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February 8, 2019

Ms. Diana Wood
Project Manager, Office of Environmental Analysis
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Mr. Travis Hughes
Chief, Regulatory Division
U.S. Army Corps of Engineers, Charleston District
69-A Hagood Ave.
Charleston, S.C. 29403

Re: December 28, 2018 Draft EA Comment Letter of Weyerhaeuser Company
STB Docket No. FD 36095, Palmetto Railways – Construction Exemption – In
Berkeley County, South Carolina

Dear Ms. Wood and Mr. Hughes:

This letter responds to the December 28, 2018 joint letter from Richard D. Bybee, Esquire and Jeffrey S. Tibbals, Esquire, submitted on behalf of Weyerhaeuser Company ("Weyerhaeuser") as a comment ("Comments") to the November 30, 2018 Draft Environmental Assessment ("DEA") for the Camp Hall Rail Line, STB Docket No. FD 36095 ("Project"). Palmetto Railways appreciates this opportunity to respond to the Comments and provide context to and clarification of some of the issues raised therein.

Given the location of Weyerhaeuser-owned property within the Project corridor¹ of the preferred alternative and the need to acquire property rights from Weyerhaeuser for the Project,

¹ Palmetto Railways acknowledges that Weyerhaeuser owns a substantial amount of property in Berkeley County and is impacted by the proposed route of the Project. However, Weyerhaeuser's property ownership status does not afford its voice any greater privilege or status in this review process

Palmetto Railways proactively sought Weyerhaeuser's involvement and feedback during the planning stage of the Project in order to develop the proposed route, working cooperatively with Weyerhaeuser to ensure that any impacts to the company's property were minimized. In those discussions, Palmetto Railways presented representatives of Weyerhaeuser with multiple versions of proposed rights-of-way for what would eventually become the Cross Alternative (the preferred alternative). *See* Exh. A, February 2016 E-mail Chain between Palmetto Railways and Weyerhaeuser. Not only did Weyerhaeuser review the proposed rights-of-way provided by Palmetto Railways, but they expressed a "strong preference" for one of the alternatives, as well as the justification for the preference as "the primary reason is [the preferred right of way] has the least impact to our ongoing forestry operations." *Id.*

Taking Weyerhaeuser's "strong preference" into account, Palmetto Railways located the portion of the preferred route that impacts Weyerhaeuser's property precisely along the preferred route that "stays to the west and hugs the county road before turning east before crossing Fish Road." Exh. A. Notably, the Comments do not expressly advocate for one of the other route alternatives developed by Palmetto Railways and evaluated in the DEA. Instead, the Comments merely suggest obliquely that "Weyerhaeuser would be pleased to work with the permit applicant and governing regulatory bodies to develop alternatives" that address Weyerhaeuser's hypothetical ideas for future use of its land.²

The principal concern expressed by the Comments is that the DEA does not account for Weyerhaeuser's apparent desire to develop its property at some indeterminate time in the future. Consequently, according to the Comments, the DEA does not adequately address the indirect cumulative effects of the Project on Weyerhaeuser's property. *See* 40 C.F.R. § 1508.8. The Comments

than the property owner with the smallest of impacts from the Project or, more importantly, those constituents, such as minority population residents, who will have significantly mitigated impacts by locating the corridor through an agricultural company's property. *E.g.*, 40 C.F.R. § 1503.4(a) (providing that neither the applicant nor the regulatory body is required to alter a project to conform to comments received by interested parties).

² However, NEPA does not require an assessment of every impact or effect of a project on commenting (and non-commenting) parties, particularly where the impacts relate to the commercial interests of the commenting party, but instead only the impacts or effects of the project within NEPA's zone of interests evaluating impacts on the environment. *See* 40 C.F.R. § 1503.4(a)(5); *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 772 (1983).

In fact, commercial interests such as Weyerhaeuser's interests, are not appropriate for consideration in a NEPA analysis, as a commenter's economic interests are unrelated to any of NEPA's stated purposes. *See Nev. Land Action Ass'n v. U.S. Forest Serv.*, 8 F.3d 713, 716 (9th Cir.1993) ("The purpose of NEPA is to protect the environment, not the economic interests of those adversely affected by agency decisions."); *Kingman Reef Atoll Investments, L.L.C. v. U.S. Dep't of Int.*, 195 F. Supp. 2d 1178, 1187 (D. Haw. 2002) ("Congress did not intend for NEPA to be used as a vehicle for protecting purely economic interests; nothing in NEPA's stated purpose suggests that it was intended to protect commercial interests at all."); *Churchill Truck Lines, Inc. v. United States*, 533 F.2d 411, 416 (8th Cir. 1976) (holding that parties motivated solely by "their own economic self-interest and welfare, are singularly inappropriate parties to be entrusted with the responsibility of asserting the public's environmental interest.").

suggestion is incorrect, however, both in the requirement for the DEA to address speculative future development, as discussed below, as well as by reference to the DEA which does, in fact, address cumulative impacts of the Project. *See, e.g.*, DEA at 3-67 (“In accordance with the analysis detailed in Appendix G, Cultural Finding of Effect, and in correspondence between the Corps and the SHPO, no adverse direct or indirect impacts on known cultural resources are anticipated.”); and 3-101 to 103 (containing an entire section on cumulative impacts, which concludes with the finding that “no major impacts resulting from the proposed rail line would be expected to combine with major impacts from other past, present, and reasonably foreseeable projects to create significant cumulative effects.”).

Far from concrete, however, the Comments describe future development of Weyerhaeuser’s property in the context of “the changing character of land uses in the Project area,” referencing the “anticipated transformation ... of the property surrounding the Volvo and Camp Hall Commerce Park.” Likewise, the Comments criticize the DEA’s evaluation of the current status and use of the Weyerhaeuser’s property, advocating instead for conjecture based on its assertion that “Weyerhaeuser is actively engaged in planning for potential zoning changes and development for its project surrounding the Project.” With no concrete or conceptual plans or permits or entitlements for future development in hand, Weyerhaeuser’s musings are speculative in nature and inappropriate for consideration in the context of a NEPA review. *Cf. Utahns for Better Transp. v. U.S. Dep’t of Transp.*, 305 F.3d 1152, 1172 (10th Cir. 2002) (“To be a reasonable alternative, it must be non-speculative ... and bounded by some notion of feasibility.”) (citations omitted).

Regarding the remaining specific issues identified in the Comments:

- i. Weyerhaeuser states that the DEA depicts only one rail yard (on the Volvo Property) and suggests that any additional rail yard proposed by Palmetto Railways would require separate environmental study. Comments at 1.
 - a. Response: Palmetto Railways agrees that the DEA reflects a single rail yard, which is reflective of the current anticipated demand used by Palmetto Railways to identify the purpose and need for the Project. Consequently, and at this time, the need for an additional rail yard associated with the Camp Hall Rail Line is speculative. Should demand increase in the future to a level that might justify construction of an additional rail yard, Palmetto Railways would seek all applicable and required permits for same.
- ii. Weyerhaeuser states that the assumptions in the DEA relating to Train Passbys appear to underestimate the potential impacts upon the inevitable surrounding residential and mixed use development. Comments at 2.
 - a. Response: Weyerhaeuser’s statement regarding the DEA’s assumptions on train passbys is conclusory and offered without any evidence to support its disagreement with the figures addressed in the DEA. Palmetto Railways notes that its estimated transport of 50,000 automobiles annually in five round trips (10 total passbys) per week is based upon projections provided to it directly by Volvo. Moreover, to the extent the Comments suggest that

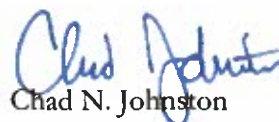
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Palmetto Railways' estimate does not account for future freight growth to and from the Camp Hall Commerce Park, for the same reasons discussed above, such a projection would be pure speculation, not actual projected demand.

Palmetto Railways looks forward to continuing its cooperation with Weyerhaeuser throughout the development, construction, and operation of the Camp Hall Rail Line. Palmetto Railways also appreciates the opportunity to respond to the Comments and for the time and consideration of this project by your respective agencies. Please advise of any additional information that you need to facilitate a timely review and decision.

Respectfully,

WILLOUGHBY & HOEFER, P.A.


Chad N. Johnston

Enclosure.

cc: Victoria Rutson
Elizabeth Williams
James F. Choate, Esquire
Jeffrey M. McWhorter

EXHIBIT A

Patrick McCrory

From: Jeff Teal <Jeff.Teal@weyerhaeuser.com>
Sent: Tuesday, February 23, 2016 5:21 PM
To: Patrick McCrory
Cc: Jim Rundorff
Subject: RE: Camp Hall Rail Route - Follow Up

I think the primary reason is it has the least impact to our ongoing forestry operations. However, we are still reviewing potential road issues (aka crossings) and any additional roadwork that may need to be completed in order to facilitate this route.

From: Patrick McCrory [mailto:PMcCrory@palmettorail.com]
Sent: Tuesday, February 23, 2016 5:00 PM
To: Jeff Teal <Jeff.Teal@weyerhaeuser.com>
Cc: Jim Rundorff <Jim.Rundorff@weyerhaeuser.com>
Subject: RE: Camp Hall Rail Route - Follow Up

Jeff,

Thank you very much for your feedback below. Based on your comments below specific to a strong preference for the route that hugs the western edge of your property, could you please provide very brief couple of bullets on your reasons for the strong preference so I can log in our analysis?

Thank you very much for your help on this.

Brgds,
Patrick

From: Jeff Teal [mailto:Jeff.Teal@weyerhaeuser.com]
Sent: Tuesday, February 23, 2016 4:53 PM
To: Patrick McCrory <PMcCrory@palmettorail.com>
Cc: Jim Rundorff <Jim.Rundorff@weyerhaeuser.com>
Subject: FW: Camp Hall Rail Route - Follow Up

Hi Patrick – I'm following up regarding the 3 different ROW's you recently provided. At a high level review we are most comfortable with the following 2 sites:

1. The last one you provided which stays to the west and hugs the county road before turning east before crossing Fish Road (Strong preference)
2. The ROW which runs directly northwest to southeast and picks up Centerline Road just north of 176

Please let us know if you need anything else at the present moment.

Thanks

Jeff

From: Jim Rundorff
Sent: Monday, February 15, 2016 7:37 AM
To: Jeff Teal <Jeff.Teal@plumcreek.com>
Subject: FW: Camp Hall Rail Route - Follow Up

From: Patrick McCrory [<mailto:PMcCrory@palmettorail.com>]
Sent: Saturday, February 13, 2016 3:44 PM
To: Jim Rundorff <Jim.Rundorff@plumcreek.com>
Subject: Camp Hall Rail Route - Follow Up

Jim,

I hope you've been well. I want to see if you had availability early next week for an update on where we are at with our study and steps forward with developing rail into the Camp Hall site? We have had to make some signification changes to our approach as we begin working closer with Berkeley County, and now have information to share/work with Plum Creek on regarding the route.

Please let me know your thoughts on availability.

Brgds,
Patrick

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