

Decision I.D. # 46994

Service Date: May 2, 2019

FINAL ENVIRONMENTAL ASSESSMENT

DOCKET NO. FD 36186

**Texas Railway Exchange
Construction and Operation Exemption
in Galveston County, Texas**



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SURFACE TRANSPORTATION BOARD
Washington, DC 20423
Office of Environmental Analysis

May 2, 2019

Dear Reader:

The Surface Transportation Board's Office of Environmental Analysis (OEA) is pleased to provide you with the enclosed Final Environmental Assessment (Final EA) for the proposal of Texas Railway Exchange, LLC (TREX) to construct and operate approximately 2,800 feet or less of new rail line in the City of Galveston, Galveston County, Texas. The proposed rail line would connect the Texas International Terminals facility (the Terminal) to an existing rail line owned and operated by BNSF Railway Company (BNSF). The Terminal currently receives BNSF traffic only through a reciprocal switching arrangement with Union Pacific Railroad (UP). The proposed rail line would increase the efficiency of rail service at the Terminal by allowing BNSF traffic to access the Terminal directly. In order to implement the TREX project, TREX would need to cross an existing line of the UP.

On February 22, 2019, OEA issued a Draft EA addressing the potential impacts of the proposed rail line, including the proposed crossing of the existing UP rail line, for public review and comment. The 20-day comment period ended on March 14, 2019. OEA received four comments during the comment period. TREX, through its legal counsel, requested some corrections to the Draft EA and several modifications to the environmental mitigation measures recommended in the Draft EA. The Texas Department of Transportation, Rail Division submitted comments noting that TREX should adhere to applicable design standards during construction of the proposed rail line. The Texas General Land Office submitted comments indicating that the proposed project would likely not have adverse impacts on coastal natural resource areas. The Texas Department of Wildlife and Parks submitted comments recommending additional environmental mitigation measures.

This Final EA includes OEA's final conclusions on potential impacts that may result from the proposed rail line, including the proposed crossing of the existing UP rail line, and

includes OEA's final recommendations, including OEA's final recommended mitigation measures. The Board will now consider the complete environmental record, including the Draft EA, all comments received, and the Final EA in making its final decision whether to approve the rail line construction and operation proposed by TREX, including the proposed crossing. If the Board approves the proposal, it will also determine what, if any, environmental mitigation to impose.

OEA has provided advanced notification of the availability of this Final EA to all parties of record for this docket and parties on the environmental distribution list, which includes key government agencies, federally recognized tribes, and other appropriate entities. The Final EA is available for review on the Board's website at www.stb.gov and OEA will provide hard copies by mail on request. Additionally, hard copies of the Final EA will be made available for review at the following locations:

Rosenberg Library
(Galveston County Library System)
2310 Sealy Street
Galveston TX 77550

Jack K. Williams Library
Texas A&M University at Galveston
Building 3010; 200 Seawolf Parkway
Galveston TX 7755

David Glen Hunt Memorial Library
Galveston College
4015 Avenue Q
Galveston TX 7755

Galveston City Hall
823 Rosenberg
Galveston TX 7755

If you have any questions regarding this Final EA, please contact Joshua Wayland, the OEA Project Manager for this case, by phone at (202) 245-0330, fax at (202) 245-0454, or e-mail at joshua.wayland@stb.gov. Thank you for your participation and interest in the environmental review process for this proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Victoria Rutson". The signature is fluid and cursive, with a large initial "V" and a stylized "R".

Victoria Rutson
Director
Office of Environmental Analysis

SUMMARY OF MAJOR CONCLUSIONS IN THIS FINAL ENVIRONMENTAL ASSESSMENT

The Surface Transportation Board's (the Board's) Office of Environmental Analysis (OEA) has conducted an extensive review of the potential beneficial and adverse environmental impacts that could result from Texas Railway Exchange's (TREX's) proposal to construct and operate approximately 2,800 feet of new rail line, including a proposed crossing of an existing Union Pacific Railroad Company (UP) rail line, in the City of Galveston, Galveston County, Texas. OEA has reviewed and considered the comments submitted during the environmental consultation process and the 20-day comment period of the Draft EA and has reached the following major conclusions:

- The proposed rail line would extend from an existing rail line operated by BNSF Railway Company (BNSF) to the Texas International Terminals (the Terminal) facility on the Galveston Ship Channel and would provide an alternative rail transportation option for rail traffic that is currently provided through a reciprocal switching service provided by UP.
- On February 22, 2019, TREX filed a crossing petition with the Board under 49 U.S.C. § 10901(d) in order to construct a new rail crossing over an existing line of railroad owned and operated by UP. A crossing over the UP line would be necessary in order to implement the proposed rail line. The potential environmental impacts of the proposed crossing are evaluated in the Draft EA and in this Final EA. TREX's crossing petition is pending before the Board in Docket No. FD 36186 (Sub-No. 1).
- In addition to the crossing over the existing UP rail line, the proposed rail line would also result in the construction of a new at-grade rail crossing of Port Industrial Road, a small public road that provides access to the Terminal and other local industrial facilities.
- OEA estimates that rail traffic on the proposed rail line and the proposed crossing of the existing UP rail line would consist of approximately four unit or sub-unit trains per week, on average, including both incoming and outgoing trains. Those trains would carry commodities including crude oil, ethanol, and other refined liquids, along with potash, fertilizers, and other dry bulk material. Rail traffic on the proposed line would be diverted from the existing switching arrangement provided by UP. Therefore, total rail traffic in the project area would not increase as a result of TREX's proposal.

- OEA considered the potential environmental impacts of two Build Alternatives (the Green Alternative and the Blue Alternative) and two design options for each Build Alternative (Option A and Option B), as well as the No-Action Alternative. The alignments of the Green and Blue Alternatives would be similar, but the Blue Alternative would require TREX to cross either approximately 947 or approximately 1,203 feet of UP property, depending on the design option, while the Green Alternative would require TREX to cross either approximately 548 or approximately 823 feet of UP property, depending on the design option. TREX's ability to cross the existing UP line depends on whether the Board authorizes the proposed crossing in a future Board decision in Docket No. FD 36186 (Sub-No. 1).
- Under both the Green Alternative and the Blue Alternative, the construction footprint of the proposed rail line, including the proposed crossing of the existing UP rail line, would be less than four acres in area and would be located in a heavily developed area that is dominated by land currently used for rail transportation and other industrial activities.
- Because the proposed rail line would increase the efficiency with which trains move into and out of the Terminal, the proposed construction and operation, including construction of the proposed crossing over the existing UP rail line, would have a beneficial impact on the local transportation system and on public safety at at-grade road crossings.
- Impacts from the proposed rail line and the proposed crossing over the existing UP rail line to geology and soils would be minimal because much of the underlying soil has been previously disturbed and prepared for rail uses as part of past track improvements on adjacent existing rail lines.
- The Green Alternative would require the construction of a new culvert and the extension of an existing culvert to cross two tidal water features, resulting in impacts to 0.415 acres of wetlands and waterways. The Blue Alternative would require the construction of a new culvert to cross one tidal water feature and would impact 0.099 acres of wetlands and waterways. Under either Build Alternative, impacts to wetlands and waterways would not be significant and would be mitigated by the mitigation measures recommended by OEA in this Final EA (see mitigation measures MM-12, MM-13, and MM-14 in Chapter 3, *Final Conclusions and Recommended Mitigation*), including future consultation with the U.S. Army Corps of Engineers (USACE).

- Because rail traffic on the proposed rail line and over the proposed crossing of the existing UP rail line would be diverted from an existing rail line, the proposed construction and operation, including the proposed crossing, would have no negative impact on local air quality. Air emissions could decrease as a result of increased transportation efficiency in the project area.
- Because the project area is industrial, very little vegetation and wildlife habitat exists in the project area and potential impacts to biological resources would be minimal. During field investigations, some habitat was observed in the project area that is suitable for the red knot (*Calidris canutus rufa*), a federally listed threatened bird species and the eastern black rail (*Laterallus jamaicensis*), a bird species that has been proposed for listing as threatened. The project area does not include critical habitat for those species or any other federally listed threatened or endangered species and no individuals of those or other federally protected species were observed during site investigations. Therefore, OEA has concluded that the proposed construction and operation, including the proposed crossing of the existing UP rail line under either the Green or Blue alternative, may affect, but is not likely to adversely affect the red knot and the eastern black rail.
- During field investigations, some suitable habitat was also observed in the project area for additional bird species that are listed as protected by the State of Texas. Those species are the brown pelican (*Pelecanus occidentalis*) and the white-faced ibis (*Plegadis chihi*). No individuals of those or other protected species were observed during site investigations. Therefore, minor impacts to state listed protected species may occur from construction and operation of the proposed rail line and the proposed crossing of the existing UP rail line.
- Because the anticipated level of rail traffic on the proposed rail line and the proposed crossing of the existing UP rail line would be less than one train per day, on average, and because there are no sensitive noise receptors in the vicinity of the project footprint, noise and vibration impacts from the proposed construction and operation, including the proposed crossing, would be minimal.
- The Texas Historical Commission (the Texas State Historic Preservation Officer or Texas SHPO) has submitted comments stating that no historic properties would be affected by TREX's proposal. Based on site inspections and independent review of available data, OEA concurs with the Texas SHPO and concludes that construction and operation of the

proposed rail line and the proposed crossing of the existing UP rail line would have no effect on historic or cultural resources.

- Because soil disturbance related to the construction of the proposed rail line, including the proposed crossing, would be minimal and because the volume of hazardous materials transported through the project area would not increase as a result of TREX's proposal, no impacts related to hazardous materials or wastes would occur.
- The two Build Alternatives differ in terms of their potential impacts to wetlands and waterways and in the amount of UP property that each alternative would cross. The Green Alternative would cross either approximately 548 feet or approximately 823 feet of UP property, depending on the design option, and would impact 0.415 acres of wetlands and waterways. The Blue Alternative would avoid wetlands by crossing additional UP property. The Blue Alternative would cross either approximately 947 or approximately 1,203 feet of UP property, depending on the design option, and would impact 0.099 acres of a waterway. Under either Build Alternative, impacts to wetlands and waterways would not be significant and would be mitigated by the measures recommended by OEA in this Final EA, including future consultation with USACE. TREX's ability to obtain the necessary access over UP property to construct the Blue Alternative depends on the Board's pending decision on TREX's crossing petition in Docket No. FD 36186 (Sub-No. 1). OEA therefore recommends that the Board authorize both Build Alternatives, including the two design options (Options A and B) for each alternative. If TREX is able to obtain the access needed to construct the Blue Alternative, OEA recommends that TREX construct and operate that alternative to minimize impacts to wetlands and waterways. If TREX is unable to obtain the access needed to construct the Blue Alternative, OEA recommends that TREX construct and operate the Green Alternative, which would then be the only practicable Build Alternative.
- Based on OEA's review of all information provided from all sources and its independent analysis, OEA concludes that the construction and operation of the proposed rail line, including the proposed crossing, under either the Green Alternative or the Blue Alternative, would have no significant environmental impact if the Board imposes, and TREX implements, OEA's final recommended mitigation measures as set forth in this Final EA.

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LIST OF ABBREVIATIONS AND ACRONYMS

AIP	Aquatic Introduction Permit
AREMA	American Railway Engineering and Maintenance of Way Association
ARRP	Aquatic Resources Relocation Plan
BNSF	BNSF Railway Company
Board	Surface Transportation Board
CMP	Coastal Management Program
CNRA	Coastal Natural Resources Area
EA	Environmental Assessment
EIS	Environmental Impact Statement
FRA	United States Department of Transportation, Federal Railroad Administration
GLO	General Land Office
NEPA	National Environmental Policy Act
OEA	Office of Environmental Analysis
SGCN	species of greatest conservation need
SH	State Highway
SHPO	State Historic Preservation Office
TCEQ	Texas Commission on Environmental Quality
TPWD	Texas Parks and Wildlife Department
TREX	Texas Rail Exchange LLC
TxDOT	Texas Department of Transportation
UP	Union Pacific Railroad
USACE	United States Army Corps of Engineers
USFWS	United States Fish and Wildlife Service

1.0 INTRODUCTION AND ENVIRONMENTAL REVIEW PROCESS

On November 21, 2018, Texas Railway Exchange, LLC (TREX) filed a petition with the Surface Transportation Board (the Board) pursuant to 49 U.S.C. § 10502 seeking an exemption from the requirements of 49 United States Code (U.S.C.) § 10901 to construct and operate approximately 2,800 feet of new rail line in the City of Galveston, Galveston County, Texas (Galveston). The primary purpose of the proposed rail line is to connect the Texas International Terminals facility (the Terminal) directly to an existing rail line owned and operated by BNSF Railway Company (BNSF) to increase the efficiency of rail service at the Terminal.

The Terminal currently receives BNSF traffic only through a reciprocal switching arrangement with Union Pacific Railroad (UP). According to TREX, this arrangement results in added expense to shippers, as well as restrictive service and operating rules that contribute to operational inefficiencies and delays. TREX states that the proposed rail line would allow BNSF trains to reach the Terminal directly and without delay, resulting in increased operational efficiencies, improved train service and processing times, reduced locomotive use and switching time, reduced train turnaround times, reduced intersection blockages (rail and public roadway), and improved system function. Because the rail traffic level originating and terminating at the Terminal depends on market demand and the Terminal's on-site capacity, construction of the proposed rail line and the proposed crossing of the existing UP rail line would not result in an increase in rail traffic beyond current levels and is expected to increase the efficiency with which trains move into and out of the Terminal.

In order to implement the TREX project, TREX would need to cross an existing Union Pacific Railroad (UP) rail line. On February 22, 2019, TREX filed a petition with the Board under 49 U.S.C. § 10901(d) requesting that the Board issue an order allowing TREX to cross the UP rail line. The Board will consider that petition in a related proceeding under docket number FD 36186 (Sub-No. 1X) according to a procedural schedule set forth in an April 4, 2019 decision.

The Board's Office of Environmental Analysis (OEA) conducted an environmental review to ensure that the proposed action complies with the statutory requirements under the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4331-4335), the

Board's environmental regulations (49 CFR Part 1105), and other applicable rules and regulations. OEA prepared a Draft Environmental Assessment (Draft EA) that provided an independent analysis of the potential environmental effects of the proposed construction and operation. Because TREX would construct the proposed crossing of the UP line as part of the proposed rail line, OEA also examined the potential environmental effects of the proposed crossing in the Draft EA.

In the Draft EA, OEA assessed the potential environmental impacts of two potential alternatives, the Green Alternative and the Blue Alternative (collectively, the Build Alternatives), that would be feasible to construct and operate and would meet the purpose and need of the proposed project. For each Build Alternative, OEA also assessed two design alternatives (Options A and B). OEA concluded that the environmental impacts of the proposed rail line, including the proposed crossing, would be similar across all of the Build Alternatives and design options and that none of the environmental impacts would be significant. The two Build Alternative and the design options for each alternative are described in detail below:

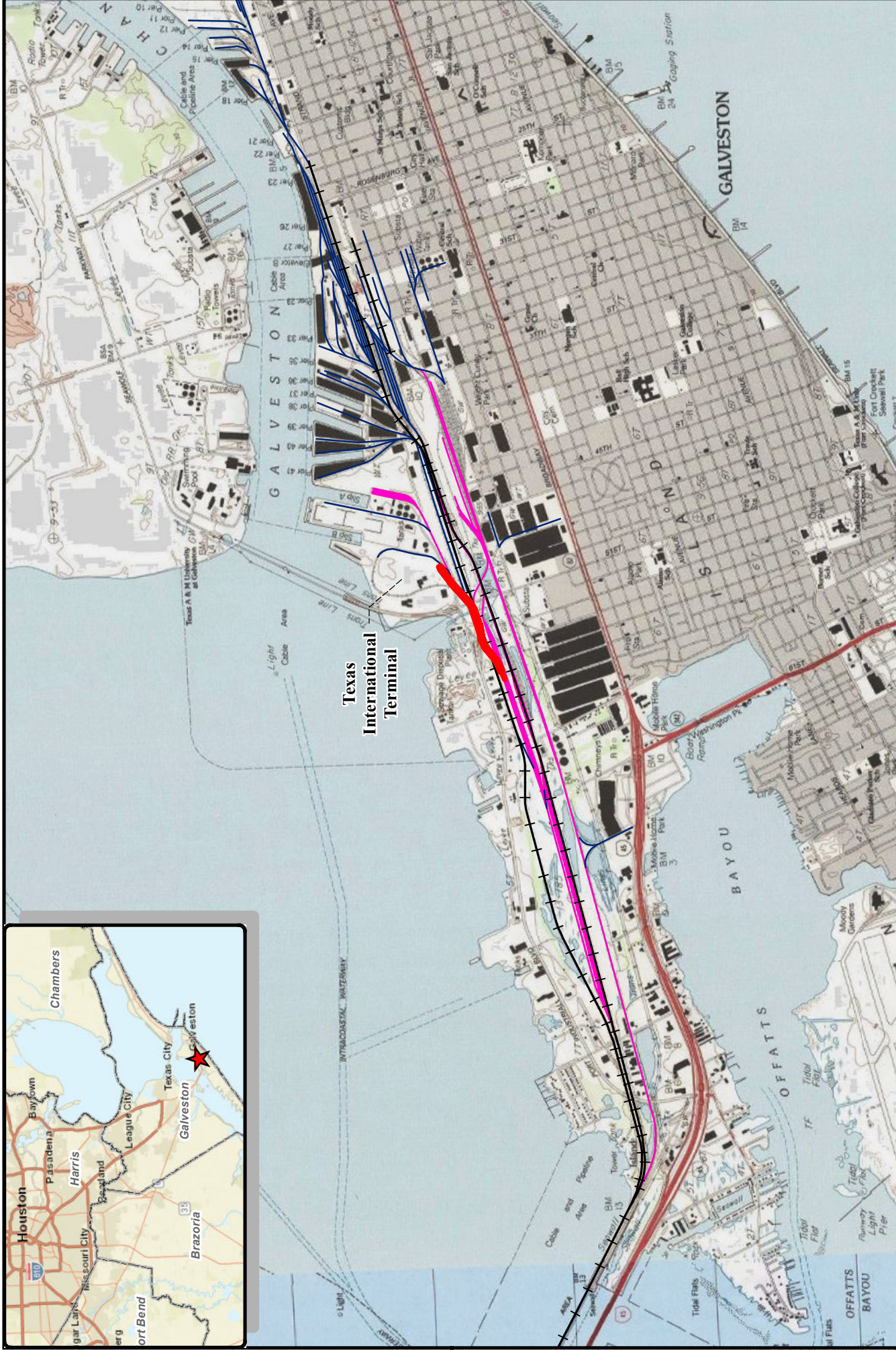
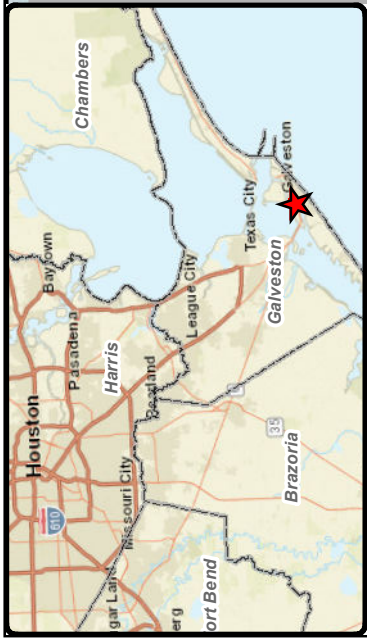
- Green Alternative (Options A and B) - This alternative would extend in a southwesterly direction from the southern end of the Terminal property to the existing BNSF line south of the existing UP rail line. From its northeastern terminus at the Terminal, the Green Alternative would cross Port Industrial Road at-grade and would travel under the 51st Street/Pelican Island Causeway. It would then cross a tidal water feature and two emergent wetlands and travel under SH 275/Harborside Drive. The Green Alternative would cross the existing UP rail line at grade and cross a linear ditch south of the UP tracks before terminating at a connection with the BNSF tracks on the south side of the ditch. The Green Alternative would include construction of a new crew access road north of and parallel to the new track from the crossing under SH 275/Harborside Drive to the existing crew parking area north of the UP tracks and near the proposed rail line's western terminus. Design Options A and B under the Green Alternative would follow slightly different alignments between the 51st Street/Pelican Island Causeway to the Terminal. Green Alternative Option A would cross Port Industrial Road approximately 660 feet west of an existing at-grade road crossing and would cross approximately 548 feet of UP property. Green Alternative Option B would cross Port Industrial Road

approximately 356 feet west of the existing road crossing and would cross approximately 823 feet of UP property.

- Blue Alternative (Options A and B) – This alternative would have the same terminus points as the Green Alternative and would follow a similar alignment. Unlike the Green Alternative, however, the Blue Alternative would avoid crossing the tidal water and both emergent wetlands to the west of 51st Street/Pelican Island Causeway by veering farther south into UP property to parallel the existing UP rail line. The Blue Alternative would also cross the linear ditch south of the UP tracks before terminating at a connection with the BNSF tracks on the south side of the ditch. Like the Green Alternative, the Blue Alternative would also include a new crew access road. Design Options A and B under the Blue Alternative follow slightly different alignments between the 51st Street/Pelican Island Causeway and the Terminal. Blue Alternative Option A would cross Port Industrial Road approximately 660 feet west of the existing at-grade road crossing and would then cross approximately 947 feet of UP property. Blue Alternative Option B would cross Port Industrial Road approximately 356 feet west of the existing road crossing and would cross approximately 1,203 feet of UP property.

Either of the Build Alternatives would be approximately 2,800 feet in length and would have a right-of-way width of approximately 50 feet, on average, to accommodate the proposed rail line and a new parallel access road, as shown in Figure 1, for a total project footprint of less than 4 acres. TREX would construct the track and rail bed in accordance with standards approved by the American Railway Engineering and Maintenance of Way Association (AREMA) and the U.S. Department of Transportation, Federal Railroad Administration (FRA) for Class 3 railroad operations. During rail operations, TREX would inspect the track regularly, as required by FRA track safety standards. Additional inspections would be conducted as warranted by weather conditions. TREX would implement a program to prevent deterioration of the track and structures consistent with industry and FRA safety standards.

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- Project Location
- Active Main Line
- Active Side Track
- Active Spur Line

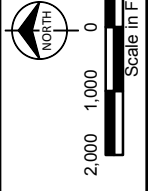


Figure 1
Regional Project Location
Texas Railway Exchange
Galveston County, Texas

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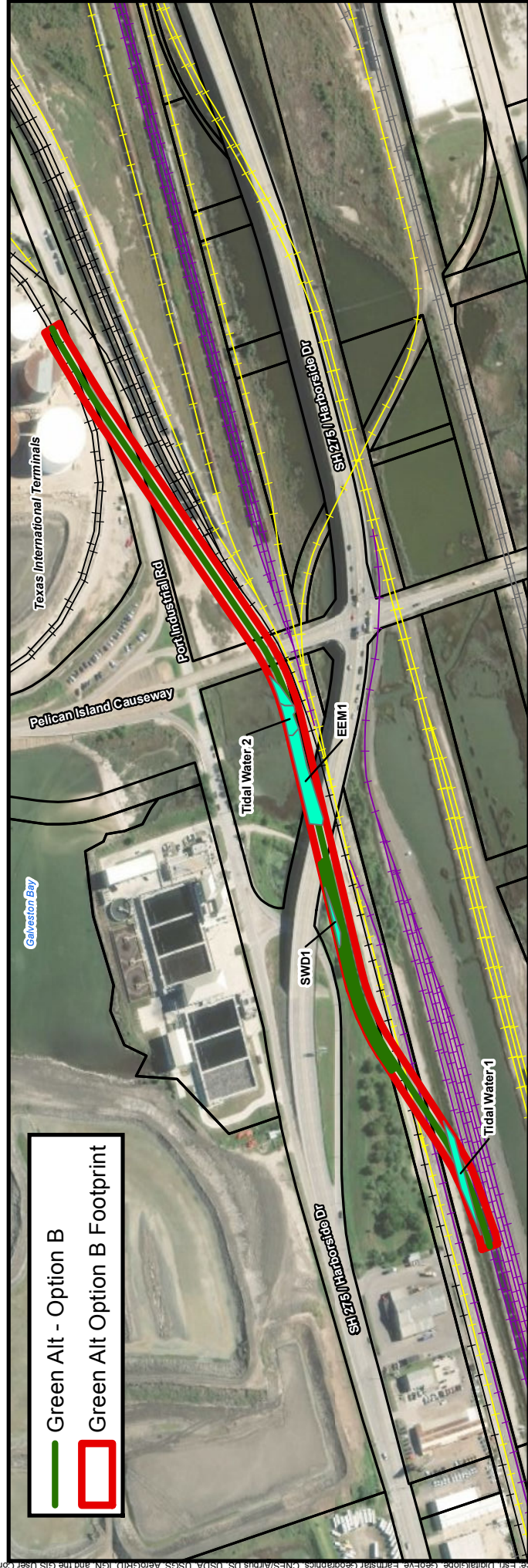
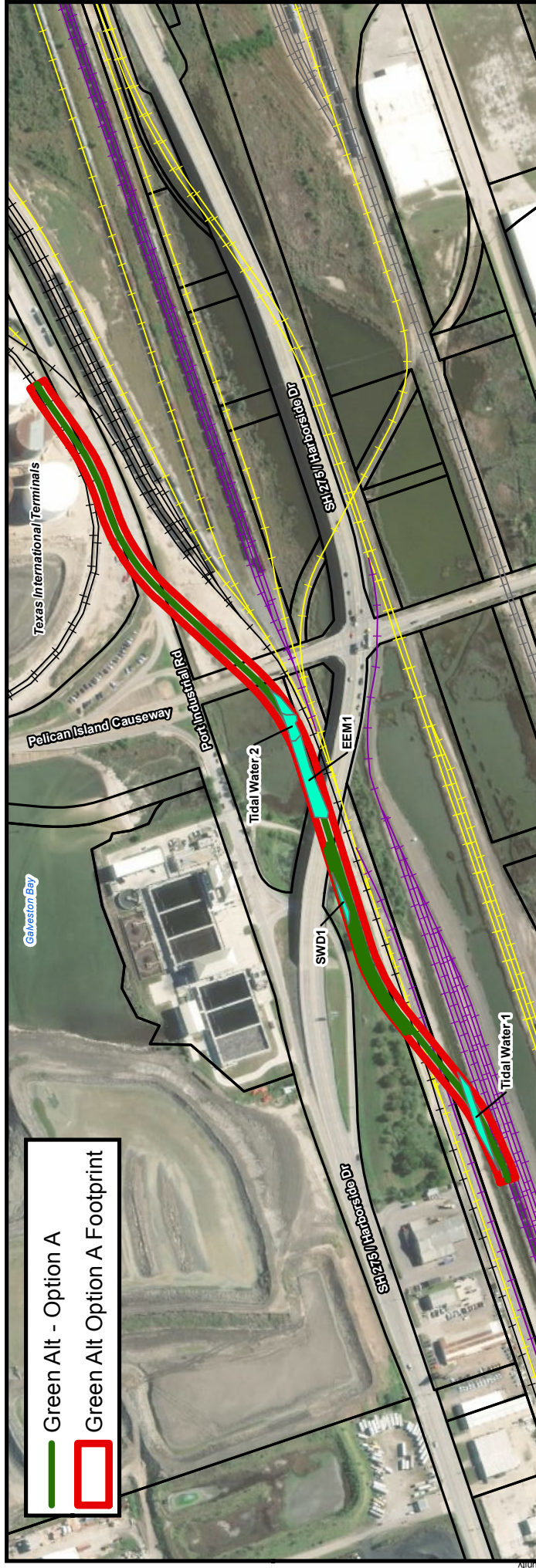
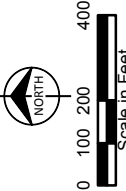


Figure 2
Green Alternative
Options A & B
Texas Railway Exchange
Galveston County, Texas



Legend:

- BNSF Track
- TREX Track
- UP Track
- Unknown Track
- Parcel Boundary
- Tidal Water/Wetlands

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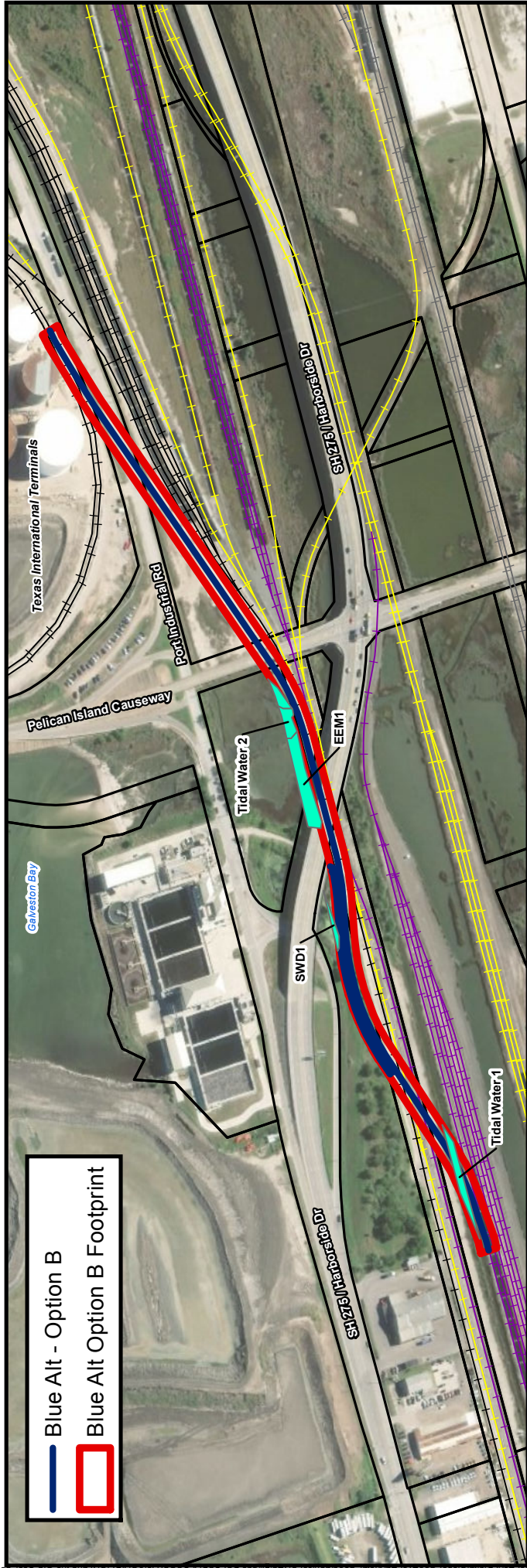
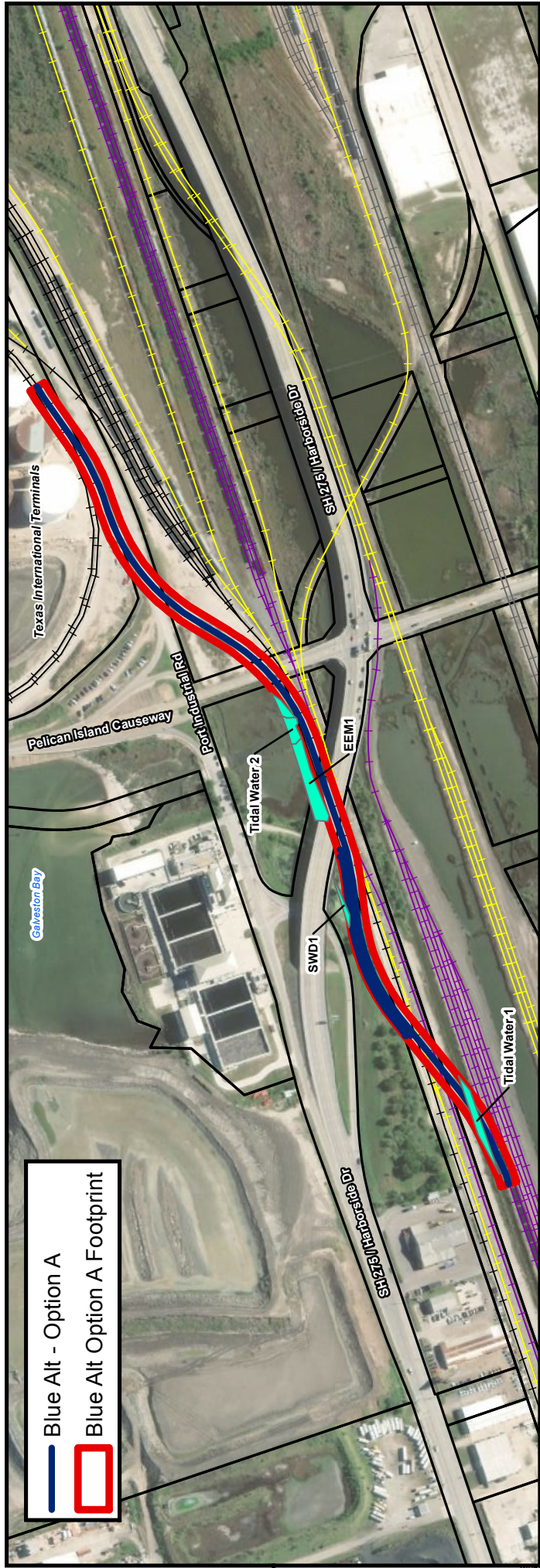
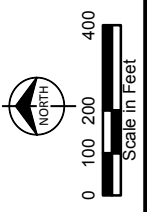


Figure 3
Blue Alternative
Options A & B
Texas Railway Exchange
Galveston County, Texas



 BNSF Track
  TREX Track
  Parcel Boundary
  Tidal Water/Wetlands

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In addition to the two Build Alternatives, OEA also considered the potential environmental impacts that could occur if the Board were to deny TREX's petition for construction and operation authority or TREX's petition for crossing authority. Under that No-Action Alternative, TREX would not construct the proposed rail line. Environmental impacts related to construction would not occur and impacts related to rail operations would remain the same as under current conditions.

OEA served the Draft EA on February 22, 2019. The Draft EA was provided to all parties to the proceeding; appropriate federal, state, and local agencies; federally recognized tribes; and any party requesting copies of the document. OEA published the Issuance of the Draft EA; Request for Comments in the Federal Register (84 FR 6461) and posted the Draft EA on the Board's website. A copy of the Draft EA was also made available for review at: the Rosenberg Library (Galveston County Library System); Jack K. Williams Library (Texas A&M University at Galveston); David Glen Hunt Memorial Library (Galveston College); and Galveston City Hall. OEA requested comments on all aspects of the document, including the scope and adequacy of the recommended mitigation measures. The 20-day comment period closed on March 14, 2019. Comments on the Draft EA were filed by three state agencies and the legal counsel for the project sponsor. Comments are attached as Appendix A to this Final EA.

OEA carefully reviewed the comments submitted in preparing its final recommendations to the Board contained in this Final EA. If the mitigation measures recommended in this Final EA are imposed by the Board, OEA believes that any potential environmental impacts resulting from construction and operation of the proposed rail line, including the proposed crossing, would not be significant; therefore, preparation of an Environmental Impact Statement (EIS) is not necessary.

OEA acknowledges the following input from TREX and the Texas Parks and Wildlife Department (TPWD) that modifies the information presented in the Draft EA:

- TREX, through its legal counsel, Slover & Loftus LLP, notes that Chapter 1 of the Draft EA incorrectly states that TREX currently provides short line rail service to the Terminal. TREX notes that TREX does not currently provide rail service and is applying for authority from the Board to operate its proposed rail line as a common-carrier railroad.

Rail traffic to the Terminal is currently provided by UP and is handled onsite by Terminal personnel. OEA concurs with TREX's comment.

- TREX indicated that Table 2-1 incorrectly quantifies the area of UP trackage rights that would have to be acquired under each of the alternatives to TREX's proposal. TREX notes that TREX is not seeking trackage rights from UP. TREX states that the numbers referred to in Table 2-1 as "UP trackage rights required" should be labeled as "linear feet of UP property crossed." OEA concurs with TREX's comment. A corrected version of Table 2-1 is provided in Chapter 2 *Comments and Responses*.
- TPWD indicated that the eastern black rail a (*Lalerallus jamaicensis*), referred to as the black rail in the Draft EA, was proposed to be listed as federally threatened on October 9, 2018. The Draft EA indicated that the black rail was not federally listed but considered a species of greatest conservation need (SGCN) by the TPWD. OEA concurs with TPWD's comment.

2.0 COMMENTS AND RESPONSES

Comments on the Draft EA were submitted by TREX, the Texas Department of Transportation (TxDOT) Rail Division, the Texas General Land Office (Texas GLO), and the Texas Parks and Wildlife Department (TPWD). Copies of those three comment letters are included in Appendix A of this Final EA. Summaries of the comments received and OEA's responses to the comments are provided below. OEA's final mitigation measures, including changes made in response to the comments received, are set forth in Chapter 3 *Final Conclusions and Recommended Mitigation*.

TxDOT Rail Division Comment – Crash Walls:

TxDOT Rail Division submitted comments indicating that the Rail-Highway Operations Manual and the American Railway Engineering and Maintenance of Way Association (AREMA) standards, Chapter 8, Pier Protection, require the installation of crash walls on highway bridge columns within 25 feet of track centerlines. Both proposed crossings under the SH 275/Harborside Drive and the 51st Street/Pelican Island Causeway bridges will require installation of crash walls because the proposed new track centerlines would be constructed within 25 feet of existing bridge columns.

OEA Response:

In the Draft EA, OEA proposed mitigation measure MM-1 to require TREX to coordinate with Galveston and TxDOT regarding temporary impacts to roadways during construction. In response to the comments from TxDOT and from TREX, OEA has revised that recommended mitigation measure to specifically require TREX to coordinate with the City and TxDOT regarding the use of crash walls, as necessary, for all existing piers located within 25 feet of the tracks supporting the Galveston-owned 51st Street/Pelican Island Causeway and the State Highway (SH) 275/Harborside Drive bridge.

Texas GLO Comment – Consistency Review Under Texas Coastal Management Program:

The Texas GLO submitted comments stating that, although the proposed project is not likely to have an adverse impact on coastal natural resources areas (CNRAs) in the coastal zone, siting and construction should avoid or minimize impacts to CNRAs. Moreover, any U.S. Army Corps

of Engineers (USACE) permit required for the project would be subject to consistency review under the Texas Coastal Management Program (Texas CMP).

OEA Response:

In the Draft EA, recommended mitigation measure MM-15 required TREX to consult with the Texas GLO regarding the consistency of the proposed rail line and proposed crossing of the existing UP rail line with the Texas CMP. Based on the Texas GLO's comments, OEA concludes that the proposed rail line, including the proposed crossing, is consistent with the Texas CMP. Therefore, additional consultation with the Texas GLO is unnecessary. To address the Texas GLO's comments, OEA is revising MM-15 to require TREX to avoid or minimize impacts to CNRAs, to the extent practicable. Mitigation measure MM-13 addresses coordination with USACE under Section 404 of the Clean Water Act. OEA notes that additional consultation with the Texas GLO may be required as part of USACE's permitting process.

TPWD Comment – Preferred Alternative:

TPWD submitted comments making a number of recommendations regarding construction activities related to the proposed rail line and proposed rail crossing of the existing UP rail line, as discussed below. Among these recommendations, TPWD suggests that TREX should consider the Blue Alternative as the least environmentally damaging alternative because it minimizes impacts to tidal wetlands and waterways, which serve as habitat for protected species and other wildlife.

OEA Response:

OEA concurs with TPWD that the Blue Alternative would result in fewer impacts to wetlands and waterways than the Green Alternative. The Blue Alternative would, however, cross more UP property than the Green Alternative. The Green Alternative would cross either approximately 548 feet or approximately 823 feet of UP property, depending on the design option, and would impact 0.415 acres of wetlands and waterways. The Blue Alternative would avoid wetlands by crossing additional UP property. The Blue alternative would cross between 947 and 1,203 feet of UP property, depending on the design option, and would impact 0.099 acres of a waterway. Under either Build Alternative, however, impacts to wetlands and waterways would not be significant and would be mitigated by the measures recommended by

OEA in this Final EA (see mitigation measures MM-12, MM-13, and MM-14 in Chapter 3, *Final Conclusions and Recommended Mitigation*), including future consultation with USACE.

TREX's ability to obtain the necessary access over UP property to construct the Blue Alternative depends on the Board's pending decision on TREX's crossing petition in Docket No. FD 36186 (Sub-No. 1). OEA therefore recommends that the Board authorize both Build Alternatives, including the two design options (Options A and B) for each alternative. If TREX is able to obtain the access needed to construct the Blue Alternative, OEA recommends that TREX construct and operate that alternative to minimize impacts to wetlands and waterways. If TREX is unable to obtain the access needed to construct the Blue Alternative, OEA recommends that TREX construct and operate the Green Alternative, which would be the only practicable Build Alternative.

TPWD Comment – Wetlands and Waterways:

TPWD submitted comments requesting that TREX provide a habitat functional assessment of wetlands in the project area using the USACE Galveston District's iHGM for tidal emergent wetlands and include in the assessment temporary laydown or staging areas that may be planned outside of the proposed new right-of-way. TPWD also requested that TREX develop a compensatory mitigation plan to address all wetland impacts.

OEA Response:

OEA assessed the impacts to wetlands and tidal waters in the Draft EA based on the review of field surveys and analyses provided by TREX. The project footprint evaluated in the Draft EA includes the area needed to construct the proposed rail line and crew access road. The area surrounding the project footprint has been previously disturbed and consists of existing rail tracks and supporting infrastructure on areas covered by aggregate and exposed earth. The wetland features affected by the project footprint are limited in their size, extent, and quality due to the surrounding land uses. Temporary laydown and storage areas to be used during construction are at the discretion of TREX and would most likely occur in areas already disturbed and adjacent to the proposed rail line footprint. OEA is recommending mitigation measure MM-13 requiring TREX to coordinate with USACE to obtain the appropriate federal approval for the project under Section 404 of the Clean Water Act and to develop a mitigation plan as part of that process. If USACE would require a habitat assessment to support the Section

404 approval process, TREX should discuss the need for such an assessment with USACE at that time.

TPWD Comment – General Construction Recommendations:

TPWD recommends the use of specific erosion and sedimentation control methods to address the management of stormwater runoff, soil stabilization, and excavation-related issues during construction. Those recommendations include the following:

- Judicious use and placement of sediment control fence to exclude wildlife from construction areas
- Regular inspection of the exclusion area to determine if wildlife species have been trapped inside the construction area and to provide opportunities for wildlife to exit the construction area safely
- Using seed/mulch stabilization materials that avoid entanglement hazards to snakes and other wildlife species
- Avoiding leaving trenches and excavation areas uncovered, inspecting trenches and excavation areas regularly for trapped wildlife, and providing escape ramps from trenches and excavation areas for trapped wildlife

OEA Response:

As discussed in the Draft EA, activities related to the construction of the proposed rail line, including the proposed crossing of the existing UP rail line, would occur within an area that previously has been significantly disturbed for industrial uses. Therefore, the likelihood of construction-related impacts to wildlife is low. To address TPWD's concerns, OEA has modified mitigation measure MM-11 and MM-18 to require TREX to consider TPWD's specific recommendations as appropriate and to the extent practicable when it undertakes project-related construction activities.

TPWD Comment – Culverts:

TPWD recommends that TREX minimize impacts to wetlands and tidal waters by using open bottom culverts or another advanced design feature to provide a more natural environment to support organism passage.

OEA Response:

As noted above, mitigation measure MM-13 would require TREX to coordinate with USACE to obtain the appropriate federal permit for the project under Section 404 of the Clean Water Act and to develop a mitigation plan as part of the permitting process. The final design features of the proposed water crossings would be negotiated by TREX with USACE and other permitting agencies to satisfy applicable permit requirements.

TPWD Comment – Migratory Bird Treaty Act:

TPWD recommends that any vegetation clearing be scheduled outside of the nesting season (March 15-September 15). If clearing must occur during the nesting season, nest survey should be conducted before clearing. If nests are observed during such surveys, TPWD recommends that a vegetation buffer of no less than 150 feet should remain around the nest until the young have fledged.

OEA Response:

Because of the industrial nature of the project area, very limited vegetation is present. There is not sufficient vegetative cover to accommodate a 150-foot buffer within the project footprint, which would be approximately 50-feet wide. OEA is recommending mitigation measure MM-17 to require TREX to conduct nest surveys before beginning project-related construction activities. To address TPWD's concerns, OEA has revised MM-17 to require TREX to maintain an area of buffer vegetation no less than 25 feet in all directions around any nests observed during surveys until the young have fledged.

TPWD Comment – Endangered Species Act:

TPWD recommends continued coordination with the U.S. Fish and Wildlife Service (USFWS) regarding the potential presence of the red knot (*Calidris canutus rufa*, federally threatened) and the eastern black rail (*Laleralus jamaicensis*, proposed threatened as of October 9, 2018). TPWD also recommends that qualified wildlife biologist conduct pre-construction surveys for both species, and coordinate, as appropriate, with USFWS and TPWD regarding avoidance, minimization, or mitigation strategies for these species.

OEA Response:

OEA has incorporated the TPWD's recommendations regarding coordination with the USFWS and TPWD into mitigation measures MM-19 and MM-20 in this Final EA. Those mitigation measures would require TREX to consult with USFWS and TPWD regarding potential impacts to the red knot, the eastern black rail, and any other federally or state-listed species that may be encountered during construction.

TPWD Comment – Clean Water Act:

TPWD recommends consultation with USACE regarding impacts to wetlands and waters of the U.S., including conducting wetland delineations and providing mitigation for unavoidable impacts under 33 CFR §332.3(e)(3); item 11.B.2. in Compensatory Mitigation for Losses of Aquatic Resources (73 Federal Register 19596, April 10, 2008); and the Galveston District Stream Condition Assessment Standard Operating Procedure for Compensatory Stream Mitigation.

OEA Response:

As noted above, OEA is recommending mitigation measure MM-13 to require TREX to coordinate with USACE to obtain the appropriate federal permit for the project under Section 404 of the Clean Water Act and to develop a mitigation plan as part of USACE permitting process.

TPWD Comment – State Laws Regarding Aquatic Resources:

TPWD recommends that TREX limit disturbance within wetlands and aquatic habitats, limit vegetation clearing to only areas where it is required, and use protective mats to reduce the amount of soil and root disturbance and aid in plant recovery. TPWD also recommends implementation of best management practices to avoid construction during spawning periods and to minimize runoff that may increase water turbidity. TPWD also recommends developing an Aquatic Resources Relocation Plan (ARRP) and/or an Aquatic Introduction Permit (AIP) prior to initiating construction activities.

OEA Response:

Based on the assessment of impacts conducted by OEA and the previously disturbed and industrial nature of the project area, OEA has concluded, based on the available information, that the use of protective mats and need for development and implementation of an ARRP and/or AIP should not be required. The project footprint and adjacent areas lack the resources that would benefit from these measures. To address TPWD's concerns, OEA is recommending mitigation measures MM-12, MM-13, and MM-14, which would require TREX to consult with appropriate agencies with jurisdiction over aquatic resources prior to beginning construction activities and to abide by the reasonable recommendations of those agencies.

TPWD Comment – State Listed Species/Rare Species:

TPWD recommends avoiding disturbance to habitats of the following state-listed threatened species: reddish egret (*Egretta rufescens*), white-faced ibis (*Plegadis chihi*), and the wood stork (*Mycteria americana*). TPWD also recommends that TREX assess the project area for the presence of the following three rare species: brown pelican (*Pelecanus occidentalis*), Texas diamondback terrapin (*Malaclemys terrapin littoralis*), and American eel (*Anguilla rostrata*). If those species are found, TPWD state that TREX should take precautions to avoid impacting them.

OEA Response:

As noted above and described in detail in the Draft EA, the project area is dominated by industrial uses, including numerous active rail lines that experience several train movements per day in addition to truck and other vehicular traffic serving the industrial facilities along Port Industrial Road. There is very little vegetation and limited aquatic habitat that could support the species identified by TPWD. Following field investigations performed prior to the issuance of the Draft EA, OEA concluded that no suitable habitat for the reddish egret or the white-faced ibis is present within the project footprint, although some suitable habitat for those species is present in the vicinity of the project area. OEA also concluded that suitable habitat for the wood stork and the brown pelican could occur within the project footprint, although no individuals of those species were observed in the project footprint during field investigations. The project area is separated from Galveston Bay and the deepwater habitats it provides by existing physical barriers that restrict access to the project area by species like the Texas diamondback terrapin

and the American eel. Therefore, those two species are not likely to occur in the project area. Nonetheless, in response to TPWD comments, OEA is recommending mitigation measure MM-20, which would require TREX to notify and consult with OEA, USFWS, and TPWD if any federally or state listed threatened or endangered species are encountered during construction of the rail line and the proposed crossing of the existing UP rail line.

TPWD Comment – Construction Recommendations – Invasive Species:

TPWD recommends that TREX establish sanitation procedures to prevent the spread of invasive plants. TPWD also recommends that TREX avoid utilizing invasive species in seed mixes or plantings for revegetation or soil stabilization purposes.

OEA Response:

To address TPWD’s comments, OEA has included mitigation measure MM-28, which would require TREX to establish sanitation procedures to prevent the spread of invasive plants and to avoid utilizing invasive species in seed mixes or plantings used for revegetation or soil stabilization purposes. OEA has also revised mitigation measure MM-16 to require TREX to consult TPWD’s *Wildlife Habitat Assessment Program: Planning Tools and Best Management Practices and the Pollinator Partnership Planting Guides* in the development and implementation of best management practices for the proposed project.

TPWD Comment – Data Reporting and the Texas Natural Diversity Database:

TPWD notes that it maintains occurrence data for protected and rare species as well as species of greatest conservation need (SGCN) within the Texas Natural Diversity Database. These records are publicly available by request. Although the data is based on the best data available it does not provide a definitive statement as to the presence, absence, or condition of the species or natural community. TPWD therefore encourages reporting encounters of protected and rare species for recording in the database.

OEA Response:

OEA acknowledges the TPWD’s role in developing and maintaining the database and recommends its use to TREX and its consultants to ensure and facilitate compliance with the applicable mitigation measures.

TREX Comment – Corrections to be Incorporated in the Final EA:

TREX submitted comments making the following factual corrections to the information presented in the Draft EA:

- (1) TREX does not currently provide short line rail service to Texas International Terminals. Through the November 21, 2018 Petition, TREX seeks an exemption to construct and operate its proposed short common carrier rail line.
- (2) TREX is not seeking and does not require trackage rights from the Union Pacific Railroad as part of its Exemption Petition or Crossing Petition.

OEA Response:

The requested clarifications are noted in Chapter 1 *Introduction and Overview of the Environment Review Process* and in the revised Table 2-1 below.

Table 2-1: Build Alternatives Comparison Data

Feature	Unit	Green Alternative		Blue Alternative	
		Option A	Option B	Option A	Option B
Total length	Feet	<2,800	<2,800	<2,800	<2,800
Right-of-way	Acres	3.3	3.2	3.3	3.2
Length of UP property crossed	Feet	548	823	947	1,203
Tidal waters crossed	Number	2	2	2	2
Freshwater streams crossed	Number	0	0	0	0
Jurisdictional waters/wetlands crossed*	EEM1	0.232	0.232	0.00	0.00
	SWD1	0.024	0.024	0.00	0.00
	Tidal Water 1	0.099	0.099	0.099	0.099
	Tidal Water 2	0.060	0.060	0.00	0.00
	Total acres	0.415	0.415	0.099	0.099
Length through floodplain	Feet	<2,800	<2,800	<2,800	<2,800
Woodlands crossed	Acres	0	0	0	0
Noise-sensitive receptors within 350 feet	Number	0	0	0	0
Road crossings	Number	1	1	1	1
Distance between existing TREX Port Industrial Road rail crossing and proposed rail crossing	Feet	660	356	660	356
Cultural resources within ROW	Number	0	0	0	0
Length of UP property crossed	Linear feet	548	823	947	1,203

* Based on field delineation.

TREX Comment – Preferred Alternative:

Although both proposed alternatives would have similar environmental impacts and none of those impacts would be significant, TREX prefers the Blue Alternative because it has the least impacts on wetlands, would require less mitigation, and would cost less to provide appropriate mitigation.

OEA Response:

OEA concurs with TREX that the Blue Alternative would result in fewer impacts to wetlands than the Green Alternative and would likely have fewer documentation and mitigation requirements related to obtaining a USACE permit under Section 404 of the Clean Water Act. The Blue Alternative would, however, cross more UP property than the Green Alternative. The Green Alternative would cross either approximately 548 feet or approximately 823 feet of UP property, depending on the design option, and would impact 0.415 acres of wetlands and waterways. The Blue Alternative would avoid wetlands by crossing additional UP property. The Blue Alternative would cross either approximately 947 or approximately 1,203 feet of UP property, depending on the design option, and would impact 0.099 acres of a waterway. Under either Build Alternative, impacts to wetlands and waterways would not be significant and would be mitigated by the mitigation measures recommended in this Final EA (see mitigation measures MM-12, MM-13, and MM-14 in Chapter 3, *Final Conclusions and Recommended Mitigation*), including future consultation with USACE. TREX's ability to obtain the necessary access over UP property to construct the Blue Alternative depends on the Board's pending decision on TREX's crossing petition in Docket No. FD 36186 (Sub-No. 1). OEA therefore recommends that the Board authorize both Build Alternatives. If TREX is able to obtain the access needed to construct the Blue Alternative, OEA recommends that TREX construct and operate that alternative to minimize impacts to wetlands and waterways. If TREX is unable to obtain the access needed to construct the Blue Alternative, OEA recommends that TREX construct and operate the Green Alternative, which would then be the only practicable Build Alternative.

3.0 FINAL CONCLUSIONS AND RECOMMENDED MITIGATION

This chapter presents OEA's final conclusions and final recommended mitigation measures that, if imposed by the Board in any decision granting TREX the authority to construct and operate the proposed rail line, including the proposed crossing of the existing UP line, would avoid, minimize, or compensate for the potential environmental impacts related to the construction, operation, and maintenance of the proposed rail line and crossing. OEA developed the final mitigation measures based on consultations with appropriate agencies, comments from interested parties, and extensive environmental analyses, including the comments on the Draft EA received during the comment period.

3.1 ALTERNATIVE SELECTION AND FINAL RECOMMENDATIONS

In the Draft EA and this Final EA, OEA examined the potential environmental impacts associated with two Build Alternatives and the No-Action Alternative. OEA also considered two design options (Options A and B) for each of the two Build Alternatives. Based on the results of OEA's analysis and the comments received on the Draft EA, OEA is recommending that the Board impose 28 mitigation measures in any decision authorizing construction and operation authority involving this project. If those mitigation measures are imposed, OEA concludes that neither of the Build Alternatives, including the two design options for each alternative (Options A and B), would result in any significant environmental impacts. Therefore, the EIS process is unnecessary in this proceeding.

The two Build Alternatives differ in terms of their impacts to wetlands and waterways and in the amount of UP property that each alternative would cross. The Green Alternative would cross either approximately 548 feet or approximately 823 feet of UP property, depending on the design option, and would impact 0.415 acres of wetlands and waterways. The Blue Alternative would avoid wetlands by crossing additional UP property. The Blue Alternative would cross either approximately 947 or approximately 1,203 feet of UP property, depending on the design option, and would impact 0.099 acres of a waterway. Under either Build Alternative, impacts to wetlands and waterways would not be significant and would be mitigated by OEA's recommended mitigation measures (see mitigation measures MM-12, MM-13, and MM-14), including future consultation with USACE. TREX's ability to obtain the necessary access over UP property to construct the Blue

Alternative depends on the Board's pending decision on TREX's crossing petition in Docket No. FD 36186 (Sub-No. 1). OEA therefore recommends that the Board authorize both Build Alternatives. If TREX is able to obtain the access needed to construct the Blue Alternative, OEA recommends that TREX construct and operate that alternative to minimize impacts to wetlands and waterways. If TREX is unable to obtain the access needed to construct the Blue Alternative, OEA recommends that TREX construct and operate the Green Alternative, which would then be the only practicable Build Alternative.

3.2 OVERVIEW OF OEA'S APPROACH TO ENVIRONMENTAL MITIGATION

In conducting the environmental review, OEA has taken a hard look at the environmental consequences of TREX's proposal to construct and operate a new rail line, including the crossing of the UP rail line, and reasonable and feasible alternatives, including the No-Action Alternative. The potential environmental effects that OEA identified would be both beneficial and adverse. OEA's environmental analysis and its resulting mitigation recommendations reflect the variety of the environmental impacts at issue and offer a reasonable and feasible way of minimizing some of the environmental impacts discovered during the course of OEA's environmental review. OEA also encourages negotiations between railroad applicants and potentially affected communities, or others, to reach mutually acceptable solutions to address the parties' concerns.

3.3 LIMITS OF THE BOARD'S CONDITIONING POWER

The Board has the authority to impose conditions to mitigate environmental impacts. As a government agency, the Board can only impose conditions that are consistent with its statutory authority. Accordingly, any mitigation measure the Board imposes must relate directly to the transaction before the Board, must be reasonable, and must be supported by the record before the Board. The Board's consistent practice has been to mitigate only those impacts that result directly from the proposed action. The Board typically does not require mitigation for preexisting environmental conditions.

3.4 VOLUNTARY MITIGATION AND NEGOTIATED AGREEMENTS

OEA encourages applicants to propose voluntary mitigation. In some situations, voluntary mitigation could replace, supplement, or reach farther than mitigation measures the Board might otherwise impose. Because applicants gain a substantial amount of knowledge

about the issues associated with a proposed rail line during project planning, and because they consult with regulatory agencies during the permitting process, they are often in a position to offer relevant voluntary mitigation. OEA encourages applicants to negotiate mutually acceptable agreements with affected communities and other government entities to address potential environmental impacts, if appropriate. Negotiated agreements could be with neighborhoods, communities, counties, cities, regional coalitions, states, and other entities. If TREX submits to the Board any such negotiated agreements, the Board would require compliance with the terms of any such agreements as environmental conditions in any final decision authorizing construction and operation of the proposed rail line, including the proposed crossing of the UP line. Any potential negotiated agreement would supersede any environmental conditions for that particular community or other entity that the Board might otherwise impose.

3.5 APPLICANTS' VOLUNTARY MITIGATION MEASURES

In this case, TREX has voluntarily agreed to implement certain mitigation measures to address the concerns raised by TxDOT and TWPD in those agencies' comments. TREX has requested that OEA revise its recommended mitigation measures in the Draft EA to reflect TREX's voluntarily commitments. Specifically, TREX requested that OEA make the following changes to the recommended mitigation measures in the Draft EA:

- Revise MM-1 to require consultation with the Galveston and TxDOT regarding the use of crash walls, as necessary, for all existing piers located within 25 feet of the tracks supporting the Galveston owned 51st Street/Pelican Island Causeway and the State Highway 275/Harborside Drive Bridge.
- Revise MM-16 to provide that TREX, where possible, will avoid using invasive plants for revegetation or soil stabilization. TREX also agrees to consult TPWD's *Wildlife Habitat Assessment Program: Planning Tools and Best Management Practices* and the *Pollinator Partnership Planting Guides*.
- Revise MM-17 to increase the recommended buffer around migratory bird nests from 15 feet to "25 feet, where possible," recognizing the limited extent of the project area and TREX's proposed right-of-way.

- Revise MM-19 to require consultation with the U.S. Fish and Wildlife Service (USFWS) regarding the eastern black rail in addition to the red knot.

OEA has reviewed TREX's new voluntary mitigation and has made the requested changes to the final mitigation measures in the Final EA.

3.6 OEA'S FINAL RECOMMENDED MITIGATION MEASURES

Based on available project information and comments received during the environmental consultation process and public comment period on the Draft EA, OEA is recommending a number of mitigation measures to address the potential environmental impacts of the proposed action in the following resource areas: geology and soils, water resources, air quality, vegetation, wildlife, threatened and endangered species, and cultural resources. OEA's final recommended mitigation measures reflect the changes discussed above, including voluntary mitigation that the applicant has agreed to implement. Minor editorial changes also have been made in OEA's final recommended mitigation.

3.6.1 Transportation and Safety

MM-1. Prior to beginning construction-related activities, Texas Railway Exchange, LLC (TREX) shall consult with the City of Galveston (Galveston) and the Texas Department of Transportation (TxDOT) regarding the use of crash walls, as necessary, for all existing piers located within 25 feet of the tracks supporting the Galveston-owned 51st Street/Pelican Island Causeway and the State Highway 275/Harborside Drive bridge. TREX shall schedule construction activities related to the construction of the rail line and the crossing of the existing Union Pacific Railroad (UP) rail line so as to minimize the periodic closing of roadways and vehicular traffic delays. TREX shall coordinate with the TxDOT and Galveston regarding the scheduling of construction activities that could result in temporary road closures and shall provide for detours and associated signage, as appropriate, or maintain at least one open lane of traffic at all times to allow for the passage of emergency and other vehicles.

MM-2. TREX shall, to the extent practicable, confine all traffic related to the construction of the rail line and to the crossing of the existing UP rail line to temporary access roads within the rail right-of-way or established public roads. Where traffic cannot be confined to temporary access roads or public roads, TREX shall make necessary arrangements with landowners to gain access.

After rail-related construction is completed, TREX shall remove and restore any temporary access roads constructed outside of the rail right-of-way unless otherwise agreed to with the landowners.

MM-3 TREX shall ensure that any activities related to the construction of the rail line and to the crossing of the existing UP rail line located within and along existing roadways are consistent with the Manual on Uniform Traffic Control Devices for installation of signs (e.g., regulatory, warning/caution, speed), delineators, and other roadway appurtenances and in compliance with the terms and conditions of any American Association of State Highway and Transportation Officials safety standards.

MM-4. TREX shall consult with appropriate federal, state, and local transportation agencies to determine the final design and other details for the use of road crossing warning signs and devices on Port Industrial Road. Implementation of road crossing warning signs and devices will be subject to the review and approval of the TxDOT and Galveston. TREX shall coordinate with the TxDOT and the city of Galveston to identify the maintenance and repair responsibilities of each party for project-related warning devices used during construction at the at-grade road crossing.

MM-5. During operation of the rail line and over the crossing of the existing UP rail line, TREX shall comply with the rail safety regulations implemented and enforced by the U.S. Department of Transportation, Federal Railroad Administration (FRA), including regulations that establish safe speed limits for train operations and regulations that establish procedures for implementing an inspection and maintenance program to minimize the potential for derailments and other rail-related accidents.

MM-6. TREX shall ensure that the rail crossing over the existing UP rail line is constructed in accordance with applicable rail safety standards and shall abide by applicable rail safety regulations implemented and enforced by the FRA during operation of the rail crossing.

MM-7. TREX shall, to the extent practicable, consult and coordinate with UP during the construction of the rail crossing over the existing UP rail line so as to minimize temporary disruptions to rail traffic along the existing UP rail line.

3.6.2 Physical Resources

MM-8. TREX shall, to the extent practicable, limit rail-related construction activities, vegetation clearing, and soil disturbance to the rail right-of-way and immediately surrounding areas to minimize fugitive dust emissions during the construction of the rail line and the crossing of the existing UP rail line.

MM-9. TREX shall use water trucks as appropriate to minimize fugitive dust emissions and shall employ best management practices in the control and suppression of fugitive dust emissions during the construction of the rail line and the crossing of the existing UP rail line.

MM-10. TREX shall comply with the reasonable requirements of applicable federal, state, and local regulations regarding the control of fugitive dust related to the construction of the rail line and the crossing of the existing UP rail line.

MM-11. TREX shall implement appropriate soil erosion and sedimentation control measures along surface waters in the project area to minimize impacts from stormwater runoff during construction of the rail line and the crossing of the existing UP rail line. TREX shall consider installation and maintenance of sediment control structures that exclude wildlife access to construction areas. TREX shall, to the extent practicable, ensure that any wildlife exclusion fencing is examined regularly and shall provide safe egress opportunities for any trapped wildlife. TREX shall also consider using seed and mulch stabilization materials that avoid entanglement hazards to snakes and other wildlife species, if such seed or mulch stabilization materials are used during construction.

MM-12. TREX shall design and construct the rail line, including culverts, and the crossing of the existing UP rail line in such a way as to maintain natural water flow and drainage patterns to the extent practicable. TREX shall consult with U.S. Army Corps of Engineers (USACE) regarding the design of crossings of waterways and wetlands under the jurisdiction of USACE.

MM-13. During construction and operation of the rail line and the crossing of the existing UP rail line, TREX shall avoid and minimize impacts to waterbodies and wetlands, to the extent practicable. TREX shall obtain from USACE any federal permits required under Section 404 of the Clean Water Act before initiating project-related construction activities that would impact wetlands and waterbodies. TREX shall comply with all reasonable requirements as required by

USACE and shall incorporate the stipulations of those permits and authorizations into construction contract specifications. TREX shall work directly with USACE to develop appropriate mitigation for direct wetland impacts as stipulated in the Section 404 permit. TREX shall also consult with the Texas Parks and Wildlife Department (TPWD) regarding any required mitigation plans developed as part of the Section 404 permitting process and shall comply with the reasonable recommendations of that agency.

MM-14. TREX shall coordinate with the Texas Commission on Environmental Quality to obtain all appropriate state permits related to impacts to water resources resulting from construction of the rail line and the crossing of the existing UP rail line, including filing the appropriate notices under the Texas Construction General Permit for discharges from construction activities.

MM-15. TREX shall, to the extent possible, avoid or minimize impacts to coastal natural resource areas within the boundaries of the Texas Coastal Management Program.

3.6.3 Biological Resources – Vegetation, Wetlands, and Wildlife

MM-16. If TREX or its contractors need to apply herbicides for right-of-way maintenance, TREX shall ensure the use of staff or contractors who are properly trained in herbicide application, shall require the following of label directions in herbicide application, and shall limit the amount of herbicide potentially entering waterways. TREX shall require the use only of herbicides regulated for such uses by the U.S. Environmental Protection Agency and follow all state regulations regarding their use. TREX shall implement procedures to prevent the spread of invasive species and avoid using invasive species in seed mixes or planting for revegetation or soil stabilization. TREX shall consult TPWD's *Wildlife Habitat Assessment Program: Planning Tools and Best Management Practices* and the *Pollinator Partnership Planting Guides* in the development and implementation of best management practices for revegetation and right-of-way maintenance related to the construction and operation of the new rail line, including the crossing of the existing UP line.

MM-17. TREX shall, to the extent practicable, avoid clearing vegetation that could provide nesting habitat for birds during the general bird nest season between March 15 and September 15. Prior to beginning construction activities, TREX shall inspect the project area for nests. If migratory bird species are found nesting on or adjacent to the project footprint, TREX shall deal

with them in a manner consistent with the Migratory Bird Treaty Act. TREX shall conduct surveys of the project footprint for migratory birds before beginning construction of the rail line and the crossing of the existing UP rail line. If nests are observed during surveys, TREX shall maintain a buffer area of vegetation of no less than 25 feet in all directions of the nest until the young have fledged, where possible within the project footprint.

MM-18. TREX shall minimize disturbances to wildlife, to the extent practicable, by restricting activities related to the construction of the rail line and the crossing of the existing UP rail line to the rail right-of-way. To the extent practicable, TREX shall avoid driving construction equipment over vegetation or storing heavy equipment on vegetative cover. TREX shall consider using protective mats, as appropriate, during project-related construction to reduce soil and root disturbance. If any trenching or other excavation is required for construction, TREX shall, to the extent practicable, ensure that excavation areas are covered overnight and inspected regularly for the presence of trapped wildlife prior to backfilling.

MM-19. Before beginning construction of the rail line and the crossing of the existing UP rail line, TREX shall consult with U.S. Fish and Wildlife Service (USFWS) regarding potential impacts to the red knot (*Calidris canutus rufa*) and the eastern black rail (*Laterallus jamaicensis*) and shall comply with the reasonable recommendations of USFWS.

MM-20. TREX shall notify OEA and the USFWS and TPWD if any federally or state listed threatened or endangered species are encountered during construction of the rail line and the crossing of the existing UP rail line.

3.6.4 Noise

MM-21. During construction of the rail line and the crossing of the existing UP rail line, TREX shall control temporary noise from construction equipment through the use and maintenance of appropriate muffler systems on machinery.

MM-22. TREX shall comply with FRA regulations that establish decibel limits for train operations and locomotive noise standards during operations along the rail line and over the crossing of the existing UP rail line.

3.5.5 Cultural Resources

MM-23. If any cultural resources are discovered or uncovered during construction of the rail line or the crossing of the existing UP rail line, TREX shall halt all work immediately and notify OEA and the Texas Historical Commission to identify and implement the required consultation and mitigation.

3.6.6 Hazardous Materials and Waste Sites

MM-24. TREX shall ensure that waste materials related to the construction and operation of the rail line and the crossing of the existing UP rail line are removed and disposed of promptly at an appropriate waste-disposal site. TREX shall store and dispose of any hazardous waste generated or hazardous materials used in the normal course of construction, operation, and maintenance activities in accordance with applicable local, state, and federal regulations.

MM-25. TREX shall develop a spill prevention plan for handling the release of petroleum products or other hazardous materials during construction and operation of the rail line and the crossing of the existing UP rail line. In the event of a spill of such materials, TREX shall comply with its spill prevention plan and applicable local, state, and federal regulations pertaining to spill containment and clean-up.

MM-26. TREX shall comply with applicable U.S. Department of Transportation regulations, policies, and procedures regarding the transportation of hazardous materials should any such materials be transported along the rail line and over the crossing of the existing UP rail line.

MM-27. If any undocumented hazardous waste sites are discovered or uncovered during construction of the rail line or the crossing of the existing UP rail line, TREX shall immediately halt all work and notify the appropriate regulatory agencies.

3.6.7 Invasive Species

MM-28. TREX shall implement procedures to prevent the spread of invasive species and avoid using invasive species in seed mixes or planting for revegetation or soil stabilization.

Appendix A – COMMENT LETTERS

Exhibit 1 Texas Railway Exchange

Exhibit 2 Texas Department of Transportation, Rail Division

Exhibit 3 Texas General Land Office

Exhibit 4 Texas Parks and Wildlife Department



SLOVER & LOFTUS LLP

ATTORNEYS AT LAW

PETER A. PFOHL

March 14, 2019

VIA EMAIL AND U.S. MAIL

Joshua Wayland
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

Re: FD 36186 (Sub-No. 1), *Texas Railway Exchange LLC – Construction and Operation Exemption – Galveston County, TX – Petition for Issuance of a Crossing Order Pursuant to 49 U.S.C. § 10901(d)*

Dear Mr. Wayland:

Texas Railway Exchange LLC's ("TREX") respectfully submits these brief comments on the Draft Environmental Assessment ("Draft EA") served by the Surface Transportation Board, Office of Environmental Analysis ("OEA") on February 22, 2019. The Draft EA preliminarily concludes that the proposed construction and operation of TREX's proposed line, and the crossing of the existing Union Pacific Railroad Company tracks, with its proposed recommended mitigation measures, would have no significant environmental impacts.

TREX agrees with the Draft EA findings,¹ including the lack of significant environmental impacts (and that an Environmental Impact Statement is unnecessary), especially given the limited scope of the project, and that the project will improve the efficiency of rail service to and from the Terminal. TREX also agrees with the Draft EA findings that the proposed line will not result in any adverse impacts to public safety, and that without the new rail line:

operational inefficiencies associated with the existing reciprocal switch service would continue, which would result in increased train processing times, increased train turnaround times, and increased track and roadway intersection blockages, relative to the

¹ The Draft EA requires a few corrections that should be incorporated into the Final EA. First, it states that "TREX currently provides short line rail service to Texas International Terminal[s]." Draft EA at 1-1. However, TREX does not currently provide rail service, but through its November 21, 2018 Petition, TREX seeks an exemption to construct and operate its proposed new short common carrier rail line. Second, Table 2-1 references "UP trackage rights required" when it is the number of "linear feet of UP property crossed." TREX is not seeking, and does not require UP trackage rights as part of its Exemption Petition or Crossing Petition.

Build Alternatives. In addition, diesel emissions from locomotives would be higher under the No-Action Alternative than under the Build Alternatives as a result of the increased number of locomotive and train movements required under the current reciprocal switching arrangement.

Id. at 2-14 to 2-15.

OEA recognizes that the United States Army Corps of Engineers (“USACE”) has jurisdiction over wetlands and waters that would be impacted by the proposed project. *Id.* at 4-6. The Draft EA finds that, “[a]lthough the environmental impacts under the two Build Alternatives would be similar, the Green Alternative would result in greater impacts to wetlands and tidal waters than the Blue Alternative.” *Id.* at 2-14 and Table 2-1.² However, the OEA still finds that each of the two presented Build Alternatives (Blue and Green), and the design options associated with those alternatives, “would have similar environmental impacts and that none of those impacts would be significant.” *Id.* at 6-1.

The Draft EA suggests that both routes could be permitted by the USACE, the Blue Alternative under a Nationwide Permit (NWP) 14 and the Green Alternative under a Section 404 Individual Permit (IP). *Id.* at 4-6. However, if both options are deemed feasible, and both are submitted for permitting, USACE will likely only permit the Blue Alternative as the Least Damaging Practicable Alternative,³ because it would affect approximately 25% of the aquatic resources impacted by the Green Alternative. *Id.* at 4-6 (Green Alternative routings will affect 0.415 acres of aquatic resources and that the Blue Alternative routings will affect 0.099 acres). TREX prefers the Blue Alternative because it would have the least impact on wetlands, and the additional permitting and mitigation of the Green Alternative would be both time intensive and costly.⁴ TREX therefore requests that OEA recommend that the Blue Alternative be selected as the preferred route, with an option to proceed with the Green Alternative if the Blue Alternative is later found to not be feasible.

² As TREX indicated in its request to prepare an environmental assessment (filed Oct. 2, 2018), the Green Alternative “will require more extensive permitting and mitigation under section 404 of the Clean Water Act.” *Id.* at 5.

³ 40 C.F.R. § 230.10(a) (“Except as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.”).

⁴ In its report summarizing the impact to wetlands and permitting requirements, TREX’s environmental consultant, Johnson, Mirmiran & Thompson (“JMT”), estimated that it would take 12-18 months to permit the Green Alternative and that TREX’s associated costs could exceed \$1 million dollars. In comparison, JMT estimated that the Blue Alternative would take 45 days and \$0 to permit. A copy of JMT’s report was included with TREX’s Oct. 2, 2018 filing.

Mr. Joshua Wayland
March 14, 2019

TREX appreciates OEA's consideration of these comments and respectfully requests that it incorporate TREX's suggested revisions as part of the Final Environmental Assessment.

Sincerely,

A handwritten signature in black ink that reads "Peter Pfohl". The signature is written in a cursive style with a large, stylized "P" and "Pfohl" following.

Peter A. Pfohl

An Attorney for Texas Railway Exchange LLC



SLOVER & LOFTUS LLP

ATTORNEYS AT LAW

PETER A. PFOHL

March 21, 2019

VIA EMAIL AND U.S. MAIL

Mr. Joshua Wayland
Office of Environmental Analysis
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

Re: FD 36186 (Sub-No. 1), *Texas Railway Exchange LLC – Construction and Operation Exemption – Galveston County, TX – Petition for Issuance of a Crossing Order Pursuant to 49 U.S.C. § 10901(d)*

Dear Mr. Wayland:

Texas Railway Exchange LLC's ("TREX") respectfully submits the below voluntary mitigation measures in response to the Texas Parks and Wildlife ("TPWD") comments dated March 11, 2019, and the Texas Department of Transportation comments dated March 14, 2019 on the Draft Environmental Assessment ("Draft EA") served by the Surface Transportation Board, Office of Environmental Analysis ("OEA") on February 22, 2019.

TREX appreciates the timely responses of TPWD¹ and TXDOT. In the interest of accommodating reasonable recommendations and avoid unnecessary delays in the preparation of the Final Environmental Assessment ("Final EA"), even if mitigation is not required, and in an attempt to streamline any future USACE permits, TREX proposes the following voluntary mitigation measures for the Final EA:

¹ Several of TPWD's comments relate to wetlands and waters of the United States, which are the jurisdiction of the United States Army Corps of Engineers ("USACE"). All necessary permits and mitigation plans will be prepared as required and as directed by USACE. TREX also states that some of the recommendations proposed by TPWD, such as keeping a 150 foot diameter of vegetation around nests will not be possible when the project area does not include an area of vegetation spanning or having a diameter of 150 feet (notably, TPWD's comments submitted on July 16, 2018 suggested requiring a 25 foot diameter). TPWD's March 11, 2019 comments also repeated several recommendations previously submitted by TPWD on July 16, 2018, and therefore were already considered by OEA and addressed in the proposed mitigation measures in the Draft EA.

Mr. Joshua Wayland

March 21, 2019

Page 2

- Revise MM-1 to require consultation with the City of Galveston and TXDOT regarding the use of crash walls, as necessary, for all existing piers located within 25 feet of the tracks supporting the City of Galveston owned 51st Street/Pelican Island Causeway and the State Highway 275/Harborside Drive Bridge.
- Revise MM-16 to provide that TREX, where possible, will avoid using invasive plants for revegetation or soil stabilization. TREX agrees to consult TPWD's *Wildlife Habitat Assessment Program: Planning Tools and Best Management Practices* and the *Pollinator Partnership Planting Guides*.
- Revise MM-17 to increase the buffer around migratory bird nests from 15 feet, to "25 feet, where possible," recognizing the limited extent of the project area and TREX's proposed right-of-way.
- Revise MM-19 to require consultation with the United States Fish and Wildlife Service ("USFWS") regarding the Eastern Black Rail. Proposed MM-19 already requires TREX to "consult with USFWS regarding potential impacts to the red knot," and as a voluntary mitigation measure TREX agrees to also consult regarding the Eastern Black Rail.

TREX appreciates OEA's consideration of these voluntary mitigation measures and respectfully requests that it incorporate TREX's suggested revisions as part of the Final EA.

Sincerely,



Peter A. Pfohl

An Attorney for Texas Railway Exchange LLC



125 EAST 11TH STREET, AUSTIN, TEXAS 78701-2483 | 512.463.8588 | WWW.TXDOT.GOV

March 14, 2019

Joshua Wayland
Surface Transportation Board
395 E. Street, SW
Washington, DC 20423
Attn: Docket No. FD 36186

Dear Mr. Wayland,

The Rail Division of the Texas Department of Transportation (TxDOT) has reviewed and is providing written comment to the Draft Environmental Assessment (EA) for the proposal of Texas Railway Exchange, LLC (TREX). Rail Division staff conducted both a desktop review and a site inspection of the proposed project corridor. All proposed alignments have a rail corridor running under State Highway 275/Harborside Drive.

The Rail Division maintains the Rail-Highway Operations Manual to define responsibilities and coordinate efforts required between rail companies and other entities for projects that impact both roadway and railroad right-of-ways. The manual calls for the installation of crash walls on highway bridge columns within 25 feet of track centerlines. Our records indicate that the Harborside Drive Bridge was completed in 1982 and one or more columns are within 25 feet of existing tracks. It appears likely that both proposed alignments would run within 25 feet of several highway bridge columns. As such, the Rail Division expects that any new rail development would follow the Rail-Highway Operations Manual and AREMA standards Chapter 8, Pier Protection and include installation of safety features on the existing infrastructure in the project area to meet current standards. The current Draft EA does indicate in Section 2.2 – Construction that crash walls will be installed, if necessary, at the existing piers supporting the City of Galveston owned 51st Street/Pelican Island Causeway in accordance with AREMA standards. *However, crash walls will also need to be installed under the State Highway 275/Harborside Drive Bridge for all piers within 25 feet of tracks.*

Rail Division staff do not have any objections to the proposed project corridors, and based on review of the Draft EA as well as a recent site inspection, would concur with the Office of Environmental Analysis's (OEA) finding of no significant impacts to the quality of the natural or human environment. We are aware that the potential project will require permitting for jurisdictional waters and wetlands of the U.S. and that at least one of the alignments will require an Individual Permit from the U.S. Army Corps of Engineers.

Thank you for the opportunity to comment on the Draft EA. We kindly ask that you continue to include TxDOT Rail Division in future correspondence as the project plans progress.

Sincerely,

Mark Werner, P.E.,
Rail Planning and Programming Section Director

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TEXAS GENERAL LAND OFFICE
GEORGE P. BUSH, COMMISSIONER

March 13, 2019

Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001
Attn: Joshua Wayland

**Re: STB Docket No. FD 36186
Texas Railway Exchange
Galveston, Galveston County, Texas
CMP#: 19-1221-F5**

Dear Mr. Wayland:

Based on information provided to the Texas Coastal Management Program on the above project, it has been determined that it will likely not have adverse impacts on coastal natural resource areas (CNRAs) in the coastal zone. However, siting and construction should avoid and minimize impacts to CNRAs. If a U. S. Army Corps of Engineers permit is required, it will be subject to consistency review under the Texas Coastal Management Program.

Please forward this letter to applicable parties. If you have any questions or concerns, please contact me at (409) 741-4057 or at federal.consistency@glo.texas.gov.

Sincerely,

Allison Buchtien
Coastal Protection
Texas General Land Office



Life's better outside.®

March 11, 2019

Joshua Wayland
Surface Transportation Board
Patriots Plaza
395 E Street SW
Washington, DC 20423-0001

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Houston

Carter P. Smith
Executive Director

RE: Draft Environmental Assessment; Surface Transportation Board Docket No. FD 36186-Texas Railway Exchange-Construction and Operation Exemption; Galveston, Galveston County, Texas

Dear Mr. Wayland:

Texas Parks and Wildlife Department (TPWD) has received and reviewed the Draft Environmental Assessment (Draft EA) regarding the above-referenced proposed railway line project.

Please be aware that a written response to a TPWD recommendation or informational comment received by a state governmental agency may be required by state law. For further guidance, see the Texas Parks and Wildlife Code, Section 12.0011. For tracking purposes, please refer to TPWD project number 41530 in any return correspondence regarding this project.

Project Description

Texas Railway Exchange LLC (TREX) proposes to construct and operate approximately 2,800 feet of new rail line in the City of Galveston, Galveston County, Texas. Based on projected rail traffic provided by TREX, it is estimated that on average, a total of approximately four trains would operate on the proposed rail line per week including both incoming and outgoing trains. The project is not anticipated to create an increase in total rail traffic.

The project footprint is located south of the Galveston Ship Channel and southwest of the Port of Galveston in an industrial area that includes several rail lines, rail yards, and a number of port facilities, including the Terminal. The proposed rail line would extend approximately 2,800 feet in a southwesterly direction from the southern edge of the existing terminal property and would cross an existing Union Pacific (UP) rail line south of the terminal to connect to the existing BNSF tracks. The proposed rail line would cross Port Industrial Road and would travel under elevated portions of SH 275/Harborside Drive and the 51st Street/Pelican Island Causeway. It would also cross two ditches and two emergent wetlands considered as jurisdictional water and wetland features under Section 404 of the Clean Water Act.

The entire length of the proposed rail line would involve new construction. The rail right-of-way (ROW) would be approximately 2,800 feet long and 50 feet wide, including approximately 25 feet on either side of the centerline of the new rail line. A gravel crew access road would be constructed within the proposed ROW parallel to the northern side of the new track. The crew access road would be constructed between the existing crew

change parking area near the west end of the proposed project and the existing crew access road south of the Port Industrial Road. Grading and surface preparation could occur during construction. New sub-ballast, ballast, ties, rail, and switch components would be installed within the ROW. A new at-grade road crossing would be installed where the proposed rail line would cross Port Industrial Road between 356 feet and 660 feet west of the existing TREX rail line crossing, depending on the Build Alternative selected. The proposed rail line would also cross two tidal waterways and two wetland areas, which could require the placement of fill materials and culvert structures in those habitats.

Environmental Impacts

Two alternatives (Green and Blue Alternatives), and two potential design options (Option A and Option B) for each of these alternatives, as well as the No-Action Alternative were considered in the Draft EA for determining the least environmental impact by the project. Although the wetland acreage was provided for each of these alternatives, the applicant has not provided a habitat assessment of these wetlands in terms of functional capacity units (FCUs) using the U.S. Army Corps of Engineers (USACE) Galveston District's interim hydrogeomorphic (iHGM) model for tidal emergent wetlands. Likewise, no figures were provided in the Draft EA that display wetlands or waters within the project area. The applicant also has not provided a compensatory mitigation plan for the proposed palustrine emergent wetlands impacts.

Based upon review of the Draft EA it does not appear that impacts beyond the ROW, such as temporary laydown areas, were defined or assessed.

Recommendations: The applicant should provide a habitat assessment of wetlands in the project area which uses the USACE Galveston District's iHGM model for tidal emergent wetlands, provide figures of wetlands in the project area, and clarify impacts anticipated to occur both within and outside of the ROW. The location and nature (e.g. temporary impact from laydown area, permanent impact from crew road) of all impacts should be defined as clearly as possible within the EA. A mitigation plan that addresses all wetland impacts associated with the project should be developed and provided in the EA.

Proposed Alternatives

Green Alternative

This alternative would extend approximately 2,800 feet in a southwesterly direction from the southern end of the existing terminal property to the existing BNSF unit train stacking tracks lying south of an existing UP rail line. From its northeastern terminus at the Terminal, the Green Alternative would cross Port Industrial Road at-grade and would travel under the 51st Street/Pelican Island Causeway. It would then cross a tidal water feature and two emergent wetlands and travel under SH 275/Harborside Drive. The Green Alternative would cross the existing UP rail line at-grade and cross a linear ditch (a second tidal water feature) south of the UP tracks before terminating at a connection with the BNSF tracks on

the south side of the ditch. The Green Alternative includes construction of a new crew access road north of and parallel to the new track from the crossing under SH 275/Harborside Drive to the existing crew parking area north of the UP tracks near the proposed rail line's western terminus. The Green Alternative would require the construction of a new culvert and the extension of an existing culvert to cross two tidal water features, resulting in impacts to 0.415 acres of tidal wetlands and waterways.

Blue Alternative

The Blue Alternative would have the same terminus points as the Green Alternative and would follow similar alignments. The Blue Alternative avoids crossing the tidal water and both emergent wetlands to the west of 51st Street/Pelican Island Causeway by veering farther south into UP property to parallel the existing UP rail line. However, the Blue Alternative would require installation of a new culvert to cross the linear ditch south of the UP tracks before terminating at a connection with the BNSF tracks on the south side of the ditch. The installation of this culvert would impact 0.099 acre of tidal wetlands and waterways. Similar to the Green Alternative, the Blue Alternative would also include a new crew access road.

TPWD offers the following comments and recommendations concerning this project.

TPWD's Recommended Least Damaging Environmental Alternative

Recommendations: The applicant should:

- Minimize impacts to tidal wetlands and waterways by considering the proposed Blue Alternative as the least environmentally damaging alternative. As noted in the Draft EA, such features serve as habitat for protected species and other wildlife.
- Provide a habitat assessment of the tidal wetlands impacted by the proposed project by determining their biological, physical and chemical FCUs using the Galveston District's iHGM model for tidal emergent wetlands.
- Provide a compensatory mitigation plan for the proposed tidal emergent wetland impacts by developing a permittee responsible mitigation plan that contains all the required components identified under 33 CFR 332(c)(2) through (c)(14) in Compensatory Mitigation for Loss of Aquatic Resources (73 Federal Register 19596, April 10, 2008).

Construction Recommendations

General Construction Recommendations

Recommendation: TPWD recommends the judicious use and placement of sediment control fence to exclude wildlife from the construction area. In many cases, sediment control fence placement for the purposes of controlling erosion and protecting water quality can be modified minimally to also provide the benefit of excluding wildlife access to construction areas. The exclusion fence should be buried at least six inches

and be at least 24 inches high. The exclusion fence should be maintained for the life of the project and only removed after the construction is completed and the disturbed site has been revegetated. Construction personnel should be encouraged to examine the inside of the exclusion area daily to determine if any wildlife species have been trapped inside the area of impact and provide safe egress opportunities prior to initiation of construction activities.

Recommendation: For soil stabilization and/or revegetation of disturbed areas within the proposed project area, TPWD recommends erosion and seed/mulch stabilization materials that avoid entanglement hazards to snakes and other wildlife species. Because the mesh found in many erosion control blankets or mats pose an entanglement hazard to wildlife, TPWD recommends the use of no-till drilling, hydromulching and/or hydroseeding rather than erosion control blankets or mats due to a reduced risk to wildlife. If erosion control blankets or mats will be used, the product should contain no netting or contain loosely woven, natural fiber netting in which the mesh design allows the threads to move, therefore allowing expansion of the mesh openings. Plastic mesh matting should be avoided.

Recommendation: If trenching or other excavation is involved in construction, TPWD recommends that contractors keep trenching/excavation and backfilling crews close together to minimize the amount of trenches/excavation areas left open at any given time during construction. TPWD recommends that any open trenches or excavation areas be covered overnight and/or inspected every morning to ensure no reptiles or other wildlife species have been trapped. Trenches left open for more than two daylight hours should be inspected for the presence of trapped wildlife prior to backfilling. If trenches/excavation areas cannot be backfilled the day of initial excavation, then escape ramps should be installed at least every 90 meters. Escape ramps can be short lateral trenches or wooden planks sloping to the surface at an angle less than 45 degrees (1:1).

Culverts

Crossings should be constructed in a manner that does not impede flow, over-widen the channel, or destabilize the banks. Natural bed and banks are significant features for fish and wildlife. Box culverts eliminate access to water for many animal species and act as a barrier to the passage of aquatic organisms. Additionally, many animals burrow into banks for nesting or roosting. Natural shorelines and banks allow access both into and out of the water, or just to the water's edge for many animals, such as salamanders, turtles, snakes, invertebrates, and birds.

Long culverts particularly pose a barrier to animal crossing. The wide, flat bottom of a square culvert spreads out the flow, creating a shallower water depth which also may prevent passage of aquatic organisms. Culverts accelerate water velocity at elevated flows, increasing downstream erosion and further inhibiting aquatic organism passage. Culverts require erosion prevention structures at the culvert outfalls. Lack of protection will likely lead to stream down-cutting and the creation of an impediment to passage for aquatic

organisms.

Recommendation: The applicant should minimize the impacts of installing a culvert in tidal wetlands by using an open bottom single culvert and/or more technically advanced design features in order to allow a more natural environment for aquatic organisms to migrate through this passageway. The size and shape of the culvert should be used to maintain the approximate configuration of the bankfull channel for water and sediment transport; or use smaller culverts set at higher elevations to maintain the integrity of the floodplain.

Federal Law: Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) prohibits direct and affirmative purposeful action that reduce migratory birds, their eggs, or their nests, by killing or capturing, to human control, except when specifically authorized by the Department of the Interior. This protection applies to most native bird species, including ground nesting species. The U.S. Fish and Wildlife Service (USFWS) Migratory Bird Office can be contacted at (505) 248-7882 for more information on potential impacts to migratory birds.

The Draft EA, mitigation measure (MM) 17, notes a commitment to:

- Deal with migratory bird species in a manner consistent with the Migratory Bird Treaty Act (MBTA);
- Conduct surveys of the project footprint for migratory birds prior to construction; and
- Leave an area of buffer vegetation around any observed nests no less than 15 feet in all directions until the young have fledged.

Recommendation: TPWD recommends any vegetation clearing be scheduled outside of the general bird nesting season of March 15th to September 15th; however, if clearing must occur during nesting season, nest surveys should be conducted prior to clearing. Nest surveys should be conducted no more than 5 days prior to construction in order to maximize detection of active nests. If nests are observed during surveys, a vegetation buffer area of no less than 150-feet in diameter should remain around the nest until all young have fledged.

Comment: TPWD does not consider a 15-foot buffer of vegetation to be sufficient in width to protect migratory bird nests/young.

Federal Law: Endangered Species Act

Federally listed animal species and their habitat are protected from take on any property by the Endangered Species Act (ESA). Take of a federally listed species can be allowed if it is incidental to an otherwise lawful activity and must be permitted in accordance with Section 7 or 10 of the ESA. Any take of a federally listed species or its habitat without the required take permit (or allowance) from the USFWS is a violation of the ESA.

The USFWS should be contacted for species occurrence data, guidance, permitting, survey protocols, and mitigation for federally listed species. For the USFWS rare species lists by county, please visit the USFWS Information for Planning and Consultation (IPaC) webpage.

The Draft EA does acknowledge potential habitat for federally-listed species as occurring within the project area. MM-20 includes commitments to notify TPWD or the U.S. Fish and Wildlife Service if any federally or state listed threatened or endangered species are encountered during construction.

The study area may provide habitat for multiple federally listed or candidate species. These include:

- eastern black rail (*Laterallus jamaicensis*, proposed threatened as of October 9, 2018)
- red knot (*Calidris canutus rufa*, threatened)

The red knot is a species which could be present within the study area during migration. The eastern black rail is a resident species that could occur within the study area in areas of suitable habitat

Recommendation: TPWD recommends a policy of coordination with USFWS if either of the above-listed bird species are observed in the area of the project.

Recommendation: TPWD recommends avoiding disturbance to the wetland habitats required by the above-named species. If disturbance is anticipated, TPWD recommends a qualified biologist conduct pre-construction surveys for these species. TPWD recommends that if any of these species or their habitat would be impacted by the proposed project, TREX should coordinate with TPWD and the USFWS, as appropriate, to determine avoidance, minimization, and mitigation strategies. For coordination with TPWD regarding terrestrial habitat impacts, please contact Ms. Rachel Lange at (361) 412-9012 or Rachel.Lange@tpwd.texas.gov. For coordination with TPWD regarding aquatic habitat impacts, please contact Ms. Colleen Roco at (281) 534-0139 or Colleen.Roco@tpwd.texas.gov.

Federal Law: Clean Water Act

Section 404 of the Clean Water Act (CWA) establishes a federal program to regulate the discharge of dredged and fill material into the waters of the U.S., including wetlands. The USACE and the Environmental Protection Agency (EPA) are responsible for making jurisdictional determinations and regulating wetlands and other waters under Section 404 of the CWA.

Wetland mitigation is out-of-kind and insufficient to compensate for impacts to stream functions. For unavoidable stream impacts, stream compensation is required under 33 CFR §332.3(e)(3); item 11.B.2. in Compensatory Mitigation for Losses of Aquatic Resources (73 Federal Register 19596, April 10, 2008); and the Galveston District Stream Condition Assessment Standard Operating Procedure for Compensatory Stream Mitigation.

Recommendation: TPWD recommends consulting with the USACE for potential impacts to waters of the U.S. including jurisdictional determinations, delineations, and mitigation.

Recommendation: TPWD recommends mitigation for all impacts to aquatic resources. The wetland and stream mitigation plan should be developed in consultation with TPWD. TREX should coordinate with Ms. Colleen Roco at (281) 534-0139 or Colleen.Roco@tpwd.texas.gov regarding aquatic habitat impacts and mitigation.

State Law: Parks and Wildlife Code – Chapter 64, Birds

Texas Parks and Wildlife (TPW) Code Section 64.002, regarding protection of nongame birds, provides that, “no person may . . . catch, kill, injure, pursue, or possess . . . a bird that is not a game bird.” TPW Code Section 64.003, regarding destroying nests or eggs, provides that, “[n]o person may destroy or take the nests, eggs, or young and any wild game bird, wild bird, or wild fowl” TPW Code Chapter 64 does not allow for incidental take and, therefore, is more restrictive than the MBTA.

Recommendation: Please review the *Federal Law: Migratory Bird Treaty Act* section above for recommendations as they are also applicable for Chapter 64 of the TPW Code compliance.

State Law: Aquatic Resources

TPW Code Section 1.011 provides TPWD authority to regulate and conserve aquatic animal life in public waters. Title 31, Chapter 57, Subchapter B, Section 57.157 of the Texas Administrative Code (TAC) regulates relocation of native fish, shellfish, freshwater mussels and clams, and plants in state waters, and Section 12.301 of the TPW Code identifies liability for wildlife taken in violation of TPW Code or a regulation adopted under TPW Code.

The Draft EA notes in MM-11, MM-12, MM-13, MM-14, and MM-16 that TREX makes several commitments related to aquatic habitats and/or water quality. These include:

- Use of erosion and sedimentation control measures along surface waters;
- Efforts towards the maintenance of natural water flow and drainage patterns;
- Minimization of impacts to waters and wetlands, and coordination/compliance with USACE regulatory requirements;

- Coordination/compliance with Texas Commission on Environmental Quality (TCEQ) regulatory requirements; and
- Staff/contractors will be properly trained in herbicide application, shall comply with product label directions, shall limit the amount of product entering waterways, and shall use only those products regulated for such uses by the EPA and follow all state regulations regarding their use.

Recommendation: To minimize disturbance to streams/wetlands and to minimize impacts to aquatic life, the applicant should only allow personnel and equipment to enter these areas when essential to the work being done. Only vegetation impeding construction should be removed, equipment should not be driven over vegetation when it is wet, and heavy machinery should not be stored on vegetative cover for long periods of time. Protective mats should be utilized during construction to reduce the amount of soil and root disturbance and aid in the recovery of plants.

Recommendation: To minimize potential impacts to sensitive organisms, the applicant should use BMPs for riparian and/or wetland areas. BMPs should include measures such as avoiding construction during spawning periods and use of double silt fences and doubling soil stabilization measures along the banks to avoid increasing the turbidity of the water.

Recommendation: For dewatering activities or other construction-related activities that may impact fish and wildlife resources, the applicant should coordinate with TPWD (Heather.Biggs@tpwd.texas.gov or 281-534-0133) regarding any required TPWD Aquatic Resource Relocation Plan (ARRP) and/or Aquatic Introduction Permit (AIP) prior to initiating any construction activities. The responsible party may be liable for replacement costs for fish and wildlife mortalities resulting from these types of activities (TPW Code 12.301). The process for determining the replacement value and cost of fish and wildlife resources can be found in §31 TAC 69.19-69.29.

Recommendation: Erosion and sedimentation control materials should adhere to the guidelines presented in the *General Construction Recommendations* section, above, and should be properly installed and maintained.

Recommendation: TREX should coordinate with Ms. Colleen Roco at (281) 534-0139 or Colleen.Roco@tpwd.texas.gov regarding aquatic habitat impacts and mitigation measures.

State Law: State-Listed Species

Section 68.015 of the Parks and Wildlife Code regulates state-listed species. Please note that there is no provision for capture, trap, take, or kill (incidental or otherwise) of state-listed species. A copy of *TPWD Protection of State-Listed Species Guidelines*, which includes a list of penalties for take of species, can be found online at the TPWD Wildlife Habitat Assessment Program: Laws and Regulations Applicable to TPWD Review

webpage. State-listed species may only be handled by persons with the appropriate authorization obtained through TPWD. For more information on this authorization, please contact the Wildlife Permits Office at (512) 389-4647.

The Draft EA does acknowledge potential habitat for multiple state-listed species as occurring within the project area. MM-20 includes commitments to notify TPWD or the U.S. Fish and Wildlife Service (USFWS) if any federally or state listed threatened or endangered species are encountered during construction.

TPWD provides online access to state-listed species information through the TPWD Rare, Threatened, and Endangered Species of Texas by County (RTEST) application. This application provides county-level information regarding occurrence of protected species (federal- or state-listed threatened or endangered) and may be utilized to inform development project planning. Additionally, records of occurrence for these protected species are tracked within the Texas Natural Diversity Database (TXNDD) and are publicly available by request. In reviewing these data sources, aerial imagery, and the Draft EA, TPWD has determined the project area appears to provide suitable habitat for multiple state-listed species, such as the following species (see aforementioned *Federal Law: Endangered Species Act* section for those species that are both federal- and state-listed):

- reddish egret (*Egretta rufescens*, threatened)
- white-faced ibis (*Plegadis chihi*, threatened)
- wood stork (*Mycteria americana*, threatened)

Birds

The reddish egret is a year-round resident within Texas, inhabiting marshes, shallow salt ponds, and tidal flats. The species may occur inland on rare occasions. Reddish egrets nest communally with other species of wading birds. Nests are constructed on the ground or in trees/bushes, often in the thickets of coastal islands.

The white-faced ibis inhabits marshes, swamps, ponds, and rivers. Freshwater systems are preferred. Isolated nesting colonies have been documented from Oregon to Kansas, but white-faced ibis are more commonly found in Utah, Texas, and Louisiana. In Texas, this species breeds and winters along the Gulf Coast; migrants may occur in the Texas panhandle and west Texas. The white-faced ibis is a colonial nesting species and will construct nests in beds of bulrushes, mats formed by dead vegetation, or trees. Nesting and hatching occurs in late spring through early summer.

The wood stork is associated with various habitats featuring shallow, standing water, such as prairie ponds, ditches, mudflats, flooded fields, and natural wetlands. This species will utilize both freshwater and saltwater systems, located in either open or forested areas. The wood stork roosts communally in snags, sometimes in association with other species of wading birds (e.g., herons).

Recommendation: TPWD recommends avoiding disturbance to habitats required by the above-listed birds. If disturbance of these habitats is anticipated, TREX should coordinate with TPWD to determine avoidance, minimization, and mitigation strategies.

Recommendation: Please review the *Federal Law: Migratory Bird Treaty Act* section above for recommendations as they are also applicable for minimizing impacts to state-listed bird species.

Rare Species

In addition to state- and federally-protected species, TPWD tracks special features, natural communities, and rare species that are not listed as threatened or endangered. These species and communities are tracked in the TXNDD, and TPWD actively promotes their conservation. TPWD considers it important to evaluate and, if necessary, minimize impacts to rare species and their habitat to reduce the likelihood of endangerment and preclude the need to list as threatened or endangered in the future.

A review of TXNDD information, RTEST, and recent aerial photographs indicates that suitable habitat may be present within the study area for the following rare species and that these species could potentially be impacted by project activities:

- brown pelican (*Pelecanus occidentalis*)
- Texas diamondback terrapin (*Malaclemys terrapin littoralis*)
- American eel (*Anguilla rostrata*)

Recommendation: TPWD recommends TREX assess the project area for suitable habitat for the above-listed rare species and avoid adverse impacts to them, if found. As the project advances, please review current TXNDD data and the TPWD RTEST online county list for Galveston County for rare species that may occur within the project area depending upon potential suitable habitat availability. If during construction, the project area is found to contain rare species, natural plant communities, or special features, TPWD recommends that precautions be taken to avoid impacts to them.

Recommendation: If encountered during construction, measures should be taken to avoid impacting any wildlife or rare plants.

Invasive Species

The Draft EA does not address invasive species or make commitments to implement BMPs aimed at their prevention or management. The proposed project area is susceptible to colonization by a variety of invasive species of plants. These plants often outcompete native plant species and establish monocultures, making the area less beneficial for wildlife and people and lowering aesthetic value of an invaded area. Invasive species of particular

concern are giant salvinia (*Salvinia molesta*), common water hyacinth (*Eichhornia crassipes*), alligatorweed (*Alternanthera philoxeroides*), deep-rooted sedge (*Cyperus entrerianus*), guineagrass (*Urochloa maxima*), Chinese tallow (*Triadica sebifera*), chinaberry (*Melia azedarach*), Brazilian peppertree (*Schinus terebinthifolius*), trifoliate orange (*Poncirus trifoliata*), salt cedar (*Tamarix ramosissima*), Chinese privet (*Ligustrum sinense*), Japanese honeysuckle (*Lonicera japonica*), and any non-native grass species.

Recommendation: TPWD recommends TREX establish sanitation procedures to prevent the spread of invasive plants. TPWD recommends such a plan include the following measures to minimize invasive plant spread: 1) Inspect the site for infestation prior to operations. 2) Avoid driving vehicles, mowers, all-terrain vehicles, or spray equipment through infestations in seed or fruit. 3) Brush and wipe all seeds and debris from clothes, boots, socks, and personal protective equipment. 4) Clean motorized equipment, especially the undercarriage and tire surfaces. 5) Cover loads or bag cut invasive plants before transport.

Recommendation: TPWD recommends TREX avoid utilizing invasive species in seed mixes or plantings for revegetation or soil stabilization purposes. More information and resources regarding revegetation and restoration with native plants may be found at TPWD's Wildlife Habitat Assessment Program: Planning Tools and Best Management Practices webpage and at the Pollinator Partnership Planting Guides webpage.

Data Reporting and the Texas Natural Diversity Database

As mentioned earlier in this letter, TPWD maintains records of occurrence for protected and rare species, or SGCN, within the TXNDD and these data are publicly available by request. The TXNDD is intended to assist users in avoiding harm to rare species or significant ecological features. The TXNDD is updated continuously, and relies partially on information submitted by private parties, such as developers or their consultants. Given the small proportion of public versus private land in Texas, the TXNDD does not include a representative inventory of rare resources in the state.

Although it is based on the best data available to TPWD regarding rare species, the data from the TXNDD do not provide a definitive statement as to the presence, absence, or condition of special species, natural communities, or other significant features within a project area. Determining the actual presence of a species in a given area depends on many variables including daily and seasonal activity cycles, environmental activity cues, preferred habitat, transiency, and population density (both wildlife and human). The absence of a species can be demonstrated only with great difficulty, and then only with repeated negative observations, taking into account all the variable factors contributing to the lack of detectable presence.

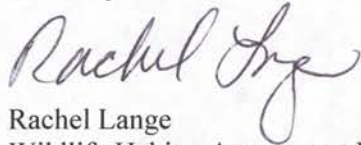
Please note that the absence of TXNDD information in an area does not imply that a species is absent from that area. These data are not inclusive and cannot be substituted for field surveys.

Joshua Wayland
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March 11, 2019

Recommendation: To aid in the scientific knowledge of a species' status and current range, TPWD encourages reporting encounters of protected and rare species to the TXNDD according to the data submittal instructions found at the TPWD Texas Natural Diversity Database: Submit Data webpage.

Thank you for considering potential impacts to Texas' wildlife and natural resources during project planning. Please contact me at (361) 412-9012 or Rachel.Lange@tpwd.texas.gov if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Rachel Lange".

Rachel Lange
Wildlife Habitat Assessment Program
Wildlife Division

RL:41530