



SLOVER & LOFTUS LLP

ATTORNEYS AT LAW

PETER A. PFOHL

August 15, 2019

Via E-Filing

Ms. Victoria Rutson
Director, Office of Environmental Analysis
and Federal Preservation Officer
Surface Transportation Board
Office of Environmental Analysis
395 E Street, SW
Washington, DC 20423-0001

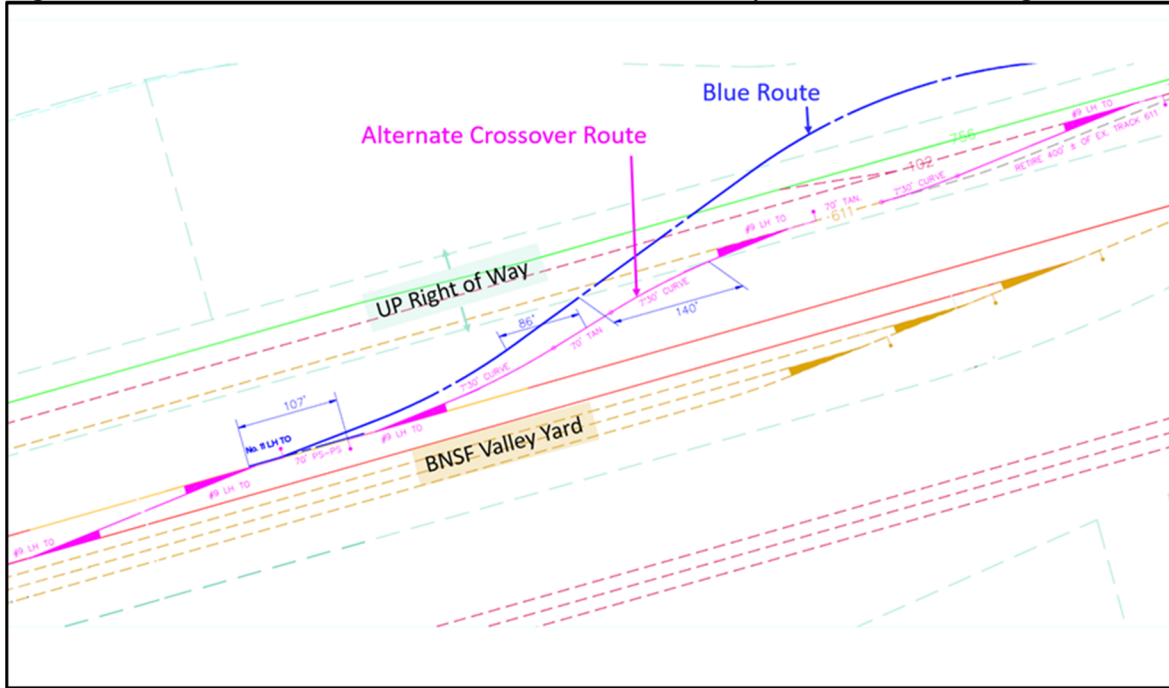
Re: *Texas Railway Exchange LLC – Construction and Operation Exemption – Galveston County, TX – Petition for Issuance of a Crossing Order Pursuant to 49 U.S.C. § 10901(d)*, STB Docket No. FD 36186 (Sub Nos. 0 and 1)

Dear Ms. Rutson:

The Texas Railway Exchange LLC (“TREX”) is hereby submitting this letter to provide the Office of Environmental Analysis (“OEA”) with information regarding the environmental impacts of substituting crossovers for diamonds to cross the tracks and property of the Union Pacific Railroad Company. This letter is being submitted contemporaneously with TREX’s status update to the Board on the parties’ discussions on the type of crossing to be used in crossing the tracks and property of the Union Pacific Railroad Company (“UP”).

TREX has presented to UP a routing option that substitutes crossovers for the proposed diamonds (“Alternate Crossover Route”), the approximate location of which is depicted below in Figure 1.

Figure 1: Alternate Crossover Route - BNSF Valley Yard and UP Right-of-Way

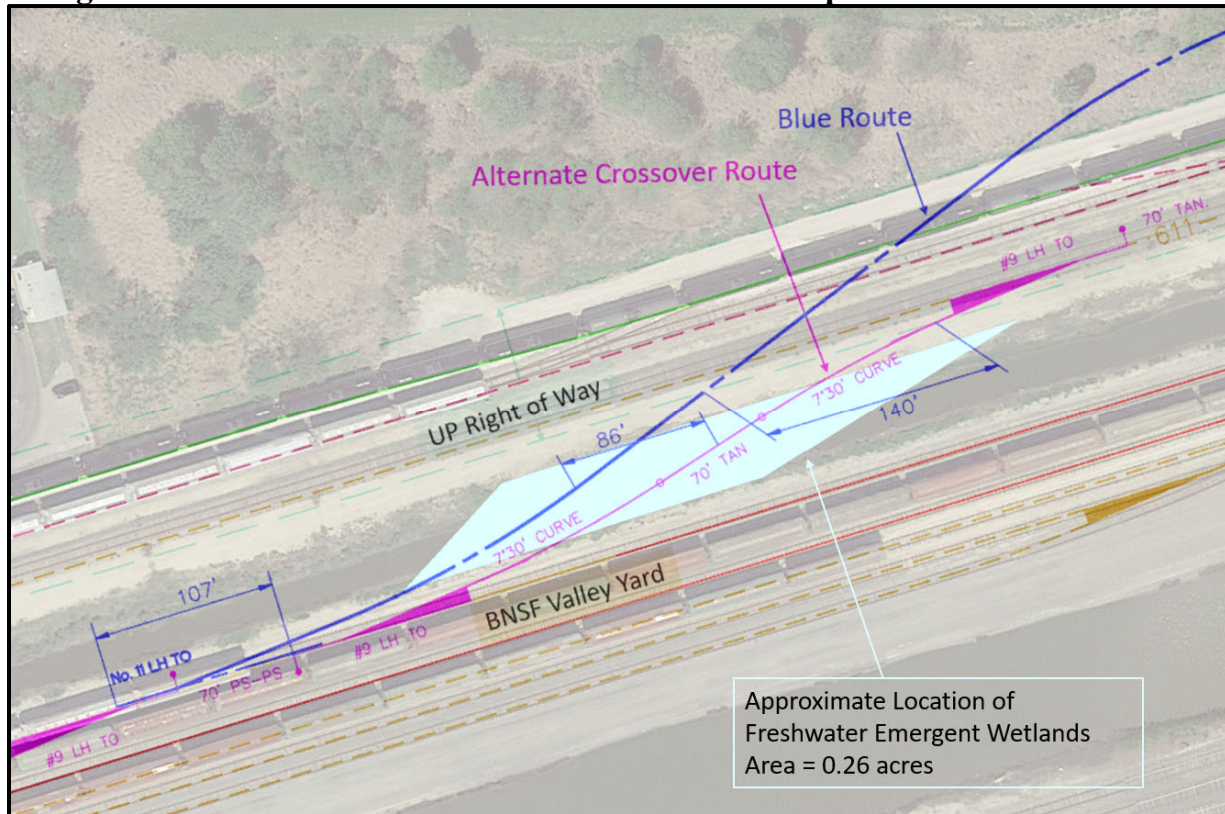


The Alternate Crossover Route, the pink route as shown on Figure 1, would be constructed slightly east from where the proposed Blue Route crosses from the BNSF Valley Yard to the UP right-of-way. The Alternate Crossover Route will utilize crossovers and connecting track instead of crossing diamonds over the UP's right of way and track.

The Alternate Crossover Route does not significantly affect areas or present issues different from the proposed Blue and Green Alternative Routes specified in the Final Environmental Assessment issued by the Office of Environmental Analysis (“OEA”) on May 2, 2019 (“Final EA”). Substituting crossovers for diamonds will reduce the amount of UP property required for the crossing, lower construction costs, and shorten the timeline for construction. Also, by connecting to existing Track 756, TREX would be able to avoid constructing 0.3 miles of duplicative track and avoid installation of an at-grade crossing on Port Industrial Road.

The total amount of wetlands impacted by the Alternate Crossover Route will be minimal. The only wetlands to be impacted by the Alternate Crossover Route are freshwater emergent wetlands located between the BNSF Valley Yard and the UP right-of-way reflected in Figure 2 below.

Figure 2: Alternate Crossover Route - Estimated Impact to Potential Wetlands



The wetland impacts are below the 1/3 acre threshold and will qualify for a Nationwide Permit as opposed to a Section 404 permit.¹ The estimated wetland impacts are also less than for the Green Route, which OEA determined to not significantly impact wetlands and waterways. Final EA at 2-10.

¹ The proposed Blue Route at this location impacts 0.099 acres of freshwater emergent wetlands as depicted in the aquatic features map (attached as Exhibit 1). Referencing the National Wetlands Inventory map (Exhibit 2), the area identified as a freshwater emergent wetland was conservatively mapped and measured using Google Earth using an overlay of the proposed routing. Using this conservative estimate, the Alternate Crossover Route could potentially impact 0.26 acres of the freshwater emergent wetlands between the BNSF Valley Yard and the UP right-of-way. TREX agrees that if the Alternate Crossover Route is constructed as the preferred route, it will perform a survey of the wetlands that may be affected and consult with the U.S. Army Corps of Engineers as required by mitigation measure 12 (MM-12) in the Final EA. See Final EA at 12.

In summary, if the parties reach an agreement to substitute crossovers for diamonds, TREX does not believe there are any significant environmental impacts or issues that would warrant further environmental analysis or review.²

Respectfully submitted,

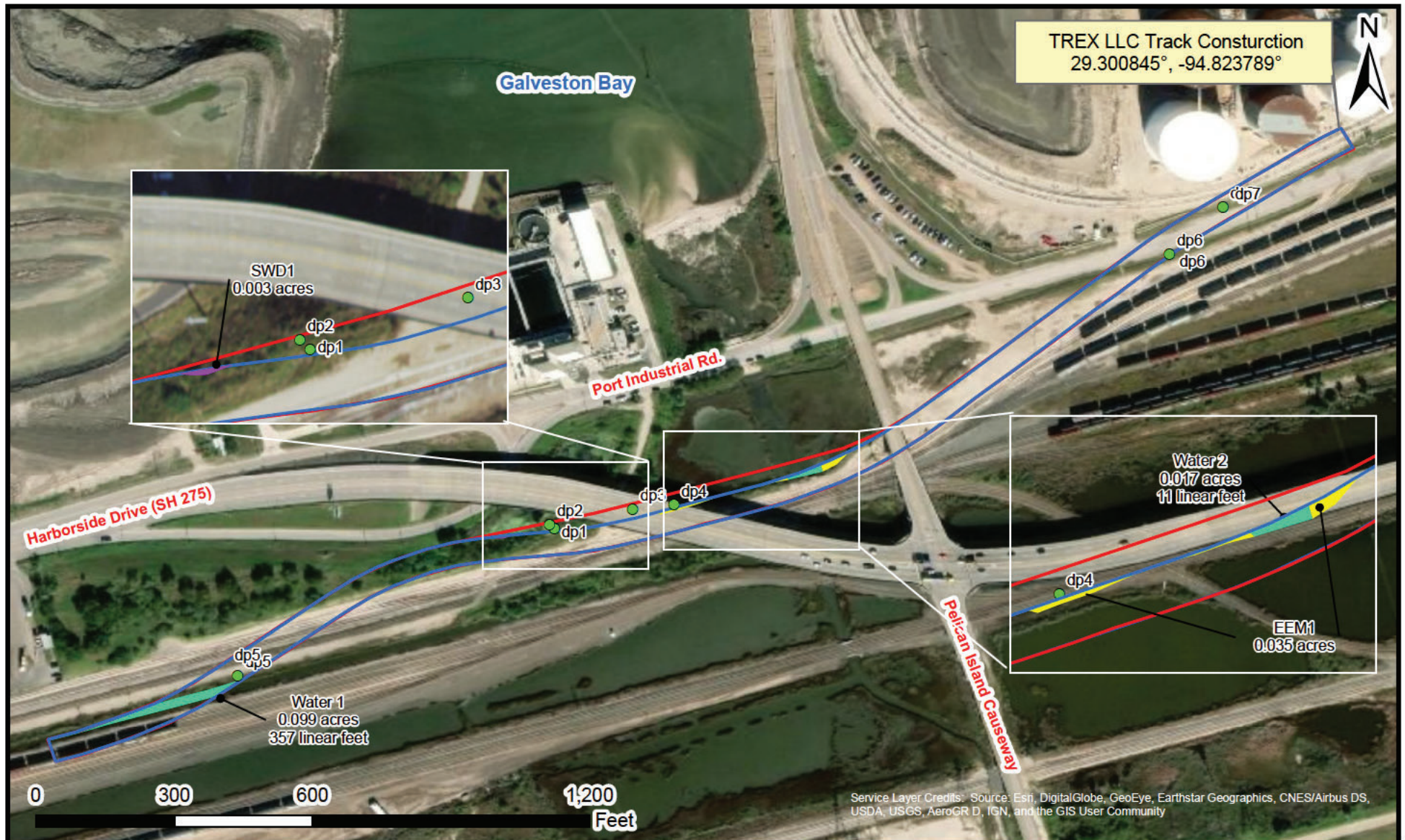


Peter A. Pfohl
Robert D. Rosenberg
Katherine F. Waring
SLOVER & LOFTUS LLP
1224 Seventeenth St., N.W.
Washington, D.C. 20036
(202) 347-7170
Attorneys for Texas Railway Exchange LLC

cc (via email): Jeremy Berman, Esq.

² TREX believes a Supplemental Environmental Assessment is not warranted because the Alternate Crossing Route only modifies the alternatives contemplated, it will not impact any new areas not already assessed, and substituting crossovers for diamonds will not “necessarily alter the environmental impact.” *See generally City of Mukilteo v. U.S. Dep’t of Tranp.*, 815 F.3d 632, 638 (9th Cir. 2016); *Great Old Broads for Wilderness v. Kimbell*, 709 F.3d 836, 854 (9th Cir. 2013) (cited by *Mukilteo v. U.S. Dep’t of Tranp.*); *Sierra Club v. U.S. Army Corps of Engineers*, 295 F.3d 1209, 1221 (11th Cir. 2002).

EXHIBIT 1

**Legend**

- TREX Composite Study Area Boundary
- Proposed Blue Route Project Boundary
- Sample Points
- Tidal Wetlands (0.035 acres)
- Tidal Waters (0.116 acres)
- Stormwater Detention Pond (0.003 acres)

TREX LLC TRACK CONSTRUCTION
AQUATIC FEATURES MAP - BLUE ROUTE
TEXAS RAILWAY EXCHANGE, LLC
GALVESTON COUNTY, TEXAS



20465 State Highway 249, Suite 300
Houston, TX 77070

Figure No.: 8B

Date: 8/8/2018

Project No.: 18494.00F

Drawn By: Alngram

Note: This is not a
Property Boundary Survey

EXHIBIT 2



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Legend

- | | |
|--|---|
| TREX Composite Study Area Boundary | Freshwater Emergent Wetland |
| NWI Features | Freshwater Forested/Shrub Wetland |
| Estuarine and Marine Deepwater | Freshwater Pond |
| Estuarine and Marine Wetland | Riverine |

**TREX LLC TRACK CONSTRUCTION
NWI FEATURES MAP
TEXAS RAILWAY EXCHANGE, LLC
GALVESTON COUNTY, TEXAS**



20465 State Highway 249, Suite 300
Houston, TX 77070

Figure No.: 4

Date: 8/8/2018

Project No.: 18494.00F

Drawn By: Alngram

Note: This is not a
Property Boundary Survey