

## CHAPTER 1 INTRODUCTION

### 1.1 BACKGROUND

On August 30, 2001, San Jacinto Rail Limited (SJRL)<sup>1</sup> and The Burlington Northern and Santa Fe Railway Company (BNSF) (collectively the Applicants) filed a petition with the Surface Transportation Board (Board)<sup>2</sup> pursuant to 49 United States Code (U.S.C.) 10502, for authority for construction by SJRL and operation by BNSF of a new rail line near Houston, Harris County, Texas. In the petition, the Applicants proposed the construction of approximately 12.8 miles of new rail line to serve the petrochemical industries in the Bayport Industrial District (Bayport Loop).

The Board, pursuant to 49 U.S.C. 10901 and 10502<sup>3</sup>, is the agency responsible for granting authority for the construction, operation, and maintenance of new rail line facilities. Accordingly, the Board, through its Section of Environmental Analysis (SEA), is the lead agency responsible under the National Environmental Policy Act (NEPA) for the preparation of this Environmental Impact Statement (EIS), which identifies and evaluates the potential environmental impacts associated with the Proposed Action and Alternatives. The U.S. Coast Guard (USCG), the Federal Aviation Administration (FAA), and the National Aeronautics and Space Administration (NASA) are cooperating agencies, pursuant to 40 Code of Federal Regulations (CFR) 1501.6. SEA and the cooperating agencies prepared this EIS in accordance with NEPA, the President's Council on Environmental Quality (CEQ) regulations, and the Board's environmental regulations (found at 49 CFR 1105) to provide the Board, the cooperating agencies, other Federal, state and local agencies, Native American Tribes, and the public with clear and concise information on the potential environmental impacts of the Proposed Action and reasonable and feasible Alternatives, including the No-Action Alternative. This EIS was also prepared in accordance with USCG COMDTINST M16475.1D, NEPA Implementing

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<sup>1</sup> SJRL is a partnership, based in Delaware, comprising BNSF, BayRail, LLC (wholly owned by BNSF), and affiliates of four plastics and chemical production companies located in the Bayport Loop. The four production companies are: ATOFINA Petro-chemicals, Inc., Basell USA, Inc., Equistar Chemicals, LP, and Lyondell Chemical Company. The affiliated limited partners of SJRL are Bay Junction, Inc. (wholly owned by ATOFINA), Basell Impact Holding Company, Equistar Bayport, LLC, and Lyondell Bayport, LLC.

<sup>2</sup> The Board is a bipartisan, decisionally independent adjudicatory body, organizationally housed within the U.S. Department of Transportation (USDOT). The Board assumed some of the regulatory functions that the Interstate Commerce Commission (ICC) administered when the Board was established by the ICC Termination Act of 1995 (49 U.S.C. 10101 *et seq.*; P.L. 104-88, December 29, 1995). The Board has jurisdiction over rail rates, railroad acquisitions and consolidations, rail constructions, and abandonments of rail service. Other functions of the ICC were either eliminated or transferred to different agencies within the USDOT.

<sup>3</sup> Under 49 U.S.C. 10901, the Board has exclusive licensing authority for the construction and operation of new rail lines. Under 49 U.S.C. 10502, the Board can issue an exemption from the prior approval requirements of 49 U.S.C. 10901 if the statutory standards of Section 10502 are met.

Procedures and Policy for Considering Environmental Impacts; FAA Order 5050.4A, Airport Environmental Handbook; FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts; and NASA NPG 8580.1, Implementing NEPA.

Following scoping and public outreach, SEA issued the Draft EIS for public review and comment on December 6, 2002. More than 600 written and oral comments were received on the Draft EIS. In preparing the Final EIS, SEA carefully considered all comments received on the Draft EIS and has responded to all substantive comments in Chapter 4 of this document. The Final EIS sets forth SEA's final recommended environmental mitigation conditions, which include the 76 voluntary mitigation measures proposed by the Applicants. The Board will consider the entire environmental record, the Draft and Final EIS, all public and agency comments, and SEA's environmental recommendations in making its final decision on the application to construct and operate the proposed Bayport Loop Build-Out. The Board will decide whether to grant final approval, approval with conditions (which could include conditions designed to mitigate potential impacts to the environment), or deny the Applicants' petition. After the Board's final decision is issued, the USCG will decide whether to issue a bridge permit. If requested, the FAA will decide whether to approve a change to the Ellington Field Airport Layout Plan (ALP) to allow the Proposed Action to cross two edges of the airport and to release the affected airport property from surplus property restrictions and/or the airport owner's obligations under grant assurances contained in grant agreements. If requested by the Applicants, NASA will decide whether to grant an easement for the Proposed Action or Alternative 1C to cross NASA's access road between the Sonny Carter Training Facility (SCTF)<sup>4</sup> and Ellington Field.

This Final EIS, which is organized consistent with CEQ regulations, is intended to be read in conjunction with the Draft EIS, which provides more detailed information on the Proposed Action and Alternatives to agency decision-makers and the public. The Draft EIS describes the project's purpose and need, the Proposed Action and Alternatives, the existing environment, and the potential environmental impacts associated with the Proposed Action and Alternatives. The Draft EIS also includes a glossary of terms and a list of acronyms and abbreviations. The Final EIS responds to public comments on the Draft EIS; makes some corrections, principally concerning environmental justice data, and some minor changes to information presented in the Draft EIS; discusses SEA's<sup>5</sup> conclusions about the environmental analysis; and includes SEA's final environmental mitigation recommendations. Further, the Final EIS reflects additional work conducted by SEA since publication of the Draft EIS to confirm conclusions presented in the Draft EIS concerning vibration and wetlands impacts; complete consultation on Essential Fish Habitat (EFH); evaluate the Applicants' voluntary habitat conservation sites to assess their potential to attract wildlife and birds that could become a hazard to aviation at Ellington Field; and develop four additional appropriate mitigation measures.

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<sup>4</sup> The SCTF comprises NASA's Neutral Buoyancy Laboratory (NBL), Software Development and Integration Laboratory, and Light Manufacturing Facility. The SCTF is described on pages 3-65 and 3-66 of the Draft EIS.

<sup>5</sup> While much of the Final EIS for convenience generally refers only to SEA, the document reflects the input of the three cooperating agencies.

## 1.2 BOARD DECISIONS

On August 28, 2002 (August 2002 Decision), the Board found, subject to consideration of the environmental impacts, that the Applicants met the transportation-related standards of 49 U.S.C. 10502 to construct the Proposed Action. However, in its decision, the Board explained that the project could not receive final approval until the environmental review process required under NEPA and related laws is completed and the Board has the opportunity to fully assess the potential environmental effects of the project. The Board made clear in its decision that it would issue a final decision on the entire proposed project following completion of the EIS process and that no construction could begin until a final decision approving the construction is issued and has become effective. A copy of the Board's August 28, 2002, decision can be found in Appendix C of this Final EIS.

On August 6, 2002, the Applicants advised SEA that in response to concerns raised by the communities in and around New South Yard regarding existing congestion, they proposed to route the Bayport Loop traffic to the CMC Dayton Yard instead of New South Yard. On September 17, 2002, in response to this letter, the Galveston Bay Conservation and Preservation Association (GBCPA) filed various motions and related requests for relief. On October 8, 2002, the Applicants filed a reply. On October 11, 2002, GBCPA filed a motion to compel to obtain certain environmental materials supplied to Board staff by the Applicants.

On October 30, 2002, SEA wrote to GBCPA responding to the issues raised in GBCPA's filing stating that the reopening of the environmental review process was unwarranted and that the material requested by GBCPA was contained in the Board's public docket and would be included in the Draft EIS. A copy of the letter from SEA to GBCPA can be found in Appendix C of this Final EIS.

In a decision served on December 3, 2002 (December 2002 Decision), the Board found that GBCPA's various motions were groundless and denied them. The Board's review of the record led to the Board's conclusion that neither the Applicants nor any Board employees had engaged in any inappropriate communications or other misconduct with regard to the Applicants' letter. The Board explained that under NEPA, the environmental review process is necessarily informal and all-inclusive and depends on cooperative consultations with the railroad as well as other agencies and other parties with expertise, so that all possible environmental information, issues, and points of view will come before the agency.<sup>6</sup> The Board stated that the BNSF letter was not, as claimed by GBCPA, an ex parte communication but was instead environmental correspondence that merely proposed, in response to community concerns about potential congestion impacts near New South Yard, an alternative routing by which BNSF trains would move over the GH&H line and other existing lines. Moreover, because the communication was

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<sup>6</sup> See *City of Auburn v. United States*, 154 F.3d 1025, 1033 (9<sup>th</sup> Cir. 1998), *cert. denied*, 527 U.S. 1022 (1999) (opportunity for public participation provides necessary checks and balances).

Indeed, the CEQ regulations implementing NEPA specifically anticipate the continuing involvement and participation of the applicant throughout the process, so long as the agency independently evaluates the information submitted and is responsible for its accuracy. See e.g., 40 CFR 1506.5(a)-(c). The Board's environmental rules also provide that the railroad may "participate in the preparation of environmental documents." 49 CFR 1105.4(j).

part of the environmental review process, the Applicants' letter was properly sent directly to SEA. The Board also found that SEA acted properly in accepting the letter, placing it in the public files in the Board's public reading room,<sup>7</sup> and bringing it to the Board's attention so that it could be mentioned in the August 2002 Decision. Finally, because the letter is environmental correspondence, the Board concluded that the Applicants were not required to serve it on other parties,<sup>8</sup> and consequently, there was no improper communication here or notice deficiency.

In the December 2002 Decision, the Board also found no basis to reopen the exemption proceeding. The Board explained that the Applicants' letter did not seek to revise the construction proposal itself and did not have any bearing whatsoever on the transportation-related issues addressed in the August 2002 Decision. The Board noted that GBCPA and other interested parties would have the opportunity to comment on the routing change after issuance of the Draft EIS that SEA was then preparing.

On January 21, 2003, GBCPA submitted a request for production of various documents and records by the Board. By letter sent to GBCPA on February 11, 2003, the Board's Secretary stated that, because the agency is not a party to this or any proceeding before it, discovery is not available from the Board. The letter also explained that much of the material sought was available either through the filing of a request under the Freedom of Information Act or was in the public docket. Copies of the Board's December 2002 Decision and the letter from the Board's Secretary to GBCPA can be found in Appendix C of this Final EIS.

### 1.3 30-DAY ADMINISTRATIVE APPEAL

CEQ regulations (40 CFR 1506.10(b)) provide that an agency shall not make a decision on a proposed action less than 30 days from publication of a notice of a Final EIS in the *Federal Register* unless the agency's decision is subject to a formal administrative review process after publication of the Final EIS. In such cases, the CEQ regulations provide that the period for appeal of the agency's decision and the 30-day period prescribed in 40 CFR 1506.10(b) may run concurrently.

The Board has an established administrative review process. Under the Board's rules, parties who wish to file an administrative appeal of the Board's final decision, including any environmental conditions that the Board might impose, may do so within 20 days of the service date of the Board's final decision, or within any further period (not to exceed 20 days), as the Board may authorize (49 CFR 1115.3(e)). Given the CEQ regulation at 40 CFR 1506.10(b), in this case, the Board will provide 30 days from the publication of the U.S. Environmental Protection Agency's (USEPA) notice of availability of the Final EIS in the *Federal Register*, for the filing of administrative appeals.

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<sup>7</sup> Thus, the letter was made available to all interested parties and became part of the administrative record in this case.

<sup>8</sup> See 49 CFR 1105.10(e).

SEA anticipates that USEPA will publish a notice of the availability of the Final EIS in the *Federal Register* on May 9, 2003. The Board's vote on whether to give final approval to this proposal will be made no earlier than the same day (i.e., May 9, 2003). The deadline for filing administrative appeals will be 30 days from the publication of the notice of the Final EIS, to and including June 9, 2003. Moreover, the Board's final decision will not become effective for 30 days (i.e., no earlier than June 9, 2003). This schedule will afford the public adequate time to pursue administrative review of all aspects of the Board's final decision and is consistent with the CEQ regulations at 40 CFR 1506.10(b).<sup>9</sup> The Board will consider any administrative appeals in a subsequent decision.

#### **1.4 PURPOSE AND NEED**

The purpose of the proposed construction and operation of a new rail line into the Bayport Loop is to provide competitive rail service to the shippers located within the Loop. The shippers in the Bayport Loop are currently served solely by Union Pacific Railroad Company (UP). The Applicants have stated that the proposed new line would add capacity and infrastructure to the Houston area, would provide shippers with access to BNSF's extensive single line services, and would provide shippers with flexibility and alternative transportation routes in the event of future service disruptions. The Applicants have stated that the proposed new rail line is needed to alleviate the constraints currently experienced by shippers, due to the existence of only one rail service option, and to provide an effective replacement for competitive conditions that existed prior to the 1996 merger of UP with the Southern Pacific Rail Corporation (SP).

#### **1.5 ALTERNATIVES CONSIDERED IN SEA'S ENVIRONMENTAL REVIEW**

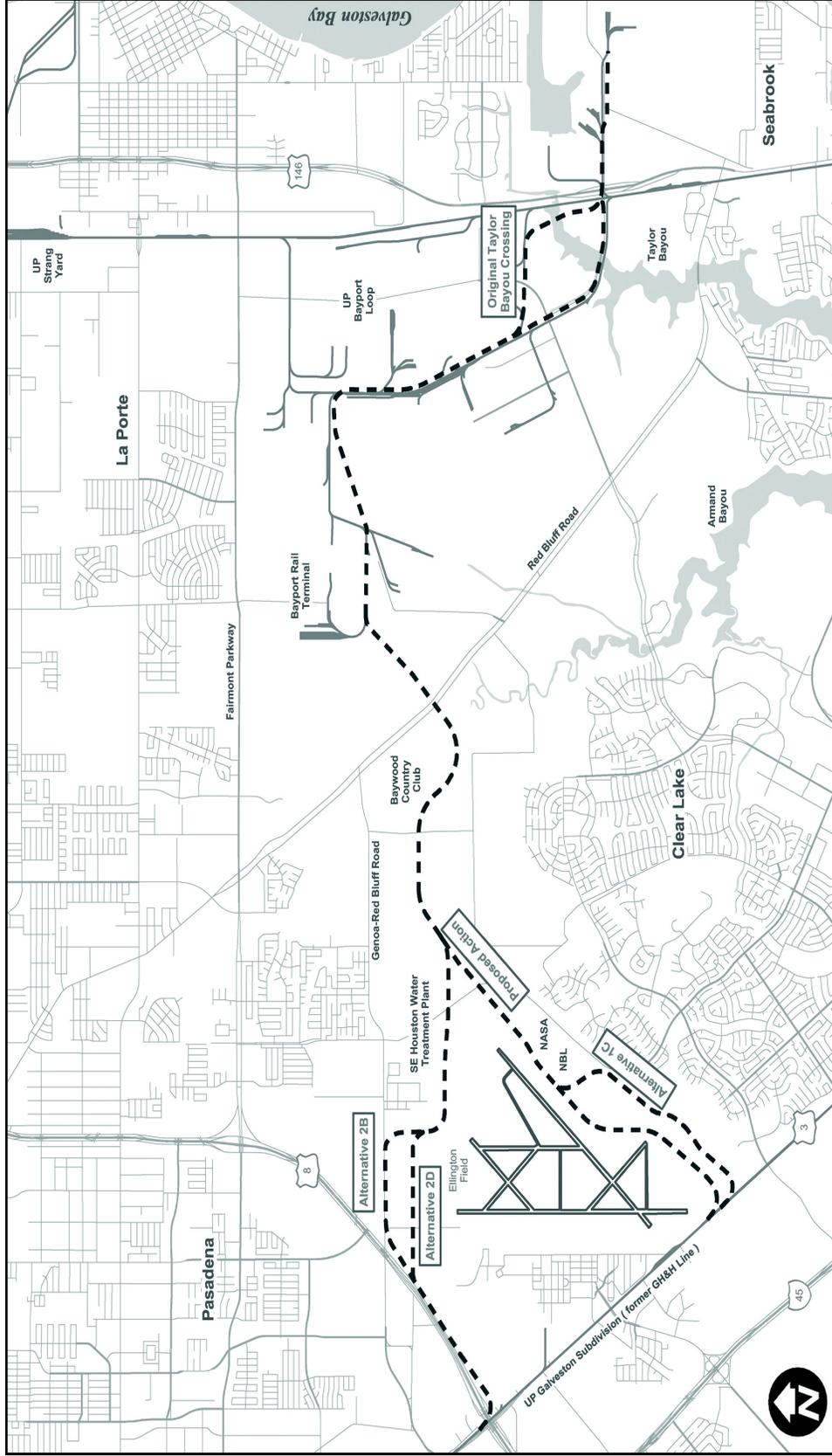
**Build Alternatives.** The Build Alternatives include the Proposed Action and other Alternatives that would require new rail line construction. The name of each Build Alternative (i.e., the Proposed Action, the Original Taylor Bayou Crossing, and Alternatives 1C, 2B, and 2D) is derived from the various proposed new rail alignments and each Alternative includes both the proposed new rail line segment and the use of trackage rights over UP lines that BNSF either has or can obtain under the UP/SP merger decision.<sup>10</sup> The segments of each Build Alternative that involve new rail line construction are referred to as the Build Segments of that Alternative. The Build Segments are shown in Figure 1.5-1.

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<sup>9</sup> Interested parties and the general public will have more than 30 days to review the Final EIS. On May 2, 2003, SEA is filing the Final EIS with USEPA and issuing it to government agencies, elected officials, community groups, citizens, and parties of record. The entire document is also available on the Board's website (<http://www.stb.dot.gov>), under "Environmental Issues," "Key Cases," and "Bayport Loop." The Final EIS is also available to all interested persons for review in the reference section of public libraries in the project area where the Draft EIS is also available.

<sup>10</sup> The Board's UP/SP merger decision and its applicability to this case is described on page 1-2 of the Draft EIS.

Figure 1.5-1  
Build Segments



**Proposed Action.** The Proposed Action is the Applicants' preferred route. The Proposed Action is shown in Figure 1.5-2. It involves the construction of a new rail line, approximately 12.8 miles long from the Bayport Loop to an existing rail line, that would allow the Applicants to provide competitive rail service to the petrochemical industries in the Bayport Loop. Implementation of the Proposed Action would result in rail operations to and from the new line over trackage rights on UP's Galveston, Houston, and Henderson Railroad (GH&H) line and UP's East Belt, Terminal, Lafayette, and Baytown Subdivisions to the storage yard operated by CMC Railroad at Dayton, approximately 30 miles northeast of Houston. The Applicants' original Proposed Action anticipated rail operations over the GH&H line and UP's Glidden Subdivision to BNSF's New South Yard. On August 6, 2002, the Applicants advised SEA that in response to concerns raised by the communities in and around New South Yard regarding existing congestion, they proposed to route the Bayport Loop traffic to the CMC Dayton Yard instead of New South Yard.

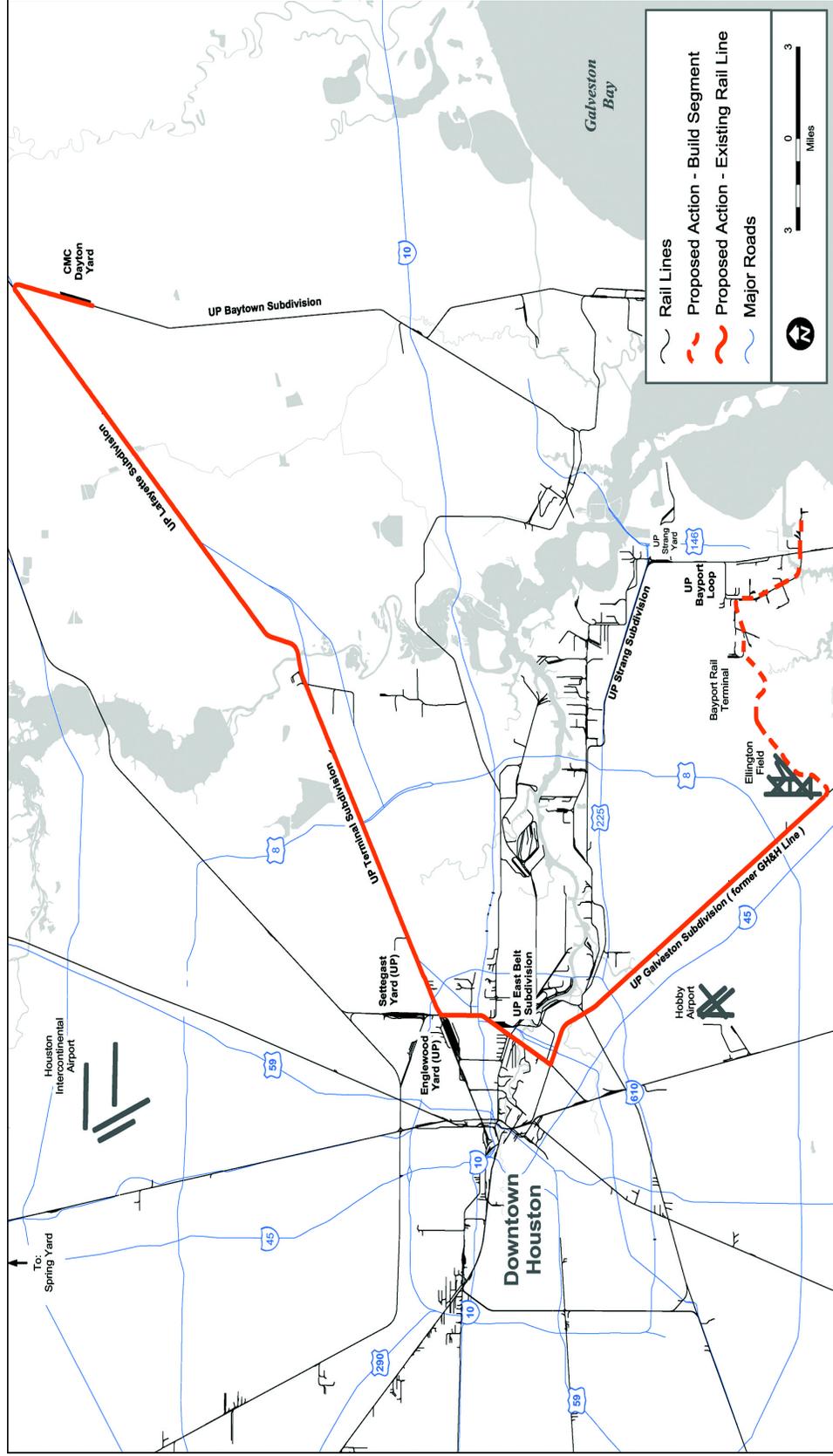
BNSF has explained in its application that it anticipates that it would run, on average, one train of approximately 36 to 66 cars per day in each direction (for a daily total of two trains and 72 to 132 rail cars). On an annual basis, a total of 13,000 to 24,000 carloads (loaded rail cars) and an equal number of empty rail cars would operate on the proposed line, representing approximately 28 to 51 percent of the rail traffic generated in the Bayport Loop. The majority of the shipments would consist of non-hazardous plastic pellets, transported in hopper cars. The remainder would consist of chemicals, transported in tank cars. At current BNSF estimates, approximately 1,500 to 7,000 carloads of hazardous materials would be transported over the line per year. Other miscellaneous inbound and outbound commodities are also likely to be transported. The Proposed Action is more fully described in Section 2.2.1 of the Draft EIS.

**Original Taylor Bayou Crossing.** The Applicants originally proposed to cross Taylor Bayou using Alternative 1, at a location that the National Marine Fisheries Service (NMFS) later identified as containing EFH. The original Taylor Bayou crossing was replaced as the Applicants' preferred crossing by Alternative 1B, which would affect a much smaller amount of EFH. The Original Taylor Bayou Crossing is described on page 2-11 of the Draft EIS.

**Alternative 1C.** After consulting with the FAA and the City of Houston, SEA requested that the Applicants develop Alternative 1C to address two issues associated with Ellington Field. The Proposed Action passes through Ellington Field's Runway Protection Zone (RPZ) and it would run between 240 acres of adjacent land owned by the City of Houston and the airport. Alternative 1C avoids these issues and consists of a two-mile modification of the Proposed Action from its turnout on the GH&H line to the Boeing and NASA facilities on Space Center Boulevard. Alternative 1C is more fully described on pages 2-11 and 2-14 of the Draft EIS.

**Alternative 2B.** The Applicants developed Alternative 2B, as a modification to Alternative 2 (which was eliminated from further study for the reasons described on page 2-19 of the Draft EIS), to avoid crossing land owned by the Deer Park School District and to move the rail line further away from a major residential neighborhood. Alternative 2B is more fully described on page 2-14 of the Draft EIS.

Figure 1.5-2  
Proposed Action



**Alternative 2D.** The Applicants developed Alternative 2D for the same reasons they developed Alternative 2B and also to avoid businesses, residences, and churches along Genoa-Red Bluff Road, minimize conflicts with the proposed expansion of Genoa-Red Bluff Road, and avoid a water main and a gas main that parallel Genoa-Red Bluff Road. The Applicants have identified this Alternative as their Preferred Alignment between Alternatives 2B and 2D. Alternative 2D is more fully described on pages 2-14 and 2-17 of the Draft EIS.

**No-Build Alternative.** The No-Build Alternative requires no new rail line construction. It would involve BNSF using the same trackage rights over existing UP lines that BNSF would use for the Proposed Action, although BNSF would need trackage rights over a smaller portion of the GH&H line. However, the No-Build Alternative would require BNSF to obtain trackage rights from UP over the Strang Subdivision and the Bayport Loop Industrial Lead to access the Bayport Loop. BNSF cannot obtain trackage rights over the Strang Subdivision and the Bayport Loop Industrial Lead under the UP/SP merger decision. BNSF has approached UP about obtaining such trackage rights, but UP has stated publicly that it will not grant trackage rights unless BNSF provides full compensation for UP's lost revenue. To date, BNSF and UP have not reached an agreement on compensation and BNSF cannot operate over the Strang Subdivision. However, if UP and BNSF were to reach an agreement allowing BNSF to operate over the Strang Subdivision to access the Bayport Loop, there would be no need for the construction of any of the Build Alternatives. SEA analyzed this Alternative in response to several requests made during scoping. Also, despite the fact that the Board does not have the authority to force UP to permit BNSF to operate over the Strang Subdivision, CEQ regulations (40 CFR 1502.14(c)) indicate that agencies should include alternatives outside the agency's jurisdiction in their analyses. The No-Build Alternative is more fully described on page 2-17 of the Draft EIS.

**No-Action Alternative.** Under the No-Action Alternative, the Applicants would not provide competitive rail service to the Bayport Loop, either by new construction or trackage rights. The shippers in the Bayport Loop would continue to be served solely by UP. The rail operations on the rail lines to and from the Bayport Loop in the Houston area would remain as they are today. The No-Action Alternative is more fully described on pages 2-18 and 2-19 of the Draft EIS.

## 1.6 ALTERNATIVES ELIMINATED FROM DETAILED STUDY

SEA eliminated some Alternatives from detailed consideration in the Draft EIS because they were deemed unreasonable or infeasible. These included Alternatives 1A, 2, 2A, 2C, 3, and 4. SEA also considered and eliminated several Alternatives suggested in public comments. In accordance with the CEQ regulations at 40 CFR 1502.14(a), SEA discussed in Section 2.3 of the Draft EIS the reasons why these Alternatives were not considered in detail.

## 1.7 PUBLIC INVOLVEMENT

On October 1, 2001, SEA served and distributed the Notice of Intent to Prepare an EIS to approximately 489 citizens, elected officials, Federal, state, and local agencies, and interested organizations, and initiated a toll-free project hotline. On November 26, 2001, SEA served and distributed the Notice of Availability of Draft Scope of Study for the EIS, Notice of Scoping Meetings, and Request for Comments, to approximately 526 citizens, elected officials, Federal, state, and local agencies, and interested organizations. The distribution encompassed the

communities surrounding the Proposed Action and the communities along the UP lines connecting the Proposed Action to New South Yard. SEA placed notices of the scoping meetings in several community newspapers and the *Houston Chronicle*. SEA also provided public service announcements to several Spanish-speaking radio stations.

The scoping meetings were held in the afternoons and evenings of January 14 and 15, 2002. SEA used a workshop format to allow attendees to provide comments and ask questions. The 189 people who attended and signed in at the scoping meetings included citizens, members of organizations, elected officials, and officials from Federal, state, and local agencies.

At the request of public comments and several elected officials, SEA extended the scoping comment period for an additional 30 days to March 14, 2002, to provide the public sufficient opportunity to explore Alternatives to the proposed route and raise issues pertinent to scoping. SEA published a notice of the extension in the *Federal Register* on February 13, 2002, and distributed it to approximately 650 citizens, elected officials, Federal, state, and local agencies, and interested organizations. SEA conducted additional public involvement activities, including translating project information into Spanish and making it available to communities and community leaders who live along existing UP lines that would be used by rail traffic operating under the Proposed Action and Alternatives.

SEA published the Notice of Availability of Final Scope of Study for the EIS in the *Federal Register* on July 19, 2002. The Final Scope was translated into Spanish and both the English and Spanish versions were widely distributed in the project area. Due to a subsequent change in Proposed Action routing from New South Yard to the CMC Dayton Yard<sup>11</sup> that took place after the scoping meetings and publication of the Final Scope, SEA sent notification of the Proposed Action to Federal, state, and local officials who represent the communities along the modified route.

SEA published the Draft EIS and delivered it to USEPA on December 6, 2002. USEPA published the Notice of Availability of the Draft EIS in the *Federal Register* on December 13, 2002. SEA distributed the Draft EIS to elected officials, Federal, state, and local agencies, interested organizations, and citizens who had requested a copy. The Draft EIS was also made available for public review in the reference section of public libraries in the project area.

At the request of several elected officials and public comments, SEA extended the comment period for the Draft EIS from the original 45 days, for an additional 25 days to February 21, 2003, to provide the public additional time to review the document and submit comments. Notice of the comment period extension was distributed to elected officials, Federal, state, and local agencies, interested organizations, and citizens.

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<sup>11</sup> This route is a change from the route described in the Applicants' original petition and was brought to the Board's attention by the Applicants (See Appendix N of the Draft EIS, letter from the Applicants to SEA dated August 6, 2002). In response to community concerns about existing congestion near New South Yard, the Applicants proposed this route as voluntary mitigation to avoid New South Yard altogether. The Applicants stated in their letter that this change does not affect the proposed route for the new rail line construction.

SEA held two public meetings on the Draft EIS on January 14 and 15, 2003, at the Pasadena Convention Center and Cesar E. Chavez High School, respectively. At each meeting, SEA and the cooperating agencies gave a brief presentation and invited interested parties to make oral comments. SEA retained a transcriber to record the oral comments and also employed a Spanish translator. In addition, a Spanish speaker from SEA's third-party contractor team helped staff the sign-in/information table. Approximately 150 people signed in at the meeting held at the Pasadena Convention Center, although SEA estimated that approximately 250 people actually attended the meeting. Approximately 260 people signed in at the meeting held at Cesar E. Chavez High School, although SEA estimated that approximately 400 to 600 people attended the meeting. A mix of elected officials, people representing organizations and companies, and private citizens spoke at the meetings. A total of 115 oral comments were received at the two meetings (50 comments at the Pasadena Convention Center meeting and 65 comments at the Cesar E. Chavez High School meeting). SEA also encouraged attendees to submit written comments at the two meetings. Thirteen written comments were submitted at the Pasadena Convention Center meeting and 19 written comments at the Cesar E. Chavez High School meeting. The transcripts from the public meetings are contained in Appendix A of this Final EIS. At both meetings, SEA stressed that written comments would be considered equally with oral comments.

SEA received over 500 written comments during the Draft EIS comment period. SEA also accepted comments after the close of the comment period. Comments were received from elected officials, Federal, state, and local agencies, organizations, companies, and concerned citizens. The comment letters are contained in Appendix B of this Final EIS. The contents of the oral and written comments are summarized in Chapter 4 of this Final EIS, which also contains SEA's responses to those comments.

SEA published this Final EIS and delivered it to USEPA on May 2, 2003. SEA also distributed the Final EIS to elected officials, Federal, state, and local agencies, interested organizations, commenters who submitted substantive comments, and citizens who had requested a copy, as well as the parties of record. The Final EIS was made available at public libraries in the project area where the Draft EIS is also available. SEA mailed a letter (in both English and Spanish), announcing availability of the Final EIS and summarizing its conclusions, to over 1,800 interested parties. SEA also provided a press release announcing availability of the Final EIS to press organizations in the project area.

## **1.8 REGULATORY AGENCY COMMENTS ON THE DRAFT EIS**

Four Federal and state regulatory agencies provided comments on the Draft EIS: USEPA Region 6, NMFS, Texas Commission on Environmental Quality (TCEQ), and the Texas Historical Commission (THC).

USEPA Region 6 reviewed the Draft EIS, in accordance with its responsibilities under Section 309 of the Clean Air Act, NEPA, and the CEQ regulations. The USEPA letter commenting on the Draft EIS, dated February 21, 2003, and included in Appendix B of this Final EIS, classified the Draft EIS and the Proposed Action as "lack of objections." The letter stated that the Draft EIS "demonstrates the Proposed Action would have no significant impact on the human environment and would have negligible impacts in all other areas."

NMFS commented on the Applicants' efforts to minimize the potential impacts to EFH and the Applicants' provision of mitigation as compensation for these unavoidable impacts. SEA worked with NMFS to complete consultation requirements under the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). In a March 31, 2003 letter, NMFS provided its final conservation recommendations for EFH and associated fishery resources (see Appendix D). SEA has incorporated these recommendations into this Final EIS and has developed a new mitigation measure concerning EFH, which SEA recommends to the Board. This mitigation measure satisfies the requirements of the MSFCMA.

TCEQ commented on wetland impacts, water quality impacts, and mitigation measures and provided a number of comments relevant to the U.S. Army Corps of Engineers' (USACE) Section 404 permit process. TCEQ requested more information and SEA provided clarification to TCEQ.

THC determined that the Proposed Action and Alternatives would have no adverse effect on archaeological or architectural historic properties.