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SEA

SERVICE DATE – OCTOBER 28, 2005

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

STB Docket No. AB-980X

**Santa Clara Valley Transportation Authority – Abandonment Exemption –
in Santa Clara and Alameda Counties, CA**

BACKGROUND

In this proceeding, Santa Clara Valley Transportation Authority (SCVTA), filed a petition for exemption under 49 U.S.C. 10502 seeking exemption from the requirements of 49 U.S.C. 10903 in connection with the abandonment of all common carrier obligations over a portion of rail line in Santa Clara County, California (the Industrial line) and a portion of rail line in Alameda County, California (the Milpitas line). The Industrial line extends 1.19 miles from milepost 16.30 to milepost 17.49 in Santa Clara County and the Milpitas line extends 2.77 miles from milepost 2.61 near Paseo Padre Drive to milepost 5.38 near Grimmer Boulevard in and near Fremont in Alameda County. A map depicting the rail lines in relationship to the area served is appended to the report. If the exemption becomes effective, SCVTA will be able to salvage track, ties and other railroad appurtenances and to dispose of the right-of-way.

DESCRIPTION OF THE LINE

According to SCVTA, the Industrial line was constructed in 1921 by the Western Pacific Railroad, primarily with 100-pound and 115-pound welded rail, with some short segments of 75-pound and 100-pound jointed rail. The Milpitas line was also constructed by the Western Pacific Railroad in 1921, with 119-pound welded rail and 100-pound jointed rail. The Industrial line is located within central San Jose, and SCVTA states that it is surrounded by existing streets, highways, mass transportation services, utilities, and public parks. The Milpitas line passes through densely populated areas of the San Francisco Bay Area.

SCVTA states that the only shipper on the Industrial line is Smurfit Stone Recycling Corporation (Smurfit). Smurfit shipped 138 cars of scrap or waste paper over the line in 2002, 123 cars of scrap or waste paper over the line in 2003, and 26 cars of scrap or waste paper over the line in the first quarter of 2004. According to SCVTA, Smurfit would continue to receive rail service by UP on UP's line of railroad southeast of the San Jose Industrial Lead and any overhead traffic can move over an adjacent UP line. SCVTA states that no local traffic has moved over the Milpitas line for at least five years and any overhead traffic could be rerouted. SCVTA plans to make these lines available to Bay Area Rapid Transit (BART) for the operation of a light rail system. SCVTA does not believe that the rights-of-way are suitable for other public purposes.

Union Pacific Railroad Company (UP), the sole provider of direct rail service over the lines, has discontinued its trackage rights and abandoned its freight easements over these lines. See Union Pacific Railroad Company – Abandonment Exemption – in Santa Clara County, CA, STB Docket No. AB-33 (Sub-No. 221X) (STB served Nov. 26, 2004) and Union Pacific Railroad Company – Abandonment Exemption – in Alameda County, CA, STB Docket No. AB-33 (Sub-No. 211X) (STB served Nov. 12, 2003).

ENVIRONMENTAL REVIEW

In its petition, SCVTA notified the Board that it would be relying on the environmental and historic reports submitted by UP in the abandonment proceedings mentioned above to fulfill the Board's environmental requirements at 49 CFR Part 1105. SCVTA also submitted a letter on July 19, 2005, to the Federal, state, and local agencies specified under the Board's environmental rules at 49 CFR 1105.7(b) describing the proposed undertaking and attaching UP's environmental and historic reports. The Board's Section of Environmental Analysis (SEA) requested that SCVTA submit supplemental information to the appropriate Federal, state, and local agencies to further define the proposed undertaking and to provide these agencies with additional maps of the project area. SCVTA submitted the supplemental information to the agencies on September 15, 2005, and SEA has reviewed and investigated the record in this proceeding.

As stated above, the sole provider of direct rail service over the lines has discontinued its trackage rights and abandoned its freight easements over these lines. The one shipper on the Industrial line would continue to receive direct rail service from UP via a new spur connection and no local traffic has moved over the Milpitas line for at least five years. Accordingly, the proposed abandonment would not adversely impact the development, use and transportation of energy resources or recyclable commodities; transportation of ozone-depleting materials; or result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network.

In its supplemental information of September 15, 2005, SCVTA states that no salvage activities are contemplated as part of the proposed abandonment, and the portions of the rail lines to be abandoned would be used for BART mass transit. There is one railroad bridge structure located at milepost 16.32, which crosses Silver Creek and is south of Highway 101. SCVTA states that this bridge would not be used as part of the light rail system, but could be used as a bike path and/or walking trail. Because SCVTA would have the option of conducting salvage activities if the abandonment is approved, SEA has examined the effects of salvage activities on the human and natural environment.

SEA has previously conducted an environmental review of UP's abandonment proceedings. (See Union Pacific Railroad Company – Abandonment Exemption – in Santa Clara County, CA, STB Docket No. AB-33 (Sub-No. 221X) (STB served Oct. 8, 2004) and Union Pacific Railroad Company – Abandonment Exemption – in Alameda County, CA, STB Docket

No. AB-33 (Sub-No. 211X) (STB served Nov. 17, 2003).) Based on SEA's prior environmental review of the UP abandonment proceedings and the maps submitted by SCVTA, SEA believes that salvage activities would likely have no adverse effect on Federally listed threatened and endangered species, prime agricultural lands, or waters subject to the jurisdiction of the U.S. Army Corps of Engineers (Corps). However, SEA is adding the appropriate offices of the U.S. Fish and Wildlife Service, the Natural Resources Conservation Service, and the Corps to the service list for this proceeding to ensure that these agencies have adequate opportunity to review and comment on the environmental impacts of this proceeding.

SEA telephoned Mr. Dick Wayman, Communications Director at the California Coastal Conservancy, on October 4, 2005, and verified that neither Alameda County nor Santa Clara County is located within California's coastal zone.

The California Public Utilities Commission (PUC) submitted comments requesting that the Board require, as a condition for the exemption, that the rail and ties be removed along the right-of-way and at all highway-rail crossings along the lines within two years of granting the abandonment exemption. PUC also requests that a "tracks out of service" sign be posted at crossings until the tracks are removed from the roadways, and that warning devices also be removed along with the tracks within two years of granting the abandonment exemption. According to PUC, tracks left in the roadway and not maintained cause traffic and pedestrian safety hazards. These hazards include: causing feet, bicycle wheels, and wheelchairs to get caught in the flangeway, which causes damage or injury to the equipment and person; broken rails and ties creating a protruding sharp obstacle above the roadway grade; rotten railroad ties and foul ballast causing depressions and potholes in the roadway areas; and vehicles, such as buses and those carrying hazardous materials, stopping unnecessarily at grade crossings, as required by California law, which causes the potential for vehicular collisions.

PUC also states that it believes that local agencies should not be left financially accountable for removal or maintenance of the crossings. According to PUC, considerable funding appears to be available for acquisition of rail right-of-way, rerouting of the track, and construction of grade separation structures in the area. PUC believes that funding must also be given to cleaning up the abandoned rail right-of-way and crossings. PUC cites the Federal Highway Administration's Manual on Uniform Traffic Control Devices as stating that elimination of a highway-rail grade crossing should include track being removed or paved over.

As discussed above, SCVTA has indicated that the portions of the rail lines to be abandoned would continue to be used for BART light rail purposes and that salvage activities are not contemplated as part of this abandonment proceeding. However, in order to address PUC's concerns, we recommend that a condition be imposed requiring SCVTA to consult with PUC prior to consummation of the abandonment. We further recommend that SCVTA shall report the results of this consultation to SEA in writing.

The National Geodetic Survey has submitted comments stating that one geodetic station marker has been identified over the Industrial line and 19 geodetic station markers have been

identified over the Milpitas line that may be affected by the proposed abandonment and requests 90 days notification in advance of activities that will disturb or destroy these markers to plan for their relocation. Accordingly, we will recommend a condition requiring SCVTA to notify NGS 90 days prior to beginning any salvage activities to plan for the possible relocation of the station markers by NGS.

HISTORIC REVIEW

The California Office of Historic Preservation (State Historic Preservation Office or SHPO) submitted a letter in response to SCVTA's letter of July 19, 2005, in which it requests additional information in order to assess the effects of the proposed abandonment on historic resources. After originally reviewing UP's environmental and historic report for the Milpitas line, the SHPO had submitted a letter, dated October 14, 2003, stating that there were no historic properties within the right-of-way. After originally reviewing UP's environmental and historic report for the Industrial line, the SHPO had submitted a letter, dated September 14, 2004, stating that there were no historic properties within the right-of-way. SEA contacted the SHPO on October 4, 2005, and the SHPO requested that SEA submit additional information to the SHPO explaining the relationship between SCVTA's current abandonment proceeding and UP's prior abandonment proceedings. Pending completion of consultation with the SHPO, SEA recommends that a condition be imposed requiring SCVTA to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

SEA is required to consult with tribes pursuant to 36 CFR 800.3(f)(2) to seek their input regarding any National Register of Historic Places eligible properties of traditional religious and cultural significance that may be affected by the proposed abandonment. A search of the Native American Consultation Database at www.cast.uark.edu/other/nps/nacd/ identified no Federally recognized tribes in Alameda and Santa Clara counties.

CONDITIONS

We recommend that the following conditions be imposed on any decision granting abandonment authority:

- 1. Santa Clara Valley Transportation Authority shall notify the National Geodetic Survey (NGS) 90 days prior to beginning salvage activities to plan for the possible relocation of the salvage markers by NGS.**
- 2. Prior to consummation of the abandonment, Santa Clara Valley Transportation Authority (SCVTA) shall consult with the California Public Utilities Commission (PUC) regarding PUC's concerns that abandoned track could cause safety hazards on roadways. SCVTA shall report the results of this consultation to the Section of Environmental Analysis in writing.**

3. **Santa Clara Valley Transportation Authority shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.**

CONCLUSIONS

Based on the information provided from all sources to date, SEA concludes that, as currently proposed, and if the recommended conditions are imposed, abandonment of the line will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations) and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

PUBLIC USE

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 CFR 1152.28) must be filed with the Board and served on SCVTA within the time specified in the Federal Register notice.

TRAILS USE

A request for a notice of interim trail use (NITU) is due to the Board, with a copy to SCVTA, within the time specified in the Federal Register notice. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 CFR 1152.29).

PUBLIC ASSISTANCE

The Board's Office of Public Services (OPS) responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact OPS directly at (202) 565-1592, or mail inquiries to Surface Transportation Board, Office of Public Services, Washington, DC 20423.

COMMENTS

If you wish to file comments regarding this environmental assessment, send an **original and two copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Rini Ghosh, who prepared this environmental assessment. Environmental comments may also be filed electronically on the Board's web site, www.stb.dot.gov, by clicking

on the "E-FILING" link. **Please refer to Docket No. AB-980X in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this environmental assessment, please contact Rini Ghosh, the environmental contact for this case, by phone at (202) 565-1539, fax at (202) 565-9000, or e-mail at ghoshr@stb.dot.gov.

Date made available to the public: October 28, 2005

Comment due date: November 28, 2005.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams
Secretary

Attachment