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April 25, 2011

Surface Transportation Board
c/o David Navecky
STB Finance Docket No. 35095
395 E. Street S.W.
Washington, D.C. 20423-0001

Dear Sir:

I am a member of Flyway Farm L.L.C., which owns Tract 7 of the Point MacKenzie Agricultural Project (Ag. Project). I am writing to protest the inclusion of the Mac-East Variant route in the Final Environmental Impact Study (FEIS), because there was no public or agency comment on this route as required by 40 C.F.R. 1502. While I have been aware of the railroad's plans to connect Port MacKenzie to the railroad system for many years, it was not until the FEIS was issued by the Office of Environmental Analysis (OEA), recommending a "new" route through the Ag. Project, that our farm has been directly impacted. It has further come to our attention, but published no where, that the railroad intends to move the Terminal Reserve Area (TRA) from the industrial zone near the Port to the middle of the Ag. Project as well.

Federal regulations require a supplemental EIS when there is a substantial change to the proposed action, and/or when there is new information relating to environmental concerns associated with a planned action.

(c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

- (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or
- (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

40 C.F.C. 1502 .9(c)(emphasis added)

In this case, there have been substantial changes between the Draft EIS (DEIS) and FEIS, in that a "new" route has been identified through the Ag. Project, and the railroad intends to relocate the TRA. Based on the facts as outlined below, it would be

inappropriate for the Surface Transportations Board (STB) to issue a final decision allowing either of these proposed changes to occur without first issuing a supplement EIS. There are potentially devastating environmental impacts associated with these changes that are not addressed in the DEIS, such as noise associated with the now proposed terminal location, noxious weeds being introduced onto our farm land, affects to the environmentally pure water shed that exists, FAA Part 77 impacts to public and private airstrips located on the Ag. Project, and a potential affect on prime moose habitat which could be destroyed.

The changes contained in the FEIS, in addition to potential environmental impacts associated with these change, warrant the need for additional comment by state and federal agencies and affected property owners, and a supplement EIS must be issued.

I. The Mac-East Variant is a New Route that was not Included in the EIS Process and was Never Adequately Assessed under 40 C.F.R. 5002 et. seq.

From its inception, all routes through the Ag. Project were eliminated because the "central route," "Mac Section-Line" or "Mac-SL, as it was then called, passed through a large section of private land, and there was too much public opposition. (FEIS R-270) Accordingly, throughout the scoping process, the central route was not identified as a potential route and was never the subject of state, federal or public comment.

After the final scope of study, but prior to the DEIS being issued, a farmer who was adversely impacted by the Mac-East route, attempted to get the "central" route resurrected and evaluated in the EIS process. (Pat and Joe Wilson hereinafter referred to as the Wilsons) The Wilsons delivered documents to the Mat Su Borough identifying the railroad ROW easement(s) associated with the central route and questioned why it wasn't being considered. In response, a Mat Su Borough official explained that the central route had not been included in the scope due to public opposition, and that if brought up now, it would be considered a brand new route that would need additional analysis and study. (FEIS R-259, discussions dated 5/6/09 and 5/21/09)

8-28-09 - P. Wilson stopped by to speak with Brad Sworts regarding the Pt. MacKenzie RR spur project.

...
PW - OK - . . . What's the downside for the boro to say Hey, what about this other route right through the center of the ag project?

BS - Well, it means they would have to go back and do a lot of this research on a brand new route.

...
PW - I don't understand why you didn't put it in to begin with

BS - . . . At that time to (sic) boro decided to apply to the State of Alaska for a ROW for that corridor -- part of that corridor is the one you're talking about -- it goes right through the center for the ag project. When we did that there was a huge uproar from the agriculture folks down there -- they had to (sic) port director going to every kind of

meeting they had, they had assembly people going to community council meetings, they had director of ? going to a special ag group meeting -- they were completely against that route -- because that huge reaction of that group, when we put together the initial project information for the STB, we chose those 2 other routes -- we went on the far West (sic) side of the agriculture project and then on the far east side. Another reason we did that was because we had heard that the people; who make decisions at the STB were partial to agriculture -- that they didn't like splitting agriculture parcels in half.

...
PW - Then wouldn't it be in the boroughs interest to bring it up now since you know we're going to bring up a lot of points against it and unless they just dismiss our issues

BS - Yes, but we also know there is this other group out there, the Gattis group, that opposes that route, so it's one group or the other and it sounds like we're going to get in trouble either way. ...

(FEIS R-259 - 261, discussions dated 8/28/09)(emphasis added)

These discussions make clear that the Borough knew they had two conflicting groups: the "Wilson's," who were impacted by the Mac-East route, and the "Gattis group," who represented the group opposed to the central route. Between August 2009 and March 16, 2010, when the DEIS was issued, the Borough did not forward the Wilson's documents or concerns to the OEA or STB. Instead, they came up with a plan that they believed would avoid any delay associated with the "new" route, and at the same time, block opposition from the "Gattis Group."

Borough officials arbitrarily decided that so long as the "new" route was within one mile of the Mac-East route, it could be considered one in the same, and no additional comment period or analysis would be needed. *(FEIS R- 261, dated 8/28/09)* The Borough also encouraged the Wilson's to submit comments on the DEIS in early May 2010, so that evidence of the feasibility of the central route was in the record when the comment period closed on May 10, 2010.

We have considered the Wilson's' comments and other facts and have developed an alignment refinement called "Variant 1" to Mac East which follows a section line from just outside the Port District through the entire Agricultural District to Ayrshire Avenue. . .

We consider this Variant to be a refinement of the Mac East Alternative and not a new alternative as its location is a (sic) less than a mile and in some cases very close to our original Mac East route. . . .

We have designed layout of Variant 1 in Brad's office at the MSB and the Wilson's could come in and take a look at what we have planned. In addition, I would recommend that the Wilson's provide a comment to the STB that they support the rail line being on the section line in this area. Their comments need to be in the STB fairly soon. That might cause the STB to include this small change in Mac East alignment in the Final EIS. . . .

FEIS, R-291, email dated May 1, 2010.

During the final days of the DEIS comment period, the Railroad first disclosed to the public its intention of commenting on the central route, but continued to characterize it as a “new” route that would warrant additional study and analysis.

RR Man: We now favor the Mac West route, yes.

Public Comment: And this is the only route alternative?

RR Man: We have just lately identified an existing RR right of way that runs down the middle of the farm project. We may include it in our final comments to the Surface Transportation Board.

Public Comment: There have been two other RR route studies since 2002. Why wasn't any of the information gathered in those studies incorporated in this study?

RR Man: This is a brand new study.

(FEIS R-213 dated May 6, 2010, last public comment meeting on DEIS)

The mandates of 40 C.F.R. 5002 et. seq., cannot be avoided by simply re-characterizing a “new” and “unstudied” route as a “variation” of a route included in the original scope and DEIS. The fact that the “new” route is, in sections, within 1 mile of Mac-East is irrelevant. With respect to Tract 7, it is more than 1 mile away. Furthermore, the fact that this route was once considered separate from Mac-East and dismissed as an unacceptable alternative, should be *prima facie* proof that it is indeed separate and distinct from Mac-East. This “new” route involves different platted parcels, it runs through “covenanted” agricultural land, and impacts different individuals. Pursuant to 40 C.F.C. 5002, a supplemental EIS must be issued.

II. Relocation of the Terminal Reserve from the Industrial Zoned Port Area to the Middle of Covenanted Agricultural Lands Should be Absolutely Forbidden.

The FEIS places the TRA in the Point MacKenzie Port Special Land Use District, reserved for Port and Industrial activities. (*Final Scope of Study, Port Activities, para. 1, FEIS, S-46 and R-279*) Property owners within the Ag. Project have become aware within the last 12 days that the railroad has abandoned these plans, and instead, intends to move the TRA to the middle of the Ag. Project. Detailed plats and analysis have been drawn up showing the TRA's “new” location, despite the the FEIS being only weeks old. This would suggest, that similar to the “new” rail route, the Borough and railroad have known of their plans to move the TRA for some time. Yet, no attempts were made to inform the public or affected property owners or include any analysis of this “new” location in the FEIS.

The TRA would take a 1,000 foot wide swath of land through the Ag. Project and extend for 2 to 3 miles. The impacts associated with the railroad route, which included two trains within a 24-hour-period and a 200 foot ROW, have no relation to the impacts of a 3-mile-long terminal, which will operate 24-hours a day. There is absolutely no basis on which the STB can issue a final decision on the location of this TRA in the

middle of the Ag. Project. A supplement EIS must be submitted, state and federal agencies must be given an opportunity to comment, and a separate analysis must be conducted on the adverse environmental impacts and mitigation conditions associated with a TRA being located in the middle of the Ag. Project.

III. The FEIS does not Support a Finding that the Ag. Project is a Preferred Location For The Rail Extension and/or the TRA.

The analysis contained in the FEIS shows fewer environmental impacts/acres associated with the Ma- East route (ME) than with the “preferred” Mac-East Variant (MEV) *See FEIS Summary and Comparison of Potential Impacts, S-49 - S-51, Attached hereto as Exhibit A, with column 7 representing the ME route, and column 12 showing impacts associated with MEV route)*

<u>Acres Impacted</u>	<u>ME</u>	<u>MEV</u>	<u>Diff.</u>
Total wetlands/water	164	160	
(Forested	85	86	
<u>scrub/shrub</u>	<u>68</u>	<u>64</u>	(-4)
Emergent	9	9	
Waters)	2	2	
Total habitat acres	652	651	(+1)
Fragmentation of core habitats, acres emergent and woody wetland and forest.	2,495	2,501	(+6)
Moose foraging habitat acres lost.	223	228	(+5)
Total Cultural resources potentially affected	23	15	(-8)
Cultural resource probability:	low, medium, high	low	
Land Use			
Private land	342	356	(+14)
Structures in 200 ft. ROW	2	1	(-1)
Acres under agricultural covenants	124	173	(+49)

Contributing trails crossed

3

2

(-1)

The FEIS Summary and Comparison of Potential Impacts shows no difference between ME and MEV in the categories of: topography and geology; locally important soils; number of culverts, culvert extensions and drainage structures; actual and potential flood plain crossings; fish-bearing stream crossings, anadromous stream crossings, index of fish habitat potential; and official trails crossed. Accordingly, by choosing the “new” MEV route, a total of 14 impacts/acres are avoided, whereas the ME route would have avoided 75 impacts/adversely affected acres. Based on the FEIS comparison alone, it is unclear why MEV is deemed to be a superior route to ME.

There are other potentially incorrect findings in the FEIS as well. The FEIS indicates that the difference in acres of private land impacted between ME and MEV is a mere 14 additional acres: 342 acres ME v. 356 acres MEV. It further claims that the difference in agricultural covenanted land impacted is only 49 acres: 124 acres ME v. 173 acres MEV. In reality, the “new” MEV bi-sects at least two farms, making the eastern section(s) of these farms inaccessible, with no access roads or railroad crossings planned. With respect to Tract 7 alone, the entire 200 acres east of the MEV route is impacted and the railroad has proposed purchasing this section rather than providing access. If the proposed TRA is located on the Ag. Project, the entire Tract 7 will no longer be able to be operated as a farm, for a total of 453 acres impacted.

Once public and agency comment is permitted on the new MEV, the STB will better be able to access the true impacts associated with the MEV route, and include in a FEIS appropriate mitigation measures. For these reasons, the OEA should be required to issue a supplement EIS, allowing state, federal and public comment.

IV. Because the DEIS did not Address the New MEV Route or New TRA Location, the Record does not Include Important Public and Agency Comment(s) that Are Relevant to the STB’s Final Decision

In this case, the EIS process failed to allow meaningful public, state and federal agency comment on significant changes to the final scope of study and DEIS. As a consequence, many of the OEA’s findings are incorrect, or fail to address mitigation measures that should be part of the STB’s final decision.

It is unlikely that the Farmland Protection Policy Act (FPPA) has been correctly applied. The FPPA protects farmland from being unnecessarily and irreversibly converted into nonagricultural uses. In this case, the OEA concluded that “no proposed alternatives warranted further consideration for protection under the Farmland Protection Policy Act.” (FEIS 3-9.) However, it is unclear from the record whether the MEV was analyzed separate from ME or Mac-West, even though it impacts significantly more agricultural lands than either of the analyzed alternatives. By moving the TRA to the Ag. Project, even more agricultural lands will be impacted. An additional land

evaluation and site assessment (LESA) should be conducted on the two significant changes to the DEIS -- the new MEV route and relocation of the TRA.

Another factor to consider is whether open rail cars will subject state agricultural lands to the spread of potentially noxious and non-native plant species. Tract 7 operations have been battling lupins in our fields for several years. These plants can cause miscarriages in horses and possibly cows. As a consequence, thousands of dollars have been spent on pesticides, and "hand-pulling" of lupins in the producing fields has occurred for the past 4 years. The introduction of additional noxious weeds and non-native plant species from open rail cars will surely impact the agricultural lands ability to continue producing quality hay. Accordingly, potential mitigation measures should be considered to avoid the spread of noxious weeds in a supplemental EIS.

Further, as a member/owner of Tract 7, I can attest that every spring, water sheds from neighboring farmland creating a fast flowing "creek" running west along Red Dane Road making it impassible by vehicle. The water turns north along Guernsey and empties into Falcon Lake, located on the western border of Tract 7. Since this phenomenon only occurs for 2-3 days in the late spring, it is unclear whether this fact was considered in the OEA's mitigation measures. The railroad has no plans for allowing water to cross the tracks and it is unclear what will happen to this water shed once the railroad is built across the property. Will Falcon Lake dry up? I believe Falcon Lake is fed solely from this watershed, as we have been unable to identify additional water sources other than a very shallow water table.

This also brings up the issue of pollutants associated with the railroad and TRA. What pollutants will be introduced into our drinking water: and the watershed that feeds into our lakes? The water table underneath the Ag. Project has been described as "super water" -- free of pollutants and superior for human consumption. Consequently, this is why the Point MacKenzie Prison chose to locate its water project on the Ag. Project, as opposed to closer to Pt. MacKenzie Road along the ME route. How will a railroad and TRA affect this source of "super water?"

Tract 7 is also the location of 3 private airplane corridors: 2 wheel plane runways, one running east/west and the other running north/south, in addition to a sea plane base on Falcon Lake. (*Exhibit B, attached*) The TRA is in the direct approach path for both runways. Suggested power lines as part of the railroad route, create an absolute safety concern, as power lines also run the northern border of the property. These runways are not only used for farm operations, as they allow parts and supplies to be transported from Anchorage within minutes as opposed to the 4-hour round trip drive by car, but ensure quick access to medical treatment in emergencies.

Finally, the "unaddressed" impact which weighs most heavily on our minds, is the existence of moose herds on Tact 7 (and surrounding farms) during the winter months. When flying over our farm in the winter, we routinely see 10 - 20 moose per panel, foraging on the short willows in our CRP fields. (Conservation Recovery Program, which sets aside sensitive farm land for preservation) Each panel is between 9 to 14 acres.

The wind-rows between the panels camouflage the moose, leaving their main diet of willows and small birch just feet away. The Wilson's comment which seems to have been given so much weight in identifying MEV as a reasonably alternative, is absolutely incorrect when it states "the agricultural area is less frequented by moose," such that the MEV "should reduce moose kills." (FEIS R-223) The truth is, a MEV will displace more moose than either the ME or Mac-West routes around the Ag. Project.

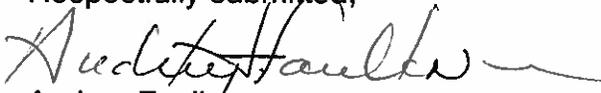
These and other issues are why 40 C.F.R. 5002 et. seq. exists. If the STB really wants to know about the land and potential impacts, they need to ask the people that are directly impacted. Public comment is not only a way to assess necessary mitigation, but potential impacts themselves. In this case, because the public and impacted parties were deprived of meaningful comment, the FEIS fails to address these and other substantial impacts.

V. Conclusion

In this case, once evidence of the "new" potentially feasible route was received by the OEA, it should have issued a supplement EIS to allow public and agency comment on the central route. Clearly, now that new unaddressed impacts have been identified, a supplemental EIS should be issued, so that potential environmental impacts can be identified through agency and public comment.

Federal Statutes mandate that the EIS "provide full and fair discussion of significant environmental impacts." (42 C.F.R. 1502.1 Purpose) In this case, the discussion was not "full" or "fair" The STB should not accept the Borough's false and deceptive characterization of the central route as a "variation" of Mac-East, nor should it allow last minute changes to the TRA, and should require additional research, as well as state, federal and public comment to fulfill the requirements of federal environmental statutes.

Respectfully submitted,



Audrey Faulkner
Manager Flyway Farm, L.L.C.
(907) 244-8907

cc: Lisa Murkowski, United States Senator
Mark Begich, United States Senator
Don Young, Congressman for all Alaska

**Table S-2
Summary and Comparison of Potential Impacts (page 1 of 3)**

	Mac West- Conn 1- Willow	Mac West- Conn 1- Houston- North	Mac West- Conn 2- Big Lake	Mac East- Conn 3- Willow	Mac East- Conn 3- Houston- North	Mac East- Conn 3- Houston- South	Mac East Var- Conn 2a- Big Lake	Mac East Var- Conn 3 Var- Willow	Mac East Var- Conn 3 Var- Houston- North	Mac East Var- Conn 3 Var- Houston- South
Topography, Geology, Soils						Topography relatively flat, little need for cutting and filling expected				Topography relatively flat, little need for cutting and filling expected
Water Resources						Locally important soil area lot: 305				Locally important soil area lot: 305
						Crossings include: 14 culverts, 2 culvert extensions, 2 drainage structures and 2 bridges				Crossings include: 18 culverts, 2 culvert extensions, 2 drainage structures, and 2 bridges
						7 identified floodplain crossings and potential floodplain crossings				7 identified floodplain crossings and potential floodplain crossings
						Total wetland/water acres: 164 (Forested 85, Scrub/shrub 69, Emergent 8, Wetland 2)				Total wetland/water acres: 160 (Forested 86, Scrub/shrub 64, Emergent 8, Wetland 2)

Exhibit A-1

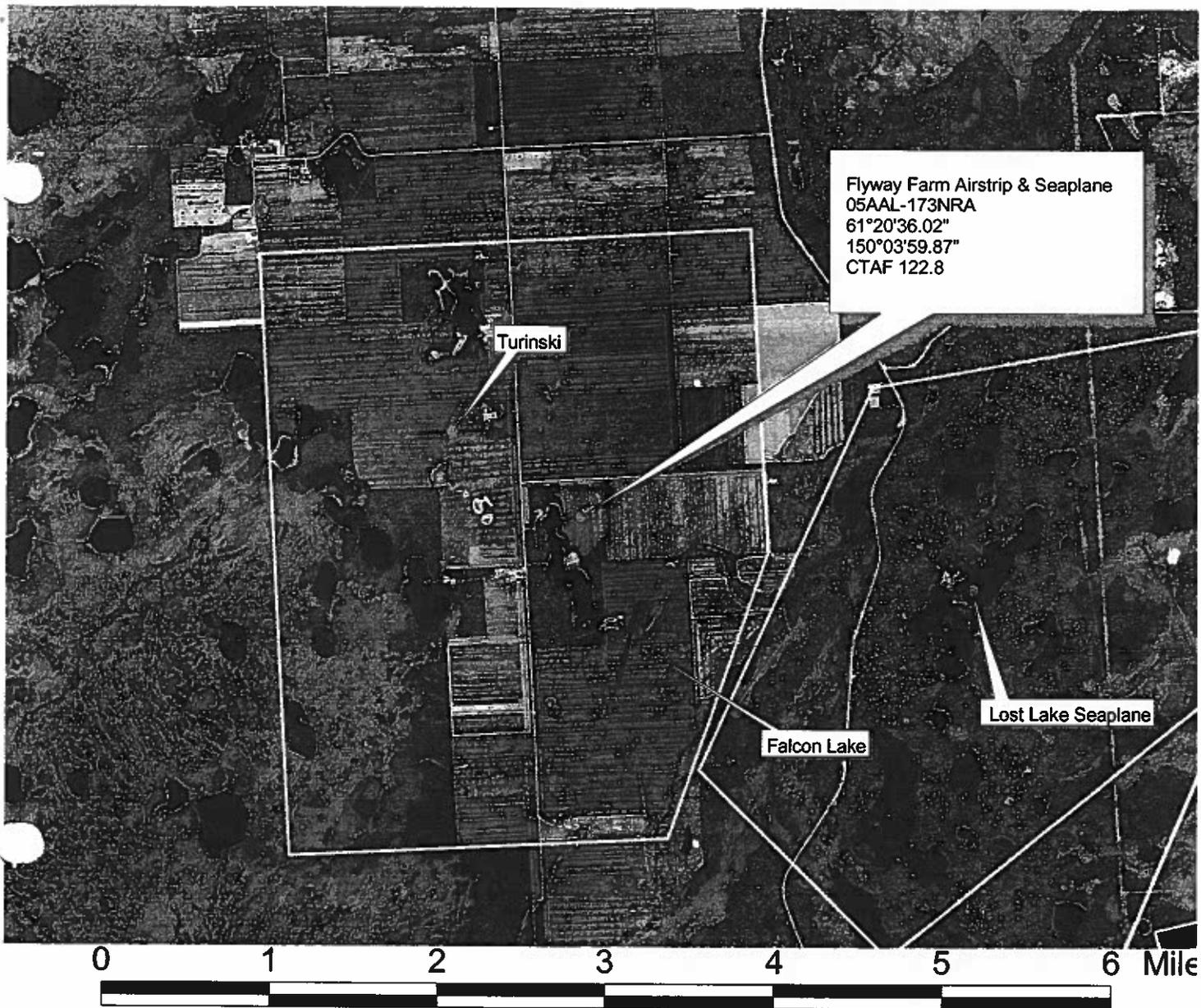
Table S-2
Summary and Comparison of Potential Impacts (page 2 of 3)

	Mac West-Conn 1-Willow	Mac West-Conn 1-Houston-North	Mac West-Conn 1-Houston-South	Mac West-Conn 2-Big Lake	Mac East-Conn 3-Houston-North	Mac East-Conn 3-Houston-South	Mac East-Conn 2a-Big Lake	Mac East-Conn 3-Willow	Mac East-Conn 3-Houston-North	Mac East-Conn 3-Houston-South	Total habitat acres lost: 657
Biological Resources						Fragmentation of core habitats: 2,495 acres of emergent wet woody wetland and forest					Fragmentation of core habitats: 2,501 acres of forest and woody wetland
						Moose foraging habitat acres lost: 223					Moose foraging habitat acres lost: 220
						Fish-bearing stream crossings: 10	same				Fish-bearing stream crossings: 10
						Anadromous stream crossings: 5 (1 bridge, 1 culvert)	same				Anadromous stream crossings: 5 (1 bridge, 1 culvert)
						Index of Fish Habitat Potential: 70,600	same				Index of Fish Habitat Potential: 70,600
Cultural Resources						Total cultural resources potentially affected: 23					Total cultural resources potentially affected: 15
						Cultural resource probability: low, medium, high level areas					Cultural resource probability: low

Table S-2
Summary and Comparison of Potential Impacts (page 3 of 3)

Mac West-Conn 1-Willow	Mac West-Conn 1-Houston North	Mac West-Conn 1-Houston South	Mac West-Conn 2-Big Lake	Mac East-Conn 3-Willow	Mac East-Conn 3-Houston North	Mac East-Conn 3-Houston South	Mac East-Conn 2a-Big Lake	Mac East-Conn 3-Willow	Mac East Var-Conn 3-Houston North	Mac East Var-Conn 3-Houston South
						342 acres private land				368 acres private land
						Structures in the 200-foot ROW: 2				Structures in the 200-foot ROW: 1
						Acres under agricultural covenant: 124				Acres under agricultural covenant: 173
						Official trails crossed: ^a 8 Contributing trails crossed: 3 ^b	same			Official trails crossed: 6 Contributing trails crossed: 2
						0 state recreation or refuge area crossed				0 state recreation or refuge areas crossed
						Adverse noise impact to 0 acres of section 4(f) properties				Adverse noise impact to 0 acres of section 4(f) properties

^a Detritage structures are defined as crossing structures whose structure would be determined by the Applicant during the final design process and could include multi-pile culverts, pre-cast arches, and single or multiple short-span bridges.
^b Includes 2,440 feet of stream relocation, the crossing of 2 parcels of the Su-Kait Wetland Mitigation Bank, and impacts to Goose Creek Fen.
 • Contributing trails are trails associated with the Iditarod Dog Sledding Historic District/Iditarod Yermaculter Landscape. These are additional trails and do not include those trails that are also officially recognized, such as Iditarod National Historic Trail.



Flyway Farm Airstrip & Seaplane traffic pattern shared with Turinski and Falcon Lake

October 18, 2005

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- Airport
 - Military
 - Objectionable/Abandoned
 - Private Use, Registration Process Complete
 - Proposal Not Pursued
 - Proposed New Airports
 - Public Use, Registration Process Complete
- Runway
- Highways.shp
- Traffic Pattern Boundary



F I L E R