



# TRUSTEES FOR ALASKA

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Via Efile

October 3, 2019

The Honorable Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street NE  
Washington, D.C. 20426

**Re: Comments on the Draft Environmental Impact Statement for the Alaska LNG Project Draft Environmental Impact Statement, Docket No. CP17-178-000**

Dear Secretary Bose:

Trustees for Alaska submits these comments on behalf of National Parks Conservation Association. The comments address the Federal Energy Regulatory Commission (FERC) Draft Environmental Impact Statement (DEIS) on the Alaska LNG Project Draft Environmental Impact Statement. This public process, required by the National Environmental Policy Act, helps to ensure that FERC fully understands, discloses, and analyzes the effects of the proposal. This is especially important here, because the size and scope of this project will impact much of Alaska and is projected to impact public lands and resources across the state including Denali, Gates of the Arctic and Lake Clark National Park and Preserve and other federal public lands.

NPCA has identified several serious deficiencies with the DEIS that make it impossible to ensure that impacts to national parks are fully analyzed and mitigation plans are in place to minimize or eliminate project impacts. To comply with the law, and fully protect the federal land resources that will be impacted by this project, FERC needs to address the inadequate and outdated air impacts analysis, adequately consider alternatives for both the portion of the route through Denali National Park and for mitigation alternatives for controlling air quality impacts, provide the missing data and analysis that have not yet been submitted by the applicant, and re-issue the DEIS with an opportunity for public comment. Allowing the applicant to submit new information, cure deficiencies, and create mitigation plans after the public comment process has closed circumvents the purposes of NEPA and applicable NEPA regulations.

The comments attached to this letter, along with the included two technical reports, demonstrate that FERC cannot legally move forward based on the information currently before it. FERC should extend the public comment period and supplement its NEPA analysis. Thank you for your consideration of these comments.

Sincerely,



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Enc. NPCA Comments

Attachment 1 – Report from Dr. Howard Gebhart

Attachment 2 – Report from Megan Williams and Exhibits 1-5

Attachment 3 – 2011 MOU Regarding Air Quality Analysis and Mitigation for Federal Oil and Gas Decisions through the NEPA Process

**Comments on the Draft Environmental Impact Statement for  
the Alaska LNG Project, Docket No. CP17-178-000**

Comments submitted on behalf of National Parks Conservation  
Association

Prepared by Trustees for Alaska  
Submitted to the Federal Energy Regulatory Commission  
October 3, 2019

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## LIST OF ACRONYMS

AGDC	Alaska Gasline Development Corporation
AQRV	Air Quality Related Value
CEQ	Council on Environmental Quality
DEIS	Draft Environmental Impact Statement
EIS	Environmental Impact Statement
EPA	U.S. Environmental Protection Agency
FERC	Federal Energy Regulatory Commission
FWS	U.S. Fish and Wildlife Service
MOU	Memorandum of Understanding
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NPCA	National Parks Conservation Association
PSD	Prevention of Significant Deterioration
RFI	Requests for Information

## INTRODUCTION

The National Parks and Conservation Association is concerned about the scope of impacts this project will have on National Park resources in Alaska, particularly Gates of the Arctic National Park, Lake Clark National Park, Denali National Park and Preserve, and other federal lands. These impacts are reasonably foreseeable from the proposed project alone, and cumulatively when considered in conjunction with other projects in the region. The air quality analyses, modeling and associated reports are incomplete, based on unrepresentative and outdated information, and likely underestimate the impacts of the Alaska LNG project to protected federal lands. In order for the EIS to provide the public with a full and accurate understanding of the project's impacts, FERC must update its modeling and air quality analyses, consider a full range of alternatives for the route through Denali National Park and for mitigating the reasonably foreseeable significant air impacts, provide all missing data and analysis, and make the additional information available to the public through a supplemental notice with opportunity for comment. Even with these deficiencies, and as discussed below and in the attached air quality reports, projected adverse air quality impacts, especially for Air Quality Related Values (AQRVs) such as visibility and acid deposition at designated Class I PSD areas and sensitive Class II areas are significant. The DEIS fails to identify mitigation measures to reduce and/or eliminate these impacts, let alone ensure such a mitigation plan will be enforceable to safeguard public lands from impacts.

As the DEIS is currently presented, including the information made available on the FERC docket as of October 2, 2019, FERC has failed to both provide a comprehensive environmental review and adequately consider the potentially significant negative environmental impacts of this project.

NPCA has previously requested that FERC extend the time for public comment until information missing from the DEIS is provided by the applicant or other agencies. Letter from NPCA to FERC dated September 3, 2019, Letter from NPCA to FERC dated September 16, 2019, and NPCA Motion to Intervene and Protest, dated September 30, 2019. Counsel for NPCA made an additional request for the missing information and for more time for public comment at FERC's public meeting in Anchorage, Alaska on September 12, 2019. NPCA's air expert has identified additional information that is missing. Williams, 2019 and Section IV below. NPCA has not received the requested information, or a response to its request for an extension of the time to comment.

### **I. FERC'S DEIS FAILS TO MEET APPLICABLE LEGAL REQUIREMENTS, PARTICULARLY NEPA AND CAA REQUIREMENTS.**

As the lead agency, FERC must ensure this process complies with the National Environmental Policy Act (NEPA) and the Clean Air Act (CAA).

### **A. FERC's DEIS Fails to Comply with NEPA**

NEPA is “our basic national charter for protection of the environment.”<sup>1</sup> NEPA’s analysis and disclosure goals are two-fold: (1) to ensure informed agency decision making, and (2) to ensure public involvement.<sup>2</sup> NEPA requires that federal agencies prepare a detailed EIS for any major Federal action that may significantly affect the quality of the human environment.<sup>3</sup> By focusing the agency’s attention on the environmental consequences of its proposed action, NEPA “ensures that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.”<sup>4</sup> NEPA “is not designed to postpone analysis of an environmental consequence to the last possible moment;” it is “designed to require such analysis as soon as it can reasonably be done.”<sup>5</sup>

FERC’s DEIS fails to comply with NEPA in multiple respects. Indeed, FERC should supplement the DEIS and re-release it for public comment. FERC fails to consider all air impacts, a reasonable range of alternatives, fails to acknowledge and address considerable missing information, and fails to properly evaluate mitigation measures.

### **B. FERC Fails to Ensure Compliance with Clean Air Act Requirements for Denali, Gates of the Arctic and Lake Clark National Park and Preserve and Other Federal Lands**

The Clean Air Act establishes the highest level of air quality protection for 156 designated national parks and wilderness areas. These places, referred to as “Class I areas,” are protected through the enforcement of Clean Air Act provisions including the Prevention of Significant Deterioration Program (PSD). The PSD program is intended to “protect, preserve and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores and other areas of special national or regional natural, recreational, scenic or historic value.” 42 U.S.C §7470(2). These protected areas are to have the best air quality in the country, attaining or exceeding the minimum levels mandated by the National Ambient Air Quality Standards, protecting public welfare and safeguarding air quality related values (AQRVs). To achieve this objective, the PSD program affords Class I areas such as Denali National Park and Preserve, the highest level of protection from industrial sources of pollution. Importantly the Clean Air Act requires assurance that “... any decision to permit increased air pollution in any area [] is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decisionmaking process. 42 U.S.C §7470(5).

The Organic Act requires the National Park Service to leave park resources and values “unimpaired for the enjoyment of future generations.” 16 USC 1. This mandate extends to all units under National Park Service management units irrespective of Class designation under the

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<sup>1</sup> 40 C.F.R. § 1500.1(a).

<sup>2</sup> *Robertson v. Methow Valley Citizen Council*, 490 U.S. 332, 349 (1989).

<sup>3</sup> 42 U.S.C. § 4332; 40 C.F.R. § 1508.18(b)(4).

<sup>4</sup> *See also Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 371 (1989)).

<sup>5</sup> *Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1072 (9th Cir. 2002).

CAA. Satisfying this statutory mandate compels cooperative engagement with other agencies including FERC.

Through the Clean Air Act, Congress established “as a national goal the prevention of any future, and remedying of any existing, impairment of visibility in the mandatory class I Federal areas which impairment results from manmade air pollution”<sup>6</sup> where visibility has been determined to be an important value.<sup>7</sup> “Manmade air pollution” is defined as “air pollution which results directly or indirectly from human activities[.]”<sup>8</sup> Congress adopted the visibility protection program to protect the —intrinsic beauty and historical and archeological treasures of specific public lands.<sup>9</sup> In 1999, EPA promulgated regulations to reduce and ultimately eliminate regional haze in Class I Areas.<sup>10</sup> This promulgation was in part due to the recognition that haze problems are caused by human made air pollution and that the nation’s precious natural resources should be protected from such impacts for the use and enjoyment by future generations. Particulate matter (PM), volatile organic compounds (VOCs), nitrogen oxides (NO<sub>x</sub>), sulfur dioxide (SO<sub>2</sub>), and ammonia (NH<sub>3</sub>) contribute directly to haze or form haze after being converted in the atmosphere. These air pollutants contribute to the deterioration of air quality and reduced visibility in our nation’s national parks, wilderness areas, and wildlife refuges. Haze is a general term to describe the extent to which air pollution diminishes visibility. Regional haze impairs a viewer’s ability to see long distances, color and geologic formation. While some haze causing particles result from natural processes, most result from anthropogenic sources of pollution.

Class I and Class II increments establish permissible amounts of sulfur dioxide, nitrogen oxide, and particulate matter that may be emitted over baseline levels by a pollution source affecting an area. 42 U.S.C. § 7473 (b)(1)&(2). The national ambient air quality standards (NAAQS) prescribes the maximum concentration of a specific pollutant in a defined area. When a given area’s pollution level is lower than the maximum level of a pollutant allowed under the NAAQS, the difference between the baseline concentration and NAAQS concentration defines the available increment. The permitting agency doles out portions of the available increment to emitting sources of pollution through the permitting process. An increment is considered spent or consumed when the limits of the NAAQS are reached.<sup>11</sup> While the regulatory authority could allow the entire increment to be used, increasing emissions that would exceed the Class I or Class II Increment threshold and thereby potentially cause damage to the area or areas constitute a violation of PSD. 42 U.S.C. § 7475(d)(2)(a); 40 CFR 51.166(p). Because consumption of particulate matter increment presents as an issue even in the flawed record modeling and where FERC is obligated to assess all reasonably foreseeable impacts from development, the agency must assess increment consumption and potential PSD violations from the AK LNG project.

NEPA Section 102, 42 USC § 4332 provides:

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<sup>6</sup> 42 U.S.C. §7491(a)(1).

<sup>7</sup> 42 U.S.C. §7491(a)(2).

<sup>8</sup> 42 U.S.C. §7491(g)(3).

<sup>9</sup> See H.R. REP. NO. 95-294, at 203–04 (1977).

<sup>10</sup> Regional Haze Regulations, 64 Fed. Reg. 35,714-35,774 (July 1, 1999); see 40 C.F.R. 51.300-51.309).

<sup>11</sup> 40 C.F.R. §52.21(b) & (d).



The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act.

The policies set forth in NEPA Section 101, 42 USC § 4331, include the federal government's obligation to:

1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
2. assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
5. achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
6. enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

The AK LNG project will emit visibility impairing pollutants including particulate matter and nitrogen oxides. NPS has identified visibility impairment, amongst other air quality related values as a concern from this development. Dr. Gebhart has identified increment consumption as being of concern as well. Gebhart, 2019. Where FERC is failing to assure no further degradation to visibility and prevent future impairment its DEIS is directly at odds with the Clean Air Act and FERC's NEPA obligations. Where FERC fails to protect other AQRVs and assure compliance with PSD increment, the agency is likewise inhibiting protection of air quality and taking an action at odds with Clean Air Act and NEPA requirements.

FERC has failed to provide information sufficient to accurately assess impacts to visibility, AQRVs, and PSD increment it is unclear at best and more likely improbably that the agency is satisfying its NEPA obligation to "attain the widest range of beneficial uses of the environment without degradation" or otherwise act in accordance with the Clean Air Act.

### **C. BLM Right-of-way**

We further note that AGDC would need to obtain a right-of-way grant from the Bureau of Land Management (BLM) for crossing lands managed by the BLM.<sup>12</sup> Under the Federal Land Policy and Management Act of 1976 (FLPMA), the BLM has authority to regulate the use, occupancy, and development of federal public lands and take whatever action is required to prevent unnecessary or undue degradation of these lands.<sup>13</sup> FLPMA provides that rights-of-way "shall be granted, issued or renewed ... consistent with ... any other applicable laws."<sup>14</sup> Thus, BLM should require FERC to submit right-of-way or other special use permit

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<sup>12</sup> FERC Alaska LNG DEIS vol. 1 at 1-7.

<sup>13</sup> 43 U.S.C. § 1732.

<sup>14</sup> 43 U.S.C. § 1764(a) (1996).

authorizations and require that all mandates of FLPMA Title V and its implementing regulations are adhered to, as well as the Clean Air Act.<sup>15</sup>

Important substantive requirements flow from FLPMA's ROW provisions. First, BLM must honor the requirement that the right-of-way grant "do no unnecessary damage to the environment." The right-of-way permit "shall contain terms and conditions which will . . . minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment."<sup>16</sup> Thus, BLM has an independent legal mandate to ensure that FERC's right-of-way grant does not unnecessary and undue degradation to the public lands and ensure that its right-of-way grant is consistent with other applicable laws, such as NEPA and the Clean Air Act.

#### **D. The "Sensitive Class II" Land Designation used by Federal Agencies is Consistent with the Clean Air Act and the NPS Organic Act**

The State of Alaska's comments to FERC, submitted on October 2, 2019, include correspondence between the Alaska Department of Environmental Conservation (ADEC) and federal agencies regarding the State's objection to the consideration of "Sensitive Class II" areas. In both the State's comments and ADEC's June 27, 2018 letter to Joe Balash, Assistant Secretary of Land and Minerals Management and Susan Combs, Acting Assistant Secretary for Fish, Wildlife and Parks, the State requests removal of the "Sensitive Class II" term. It argues that the term "Class II Sensitive Area" born out of a 2011 Memorandum of Understanding (MOU) between Department of Interior, the Environmental Protection Agency and the Department of Agriculture conflicts with other Clean Air Act requirements. The MOU defines "Class II Sensitive Area" as "an area identified by the affected agency on a case-by-case basis." Alaska states that "special protections for Class II areas only exist due to this memorandum." This is incorrect. This definition exists in the 2011 MOU, and is a term specifically honored by the sister federal agencies. But it is also valid, separate from the MOU, and not at odds with the requirements of the Clean Air Act. Alaska offers no support in suggesting otherwise. It is unfortunate and immaterial that the Department of Interior subsequently withdrew the June 27, 2018 letter in its letter to FERC of July 2019. Similarly, ADEC states that the phrase "nationally designated protected areas" could likewise be misleading.

At bottom the Organic Act of the National Park Service establishes that the agency's mission is twofold to (1) conserve national park resources and (2) provide for their use and enjoyment "in such a manner and by such means as will leave them unimpaired" for future generations. 16 U.S.C. § 1. The Wilderness Act provides for a similar directive, to leave wilderness areas unimpaired for present and future generations. 16 U.S.C. §§ 1131-1136. The Clean Air Act provides that an express purpose of the PSD program is "to preserve, protect, and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value..."<sup>42</sup> U.S.C. § 7470(2). As stated in the Federal Land Manager Air Quality Guidance document, Appendix C:

The designation of a Park or Wilderness as Class I or II does not dictate the

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<sup>15</sup> See 43 C.F.R. pt. 2800 (BLM FLPMA grant regulations).

<sup>16</sup> *Id.* § 1765(a)(ii).

management goals for it; these are identified in the enabling legislation. The designation only determines which options are available to meet the goals. Class I Parks or Wildernesses, for instance, can be protected through AQRV analysis, whereas the protection of Class II Parks and Wildernesses can be achieved using BACT requirements.

Indeed, these federal laws and guidance make clear that protection of the public lands set aside comes with requisite management and resource protection obligations of federal agencies. While the Clean Air Act affords Class I areas distinct and heightened protections, such protections do not come at the expense of the necessary safeguarding of other parks, preserves and wilderness areas. Regardless of whether these areas are referred to as “Sensitive Class II areas,” “nationally designated protected areas,” or otherwise named, what is significant is that they merit protection because federal laws have established that they are to be specifically and specially protected. These laws charge Federal Land Managers, including the National Park Service, with an affirmative obligation to protect these lands and their resources. As such, NPS supports FERC’s approach and urges the agency to abide by the Sensitive Class II area designation that land managers deem appropriate and as has been used in interagency agreements, the federal land managers own guidance, and which is supported firmly in enabling legislation.

## **II. FERC FAILS TO CONSIDER THE FULL RANGE OF IMPACTS OF THE ALASKA LNG PROJECT TO AIR QUALITY.**

The Alaska LNG Environmental Impact Statement (EIS) must assess the direct, indirect, and cumulative effects of the proposed project on the human environment, as well as means to mitigate adverse environmental impacts.<sup>17</sup> The effects and impacts to be analyzed include ecological, aesthetic, historical, cultural, economic, social, and health impacts.<sup>18</sup> Direct effects are those that are caused by the project and that occur in the same time and place.<sup>19</sup> Indirect effects are those that are somewhat removed in time or distance from the project, but nonetheless reasonably foreseeable.<sup>20</sup>

The EIS must consider actions that are connected with, or closely related to, the project in question.<sup>21</sup> NEPA requires that “connected actions” and “cumulative actions” be considered together in a single EIS.<sup>22</sup> “Connected actions” are defined as actions that: automatically trigger other actions which may require EISs; cannot or will not proceed unless other actions are taken previously or simultaneously; or are interdependent parts of a larger action and depend on the larger action for their justification.<sup>23</sup>

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<sup>17</sup> 40 C.F.R. §§ 1502.16, 1508.25(c).

<sup>18</sup> *Id.* at § 1508.8.

<sup>19</sup> *Id.* at § 1508.8(a).

<sup>20</sup> *Id.* at § 1508.8(b).

<sup>21</sup> *Id.* at § 1508.25(a)(1).

<sup>22</sup> *Id.* at § 1508.25.

<sup>23</sup> *Id.* at § 1508.25(a)(1).

Indirect effects “are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.”<sup>24</sup> In contrast, “cumulative impact” is defined as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.”<sup>25</sup> “Cumulative impacts” include those impacts “which when viewed with other proposed actions have cumulatively significant impacts.”<sup>26</sup> Such impacts can result from individually minor but collectively significant actions taking place over a period of time.<sup>27</sup>

In its cumulative impacts analysis, FERC must take a “hard look” at all past, present and reasonably foreseeable future actions:

[A]nalysis of cumulative impacts must give a sufficiently detailed catalogue of past, present, and future projects, and provide adequate analysis about how these projects, and differences between the projects, are thought to have impacted the environment . . . . Without such information, neither the courts nor the public . . . can be assured that the [agency] provided the hard look that it is required to provide.<sup>28</sup>

“Effects are reasonably foreseeable if they are sufficiently likely to occur that a person of ordinary prudence would take [them] into account in reaching a decision.”<sup>29</sup> In an EPA NEPA guidance document, EPA noted:

[P]rojects need not be finalized before they are reasonably foreseeable. “NEPA requires that an EIS engage in reasonable forecasting. Because speculation is . . . implicit in NEPA, [ ] we must reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as crystal ball inquiry.” *Selkirk Conservation Alliance v. Forsgren*, 336 F.3d 944 (9th Cir. 2003). As the [EPA] also has noted, “reasonably foreseeable future actions need to be considered even if they are not specific proposals.”<sup>30</sup>

FERC may not rely solely on the one-sided information and conclusions contained in the proponent’s application. As the lead agency responsible for developing the EIS, FERC is obligated to obtain appropriate baseline data for the project area and do a thorough analysis of potential impacts from the proposed project.

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<sup>24</sup> *Id.* at § 1508.8(b).

<sup>25</sup> *Id.* at § 1508.7.

<sup>26</sup> *Id.* at § 1508.25(a)(2).

<sup>27</sup> *Id.*

<sup>28</sup> *Te-Moak Tribe of W. Shoshone v. Dep’t of Interior*, 608 F.3d 592, 603 (9th Cir. 2010) (rejecting NEPA review for mineral exploration operation that failed to include detailed analysis of impacts from nearby proposed mining operations).

<sup>29</sup> *EarthReports Inc. v. Federal Energy Regulatory Commission*, 828 F.3d 949, 955 (D.C. Circuit 2016).

<sup>30</sup> Environmental Protection Agency, *Consideration of Cumulative Impact Analysis in EPA Review of NEPA Documents*, Office of Federal Activities, May 1999, at 12–13, <https://www.epa.gov/sites/production/files/2014-08/documents/cumulative.pdf>.

FERC has failed to take a hard look at direct, indirect, and cumulative effects and has therefore failed to adequately consider the potential significant adverse impacts to air quality.

FERC's air quality modeling analyses demonstrates that widespread and significant adverse impacts on air quality would occur at Denali National Park (Class I), Gates of the Arctic National Park, Lake Clark National Park and other protected federal lands. These impacts occur from the components of the proposed project alone, and cumulatively when considering other sources in the region. The air quality analyses, modeling and associated reports are incomplete, based on unrepresentative and outdated information, and likely underestimate the impacts of the Alaska LNG project to protected federal lands. In order to provide the public with a full and accurate understanding of the project's impacts, FERC must update its modeling and air quality analyses, provide a mitigation plan and make such additional information available to the public through a supplemental notice with opportunity for comment. Even with these deficiencies, and as discussed below and in the attached air quality reports, the projected adverse air quality impacts, especially for Air Quality Related Values (AQRVs) such as visibility and acid deposition at designated Class I PSD areas and sensitive Class II areas are significant and the Draft EIS fails to identify mitigation measures to reduce and/or eliminate these impacts.<sup>31</sup> Without the proposed mitigation measures, neither FERC nor the public can ensure such a mitigation plan would be adequate and enforceable to safeguard public lands from impacts.

NPCA is providing FERC with two expert reports specific to air quality issues of the AK LNG Project (attached). The first is entitled "Technical Comments on Alaska LNG Project DRAFT Environmental Impact Statement (EIS) – Air Quality Sections" by Dr. Howard Gebhart of Air Resource Specialists Inc. Gebhart, 2019. The second is entitled "Air Quality Review of the Alaska LNG Project Draft Environmental Impact Statement" by Megan Williams. Williams, 2019. Both these reports are incorporated into NPCA's comments on the DEIS by reference. Key findings from these reports are briefly summarized here.

One of the foundational requirements of NEPA is to compel a cumulative assessment of environmental impacts from a development project. Compliance with this mandate here necessitates a comprehensive air quality assessment addressing the cumulative impact of all parts of the AK LNG project including all Compressor and Heat Stations, the Liquefaction Facility and the Gas Treatment Plant. The air quality impacts of these facilities cannot properly be understood in isolation of each other. It is therefore necessary for FERC to model cumulative air quality impacts of all project components using current and relevant emissions data. Among other modeling deficiencies, the DEIS does not include impacts from the compressor and heater stations in the cumulative impact analysis. This is a significant flaw in the DEIS that must be remedied for FERC to meet its NEPA obligations. Williams, 2019 at 7. These facilities will impact the same national parks and wildlife refuges as other project facilities including the Liquefaction Facility. These impacts must all be included in FERC's assessment of cumulative impacts.

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<sup>31</sup> See Attachment 3 – 2011 MOU Regarding Air Quality Analysis and Mitigation for Federal Oil and Gas Decisions through the NEPA Process for information about Class II Sensitive Areas.

The National Park Service previously commented on this shortcoming, stating that such a cumulative analysis is necessary as it is “the only way to effectively evaluate the direct effects of all LNG facilities to [Air Quality Related Values] in Class I and Sensitive Class II areas.”<sup>32</sup> The cumulative impact analysis must include all existing and reasonably foreseeable development sources including the Greater Mooses Tooth 1 and 2, Nanushuk, and Willow development projects.

FERC must update and provide additional information including additional modeling and data on the magnitude of projected impacts from the numerous emitting sources, the various time periods of operation and during specific operational events. According to Dr. Gebhart, the DEIS is based on outdated air models and relies on outdated emissions data. Gebhart, 2019 at 1, 6. For example, Dr. Gebhart finds that the construction-related emissions appear outdated and the maritime emissions were not calculated based on the maximum number of vessels. Gebhart, 2019 at 2. Both Dr. Gebhart and Ms. Williams find numerous additional data deficiencies including that FERC does not provide modeling results for the years when construction, start-up, and operational activities will occur simultaneously or for flaring activities during start-up and maintenance at the Gas Treatment Plant and Liquefaction Facilities. Gebhart, 2019 at 2; Williams, 2019 at 3, 19.

FERC must update and disclose the magnitude of those concurrent impacts in the DEIS in order for the public to be able to assess their significance, including (1) predicted exceedances of national ambient air quality standards (NAAQS) regardless of whether those exceedances are projected outside of what FERC defines as “Normal Operations” as well as (2) significant visibility and ecosystem impacts from operation of the proposed project. Accordingly, the modeling and impact analyses must be redone using: the current versions of EPA approved air dispersion models; current, complete and accurate emissions information for both project and non-project emission sources; and a comprehensive impact assessment based on corrected and disclosed information.

There are numerous missing elements of reporting and analysis rendering the record incomplete and potential emissions and their impact unknown. Williams, 2019 and Section IV below. This information must be analyzed, and the environmental impacts disclosed. For example, the modeling of the Liquefaction Facility and Gas Treatment Plant shows that emissions from the Liquefaction Facility would contribute to visibility impairment on 13 days per year at Lake Clark National Park and that emissions from the Gas Treatment Plant would contribute to visibility impairment on 15 days per year at Arctic National Wildlife Refuge. Visibility impairment at additional Class I areas is also projected even in this limited model. Williams, 2019. The DEIS and underlying Resource Report do not include a complete analysis of the impacts of the compressor or heater stations on visibility in nearby Class I and Sensitive Class II areas and fails to assess the combined effect of emissions from multiple compressor

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<sup>32</sup> See, e.g., FERC Alaska LNG DEIS Resource Report No. 9 Appendix D at 98 and 100 for modeled visibility and deposition impacts at Denali National Park from the Liquefaction Facility and FERC Alaska LNG DEIS Resource Report No. 9 at 9-69 and 9-72 for modeled visibility and deposition impacts at Denali National Park from the Main Pipeline compressor stations.

stations to protected public lands. *Id.* Moreover, the information provided on the impacts relative to the compressor and heater stations are inconsistent. *Id.*

The Tuxedni Wilderness within the Alaska Maritime National Wildlife Refuge (NWR) is designated a Class I area, and the Arctic, Kanuti, Yukon Flats, Koyukuk, Selawik, Nowitna, Kenai, Kodiak, and Alaska Maritime NWRs are considered sensitive Class II air quality areas. Williams, 2019. The project facilities would be within 300 kilometers (km) of these areas, which is a typical screening distance used by Federal Land Managers to assess potential air quality impacts from a facility on a sensitive area or resource. Williams, 2019 at 20. The project impact analyses shows significant ecosystem threats related to nitrogen deposition impacts from the Gas Treatment Plant at the Arctic National Wildlife Refuge; from the Liquefaction Facility at Denali National Park, Lake Clark National Park, Tuxedni National Park and Kenai National Wildlife Refuge; and from the Main Pipeline/Compressor and Heater stations at Gates of the arctic National Park, Denali National Park, Arctic National Wildlife Refuge, Yukon Flats National Wildlife Refuge, Kanuti National Wildlife Refuge, and Kenai National Wildlife Refuge. Increased nitrogen deposition at Denali National Park and Preserve is of significant concern to NPCA as its resources including wetlands and arctic vegetation may be harmed by increased nitrogen deposition related to the project. Williams, 2019 at 8, 12. While the DEIS presents an incomplete picture, the magnitude of these ecosystem impacts is clearly significant. Even the DEIS's limited and incomplete analysis shows that the nitrogen deposition threshold would be exceeded by two to over 387 times from single compressor stations at Denali National Park, Gates of the Arctic National Park, Yukon Flats National Wildlife Refuge, and Arctic National Wildlife Refuge. Williams, 2019 at 12.

The project impact analyses shows significant sulfur deposition impacts from the Liquefaction Facility at Lake Clark National Park, Tuxedni National Park, and Kenai National Wildlife Refuge; and from the Main Pipeline/Compressor and Heater Stations at the Arctic National Wildlife Refuge. Denali National Park and Preserve and Gates of the Arctic are already identified by the National Park Service as being of moderate concern for sulfur deposition because these ecosystems are highly sensitive to acidification. Williams, 2019 at 9. While the DEIS's incomplete assessment of ecosystem impacts is already alarming, it is incomplete, unrepresentative and likely to underestimate the actual impacts.

The DEIS has no far-field air quality related value impact at the implicated public lands including Class I areas from the Main Pipeline/ Compressor and Heater stations. Nor does the DEIS assess the combined effect to Class I and Class II areas from the multiple compressor stations. These are necessary to depict the projected real-world impact of operations and to comply with NEPA. FERC must complete a thorough analysis of the impact of emissions from all project sources impacting the same area. Williams, 2019 at 3. Assessing these sources (including the compressor stations) and modeling their respective impacts to public lands in isolation of one another violates the letter and spirit of NEPA's requirements to provide a comprehensive and cumulative assessment of the direct impacts of the project. As a result, it is likely that air quality impacts would be predicted to be even more extensive than what is presented in the DEIS. Throughout the DEIS, FERC reports the need for updated emissions calculations and revised modeling analyses, to be submitted by the AGDC. However most material available in the record is outdated, unrepresentative analysis.

There are also specific modeling deficiencies associated with different sources. The modeling for the Gasification Facility annual average emission rates used for emergency sources underestimate short term emissions that occur when these emergency sources are actually operational. Gephart, 2019 at 2-3. Other modeling problems in the DEIS include an incorrect method applied for converting nitrogen oxides to the regulated nitrogen dioxides; an outdated and no longer available method for assessing nitrogen oxide emission impacts to Class I areas was applied; no evaluation of how “secondary PM-2.5 concentrations are additive to the primary PM-2.5 emissions” in the modeling. Gephart, 2019 at 3. These flaws are especially problematic as Dr. Gebhart determines that if primary and secondary PM-2.5 were combined as necessary, any available increment in protected federal lands would be consumed. *Id.* This adverse impact is nowhere recognized in the DEIS and no mitigation measures are proposed or evaluated to avoid this consequence. Dr. Gephart identifies critical information absent from Appendix E, namely the modeling that the DEIS cites to as support for its impact assessment of the compressor stations. *Id.* at 3-4. Despite this glaring omission, Dr. Gephart also specifies that the assessment provided in Section 4.15 fails to adequately address increment consumption in Class I and II areas. *Id.* This is especially troubling as some compressor stations are within 5 km of Class I Denali National Park and Preserve yet no Class I PSD increment analysis is provided. *Id.* at 4. Dr. Gebhart also predicts that Class II increments will be violated. *Id.* In the modeling assessment for the Liquefaction Facility, Dr. Gebhart identifies numerous shortcomings including the failure to assess various flaring scenarios, unrealistic operational considerations at the combustion turbines, unexplained or unjustified meteorological data and approach, and improper or absent information related to maritime emissions. *Id.* at 2, 5-6.

FERC directs AGDC to prepare and seek approval on a mitigation plan in consultation with federal land managers prior to construction that would reduce emissions of sulfur oxides and nitrogen oxides to mitigate visibility and deposition impacts from the project facilities such that they are below associated National Park Service thresholds. A directive to ready a mitigation plan at a later date is entirely insufficient. It is incumbent on FERC as the lead agency to produce additional, comprehensive, updated analysis and mitigation plans to address the significant projected impacts and create a legally sufficient DEIS. The plan must contain enforceable emissions mitigating measures to ensure the protection of air quality and compliance with all applicable standards including standards under the Clean Air Act. The so-called mitigation plans referenced in the DEIS are insufficient, based on incomplete information, not enforceable, and do not reflect the assumptions made in the air quality impact analysis. There is no schedule for availability or review of an adequate mitigation plan. FERC must set forth a plan detailing a mitigation plan and how it will ensure compliance with all applicable requirements. The agency must also make the mitigation plan available to the public for review and comment as part of a revised or supplemental DEIS process.

While some additional materials were provided by AGDC and made available to the public on September 18, 2019 – with an October 3, 2019 deadline it is entirely unreasonable for the public to carefully review and provide meaningful feedback on the nearly 2000 pages of additional information reflecting updated construction emissions and an Air Conformity Report. Even with the additional documents, key information is still missing from the record, including an updated and revised air quality modeling analysis for the Gas Treatment Plant, Main Pipeline/Compressor and Heater stations and Liquefaction Facilities and all other emissions sources associated with the project.



FERC's requests to the applicant and requests by commenters for updated and revised modeling underscore the need for this information to be provided to the public. Updated models that are representative of the project's cumulative impacts and related information are fundamental to an understanding of the range and scale of project impacts including on effected national parks and wildlife refuges, National Ambient Air Quality Standards, Prevention of Significant Deterioration Increment and all Air Quality Related Values.

In addition to updated models, as discussed in Ms. Williams' report, the EIS and later submitted documents are still missing additional information requested by FERC. Williams, 2019; and Section VI. below. Revised emissions calculations from the Liquification Facility and associated impacts from the LNG carriers and support vessels as well as a modeling report for the Main Pipeline that includes impacts from offsite sources have not yet been provided as of October 2, 2019. The DEIS analysis should be updated, mitigation plans developed, and the DEIS should be supplemented with an additional notice and comment period.

### III. FERC FAILS TO CONSIDER A REASONABLE RANGE OF ALTERNATIVES

The DEIS fails FERC's legal obligation — and NEPA's core mandate — to study in depth and disclose the environmental consequences of reasonable alternatives to the agency's preferred course of action. NEPA requires that an EIS include "alternatives to the proposed action."<sup>33</sup> The analysis of alternatives is the "heart" of an EIS.<sup>34</sup> An agency must "[r]igorously explore and objectively evaluate all reasonable alternatives" to a proposed action.<sup>35</sup> The purpose of the alternatives requirement is to analyze a variety of impacts and present a range of choices to the decision maker.<sup>36</sup> The "touchstone" of the inquiry is "whether an EIS's selection and discussion of alternatives fosters informed decision-making and informed public participation."<sup>37</sup> Accordingly, the EIS must include an evaluation of "all reasonable alternatives," and provide the decision maker with a "range of alternatives" from which to elect.<sup>38</sup> Consistent with NEPA's basic policy objective to protect the environment, this includes more environmentally protective alternatives.<sup>39</sup> It also includes reasonable alternatives submitted by the public at scoping.<sup>40</sup> "The existence of a viable but unexamined alternative renders an [EIS] inadequate."<sup>41</sup> The range of alternatives in the DEIS is legally inadequate. FERC must comply with its legal obligations under NEPA to consider a reasonable range of alternatives.

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<sup>33</sup> 42 U.S.C. § 4332(2)(C)(iii).

<sup>34</sup> 40 C.F.R. § 1502.14.

<sup>35</sup> 40 C.F.R. § 1502.14(a).

<sup>36</sup> 40 C.F.R. §§ 1502.14, 1505.1(e).

<sup>37</sup> *State of Cal. v. Block*, 690 F.2d 753 (9th Cir. 1982) (citation omitted).

<sup>38</sup> 40 C.F.R. §§ 1502.14(a), 1505.1(e).

<sup>39</sup> 40 C.F.R. § 1500.2(e) (agencies must "[u]se the NEPA process to identify and assess reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment"); *see also, e.g., Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1121-22 (9th Cir. 2002) (citing cases), *abrogated on other grounds by The Wilderness Soc'y v. U.S. Forest Serv.*, 630 F.3d 1173, 1178-80 (9th Cir. 2011) (en banc).

<sup>40</sup> *See* 40 C.F.R. §§ 1501.7, 1502.1

<sup>41</sup> *Mont. Wilderness Ass'n v. Connell*, 725 F.3d 988, 1004 (9th Cir. 2013) (quotations and citation omitted).

In defining what is a “reasonable” range of alternatives, NEPA requires consideration of alternatives “that are practical or feasible” and not just “whether the proponent or applicant likes or is itself capable of carrying out a particular alternative”; in fact, “[a]n alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable.”<sup>42</sup>

The DEIS does not comply with NEPA’s mandate, including in the two ways described below.

#### **A. FERC Fails to Fully Consider Reasonable Alternatives for the Route through Denali National Park**

National parks are an important part of our nation’s heritage and are generally created to protect undisturbed landscapes and provide visitors an opportunity to experience America’s spectacular places. The pipeline’s impacts on national parks require special consideration, but those impacts have not received a thorough analysis in the DEIS. The lack of appropriate analysis of air quality impacts is discussed above in these comments. Information is similarly lacking for the discussion of the pipeline route through or around Denali.

NPCA is not opposed to the proposed pipeline traveling through Denali National Park if that option poses fewer adverse impacts than the route around the eastern boundary. In the 2012 ASAP EIS, NPCA supported the route variation that paralleled the Parks Highway through Denali because it was using a previously disturbed corridor and had fewer impacts than the route around the park through the roadless Yanert Valley. In keeping with this position, NPCA also supported the 2013 Denali National Park Improvement Act allowing the pipeline to travel seven miles through the park along or near the highway.

Unfortunately, the analysis in the DEIS does not provide enough information for the public or agencies to weigh the benefits of possible, proposed routes around and through Denali.

As an initial problem, the proposed Denali alternative was chosen by the applicant as its preferred option in the midst of the comment period. That change has made commenting on the pipeline more difficult for the public concerned about the pipeline in Denali and has also significantly limited the information available to the public. According to a letter from AGDC on August 16, 2019, AGDC “intends to continue working with the National Park Service and submit more detailed project and resource information needed to update the affected sections of the DEIS by October 4, 2019.” The public comment period ends October 3, 2019. This new information should be included in a supplement to the DEIS with an appropriate public comment period.

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<sup>42</sup> Council on Environmental Quality, *Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations, Questions 2A and 2B*, available at <https://www.energy.gov/sites/prod/files/2018/06/f53/G-CEQ-40Questions.pdf>; see also, 40 C.F.R. §§ 1502.14, 1506.2(d).

In addition, according to the DEIS, FERC chose not to analyze a route that followed the Parks Highway all the way through Denali because NPS believes that route could impact important wetlands adjacent to the highway. While the cost to important wetlands is a possible reason to choose one route over another, the DEIS does not address the other costs and benefits of the alternative route or provide enough information on route and construction techniques to evaluate the danger to the wetlands. Further analysis is needed to allow the public and FERC to weigh the benefits and costs of each alternative route.

The DEIS must also more fully address mitigation for the damage of Denali National Park resources by the pipeline and accompanying infrastructure. This project will impact vegetation, may spread invasive plants, will add light pollution to the park and surrounding area's night skies, and impact several scenic overviews within the region. Congress created the portion of Denali affected by this pipeline for the "preservation of animals, birds and fish" and "preservation of natural curiosities and their scenic beauty." The extent of committed mitigation from project sponsors is an important element in determining which alternative will have the least impacts on park and gateway community resources. (It is worth noting that the route along the Parks Highway and through Denali National Park represents a massive savings for ADGC and it is appropriate for the agency to commit to reinvesting some of that savings in mitigation to protect the national park and the surrounding Denali Borough.)

The DEIS must include consideration of revegetation and invasive plant mitigation and ensure that NPS standards are met within and near Denali.<sup>43</sup> The DEIS must also include mitigation to minimize light pollution by following the International Dark Sky Guidelines and to minimize visual impacts of the project.

Finally, after appropriate analysis and comment has occurred, NPCA urges AGDC and FERC to strongly consider placing one of the proposed route's five gas interconnection points in or near Healy. The placement of an interconnection point in the area could potentially allow the park to convert its bus fleet to compressed natural gas and to otherwise limit its emissions.

### **B. FERC Fails to Consider Reasonable Alternatives to Mitigate Air Quality Impacts**

FERC should have but did not consider reasonable alternatives to eliminate or mitigate the exceedance of established deposition, visibility and increment thresholds including employing well-established pollution reduction strategies.

FERC's DEIS is deficient in at least three respects when it comes to PSD increment consumption. First, FERC's DEIS fails to determine the current extent of PSD increment consumption in the affected area. Second, FERC's DEIS fails to examine the extent to which emissions from the preferred alternative cause or contribute to any PSD increment violation. Third, to the extent the preferred alternative causes or contributes to any PSD increment violation, FERC's DEIS fails to rigorously explore and objectively evaluate reasonable alternatives to eliminate any PSD increment violations. Gephart, 2019 at 6. By failing to follow these three essential steps, FERC's DEIS is fatally flawed.

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<sup>43</sup> The DEIS is currently lacking revegetation and invasive plans that should be part of the public review process. *See e.g.* DEIS at 4-877, 5-51, 5-53.

Emission control strategies are feasible and widely used yet not required under the DEIS for various components of the project. For example, the Liquefaction Facility could be but is not subject to continuous use of the thermal oxidizer to control emissions.<sup>44</sup> There is no corresponding mitigation measure that requires continuous operation of the thermal oxidizer. Heaters at the Gas Treatment Plant could be subject to limited use consistent with modeled operating assumptions but are not. Dust suppression practices on all unpaved roads and requirements for all diesel vehicles to use diesel particulate filter technology should have been made part of a reasonable alternative to control construction related emissions. Mitigation measures that are expressed in vague terms by FERC such as turbines and generators compliant with applicable Clean Air Act standards and/or enforceable requirements related to the “optimization of Project design parameters such as stack heights, building heights (which affect downwash), and efficiency assessments of electric power and process heat uses.”<sup>45</sup>

Measures such as these are required in a reasonable alternative to mitigate emissions impacts.

#### **IV. FERC FAILS TO OBTAIN AND INCLUDE MISSING INFORMATION IN THE DEIS.**

For the purpose of evaluating significant impacts in the EIS, if there is incomplete information relevant to reasonably foreseeable significant adverse impacts and the information is “essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant,” the information must be gathered and included in the EIS.<sup>46</sup>

If information essential to reasoned choice is unavailable or if the costs of obtaining it are exorbitant (excessive or beyond reason), FERC must make a statement to this effect in the EIS. FERC must discuss what effect the missing information may have the agency’s ability to predict impacts to the particular resource. If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, FERC must include within the EIS or EA:

1. a statement that such information is incomplete or unavailable;
2. a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment;
3. a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and
4. the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.<sup>47</sup>

For the purposes of this section, “reasonably foreseeable” includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the

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<sup>44</sup> FERC Alaska LNG DEIS Resource Report No. 9 Appendix D at 28

<sup>45</sup> FERC Alaska LNG DEIS Resource Report No. 9 at 9-98

<sup>46</sup> 40 C.F.R. § 1502.22(a); *see also* 43 C.F.R. § 46.125.

<sup>47</sup> 40 C.F.R. § 1502.22

analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.<sup>48</sup>

This requirement helps “insure the professional integrity, including scientific integrity, of the discussions and analyses” in an EIS.<sup>49</sup> It also ensures that the agency has necessary information before it makes a decision, preventing the agency from acting on “incomplete information, only to regret its decision after it is too late to correct.”<sup>50</sup> “[T]he very purpose of NEPA’s requirement that an EIS be prepared for all actions that may significantly affect the environment is to obviate the need for [ ] speculation by insuring that available data is gathered and analyzed prior to the implementation of the proposed action.”<sup>51</sup> Accordingly, NEPA’s missing information regulation “clearly contemplates original research if necessary.”

There is a substantial amount of baseline data missing or out of date that FERC had to address before the agency can meaningfully evaluate and comply with numerous statutory mandates for permitting this project and the public can fully understand the potential impacts from the proposal. FERC’s failure to address or obtain this lacking information renders its DEIS deficient and necessitates a supplemental EIS. It is not adequate for the information to be made available after the public comment period has closed. The simple remedy is for FERC to supplement the DEIS while keeping the comment period open, or to issue a revised DEIS with the additional information and a new comment period.

Additional information is required in many critical areas to fully evaluate the impacts of the proposed project and to develop necessary mitigation measures, stipulations or BMPs. These areas include, but are not limited to:

- Updated Construction Emission Calculations. DEIS at 4-897.
- Updated General Conformity Analysis. DEIS at 4-897.
- Revised CALPUFF air dispersion modeling. DEIS at 4-907.
- Revised impact tables for NAAQS/AAAQS, PSD Increment, and all air quality-related-values. DEIS at 4-907
- Updated annual emission calculations for operation of the Liquefaction Facilities to reflect the anticipated maximum and average number of LNG Carriers and support vessels. DEIS at 4-926.
- Quantitative demonstration of whether maximum or average number of vessels would result in exceedances of any NAAQS, deposition, and visibility impact analysis (and all supporting data and narrative). DEIS at 4-926.
- Class I and Sensitive Class II Mitigation Plan including all relevant data. DEIS at 4-937.
- Updated Project Blasting Plan. DEIS at 4-112.
- All public water wells within 500 feet of the project. DEIS at 4-126, 127.

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<sup>48</sup> 40 CFR 1502.22(b)

<sup>49</sup> 40 C.F.R. § 1502.24.

<sup>50</sup> *Churchill County v. Norton*, 276 F.3d 1060, 1072–73 (9th Cir. 2001) (quoting *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1216 (9th Cir. 1998)).

<sup>51</sup> *Found. for N. Am. Wild Sheep v. U.S. Dep’t of Agric.*, 681 F.2d 1172, 1179 (9th Cir. 1982).

- Complete waterbody crossing dataset. DEIS at 4-462, 501.
- Updated information and photo simulations on four Known Observation Points as indicated. DEIS at 4-569.
- Updated noise impact calculations to reflect use of the DMT crossing method. EIS at 4-947.
- Additional Engineering and Technical Information as requested in DEIS Section 4.18.9. DEIS at 4-1067 to 4-1071.
- Updated compressor station modeling discussed in DEIS, but not available in Appendix E of Resource Report 9.
- Missing analyses referenced by DEIS in the discussion of visibility and acid deposition impacts
- Appendix E, Figures 2 and 3 to Resource Report 9
- Construction Emission Control Plan
- Fugitive Dust Control Plan
- Open Burning Control Plan
- Accurate Modeling for years when construction, start-up, and operational activities occur simultaneously
- Modeling for flaring activities at the Gas Treatment Plan and Liquefaction Facilities outside of “normal operations”
- Full assessment of visibility and ecosystem impacts from operation, including impacts of the compressor or heater stations on nearby Class I and Sensitive Class II areas
- Updated Main Pipeline Modeling Report

**V. FERC MUST RE-ISSUE THE DEIS WITH ADDITIONAL OPPORTUNITY FOR PUBLIC COMMENT.**

For all of the reasons described above, FERC’s DEIS should be supplemented and re-released for public comment. To achieve NEPA’s goals, the statute requires federal agencies to “[e]ncourage and facilitate public involvement in decision’s which affect the quality of the human environment.”<sup>52</sup> To help guarantee public participation and informed decisions, the language of an EIS must be “clear,” “be written in plain language,” and presented in a way that “the public can readily understand.”<sup>53</sup> It must also be “supported by evidence that the agency has made the necessary environmental analyses.”<sup>54</sup> “The information must be of high quality” because “[a]ccurate scientific analysis . . . and public scrutiny are essential to implementing NEPA.”<sup>55</sup>

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<sup>52</sup> 40 C.F.R. § 1500.2(d).

<sup>53</sup> *Earth Island Inst. v. U.S. Forest Service*, 442 F.3d 1147, 1160 (9th Cir. 2006); 40 C.F.R. § 1502.8; *see also Or. Env’tl. Council v. Kunzman*, 817 F.2d 484, 493 (9th Cir. 1987) (“An EIS must be organized and written so as to be readily understandable by governmental decisionmakers and by interested non-professional laypersons likely to be affected by actions taken under the EIS.”).

<sup>54</sup> 40 C.F.R. § 1502.1; *see also* 40 C.F.R. § 1502.8.

<sup>55</sup> 40 C.F.R. § 1500.1(b).

In responding to public comments on a DEIS, an agency may: (1) “[m]odify alternatives including the proposed action;” (2) “[d]evelop and evaluate alternatives not previously given serious consideration by the agency;” (3) “[s]upplement, improve, or modify its analyses;” (4) “[m]ake factual corrections;” or (5) “[e]xplain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency’s position.”<sup>56</sup> “If changes [in an EIS] in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement.”<sup>57</sup>

Conversely, non-minor changes that require modified or new alternatives or analyses generally require revision or supplementation of the DEIS.<sup>58</sup> Agencies shall supplement a draft statement where “[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.”<sup>59</sup> The agency may prepare supplements when the agency determines that the purposes of NEPA will be furthered by doing so.<sup>60</sup> The agency must then seek public comment on the revised DEIS.<sup>61</sup> An EIS that fails to enable meaningful public review and understanding of the agency’s proposal, methodology, and analysis of environmental consequences violates NEPA.<sup>62</sup> FERC’s DEIS will need to be supplemented for at least three reasons: it fails to take a hard look at the impacts of the air quality impacts from the proposed project; it fails to analyze a reasonable range of alternatives in the ways detailed above, and it fails to include key information and analysis, including mitigation measures and plans. Fixing these shortcomings will result in an EIS that contains significant new information bearing on the LNG project.

NEPA dictates that FERC take a “hard look” at the environmental consequences of a proposed action, including its direct, indirect, and cumulative effects.<sup>63</sup> The required hard look encompasses effects that are “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.”<sup>64</sup> The numerous and significant gaps in information, analysis, and alternatives renders the DEIS impacts analysis deficient. As the Ninth Circuit has explained, “without establishing the baseline conditions . . . ,

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<sup>56</sup> 40 C.F.R. § 1503.4(a).

<sup>57</sup> 40 C.F.R. § 1503.4(c).

<sup>58</sup> See 40 C.F.R. §§ 1503.4, 1502.9(a) & (c).

<sup>59</sup> 40 C.F.R. § 1502.09(c)(1).

<sup>60</sup> *Id.* at § 1502.09(c)(2).

<sup>61</sup> See 40 C.F.R. §§ 1502.9(a), 1503.1(a)(4); see also *California v. Block*, 690 F.2d 753, 771 (9th Cir. 1982) (“Only at the stage when the DEIS is circulated can the public and outside agencies have the opportunity to analyze a proposal and submit comment. No such right exists upon issuance of a final EIS.”).

<sup>62</sup> See, e.g., *California ex rel. Lockyer v. U.S. Forest Serv.*, 465 F. Supp. 2d 942, 948-50 (N.D. Cal. 2006) (“incomprehensible” national monument management plan and corresponding EIS violated NEPA where it contained conflicting and confusing statements regarding applicable standards for management).

<sup>63</sup> *Robertson*, 490 U.S. at 348; 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1502.16, 1508.7, 1508.8.

<sup>64</sup> 40 C.F.R. § 1508.8.

there is simply no way to determine what effect the proposed [action] will have on the environment and, consequently, no way to comply with NEPA.” Many elements of the impacts analysis, including mitigation for a range of impacts from air pollution and the potential route through Denali, are incomplete, unsupported by the best available science, or otherwise inadequate. A revised DEIS, followed by an opportunity for the public to comment on new circumstances and information contained in FERC’s analysis, is required.

FERC’s DEIS for the LNG project contains numerous gaps in information and analysis that seriously frustrate public review and understanding. Air quality issues are only partially addressed, with key elements of the DEIS analysis missing, incomplete, inaccurate, inconsistent with the best available science, or otherwise inadequate. NPCA and other commenters have highlighted many items of missing and incomplete information. To remedy these extensive gaps in information and analysis, a revised DEIS is necessary.

FERC’s failure to analyze a reasonable range of alternatives also necessitates a revised DEIS. NEPA requires that an EIS analyze a range of reasonable alternatives. The analysis of alternatives is the “heart” of an EIS.<sup>65</sup> An agency must “[r]igorously explore and objectively evaluate all reasonable alternatives” to a proposed action.<sup>66</sup> Consistent with NEPA’s basic policy objective to protect the environment, this includes more environmentally protective alternatives.<sup>67</sup> It also includes reasonable alternatives submitted by the public at scoping.<sup>68</sup> “The existence of a viable but unexamined alternative renders an [EIS] inadequate.”<sup>69</sup> The “touchstone” of the inquiry is “whether an EIS’s selection and discussion of alternatives fosters informed decision-making and informed public participation.”<sup>70</sup> The new and revised alternatives that will be necessary to remedy the identified, significant gaps will not be “minor variation[s]” of the existing alternatives that are “qualitatively within the spectrum of alternatives that were discussed in the draft.” To remedy the inadequate range of alternatives, a revised DEIS is necessary.

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<sup>65</sup> 40 C.F.R. § 1502.14

<sup>66</sup> 40 C.F.R. § 1502.14(a); *see also* 42 U.S.C. § 4332(2)(E) (agencies must “study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.”).

<sup>67</sup> 40 C.F.R. § 1500.2(e) (agencies must “[u]se the NEPA process to identify and assess reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment”); *see also, e.g., Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1121-22 (9th Cir. 2002) (citing cases), *abrogated on other grounds by The Wilderness Soc’y v. U.S. Forest Serv.*, 630 F.3d 1173, 1178-80 (9th Cir. 2011) (en banc).

<sup>68</sup> *See* 40 C.F.R. §§ 1501.7, 1502.1.

<sup>69</sup> *Mont. Wilderness Ass’n v. Connell*, 725 F.3d 988, 1004 (9th Cir. 2013) (quotations and citation omitted).

<sup>70</sup> *Id.* at 1005 (quotations and citation omitted).



CONCLUSION

Thank you for considering these comments. If you have any questions regarding these comments, please do not hesitate to contact us at the numbers or email addresses below.

Sincerely,



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INDEX OF ATTACHED DOCUMENTS

Attachment 1. Gebhart, Howard, Technical Comments on Alaska LNG Project DRAFT Environmental Impact Statement (EIS) – Air Quality Sections. Air Resource Specialists Inc. Gebhart, 2019.

Attachment 2. Williams, Megan, Air Quality Review of the Alaska LNG Project Draft Environmental Impact Statement with Exhibts 1-5. Williams, 2019.

Attachment 3. 2011 MOU Regarding Air Quality Analysis and Mitigation for Federal Oil and Gas Decisions through the NEPA Process.