

E1-1506

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036-3003

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PETER A. PFOHL
DANIEL M. JAFFE
KAREN HASSELL HERREN
KENDRA A. ERICSON

TELEPHONE:
(202) 347-7170

FAX:
(202) 347-3619

WRITER'S E-MAIL:
kjd@sloverandloftus.com

March 19, 2003

HAND DELIVERY

Ms. Victoria J. Rutson
Chief, Section of Environmental Analysis
Surface Transportation Board
1925 K Street, N.W.
Suite 500
Washington, D.C. 20423

Re: Finance Docket No. 34314, Bexar County
Rural Rail Transportation District --
Construction and Operation -- In Bexar County, Texas

Dear Ms. Rutson:

The purpose of this letter is to request that the Board prepare an Environmental Assessment ("EA"), in lieu of an Environmental Impact Statement ("EIS"), for the rail line construction and operation project that is the subject of the referenced proceeding. In support of this request, Applicant Bexar County Rural Rail Transportation District ("BCRD") offers the following information:

On or about January 28, 2003, BCRD indicated to the Board its intention to submit a petition in the referenced docket under 49 U.S.C. § 10502, seeking an exemption from the prior approval requirements of 49 U.S.C. § 10901 to permit the construction and operation of a line of railroad less than seven miles in length to connect an industrial development area south of San Antonio, Texas to existing rail lines operated by the Union Pacific Railroad Company and the Burlington Northern & Santa Fe Railway. The new line initially will serve a motor vehicle assembly facility to be constructed by Toyota Motor Corp. on a site near Applewhite Road south of San Antonio. It is also expected

Ms. Victoria J. Rutson
March 19, 2003
Page 2

that additional traffic will use the line as suppliers and unrelated manufacturers and other shippers come to locate along or near the right-of-way.

On February 4, 2003, representatives of BCRD, including the undersigned, participated in a pre-filing meeting with you and members of your staff, to review the parameters of the proposed construction project and the applicable environmental review procedures and requirements. Subsequently, on February 5, 2003, BCRD formally requested approval of its retention of Ms. Jo Carole Dawkins and Dawkins Environmental Consulting, to act as independent third party consultant for the preparation of the necessary environmental documentation for the project, under the Board's direction and supervision. On February 19, your office approved that request

Following Ms. Dawkins' approval, BCRD retained HDR Engineering, Inc. to act as its own consultant with respect to environmental impact issues. HDR personnel who are not directly engaged on behalf of BCRD also are expected to provide field support for Ms. Dawkins' review and analysis, under the terms of a Memorandum of Understanding that is now under review in your office and we anticipate soon will be entered into by Ms. Dawkins' firm, BCRD and SEA. Earlier this month, HDR conducted a preliminary field survey of the region that potentially would be affected by the proposed rail project, including in particular the routing that is preferred by BCRD and most likely will be presented as the primary route for the new line.

The Board's regulations provide that an EIS normally is prepared in connection with a rail construction project. See 49 C.F.R. Part 1105.6(a). However, 49 C.F.R. Part 1105.6(d) provides for flexible exceptions to the general rule:

The Board may reclassify or modify these requirements for individual proceedings....[I]n a rail construction, an applicant can seek to demonstrate (with supporting information addressing the pertinent aspects of § 1105.7 (e)) that an EA, rather than an EIS, will be sufficient because the particular proposal is not likely to have a significant environmental impact.

BCRD respectfully submits that an EA is sufficient in this case under the standards of 49 C.F.R. Part 1105.6 (d), because the subject construction project is not likely to have a significant environmental impact. By reference to the specific elements

of 49 C.F.R. Part 1105.7 (e), and supported by the results of the HDR field survey noted above, our reasons are as follows:

(1) Proposed action and alternatives

If built along BCRD's preferred alignment, the proposed line is only 6.64 miles in length, and initially is expected to handle a total of three trains each day between the Applewhite Site south of San Antonio and UP's Elmendorf Subdivision. BNSF holds trackage rights over the Elmendorf Subdivision which would enable it to serve the Applewhite Site via the new rail line as well. In between the Applewhite Site and the Elmendorf Subdivision, the line would cross and a connection could be established with UP's Corpus Christi Subdivision. The principal commodities that will be handled over the line initially are automotive parts and supplies, and finished motor vehicles. The preferred alignment for the project is delineated as Route 3E on the maps that appear as Exhibits A1 and A2 on the CD-ROM that accompanies this letter.

The purpose of the proposed action is to provide competitive rail service access to the Applewhite Site, including the new Toyota assembly plant. It is possible to achieve the same purpose through the construction of alternative rail lines along different alignments, which are depicted as Routes 1W, 2W, 3W, 1E and 2E on Exhibits A1, A2 and A3 on the accompanying CD-ROM. However, all of these alternative routings are less desirable than BCRD's preferred alignment from the perspectives of transportation policy, property acquisition requirements, construction engineering and environmental impact. This is particularly true of the western routings (1W, 2W and 3W), all of which are longer than Route 3E and would involve extensive private property acquisitions and crossings over a principal interstate highway (I 35) and UP's Laredo Subdivision, which presently handles some 14 trains each day.

Simple rail access to the Applewhite Site could be accomplished through the construction of an exempt spur track (49 U.S.C. §10906) linking the Site to UP's Corpus Christi Subdivision. However, that would render Toyota and any other shippers locating at or near the Site captive to UP service, and would be a disincentive to further economic development in the region. The proposed action is necessary to achieve the public interest goal of competitive rail service, and BCRD's preferred alignment (Route 3E) represents the most efficient and economical alternative to accomplish this important goal, consistent with the goal of minimizing adverse impacts on the quality of the human environment.

(2) Transportation system.

The proposed action will increase the number of rail transportation options available in the affected region. BCRD's preferred alignment would cross four roadways, three of which (Blue Wing Road, South Flores Road and Pleasanton Road) are relatively light density and safely can be crossed at grade. The fourth road -- U.S. Highway 281 -- experiences an average daily traffic flow of slightly more than 11,000 vehicles, and would be grade separated. The preferred alignment (as well as alternatives 1E and 2E) also would cross UP's Corpus Christi Subdivision. That line presently handles an average of only six trains each day, and the three additional trains expected to move across it easily can be accommodated by an at-grade diamond crossing with signalization to avoid operational conflicts.

The three trains per day initially expected to be handled over the proposed line would be entirely new traffic. There will be no diversions of freight or passenger traffic either to or from other transportation systems or modes.

(3) Land use.

Major land uses in the affected area include rural residential, grazing and agricultural uses, streams and associated regulatory flood plains, and utility corridors. Much of the area that would be impacted by the proposed action is rangeland and agricultural, and the proposed action is not expected to adversely affect or conflict with existing land use plans or local zoning.

Between 70 and 135 acres of land would be required for the right-of-way, following BCRD's preferred alignment. The right-of-way width is anticipated to vary between 100 and 150 feet. Appearing as Exhibit B on the accompanying CD-ROM is a set of photographs taken by BCRD's environmental consultant, HDR Engineering, Inc., depicting various representative segments of the routing of BCRD's preferred alignment.

(4) Energy.

The proposed action will result in new rail traffic and, thus, a modest net increase in energy use for train operations. Based on an average of three trains per day, it is estimated that approximately 550 trainsets would operate over the proposed line each year.

Any natural gas or petroleum pipelines or major transmission lines crossed by the new track would be protected using a combination of land bridges, encasements and relocations in accordance with established industry standards. The proposed action will have no adverse effect on recyclable commodities, and may have a positive impact if recycled rail or crossties are used in the construction process. No diversions of traffic from rail to motor carriage are expected to occur.

(5) Air.

No significant impact to local or regional air quality is expected. According to 40 C.F.R. Part 81.344 and the Texas Commission on Environmental Quality (TCEQ), the City of San Antonio and the region encompassing the proposed line and all reasonable alternatives currently are in attainment under the Clean Air Act.

(6) Noise.

Anticipated traffic volume can be expected to lead to a corresponding increase in noise levels. Sensitive noise receptors, if any, will be identified during the EA preparation process.

(7) Safety.

Roadway crossings, a grade separation at U.S. Highway 281, and associated crossing protections will be provided in accordance with Texas Department of Transportation standards. Based on BCRD's consultant's initial review, gates and flashing lights would be adequate for use at the grade crossings. For BCRD's preferred alignment, a single rail crossing over UP's Corpus Christi Subdivision would be accomplished at grade, with appropriate signalization.

A preliminary database search performed in accordance with ASTM Standard E1527-00 for Phase I Environmental Site Assessments indicated no hazardous waste sites in the vicinity of BCRD's preferred alignment (Route 3E on Exhibit A2). Six sites were identified under the Emergency Response Notification System (ERNS) and four sites were identified under the petroleum storage tank database of the TCEQ. All of the incidents related to these reported sites are at least seven years old, however, and are not expected to impact the proposed action.

(8) Biological resources.

The majority of land in the area affected by the proposed action is rangeland or agricultural. A review of National Wetland Inventory (NWI) maps did not identify any mapped wetlands that would be impacted by BCRD's preferred alignment or other reasonable alternatives. A full survey conducted in the course of the EA preparation will delineate any Army Corps of Engineers jurisdictional issues and/or Clean Water Act permit requirements, and BCRD will pursue and secure any that may be needed.

There are no wildlife sanctuaries or refuges, national or state parks or forests that would be affected by the proposed action. A broad search of databases containing federal and state-listed endangered or threatened species known to occur in habitats similar to those found along BCRD's preferred alignment and the alternatives depicted on the Exhibit A series yielded a schedule of 23 animals and 7 plant species that will be the focus of investigation during the EA preparation phases. If and to the extent any of these are found in the area and would be adversely affected by the proposed action, mitigation measures will be developed in coordination with the U.S. Fish and Wildlife Service and the Texas Parks and Wildlife Department.

No rare or sensitive native habitats were shown by preliminary review to be significantly impacted by the proposed action.

(9) Water resources.

The Carizzo-Wilcox aquifer lies below the area affected by the proposed action. Within this area, the San Antonio River, Leon Creek, Medina River and their flood plains are sources of recharge for the aquifer. However, the aquifer and its recharge should not be affected by the proposed line, because only a small portion would be located within the flood plains.

Bexar County is composed of five watersheds or hydrologic units. BCRD's preferred alignment crosses four waterways that lie within two of these watersheds -- the Medina (HU # 12100302) and the Upper San Antonio (HU #1210301). The proposed action would use hydraulic engineering and mitigation techniques to avoid affecting surface waters, and ensure that all waterways crossings meet design criteria set by the City of San Antonio's flood plain administrator. If and to the extent necessary, BCRD will obtain a permit under Section 402 of the Clean Water Act for storm water discharges during construction. The preliminary field survey conducted by HDR indicated that the

Ms. Victoria J. Rutson
March 19, 2003
Page 7

proposed action would have no lasting, adverse impact on surface or groundwater resources within the affected region.

* * *

We believe that the foregoing information should be sufficient under 49 C.F.R. Part 1105.6(d) to justify reclassification of the BCRD rail project as one requiring only an EA. However, if your office believes that any additional information is needed in order to make that determination, please contact the undersigned.

Respectfully submitted,



Kelvin J. Dowd
Attorney for the
Bexar County Rural Rail
Transportation District

KJD:dmb

cc: Mr. Troy Brady (SEA)
Ms. Jo Carole Dawkins
Mr. Craig Stong
Mr. Seth Mitchell
Ed Schweningen, Esq.
Mr. Gabriel Perez