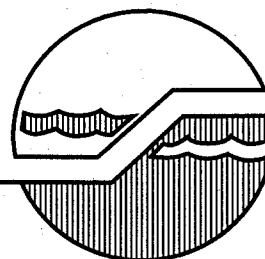


Galveston Bay Conservation & Preservation Association

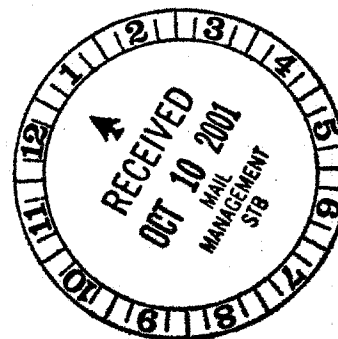
P.O. Box 323 Seabrook, Texas 77586

RRR # 7000 1670 0006 3079 9649



October 3, 2001

Surface Transportation Board
Office of the Secretary
Case Control Unit, ATTN: STB Finance Docket No. 34079
1925 K Street, NW
Washington, DC 20423-0001



Dear Secretary Williams:
RE:

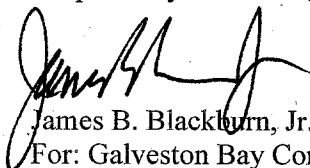
STB Finance Docket No. 34079
San Jacinto Rail Limited and Burlington Northern Santa Fe Company -
Construction and Operation of Track

Docketed Submission

The Galveston Bay Conservation and Preservation Association (GBCPA) has copied the service list for STB proceeding FD_34079 on a letter to the Commanding Officer of the Army Corps of Engineers, Galveston District. It now completes this submission for the public record in this case by copying the Secretary.

A 3.5-inch IBM-compatible disk containing a WordPerfect format electronic copy of this submission and 2 related images in jpeg format is enclosed, along with a hard copy original and 25 paper copies. In addition, all known parties on the attached service list will receive this filing, as stated in the Certificate of Service.

Respectfully submitted,



James B. Blackburn, Jr.
For: Galveston Bay Conservation and Preservation Association

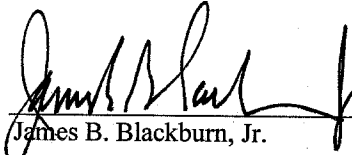
ENTERED
Office of the Secretary

OCT 11 2001

Part of
Public Record

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of October, 2001, I have caused to be served by first-class mail, postage prepaid, or a more expeditious means a true and correct copy of the foregoing Request to the following parties of record in STB Finance Docket case No. 34079.


James B. Blackburn, Jr.

Richard E. Wiecher
Sarah Whitley Bailiff
The Burlington Northern and
Santa Fe Railway Company
2500 Lou Menk Drive
Third Floor
Fort Worth, Texas 76131-0039

Erika Z. Jones
Robert M. Jenkins III
Adrian L. Steel, Jr.
Kathryn A. Kusske
Mayer, Brown, and Platt
1909 K Street NW
Washington, DC 20006

Martin W. Bercovici
Keller and Heckman LLP
1001 G Street NW, Suite 500 West
Washington, DC 20001

J. Michael Hemmer
Covington and Burling
1201 Pennsylvania Avenue, NW
Washington, DC 20004

Richard J. Schiefelbein
Woodharbor Associates
7801 Woodharbor Drive
Fort Worth, TX 76179-3047

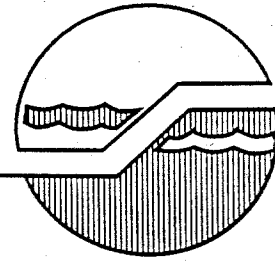
Mr. Jerry L. Martin
Director, Rail Division
Texas Railroad Commission
P.O. Box 12967
Austin, TX 78711-2967

Mr. John W. Johnson, Chairman
Texas Department of Transportation
125 E. 11th Street
Austin, TX 78701-2483

William W. Whitehurst, Jr.
W. W. Whitehurst and Associates, Inc.
Economic Consultants
12421 Happy Hollow Road
Cockeysville, MD 21030-1711

Galveston Bay Conservation & Preservation Association

P.O. Box 323 Seabrook, Texas 77586



October 2, 2001

VIA FAX: 409/766-3951 and Certified Mail

Return Receipt Requested # 7000 1670 0006 3079 9731

Colonel Leonard D. Waterworth

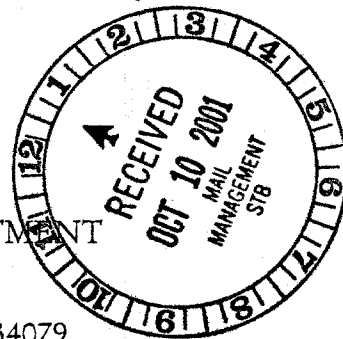
District Engineer and Commanding Officer

U.S. Army Corps of Engineers, Galveston District, CESWG-DE

P.O. Box 1229

Galveston, TX 77551

COPY



RE: PORT OF HOUSTON AUTHORITY'S PROPOSED BAYPORT
CONTAINER TERMINAL AND CRUISE SHIP FACILITIES, DEPARTMENT
OF THE ARMY APPLICATION.

RE: SURFACE TRANSPORTATION BOARD FINANCE DOCKET NO. 34079,
"SAN JACINTO RAILWAY" AND THE BURLINGTON NORTHERN
SANTA FE RAILWAY COMPANY - BUILD OUT TO THE BAYPORT LOOP
NEAR HOUSTON, HARRIS COUNTY, TEXAS.

Dear Col. Waterworth:

A very serious regulatory matter has come before the Galveston District that demands your attention and careful oversight.

On August 30, 2001, the San Jacinto Rail Limited (San Jacinto) and The Burlington Northern and Santa Fe Railway (BNSF) filed a petition with the Surface Transportation Board (STB) for authority for construction by San Jacinto and operation by BNSF of a 12.8-mile rail line into the Bayport area. On September 24th, the STB's Chief of the Section of Environmental Analysis (SEA) gave notice that "the construction and operation of this project has the potential to result in significant environmental impacts." As a result, the SEA has filed a notice of intent to prepare an Environmental Impact Statement for the BNSF/San Jacinto line. This notice is attached for your examination.

Under 40 CFR § 1508.25, this proposed action is required to be considered in the same environmental impact statement as the Port of Houston Authority's (PHA) Bayport Container Facility. Formal coordination must occur between the Surface Transportation Board and the Corps of Engineers to integrate these proposals into the same EIS. This is the case for several reasons delineated in 40 CFR § 1508.25.

I. Qualification as cumulative actions

First, as defined under 40 CFR § 1508.25(a)(2), these actions are:

“Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts (defined at § 1508.7) and should therefore be discussed in the same impact statement.”

At this time, two proposed major federal actions await agency determinations – permits for PHA’s Bayport Container Terminal, and construction approval for BNSF’s San Jacinto Rail line. These actions affect the same geography, as Maps 1 and 2 (attached) clearly show. The severity and type of impact may lead to a determination of this geography as local or regional, but the agency record to date reflects that it must be at least one or the other. The Corps began to identify the significant direct and indirect environmental impacts of the Bayport Container Terminal during the EIS scoping process. The STB recognized the BNSF/San Jacinto line’s “potential to result in significant environmental impacts” in its decision to require an EIS. Retreating arbitrarily to a property line analysis at this stage would repudiate the current agency record, and the NEPA process as a whole.

As the Supreme Court set out in *Kleppe v. Sierra Club* (96 S. Ct. 2718 (1976)), once major federal actions “reach the stage of actual proposals, impact statements on them will take into account the effect of their approval upon the existing environment; and the condition of that environment presumably will reflect earlier proposed actions and their effects (Footnote 20, emphasis added).” Other language in *Kleppe* stating “it is [not] necessary that [agencies] always complete a comprehensive environmental impact statement on all proposed actions in a given region before approving any [one],” (Footnote 26) does not release either the Corps or the STB from the Court’s clear, affirmative statement earlier in the decision:

“Cumulative environmental impacts are, indeed, what require a comprehensive impact statement.”

The Council on Environmental Quality (CEQ) regulations adopted since 1978 have clarified the basis of this requirement and the meaning of “cumulatively significant environmental impacts” (see 40 CFR § 1508.7). Unlike the requirements of 40 CFR § 1508.25(a)(3) described below, which these proposals also meet, the course for the agencies involved is not discretionary when the proposed actions qualify as cumulative and the impacts qualify as significant. Without question, the proposed PHA Bayport and BNSF/San Jacinto Rail projects and their impacts meet these criteria. Therefore, NEPA requires their analysis and disclosure in a single, unified statement.

The agencies must conduct this analysis regardless of whether the BNSF/San Jacinto line ultimately enters the PHA Bayport property. Both parties deny this connection, and BNSF did not indicate such intentions in its application to the STB.

Cumulatively significant impacts resulting from these two presently proposed actions will occur in variety of categories, including air pollution, noise, traffic, land use, public safety, wetland filling, property value, and community infrastructure. In some categories the incremental effect of the two proposals will add unacceptably to impacts from past actions, particularly for air pollution, traffic, and wetland habitat destruction.

In other ways, their presence will enable reasonably foreseeable future actions and their resulting impacts on the categories noted above. The proposed rail line represents just one part of the reasonably foreseeable incremental infrastructure growth that PHA Bayport's phased construction will either need (in which case these actions are *connected* as defined in 40 CFR § 1508.25(a)(1)(ii and iii)) or leverage in the Bayport area.

In addition, "but for" the proposed rail line and Terminal complex, a land use change of regional significance would not occur along the proposed route and in surrounding communities. Land use and industrial facility experts have completed analyses for the Galveston Bay Conservation and Preservation Association (GBCPA) concurring with that forecast. The BNSF/San Jacinto alignment, in conjunction with the Bayport Terminal, will enable a regional land use shift of truly staggering and inappropriate proportion. Industry currently accounts for only 7% of developed land around Bayport, with over 80% classified as residential (refer to Map 2). With the rail line and associated shipping complex to leverage future infrastructure and land use, this industrial percentage could double or even triple. Residential development would not occur on the currently vacant land along the proposed BNSF/San Jacinto line. Available open space would decline and literally bring incompatible land uses to the property lines of thousands of homes. NEPA requires a unified disclosure of these impacts when they result from cumulative actions.

II. Qualification as similar actions

These actions also meet the definition under 40 CFR § 1508.25(a)(3) of "similar actions."

"Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography (emphasis added). An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement."

The BNSF/San Jacinto Rail and Port of Houston Authority proposals certainly meet the test of common timing and geography. The BNSF San Jacinto line, as proposed, ends at a series of rail spurs and switching tracks on the Atofina, Inc. property that abut the Port of Houston Authority's property line for the Bayport Container Terminal.

While the Port and BNSF maintain that these actions are not physically connected (e.g., the BNSF/San Jacinto line will not enter the Port of Houston property), the language of 40 CFR § 1508.25(a)(3) renders such a claim irrelevant. Again, the agency record of the Corps and STB to date indicates that potential impacts of these concurrent proposals will occur over a common geography.

Analyzing these actions in the same impact statement is the best way to assess their combined impact for several reasons. First, while the determination rests with the agency (under § 1508.25(a)(3)), failure to do so in these circumstances could be construed as an arbitrary and capricious foreclosure of the analysis and a violation of the Administrative Procedure Act.

Second, transportation infrastructure in the Bayport area will strongly influence the Corps EIS analysis for the Bayport Container Facility, on a number of issues. These issues include air quality, land use on the PHA Bayport property (with resulting impacts on wetlands and decisions regarding fill material), future land use in the surrounding area, traffic, noise, the access to and logistics of the terminal, community infrastructure planning, and direct and indirect resource demands.

Third, whether or not PHA Bayport connects directly to this proposed rail line, it will influence its operation. The crossings of Port Road and the State Highway 146 access roads have been proposed without grade separation. BNSF/San Jacinto proposes to switch cars between the Atofina, Inc. property - and potentially several other facilities along Port Road - and an exchange yard located near Equistar and Lyondell facilities in Pasadena. Though it would only assemble one train a day to head west from the exchange facility, BNSF has stated that the switching east of the yard would occur on a continuous basis. This would dramatically impact traffic patterns along Port Road and Highway 146, the primary access to PHA Bayport. As PHA currently proposes truck movements only during daytime hours, it will have to re-evaluate its logistics (with changes in the resulting environmental impacts). Similarly, new and existing facilities along Port Road would have to re-evaluate their rail service plans and spurs to both this BNSF line and the existing Union Pacific (UP) line, so as not to further impact PHA Bayport operations.

For at least these reasons, the Corps of Engineers and the STB should analyze these proposals affecting the Bayport area together. A final reason exists, however, that merits your attention.

III. Conflicting statements on rail access to the PHA Bayport Facility

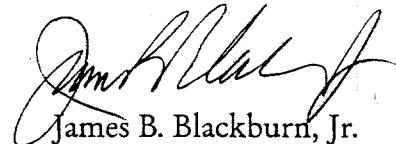
Given the need and demand for competitive rail service at port facilities across the country, it has always seemed less than efficient that PHA would require container movements over its own shortline railroad, the Port Terminal Railroad Association (PTRA), rather than placing containers directly on the two major long-haul carriers (BNSF and UP). The reasoning for extending PTRA lines to the proposed Bayport

October 2, 2001

Container Facility seemed justifiable before the STB's settlement of trackage rights resulting from the UP/SP merger (see STB Finance Docket No. 32760 Sub-nom 26, Decision No. 10, December 21, 1998). Despite the unfavorable outcome for the Port and PTRAs in that case, the reasoning remained plausible given the ability of Bayport's proposed rail yard to marshal and switch traffic from surrounding facilities, and handle a high volume of traffic. The pending BNSF proposal, however, would extend competitive rail service to the property line of PHA Bayport (UP's track already serves the adjacent facilities). Given this, and the fact that PHA presently lacks the land to build the rail yard proposed in its Army Department permit application (revised October 31, 2000), the justification of extending PTRAs to Bayport, even in 2012, seems without merit. We believe that the Corps and STB must investigate and understand the substantive connections between these two proposals before determining whether or not they are connected actions as per 40 CFR § 1508.25(a).

GBCPA, founded in 1974, is an organization of private citizens who are working to keep the Bay waterways and adjacent land areas suitable as a recreational and living environment. We are working to preserve a way of life that will be destroyed if pollution and environmental destruction make the Bay area unsuitable for these purposes. On behalf of all the citizens of the Southeast Texas Gulf Coast, we request that the Corps and the STB fully and fairly analyze the cumulative impacts of these proposals in the Bayport area, in a single, comprehensive EIS that identifies their true scope.

Sincerely,



James B. Blackburn, Jr.

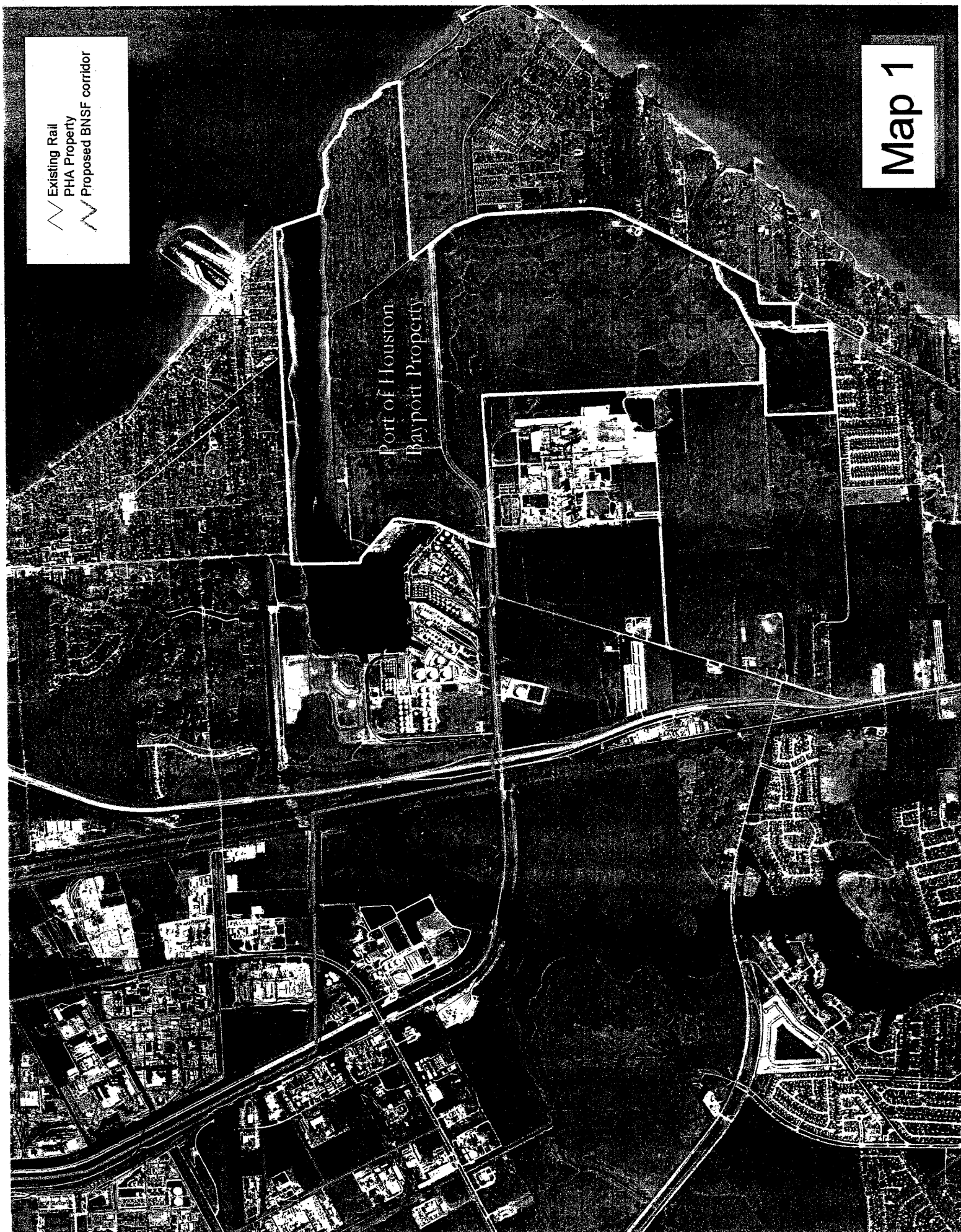
Chairman

Galveston Bay Conservation and Preservation Association

CC: Mr. Vernon Williams, Secretary, STB, Washington
Ms. Dana White, SEA, STB, Washington
Mr. J. Mark King, CESWG-RB, Galveston
Service list for STB Proceeding FD_34079

Existing Rail
PHA Property
Proposed BNSF corridor

Map 1



Map 2

