

EL-18902



EA served May 22, 2012 in City of Alameda d/b/a ABL, AB 1090X

Charles Montange to: david.navecky

05/23/2012 01:30 PM

Please respond to "Charles Montange"

History:

This message has been replied to.

Mr. Navecky, the comments section of the EA referenced above indicated that questions concerning the EA could be directed to you by telephone or email. I have left a telephone message, and this email is basically a repetition of it. The EA, "pending clarification of this matter," recommends a condition be placed on the abandonment authorization in 1090X requiring no alteration of the line until Federal Consistency review requirements are met under the CZMA, specifically as follows: that the RR report back to OEA concerning consultations with the Federal Consistency Unit of the Cal Coastal Commission. The recommended condition would bar the RR from consummating abandonment (railbanking for the most part) or removing track or ties until CZMA "consistency certification is obtained, if applicable, and the Board has removed this condition."

Please consider this email an effort to provide clarification such that the recommendation for a Cal Coastal Commission federal consistency review, and a stay on any consummation and salvage pending such review and STB action on it, be rescinded.

The California Coastal Commission does not have jurisdiction over CZMA matters in or around the City of Alameda. This is handled exclusively by the Bay Conservation and Development Commission ("BCDC"). Because the Cal Coastal Commission lacks jurisdiction, it does not make federal consistency certifications for City of Alameda on any matter, and I have specifically confirmed with the head of the Federal Consistency Unit of the Commission that it would not do so in 1090X. Mr. Mark Delaplaine, who heads the Federal Consistency Unit for Cal Coastal Commission, has offered to verify this to you directly if you telephone him. His tel number is 415-904-5289.

Compliance with CZMA is fully secured by the commitment of City d/b/a ABL to obtain all necessary permits or approvals from BCDC before undertaking any action requiring such permits or approvals, and by the separate condition recommended in the EA that City d/b/a consult with BCDC and obtain such permits or approvals.

In light of this clarification, we request that the OEA rescind the second of the three conditions it recommends. The condition cannot be complied with because Cal Coastal Commission lacks jurisdiction.

I would also note that the City of Alameda filed a "statement of willingness" seeking a Trails Act condition, and City of Alameda d/b/a ABL consented to same, at the same time as the two year out of service abandonment application was filed. We believe the request met the requirements of 49 CFR 1152.29. It might be appropriate for the EA to so note in the "Trails Use" section of the EA. The City believes that railbanking the portion of the Line indicated in our statement of willingness will preserve the corridor for future rail use and provide additional benefits to the public through interim trail use.

Please feel free to contact me at 206-546-1936 should further information be required.