



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

January 28, 2015

Todd Yeager
 Field Manager
 U.S. Bureau of Land Management
 111 Garryowen Road
 Miles City, MT 59301

Re: Docket No. FD 30186, Tongue River Railroad Company, Inc.—Rail Construction and Operation—in Custer, Powder River and Rosebud Counties, Mont.; **Request for Information Regarding 4(f) Applicability for the Pumpkin Creek Ranch and Recreation Area, Measures to Minimize Harm, and *de minimis* Findings**

Dear Mr. Yeager:

The purpose of this letter is to request your input as the official with jurisdiction over the property identified below regarding: (1) the applicability of Section 4(f) of the U.S. Department of Transportation Act of 1966 (Section 4(f)) to the recreation property that could be affected by the proposed Tongue River Railroad; (2) whether there are any other properties under U.S. Bureau of Land Management (BLM) jurisdiction that qualify as Section 4(f) properties and would be affected by any of the alternatives for the proposed rail line; and (3) whether a finding of *de minimis* impacts is appropriate. We have attached two maps to this letter showing the alternatives for the new rail line currently under consideration.

Section 4(f) Background

As you are aware, the Surface Transportation Board's (Board) Office of Environmental Analysis (OEA) is in the process of developing a Draft Environmental Impact Statement (EIS) for the proposed Tongue River Railroad. OEA anticipates that the Draft EIS will include a determination that two of the alternatives analyzed for the proposed Tongue River Railroad could have an effect on one recreational property managed by BLM that is eligible for protection under Section 4(f).

Although the Board is administratively affiliated with the U.S. Department of Transportation, the Board is an independent decision-making body, and as such Section 4(f) is not applicable to Board actions. However, if the Board were to approve one of the alternatives that cross Interstate 94, an underpass would need to be built, which would require approval from the Federal Highway Administration (FHWA) in coordination with the Montana Department of Transportation. This FHWA approval is subject to review under Section 4(f) of the U.S.

Department of Transportation Act of 1966 (49 U.S.C. § 303(c)). Section 4(f) provides that U.S. Department of Transportation agencies, such as FHWA, cannot approve the use of land from publicly owned parks, recreation areas, wildlife and waterfowl refuges, or public and private historical sites unless there is no feasible and prudent alternative to the use of such land and the project includes all possible planning to minimize harm to the Section 4(f) property.

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.”

Eligible Section 4(f) Properties

Properties 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 property in question plays an important role in meeting those objectives. Further, its primary purposes and function must be as a park, recreation, or refuge. Primary purpose is related to the property's primary function and how it is intended to be managed. Incidental, secondary, occasional, or dispersed activities similar to park, recreational, or refuge activities do not constitute a primary purpose within the context of Section 4(f). If the property identified below offers incidental, secondary, occasional, or dispersed park, recreational, or refuge activities, the property would not qualify for protection under Section 4(f).

OEA has identified the following Section 4(f) property that could be affected by The Tongue River Road Alternative and the Tongue River Road East Alternative for the proposed Tongue River Railroad:

- **The Pumpkin Creek Ranch and Recreation Area:** a 20,578-acre recreational area administered by BLM and located approximately 15 miles south of Miles City. It can be accessed from Tongue River Road from the northwest and Highway 59 from the north and east. There are currently no amenities at the site, and recreational activities consist mainly of hunting, hiking, mountain biking, wildlife viewing, sledding, snowmobiling, and horseback riding.

Based on OEA’s review of the property listed above, OEA has preliminarily determined that this property meets the criteria listed above for eligibility for protection as a Section 4(f) property. OEA (on behalf of FHWA) respectfully requests that BLM confirm whether the availability and function of this property plays an important role in meeting agency objectives and verify that its primary purposes and function is as a park. Additionally, if there are other potential Section 4(f)

properties under BLM jurisdiction that would be affected by the proposed rail line that we have not identified in this letter, we would appreciate it if you let us know about these properties in your reply.

Preliminary Section 4(f) Determination

OEA has determined that either the Tongue River Road Alternative or the Tongue River Road East Alternative would traverse nearly 1.0 mile of the far northwest corner of the Pumpkin Creek Ranch and Recreation Area. During construction, there would be temporary and localized noise and visual disturbances perceptible to users of the recreational area adjacent to the construction corridor. Access across the proposed rail line via roads could be temporarily impeded during construction, resulting in temporary access restrictions to the Pumpkin Creek Ranch and Recreation Area.

Approximately 52.8 acres of the Pumpkin Creek Ranch and Recreation Area would be acquired and converted to rail line right-of-way. The area affected by the right-of-way for these alternatives would be directly adjacent to and on the east side of Tongue River Road, where it crosses the Pumpkin Creek Ranch and Recreation Area. The rail line right-of-way would cross known roads leading into the Pumpkin Creek Ranch and Recreation Area at this location. The Tongue River Road and Tongue River Road East alternatives would also sever approximately 32 acres of land from the rest of the recreation area. The severed portion of land would remain accessible to users via Tongue River Road.

If the Board should approve either the Tongue River Road Alternative or Tongue River Road East Alternative, approximately 52.8 acres of the Pumpkin Creek Ranch and Recreation Area would be incorporated into the railroad right-of-way. OEA has not identified any recreational facilities or amenities within the area of permanent incorporation or within the area that would be severed by these alternatives. The potential area of use would constitute less than 0.3 percent of the total area of the 4(f) property and would be adjacent to Tongue River Road where audible and visual disturbances from vehicular traffic are already taking place. OEA is considering a measure that would require Tongue River Railroad Corporation (TRRC) to consult with managers of recreational areas, including BLM, and other user groups as appropriate to develop a construction plan to limit impacts on recreational areas. The plan would designate temporary access points to recreational resources if main access points would be obstructed during construction. This measure would allow for continued access to the northwest corner of the Pumpkin Creek Ranch and Recreation Area from Tongue River Road during construction. OEA is also considering a measure that would require TRRC to coordinate with landowners to identify key access points to property that would be affected by operation of the proposed rail line and require TRRC to install at-grade crossings and relocate roads to maintain adequate access to properties. This measure would allow for continued access to the northwest corner of the Pumpkin Creek Ranch and Recreation Area from Tongue River Road during operation.

For these reasons, OEA has preliminarily determined that the activities, features, and attributes of the Pumpkin Creek Ranch and Recreation Area qualifying it for protection under Section 4(f) would not be adversely affected and therefore, intends to make a *de minimis* impact finding for the Pumpkin Creek Ranch and Recreation Area.

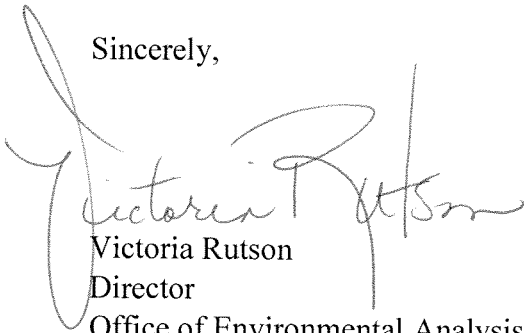
OEA is requesting your written concurrence that: (1) the Pumpkin Creek Ranch and Recreation Area is eligible for Section 4(f) protection; (2) there are no other BLM-managed Section 4(f) properties potentially affected by the proposed Tongue River Railroad; and (3) the proposed Tongue River Railroad would not adversely affect the activities, features, and attributes of the property identified above and a *de minimis* impact finding is appropriate or could be reached with the development and implementation of additional mitigation measures not yet identified.

If BLM believes that additional mitigation measures would be required to make the potential impacts on the Section 4(f) property *de minimis*, please outline such measures in your reply. Please address your reply to Mr. Kenneth Blodgett of my staff at the address below, or as an email attachment to Kenneth.Blodgett@stb.dot.gov.

Mr. Kenneth Blodgett
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001
Attention: STB Finance Docket No. 30186

If you have any questions, please do not hesitate to contact Kenneth Blodgett, OEA's Project Manager, at (202) 245-0305, or Alan Summerville of ICF International, Project Manager for OEA's third-party contracting team, at 703-934-3616. We would appreciate your reply by February 25, 2015. And thank you for your help and expertise.

Sincerely,



Victoria Rutson
Director
Office of Environmental Analysis

cc: Mr. Brian Hasselbach
Montana Division
Federal Highway Administration
585 Shepard Way, Suite 2
Helena, MT 59601