Federal Communications Commission
Washington, D.C. 20554

March 16, 2011

DA 11-504
In Reply Refer to:
1800B3-HOD
Released: March 16, 2011

Robert B. Jacobi, Esq.
Cohn and Marks LLP
1920 N Street, N.W., Suite 300
Washington, DC 20036-1622

In re: New(AM), Snohomish, WA
Facility ID No. 160891
Application No. BNP-20071010ABZ

Finding of No Significant Impact
Informal Objections to Application

Dear Mr. Jacobi:

This letter concerns the referenced application, as amended ("Application"),[1] of CAAM Partnership, LLC ("CAAM") for a new AM broadcast station ("Station") in Snohomish, Washington. Additionally, we have before us objections to the Application filed by Citizens to Preserve the Upper Snohomish River Valley ("Citizens"), Stewards of the Land and Community ("Stewards"), Angela Day ("Day") and Albert C. Highberger ("Highberger").[2] For the reasons set forth below, we find that the proposed Station will have no significant impact on the quality of the human environment, deny the objections, and grant the Application.

Background. CAAM filed an application for a new AM station at Snohomish, Washington, during the filing window for Auction 84. The Commission found CAAM's application to be mutually exclusive with a number of other applications.[3] As a result, the Commission undertook an analysis to determine whether any of the mutually exclusive applications were entitled to a dispositive preference

[1] CAAM originally filed the Application on October 10, 2007. It subsequently amended the Application in June 2008, September 2008, September 2010 ("September 2010 Amendment"), October 2010 ("October 2010 Amendment") and January 2011.

[2] *Letter from Citizens to Preserve the Upper Snohomish River Valley* (rec'd Nov. 15, 2010) ("*2010 Citizens Letter*"); *Letter from Citizens to Preserve the Upper Snohomish River Valley* (rec'd Oct. 20, 2009) ("*2009 Citizens Letter*"); *Letter from the Stewards of the Land & Community* (rec'd Oct. 13, 2009) ("*Stewards Letter*"); *Letter from Angela Day* (rec'd Oct. 20, 2009) ("*Day Letter*"); *Letter from Albert C. Highberger* (rec'd Sept. 28, 2010) ("*2010 Highberger Letter*"); *Letter from Albert C. Highberger* (rec'd Oct. 19, 2009) ("*2009 Highberger Letter*"); *Letter from Albert C. Highberger* (rec'd Dec. 29, 2007) ("*2007 Highberger Letter*"). The *2007 Highberger Letter* sought denial of both the Application and an application filed by S-R Broadcasting Co., Inc. ("S-R Broadcasting") seeking authority to construct four towers at the same site proposed by CAAM ("S-R Broadcasting Application"). In our decision granting the S-R Broadcasting Application, we found that Highberger's allegations were "properly considered in connection with the CAAM Application." *S-R Broadcasting Co., Inc.*, Letter, 23 FCC Rcd 8574, 8578 (MB 2009) ("*S-R Broadcasting*"). We address Highberger's arguments herein.

[3] *AM Auction No. 84 Mutually Exclusive Applicants Subject to Auction*, Public Notice, Report No. AUC-05-84-E, 20 FCC Rcd 10563 (MB 2005).

under Section 307(b) of the Communications Act of 1934, as amended ("Act"), or whether an auction should ensue. The Commission ultimately awarded a dispositive preference to CAAM and directed CAAM to file its long form application for a construction permit within 60 days.[4] On October 10, 2007, CAAM filed the Application. The Application specifies daytime non-directional antenna operations at 20 kW from one 59.4-meter tower that has already been constructed at the Station's proposed site and currently is used by KRKO(AM), Everett, Washington, and nighttime directional antenna operations at 50 kW from four 59.4-meter antenna towers, two of which already have been constructed at the proposed site and currently are used by KRKO(AM) and two of which CAAM proposes to construct at the proposed site.

Because the Application proposes to construct two additional towers in a flood plain, on September 18, 2008, CAAM submitted an environmental assessment ("EA").[5] The Bureau released a *Public Notice* announcing the acceptance of the EA on September 24, 2008, and providing a 30-day period for public comment on the EA.[6]

We received no timely comments on the EA specifically in response to the *Public Notice* although, in October 2009, we received letters from Citizens, Stewards, Day and Highberger requesting denial of the Application. Citizens, Stewards and Highberger object to the Application based on concerns regarding the perceived adverse health effects of exposure of local residents to radiofrequency ("RF")

---

[4] *Letter from Peter H. Doyle to JNE Investments, Inc., CAAM Partnership and Amy Meredith*, 1800B3-LAS/JP (MB Aug. 17, 2007).

[5] *See* 47 C.F.R. § 1.1307(a)(6). The proposed antennas previously were reviewed under the Washington State Environmental Protection Act ("SEPA") at the same time as the existing towers and equipment building. *See S-R Broadcasting*, 23 FCC Rcd at 8576, n.7 (explaining the SEPA review process in detail). The SEPA review is final. *Id.* Only the existing antenna and existing equipment building were reviewed and addressed in the issuance of the original conditional use permit ("CUP") by the Snohomish County Department of Planning and Development Services ("PDS"). As a result, CAAM sought approval for a major modification to the CUP to add the two proposed towers. The Snohomish County Council approved the major modification on February 18, 2009, *Motion Granting Appeal by CAAM Partnership, LLC, Approving the Application for Major Modification to the Conditional Use Permit Held by CAAM Partnership, LLC, and Reversing the Hearing Examiner's Denial of the Application for Major Modification*, Motion No. 09-077 (Snohomish County Council Feb. 18, 2009) available at https://www.snoco.org/Edocs/singlePdf.jsp?docid=51527927&secid=0, and PDS granted the modification pursuant to the Washington State Shoreline Management Act of 1971. PDS Project Details, Project File No. 07-109195-000-00-LU, available at http://www.snoco.org/app/pds/permitstatus/PDS-PrintDetails.aspx?FolderRSN=593921&ProjFileNo=07109195LU. Citizens appealed the Council's decision to the King County (Washington) Superior Court, which affirmed the Council. *Citizens to Preserve the Upper Snohomish River Valley, et al. v. Snohomish County, et al.*, Case No. 09-2-12074-9SEA (King County Superior Court Aug. 25, 2009). That decision was not appealed and is now final. Similarly, Citizens appealed the PDS decision to the State Shoreline Hearing Board, but voluntarily requested dismissal of its appeal on February 13, 2008. PDS issued all requested and necessary revisions on June 23, 2009. *See* PDS Project Details, Project File No. 07-109195-000-00-LU, available at http://www.snoco.org/app/pds/permitstatus/PDS-PrintDetails.aspx?FolderRSN=593921&ProjFileNo=07109195LU; PDS Project Details, Project File No. 07-109195-000-00-SM, available at http://www.snoco.org/app/pds/permitstatus/PDS-PrintDetails.aspx?FolderRSN=593922&ProjFileNo=07109195SM; PDS Project Details, Project File No. 07-109195-000-00-FZ, available at http://www.snoco.org/app/pds/permitstatus/PDS-ProjectDetails.aspx?FolderRSN=593924&ProjFileNo=07109195FZ.

[6] *See Environmental Assessment Accepted for Filing/Environmental Action*, Public Notice, Report No. MB/AD-08-02, 23 FCC Rcd 13847 (Sept. 24, 2008).

radiation from the Station's facilities.[7] Citizens and Day voice concerns about effects on birds and other wildlife.[8] Citizens protests the alleged effect the towers will have on local property values,[9] while Day and Highberger question whether CAAM considered alternative sites for the Station[10] and Stewards and Highberger raise aesthetic concerns.[11] Highberger also expresses concerns about inefficient use of the broadcast spectrum.[12] In addition to its other concerns, Citizens asserts that RF interference from the new AM station will impact everything from radios and televisions to garage doors and car windows.[13] Finally, Citizens submits materials related to the efforts of Snohomish County, Washington to update its Shoreline Management Program. Citizens asserts that these materials suggest "that permits issued by Snohomish County for [the] two new towers [proposed by CAAM] should be vacated."[14]

Citizens, Stewards, Day and Highberger raised similar objections to the construction of four towers at this site by S-R Broadcasting, two of which are the existing towers that CAAM proposes to use as part of its nighttime directional antenna array.[15] The construction of the four towers at issue then was

---

[7] *2009 Citizens Letter* at 1-2; *Stewards Letter* at 2; *2009 Highberger Letter* at 2; *2010 Highberger Letter.*

[8] *2009 Citizens Letter* at 2; *Day Letter* at 2.

[9] *2009 Citizens Letter* at 2.

[10] *Day Letter* at 2; *2009 Highberger Letter* at 3.

[11] *Stewards Letter* at 2; *2009 Highberger Letter* at 4.

[12] *2009 Highberger Letter* at 1, citing *2007 Highberger Letter* at 1-2.

[13] *2009 Citizens Letter* at 2.

[14] *2010 Citizens Letter* at 2. Citizens notes that the Snohomish County Council passed an update to the County's Shoreline Management Plan ("SMP") on October 13, 2010. *Id.*, attaching Snohomish County, Washington, Amended Ordinance No. 10-058. Citizens states that the amended SMP prohibits new AM radio towers in the shoreline area, which is defined to include the 100-year flood plain. *Id.*, citing Snohomish County Code § 30.67.595(b)(vii). While Citizens acknowledges that the amended SMP grandfathers "AM radio towers either constructed before October 13, 2010, or with complete applications for all permits and approvals required for construction before October 13, 2010," Snohomish County Code § 30.67.595(b)(vii), Citizens asserts that the two new towers proposed by CAAM are not grandfathered. *2010 Citizens Letter* at 2. CAAM responded in a letter dated November 22, 2010. *Letter from Robert L. Jacobi* (rec'd Nov. 22, 2010). CAAM first points out that the amended SMP is not effective yet and will not be effective until it is approved by the Washington State Department of Ecology ("WDOE"). *Id.*, Appendix A at 2, citing RCW 90.58.090. CAAM goes on to argue that the two new towers will be grandfathered under the amended SMP because CAAM timely filed complete applications with both the local authorities and the Commission prior to October 13, 2010. *Id.* at 2. We find that, as CAAM asserts, the revised SMP adopted by the Snohomish County Council is not effective yet because WDOE has not approved it. We will not address further Citizens' and CAAM's arguments about how to interpret the provisions of a plan that may or may not become effective at some point in the future.

[15] Indeed, both Citizens and Day enclose and seek to incorporate their prior filings objecting to the S-R Broadcasting Application. *2009 Citizens Letter* at 2; *Day Letter* at 2. Specifically, Citizens encloses a copy of a letter submitted to the Commission regarding S-R Broadcasting's Application. *Letter from Jennifer A. Dold, Esq.* (rec'd Oct. 4, 2007) ("*Dold Letter*"). Citizens argues that, while this letter discusses "the sister station at that site, KRKO-AM, the arguments are similar for the CAAM [sic] proposal." *2009 Citizens Letter* at 2. Likewise, Day argues that, because CAAM is relying on an earlier EA and Environmental Impact Statement and incorporating the earlier EA by reference, the concerns that she raised regarding the S-R Broadcasting Application also apply to this Application. *Day Letter* at 1. Day includes her Application for Review of *S-R Broadcasting, Letter from Angela Day* (rec'd June 27, 2008) ("*Day Application for Review*"), and her letter to the Commission regarding the potential adverse impacts of RF exposure to birds, fish and wildlife of the "antenna farm proposed by S-R Broadcasting/CAAM Partnership." *Letter from Angela Day* (rec'd Mar. 7, 2008) ("*2008 Day Letter*"). We note that the *Dold Letter* and the *2008 Day*

associated with the relocation of KRKO(AM) to this site. The Commission ultimately made a Finding of No Significant Impact in that case and granted the S-R Broadcasting Application.[16] While S-R Broadcasting submitted an EA ("S-R Broadcasting EA") that analyzed the cumulative effects of construction of the KRKO(AM) facilities and facilities for an additional AM station at the site, the Commission did not study the cumulative environmental effects of the S-R Broadcasting Application and the Application. The Commission found that, "if the CAAM application is not grantable, the additional towers will not be built, and there will be no 'cumulative effect' added by those additional towers."[17] The Commission did, however direct CAAM, "when it ultimately files an EA for the CAAM Application to include in the EA a specific discussion regarding the cumulative effect of all the towers at the site [sic] with respect to each of the environmental facts set forth in Section 1.1307(a) of the Rules."[18] The EA submitted by CAAM includes such an analysis.

Discussion. Pursuant to Section 309(e) of the Act, informal objections must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest, convenience, and necessity.[19] For the reasons discussed below, the objectors do not carry that burden.

Under the Commission's Rules ("Rules") implementing the National Environmental Policy Act of 1969, as amended ("NEPA"),[20] licensees, permittees and applicants (collectively, "Licensees") are required to assess proposed facilities to determine whether the facilities may significantly affect the environment, as defined in Section 1.1307 of the Rules.[21] For actions that may have significant environmental effects, such as those involving location of facilities in a flood plain, Licensees must prepare and submit to the Commission an EA[22] and undergo environmental review and any mandatory

---

Letter were fully considered and addressed in *S-R Broadcasting*. *S-R Broadcasting*, 23 FCC Rcd at 8577, 8580-81, 8586, 8587-88. We do not consider these pleadings further. *See Principle Broadcasting Network – Dallas, LLC*, Letter, 24 FCC Rcd 5743, 5745 (MB 2009) (declining to consider arguments made by the same parties and addressed by the Bureau in another proceeding). Moreover, to the extent that Citizens and Day challenge the manner in which the Bureau addressed their prior filings in *S-R Broadcasting*, we note that Citizens and Day have both challenged that decision. *See Day Application for Review*; *Letter from Citizens to Preserve the Upper Snohomish River Valley* (rec'd July 1, 2008) ("*Citizens Appeal*"). Their challenges, in addition to the challenges lodged by two other organizations, *see infra* note 16, are pending before the Commission and will be addressed separately.

[16] Citizens, Stewards, Day and another organization, the Pilchuck Audubon Society, each have filed Applications for Review of *S-R Broadcasting*. *See Day Application for Review; Citizens Appeal; Letter from Stewards of the Land and Community* (dated June 24, 2008); *Letter from Pilchuck Audubon Society* (rec'd June 30, 2008). In two separate filings, S-R Broadcasting has opposed these filings. *S-R Broadcasting, Opposition to Applications for Review* (rec'd Jul. 14, 2008); *S-R Broadcasting, Opposition to Informal Objections* (rec'd Aug. 11, 2008). As noted, *see supra* note 15, the Commission will address these challenges and S-R Broadcasting's Oppositions in a separate decision.

[17] *S-R Broadcasting*, 23 FCC Rcd 8590-91.

[18] *Id.*

[19] *See, e.g., WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n. 10 (1990), *aff'd sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *reh'g denied* (Sep. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

[20] 42 U.S.C. §§ 4321-4335.

[21] 47 C.F.R. § 1.1307.

[22] *See* 47 C.F.R. § 1.1311.

consultation with expert agencies, prior to initiating construction.[23] The Commission conducts an independent review of the EA to determine whether the proposed construction would have a significant impact on the human environment. If the Commission finds, after reviewing the EA and any comments received, that a proposed facility will not have a significant environmental effect, it will issue a finding of no significant impact ("FONSI") and grant the application.[24] If the Commission finds that a proposed action will have a significant environmental effect and the applicant does not choose to amend its application,[25] the applicant may not commence construction until the Commission concludes further environmental processing, including the preparation of an environmental impact statement ("EIS").[26]

The EA and Subsequent Information.[27] According to the EA, the existing towers are – and the new towers will be – located at the southwest corner of the intersection of 132nd Street, S.E. and Shorts School River Road in Snohomish. The EA notes that this location is "the FCC, FAA and locally permitted transmitter location for KRKO-AM."[28] The area is described as "rural" and "made up predominantly of large undeveloped parcels devoted almost exclusively to agricultural use."[29] The new towers will be identical to the existing 199-foot towers that CAAM proposes to use (*i.e.*, self-supported, freestanding towers without guy wires).[30] Like the existing towers and equipment building, the new towers[31] will be constructed on a 16-foot foundation to elevate the structures out of possible flood waters.[32] The EA indicates that all proposed development activities will occur more than 750 feet from any wetlands and streams[33] and will be physically separated from these areas by both the existing permitted KRKO(AM) project and an earthen dike.[34] There will be a ground system consisting of 120

---

[23] *See* 47 C.F.R. § 1.1308.

[24] *See* 47 C.F.R. § 1.1308(d).

[25] *See* 47 C.F.R. §§ 1.1308(c), 1.1309.

[26] *See* 47 C.F.R. §§ 1.1305, 1.1314, 1.1315, 1.1317.

[27] The EA states that it "incorporates a number of environmental documents and decisions" regarding the S-R Broadcasting Application and "updates the documents where necessary." EA at Section 6.1. The EA points out that the environmental analysis undertaken for the S-R Broadcasting Application addressed the potential cumulative effects of both construction of KRKO(AM) and construction of another AM station, including four antenna towers and a second equipment building, at the site. *Id.* The EA notes that "CAAM's review of FCC NEPA related criteria, and input from involved regulatory agencies and interested community groups revealed no new issues related to NEPA that were not previously analyzed and resolved for the environmental master plan covering Phases I and II at the project site." The EA does state, however, that "CAAM is providing updates in this EA as necessary to ensure the cumulative environmental analysis remains current" and "is providing a separate alternative sites analysis since that is required" as part of the local permitting process and under NEPA. *Id.* at Section 6.2.

[28] *Id.* at Section 2.1.1.

[29] *Id.* at Sections 2.1.2 & 2.1.3.

[30] *Id.* at Section 2.2.

[31] CAAM proposes to construct a 12-foot x 10-foot steel equipment platform at the base of each of the new towers. *Id.* These equipment platforms will be identical to those at the base of each of the existing towers that CAAM proposes to use. *Id.*

[32] *Id.* The towers will be fabricated in 20-foot sections away from the site and assembled on site. *Id.* at Section 2.2.3.

[33] *Id.* at Section 2.2. The EA notes that "[t]he Snohomish River and a nearby wetland, are located off site to the west" and that there are no bodies of water or wetlands on the site. *Id.* at Section 2.1.1.

[34] *Id.* at Sections 2.1.1 and 2.2.

copper wires, each roughly 1/16 of an inch thick, extending 200 feet from the central base of each tower in a "bicycle spoke pattern;" these will be buried approximately 18 inches deep and will likely be "planted" by a small farm tractor pulling a spool of copper wire, feeding it in behind the plow.[35]

With respect to the specific factors set forth in Section 1.1307 of the Rules, the EA, as supplemented by the September 2010, October 2010 and January 2011 Amendments, contains the following information and documentation:

Officially Designated Wilderness Area (Section 1.1307(a)(1)): The EA states that the proposed site does not lie within the boundaries of an officially designated wilderness area.[36]

Officially Designated Wildlife Preserve (Section 1.1307(a)(2)): The EA states that the proposed site does not lie within the boundaries of an officially designated wildlife preserve.[37]

Endangered Species or Designated Critical Habitats (Section 1.1307(a)(3)): The EA relies on the environmental review conducted for the S-R Broadcasting Application, which encompassed not only the infrastructure needed for KRKO(AM) but also the infrastructure needed for another AM station tower at the site.[38] In particular, the EA notes that the Washington State Shoreline Hearings Board held a six-day *de novo* appeal hearing about the cumulative impacts of the existing and proposed antennas and buildings on migratory birds, species of concern, as well as listed, threatened and endangered species. The EA states that the Board affirmed the environmental analysis for all of these structures. The Board found that "the evidence does not support a conclusion of significant adverse environmental impact to wildlife in the area."[39]

The EA also refers to the Commission's prior FONSI in *S-R Broadcasting*. Among other things, that finding was based upon the Biological Assessment ("BA") and Avian Risk Assessment ("ARA") included in the S-R Broadcasting EA, which assessed the impact of both the infrastructure needed for KRKO(AM) and the infrastructure needed to collocate another AM station at the site on certain threatened species,[40] critical habitats,[41] and migratory birds. CAAM has taken steps to update both of

---

[35] *Id.* at Section 2.2.6.

[36] *Id.* at Section 6.2.5.

[37] *Id.*

[38] *Id.* at Sections 1.3 & 3.1.4. The EA explains that "[t]he cumulative impacts of both proposals were environmentally reviewed since the potential for a project similar to the CAAM project but larger in scope was known at the time the environmental review was conducted for KRKO-AM." *Id.* at Section 3.1.4.

[39] *Id.*, Attach. 5 at 29.

[40] The S-R Broadcasting EA noted that no endangered species were found to be present in the vicinity of the site. It contained a list of threatened species in the vicinity of the site. The list was based upon information obtained from the Washington State Department of Fish & Wildlife, the United States Fish & Wildlife Service ("USFWS"), the National Marine Fisheries Service ("NMFS"), and the Federal Register. Listed were Bald Eagle, threatened; Marbled Murrelet, threatened; Bull Trout, threatened; Dolly Varden, threatened; Puget Sound Chinook Salmon, threatened; and Puget Sound Coho Salmon, candidate for listing as threatened. As noted in *S-R Broadcasting*, the Bald Eagle was de-listed by USFWS on June 28, 2007. *See Endangered and Threatened Wildlife and Plants; Removing the Bald Eagle in the Lower 48 States From the List of Endangered and Threatened Wildlife,* 72 Fed. Reg. 37346 (July 9, 2007). In addition, NMFS determined that listing of Puget Sound Coho Salmon as threatened was not warranted. *Endangered and Threatened Species; Establishment of Species of Concern List, Addition of Species to Species of Concern List, Description of Factors for Identifying Species of Concern, and Revision of*

these assessments and to consider the cumulative effects of the existing antennas and buildings and the two additional antennas that it proposes to construct.

Specifically, CAAM updated the list of state and federal threatened species and critical habitats compiled as part of the S-R Broadcasting EA.[42] The EA also includes an updated BA and an updated ARA.[43] The updated BA states that "[n]o new species managed by USFWS have been listed that occur in the [project] area since the writing of the [original] Biological Assessment."[44] It notes that, since the writing of the original Biological Assessment, USFWS has proposed to designate critical habitat for Bull Trout,[45] NMFS has listed Puget Sound Steelhead as threatened[46] and NMFS has issued a final designation of critical habitat for Puget Sound Chinook Salmon.[47] The updated BA concludes that the "findings of the [original Biological Assessment] remain current for bald eagle, marbled murrelet, marbled murrelet critical habitat, Puget Sound Chinook, bull trout, dolly varden, and Puget Sound coho" and that "the analysis and 'no effects' findings are equally applicable to the revised habitat designation for Puget Sound Chinook, the proposed critical habitat designation for bull trout, and the newly-listed Puget Sound steelhead."[48] CAAM submitted the updated BA and ARA to USFWS for its concurrence. In response, USFWS informed CAAM that should the Commission make a "no effect" finding, USFWS concurrence was not required.[49]

The EA also discusses additional concerns raised about possible impacts to migratory birds, particularly the Trumpeter Swan. CAAM notes that these concerns also were addressed in the context of the S-R Broadcasting Application[50] but that CAAM has updated the materials submitted by S-R Broadcasting. CAAM explains that the proposed site was selected "to diminish the perceived potential for migratory bird collisions … by sharing one site as opposed to creating two separate sites within the

---

Candidate Species List Under the Endangered Species Act, 69 Fed. Reg. 19975 (Apr. 15, 2004). NMFS lists Puget Sound Coho Salmon as a Species of Concern. *Id.*

[41] The S-R Broadcasting EA examined the critical habitats of the Marbled Murrelet and Puget Sound Chinook Salmon.

[42] CAAM used information obtained from USFWS, NMFS, the Washington State Department of Fish and Wildlife and the Federal Register to update the list. *See* EA at Section 6.2.6. *See also* EA, Attachs. 20 and 21.

[43] At our request, CAAM further updated the Biological and Avian Risk Assessments. October 2010 Amendment, Exh.1 & Attach. 1.

[44] October 2010 Amendment, Attach. 1, Appendix B. *See also* EA, Attach. 22.

[45] *Id. See also Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for Bull Trout in the Coterminous United States*, 75 Fed. Reg. 2270 (Jan. 14, 2010).

[46] *Id. See also Endangered and Threatened Species: Final Listing Determination for Puget Sound Steelhead,* 72 Fed. Reg. 26722 (May 11, 2007).

[47] *Id. See also Endangered and Threatened Species; Designation of Critical Habitat for 12 Evolutionarily Significant Units of West Coast Salmon and Steelhead in Washington, Oregon, and Idaho,* 70 Fed. Reg. 52630 (Sept. 2, 2005).

[48] *Id.*

[49] *E-mail to Ms. Linda Atkins from Karen Myers, Consultation and Technical Assistance Division, US Fish and Wildlife Service* (Dec. 22, 2010).

[50] The original Avian Risk Assessment "determine[d] the potential impact on birds of up to 8 radio towers." S-R Broadcasting EA, Attach. 12.

[Trumpeter Swan's] daily range." CAAM notes, though, that focused studies indicate that collisions have "a low likelihood of occurrence." CAAM also points out that its choice of "self-supported lattice antennas and reduced antenna heights will further diminish the cumulative potential impacts on migratory birds in the region" and that riparian plantings, required as a condition on the local permits issued to S-R Broadcasting, will enhance the habitat along the river corridor. CAAM submits sworn declarations that report no known avian collisions, migratory bird carcasses or animal scavenger tracks around the existing towers at the proposed site since those towers were constructed in 2008.[51]

Districts, Sites, Buildings, Structures or Objects Significant in American History, Architecture, Archaeology, Engineering, or Culture that Are Listed or Eligible for Listing in the National Register of Historic Places (Section 1.1307(a)(4)): The EA notes that this issue was addressed during review of the S-R Broadcasting Application, which culminated in the issuance of a FONSI by the Commission.[52] Specifically, the EA explains that, because the tower and equipment building proposed by S-R Broadcasting were to be constructed near an urban area with buildings constructed more than 50 years ago, the Washington Department of Community, Trade, and Economic Development's Office of Archaeology and Historic Preservation ("OAHP") requested that a Preservation Professional conduct a file review and field survey of the site and surrounding area. Dr. Caroline Galacci conducted the review and concluded that the construction and operation of the proposed antenna will not affect districts, sites, buildings, structures, or objects listed in, or eligible for listing in, the National Register of Historic Places. On May 14, 2001, Dr. Galacci submitted a "no effect" opinion letter to OAHP, which provided a written concurrence letter on May 21, 2001, for the four-tower configuration and an additional concurrence letter on July 9, 2001, for four possible future towers.[53] CAAM notes that it seeks to construct only two of the four future towers addressed in the second concurrence letter. CAAM asserts that its proposal will result in no cumulative effects on eligible or listed historic places and grounds its assertion in the second OAHP concurrence letter.[54]

CAAM took steps to determine whether additional historic properties had been identified within the Area of Potential Effects for the towers since the issuance of these two OAHP letters in 2001. CAAM prepared and submitted an FCC Form 620 to the Washington State Department of Archaeology and Historic Preservation ("DAHP").[55] DAHP has concurred in CAAM's conclusion that the proposed construction will result in "no historic properties affected."[56]

Indian Religious Sites (Section 1.1307(a)(5)): The EA notes that, on behalf of CAAM, S-R Broadcasting reached out to tribes that might be interested in the proposed site using the Commission's

---

[51] October 2010 Amendment, Attach. 1, Appendix C.

[52] EA at Section 6.2.3. *S-R Broadcasting*, 23 FCC Rcd at 8581, 8587.

[53] *See* EA at Section 6.2.3 and Attach. 17.

[54] *Id.* at Section 6.2.3.

[55] October 2010 Amendment, Attach. 1, Appendix A. Along with the FCC Form 620, CAAM submitted to DAHP "evidence of all tribal and NHO involvement and the results of a field survey conducted on July 31, 2010 and a database review to ascertain the historic status of any newly listed structures or structures eligible for listing since the original review in 2001." *Id.*

[56] *Letter to Ms. Connie Walker Gray from Stephen A. Mathison, Washington State Department of Archaeology and Historic Preservation* (Sept. 1, 2010), attached as Attach. 1 to September 2010 Amendment

Tower Construction Notification System ("TCNS").[57] S-R Broadcasting initiated the notification on June 11, 2008. TCNS identified eight federally recognized Tribes with an interest in the property: Muckleshoot Indian Tribe, Sauk Suiattle Indian Tribe, Stillaguamish Tribe of Indians, Suquamish Tribe, Tulalip Tribes, Yakama Nation, Snoqualmie Indian Tribe and Spokane Tribe of Indians. Of those eight tribes:

- Four Tribes (Sauk Suiattle, Tulalip, Yakama, and Snoqualmie) established response parameters in TCNS that if there is no Tribal response within 30 days after notification, the Tribe has no interest in participating in pre-construction review and requests notification only if archaeological artifacts or remains are found on-site during or after construction. These Tribes did not respond within 30 days, and S-R Broadcasting, on behalf of CAAM, pledged to provide notification to them if any archaeological items are found on site.[58]
- The Suquamish Tribe indicated that it deferred to the wishes of the Tulalip Tribes and Snoqualmie Tribes listed above. S-R Broadcasting and CAAM state that they interpret that response to mean that the Suquamish Tribe has no interest in pre-construction review.[59]
- The remaining three Tribes – the Muckleshoot Indian Tribe, Spokane Tribe of Indians and Stillaguamish Tribe of Indians – indicated "no interest."[60]

TCNS notification was also provided to OAHP, which submitted no response.[61]

The EA states that, as part of the master environmental planning process for the site, at the request of OAHP, S-R Broadcasting had a Preservation Professional "conduct a file review, field survey, and a letter of inquiry to any Native American tribes owning land in the area of the proposed site and the surrounding area for possible eligible religious sites."[62] Dr. Galacci conducted this review and determined that the construction and operation of the proposed antenna would not affect any federally recognized Tribal religious sites.[63]

Flood Plain (Section 1.1307(a)(6)): The EA indicates that the proposed site is in a 100-year flood plain and must comply with all applicable local Snohomish County Master Planning guidelines for commercial construction in a flood plain.[64] The EA states that an equipment platform, approximately 12-foot x 10-foot, will be situated at the base of each antenna and will be elevated 16 feet above ground

---

[57] The EA notes that, in 2007, the two existing towers that CAAM proposes to use previously were cleared via this same notification process. *Id.* at Section 6.2.4.

[58] *See Letter from Robert B. Jacobi, Esq.* (rec'd Sept. 4, 2008). Indeed, S-R Broadcasting, on behalf of CAAM, has pledged to notify all eight of the Tribes if any archaeological items are found on site. *Id.*

[59] *Id.* at 1 (citing Sept. 2, 2008, e-mail response from the Tribe).

[60] *Id.* (citing August 26, 2008, e-mail response from the Muckleshoot Tribe, June 30, 2008, e-mail response from the Spokane Tribe, July 1, 2008, e-mail response from the Stillaguamish Tribe).

[61] As indicated above, OAHP had previously concurred with S-R Broadcasting's proposed finding of "no adverse effect" on any historic properties. *See supra* note 53.

[62] EA at Section 6.2.4.

[63] *See id.*

[64] *See id.* at Section 6.2.1 and Attach. 15, Army Corps Flood Depth Analysis. The EA indicates that the Snohomish County permits for construction within a 100-year flood plain are issued for the structure foundation, not for the tower itself. EA at Section 6.2.1.

level. Prefabricated aluminum boxes will be placed on the elevated equipment platforms at the base of each antenna. These platforms are designed to keep the equipment above the 100-year flood levels.[65]

As discussed extensively in *S-R Broadcasting*, on April 6, 2007, the Snohomish County Department of Planning and Development Services ("PDS") issued all permits required for construction of the two existing towers and the existing equipment building.[66] More recently, after the hearings and litigation described in note 5 above, on June 23, 2009, PDS granted CAAM the permits required for construction of two additional towers at the same site.[67] The EA states that the CAAM proposal "will have no cumulative effects on flood plains" and holds "no potential to raise base flood flows."[68]

Change in Surface Features (Wetland Fill, Deforestation, Water Diversion, etc.) (Section 1.1307(a)(7)): The EA indicates that the proposed towers will have "no cumulative effects on any wetlands" and that "no wetlands will be impacted."[69] The EA also relies on the environmental review conducted for the S-R Broadcasting Application, which encompassed not only the infrastructure needed for KRKO(AM) but also the infrastructure needed to collocate another AM station at the site.[70] Specifically, the EA refers to the fact that, after a six-day *de novo* appeal hearing regarding shoreline impacts, among other issues, the Washington State Shoreline Hearings Board affirmed the environmental analysis for the new antenna structures proposed by CAAM. The Board found that the project would have "very little impact on the natural elements of the shoreline" and would not "impact the actual water resources of the Snohomish River or its ecology."[71]

High Intensity White Lights (Section 1.1307(a)(8)): The EA states that high intensity white lights are not proposed for the two new towers proposed by CAAM.[72]

With respect to the specific information that is to be included in an EA pursuant to Section 1.1311 of the Rules, the EA submitted by CAAM describes the tower, supporting structures, and construction methodology, as well as the surrounding area and uses.[73] The site is zoned "A-10" and the proposed use as a radio tower site is consistent with applicable zoning code requirements.[74] The proposed site is not in

---

[65] *See* EA at Section 6.2.1 and Attach. 15, Army Corps Flood Depth Analysis.

[66] *See* attachments to *Letter from Robert B. Jacobi, Esq.* (rec'd Apr. 25, 2007). These include a Flood Hazard Permit and Commercial Structural Permits.

[67] These permits include a Flood Hazard Permit and Commercial Structural Permits. *See supra* note 5.

[68] EA at Section 6.2.1. This statement is based upon "the proposed construction design" and "strict adherence to the Snohomish County permit review process." *Id.*

[69] *See id.* at Section 6.2.7. A Wetlands Determination Report was created and submitted with the S-R Broadcasting EA. S-R Broadcasting EA, Attach. E. CAAM submitted an update to the Report in the EA. EA at Attach. 25.

[70] EA at Sections 1.3 & 3.1.4. The EA explains that "[t]he cumulative impacts of both proposals were environmentally reviewed since the potential for a project similar to the CAAM project but larger in scope was known at the time the environmental review was conducted for KRKO-AM." *Id.* at Section 3.1.4.

[71] *Id.*, Attach. 5 at 33-34.

[72] *Id.* at Section 6.2.2.

[73] *See* 47 C.F.R. § 1.1311(a)(1).

[74] *See* EA, Attach. 8, Snohomish County Zoning Map. The proposed use of the site is a "Utility" under Washington state law, which is defined as an entity whose principal purpose is to provide electricity, water, sewer, storm drainage, gas, radio, television, telephone and other forms of communication utilizing the electromagnetic

a residential area.[75] Additionally, CAAM has described and thoroughly documented the proceedings undertaken to secure local zoning approval, ultimately receiving all the necessary permits from state and local authorities.[76] Finally, as discussed in greater detail below, the EA discusses the fact that the Application has been a source of controversy on environmental grounds in the local community and also addresses the environmental and other considerations which led to CAAM's selection of the proposed site and facilities, and the alternative sites evaluated by CAAM.[77]

Local Controversy (Section 1.1311(a)(3)): As discussed in *S-R Broadcasting*, the construction of towers at this site has been a source of controversy on environmental grounds.[78] In opposing the S-R Broadcasting Application, individuals, organizations and federal and state agencies expressed concern about protected species, migratory birds, aesthetics, effects on recreational use of nearby areas and RF interference.[79] It appears that construction at this site remains a source of local controversy on environmental grounds, as evidenced by the appeals taken of the local land use authorities' decision to grant the permits necessary to construct the additional facilities proposed by CAAM and by the letters submitted in response to the Application.[80] We note, however, that opposition alone to a project does not establish that a project is controversial as that term is used in NEPA and that it will have a significant environmental impact.[81] Controversy regarding an issue that is relevant to the existence of a significant environmental impact may be a factor in favor of preparing an EIS, but mere opposition in the absence of such a legitimate issue is not.[82]

Environmental and Other Considerations Leading to Selection of Proposed Site (Section 1.1311(a)(4)):. The EA contains an extensive discussion of the site selection process, and alternatives

---

communication. SCC 18.90.870. A "Utility Facility" is permitted as a conditional use in an A-10 zone. SCC 18.32.040.

[75] 47 C.F.R. § 1.1311(a)(1).

[76] 47 C.F.R. § 1.1311(a)(2). *See supra* note 5.

[77] 47 C.F.R. §§ 1.1311(a)(3) & (4).

[78] *See S-R Broadcasting*, 23 FCC Rcd at 8584.

[79] *Id.*

[80] *See supra* note 5. Indeed, in September 2009, two of the four towers already constructed at the site by S-R Broadcasting were sabotaged. *Letter from Robert B. Jacobi, Esq.* (rec'd Sept. 10, 2009). According to a press release, it was the Earth Liberation Front that tore the towers down, citing concern for "the health and environmental risks associated with radio waves emitted from the towers." *Id.* quoting Earth Liberation Front, Media Release (dated Sept. 4, 2009), available at http://www.elfpressoffice.org/release090409.html.

[81] 40 C.F.R. § 1508.27(b)(4) (degree to which effects are likely to be highly controversial is relevant in defining "significantly" as used in NEPA).

[82] *T-Mobile and Pierce Archery Proposed Antenna Tower*, Memorandum Opinion and Order, 18 FCC Rcd 24993 (WTB 2003) (*citing Friends of the Ompompanoosuc v. FERC*, 968 F.2d 1549, 1557 (2d Cir. 1992)) (holding that there is a difference between "controversy" and "opposition" and that an EIS would be needed if "a substantial dispute exists as to the size, nature, or effect of the major federal action rather than to the existence of opposition to a use."); *see also Indiana Forest Alliance, Inc v. United States Forest Service*, 325 F.3d 851, 858 (7th Cir. 2003) (establishing "a two-step approach to determining whether an agency has acted arbitrarily or capriciously in deciding not to prepare an EIS in the face of scientific controversy").

considered, including a "No Action Alternative."[83] The EA indicates that the availability of alternate sites was limited due to (1) the Commission's medium-wave interference spacing requirements for AM stations; (2) the Commission requirement that the Station provide nighttime coverage to Snohomish combined with the "extraordinarily high" nighttime interference-free contour for the Station; (3) Commission regulations designed to encourage transmitter sites to be located in rural areas, away from concentrated population areas; (4) the limited real estate market for sites with appropriately sized parcels of land with suitable signal propagation characteristics; and (5) Harvey Field, a local airfield which must be protected under Federal Aviation Administration regulations. The EA indicates that, utilizing a matrix of site-selection criteria,[84] CAAM was able to identify six project alternatives. Each but the current proposal was rejected for a variety of reasons.

- The "No Action Alternative" was rejected because it would leave the Marysville Urbanized Growth Area ("UGA") as the largest UGA in the continental United States of its size without a single broadcast license issued to a community within its boundaries and would "thwart the 'fair, efficient, and equitable' use of radio spectrum by ignoring efforts already undertaken by the FCC that established the public interest to be served by this application and award[ed] a dispositive preference to the city of Snohomish."[85]

---

[83] *See* EA at Sections 5.1-5.4.7. The EA states that it is incorporating by reference the "Site Selection Rationale" included in the analysis of the S-R Broadcasting Application. The EA notes that the discussions of directionalizations, conductivity and other factors that made the Short School Road location viable for KRKO(AM) are relevant to CAAM. *Id.* at Section 5.1. However, the EA states that "CAAM is providing an alternative site analysis to specifically address the CAAM proposal." *Id.*

[84] The Site Selection Criteria applied by CAAM were:

1. Ground electrical conductivity necessary for optimal AM transmission;
2. Maximization of signal coverage area;
3. Topographic or building obstructions (to avoid sources of signal interference);
4. Protection of co-channel stations from interference;
5. Compliance with local zoning restrictions;
6. Population density considerations (attempting to locate antenna in sparsely populated area);
7. Parcel size and availability;
8. Avoiding sensitive environmental areas and potential impacts to Endangered or Threatened Species;
9. FAA airspace protection;
10. Site accessibility;
11. High-tension power lines (to avoid negative effects of high-tension power lines on AM signal);
12. Available electric power;
13. Construction limitations; and
14. The possibility of co-locating at existing sites.

[85] *See* EA at Section 5.4.1.

- Three alternatives – the "Larimer Road Alternative," the "Mill Creek Alternative" and the "Tualco Valley Alternative" – were rejected because, from these sites, the Station's nighttime signal "cannot cover the City of Snohomish, as it is required to do by the FCC."[86]
- The "East Valley Alternative" offered enough land in the right location but "the owner is unwilling to sell, a large number of anti-AM radio opponents already exist, the land is largely wetlands, 2000 acres were assembled for a private duck hunting club and the land is encumbered by environmental protections that make it unsuitable for building."[87]

Therefore, the EA indicates, CAAM chose the "Shorts School Road Alternative" because it enables the Station to provide nighttime service to its community of license, as required by the Commission, and permits the Station to share two antenna structures and an equipment building with KRKO(AM).[88] The EA observes that co-location at this site "will limit the number of antennas necessary to broadcast [the Station's signal] to only two, prevent the proliferation of AM transmitter sites in the area, and satisfy the technical[,] locational and ground conductivity requirements for transmitting the signal."[89]

Cumulative Effects: The EA states that the review of the S-R Broadcasting Application conducted pursuant to the Washington State Environmental Policy Act included not only the infrastructure needed for KRKO(AM) but also the infrastructure needed for another AM station tower at the site.[90] Thus, the EA notes that the combination of the KRKO(AM) project and a project larger in scope than the CAAM proposal has "previously been analyzed for cumulative impacts."[91] The EA additionally notes that the S-R Broadcasting EA also analyzed cumulative impacts.[92] The EA acknowledges that the project addressed in the S-R Broadcasting EA differs somewhat from the CAAM project. Thus, although the EA adopts and incorporates by reference all environmental documents addressing construction of facilities for two AM stations at the site that were submitted to the Commission in the proceedings regarding the S-R Broadcasting Application, the EA also contains updates and supplements to the environmental analysis previously conducted for each of the specific environmental criteria listed in Section 1.1307 of the Rules.[93] The EA concludes that "there is no new information indicating that the proposed revision to the site plan has any greater or different probable adverse environmental impacts than those considered in the prior cumulative review."[94]

---

[86] *Id.* at Sections 5.4.2-5.4.4. The EA also indicates that, at each of these sites, four new antenna structures would be required and, at the Tualco Valley site, a new building also would be required. *Id.*

[87] *Id.* at Section 5.4.5. The EA indicates that, at this site too, four new antenna structures, a building, power and a road would be required. *Id.*

[88] *Id.* at Section 5.4.6.

[89] *Id.*

[90] *Id.* at Sections 1.3 & 3.1.4. The EA explains that "[t]he cumulative impacts of both proposals were environmentally reviewed since the potential for a project similar to the CAAM project but larger in scope was known at the time the environmental review was conducted for KRKO-AM." *Id.* at Section 3.1.4.

[91] *Id.* at Section 1.3.

[92] *Id.* at Section 3.1.4.

[93] *Id.* at Section 6.1.

[94] *Id.* at Sections 3.1.4 and 6.2.

Comments/Objections. As noted above, in December 2007, we received a letter from Highberger seeking denial of both the Application and the S-R Broadcasting Application. Highberger argues essentially that the Application is "redundant" because the KRKO(AM) facilities at the site from which KRKO(AM) sought to relocate already served the city of Snohomish without interference both day and nighttime. Thus, he argues, KRKO(AM) could be redesignated a Snohomish station, obviating the necessity of the Application filed by CAAM to serve that community. He argues that grant of the S-R Broadcasting Application and the Application would represent an inefficient use of spectrum and unnecessarily inflict higher RF emissions on Snohomish County residents. CAAM responded to the Highberger Letter on January 8, 2008.[95]

We received no timely comments in response to the Public Notice announcing the acceptance for filing of the EA for CAAM's proposed facilities. However, after the release of a Public Notice accepting the Application for filing,[96] we received letters from Day, Citizens, Stewards and Highberger expressing concerns about various environmental issues and seeking denial of the Application. Day argues that "this site appears to merit the development of a complete EIS which considers not just the aesthetic impacts of a proposed tower array, as did the 2005 EIS submitted by S-R Broadcasting."[97] Day reasons that combined the S-R Broadcasting and CAAM facilities at the site would "total six towers, two stations, and a nighttime output of 100,000 watts from this site." She believes that this is a "substantial development requiring an EIS under the National Environmental Policy Act." Day also discusses the fact that the site is located in a flood plain and near historic sites and a Snohomish County park. In addition, she asserts that the site is within a few hundred feet of the Snohomish River and notes that the river is home to the endangered Puget Sound Chinook Salmon. Finally, she expresses concerns about the impact of the CAAM proposal on migratory birds[98] and questions whether CAAM adequately considered alternative sites.

Citizens too seeks preparation of a comprehensive EIS.[99] Among other things, Citizens asserts that the EA does not, but should, consider the impact of CAAM's proposal on Puget Sound Steelhead Trout, a species listed as endangered. According to Citizens, there is a major run of Puget Sound Steelhead Trout in the Snohomish River. Citizens also expresses concerns about the potential health

---

[95] *Letter from Robert B. Jacobi* (rec'd Jan. 8, 2008) (attaching an engineering submission responsive to the technical arguments made by Highberger).

[96] *Broadcast Applications*, Public Notice, Report No. 27083 (MB 2009).

[97] *Day Letter* at 2.

[98] *Day Letter* at 2. Day notes that the site is in the flyway of Trumpeter Swans and other birds protected by the Migratory Bird Treaty Act. *Id.* She also asserts that Bald Eagle nesting sites have been documented nearby. *Id.*

[99] *2009 Citizens Letter* at 2-3.

impacts of RF exposure,[100] the impact of CAAM's proposal on housing prices and migratory birds,[101] and RF interference.[102]

Stewards advocates an EIS. Stewards describes the area surrounding the site and voices concerns about adverse health effects from RF exposure.[103]

Finally, Highberger reasserts his concerns about inefficient use of spectrum and possible adverse health effects of RF exposure.[104] Highberger also questions whether CAAM "seriously evaluated feasible alternative sites"[105] and argues that CAAM's proposed facility "is not compatible with this pristine prime agricultural valley."[106] CAAM responded to these objections on October 26, 2009.[107]

---

[100] *2009 Citizens Letter* at 1-2 (noting that the Snohomish County Hearing Examiner concluded that the "proposed AM station presented a plausible threat to human health within the region" but acknowledging that the County Council "overturned this decision on the basis that no causal mechanism was in evidence").

[101] According to Citizens, after the KRKO(AM) towers were constructed, a record number of Trumpeter Swans arrived in the Upper Snohomish River Valley in the fall of 2008 but only a quarter remained after January 2009. Citizens appears to believe that the decline was attributable solely to the presence of the KRKO(AM) towers but submits no evidence to support this view. *2009 Citizens Letter* at 2. We note that Citizens has not updated the record to indicate how many Trumpeter Swans returned to the area in the fall of 2009.

[102] *2009 Citizens Letter* at 2. Citizens bases its claims regarding RF interference on the fact that such interference occurred during program tests of KRKO(AM). *Id.* Citizens, however, acknowledges that KRKO(AM) has worked to address complaints regarding interference. *Id.* Citizens indicates that "at least two local commercial businesses still remain severely impacted by these signals" but does not indicate if KRKO(AM) successfully resolved any other complaints. It appears that Citizens' allegations relate to blanketing interference. We note that KRKO(AM) is required to resolve any blanketing interference issues within one year of commencement of operations, 47 C.F.R. § 73.88, and appears to have made efforts to do so. It would be premature to consider any concerns about blanketing interference from the new AM station proposed by CAAM at this time. Thus, we do not consider this issue further.

[103] *Stewards Letter* at 2 (stating that "[r]esidents and parents of schoolchildren [attending schools in the area] are concerned about the possible adverse health effects of such close proximity to these proposed high voltage radio towers" and that the proposed towers "sit in a spectacularly scenic portion of our pristine river valley, adjacent to a popular wildlife preserve"). Stewards also asserts that "the environmental analysis submitted in 2001 is shamefully inadequate and certainly outdated." We note that the Commission considered and rejected the argument that the S-R Broadcasting EA was outdated in *S-R Broadcasting*. The Commission noted that "there is no evidence in the record that the information submitted has become stale or outdated" and that the EA had been supplemented with additional material. *S-R Broadcasting*, 23 FCC Rcd at 8587. We note that, while CAAM references various material included in the S-R Broadcasting EA, it has taken steps to update these materials in its EA. We find that the information before us is more than adequate to make a reasoned determination of the effects of the CAAM proposal on the quality of the human environment.

[104] *2009 Highberger Letter* at 1-3; *2010 Highberger Letter.*

[105] *Id.* at 4. Specifically, Highberger asserts that, contrary to CAAM's statements, the proposed site is not "superior to other flat areas in Snohomish County that are located at greater distances from human populations." *Id.*

[106] *Id.* at 5.

[107] *Letter from Robert B. Jacobi, Esq.* (rec'd Oct. 26, 2009) (attaching *S-R Broadcasting* and arguing Highberger merely rehashed arguments already made).

Conclusions Regarding EA and Objections. Upon examination of the EA and supplemental materials, we find that the information supplied satisfies the requirements specified in Sections 1.1307 and 1.1311 of the Rules and that there is a reasoned basis to issue a FONSI.[108]

Endangered Species/Migratory Birds. The EA and supplemental materials clearly explain the basis for the applicant's determination, pursuant to sections 1.1307(a)(3) and 1.1311, that there would be no effect on listed or proposed threatened or endangered species or designated or proposed critical habitats within the project's action area. Moreover, we note that, while preparation of an EIS that addressed both the infrastructure needed for KRKO(AM) and the infrastructure needed for another AM station tower at the site was required, the EIS was limited to the "aesthetic and visual impacts of the project."[109] Indeed, the state environmental review process resulted in a finding that the project would not have a significant impact on wildlife, or on wildlife habitat.[110] The materials that formed the basis for this determination are included with the Application and the S-R Broadcasting Application, or are publicly available.

Additionally, we note that USFWS examined the existing infrastructure that CAAM proposes to use. Ultimately, USFWS praised the design of these towers, which conforms closely to USFWS guidelines, and required S-R Broadcasting to report any "takings" of migratory birds at the tower site.[111] USFWS also reviewed the two towers CAAM proposes to construct, which will be identical to the existing towers, as well as the revised BA. USFWS found that "it appears that the proposed towers are following the guidance that has been provided previously to reduce the likelihood of killing birds" and stated "the conclusions and recommendations provided in our April 11, 2007 letter ... remain applicable."[112] CAAM indicates that it selected its proposed site specifically to "diminish the perceived potential for migratory bird collisions."[113] CAAM also updated the ARA included in the S-R Broadcasting EA and included sworn declarations indicating that there have been no "takings" of migratory birds at the tower site since the existing antennas were erected in 2008. The updated ARA ultimately found that the "no effect" conclusions reached in the original "remain valid and unchanged."[114] Nothing further is required of CAAM at this time.[115]

---

[108] 47 C.F.R. §§ 1. 1307 & 1.1311.

[109] *See Citizens to Preserve the Upper Snohomish River Valley and Pilchuck Audubon Society v. Department of Planning and Development Services*, Decision of the Deputy Hearing Examiner, File No. 00 107495 (July 31, 2002).

[110] *Id.*

[111] *See 2007 USFWS Letter.* While Citizens expressed concerns that the number of Trumpeter Swans roosting in the Upper Snohomish River Valley has declined and will decline further due to the construction of the existing towers, Citizens did not provide any evidence that there have been any "takings" of Trumpeter Swans or other migratory birds at the tower site. As discussed, CAAM has submitted sworn declarations indicating that there have been no such "takings." Thus, we find Citizens has not demonstrated that the Application will violate the Migratory Bird Treaty Act or requires further analysis under the Commission's rules implementing NEPA.

[112] *E-mail to Ms. Linda Atkins from Karen Myers, Consultation and Technical Assistance Division, US Fish and Wildlife Service* (July 16, 2010), attached as Attach. 1 to September 2010 Amendment..

[113] EA at Section 6.2.6.

[114] EA, Attach. 23 at 6.

[115] *See E-mail to Ms. Linda Atkins from Karen Myers, Consultation and Technical Assistance Division, US Fish and Wildlife Service* (Dec. 22, 2010) (repeating earlier recommendation that the applicant should document and retain the documentation to support its analysis of effects to listed species and critical habitats protected by the Endangered

Flood Plain. With respect to the location of the existing and proposed towers and the existing equipment building in a flood plain, we note that CAAM obtained a flood hazard permit for the two new towers from Snohomish County and that S-R Broadcasting obtained a flood hazard permit from Snohomish County for the existing towers and existing equipment building. The issuance of these permits demonstrates that the existing structures are, and the proposed structures will be, above the flood plain.[116]

RF Radiation Exposure: With respect to the concerns expressed by Citizens, Day and Highberger regarding the perceived unhealthy exposure of local residents to RF radiation from both KRKO(AM)'s and CAAM's facilities, we observe that CAAM's engineering consultants have established that operation of both KRKO(AM) and CAAM's new AM station at the site will comply with the RF radiation exposure limitations contained in Sections 1.1307(b) and 1.1310 of the Rules with the following provisos.[117] First, we note that CAAM will be required to erect a protective fence around the new towers and install appropriate warning signs.[118] Second, the construction permit will contain a condition requiring CAAM to take actual radiation measurements which will be submitted to the Commission to ensure compliance with the RF exposure limitations.[119]

Other Matters. Effects on local property values. Citizens expresses concern over the perceived effect of the towers on property values in the area. While we understand Citizens' misgivings, as we discussed in *S-R Broadcasting*, concern over property values is not an environmental factor considered by the Commission in reviewing proposals for broadcast facilities. Moreover, the environmental statutes governing the Commission's obligations do not require federal agencies to consider socioeconomic factors, such as diminished property values, where the record establishes that the threshold requirement for environmental analysis – impact on the environment – has not been met.[120]

Species Act, including any future revisions of the BA that also result in a "no effects" determination by the applicant).

[116] To satisfy a condition of its Flood Hazard Permit, S-R Broadcasting obtained an Elevation Certificate from the National Flood Insurance Program, Federal Emergency Management Agency, United States Department of Homeland Security for the existing towers and equipment building. *Letter from Robert B. Jacobi, Esq.* (rec'd Apr. 25, 2007). The Flood Hazard Permit issued to CAAM did not contain such a condition.

[117] 47 C.F.R. §§ 1.1307(b), 1.1310. *See also* OST/OET Bulletin No. 65, "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation," and RF Worksheet # 2, appended to the Instructions to FCC Form 301.

[118] We also require CAAM to ensure that, as required by the Commission, S-R Broadcasting has taken the same steps with respect to the KRKO(AM) facilities. *See S-R Broadcasting*, 23 FCC Rcd at 8588.

[119] The condition will be the same as that placed on S-R Broadcasting in connection with the KRKO(AM) construction. *See* FCC Form 351, FCC File No. BP-20000308ABU (May 30, 2008) at 4 (special operating condition #4). The Commission has the authority to levy forfeitures and require broadcast stations to terminate operations until any violation of its Rules involving RF exposure hazards has been rectified. *See A-O Broadcasting Corporation,* Memorandum Opinion and Order, 23 FCC Rcd 603, 604 ¶ 3 & n.8 (2008), *citing A-O Broadcasting,* Notice of Apparent Liability, 17 FCC Rcd 24184 (2002), *forfeiture issued,* 31 CR 411 (2003), *recon. denied*, 34 CR 858 (2005).

[120] *See, e.g., Canyon Area Residents for the Environment*, Memorandum Opinion and Order, 14 FCC Rcd 8152, 8155-56 (1999).

Aesthetic concerns. Stewards encloses a photograph of the site and argues that "radio towers here are grossly inappropriate."[121] As we noted in *S-R Broadcasting*, the Commission, in amending its environmental rules in 1986, observed that

> [A]esthetic concerns may more appropriately be resolved by local, state, regional or local land use authorities. Those authorities can better handle such questions given their experience and familiarity with land use values. Accordingly, in considering any objections based upon aesthetic concerns, due recognition and considerable weight will be accorded to the fact that site approval has been obtained from a local, state, regional or federal land use board or agency, if that approval has taken into account the environmental impact of the proposal.[122]

The record in the local zoning approval process clearly indicates that the Snohomish County and Washington State authorities carefully reviewed the environmental impact of both the KRKO(AM) towers and the proposed towers before issuing the permits required for their construction. We therefore defer to those authorities on the issue of the aesthetic impact of the CAAM proposal.

Spectrum Efficiency. We reject Highberger's suggestion that we deny this Application and ensure service to Snohomish by changing KRKO(AM)'s community of license from Everett to Snohomish, Washington. Such action would be inconsistent with Commission precedent regarding community of license changes, which does not permit a third party to request an involuntary change in a station's community of license.[123]

Cumulative Effects. CAAM has demonstrated that its proposal will not have any cumulative effects. As CAAM notes, the review of the S-R Broadcasting Application conducted pursuant to the Washington State Environmental Policy Act included both the infrastructure needed for KRKO(AM) and more than enough infrastructure for the AM station that CAAM proposes and thus addressed the potential for cumulative impacts. This review resulted in preparation of an EIS regarding only the aesthetic and visual impacts of the proposed infrastructure. As noted above, no EIS was required regarding the impacts of the project on wildlife and wildlife habitat as these impacts were found not significant. Moreover, the S-R Broadcasting EA submitted to the Commission analyzed the impact of construction of both the KRKO(AM) towers and up to four additional towers and concluded that the construction would not significantly affect the quality of the human and natural environment.[124] Finally, the EA updates and supplements these materials, providing additional documentation to support CAAM's statement that there will be no cumulative effects.

Site Selection. Highberger asserts that, contrary to CAAM's statements, the ground conductivity of CAAM's proposed site is not "superior to other flat areas in Snohomish County that are located at

---

[121] *Stewards Letter* at 2.

[122] *Artichoke Broadcasting Corporation,* Decision, 8 FCC Rcd 4531 (Rev. Bd. 1993). *See also Amendment of Environmental Rules in Response to New Regulations Issued by the Council on Environmental Quality,* Report and Order, 60 RR 2d 13, 17-18 (1986); *Baltimore County, Maryland,* Memorandum Opinion and Order, 5 FCC Rcd 5615, 5617 (1990).

[123] *La Grande and Prairie City, Oregon,* Report and Order, 23 FCC Rcd 15355, 15356 (MB 2008); *La Grange, Richlands, Shallotte, Swansboro, Topsail Beach, and Wrightsville Beach, North Carolina*, Report and Order, 21 FCC Rcd 91, 93 n.8 (MB 2006).

[124] S-R Broadcasting EA at § 6.0.

greater distances from human populations."[125] Based on this, Highberger questions whether CAAM "seriously evaluated feasible alternative sites."[126] Highberger, however, has not provided sufficient information for us to determine if the "other flat areas" he references actually do have superior ground conductivity. Moreover, even assuming that these "other flat areas" have superior ground conductivity, that alone does not demonstrate that CAAM failed to consider other alternative sites.[127]

Day also asserts that CAAM's site selection process was inadequate. Specifically, Day notes that the Snohomish County Hearing Examiner found certain testimony taken during hearings on CAAM's application for a major modification to the CUP "raise[d] questions about how thorough the site selection process really was, given the fact that CAAM already owned the existing site."[128] However, while she found that the testimony raised questions, the Hearing Examiner did not address the adequacy of CAAM's site selection process in her conclusions of law.[129] In addition, the Snohomish County Council ultimately overturned the Hearing Examiner's decision.

CAAM provided detailed documentation explaining its site selection process. We find that CAAM has satisfied the requirements set forth in Section 1.1311(a)(4) of the Rules.[130]

Conclusion/Actions. Upon examination of the EA, we find that the information supplied satisfies the requirements specified in Section 1.1311 of the Rules.[131]

Additionally, pursuant to Section 1.1308 of the Rules,[132] we find that the CAAM proposal will have no significant environmental impact on the quality of the human environment, and no further environmental processing is warranted. Moreover, we have examined the captioned application and find that it complies with all pertinent statutory and regulatory requirements.

Accordingly, in light of the findings made above, IT IS ORDERED, that the Informal Objections filed by Citizens to Preserve the Upper Snohomish River Valley, Stewards of the Land and Community, Angela Day and Albert C. Highberger ARE DENIED, and the application (File No. BNP-20071010ABZ)

---

[125] *2009 Highberger Letter* at 3.

[126] *Id.* at 3.

[127] As discussed above, ground conductivity was but one of a number of factors considered by CAAM in evaluating each possible site. *See supra* note 84.

[128] Decision of Snohomish County Hearing Examiner, File No. 07-109195-000-00-LU, at 15 (dated Oct. 15, 2008), available at http://www.co.snohomish.wa.us/documents/Departments/PDS/Commerical_Land_Use/Proposed_Developments/2008_hed_decisions/07109195a.pdf.

[129] *Id.* at 57-60.

[130] 47 C.F.R. § 1.1311(a)(4) (requiring that an EA include "[a] discussion of environmental and other considerations which led to the selection of the particular site and, if relevant, the particular facility; ... and any alternative sites which have been or might reasonably be considered").

[131] 47 C.F.R. § 1.1311.

[132] 47 C.F.R. § 1.1308.

of CAAM Partnership, LLC for a new AM radio station at Snohomish, Washington, IS GRANTED, subject to special operating conditions comparable to those imposed with respect to KRKO(AM), Facility ID No. 62056, Everett, WA, in FCC Form 351, FCC File No. BP-20000308ABU (May 30, 2008).

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: CAAM Partnership, LLC
Citizens to Preserve the Upper Snohomish River Valley
Stewards of the Land and Community
Angela Day
Albert C. Highberger