sensitive wetlands and wildlife habitat. To reduce the project impacts to sensitive habitat, a widened embankment rather than a separate access road is planned, keeping the embankment footprint to a minimum. Constructing the access road in this manner also mitigates potential impacts to moose due to collisions, EIS Voluntary Mitigation Measure 18. The widened embankment provides additional room for moose to escape the railway vehicle envelope.

Costs associated with construction of an access road on a shared embankment are less than costs of removal and reconstruction of the road for maintenance over the life of the rail line. Impacts to area wetlands are anticipated to be less significant if areas are not redisturbed at regular intervals for routine maintenance over time. Construction and unexpected maintenance of the rail line considering existing technology and logistics cannot be accomplished without an appropriate means of accessing the alignment. Based upon anticipated costs over the life of the rail line, existing technology and logistics, it has been determined practicable to include a shared embankment access road for all evaluated alternatives.

Emergency and Safety Concerns

The lack of an access road or widened embankment which allows for access on the existing mainline has negatively affected ARRC's ability to respond to emergency and safety situations and decreases ARRC's overall emergency preparedness for incidents such as:

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- Onboard illness or injury requiring hospitalization
- Stalled trains requiring transfer of passengers to other modes of transportation
- Response fatalities or injuries to railway workers
- Evacuation of passengers
- Derailment or collision
- Severe weather conditions/natural disasters
- Security situations (bomb threat, hijacking, shooting or other acts of terrorism); and
- Response times to spills or other incidents that result in negative environmental affects

The absence of an access road for the existing rail line has caused significant delays in responding to spill related incidents and resulted in decreased response times for cleanup efforts. The construction and use of a permanent access road is an integral part of the project because it will serve the public's interest by significantly adding to the prevention of accidents and casualties, decrease response time for spills and natural disasters, and significantly increase safety conditions for railway workers, passengers and security situations.

Public Use and Access

ARRC will not maintain the embankment for public use; sufficient access is maintained at official crossing locations through the embankment. As the widened embankment will run immediately adjacent to the rail line, this would be both impractical and unsafe as a public use corridor. To prevent trespassing, ARRC will set up barriers at likely points along the embankment and will monitor the embankment periodically. Tickets will carry fines starting at \$1,000 for individuals trespassing on ARRC property or within the ROW of the Alaska Railroad. An existing public information campaign informs people of the potential dangers and consequences of using any portion of the rail corridor as an alternative transportation route.

Summary

EPA is concerned that the EIS did not evaluate an alternative that did not include a full-length access road. ARRC believes that a full-length access/maintenance road is critical for the safe and efficient construction, operation, and maintenance the new rail line and that alternatives not including the access/maintenance road are simply neither reasonable nor practical, and therefore do not need to be included in the EIS. Given the ever increasing regulation over on-track vehicles by FRA, it is simply no longer feasible to provide the level of maintenance and inspection required of the railroad track from the track itself. While it is easy for EPA and others to point to large portions of ARRC's system, built between 1907 and 1923, which does not have similar access, the fact is that those same people would not be expected to drive on roadways which have not been improved in the last 100-years, nor drive vehicles which have not evolved since the 1920's. Furthermore, the original line was largely built by hand and with horse-drawn machinery with wanton disregard for safety or short- and long-term environmental impacts. It is not reasonable or even feasible in certain cases, to expect a railroad to be constructed and maintained in the present regulatory environment yet incorporate

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design standards and practices employed 100-years previous. It is more than a matter of expedience, but an issue of safety which cannot be weighed by a marginal reduction of wetland impacts.

Alaska Department of Fish and Game Comments on Mitigation Measures

ARRC and their consultant, HDR, have been working closely with ADF&G to make certain that fisheries and moose concerns were appropriately addressed during the permitting process.

Moose Concerns

As there is not a permit application process that drives moose mitigation, moose mitigation measures were addressed during the coastal consistency evaluation process under the ADNR, Alaska Coastal Management Program (11 AAC 112), scheduled to be shut down effective July 1, 2011. This process involved both ADNR and ADF&G and has included several meetings and iterations of the Coastal Project Questionnaire and Consistency Evaluation Application, which includes agreed upon moose mitigation measures. The following information has been included and agreed upon by the ADF&G, ADNR and ARRC during this evaluation (Page 18 of the Coastal Project Questionnaire and Consistency Evaluation):

'A working group was developed between the USFWS, ADF&G, and the ARRC to develop mitigation strategies to avoid, minimize and mitigate for impacts to moose in the project corridor. The following mitigation measures were identified.

- *ARRC will discourage growth of moose browse along new ROW to avoid attracting moose.*
- *ARRC will construct and maintain an embankment wide enough to allow moose a place to retreat on one side when a train passes to reduce the potential for moose strikes.*
 - *During winter months the embankment will be plowed to allow space for the animals to retreat as time permits.*
- *Portions of the embankment such as the southern portion through the agricultural district and the northern portion through the Miller Reach burn will be low-profile through fairly flat open areas which allows for a good line of sight for both moose and the train operators.*
- *Some of the planned crossing structures will be constructed to allow for moose passage and others due to height also present possible moose passage opportunities.*
- *Train crews report every moose (by ARRC milepost) that is struck. Field salvage crews report specific information on the moose if practicable: Sex, if and where salvaged, etc. The ARRC, Maintenance of Way Office, tracks this data in a data base and reports to management and ADF&G monthly. Monthly reports are faxed to Tony Kavalok at 907-746-6305.*

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- *The working group will reconvene and change or develop new strategies for strike avoidance after rail line operation if moose mortality along the proposed line surpasses the pre-determined threshold of 10 moose in one year of operation.'*

ARRC feels that the above mitigation measures satisfy the concerns the ADF&G has expressed related to Mitigation Measure 33.

Fisheries Concerns

ARRC has applied for Title 16 Fish Habitat permits for stream crossings in accordance with the Fishway Act (Alaska Statute (AS) 16.05.841), and the Anadromous Fish Act (AS 16.05.871) for eight separate locations; seven of which support anadromous salmon. Fish presence/absence studies for the project were conducted in 2007 (Entrix) and 2010 (HDR). A copy of the 2010 fisheries report was provided to ADF&G for review and comment prior to permit application submittal and the final report was included as supplemental information to submittals.

ADF&G, in cooperation with ARRC, is planning to conduct subsequent surveys in 2011 to discuss design specifics and verify fish sampling results from 2007/2010. ARRC will continue to coordinate with ADF&G to determine if any additional permits or design modifications are needed following those surveys. The ARRC has committed to provide appropriate fish passage structures if fish are present during the 2011 fisheries data collection efforts. Further ARRC has committed to keep all drainage structures free from debris as identified in Mitigation Measure 16 of the EIS.

ARRC feels that Mitigation Measure 16 does adequately address concerns raised by ADF&G. ARRC has committed to place appropriate fish passage structures where fish passage is identified as well as keep these structures free from debris. As there are currently only two fish passage culverts and one is an extension of an existing culvert that currently passes fish, only one additional fish passage culvert at this time would be a concern for maintaining passage. Due to the location and surrounding topography it is not likely this culvert would become perched. If additional locations are identified and culverts are installed all agreed upon mitigation measures would be adhered.

ADF&Gs concerns regarding deleting Mitigation Measure 17 have already been addressed in current design methods used for both bridge and culvert construction. Design methods are discussed in both the individual Title 16 permit applications and within the Summary of Project Design and Construction submitted with the permit application package. Additionally, meetings with ADF&G to discuss crossing structures, locations, and methodologies used to identify field sampling locations have been instrumental in developing the permit applications, appropriate mitigation measures and have resulted in more bridges and less culverts being installed through the alignment.

Victoria J. Rutson
June 27, 2011
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Other ADF&G Concerns

Mitigation Measure 39 and VM-42:

Concerns related to Mitigation Measure 39 and VM-42 have been addressed in the permitting process and included in the project description provided to all permitting agencies. The following text is included on page 8 of the Project Description as well as being included in the Coastal Evaluation and USCG Section 9 permit application:

'Potential Changes in Navigation Patterns

Temporary closures or changes in transportation patterns over navigable waterways during construction may occur. A navigational opening to accommodate local boating traffic may be maintained when there is sufficient flow in the Little Susitna River and other identified navigable waters (Table 2 above) within the project area (anticipate two additional crossings; H 0.8 and H 6.3). Notices will be posted at local and state owned boat launches in the area to notify vessels of times and dates when construction will be occurring over the river. Additional signage shall be posted as appropriate to signify any new travel patterns within the river.

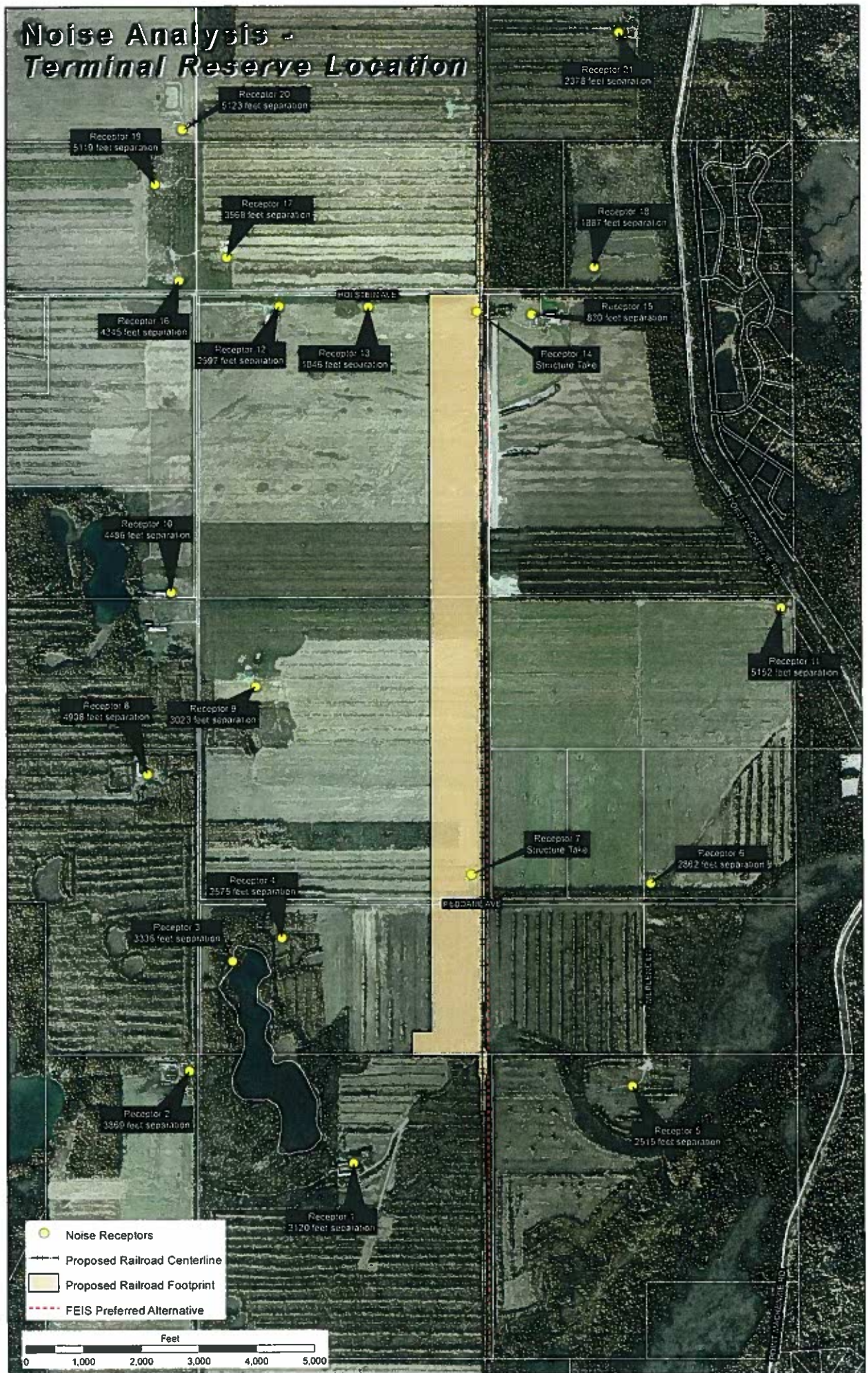
*It may be necessary to have intermittent closures of the navigable waterways based upon construction over the waterways to avoid a potentially dangerous working and travel environment. These closures will be planned to not significantly impact seasonal fishing or hunting activities. **Intermittent closures will last no more than 17 days and will not be for a period of time greater than 24 hours at a time, with closures generally lasting for 12 hour periods based upon construction schedules.** All closures and time schedules will be posted at minimum of two weeks in advance by public notice in area newspapers, on the project website, and at local boat launches to increase public knowledge and awareness.'*

Mitigation Measure 41

ARRC has worked with area user groups to identify crossing locations, rerouting of trails as necessary and developing access plans across the proposed railroad. This information is located in the Project Description of the permit application package starting on page 8 through page 12. All crossing structures are addressed including officially recognized trail crossings, waterway crossings, roadway crossings and how developed and undeveloped section line easements will be addressed during the ROW process. ARRC has met with local and state agencies as well as local interest groups regarding crossing locations and access issues. ARRC feels that sufficient information has been provided within the post Final EIS project newsletter, the project open house and throughout the permitting process.

Attachment 1

Noise Analysis - Terminal Reserve Location



Attachment 2

Land Use - Terminal Reserve Location



Attachment 3

Noise Analysis - Modified Connector 3

