

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR–NASD–2004–091 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–091. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission’s Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASD–2004–091 and should be submitted on or before July 16, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–14450 Filed 6–24–04; 8:45 am]

**BILLING CODE 8010–01–P**

**SMALL BUSINESS ADMINISTRATION**

**[Declaration of Disaster #3586]**

**State of Ohio (Amendment #1)**

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 18, 2004, the above numbered declaration is hereby amended to include Hocking, Mahoning, and Portage Counties as disaster areas due to damages caused by severe storms, and flooding occurring on May 18, 2004, and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Pickaway, Ross, and Trumbull in the State of Ohio; and Mercer County in the Commonwealth of Pennsylvania may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 2, 2004, and for economic injury the deadline is March 3, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 21, 2004.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 04–14536 Filed 6–24–04; 8:45 am]

**BILLING CODE 8025–01–P**

**SMALL BUSINESS ADMINISTRATION**

**[Declaration of Disaster #3594]**

**State of Wisconsin**

As a result of the President’s major disaster declaration on June 19, 2004, I find that Columbia, Dodge, Fond du Lac, Jefferson, Kenosha, Ozaukee and Winnebago Counties in the State of Wisconsin constitute a disaster area due to damages caused by severe storms and flooding occurring on May 19, 2004, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of

<sup>7</sup> 17 CFR 200.30–3(a)(12).

business on August 18, 2004 and for economic injury until the close of business on March 21, 2005 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Adams, Calumet, Dane, Green Lake, Juneau, Marquette, Milwaukee, Outagamie, Racine, Rock, Sauk, Sheboygan, Walworth, Washington, Waukesha, Waupaca and Waushara in the State of Wisconsin; and Lake and McHenry counties in the State of Illinois.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere .....	5.750
Homeowners without credit available elsewhere .....	2.875
Businesses with credit available elsewhere .....	5.500
Businesses and non-profit organizations without credit available elsewhere .....	2.750
Others (including non-profit organizations) with credit available elsewhere .....	4.875
For Economic Injury	
Businesses and small agricultural cooperatives without credit available elsewhere .....	2.750

The number assigned to this disaster for physical damage is 359406. For economic injury the number is 9ZJ800 for Wisconsin; and 9ZJ900 for Illinois.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 21, 2004.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 04–14535 Filed 6–24–04; 8:45 am]

**BILLING CODE 8025–01–P**

**DEPARTMENT OF STATE**

**[Public Notice 4750]**

**Finding of No Significant Impact and Summary Environmental Assessment; Brownsville/Matamoros West Rail Relocation Project—Cameron County, TX**

The proposed action is to issue a Presidential Permit to Cameron County, Texas (the “Sponsor”), for the Brownsville/Matamoros West Rail

Relocation Project ("West Rail Project"), which will include the construction, operation and maintenance of an international rail bridge across the Rio Grande River from Brownsville, Texas to Matamoros, Mexico.

## I. Background

The Department of State is charged with the issuance of Presidential Permits for the construction of international bridges between the United States and Mexico under the International Bridge Act of 1972, 33 U.S.C. 535 *et. seq.*, and Executive Order 11423, 33 FR 11741 (1968), as amended by Executive Order 12847 of May 17, 1993, 58 FR 29511 (1993), Executive Order 13284 of January 23, 2003, 68 FR 4075 (2003), and Executive Order 13337 of April 30, 2004, 69 FR 25299 (2004).

A draft environmental assessment of the proposed West Rail Project was prepared by Raba-Kistner Consultants, Inc. and HNTB, Inc. on behalf of the Presidential Permit applicant, Cameron County, Texas, under the guidance and supervision of the U.S. Department of State (the "Department"). The Department placed a notice in the **Federal Register** (68 FR 141 (July 23, 2003)) regarding the availability for inspection of Cameron County's permit application and related documents. No comments were received in response to this notice.

Consistent with its regulations for the implementation of the National Environmental Policy Act ("NEPA") and in the context of its responsibilities with respect to Presidential permits, the Department has conducted its own, independent review of the draft environmental assessment. Numerous Federal and non-federal agencies have also independently reviewed the draft environmental assessment, offered comments and/or qualifications, and approved or accepted the draft environmental assessment. These "cooperating agencies" are: the Department of Commerce, the Department of Defense (U.S. Army Corps of Engineers), the Department of Homeland Security (Bureau of Customs and Border Protection, the Federal Emergency Management Agency, and the United States Coast Guard), the Department of Health and Human Services (Food and Drug Administration), the Department of the Interior (Fish and Wildlife Service), the Department of Justice, the Department of Transportation (the Surface Transportation Board, Federal Highway Administration, Federal Railway Administration), the Department of State, the Environmental Protection Agency, the Council of Environmental

Quality, the General Services Administration, the International Boundary and Water Commission, the State of Texas, Texas Parks and Wildlife Department, the Texas Historical Commission, and the Texas Commission on Environmental Quality. All comments received by these cooperating agencies were responded to directly by the Sponsor or Raba-Kistner Consultants, Inc., including by expanding the analysis contained in the draft environmental assessment and/or through the development of appropriate mitigation measures.

The Sponsor has worked closely with the Federal and state agencies that have participated in the environmental assessment to address their concerns about the possible environmental impacts of this project. The results of Cameron County's meetings and other contacts with agencies were recorded in correspondence and described in the draft environmental assessment and addenda. After examining six alternatives rail routes, Cameron County ultimately proposed the preferred alignment that sought to minimize direct and indirect impacts to the human environment and that represented lower design and construction costs. The draft environmental assessment, as amended and supplemented, together with the comments submitted by Federal and state agencies, responses to these comments, and all correspondence between the agencies and the Sponsor addressing the agencies' concerns, constitute the final environmental assessment.

Based on the final environmental assessment, including mitigation measures that Cameron County has or is prepared to undertake, information developed during the review of Cameron County's application and comments received from Federal and state agencies, and the Department's independent review of that assessment, the Department has concluded that issuance of the Presidential Permit authorizing construction, operation and maintenance of the West Rail Bypass and international railway bridge would not have a significant impact on the quality of the human environment within the United States. Accordingly, a Finding of No Significant Impact ("FONSI") is adopted and an environmental impact statement will not be prepared, in accordance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, Council of Environmental Quality Regulations, 40 CFR 1501.4 and 1508.13, and with Department of State Regulations, 22 CFR 161.8(c).

## II. Summary Environmental Assessment

### A. The Proposed Project

Cameron County, Texas has applied to the Department for a Presidential permit authorizing the relocation of the Union Pacific Railroad (UPRR) line approximately 6 miles west of the City of Brownsville, Texas and the construction of a new international rail bridge approximately 15 river miles upstream of an existing rail bridge, which together constitute the West Rail Relocation Project. A single rail line will be constructed from the existing rail junction adjacent to U.S. Highway 77/83 and run to the Rio Grande River. It will claim a minimum right of way of 100 feet. Union Pacific Railroad (UPRR) will assume control of the new rail line once construction has been completed. UPRR will maintain operating rights to the new rail line in the United States. It is anticipated that, upon completion of the project, the Sponsor will request the Department of State to transfer the permit to the B&M Bridge Company, which will take over ownership of the U.S. portion of the international rail bridge.

The West Rail project involves the construction of a new international rail bridge that will pass over International Boundary and Water Commission (IBWC) levees and the Rio Grande River and into Matamoros, Tamaulipas, Mexico. The single-track bridge will span the Rio Grande River's floodway located between the flood control levees of the U.S. and Mexican sections of land managed by the IBWC. The proposed bridge will be located approximately at Rio Grande River Mile 71.7 and have a total span of 2,940 linear feet. The length of the U.S. portion of the bridge is approximately 840 feet. The bridge design will include a vertical clearance above the levees in accordance with IBWC requirements.

The rail bridge design, structure, and construction will adhere to UPRR engineering standards. An approach embankment will terminate at the north right of way of U.S. Highway 281 and tie into the abutment of the international rail bridge. The bridge will cross U.S. Highway 281 at a minimum elevation of 16.5 feet and continue over the IBWC levee and the Rio Grande River. Provisions for future widening of U.S. Highway 281 will be included in the design. A geotechnical study will determine the necessary bridge foundations and spacing of the columns for each pier. Schematics reflect the design flood elevation based on a flood flow of 20,000 cubic feet per second for this reach of the river. In addition, an 8

feet 3 inch, curved, chain-linked fence will be constructed at the edges of the bridge's superstructure to prevent pedestrian falls and illegal immigration. There will be no illumination under the bridge. Gate controls across the bridge will also be included. Land areas below the bridge will be replanted according to United States Fish and Wildlife Service (USFWS) specifications.

The engineering design phase will include hydraulic studies of the Rio Grande River that will be completed upon the issuance of a Presidential Permit. The hydraulic studies will assess the hydraulic impact of the bridge on the river flow and the impact of a potential relocation of the levee in Mexico to a location nearer to the river and will be presented to the U.S. and Mexican sections of the IBWC for review.

As the project involves the construction of an international rail bridge, the Department of Homeland Security has been consulted regarding border control and inspection needs. The Department of Homeland Security and the General Services Administration have outlined guidelines for the construction of all facilities related to the West Rail project, and Cameron County has agreed to adhere to the criteria in these guidelines.

The West Rail Project offers several advantages to communities of Brownsville and throughout Cameron County, which include improvements to the general human environment:

- Removal of the existing rail system from residential and downtown areas of Brownsville and Matamoros, thereby improving safety and reducing congestion and noise.
- Elimination of at-grade road crossings, reducing air pollution from vehicles idling while awaiting passage of trains.
- Creation of improved transportation corridors to handle traffic volumes more efficiently and allow for the redevelopment of the city's downtown area.
- Greater competitiveness, given the reduction in rail freight travel time between Brownsville and Monterrey, Mexico by approximately 2½ hours and the elimination of heavy traffic conditions at peak travel times.
- Facilitation of expected economic growth in the Brownsville area.
- Reduction in the community's immediate exposure to potential derailment-related Hazmat accidents and railcar explosions.

### B. Alternatives Considered

In its review, the Department considered 6 alternatives described in detail in the draft environmental assessment and in a summary fashion below:

1. (The Project) Originates at the rail intersection adjacent to U.S. Highway 77/83, proceeds west, just north of the Resaca de la Palma wildlife refuge, turns south, passing 2,000 feet west of the World Birding Center, and crosses U.S. Highway 281 and the Rio Grande River.

2. Originates at the rail intersection adjacent to U.S. Highway 77/83, proceeds west, circumnavigating the Resaca de la Palma wildlife refuge further to the north than Alternative 1. The route then turns south, passing 2,000 feet west of the World Birding Center and crosses U.S. Highway 281 and the Rio Grande River.

3. Originates at the rail intersection adjacent to U.S. Highway 77/83 and continues west, north of the Resaca de la Palma wildlife refuge, proceeds an additional 3 miles, then turns south, crossing U.S. Highway 281 and the Rio Grande River.

4. (a), (b). Both Alternatives 4a and 4b originate at the rail intersection adjacent to U.S. Highway 77/83 and proceed south between the Resaca de la Palma refuge and the Cameron County Irrigation District Main Reservoir. At this point, Alternative 4a continues over U.S. Highway 281 and the Rio Grande River. Alternative 4b turns and proceeds west, south of the World Birding Center, along the same alignment as Alternative 1, crossing U.S. Highway 281 and the Rio Grande River.

5. Originates at the rail intersection adjacent to U.S. Highway 77 and proceeds north to the town of Rancho Viejo using existing rail lines. North of Rancho Viejo, the route turns southwest, then due south, and proceeds across U.S. Highway 281 and the Rio Grande River. This route abuts the western boundary of the World Birding Center.

6. The "No Build" Alternative: The international rail bridge is a common design element to all of the considered alternatives, other than the "No Build" alternative.

Alternative 2 was viewed as not preferred because it required approximately 51 additional acres of prime farmland. It would further require two grade separations for the future Merryman Road, a major street on the Brownsville thoroughfare plan.

Alternative 3 was viewed as not preferred because it would require the acquisition of additional acreage of prime farmlands (approximate 96 acres), a grade separation at the future FM

1421, a skewed overpass crossing at U.S. Highway 281, increased international bridge length (total of 0.19 miles), the displacement of 4–5 residential structures, the bisection of a residential community, and the location of 132 residences within 1,000 feet of the proposed rail line.

Both Alternatives 4a and 4b were viewed as not preferred for the reasons stated below. Alternative 4a, with a railroad embankment on the west side of the Cameron County Irrigation District main reservoir, would require, at minimum, sheet pilings along the west side of the reservoir for approximately 2,100 linear feet. A geotechnical analysis may reflect the need to complete bridging along a greater section of the reservoir. The pilings, estimated to reach depths of 50 feet below grade surface, would add costs of approximately \$3.15 million to the project in addition to the costs of installing the embankment, ballast, and rail tracks. The alignment would continue south across U.S. Highway 281 and bisect the Riverbend Subdivision and the Villa Nueva Community. The U.S. Highway 281 overpass would add approximately \$5 million, according to the Texas Department of Transportation. From U.S. Highway 281 the rail line would proceed with a vertical rise of 15 feet over the IBWC levee and remain elevated across the floodway leading to the Rio Grande River. This segment across the floodway would add approximately \$12 million. Construction of this alternative would encroach on the eastern boundary of the World Birding Center. The Texas Parks and Wildlife Department (TPWD) has opposed this route.

Alternative 4b would require, at minimum, sheet pilings along the west side of the Cameron County Irrigation District main reservoir for approximately 2,100 linear feet. A geotechnical analysis may reflect the need to complete bridging along a greater section of the reservoir. The pilings, estimated to reach depths of 50 feet below grade surface, would add costs of approximately \$3.15 million to the project in addition to the cost of installing the embankment, ballast, and rail tracks. Rail bridges over U.S. Highway 281 and New Carmen Road would include approximately 2,750 feet of additional railroad bridge compared to Alternative 1 at an additional cost of \$5.5 million. The international rail bridge between the IBWC levee and the river would be the same as that constructed under Alternative 1. An additional bridge may be required for the Resaca crossing south of the Las Palmas Wildlife Management Area.

Construction of this alternative would also encroach on the eastern boundary of the World Birding Center. The TPWD has opposed Alternative 4b. Cameron County identifies another major difficulty with this alternative is the diagonal crossing of privately owned land parcels between U.S. Highway 281 and the wildlife management area.

Alternative 5 was not viewed as a preferred alternative because it would involve increased travel time of trains from one switching yard to another, required construction of two more overpasses, and would bring the rail line with 1,000 feet of a significant number of homes.

Alternative 6, the "No Build" alternative, would leave the existing rail system in place and achieve none of the described project objectives. Potential industrial and commercial growth associated with the West Rail Project would be curbed as the area would lack a safer, more direct route to the major transportation corridor. At-grade rail/roadway safety crossing issues would remain, as would traffic delays and idling times for traffic and their associated emissions. Such emissions are currently contributing to the degradation of air quality. Train noise in the downtown Brownsville area would persist.

None of the above alternatives provided avoidance or mitigation of any of the unavoidable impacts attributable to the selected project, and in addition, created higher costs in terms of land usage and overall costs. For this reason, the Department concluded that these options were not preferred alternatives.

### III. Summary of the Assessment of the Potential Environment Impacts Resulting From the Proposed Action

The final environmental assessment provides detailed information on the environmental effects of the construction and use of the alternatives described above, including the proposed project. The proposed project was determined to be the preferred alternative, in view of the lower construction costs and the low extent of community and environmental impact as compared to the other alternatives.

On the basis of the final environmental assessment, the Department reached the following conclusions on the impact of construction of the railway bypass and bridge at the proposed location:

**Farmlands:** The proposed project requires the acquisition of approximately 46 acres of farmland that may be considered prime farmland under the Farmland Protection Policy Act, 7 U.S.C. 4201, *et seq.* The amount

of farmland acquired does not include acreage to be negotiated with the USFWS for the construction of a buffer zone north of the World Birding Center, the dimensions of which have been determined through consultation with the U.S. Fish and Wildlife Service. The proposed project requires one at-grade crossing at New Carmen Road. Right-of-way at this crossing will be secured by Cameron County, should an overpass at this site be desired in the future.

**Wetlands:** Given appropriate mitigation measures agreed to by the Sponsor and coordination with appropriate Federal and state agencies, the Department expects the proposed project's impact on wetland areas to be negligible. Specific wetland impacts will be influenced by the final bridge design selected for the several areas where the relocation project will traverse waterways, such as the Resaca del Rancho Viejo, Resaca de la Palma, and the Rio Grande. All wetland issues will be coordinated with the appropriate federal and state agencies, as outlined below. The construction plans will include a storm water runoff protection plan to eliminate the introduction of exotic weedy species. Much of the proposed route, according to the National Wetlands Inventory (NWI), falls within upland agricultural areas. The final environmental assessment estimates a total of 0.33 acres of wetlands will be impacted by this project.

The project crosses two resacas (Resaca del Rancho Viejo and Resaca de la Palma). Both are normally filled with water and may fall under the jurisdiction of the U.S. Army Corps of Engineers (USACE). The project will also cross various drainage and irrigation ditches. As described in the final environmental assessment, wetland delineation will be conducted as necessary in support of a Section 404 permit issued pursuant to the Clean Water Act, 33 U.S.C. 1251, *et seq.*, in accordance with USACE and Department of the Army specifications.

As the project enters the engineering design phase, mitigation measures regarding the impact on vegetative and aquatic habitats falling within the project area—such as affected areas of the Resaca Rancho Viejo and Resaca de la Palma—will be developed. This step will involve coordination with the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the Texas Parks and Wildlife Department to not only protect defined jurisdictional wetlands but also to secure necessary permits for crossing these areas.

**Floodplains, Floods, and the River Channel:** While the rail line and

international bridge will cross portions of an identified 100-year shallow floodplain, negative impacts to the floodplain are not expected.

The design for the international rail bridge requires a 15 feet elevation above the floodplain of the Rio Grande River with bents located in the floodplain itself. The bents are not expected to impede the free flow of floodwater within the river or its levees. Flood levels should remain unchanged.

The railway approach to the international bridge will be at grade level. The design is anticipated to include free flow box culverts and/or bridges at resacas and irrigation crossings. These features should not impede the free flow of floodwaters. The design will include proper slope drainage and free flow of waters off the railway surface to be directed toward natural drainage gradients.

The project is not expected to require dredging, tunneling, or trenching. Should the design call for the installation of bridge bents in the river's channel, a temporary cofferdam may be used. Once the bent installation is finished, all non-native materials in the channel will be promptly removed.

**Air Quality:** While project-related activities, which may include, but are not limited to, construction, demolition, repair, or rehabilitation, are expected to create higher levels of dust and airborne particles and involve additional exhaust emitted from machinery and trucks, these impacts are expected to only be short-term and should pose no significant impact upon general air quality. Moreover, the project will include best management practices (BMP) to mitigate fugitive dust emissions throughout the construction process. For dust control, timely application of water will be used as necessary, or as excessive emissions are produced.

The West Rail Project lies within the Brownsville-Laredo Intrastate Air Quality Control Region (AQCR 213), which is in attainment of National Air Quality Standard air pollutants. Therefore, the Texas Commission on Environment Quality (TCEQ) in a letter dated March 21, 2003 contained in Appendix D of the Environmental Assessment indicated that no special measures need to be taken in regards to this project other than standard dust mitigation techniques by the construction contractors.

**Listed, Threatened, and Endangered Species:** Several listed and endangered species could potentially be impacted by the project. To mitigate these impacts, the Department expects the Sponsor to comply with a series of

recommendations from the USFWS and the TPWD.

Two species of federally protected cats, the ocelot and the jaguarundi, are found in the general project region along with one bird species, the Northern aplomado falcon, and two plant species, the Texas Azenia and the South Texas Ambrosia. Surveys of the project site, however, found that vegetation there is less dense than in areas typically occupied by those species. Therefore, their regular presence within the immediate project area is considered unlikely. In addition to federally listed species, 15 state-listed, threatened, or endangered species may use portions of the project route because of the presence of potentially suitable habitat.

In letters contained in Appendix C of the environmental assessment and in subsequent correspondence, the USFWS and TPWD made a number of recommendations with which Cameron County has agreed to comply. These include replanting with native species disturbed areas of vegetation and trees, fulfillment of the World Birding Center Revegetation Mitigation Plan (Appendix L of the draft Environmental Assessment), a monitoring program with annual reports to USFWS on fulfillment of Revegetation Mitigation Plan, use of specific train operating procedures to minimize train noise, and ownership by Cameron County in perpetuity of the buffer zones and Right of Ways for the rail line and placement in the deeds for these areas restricted conditions regarding future clearing, construction and development. Additionally a qualified biologist, as provided for in the draft environmental assessment, will survey the project area prior to construction to determine if state and federally-listed, threatened, or endangered species are present. If encountered, these species will be relocated to avoid any direct impact. Record of exotic species removed from the area will be documented, as requested by the Texas Parks and Wildlife Department. In light of the Migratory Bird Treaty Act and population decline of many migratory bird species, the Department expects that precautions will be taken throughout the construction process to avoid or minimize the loss of critical vegetation during migratory bird's general nesting season from March through September. In conformance with the Act, a survey will be conducted to identify nesting sites and species prior to construction near the Resaca de la Palma refuge, thus avoiding inadvertent destruction of nests, eggs, etc.

*Habitat and Vegetation:* The construction phase will cause some loss of habitat and clearing of vegetation. Approximately 18 acres of wooded and scrub vegetation will be cleared, particularly along the Resaca de la Palma wildlife refuge where mature mesquite, huisache, and spiny hackberry trees will be removed throughout the 100 feet right of way. The use of defoliating agents and/or herbicides is not anticipated.

Cameron County, throughout the project, has coordinated closely with USFWS and TPWD on the re-vegetation of disturbed areas. As a consequence, mitigation efforts will include the revegetation of areas along the project route and the creation of a buffer zone between the railway and the Resaca de la Palma refuge. North of the refuge, the County will implement the "World Birding Center Revegetation Mitigation Plan, Appendix L of the draft environmental assessment, to minimize noise and visual impacts and create further bio-diversity in regards to the future World Birding Center. This plan calls for the creation of a 13-acre mitigation area sited 30 ft north of Lower Rio Grande National Wildlife Refuge (LRGV-NWR). This mitigation area will include approximately a 6.5-acre vegetative area and an approximately 6.5 acre clear zone. The Mitigation Plan seeks to increase diversity in the current cultivated land by the addition of woody deciduous tree and shrub diversity, and improve the visual aesthetics of the project and reduce its noise impact. The area encompassed by the mitigation plan and the railway right-of-way will remain under the ownership of Cameron County, and that deed restriction as far as clearing, construction and future development will be filed with the County Clerk to remain in perpetuity.

*Potential Land Use Conflicts:* The Department examined long- and short-term concerns relating to land use and determined that the project will be consistent with defined land usage. The proposed project requires the least acreage and minimizes impact to the land, compared to other alternatives, and largely avoids community and residential areas. The draft environmental assessment notes that roughly 75% of the land falling within the project area has already been altered by human activities. Development and construction phases of the project are expected to alter land forms and will temporarily modify the natural drainage pattern throughout the project area.

Land types to be used in this project include levee areas of the Rio Grande River, scrubland, and farmland. The

project should not cause significant impact to the levee area or agricultural lands. Access to agricultural land will remain open.

Projected acquisitions include private land. No relocations or displacement of homes or businesses will be necessary. The acquisition of private lands will be limited to the requirements of the project, such as the 100 to 300 feet right of way for the railway, the international rail bridge, and any roadway overpasses. Upon completion of the project, lands acquired through the project will be transferred to Union Pacific Railroad (UPRR).

Alteration of land and the removal of vegetation are not expected to affect erosion within the general project area greater than any similar construction project. Measures will be adopted as fully as possible throughout the construction period to minimize erosion, including undertaking construction in dry seasons and completion of Storm Water Pollution Prevention Plan, compliance with requirements imposed by the U.S. Army Corps of Engineers and other agencies, returning disturbed lands to their previous contours, and revegetation efforts. The TPWD has issued recommendations to moderate erosion, including the use of weed free hay bales and silt screens to prevent siltation into wetlands, which the Sponsor has committed to undertake.

*Historical and Archeological Resources:* A survey conducted by Anthony and Brown Consulting and approved by the Texas Historical Commission indicates that no archeological or historical sites will be impacted by the proposed project. One archeological site, 41CF185, was found, but it is completely destroyed and is neither eligible for the National Register of Historic Places nor for designation as a State Archeological Landmark. No evidence of buried prehistoric sites was found.

Cameron County made a "reasonable and good faith" effort to identify Native American groups that may have historical ties to the area and to invite these groups to participate in the consultation process, in accordance with the Native American Graves Protection and Repatriation Act, Executive Order 12875, and the Advisory Council for Historic Preservation. Using the Native American Consultation Database, maintained by the Department of the Interior, no federally recognized Native American groups were identified.

*Water Quality:* Significant impacts to current water supply and use are not anticipated, nor are adverse effects to

the interbasin transfer of ground water. Impacts to the quality of storm water run off, surface water, and ground water will be minimal.

*Noise:* The Department identified two broad categories of noise resulting from the proposed project: short-term construction-related noise and longer-term noise associated with passing trains and horn blasts. The proposed project is located within a sparsely populated area of Cameron County (the draft environmental assessment notes only two residential structures within 1,000 feet of the construction). However, portions of the Resaca de la Palma wildlife refuge and World Birding Center may be affected by noise related to rail traffic, but those impacts are not expected to be significant and will be minimized by implementation of the World Birding Center Revegetation Mitigation Plan.

While levels of construction noise will vary according to the nature of the construction work in progress, such noise is expected to be short term and will not exceed noise limits imposed by federal, state, and local laws and ordinances.

Noise resulting from rail traffic is not expected to have a significant impact on the surrounding environment, including the Resaca de la Palma wildlife refuge and the World Birding Center. A horn noise analysis conducted for the New Carmen Road at-grade crossing indicates that horn noise will not have any impact on the surrounding environment, as defined by the FTA (Federal Transit Administration).

Similarly, interim criteria for the threshold of disturbance for birds established by the FTA will not be exceeded either by regular train traffic or by train horns.

While a USFWS standard for peak hour noise will be slightly exceeded, the impact is not expected to be significant since the noise level will not exceed the USFWS limit 200 feet from the tracks and highway noise in the area frequently is recorded well above the USFWS peak hour noise level. Noise impacts will also be minimized by a ban against trains idling on the tracks, and maintenance of minimum speed of trains passing through the area of approximately 40 mph.

It should be noted that the proposed project will reduce noise levels along the existing corridor significantly, an important benefit for the higher numbers of homes located on the existing corridor.

*Environmental Justice/Socio-Economic Concerns:* In accordance with Executive Order 12898 of February 11, 1994, the project is not expected to have

a disproportionate impact on the minority or low-income communities in the immediate vicinity of the project, in view of the location of the project and the sparsely-populated nature of the land.

*Energy Requirements and Conservation Potentials:* The construction of the proposed project should be considered as a short-term use of the environment during which energy and labor will be expended. This energy cost will, in the long-term, be offset by reduced vehicle congestion in downtown Brownsville and the more efficient movement of commerce and cargo between the United States and Mexico.

*Any Irreversible and Irrecoverable Commitment of Resources:* The project has not involved irreversible and irretrievable commitment of resources.

*Health and Safety:* The project should contribute to the health and safety of the Brownsville community through lessening vehicle emissions, reducing the potential for vehicle-train collisions at existing at-grade crossings, and minimizing the potential for the railroad accidents in densely-populated areas involving hazardous materials.

*Cumulative Impacts:* The Department also considered cumulative environmental impacts resulting from the project.

As stated above, the proposed project will improve the quality of life for city and area residents by (a) the relocation of rail lines outside the Brownsville; (b) the reduction of vehicle waiting times and improvement of air quality in the downtown sections of the city; (c) the reduced impact of train noise to city residents; (d) the diversion of the transport of hazardous cargo from downtown Brownsville to less populated areas outside the city; and, (e) the elimination of numerous at-grade crossings.

Environmental disruption throughout the construction process and in the operation of the rail line will be minimized through appropriate mitigation measures, discussed above, and coordination between Cameron County with Federal and state agencies such as the IBWC, USACE, USFWS, and TPWD in the development and implementation of those mitigation measures.

#### **IV. Conclusion: Analysis of the Final Environmental Assessment**

On the basis of the final environmental assessment, information developed during the review of the Cameron County's application and environmental assessment, and comments received, a Finding of No

Significant Impact ("FONSI") is adopted and an environmental impact statement will not be prepared.

The Final Environmental Assessment prepared by the Department addressing this action is on file and may be reviewed by interested parties at the Department of State, 2201 C Street NW, Room 4258, Washington, DC (Attn: Mr. Dennis Linskey, Tel 202-647-8529).

Dated: June 18, 2004.

**Dennis Linskey,**

*Coordinator, U.S.—Mexico Border Affairs, Office of Mexican Affairs, Department of State.*

[FR Doc. 04-14468 Filed 6-24-04; 8:45 am]

**BILLING CODE 4710-29-P**

---

## **DEPARTMENT OF TRANSPORTATION**

### **Office of the Secretary**

[Docket No. OST-2004-18488]

### **Notice of Renewal of a Previously Approved Collection**

**AGENCY:** Office of the Secretary.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Department of Transportation's (DOT) intention to request extension of a previously approved information collection.

**DATES:** Comments on this notice must be received by August 24, 2004.

**ADDRESSES:** You may submit comments identified by DOT DMS Docket Number OST-2004-18488 by any of the following methods:

- Web site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax 1-202-493-2251.

• Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

• Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

• Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information