

November 27, 2024

Richard Mousley
Senior Right of Way Agent
200 East Hardin Street
Findlay, OH 45840

ENGINEERING
TEL 907.265.3095

RE: Letter of Objection dated 10/31/2024 – Fish Creek Trail Connection Project

Dear Mr. Mousley:

The Alaska Railroad Corporation (“ARRC”) received your letter dated October 31, 2024 registering Tesoro Alaska Pipeline Company LLC’s (“Marathon’s”) objection to the placement of the proposed Fish Creek Trail Connection Project (the “Project”) within the Alaska Railroad right-of-way (“ROW”). Based on our review of your letter, ARRC believes your concerns can be summarized as follows:

- 1) Marathon is advocating for the construction of the Project alternative S3 over S2;
- 2) Marathon perceives potential conflicts between the Project and maintenance activities that may be required by Marathon to maintain your pipeline;
- 3) Marathon is concerned regarding potential damage or vandalism to its permitted facilities, especially valve site MLV19, and potential liability therefor;
- 4) Marathon expresses concerns regarding the application of ARRC Technical Standards for Roadway, Trail, and Utility Facilities in the ARRC Right-of-Way (“ROW Standards”).
- 5) Marathon believes the S2 alternative could adversely impact unspecified “property rights”.

We address the above concerns in order below.

First, we note that the Project is being developed by the Municipality of Anchorage (the “Muni”), and managed by the Alaska Department of Transportation and Public Facilities (“ADOT”). ARRC continues to be periodically consulted by those entities on technical matters related to the Project, but has neither developed nor taken an official position regarding the proposed location of the Trail other than to consult existing permitted corridor users and to address their valid concerns. Additionally, ARRC has raised concerns with the Project developers over the potential impacts to private yard encroachments in the ARRC ROW. Although these encroachments do not have a current right-of-way instrument associated with them, we have asked that the Project make all reasonable attempts to mitigate impacts to these individual yards. If Marathon has a strong opinion regarding the proposed route selection, those comments need to be addressed to ADOT and the Muni. If, after good-faith efforts to work with ADOT and the Muni, there remain legitimate concerns related to your permitted facilities that remain unresolved, we will work with Marathon and the Project developers to determine if these concerns can be mitigated.

Second, we recognize Marathon’s understandable general concern relating to the effect of the Project on its maintenance obligations related to its pipeline facilities. Those obligations arise under the Permit and Construction Agreement for Underground Pipeline dated April 26, 1976 (Contract # 69-25-0003-4541)

granted originally to the Nikiski Alaska Pipeline Company, now Tesoro Alaska Pipeline Company LLC (the "Permit"). Section 9 of the Permit, titled "Future Permits," reads:

*"The Railroad reserves the right to grant to others, permits to use and occupy the permit area providing that said use and occupancy will not, in the opinion of the Railroad, **unreasonably interfere with the Permittee's use of the Permit area.**"* (emphasis added)

Marathon's pipeline is but one of many similar facilities through the area. ARRC believes that it is reasonable to assume that, depending upon the eventual location of the Project, the proposed trail might have to be temporarily closed for Marathon to complete certain maintenance activities. This same situation exists for over a mile at the north end of the Project, between the Coastal Trail crossing and Elderberry Park, as well as south of the Project, along Northern Lights Boulevard.

To access pipeline facilities through the section of corridor proposed in the Project area, there is presently a gated road used by Marathon and others for access. The southern end of that access road will remain unaffected by the Project, but its northern end would be supplanted by the proposed trail. However, Marathon's stated position is that its maintenance access will be restricted on the southern end of the Project (S2) where we do not expect your access would be directly affected, while remaining silent with respect to the northern half of the Project, specifically alternative N3, where regular maintenance might require more coordination. If ARRC is to take a position regarding Marathon's continued ability to maintain its facility as the result of the Project, we will need more detail regarding both its concerns regarding why this portion of the corridor has maintenance concerns that are materially different than those existing immediately north and south of the Project, and how the Project is unable to adequately mitigate those concerns due to an apparent disparity of impacts.

With respect to potential damage or vandalism to Marathon's facilities, we note that under an ARRC permit for the trail facility, the Muni will be responsible for any damage resulting from their construction or operation of that facility. We further note that the security of Marathon's pipeline will be enhanced by its location below grade. Per both the ROW Standards and industry practice, Marathon's pipeline ought to be substantially buried (at least 5-6 feet), which would seem to adequately protect it from vandalism.

Another issue affecting pipeline security relates to the location of valve stations. Based on our review, it appears that the description of the location of the valve station referenced in your letter is inaccurate. Although presently fenced, it is located 20 feet from a public street in plain public view with only one side wooded, and only 50-feet from a playground. Moreover, we understand that valve station is accessed by vehicles running on an existing trail that parallels Northern Lights Boulevard 100 feet to the south. Given the valve station's present location and the amount of access and foot traffic in its immediate vicinity, we fail to see how this setting is materially different than other valve stations though the corridor outside of the Project area, nor how the vandalism risk will be substantially increased should alternate S2 be pursued. In any event, such concerns ought to be brought to the Project developers by Marathon for potential mitigation; with ARRC consulted only if and when those concerns cannot be adequately resolved.

Turning to ARRC's ROW Standards, your concern over the ability for ARRC to add an additional track through the corridor is valid. In fact, such a track would be placed on the east side of the current mainline, towards S3, and away from S2. This is because of the location of the Muni's bridge over

Northern Lights Boulevard immediately south of the Project, and the Muni's underpass under the railroad immediately North of the Project are both designed for this eventuality.

Your letter cites overall safety as an issue, quoting several sections of both the ROW Standards and AMATS documents. ARRC cannot comment upon the development or application of AMATS documents regarding trails. With respect to your assertion of public safety concerns for projects within 50 feet of the railroad tracks related to loose strapping and snow operations, those concerns and others were foremost in mind when ARRC developed the ROW Standards. In fact, review of data, industry practice, and ARRC operations were key components informing the development of the ROW Standards. With respect to appropriate distances of non-ARRC facilities from the tracks, Part 3.2 of the ROW Standards states:

...non-railroad Facility shall be physically located as far away from ARRC Track as possible, but not within fifty (50) feet of the centerline of any operating ARRC Track or any Future Track.

Given ARRC's desire to minimize impact on the yard encroachments on the south end of the Project, presumably the Project developers created alignment S2 with those limitations in mind. Consistent with that assumption, no exception to those standards has been requested by the Project developers to date.

Finally, your letter states that the S2 project "will unreasonably interfere with our property rights and permitted use of the area." We assume that that reference pertains to Permit rights or to ownership of the pipeline facility itself rather than to any property rights in the ARRC ROW. Section 8 of the Permit explicitly provides that Marathon has no property rights in the ARRC ROW:

"It is understood that through this Permit the Permittee acquires no interest in or title to Railroad property on, under or over which the facility is placed, the land remaining at all times the property of the Railroad."

ARRC strongly encourages Marathon, the Muni, and ADOT to resolve any legitimate concerns related to your facilities with the proposed Project. We further look forward to working with you on the renewal of your Permit, which expires in 2026, and to continuing our relationship in providing for the transportation needs of the people of Alaska. If you have any further questions or concerns in this matter, please do not hesitate to contact me at your convenience.

Sincerely,



Brian Lindamood, PE, SE
Vice President, Engineering & Chief Engineer

Cc: Bill O'Leary (ARRC) Christy Terry (ARRC)
 Andy Behrend (ARRC) Meghan Clemens (ARRC)
 Andrew Donovan (ARRC) Kate Dueber (ARRC)
 Commissioner Ryan Anderson (ADOT) Sean Holland (ADOT)
 Noah King (ADOT) Eva Gardner (Muni)
 Taylor Keegan (Muni) Nicholas Capozzi (State of AK)