

NEW EXEMPTIONS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13062-N .....		Safety-Kleen (BDT), Inc., Columbia, SC.	49 CFR 173.40(c)(2) .....	To authorize the transportation in commerce of non-DOT specification cylinders filled with a Division 2.3 Inhalation Hazard Zone A, material or a Division 6.1 material. (mode 1)
13063-N .....		Air Products Polymers, L.P., Dayton, NJ.	49 CFR 174.67(i) & (j) .....	To authorize the transportation in commerce of rail cars containing Class 3 hazardous materials to remain connected while standing without the physical presence of an unloader. (mode 2)
13064-N .....		Pressed Steel Tank Co., Milwaukee, WI.	49 CFR 173.300a, 173.34(e) .....	To authorize the manufacture, marking, sale and use of a non-DOT specification cylinder for use in transporting Division 2.3 hazardous materials. (modes 1, 2, 3)

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 BILLING CODE 4910-60-M

**DEPARTMENT OF TRANSPORTATION**

**Surface Transportation Board**

[Finance Docket No. 34079]

**San Jacinto Rail Limited—Construction Exemption—And The Burlington Northern and Santa Fe Railway Company—Operation Exemption—Build-Out to the Bayport Loop Near Houston, Harris County, TX**

**AGENCIES:** *Lead:* Surface Transportation Board. *Cooperating:* U.S. Coast Guard, Federal Aviation Administration, National Aeronautics and Space Administration.

**ACTION:** Notice of availability of final scope of study for the Environmental Impact Statement (EIS).

**SUMMARY:** On August 30, 2001, San Jacinto Rail Limited (SJRL) and The Burlington Northern and Santa Fe Railway (BNSF) (referred to collectively as the Applicants) filed a petition with the Surface Transportation Board (Board) pursuant to 49 U.S.C. 10502 for authority for construction by SJRL and operation by BNSF of a new rail line near Houston, Harris County, Texas. The project would involve construction of approximately 12.8 miles of new rail line to serve the petro-chemical industries in the Bayport Industrial District (Bayport Loop). Trains operating over the new rail line would originate at BNSF's New South Yard and operate via trackage rights over the Union Pacific Railroad Company's (UP) Glidden Subdivision and UP's Galveston Subdivision, also known as the former Galveston, Henderson, and Houston Railroad (GH&H) line, to the beginning of the new rail line near

Ellington Field. Because the construction and operation of this project has the potential to result in significant environmental impacts, the Board's Section of Environmental Analysis (SEA) determined that the preparation of an Environmental Impact Statement (EIS) is appropriate. To help determine the scope of the EIS, and as required by the Board's regulations at 49 CFR 1105.10(a)(2), SEA published in the *Federal Register* and made available to the public on November 26, 2001, the Notice of Availability of Draft Scope of Study for the EIS, Notice of Scoping Meetings, and Request for Comments. SEA held four public scoping meetings at the Pasadena Convention Center on January 14 and 15, 2002. The scoping comment period originally concluded February 1, 2002, but, in response to requests, SEA extended the scoping period an additional 30 days, to March 14, 2002. During the scoping comment period, the U.S. Coast Guard (USCG), the Federal Aviation Administration (FAA), and the National Aeronautics and Space Administration (NASA) requested cooperating agency status in the preparation of the EIS. After review and consideration of all comments received, this notice sets forth the Final Scope of the EIS. The Final Scope adopts the Draft Scope, which is provided as Attachment A, and reflects any changes to the Draft Scope as a result of the comments, summarizes and addresses the principal environmental concerns raised by the comments, and briefly discusses pertinent issues concerning this project that further clarify the Final Scope.

**FOR FURTHER INFORMATION CONTACT:** Ms. Dana White, SEA Project Manager, toll-free at 1-888-229-7857 (TDD for the hearing impaired 1-800-877-8339). The Web site for the Surface Transportation Board is <http://www.stb.dot.gov>.

Mr. Phil Johnson, U.S. Coast Guard, (504) 589-2965.  
 Ms. Nan Terry, Federal Aviation Administration, (817) 222-5607.  
 Ms. Perri Fox, National Aeronautics and Space Administration, (281) 483-3157.  
 This document is available in English and Spanish at the repositories listed below or by calling the toll-free number at 1-888-299-7857. In addition, a set of frequently asked questions in English and Spanish is provided as Attachment B for quick reference.<sup>1</sup>  
 San Jacinto College, Central Campus Library, 8060 Spencer Highway, Pasadena, TX 77505, (281) 476-1850.  
 San Jacinto College, North Campus Library, 5800 Uvalde Street, Houston, TX 77015, (281) 459-7116.  
 San Jacinto College, South Campus, 13735 Beamer Road, Houston, TX 77089, (281) 922-3416.  
 University of Houston, Clear Lake Campus, Alfred Neumann Library, 2700 Bay Area Boulevard, Houston, TX 77058, (281) 283-3930.  
 Freeman Memorial Branch Library, 16602 Diana Lane, Houston, TX 77062, (281) 488-1906.  
 Harris County Public Library, Evelyn Meador Branch, 2400 N. Meyer Road, Seabrook, TX 77586, (281) 474-9142.  
 Harris County Public Library, South Houston Branch, 607 Avenue A, South Houston, TX 77587, (713) 941-2385.  
 Pasadena Public Library, Fairmont Branch, 4330 Fairmont Pkwy, Pasadena, TX 77504, (713) 998-1095.  
 Pasadena Public Library, Main Branch, 1201 Jeff Ginn Memorial, Pasadena, TX 77506, (713) 477-0276.  
 Deer Park Public Library, 3009 Center Street, Deer Park, TX 77536-7099, (281) 478-7208.

<sup>1</sup>In addition, SEA has distributed extra copies of numerous community groups that have previously distributed project information from SEA.

Houston Public Library, 500 McKinney Avenue, Houston, TX 77002, (713) 247-2222.

Park Place Regional Library, 8145 Park Place Blvd, Houston, TX 77017, (832) 393-1970.

Patricio Flores Library, 110 North Milby Street, Houston, TX 77003, (832) 393-1780.

Melcher Branch Library, 7200 Keller, Houston, Texas 77012, (832) 393-2480.

Bracewell Branch Library, 10115 Kleckley, Houston, Texas 77075, (832) 393-2580.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Bayport Loop consists of approximately 24 shipper facilities. UP is the only railroad serving the Bayport Loop. UP acquired the existing Bayport Loop trackage in its merger with the Southern Pacific Rail Corporation (SP) in 1996. In the Board's final decision approving the merger,<sup>2</sup> and as a condition of the merger approval, the Board used its authority to grant trackage rights over former UP lines (but not former SP lines) to other rail companies to the extent required to ensure an equal level of competition to that which existed before the merger. The Board's decision included granting trackage rights to ensure access to competitive build-ins or build-outs. The Board stated that this would allow other rail companies to replicate the competitive options previously provided by the independent operations of UP and SP. The Board explained in its decision that shippers need not demonstrate the economic feasibility of a build-in or build-out proposal under this condition.

Before the UP/SP merger, the Bayport Loop was solely served by SP. UP operated the former GH&H rail line to the south of Ellington Field, and had an opportunity to construct a new rail line into the Bayport Loop to compete with SP. However, when the two companies merged in 1996, this competitive option would have been eliminated but for the merger condition noted above. Through the Proposed Action, the Applicants here<sup>3</sup> are seeking approval to create the

competitive situation provided for by the Board's condition by utilizing trackage rights over the former GH&H line and constructing a rail line into the Bayport Loop.

BNSF would operate on average one train each way per day comprising 36 to 66 railcars, totaling 13,000 to 24,000 loaded railcars per year. The majority of the railcars would contain plastic pellets. Approximately 1,500 to 7,000 tank cars each year would contain hazardous materials or other miscellaneous inbound and outbound commodities.

##### Environmental Review Process

The Board is the lead agency, pursuant to 40 CFR 1501.5. SEA is responsible for ensuring that the Board complies with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321-4335, and related environmental statutes. SEA is the office within the Board responsible for completing the environmental review process. ICF Consulting of Fairfax, Virginia is serving as an independent third-party contractor to assist SEA in the environmental review process. SEA is directing and supervising the preparation of the EIS. The USCG, FAA, and NASA are cooperating agencies, pursuant to 40 CFR 1501.6. If the USCG, FAA, and NASA find the EIS adequate, they will base their decisions on it. The EIS should include all of the information necessary for decisions by the Board and the cooperating agencies (collectively, the agencies).

The NEPA environmental review process is intended to assist the agencies and the public to identify and assess the potential environmental consequences of a Proposed Action before a decision on the Proposed Action is taken. The NEPA regulations require the agencies to consider a reasonable range of feasible alternatives to the Proposed Action. The President's Council on Environmental Quality (CEQ), which oversees the implementation of NEPA, has stated in Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations that "[R]easonable

affiliates of four plastics and chemical production companies located in the Bayport Loop. The four production companies are ATOFINA Petro-Chemicals, Inc., Basell USA, Inc., Equistar Chemicals, LP, and Lyondell Chemical Company.

alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense \* \* \*." In the EIS, the agencies are considering a full range of alternatives that meet the purpose and need of the project, as well as the No-Action Alternative. Some alternatives have been dismissed from further analysis because they have been determined to be infeasible or because the agencies consider them to be environmentally inferior to other alternatives under consideration. The EIS will include a brief discussion of the reasons for eliminating certain alternatives from detailed analysis.

SEA and the agencies will prepare a Draft EIS (DEIS) for the Proposed Action. The DEIS will address those environmental issues and concerns identified during the scoping process and detailed in the Scope of Study served November 26, 2001. It will also discuss a reasonable range of alternatives to the Proposed Action and recommend environmental mitigation measures.

In addition, the DEIS will also analyze the impacts of the additional traffic from the Proposed Action over those UP lines to which Applicants may acquire trackage rights pursuant to the UP/SP merger condition, namely the Glidden Subdivision and the GH&H line.<sup>4</sup>

The DEIS will be made available upon its completion for public review and comment. A Final EIS (FEIS) will then be prepared reflecting the agencies' further analysis and the comments on the DEIS. In reaching their future decisions on this case, the Board and the cooperating agencies will take into account the full environmental record, including the DEIS, the FEIS, and all public and agency comments received.

<sup>4</sup> In order to determine the potential impacts over the trackage rights lines, SEA must establish the current UP traffic levels. Because UP is not a participant in this proceeding, and is therefore beyond the scope of the Board's jurisdiction here, SEA will use the best available information to characterize existing conditions on those two lines. Similarly, in analyzing the No-Action Alternative, SEA will use the best available information to characterize existing conditions on the rail lines that UP currently uses to serve the Bayport Loop and analyze the potential impacts associated with the decrease in rail traffic on those lines as a result of the Proposed Action.

<sup>2</sup> See *Union Pacific/Southern Pacific Merger*, 1 S.T.B. 233 (1996).

<sup>3</sup> The Applicants are a partnership comprising BNSF, BayRail, LLC (wholly owned by BNSF), and

**Proposed Action and Alternatives**

Based on analysis conducted to date and comments received during the scoping process, the agencies have determined the reasonable and feasible alternatives that will be analyzed in detail in the EIS.<sup>5</sup> To assist with the

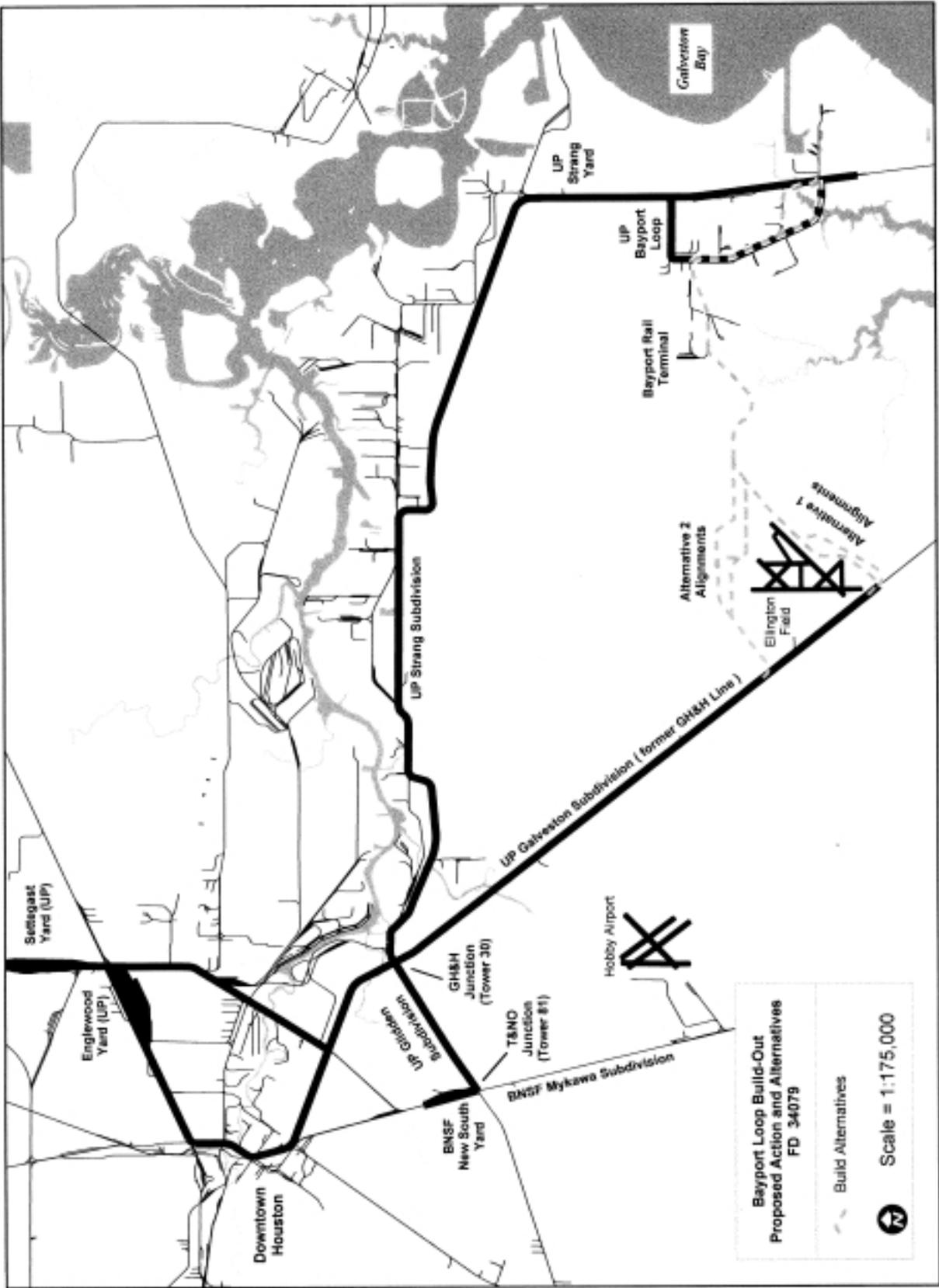
<sup>5</sup> Many commenters have urged the Board to require BNSF to provide competing service to the

shippers in the Bayport Loop via trackage rights over existing UP rail lines. However, the UP/SP merger decision directs UP and BNSF to negotiate terms for build-in/build-out arrangements; it does not direct the parties to negotiate trackage rights over UP's lines in the state Highway 225 and 146 corridors. The Board's policy is to encourage private-sector dispute resolution whenever possible and BNSF and UP have had exchanges regarding Bayport access. If they should reach an agreement granting BNSF access to the Bayport Loop over UP's

visualization of the Proposed Action and Alternatives, please refer to the map below.

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line, BNSF would likely move to dismiss its petition to construct and operate a new rail line to the Bayport Loop. Until that happens, however, the Board is obligated to consider BNSF's petition in this proceeding.



### A. Proposed Action and Modifications

(1) The Proposed Action consists of construction of a new rail line along Alignment 1 to the Bayport Loop and operations from BNSF's New South Yard over UP's Glidden Subdivision and UP's GH&H line. Alignment 1, the Applicants' preferred route, has been modified to include Alignment 1B, which crosses Taylor Bayou parallel to the Port Road and UP crossings. A spur would follow part of the original Alignment 1 route to serve potential shippers in the Bayport Loop. The Applicants developed Alignment 1B because of concerns expressed by the National Marine Fisheries Service over an area of Essential Fish Habitat associated with the original proposed crossing of Taylor Bayou. BNSF would operate on average one train each way per day comprising 36 to 66 railcars, totaling 13,000 to 24,000 loaded railcars per year. The majority of the railcars would contain plastic pellets. Approximately 1,500 to 7,000 tank cars each year would contain hazardous materials or other miscellaneous inbound and outbound commodities.

(2) The original Taylor Bayou crossing was part of Alignment 1 as originally proposed by the Applicants. This alignment would run east across Bay Area Boulevard, turn south, cross Taylor Bayou, and turn east along Port Road.

(3) Alignment 1C is a modification to Alignment 1 that would connect with the GH&H line just south of where Alignment 1 would connect. It parallels Alignment 1 to the south-east corner of the Ellington Field fence line. It continues north-east towards the Boeing and NASA facilities on Space Center Boulevard and turns north-west to rejoin Alignment 1 before it crosses NASA's access road to Ellington Field.

### B. Alignment 2 Modifications

Alignment 2 was developed by the Applicants as an alternative to the Proposed Action. The original Alignment 2 would have begun construction from the GH&H on the north side of the Sam Houston Parkway (Beltway 8) and run under Beltway 8. The route then would have run parallel to the east side of Beltway 8 to Genoa-Red Bluff Road. It would have then run east alongside Genoa-Red Bluff Road, passing to the north of Ellington Field and the Baywood Country Club. It would have continued east across Red Bluff road to join Alignment 1 into the Bayport Loop. SEA dismissed the original Alignment 2 from detailed analysis for reasons that are discussed below.

(1) Alignment 2B, which now replaces Alignment 2, is a modification of Alignment 2 that would diverge from Alignment 2 by turning south before reaching the City of Houston's Southeast Water Treatment Plant. Alignment 2B then turns east across the grounds of the Water Treatment Plant and passes to the south of the existing Water Treatment Plant. It continues east, crossing Space Center Boulevard over a proposed grade separation and joins Alignment 1.

(2) Alignment 2C is a modification to the original Alignment 2. It would follow the original Alignment 2 and turn south from Genoa-Red Bluff Road on the east side of the Water Treatment Plant. It would then turn east again and connect with Alignment 1.

(3) Alignment 2D is a modification to the original Alignment 2 and would turn east before reaching Genoa-Red Bluff Road. It would turn south before reaching the Water Treatment Plant, turn east across the Plant grounds, and connect to Alignment 1.

### C. BNSF Trackage Rights Over UP Lines in the SH 225 and SH 146 Corridors

In addition to analyzing the reasonable and feasible alternatives described above, consistent with the requirement in the NEPA implementing regulations to consider alternatives outside the jurisdiction of the lead agency, the EIS will consider BNSF's use of trackage rights over UP's lines in the State Highway (SH) 225 and SH 146 corridors to reach the Bayport Loop. This alternative would involve operating from New South Yard over the Glidden Subdivision and continuing over UP's lines in the SH 225 and SH 146 Corridors. Notwithstanding the unforeseeable likelihood of this event, as discussed earlier, SEA believes that it is necessary to analyze this alternative in the EIS partly for comparative purposes relative to the No-Action Alternative and the Proposed Action, and partly because of the possibility of a negotiated agreement between BNSF and UP regarding use of the track.

### D. The No-Action Alternative

Under the No-Action Alternative, the Applicants would not build and operate the new rail line into the Bayport Loop and there would be no change in current operations. UP would continue to serve the petro-chemical plants in the Bayport Loop. The No-Action Alternative consists of the existing situation where UP transports rail cars to and from the Bayport Loop over its lines heading north out of the Loop alongside SH 146, past Strang Yard, then west on its Strang Subdivision alongside SH 225, and on to either Englewood Yard or Settegast

Yard. In analyzing the No-Action Alternative, SEA will use the best available information to characterize existing conditions on the rail lines that UP currently uses to serve the Bayport Loop and analyze the potential impacts associated with the decrease in rail traffic on those lines as a result of the Proposed Action.

### E. Alternatives Excluded From Detailed Analysis

During the scoping process, the agencies determined that the alternatives discussed below are not reasonable and/or feasible and, therefore, do not warrant detailed consideration in the EIS. The EIS will, however, further describe the reasons for eliminating them from detailed consideration.

(1) The construction and operation of the Proposed Action along Alignments 1A, 2, and 2A. The Applicants believe that these alternatives are not feasible because the construction of a single grade separation for Genoa-Red Bluff Road and Red Bluff Road is economically infeasible and would conflict with the City of Pasadena's plans to accommodate growth in traffic by extending Genoa-Red Bluff Road to the north/northeast to connect with Fairmont Parkway.

(2) The construction and operation of the Proposed Action along Alignments 3 and 4. Although initially included in the Applicants' environmental background document, which accompanied the Applicants' petition to the Board,<sup>6</sup> Alignments 3 and 4 now appear to be infeasible because they would involve new construction off the existing Port Terminal Railroad Association (PTRA) tracks in the rail corridor along SH 225. As determined during this scoping process, the Applicants cannot use trackage rights over the PTRA to utilize Alignments 3 and 4 because of a legal agreement between UP and the Port of Houston Authority that prohibits BNSF from using the PTRA tracks to provide service to the Bayport Loop.

(3) The construction and operation of the Proposed Action along a new alignment in the SH 225 and SH 146 corridors to reach Alignment 3 or 4. This construction alternative, which is not shown on the map, would involve operating from New South Yard over the Glidden Subdivision and appears to have several engineering challenges, and could have environmental and safety concerns that are more substantial

<sup>6</sup> This document is available in the Board's public record.

than the alternatives that are already under consideration.<sup>7</sup>

(4) The construction and operation of the Proposed Action using a new Beltway 8—Fairmont Avenue Alignment. This alignment would follow the original Alignment 2, continue north across Genoa-Red Bluff Road, run east along Fairmont Parkway, and run south on Red Bluff Road until it reaches one of the other alignments. This alignment may require taking a number of businesses and would adversely affect the entrances and exits for a large shopping center, adversely affect turning movements across Fairmont Parkway, and may have adverse noise effects to sensitive receptors.

(5) Suggestions that negotiations between Bayport Loop shippers and UP for lower shipping rates, in an effort to obviate the need for the Proposed Action, do not meet the purpose and need of providing alternative rail service. Negotiations between the Bayport Loop shippers and UP already occur on a regular basis as contracts come up for renewal.

#### Independent Utility

Scoping comments suggested that the proposed Bayport Channel Container/Cruise Terminal (Bayport Terminal) and the Proposed Action are connected and requested that an EIS be prepared jointly for the two projects. However, based on the Applicant's Verified Statement, SEA's consultation with U.S. Army Corps of Engineers (USACE), which prepared the Draft EIS for the Bayport Terminal, and SEA's consultation with Port of Houston Authority, the two projects are not connected. Rather, the two projects are separate and distinct. They do not depend on each other economically or physically and each would proceed in the absence of the other. This issue will be discussed in more detail in the EIS.

#### Reasonably Foreseeable Actions

Under CEQ's guidelines, the analysis of environmental effects resulting from a Proposed Action requires the separation of actions and effects that are reasonably foreseeable as opposed to results that are remote and speculative. Typically, SEA analyzes potential rail

operations for a period of three to five years into the future. Projections for rail operations beyond these time frames are not reasonably foreseeable. Beyond three to five years, for example, fluctuations in the economy, changes in contracts between shippers and railroads, railroad mergers, chemical company mergers, expansions or shifts in production among chemical plants, and changes in technology become speculative. The time frame for the analysis of potential effects will vary by impact area depending on the availability of information and SEA's ability to reasonably foresee potential impacts.

#### Public Participation

On October 1, 2001, SEA served and distributed the Notice of Intent to Prepare an EIS to approximately 489 citizens, elected officials, Federal, state, and local agencies, and interested organizations and initiated a toll-free project hotline 1-888-229-7857. On November 26, 2001, SEA served and distributed the Notice of Availability of Draft Scope of Study for the EIS, Notice of Scoping Meetings, and Request for Comments to approximately 526 citizens, elected officials, Federal, state, and local agencies, and interested organizations. The distribution covered the communities surrounding the Proposed Action and the communities along the UP mainlines connecting the Proposed Action to New South Yard. SEA placed notices of the scoping meetings in several community newspapers and the Houston Chronicle. SEA also provided public service announcements to several Spanish-speaking radio stations.

The scoping meetings were held in the afternoons and evenings on January 14 and 15, 2002, at the Pasadena Convention Center. SEA used a workshop format to allow attendees to provide comments to and ask questions of SEA and SEA's third-party independent contractor, ICF Consulting. The 189 people who attended the scoping meetings included citizens, organizations, elected officials, and officials from state and local agencies. Attendees submitted 21 comment sheets during the meetings and 20 attendees provided oral comments to a court reporter. At the close of the scoping period, on February 1, 2002, SEA received an additional 698 scoping comment forms, form letters, and letters raising environmental issues. At that time, SEA had received 14 calls to the toll-free hotline. Thirteen of these callers asked for information and one provided comments.

At the request of a number of commenters and several elected officials, SEA extended the comment period for an additional 30 days to March 14, 2002, to provide the public sufficient opportunity to explore alternatives to the proposed route and raise issues pertinent to scoping. SEA published the notice to extend the comment period in the **Federal Register** on February 13, 2002, and distributed it to 650 citizens, elected officials, Federal, state, and local agencies, and interested organizations. During that time, SEA conducted additional public involvement activities for the communities along that portion of the UP mainline that the Applicants would use as part of this proposal. Also, project information was translated into Spanish and made available to communities and community leaders who live along the Glidden Subdivision and the GH&H line and invited comments and questions in Spanish to the toll-free hotline. SEA distributed several hundred of these documents in Spanish to numerous community groups. At the end of the extended scoping period, SEA had received 198 additional comment forms, form letters, and letters, as well as 21 calls to the toll-free hotline. Six of these callers asked for information and 15 provided comments.

As part of the environmental review process to date, SEA has conducted broad public outreach activities to inform the public about the Proposed Action and to facilitate public participation. SEA has and will continue to consult with Federal, state, and local agencies, affected communities, and all interested parties to gather and disseminate information about the proposal.

#### Response to Comments

SEA and the cooperating agencies reviewed and considered the approximately 800 comments in preparation of this Final Scope of the EIS. The Final Scope adopts the Draft Scope and reflects any changes to the Draft Scope as a result of comments. The discussion below summarizes and addresses the principal environmental concerns raised by the comments, and presents additional discussion to further clarify the Final Scope.

##### A. Rail Operations Safety

##### General Comments on Infrastructure and Operational Conditions

Comments stated that to operate additional trains safely over the GH&H line its infrastructure should be improved through significant

<sup>7</sup> More specifically, construction of a new rail line in this corridor might also require the relocation of several miles of pipeline and existing UP tracks in order to create enough space along the existing right-of-way for a new line. The existing rail lines pass through land that is developed with residential, commercial, and industrial uses. Construction of a new rail line in this corridor could bring rail operations closer to homes than any of the other alternatives and might require the taking of homes.

investments. In addition, comments stated that the Board should study these potential investments through the EIS and require them as mitigation. Other comments suggested that the line should be upgraded to welded rail between Graham Siding and Tower 30, and new rail and bridge construction should be done near Sims Bayou/Berry Creek. Also, the applicants should implement crossing improvements and signal installation for rail and non-rail traffic to address the increased hazardous material traffic.

*Response.* The EIS will include a description of the existing rail operations safety conditions on the lines that the Proposed Action and Alternatives would affect (i.e., those lines over which the Applicants are seeking trackage rights). The existing conditions will be used as the baseline from which to analyze the impacts of the Proposed Action. The EIS also will describe the FRA's regulatory framework for rail safety.

#### Comments on Risks of Increased Rail Traffic

Comments stated that safety risk will increase because of the increased train traffic and the EIS should undertake a full risk assessment for train accidents and derailments during loading of tank cars and during switching activities in yard facilities. In addition, comments also indicated that SEA should conduct a risk assessment that includes consideration of derailments, collisions, hazmat releases, and human injuries associated with loading, switching, yard activities, grade crossings, and operation associated with the Proposed Action and Alternatives. Comments stated that BNSF has a poor safety record with a total of 485 train accidents in 2001 and a history of chemical spills. Comments asked whether, in the case of a derailment, BNSF would be held responsible for the damages in the area. Other comments stated that the new rail line would be a vast improvement over the present rail line because it would be safe, continuous rail on a modern roadbed. In addition, comments stated that the line would be safest if it is maintained and inspected regularly and suggested that the Board ensure that this happens.

*Response.* The EIS will analyze the probabilities of derailments and collisions in order to determine the risk associated with transporting hazardous material. The EIS will also include an analysis of highway-rail at-grade crossing accidents. The analysis will focus primarily on the historical, statistical BNSF and UP accident/derailment rate involving trains carrying

hazardous material, releases of hazardous material and the number of instances of evacuations from hazardous materials releases resulting from train accidents/derailments. The EIS will describe BNSF's overall safety record as well as the records of the other major U.S. railroads.

#### Comments on Derailments

Comments expressed concern over potential rail car derailments. In addition, comments asked what the chances are of derailment for trains traveling straight compared to those making turns, because the new rail line makes several turns. Comments expressed concern over the two sharp curves in build-out Alignment 1C. Comments stated that BNSF has had three derailments since October 2001. Furthermore, comments expressed concern over the speed the trains would be operating and contended that if they operate over 20 miles per hour (mph) they could derail.

*Response.* The EIS will include an analysis of the Proposed Action in light of the FRA track safety standards and proposed operating speeds. The FRA track safety standards contain requirements for tangent (straight) and curved track and once the railroads set the train speeds at which they wish to operate, they must maintain the track according to the FRA standards. Curved track must meet additional geometry requirements, as compared to tangent track, in order to be in compliance with the FRA standards.

#### B. Rail Operations

##### Comments of the Condition of Existing Infrastructure

Comments focused on the condition of the existing rail infrastructure around Houston, stating that it is currently inadequate. Comments expressed concern over the addition of trains and rail cars to what the comments characterized as an already congested and poorly maintained rail network. Specific comments described the condition of the GH&H line, the UP Glidden Subdivision, and T&NO junction as unacceptable. Comments stated that the railroads should continue their investment in infrastructure. Comments stated that BNSF has not included infrastructure improvements as part of its application and contests the need for such improvements. Comments suggested that moving rail traffic off the existing lines along SH 146 and SH 225 might drain the capital necessary to maintain those lines at the same time as increasing rail traffic problems elsewhere in Houston.

Comments stated that SEA should study the condition of the existing infrastructure and its traffic levels in the DEIS. Comments requested the Board to study infrastructure investment in the DEIS and require this investment as part of mitigation.

*Response.* In response to concerns raised over the Proposed Action, the EIS will include an analysis of rail operations associated with the Proposed Action and Alternatives, which involves two trains per day, on average, including impacts over UP's main line. The EIS will consider the existing rail operations and the condition of the infrastructure that the Proposed Action and Alternatives would affect and will use this information as a baseline in its analysis of impacts. The EIS will consider mitigation measures as appropriate. The EIS also will discuss the FRA's regulatory framework for minimum safety standards for track infrastructure.

##### Comments Concerning the GH&H Line

Comments expressed concern about the condition of the GH&H line and what one comment called "its unacceptable safety and traffic problems." Comments also mentioned the severity of safety and traffic problems near three schools that directly border the line and fifteen schools that are located within one mile of the GH&H line and attributed some of these problems to the lack of incentive to upgrade a lightly used track. Comments suggested that the 150-year-old line needs to be repaired and that the GH&H tracks are too old to bear any additional traffic. Comments suggested that the Board require that the track be replaced with continuous welded rail and that all bridges, grade crossings, and switches be brought up to the best available standards. Other comments stated that the GH&H line has presented no problems for about 150 years.

*Response.* The EIS will analyze the rail operations impacts of the Proposed Action and Alternatives on the UP's GH&H line. The analysis will account for the existing condition of the line and the current rail traffic levels. For example, SEA's initial fieldwork found four to five UP trains per day operating on the GH&H line based on four days of train counts and nine trains per day during a fifth day of train counts. The EIS will include a description of safety conditions on the GH&H.

##### Comments on Rail Congestion

Comments stated that there is chronic rail congestion on the East Belt line and in the vicinity of New South Yard that impairs the mobility of residents and

creates a safety problem. Comments highlighted the trains backing into New South Yard as a particular source of hardship for residents and suggested that this practice be eliminated. Comments stated that the Federal requirement that trains not block crossings for more than ten minutes without cause is not being enforced. Comments suggested that SH 225 already exists as a dedicated container and chemical traffic corridor and that re-routing traffic away from this corridor would create traffic problems on other lines, including the GH&H line, Glidden Subdivision, and former Houston Belt & Terminal Railway lines. Comments called on SEA to give weight to the benefits of this current dedicated corridor.

*Response.* The EIS will consider the existing rail operations in the project area and the potential effects from the Proposed Action and Alternatives, including a discussion of nearby UP, BNSF, and PTRR rail line operations on the East Belt, Double Track Junction, T&NO Junction, and switching operations in both New South Yard and Old South Yard.

#### Comments About Daily Train Traffic

Comments requested that SEA study existing train traffic levels on the lines that the Proposed Action would affect, in order to provide a baseline rail traffic model. Comments also suggested studying the traffic and mapping grade crossings on lines that the Proposed Action and Alternatives would directly and indirectly affect. Comments requested that SEA determine how existing rail traffic would interact with the new traffic, as well as traffic identified in the Bayport Terminal and Texas City/Shoal Point container facility DEIS. Comments questioned the proposed use of welded track, which could allow speeds of up to 60 mph, when the Applicants have stated that the speed limit would be 20 mph. Other comments asked how the proposed 20 mph speed limit would be controlled and enforced.

*Response.* The EIS will consider the existing rail operations in the project area and the potential effects from the Proposed Action and Alternatives. For example, as discussed earlier, the EIS will include the results of SEA's field work which sampled the numbers of trains and rail cars operating on the applicable lines in order to better determine the daily number of trains for each of the lines in the project area. The EIS will also consider the interaction of the new trains with existing rail traffic and will describe the enforcement of speed limits.

#### Comments on the Bayport Rail Terminal

Comments questioned the expansion at the Bayport Rail Terminal that is currently taking place, which will roughly triple its capacity. Comments suggested that SEA note this in the DEIS.

*Response.* The EIS will consider the expansion of the Bayport Rail Terminal and any relationship with the Proposed Action and Alternatives.

#### C. Hazardous Materials Transportation Safety

##### General Comments on Assessment of Existing Conditions

Comments expressed general concern about whether the EIS would adequately assess the existing conditions relevant to hazardous materials transportation safety in the area potentially affected by the Proposed Action and Alternatives, particularly with respect to the extent of the area subject to analysis, the population potentially affected in the event of a release, the existing land uses in the area (e.g., proximity to homes, schools, airport, assisted living facilities), and the existing emergency management services. Comments mentioned that the U.S. Department of Transportation extensively regulates the transportation of hazardous materials, including by rail. Comments also indicated that the Applicants subscribe to a Responsible Care® initiative that responds to public concerns about the manufacture, distribution, and use of chemicals.<sup>8</sup>

*Response.* The EIS will describe the existing conditions in the project area. The EIS will also describe the existing emergency management services, including voluntary initiatives implemented by industry in coordination with local authorities. The EIS will include a description of regulations applicable to the transportation of hazardous materials via rail and related emergency response requirements. As part of the assessment of potential impacts associated with hazardous materials transportation, the EIS is considering the population located within the area of influence of the Proposed Action and Alternatives that potentially could be affected in the event of a release.

<sup>8</sup> Responsible Care® is an initiative sponsored by the American Chemistry Council which, among other activities, works with manufacturers, customers, carriers, suppliers, and distributors to foster the safe use, transport, and disposal of chemicals.

#### Comments on Potential Impacts Associated with Hazardous Materials Transportation

Comments expressed concern regarding the nature and amount of chemicals that the Applicants would transport, as well as the potential impacts of spills and releases on the surrounding human and natural environment. Comments indicated the need for a risk assessment and evacuation plans pertaining to the proposed rail line. Comments mentioned the risks related to accidents, including derailments and collisions. Other comments expressed concern regarding the safety statistics of existing transport by chemical companies and railroads.

*Response.* The EIS will assess potential impacts associated with hazardous materials transportation based on an analysis of the probability of a release of hazardous materials and on an assessment of potential consequences in the event of such a release. The analysis of the probability of a release of hazardous materials will consider the safety statistics from the FRA for railroad companies operating in the project area. The assessment of potential consequences will consider the types of chemicals transported over the Proposed Action and Alternatives, as well as the population located along the main lines and around the rail yards that potentially could be affected in the event of a release. Both the analysis of the probability of a release and the assessment of potential consequences will consider existing conditions under the No-Action Alternative, as well as reasonably expected potential conditions if the Proposed Action should be approved and implemented.

#### Comments Specific to Terrorism

Comments expressed concern about potential terrorist acts that may involve hazardous materials transportation and may target critical infrastructure in the area potentially affected by the Proposed Action.

*Response.* Consistent with prior cases before the Board, safety will be a paramount concern in the environmental review process in this proceeding.

The EIS will consider the probability of a release of hazardous materials during transportation using historic accident statistics, regardless of the cause of the release. The EIS will also consider the potential consequences of releases to human health and the environment.

The EIS will also describe the existing regulations and policies governing the

transportation of hazardous materials and the latest developments in those regulations and policies, such as the new rules proposed on May 2, 2002, by the Department of Transportation's Research and Special Programs Administration (RSPA), which would require shippers of certain hazardous materials to develop or update security plans and provide appropriate training. During the course of the environmental review process here, SEA will keep abreast of any policies or recommendations that RSPA and the FRA may develop and that may be applicable to this proceeding, and will provide information on any developments in the Draft and Final EIS, if appropriate.<sup>9</sup>

The EIS will also recognize the procedures now in place in Houston, and in the Bayport Loop area in particular, to handle hazardous materials transport safely. Houston and the Bayport Loop have one of the largest concentrations of chemical facilities in the country. As a result, Houston has in place significant specialized emergency management capabilities to address both accidental and intentional events that may occur in the process of handling and transporting chemicals and hazardous materials.

The security issues relating to potential terrorist acts in the area potentially affected by the Proposed Action do not appear to be separate and distinct from the security issues facing the railroad industry generally. As noted above, these issues are currently being examined for the industry as a whole by RSPA. The EIS will examine the procedures that railroads must comply with regarding transportation safety, security, and the handling of hazardous materials on all their lines.

#### D. Pipeline Safety

##### General Comments

Comments expressed concern about the proximity of the proposed rail line to existing pipelines, noting that in many places the proposed alignment would cross directly over or run beside existing pipelines. Comments recommended that SEA perform a risk assessment that includes consideration

<sup>9</sup> While the Board is directed to promote a safe rail transportation system in discharging its duties involving rail construction and other matters that require action by the Board, FRA has primary authority to ensure railroad safety under the Federal Rail Safety Act (FRSA), 49 U.S.C. 20101 *et seq.* Railroads are legally bound to comply with the comprehensive across-the-board safety measures adopted under FRSA on all of their lines, regardless of any specific mitigation that the Board may impose in any case-specific environmental review of individual proposals that may require Board approval.

of pipeline safety factors at rail/pipeline crossings. In particular, comments expressed concern that cleanup (e.g., excavation of soil) of a spill from a railcar near a pipeline that transports flammable or otherwise hazardous chemicals could cause a pipeline rupture and/or explosion, as had occurred in the recent past. Comments also expressed concern about possible pipeline rupture during construction of the proposed line and inquired whether existing regulations prohibit construction of rail lines in close proximity to pipelines. Comments inquired whether any chemical incompatibilities were expected to exist between the contents of a particular pipeline and the contents of a rail car passing in close proximity.

*Response.* The EIS will consider pipeline safety factors at rail/pipeline crossings and where a rail alignment runs beside existing pipelines. The EIS will examine the likelihood of a hazardous materials release due to construction and operation of the Proposed Action and Alternatives near pipelines and the potential impacts from a hazardous material release.

##### Comments on Communication in the Event of an Accident

Comments requested that the scope of the EIS be expanded to include an examination of whether communication between the railroad, the pipeline companies, and area residents would be sufficient in the event of an accident.

*Response.* The EIS will describe emergency preparedness requirements and plans for the Proposed Action and Alternatives, including provisions for communications in the event of an accident.

#### E. Transportation

##### Grade Crossing Safety

Comments expressed concern over vehicle and pedestrian accidents, including accidents involving people with disabilities at grade crossings. Comments mentioned that four at-grade crossing accidents occurred at T&NO junction (immediately south of New South Yard) within a ten-month period from January to October 2001. In addition, comments expressed concern over the grade crossing safety risks associated with travel to and from schools. Comments stated that the Proposed Action and Alternatives would double safety risks and requested that BNSF undertake a series of crossing improvements and signal installations for rail and non-rail traffic. Other comments requested that all major roads be grade separated. In addition,

comments requested a rail overpass and overwalk at Howard Drive to protect the safety of children and their pets. Comments stated that too many accidents occur at Old Galveston Road and Howard Drive.

*Response.* The EIS will analyze potential safety impacts at grade crossings. The EIS will address mitigation measures as appropriate and will discuss the Federal Railroad Administration (FRA) and the Federal Highway Administration (FHWA) regulations governing grade crossing safety, which are delegated to the State of Texas. The EIS will also reflect consultations with and recommendations by the Texas Department of Transportation regarding grade crossing safety.

##### Grade Crossing Delay

Comments expressed concern over a potential increase in vehicle traffic congestion throughout east and southeast Houston due to additional train traffic from the Proposed Action. In addition, comments requested that the delay analysis not be limited to existing grade crossings but should include future crossings such as Space Center Boulevard, Red Bluff Road, Bay Area Boulevard, Port Road, and SH 146. Comments expressed concern over traffic blockage due to the lack of planned grade separated crossings. Other comments expressed concern over the congestion at New South Yard resulting in main road blockages. Comments expressed concern over trains blocking access to their communities (e.g., Old Galveston Road). Comments also mentioned traffic delays around schools. Comments stated that the Texas Transportation Code 471.007, which does not allow trains to block crossings for more than 10 minutes, is violated daily by existing trains. To address this problem, the comments requested that the Board ensure that an enforceable plan to prevent rail traffic problems and their associated safety risks accompany the application. Comments requested that BNSF not store cargo or park trains in such a way that they would block streets, other tracks, or crossings. Comments stated that the grade crossing delay problem could be mitigated through an enforceable commitment to off-peak hour operations. Other comments stated that the Board should see that traffic problems in east and southeast Houston are solved regardless of exemption approval in this proceeding.

*Response.* The EIS will analyze the potential effect that the Proposed Action and Alternatives might have on delay at

existing grade crossings, as well as at new grade crossings.

#### Emergency Response

Comments expressed concern over potential delays to emergency vehicles and blockages of emergency evacuation routes. Comments requested that the EIS include maps of primary emergency management systems, fire, and public safety access routes that the proposed alignments would block. Comments also expressed concern over the delays that would occur at Space Center Boulevard, which is being extended and could be used as an evacuation route. Comments stated that the community of Shoreacres contracts its emergency medical services from Clear Lake and would be directly affected by the Proposed Action and Alternatives. Comments requested that the EIS examine the frequency of road blockages from BNSF and UP trains.

*Response.* The EIS will analyze the potential impacts of the Proposed Action and Alternatives on emergency response vehicles and evacuation routes due to blocked crossings associated with the train traffic of the Proposed Action.

#### Other Transportation Projects

Comments requested that the EIS coordinate with other studies such as the HGAC 2025 Metropolitan Transportation Plan (MTP), the SH 146 Major Investment Study, the Texas City Shoal Point DEIS and the Bayport Terminal DEIS. Comments also expressed the need for the EIS to consider the potential transportation impacts of these projects along with the Proposed Action.

*Response.* The EIS will analyze the Proposed Action and Alternatives in the context of other reasonably foreseeable projects in the area. The EIS will consider information on transportation improvements and road traffic predictions from all relevant studies.

#### F. Noise and Vibration

##### General Comments on Noise and Vibration

Comments expressed generalized concern about noise and vibration impacts that would result from the proposed rail operations and construction, including adverse effects on communities, schools, residences, property values, and overall quality of life along both the new and existing rail lines. Comments also expressed concern that rail line traffic would increase in the future, which would lead to more noise pollution. Additional comments expressed concern about the effects of noise and vibration on wildlife. Comments also stated that the Proposed

Action would reduce noise impacts in comparison to trucks in the area.

*Response.* Typically, the Board analyzes noise impacts where there is an increase of at least eight trains per day on a rail line or an increase in rail traffic of at least 100 percent (measured in gross ton miles annually) (see 49 CFR 1105.7e(6)). However, in response to concerns raised over the Proposed Action, the EIS will analyze the noise impacts of train operations associated with an increase of two trains per day, on average, over both the new line and trackage rights lines, and for construction of the project. The EIS noise analysis will include adverse noise effects on sensitive receptors such as residences and schools. The EIS will discuss operational and construction-induced vibration to address concerns raised by comments. Potential effects of noise and vibration on wildlife will be addressed under biological resources.

##### Comments on Evaluation of Noise Levels

Comments requested that the EIS discuss applicable noise regulations and standards and noise levels along all proposed alignments, including: (1) Absolute and incremental increase in noise levels, as well as appropriate absolute criteria (comments suggested EPA's goal of a Day-Night Equivalent Level, abbreviated as  $L_{dn}$  or DNL of 55 Hourly A-Weighted Sound Level (dBA) for residential areas), and (2) short-term (instantaneous to one-hour) criteria. Instantaneous noise impact assessment was also requested, estimating noise levels for both day and night. Comments also stated that the EIS should analyze background noise, frequent noise that is louder than ambient noise, periodic noise, infrequent noise, and rare, but foreseeable noise. Comments also requested the evaluation of mitigation options.

*Response.* The Board's regulations at 49 CFR 1105.7 use an incremental increase in noise levels of three decibels  $L_{dn}$  or more, or an increase to a noise level of 65  $L_{dn}$  or greater as noise impact analysis thresholds. Sixty-five  $L_{dn}$  is the standard employed by Federal agencies that regulate or evaluate noise impacts, including the EPA, FHWA, Federal Transit Administration (FTA), FRA, and FAA. The Board uses this standard in all of its environmental review analyses. Federal agencies consider noise levels above 65  $L_{dn}$  as incompatible with residential land use. The EIS will discuss existing noise levels. For example, much of the project area is already at 65  $L_{dn}$  or higher due to existing sources (e.g., existing rail traffic, Ellington Field). Regarding

instantaneous noise impact assessment, the EIS will provide instantaneous noise levels from a range of sources to provide context (e.g., airplanes, trains, and cars), and mitigation measures as appropriate.

##### Comments on Long-term Sound Level Averages

Comments requested that long-term sound level averages (over an hour or more) be included in the analysis for construction activities, but not in analysis for operational activities, unless appropriate.

*Response.* The construction noise analysis in the EIS will consider both long (30-day average) and short-term (8 hour) sound levels. The operational analysis in the EIS will consider long-term sound levels.

##### Comments on Proposed Action and Alternative Alignments

Comments expressed concern over specific alignments for the Proposed Action and Alternatives. Comments specifically referred to Alignments 1, 1C, and 2B as unacceptable due to their proximity to the Northfork subdivision in Clear Lake City. Comments also suggested that Alignments 1, 1B, and 1C would have a negative impact on the community because of noise. Comments suggested that the two sharp curves proposed in Alignment 1C would cause increased noise when the trains turn and the joints move between the cars. Comments suggested that the DEIS evaluate noise impacts for existing and reasonably foreseeable future land use. More specifically, comments expressed concern over potential noise and vibration impacts to NASA's Sonny Carter Training Facility. Comments also expressed concern over the increased noise impacts that a new rail line would introduce, in addition to the noise from existing operations at Ellington Field, near-by industrial plants, and existing rail traffic along SH 3. Comments also stated that the new rail line would have an insignificant impact on noise in comparison to existing operations at Ellington Field.

*Response.* The noise analysis in the EIS will include noise contours for rail operations over each new construction alignment evaluated and noise contours for associated rail operations over the existing mainlines, including the No-Action Alternative, to disclose areas where the Proposed Action would cause noise effects. The EIS will address the potential for wheel squeal noise. The EIS will determine whether the Proposed Action would cause any noise and vibration effects to NASA's Sonny Carter Training Facility.

### Comments on Vibration Impacts

Comments expressed generalized concern over the potential effects that vibration resulting from construction and operation activities of the Proposed Action may have on schools, homes, structures, and/or roads. In addition, comments expressed concern over potential vibration impacts to NASA's Sonny Carter Training Facility. Comments also requested that the EIS analyze and quantify such impacts.

*Response.* The EIS will discuss operational and construction-induced vibration. The EIS will also evaluate vibration impacts on the basis of maximum vibration level. Because maximum vibration levels would be essentially unchanged for areas where rail traffic currently exists, the EIS discussion of potential vibration impacts is expected to focus on areas where new rail construction would occur.

### G. Climate and Air Quality

#### General Comments on Air Quality

Comments expressed general concerns about air pollution, including diesel emissions, and associated adverse health effects resulting from construction and operation of the Proposed Action and from potential releases should a chemical spill occur. Comments also stated that Federal highway funds might be lost as the result of increasing air pollution. Further, comments expressed concern over current Clean Air Act (CAA) conformity compliance issues and the additional air quality impacts that construction and operation of the Proposed Action would have on the Houston-Galveston non-attainment area. In addition, comments requested that SEA consider all criteria pollutants in the air quality analysis. Comments requested dispersion modeling and analysis of the air quality impacts on a local, rather than a county-wide, level. Comments expressed concern that the Proposed Action would increase air pollution by encouraging expansion of the petro-chemical plants in Houston. Comments stressed that census data and risk factors should be used to determine which populations would likely experience health effects from exposure to air emissions. Finally, comments requested estimates of emission rates and use of dispersion modeling of carbon monoxide from locomotive diesel engines to determine the impacts on breathing air intakes at NASA's Sonny Carter Training Facility.

*Response:* The Board typically analyzes air impacts where there is an increase of at least eight trains per day,

an increase in rail traffic of at least 100 percent (measured in gross ton miles annually), or an increase in rail yard activity of at least 100 percent (measured by carload activity). When a Proposed Action affects a non-attainment area, as defined by the CAA, as is the case here, the Board typically analyzes air impacts if there is an increase of at least three trains per day, an increase in rail traffic of at least 50 percent, or an increase in rail yard activity of at least 20 percent. The Proposed Action anticipates two trains per day, and would therefore not trigger any environmental thresholds requiring air quality impacts analysis. However, in response to concerns raised over potential impacts to air quality from the Proposed Action, the EIS will include analysis of air impacts of train operations.

The EIS will also examine the additional emissions from both the construction and operational phases of the Proposed Action and Alternatives, including rail-related emissions and potential air emission increases due to increased vehicle delays at highway/rail at-grade crossings. The EIS analysis will include consideration of criteria pollutants, with emphasis on those most relevant to the Houston non-attainment situation (e.g., NO<sub>x</sub> and PM<sub>10</sub>). If additional emissions associated with two train trips per day are found to be large enough to cause exceedances of criteria pollutant standards, then the EIS will include consideration of these impacts. Further, the EIS will determine whether carbon monoxide concentrations would have an adverse affect on the breathing air intakes at NASA's training facility. The EIS will evaluate releases, including air emissions, resulting from spills in the context of the hazardous materials transport safety analysis.

#### Comments on Particulate Matter

Comments expressed general concern over small particle pollutant emissions resulting from the Proposed Action. Comments stated that the air quality analysis should examine levels of fine particulate matter (PM<sub>2.5</sub>) associated with construction and operation of the Proposed Action and provide figures showing the impacts on air quality specifically for the area that includes the Proposed Action. Comments indicated that exhaust from diesel sources is a major source of PM<sub>2.5</sub> air pollution, as well as other fine particle emissions, that may be hazardous and lead to adverse health effects. Comments stated that the EIS should analyze the background level of PM<sub>2.5</sub> air pollution for the Proposed Action

and Alternatives, determine the sources of fine particle emissions, and examine the potential health effects resulting from increased exposure to such pollutants.

*Response.* Typically, the Board would not analyze potential air quality effects from fine particulate emissions (PM<sub>2.5</sub>) in an EIS for a project such as this, with a projected low level of increased rail activity (two trains per day on average), the lack of an attainment or nonattainment designation for PM<sub>2.5</sub> in the Houston area pursuant to the CAA, and the absence of a State Implementation Plan (SIP) or emission threshold that would trigger requirements for fine PM. However, in response to concerns raised over the Proposed Action, the EIS will include examination of changes in diesel particulate emissions resulting from operation and construction of the Proposed Action and Alternatives.

#### Comments on Hazardous Air Pollutants

Comments expressed concern about hazardous air pollutant (HAP) emissions, especially diesel emissions, resulting from construction and operation of the Proposed Action. Comments requested that the EIS indicate background levels of HAPs, areas that will experience increased HAP levels as a result of the project, the total and incremental increase in HAP levels that these areas will experience, and the resulting health effects.

*Response.* The Board would not normally analyze HAP emissions in an EIS for a project such as this with projected low level of increased rail activity, and the absence of HAP emission regulations applicable to mobile sources in Texas. However, in response to concerns raised over the Proposed Action and recent concerns about possible adverse health impacts from diesel emissions, the EIS will include a diesel emissions screening analysis. The analysis will compare estimates of daily average diesel emissions from construction and operation of the Proposed Action and Alternatives with county total daily average emissions and with the total daily average existing train activity, local diesel truck activity and other potential sources of nearby diesel emissions (e.g., airport ground support equipment) for selected site locations (e.g., near residential areas) in the project area.

### H. Water Resources

#### General Comments on Water Quality

Comments expressed general concern about the effects of a new rail line on

water resources, including contamination of the water supply, potential impacts on water quality, and the effects of hazardous materials on the high water table in the project area. Comments mentioned specific concern regarding possible adverse impacts on Armand Bayou or the Armand Bayou Nature Preserve. Comments also mentioned concern for other water bodies, including Mustang Bayou, Taylor Lake, Clear Lake, and Galveston Bay.

*Response.* The EIS will describe the existing surface water and groundwater resources within the project area, including lakes, rivers, bayous, streams, stock ponds, wetlands, and floodplains and the potential impacts on these resources resulting from construction and operation of the Proposed Action and Alternatives.

#### Comments Specific to Spills

Comments mentioned the effect that potential chemical spills could have on water quality and ecologically sensitive bayous and estuaries. Comments also mentioned the possibility of contamination of groundwater due to chemical spills, including leakage and runoff from operation and construction activities.

*Response.* The EIS will analyze the potential impact associated with a release of hazardous materials to surface water and groundwater.

#### Comments Specific to Floodplains

Comments mentioned possible impacts/changes to the floodplains, drainage, and flood control systems as a concern. Comments also requested that SEA consider the impacts from constructing a rail line that could potentially "dam the city" of Clear Lake and reduce the region to a 100-year flood plain. Comments requested that SEA include a storm surge analysis along the proposed route.

*Response.* The EIS will consider the existing surface water and groundwater resources within the project area, including floodplains and the potential impacts on floodplains resulting from construction and operation of the Proposed Action and Alternatives. The EIS also will consider the water quality issues associated with stormwater, including requirements of the National Pollutant Discharge Elimination System (NPDES) stormwater management program.

#### General Comments on Wetlands

Several comments expressed general concern for the negative environmental impacts on the wetlands surrounding Armand Bayou and other wetlands in

the project area. Comments indicated concern for the possible impact to water quality from wetland filling and requested that the EIS disclose the amount of wetlands that will be filled for each alternative alignment. Other comments suggested that the Board include a Clean Water Act (CWA) Section 404(b)(1) analysis for wetlands that are proposed to be filled.

*Response.* As noted above, the EIS will include a discussion of the potential impacts to wetlands and water quality. The approximate acreage of impact is calculated for the Proposed Action and Alternatives. The EIS will provide the approximate area of impact to wetlands along each alignment. A wetlands analysis under CWA Section 404(b)(1) is part of a permitting process that involves the Applicant and the USACE. The EIS will include a discussion of the CWA Section 404 permitting process.

#### Comments Related to Isolated Wetlands

Comments discussed the ruling on isolated wetlands by the U.S. Supreme Court on January 9, 2001 in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159, 121 S. Ct. 675 (2001) (SWANCC). Comments stated that no national guidance has yet been promulgated by the Environmental Protection Agency (EPA) and the USACE, and that there are many interpretations of this ruling nationwide. Comments also stated that they did not agree with the USACE Galveston District's interpretation of the Supreme Court decision that is described in the Bayport Terminal DEIS. Comments also indicated the view that SEA would likely defer to this interpretation but requested that SEA include the following analyses in the EIS: (1) Maps of jurisdictional and non-jurisdictional wetlands and field verification of the jurisdictional wetlands, (2) a map layer of proposed filled areas in the wetlands, (3) cross-section drawings of the Proposed Action with heights and widths, (4) a discussion of the USACE Galveston District's interpretation of jurisdictional wetlands, and (5) notification to TNRCC of the project during preparation of the DEIS. Comments recommended identifying all wetland areas within the project area and minimizing any adverse impacts to isolated wetlands to the same extent as jurisdictional wetlands.

*Response.* The EIS will include a discussion of the applicable regulatory programs at both the state and Federal level. The EIS also will characterize existing conditions and potential impacts to wetlands from the Proposed Action and Alternatives. The potential

impacts to both wetlands subject to permitting by the USACE under CWA Section 404 (i.e., "jurisdictional wetlands") and non-jurisdictional wetlands (e.g., isolated wetlands) is included. The USACE Galveston District will make the jurisdictional determination regarding wetlands. The EIS will include the results of the determination, if available, for the Proposed Action and Alternatives.

#### Comments on Water-Related Permits

Comments stated that under the Harris County Stormwater Quality Regulations, a stormwater quality permit for construction activity might be required from Harris County. Further, comments indicated that the Flood Control Division of the Harris County Public Infrastructure Department would need to approve the construction drawings for work proposed in the Department's right-of-way. Comments also mentioned that approval might be required from the Engineering Division of the Harris County Public Infrastructure Department due to the impact of the proposed rail on existing drainage.

Comments noted the requirements of and the need to coordinate with the Galveston District of USACE. Comments expressed the need to determine potential jurisdiction under Section 10 of the Rivers and Harbors Act of 1899 due to the crossing of Armand Bayou. Comments also suggested the need for permits from USACE for environmentally sensitive areas of Armand Bayou. Comments suggested consultation with USACE to determine if permitting issues under CWA Section 404 would be necessary for the regional stormwater detention basin and for the wetlands mitigation area in the Space Center Boulevard extension project east of Ellington Field.

Comments indicated that the proposed new rail line crosses Armand Bayou, Big Island Slough, and Taylor Bayou, and because these waterways are tidally influenced, they are considered navigable waterways of the U.S. and subject to USCG jurisdiction. These comments also included information to aid in the determination of bridge permits for the proposed rail lines.

*Response.* As part of the analysis of potential impacts on water resources, the EIS will consider the permits and regulations that would apply to the Proposed Action and Alternatives, such as permits pursuant to Sections 401 and 404 of the CWA.

#### Comments Related to Mitigation

Comments mentioned the possible disturbance of property that is managed

by Armand Bayou Nature Center (ABNC). The comments requested that the DEIS address potential impacts to this area and that "an adequate and appropriate mitigation plan be developed that is congruent with ABNC's mission and purpose."

*Response.* The EIS will characterize the existing conditions of ABNC, analyze potential effects, and address mitigation as appropriate.

### I. Biological Resources

#### General Comments on Biological Resources

Comments mentioned concern about animals and plants in a general context, and requested a risk assessment of "natural areas." Comments expressed concern about impacts to sensitive habitats associated with ecosystems and bayous in the project area. Comments expressed specific concern about the possible effects Alignment 1C would have on fish spawning areas around Mustang Bayou. Comments expressed concern about the threat of introduction of non-indigenous species along the alternative alignments. Comments expressed concern about potential impacts to coastal wetlands and coastal natural resource areas. Comments recommended that the alternative alignments follow existing rights-of-way, and also discussed the disturbance of wildlife and vegetation that can result from construction activities.

*Response.* The EIS will consider the existing plant and animal communities and aquatic resources within the project area and the potential impacts on biological and aquatic resources from construction and operation of the Proposed Action and Alternatives.

#### Comments on Taylor Bayou, Armand Bayou Nature Center, and Armand Bayou Coastal Preserve

Comments expressed general concern about negative impacts to the ABNC. Comments specifically mentioned concerns about the plants and animals surrounding ABNC. Comments indicated that Alternative 1 would affect the east bank of Taylor Bayou and would eliminate conservation management in that area. Comments also stated that alternative alignments adjacent to Taylor Bayou would affect inter-tidal marsh and upland to wet hardwood forest. Comments requested that the EIS address potential impacts and appropriate mitigation plans. Comments remarked that the proposed rail line would diminish the aesthetic value of the Armand Bayou Coastal Preserve and interfere with educational programs at the preserve and the nature

center. Comments supported the use of an alternative route that avoids crossing the preserve.

*Response.* The EIS will consider the existing conditions along Taylor Bayou and Armand Bayou and evaluate potential impacts to the wetlands, plant and animal communities, scenic resources, and recreational uses. The EIS will address the impacts of the Proposed Action and Alternatives on these resources, including avoidance, minimization, and mitigation (where appropriate), depending on the potential effects identified in the EIS.

#### Comments on Hazardous Materials Damaging Biological Resources

Comments expressed concern over potential impacts to the ecosystem and biological resources in the event of a hazardous materials release and mentioned the negative effects a hazardous material spill would have on area wildlife or wildlife habitat. More specifically, comments expressed concern over impacts to wildlife and "long-term productivity" (vegetation) in the event of hazardous materials entering a water body, and the economic ramifications of such an event. Comments also expressed general concern about hazardous chemicals causing damage to an unspecified nature preserve and about the environmental damage to fish and wildlife that would result from a spill into Taylor and/or Armand Bayou. Comments also expressed concern about the impact of leakage and runoff from the alignment on the surrounding watershed and near-by bayous.

*Response.* The EIS will consider the likelihood of a hazardous materials release from construction and operation of the Proposed Action and Alternatives and the potential impacts to aquatic and biological resources from a hazardous material release.

#### Comments on Effects of Noise, Vibration, and Pollution on Biological Resources

Comments requested that the EIS analyze the effects of noise, vibration, and pollution from the project on area ecology. Comments also expressed concern about habitat loss resulting from the project, and questioned whether lands designated for this project would remain as undeveloped habitat if this project were not built. Comments requested that the EIS include a comparison of timelines for development due to this project versus development due to other reasons.

*Response.* The EIS will consider the existing terrestrial and aquatic resources within the project area and the potential

impacts on these resources from construction and operation, including noise, vibration, and pollution, of the Proposed Action and Alternatives, including the No-Action Alternative. The EIS will use the best available information for reasonably foreseeable development to analyze any future changes in land use and the timeframe for those changes in the area affected by the Proposed Action and Alternatives relative to the No-Action Alternative.

#### Comments on Wildlife

Comments expressed general concerns about wildlife and wildlife habitat. Comments specifically mentioned deer, squirrels, rabbits, turtles, frogs, armadillos, owls, field mice, wild boar, bobcats, egrets, and alligators. Comments expressed concern that the construction of the proposed build-out may drive wild pigs into near-by neighborhoods or onto the railroad track. Comments also expressed concern for the safety of domestic as well as wild animals. Comments noted that the project area is a migration route for many bird species and requested that measures be taken to ensure that construction activities do not have any adverse impacts on migratory birds, in order to be in compliance with the Migratory Bird Treaty Act.

*Response.* The EIS will consider the existing avian and wildlife communities and wildlife habitat in the project area and the potential impacts of the Proposed Action and Alternatives on those resources.

#### Comments Specific to Mitigation

Comments requested that open space dedications be incorporated into the project plan as an opportunity to install wildlife corridors along Red Bluff Road and other areas. Comments also recommended minimizing the clearing of riparian vegetation as much as possible and mitigating for the appropriate habitat losses associated with the disturbed project area, by using site-specific native plant species.

Comments requested that a monthly maintenance program be established for mowing grass along the right-of-way.

*Response.* The EIS will consider the potential impact on biological resources, including the potential impact of habitat loss and disruption of wildlife corridors, and will include mitigation as appropriate, depending on the potential effects identified in the EIS.

#### Comments on Endangered, Threatened, and Rare Species

Comments expressed generalized concern over the presence of endangered and/or protected animal

and plant species in the area of the Proposed Action. Comments expressed concern about the presence of the Federally listed endangered species, the Texas prairie dawn-flower in the proposed project area and provided general information about the flower. Comments provided lists of Endangered and Threatened Species that may occur in Harris County and requested that the area affected by the proposed alignment be properly evaluated by trained biologists for the presence or absence of such species.

*Response.* The EIS will consider the existing plant and animal communities in the project area, the potential impact to those communities, and possible mitigation (where appropriate) depending on the potential effects identified in the EIS. At the request of the U.S. Fish & Wildlife Service, SEA conducted a survey for the Texas prairie dawn in the project area. The EIS will address the potential impacts to special status species, including the Texas prairie dawn.

#### J. Topography, Geology and Soils

##### General Comments on Geology and Soils

Comments expressed the need for the EIS to examine specific issues related to topography and geology, including consideration of subsidence, soil stability, wells and deep well injection sites, surface faults, and salt domes.

*Response.* The EIS will analyze the geology and soils found within the project area, including unique or problematic geologic formations or soils and prime farmland and hydric soils and the potential impacts on these resources resulting from the construction and operation of the Proposed Action and Alternatives. The EIS will include consideration of other characteristics that are relevant to identification of potential impacts from the Proposed Action, as appropriate.

##### Comments Specific to Soil Erosion

Comments mentioned the need to minimize soil erosion and siltation into various water bodies. Methods proposed include hay bales, silt fences, or other soil erosion prevention techniques. Comments also noted that newly graded areas should be seeded or sodded with native grasses, leguminous forbs, and trees and that natural buffers around wetlands and aquatic systems should remain undisturbed.

*Response.* The EIS will include consideration of erosion impacts and mitigation, if appropriate. This topic will be addressed in the water resources section of the EIS.

#### K. Land Use

##### Comments on Current and Future Impacts

Comments expressed concern that a new rail line would result in adverse impacts on both current and future land uses. Specific concerns were expressed regarding current land use including impacts on the Runway Protection Zone (RPZ) and safe use of the runways at Ellington Field. Comments expressed concern about the impact on the use of Sylvan Rodriguez Park. Concerns were expressed about future land use, including impacts to runway extensions or taxiway additions at Ellington Field, new development at or near Ellington Field, and increased industrial (rather than residential or commercial) development around the portions of the Proposed Action and Alternatives. Regarding future land uses, comments specifically suggested that SEA consult with NASA, the cities of Houston and Pasadena, and the Clear Lake Area Economic Development Foundation. Comments indicated that the EIS should address consistency of the proposed project with the coastal management program.

*Response.* The EIS will include an analysis of the potential land use impacts of the Proposed Action and Alternatives. The EIS land use analysis will include consideration of consistency of the project with the Coastal Zone Management Plan. The EIS will analyze both potential effects on current land use and effects on reasonably foreseeable future land use. The EIS will reflect the input of cooperating agencies and consultations with other agencies and organizations, including those specifically mentioned here. Regarding Ellington Field, SEA is consulting with the FAA and the City of Houston on the potential impacts of the Proposed Action. The FAA is using this EIS to cover its Federal Action and decision relative to its authority. Upon request by the owner of Ellington Field (i.e., the City of Houston) to (1) approve a change to the airport layout plan (ALP) to accommodate the Proposed Action and (2) release the affected airport property from surplus property restrictions and/or the airport owner's obligations under grant assurances contained in grant agreements, FAA will determine whether the ALP approval and release is appropriate pursuant to 49 U.S.C. 47151–47153 (formerly known as the Surplus Property Act), 49 U.S.C. 47107(c)(2)(B), 49 U.S.C. 47107(a)(16), and any other applicable Federal law, regulation, and applicable FAA Orders.

##### Comments on Future Land Use and Time Period for Analysis

Comments suggested that the corridor where new rail lines would be constructed as part of the Proposed Action and some of the alternatives serve as a buffer from further industrial development for residential communities to the north and south. Comments stated that the EIS should project land use for longer than three to six years because of the potential for a new rail line to encourage conversion of a residential area to a mixed-use area containing industrial, commercial, and residential uses.

*Response.* The EIS will use the best available information for reasonably foreseeable development to analyze any future changes in land use and the timeframe for those changes in the area affected by the Proposed Action and Alternatives. The EIS will address potential development of the project area for mixed use in the context of current residential, industrial, commercial, and institutional uses that include Ellington Field, a wastewater treatment plant near Ellington Field, the Boeing rocket engine manufacturing facility, the NASA Sonny Carter Training Facility, a water treatment plant, aggregate production facilities, miscellaneous light industrial and commercial operations, gas fields, two gas plants, a golf club, and undeveloped natural areas.

#### L. Socioeconomics

##### General Comments

Comments addressed the impact of the Bayport Loop project on socioeconomics in the Houston-Galveston area. Comments expressed general concern over lowered quality of life or the absence of economic benefits. Comments were received requesting an examination of economic impacts.

*Response.* The EIS will examine economic and social effects that would result from effects of the Proposed Action and Alternatives on the natural or physical environment. The EIS will analyze environmental impacts from the Proposed Action and Alternatives such as noise, air quality, land use, and transportation, to determine if these impacts might affect quality of life.

##### Comments on Property Values and Economic Costs

Comments expressed concern over impacts on property values, including degradation in value. Comments stated that the Proposed Action ultimately would result in loss of tax revenue, partly as the result of lowered property values. Comments requested a cost-

benefit analysis, including construction costs, income, expense, and cash flow statements, and annual rail transportation cost savings. Comments requested a complete economic analysis of the project. Comments also indicated the need to analyze in the EIS factors such as property values, quality of life, franchise taxes, and job growth. Comments also referred to the tax base for the Clear Creek Independent School District. Comments noted that chemical plants and other industries are important to maintain the economic viability and growth of the area. Comments also stated support for competition and fairness in transportation costs to the chemical industry.

*Response.* The EIS will analyze the socioeconomic effects that are reasonably foreseeable and that may result from the Proposed Action and Alternatives. As noted above, the EIS will examine economic and social effects associated with effects of the Proposed Action and Alternatives on the natural or physical environment. The regulations implementing NEPA at 40 CFR 1502.23, state that if a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered, the EIS should consider the cost-benefit analysis in evaluating the alternatives.<sup>10</sup>

#### Comments on Employment and Income

Comments indicated that the proposed rail line might bring jobs and commerce to the Houston area. Comments also stated that loss of jobs would occur. Comments suggested that the money funding the project might be used to create new jobs instead.

*Response.* The EIS will analyze economic impacts from the Proposed Action and Alternatives, such as effects on income and employment, associated with significant effects on the natural or physical environment.

<sup>10</sup> The Board considers the economic merits of a proposed rail line construction and operation in the merits phase of the proceeding. At 49 U.S.C. § 10502 the Board exercises its authority to exempt rail carrier transportation.

(a) In a matter related to a rail carrier providing transportation subject to the jurisdiction of the Board under this part, the Board, to the maximum extent consistent with this part, shall exempt a person, class of persons, or a transaction or service whenever the Board finds that the application in whole or in part of a provision of this part “

(1) is not necessary to carry out the transportation policy of Section 10101 of this title; and

(2) either—

(A) the transaction of service is of limited scope; or

(B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.

#### Comments on Public Services

Comments indicated that construction and operation of a new rail line would result in negative impacts on public services, including the new Texas Children's Health Center (TCHC).

*Response.* To determine the potential effects of the Proposed Action and Alternatives on public service facilities in the project area, the EIS is analyzing environmental impacts such as noise, air quality, land use, and transportation, to determine if they might result in adverse effects to public services, including TCHC.

#### Comments on Parks and Recreation and Aesthetics

Comments stated that the proposed rail line would have impacts on parks. Comments specifically stressed that the project would produce significant adverse impacts on the Sylvan Rodriguez Park. Comments also referred to potential impacts on the recreational uses of Armand Bayou. Comments expressed concern about the effects of the Proposed Action and Alternatives on the aesthetic value of nearby neighborhoods and surrounding land.

*Response.* The EIS will consider the potential effects of the Proposed Action and Alternatives on parks and recreation and aesthetics.

#### M. Cultural Resources

##### General Comments

Comments indicated that the project might negatively affect revitalization of a historic area located near the existing mainline. Comments stated that an archeological survey of parts of the proposed project would be necessary prior to construction due to potential impacts on cultural resources.

*Response.* The EIS will address potential impacts to cultural resources and will describe the results of archeological surveys conducted as part of consultations with the Texas Historical Commission.

#### N. Environmental Justice

##### General Comments

Comments expressed concern over impacts that the Proposed Action could have on environmental justice communities. Comments indicated that the DEIS should account for the environmental justice problems (disproportionate adverse effects primarily on low-income and minority communities) already created in east and southeast Houston by rail traffic and resulting rail safety hazards. Comments indicated that the study areas used to examine environmental justice impacts should be consistent for

all the alternatives, including the No-Action Alternative. In addition, comments indicated that the analysis for each alternative should include all affected populations, which may include populations along rail lines other than those used directly by the Proposed Action and Alternatives. Comments suggested that the analysis use 2000 Census Bureau data and determine the affected areas based on the results of analyses in other sections of the EIS.

*Response.* The EIS will address potential impacts of the Proposed Action and Alternatives on environmental justice communities. The EIS will describe the affected environment and environmental consequences associated with the Proposed Action and Alternatives across a range of topics, e.g., noise, hazardous materials transport, and highway/rail grade crossing safety. The environmental justice analysis will use the results of these analyses to disclose the affects to environmental justice populations (including direct, indirect, and cumulative effects) and determine whether the affects are disproportionately high and adverse. The EIS will use 2000 Census Bureau data for minority populations. The equivalent data is not yet available for income. The EIS will use the best available forecast of 2000 income levels.

#### Comments on Public Involvement and Environmental Justice

Comments stated that low-income, minority neighborhoods had not been informed of the project in a timely manner and expressed concern over the impacts from the Proposed Action. Comments also stated that agencies should seek input from environmental justice communities as early in the scoping process as possible.

*Response.* The EIS will describe the environmental justice outreach efforts during the scoping process and throughout the preparation of the document, including notifications concerning the project, public service announcements for Spanish language radio stations, distribution of a project fact sheet in Spanish, contacts with community groups, availability of a project hotline for Spanish speakers, and extension of the scoping comment period.

#### O. Cumulative Impacts

##### Comments on Cumulative Impacts

Comments stated that SEA should consider the cumulative impacts of the Bayport Loop Build-Out with other projects being planned in the local area.

These comments mentioned the Bayport Terminal, the TxDOT SH 146 Major Investment Study, the 2022 and 2025 Metropolitan Transportation Plans, and the Texas City/Shoal Point Container Terminal, among others. Comments stated that the EIS should study the cumulative impacts to rail and road transportation, rail operations, air quality, noise, land use, property values, risks of hazardous material release, wetlands, ecology, and environmental justice. Comments also stated that the Proposed Action should be analyzed

along with the Bayport Terminal in a joint EIS.

*Response.* The EIS will contain analyses of the cumulative impacts of the Proposed Action and Alternatives combined with other projects in the local area, such as the Bayport Terminal. The analysis of cumulative impacts will cover all relevant environmental impact areas described in this Final Scope. As discussed earlier in this Final Scope, SEA and USACE are preparing separate EISs for this Proposed Action and for the Bayport Terminal project because the two

projects are separate and distinct. They do not depend on each other economically or physically and each would proceed in the absence of the other.

The Web site for the Surface Transportation Board is *http://www.stb.dot.gov*.

Decided: July 8, 2002.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

**Vernon A. Williams,**  
*Secretary.*

**BILLING CODE 4915-00-P**

32302  
SEA

SERVICE DATE - NOVEMBER 26, 2001

SURFACE TRANSPORTATION BOARD

Finance Docket No. 34079

San Jacinto Rail Limited - Construction Exemption - And The Burlington Northern and Santa Fe Railway Company - Operation Exemption - Build-Out to the Bayport Loop Near Houston, Harris County, Texas

Decided November 9, 2001

**ACTION:** Notice of Availability of Draft Scope of Study for the Environmental Impact Statement, Notice of Scoping Meetings, and Request for Comments.

**SUMMARY:** On August 30, 2001, San Jacinto Rail Limited (San Jacinto) and The Burlington Northern and Santa Fe Railway (BNSF) (collectively the Applicants) filed a petition with the Surface Transportation Board (Board) pursuant to 49 U.S.C. 10502 for authority for construction by San Jacinto and operation by BNSF of a new rail line near Houston, Harris County, Texas. The project would involve approximately 12.8 miles of new rail line to serve the petro-chemical industries in the Bayport Industrial District (Bayport Loop). Because the construction and operation of this project has the potential to result in significant environmental impacts, the Board's Section of Environmental Analysis (SEA) has determined that the preparation of an Environmental Impact Statement (EIS) is appropriate. SEA is holding public scoping meetings as part of the EIS process, as discussed in the Notice of Intent to Prepare an EIS published by the Board on October 1, 2001. As part of the scoping process, SEA has developed a draft Scope of Study for the EIS.

**DATES AND LOCATIONS:** Scoping meetings will be held on:

January 14, 2002, 2-4 pm and 7-9 pm  
January 15, 2002, 2-4 pm and 7-9 pm

The scoping meetings will be held at the:

Pasadena Convention Center  
7902 Fairmont Parkway  
Pasadena, Texas

The public scoping meetings will be informal meetings in a workshop format during which interested persons may ask questions about the proposal and the Board's environmental review process, and advise the Board's representative about potential environmental effects of the project. SEA has made available for public comment the draft scope contained in this notice.

SEA will issue a final scope shortly after the close of the comment period. Written comments on

the Scope of Study are due February 1, 2002 (60 days).

**FILING ENVIRONMENTAL COMMENTS:** Interested persons and agencies are invited to participate in the EIS scoping process. A signed original and 10 copies of comments should be submitted to:

Office of the Secretary  
Case Control Unit  
STB Finance Docket No. 34079  
Surface Transportation Board  
1925 K Street, NW  
Washington, D.C. 20423-0001

To ensure proper handling of your comments, you must mark your submission:

Attention: Dana White  
Section of Environmental Analysis  
Environmental Filing

**FOR FURTHER INFORMATION CONTACT:** Ms. Dana White, Section of Environmental Analysis, Surface Transportation Board, 1925 K Street, NW, Washington, D.C. 20423-0001, or SEA's toll-free number for this project at 1-888-229-7857 (TDD for the hearing impaired 1-800-877-8339). The website for the Surface Transportation Board is [www.stb.dot.gov](http://www.stb.dot.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Draft Scope of Study for the EIS**

###### **Proposed Action and Alternatives**

The proposed action, known as the Bayport Loop Build-Out, involves the construction and operation of approximately 12.8 miles of new rail line connecting the Bayport Loop petrochemical and plastic production facilities and the former Galveston, Henderson & Houston Railroad line, now owned by the Union Pacific Railroad Company (UP), near the southeast corner of Ellington Field at Texas State Highway 3. The proposed action also includes operating trains from the BNSF New South Yard over trackage rights on Union Pacific mainlines to the point of connection. As a result of the new construction, BNSF would have access to the facilities located in the Bayport Loop using the new line, and the facilities would be provided with a choice of rail providers.

The reasonable and feasible alternatives that will be evaluated in the EIS are (1) construction and operation of the proposed project along the identified preferred alignment, (2) other alternatives that might be identified during the scoping process, and (3) the no-action alternative.

## **Environmental Impact Analysis**

### **Proposed New Construction**

Analysis in the EIS will address the proposed activities associated with the construction and operation of new rail facilities and their potential environmental impacts, as appropriate.

### **Impact Categories**

The EIS will address potential impacts from the proposed construction and operation of new rail facilities on the human and natural environment. Impact areas addressed will include the categories of land use, biological resources, water resources, geology and soils, air quality, noise, energy resources, socioeconomics as they relate to physical changes in the environment, safety, transportation systems, cultural and historic resources, recreation, aesthetics, and environmental justice. The EIS will include a discussion of each of these categories as they currently exist in the project area and will address the potential impacts from the proposed project on each category as described below:

#### **1. Land Use**

The EIS will:

- a. Describe existing land use patterns within the project area and identify those land uses that would be potentially impacted by new rail line construction.
- b. Describe the potential impacts associated with the proposed new rail line construction to land uses identified within the project area. Such potential impacts may include impacts to farming and ranching activities, incompatibility with existing land uses, consistency with the coastal zone management plan, and conversion of land to railroad uses.
- c. Propose mitigative measures to minimize or eliminate potential project impacts to land use, as appropriate.

#### **2. Biological Resources**

The EIS will:

- a. Describe the existing biological resources within the project area, including vegetative communities, wildlife and fisheries, and federal and state threatened or endangered species and the potential impacts to these resources resulting from construction and operation of new rail facilities.
- b. Describe any wildlife sanctuaries, refuges, and national or state parks, forests, or grasslands within the project area and the potential impacts to these resources resulting from construction and operation of new rail line.
- c. Describe any wetlands within the project area and the potential impacts to these resources resulting from construction and operation of new rail line.
- d. Propose mitigative measures to minimize or eliminate potential project impacts to biological resources, as appropriate.

### 3. Water Resources

The EIS will:

- a. Describe the existing surface and groundwater resources within the project area, including lakes, rivers, bayous, streams, stock ponds, wetlands, and floodplains and the potential impacts on these resources resulting from construction and operation of new rail line.
- b. Describe the permitting requirements for the proposed new rail line construction regarding wetlands, stream and river crossings, water quality, and erosion control.
- c. Propose mitigative measures to minimize or eliminate potential project impacts to water resources, as appropriate.

### 4. Geology and Soils

The EIS will:

- a. Describe the geology and soils found within the project area, including unique or problematic geologic formations or soils and prime farmland and hydric soils and the potential impacts on these resources resulting from the construction and operation of new rail line.
- b. Describe measures employed to avoid or construct through unique or problematic geologic formations or soils.
- c. Propose mitigative measures to minimize or eliminate potential project impacts to geology and soils, as appropriate.

### 5. Air Quality

The EIS will:

- a. Evaluate rail-related air emissions on new rail line, if the proposed project affects a Class I or non-attainment area as designated under the Clean Air Act.
- b. Discuss and evaluate the potential air emissions increases from vehicle delays at new at-grade road/rail crossings. Emissions from vehicle delays will be factored into the emissions estimates for the affected area, as appropriate.
- c. Describe the potential air quality impact resulting from new rail line construction activities.
- d. Propose mitigative measures to minimize or eliminate potential project impacts to air quality, as appropriate.

### 6. Noise

The EIS will:

- a. Describe the potential noise impacts during new rail line construction.
- b. Describe the potential noise impacts of new rail line operation for those areas that exceed the Board's environmental threshold of eight or more trains per day.
- c. Propose mitigative measures to minimize or eliminate potential project impacts to noise receptors, as appropriate.

**7. Energy Resources**

The EIS will:

- a. Describe the potential impact of the new rail line on the distribution of energy resources in the project area, including petroleum and gas pipelines and overhead electric transmission lines.
- b. Propose mitigative measures to minimize or eliminate potential project impacts to energy resources, as appropriate.

**8. Socioeconomics**

The EIS will:

- a. Describe the potential environmental impacts to residences, residential areas, and communities within the project area as a result of new rail line construction and operation activities.
- b. Describe the potential environmental impacts to commercial and industrial activities and development in the project area as a result of new rail line construction and operation.
- c. Propose mitigative measures to minimize or eliminate potential project adverse impacts to social and economic resources, as appropriate.

**9. Safety**

The EIS will:

- a. Describe existing road/rail grade crossing safety and the potential for an increase in accidents related to the new rail operations, as appropriate.
- b. Describe existing rail operations and the potential for increased probability of train accidents, as appropriate.
- c. Describe pipeline safety factors at rail/pipeline crossings, as appropriate.
- d. Describe hazardous materials safety factors for the transportation of hazardous materials and the potential for a release of those materials, as appropriate.
- e. Describe the potential for disruption and delays to the movement of emergency vehicles due to new rail line construction and operation.
- f. Propose mitigative measures to minimize or eliminate potential project impacts to safety, as appropriate.

**10. Transportation Systems**

The EIS will:

- a. Describe the potential impacts of new rail line construction and operation on the existing transportation network in the project area, including vehicular delays at grade crossings.
- b. Describe potential impacts to navigation associated with new bridges.
- c. Propose mitigative measures to minimize or eliminate potential project impacts to

transportation systems, as appropriate.

## 11. Cultural and Historic Resources

The EIS will:

- a. Describe the potential impacts to historic structures or districts previously recorded and determined potentially eligible, eligible, or listed on the National Register of Historic Places within or immediately adjacent to the right-of-way for the preferred and alternative construction alignments.
- b. Describe the potential impacts to archaeological sites previously recorded and either listed as unevaluated or determined potentially eligible, eligible, or listed on the National Register of Historic Places within the right-of-way for the preferred and alternative construction alignments.
- c. Describe the potential impacts to historic structures or districts identified by ground survey and determined potentially eligible, eligible, or listed on the National Register of Historic Places within or immediately adjacent to the right-of-way for the preferred and alternative construction alignments.
- d. Describe the potential impacts to archaeological sites identified by ground survey and determined potentially eligible, eligible, or listed on the National Register of Historic Places within the right-of-way for the preferred and alternative construction alignments.
- e. Describe the potential general impacts to paleontological resources in the project area due to project construction, if necessary and required.
- f. Propose mitigative measures to minimize or eliminate potential project impacts to cultural and historic resources, as appropriate.

## 12. Recreation

The EIS will:

- a. Describe the potential impacts of the proposed new rail line construction and operation on recreational opportunities provided in the project area.
- b. Propose mitigative measures to minimize or eliminate potential project impacts on recreational opportunities, as appropriate.

## 13. Aesthetics

The EIS will:

- a. Describe the potential impacts of the proposed new rail line construction on any areas identified or determined to be of high visual quality.
- b. Describe the potential impacts of the proposed new rail line construction on any waterways considered for or designated as wild and scenic.
- c. Propose mitigative measures to minimize or eliminate potential project impacts on aesthetics, as appropriate.

**14. Environmental Justice**

The EIS will:

- a. Describe the demographics in the project area and the immediate vicinity of the proposed new construction, including communities potentially impacted by the construction and operation of the proposed new rail line.
- b. Evaluate whether new rail line construction or operation would have a disproportionately high adverse impact on any minority or low-income groups.
- c. Propose mitigative measures to minimize or eliminate potential project impacts on aesthetics, as appropriate.

**15. Cumulative Impacts**

The EIS will address 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 actions.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams  
Secretary

STB Finance Docket No. 34079

Attachment B

***SURFACE TRANSPORTATION BOARD***  
***Section of Environmental Analysis***  
***Washington, DC 20423***

**Proposed San Jacinto Rail Limited and The Burlington Northern  
and Santa Fe Railway Company Bayport Loop Build-Out**

**WHAT IS THE “BAYPORT LOOP BUILD-OUT PROJECT”?** The Bayport Loop Build-Out would involve approximately 12.8 miles of new rail line to serve the petro-chemical industries in the Bayport Industrial District (Bayport Loop). The Bayport Loop consists of approximately 24 shipper facilities. Union Pacific (UP) is currently the only railroad serving the Bayport Loop. As a result of the new construction, Burlington Northern and Santa Fe (BNSF) would have access to the facilities located in the Bayport Loop using the new line, and the facilities would be provided with a choice of rail providers in the area. Trains operating over the new rail line would originate at BNSF’s New South Yard and operate via trackage rights over the UP’s Glidden Subdivision and UP’s Galveston Subdivision, also known as the former Galveston, Henderson, and Houston (GH&H) line, to the beginning of the new rail line near Ellington Field.

**WHAT IS THE PURPOSE OF THE FINAL SCOPE?** The Final Scope defines the environmental issues that will be analyzed in the Environmental Impact Statement (EIS), and summarizes comments and concerns expressed by the public and interested Federal, state, and local agencies. These comments, as well as on site inspections by the Surface Transportation Board’s Section of Environmental Analysis (SEA) staff and independent analysis by the SEA staff and its third-party independent consultant, defined the scope of study of the EIS.

**WHERE ARE ADDITIONAL COPIES OF THE FINAL SCOPE AVAILABLE?** The Final Scope is available for review at several repositories. If you are unable to access one of these locations, please contact us and we will provide you with a copy of the document. Documents are available in both English and Spanish. The project address and toll-free hotline number are listed below.

**WHAT ARE THE NEXT STEPS FOR THE PROJECT?** SEA is preparing a Draft EIS to address the potential impacts from the proposed construction and operation of the new rail facilities on the human and natural environment. This document will be available for public review and comment.

**HOW DO I OBTAIN MORE INFORMATION ABOUT THE PROJECT?** If you would like to be placed on our mailing list to receive project information, please write the SEA project manager at the address below, or call the toll-free project hotline at **1-888-229-7857** and leave your name and address. The hotline is also periodically updated with new project information. Information on the hotline is provided in both English and Spanish.

**ADDRESS:**

Dana White  
Section of Environmental Analysis  
Surface Transportation Board  
1925 K Street, NW  
Washington, D.C. 20423-0001  
Attention: Finance Docket No. 34079

**JUNTA DE TRANSPORTE SUPERFICIE**  
**Sección de Análisis Ambiental**  
**Washington, DC 20423**

**Propuesta Para Construcción de una Línea de Ferrocarril Tipo Build-Out por el San Jacinto Rail Limited y el Burlington Northern and Santa Fe Railway Company hacia el Bayport Loop**

**¿QUÉ ES EL “PROYECTO TIPO BUILD-OUT EN EL BAYPORT LOOP”?** El Proyecto tipo Build-Out en el Bayport Loop implicará la construcción de aproximadamente 12.8 millas de nuevas líneas de ferrocarril para brindar servicio a las industrias petroquímicas en el Distrito Industrial de Bayport (Bayport Loop). Éste consiste de aproximadamente 24 instalaciones de carga. El Union Pacific (UP) es el único ferrocarril que actualmente presta servicio en Bayport Loop. Como resultado de la nueva construcción, el ferrocarril Burlington Northern and Santa Fe (BNSF) tendría acceso a las instalaciones localizadas en el Bayport Loop utilizando la nueva línea, y a las empresas se les brindaría la oportunidad de escoger al proveedor de servicios de ferrocarril. Los trenes que operen sobre la nueva línea partirían de la estación de clasificación del BNSF de New South Yard y operaría mediante un derecho de circulación a través de Glidden Subdivision de la UP y de Galveston Subdivision de la UP, conocida también como la antigua línea Galveston, Henderson, and Houston (GH&H), hasta el entronque con la nueva línea cerca del aeropuerto Ellington Field.

**¿CUÁL ES EL PROPOSITO DEL ENFOQUE FINAL?** En el Enfoque Final se definen aspectos ambientales que se analizarán en el Informe de Impacto Ambiental (informe conocido como EIS, por sus siglas en inglés) y en él se resumen comentarios e inquietudes expresados por el público y agencias Federales, estatales y locales interesadas. Estos comentarios, igual que las inspecciones realizadas directamente en el sitio por personal de la Sección de Análisis Ambiental (conocida como SEA, por su sigla en inglés) de la Junta de Transporte por Superficie y los análisis independientes realizados por personal de SEA y su consultor independiente, definieron el alcance del estudio del EIS.

**¿DÓNDE ESTAN DISPONIBLES COPIAS ADICIONALES DEL ENFOQUE FINAL?** El Enfoque Final está disponible para su revisión en diversos sitios. Si no le es posible llegar a alguno de estos sitios, por favor contáctenos y le suministraremos una copia del documento. Éstos están disponibles tanto en Inglés como en Español. Más adelante se da la dirección del proyecto y el número de una línea telefónica libre de costo.

**¿CUÁLES SON LOS SIGUIENTES PASOS PARA EL PROYECTO?** SEA está preparando un Borrador del EIS donde se toman en cuenta los impactos potenciales derivados de la construcción y operación propuestas para la nueva línea de ferrocarril sobre el ambiente humano y natural. Este documento estará disponible para que el público lo revise y emita comentarios al respecto.

**¿CÓMO OBTENGO MAS INFORMACIÓN SOBRE EL PROYECTO?** Si usted desea ser incluido en nuestra lista de correo para recibir información referente al proyecto, por favor escriba a la gerente de proyecto del SEA a la dirección indicada más adelante, o llame gratis a través de la línea telefónica libre de costo 1-888-229-7857 y deje su nombre y dirección. También, la línea sin costo se actualiza periódicamente con nueva información sobre el proyecto, la cual se suministra tanto en Inglés como en Español.

**DIRECCIÓN:**  
Dana White  
Section of Environmental Analysis  
Surface Transportation Board  
1925 K Street, NW  
Washington, D.C. 20423-0001  
Attention: Finance Docket No. 34079