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November 3, 2009

Victoria Rutson
Chief
Section of Environmental Analysis
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Final Environmental Impact Statement, Finance
Docket No. 34658, Alaska Railroad Corporation
Northern Rail Extension

Dear Ms. Rutson:

We are aware that the Board has recently received correspondence from the U.S. Environmental Protection Agency (EPA) and the State of Alaska Department of Natural Resources (Alaska DNR) that raises questions about certain aspects of the Final Environmental Impact Statement (FEIS) in the above-named proceeding. I am writing this letter on behalf of the applicant, Alaska Railroad Corporation (ARRC), to briefly address several of those questions.

As an initial matter, EPA's letter asserts that the FEIS does not "clearly identif[y]" the need for the Northern Rail Extension project. In fact, the FEIS plainly articulates three needs for the project: (1) the provision of commercial freight rail service for business, military and industrial users along the proposed line, all of whom currently must transfer their incoming freight to trucks near Fairbanks; (2) the provision of passenger transportation that could support tourism; and (3) the provision of dependable, year-round access to the U.S. Army and U.S. Air Force training areas at Tanana Flats and Donnelly. See FEIS at 1-4. These needs are wholly in-line with the Board's authorizing statute, which articulates a policy of developing a rail system that will meet "the needs of the public and national defense." 49 U.S.C. 10101(4).¹

In the course of developing the needs described in the FEIS, the Board—quite properly—gathered information concerning the project from ARRC. "When an agency is asked to sanction a specific plan, the agency should take into account the needs and goals of the parties involved in the application." *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991).

¹ The Board's governing statute describes numerous other relevant policies, including a policy "to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes." 49 U.S.C. § 10101(5). Moreover, to implement the policy of 49 U.S.C. § 10901(c), the Board operates under a "presumption that [rail] construction projects will be approved." *Class Exemption for the Construction of Connecting Track Under 49 U.S.C. 10901*, 1 S.T.B. 75, 79 (1996).

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Indeed, an agency responsible for project permitting “has a *duty* to take into account the objectives of the applicant’s project.” *Greater Yellowstone Coalition v. Flowers*, 359 F.3d 1257, 1270 (10th Cir. 2004) (emphasis added). The National Environmental Policy Act (NEPA) does not grant agencies discretion to “redefine the goals of the proposal that arouses the call for action.” *Citizens Against Burlington*, 938 F.2d at 199.

The FEIS’s description of the need for the Northern Rail Extension project has been thoroughly vetted by the Board’s Section of Environmental Analysis (SEA), as well as the eight cooperating agencies.² No additional analysis is necessary.

EPA’s letter also “encourage[s]” the Board to discuss the impacts of the anticipated designation of the Fairbanks/North Pole area as nonattainment for PM_{2.5}, if such designation occurs before the release of the Record of Decision (ROD). SEA has already responded to this comment in Chapter 3 of the FEIS, which explains that “estimated PM_{2.5} emissions from the construction and operation of the proposed rail line extension would be below the general conformity *de minimis* level for PM_{2.5}” FEIS at 3-114. Consequently, “the project is deemed not to interfere with the goal of attaining the PM_{2.5} air quality standards.” *Id.*

Next, EPA expresses its concerns with the FEIS’s selection of multiple preferred alternatives for the Eielson and Donnelly segments of the proposed extension. According to EPA, the “typical[]” practice under the governing regulations is to identify one, and only one, preferred alternative in an FEIS. The regulations EPA references state that an agency may identify a “preferred alternative *or alternatives*” in its DEIS, and that “such alternative” must be included in an FEIS. 40 C.F.R. § 1502.14(e) (emphasis added). The use of the singular term “alternative” in the second part of this subsection, while grammatically awkward, is not meant to limit agencies to a single preferred alternative. In fact, NEPA regulations regarding an agency’s record of decision—a stage of NEPA review subsequent to the FEIS—plainly state that agencies shall identify an “alternative *or alternatives* which were considered to be environmentally preferable.” 40 C.F.R. § 1505.2(b) (emphasis added).

Consistent with the governing NEPA regulations, SEA has identified multiple preferred alternatives in a prior situation similar to this one, leaving the final track routing to be determined during final design and permitting. See Fin. Docket No. 34079, *Burlington N. & Santa Fe Rwy. Co.—Operation Exemption—Build Out to the Bayport Loop*, Final Environmental

² The cooperating agencies are the U.S. Department of Defense Alaskan Command, the Bureau of Land Management, the Federal Transit Administration, the Federal Railroad Administration, the U.S. Air Force 354th Fighter Wing, the U.S. Army Corps of Engineers, the U.S. Coast Guard and the Alaska DNR. Two of these agencies, the U.S. Department of Defense Alaskan Command and the U.S. Air Force 354th Fighter Wing, would become potential ARRC customers upon completion of the rail extension. See Draft Environmental Impact Statement (DEIS) at 1-6, 2-1, 2-2. The military need for the project, as described in the DEIS, includes the fact that access to the Tanana Flats and Donnelly training areas is currently restricted by lack of a bridge over the Tanana River. See DEIS at 2-1. The proposed project would remedy that situation, and “could facilitate continuing range, trail and [training area] infrastructure and maintenance improvements” *Id.*

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Impact Statement at 2-2 (concluding “all of the Alternatives, including the Build Alternatives, the No-Build Alternatives, and the No-Action Alternative, would result in generally similar impacts, none of which would be significant”). The same course of action is equally sensible here, where ARRC continues to fine-tune the routing of its proposed rail extension during the separate process of final design and permitting.

Finally, EPA’s letter recalls that the agency “expressed substantial environmental concerns” after reviewing the Draft Environmental Impact Statement for the project, and states vaguely that its “environmental concerns relating to the project remain” Although Chapter 3 of the FEIS deals with EPA’s original comments in detail (*see, e.g.*, FEIS at 3-66, 3-114, 3-115), EPA’s letter does not mention SEA’s responses. ARRC continues to believe that SEA’s environmental review is sound, and that its responses to EPA’s original comments adequately address EPA’s concerns.

Under NEPA, “an agency decision concerning which alternatives to consider is necessarily bound by a rule of reason and practicality.” *Airport Neighbors Alliance, Inc. v. United States*, 90 F.3d 426, 432 (10th Cir. 1996) (internal quotation marks omitted). Infeasible alternatives need not be studied. *See id.* & n.6 (affirming an agency’s refusal to consider a runway alternative that “could not be built” due to the terrain at the site); *see also, e.g., Bearing Strait Citizens for Responsible Resource Dev. v. U.S. Army Corps of Engineers*, 524 F.3d 938, 955 (9th Cir. 2008) (holding that “[a]n agency need not” discuss “infeasible” or “ineffective” alternatives).

The alternatives that were carried forward for further analysis in this case were developed using field data gathered during the environmental review process. The geotechnical and topographical data indicated that constructing the “modifications” identified in the recent letter from Alaska DNR would require extensive excavation and grading, rendering those options impracticable and infeasible. Therefore, SEA was not required to include those alternatives in the FEIS.

Since the issuance of the FEIS, ARRC has begun the separate process of final design and permitting. During this process, ARRC will continue to meet with regulatory and land management agencies to discuss their concerns and to develop means to avoid, reduce, or mitigate potential environmental impacts. To the extent it remains productive, ARRC intends to continue this collaborative approach so that all agency concerns are fully considered.

For all the reasons discussed above, the Board need not make any changes to the FEIS in response to the EPA and Alaska DNR letters.

Sincerely,



Kathryn Kusske Floyd

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cc: David Navecky
Brian Lindamood
Alan Summerville