



Mack H. Shumate, Jr.
Senior General Attorney, Law Department

EI-2978

May 25, 2007

Honorable Vernon A. Williams
Surface Transportation Board
395 E Street, S.W., Room 1149
Washington, DC 20423

**Re: STB Docket No. AB-33 (Sub-No. 236X), *Union Pacific Railroad Company—Abandonment Exemption—in Bexar County, TX*
STB Docket No. AB-576 (Sub-No. 2X), *Alamo Gulf Coast Railroad Company—Discontinuance of Service Exemption—in Bexar County, TX***

Dear Mr. Williams:

By decision served on April 4, 2007 in the above-entitled proceedings, the Surface Transportation Board (“STB”) granted an exemption for Union Pacific Railroad Company (“UP”) to abandon, and for Alamo Gulf Coast Railroad Company (“AGCR”) to discontinue service over, a line of railroad extending between milepost 253.26 and milepost 256.0 on UP’s Kerrville Subdivision, a distance of 2.74 miles in Bexar County, TX (the “Line”), subject to two environmental conditions that required UP to:

(1) notify [National Geodetic Survey (“NGS”)] at least ninety (90) days prior to beginning salvage activities in order to plan for the possible relocation of the geodetic station markers by NGS; and

(2) not conduct salvage activities during the nesting season of the Golden-cheeked Warbler, which is between March and September, and, if salvage is planned for that time period, UP shall hire a consultant to determine if the species is present in the proposed project area. If the species is not present in the project area, UP may conduct salvage activities. If the species is present in the project area, then UP shall consult with [U.S. Fish and Wildlife Service (“USFWS”)] and [Texas Parks and Wildlife Department (“TPWD”)] to determine if avoidance or impact mitigation measures are necessary to protect habitat for the Golden-cheeked Warbler and report the results of any surveys or consultations in writing to SEA prior to the onset of salvage activities.

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Public Record

March 25, 2007
Honorable Vernon A. Williams
Surface Transportation Board

UP has complied with both of the conditions.

(1) The NGS condition. By letter dated March 23, 2007 (a copy of which is attached as Exhibit "1"), the National Geodetic Survey was notified of the proposed salvage. By email dated April 4, 2007 (a copy of which is attached as Exhibit "2"), NGS responded stating "No further action need to be taken in this matter, seeing that no marks were disturbed." Based on the response from the NGS, UP has complied with the first condition.

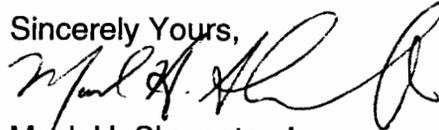
(2) The Golden-cheeked Warbler condition. In order to facilitate the plans of Fourth Quarter Properties, a real estate development company, to utilize the right-of-way for development of a major shopping and entertainment center, UP seeks to expeditiously consummate the abandonment, which will include salvage activities. In compliance with the Golden-cheeked Warbler condition, a survey of the Line was conducted by SWCA Environmental Consultants ("SWCA"). SWCA has surveyed the Line and determined that the Golden-cheeked Warbler is not present in the proposed project area. SWCA's survey is attached as Exhibit "3".

SWCA conducted the survey during the appropriate part of the year established by USFWS and followed the USFWS protocols for conducting the actual survey. SWCA did not detect any, and is confident that there are not any Golden-cheeked Warblers within or adjacent to the Line.

Having complied with the Environmental conditions imposed by the Board, as well as all other conditions, pursuant to the requirements of 49 C.F.R. §1152.29(e)(2), UP notifies the Board that it has **consummated the abandonment of the Line.**

An original and ten (10) copies of this letter are enclosed for the Board's further use.

Sincerely Yours,



Mack H. Shumate, Jr.

LAW OFFICES OF
LOUIS E. GITOMER

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March 23, 2007

National Geodetic Survey
Edward J. McKay, Chief
Spatial Reference System Division
NOAA N/NGS2
1315 East West Highway
Silver Spring, MD 20910-3282

Re: STB Docket No. AB-33 (Sub-No. 236X), *Union Pacific Railroad Company—Abandonment Exemption—in Bexar County, TX*
STB Docket No. AB-576 (Sub-No. 2X), *Alamo Gulf Coast Railroad Company—Discontinuance of Service Exemption—in Bexar County, TX*

Dear Mr. McKay:

The Section of Environmental Analysis (the “SEA”) of the Surface Transportation Board (the “STB”) prepared an Environmental Assessment on February 13, 2007 in the above-entitled proceeding. One of the conditions proposed by SEA was that “the National Geodetic Survey (NGS) be notified at least 90 days prior to beginning salvage activities in order to plan for the possible relocation of the geodetic station markers by NGS.”

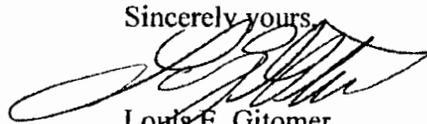
The Union Pacific Railroad Company (“UP”) and the Alamo Gulf Coast Railroad Company (“AGCR”) filed a joint petition for exemption with the STB to abandon and discontinue service over, respectively, a 2.74-mile line of railroad between MP 253.26 and MP 256.0 of UP’s Kerrville Subdivision in Bexar County, Texas (“the Line”). The purpose of the abandonment and discontinuance was to remove the rail line to facilitate development of The Rim by Fourth Quarter Properties LXI, L.P., Fourth Quarter Properties LXIII, L.P., Fourth Quarter Properties LXIV, L.P., Fourth Quarter Properties LXV, L.P., all subsidiaries of Thomas Enterprises, Inc. (“Fourth Quarter”), an 800-acre mixed-use development, located on the leading edge of San Antonio’s explosive northwest growth sector. The Rim began in 2004, well before UP and AGCR filed with the STB. In 2005, the Line was inspected and only one geodetic marker was discovered at BM 1079, which is still in place. Although there is a record of a marker on the US Geological Survey Map at BM 1035, it was not found by a field survey conducted in 2005 or again in 2007.



National Geodetic Survey
March 23, 2007
Page 2

Please advise whether any further steps need to be taken to resolve this matter.
Thank you for your assistance. If you have any questions, please contact.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'L. Gitomer', written over the typed name.

Louis E. Gitomer
Attorney for Fourth Quarter

cc: Mr. Shumate
Mr. Allen

Louis E. Gitomer

From: Simon Monroe [Simon.Monroe@noaa.gov]
Sent: Wednesday, April 04, 2007 12:09 PM
To: Louis E. Gitomer
Subject: STB Docket No. AB-33 (Sub-No.236X) ; STB Docket No. AB-576 (Sub-No. 2X)

Dear Attorney L.E.Gitomer,

No further action need to be taken in this matter, seeing that no marks were disturbed.
Remember if no marks are disturbed, no action need to be taken.

P.S. Mr. Ed Mckay, has been RETIRED about three years now. For future reference make all letters of request to Gilbert Mitchell, or myself Simon Monroe.

Thank You,
Simon Monroe





**RESULTS OF THE 2007 FIELD SURVEYS
FOR THE GOLDEN-CHEEKED WARBLER
ON TWO WOODLAND AREAS WITHIN
AND ADJACENT TO A UNION PACIFIC
RAILROAD RIGHT-OF-WAY, NORTHERN
BEXAR COUNTY, TEXAS**

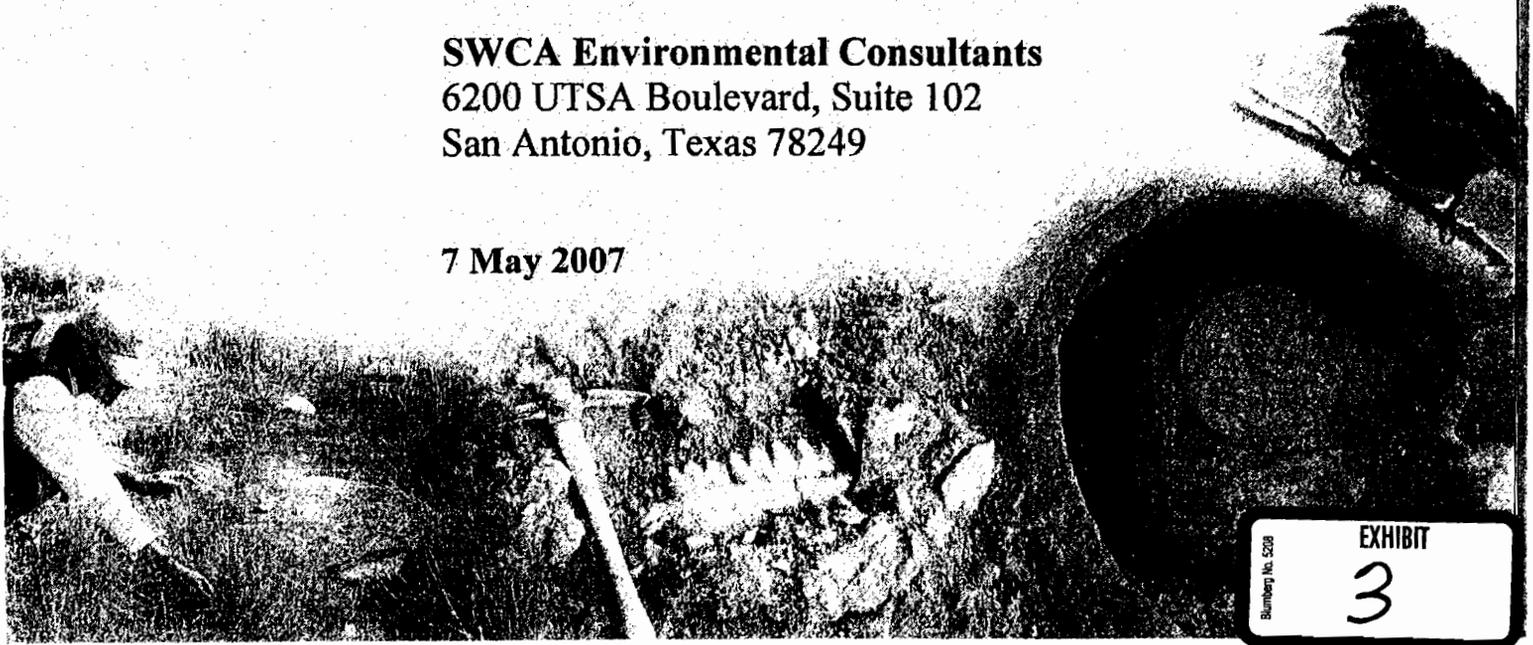
Prepared for:

Thomas Enterprises
45 Ansley Drive
Newnam, GA 30263

Prepared by:

SWCA Environmental Consultants
6200 UTSA Boulevard, Suite 102
San Antonio, Texas 78249

7 May 2007



Blumberg No. 5208
EXHIBIT
3

INTRODUCTION

SWCA Environmental Consultants was contracted to conduct presence/absence surveys for golden-cheeked warblers (*Dendroica chrysoparia*) on two woodland areas within, and adjacent to, a Union Pacific Railroad Company ("UP") railroad 2.74 mile line of railroad between MP 253.26 and MP 256.0 right-of-way (the "ROW") in northern Bexar County. SWCA initially conducted a habitat assessment along the railroad ROW (Figure 1) and concluded that most of the ROW does not occur within, or adjacent to, golden-cheeked warbler habitat. Most of the ROW occurs along commercial, industrial, and residential areas, which is not golden-cheeked warbler habitat. The vegetation composition and structure of the few small woodland patches that occur along the ROW differ significantly from those found in areas where golden-cheeked warblers regularly occur in Bexar County. However, to definitively rule out the occurrence of golden-cheeked warblers, presence/absence surveys were conducted along two undeveloped woodland portions of the ROW (Figure 2). These two areas are referred to in this report as the 'northern survey area' and 'southern survey area'. These survey areas occur adjacent to the east and west side of the railroad ROW, respectively. To the west of the northern survey area is IH-10, which is not golden-cheeked warbler habitat. To the east of the southern survey area is a quarry, which is also not golden-cheeked warbler habitat.

The golden-cheeked warbler is a migratory bird species that is present in Texas only during the breeding season. The breeding range of the golden-cheeked warbler is restricted to central Texas. Most golden-cheeked warblers arrive on breeding grounds in mid-March and depart for their wintering areas in late July. The United States Fish and Wildlife Service (USFWS)-established survey season for the warbler is from 15 March through 15 May, the period during which SWCA conducted the surveys.

Golden-cheeked warblers typically occur in mature woodlands possessing a high percentage of canopy closure and comprised of a mixture of Ashe juniper (*Juniperus ashei*) and broad-leaved deciduous species. Texas oak (*Quercus buckleyi*) and Lacey oak (*Quercus glaucoides*) trees are often present in areas occupied by warblers in Bexar County; other tree species that may occur in warbler habitat include cedar elm (*Ulmus crassifolia*), escarpment black cherry (*Prunus serotina* var. *eximia*), and Arizona walnut (*Juglans major*). Ashe juniper trees are required by the warbler as these trees provide strips of bark from which the birds make their nests. In our experience, most golden-cheeked warbler territories range in size from about 6 to 20 acres, although some unmated males have been observed ranging across areas of up to 40 or 50 acres. The range in territory size is usually the result of differences in habitat quality.

USFWS listed the golden-cheeked warbler as endangered in 1990. Species listed as endangered by the USFWS are protected by the Endangered Species Act (ESA). Section 9 of the ESA prohibits the "take" of threatened and endangered species; take is defined as "harass, harm, pursue, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." Generally, the USFWS considers modification of regularly occupied endangered species habitat to constitute "harm" and, therefore, be a violation of the ESA.

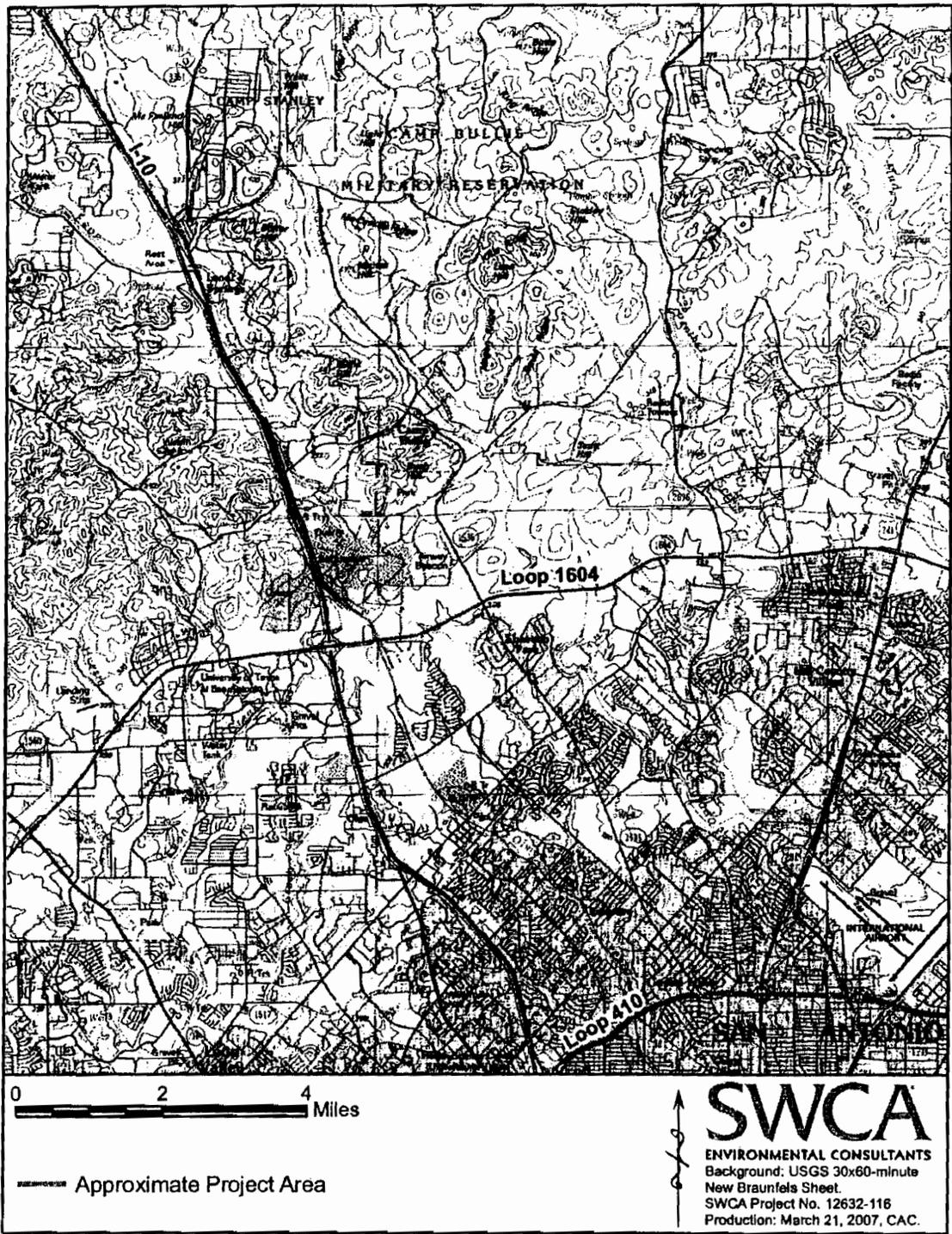


Figure 1. Project location map of the approximately 3-mile long Railroad Right-of-Way, northern Bexar County, Texas.



Figure 2. Project location map of a golden-cheeked warbler survey conducted along a railroad right-of-way, northern Bexar County, Texas.

PROPERTY DESCRIPTION

The two survey areas appear on the Castle Hills, Texas US Geological Survey (USGS) 7.5-minute topographic quadrangle map.¹ Topography along the survey areas is flat to undulating. Based on published geologic mapping for the region, the northern survey area lies on terrace alluvium of Leon Creek and the southern survey area lies on the Kainer Formation.² The survey area occurs within the IH-10 corridor in a relatively urban area of Bexar County. Most of the railroad ROW occurs along commercial, industrial, and residential development. However, two segments of the ROW occur adjacent to undeveloped land (Figure 2).

Woody vegetation within railroad ROW consists primarily of secondary growth vegetation. Common species include hackberry (*Celtis* sp.), cedar elm, live oak (*Quercus fusiformis*), Ashe juniper, mesquite (*Prosopis glandulosa*), and chinaberry (*Melia azedarach*). Trees generally range in height from about 15 to 35 feet tall. Weedy species such as Rooseveltweed (*Baccharis neglecta*) and Johnsongrass (*Sorghum halepense*) are common and growing within the railroad ballast.

The northern survey area (approximately 2,166 feet long) occurs adjacent to the east side of the railroad ROW and is approximately 15 acres in size. Vegetation within undeveloped areas adjacent to the northern survey area consists of open to relatively dense woodlands and includes mesquite, cedar elm, live oak, and hackberry. A small hill that occurs on the east side of the ROW contains a deciduous woodland consisting of Texas oak, live oak, cedar elm, and Ashe juniper. Tree heights range from 18 to 25 feet. Shrub species occur in low to moderate densities and include agarita (*Berberis trifoliolata*), evergreen sumac (*Rhus virens*), Mexican buckeye (*Ungnadia speciosa*), hog plum (*Colubrina texensis*), twistleaf yucca (*Yucca rupicola*), and greenbrier (*Smilax bona-nox*).

The southern survey area (approximately 1,769 feet long) occurs adjacent to the west side of the railroad ROW and is approximately 12 acres in size. The southern survey area occurs near a quarry and abandoned commercial development. Vegetation within this area has been disturbed and primarily occurs along fence lines and in fill material. Species include hackberry, live oak, cedar elm, sycamore (*Platanus occidentalis*), cottonwood (*Populus deltoides*), and mulberry (*Morus rubra*). Shrub species include elbow bush (*Forestiera pubescens*), hog plum (*Colubrina texensis*), sapling cedar elm trees, greenbrier, and prickly pear (*Opuntia lindheimeri*) cactus. Vegetation on the west side of the railroad ROW consists of live oak/Ashe juniper woodland that has been partially cleared in the past. Trees generally range in height from 15 to 18 feet tall.

¹ United States Geological Survey. 1992. Castle Hills, Texas 7.5-minute quadrangle map.

² Collins, E. W. 2000. Geologic Map of the New Braunfels, Texas, 30 X 60 Minute Quadrangle: Geologic Framework of an Urban-Growth Corridor along the Edwards Aquifer, South-Central Texas. Bureau of Economic Geology.

METHODS

USFWS-established survey season for the warbler is from 15 March through 15 May. USFWS survey protocols require a minimum of 4 hours of survey time per 100 acres of habitat with a minimum of 1 hour of survey time per visit and a minimum of five site visits. No more than one visit is permitted every five days. In accordance with the survey protocol, if no warblers are encountered during the five visits, one more visit will be conducted to play taped warbler songs. The absence of a response to the taped warbler songs is confirmation that there are no golden-cheeked warblers within the survey area.

SWCA biologists familiar with golden-cheeked warbler habitats and vocalizations in the Bexar County region (permit #TE800611-0) conducted field surveys along the northern survey area on 1, 6, 13, and 27 April and 6 May 2007 between 6:44 a.m. and 9:32 a.m. Separate field surveys were also conducted along the southern survey area on 1, 6, 13, and 27 April and 5 May 2007 between 6:19 a.m. and 9:35 a.m. Biologists walked along the ROW and listened for warbler vocalizations originating from the survey areas. Surveys were conducted based in part on the assumption that surveyors could hear and identify warbler calls from a distance of 300 feet; thus, each survey area was calculated by multiplying the length (feet) of railroad ROW by 300 feet. The level of effort for this survey meets USFWS presence/absence survey protocols. The northern survey area occurs adjacent to the east side of the ROW and is approximately 15 acres in size. The length of ROW that is included in the survey area is approximately 2,166 feet long (2,166 feet X 300 feet = 15 acres). The northern survey area requires 5-1 hour visits. The southern survey area is approximately 12 acres in size and is approximately 1,769 feet long (1,769 feet X 300 feet = 12 acres). The southern survey area requires 5-1 hour visits. Each visit consisted of a minimum of one hour per area; total survey time was 10 hours and 30 minutes. Taped recordings of warbler calls were used on 7 May 2007 to elicit responses.

RESULTS

As shown in Figure 3, no golden-cheeked warblers were detected within, or adjacent to, any of the survey areas during any of the surveys and in response to the taped warbler calls. SWCA is confident that there are no golden-cheeked warblers within or adjacent to the ROW and that the ROW is not habitat for the golden-cheeked warbler. Weather during all surveys was within limits considered acceptable for the golden-cheeked warbler.



Figure 3. Results of the 2007 golden-cheeked warbler survey conducted along a railroad right-of-way, northern Bexar County, Texas.