



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Economics, Environmental Analysis and Administration

November 9, 2009

Donald Perrin
Alaska Department of Natural Resources
Office of Project Management and Permitting
550 W. 7th Ave., Suite 705
Anchorage, AK 99501

Re: STB Finance Docket No. 35095, The Alaska Railroad Corporation – Petition for Exemption to Construct and Operate of a Rail Line Extension to Port Mackenzie, Alaska; Request for Information Regarding 4(f) Applicability, Measures to Minimize Harm, and *de minimis* Findings

Dear Mr. Perrin:

The purpose of this letter is to request input from official(s) with jurisdiction over the resources identified below regarding (1) the applicability of Section 4(f) of the U.S. Department of Transportation Act of 1966 (also referred to as “Section 4(f)”) to the recreation resources that could be affected by the above-referenced project (also referred to as the “Port MacKenzie Rail Extension”); (2) whether there are any other resources under Alaska Department of Natural Resources (ADNR) or Alaska Department of Fish and Game (ADF&G) jurisdiction that qualify as Section 4(f) resources and would be affected by any of the alternatives for the proposed rail line; and (3) where the proposed project may require the use of a Section 4(f) resource, whether proposed mitigation and measures to minimize harm would support a finding of *de minimis* use.

Section 4(f) Background

The Surface Transportation Board’s (the Board) Section of Environmental Analysis (SEA) is in the process of developing a Draft Environmental Impact Statement (EIS) for the proposed Port MacKenzie Rail Extension. SEA anticipates that the Draft EIS will include a determination that some of the alternatives analyzed for the proposed Port MacKenzie Rail Extension could have an effect on one or more recreational resources located within lands managed by ADNR or ADF&G that may be protected under Section 4(f).

Section 4(f) applies to the actions of agencies within the U.S. Department of Transportation (U.S. DOT). In order for the Federal Railroad Administration (FRA), a U.S. DOT agency and a cooperating agency in the development of this EIS, to grant funding for the proposed Port MacKenzie Rail Extension, FRA must determine and evaluate the project’s potential effects to resources protected under Section 4(f). The Secretary of the Department of Transportation cannot approve a transportation project requiring the use of publicly owned parks, recreation areas, or wildlife and waterfowl refuges, or significant public or private historic sites

unless there is no prudent and feasible alternative to using that land and the project includes all possible planning to minimize harm to the Section 4(f) resource.

Resources protected under Section 4(f) include “significant publicly owned public parks and recreational areas that are open to the public and significant publically owned wildlife and waterfowl refuges.” The term “significant” means that in comparing the availability and function of the park, recreational area or wildlife and waterfowl refuge, with the park, recreation or refuge objectives of the community or authority, the resource in question plays an important role in meeting those objectives. Further, one of its major purposes and functions must be for park, recreation, or as a refuge. If any of the resources identified below offer incidental, secondary, occasional or dispersed park, recreational or refuge activities, then this does not constitute a major purpose and the resource would not qualify for protection under Section 4(f).

Potential Section 4(f) Properties

We have identified the following preliminary list of potential Section 4(f) properties that could be affected by one or more of the alternatives for the proposed rail line:

- *Little Susitna State Recreation River.* The recreation area, including the Nancy Lake Creek Public Use Site, offers public recreation opportunities, including boating, camping, fishing, and hiking and all-terrain vehicle use on trails along the banks of the river.
- *Nancy Lake State Recreation Area.* The recreation area provides opportunities for canoeing, picnicking, fishing, hiking, camping, dog sledding, skiing, snowshoeing, and snowmachining.
- *Willow Creek State Recreation Area.* Recreational activities available in the area include fishing, camping, floating/boating, winter trails (including the Lucky Shot Trail), wildlife viewing, and hunting.
- *Mud Lake Trail.* This is a multi-use winter trail located near the northwest corner of the Nancy Lakes State Recreation Area that provides access between Nancy Lakes State Recreation Area and the West Gateway Trail System.
- *Pipeline Trail.* This a multi-use winter trail that follows a gas pipeline corridor and provides access to the Point MacKenzie area, the Susitna River, and the Susitna Flats State Game Refuge.
- *Flathorn Lake Trail.* This is a multi-use winter trail that provides access to the Susitna Flats State Game Reserve and the Little Susitna River.
- *Aurora Dog Mushers Trail.* This system is a series of non-motorized winter trails southeast of Big Lake that provides training and racing opportunities for dog sledgers.
- *Susitna Flats State Game Refuge.* The refuge provides important public recreation opportunities, including fishing, hunting, boating, wildlife viewing, and multi-use winter trails.

SEA, on behalf of FRA, respectfully requests that ADNR and ADF&G determine whether the availability and function of these resources plays an important role in meeting agency objectives and verify that one of the major purposes and functions of these resources is for park, recreation, or as a refuge. Additionally, if there are any other potential Section 4(f) resources that would be affected by the proposed rail line that we have not identified, please provide information on these resources and their location in your reply.

Measures to Minimize Harm and *de minimis* Findings

SEA is also developing measures to minimize potential impacts to Section 4(f) resources. SEA will include these mitigation measures in the Port MacKenzie Rail Extension Draft EIS. The measures will include voluntary mitigation developed by the Applicant, as well as preliminary mitigation developed by SEA. Below is a list of measures we are considering including in the Draft EIS to mitigate potential impacts of the proposed rail line on the resources managed by ADNR or ADF&G identified above.

The Applicant shall consult with land managers to develop a plan to ensure project-related construction activities occur during the most appropriate timeframe, designate temporary recreational access points if main access routes must be obstructed during construction, and consult with the agencies with jurisdiction and user groups to limit potential impacts to recreation activities.

Depending on the alternative authorized, the Applicant shall coordinate with the U.S. Coast Guard to provide adequate clearances for navigation of recreational boats on navigable rivers (e.g. Willow Creek and the Little Susitna River).

The Applicant shall maintain public access to and from legally authorized trails and Matanuska-Susitna Borough (MSB) recognized trail easements. The Applicant shall provide grade-separated crossings where the new rail line would cross these trails, although some trails could require some realignment to consolidate crossings. The Applicant shall work with trail user groups to design and construct grade-separated trail crossings.

The Applicant shall consult with ADNR, ADF&G, and MSB to determine where significant public access is occurring to and along public and navigable water bodies. If existing levels of access or significance of adjacent water bodies merit access preservation, the Applicant shall design project-related waterbody crossing structures to accommodate upland access on public land along waterways.

If the Surface Transportation Board authorizes the Mac West segment, the Applicant shall consult with the ADF&G to develop and implement measures, including consideration of replacing refuge acreage used for project-related rail right-of-way, to minimize impacts to the Susitna Flats State Game Refuge to the extent practicable.

If the Surface Transportation Board authorizes the Willow segment, the Applicant shall consult with ADF&G and ADNR to develop and implement measures, including consideration of replacing acreage used for project-related rail right-of-way, to minimize potential impacts to the Willow Creek State Recreation Area, Nancy Lakes State Recreation Area and Little Susitna River State Recreation River Area. The Applicant shall identify any additional trails, campsites, or other uses within the recreation areas that could be potentially affected by the project and shall coordinate with ADNR Division of Parks and Recreation (DPOR) to craft a site-specific crossing plan to eliminate or decrease potential impacts to the extent practicable.

If the Surface Transportation Board authorizes the Houston North segment, the Applicant shall consult with the ADNR to develop and implement measures to minimize potential impacts to the Little Susitna State Recreation River and the Nancy Lake Creek Junction public use site including replacement of any camping or other facilities within the right-of-way.

If the Surface Transportation Board authorizes the Connector 1 segment, the Applicant shall consult with ADF&G and ADNR to determine if any trails in addition to official recognized trails within and surrounding the Little Susitna Public Use Facility have high enough levels of use to merit consideration for a grade-separated crossing.

If the Surface Transportation Board authorizes the Willow segment, the Applicant shall provide two grade-separated crossings for the Lucky Shot Trail within the Willow Creek State Recreation Area and shall construct a bridge over Willow Creek with adequate clearance to ensure public access along the waterway during winter as well as summer conditions.

If the Surface Transportation Board authorizes the Willow segment, the Applicant shall determine whether access would be made available to the parkland in the Nancy Lakes State Recreation Area west of the proposed right-of-way; if such accommodation is warranted but not practicable, the Applicant shall consult with ADNR DPOR to determine appropriate mitigation for the loss of public access to this area.

If the Surface Transportation Board authorizes the Willow or Houston North segments, the Applicant shall construct a bridge over the Little Susitna River with adequate clearance to ensure public access along the waterway during winter as well as summer conditions.

If the Surface Transportation Board authorizes the Mac West, Connector 1, and/or Willow segments, the Applicant shall consult with ADFG to identify trails, campsites or other uses within the Susitna Flats State Game Refuge that would be affected and develop a site-specific crossing plan to maintain public access for Susitna Flats State Game Refuge.

Section 6009 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (49 U.S.C. 303), also known as SAFETEA-LU, amended Section 4(f) statutory requirements to include an exception for uses of protected land that would have a “*de minimis*” impact on that land. The U.S. Secretary of Transportation may make a finding of *de minimis* impact if the project “will not adversely affect the activities, features, and attributes of the park, recreation area, or wildlife or waterfowl refuge eligible for protection” under Section 4(f), and if the “Secretary has received concurrence from the officials with jurisdiction over the park, recreation area, or wildlife or waterfowl refuge.” To complete the Section 4(f) evaluation, SEA, on behalf of FRA, is requesting your input on whether a *de minimis* impact finding for any or all of the properties identified above could be reached through the implementation of the measures described above, or with the development and implementation of additional mitigation measures.

In summary, please indicate if you concur that: (1) this letter has identified all the ADNR- and ADF&G-managed Section 4(f) resources potentially affected by the proposed Port MacKenzie Rail Extension; (2) there are no other ADNR- or ADF&G-managed Section 4(f) resources potentially affected by the proposed project; and (3) the potential mitigation measures outlined in this letter would make the potential impacts *de minimis* for any of the Section 4(f) resources listed in this letter, and if so, which resources. If we have failed to identify all the ADNR- or ADF&G-managed Section 4(f) resources, please identify their location and provide a

description of the resource in your reply. If ADNR or ADF&G believes that additional mitigation measures would be required to make the potential impacts on Section 4(f) resources *de minimis*, please outline such measures in your reply. Please address your reply to Dave Navecky of my staff at the letterhead address, or as an email attachment to David.Navecky@stb.dot.gov.

Your hard work and cooperation to date has helped make this environmental review process the "hard look" required by NEPA. I thank you in advance for the expertise and effort needed in responding to the questions posed in this letter. If you have any questions, please do not hesitate to contact Dave Navecky, SEA's Project Manager, at 202-245-0294, or Alan Summerville of ICF International, Project Manager for SEA's third-party contracting team, at 703-934-3616. We would appreciate your reply by December 9, 2009.

Sincerely,



Victoria Rutson
Chief
Section of Environmental Analysis

cc:

Mr. John Winkle
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