

# CALIFORNIA HIGH-SPEED TRAIN

Fresno to Bakersfield  
Section

## Appendix D Clean Water Act Section 404 Practicability Criteria, Union Pacific Railroad Alignment Alternative

March 2011





# California High-Speed Train Project

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## **Clean Water Act Section 404 Practicability Criteria, Union Pacific Railroad Alignment Alternative**

*Prepared by:*

URS/HMM/Arup Joint Venture

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## Acronyms and Abbreviations

Authority	California High-Speed Rail Authority
BNSF	BNSF Railway Company
CAHST	California High-Speed Train
Caltrans	California Department of Transportation
CEQA	California Environmental Quality Act
COG	Council of Governments
CWA	Federal Clean Water Act
EIR	Environmental Impact Report
EIS	Environmental Impact Statement
FAA	Federal Aviation Administration
FRA	Federal Railroad Administration
FSZ	Farm Security Zone
GIS	Geographic Information System
Guidelines	Clean Water Act Section 404(b)(1) Guidelines
HST	High-Speed Train
ICA	Interstate Commerce Act
ICC	Interstate Commerce Commission
LEDPA	Least Environmentally Damaging Practicable Alternative
mph	Miles per Hour
MOU	Interagency Memorandum of Understanding
NEPA	National Environmental Policy Act
ROD	Record of Decision
RTP	Regional Transportation Plan
Section 404	Federal Clean Water Act Section 404
SR	State Route
STB	Surface Transportation Board
U.S. EPA	U.S. Environmental Protection Agency
UPRR	Union Pacific Railroad

USACE	U.S. Army Corps of Engineers
USGS	U.S. Geological Survey

# **Chapter 1**

## **Introduction**



## 1.0 Introduction

This document presents information regarding the practicability of constructing a high-speed train (HST) project between Fresno and Bakersfield along the Union Pacific Railroad (UPRR) Corridor. It is provided to comply with the information requirements of Checkpoint B as specified in the Tier 2 MOU described in Chapter 3.0. Accordingly, it includes pertinent information on three evaluation factors: existing technology, logistics, and cost.

Key findings indicate that HST construction along the UPRR Corridor would:

- Present substantial technical challenges.
- Involve numerous logistical conflicts with existing infrastructure – particularly UPRR tracks, state highways and local roads, and industrial facilities.
- Almost certainly induce multiple legal challenges by UPRR and other parties, which collectively could delay the onset of project construction by several years.
- Cost significantly more than a HST project along the BNSF Corridor.

The information provided herein focuses on the issue of practicability, as defined by the Guidelines. It does not compare potential environmental impacts associated with HST construction along the UPRR Corridor with HST construction along the BNSF Corridor. It also does not identify the least environmentally damaging practicable alternative (LEDPA).

This document does not comprise a complete alternatives analysis, as required by the Guidelines. A complete Section 404(b)(1) alternatives analysis, including a comparison of project alternatives and the identification of the LEDPA, will be submitted to the U.S. Environmental Protection Agency (U.S. EPA) and the U.S. Army Corps of Engineers (USACE) as a component of the HST Project's Section 404 permit application. The analysis also will be submitted to the State Water Resources Control Board as part of the application for water quality certification and waste discharge requirements.

This document includes a review of HST planning for the Fresno to Bakersfield Section, a summary of U.S. EPA and USACE participation in HST planning activities, a brief overview of Section 404 regulatory requirements, and a description of the HST project purpose. It also describes the influences of existing technology, logistics, and cost on project practicability.

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# **Chapter 2**

## **Background**



## 2.0 Background

In 1996, the California High-Speed Rail Authority (Authority) was authorized to undertake the planning and development of a proposed statewide HST network. In 2005, the Authority and the Federal Railroad Administration (FRA) completed a Final Program EIR/EIS for the Proposed California High-Speed Train System (Statewide Program EIR/EIS) as the first phase of a tiered environmental review process (CHSRA 2005). The Authority certified the Final Program EIR under the California Environmental Quality Act (CEQA), and approved the proposed HST System; FRA issued a Record of Decision (ROD) under the National Environmental Policy Act (NEPA) on the Federal Program EIS.

The Statewide Program EIR/EIS established the purpose and need for the HST system, analyzed an HST system, and compared it with a No Project/No Action Alternative and a Modal Alternative. In approving the Statewide Program EIR/EIS, the Authority and the FRA selected the HST Alternative, selected certain corridors/general alignments and general station locations for further study, incorporated mitigation strategies and design practices, and specified further measures to guide the development of the HST system in site-specific project environmental review to avoid and minimize potential adverse environmental impacts. In the subsequent Bay Area to Central Valley HST Final Program EIR/EIS, the Authority and FRA selected the Pacheco Pass alternative to connect the Bay Area to the Central Valley.

The Authority is now preparing project-level environmental documents for several HST sections, including the Fresno to Bakersfield Section. These documents will tier from the Final Statewide Program EIR/EIS and the Final Bay Area to Central Valley HST Program EIR/EIS in accordance with Council on Environmental Quality (CEQ) regulations (40 Code of Federal Regulations [CFR] Section [§] 1508.28) and State CEQA Guidelines (14 C.C.R. §15168[b]). Tiering will ensure that the Fresno to Bakersfield HST Project EIR/EIS builds upon all previous work prepared for, and incorporated in, the Statewide Program EIR/EIS and the Bay Area to Central Valley HST Program EIR/EIS.

In keeping with the tiered approach, the Fresno to Bakersfield HST Project EIR/EIS will consider a No Project/No Build Alternative and an HST Alternative for the Fresno to Bakersfield Corridor. The No Project/No Build Alternative will represent the conditions in the Corridor as they existed in 2009, and as they would exist based on programmed and funded improvements to the intercity transportation system and other reasonably foreseeable projects through 2035. Under the Build Alternative, the Authority proposes to construct an HST system capable of operating speeds of 220 miles per hour (mph) on dedicated, fully grade-separated tracks.

The Authority selected the BNSF Alignment from Fresno to Bakersfield as the preferred alignment for this portion of the Central Valley in the Statewide Program EIR/EIS. This alignment uses the UPRR Corridor through the urban area of Fresno, and would require a new high-speed alignment east of the City of Hanford. Alignment alternatives have also been evaluated to serve a potential Kings/Tulare Regional Station in the Visalia/Hanford/Tulare area.

Further engineering studies to be undertaken as part of the EIR/EIS process will examine and refine alignments in the BNSF Corridor. Two preferred station locations in Fresno and Bakersfield will be evaluated in the Fresno to Bakersfield HST Project EIR/EIS, as well as a preferred Kings/Tulare Regional Station location in the Visalia/Hanford/Tulare region. Alternative station sites at or near the selected station locations may be identified and evaluated.

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**Chapter 3**  
**U.S. EPA and USACE Participation in HST**  
**Planning**



### 3.0 U.S. EPA and USACE Participation in HST Planning

The U.S. EPA and USACE have been actively involved in HST planning activities since 2003, when they – along with the Authority, FRA, Federal Highway Administration, and Federal Transit Administration – signed an Interagency Memorandum of Understanding (MOU) that established procedures to integrate NEPA and Section 404 actions relating to HST program-level (Tier 1) planning (MOU 2003). The NEPA/404 integration process facilitated compliance with NEPA, CWA Section 404, and Rivers and Harbors Act Section 14. In signing the MOU, the federal agencies also agreed to be cooperating agencies during the NEPA review process.

On August 31, 2004, the U.S. EPA provided written comments on the HST Statewide Program Draft EIR/EIS. These comments identified general and specific concerns that pertained to many of the HST planning sections. In the Central Valley, the U.S. EPA specifically requested that the project minimize impacts to farmland, local communities, waters of the United States, and associated biological resources by minimizing the use of bypasses and total miles of track.

The USACE also commented on the Statewide Program Draft EIR/EIS on August 31, 2004. Their comments described USACE regulatory scope and specified the requirement to comply with the Guidelines (noting, in particular, the need for avoidance and complete mitigation). They also requested that more detailed information regarding aquatic resources be included in the final document and recommended a suite of data needs to be addressed during Tier 2, or project-level, environmental impact evaluation.

On July 22, 2005, in compliance with the NEPA/404 MOU process, U.S. EPA provided written comments to the FRA. These comments were based on U.S. EPA's review of the Administrative Draft Final Statewide Program EIS and indicated concurrence that the preferred alignments and station options were most likely to contain the LEDPA.

With respect to the Fresno to Bakersfield Section, the U.S. EPA letter indicated support of the decision by the Authority and FRA to both: "(1) identify the Burlington Northern Santa Fe (BNSF) alignment as the preferred option for high speed train connecting Fresno to Bakersfield, and (2) fully evaluate an additional alignment, such as the UPRR alignment, during project-level environmental review should the proposed additional planning study identify a feasible and practicable alignment that is likely to be less damaging to water and biological resources." The letter further stated, "We are confident that the decision to analyze the BNSF Alignment, as well as any alternative that is demonstrated to be less damaging to biological and water resources through the additional proposed study, will result in a high speed train alignment most likely to contain the LEDPA" (U.S. EPA 2005).

The USACE provided comments to the FRA, per the NEPA/404 MOU, on July 22, 2005. It concurred with the preferred HST Corridors/general alignments and general alternatives, including the BNSF. It also made reference to a proposed additional planning study, described below.

On November 18, 2005, the FRA issued its ROD on the Statewide Program Final EIR/EIS. With respect to compliance with CWA Section 404, the ROD stated, "The USEPA and USACE have participated in the development of both the Draft and Final Program EIR/EIS and, in accordance with the MOU among Federal agencies for their environmental review, were consulted concerning the selection of the preferred corridor and route most likely to yield the least environmentally damaging practicable alternative (LEDPA) and as identified as preferred in the Final Program EIR/EIS. The USEPA and USACE have concurred that the preferred HST alignment and station options are most likely to contain the LEDPA. Future project-level environmental review will

include further consultation with USEPA and USACE regarding the Clean Water Act leading to USACE permit application" (FRA 2005, page 33).

The aforementioned additional planning study referenced in the U.S. EPA and USACE NEPA/404 concurrence letters assessed the potential of HST station locations to serve the vicinity of Visalia (CHSRA 2007). This study, entitled the Visalia-Tulare-Hanford Station Feasibility Study, was initiated in early 2005 and completed in August 2007. It evaluated potential station locations in the vicinity of Visalia, along the BNSF and UPRR corridors; however, it also had a much larger scope, because it analyzed several potential HST alignments between Fresno and Bakersfield, including alignments along segments of the UPRR. For these alignments, the study described associated potential environmental impacts, including impacts to sensitive land uses, farmland, cultural resources, communities, water resources, floodplains, wetlands, sensitive species, and 4(f) resources. It concluded that a station east of Hanford, on the BNSF Alignment, would be capable of providing service to the Visalia-Tulare-Hanford area. It also concluded that a UPRR alternative would have greater constructability issues and greater potential noise, cultural, community, and property impacts. Of particular importance regarding the identification of a LEDPA, the study did not identify any alternative that would be less damaging than the BNSF Alignment to biological and water resources.

On May 19, 2010, Authority representatives met with the U.S. EPA and USACE to discuss progress in evaluating the BNSF and UPRR alignment alternatives. They indicated that the UPRR alternative had been eliminated from further environmental assessment during the development of the Statewide Program Final EIR/EIS. They also referred to the results of the Visalia-Tulare-Hanford Station Feasibility Study, emphasizing that the study did not identify any alternative to the BNSF Alignment that would be less damaging to biological and water resources. The U.S. EPA informed the Authority it could eliminate the UPRR alternative from further evaluation if it could demonstrate that construction of an HST project on this alignment would be impracticable.

In August 2010, the FRA, Authority, U.S. EPA, and USACE developed a Tier 2 MOU to integrate decisionmaking for specific segments of the HST program (MOU 2010). The purpose of the MOU is to foster agreement among the signatory agencies and to make it possible for the USACE to more efficiently adopt the Tier 2 EISs for which the FRA is the Federal lead agency. The MOU specifies, in Appendix B, information required for an analysis of HST project alternatives.

On January 28, 2011, the Tier 2 MOU signatory agencies met to discuss Checkpoint B issues for the Fresno to Bakersfield HST section. This document incorporates edits requested by U.S. EPA and USACE and provides additional information.

**Chapter 4**  
**Clean Water Act Section 404**  
**Requirements**



## 4.0 Clean Water Act Section 404 Requirements

Construction of the Fresno to Bakersfield HST project, regardless of alignment, will involve discharges of dredged or fill material to waters of the United States. Accordingly, the project will require a Section 404 permit from the USACE. Given the project's scope and extent of expected discharges, it will likely require an individual Section 404 permit, rather than a general permit. In seeking an individual Section 404 permit, the Authority will need to demonstrate compliance with all parts of the CWA Section 404(b)(1) Guidelines. A key part of the Guidelines, which this practicability analysis addresses, involves the identification of practicable project alternatives.

Section 404 of the CWA (33 USC 1244) establishes a framework for regulating the discharge of dredged or fill material to waters of the United States, including adjacent wetlands. The U.S. EPA and USACE co-administer the Section 404 regulatory program. To construct a project involving the discharge of dredged or fill material into waters of the United States, one must obtain a Section 404 permit from the USACE.

On December 24, 1980, the U.S. EPA promulgated regulations at 40 CFR 230 (commonly known as the Section 404(b)(1) Guidelines, and referred to herein as the Guidelines). The Guidelines are the substantive criteria the Corps must use in determining a proposed project's environmental impacts on aquatic resources from discharges of dredged or fill material. The Guidelines are binding regulations; a project that does not comply with them will be denied a Section 404 permit. If a project does comply with the Guidelines, the USACE may grant a permit unless issuance would be contrary to the public interest. The Guidelines are binding, but they are also flexible and allow judgment to be made on a case-by-case basis.

The Guidelines establish four major restrictions on discharge [40 CFR 230.10 (a-d)]. The USACE may authorize a project only if it complies with each of these restrictions. The restriction under the Guidelines at 40 CFR 230.10 (a) establishes the requirement to identify and analyze practicable alternatives to the proposed discharge. According to this restriction, a discharge of dredged or fill material may not be permitted if there is a practicable alternative to the proposed discharge that would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.

Practicable alternatives include, but are not limited to: (1) activities that do not involve a discharge of dredged or fill material into waters of the United States; and (2) discharges of dredged or fill material at other locations within waters of the United States. An alternative is considered practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. Practicable alternatives may include placing a project in an area not owned by the permit applicant that could be reasonably obtained by the applicant to fulfill the basic purpose of the proposed project.

If a proposed project involving a discharge to a special aquatic site is not water dependent (i.e., requires access or proximity to, or siting within, the special aquatic site in question to fulfill its basic purpose), then it is presumed that practicable alternatives which do not involve a discharge to a special aquatic site are available. Furthermore, these practicable alternatives are presumed to have less adverse impact to the aquatic ecosystem, unless demonstrated otherwise.

A practicable alternative that has the least adverse impact on the aquatic ecosystem and no other significant adverse environmental consequences is designated as the least environmentally damaging practicable alternative, or LEDPA. The USACE may only authorize a project alternative that it determines to be the LEDPA. Any project alternative that is found to be impracticable cannot be considered to be the LEDPA and need not be further evaluated.

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# **Chapter 5**

## **Fresno to Bakersfield HST Project Purpose**



## 5.0 Fresno to Bakersfield HST Project Purpose

An important step in a determination of practicability under the Guidelines requires the identification of project purpose. Only alternatives that meet the project purpose need to be evaluated.

Recent discussions between the Authority, FRA, U.S. EPA, and USACE led to agreement regarding the statement of project purpose for the Fresno to Bakersfield HST Section. It reads as follows:

“The purpose of this project is to implement the Fresno to Bakersfield section of the California HST system to provide the public with electric-powered high-speed rail service that provides predictable and consistent travel times between major urban centers and connectivity to airports, mass transit, and the highway network in the south San Joaquin Valley, and connects the Northern and Southern portions of the system.”

The HST project’s preferred alternative along the BNSF Corridor would meet the overall project purpose. The UPRR alignment alternative, likewise, would meet the overall project purpose; the subsequent sections of this report provide information regarding the practicability of this alternative.

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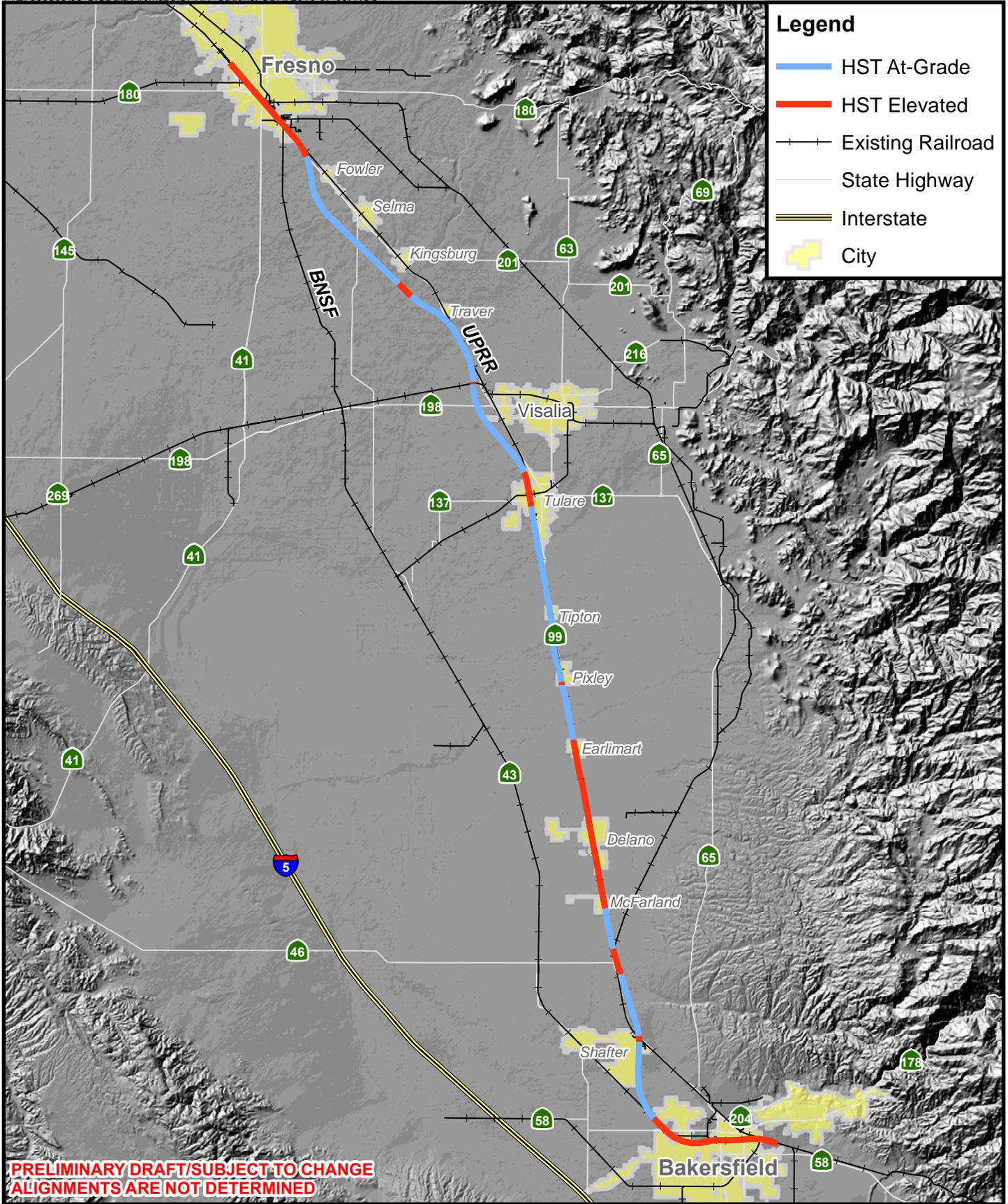
**Chapter 6**  
**Fresno to Bakersfield UPRR Alignment**  
**Alternative**



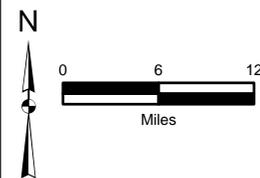
## 6.0 Fresno to Bakersfield UPRR Alignment Alternative

The Final Statewide Program EIR/EIS and subsequent planning efforts (particularly the Visalia-Tulare-Hanford Station Feasibility Study) evaluated a range of alternatives along the UPRR Corridor. In general, the UPRR Corridor follows State Route 99 (SR 99) from Fresno to Bakersfield, which travels through several small communities, including Fowler, Selma, Kingsburg, Traver, Goshen, Tulare, Tipton, Pixley, Earlimart, Delano, and McFarland. SR 99 has several interchanges and crossings with other state routes and county/local roads, including a major interchange with SR 198 in Visalia. The existing UPRR tracks generally parallel SR 99, and they cross it at several locations.

This document provides information regarding a UPRR alignment alternative as shown on Figure 1. The alignment closely follows the B-2 Alternative Alignment described in the Visalia-Tulare-Hanford Station Feasibility Study (CHSRA 2007), and includes a bypass to the west of Fowler, Selma, and Kingsburg, in response to requests from those communities and Fresno County. The alignment incorporates a minor alignment alteration near SR 198 to avoid conflicts with the Visalia Municipal Airport.



**PRELIMINARY DRAFT/SUBJECT TO CHANGE  
ALIGNMENTS ARE NOT DETERMINED**



**UPRR Corridor  
Alignment Overview**

**Figure  
1**

# **Chapter 7**

## **Practicability Factors**



## 7.0 Practicability Factors

This chapter provides information to assist in a determination of practicability for the UPRR alignment alternative. In compliance with the Guidelines, it focuses on three evaluation factors: existing technology, logistics, and cost.

### 7.1 Existing Technology

In a practicability analysis, an assessment of existing technology typically involves an evaluation of available engineering and construction methods and techniques. For linear transportation projects, construction in difficult terrain or on unstable or otherwise unsuitable soils may not be feasible using available techniques. If an alignment cannot be adjusted, it may be necessary to develop special, project-specific construction methods. This is rare, however, as most transportation projects can be built using existing techniques. As a result, determinations of practicability for transportation projects usually do not turn on this element.

Each of the HST sections involves unique applications of existing technology for the construction, implementation, and operation of a high-speed train. The technology used in each section will vary as the alignments move from the urban centers of San Francisco and Los Angeles through suburban communities adjacent to existing transportation Corridors and through rural areas of the Central Valley. In addition to these variations, the Corridors through the Altamont Pass and Tehachapi Mountain will present some of the greatest technological challenges for the project.

The HST project is envisioned to use state-of-the-art technology employing electrically powered vehicles with a steel-wheel-on-steel-rail system. Infrastructure elements would include the use of an overhead electrical catenary to power the rail system and move the vehicles to a maximum speed of 220 mph. An automated train-control system will be developed and implemented to maintain safety, signalization, power distribution, and other critical system-wide features. Existing, proven high-speed train technology will be combined with the latest technological advances to produce an efficient and safe transportation system.

Between Fresno and Bakersfield, an alignment along the UPRR Corridor would present some unique and particularly complex technical challenges. This Corridor includes the UPRR primary California mainline, which provides for the greatest volume of rail goods movement in the state. The Corridor also includes SR 99, one of two primary highway transportation features in the Central Valley that, in given segments, carries the largest volume of North/South traffic in the state.

An alignment along the UPRR Corridor would be constructed on a combination of viaduct structures, at-grade embankments, and a possible sub-grade trench. The design of a high-speed train project in this shared Corridor must resolve numerous conflicts between the high-speed facility, heavy-rail service lines, and roadways.

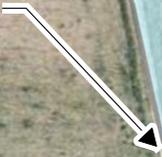
Typical concrete viaduct structures for a high-speed train are designed and constructed on single columns, spaced between 100 and 120 feet. Structure height can vary depending upon the clearance needed, while maintaining construction efficiency and cost effectiveness. The alignment conflicts identified along this Corridor necessitate the design of highly specialized "straddle bent" structures. Several of these structures that would enable the HST tracks to cross SR 99 or UPRR tracks would be more than 1,700 feet long and 150 feet wide; examples of where these structures would be required are shown in Figure 2 and Figure 3. These structures would require foundations, columns, and other structural elements to avoid encroachment into UPRR

**Legend**

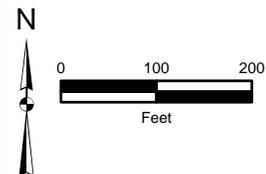
-  HST At-Grade
-  HST Elevated
-  Existing Railroad

Photo and Roads: Bing Maps 2010

Straddle Bent Structure needed to cross UPRR and off-ramp.  
Approximate Length = 1,750 feet

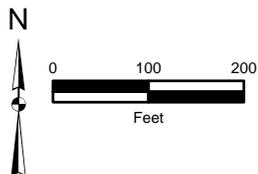
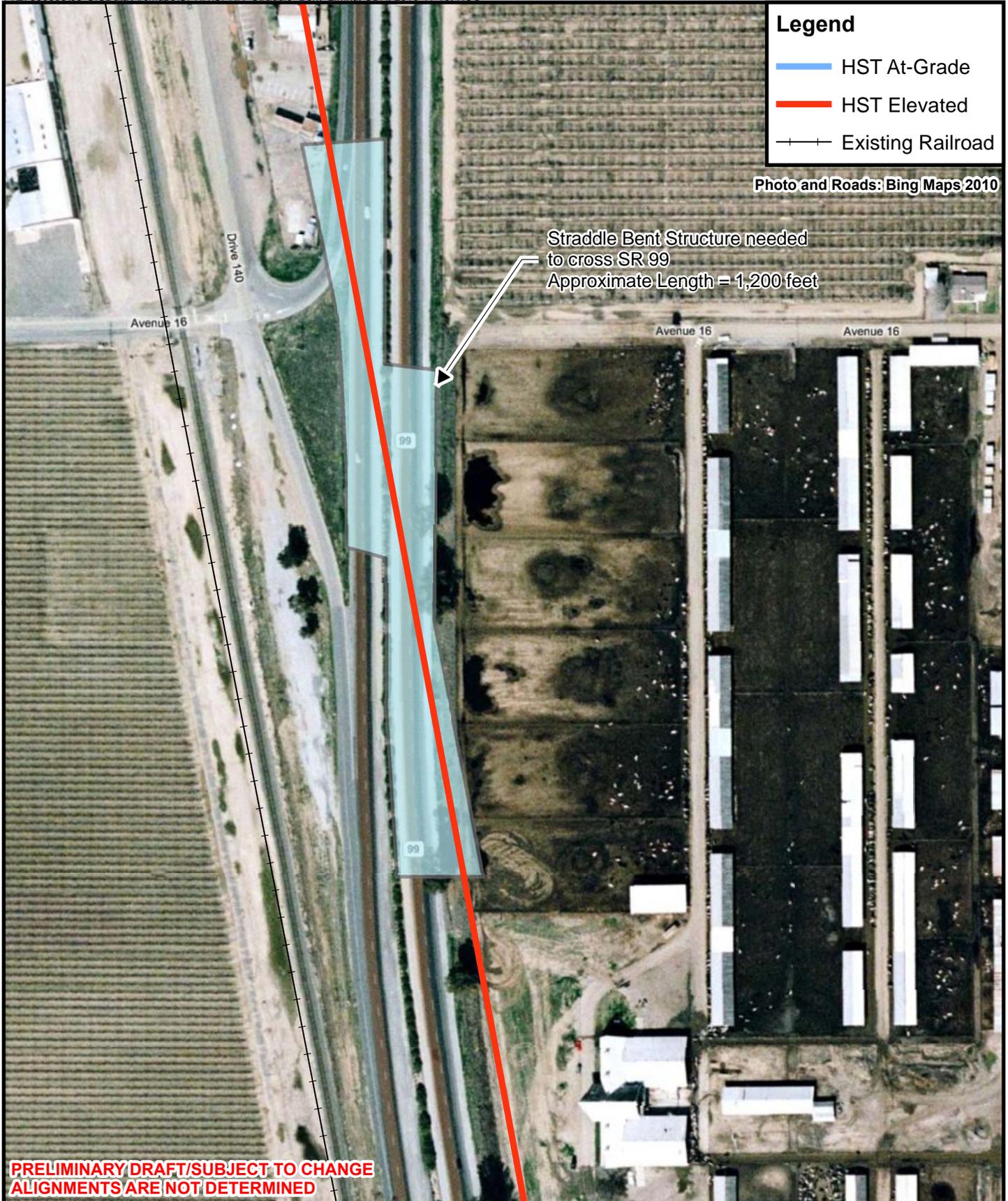


**PRELIMINARY DRAFT/SUBJECT TO CHANGE  
ALIGNMENTS ARE NOT DETERMINED**



**UPRR Alignment  
Straddle Bent  
Conflicts**

**Figure  
2**



**UPRR Alignment  
Straddle Bent  
Conflicts**

**Figure  
3**

right-of-way. They also would require specialized construction methods. The cost of these structures would greatly exceed the cost of typical viaduct structures used in other portions of this UPRR alignment.

In the Visalia area of the UPRR Corridor, one possible alignment alternative would place the HST in close proximity to the Visalia Municipal Airport. This option would create a direct conflict with the approach of incoming aircraft if a viaduct were used for the HST. An at-grade track in this location is not possible given the adjacent SR 99/SR 198 freeway-to-freeway interchange. The only possible design in this location would require a trenched section of track for several miles of the alignment. The design and construction at this location would place the HST below the existing grade, thus mitigating the conflicts with the airport and freeway-to-freeway interchange. From a technological standpoint, civil, structural, and hydraulic engineering disciplines would be used to design and implement this unique feature at a considerable cost to the project.

## 7.2 Logistics

### 7.2.1 Infrastructure Conflicts

The construction and operation of a HST project in the UPRR Corridor presents a number of significant logistical conflicts that involve existing infrastructure. These include the UPRR mainline and spurs, highways and local roads, airport runway protection zones, and industrial facilities. These conflicts are unique to this alignment, and many of them are interrelated, especially those involving UPRR facilities. These logistical conflicts could delay the project or potentially preclude the placement of the HST in this Corridor. Each of these logistical conflicts is discussed below.

#### A. UNION PACIFIC RAILROAD

##### Background

As early as 1862, when Congress passed the Pacific Railway Act, which authorized and subsidized construction of the first transcontinental railroad, railroads have been viewed as essential infrastructure for commerce and a healthy national economy. Today, more than 650 freight railroads in the United States have "common carrier" status, including the four market-dominating Class 1 companies: CSX, Norfolk Southern, BNSF Railway, and Union Pacific Railroad. "Common carrier" status was established by the Interstate Commerce Act of 1887 (ICA), and it grants "common carrier" railroads certain rights and protections; in return, "common carriers" are obliged to serve the public without discrimination. The ICA also created the Interstate Commerce Commission (ICC) to regulate the railroads. In 1995, Congress passed Public Law 104-88, which abolished the ICC and replaced it with the Surface Transportation Board (STB).

State and local governmental entities may acquire rights to use railroad property either by negotiated agreement or condemnation (eminent domain). In practice, public entities rarely file condemnation actions. Instead, rights to use railroad property, whether in easement or fee, are usually acquired through negotiated agreements. This is largely due to the fact that under the ICA and successor laws, and based on 100 years of case law, railroads have established a very high level of property protection.

##### Union Pacific Railroad Concerns and Their Implications

Since 2008, UPRR has consistently expressed its concerns to the Authority in writing about the design of the HST project either within or in proximity to UPRR's rights-of-way. UPRR's position regarding use of its rights-of-way and the design of the HST project is articulated in the following letters (Attachment A):

- Letter from Jerry Wilmoth, UPRR, to Mehdi Morshed, CHSRA (May 13, 2008)
- Letter from Scott D. Moore, UPRR, to Quentin Kopp, Chair, CHSRA Board (July 7, 2008)
- Letter from Jerry Wilmoth, UPRR, to CHSRA (February 23, 2009)
- Letter from Jerry Wilmoth, UPRR, to Dan Leavitt, CHSRA (S.J.-Merced) (April 8, 2009)
- Letter from Jerry Wilmoth, UPRR, to Dan Leavitt, CHSRA (Merced-Bakers.) (April 8, 2009)
- Letter from Jerry Wilmoth, UPRR, to Dan Leavitt, CHSRA (November 23, 2009)
- Letter from Jerry Wilmoth, UPRR, to Dan Leavitt, CHSRA (February 25, 2010)
- Letter from Jerry Wilmoth, UPRR, to Dan Leavitt, CHSRA (April 23, 2010)
- Letter from Jerry Wilmoth, UPRR, to San Leavitt, CHSRA (September 1, 2010)

In this series of letters, UPRR states its position that it is not in its best interest to allow the HST project to be placed on its rights-of-way. The April 8, 2009, letter providing scoping comments on the HST project between Merced and Bakersfield states: "Confirming Union Pacific's prior statements, both written and oral, we will not voluntarily make these or any part of the Fresno Subdivision [UPRR's main line running between Sacramento and Bakersfield] available for the high-speed rail alignment."<sup>1</sup> These letters also identify UPRR's concerns with having the HST project placed adjacent to its rights of way.

The letters from UPRR generally emphasize its concern that the HST project being constructed on or immediately adjacent to its rights-of-way could have adverse business/economic consequences to UPRR itself; its customers; and local, regional, and the state economies. As stated in several of these letters, "Union Pacific is the largest rail carrier in California in terms of both mileage and train operations." In addition, UPRR has emphasized that its rail network in the Bay Area and the Central Valley is "vital to the economic health of California and the nation as a whole." According to UPRR, placement of the HST alignment immediately adjacent to the Fresno Subdivision line would cause serious economic losses by interrupting service to many existing shippers.

UPRR also notes that it has a common carrier obligation to provide service to its customers along its railroad lines and cannot be forced to abandon or discontinue freight service over its main or branch lines without authority from the STB. As identified in UPRR's letters, it is obligated as a common carrier to provide freight service along its railroad alignment. (See Attachment B: 49 U.S.C. 11101, subd. (a)). The Surface Transportation Board exercises jurisdiction over actions that would involve abandonment or discontinuance of rail transportation operations under the ICC Termination Act of 1995. (See Attachment B: 49 U.S.C. 10501 subd. (a)). A railroad can abandon a line only with approval of the STB. (See Attachment C: STB, Abandonment and Alternatives to Abandonment).

UPRR has also identified safety concerns associated with placement of the HST in proximity to its freight operations. Those concerns include: (1) incompatibility of freight trains and high-speed passenger trains operating on the same track; (2) the need for complete grade separation for any cross overs; and (3) the need for grade separated cross overs to meet UPRR height requirements.

Finally, UPRR has also noted the environmental consequences of having HST limit or constrain its freight operations. Industries that cannot in the future be served by freight rail due to proximity to the HST project would have to rely on truck service on local roads to move their goods.

---

<sup>1</sup> The UPRR commented on the Notice of Intent for an HST project between Merced and Bakersfield published by the FRA on March 16, 2009. Subsequent to the public scoping meetings held for that project, the FRA and Authority determined that the environmental effects of the HST system from Merced to Bakersfield were more appropriately assessed in two separate EIR/EIS documents, one from Merced to Fresno and the other from Fresno to Bakersfield. The UPRR's comment addresses all of the UPRR main line tracks from Sacramento to Bakersfield and is applicable equally to the Merced to Fresno Section and the Fresno to Bakersfield Section.

### **HST Design Response to UPRR Concerns**

The Authority and FRA have carefully considered the position articulated by UPRR over the past several years in the development of project-level design for the HST system statewide. As the HST design has progressed, the agencies have sought to develop the statewide HST in a manner that would meet the design needs of the HST system and minimize environmental impacts, while also respecting the needs of adjacent freight railroads and their customers. From a statewide perspective, the design avoids placement of HST tracks or facilities within or over UPRR right-of-way wherever possible to limit infrastructure conflicts and concerns related to safety, liability, and freight customer access. The design includes spacing between HST and UPRR tracks to meet anticipated safety requirements. The design also minimizes cross overs to the extent possible, while still being consistent with HST design requirements. Finally, the HST design has been developed to maintain access to UPRR freight customers or provide replacement access.

### **Logistical Issues With Construction of HST within UPRR Right-of-Way**

UPRR's consistently stated opposition to construction of the HST within its right-of-way makes clear that UPRR will not willingly negotiate with the Authority for access to extensive portions of its alignment, which would be required to place HST tracks within the UPRR right-of-way. To obtain access to place HST facilities within the UPRR right-of-way between Fresno and Bakersfield if UPRR continues to be unwilling to share any portions of its right-of-way, the Authority would be required to initiate condemnation proceedings. The jurisdiction of the STB would very likely be triggered, resulting in numerous additional procedures. The timing and outcome of such legal and administrative proceedings is highly uncertain, creating great risk to this project of delays that could result in considerable increased cost.

### **Logistical Issues with Construction of HST Adjacent to UPRR Right-of-Way**

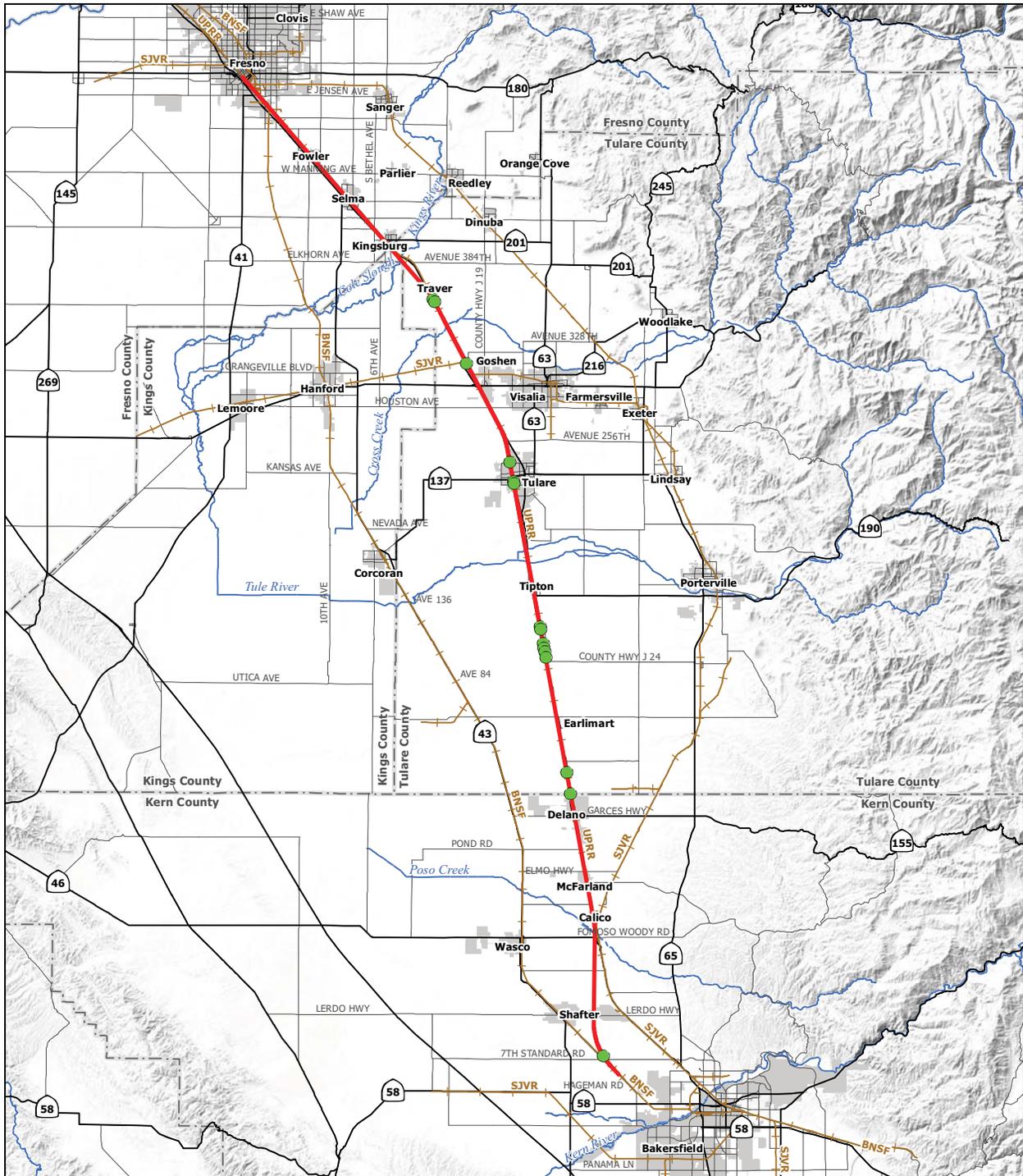
Based on the assumption that the Authority would be at risk of significant delay and great uncertainty if the HST design is reliant on obtaining access to UPRR right-of-way, the Authority has made considerable efforts to develop designs for the HST that meet its purpose and need, but that involve no access to UPRR right-of-way. In the alignment between Fresno and Bakersfield, the HST tracks would therefore be adjacent to the existing UPRR tracks and SR 99. This proximity is consistent with maintaining a dedicated transportation corridor and minimizing environmental impacts in general, while also acknowledging UPRR's position. As identified by UPRR, HST being adjacent to, but not in, its mainline right of way still poses logistical problems.

The primary logistical issue with being adjacent to UPRR is that, while SR 99 and the UPRR tracks are generally parallel, they also cross at several locations. The construction of HST tracks in this corridor would require the HST tracks to cross over SR 99 so that they remain adjacent to, but not within, UPRR right-of-way. The design requirements of the HST alignment would create several highly skewed crossings of both the UPRR and SR 99 that involve unusually difficult and expensive construction ("straddle bents" in excess of 150 feet in width to ensure piers remain outside the UPRR right-of-way). Moreover, crossings of UPRR would still either require UPRR consent or would lead to the logistical difficulties identified above related to the time and uncertainty of legal and administrative proceedings to gain permission to cross UPRR track.

A related logistical issue involves the process to maintain or replace access to existing freight customers along the UPRR Fresno Subdivision line between Fresno and Bakersfield. As described below in Section 7.2.1.D, UPRR serves many industrial facilities between Fresno and Bakersfield via track sidings. As shown in Figure 4, there are some 15 sidings that connect UPRR mainline tracks to freight customers in this section. These sidings vary considerably in length and general layout; typical siding examples are illustrated in Figure 5 and Figure 6. Although the design of a HST project in the UPRR Corridor would seek to avoid interrupting or eliminating access to UPRR

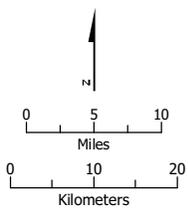
freight customers, the number of facilities on this alignment would render construction exceedingly difficult. Even with efforts to fully avoid any adverse effects on UPRR's freight customers, the risk and uncertainty of potential legal and administrative proceedings would remain.

Related issues involve adjacency limiting the areas to which future UPRR rail spurs/sidings could be constructed. Restricting future connections could limit the ability of UPRR to expand its operations and to service new customers. Reducing access to the railroad would reduce transportation options for agricultural operations, which are the major economic engine of the region.



PRELIMINARY DRAFT/SUBJECT TO CHANGE - HST ALIGNMENT IS NOT DETERMINED  
 Source: URS, 2010

February 8, 2011



- Spur location
- UPRR Corridor
- Existing rail line
- ~ Stream
- Community/Urban area
- County boundary

**Figure 4**  
 Spur locations along  
 the UPRR Corridor



**Figure 5**  
Mainline and spurs



**Figure 6**  
Mainline and spur

## **B. HIGHWAYS AND LOCAL ROADS**

The UPRR alignment alternative would require the reconstruction of four interchanges along SR 99 and the interchange at SR 99 and SR 198. These interchanges are currently constrained by UPRR. Due to the existing constraints on the roadway and interchange configurations, a new design would require exceptions to the Caltrans design standards. These design exceptions would decrease the safety of the driving public by exposing them to features below the current state highway design standards.

The UPRR alignment alternative also would require the construction of viaduct structures passing over SR 99 five times between Fresno and Bakersfield, and also over SR 137 in Tulare. Figure 7 illustrates an example of a short section where the HST tracks would cross SR 99 at several sites. Although columns could be placed to avoid existing infrastructure, HST tracks in the UPRR Corridor would forever constrain improvements along one of the state's most vital roadways and preclude the long-range vision of SR 99 being upgraded to an interstate highway.

The SR 99 and SR 198 interchange in Visalia represents a significant constraint to the HST alignment to stay within the existing transportation corridor. Because the existing junction is located adjacent to the Visalia Municipal Airport, the HST alignment would have to be placed in a trench in order to avoid raising the existing bridges in the interchange. Any increase in elevation of transportation infrastructure is unacceptable, because it would interfere with the Precision Instrument Approach Surface of the airport. Maintaining an alignment along this Corridor, outside of the airport constraints, would impact SR 198 and necessitate the reconstruction of the freeway-to-freeway interchange.

## **C. AIRPORT RUNWAY PROTECTION ZONES**

Four airports occur in the vicinity of the UPRR Corridor alignment: Visalia Municipal (Visalia), Mefford Field (Tulare), Delano Municipal (Delano), and Minter Field (Shafter). These airports were developed subsequent to the UPRR; therefore, the railroad does not encroach on their Precision Instrument Approach Surfaces, as defined in the Caltrans Highway Design Manual Index 207 (Caltrans 2006) and illustrated schematically in Figure 8. However, these airports constrain the HST alignment and the necessary relocations of other facilities impacted by the HST.

In order to stay within the transportation Corridor near the Visalia Municipal Airport, the HST project, as noted above, would need to be constructed in a trench to avoid encroaching on the Airport's Precision Instrument Approach Surface. Given geometric constraints, and in an effort to not place SR 99 between rail facilities, the UPRR tracks would need to be relocated for a length of 5 miles between Visalia and Tulare. This would involve placing the HST tracks between SR 99 and the UPRR tracks. Without UPRR's cooperation, this would not be feasible.

Relocation of the UPRR tracks in this 5-mile-long segment would result in significant infrastructure impacts. All of the existing rail spurs would need to be reconstructed along with all of the rail infrastructure and a substantial number of state and local road facilities. The resulting larger project footprint would increase the loss of agricultural lands and result in adverse impacts to the local businesses.

The only available alternative to avoid the airport and the relocation of UPRR would involve aligning the HST tracks approximately 1 mile to the west of the existing SR 99 transportation Corridor between Goshen and Tulare, a distance of some 13 miles, as indicated in Figure 9. This would increase impacts to agricultural lands and dairies.

**Legend**

- HST At-Grade
- HST Elevated
- +— Existing Railroad

Photo and Roads: Bing Maps 2010

HST Crosses Over UPRR and SR 99 Off-Ramp

HST Crosses Over SR 99

HST Crosses Over SR 99

HST Crosses Over SR 99

**PRELIMINARY DRAFT/SUBJECT TO CHANGE  
ALIGNMENTS ARE NOT DETERMINED**

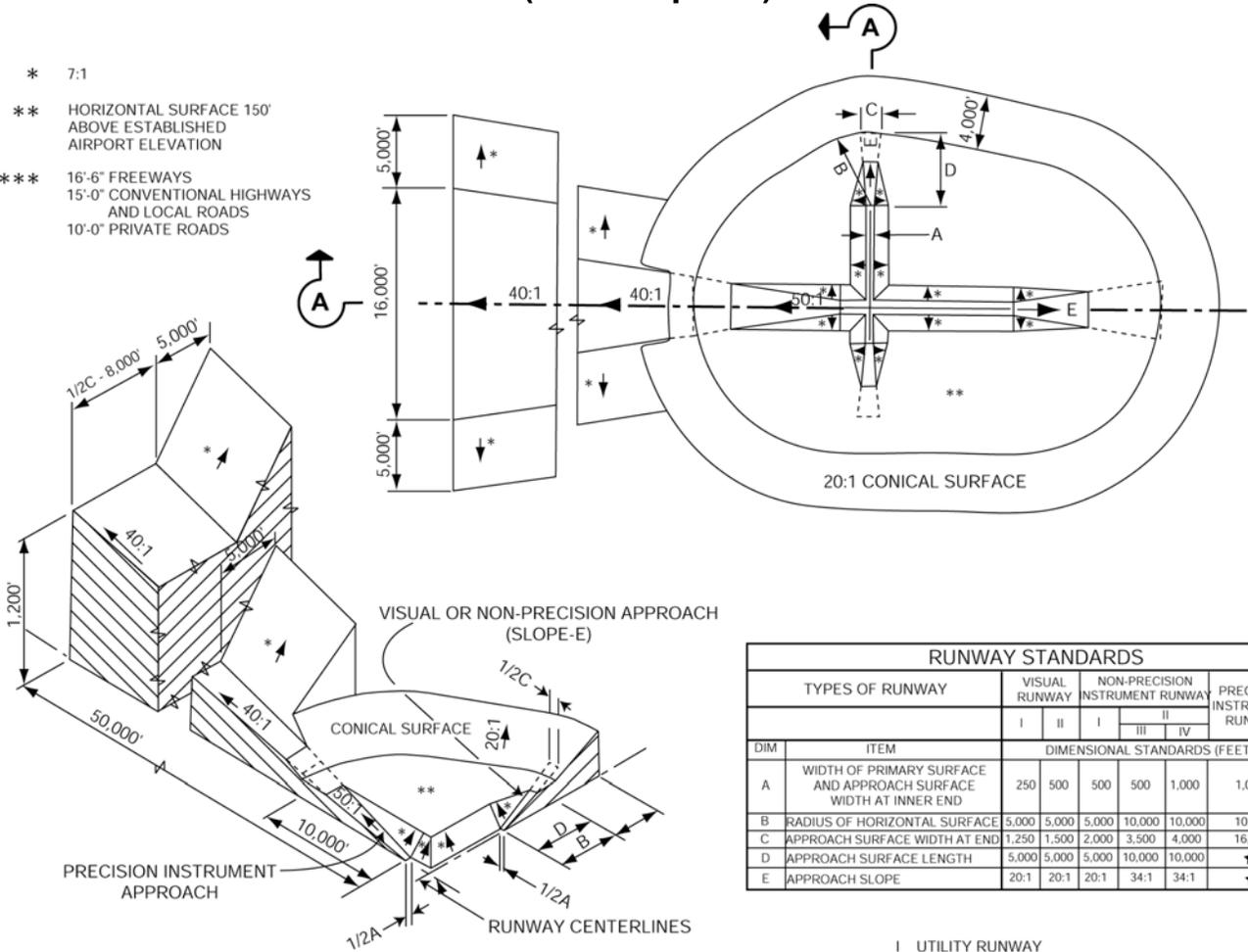


**UPRR Alignment  
Roadway and Railroad  
Conflicts**

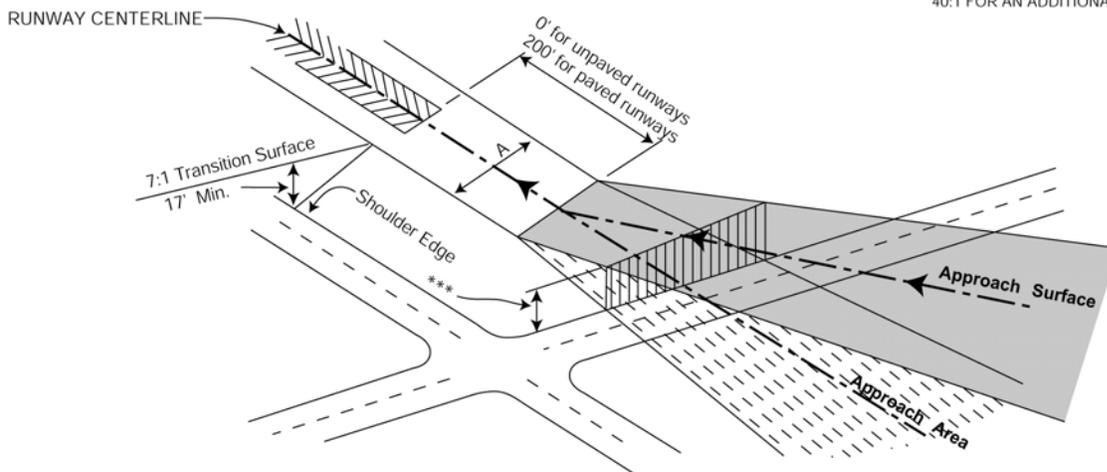
**Figure  
+**

**Figure 207.2A**  
**Airway-Highway Clearance Requirements**  
**(Civil Airports)**

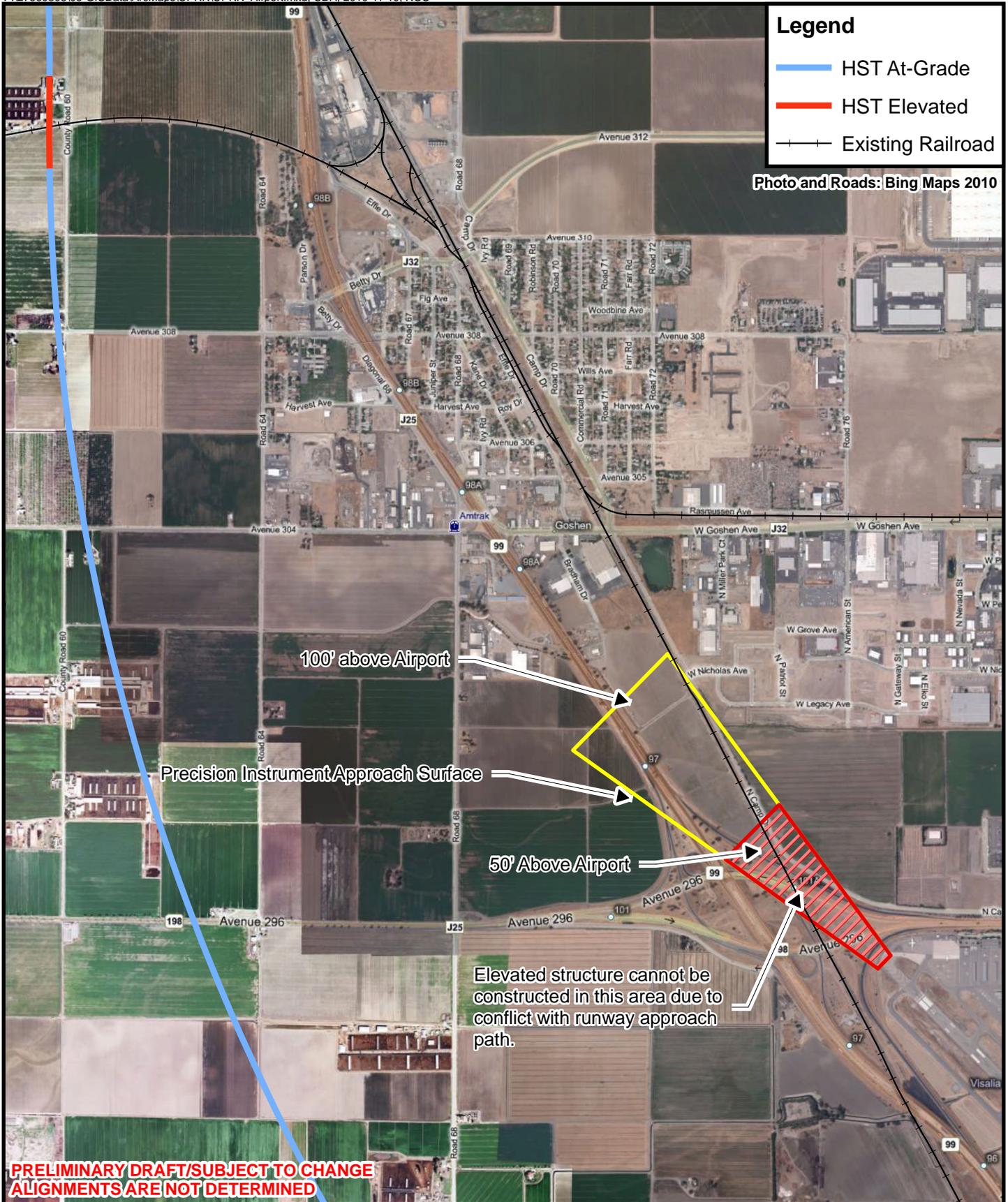
- \* 7:1
- \*\* HORIZONTAL SURFACE 150' ABOVE ESTABLISHED AIRPORT ELEVATION
- \*\*\* 16'-6" FREEWAYS  
 15'-0" CONVENTIONAL HIGHWAYS AND LOCAL ROADS  
 10'-0" PRIVATE ROADS



**ISOMETRIC VIEW OF SECTION A-A**



- I UTILITY RUNWAY
- II RUNWAYS LARGER THAN UTILITY
- III VISIBILITY MINIMUMS GREATER THAN 3/4 MILE
- IV VISIBILITY MINIMUMS AS LOW AS 3/4 MILE
- ★ PRECISION INSTRUMENT APPROACH SLOPE IS 50:1 FOR INNER 10,000 FEET AND 40:1 FOR AN ADDITIONAL 40,000 FEET



**Legend**

- HST At-Grade
- ▨ HST Elevated
- +— Existing Railroad

Photo and Roads: Bing Maps 2010

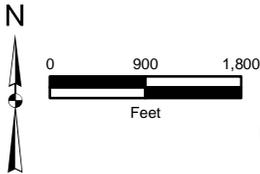
100' above Airport

Precision Instrument Approach Surface

50' Above Airport

Elevated structure cannot be constructed in this area due to conflict with runway approach path.

**PRELIMINARY DRAFT/SUBJECT TO CHANGE  
ALIGNMENTS ARE NOT DETERMINED**



**UPRR Alignment  
Visalia Airport Runway  
Conflicts**

**Figure**  
-

**D. INDUSTRIAL FACILITIES**

The UPRR alignment impacts numerous industrial facilities between Fresno and Bakersfield. The alignment would avoid direct impacts to some facilities; however, there may be indirect impacts to the facilities, including limiting expansion, preventing future connections with UPRR, or altering the local roadway network so as to make the facilities' locations no longer desirable to suppliers or customers. Table 1 indicates some of the facilities affected.

**Table 1**  
 Industrial Facilities Impacted by UPRR Corridor Alignment

Company	Location	Industry
JD Heiskell & Co	Tulare	Grain Processing
Kraft Foods, Inc.	Tulare	Food
California Dairies	Tipton	Butter Plant
Calgren Renewable Fuels	Pixley	Ethanol Plant
JD Heiskell & Co	Pixley	Grain Processing
Crop Production Services	Delano	Fertilizer
Railex	Delano	Rail Shipping
Sears Logistics Services	Delano	Retail Distribution
AES Delano	Delano	Biomass Power Plant
APTCO	Delano	Expanded Polystyrene
Source: URS 2010		

Several large industrial facilities occur in the area between Tipton and Pixley. These include an ethanol manufacturing plant, grain processing facility, and butter factory (Figure 10). These facilities are large employers in this rural region. Displacing these businesses would have a significant negative effect, not only on the businesses but also on the nearby communities of Tipton and Pixley that rely on them as employment centers.

In Delano, just south of the airport, a Railex distribution center is located adjacent to the UPRR tracks (Figure 11). Railex is a private, non-stop rail service that has two trains a week from Delano, California to Rotterdam, New York, primarily for the movement of agricultural goods across the country. Railex is recognized by the U.S. EPA as a SmartWay Transport Partner. As a rail transportation company, Railex has a spur connection to the UPRR. The UPRR alignment alternative crosses over the Railex spur on a viaduct to avoid severing the existing connection. However, the location of the HST within the UPRR Corridor would limit the ability of Railex to expand its storage track area, and therefore would hinder the future growth of this distribution center.

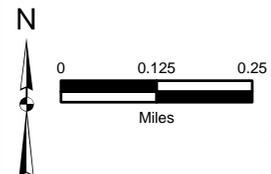
### Legend

- HST At-Grade
- HST Elevated
- +— Existing Railroad

Photo and Roads: Bing Maps 2010

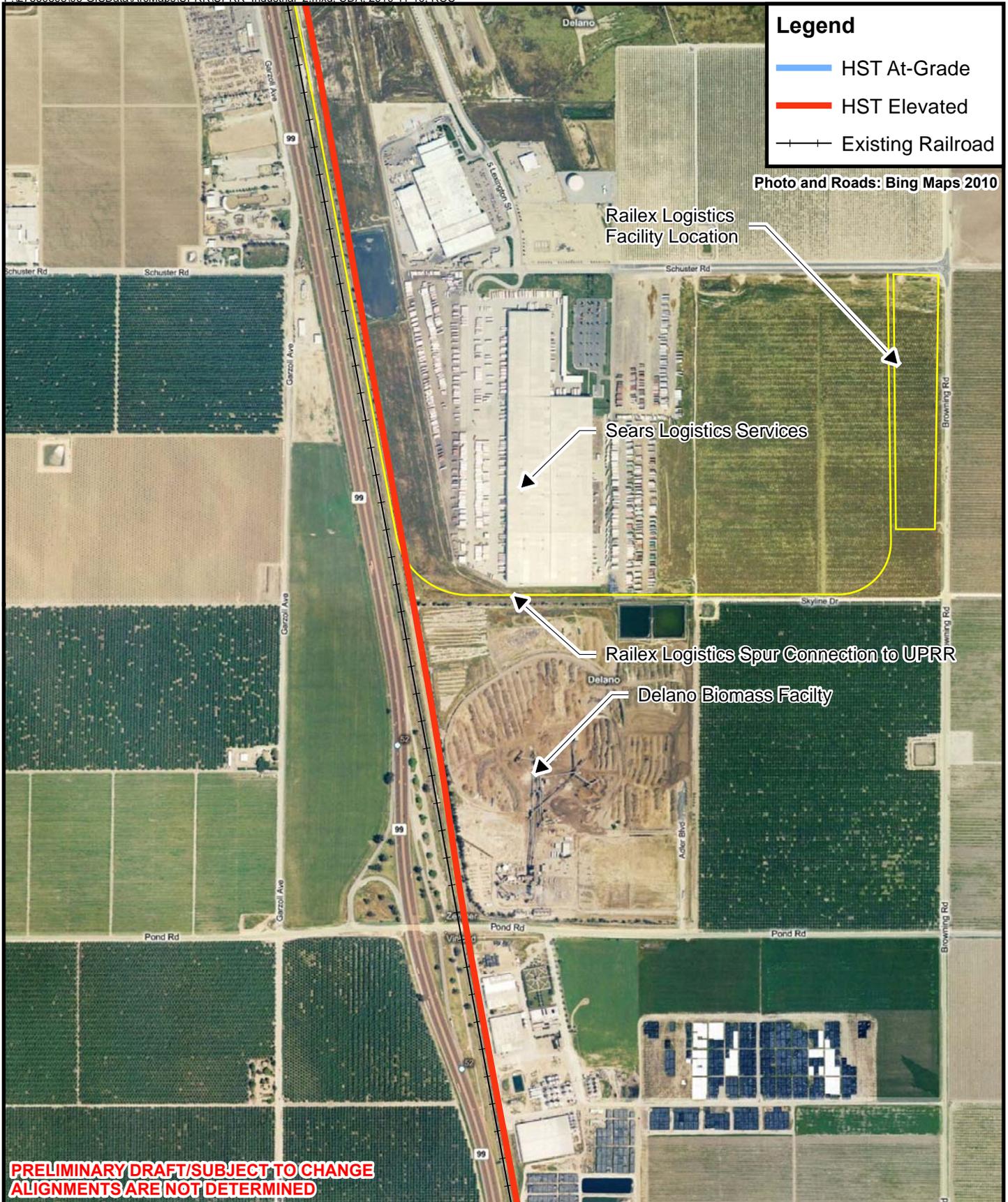


**PRELIMINARY DRAFT/SUBJECT TO CHANGE  
ALIGNMENTS ARE NOT DETERMINED**



**UPRR Alignment  
Industrial Facility  
Conflicts**

**Figure  
10**



**UPRR Alignment  
Industrial Facility  
Conflicts**

**Figure  
11**

### 7.3 Summary of Logistic Issues

The design and construction of a HST project on the UPRR alignment would require resolving numerous complex logistical issues. Chief among these are conflicts with the existing UPRR tracks and spurs. Potential construction delays associated with negotiating access to the UPRR right-of-way represent a significant logistical problem, particularly because they greatly increase the element of uncertainty on the planning horizon. Other logistical issues involve state highways and local roads (particularly the intersection of SR 99 and SR 198), the Visalia Municipal Airport, and industrial facilities.

The physical aspects of many of the infrastructure conflicts are well understood and could be addressed through appropriate engineering design. Other aspects, such as potential schedule delays resulting from negotiations with UPRR, are much less predictable and could take years to resolve. Taken together, these challenges pose severe logistical impediments to the UPRR alignment alternative.

### 7.4 Cost

Cost considerations often play an important role in determining the practicability of potential alternatives under the Guidelines. For transportation projects, there are several kinds of "cost" that may influence practicability. These typically include costs associated with land acquisition, construction, operation, and maintenance. The timing of project construction, as well as the availability and timing of project funding, are also aspects of "cost" that may be considered.

Preliminary estimates indicate a HST project on the UPRR Corridor would cost significantly more than the BNSF Alternative Alignment. The major source of the cost differential is the UPRR guideway and track element, which includes the reconstruction of five interchanges along SR 99 and the placement of several HST aerial structures.

The right-of-way cost element would be greater for the UPRR Alternative Alignment compared to the BNSF Alternative Alignment because there is more urbanized and developed land along SR 99. This land is considerably more expensive than undeveloped land along the BNSF Corridor.

The stations cost element would be similar for the two alignments because the proposed stations are the same in both corridors: Fresno, Kings/Tulare Regional, and Bakersfield. Because the costs for environmental impact mitigation, program implementation, and unallocated contingencies are functions of the total cost, they consequently would increase as the total cost increases.

Based on preliminary estimates of each of the project components described above, the capital costs to construct the a HST project in the UPRR Corridor would be significantly greater than the costs to construct the BNSF Alternative Alignment.

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# **Chapter 8.0**

## **Summary**



## 8.0 Summary

This document presents information regarding the practicability of constructing an HST project along the UPRR Corridor between Fresno and Bakersfield. In accordance with the Section 404(b)(1) Guidelines; it includes information on three criteria: existing technology, logistics, and cost.

### 8.1 Existing Technology

Construction of the HST project along the UPRR Corridor would pose substantial technical challenges, including the design and construction of at-grade embankments; viaduct structures; and a possible sub-grade trench. Highly specialized structures would be required, particularly where the HST tracks cross SR 99 or the UPRR tracks. In these areas, some of the overhead structures would be more than 150 feet wide and 1,700 feet long and would require unique designs to avoid encroachment into the UPRR right-of-way. In Visalia, it could be necessary to place the HST tracks in a sub-grade trench to avoid conflicts with SR 198 and the Visalia Municipal Airport.

Construction of the UPRR alignment alternative would require solutions to an array of unique technical problems. As noted below, these solutions would markedly increase project cost. Nevertheless, existing technology and on-going engineering advances could address these problems and enable the construction of all necessary HST facilities.

### 8.2 Logistics

Placement of the HST facilities along the UPRR Corridor would require addressing several major logistical issues. These include conflicts with the UPRR mainline and spurs, state highways and local roads, industrial facilities, existing land uses, and local communities.

The major logistical challenge would involve resolving conflicts with UPRR. This could include the relocation of more than 5 miles of UPRR tracks, the reconstruction of numerous existing service spurs, and the associated construction of special aerial structures. Also, and of critical importance to the project's viability, the UPRR has publicly stated its intent, in writing, to take legal action if necessary to ensure that no HST construction occurs within or adjacent to its right-of-way between Fresno and Bakersfield. This litigation, if initiated, could delay HST construction on either the BNSF or UPRR alignment alternatives for 2 years or more and result in significant project cost escalation.

Other logistical considerations include the resolution of conflicts with SR 99 and SR 198, the Visalia Municipal Airport, and more than a dozen large industrial facilities.

### 8.3 Cost

The technical and logistical factors associated with the design and construction of the UPRR alignment alternative have a strong bearing on project cost. Based on preliminary data, with the exception of station costs, which are equal for the UPRR and BNSF alignment alternatives, the costs of all other project components are considerably greater for the UPRR Alternative Alignment than for the BNSF Alternative Alignment.

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# **Chapter 9.0**

## **References**



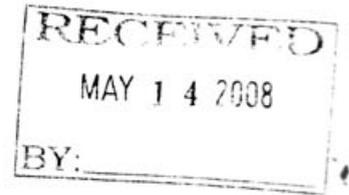
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- USACE 2005. Letter to Mark Yachmetz, Environmental Program Manager, Federal Railroad Administration, Washington, D.C. from Alex Dornstauder, District Engineer, USACE, Los Angeles District. July 22. 2 pages.

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**Attachment A**  
**Correspondence from UPRR**





May 13, 2008

Mr. Mehdi Morshed  
Executive Director  
California High Speed Rail Authority  
925 L Street, Suite 1425  
Sacramento, California 95814

Re: California High Speed Rail Route

Dear Mr. Morshed:

Reference is made to our meeting of May 9, 2008, to discuss the current status of the California high-speed rail initiative and its possible impacts on Union Pacific Railroad.

It was a very informative meeting to hear the efforts you are undertaking as the high-speed train bond measure is being prepared for the November, 2008 ballot.

After hearing your plans regarding the proposed routing for this service, Union Pacific feels it is important for the California High Speed Rail Authority (CHSA) to once again understand Union Pacific's position as related to potential alignments along Union Pacific corridors. Union Pacific has carefully evaluated CHSA's project and for the variety of reasons we discussed during our meeting, does not feel it is Union Pacific's best interest to have any proposed alignment located on Union Pacific rights-of way. Therefore, as your project moves forward with its final design, it is our request you do so in such a way as to not require the use of Union Pacific operating rights-of-way or interfere with Union Pacific operations. The State of California and the nation need railroads to retain their future ability to meet growing demand for rail cargo transportation, or that cargo will be in trucks on the highways.

Should you have any questions or comments, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Wilmoth".

Cc: Scott Moore - UP  
Wesley Lujan - UP

Jerry Wilmoth  
General Manager Network Infrastructure

UNION PACIFIC RAILROAD  
10031 Foothills Blvd., Roseville, CA 95747  
ph. (916) 789-6360 fx. (916) 789-6171

E000027





**Scott D. Moore**  
Vice President Public Affairs

July 7, 2008

Mr. Quentin L. Kopp  
Chairperson  
California High-Speed Rail Authority Board  
925 L Street, Suite 1425  
Sacramento, CA 95814

Re: Final Bay Area to Central Valley HST Program EIR/EIS

Dear Chairperson Kopp:

Union Pacific Railroad Company (UPRR) appreciates the opportunity to provide the following comments to the High-Speed Rail Board with respect to the above-referenced EIR/EIS.

UPRR wishes to emphasize that we are not opposed to the concept of high-speed rail nor would we oppose implementation of the project should the voters approve the bond issue in November. Our concern is that the project should not be designed to utilize or occupy any of our rights of way. Our rights of way are limited in width and are fully dedicated to freight service, and, in some instances, to commuter passenger trains. UPRR simply cannot meet the future freight transportation needs of California if our right of way is taken away for high-speed rail.

To respond to the specific corridors proposals for high-speed rail, UPRR points out that our San Jose to Gilroy right of way is very narrow by railroad standards – primarily 60-feet or less – and is bounded on one side by a major arterial highway. We could not give up a 50-foot exclusive width right of way to high-speed rail and remain in business.

Even though our right of way is wider (primarily 100-feet) along most of the Central Valley line, a loss of 50 feet would render future freight rail expansion impossible. As fuel prices rise and the nation becomes more concerned with the environmental effects of transportation, we need the ability to expand our infrastructure, perhaps substantially. In addition, we serve numerous industries on both sides of our track. High-speed rail would cut off, forever, our ability to expand capacity in the Central Valley, leaving California with only highway alternatives. It also would disrupt existing rail-served businesses and prevent new rail-served industries from locating on one or both sides of our rail line. This is not a wise transportation decision for the State.

Regarding Caltrain's San Francisco – San Jose corridor, UPRR does not own the right of way but has a freight easement over Caltrain's tracks. Our freight operations already are restricted to avoid delaying Caltrain's commuter trains. Imposing two exclusive high-speed rail tracks on a 50-foot right of way effectively will end our ability to provide freight service to customers on this corridor, including the Port of San Francisco. We will have the same concerns between Sylmar and Los Angeles, where Metrolink's commuter line right of way is designated for high-speed rail service.

An effective and efficient freight rail network is vital to California's economic future. Policy makers such as the high-speed rail board should not jeopardize UPRR's ability to provide such freight service by assuming that high-speed rail will have no impact. UPRR urges the board to carefully consider corridor routes that do not utilize our rights of way.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott D. Moore", written over a horizontal line.

Scott D. Moore

cc: Mehdi Morshed, California High-Speed Rail Authority  
Jerry Wilmoth, Union Pacific Railroad  
Wesley Lujan, Union Pacific Railroad



**Jerry Wilmoth**  
General Manager Network Infrastructure

February 23, 2009



California High-Speed Rail Authority  
Attn: San Francisco to San Jose HST Project EIR/EIS  
925 L Street, Suite 1425  
Sacramento, CA 95814

**Re: Union Pacific Railroad Scoping Comments For Joint EIR/EIS**

Dear High-Speed Rail Authority:

Union Pacific Railroad Company submits the following comments in response to the High-Speed Rail Authority's (Authority) Notice of Preparation pursuant to CEQA dated January 8, 2009, concerning the Project Environmental Impact Report/Environmental Impact Statement for the San Francisco to San Jose segment of the high-speed train system (HSR). These comments also respond to the Notice of Intent pursuant to NEPA published by the Federal Railroad Administration in the Federal Register on December 29, 2008. Union Pacific understands that the Authority and the FRA will jointly prepare the EIR/EIS for this project.

Union Pacific Railroad Company (Union Pacific) is a Delaware corporation that owns and operates a common carrier railroad network in the western half of the United States, including the State of California. Specifically, Union Pacific owns and operates rail main lines connecting the San Francisco Bay Area to Sacramento and points east and north, and to Los Angeles and points east and southeast. Union Pacific is the largest rail carrier in California in terms of both mileage and train operations. Union Pacific's rail network in the Bay Area is vital to the economic health of California and the nation as a whole. Union Pacific's rail service to customers in the Bay Area is crucial to the future success and growth of those customers.

Union Pacific previously submitted comments on the Bay Area to Central Valley HST Program EIR/EIS by letter dated July 7, 2008, from Mr. Scott Moore to Mr. Quentin L. Kopp of the Authority's Board (copy attached). Union Pacific reaffirms these comments and hereby incorporates them within this letter. By letter dated May 13, 2008, to Mr. Mehdi Morshed, the Authority's Executive Director (copy attached), the undersigned stated that it was not in Union Pacific's best interests to permit any proposed high-speed rail alignment on our rights of way. This remains Union Pacific's position on this matter.

Union Pacific submits the following comments with reference to the scoping of the joint EIR/EIS for the San Francisco to San Jose segment of the light rail system.

- 1) Union Pacific formerly owned and operated the Caltrain (PCJPB) right of way between San Francisco and San Jose that is proposed for the HSR system. Union Pacific sold the right of way to PCJPB in 1991 and retained a permanent and exclusive easement for the operation of freight trains and for the delivery of common carrier rail service over the entire line. Union Pacific also retained all rights and obligations relating to intercity passenger service provided by Amtrak or any other operator, at Union Pacific's sole election, operating over this line (currently no Amtrak or intercity passenger service trains operate over this right of way except between San Jose and Santa Clara). Union Pacific's permanent easement for freight and Amtrak service over this line is a valuable property and operational right that must not be impaired by construction and operation of the HSR. The Authority must protect such rights and mitigate all adverse impacts to Union Pacific's satisfaction.

- 2) In addition to retention of the easement rights outlined above, Union Pacific entered into an operating contract with the PCJPB at the time of sale setting forth Union Pacific's rights with respect to freight services on the line. Union Pacific has notified the PCJPB that it expects the PCJPB to protect Union Pacific's rights under this contract in any arrangement that might be made with HSR. The Authority must be aware of and protect Union Pacific's rights under this contract as well. All adverse impacts must be mitigated to Union Pacific's satisfaction.
- 3) As a common carrier railroad, Union Pacific is subject to the requirements of federal law governing abandonment or discontinuance of freight operations. Specifically, the Interstate Commerce Commission Termination Act (49 USC §10501 et seq.) prohibits a railroad from abandoning or discontinuing freight services over main or branch lines of railroad without authority from the federal Surface Transportation Board (STB). In the sale of the PCJPB right of way, Union Pacific retained all common carrier freight service rights and obligations. Therefore, Union Pacific's operations over the San Francisco – San Jose line are subject to STB jurisdiction. Neither the PCJPB nor the Authority may take any action that effectively requires or causes Union Pacific to abandon or discontinue freight service unless prior authority from the STB has been obtained. Union Pacific will deem any attempt by HSR to interfere with Union Pacific's property and contract rights on the San Francisco to San Jose line as an attempt to force a de facto abandonment of freight service in violation of federal law.
- 4) Union Pacific currently operates freight trains over the PCJPB right of way from San Jose to the Quint St. lead in San Francisco. The Quint St. lead diverges from the main line immediately north of Tunnel 3, near Jerrold St. Union Pacific's right to operate freight trains over the PCJPB extends to the entire width of the right of way over all available trackage. Union Pacific freight operations must not be adversely impacted by construction or operation of the HSR. All significant impacts must be mitigated to Union Pacific's satisfaction.
- 5) Union Pacific currently serves the Port of San Francisco via the Quint St. lead track. The port has advised Union Pacific that it intends to continue existing rail freight services and to encourage future growth in rail freight to and from Piers 80-96. Union Pacific is informed and believes that the port intends to enter into arrangements with tenants and pier operators that will cause future growth in rail operations. Union Pacific has means of serving the port other than via the Quint St. lead. The Authority must not undertake any action that interferes with freight operations via the tunnels and the Quint St. lead without mitigation of all significant impacts and prior approval from Union Pacific and the port.
- 6) Union Pacific currently serves a number of customers at or near the Port of Redwood City via the Redwood Jct. lead track. These customers, including Granite Rock and the port, have advised Union Pacific that they intend to continue all existing rail freight services and likely will demand additional freight services in the future. Union Pacific has no means of serving the port and the adjacent customers except via the PCJPB main line and the Redwood Jct. lead track. The Authority must not undertake any action that interferes with operations via this lead track without prior approval from Union Pacific, the port and the customers at this location.
- 7) Union Pacific currently serves a number of customers at other locations on the PCJPB San Francisco to San Jose line, including Granite Rock at South San Francisco. The existing yard at South San Francisco is crucial to Union Pacific's ability to provide

- freight service to the Port of San Francisco and to Granite Rock and other customers adjacent to the yard. The Authority must not undertake any action that interferes with
- 8) operations at the yard and adjoining trackage without prior approval from Union Pacific, the port and the customers at this location.
  - 9) Union Pacific owns and has primary operating rights on Main Track No. 1 between Santa Clara (CP Coast) and Diridon Station (San Jose). This track currently is shared with Amtrak's Capitol Corridor and Coast Starlight services and with Altamont Commuter Express's Stockton – San Jose commuter service. Union Pacific's rights to this track are crucial to continued operation of these passenger services. Use of this track also is crucial to freight service on the line to San Francisco. Further, these rights support continued operation of freight service on the main line south of San Jose to Los Angeles. The Authority must not undertake any action that interferes with Union Pacific's ownership and operation of Main Track No. 1 without prior approval from Union Pacific and the commuter agencies identified above. All adverse impacts must be mitigated to Union Pacific's satisfaction.
  - 10) PCJPB owns the right of way south of Diridon Station to a point called Lick (approximately three miles south of the station). Union Pacific's rights with regard to Main Track No. 1 extend southward to Lick. All comments in (8) above are applicable to the Diridon – Lick portion.
  - 11) Union Pacific has complete ownership of and control over the railroad right of way from Lick to Gilroy (and southward to San Luis Obispo and Los Angeles (Moorpark)). The PCJPB and the Santa Clara Valley Transportation Authority have a contract right to operate up to ten commuter trains to and from Gilroy over Union Pacific's right of way. Neither agency has any ownership rights in this line and no contractual rights to allow third parties to use this line. Union Pacific has no intention of allowing or permitting the Authority to build or operate the HSR within Union Pacific's right of way southward of Lick. The Authority should take this into account as part of the EIR/EIS for the San Francisco – San Jose segment.
  - 12) The Authority must study the following matters as part of the EIR/EIS and all necessary mitigation measures must be implemented:
    - (i) Slow speed freight trains and high-speed trains are incompatible on the same tracks at any time, including cross-overs. Union Pacific requires overhead clearance of 23 feet 6 inches, which is higher than the Authority contemplates for its electrical system. The Authority must provide grade-separated cross-overs for freight trains at necessary locations. The Authority must not contemplate operation of freight trains on any HSR trackage at any time (and vice-versa). If necessary, completely separate freight trackage must be provided. HSR must comply with all applicable FRA regulations.
    - (ii) Mitigation measures for the HSR may include construction of new freight trackage for Union Pacific. Such trackage must meet Union Pacific's construction and operation standards, and must be compliant with FRA and California Public Utilities Commission applicable standards.
  - 13) The construction and operation of HSR in the San Francisco to San Jose right of way must not cause increased operating costs or operating inefficiencies for Union Pacific. The Authority must assume Union Pacific's liability exposure and risk arising from current and future freight operations in the same corridor as the HSR. The Authority should fully study means to indemnify and insure Union Pacific against all such liability or risk, including liability to HSR patrons.

February 23, 2009

Union Pacific is confident that its concerns listed herein will be fully addressed and mitigated by the Authority and FRA during the EIR/EIS process. Union Pacific is willing to meet with the Authority and FRA to discuss its concerns about high-speed rail operation and to better understand the Authority's intentions regarding use of Union Pacific rights of way. Following such meeting, Union Pacific will be glad to consider all future requests by the Authority for information, construction standards and mapping data.

Please direct all requests and correspondence to the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Wilhoit". The signature is written in a cursive style with a large, looping initial "J".

Enclosures (2)



April 8, 2009

California High-Speed Rail Authority  
Dan Leavitt, Deputy Director  
Attn: San Jose to Merced HST Project EIR/EIS  
925 L Street, Suite 1425  
Sacramento, CA 95814



**Re: Union Pacific Railroad Scoping Comments**  
**For San Jose to Merced Joint EIR/EIS**

Dear High-Speed Rail Authority:

Union Pacific Railroad Company submits the following comments in response to the High-Speed Rail Authority's (Authority) Notice of Preparation pursuant to CEQA dated February 23, 2009, concerning the Project Environmental Impact Report/Environmental Impact Statement for the San Jose to Merced segment of the high-speed train system (HSR). These comments also should be considered as responding to the Notice of Intent pursuant to NEPA as published by the Federal Railroad Administration in the Federal Register. Union Pacific understands that the Authority and the FRA will jointly prepare the EIR/EIS for this project.

Union Pacific Railroad Company (Union Pacific) is a Delaware corporation that owns and operates a common carrier railroad network in the western half of the United States, including the State of California. Specifically, Union Pacific owns and operates rail main lines connecting the San Francisco Bay Area to Sacramento and points east and north, and to Los Angeles and points east and southeast. Union Pacific is the largest rail carrier in California in terms of both mileage and train operations. Union Pacific's rail network in the Bay Area and the Central Valley is vital to the economic health of California and the nation as a whole. Union Pacific's rail service to customers in the Bay Area and Central Valley is crucial to the future success and growth of those customers.

Union Pacific previously submitted comments on the Bay Area to Central Valley HST Program EIR/EIS by letter dated July 7, 2008, from Mr. Scott Moore to Mr. Quentin L. Kopp of the Authority's Board (copy attached). Union Pacific reaffirms these comments and hereby incorporates them within this letter. By letter dated May 13, 2008, to Mr. Mehdi Morshed, the Authority's Executive Director (copy attached), the undersigned stated that it was not in Union Pacific's best interests to permit any proposed high-speed rail alignment on our rights of way. Union Pacific's position on this matter remains the same.

Union Pacific submits the following comments with reference to the scoping of the joint EIR/EIS for the San Jose to Merced segment of the high-speed rail system.

**Comments Applicable to San Jose to Gilroy Segment**

- 1) Union Pacific formerly owned and controlled operations on the Caltrain (PCJPB) right of way between San Jose and a station named Lick (approximately 4.5 miles south of San Jose Diridon Station), which right of way is proposed for use by the HSR system. Union Pacific sold this right of way (and the right of way north of San Jose to San Francisco) to PCJPB in 1991 and retained a permanent and exclusive easement for the operation of freight trains and intercity passenger trains over the entire line. Union Pacific owns and has primary operating rights on Main Track No. 1 between Santa Clara (CP Coast) and Lick station. Between San Jose and Santa Clara, this track currently is shared with Amtrak's Capitol Corridor service and with Altamont Commuter Express's Stockton – San Jose commuter service. Between Lick and Santa Clara, this track also is shared with Amtrak's Coast Starlight, a long distance passenger train running between Los Angeles and Seattle, and with the PCJPB-VTA commuter trains to and from Gilroy (see section (3) below). Union Pacific's rights to Main Track No. 1 are crucial to effective operation of these passenger services. Such rights also are crucial to freight service on the line between Los Angeles and Oakland and to San Francisco. The Authority must not undertake any action that interferes with Union Pacific's ownership and operation of Main Track No. 1 without prior approval from Union Pacific, Amtrak and the commuter agencies identified above. All adverse impacts must be mitigated to Union Pacific's satisfaction.
- 2) The comments submitted by Union Pacific in its San Francisco to San Jose scoping letter dated February 20, 2009, and in the amendment letter dated March 13, 2009, copies attached hereto, are relevant with respect to the San Jose to Lick segment of the HSR project, and are incorporated herein.
- 3) Union Pacific owns outright in fee simple the entire width of the railroad right of way from Lick to Gilroy (and southward to San Luis Obispo and Los Angeles (Moorpark)). Amtrak's Coast Starlight operates over this line, and the PCJPB and the Santa Clara Valley Transportation Authority (VTA) have certain limited contract rights to operate up to ten round-trip commuter trains to and from Gilroy over Union Pacific's right of way. Neither agency has any ownership rights in this line and neither has any right or authority to allow third parties such as HSR to use or occupy this line. Union Pacific alone has such right. As previously advised, Union Pacific has no intention of allowing or permitting the Authority to build or operate the HSR within Union Pacific's right of way between Lick and Gilroy.
- 4) The Lick – Gilroy right of way (31 miles) owned by Union Pacific is, with few exceptions, only 60-foot wide. For much of this distance, the right of way is directly bordered by Monterey Road or other public highways. There are two main tracks from Lick to Coyote (12 miles), and the Santa Clara Valley

Transportation Authority (VTA) currently is adding 8.4 miles of second main track south of Coyote. With over twenty miles of the right of way occupied by two main tracks, there is no space available for any additional rail operations, including HSR. Union Pacific intends to preserve the remaining non-double track portions for future freight service expansion. Union Pacific will take all legal action required to protect its property and operations against threats to such future capacity, including attempts to take the property by eminent domain.

- 5) The Authority must be aware of the following matters as it prepares the EIR/EIS:
- a. Slow speed freight trains and high-speed trains are incompatible on the same tracks at any time and at any location, including at-grade cross-overs. Union Pacific requires overhead clearance of 23 feet 6 inches, which is higher than the Authority contemplates for its electrical system. The Authority must provide grade-separated cross-overs for freight trains at necessary locations. The Authority must not contemplate operation of freight trains on any HSR trackage at any time (and vice-versa). If necessary, completely separate freight trackage must be provided. HSR must comply with all applicable FRA regulations with regard to freight trackage.
  - b. Given the constraints of the right of way between Lick and Gilroy, it is not possible or practical to share that right of way with HSR. There are no mitigation measures which will make this possible. Union Pacific will not voluntarily make this right of way available to HSR under any circumstances.
- 6) As a common carrier railroad, Union Pacific is subject to the requirements of federal law governing abandonment or discontinuance of freight operations. Specifically, the Interstate Commerce Commission Termination Act (49 USC §10501 et seq.) prohibits a railroad from abandoning or discontinuing freight services over main or branch lines of railroad without authority from the federal Surface Transportation Board (STB). In the sale of the PCJPB right of way, Union Pacific retained all common carrier freight service rights and obligations. Therefore, Union Pacific's operations over the San Jose – Lick – Gilroy line are subject to STB jurisdiction. Neither the PCJPB nor the Authority may take any action that effectively requires or causes Union Pacific to abandon or discontinue freight service on or over such line without prior authority from the STB. Union Pacific will deem any attempt by HSR to interfere with Union Pacific's property and contract rights on the San Jose to Gilroy line, including attempts to seize the line by the exercise of eminent domain, as an attempt to force a de facto abandonment of freight service in violation of federal law.

**Comments Applicable to Gilroy – Chowchilla Segment**

Union Pacific has no scoping comments with reference to this segment as no Union Pacific right of way or operations are involved.

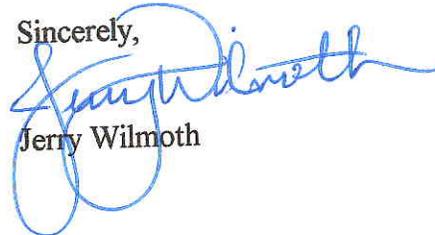
**Comments Applicable to Chowchilla – Merced Segment**

The map attached to the Notice of Preparation (Figure 1) indicates that Union Pacific's main line right of way would be utilized by HSR northward from Chowchilla (Henry Miller Road) to Merced, and possibly southward to Fresno. Union Pacific's scoping comments with reference to the Notice of Preparation for the Bakersfield – Merced segment, filed simultaneously with the Authority, are applicable to the Chowchilla – Merced – Fresno segment here. Both segments may occupy portions of Union Pacific's Fresno Subdivision main line. Therefore, Union Pacific's scoping comments for the Bakersfield – Merced segment are applicable hereto and are incorporated herein by reference.

Union Pacific is confident that its concerns listed herein will be fully addressed by the Authority and FRA during the EIR/EIS process. Union Pacific is willing to meet with the Authority and FRA to discuss its concerns about high-speed rail operation and to better understand the Authority's intentions regarding use of Union Pacific rights of way. Following such meeting, Union Pacific will be glad to consider all future requests by the Authority for information concerning operations, construction standards and mapping data.

Please direct all requests and correspondence to the undersigned.

Sincerely,



Jerry Wilmoth



April 8, 2009

California High-Speed Rail Authority  
Dan Leavitt, Deputy Director  
Attn: Merced to Bakersfield HST Project EIR/EIS  
925 L Street, Suite 1425  
Sacramento, CA 95814

**Re: Union Pacific Railroad Scoping Comments  
For Merced to Bakersfield Joint EIR/EIS**

Dear High-Speed Rail Authority:

Union Pacific Railroad Company submits the following comments in response to the High-Speed Rail Authority's (Authority) Notice of Preparation pursuant to CEQA dated February 23, 2009, concerning the Project Environmental Impact Report/Environmental Impact Statement for the Merced to Bakersfield segment of the high-speed train system (HSR). These comments also should be considered as responding to the Notice of Intent pursuant to NEPA as published by the Federal Railroad Administration in the Federal Register. Union Pacific understands that the Authority and the FRA will jointly prepare the EIR/EIS for this project.

Union Pacific Railroad Company (Union Pacific) is a Delaware corporation that owns and operates a common carrier railroad network in the western half of the United States, including the State of California. Specifically, Union Pacific owns and operates rail main lines connecting the San Francisco Bay Area to Sacramento and points east and north, and to Los Angeles and points east and southeast. Union Pacific is the largest rail carrier in California in terms of both mileage and train operations. Union Pacific's rail network in the Bay Area and the Central Valley is vital to the economic health of California and the nation as a whole. Union Pacific's rail service to customers in the Bay Area and Central Valley is crucial to the future success and growth of those customers.

Union Pacific previously submitted comments on the Bay Area to Central Valley HST Program EIR/EIS by letter dated July 7, 2008, from Mr. Scott Moore to Mr. Quentin L. Kopp of the Authority's Board (copy attached). Union Pacific reaffirms these comments and hereby incorporates them within this letter. By letter dated May 13, 2008, to Mr. Mehdi Morshed, the Authority's Executive Director (copy attached), the undersigned stated that it was not in Union Pacific's best interests to permit any proposed high-speed rail alignment on our rights of way. Union Pacific's position on this matter remains the same.

Union Pacific submits the following comments with reference to the scoping of the joint EIR/EIS for the Merced to Bakersfield segment of the high-speed rail system. These comments are submitted on the assumption that Union Pacific's Fresno Subdivision main line is under study for the HSR alignment. To the extent that the preferred HSR alignment is within or adjacent to the

Burlington Northern Santa Fe Railway Company right of way along this segment, Union Pacific expresses no opinion and these comments would be inapplicable.

- 1) Union Pacific owns the Fresno Subdivision right of way in fee simple between Sacramento and Bakersfield. Union Pacific controls the operation and maintenance of this subdivision. No other carrier or government agency has the right to permit other railroads or rail operators to use any part of this right of way. This single track, CTC-dispatched main line serves the major cities of Stockton, Modesto, Turlock, Merced, Chowchilla, Madera, Fresno, Tulare and Bakersfield. Union Pacific understands, based on the Notices of Preparation for this segment and for the San Jose – Merced segment, that the Authority is considering Union Pacific's Fresno Subdivision for the HSR alignment between Merced, Madera and Fresno, in the central Fresno area, and potentially from Fresno to Bakersfield. Confirming Union Pacific's prior statements, both written and oral, we will not voluntarily make these or any part of the Fresno Subdivision available for the high-speed rail alignment.
- 2) For the majority of its length between Merced and Bakersfield, the Fresno Subdivision right of way is 100 feet in width, with limited wider zones in towns and cities for station grounds. At locations between cities where the right of way is wider, the outer portions generally have been given over to public highways or other utility uses. State Highway 99 closely parallels the Fresno Subdivision between Merced and Fresno, and between Kingsburg and Bakersfield.
- 3) Major rail shippers are located along the Fresno Subdivision. In many instances, these shippers have constructed large unloading and storage facilities, including facilities for feed, grain, and ethanol. These facilities are immediately adjacent to the right of way, generally on the side away from Highway 99. The HSR alignment on or adjacent to the Fresno Subdivision potentially would terminate Union Pacific's ability to serve these shippers, and future shippers needing rail service, leading to serious economic loss to shippers, consumers, the state and the railroad.
- 4) In the Fresno metropolitan area, Union Pacific owns and operates a major freight yard which is crucial to its ability to serve customers on the Fresno Subdivision. This yard, located in the northern part of the city, also serves as a consolidation point for freight shipments to and from regional and short line railroads such as the San Joaquin Valley Railroad. Loss of this consolidation point would be a serious obstacle to these smaller rail carriers. As a result, this yard is not available in whole or in part for the HSR alignment; it is reserved for present and future railroad operation. The right of way north and south of the Fresno Yard, traversing numerous city streets, is reserved for Union Pacific and regional carrier freight operations as well. Union Pacific does not intend voluntarily to make any part of its Fresno area right of way or yard available for the HSR alignment.

Union Pacific likewise is not interested in a consolidated rail corridor in Fresno with any other rail user.

- 5) As a common carrier railroad, Union Pacific is subject to federal law governing abandonment or discontinuance of freight operations. Specifically, the Interstate Commerce Commission Termination Act (49 USC §10501 et seq.) prohibits a railroad from abandoning or discontinuing freight services over main or branch lines of railroad without authority from the federal Surface Transportation Board (STB). Union Pacific's operations over the Fresno Subdivision main line are subject to STB jurisdiction. The Authority may not undertake any action that effectively requires or causes Union Pacific to abandon or discontinue freight service on or over any portion of the Fresno Subdivision unless prior authority from the STB has been obtained. Union Pacific will deem any attempt by HSR to interfere with Union Pacific's operation over the Fresno Subdivision, including service to shippers, or to appropriate any part of its right of way by eminent domain, as an attempt to force a de facto abandonment of freight service in violation of federal law.
- 6) The Authority must be aware of the following matters as it prepares the EIR/EIS:
  - a. Slow speed freight trains and high-speed trains are incompatible on the same tracks at any time and at any location, including at-grade cross-overs. Union Pacific requires overhead clearance of 23 feet 6 inches, which is higher than the Authority contemplates for its electrical system. The Authority must provide grade-separated cross-overs for freight trains at necessary locations. The Authority must not contemplate operation of freight trains on any HSR trackage at any time (and vice-versa). If necessary, completely separate freight trackage must be provided. HSR must comply with all applicable FRA regulations with regard to freight trackage.
  - b. Union Pacific does not believe it is possible or practical to devise any mitigation measures which will permit shared use of any part of the Fresno Subdivision right of way. Union Pacific will not voluntarily make this right of way available to HSR under any circumstances.

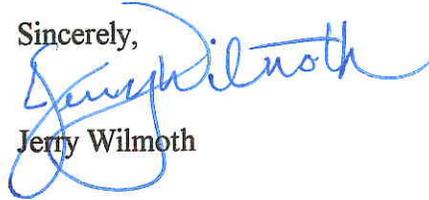
The map attached to the Notice of Preparation (Figure 1) for the San Jose – Merced segment of the HSR indicated that Union Pacific's main line right of way would be utilized by HSR northward from Chowchilla (Henry Miller Road) to Merced. Union Pacific's scoping comments herein are fully applicable to the Chowchilla – Merced segment.

**Jerry Wilmoth**  
General Manager Network Infrastructure

Union Pacific is confident that its concerns listed herein will be fully addressed by the Authority and FRA during the EIR/EIS process. Union Pacific is willing to meet with the Authority and FRA to discuss its concerns about high-speed rail operation and to better understand the Authority's intentions regarding use of Union Pacific rights of way. Following such meeting, Union Pacific will be glad to consider all future requests by the Authority for information concerning operations, construction standards and mapping data.

Please direct all requests and correspondence to the undersigned.

Sincerely,



Jerry Wilmoth



Jerry Wilmoth  
General Manager Network Infrastructure

November 23, 2009

Mr. Dan Leavitt - Deputy Director  
California High-Speed Rail Authority  
Attn: Altamont Pass Rail Project EIR/EIS  
925 L Street, Suite 1425  
Sacramento, CA 95814

Re: Union Pacific Railroad Scoping Comments  
For the Altamont Pass Rail Project EIR/EIS – Due December 4, 2009

Dear High-Speed Rail Authority:

Union Pacific Railroad Company submits the following comments in response to the High-Speed Rail Authority's (Authority) Notice of Preparation pursuant to CEQA dated October 22, 2009, concerning the Altamont Pass Rail Project proposed by the Authority jointly with the San Joaquin Regional Rail Commission (SJRRRC) from Stockton to San Jose via the Altamont Pass. These comments also should be considered as responding to the Notice of Intent pursuant to NEPA as published by the Federal Railroad Administration (FRA) in the Federal Register. Union Pacific understands that the Authority and the FRA will jointly prepare the EIR/EIS for this project.

Union Pacific Railroad Company (Union Pacific) is a Delaware corporation that owns and operates a common carrier railroad network in the western half of the United States, including the State of California. Specifically, Union Pacific owns and operates rail main lines connecting the Stockton – Tracy area with San Jose and other Bay Area points. These rail lines connect with other Union Pacific lines running east and north and with lines to Los Angeles and points east and southeast. Union Pacific is the largest rail carrier in California in terms of both mileage and train operations. Union Pacific's rail network in the Stockton – San Jose – Oakland area and in the Central Valley is vital to the economic health of California and the nation as a whole. Union Pacific rail service to customers in the Bay Area, Central Valley, Stockton, Tracy, Sacramento, Modesto and other major cities is crucial to the future success and growth of those areas and customers.

Union Pacific previously submitted comments on the Bay Area to Central Valley HST Program EIR/EIS by letter dated July 7, 2008, from Mr. Scott Moore to Mr. Quentin L. Kopp of the Authority's Board (copy attached). Union Pacific reaffirms these comments and hereby incorporates them within this letter. By letter dated May 13, 2008, to Mr. Mehdi Morshed, the Authority's Executive Director (copy attached), the undersigned stated that it was not in Union Pacific's best interests to permit any proposed high-speed rail alignment on our rights of way. Union Pacific's position on this matter remains the same.

Union Pacific submits the following comments with reference to the scoping of the joint Altamont Pass Rail Project EIR/EIS for the Stockton to San Jose corridor. These comments are submitted on the assumption that the project corridor via Altamont Pass to San Jose may encroach on or otherwise impact Union Pacific's rights of way which are used as freight and passenger routes . Union Pacific has not seen detailed right of way maps for this corridor project nor has Union Pacific been advised by the Authority as to the definitive route selected for the corridor between Stockton, Tracy and San Jose. Union Pacific must therefore assume, for purposes of these scoping comments, that some or all of its right of way is proposed for use by regional rail commuter trains and ultimately by high-speed rail trains.

With respect to such use, the Authority is advised as follows:

1. Union Pacific owns the following rights of way which may be impacted by the proposed rail corridor development:
  - a) the Oakland Subdivision main line from Fremont (Niles Jct.) to Stockton, comprising the former Western Pacific main line over Altamont Pass.
  - b) the Fresno Subdivision main line from Stockton to Lathrop, comprising the former Southern Pacific main line between these locations.
  - c) the Tracy Subdivision main line from Lathrop to Tracy, comprising a portion of the former Southern Pacific main line across Altamont Pass. The SP main line from Tracy to Fremont (Niles Jct.) over Altamont Pass has been abandoned and conveyed to third parties. The balance of the Tracy Subdivision now extends to Martinez via the line known as the Mococo Line.
  - d) the Niles Subdivision main line from Fremont (Niles Jct.) to Newark.
  - e) the Coast Subdivision main line from Newark to San Jose.
  - f) the Warm Springs Subdivision from Fremont (Niles Jct.) to San Jose.

All of these subdivisions are critically important to Union Pacific for the operation of freight service to and from the Bay Area. BNSF also has certain trackage rights on some of these subdivisions for its own freight operations.
2. SJRRC operates commuter passenger trains under agreement with Union Pacific from Stockton to San Jose over the Fresno, Oakland, Niles and Coast subdivisions. Amtrak and Capitol Corridor operate regional passenger trains over the Niles and Coast Subdivisions, and Amtrak operates the long distance Coast Starlight over the Coast Subdivision.
3. Union Pacific controls the operation and maintenance of these subdivisions. No other carrier or government agency has the right to permit other railroads or rail operators to use any part of these rights of way. These main lines are all CTC-dispatched and consist mainly of single track with small sections of double track. The majority of these rights of way are 100-feet in width, with limited wider zones in towns and cities for station grounds.

4. Major rail shippers are located along these subdivisions. In many instances, these shippers have constructed large unloading and storage facilities. These facilities are immediately adjacent to the right of way, generally on the side away from paralleling highways. Corridor alignment on or adjacent to these subdivisions potentially would terminate Union Pacific's ability to serve some or all of these shippers, or future shippers needing rail service, leading to serious economic loss to shippers, consumers, the state and the railroad

Confirming Union Pacific's prior statements, both written and oral, we will not make any segments or any parts of these subdivisions available for the proposed regional commuter rail corridor or the potential future high-speed rail alignment under any circumstances. Preparation of the Project EIR/EIS should recognize this limitation on available right of way.

As a common carrier railroad, Union Pacific is subject to federal law governing abandonment or discontinuance of freight operations. Specifically, the Interstate Commerce Commission Termination Act (49 USC §10501 et seq.) prohibits a railroad from abandoning or discontinuing freight services over main or branch lines of railroad without authority from the federal Surface Transportation Board (STB). Union Pacific's operation over these subdivisions is subject to STB jurisdiction. The Authority may not undertake any action that effectively requires or causes Union Pacific to abandon or discontinue freight service on or over any portion of these subdivisions unless prior authority from the STB has been obtained. Union Pacific will deem any attempt by HSR to interfere with Union Pacific's operation over these subdivisions, including service to shippers, or to appropriate any part of its right of way by eminent domain, as an attempt to force a de facto abandonment of freight service in violation of federal law.

5. The Authority must be aware of the following matters as it prepares the EIR/EIS:
  - a) Slow speed freight trains and high-speed trains are incompatible on the same tracks at any time and at any location, including at-grade cross-overs. Union Pacific requires overhead clearance of 23 feet 6 inches. The Authority must provide grade-separated cross-overs for freight trains at necessary locations. The Authority must not contemplate operation of freight trains on any HSR trackage at any time (and vice-versa). HSR must comply with all applicable FRA regulations with regard to freight trackage.
  - b) Union Pacific does not believe it is possible or practical to devise any mitigation measures which will permit shared use of any part of these subdivisions for the types of passenger service contemplated by the EIR/EIS. As previously stated, Union Pacific will not voluntarily make these rights of way available to the corridor project under any circumstances. The Authority must not assume that even a small part of Union Pacific's rights of way will be available for the Altamont Rail Project.
  - c) Union Pacific is of the legal opinion that all of its operating right of way, including these subdivisions, is exempt from the state's eminent domain powers.

Union Pacific has read carefully the entire Notice of Preparation for the Altamont Rail Project and has noted many statements to the effect that freight operations and the type of passenger service envisioned by the EIR/EIS are entirely incompatible. Union Pacific concurs in the Authority's assessment in this regard and believes that the Authority actually has no current intention of attempting to take or use any part of our rights of way for passenger train service as contemplated by the EIR/EIS. Nonetheless, Union Pacific deems it prudent to reaffirm its position on joint operations as stated in this scoping letter.

As the Authority is fully aware, SJRRC operates a limited number of commuter passenger trains via the Fresno, Oakland, Niles and Coast subdivisions between Stockton and San Jose. At current freight and passenger train volumes, SJRRC's operations can be accommodated on these lines. However, Union Pacific cannot permit greater passenger train volumes over these subdivisions without extensive capacity improvements.

The Authority is also aware that Amtrak and the Capitol Corridor operate a large number of regional passenger trains between Oakland and San Jose via the Niles and Coast subdivisions. Union Pacific cannot accommodate any further passenger train operation over these subdivisions without extensive capacity improvements.

Accordingly, Union Pacific supports the Authority's intention to provide a new and completely separate rail passenger train corridor for future standard and high-speed rail passenger operation. This corridor must be reserved for rail passenger service without interference with, or use of, Union Pacific's freight main lines as identified herein.

Union Pacific applauds the Authority's recognition that freight main lines are inappropriate for both regional rail commuter service and high-speed trains.

Union Pacific is confident that its concerns listed herein will be fully addressed by the Authority and FRA during the EIR/EIS process. Union Pacific is willing to meet with the Authority and FRA to discuss its concerns about rail corridor operation and to better understand the Authority's intentions regarding potential impacts on Union Pacific rights of way. Following such meeting, Union Pacific will be glad to consider all future requests by the Authority for information concerning operations, construction standards and mapping data.

Please direct all requests and correspondence to the undersigned.

Sincerely,



Jerry S. Wilmoth  
General Manager - Network Infrastructure

Attachments (2)



**Jerry Wilmoth**  
General Manager Network Infrastructure

February 25, 2010

California High-Speed Rail Authority  
Dan Leavitt, Deputy Director  
Attn: Merced to Sacramento HST Project EIR/EIS  
925 L Street, Suite 1425  
Sacramento, CA 95814

Re: Union Pacific Railroad Scoping Comments for Merced to Sacramento Joint EIR/EIS

Dear High-Speed Rail Authority:

Union Pacific Railroad Company appreciates the opportunity to provide the following comments in response to the High-Speed Rail Authority's (Authority) Notice of Preparation pursuant to CEQA dated December 23, 2009, concerning the Project Environmental Impact Report/Environmental Impact Statement for the Merced-to-Sacramento segment of the high-speed train system (HSR). These comments also respond to the Notice of Intent issued on the same date pursuant to NEPA, as published by the Federal Railroad Administration in the Federal Register. Union Pacific understands that the Authority and the FRA will prepare the joint EIR/EIS for this project.

Union Pacific previously submitted comments on the Bay Area-to-Central Valley HST Program EIR/EIS by letter dated July 7, 2008, from Mr. Scott Moore to Mr. Quentin L. Kopp of the Authority's Board (copy attached). Union Pacific reaffirms these comments and hereby incorporates them in this letter. By letter dated May 13, 2008, to Mr. Mehdi Morshed, the Authority's Executive Director (copy attached), I stated that it was not in Union Pacific's interests to permit any proposed high-speed rail alignment on our rights of way. Union Pacific's position has not changed.

Union Pacific Railroad Company (Union Pacific) is a Delaware corporation that owns and operates a common carrier rail network in the western half of the United States, including the State of California. Specifically, Union Pacific owns and operates main lines connecting the San Francisco Bay Area to Sacramento and points east and north, and to Los Angeles and points east and southeast. Union Pacific is the largest rail carrier in California in terms of both mileage and train operations. Union Pacific's rail network in the Bay Area and the Central Valley is vital to the economic health of California and the nation as a whole. Union Pacific's rail service to freight customers in the Bay Area and Central Valley is crucial to the future success and growth of freight customers, as well as regional and local economies.

Union Pacific understands, based on the Notices of Preparation, that the Authority is considering Union Pacific's Fresno Subdivision for the HSR alignment between Sacramento (Elvas) and Merced. Confirming Union Pacific's prior statements, both written and oral, we cannot make this or any part of the Fresno Subdivision right of way available for the high-speed rail alignment.

Union Pacific owns the Fresno Subdivision right of way in fee simple between Sacramento (at a point northeast of downtown Sacramento called Elvas) and Merced. The Fresno Subdivision in this area is a single-track, CTC-dispatched main line serving the major cities of Lodi, Stockton, Manteca, Modesto, Turlock, and Merced. Union Pacific controls operations and maintenance on this subdivision. BNSF also operates freight trains under a trackage rights agreement on this subdivision. Amtrak operates passenger trains on this subdivision between Sacramento and Stockton. The Altamont Commuter Express (ACE) operates commuter trains on this subdivision between Stockton and Lathrop. Only Union Pacific has the right to permit other railroads or rail operators such as these to use any part of this right of way.

For the majority of its length between Merced and Sacramento (Elvas), the Fresno Subdivision right of way is 100 feet in width, with limited wider zones in towns and cities for station grounds. Although the right of way has sometimes been wider between cities, the outer portions have been taken for public highways or utility uses in many locations. All remaining right of way is dedicated to current and future freight rail service and cannot be released for HSR construction.

Union Pacific submits the following specific comments for the scoping of HSR near our Merced-to-Sacramento tracks:

- 1) Many rail shippers are located along the Fresno Subdivision between Sacramento and Merced. Union Pacific has a federal obligation to serve existing shippers and new shippers who request service in the future. HSR cannot cut off these services. Grade separations will be required for rail tracks serving these shippers if the HSR alignment intersects them. As the Authority presumably agrees, at-grade rail-to-rail crossings between freight tracks and HSR would not be safe or acceptable.
- 2) Placing the HSR alignment at ground level adjacent to or near Union Pacific's right of way in areas where no shippers now operate would, in effect, create a rail "desert" that could never in the future be used to site a new, rail-served facility for any shipper. This is especially critical between Manteca and Merced, where U.S. Highway 99 has already cut off one side of Union Pacific's access to potential industrial shippers on one side. An HSR alignment closely paralleling Union Pacific's right of way on the side opposite U.S. 99 would forever prevent future rail-served industrial, agricultural, and logistics development between Merced and Manteca. Future industries in this corridor would have to be served by trucks using local roads, rather than rail.

Even where U.S. 99 is not adjacent to our tracks, the Authority must consider that an HSR alignment immediately next to or near the right of way will forever curtail economic development along that side of the corridor and deprive Union Pacific, its potential shippers, landowners, and cities and counties of valuable commercial opportunities. Such alignment will cause adjacent property owners to lose rail-related development opportunities and potentially to lose present or future market value.

The Authority must evaluate the economic losses and environmental impacts, including the losses to Union Pacific that result from limiting future rail-served development. The Authority should develop mitigation alternatives to limit such impacts by retaining the possibility for future rail-related development along the Fresno Subdivision. Union Pacific strongly urges the Authority to site the HSR alignment far enough from the railroad to permit future industrial development between the railroad and HSR without the need for grade-separated roadway and rail access. Alternatively, HSR could be placed on the opposite side of U.S. 99 from our railroad between Manteca and Merced.

- 3) In the Stockton metropolitan area, Union Pacific owns and operates a major railcar freight yard, which is crucial to our ability to serve customers on the Fresno Subdivision and on the main line over Altamont Pass. This yard, located in the southern part of the city, also serves as a consolidation point for freight shipments to and from branch lines, regional carriers and short line railroads. Further south, at Lathrop, Union Pacific owns and operates a major, rapidly growing intermodal terminal on the parallel Sacramento Subdivision serving the Central Valley and portions of the Bay Area. These facilities are crucial to the future economic development of the entire area and cannot be constrained by the HSR alignment. These facilities and all adjacent expansion property must be reserved for present and future railroad service.
- 4) In the Sacramento metropolitan area, Union Pacific's Martinez Subdivision right of way connects Elvas and the Sacramento Valley Station about 3 miles to the west. The Martinez Subdivision also connects to the Sacramento Subdivision at Haggin, at the middle of this segment. Union Pacific, BNSF, and Caltrans use the Martinez Subdivision as the principle freight and passenger route through the Central Corridor between the Midwest and the Bay Area.

Currently, there is a major project at the Sacramento Valley Station to realign Union Pacific's tracks and relocate the current passenger platforms and related facilities. Any HSR use of Union Pacific's Martinez Subdivision right of way at grade or aerially would unduly constrain Union Pacific's service, as well as the limited expansion opportunities in this highly constrained area. Confirming Union Pacific's prior statements, both written and oral, we cannot

make any part of the Martinez Subdivision available for the high-speed rail alignment, including the aerial portion over the Sacramento Valley Station.

- 5) Certain safety risks are inherent in locating HSR adjacent to a 100-foot-wide, freight rail right of way carrying mainline freight trains at speed. Although Union Pacific and other railroads have made astonishing progress over the years in reducing freight train derailments, major derailments still occur. In most instances, derailments will remain within the confines of the rail right of way, but some derailments may propel rail cars onto the tracks of an adjacent passenger operation. Some derailments also cause fires or explosions. A freight train derailment that coincides with passage of a 200-plus m.p.h. HSR train—which will not have the safety and structural protections of current passenger rail equipment—could result in a catastrophic incident. Although exceedingly rare, a derailment of a high-speed train adjacent to a freight line could also compound the extent of the accident if a freight train were in the area. The Authority must consider and develop mitigation options for these risks that do not require use of Union Pacific’s right of way.
- 6) Freight trains and HSR trains cannot be operated on the same tracks at any time or at any location, including at-grade crossings. Similarly, freight trains should never operate on any HSR trackage. Completely separate trackage and grade separations must be provided.

The Notice of Preparation and accompanying map do not identify Union Pacific’s Sacramento Subdivision (former Western Pacific line) between Stockton and Sacramento as a potential alternative route for the HSR. Union Pacific owns the Sacramento Subdivision right of way in fee simple between Stockton (El Pinal) and Sacramento (Haggin). My May 13, 2008, letter to Mehdi Morshed would be equally applicable to the Sacramento Subdivision.

Union Pacific, however, may be able to accommodate “higher speed” rail operations (up to 110 mph) on a portion of this subdivision. As an alternative to HSR’s other alignment proposals, Union Pacific is willing to enter into discussions with HSR for the joint use of a portion of Union Pacific’s Sacramento Subdivision extending between Stockton (El Pinal) and the vicinity of the former WP Curtis Park Railyard for higher speed operations not exceeding 110 mph. Sacramento RT has a passenger station at the terminus of its Blue Line at Meadowview Station. HSR passengers could perform a cross-platform transfer between HST and Sacramento RT at the Meadowview Station to access the extensive Sacramento RT light rail network in the greater Sacramento region.

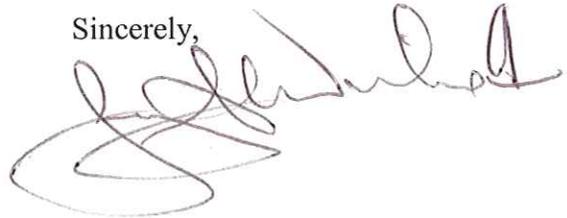
These comments do not address a potential alternative route via the Central California Traction Company (CCT) right of way shown in the Notice of Preparation. The CCT may submit its own scoping comments. Further, to the extent that the preferred HSR alignment is within or adjacent to the BNSF Railway Company (BNSF) right of way on any part of the Merced to Sacramento segment, Union Pacific offers no comments.

Union Pacific is confident that its concerns listed herein will be fully addressed by the Authority during the EIR/EIS process.

Union Pacific is willing to meet with the Authority to discuss its concerns about high-speed rail operation and to better understand the Authority's intentions regarding Union Pacific rights of way. Following such meeting, Union Pacific will be glad to consider all future requests by the Authority for information concerning operations, construction standards and mapping data.

Please direct all requests and correspondence to the undersigned.

Sincerely,

A handwritten signature in dark ink, appearing to be "J. J. ...", written in a cursive style.

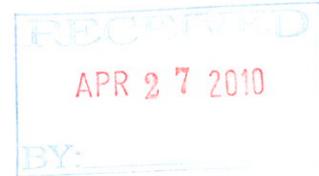
Attachment





**Jerry Wilmoth**  
General Manager Network Infrastructure

April 23, 2010



Dan Leavitt  
Deputy Director  
California High-Speed Rail Authority  
925 L Street, Suite 1425  
Sacramento, California 95814

Attn: Bay Area to Central Valley Revised Draft Program EIR Material Comments

Dear Mr. Leavitt:

In accordance with Section 1.3 of the revised draft program EIR identified above, dated March 4, 2010, Union Pacific Railroad Company submits the following comments regarding the revisions set forth in said revised EIR.

All of Union Pacific's previous written comments and objections submitted to the Authority, for this program segment and all other project and program segments, including the Union Pacific letters attached to the revised EIR, are incorporated herein and remain fully valid and effective.

Chapter 2 – Revised Project Description and Revised Impact Analysis:

San Jose to Gilroy

San Jose (Diridon) to Lick – Union Pacific previously has advised the Authority that it must have no less than twenty-five feet (25') clear and available from right of way line to center line of the No. 1 main track (the UPRR freight and Amtrak track). It appears from the drawings in Chapter 2 of the revised EIR that in some locations, UP's No. 1 main line would be pushed eastward with less than fifteen feet (15') available. This will severely impact our mechanized maintenance functions and greatly hinder our ability to clear derailments. The Authority's plans allowing less than the required twenty-five feet (25') in this segment need to be revised.

Lick to Gilroy – Chapter 2 of the revised EIR appears to locate the high-speed rail corridor immediately adjacent to UP's east right of way line throughout this segment. The proposed alignment provides no buffer space between the high-speed and freight-Caltrain corridors. Where the high-speed corridor is elevated (such as at Morgan Hill), the edge of the elevated platform or structure will be exactly on UP's extended right of way line. Union Pacific previously has advised the Authority that an alignment that abuts UP's right of way line is unacceptable for two reasons: it is potentially unsafe and it prevents all future rail development on that side of the right of way.

Where the high-speed corridor is to be located between UP's right of way and Monterey Highway, UP requests that an adequate buffer space be maintained between the nearest high-speed track and UP's right of way line. The width of such buffer space shall meet UP's existing standards, i.e., be no less than fifty feet (50'), and comply with all FRA regulations and requirements. Where Monterey Highway is not adjacent to the high-speed corridor, UP requests that the corridor right of way be separated from its right of way line by at least one hundred feet (100') and meets all FRA regulations.

Gilroy Station – Chapter 2 indicates that the Gilroy station will be located on UP's right of way east of the existing Caltrain depot. This property is currently held for commercial or industrial development and will not be made available to the Authority. As shown previously, UP will defend against any legal action to take such property by eminent domain. UP has made this position clear to the Authority (and to the City of Gilroy) on many prior occasions and such position has not changed.

Altamont Pass Corridor – Union Pacific has not taken any position regarding this alternative corridor and does not do so at this time. UP has previously advised the Authority concerning the potential use of UP's rights of way in the East Bay and over Altamont Pass. Those comments remain operative.

### Chapter 3 – Union Pacific Railroad's Statements.

This chapter of the revised EIR attaches and discusses UP's previous written statements and comments regarding location of the high-speed corridor on its rights of way. The revised EIR does not accurately characterize and summarize UP's position, i.e., that no part of the high-speed corridor may be located on UP's right of way.

The Authority, in preparing the revised EIR, appears to have disregarded UP's statements and position with reference to the alignment of the high-speed corridor in the Lathrop to Merced and Chowchilla to Merced segments. Based on drawings and photographs in the revised EIR, the Authority intends to locate the high-speed corridor either on UP's right of way (either at-grade or elevated) in Manteca, Modesto, Salida, Turlock, Atwater and Merced, or immediately adjacent thereto. This is not acceptable. UP's position has been made clear from the outset of high-speed rail planning and is plainly stated in the letters attached to the revised EIR.

UP reiterates its position once again: no part of the high-speed rail corridor may be located on (or above, except for overpasses) UP's rights of way at any location. To the extent that the Authority ignores this position, its revised EIR is deficient.

### Chapter 4 – Impacts to Union Pacific Freight Operations.

Section 4.1.4 states the Authority's position as follows:

*HST alignments will be designed to minimize impacts to existing UPRR business-serving spurs where feasible. The Authority will work with UPRR for those locations where design of the HST alignment may affect these business-serving spurs. The following options will be jointly evaluated in concert with the UPRR:*

- *The HST alignment will be grade-separated (trench, tunnel, or aerial) from the UPRR spur.*
- *The Authority will negotiate with the UPRR to acquire the business-serving spur.*
- *If possible, the spur will be reconstructed so as not to interfere with HST operations.*

*With regard to the business implications of acquiring properties adjacent to the railroad operating rights-of-way that may prohibit or reduce the likelihood of future business-serving spurs and associated potential business opportunities for UPRR, the Authority is fully aware that there currently is no prohibition to acquiring property adjacent to existing privately-owned railroad rights-of-way. UPRR will retain authority to serve those businesses on properties or track rights-of-way owned by the UPRR.*

Union Pacific's position on the Authority's plans to locate the high-speed corridor immediately adjacent to UP's right of way has been made quite clear in its comments to the Merced-Sacramento Project Level EIR dated February 25, 2010. Those comments are incorporated herein.

To reiterate the main points of UP's position, no part of the high-speed corridor may be located on any rights of way owned or operated by UP, whether at grade or grade separated. For overpasses, all supporting piers must be completely off the right of way. Locating the high-speed corridor immediately adjacent to UP's right of way raises serious safety issues and creates a barrier against any future rail-served development on that side. California's economic and environmental needs cannot be served if future freight rail development is summarily prohibited by high-speed rail. Adequate free property must be provided adjacent to the right of way to allow for such future rail-served development.

The Authority's position statement as quoted above is unacceptable to Union Pacific. UP will not negotiate with the Authority regarding sale of right of way or rail spurs. UP will protest against and assist its existing rail-served customers in the event that the Authority attempts to take the property and operations of such customers by eminent domain.

The mitigation strategies suggested by the Authority in Section 4.1.5 are unacceptable to Union Pacific. No part of the high-speed corridor may be located on UP's rights of way. Therefore, mitigation for UP is not an issue. UP will not permit any of its trackage or facilities (such as team tracks) to be taken or relocated.

#### Union Pacific's Safety Concerns and Objections.

The revised EIR fails to analyze the safety risks inherent in locating the high-speed corridor immediately adjacent to a narrow, 60 or 100-foot-wide, freight rail right of way carrying mainline freight trains at speed. Although Union Pacific and other railroads over the years have made astonishing progress in reducing freight train derailments, major derailments still occur. In most instances, derailments will remain within the confines of the rail right of way, but some derailments may propel rail cars onto the tracks of an adjacent passenger operation. A freight train derailment that coincides with passage of a 200-plus m.p.h. HSR train – which would not have the safety protections of current passenger rail equipment – could result in one of the worst rail accidents in American history, with dozens or even hundreds of fatalities. The chances of such an occurrence would be small, but even small chances, given enough time, become increasingly likely. The Authority must consider, and develop mitigation options, for this risk. These mitigations should

include moving the high-speed corridor as far from the freight rail tracks as possible and may include FRA-approved crash walls, intrusion detection, and interlocked signal systems. Union Pacific will hold the Authority responsible for a decision that fails to prevent this type of accident.

Conclusion and Summary.

Union Pacific has made its position regarding use of its rights of way for the high-speed rail corridor clear on many occasions. Union Pacific objects to location of the high-speed corridor so close to UP's operations as to be a safety hazard. Finally, Union Pacific objects to the location of the corridor so that it takes existing rail-served customers or acts as a barrier to all future rail-served developments.

Please direct all questions or comments to the undersigned.

Sincerely,



Jerry S. Wilmoth  
General Manager – Network Infrastructure



**UNION PACIFIC RAILROAD**  
 Western Region  
 10031 Foothills Blvd, Roseville, CA 95747



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Dan Leavitt  
 Deputy Director  
 California High-Speed Rail Authority  
 925 L Street, Suite 1425  
 Sacramento, California 95814

55814+3704



*Handwritten signature*





**Jerry Wilmoth**  
General Manager Network Infrastructure

September 1, 2010

Dan Leavitt  
California High-Speed Rail Authority  
925 L Street, Suite 1425  
Sacramento, California 95814

Attn: Bay Area to Central Valley High-Speed Train (HST)  
Revised FINAL Program Environmental Impact Report

Dear Mr. Leavitt:

Union Pacific Railroad Company (Union Pacific) submits the following comments regarding the Standard Response 9 related to Union Pacific Railroad Issue as set forth Chapter 12 of the Bay Area to Central Valley High-Speed Train Revised FINAL Program Environmental Impact Report (FINAL Program EIR).

All of Union Pacific's previous written comments and objections submitted to the Authority, for this program segment and all other project and program segments, including the Union Pacific letters attached to the FINAL Program EIR, are incorporated herein and remain fully valid and effective.

Union Pacific has reviewed statements made by HSR in the FINAL Program EIR regarding impacts on freight operations, as well as, feasibility of Pacheco Pass and Altamont Pass Network alternative in light of Union Pacific position on its right-of-way. Notwithstanding alternative solutions to Union Pacific's concerns or any requirements imposed by regulatory authorities, this letter will remind HSR that Union Pacific will be sole determiner of any other additional conditions, standards or remedies required to minimize the impact HSR may have on any adjacent Union Pacific rights-of-way or facilities.

Please direct all questions or comments to the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Wilmoth", written over a large, stylized circular flourish.



**Attachment B**  
**ICC Termination Act of 1995**  
**Public Law 104-88, Excerpts**



Public Law 104–88  
104th Congress

An Act

To abolish the Interstate Commerce Commission, to amend subtitle IV of title 49, United States Code, to reform economic regulation of transportation, and for other purposes.

Dec. 29, 1995  
[H.R. 2539]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “ICC Termination Act of 1995”.

(b) **TABLE OF CONTENTS.**—

- Sec. 1. Short title; table of contents.  
Sec. 2. Effective date.

ICC Termination  
Act of 1995.  
Government  
organization.  
49 USC 101 note.

**TITLE I—ABOLITION OF INTERSTATE COMMERCE COMMISSION**

- Sec. 101. Abolition.  
Sec. 102. Rail provisions.  
Sec. 103. Motor carrier, water carrier, and freight forwarder provisions.  
Sec. 104. Miscellaneous motor carrier provisions.  
Sec. 105. Creditability of annual leave for purposes of meeting minimum eligibility requirements for an immediate annuity.  
Sec. 106. Pipeline carrier provisions.

**TITLE II—SURFACE TRANSPORTATION BOARD**

- Sec. 201. Title 49 amendment.  
Sec. 202. Reorganization.  
Sec. 203. Transfer of assets and personnel.  
Sec. 204. Saving provisions.  
Sec. 205. References.

**TITLE III—CONFORMING AMENDMENTS**

**Subtitle A—Amendments to United States Code**

- Sec. 301. Title 5 amendments.  
Sec. 302. Title 11 amendments.  
Sec. 303. Title 18 amendments.  
Sec. 304. Internal Revenue Code of 1986 amendments.  
Sec. 305. Title 28 amendments.  
Sec. 306. Title 31 amendments.  
Sec. 307. Title 39 amendments.  
Sec. 308. Title 49 amendments.

**Subtitle B—Other Amendments**

- Sec. 311. Agricultural Adjustment Act of 1938 amendments.  
Sec. 312. Animal Welfare Act amendment.  
Sec. 313. Federal Election Campaign Act of 1971 amendments.  
Sec. 314. Fair Credit Reporting Act amendment.  
Sec. 315. Equal Credit Opportunity Act amendment.  
Sec. 316. Fair Debt Collection Practices Act amendment.  
Sec. 317. National Trails System Act amendments.  
Sec. 318. Clayton Act amendments.  
Sec. 319. Inspector General Act of 1978 amendment.  
Sec. 320. Energy Policy Act of 1992 amendments.

- Sec. 321. Merchant Marine Act, 1920, amendments.  
 Sec. 322. Railway Labor Act amendments.  
 Sec. 323. Railroad Retirement Act of 1974 amendments.  
 Sec. 324. Railroad Unemployment Insurance Act amendments.  
 Sec. 325. Emergency Rail Services Act of 1970 amendments.  
 Sec. 326. Alaska Railroad Transfer Act of 1982 amendments.  
 Sec. 327. Regional Rail Reorganization Act of 1973 amendments.  
 Sec. 328. Milwaukee Railroad Restructuring Act amendment.  
 Sec. 329. Rock Island Railroad Transition and Employee Assistance Act amendments.  
 Sec. 330. Railroad Revitalization and Regulatory Reform Act of 1976 amendments.  
 Sec. 331. Northeast Rail Service Act of 1981 amendments.  
 Sec. 332. Conrail Privatization Act amendment.  
 Sec. 333. Migrant and Seasonal Agricultural Worker Protection Act amendments.  
 Sec. 334. Federal Aviation Administration Authorization Act of 1994.  
 Sec. 335. Termination of certain maritime authority.  
 Sec. 336. Armored Car Industry Reciprocity Act of 1993 amendments.  
 Sec. 337. Labor Management Relations Act, 1947 amendment.  
 Sec. 338. Inlands Waterway Revenue Act of 1978 amendment.  
 Sec. 339. Noise Control Act of 1972 amendment.  
 Sec. 340. Fair Labor Standards Act of 1938 amendment.

#### TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 401. Certain commercial space launch activities.  
 Sec. 402. Destruction of motor vehicles or motor vehicle facilities; wrecking trains.  
 Sec. 403. Violation of grade-crossing laws and regulations.  
 Sec. 404. Miscellaneous title 23 amendments.  
 Sec. 405. Technical amendments.  
 Sec. 406. Fiber drum packaging.  
 Sec. 407. Noncontiguous domestic trade study.  
 Sec. 408. Federal Highway Administration rulemaking.

49 USC 701 note. **SEC. 2. EFFECTIVE DATE.**

Except as otherwise provided in this Act, this Act shall take effect on January 1, 1996.

## TITLE I—ABOLITION OF INTERSTATE COMMERCE COMMISSION

49 USC 701 note. **SEC. 101. ABOLITION.**

The Interstate Commerce Commission is abolished.

### **SEC. 102. RAIL PROVISIONS.**

(a) AMENDMENT.—Subtitle IV of title 49, United States Code, is amended to read as follows:

### “SUBTITLE IV—INTERSTATE TRANSPORTATION

#### “PART A—RAIL

“CHAPTER	Sec.
“101. GENERAL PROVISIONS .....	10101
“105. JURISDICTION .....	10501
“107. RATES .....	10701
“109. LICENSING .....	10901
“111. OPERATIONS .....	11101
“113. FINANCE .....	11301
“115. FEDERAL-STATE RELATIONS .....	11501
“117. ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES ....	11701
“119. CIVIL AND CRIMINAL PENALTIES .....	11901

#### “PART B—MOTOR CARRIERS, WATER CARRIERS, BROKERS, AND FREIGHT FORWARDERS

“CHAPTER	Sec.
“131. GENERAL PROVISIONS .....	13101

“CHAPTER	Sec.
“133. ADMINISTRATIVE PROVISIONS .....	13301
“135. JURISDICTION .....	13501
“137. RATES AND THROUGH ROUTES .....	13701
“139. REGISTRATION .....	13901
“141. OPERATIONS OF CARRIERS .....	14101
“143. FINANCE .....	14301
“145. FEDERAL-STATE RELATIONS .....	14501
“147. ENFORCEMENT; INVESTIGATIONS; RIGHTS; REMEDIES .....	14701
“149. CIVIL AND CRIMINAL PENALTIES .....	14901

“PART C—PIPELINE CARRIERS

“CHAPTER	Sec.
“151. GENERAL PROVISIONS .....	15101
“153. JURISDICTION .....	15301
“155. RATES AND TARIFFS .....	15501
“157. OPERATIONS OF CARRIERS .....	15701
“159. ENFORCEMENT; INVESTIGATIONS, RIGHTS, AND REMEDIES ....	15901
“161. CIVIL AND CRIMINAL PENALTIES .....	16101

“PART A—RAIL

“CHAPTER 101—GENERAL PROVISIONS

“Sec.
“10101. Rail transportation policy.
“10102. Definitions.

“§ 10101. Rail transportation policy

“In regulating the railroad industry, it is the policy of the United States Government—

“(1) to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail;

“(2) to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required;

“(3) to promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by the Board;

“(4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense;

“(5) to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes;

“(6) to maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues which exceed the amount necessary to maintain the rail system and to attract capital;

“(7) to reduce regulatory barriers to entry into and exit from the industry;

“(8) to operate transportation facilities and equipment without detriment to the public health and safety;

“(9) to encourage honest and efficient management of railroads;

“(10) to require rail carriers, to the maximum extent practicable, to rely on individual rate increases, and to limit the use of increases of general applicability;

“(11) to encourage fair wages and safe and suitable working conditions in the railroad industry;

“(12) to prohibit predatory pricing and practices, to avoid undue concentrations of market power, and to prohibit unlawful discrimination;

“(13) to ensure the availability of accurate cost information in regulatory proceedings, while minimizing the burden on rail carriers of developing and maintaining the capability of providing such information;

“(14) to encourage and promote energy conservation; and

“(15) to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part.

#### “§ 10102. Definitions

“In this part—

“(1) ‘Board’ means the Surface Transportation Board;

“(2) ‘car service’ includes (A) the use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars, other vehicles, and special types of equipment used in the transportation of property by a rail carrier, and (B) the supply of trains by a rail carrier;

“(3) ‘control’, when referring to a relationship between persons, includes actual control, legal control, and the power to exercise control, through or by (A) common directors, officers, stockholders, a voting trust, or a holding or investment company, or (B) any other means;

“(4) ‘person’, in addition to its meaning under section 1 of title 1, includes a trustee, receiver, assignee, or personal representative of a person;

“(5) ‘rail carrier’ means a person providing common carrier railroad transportation for compensation, but does not include street, suburban, or interurban electric railways not operated as part of the general system of rail transportation;

“(6) ‘railroad’ includes—

“(A) a bridge, car float, lighter, ferry, and intermodal equipment used by or in connection with a railroad;

“(B) the road used by a rail carrier and owned by it or operated under an agreement; and

“(C) a switch, spur, track, terminal, terminal facility, and a freight depot, yard, and ground, used or necessary for transportation;

“(7) ‘rate’ means a rate or charge for transportation;

“(8) ‘State’ means a State of the United States and the District of Columbia;

“(9) ‘transportation’ includes—

“(A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and

“(B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property; and

“(10) ‘United States’ means the States of the United States and the District of Columbia.

**“CHAPTER 105—JURISDICTION**

“Sec.

“10501. General jurisdiction.

“10502. Authority to exempt rail carrier transportation.

**“§ 10501. General jurisdiction**

“(a)(1) Subject to this chapter, the Board has jurisdiction over transportation by rail carrier that is—

“(A) only by railroad; or

“(B) by railroad and water, when the transportation is under common control, management, or arrangement for a continuous carriage or shipment.

“(2) Jurisdiction under paragraph (1) applies only to transportation in the United States between a place in—

“(A) a State and a place in the same or another State as part of the interstate rail network;

“(B) a State and a place in a territory or possession of the United States;

“(C) a territory or possession of the United States and a place in another such territory or possession;

“(D) a territory or possession of the United States and another place in the same territory or possession;

“(E) the United States and another place in the United States through a foreign country; or

“(F) the United States and a place in a foreign country.

“(b) The jurisdiction of the Board over—

“(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and

“(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,

is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

“(c)(1) In this subsection—

“(A) the term ‘local governmental authority’—

“(i) has the same meaning given that term by section 5302(a) of this title; and

“(ii) includes a person or entity that contracts with the local governmental authority to provide transportation services; and

“(B) the term ‘mass transportation’ means transportation services described in section 5302(a) of this title that are provided by rail.

“(2) Except as provided in paragraph (3), the Board does not have jurisdiction under this part over mass transportation provided by a local governmental authority.

“(3)(A) Notwithstanding paragraph (2) of this subsection, a local governmental authority, described in paragraph (2), is subject to applicable laws of the United States related to—

“(i) safety;

“(ii) the representation of employees for collective bargaining; and

“(iii) employment, retirement, annuity, and unemployment systems or other provisions related to dealings between employees and employers.

“(B) The Board has jurisdiction under sections 11102 and 11103 of this title over transportation provided by a local governmental authority only if the Board finds that such governmental authority meets all of the standards and requirements for being a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission that were in effect immediately before the effective date of the ICC Termination Act of 1995. The enactment of the ICC Termination Act of 1995 shall neither expand nor contract coverage of employees and employers by the Railway Labor Act, the Railroad Retirement Act of 1974, the Railroad Retirement Tax Act, and the Railroad Unemployment Insurance Act.

notify the parties of such finding and publish such finding in the Federal Register.

“(d) In the case of any railroad line subject to sale under subsection (a) of this section, the Board shall, upon the request of the acquiring carrier, require the selling carrier to provide to the acquiring carrier trackage rights to allow a reasonable interchange with the selling carrier or to move power equipment or empty rolling stock between noncontiguous feeder lines operated by the acquiring carrier. The Board shall require the acquiring carrier to provide the selling carrier reasonable compensation for any such trackage rights.

“(e) The Board shall require, to the maximum extent practicable, the use of the employees who would normally have performed work in connection with a railroad line subject to a sale under this section.

“(f) In the case of a railroad line which carried less than 3,000,000 gross ton miles of traffic per mile in the preceding calendar year, whenever a purchasing carrier under this section petitions the Board for joint rates applicable to traffic moving over through routes in which the purchasing carrier may practicably participate, the Board shall, within 30 days after the date such petition is filed and pursuant to section 10705(a) of this title, require the establishment of reasonable joint rates and divisions over such route.

“(g)(1) Any person operating a railroad line acquired under this section may elect to be exempt from any of the provisions of this part, except that such a person may not be exempt from the provisions of chapter 107 of this title with respect to transportation under a joint rate.

“(2) The provisions of paragraph (1) of this subsection shall apply to any line of railroad which was abandoned during the 18-month period immediately prior to October 1, 1980, and was subsequently purchased by a financially responsible person.

Applicability.

“(h) If a purchasing carrier under this section proposes to sell or abandon all or any portion of a purchased railroad line, such purchasing carrier shall offer the right of first refusal with respect to such line or portion thereof to the carrier which sold such line under this section. Such offer shall be made at a price equal to the sum of the price paid by such purchasing carrier to such selling carrier for such line or portion thereof and the fair market value (less deterioration) of any improvements made, as adjusted to reflect inflation.

“(i) Any person operating a railroad line acquired under this section may determine preconditions, such as payment of a subsidy, which must be met by shippers in order to obtain service over such lines, but such operator must notify the shippers on the line of its intention to impose such preconditions.

## “CHAPTER 111—OPERATIONS

### “SUBCHAPTER I—GENERAL REQUIREMENTS

“Sec.

“11101. Common carrier transportation, service, and rates.

“11102. Use of terminal facilities.

“11103. Switch connections and tracks.

### “SUBCHAPTER II—CAR SERVICE

“11121. Criteria.

- "11122. Compensation and practice.
- "11123. Situations requiring immediate action to serve the public.
- "11124. War emergencies; embargoes imposed by carriers.

"SUBCHAPTER III—REPORTS AND RECORDS

- "11141. Definitions.
- "11142. Uniform accounting system.
- "11143. Depreciation charges.
- "11144. Records: form; inspection; preservation.
- "11145. Reports by rail carriers, lessors, and associations.

"SUBCHAPTER IV—RAILROAD COST ACCOUNTING

- "11161. Implementation of cost accounting principles.
- "11162. Rail carrier cost accounting system.
- "11163. Cost availability.
- "11164. Accounting and cost reporting.

"SUBCHAPTER I—GENERAL REQUIREMENTS

**"§ 11101. Common carrier transportation, service, and rates**

"(a) A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall provide the transportation or service on reasonable request. A rail carrier shall not be found to have violated this section because it fulfills its reasonable commitments under contracts authorized under section 10709 of this title before responding to reasonable requests for service. Commitments which deprive a carrier of its ability to respond to reasonable requests for common carrier service are not reasonable.

"(b) A rail carrier shall also provide to any person, on request, the carrier's rates and other service terms. The response by a rail carrier to a request for the carrier's rates and other service terms shall be—

"(1) in writing and forwarded to the requesting person promptly after receipt of the request; or

"(2) promptly made available in electronic form.

"(c) A rail carrier may not increase any common carrier rates or change any common carrier service terms unless 20 days have expired after written or electronic notice is provided to any person who, within the previous 12 months—

"(1) has requested such rates or terms under subsection (b); or

"(2) has made arrangements with the carrier for a shipment that would be subject to such increased rates or changed terms.

"(d) With respect to transportation of agricultural products, in addition to the requirements of subsections (a), (b), and (c), a rail carrier shall publish, make available, and retain for public inspection its common carrier rates, schedules of rates, and other service terms, and any proposed and actual changes to such rates and service terms. For purposes of this subsection, agricultural products shall include grain as defined in section 3 of the United States Grain Standards Act (7 U.S.C. 75) and all products thereof, and fertilizer.

"(e) A rail carrier shall provide transportation or service in accordance with the rates and service terms, and any changes thereto, as published or otherwise made available under subsection (b), (c), or (d).

"(f) The Board shall, by regulation, establish rules to implement this section. The regulations shall provide for immediate disclosure and dissemination of rates and service terms, including classifica-

Publication.  
Public  
information.

Regulations.

tions, rules, and practices, and their effective dates. Final regulations shall be adopted by the Board not later than 180 days after the effective date of the ICC Termination Act of 1995.



**Attachment C**  
**Surface Transportation Board Abandonments**  
**And Alternatives to Abandonment**

**Overview**



**Overview**

**Abandonments**

**and**

**Alternatives to  
Abandonment**

**2008 edition**

**Produced by**  
**Office of Public Assistance, Governmental Affairs, and Compliance**  
**Surface Transportation Board**  
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**Overview**  
**Abandonments and Alternatives to Abandonment**  
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## **A Brief Overview of the Abandonment Process**

Applications for abandonment are normally handled under a "modified procedure". Cases are decided based on the written submissions of the parties.

Most abandonment applications are filed by the rail carrier owning the track to be abandoned. The reason the carrier files the application is that it believes that the line has become unprofitable - keeping lightly used lines in a state of good repair and losing the opportunity to use the money and assets elsewhere in the carrier's system can be costly.

Pleadings filed in opposition to abandonments are usually filed by shippers or receivers who are stationed along the line to be abandoned, but other persons may also file in opposition, provided that they either challenge the railroad's statements as filed or offer evidence to show that the shippers and receivers on the line would suffer more harm by losing the rail service than the carrier would suffer by continuing to provide the service.

Procedures are available for those who would like to purchase the line and assume the common carrier obligation to provide service (contract or non-contract) over the line, or who would like to offer the carrier a subsidy to continue to provide the service. This is called an "Offer of Financial Assistance" (OFA). OFA's will not be considered unless the STB has decided that the line is a candidate for abandonment, but the OFA must be filed with the STB within 10 days of its decision to permit abandonment. Each OFA is reviewed by the STB to determine whether the offeror is financially responsible and whether the offer itself is reasonable. The carrier and the offeror are then given time to negotiate a deal. If they are unable to do so, the offeror may ask the STB to set the terms and conditions of the transfer. Once the STB has set the terms and conditions, the offeror may accept those terms or decline to pursue its offer. The carrier must accept the terms if the offeror accepts them.

If the STB grants the carrier's application for abandonment authority and if there are no reasonable OFA's, the STB will consider requests for Trail Use or Public Use Conditions to be imposed on the abandonment decision, provided that the STB's Section of Environmental Analysis has found that the right-of-way is suitable for those uses. Although both uses are for the benefit of the public, there is a difference in the two conditions. It is entirely permissible to ask for the imposition of both conditions.

The Public Use Condition can encompass any public use, for example, a trail, light rail, or a highway. Public Use conditions are imposed by the STB, whether or not the railroad consents. The term of the condition is 180 days and the purpose is to hold the abandonment request open for that long to give the parties an opportunity to negotiate for the transfer of the right-of-way. The 180-day negotiation period can not be extended.

The Trail Use Condition can also encompass various types of trail and public uses. The Trail proponent must file a request with the STB asserting its willingness to assume financial

responsibility for the right-of-way. The carrier must consent to the imposition of the Trail Use Condition. The term of the condition is 180 days and the purpose is, as with the Public Use Condition, to hold the abandonment request open for that period to give the parties an opportunity to negotiate for the transfer of the right-of-way. The 180-day negotiation period can be extended if both parties request an extension.

In the case of the Public Use Condition and the Trail Use Condition, the parties must reach an agreement. The STB is not authorized to assist in the negotiations or to set the terms and conditions as it can in the OFA process. Nor can the STB decide what kind of trail is appropriate. That is to say, if some people think the trail would be ideal for snowmobiles and dirt bikes, while others think motorized vehicles should be banned from the trail, that decision must be made locally. The STB has no authority to decide what type of trail or public use will be allowed.

The STB, however, is required to give priority to efforts to continue freight rail service over the line. Therefore, the STB is not permitted to consider Trail Use or Public Use requests unless the current carrier on the line can prove that it is no longer profitable to operate and there have been no reasonable Offers of Financial Assistance, or those who have made any Offers of Financial Assistance have decided to no longer pursue their offer.

The remainder of this publication goes into these processes in more detail and provides some abandonment timelines, as well as a sample request for trail use and public use conditions. It also gives information on how to protest abandonments, how to file an Offer of Financial Assistance, and how to submit a Request for Public and/or Trail Use Condition. Additional information about the STB, including examples of the procedures detailed here can be found on the STB's web site at [www.stb.dot.gov](http://www.stb.dot.gov). Click on the E-Library button and then click on "Filings" to see what others have filed in situations similar to yours. If you do not have access to the Internet or you have additional questions, please contact Nancy Beiter or Rudy Saint-Louis in our Office of Governmental and Public Services at 202 245-0230.

## INTRODUCTION

By the mid-1970's, our nation's rail transportation system was in dire financial condition. Rail carriers were faced with increased competition from other modes of transportation (especially trucking), rising labor, fuel and maintenance expenses, and pervasive regulation that made it difficult for rail carriers to get rid of unprofitable lines. These conditions had contributed to the bankruptcy of several prominent rail carriers.

Against this background, Congress enacted a series of new laws, most notably the Staggers Rail Act of 1980 (Staggers Act). Together with the implementing regulations issued by the Interstate Commerce Commission (ICC), the STB's predecessor, this legislation sought to increase the role of the marketplace and to decrease the role of government regulation in shaping rail transportation. In essence, the Staggers Act gave railroads more flexibility to set prices and adjust services as the market requires and thus enabled them to act more competitively. At the same time, the necessity for some regulatory involvement was recognized because rail carriers still have significant market power in particular situations, and because rail transportation is vital to the public and provides a relatively environmentally friendly mode of transportation. The current regulatory scheme governing abandonments and acquisitions seeks to balance these competing considerations.

Where the market has spoken clearly and a line is no longer in use or is used very little, a rail carrier may usually abandon a line subject to appropriate labor protection and environmental conditions. Lines over which no local traffic has moved for two years without any formal complaint have been exempted from traditional regulatory scrutiny and can be abandoned simply by filing a Notice with the STB.

Under the more detailed abandonment application processes for active lines, the Board balances the economic burden of continued operation against the public's need for the service. Permission usually will be given to abandon lines on which there are significant operating losses. On the other hand, the carrier's ability to earn more money by disinvesting from a line and reinvesting its assets elsewhere usually is not sufficient to allow abandonment in the face of a public need for service.

Although it may be easier for carriers to abandon unprofitable lines, it is also now much easier for States and private parties to preserve rail service. The Feeder Railroad Development Program enables any financially responsible person to force a rail carrier to sell a line that has been designated for possible abandonment, even though no abandonment application has been filed. Similarly, once an abandonment application or a Notice has been filed for a line, any financially responsible party can offer to subsidize the carrier's service or force the railroad to sell them the line for continued rail service. To encourage entrepreneurs and the States to operate these lines, the Board has frequently exempted them from many regulatory requirements. Labor protective conditions are not imposed in forced sales.

The ICC Termination Act of 1995 amended the Interstate Commerce Act by abolishing the Interstate Commerce Commission and by establishing the Surface Transportation Board. While many aspects of rail regulation were changed by that Act, the legislation governing rail abandonments was essentially unchanged, but the old ICC rules were revised by the STB. The new statutory reference is 49 U.S.C. 10903. The new rules are codified at 49 CFR Parts 1105 and 1152. A guide to using our web site where these rules are available appears at Appendix I.

## **Chapter 1**

### **REGULATION OF ABANDONMENTS**

Under the ICC Termination Act of 1995 (the Act), a railroad may abandon a line only with the STB's permission. The Board must determine whether the "present or future public convenience and necessity require or permit" the abandonment. In making this determination, the Board balances two competing factors. The first is the need of local communities and shippers for continued service. That need is balanced against the broader public interest in freeing railroads from financial burdens that are a drain on their overall financial health and lessen their ability to operate economically elsewhere.

In most years, the majority of abandonments that are filed with the STB are filed under one of its two "exemption" procedures. The exemption procedures do not exempt the abandonment from regulation altogether, but exempt the carrier from those procedures that require it to produce extensive evidence of its economic losses. Exempt abandonments are still subject to regulatory review when necessary. Lines slated for abandonment are eligible for purchase through forced sale procedures. Railroads are required to provide the information necessary to prepare an environmental review and are subject to labor protective conditions whenever they abandon a line. Notice requirements differ, but notice must be published in the legal notices section of a local public newspaper.

When a rail consumer (shipper or receiver) is notified that its rail service will cease and it does not understand the reason for the cessation and has a continuing need for service, that consumer should contact the STB immediately to begin exploring options for continued service. Sometimes service interruptions are temporary. Railroads may embargo lines in order to make necessary repairs. But otherwise rail carriers have a common carrier obligation to provide service to customers until they have received authority to abandon the line from the STB.

While most rail abandonments are filed by the carrier that owns and operates the line, there are exceptions. Some carriers operate by lease or trackage rights over a line that is owned by someone else. Those carriers may file for authority to cease operations by filing for authority to "discontinue" service. Carriers who own and operate a line may also file for "discontinuance" authority when they do not want to abandon the line. They may need the line for storage or repair, but they want to discontinue their common carrier obligation to provide transportation service over the line. Finally, third parties may file for abandonment authority for lines they neither own nor operate. The standard for granting such authority is very high because a grant of such authority requires a carrier to get rid of an asset in which it has a large investment.

#### **Docket Numbers. Case Names and Service Dates**

When an abandonment is filed at the Board, it is assigned a docket number. Abandonment docket numbers start with the prefix "AB" and the letters are followed by a number that is unique to the carrier. For example, AB 55 numbers all involve abandonments of track operated by CSX Transportation. AB 167 are abandonments by Conrail. The Sub number follows. The Sub number is different for each abandonment filed by the carrier. The Sub number may be followed by a letter. The most frequently used letter is "X". The letter "X" signals an exemption case, rather than a full abandonment application. If you know the docket

number of the abandonment you wish to discuss when you telephone or e-mail someone at the STB, staff will be able to assist you more quickly.

Abandonment dockets also have names that can tell you something about the case. The name usually consists of the name of the carrier, then a dash, then the name of the type of proceeding such as "Abandonment Exemption" and then another dash followed by name of the county or counties and state or states through which the track passes, e.g., AB 32 (Sub-No. 101X) BOSTON & MAINE CORPORATION--ABANDONMENT EXEMPTION--IN HARTFORD COUNTY, CT.

All filings before the Board in a particular case must contain the appropriate docket number. To avoid confusion caused by inadvertent typographical mistakes, we recommend that the case name be included also.

The most important date on a Board decision is the "service date". The "service date" differs from the "decided date" in most cases and it means the date the decision was released to the public. That date is important because it begins the tolling of various time periods described below.

#### **Four Types of Abandonment Dockets**

There are four ways in which rail lines can be abandoned, but all abandonments of rail lines must come before the Surface Transportation Board. There are no *de facto* abandonments. Lines that have not come before the STB or the ICC, no matter how many years or decades they may have been out-of-service, are referred to as "out-of-service", not "abandoned".

The four ways are explained in detail below. The most frequent case is the Class Exemption when all the carrier needs to do is file a Notice of Exemption with the STB to let the Board know that it is abandoning a line that has been out-of-service for two years or longer. While in most instances these dockets receive little scrutiny, it is still possible to protest the abandonment and/or to take advantage of one of the alternatives to abandonment. (See below for more detail)

If the line has not been out-of-service for two years or more, but has seen very little use, the carrier may Petition the Board for an individual exemption. It should be clear to the Board from the evidence in the Petition that the line has seen little use. This evidence can, of course, be challenged. All of the alternatives to abandonment are also available. A full discussion of Petitions for Abandonment begins on page 8.

Abandonment applications are filed by carriers in situations where the carrier believes it cannot continue to operate the line profitably in spite of the fact that the line is used. The burden of proof is on the carrier to show that the line is not profitable and that evidence is subject to challenge. Here too, alternatives to abandonment are available. Further discussion begins on page 10.

Finally, there are abandonment dockets that are not filed by carriers but are filed by third parties. These are called "Adverse Abandonments" and are generally opposed by the carrier who owns the line. Reasons for these kinds of cases vary. They are filed only in rare instances, and so will be discussed in Appendix V.

## **Class Exemptions for Out-of-Service Lines (49 CFR §1152.50)**

By far the type of abandonment or discontinuance case most frequently filed at the STB comes under the class exemption for out-of-service lines. To invoke the class exemption for out-of-service lines, a carrier must file a Notice at the Board certifying that (1) no local traffic has moved on the line for the past 2 years; (2) any overhead traffic that has moved over the line can be rerouted over other lines; and (3) no formal complaint about a lack of service is pending or has been decided in favor of the shipper. Formal complaints are those filed with the STB or those pending in a U.S. District Court and which allege that the carrier has imposed an illegal embargo or has otherwise unlawfully failed to provide service. (See 49 CFR 1152.50(b))

Unlike the traditional application process, no Notice of Intent to abandon, and no amendment to the system diagram is required.<sup>1</sup> However, 10 days before filing the exemption notice with the Board, the railroad must notify the affected State's Public Service Commission or equivalent agency, the U.S. Department of Defense (Military Traffic Management Command, Transportation Engineering Agency, Railroads for National Defense Program), the National Park Service, Recreation Resources Assistance Division, and the U.S. Department of Agriculture, Chief of the Forest Service, of its intention to do so.

The notice should name the railroad, describe the line involved, including United States Postal Service ZIP Codes, indicate that the exemption procedure is being used, and include the approximate date that the notice of exemption will be filed with the Board. The notice must include the following statement "Based on information in our possession, the line (does) (does not) contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it."

Under the Board's environmental rules (49 CFR Part 1105), in every abandonment exemption case, the carrier must also publish a notice in a newspaper of general circulation in each county in which the line is located and certify to the Board that it has done this by the date its notice of exemption is filed. The notice must alert the public to the proposed abandonment, to available reuse alternatives, such as trail use and public use, and to how it may participate in a Board proceeding. Sample newspaper notices are provided in the Appendix to 49 CFR §1105.12.

Also under the environmental rules, at least twenty days prior to the filing of a Notice of Exemption the applicant must file copies of its environmental report with:

- (1) the State Clearinghouse of each State involved (or other State equivalent agency if the State has no clearinghouse);
- (2) the State Environmental Protection Agency of each State involved;
- (3) the State Coastal Zone Management Agency for any state where the proposed activity would affect land or water uses within that State's coastal zone;
- (4) the head of each county (or comparable political entity including any Indian reservation) through which the line goes;
- (5) the appropriate regional offices of the Environmental Protection Agency;
- (6) the U.S. Fish and Wildlife Service;
- (7) the U.S. Army Corps of Engineers;
- (8) the National Park Service;
- (9) the U.S. Soil Conservation Service;

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<sup>1</sup> See p infra describing the full abandonment process

(10) the National Geodetic Survey (formerly known as the Coast and Geodetic Survey) as designated agent for the National Geodetic Survey and the U.S. Geological Survey; and  
(11) any other agencies that have been consulted in preparing the report.

For information regarding the names and addresses of the agencies to be contacted, interested parties may wish to use the contact list now available on the Board's website, under Environmental Matters and then Environmental Contact List. Users are cautioned, however, that addresses listed thereon should be verified to be sure they are up-to-date.

All of this must be completed before filing the Notice of Exemption with the Board. The Notice of Exemption itself has to be filed at least 50 days prior to the intended date of finalization (legally referred to as a "consummation") of the abandonment or discontinuance. After the carrier has filed a letter of consummation, its legal obligation to provide service over the line ceases. Notices of exemption and the letters of consummation are posted on the STB's web site under "E-Library" and "Filings". See more specific instructions on how to use the Board's website in Appendix I. Letters of consummation must be filed within one year of the publication of the Notice in the Federal Register or the abandonment authority will expire. See 49 CFR §1152.29(e).

The Notice itself will include the proposed consummation date along with the other information required by 49 CFR §1152.50(b) (described above) and §1152.22 (a).

1152.22 (a) requires the following things to be filed with Notices of Exemption.

- (1) The exact name of applicant.
- (2) Whether the applicant is a common carrier by railroad subject to the STB's jurisdiction.
- (3) Whether the carrier is seeking abandonment of a line or just a discontinuance of service.
- (4) A detailed map of the subject line on a sheet not larger than 8×10½ inches, drawn to scale, and with the scale shown on it. The map must show, in clear relief, the exact location of the rail line to be abandoned or over which service is to be discontinued and its relation to other rail lines in the area, highways, water routes, and population centers.
- (5) The name, title, and address of any representative of applicant to whom correspondence should be sent.
- (6) A list of all United States Postal Service ZIP Codes that the line proposed for abandonment traverses.
- (4) A statement of whether the properties proposed to be abandoned are appropriate for use for other public purposes, including roads or highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. If the applicant is aware of any restriction on the title to the property, including any reversionary interest, which would affect the transfer of title or the use of property for other than rail purposes, this shall be disclosed.

20 days after receiving the Notice of Exemption, the Board will publish the Notice in the Federal Register. 30 days after that date, the carrier may file its letter of consummation of the abandonment or discontinuance unless the Board stays the exemption or an Offer of Financial Assistance has been received (explained in Chapter 3) or unless a Public Use or Trail Use Condition has been imposed (explained in Chapter 4).

## **Types of Opposition filed to Notices of Exemption.**

Parties who wish to oppose a Notice of Exemption may file a Petition for Stay or a Petition to Reject or to Revoke the Exemption. Petitions for Stay based on transportation concerns must be filed at the Board within 10 days after the Notice of Exemption is published in the Federal Register. Petitions for Stay based on environmental or historic preservation concerns may be filed at any time but should be filed sufficiently in advance of the proposed effective date of the discontinuance or abandonment to allow the Board time to consider and act on the Petition.<sup>2</sup>

Petitions to Reject or Reconsider the Exemption can be filed within 20 days after the Federal Register notice has been published. After the exemption has taken effect, parties may file a Petition to Revoke the Exemption at any time.

The STB will revoke the exemption if the information contained in the Notice of Exemption filed by the carrier is false or misleading. Therefore, if local traffic has moved on the line within the last 2 years, the exemption will be rejected.

Although environmental concerns, public need for continued service, and other issues can be raised in a petition to reconsider or revoke, the Board will disallow the exemption only in extraordinary cases.

If use of the class exemption is disallowed for a line, the railroad is still free to apply for abandonment or discontinuance of the line under the regular application procedures or to seek an individual petition under procedures discussed below.

A time table setting out the deadlines in Notice of Exemption cases is attached as Appendix II.

## **Individual Exemptions**

Sometimes individual lines may not have been out of service for the required 2 years, but may have seen very little traffic and so the carrier may want to abandon the line because providing continued service at a very low volume is not economically feasible. In that situation a carrier may file a Petition for an Exemption - Discontinuance, thus signaling that while it does not qualify for the automatic class exemption described above, it nevertheless believes that the abandonment or discontinuance can be exempted from the extensive evidentiary requirements needed for a full abandonment application.

The only prior notices that the carrier who files a Petition for Exemption must file are those set out in the Board's Environmental Rules (49 CFR Part 1105). Thus, in every abandonment exemption case, the carrier must publish a notice in a newspaper of general circulation in each county in which the line is located and certify to the Board that it has done so when its Petition for Exemption is filed. The notice must alert the public to the proposed abandonment, to available reuse alternatives, such as trail use and public use, and to how it may participate in a Board proceeding. Sample newspaper notices are provided in the Appendix to 49 CFR §1105.12.

Also under the environmental rules, at least twenty days prior to the filing of a Petition for Exemption the applicant must file copies of its environmental report with:

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<sup>2</sup> The criteria for a successful petition for stay are set out on page 9 below.

- (1) The State Clearinghouse of each State involved (or other State equivalent agency if the State has no clearinghouse);
- (2) The State Environmental Protection Agency of each State involved;
- (3) The State Coastal Zone Management Agency for any state where the proposed activity would affect land or water uses within that State's coastal zone;
- (4) The head of each county (or comparable political entity including any Indian reservation) through which the line goes;
- (5) The appropriate regional offices of the Environmental Protection Agency;
- (6) The U.S. Fish and Wildlife Service;
- (7) The U.S. Army Corps of Engineers;
- (8) The National Park Service;
- (9) The U.S. Soil Conservation Service;
- (10) The National Geodetic Survey (formerly known as the Coast and Geodetic Survey) as designated agent for the National Geodetic Survey and the U.S. Geological Survey; and
- (11) Any other agencies that have been consulted in preparing the report.

For information regarding the names and addresses of the agencies to be contacted, interested parties may wish to use the contact list now available on the Board's website, under Environmental Matters and then Environmental Contact List. Users are cautioned, however, that addresses listed thereon should be verified to be sure they are up-to-date.

A petitioner for an abandonment exemption must serve a copy of the petition on the persons receiving notices under §1152.50(d). So while no Notice of Intent to abandon or system diagram map or narrative notice is required,<sup>3</sup> the railroad must notify the affected State's Public Service Commission or equivalent agency, the U.S. Department of Defense (Military Traffic Management Command, Transportation Engineering Agency, Railroads for National Defense Program), The National Park Service, Recreation Resources Assistance Division and the U.S. Department of Agriculture, Chief of the Forest Service.

The Board must publish a notice of the proposed exemption in the Federal Register 20 days after it is filed. No further public notice is given even if the petition is denied. Carriers frequently will serve a copy of their petition on any shippers on the line but are not required to give notice when the petition is granted or denied. Interested persons can be notified individually by the Board, if they ask that their names be placed on the Board's service list<sup>4</sup> in a particular case. Such requests should be e-mailed to [barbara.saddler@stb.dot.gov](mailto:barbara.saddler@stb.dot.gov). Those without access to e-mail may mail requests to the Section of Administrative Services, Office of Proceedings, Surface Transportation Board, 395 E Street, S.W., Washington, D.C. 20423 or fax them to the Section of Administration at 202-245-0464 or 202-245-0465. All requests must contain the appropriate docket number.

A petition for exemption generally will include only a brief description of the relevant facts. It need not be, and typically is not, accompanied by detailed financial or other information. It must, of course, identify the line to be abandoned or discontinued with specificity and include a map showing, in clear relief, the exact location of the rail line to be abandoned or over which service is to be discontinued and its relation to other rail lines in the area, highways,

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<sup>3</sup> See p infra describing the full abandonment process

<sup>4</sup> See Appendix I for instructions as to how to use the Board's web site to access service list information.

routes, and population centers. It must also clearly identify the applicant and its representative and explain why the applicant believes this particular line qualifies for an individual exemption. The application must also contained a draft federal register notice using the sample set out in 49 CFR §1152.60.

Petitions for Exemption are normally decided by the Board within 90 days of being filed.

Letters of Consummation of the abandonment or discontinuance must be filed within a year of the date of a grant of a petition for exemption or the abandonment authority will expire. See 49 CFR §1152.29(e).

### **Opposition to Petitions for (Individual) Exemption**

Persons opposing an exemption must file a response in opposition within 20 days after publication of the Federal Register notice. Offers to purchase or subsidize the line (see Chapter 3, Offers of Financial Assistance) must be filed 120 days after the filing of a petition for exemption or 10 days after the service of the Board's decision granting the exemption, whichever occurs sooner. To receive an individual copy of that decision you must have asked to be put on the service list as instructed, *supra*. (See page 8) You may also look for the decision to be published on the Board's website. Decisions and Notices are posted on the STB website at 10:30 a.m. each weekday morning.

Petitions to stay the effective date of the decision may be filed in either Petition (Individual) or Notice (Class) exemption cases. It should be noted that administrative agencies, like the Courts, have developed firm criteria for staying administrative action. To justify a stay, a petitioner must demonstrate that:

- (1) there is a strong likelihood that it will prevail on the merits;
- (2) it will suffer irreparable harm in the absence of a stay;
- (3) other interested parties will not be substantially harmed by the issuance of a stay; and
- (4) the public interest supports the granting of the stay.

The Board, as do the Courts, gives very careful consideration to each of the above criteria and has required a strong substantive showing on all of the four factors. While the showing of irreparable injury may vary from case to case, in general, injuries that can be corrected later may not be enough to justify a stay. Similarly, in determining the public interest factor, the interests of private litigants must give way to the realization of public purposes. The burden of making a strong showing on all four of the factors rests with the petitioner.

Where possible, parties opposed to the exemption should file a protest with the Board before it acts on the exemption request. Even in the absence of a formal notice requirement, community leaders and shippers often are aware of a railroad's plan to seek an exemption before the carrier files its petition.

Protests and petitions for reconsideration of individual exemptions should include a detailed statement of facts. For example, rail consumers should explain their business operations, quantify their use of the involved rail line, discuss the availability and costs of alternative transportation service and explain the impact loss of the rail service would have on their businesses and the community. To the extent possible, protestants should also try to evaluate critically any financial information and traffic projections submitted by the railroad.

If the Board denies a carrier's request for an exemption, the carrier is free to file for authority to abandon or discontinue the line under the regular application procedures discussed below.

### **Abandonment Applications**

The ICC Termination Act of 1995 (the Act) retains strict filing and procedural requirements for abandonment applications that do not meet the exemption criteria discussed above. Once an abandonment application is filed, however, interested persons have only 45 days to file protests. Since an effective opposition to abandonment may require substantial preparation, the Act requires carriers to give communities and rail consumers advance notice of future abandonment plans for lines that are in active use.

### **System Diagram Maps**

The earliest indication that a railroad intends to abandon a line comes from the carrier's system diagram map. The Act requires a rail carrier to maintain a map of all its rail lines. A Class III carrier<sup>5</sup> may choose to prepare a narrative description of its lines instead of a map. On this system diagram map or in its narrative report, the carrier must identify separately (category 1) any line for which it expects to file an abandonment application (but not a Notice or Petition for Exemption) within the next three years and (category 2) any line that it considers to be a potential candidate for abandonment. The Board will reject an abandonment application if any part includes a line that has not been identified as a category 1 line for at least 60 days before the carrier filed the abandonment application. A carrier must publish its system diagram map or narrative in a newspaper of general circulation in each county containing a rail line in category 1, and publish all subsequent changes to its system diagram map. (See 49 U.S.C. 10903(c)(2) and 49 CFR §1152.10-13.) System diagram maps are updated only when the carrier wishes to change the category for a particular line. Despite their name, however, system diagram maps are not an easy resource to check for a diagram of a carrier's entire system. The original map filed may be large, e.g. 3' x 6'. They are available for viewing in the STB library and you can ask the STB librarian for information on recent updates at [STB.Library@stb.dot.gov](mailto:STB.Library@stb.dot.gov), telephone (202) 245-0406.

When rail consumers and affected communities see the notice of a system diagram map change in the local newspaper legal notices, they are presented with an opportunity to meet to weigh possible opposition to abandonment and to consider alternative means of continuing rail operations by the current railroad or by another operator. For example, rate and service changes which might permit the railroad to operate more efficiently or profitably may be negotiated.

A line need not have been listed in category 2 prior to abandonment, so no weight should be attached to the fact that a line was or was not listed in category 2.

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<sup>5</sup> Class III carriers are the smallest railroads with gross operating revenues of less than approximately \$25,000,000 per annum.

## **Notice of Intent**

In addition to the system diagram map requirement, the STB requires the railroad to file a “Notice of Intent” to file an abandonment application. The railroad must publish this notice once a week for three consecutive weeks in general circulation newspapers in each county where the line is located<sup>6</sup>, send it to each of the significant shippers on the line, send it to the State agency responsible for rail transportation planning, and post it at each agency station and terminal on the line. All these notice requirements must be fulfilled 15-30 days before the application is filed at the STB.

The complete form and all the information this Notice must contain are set out in section 1152.21 of the regulations. These regulations apply only to abandonment applications, not exemptions. The notice describes when and how to file a protest against the proposed abandonment. It also explains how to obtain information on possible subsidy or purchase of the line. Once the Notice of Intent to abandon is received, rail consumers, communities and interested citizens should organize their activities concerning the abandonment and prepare to present their position to the STB and the railroad. For help in preparing a Notice of Intent or in preparing an opposition to an abandonment please contact the STB’s Office of Governmental and Public Affairs at (202) 245-0230.

## **Labor Issues in Abandonment Cases**

The ICC Termination Act provides certain protection for employees of railroads engaging in major changes in operations. It requires railroads to protect their employees from financial loss for a period of up to 6 years and to provide other protection relating to benefits and seniority. Labor issues may arise in any rail transaction. The STB imposes labor protection conditions in most abandonment cases.

The terms of those conditions are set out in Oregon Short Line R. Co. – Abandonment – Goshen, 360 ICC 91 (1979). But those conditions are not imposed in forced sales under the offer of financial assistance provisions of the statute and are imposed only on the seller when there is a forced sale under the Feeder Railroad Development Program.

The Board is not permitted to use its broad exemption power set out in 49 U.S.C. 10502 to excuse carriers from providing employees with the labor protective conditions they are due.

It is important at the beginning of any abandonment to determine what position, if any, rail labor intends to take. There are some abandonments which will have minimal or no effect on rail jobs. In those cases, rail labor often decides not to participate. There are other situations in which labor witnesses play an active role, challenging railroad costing testimony and providing conflicting data in such areas as labor costs, track maintenance, and the current condition of the line and the rolling stock.

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<sup>6</sup> Note the distinction. In exemption cases the newspaper notice requirement is contained in the Board’s environmental rules and only requires publication once.

## Chapter 2

### ALTERNATIVES TO ABANDONMENT Forced Sales and Subsidies

Users and interested parties should consider alternatives to abandonment at the first sign a carrier may be contemplating abandonment. The fact that the existing railroad believes the line is no longer economically viable does not necessarily mean the line cannot continue operations under other arrangements. There are many examples of small short line railroads operating on lines that the main line railroad sought to abandon. Congress and the STB have made it easier to preserve rail service by acquiring or subsidizing rail lines. These options will be briefly outlined below.

To encourage continued service, Congress and the STB have adopted procedures that make it possible to force the sale or subsidy of lines slated for abandonment where the parties cannot agree on the price of a sale or terms of a subsidy.

#### Offer of Financial Assistance (OFA)

##### Filing Due Dates

Under the offer of financial assistance (OFA) procedures, any financially responsible party seeking to continue service on a line approved for abandonment whether by full application or by class or individual exemption may compel the railroad to sell or conduct subsidized operations over the line. The statutory requirements and STB regulations concerning offers of financial assistance are contained at 49 U.S.C. 10904 and 49 CFR §1152.27. Note that in each type of abandonment docket, the rules for OFA's are different so be sure to note the type of docket involved.

In abandonment application cases (see page 10) or in cases where the applicant has filed a Petition for (Individual) Exemption, parties may request data on subsidy and acquisition costs from applicant as soon as Petition or the Notice of Intent to abandon is filed.

In class exemption cases, after the Notice of Exemption is filed, anyone who wishes to file an OFA must first file a formal expression of his/her intention to file an OFA 10 days after the Federal Register publication, stating whether the intention is to purchase the line or to subsidize the current carrier's operations.

The due dates for OFA's to be submitted to the Board are different in each type of abandonment docket.

In class exemption (Notice) cases, OFA's are due 50 days after the publication of the Notice of Exemption in the Federal Register. Note that there are only 20 days between the date the formal expression of intent to file an OFA is due and the date the OFA is due. Since the carrier does not have to provide the data needed to prepare an OFA until after it receives the formal notice of intent, by the time the data is received the potential offeror has very little time to prepare the Offer. It is important to let the Board know if the potential offeror needs additional time by filing a Motion for Extension of Time and serving a copy of that motion on the carrier, especially if the carrier has been slow to produce the required data.

In individual exemption cases (Petitions) and in full abandonment application cases, OFA's are due 10 days after the service of a Board decision granting the exemption or 120 days after the Petition for Exemption is filed whichever is sooner.

### ***Bona Fide Offer***

The OFA statute in 49 U.S.C. 10904(d) requires that the offeror be financially responsible. The Board has delegated to the Director of the Office of Proceedings the authority to determine whether an OFA comes from a financially responsible person or entity and that the offer is therefore *bona fide*. In abandonment application cases and in Petition (Individual) exemption cases, that decision may not be made until after the actual Offer comes in, but in Notice of (Class) Exemption cases, that decision is usually made after the formal notice of intent to file an OFA comes in. Therefore, it is important for the filer of a formal notice of intent in a Notice of (Class) Exemption case to file an informative financial statement with the notice of intent. The STB assumes a State or local government entity to be financially responsible.

### **Information provide by the Carrier to the Offeror**

In abandonment applications, the potential offeror may request subsidy and acquisition data as soon as the Notice of Intent is filed. In Notice of (Class) Exemption cases, the carrier must provide this information as soon as the formal notice of intent to file an OFA is received. In Petition for (Individual) Exemption cases, the potential offeror may request the information as soon as the Petition is filed with the Board.

Information received from the carrier should include (1) an estimate of the minimum purchase price or annual subsidy needed to keep the line in operation, (2) reports on the physical condition of the line, and (3) traffic and other data necessary to determine the amount of annual financial assistance needed to continue service.

This should be enough information for the potential offeror to begin a thorough feasibility study.

### **Contents of Offer and Filing Fee**

The offer must identify the line or portion of the line it wishes to subsidize or purchase. It must also show that the offer to subsidize or purchase the line is reasonable. A subsidy should cover the railroad's avoidable operating losses on the line, plus a reasonable return on the value of the line. An offer to purchase should equal the acquisition cost of the line (the net liquidation or going concern value of the line, whichever is higher). The offeror should explain how its offer was calculated and explain any disparity between its offer and the carrier's estimate. If the offeror is found to be *bona fide* and the offer is reasonable, the Board will postpone the effective date of the abandonment and give the parties a short opportunity to negotiate.

When the Offer is submitted to the Board it must be accompanied by a filing fee. At the time this information bulletin is being revised, the filing fee is \$1,300.00. Filing fees are updated annually, so the offeror should check the Board's current fee for filing OFA's at 49 CFR 1002.2(f) (25).

### **When Negotiations are Successful**

If negotiations are successful and the parties voluntarily enter into a purchase of subsidy agreement which will result in continued rail service, the Board is required to approve the transaction and dismiss the abandonment application.

### **Request to Set Terms and Conditions and Filing Fee**

Should the parties fail to agree on the amount or terms of subsidy or purchase, either party may ask the STB (within 30 days after the offer is filed) to establish terms and conditions. The Board must issue a decision setting the terms and conditions within 30 days after the request is made. The offeror then has 10 days to accept or reject the STB's terms and conditions. If the offeror chooses to accept them, then the railroad by law is forced to comply with them.

Note that the Request to Set Terms and Conditions carries a substantial filing fee so every effort should be made to come to an agreement with the carrier. At the time this information bulletin is being revised, the filing fee is \$19,300.00. Filing fees are updated annually, so the offeror should check the Board's current fee for filing a Request to Set Terms and Conditions at 49 CFR 1002.2(f)(26).

### **Feeder Line Applications**

The Feeder Railroad Development Program was designed as an alternative to abandonment. The statutory procedures for this program are found at 49 U.S.C. 10907 and the Board's regulations are set out at 49 CFR §1151. Congress envisioned this program as a method of allowing rail consumers, communities or other interested parties to acquire rail lines *before* an abandonment application is filed. If a rail line has been listed on a carrier's system diagram map in category 1 or category 2 (see System Diagram Maps page 11 above) and the railroad has not yet filed an application or a Petition for or Notice of Exemption for abandonment it is eligible for a feeder line application. Even if a line is not shown on the carrier's system diagram map as a candidate for potential abandonment, rail users and communities may apply to the Board to compel the railroad to sell the line by proving that the "public convenience and necessity" requires or permits the sale. This test, however, is more difficult to satisfy. The price for such a sale is either agreed to by the parties or set by the Board.

A proceeding begins upon the filing of a feeder line application with the Board. The applicant must show, among other things, that it (1) can pay the net liquidation value of the line or its going concern value, whichever is greater, and (2) has the ability to provide service and cover such costs as operating expenses, rents, and taxes for a least 3 years. The applicant must provide the dates it intends to operate the line and an operating plan that identifies the proposed operator. The operating plan should be detailed, showing what customers will be served, and it should include all proposed interline connections. It should include copies of any agreement between the proposed new owner and the proposed new operator. Applicant should also provide evidence of liability insurance coverage it carries. If the application includes a request for trackage rights over the line, insurance coverage must be at a level sufficient to indemnify the owning railroad against all personal and property damage that may result from negligence on the part of the operator.

The Board has 15 days from the date of filing to reject the application if it does not contain the required information, or 30 days from the date of filing to accept it by filing a Notice in the Federal Register.

Other interested persons have 30 days from the date the application is accepted to file a competing application. The owning carrier and others who wish to protest the application have 60 days after the application is accepted to file their evidence, and applicants have 20 days to respond to those protests.

The STB will publish its decision in the Federal Register. If the Board has accepted the application and agreed to force the sale, the applicant has 10 days from the service date of that decision to accept or reject the Board's terms. If there are competing applications and two or more applicants agree to accept the Board's terms, the owning railroad must select the offeror with whom it wishes to transact business and it must notify the Board and the offerors of its selection. The parties may then agree to a final sale price.

The program is designed to allow the owning carrier to avoid the expense of an abandonment application and enables a new operator to take over the line before it has fallen into serious disrepair. There is a caveat, however, especially in filing feeder line applications for the lines that the carrier has not signaled it is ready to abandon on its system diagram map. It could place the new short line owner and the railroad in an adversarial relationship from the outset because it may force the railroad to sell the line at a price that it may feel is unfair. This is especially problematic if the new carrier will have to establish interchange agreements with the old, selling carrier.

### **Abandoned Lines Acquired by States**

There are special rules for operations over abandoned lines that have been acquired, whether by purchase or lease, by a State. They are located at 49 CFR 1150.21 – 1150.24. In that case the operator can apply for a Modified Certificate of Public Convenience and Necessity. If granted, a copy of the authority granting the Modified Certificate must be served on the Association of American Railroads ([www.aar.org](http://www.aar.org)). In this circumstance only the operator (not the State) acquires a common carrier obligation. By notifying the shippers, the operator may choose to provide service only under certain conditions. The operator need only serve those shippers that comply with the pre-conditions. The operator may commence operations immediately upon filing a notice with the Board, and may cease operations after giving 60 days' notice to the State and the Board. A copy of the notice must be mailed to all users of the line. A list of what must be included in the notice is contained in 49 CFR 1150.23.

### **Voluntary Sales and Operations**

Parties interested in preserving rail service need not wait until abandonment is approved to negotiate a voluntary purchase of a line proposed for abandonment or, for that matter, any active rail line. To make purchases of lines that might otherwise be abandoned more attractive to potential buyers, the STB has exempted these purchases from many regulations. More about these sales options are contained in the booklet entitled "So You Want to Start A Small Railroad" available for downloading from the STB's website.

### Chapter 3. Alternative Uses for Rail Rights-of-Way

The ICC Termination Act (49 U.S.C. 10101 et. seq.) (ICCTA) and the National Rails to Trails Act (16 U.S.C.1247 (d)), along with the STB's regulations (49 CFR 1152.28 and 49 CFR 1158.29), give interested parties the opportunity to negotiate *voluntary* agreements to use a railroad right-of-way, that otherwise would be abandoned, for recreational or other public use, such as a commuter rail service or a highway. These methods of preserving a railroad corridor are known as "rail banking" meaning that the right-of-way is preserved for potential future use as a railroad. Many railroads do not own the land on which their tracks lie. Rather, they have easements or some other type of land use rights over the land of property owners. Unless those easements are "rail banked" by converting them to a trail or other public use, they are extinguished.

States differ in how the land of abandoned railroads is treated if the abandoning carrier does not own the land. But in any case, and even if the carrier does own the land in "fee simple" or outright, the corridor may still be rail banked. Some rights of way that have been rail banked have been reactivated as rail lines. Other lines that have been banked at first have had trail or public use conditions removed and are now abandoned.

The rules for filing a request for public use condition and a trail use condition differ. The sample request that appears as Appendix IV to this booklet is a request for both types of conditions. Proponents often ask for both conditions in the same request in order to take advantage of the benefits of each type of condition. The disadvantage of this approach is that the request for a trail use condition carries a filing fee, while a request for a public use condition does not. The filing fee is currently \$200. Please check the STB's website as per the instructions in Appendix I to access the current fee schedule. (Schedule Item No. 27)

#### Public Use Conditions

Under the terms of ICCTA, when the Board approves or exempts an abandonment it must determine whether the rail line is suitable for alternative public use, such as highways, other forms of mass transit, conservation, energy production or transmission or recreation. If it is, the Board may prohibit the railroad from selling or otherwise disposing of the rail corridor for up to 180 days after the effective date of the decision or notice authorizing abandonment. During the 180 day period, interested persons may negotiate with the rail road to acquire the property for public use. The railroad's consent is unnecessary for the imposition of this negotiating period. If the parties fail to reach an agreement within the 180 day period, the Board must allow the railroad to fully abandon the line and dispose of its property. It cannot require the railroad to sell its property for public use. It cannot extend the public use condition beyond the initial 180 days.

The Board will only impose a public use condition when it has received a request to do so pursuant to 49 CFR 1152.28. The request must:

1. State the condition sought;
2. Explain the public importance of the condition;
3. State the period of time for the condition (which cannot exceed 180 days); and
4. Provide justification for the requested period of time.

As with all pleadings filed at the STB, a "Certificate of Service", indicating that a copy of the public use request has been served on the carrier seeking abandonment at its address of

record or with its attorney's address of record, must appear at the bottom of the request and must be separately signed.

Timing is important. In an application for abandonment, the public use proponent must file the request within 45 days of the filing of the abandonment application which is 25 days after the notice appears in the Federal Register. In exemption cases, whether the exemption is a class exemption (notice) or an individually sought exemption (petition), the public use request must be filed within 20 days after the Federal Register publication appears.

### **Request for Trail Use Condition**

To begin the trail use process, a trail proponent must file a trail use request in the proceeding initiated by the railroad to abandon the line. A trail use request has no effect on the Board's decision whether to give a railroad permission to abandon. It is considered only after the Board has decided to permit abandonment, and there has been no consummated Offer of Financial Assistance to buy or subsidize the line.

Under 49 CFR 1152.29, the trail use request must include:

1. A map which clearly identifies the rail corridor which is proposed for trail use even if the request will cover the entire line that is to be abandoned.

2. A statement of willingness to accept financial responsibility which indicates the trail proponent's willingness to manage the trail, to pay property taxes on the trail and to accept responsibility for any liability arising from the use of the rail corridor as a trail, and

3. An acknowledgement that trail use is subject to the user's continuing to meet the above obligations, and the possibility of future reactivation of rail service on the line.

As with all pleadings filed at the STB, a "Certificate of Service", indicating that a copy of the public use request has been served on the carrier seeking abandonment at its address of record or with its attorney's address of record, must appear at the bottom of the request and must be separately signed.

A sample public use/trail use condition request appears at Appendix V. An original and 10 copies of the request must be filed with the Board along with the proper filing fee.

Unlike the public use condition, the trail use condition will only be imposed if the railroad consents. If the railroad does agree, then a condition is imposed which prohibits the rail carrier from otherwise disposing of the rail corridor for 180 days while the parties negotiate an agreement. The Board has granted extensions of the 180-day negotiating period. Both parties must agree to the request and a filing fee must accompany the request for an extension.

As with the public use condition, timing is very important. In an abandonment application, trail use requests must be filed within 45 days of the filing of the application which is 25 days after the publication of the application in the Federal Register. The rail carrier seeking abandonment authority then has 15 days to notify the Board whether and with whom (if more than one proponent has submitted a request) it intends to negotiate a trail use agreement. In class exemption cases a trail use request must be filed within 10 days of the appearance of the notice in the Federal Register. Note that this is 10 days earlier than a public use condition is due. In an individual exemption case (petition), a trail use request must be filed within 20 days of the appearance of the Federal Register notice. In both types of exemption cases the carrier has 10 days after the trail use request is received to notify the Board whether and with whom it intends to negotiate a trail use agreement.

## Appendix I

### How to Use the Board's Web Site

The address of the STB website is [www.stb.dot.gov](http://www.stb.dot.gov). Please enter this in the address line of your browser. You will then be able to view 8 dark blue tabs spread across the top of the home page underneath the seal.

**E-Filing** is where you can file all formal filings (protests, petitions, oppositions, motions, notices) that do **not** require a filing fee. To file a formal filing you must create a log-in account. There is no charge to do that. To file comments you will not have to create a log-in account. When you file a formal filing you will become an official Party of Record, meaning that you will receive copies of all filings, decisions and notices in the case and other Parties of Record must serve you with copies of what they file. When you file Comments, you do not become a party of record, but your comments will become party of the public record in the case.

**E-Library** reveals a drop-down menu, the choices are

**Service Lists:** When you select this tab, you will be asked for the docket number of the case that interests you. You will be given a list of all of the Parties of Record in that case along with their addresses. These are the people you must "serve" with a copy of your filing.

**Decisions & Notices:** When you select this tab you will see a listing of all of the decisions and notices the Board has issued. On the first page they are in date order with the most recent first. All decisions and notices for the day are posted on this page at 10:30 a.m. weekdays (excluding holidays). To view decisions and notices in a particular abandonment docket, click on the small phrase "Full Text Search" that appears underneath the yellow shaded area. You can then feed in the docket number of the abandonment you are looking for in the appropriate search boxes and then hit the "Submit" button at the bottom of the page. A list of decisions and notices in your docket will appear. Click on the blue document id number and you will get access to a PDF version of the decision.

**STB Reports:** Significant decisions of the Surface Transportation Board are printed in bound volumes (STB Reports), available in the STB's library. The STB Reports can also be viewed electronically. There are currently six published volumes, one for each of the years 1996 through 1998, one for the year 1999 and the first six months of the year 2000, one for the last four months of the year 2000 through the year 2001, and one for year 2002 and the first five months of year 2003.

**Filings:** When you select this tab you will see a listing of all of the filings and pleadings the Board has received at least since 2002. On the first page they are in date order with the most recent first. All filings for the day are posted within 24 hours of receipt (excluding weekends and holidays), although you may see the filing listed before the actual PDF version is scanned in and attached. To view filings and pleadings in a particular abandonment docket, click on the small phrase "Full Text Search" that appears underneath the yellow shaded area. You can then feed in the docket number of the abandonment you are looking for in the appropriate search boxes and then hit the "Submit" button at the bottom of the page. A list of filings in your docket will appear. Click on the blue document id number and you will get access to a PDF version of the filing. Older filings than 2002 are being loaded as staff is able to do so.

**Recordations:** Are filings by banks and lenders to record their security interest in rolling stock. This tab is not relevant for abandonments.

**Correspondence:** This tab gives access to the environmental correspondence filed in each docket at the STB. The search system for this tab is different. When you click on Full Text Search, only one search window will open. You must feed in the docket number with an underscore between each part of the number. For example, you would feed in AB\_6\_384\_X to get the environmental correspondence in AB 6 (Sub-No. 384X).

#### **Research Aids:**

**Statutes:** This tab gives you a connection to the Government Printing Office's (GPO) web site and the STB sections of the United States Code. The U.S.C. contains the all the sections of the Board's enabling legislation, The ICC Termination Act of 1995 (ICCTA). The ICCTA is enacted by Congress and cannot be changed by the STB.

**Rules:** This tab gives you a connection to the GPO website and the STB's rules (regulations). Rules are enacted by the STB and can be changed, but in most instances they can only be changed in a formal rule making procedure that follows the procedures outlined in the Administrative Procedures Act. The STB rules are in Title 49 of the Code of Federal Regulations (CFR), beginning with part 1000. The current **Fees** are part of the rules

and appear in a schedule found at 49 CFR 1002.2. The current **Abandonment Rules** are found at 49 CFR Part 1152. The current **Environmental Rules** are found at 49 CFR Part 1105.

**Federal Register:** This tab links you to the Federal Register's web site.

**Legislation:** This tab is a link to Thomas, the Library of Congress's web site that helps you find pending legislation.

**Transcripts:** This tab links to a list of transcripts and statements by STB Board members made at oral hearings and arguments before the Board. Hearings and Oral Arguments are almost never held in abandonment dockets.

**E-Publications:** This tab links to this publication as well as others.

Other tabs of interest in abandonment cases are:

**Public Information:** Choose "Resources" for links to instructions on **How to File** and to the schedule of current **Filing Fees** and to a brief discussion of **Abandonments**.

**About STB:** will give you links to the STB's organizational chart as well as to the names and bios of current Board members and the Chairman.

**To see examples of filings:** Go to E-Library, select Filings, then click on Full Text Search. Enter AB in the first search window and then go down to the line marked "Filing Type" and scroll down to the type of filing you want to see, then click Submit

**For filing fees:** Go to Public Information, then Resources, then Filing Fees

## Appendix II

### Notice of (Class) Exemption Time Table

**D minus 20 days:** Notices of Environmental Report must be sent to required agencies. Newspaper notices should be filed.

**D minus 10 days:** Notices of expectation that Notice of Exemption will be filed must be filed with all of the agencies set out in 49 CFR §1152.50

**D:** Date of Filing Notice of Exemption at the Board

**D + 20 days:** Board published Notice of Exemption in the Federal Register

**D + 30 days:** Notice of Intent to File OFA due, Request for Trail Use due

**D + 40 days:** Deadline for filing requests for Public Use Conditions.  
Deadline for filing Petitions to Stay the exemption.

Anytime between D and D+50 days: Stay requests based on environmental or historic preservation concern due, but should be filed to give the Board enough time to act prior to the proposed effective date of consummation (this date must be identified in the Notice of Exemption).

**D + 40 days:** Petitions to reject or reconsider the Notice of Exemption due.

**D + 50 days:** Letter of Consummation of abandonment or discontinuance may be filed with the Board.  
Offers to subsidize or purchase the line (OFA's) due

One year after publication in Federal Register: Letter of Consummation of abandonment or discontinuance must be filed with the Board or abandonment/discontinuance authority will expire (this does not apply if a trail use/public use agreement is reached or the Board authorized negotiation period has not expired)

#### Other Opposition

Opposing parties may file a Petition to Revoke the Exemption at any time after the Notice of Exemption is filed, even after the abandonment has been consummated.

## Appendix III

### Petition for (Individual) Exemption Time Table

**D minus 20 days:** Notices of Environmental Report must be sent to required agencies.  
Newspaper notices should be filed.

**D:** Date of Filing Petition for Exemption at the Board

**D+20 days:** Notice of Petition filed in the Federal Register.

**D+40 days:** All filings in opposition to Petition are due; Requests for Public Use Condition due; Requests for Trail Use Condition due.

**D+120 days or 10 days after service date of Board's granting of Petition, whichever is sooner:** Offers of Financial Assistance due

**One year after publication in Federal Register:** Letter of Consummation of abandonment or discontinuance must be filed with the Board or abandonment/discontinuance authority will expire (this does not apply if a trail use/public use agreement is reached or the Board authorized negotiation period has not expired)

## Appendix IV

### Abandonment Application Time Table

- D - 60 days: Deadline for identifying line as category 1 on System Diagram Map**
- D - 30 days to D - 15 days: Opportunity to file Notice of Intent (to file)**
- D - 20 days: Due date for railroad to file environmental and/or historic reports on required agencies**
- D: Application filed, including applicant's case in chief**
- D + 10: Due date for Oral Hearing requests**
- D + 15: Due date for Board decision on Oral Hearing requests**
- D + 20: Notice of Application published in Federal Register**
- D + 45: Due date for Protests and comments, including opposition's case in chief.  
Due date for Public Use Requests, Trail Use Requests**
- D + 60: Due date for applicant's reply to opposition case and for applicant's response to trail use requests**
- D + 110: Due date for Board to issue decision on the merits**
- D + 120 or 10 after service of Board's decision on merits, whichever is sooner:  
Offers of Financial Assistance due<sup>7</sup>**

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<sup>7</sup> Trail use requests will not be granted by the STB until all OFA's have been rejected.

## Appendix V

### Sample Public Use Condition and Trail Use Request

Below is a sample of a request for both Public Use Condition and Trail Use Request. The blank spaces and items in italics in the brackets are to be completed by the prospective trail or public use agency or group to reflect the specific circumstances. The items in brackets suggest options. The request must be mailed to the railroad and filed with the Surface Transportation Board.

[Date]

Secretary  
Surface Transportation Board  
395 E Street, S.W.,  
Washington, D.C. 20423-0001

Re: [STB Docket Number] [STB Case Name]

Dear Secretary:

This request is filed on behalf of [*name of person, group or corporation proposing the trail use and/or public use condition*], which is a [*political subdivision, government, public/private interest organization, individual*] located at [*address*], hereinafter referred to as “proponent”.

Proponent requests issuance of a Public Use Condition as well as an Interim Trail Use Condition rather than an outright abandonment authorization between [*endpoint A, preferably identified by milepost number*] and [*endpoint B, preferably identified by milepost number*].

#### **A. Request for Public Use Condition**

Proponent asks the STB to find that this property is suitable for other public use and to place the following conditions on the abandonment:

1. An order prohibiting the carrier from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms. Justification for this condition is [*briefly explain how proponent hopes to use the corridor, e.g. the corridor is along a river and would make a beautiful trail, the corridor connects a suburb with a metropolis and would make an excellent commuter line, the corridor is suitable for use by fiber optic cable etc.*]. The time period sought is 180 days from the effective date of the abandonment authorization. Proponent needs this much time [*explain reasons for the proposed time period such as, to negotiate with the carrier, to complete a trail plan, to obtain title information etc.*]
2. An order barring removal of structures such as [*bridges, trestles, culverts, tunnels, track, ties, spikes – Include in this request only those things that proponent might need or want for the proposed future use*]. The justification for this condition is that these things have considerable value for [*describe how proponent will use the structures asked to be preserved*]. The time period requested is 180 days from the effective date of the abandonment authorization for the same reason as indicated above.

#### **B. Request for Interim Trail Use**

The railroad right-of-way is suitable for railbanking. In addition to the public use conditions sought above, proponent also makes the following request:

#### **Statement of Willingness to Assume Financial Responsibility**

In order to establish interim trail use under section 8(d) of the National Trails System Act, 16 U.S.C. §1247(d) and 49 CFR §1152.29, proponent is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of , and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by and operated by the railroad. {NB. This language **must** be included in the request or the STB cannot grant the trail use condition. If the proponent is immune from liability it need only indemnify the railroad against any potential liability.)

The property extends from railroad milepost [# ], near [*nearest station, town or village*] to milepost [#] near [*nearest station, town or village*] a distance of [#] miles in [*County, State*]. The right of way is [*part of*] a line proposed for abandonment in the docket referenced above.

A map depicting the portion of the right-of-way to be subject to the public use/trail use condition requested is attached.

[*Full name of proponent*] acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

By my signature below I hereby certify that a copy of this notice was served by [*U.S. Mail, postage prepaid or Federal Express or hand delivered etc.*] upon [*legal representative of railroad in this docket, address*], this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Respectfully submitted

[*Name*]

[*address, phone number, email*]

On behalf of:

[*Proponent*]

## Appendix VI.

### Adverse (Third Party) Abandonments

Subject to establishing a proper interest in an abandonment proposal, any person may institute a proceeding for the issuance of a certificate of public convenience and necessity authorizing abandonment of a rail line.

On occasion, abandonment applications are filed by persons other than railroads. If a line is not currently being used and if the corridor could be used for another public purpose, it might be a good candidate for an adverse abandonment. Since the carrier against whom the abandonment is filed is the owner of the track and, at some point made an investment in it, the Board scrutinizes these types of abandonment applications very carefully.

However, the Board will not allow a carrier to continue a line in embargoed status of no service indefinitely in the face of a national transportation policy that encourages unused rights of way to be utilized for other public purposes.

In deciding an adverse abandonment case the Board will weigh the interests of the carrier or owner of the line, any users of the line or potential users, the interests of the public, the interests of interstate commerce and the interstate rail system.

Adverse parties must file a full abandonment application. They are not permitted to take advantage of the class and individual exemption procedures outlined in this handbook.

The first thing to do in an adverse abandonment case is to file with the STB a Petition for Waiver of the filing requirements because a third party will not have all of the information required to be filed in a full abandonment application. See 49 CFR 1152.22. The petition should specify the sections of §1152.22 for which a waiver is sought and the reasons why it should be granted. The Petition must be served on the carrier at its registered address. To see an example of what kinds of provisions the Board will waive and which ones it will not, see the Board's decision in AB-1014, *Denver & Rio Grande Historical Foundation – Adverse Abandonment- In Mineral Co., CO*, served October 18, 2007. A copy of this decision is available on the STB's website. (See instructions at Appendix I, E-Library, Decisions and Notices). You should wait for the Board's ruling on the Petition before you file an application so you are know what information you must include in the application.

Most adverse abandonments applications are not granted over the carrier's objection. Arguments in favor of the abandonment should be very persuasive and there should be little realistic chance that the railroad will be put back in service.

The filing fee for adverse abandonment cases is quite high, but the fee will be waived where the applicant is a government entity. At this writing the fee is \$18,900.00. You should check item 21 on the fee schedule.