

BEFORE THE
SURFACE TRANSPORTATION BOARD

SEP 9 2004
RECEIVED

Abandonment of a line of Railroad
Between BNSF 66.95 in Bay City, Texas,
Texas and M.P. 54.00 near Cane Junction, Texas,
and between M.P. 0 00 near Cane Junction, Texas
and M.P. 7.94 near Newgulf, Texas, in Matagorda
and Wharton Counties, Texas

NOTICE OF EXEMPTION
Docket No. AB-6
(Sub-No. 426X)

ENTERED
Office of Proceedings

211961 SEP -9 2004

Part of
Public Record

TO THE SURFACE TRANSPORTATION BOARD:

The Burlington Northern and Santa Fe Railway (BNSF) hereby notifies the Board that it intends to abandon its line of railroad between BNSF M.P. 66.95 in Bay City, Texas and M.P. 54.00 near Cane Junction, Texas and between M.P. 0.00 near Cane Junction, Texas and M.P. 7.94 near Newgulf, Texas, in Matagorda and Wharton Counties, Texas, a total distance of 20.89 miles, pursuant to the Board's Exemption of Out of Service Rail Lines, 49 C.F.R. § 1152.50 and in support of the Notice, respectfully provides the following information:

I. Proposed consummation date for the abandonment.
October 29, 2004

II. Certification required in 49 C.F.R. § 1152.50(b)

The attached Certification of Michael Smith certifies that no formal complaint filed by a user of rail service on this line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line is pending with the Board or any U.S. District Court or has been decided in favor of a complainant within the last two

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years. The attached Verification of Richard A. Batie certifies that no local traffic has moved over this line for at least two (2) years and any overhead traffic on the line can be rerouted over other lines

III. Information required by C.F.R. § 1152.22(a)(1-4), (7), (8) and (e)(4).

(a) General

- (1) Exact name of Applicant.**

**The Burlington Northern and Santa Fe Railway
Company**

- (2) Whether applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, Chapter 105.**

Applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, Chapter 105

- (3) Relief sought.**

BNSF seeks an exemption from Surface Transportation Board approval authorizing the abandonment and discontinuance of service of the Bay City Texas to Cane Junction, Texas and the Cane Junction, Texas to Newgulf, Texas lines specified above

- (4) Detailed map of the subject line.**

See Exhibit A.

- (5) Name, title and address of representative of applicant to whom correspondence should be sent.**

**Michael Smith
Freeborn & Peters
311 S Wacker Dr., Suite 3000
Chicago, IL 60606-6677**

- (6) List of all United State Postal Service ZIP Codes that the line traverses.**

The Bay City Texas to Cane Junction, Texas and the Cane Junction, Texas to Newgulf, Texas lines traverses United States Postal Service Zip 77414, 77482 and 77420.

- (7) Statement of whether the properties proposed to be abandoned are suitable for other public purposes, including roads or highways, other forms of mass transportation, conservation, energy production or transmission or recreation. If the applicant is aware of any restriction on the title to the property, including any reversionary interest, which would affect the transfer of title or the use of property for other than rail purposes, this shall be disclosed.**

The right of way may be suitable for use for other public purposes such as a trail. On part of the properties involved, title considerations may affect the conveyance of the land for use other than railroad purposes. Based on information in our possession, the line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

IV. Level of protection.

The interest of railroad employees will be protected by the conditions imposed in Oregon Short Line RR Co. - Abandonment - Goshen, 360 I.C.C. 91 (1979)

V. Certification that the notice requirements of §§ 1152.50(d)(1) and 1105.11 have been met is attached

Respectfully submitted,



**Michael Smith
Freeborn & Peters
311 S. Wacker Dr Suite 3000
Chicago, Illinois 60606-6677
Phone: (312) 360-6724
Fax: (312) 360-6598**

Date: September 8, 2004

VERIFICATION

STATE OF TEXAS)
)ss
COUNTY OF TARRANT)

Richard A. Batte makes oath and says he is Manager, Shortline Development in the Network Development department of The Burlington Northern and Santa Fe Railway Company; that he has been authorized by the Applicant to verify and file with the Surface Transportation Board the foregoing Notice of Exemption in AB-6 (Sub-No. 426X); that he affirms that the line has had no local traffic in the prior two (2) years and that there is no overhead traffic to be rerouted; that he has carefully examined all of the statements in the Notice; that he has knowledge of the facts and matters relied upon in the Notice; and that all representations set forth therein are true and correct to the best of his knowledge, information, and belief.

Richard A. Batte

Richard A. Batte
Manager, Shortline Development

Subscribed and sworn to before me the 7th day of SEPT., 2004.

Winona L. Garrett

Notary Public



THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
NO. AB-6 (Sub No. 426X)

CERTIFICATION

I hereby certify that (1) no formal complaint filed by a user of rail service on this line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line is pending with the Board or any U.S. District Court or has been decided in favor of a complainant within the last two (2) years; (2) service of notice upon the U.S. Department of the Interior, National Park Service, Recreation Park Service, Land Resource Division; the Department of Defense, Military Traffic Management Command; the Public Utility Commission of Texas, the Texas Department of Transportation; and the Chief Forest Service, U.S. Department of Agriculture was accomplished by mailing a copy thereof on August 11, 2004; (3) the environmental and historic reports were serviced upon the agencies identified in 49 C.F.R. § 1105.7(b) and the State Historic Preservation Offices on August 11, 2004; (4) service of notice upon the State Clearinghouses was accomplished by mailing a copy thereof on August 11, 2004; and (5) the publication requirements of 49 C.F.R. § 1105.12 have been complied with, to wit: publication of notice was accomplished on August 28, 2004 in the Wharton Journal-Spectator and on September 2, 2004 in the Bay City Tribune, affidavits of publication is attached.

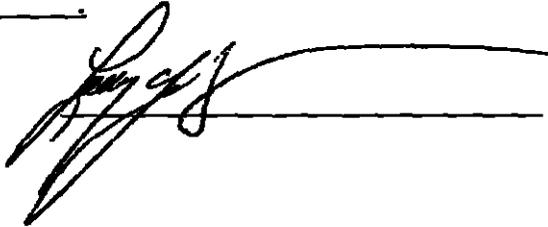


Michael Smith
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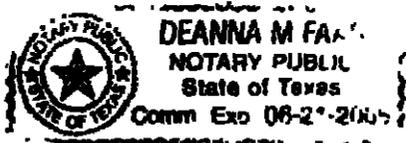
Date: September 8, 2004

STATE OF TEXAS
COUNTY OF WHARTON

Before me, the undersigned authority, on this day
personally appeared Larry C. Jackson, the
General Manager/Editor of the Wharton, Journal-Spectator,
(TITLE) (NAME OF NEWSPAPER)
a newspaper having general circulation in Wharton County, Texas, who
being by me duly sworn, deposes and says that the foregoing attached
notice was published in said newspaper on the following dates, to
wit: August 28, 2004.



Subscribed and sworn to before me this the 31 day of
August, 2004, to certify which witness my hand and seal of office.



Deanna M. Farris
Notary Public in and for
Wharton County, Texas

**NOTICE OF INTENT
TO ABANDON**

The Burlington Northern and Santa Fe Railway Company gives notice that on or after September 6, 2004, it intends to file with the Surface Transportation Board, Washington, DC 20423, a petition for exemption under 49 CFR 1152 Subpart F -- Exempt Abandonments permitting the abandonment of 30.89 miles of railroad line between Milepost 66.95 near Bay City, Texas and Milepost 54.00 near Cane Junction, Texas and between Milepost 0.00 near Cane Junction, Texas and Milepost 7.94 near Newgulf, Texas, which traverses through United States Postal ZIP Codes 77414, 77482 and 77420 in Matagorda and Wharton Counties, Texas. The proceeding will be docketed as No. AB-6 (Sub No. 426X).

The Board's Section of Environmental Analyses (SEA) will generally prepare an Environmental Assessment (EA), which will normally be available 60 days after the filing of the petition for abandonment exemption. Comments on environmental and energy matters should be filed no later than 30 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the Section of Environmental Analysis, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001 or by calling that office at 202-565-1538.

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Board's Office of the Secretary, 1925 K Street, N.W., Washington DC 20423-0001 [See 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicants' representative [See 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Public Services at 202-565-1592. Copies of any comments or requests for conditions should be served on the applicant's representative Michael Smith, Freeborn & Peters, 311 S Wacker Drive, Suite 3000, Chicago, Illinois 60606-6677 - telephone (312) 360-6724.

This notice was published in The Wharton Journal-Spectator on August 28, 2004.

**PUBLISHER'S AFFIDAVIT
OF**

**} THE BAY CITY TRIBUNE and
THE MATAGORDA
COUNTY TRIBUNE**

**THE STATE OF TEXAS
COUNTY OF MATAGORDA**

On this, the 2nd day of September, 2004 personally appeared
_____ before me the undersigned authority.

Belinda Flores who states that he/she is the Classified Representative
of The Bay City Tribune The Matagorda County Tribune, published at
Bay City, Texas, County of Matagorda.

And upon being duly sworn by me on oath states that the attached
advertisement was published in said newspaper in the issues of

August 29, 2004

Signed Belinda Flores

Classified Representative

Subscribed and sworn to before me this the

2nd of September 2004



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Mary Ann Oros

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NOTICE OF PUBLIC SALE

BEST STORAGE PURSUANT TO THE PROVISIONS OF CHAPTER 59 TEXAS PROPERTY CODE SHALL CONDUCT A PUBLIC SALE OF THE CONTENTS OF THE STORAGE ROOM (S) LISTED BELOW IN BAY CITY, TEXAS, TELEPHONE # 979-323-0999 ON THE DATE SHOWN BELOW TO SATISFY A LANDLORD'S LIEN ALL SALES WILL BE FOR CASH TO THE HIGHEST BIDDER ALL SUCCESSFUL BIDDERS SHALL TAKE POSSESSION AND REMOVE THE CONTENTS OF THE ROOM IMMEDIATELY BEST STORAGE RESERVES THE RIGHT TO REJECT ANY BIDS AND TO WITHDRAWN ANY ITEMS FROM SUCH SALE DATE SEPTEMBER 20, 2004 START LOCATION 4901 7TH STREET DAY CITY, TX 77414 TIME 3:00 P M NAMES

- RAMIRO REYNA,
 - ANN F GROVEY
 - ANNA GROVEY,
 - ROCHELLE L SCOTT,
 - ROCHELLE SR SCOTT
 - DESTINY D STRADER,
 - STEPHANIE M LAMB,
 - IVY L YOUNG
- CONTENTS CONSIST OF BIKES, BEDS, LANE CHAIRS, STROLLER, REFRIGERATOR, EXERCISE BIKE BLANKETS, CHAIRS, TVS, ICE CHEST, TOYS KEYBOARD, DOLL HOUSE, BAR STOOLS, FAN TOOLS LUGGAGE, MISC BOXES, COUCH, TABLES, FISHING POLES, CLOTHES, BATTERY CHARGER AIR CONDITIONER, TVS, END TABLES, DRESSERS ICE CHEST, ENTERTAINMENT CENTER, SEWING MACHINE GLASSWARE, CHRISTMAS DECORATIONS



"All real estate advertised in this newspaper is subject to the Federal Fair Housing Act of 1968 as amended which makes it illegal to advertise "any preference limitation, or discrimination based on race color religion sex handicap familial status, or national origin or in intention to make any such preference limitation or discrimination." This newspaper will not knowingly accept any advertising for real estate which is in violation of the law Our readers are hereby informed that all challenges advertised in this newspaper are available on an equal opportunity basis

NOTICE OF INTENT TO ABANDON

The Burlington Northern and Santa Fe Railway Company gives notice that on or after September 6, 2004, it intends to file with the Surface Transportation Board, Washington, DC 20423, a petition for exemption under 49 CFR 1152 Subpart F — Exempt Abandonments permitting the abandonment of 20.89 miles of railroad line between Milepost 66.95 near Bay City, Texas and Milepost 54.00 near Cane Junction, Texas and between Milepost 0.00 near Cane Junction, Texas and Milepost 7.94 near Newgulf, Texas, which traverses through United States Postal ZIP Codes 77414, 77482 and 77420 in Matagorda and Wharton Counties, Texas. The proceeding will be docketed as No AB-6 (Sub No 426X)

The Board's Section of Environmental Analyses (SEA) will generally prepare an Environmental Assessment (EA), which will normally be available 60 days after the filing of the petition for abandonment exemption. Comments on environmental and energy matters should be filed no later than 30 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the Section of Environmental Analysis, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001 or by calling that office at 202-565-1538

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



NOTICE OF APPLICATION AND PRELIMINARY DECISION FOR WATER QUALITY TYPES PERMIT RENEWAL

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Cheryl D. Avila
Vg. auto, running
boards, 21K miles.
09/19/95

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**In the Matter of The
Burlington Northern and Santa Fe
Railway Company Notice of Exemption
to Abandon Its Line of Railroad
Between BNSF M P. 66.95 in Bay City, Texas and
M P. 54.00 near Cane Junction, Texas, and between
M.P. 0.00 near Cane Junction, Texas and M.P. 7.94
near Newgulf, Texas, in Matagorda and Wharton
Counties, Texas**

**Docket No. AB-6
(Sub-No. 426X)**

ENVIRONMENTAL REPORT

The following information is submitted to the Surface Transportation Board by The Burlington Northern and Santa Fe Railway Company (BNSF) in accordance with the Board's reporting requirements as set forth in 49 C.F.R. § 1105.7 for the purpose of assisting the Board's preparation of an environmental document regarding BNSF's Notice of Exemption for abandonment of its line between M.P. 66.95 in Bay City, Texas and M.P. 54.00 near Cane Junction, Texas and between M.P. 0.00 near Cane Junction, Texas and M.P. 7.94 near Newgulf, Texas, in Matagorda and Wharton Counties, Texas, a total distance of 20.89 miles.

(1) Proposed action and Alternatives: Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

BNSF seeks to abandon and discontinue service of the line. A map of the line is attached as Exhibit A.

(2) Transportation system: Describe the effect of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

The proposed abandonment will have no affect on existing transportation systems or patterns as the line is out of service.

(3) Land Use:

(i) Based on consultation with local and/or regional planning agencies and/or review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

BNSF believes that the proposed exemption will not be inconsistent with local or regional land use plans. The Matagorda County Board of Commissioners and the Wharton County Board of Commissioners were notified by letters dated June 15, 2004. See Exhibits B and C. As of the date of this report, neither has responded. Directly to those inquiries. BNSF will provide the Board copies of any response it may receive.

(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agriculture land.

The proposed exemption should have no effect on prime farmland. The proposed project is considered a prior conversion by the FPPA. The Farmland Protection Policy states in CFR Part 658.2 that "Farmland does not include land already committed to urban development or water storage". This project is not subject to the FPPA. See Exhibit D, letter from the Natural Resources Conservation Service.

(iii) If any action affects land or water uses within a designated coastal zone, include the coastal zone information required by § 1105.9

N/A

(iv) If the proposed action is abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. § 10906 and explain why.

BNSF does not know whether the right-of-way is suitable for alternative public uses. The Matagorda County Board of Commissioners and the Wharton County Board of Commissioners were notified by letters dated June 15, 2004. See Exhibits B and C. As of the date of this report, neither has responded directly to that inquiry. BNSF will provide the Board copies of any response it may receive.

(4) Energy:

(i) Describe the effect of the proposed action on transportation of energy.

To the best of BNSF's knowledge there are no undeveloped energy resources such as oil, natural gas or coal in the vicinity of this line.

(ii) Describe the effect of the proposed action on recyclable commodities.

This abandonment and discontinuance will not adversely affect movement or recovery of recyclable commodities as the line is out of service.

(iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.

This abandonment will not result in an increase or decrease in overall energy efficiency as the line is out of service.

(iv) If the proposed action will cause diversions from rail to motor carriage of more than:

(A) 1,000 rail carloads a year, or

(B) An average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in the energy consumption and show the data and methodology used to arrive at the figure given.

There will be no diversions of traffic because the line is out of service.

(5) Air:

(i) If the proposed action will result in either:

(A). An increase in rail traffic of at least 100% (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of the line effected by the proposed, or

No

(B). An increase in rail yard activity of at least 100% (measured by carload activity), or

No.

(C). An average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions.

The action will not involve an increase in truck traffic of more than 10% or 50 vehicles a day on any affected road segment as the line is out of service.

(ii) If the proposed action affects a Class I or nonattainment area under the Clean Air Act, and will result in either:

(A) An increase in rail traffic of at least 50% (measured in gross ton miles annually) or an increase of at least three train a day on any segment of rail line, or

(B) An increase in rail yard activity of at least 20% (measured by carload activity), or

(C) An average increase in truck traffic or more than 10-% of the average daily traffic of 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by State implementation Plan. However, for a rail construction under 49 U.S.C. § 10901 (or 49 U.S.C. § 10505) or in a case involving the reinstatement of service over a previously abandoned line, only the three train a day threshold in this item shall apply.

The proposed abandonment will not result in an increase of rail or truck traffic because the line is out of service

(iii) If the transportation of ozone depleting materials (such as nitrogen oxide and from) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

The proposed abandonment will not result in an increase of rail or truck traffic because the line is out of service

(6) Noise: If any of the thresholds identified in item (5)(c) of this section are surpassed, state whether the proposed action will cause:

(i) An incremental increase in noise levels of three decibels Ldn or more,

N/A

(ii) An increase to a noise level of 76 decibels Ldn or greater. If so, identify sensitive receptors (e.g. schools, libraries, hospitals, residences, retirement communities and nursing homes) in the project area and quantify the noise increase for those receptors if the thresholds are surpassed.

N/A

(7) Safety:

(i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad crossings).

This abandonment should have no adverse effect on health or public safety. There are 9 public crossings and 27 private crossings. During salvage operations on the line, precautions will be taken to ensure public safety, and contractors will be required to satisfy all applicable health and safety laws and regulations.

(ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills, and the likelihood of and accidental release of hazardous materials

Abandonment will not result in transportation of hazardous materials.

(iii) If there are any known hazardous waste site or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

There is no evidence of known hazardous waste site or sites where there have been known hazardous materials spills on the right of way.

(8) Biological resources:

(i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects

BNSF believes that the proposed exemption not affect endangered or threatened species or areas designated as critical habitat. A Pair of threatened bald eagles is known to nest to the east-southeast of Newgulf, Texas See Exhibit E, letter from the U.S. Fish and Wildlife Service. Currently, only the Bald Eagle (*Haliaeetus leucocephalus*) has been

documented in the general project area. See Exhibit F, letter from the Texas Parks and Wildlife.

(ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

BNSF believes that the proposed exemption will not affect wildlife sanctuaries or refuges, National or State parks or forests. The Big Boggy National Wildlife Refuge is located near the general project area. See Exhibit F, letter from the Texas Parks and Wildlife. The National Park Service has reviewed the subject project and has determined there are no National Park Service Units in the vicinity. See Exhibit G, letter from the National Park Service.

(9) Water:

(i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.

BNSF believes that the proposed exemption will be consistent with applicable Federal, State or local water quality standards. The Texas Commission on Environmental Quality was notified by letters dated June 15, 2004. See Exhibit H and I. As of the date of this report, the Texas Commission on Environmental Quality has not responded BNSF will provide the Board copies of any response it may receive.

(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under Section 404 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action and whether any designated wetlands or 100-year floodplains will be affected. Describe the effects.

The U.S. Army Corps of Engineers concluded that a Section 404 permit is not required. See Exhibit J, letter from the Army Corps of Engineers.

BNSF believes the proposed exemption will not affect the 100-year floodplain. Simply removing the track materials should have no significant impact on the 100-year floodplain. See Exhibit K, letter from the Matagorda County Environmental Health

(iii) State whether permits under Section 402 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action. (Applicants should contact the U.S. Environmental Protection Agency or the state environmental protection or equivalent agency if they are unsure whether such permits are required.)

BNSF believes that Section 402 permits will not be required for the proposed action. The Texas Commission on Environmental Quality was notified by letters dated June 15, 2004. See Exhibits H and I. As of the date of this report, the Texas Commission on Environmental Quality has not responded. BNSF will provide the Board copies of any response it may receive.

(10) Proposed Mitigation: Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

Any salvage operations that may result will be in accordance with BNSF's general practice of requiring its private contractors to comply with all federal, state and local laws and regulations pertaining to the environment, including, but not limited to noise, air quality, water quality, and items of archaeological significance. The project itself should mitigate the environmental effects of reinstating active rail operations.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'M. Smith', written over a horizontal line.

**Michael Smith
Frieborn & Peters
311 S. Wacker Dr. Suite 3000
Chicago, Illinois 60606-6677
Phone: (312) 360-6724
Fax: (312) 360-6598**

Date: September 8, 2004

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**In the Matter of The
Burlington Northern and Santa Fe
Railway Company Notice of Exemption
to Abandon Its Line of Railroad
Between BNSF M.P. 66.95 in Bay City, Texas
and M.P. 54.00 near Cane Junction, Texas, and between
M.P. 0.00 near Cane Junction, Texas and M.P. 7.94
near Newgulf, Texas, in Matagorda and Wharton
Counties, Texas**

**Docket No. AB-6
(Sub-No. 426X)**

HISTORICAL REPORT

The following is submitted to the Surface Transportation Board by The Burlington Northern and Santa Fe Railway Company (BNSF) in accordance with the Board's reporting requirements set forth in 49 C.F.R. § 1105.8 for the purpose of assisting the Board's environmental and historical assessment regarding BNSF's Notice of Exemption to abandon its line of railroad between M.P. 66.95 in Bay City, Texas and M.P. 54.00 near Cane Junction, Texas and between M.P. 0.00 near Cane Junction, Texas and M.P. 7.94 near Newgulf, Texas, in Matagorda and Wharton Counties, Texas, a total distance of 20.89 miles.

(1) A U.S.G.S. topographic map (or alternate map drawn to scale and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action) showing the location of the proposed action, and the locations and approximate dimensions of the railroad structures that are 50 years old or older and are part of the proposed action;

One copy of a U.S.G.S. Topographical map has been provided to the Texas State Historical Society and one copy is being provided to the Surface Transportation Board's Section of the Environmental Analysis upon filing of this Report.

(2) A written description of the right-of-way (including approximate widths, to the extent known) and the topography and urban and/or rural characteristics of the surrounding area:

The Bay City to Cane Junction and the Cane Junction to Newgulf, Texas lines are located in a rural area of southeastern Texas. The line connects the town of Bay City with the stations of Runnels, Cane Junction and Newgulf.

Bay City has a 2004 population of 18,667 according to the Texas State Travel Guide. The stations of Cane Junction, Runnels and Newgulf have no population.

The land adjoining the right of way is primarily used for ranchland and farmland and is generally flat. Primary crops include soybeans, corn and cotton. The right of way is 100 feet in width.

(3) Good quality photographs (actual photographic prints, not photocopies) of railroad structures on the property that are 50 years old or older and of the immediately surrounding area:

There are 8 bridges that are 50 years or older in the immediate area of the abandonment. See Exhibit L.

(4) The date(s) of construction of the structures, and the date(s) and extent of any major alterations, to the extent such information is known;

The dates of construction of the bridges are included with the photographs. See Exhibit L.

(5) A brief narrative history of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action:

The right of way was acquired between 1899 and 1914 by the Cane Belt Railroad Company which was a predecessor of The Atchison Topeka and Santa Fe Railway

(ATSF). In 1995 the ATSF merged with the Burlington Northern Railroad to become The Burlington Northern and Santa Fe Railway (BNSF).

(6) A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is to be historic;

Documents in BNSF's possession concerning this abandonment may include alignment maps showing the right-of-way and/or station maps. Such documents are too large for practical reproduction in this report, but can be furnished upon request, if they are available.

(7) An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 C.F.R. § 60.4), and whether there is a likelihood of archaeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities);

To the best of BNSF's knowledge, the proposed abandonment should have no appreciable effects on any known sites or properties listed, or eligible for listing in the National Register of Historic Places. No historic properties are affected See Exhibit M, response from the Texas Historical Commission

(8) A description (based on readily available information in the railroad's possession) of any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or manmade) that might affect the archaeological recovery of resources (such as swampy conditions or the presence of toxic wastes), and the surrounding terrain.

BNSF is not aware of any known prior subsurface ground disturbance or fill or any other environmental conditions (naturally occurring or man-made) that might affect the recovery of archaeological resources.

Respectfully submitted,



Michael Smith
Freborn & Peters
311 S. Wacker Dr. Suite 3000
Chicago, Illinois 60606-6677
Phone: (312) 360-6724
Fax. (312) 360-6598

Date: September 8, 2004

CERTIFICATION PURSUANT TO 49 C.F.R.1105.7(c)

The Burlington Northern and Santa Fe Railway Company ("BNSF") by and through its authorized representative, Michael Smith, certifies that on August 11, 2004, BNSF sent copies of the foregoing Environmental and Historical Reports by first class mail to the following agencies:

Ms. Victoria Rutson
Chief, SEA
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

F. Lawrence Oaks
State Historic Preservation Officer
The Texas Historical Commission
P O Box 12276
Austin, TX 78711-2276

Bureau of Land Management
Moore Field Office
221 N. Service Road
Moore, OK 73160-4946

Julie Wicker
Environmental Review Assistant
Wildlife Habitat Assessment Program
Threatened and Endangered Species
Texas Parks and Wildlife
4200 Smith School Road
Austin, TX 78744

U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202

U.S. Fish & Wildlife Service
Endangered Species Program
Southwest Region
P.O. Box 1306
Albuquerque, NM 87103

Mark Fisher
Texas Commission on Environmental
Quality
Water Quality Assessment
MC 150
P.O. Box 13087
Austin, TX 78711-3087

Chris Linendoll
Texas Commission on Environmental
Quality
Wastewater Permitting Section
MC 148
P.O. Box 13087
Austin, TX 78711-3087

Matagorda County Board of Commissioners
1700 7th Street
County Courthouse
Bay City, TX 77414-5080

Wharton County Board of Commissioners
P.O. Box 69
County Courthouse
Wharton, TX 77488-0069

Ed Schulze
Director
Matagorda County Environmental Health
First Floor, 2200 7th St
Bay City, TX 77414

Wharton County Emergency Management Agency
116 E Burlison St
Wharton, TX 77488

James Greenwade
Soil Scientist
Natural Resources Conservation Service
101 South Main Street
Temple, TX 76501-7602

Larry Butler
State Conservationist
Texas Natural Resources Conservation Service
101 South Main
Temple, TX 76501

National Park Service
Regional Director
Intermountain Region
12795 Alameda Pkwy
Denver, CO 80225

U.S Army Corps of Engineers
Galveston District
P.O Box 1229
Galveston, TX 77553-1229

Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

Public Utility Commission of Texas
1701 N. Congress Ave.
PO Box 13326
Austin, TX 78711-3326

Richard Snay
National Geodetic Survey
NOAA - SSMC3
1315 East-West Highway
Silver Spring, MD 20910

The required cover letters (pursuant to 49 C.F.R. 1105.11) are attached hereto. BNSF has consulted with all appropriate agencies in preparing the reports.



Michael Smith
Freeborn & Peters
311 S. Wacker Dr Suite 3000
Chicago, Illinois 60606-6677
Phone: (312) 360-6724
Fax: (312) 360-6598

Date: September 8, 2004

A

BAY CITY - NEWGULF, TEXAS

WHARTON

**NEWGULF
MILEPOST 7.94**

**MILEPOST 54.00
CANE JUNCTION**

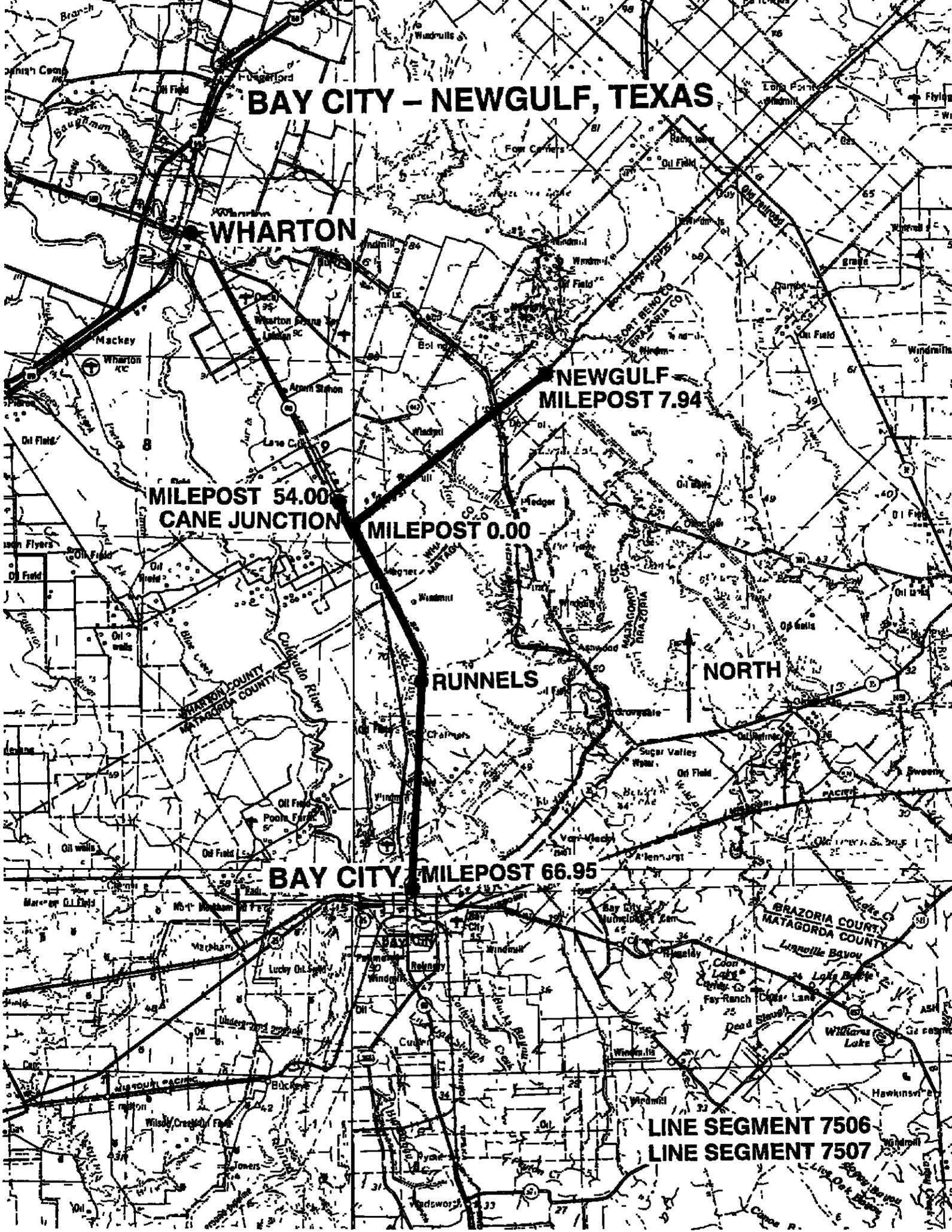
MILEPOST 0.00

RUNNELS

NORTH

BAY CITY MILEPOST 66.95

**LINE SEGMENT 7506
LINE SEGMENT 7507**



B

Freeborn & Peters LLP

June 15, 2004

Matagorda County Board of Commissioners
1700 7th Street
County Courthouse
Bay City, TX 77414-5080

Attorneys at Law

311 South Wacker Drive
Suite 3000
Chicago, Illinois
60606-6677
Tel 312 360.6000

Brian Nettles
Paralegal
Direct 312 360.6336
Fax 312 360 6596
bnettl@
freebornpeters.com

**Re: *The Burlington Northern and Santa Fe Railway Company Abandonment
between Bay City, Texas and Cane Junction, Texas and between Cane
Junction, Texas and Newgulf, Texas***

Dear Sir or Madam:

BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 20.89 miles of railroad line between Milepost 66.95 near Bay City, Texas and Milepost 54.00 near Cane Junction, Texas and between Milepost 0.00 near Cane Junction, Texas and Milepost 7.94 near Newgulf, Texas.

As part of the environmental report BNSF needs to know whether or not the proposed action is consistent with local land use plans and if there are any alternate public uses for the corridor such as a recreational trail.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact.

For your reference I have enclosed a map of the above referenced railroad line. Please provide this information by July 15, 2004. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336.

Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

/bn
Enclosure

Chicago

Springfield

C

June 15, 2004

Wharton County Board of Commissioners
P.O. Box 69
County Courthouse
Wharton, TX 77488-0069

Attorneys at Law

311 South Wacker Drive
Suite 3000
Chicago, Illinois
60606-6677
Tel 312 368.6000

**Re: *The Burlington Northern and Santa Fe Railway Company Abandonment
between Bay City, Texas and Cane Junction, Texas and between Cane
Junction, Texas and Newgulf, Texas***

Dear Sir or Madam:

Brian Nettles
Paralegal
Direct 312 368.6336
Fax 312 360 6596
bnettl@
freemornpeters.com

BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 20.89 miles of railroad line between Milepost 66.95 near Bay City, Texas and Milepost 54.00 near Cane Junction, Texas and between Milepost 0.00 near Cane Junction, Texas and Milepost 7.94 near Newgulf, Texas.

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Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

/bn
Enclosure

Chicago

Springfield

D

United States Department of Agriculture



Natural Resources Conservation Service
101 South Main Street
Temple, TX 76501-7602

June 30, 2004

Freeborn & Peters LLP
311 South Wacker Drive
Suite 3000
Chicago, Illinois 60606-6677

Attention: Brian Nettles, Environmental Specialist

**Subject: LNU-Farmland Protection-
Burlington Northern and Santa Fe Railway
Abandonment Bay City- Cane Junction
And Cane Junction to Newgulf, Texas
Wharton and Matagorda County, Texas**

We have reviewed the information provided concerning the proposed Abandonment of The Burlington Northern Santa Fe Railroad between Bay City, Texas and Cane Junction, Texas and between Cane Junction, Texas and Newgulf, Texas in Wharton and Matagorda Counties, Texas as outlined in your letter of June 15, 2004. This is part of NEPA evaluation for the Department of Transportation, Surface Transportation Board. We have evaluated the proposed site as required by the Farmland Protection Policy Act (FPPA).

The proposed project is considered a prior conversion by the FPPA. The Farmland Protection Policy Act states in CFR Part 658.2 that "Farmland does not include land already committed to urban development or water storage". This project is not subject to the FPPA. We have completed an AD-1006 indicating the exemption. We know of no other environmental concerns. We urge you to use accepted erosion control methods during construction.

I have attached an AD-1006 (Farmland Conversion Impact Rating) form for this project indicating the approval status. Thanks for the resource materials you submitted to evaluate this project. If you have any questions please call James Greenwade at (254)-742-9960 or Sam Brown at (254)-742-9854, Fax (254)-742-9859.

Thanks,

A handwritten signature in black ink that reads "James M. Greenwade".

James M. Greenwade
Soil Scientist
Soil Survey Section
USDA-NRCS, Temple, Texas

The Natural Resources Conservation Service provides leadership in a partnership effort to help people conserve, maintain, and improve our natural resources and environment

An Equal Opportunity Provider and Employer

FARMLAND CONVERSION IMPACT RATING

PART I (To be completed by Federal Agency)		Date Of Land Evaluation Request		6-15-2004	
Name of Project BNSF Abandonment Bay City-Cane Junction and Cane Junction to New Gulf, Texas		Federal Agency Involved (DOT) Surface Transportation Board			
Proposed Land Use Abandoned RR Right of Way		County and State Wharton and Matagorda Counties, Tx			
PART II (To be completed by NRCS)		Date Request Received By NRCS 6-18-2004		Person Completing Form. James Greenwade	
Does the site contain Prime, Unique, Statewide or Local Important Farmland? <i>(If no, the FPPA does not apply - do not complete additional parts of this form)</i>		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		Acres Irrigated	
Major Crop(s)		Famable Land In Govt. Jurisdiction Acres %		Average Farm Size	
Name of Land Evaluation System Used		Name of State or Local Site Assessment System		Amount of Farmland As Defined in FPPA Acres %	
				Date Land Evaluation Returned by NRCS	
PART III (To be completed by Federal Agency)		Alternative Site Rating			
		Site A	Site B	Site C	Site D
A Total Acres To Be Converted Directly					
B Total Acres To Be Converted Indirectly					
C Total Acres In Site					
PART IV (To be completed by NRCS) Land Evaluation Information					
A. Total Acres Prime And Unique Farmland					
B Total Acres Statewide Important or Local Important Farmland					
C. Percentage Of Farmland in County Or Local Govt. Unit To Be Converted					
D. Percentage Of Farmland in Govt. Jurisdiction With Same Or Higher Relative Value					
PART V (To be completed by NRCS) Land Evaluation Criterion Relative Value of Farmland To Be Converted (Scale of 0 to 100 Points)					
PART VI (To be completed by Federal Agency) Site Assessment Criteria <i>(Criteria are explained in 7 CFR 658.5 b For Corridor project use form NRCS-CPA-100)</i>		Maximum Points	Site A	Site B	Site C
1 Area In Non-urban Use		(15)			
2 Perimeter In Non-urban Use		(10)			
3 Percent Of Site Being Farmed		(20)			
4 Protection Provided By State and Local Government		(20)			
5 Distance From Urban Built-up Area		(15)			
6 Distance To Urban Support Services		(15)			
7 Size Of Present Farm Unit Compared To Average		(10)			
8 Creation Of Non-farmable Farmland		(10)			
9 Availability Of Farm Support Services		(5)			
10 On-Farm Investments		(20)			
11 Effects Of Conversion On Farm Support Services		(10)			
12 Compatibility With Existing Agricultural Use		(10)			
TOTAL SITE ASSESSMENT POINTS		160			
PART VII (To be completed by Federal Agency)					
Relative Value Of Farmland (From Part V)		100			
Total Site Assessment (From Part VI above or local site assessment)		160			
TOTAL POINTS (Total of above 2 lines)		260			
Site Selected		Date Of Selection		Was A Local Site Assessment Used? YES <input type="checkbox"/> NO <input type="checkbox"/>	
Reason For Selection					

E



United States Department of the Interior
FISH AND WILDLIFE SERVICE

Division of Ecological Services
17629 El Camino Real #211
Houston, Texas 77058-3051



August 2, 2004

Brian Nettles
Freeborn & Peters LLP
311 South Wacker Drive, Suite 3000
Chicago, Illinois 60606-6677

Dear Mr. Nettles.

This responds to your June 15, 2004 letter requesting threatened and endangered species information for your project area. The Burlington Northern and Santa Fe Railway Company plans to seek authority from the Surface Transportation Board to abandon 20.89 miles of railroad line between Milepost 66.95 near Bay City, Texas and Milepost 54.00 near Cane Junction, Texas and between Milepost 0.00 near Cane Junction, Texas and Milepost 7.94 near Newgulf, Texas. The proposed abandonment may require removal of the track materials such as the rails and ties but the roadbed will be left intact.

A review of U.S. Fish and Wildlife Service files indicates that a pair of threatened bald eagles is known to nest to the east-southeast of Newgulf, Texas. Mr. Brent Ortego, Texas Parks and Wildlife Department, monitors this nest and may be able to provide you with additional information. He is located at 2805N. Navarro, Suite 600B, Victoria, Texas 77901 or can be reached at 361-576-0022

Bald eagles nest along river systems, or within 1-2 miles of some other large body of water, such as a lake or reservoir. Nests are often located in areas where forest, marsh, and water meet. Once a suitable breeding territory is found, breeding pairs will return to the same area year after year, often using alternate nests within the territory during different breeding years. Although a given nest or nest tree may be lost, a pair often returns to the same territory to begin another. Nesting territories can even be inherited by subsequent generations.

Individual bald eagles exhibit considerable variation in their responses to human activity, depending upon the type, frequency, and duration of activity; the extent of environmental modification; the point in time of the bird's reproductive cycle; and various other factors not well understood. Although it cannot be predicted with absolute certainty the effects a given disturbance might have on a specific eagle or eagle pair, certain activities are known to disturb bald eagles more than others. The enclosed habitat management guidelines address some of these concerns and identify recommended restrictions that may avoid potential impact to bald eagles if they should occur at or near the proposed project site.

Under Section 7(a)(2) of the Endangered Species Act, the federal action agency, or its designated representative, is responsible for determining the effects of their actions on listed species or critical habitat (50 CFR § 402.14 [a]) and is ultimately responsible for section 7 obligations. If the action agency determines its proposed action will have no effect on federally listed species or critical habitat, no contact with the Service is necessary. However, you should maintain a complete record of your evaluation, including steps leading to the determination of affect, the qualified personnel conducting the evaluation, habitat conditions, site photographs, and any other related articles. Should your determination indicate that the proposed project "may affect" federally listed

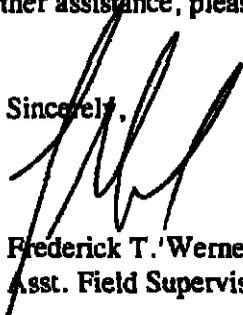
TAKE PRIDE
IN AMERICA 

Brian Nettles
August 2, 2004
Page 2

species, this office should be contacted for further evaluation. The Service's Consultation Handbook is available online (<http://endangered.fws.gov/consultations/s7hndbk/s7hndbk.htm>) for further information on definitions and process.

If you have any questions or if we can be of further assistance, please contact either Edith Erling or Catherine Yeargan at 281-286-8282.

Sincerely,



Frederick T. Werner
Asst. Field Supervisor, Clear Lake Field Office

Enclosure

The following management guidelines were developed for the purpose of helping landowners and managers maintain or improve their land for the benefit of bald eagles, if the species occurs on their property, by protecting the environmental conditions the species requires. Emphasis is placed on providing information so that landowners may recognize and avoid or minimize those human-related activities which may adversely affect bald eagles, particularly nesting pairs. Bald eagles are protected by a number of Federal and State laws and regulations (including the Endangered Species Act, Bald Eagle Protection Act, and Migratory Bird Protection Act) which prohibit such acts as harassing, harming, disturbing, pursuing, etc. bald eagles, or destroying their nests. Individual bald eagles exhibit considerable variation in their responses to human activity, depending upon the type, frequency, and duration of activity; the extent of environmental modification; the point in time of the bird's reproductive cycle; and various other factors not well understood. Although it cannot be predicted with absolute certainty the effects a given disturbance might have on a specific eagle or eagle pair, certain activities are known to disturb bald eagles more than others. ALTHOUGH ADVISORY ONLY, the following guidelines address some of these concerns and identify recommended restrictions that should avoid potential impact to bald eagles (and avoid conflict with protective regulations). FOR ADDITIONAL INFORMATION, PLEASE CONTACT THE CLEAR LAKE OFFICE OF THE U.S. FISH AND WILDLIFE SERVICE (FWS) AT 713-286-8282, OR THE TEXAS PARKS AND WILDLIFE DEPARTMENT (512-389-4505 or 512-448-4311).

NESTING: GENERAL INFORMATION: Due to surveys carried out annually by the Texas Parks and Wildlife Department, bald eagle nest sites are currently known to occur in 27 southeastern Texas counties, although only a portion of these are active or successful each year. THE BALD EAGLE NESTING PERIOD IN TEXAS IS NORMALLY OCTOBER TO JULY, with peak egg-laying in December and hatching primarily in January. The young generally fledge in April after 10-12 weeks of growth, but parental care continues for another 4-6 weeks. Adults and young begin to migrate north in May, with a pair sometimes remaining within a territory all year. EAGLES ARE VULNERABLE TO DISTURBANCE THROUGHOUT THE NESTING PERIOD, but particularly during the first 12 weeks (during courtship, nest building, egg-laying, incubation, and brooding). Disturbance at this time may cause nest abandonment and chilled or overheated eggs or young. However, human activity even late in the nesting cycle may cause premature fledging and reduce the young's chances for survival.

Not only is protection of an actual NEST important; so is protection of the NEST SITE itself and all the component factors that attracted the pair to the area in the first place. Once a suitable breeding territory is found, breeding pairs will return to the same area year after year, often using alternate nests within the territory during different breeding years. Although a given nest may be lost due to weather or age of the tree, a pair often returns to the same territory to begin another. In cases where one member of a pair dies, the nest may go unused for several years but then be recolonized by the surviving member returning with a new mate. Nesting territories can even be inherited by subsequent generations. Therefore, guidelines intended to protect a nesting territory should apply to an "abandoned" nest site for at least five consecutive years of documented non-use.

MANAGEMENT ZONES FOR NESTING HABITAT: THE FOLLOWING HABITAT MANAGEMENT GUIDELINES, DEVELOPED BY THE FWS AND TPWD FOR NESTING BALD EAGLES IN TEXAS, ARE BASED ON THE IDENTIFICATION OF TWO MANAGEMENT ZONES SURROUNDING EACH NEST SITE, WITH CERTAIN RECOMMENDED RESTRICTIONS APPLYING TO EACH ZONE.

A. PRIMARY MANAGEMENT ZONE FOR NEST SITES:

THIS ZONE SHOULD ENCOMPASS AN AREA EXTENDING 750 TO 1,500 FEET OUTWARD IN ALL DIRECTIONS FROM THE NEST SITE. THE FWS RECOMMENDS THAT THE FOLLOWING ACTIVITIES NOT OCCUR WITHIN THIS ZONE:

1. Alteration of habitat or change in land use, such as would result from residential, commercial, or industrial development; construction projects; or mining activities.
2. Tree-cutting, logging, or removal of trees, either living or dead.
3. Use of chemicals toxic to wildlife.
4. Placement of above-ground electrical transmission or distribution lines. (Collision with powerlines and electrocution on powerline structures remain important causes of raptor mortality. Placement of underground lines is strongly recommended near bald eagle nests and winter concentration sites.)
5. Helicopter or fixed-wing aircraft operation within 500 feet vertical distance or 1,000 feet horizontal distance of the nest site, except during the non-nesting season (about late-July to early-October).
6. Human entry, except as described below (or as otherwise specifically allowed):
 - a) Minimal-disturbance activities (such as hiking, fishing, camping, bird-watching), and certain land-use activities (such as farming, ranching, hunting) which are existing practices and have occurred historically on the site, can be carried out safely during the non-nesting period if no physical alteration of the primary zone is involved.
 - b) The activities mentioned in (a) above which are existing practices and have occurred historically on the site during the nesting season, and do not appear to be adversely impacting the success of the nest site, can be carried out safely during the nesting season as well (late-October to early-July) if:
 - (1) A change or increase in the form or level of disturbance from historic levels would not result.
 - (2) Physical alteration of the primary zone would not result.
 - (3) Landowners are made aware of the most critical portions (October-April) of the eagle nesting

season, so that these activities can be avoided or minimized during this time as much as possible.
(4) The activity will be stopped if impact to bald eagles becomes apparent.

B. SECONDARY MANAGEMENT ZONE FOR NEST SITES:

THIS ZONE SHOULD ENCOMPASS AN AREA EXTENDING OUTWARD FROM THE BOUNDARY OF THE PRIMARY ZONE AN ADDITIONAL DISTANCE OF 750 FEET TO 1 MILE. Restrictions in this zone are intended to preserve the integrity of the primary zone and to protect important eagle use areas, particularly feeding areas, within the secondary zone. The secondary zone should be contiguous with feeding areas and should protect eagle access to them.

1. The following activities are likely to be detrimental to bald eagles at any time and so (in most cases) should be avoided within the secondary zone. These activities include (but are not necessarily limited to):
 - a) Development of new commercial or industrial sites;
 - b) Construction of multi-story buildings or high-density housing developments between the nest and the eagle's feeding area;
 - c) Placement of electrical transmission or distribution lines between the nest site and the eagle's feeding area.
 - d) Construction of new roads, trails, canals, or rights-of-way which would tend to facilitate human access to the eagle nest;
 - e) Use of chemicals toxic to wildlife.
2. Certain activities that involve only minimal alteration or disturbance of habitat can be carried out safely in the secondary zone during the non-nesting season. Examples of such activities include minor logging or land clearing, minor construction, seismographic exploration employing explosives, oil-well drilling, and low-level aircraft operations. However, they should be carried out based on the following guidelines:
 - a) Such activities should avoid alteration or loss of bald eagle habitat as much as possible.
 - b) If logging occurs, it should be done so that as many large trees as possible, but at least 10 to 15 live trees per acre, are retained as roost and perch trees. Generally, the trees left uncut should be the largest trees in the stand, and preferably with open crowns and stout lateral limbs. Selective forestry practices (such as seedtree, shelterwood, and single tree selection) are recommended over clear-cutting.
3. Certain minimal-disturbance activities (such as hiking, bird-watching, fishing, camping, picnicking, and hunting), and other similar land-use activities that involve no new alteration of habitat (farming, ranching), can be safely carried out in the secondary zone at any time.

FEEDING:

THE FOLLOWING GUIDELINES ARE DESIGNED TO PROTECT BALD EAGLE FEEDING AREAS:

1. Use of toxic chemicals in watersheds and rivers where bald eagles feed should be avoided as much as possible.
2. Alteration of natural shorelines where bald eagles feed should be avoided or minimized as much as possible. Degraded shorelines should be rehabilitated wherever possible.
3. Public land-holding agencies should monitor the water quality of feeding areas so that environmental contaminants, if present, can be detected and the source located.

COMMUNAL ROOST SITES:

THE FOLLOWING GUIDELINES ARE DESIGNED TO PROTECT BALD EAGLE WINTER ROOST CONCENTRATION AREAS:

1. Significant logging or land clearing activity should be avoided within 1,500 feet of a roosting concentration area.
 2. Disruptive land-use activities should be avoided near a communal roost site, except those activities which have occurred traditionally and do not appear to be affecting roosting bald eagles. However, the activity should be avoided during evening, night, and early morning hours.
-

F



August 2, 2004

Mr. Brian Nettles
Freeborn & Peters LLP
311 South Wacker Drive, Suite 3000
Chicago, IL 60606-6677

- COMMISSIONERS
- JOSEPH B. C. FITZSIMONS
CHAIRMAN
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- DONATO D. RAMOS
LAREDO
- MARK E. WATSON, JR.
SAN ANTONIO
- LEE M. BARR
CHAIRMAN-EMERITUS
FORT WORTH
-
- ROBERT L. COOK
EXECUTIVE DIRECTOR

Dear Mr. Nettles:

This letter is in response to your information request, dated June 15, 2004, for rare, threatened, and endangered species within or near the proposed abandonment in of 20.89 miles of railroad line between milepost 66.95 near Bay City and milepost 54.00 near Cane Junction and between milepost 0.00 near Cane Junction and milepost 7.94 near Newgulf in Matagorda and Wharton Counties. This letter does not include a review of impacts to threatened and endangered species or general fish and wildlife habitat from this project.

Given the small proportion of public versus private land in Texas, the TPWD Biological and Conservation Data System (BCD) does not include a representative inventory of rare resources in the state. Although it is based on the best data available to TPWD regarding rare species, the data from the BCD do not provide a definitive statement as to the presence, absence, or condition of special species, natural communities, or other significant features within your project area. These data cannot substitute for an on-site evaluation by your qualified biologists. The BCD information is intended to assist you in avoiding harm to species that may occur on your site.

Currently in the BCD, the following species and managed area have been documented in the general project area:

Federal and State Listed Threatened (Federal Proposed for Delisting)
Bald Eagle (*Haliaeetus leucocephalus*)

Managed Areas
Big Boggy National Wildlife Refuge

The eastern end of the proposed project route near Newgulf is located within a documented Bald Eagle nesting territory. Another occurrence of the Bald Eagle has been documented within 1.5 miles of project route. Printouts for these occurrence records are included for your planning reference. **Please do not include BCD occurrence printouts in your draft or final documents.** Because some species are especially sensitive to collection or harassment, these records are for your reference only. The general project area has a relatively high



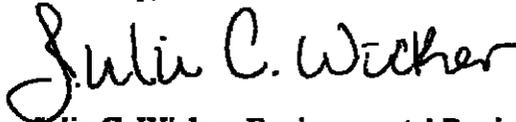
Take a kid
hunting or fishing
• • •
Visit a state park
or historic site

concentration of eagles. Thus, enclosed are guidelines for working in close proximity to Bald Eagle nests for your project planning efforts.

Also enclosed are TPWD lists of rare, threatened, and endangered species for Matagorda and Wharton Counties. When additional information for the project site becomes available, please use these lists for your analysis and the enclosed Rare Resources Review Request form as a guideline for the information to send us so that we can provide you a narrowly-focused site-specific review.

Thank you for the opportunity to provide you preliminary information for your project analysis. Please contact me if you have any questions or need additional assistance (512/912-7054).

Sincerely,



Julie C. Wicker, Environmental Review Assistant
Wildlife Habitat Assessment Program
Threatened and Endangered Species

Enclosures (4)

The following management guidelines were developed for the purpose of helping landowners and managers maintain or improve their land for the benefit of bald eagles, if the species occurs on their property, by protecting the environmental conditions the species requires. Emphasis is placed on providing information so that landowners may recognize and avoid or minimize those human-related activities which may adversely affect bald eagles, particularly nesting pairs. Bald eagles are protected by a number of Federal and State laws and regulations (including the Endangered Species Act, Bald Eagle Protection Act, and Migratory Bird Protection Act) which prohibit such acts as harassing, harming, disturbing, pursuing, etc. bald eagles, or destroying their nests. Individual bald eagles exhibit considerable variation in their responses to human activity, depending upon the type, frequency, and duration of activity; the extent of environmental modification; the point in time of the bird's reproductive cycle; and various other factors not well understood. Although it cannot be predicted with absolute certainty the effects a given disturbance might have on a specific eagle or eagle pair, certain activities are known to disturb bald eagles more than others. **ALTHOUGH ADVISORY ONLY**, the following guidelines address some of these concerns and identify recommended restrictions that should avoid potential impact to bald eagles (and avoid conflict with protective regulations). **FOR ADDITIONAL INFORMATION, PLEASE CONTACT THE CLEAR LAKE OFFICE OF THE U.S. FISH AND WILDLIFE SERVICE (FWS) AT 713-286-8282, OR THE TEXAS PARKS AND WILDLIFE DEPARTMENT (512-389-4505 or 512-448-4311).**

GENERAL INFORMATION: Due to surveys carried out annually by the Texas Parks and Wildlife Department, bald eagle nest sites are currently known to occur in 27 southeastern Texas counties, although only a portion of these are active or successful each year. **THE BALD EAGLE NESTING PERIOD IN TEXAS IS NORMALLY OCTOBER TO JULY**, with peak egg-laying in December and hatching primarily in January. The young generally fledge in April after 10-12 weeks of growth, but parental care continues for another 4-6 weeks. Adults and young begin to migrate north in May, with a pair sometimes remaining within a territory all year. **EAGLES ARE VULNERABLE TO DISTURBANCE THROUGHOUT THE NESTING PERIOD**, but particularly during the first 12 weeks (during courtship, nest building, egg-laying, incubation, and brooding). Disturbance at this time may cause nest abandonment and chilled or overheated eggs or young. However, human activity even late in the nesting cycle may cause premature fledging and reduce the young's chances for survival.

Not only is protection of an actual NEST important; so is protection of the NEST SITE itself and all the component factors that attracted the pair to the area in the first place. Once a suitable breeding territory is found, breeding pairs will return to the same area year after year, often using alternate nests within the territory during different breeding years. Although a given nest may be lost due to weather or age of the tree, a pair often returns to the same territory to begin another. In cases where one member of a pair dies, the nest may go unused for several years but then be recolonized by the surviving member returning with a new mate. Nesting territories can even be inherited by subsequent generations. Therefore, guidelines intended to protect a nesting-territory should apply to an "abandoned" nest site for at least five consecutive years of documented non-use.

MANAGEMENT ZONES FOR NESTING HABITAT: THE FOLLOWING HABITAT MANAGEMENT GUIDELINES, DEVELOPED BY THE FWS AND TPWD FOR NESTING BALD EAGLES IN TEXAS, ARE BASED ON THE IDENTIFICATION OF TWO MANAGEMENT ZONES SURROUNDING EACH NEST SITE, WITH CERTAIN RECOMMENDED RESTRICTIONS APPLYING TO EACH ZONE.

A. PRIMARY MANAGEMENT ZONE FOR NEST SITES:

THIS ZONE SHOULD ENCOMPASS AN AREA EXTENDING 750 TO 1,500 FEET OUTWARD IN ALL DIRECTIONS FROM THE NEST SITE. THE FWS RECOMMENDS THAT THE FOLLOWING ACTIVITIES NOT OCCUR WITHIN THIS ZONE:

1. Alteration of habitat or change in land use, such as would result from residential, commercial, or industrial development; construction projects; or mining activities.
2. Tree-cutting, logging, or removal of trees, either living or dead.
3. Use of chemicals toxic to wildlife.
4. Placement of above-ground electrical transmission or distribution lines. (Collision with powerlines and electrocution on powerline structures remain important causes of raptor mortality. Placement of underground lines is strongly recommended near bald eagle nests and winter concentration sites.)
5. Helicopter or fixed-wing aircraft operation within 500 feet vertical distance or 1,000 feet horizontal distance of the nest site, except during the non-nesting season (about late-July to early-October).
6. Human entry, except as described below (or as otherwise specifically allowed):
 - a) Minimal-disturbance activities (such as hiking, fishing, camping, bird-watching), and certain land-use activities (such as farming, ranching, hunting) which are existing practices and have occurred historically on the site, can be carried out safely during the non-nesting period if no physical alteration of the primary zone is involved.
 - b) The activities mentioned in (a) above which are existing practices and have occurred historically on the site during the nesting season, and do not appear to be adversely impacting the success of the nest site, can be carried out safely during the nesting season as well (late-October to early-July) if:

(continued)

- (1) A change or increase in the form or level of disturbance from historic levels would not result.
- (2) Physical alteration of the primary zone would not result.
- (3) Landowners are made aware of the most critical portions (October-April) of the eagle nesting season, so that these activities can be avoided or minimized during this time as much as possible.
- (4) The activity will be stopped if impact to bald eagles becomes apparent.

B. SECONDARY MANAGEMENT ZONE FOR NEST SITES:

THIS ZONE SHOULD ENCOMPASS AN AREA EXTENDING OUTWARD FROM THE BOUNDARY OF THE PRIMARY ZONE AN ADDITIONAL DISTANCE OF 750 FEET TO 1 MILE. Restrictions in this zone are intended to preserve the integrity of the primary zone and to protect important eagle use areas, particularly feeding areas, within the secondary zone. The secondary zone should be contiguous with feeding areas and should protect eagle access to them.

1. The following activities are likely to be detrimental to bald eagles at any time and so (in most cases) should be avoided within the secondary zone. These activities include (but are not necessarily limited to):
 - a) Development of new commercial or industrial sites;
 - b) Construction of multi-story buildings or high-density housing developments between the nest and the eagle's feeding area;
 - c) Placement of electrical transmission or distribution lines between the nest site and the eagle's feeding area.
 - d) Construction of new roads, trails, canals, or rights-of-way which would tend to facilitate human access to the eagle nest;
 - e) Use of chemicals toxic to wildlife.
2. Certain activities that involve only minimal alteration or disturbance of habitat can be carried out safely in the secondary zone during the non-nesting season. Examples of such activities include minor logging or land clearing, minor construction, seismographic exploration employing explosives, oil-well drilling, and low-level aircraft operations. However, they should be carried out based on the following guidelines:
 - a) Such activities should avoid alteration or loss of bald eagle habitat as much as possible.
 - b) If logging occurs, it should be done so that as many large trees as possible, but at least 10 to 15 live trees per acre, are retained as roost and perch trees. Generally, the trees left uncut should be the largest trees in the stand, and preferably with open crowns and stout lateral limbs. Selective forestry practices (such as seedtree, shelterwood, and single tree selection) are recommended over clear-cutting.
3. Certain minimal-disturbance activities (such as hiking, bird-watching, fishing, camping, picnicking, and hunting), and other similar land-use activities that involve no new alteration of habitat (farming, ranching), can be safely carried out in the secondary zone at any time.

FEEDING:

THE FOLLOWING GUIDELINES ARE DESIGNED TO PROTECT BALD EAGLE FEEDING AREAS:

1. Use of toxic chemicals in watersheds and rivers where bald eagles feed should be avoided as much as possible.
2. Alteration of natural shorelines where bald eagles feed should be avoided or minimized as much as possible. Degraded shorelines should be rehabilitated wherever possible.
3. Public land-holding agencies should monitor the water quality of feeding areas so that environmental contaminants, if present, can be detected and the source located.

COMMUNAL ROOSTING:

THE FOLLOWING GUIDELINES ARE DESIGNED TO PROTECT BALD EAGLE WINTER ROOST CONCENTRATION AREAS:

1. Significant logging or land clearing activity should be avoided within 1,500 feet of a roosting concentration area.
2. Disruptive land-use activities should be avoided near a communal roost site, except those activities which have occurred traditionally and do not appear to be affecting roosting bald eagles. However, the activity should be avoided during evening, night, and early morning hours.

TEXAS BIOLOGICAL AND CONSERVATION DATA SYSTEM
TEXAS PARKS AND WILDLIFE DEPARTMENT
20 JUL 2004

NAME: HALIAEETUS LEUCOCEPHALUS

COMMON NAME: BALD EAGLE

OTHER NAME:

FEDERAL STATUS: LT-PDL

STATE STATUS: T

GLOBAL RANK: G4

STATE RANK: S3B,S3N

IDENTIFIED: Y TRACK: Y

SENSITIVITY: Y

COUNTY: Fort Bend
Wharton
Brazoria
Matagorda

USGS TOPO MAPS:

TOPO QUAD:

MARGIN #:

GUY

2909537

1

BOLING

2909538

1

DANCIGER

2909527

2

PLEDGER

2909528

1

ELEMENT OCCURRENCE NUMBER: 092

DATE LAST OBSERVED: 2003

PRECISION: M

DATE FIRST OBSERVED: 2001

OCCURRENCE RANK:

DATE SURVEYED:

SURVEY COMMENTS:

MANAGED AREAS:

CONTAINED:

DIRECTIONS:

GENERAL VICINITY OF SAN BERNARD RIVER AND CEDAR CREEK

DESCRIPTION:

QUALITATIVE/QUANTITATIVE DATA:

NEST #241-4A: 2001, ACTIVE NEST PRODUCED ONE YOUNG; 2002, ACTIVE NEST
PRODUCED TWO YOUNG; 2003, INACTIVE

MANAGEMENT COMMENTS:

PROTECTION COMMENTS:

OTHER COMMENTS:

TPWD NEST #241-4A (WHARTON COUNTY)

BEST SOURCE OF INFORMATION:

ORTEGO, BRENT. 2001. PERFORMANCE REPORT. PROJECT NO. 10: BALD EAGLE
NEST SURVEY AND MANAGEMENT. FEDERAL AID GRANT NO. W-125-R-12.
SEPTEMBER 30, 2001.

TEXAS BIOLOGICAL AND CONSERVATION DATA SYSTEM
TEXAS PARKS AND WILDLIFE DEPARTMENT
20 JUL 2004

NAME: HALIAEETUS LEUCOCEPHALUS

COMMON NAME: BALD EAGLE

OTHER NAME:

FEDERAL STATUS: LT-PDL

STATE STATUS: T

GLOBAL RANK: G4

STATE RANK: S3B, S3N

IDENTIFIED: Y TRACK: Y

SENSITIVITY: Y

COUNTY: Matagorda

USGS TOPO MAPS:

TOPO QUAD:

MARGIN #:

MARKHAM

2809681

1

BAY CITY

2809588

1

ELEMENT OCCURRENCE NUMBER: 106

DATE LAST OBSERVED: 2001

PRECISION: M

DATE FIRST OBSERVED: 1997

OCCURRENCE RANK:

DATE SURVEYED:

SURVEY COMMENTS:

MANAGED AREAS:

CONTAINED:

DIRECTIONS:

TERRITORY ON COLORADO RIVER

DESCRIPTION:

QUALITATIVE/QUANTITATIVE DATA:

NEST #158-4A: 1997 ACTIVE NEST PRODUCED 1 YOUNG, 1998 ACTIVE NEST
PRODUCED 0 YOUNG, 1999-2000 ACTIVE NEST PRODUCED 2 YOUNG, 2001 ACTIVE
NEST PRODUCED 1 YOUNG

MANAGEMENT COMMENTS:

PROTECTION COMMENTS:

OTHER COMMENTS:

TPWD NEST #158-4A

BEST SOURCE OF INFORMATION:

POLASEK, LEN. 1999. CHRONOLOGICAL OUTCOME OF BALD EAGLE NEST SURVEYS
IN TEXAS. 1982-1999.

Code Key for Occurrence Printouts from the Texas Biological and Conservation Data System (BCD)

This information is for your assistance only; due to continuing data updates, vulnerability of private land to trespass and species to disturbance or collection, please do not publish in public documents or otherwise reprint or redistribute the information, instead refer all requesters to our office to obtain the most current information available.

FEDERAL STATUS (as determined by the US Fish and Wildlife Service)

LE	Listed Endangered
LT	Listed Threatened
PE	Proposed to be listed Endangered
PT	Proposed to be listed Threatened
PDL	Proposed to be Delisted (Note. Listing status retained while proposed)
E/SA, T/SA	Listed Endangered on basis of Similarity of Appearance, Listed Threatened on basis of Similarity of Appearance
DL	Delisted Endangered/Threatened
C1	Candidate, Category 1. USFWS has substantial information on biological vulnerability and threats to support proposing to list as threatened or endangered. Data are being gathered on habitat needs and/or critical habitat designations
C1*	C1, but lacking known occurrences
C1**	C1, but lacking known occurrences, except in captivity/cultivation
XE	Essential Experimental Population
XN	Non-essential Experimental Population
Blank	Species is not federally listed

STATE STATUS (as determined by the Texas Parks and Wildlife Department)

E	Listed Endangered
T	Listed Threatened
Blank	Species not state-listed

GLOBAL CONSERVATION STATUS RANK (GRANK OR GLOBAL RANK)

G1	Critically imperiled globally, extremely rare, typically 5 or fewer viable occurrences
G2	Imperiled globally, very rare, typically 6 to 20 viable occurrences
G3	Very rare and local throughout range or found locally in restricted range, typically 21 to 100 viable occurrences
G4	Apparently secure globally
G5	Demonstrably secure globally
GH	Of historical occurrence through its range
GU	Possibly in peril range-wide, but status uncertain
G#G#	Ranked within a range as status uncertain
GX	Apparently extinct throughout range
Q	Rank qualifier denoting taxonomic assignment is questionable
?	Not ranked to date or rank qualifier denoting uncertain rank
C	In captivity or cultivation only
G#T#	"G" refers to species rank; "T" refers to variety or subspecies rank

STATE CONSERVATION STATUS RANK (SRANK OR STATE RANK)

S1	Critically imperiled in state, extremely rare, vulnerable to extirpation, typically 5 or fewer viable occurrences
S2	Imperiled in state, very rare, vulnerable to extirpation, typically 6 to 20 viable occurrences
S3	Rare or uncommon in state, typically 21 to 100 viable occurrences
S4	Apparently secure in state
S5	Demonstrably secure in state
SA	Accidental in state
SE	An exotic species established in state
SH	Of historical occurrence in state and may be rediscovered
SP	Potential occurrence in state
SR	Reported, but without persuasive documentation
SRF	Reported falsely or in error, but error persists in literature
SU	Possibly in peril in state, but status uncertain
SX	Apparently extirpated from State
SZ	Migratory/transient in state to irregular/dispersed locations
B	Qualifier indicating basic rank refers to the breeding population in the state
N	Qualifier indicating basic rank refers to the non-breeding population in the state
?	Not ranked to date or rank qualifier denoting uncertain rank
C	In captivity or cultivation only in the state

IDENTIFICATION STATUS

- Y** Element accurately identified at reported location
N Element inaccurately identified at reported location
? Questionable; element identity is uncertain, disputed, or out of normal range at reported location
Blank Identification of this element has not been verified

TRACKING STATUS

- Y** Currently tracked as an element by TPWD
N Not actively inventoried by TPWD; not of conservation concern in Texas; abundant, exotic, or accidental
W Watch list; not actively inventoried by TPWD, but still of conservation concern and may be tracked in the future

SENSITIVITY

- Y** Species or location sensitive due to threat from collection, disturbance, or illegal trespass onto private lands

MAPPING PRECISION

- S** Second: Accuracy within 3-second radius of latitude/longitude or boundaries, if delineated
M Minute: Accuracy within 1-minute radius of latitude/longitude, approx. 2 kilometers or 1.5 miles radius
G General: Occurrence mapped to within about an 8-km or 5-mi radius or USGS quadrangle or place name precision only
U Unmappable record

OCCURRENCE RANK

A	Excellent	AI	Excellent, Introduced
B	Good	BI	Good, Introduced
C	Marginal	CI	Marginal, Introduced
D	Poor	DI	Poor, Introduced
E	Extant/Present	EI	Extant, Introduced
H	Historical/No Field Information	HI	Historical, Introduced
X	Destroyed/Extirpated	XI	Destroyed, Introduced
O	Obscure	OI	Obscure, Introduced

MANAGED AREAS (code following managed area name)

- Y** Element occurrence contained within managed area boundaries
N Element occurrence is not entirely contained within managed area boundaries
? Unknown whether occurrence is or is not wholly contained within managed area boundaries
Blank No information available

OTHER DEFINITIONS

USGS Topo Maps	Name of USGS topographical map
Topo Quad	Unique, 7-digit number corresponding to geographic location of USGS quad within Texas
Element Occurrence #	Unique number assigned sequentially to each occurrence of each element when added to the BCD
Element	Animal, plant, or invertebrate species of conservation concern; natural plant community; or other significant feature of natural diversity
Margin #	Corresponds to quad margin number assigned to a particular occurrence
Date Surveyed	If conducted, date of survey
Survey Comments	Comments concerning the quality or condition of the element occurrence at time of survey
Date First/Last Observed	Date a particular occurrence was first/last observed; refers only to species occurrence as noted in source and does not imply the first/last date the species was present
Directions	Directions to geographic location where occurrence was observed, as described by observer or in source
Description	General physical description of area and habitat where occurrence is located, including associated species, soils, geology, and surrounding land use
Qualitative/Quantitative Data	Biological data; may include number of individuals, vigor, flowering/fruitlet data, nest success, behaviors observed, or unusual characteristics
Protection Comments	Observer comments concerning legal protection of the occurrence
Management Comments	Observer comments concerning management recommendations appropriate for occurrence conservation
Other Comments	Additional information not applicable to other data fields
Best Source of Information	Primary source containing most or the best information about occurrence

MATAGORDA COUNTY

	Federal Status	State Status
*** BIRDS ***		
American Peregrine Falcon (<i>Falco peregrinus anatum</i>) - potential migrant; nests in west Texas	DL	E
Arctic Peregrine Falcon (<i>Falco peregrinus tundrius</i>) - potential migrant	DL	T
Attwater's Greater Prairie-chicken (<i>Tympanuchus cupido attwateri</i>) - this county within historic range; endemic; open prairies of mostly thick grass one to three feet tall; from near sea level to 200 feet along coastal plain on upper two-thirds of Texas coast; males form communal display flocks during late winter-early spring; booming grounds important; breeding February-July	LE	E
Bald Eagle (<i>Haliaeetus leucocephalus</i>) - found primarily near seacoasts, rivers, and large lakes; nests in tall trees or on cliffs near water; communally roosts, especially in winter; hunts live prey, scavenges, and pirates food from other birds	LT-PDL	T
Brown Pelican (<i>Pelecanus occidentalis</i>) - largely coastal and near shore areas, where it roosts on islands and spoil banks	LE	E
Henslow's Sparrow (<i>Ammodramus benslowii</i>) - wintering individuals (not flocks) found in weedy fields or cut-over areas where lots of bunch grasses occur along with vines and brambles; a key component is bare ground for running/walking; likely to occur, but few records within this county		
Interior Least Tern (<i>Sterna antillarum atbalassos</i>) - this subspecies is listed only when inland (more than 50 miles from a coastline); nests along sand and gravel bars within braided streams, rivers; also know to nest on man-made structures (inland beaches, wastewater treatment plants, gravel mines, etc); eats small fish & crustaceans, when breeding forages within a few hundred feet of colony	LE	E
Mountain Plover (<i>Charadrius montanus</i>) - shortgrass plains and plowed fields (bare, dirt fields); primarily insectivorous; winter resident in this area		
Piping Plover (<i>Charadrius melodus</i>) - wintering migrant along the Texas Gulf Coast; beaches and bayside mud or salt flats	LT	T
Reddish Egret (<i>Egretta rufescens</i>) - resident of the Texas Gulf Coast; brackish marshes and shallow salt ponds and tidal flats; nests on ground or in trees or bushes, on dry coastal islands in brushy thickets of yucca and prickly pear		T
Snowy Plover (<i>Charadrius alexandrinus</i>) - wintering migrant along the Texas Gulf Coast beaches and bayside mud or salt flats		
Sooty Tern (<i>Sterna fuscata</i>) - predominately "on the wing"; does not dive, but snatches small fish and squid with bill as it flies or hovers over water; breeding April-July		T
White-faced Ibis (<i>Plegadis chihi</i>) - prefers freshwater marshes, sloughs, and irrigated rice fields, but will attend brackish and saltwater habitats; nests in marshes, in low trees, on the ground in bulrushes or reeds, or on floating mats		T
White-tailed Hawk (<i>Buteo albicaudatus</i>) - near coast it is found on prairies, cordgrass flats, and scrub-live oak; further inland on prairies, mesquite and oak savannas, and mixed savanna-chaparral; breeding March to May		T
Whooping Crane (<i>Grus americana</i>) - potential migrant; winters in and around Aransas National Wildlife Refuge and migrates to Canada for breeding; only remaining natural breeding population of this species	LE	E

	Federal Status	State Status
Wood Stork (<i>Mycteria americana</i>) - forages in prairie ponds, flooded pastures or fields, ditches, and other shallow standing water, including salt-water; usually roosts communally in tall snags, sometimes in association with other wading birds (i.e. active heronries); breeds in Mexico and birds move into Gulf States in search of mud flats and other wetlands, even those associated with forested areas; formerly nested in Texas, but no breeding records since 1960		T

***** BIRDS-RELATED *****

Colonial waterbird nesting areas - many rookeries active annually
 Migratory songbird fallout areas - oak mottes and other woods/thickets provide foraging/roosting sites for neotropical migratory songbirds

***** MAMMALS *****

Black Bear (<i>Ursus americanus</i>) - within historical range of Louisiana Black Bear in eastern Texas, Black Bear is federally listed threatened and inhabits bottomland hardwoods and large tracts of undeveloped forested areas; in remainder of Texas, Black Bear is not federally listed and inhabits desert lowlands and high elevation forests and woodlands; dens in tree hollows, rock piles, cliff overhangs, caves, or under brush piles	T/SA; NL	T
Louisiana Black Bear (<i>Ursus americanus luteolus</i>) - within historical range in eastern Texas; inhabits bottomland hardwoods and large tracts of undeveloped forested areas; dens in tree hollows, rock piles, or under brush piles	LT	T
Ocelot (<i>Leopardus pardalis</i>) - dense chaparral thickets; mesquite-thorn scrub and live oak mottes; avoids open areas; breeds and raises young June-November	LE	E
Plains Spotted Skunk (<i>Spilogale putorius interrupta</i>) - catholic; in habitat; open fields, prairies, croplands, fence rows, farmyards, forest edges, and woodlands; prefers wooded, brushy areas and tallgrass prairie		
Red Wolf (<i>Canis rufus</i>) (extirpated) - formerly known throughout eastern half of Texas in brushy and forested areas, as well as coastal prairies	LE	E
West Indian Manatee (<i>Trichechus manatus</i>) - Gulf and bay system; opportunistic, aquatic herbivore	LE	E

***** REPTILES *****

Atlantic Hawksbill Sea Turtle (<i>Eretmochelys imbricata</i>) - Gulf and bay system	LE	E
Green Sea Turtle (<i>Chelonia mydas</i>) - Gulf and bay system	LT	T
Gulf Saltmarsh Snake (<i>Nerodia clarkii</i>) - saline flats, coastal bays, & brackish river mouths		
Kemp's Ridley Sea Turtle (<i>Lepidochelys kempi</i>) - Gulf and bay system	LE	E
Leatherback Sea Turtle (<i>Dermochelys coriacea</i>) - Gulf and bay system	LE	E
Loggerhead Sea Turtle (<i>Caretta caretta</i>) - Gulf and bay system	LT	T
Smooth Green Snake (<i>Liochlorophis vernalis</i>) - Gulf Coastal Plain; mesic coastal shortgrass prairie vegetation; prefers dense vegetation		T
Texas Diamondback Terrapin (<i>Malaclemys terrapin littoralis</i>) - coastal marshes, tidal flats, coves, estuaries, and lagoons behind barrier beaches; brackish and salt water; burrows into mud when inactive; may venture into lowlands at high tide		
Texas Garter Snake (<i>Thamnophis sirtalis annectens</i>) - wet or moist microhabitats are conducive to the species occurrence, but is not necessarily restricted to them; hibernates underground or in or under surface cover; breeds March-August		

	Federal Status	State Status
Texas Horned Lizard (<i>Ptychocheilus cornutus</i>) - open, arid and semi-arid regions with sparse vegetation, which could include grass, cactus, scattered brush or scrubby trees; soil may vary in texture from sandy to rocky; burrows into soil, enters rodent burrows, or hides under rock when inactive; breeds March-September		T
Texas Scarlet Snake (<i>Cemophora coccinea linei</i>) - mixed hardwood scrub on sandy soils; feeds on reptile eggs; semi-fossorial; active April-September		T
Texas Tortoise (<i>Gopherus berlandieri</i>) - open brush with a grass understory is preferred; open grass and bare ground are avoided; when inactive occupies shallow depressions at base of bush or cactus, sometimes in underground burrows or under objects; longevity greater than 50 years; active March-November; breeds April-November		T
Timber/Canebrake Rattlesnake (<i>Crotalus horridus</i>) - swamps, floodplains, upland pine and deciduous woodlands, riparian zones, abandoned farmland; limestone bluffs, sandy soil or black clay; prefers dense ground cover, i.e. grapevines or palmetto		T

*** VASCULAR PLANTS ***

- Coastal gay-feather (*Liatris bracteata*) - endemic; black clay soils of prairie remnants; flowering in fall
- Threeflower broomweed (*Thurovia triflora*) - endemic; black clay soils of remnant grasslands, also tidal flats; flowering July-November

Status Key:

- LE, LT - Federally Listed Endangered/Threatened
- PE, PT - Federally Proposed Endangered/Threatened
- E/SA, T/SA - Federally Listed Endangered/Threatened by Similarity of Appearance
- CI - Federal Candidate for Listing, Category 1; information supports proposing to list as endangered/threatened
- DL, PDL - Federally Delisted/Proposed for Delisting
- NL - Not Federally Listed
- E, T - State Listed Endangered/Threatened
- "blank" - Rare, but with no regulatory listing status

Species appearing on these lists do not all share the same probability of occurrence. Some species are migrants or wintering residents only, or may be historic or considered extirpated.

WHARTON COUNTY

Federal Status State Status

*** BIRDS ***

American Peregrine Falcon (<i>Falco peregrinus anatum</i>) - potential migrant; nests in west Texas	DL	E
Arctic Peregrine Falcon (<i>Falco peregrinus tundrius</i>) - potential migrant	DL	T
Attwater's Greater Prairie-chicken (<i>Tympanuchus cupido attwateri</i>) - this county within historic range; endemic; open prairies of mostly thick grass one to three feet tall; from near sea level to 200 feet along coastal plain on upper two-thirds of Texas coast; males form communal display flocks during late winter-early spring; booming grounds important; breeding February-July	LE	E
Bald Eagle (<i>Haliaeetus leucocephalus</i>) - found primarily near seacoasts, rivers, and large lakes; nests in tall trees or on cliffs near water; communally roosts, especially in winter; hunts live prey, scavenges, and pirates food from other birds	LT-PDL	T
Eskimo Curlew (<i>Numenius borealis</i>) - nonbreeding; grasslands, pastures, plowed fields, and less frequently, marshes and mudflats	LE	E
Mountain Plover (<i>Charadrius montanus</i>) - shortgrass plains and plowed fields (bare, dirt fields); primarily insectivorous; winter resident in this area		
White-faced Ibis (<i>Plegadis chibi</i>) - prefers freshwater marshes, sloughs, and irrigated rice fields, but will attend brackish and saltwater habitats; nests in marshes, in low trees, on the ground in bulrushes or reeds, or on floating mats		T
White-tailed Hawk (<i>Buteo albicaudatus</i>) - near coast on prairies, cordgrass flats, and scrub-live oak; further inland on prairies, mesquite and oak savannas, and mixed savanna-chaparral; breeding March-May		T
Whooping Crane (<i>Grus americana</i>) - potential migrant; winters in and around Aransas National Wildlife Refuge and migrates to Canada for breeding; only remaining natural breeding population of this species	LE	E
Wood Stork (<i>Mycteria americana</i>) - forages in prairie ponds, flooded pastures or fields, ditches, and other shallow standing water, including salt-water; usually roosts communally in tall snags, sometimes in association with other wading birds (i.e. active heronries); breeds in Mexico and birds move into Gulf States in search of mud flats and other wetlands, even those associated with forested areas; formerly nested in Texas, but no breeding records since 1960		T

*** FISHES ***

Guadalupe Bass (*Micropterus treculi*) - introduced in Nueces River system; endemic to perennial streams of the Edwards Plateau region

*** MAMMALS ***

Black Bear (<i>Ursus americanus</i>) - within historical range of Louisiana Black Bear in eastern Texas, Black Bear is federally listed threatened and inhabits bottomland hardwoods and large tracts of undeveloped forested areas; in remainder of Texas, Black Bear is not federally listed and inhabits desert lowlands and high elevation forests and woodlands; dens in tree hollows, rock piles, cliff overhangs, caves, or under brush piles	T/SA; NL	T
Louisiana Black Bear (<i>Ursus americanus luteolus</i>) - possible as transient; bottomland hardwoods and large tracts of inaccessible forested areas	LT	T

Federal State
Status Status

Plains Spotted Skunk (*Spilogale putorius interrupta*) - catholic in habitat; open fields, prairies, croplands, fence rows, farmyards, forest edges, and woodlands; prefers wooded, brushy areas and tallgrass prairie

*** REPTILES ***

Texas Garter Snake (*Thamnophis sirtalis annectens*) - wet or moist microhabitats are conducive to the species occurrence, but is not necessarily restricted to them; hibernates underground or in or under surface cover; breeds March-August

Texas Horned Lizard (*Phrynosoma cornutum*) - open, arid and semi-arid regions with sparse vegetation, including grass, cactus, scattered brush or scrubby trees; soil may vary in texture from sandy to rocky; burrows into soil, enters rodent burrows, or hides under rock when inactive; breeds March-September

T

Timber/Canebrake Rattlesnake (*Crotalus horridus*) - swamps, floodplains, upland pine and deciduous woodlands, riparian zones, abandoned farmland; limestone bluffs, sandy soil or black clay; prefers dense ground cover, i.e. grapevines or palmetto

T

Status Key:

LE,LT - Federally Listed Endangered/Threatened

PE,PT - Federally Proposed Endangered/Threatened

E/SA,T/SA - Federally Endangered/Threatened by Similarity of Appearance

Cl - Federal Candidate, Category 1; information supports proposing to list as endangered/threatened

DL,PDL - Federally Delisted/Proposed for Delisting

NL - Not Federally Listed

E,T - State Endangered/Threatened

"blank" - Rare, but with no regulatory listing status

Species appearing on these lists do not all share the same probability of occurrence. Some species are migrants or wintering residents only, or may be historic or considered extirpated.



Notes for
County Lists of
Texas' Special Species



The Texas Parks and Wildlife (TPWD) county lists include:

Vertebrates, Invertebrates, and Vascular Plants on the special species lists of the Texas Biological and Conservation Data System. These special species lists are comprised of all species, subspecies, and varieties that are federally listed; proposed to be federally listed; have federal candidate status; are state listed; or carry a global conservation status indicating a species is imperiled, very rare, or vulnerable to extirpation.

Colonial Waterbird Nesting Areas and Migratory Songbird Fallout Areas are contained on the county lists for coastal counties only.

The TPWD county lists exclude:

Natural Plant Communities such as Little Bluestem-Indiangrass Series (native prairie remnant), Water Oak-Willow Oak Series (bottomland hardwood community), Saltgrass-Cordgrass Series (salt or brackish marsh), Sphagnum-Beakrush Series (seepage bog).

Other Significant Features such as non-coastal bird rookeries, migratory bird information, bat roosts, bat caves, invertebrate caves, and prairie-dog towns.

These lists will never be all inclusive for all rare species distributions. In order to keep the lists to a reasonable length, historic ranges for some state extirpated species, full historic distributions for some extant species, accidentals and irregularly appearing species, and portions of migratory routes for particular species are not included.

The revised date on each county list reflects the last date any changes or revisions were made for that county and reflects current listing statuses and taxonomy.

Species that appear on county lists do not all share the same probability of occurrence within a county. Some species are migrants or wintering residents only. Additionally, a few species may be historic or considered extirpated within a county. Species considered extirpated within the state are so flagged on each list.

This information is for your assistance only; due to continuing data updates, please do not reprint or redistribute the information, instead refer all requesters to our office to obtain the most current information available.



The Texas Biological and Conservation Data System



The Texas Biological and Conservation Data System (TXBCD), established in 1983, is the Department's most comprehensive source of information on rare, threatened, and endangered plants and animals, exemplary natural communities, and other significant features. Though it is not all-inclusive, the TXBCD is constantly updated, providing current or additional information on statewide status and locations of these unique elements of natural diversity.

The TXBCD gathers biological information from museum and herbarium collection records, peer reviewed publications, experts in the scientific community, organizations, qualified individuals, and on-site field surveys conducted by TPWD staff on public lands or private lands with written permission. TPWD staff botanists, zoologists, and ecologists perform field surveys to locate and verify specific occurrences of high-priority biological elements and collect accurate information on their condition, quality, and management needs.

The TXBCD can be used to help evaluate the environmental impacts of routing and siting options for development projects. It also assists in impact assessment, environmental review, and permit review.

Given the small proportion of public versus private land in Texas, the TXBCD does not include a representative inventory of rare resources in the state. Although it is based on the best data available to TPWD regarding rare species, these data cannot provide a definitive statement as to the presence, absence, or condition of special species, natural communities, or other significant features in any area. Nor can these data substitute for on-site evaluation by qualified biologists. The TXBCD information is intended to assist the user in avoiding harm to species that may occur.

Please use the following citation to credit the TXBCD as the source for this county level information:

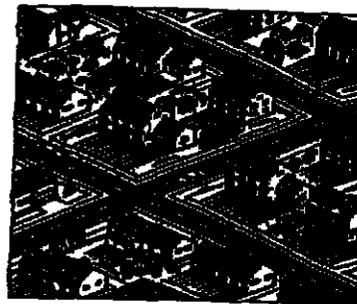
Texas Biological and Conservation Data System. Texas Parks and Wildlife, Wildlife Diversity Branch. County Lists of Texas' Special Species. [county name(s) and revised date(s)].

For information on obtaining a project review form or a site-specific review of a project area for rare species, and for updated county lists, please call (512) 912-7011.

TEXAS PARKS AND WILDLIFE



**Wildlife Habitat Assessment Program
Threatened and Endangered Species
3000 S. IH-35, Suite 100
Austin, Texas 78704
512/912-7011 phone
512/912-7058 fax
www.tpwd.state.tx.us**



Rare Resources Review Requests (Including Threatened and Endangered Species)

This service includes an analysis of your site-specific assessment of environmental information and potential impacts to threatened, endangered, and other rare species, natural communities, and special features presently known or potentially occurring in the vicinity of a project. If you need only state or county rare species lists for preliminary project planning, in lieu of submitting this form please contact our administrative staff at (512) 912-7011.

Review requests for this analysis should include all the information listed on Page 2 below and be sent to the attention of Celeste Brancel at the above address. We will provide you an analysis based on the most current information available to Texas Parks and Wildlife Department regarding sensitive natural resources. Please expect our response to take on average 4 to 6 weeks from receipt, depending on the size of your request. Note the more pertinent information you provide, the more customized our review, and the faster our turnaround. Review requests submitted without adequate project detail may cause a delay in our response while we contact you and wait for supplemental information. The potential for adverse impacts to rare resources from project activities varies based on the type of activity; location; season; vegetation; present physical features (both natural and man-made); degree of disturbance; planned avoidance, minimization, mitigation, enhancement, and restoration measures; and species-specific tolerance levels. Current site color photographs and aerial photographs greatly facilitate the review process. More information allows us to more accurately assess a project's potential impacts as well as assists in narrowing the list of species or impacts you and we would need to address.

TPWD charges for this review service. Since TPWD is largely a self-funded agency, this revenue allows for additional staff to provide more timely responses to review requests. The charges are based on a flat fee (minimum charge of \$50/project site), except when the project is unusually large (\$25/additional hour). An invoice will accompany the TPWD response letter for the review request, which will be due upon receipt; please do not prepay. Government agencies are exempted from these charges. Private consultants performing work under contract for government entities are not exempt.

This analysis does not include a review of general fish and wildlife habitat impacts (such as impacts to wetlands, water bodies, other fish and wildlife species, forests, parklands, etc.). Should you need such a review, a separate request should be sent to Kathy Boydston, TPWD Wildlife Division, Wildlife Habitat Assessment Program, 4200 Smith School Road, Austin, TX 78744-3291.



**- Rare Resources Review Requests
- (Including Threatened and Endangered Species), cont'd. -**

If this form is filled out electronically, please use a font or style that will contrast with the text below. If sending in a separate attachment, it is not necessary to return the blank form, providing all the information below is included on the attachment.

Name:
Your Company:
Your Company Address:
City, State, Zip:

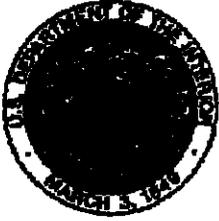
Date:
Phone:
Fax:
E-Mail:

Project Title & Site Location:

County(ies):

- 1) **Scope of Project**
 - a) What regulations will this review help you to comply with? OR If not regulatory, why is the review being requested?
 - b) What activities will be conducted at the site? (Especially activity types, extent, and acreage of ground, waterway, and vegetation disturbance and total acreage of site)
 - c) Schedule of activities – Approximately when will the project be active on the site?
- 2) **Vegetation - Species, structure and composition, vegetation layers, height of layers, natural vegetation community type**
- 3) **Other Natural Resources/Physical Features**
 - a) Soils and geology
 - b) Habitat, watercourses, animals, etc.
- 4) **Existing Site Development - Extent of pavement, gravel, shell, or other cover; buildings, landscaped, xeriscaped, drainage system, etc).**
- 5) **Historic Use/Function of Site – Pasture, forest, urban, row crops, rangeland, wetland, etc.**
- 6) **Has a threatened and endangered species survey or assessment already been performed? (In general, TPWD recommends an on-site habitat assessment be performed).**
 - a) If yes, provide surveyor name, qualifications, methods or protocols, acreage surveyed, level of effort, weather conditions, time of day, and dates the survey was performed.
 - b) If yes, please provide results and copy of survey/assessment report.
- 7) **Could current on-site or adjacent habitat support rare species? Specifically, explain why or why not.**
- 8) **Brief description of potential negative impacts from project activities and avoidance, minimization, and mitigation measures planned.**
- 9) **Brief description of planned beneficial enhancements or restoration efforts.**
- 10) **Clearly delineate exact location of site on original or photocopy of relevant portion of USGS 7.5' topographic quadrangle (most preferable) or best map available. Topographic map should show name of quadrangle. The map must contain identifiable features and a scale that allows us to accurately pinpoint your site.**
- 11) **Originals or color-copy photographs of site and surrounding area with captions or narratives.**
- 12) **Aerial photographs when available. Aerials should show the year photograph was taken.**

G



United States Department of the Interior
NATIONAL PARK SERVICE
INTERMOUNTAIN REGION
Intermountain Support Office
12795 West Alameda Parkway
PO Box 25287
Denver, Colorado 80225-0287



SEP 01 2004

Michael A. Smith
Freeborn & Peters LLP
311 South Wacker Drive
Suite 3000
Chicago, IL 60606-6677

Subject: Surface Transportation Board Docket No. AB-6 (Sub-No. 426X); The Burlington Northern and Santa Fe Railway Company Abandonment between Bay City, Texas and Cane Junction, Texas and between Cane Junction, Texas and Newgulf, Texas

Dear Mr. Smith:

The National Park Service has reviewed the subject project and has determined there are no National Park Service Units in the vicinity. In view of this, the National Park Service has no comments on this project.

We appreciate the opportunity to comment. If you have any questions, please contact me at (303)969-2851.

Sincerely,

Cheryl Eckhardt
NEPA/Section 106 Specialist

**TAKE PRIDE
IN AMERICA**

H

Freeborn & Peters LLP

June 15, 2004

Mark Fisher
Texas Commission on Environmental Quality
Water Quality Assessment
MC 150
P.O. Box 13087
Austin, TX 78711-3087

Attorneys at Law

311 South Wacker Drive
Suite 3000
Chicago, Illinois
60606-6677
Tel 312 360.6000

**Re: *The Burlington Northern and Santa Fe Railway Company Abandonment
between Bay City, Texas and Cane Junction, Texas and between Cane
Junction, Texas and Newgulf, Texas***

Brian Nettles
Paralegal
Direct 312 360.6336
Fax 312 360 6396
bnettlan@
freebornpeters.com

Dear Mr. Fisher:

BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 20.89 miles of railroad line between Milepost 66.95 near Bay City, Texas and Milepost 54.00 near Cane Junction, Texas and between Milepost 0.00 near Cane Junction, Texas and Milepost 7.94 near Newgulf, Texas.

Chicago

Springfield

As part of the environmental report BNSF needs to know whether or not this action will be consistent, with Federal, State or local water quality standards. Also, please state whether or not Section 402 and/or TPDES permits are required as a result of the proposed abandonment.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact. No placement of dredge or fill material in any inland waterways is anticipated to result from abandonment and/or salvage.

For your reference I have enclosed a map of the above referenced railroad line. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336.

Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

I

June 15, 2004

Chris Linendoll
Texas Commission on Environmental Quality
Wastewater Permitting Section
MC 148
P.O. Box 13087
Austin, TX 78711-3087

Attorneys at Law

311 South Wacker Drive
Suite 3000
Chicago, Illinois
60606-6677
Tel 312 360.6000

Brian Nettles
Paralegal
Direct 312 360 6336
Fax 312.360 6396
bnettl@
freemornreporters.com

Chicago

Springfield

Re: *The Burlington Northern and Santa Fe Railway Company Abandonment between Bay City, Texas and Cane Junction, Texas and between Cane Junction, Texas and Newgulf, Texas*

Dear Mr. Linendoll:

BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 20.89 miles of railroad line between Milepost 66.95 near Bay City, Texas and Milepost 54.00 near Cane Junction, Texas and between Milepost 0.00 near Cane Junction, Texas and Milepost 7.94 near Newgulf, Texas.

As part of the environmental report BNSF needs to know whether or not this action will be consistent, with Federal, State or local water quality standards. Also, please state whether or not Section 402 and/or TPDES permits are required as a result of the proposed abandonment.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact. No placement of dredge or fill material in any inland waterways is anticipated to result from abandonment and/or salvage.

For your reference I have enclosed a map of the above referenced railroad line. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336.

Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

J



DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P.O. BOX 1229
GALVESTON, TEXAS 77553-1229

August 17, 2004

REPLY TO
ATTENTION OF

Evaluation Section

SUBJECT: Permit Application No. D-16221

Brian Nettles
Freeborn & Peters, LLP
311 South Wacker Drive, Suite 3000
Chicago, Illinois 60606-6683

Dear Mr Nettles:

This is in regard to your June 15, 2004 permit application requesting a Department of the Army permit to remove and/or abandon a railroad line between mileposts 66.95 near Bay City, Matagorda County, Texas, and 54 00 near Cane Junction, Wharton County, Texas and between mileposts 0.00 near Cane Junction, Wharton County, Texas and 7.94 near Newgulf, Wharton County, Texas.

We have reviewed your project and have concluded that because no work is being conducted and no fill material is being placed into a wetland or water of the United States, the proposed project is not subject to our jurisdiction under Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the Clean Water Act. As such, a Department of the Army permit is not required. Your permit application is being returned for your disposition.

This preliminary determination is valid for 5 years from the date of this letter unless new information warrants a revision of the determination prior to the expiration date. Please reference determination number D-16221 in future correspondence pertaining to this subject. If you have any questions concerning this determination or possible appeal of this determination, please contact Felicity Dodson at the letterhead address or by telephone at 409-766-3105.

Sincerely,

A handwritten signature in cursive script that reads "Janet Thomas Botello".

Janet Thomas Botello
Leader, Central Evaluation Unit

Enclosures:

June 15, 2004 Permit Application
Notification of Administrative Appeal Options and Process and Request for Appeal

Applicant: Freeborn & Peters, LLC		File Number: D-16221	Date: 08/16/04
Attached is:		See Section below	
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A	
	PROFFERED PERMIT (Standard Permit or Letter of Permission)	B	
	PERMIT DENIAL	C	
	APPROVED JURISDICTIONAL DETERMINATION	D	
X	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved jurisdictional determination (JD) or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL.** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record

If you have questions regarding this decision and/or the appeal process you may contact

Felicity Dodson, Regulatory Specialist
CESWG-PB-RE, P O. Box 1229
Galveston, Texas 77553-1229
Telephone. 409-766-3105, FAX: 409-766-6301

If you only have questions regarding the appeal process you may also contact.

James E. Gilmore, Appeal Review Officer
CESWD-CMO-E, 1100 Commerce Street, Room 8E9
Dallas, Texas 75242-0216
Telephone: 214-767-2457; FAX: 214-767-9021
Email. James.E.Gilmore@usace.army.mil

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation, and will have the opportunity to participate in all site investigations

Signature of appellant or authorized agent.

Date:

Telephone number:

K

MATAGORDA COUNTY ENVIRONMENTAL HEALTH

First Floor 2200 7th Street
Bay City, Texas 77414
979-244-2717
Fax 979-245-5661



Ed Schulze, Director

- Food Service & Sanitation
- Animal Control
- Floodplain Management
- Radiological Control
- Solid Waste Management

June 18, 2004

Brian Nettles
311 South Wacker Drive
Suite 3000
Chicago, Illinois 60606-6677

Re: BNSF Railway Company abandonment between Bay City, Texas and Cane Junction, Texas and between Cane Junction, Texas and Newgulf, Texas

We are in receipt of your letter dated June 15, 2004 relative to the abandonment of the above referenced rail line. Without doing any indepth study of this matter, we believe simply removing the track materials should have no significant impact on the 100-year floodplain. Obviously removal of the roadbed may impact the floodplain in some ways yet to be determined.

We regret hearing the loss of this type of infrastructure from Matagorda County. We have always felt the railroads were an important and integral part of history and development of our county, state, and nation.

We appreciate the opportunity to comment on your request. If we can be of further assistance, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Schulze".

Ed Schulze
Director

ES:bs0

L

Abandonment Documentation M.P. 0.00 to M.P. 7.94

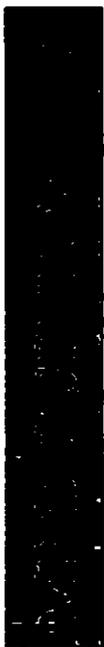
List of Bridges

Bridge: 0.20	Built: 1930	Length: 28.0'	Height: 5.0'	Description: Ballast Deck Frame Trestle	Obstacle: Water
Bridge: 2.40	Built: 1930	Length: 168.0'	Height: 7.0'	Description: Ballast Deck Frame Trestle	Obstacle: Water
Bridge: 3.80	Built: 1930	Length: 322.0'	Height: 19.0'	Description: Ballast Deck Frame Trestle	Obstacle: Water
Bridge: 5.00	Built: 1930	Length: 476.0'	Height: 16.0'	Description: Ballast Deck Frame Trestle	Obstacle: Water

Abandonment Documentation (M.P. 54.00 to M.P. 66.95

List of Bridges

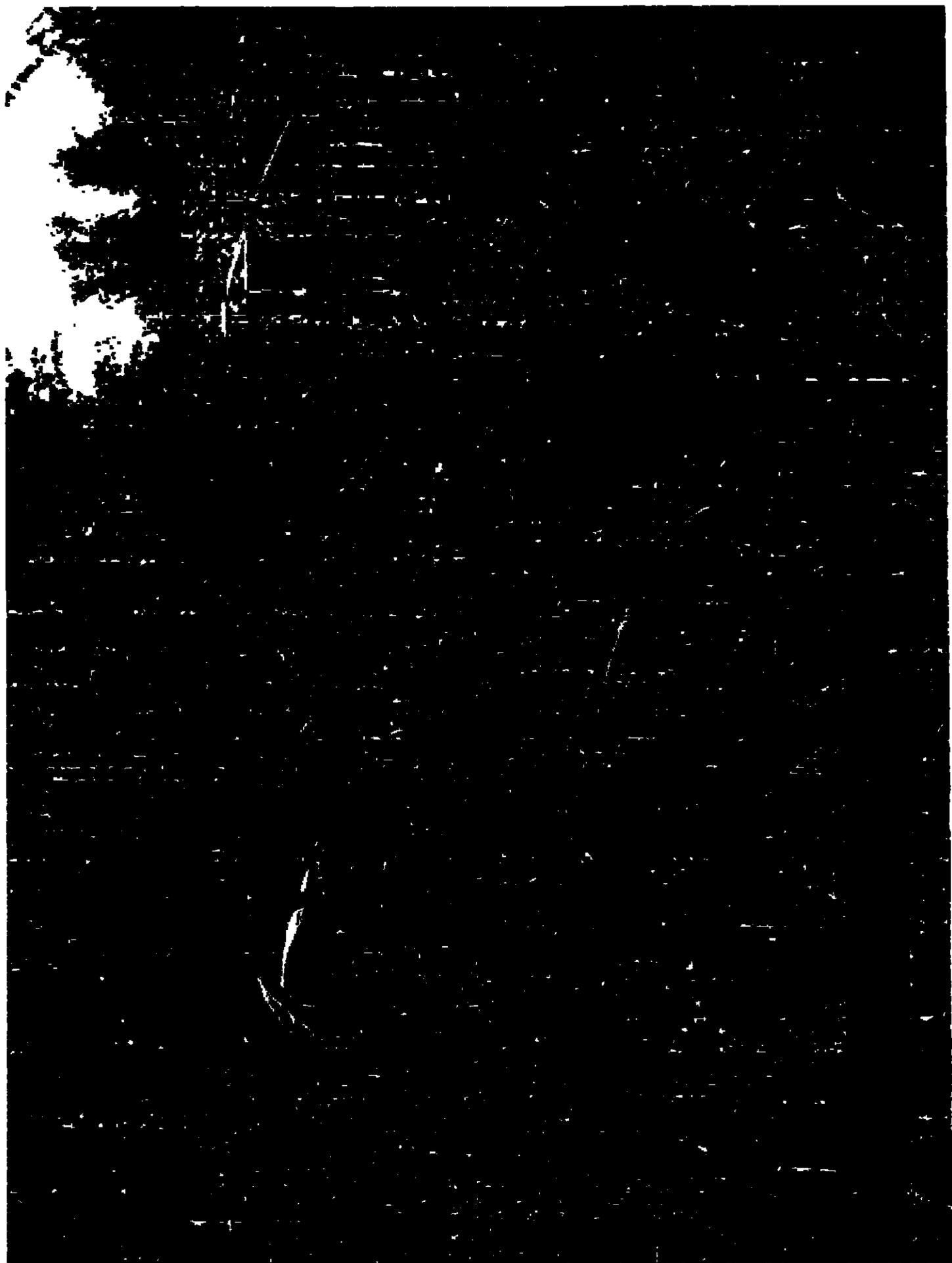
Bridge: 56.02	Built: 1922	Length: 28.0'	Height: 9.0'	Description: 2 - 14' Open Pile Trestle	Obstacle: Water
Bridge: 59.30	Built: 1920	Length: 14.0'	Height: 6.0'	Description: 14' Open Pile Trestle	Obstacle: Water
Bridge: 62.90	Built: 1918	Length: 28.0'	Height: 5.0'	Description: 2 - 14' Open Pile Trestle	Obstacle: Water
Bridge: 64.00	Built: 1912	Length: 42.0'	Height: 7.0'	Description: 3 - 14' Open Pile Trestle	Obstacle: Water





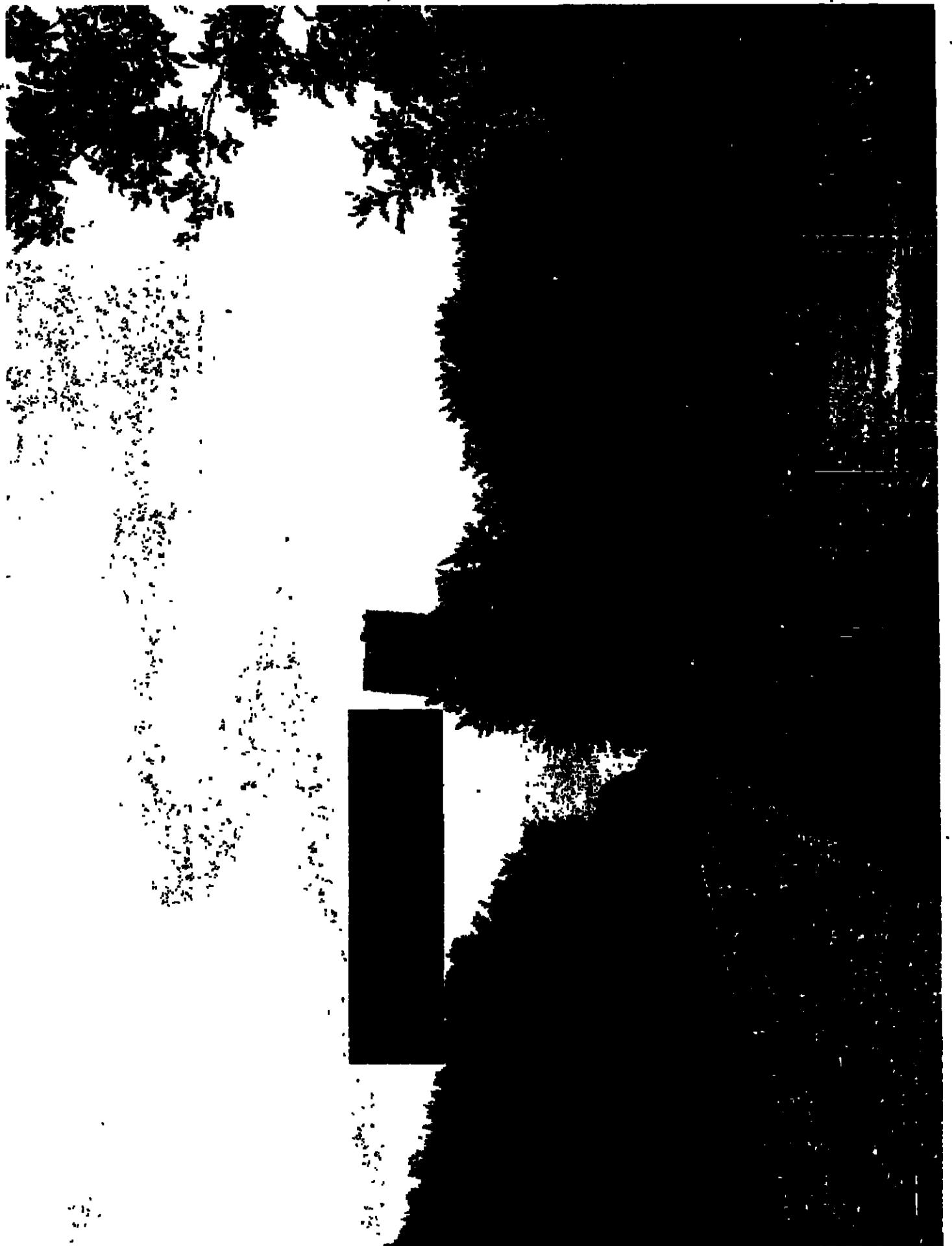




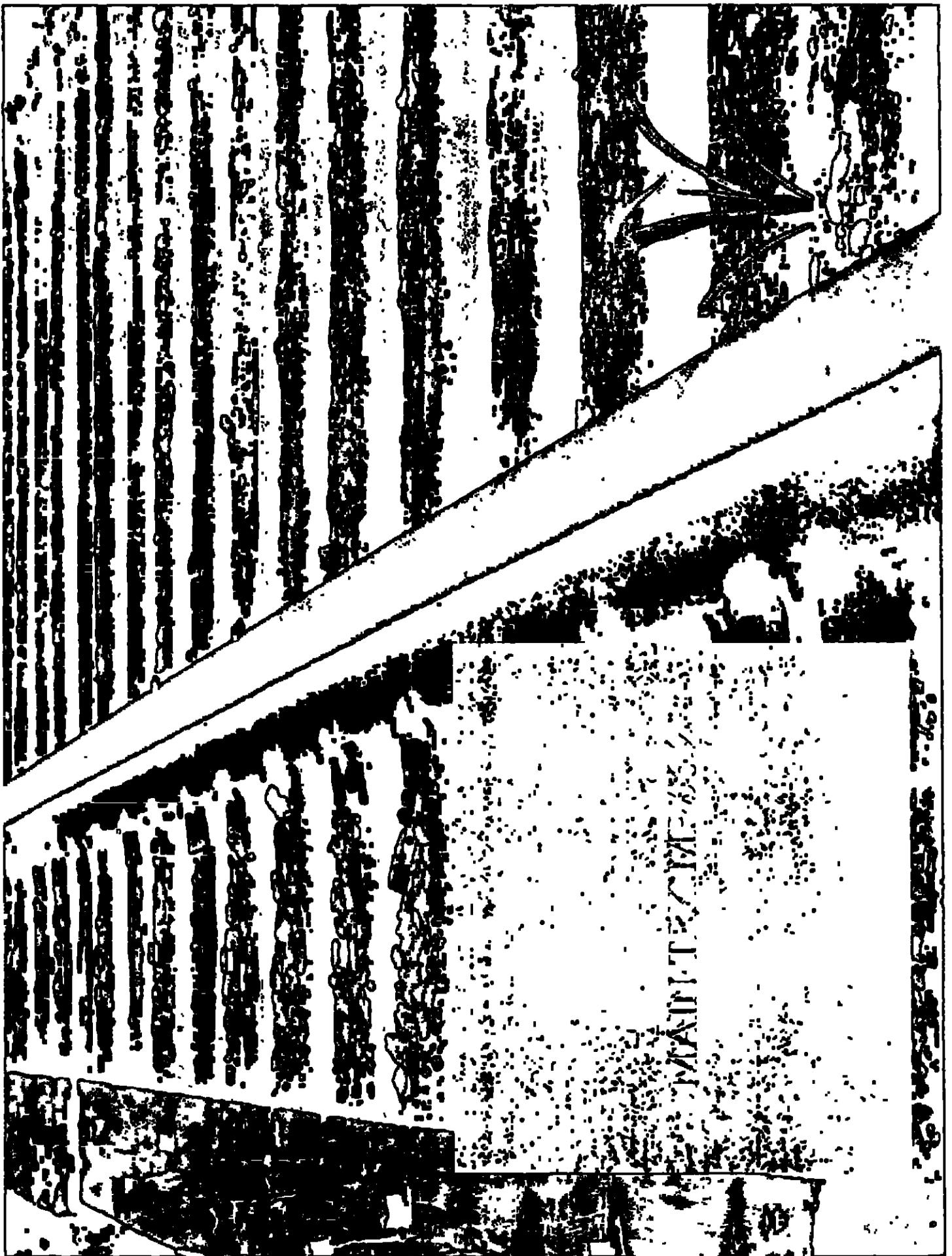








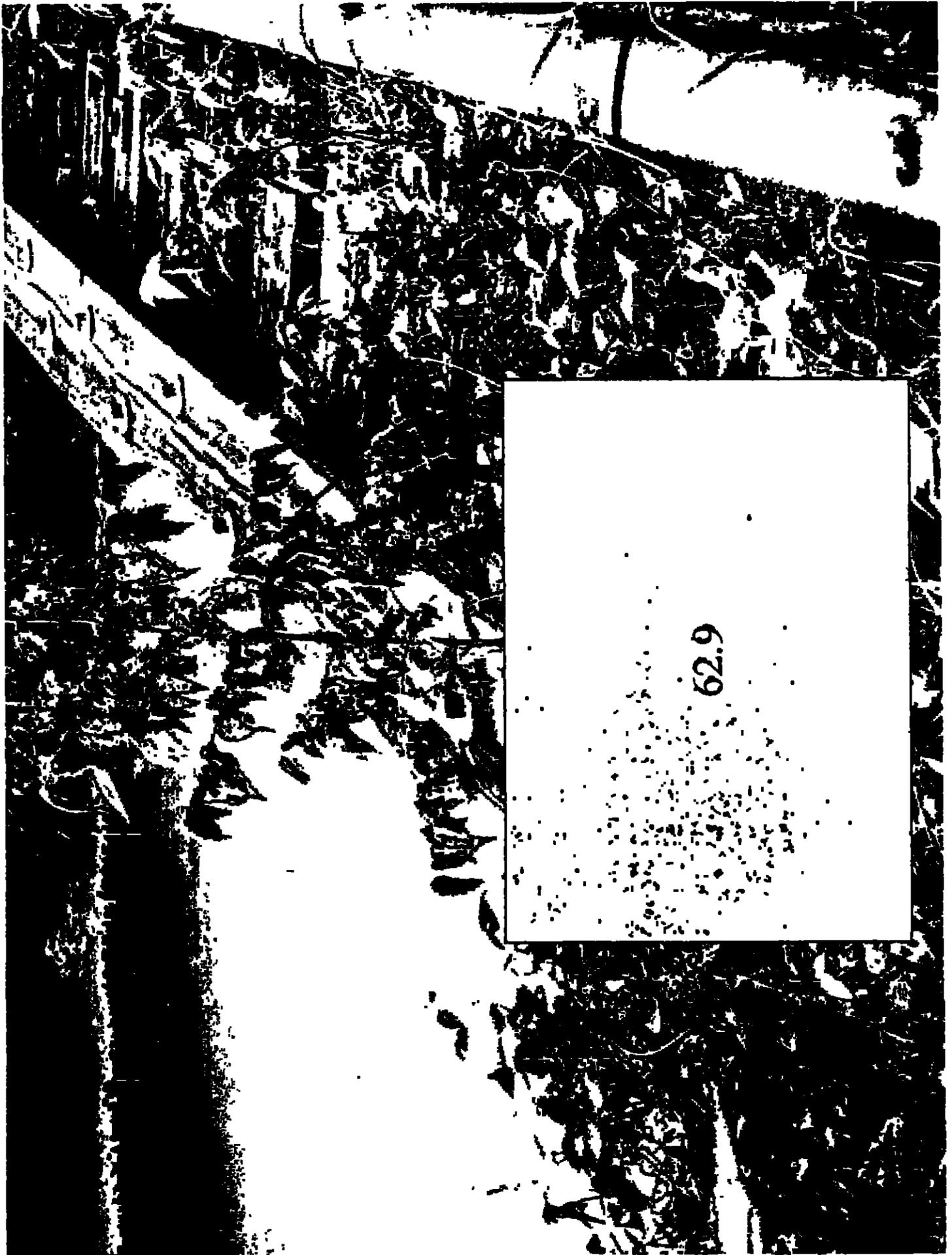




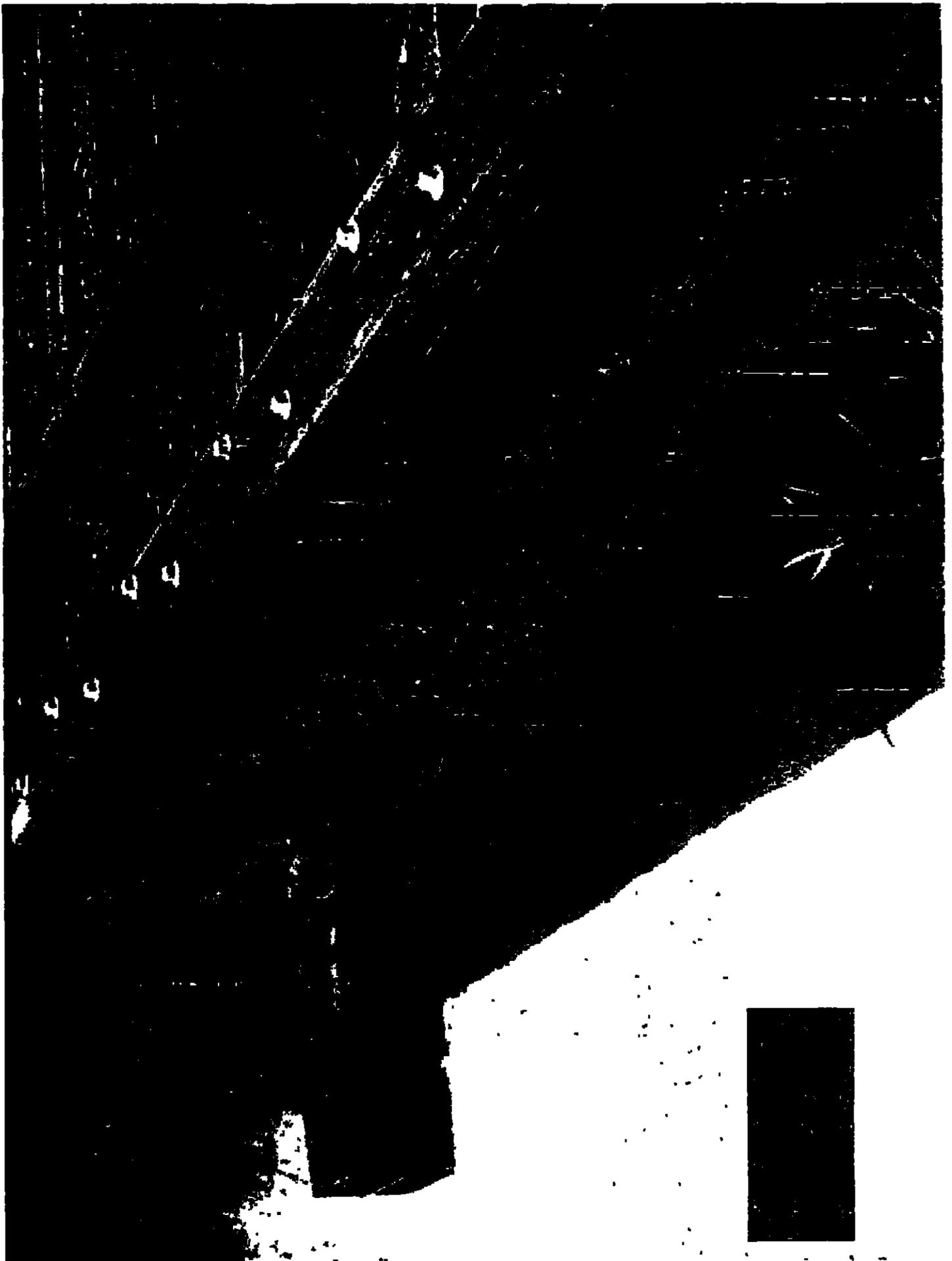


59.3





62.9







M

Freeborn & Peters LLP

RECEIVED

JUN 29 2004

TEXAS HISTORICAL COMMISSION

June 28, 2004

Peter Ketter
The Texas Historical Commission
1511 Colorado
Austin, TX 78701

Attorneys at Law

311 South Wacker Drive
Suite 3000
Chicago, Illinois
60606-6677
Tel 312.360.6000

Brian Nettles
Paralegal
Direct 312 360 6336
Fax 312 360 6396
bnettle@
freebornpeters.com

Re: *The Burlington Northern and Santa Fe Railway Company Abandonment between Bay City, Texas and Cane Junction, Texas and between Cane Junction, Texas and Newgulf, Texas*

Dear Mr. Ketter:

BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 20.89 miles of railroad line between Milepost 66.95 near Bay City, Texas and Milepost 54.00 near Cane Junction, Texas and between Milepost 0.00 near Cane Junction, Texas and Milepost 7.94 near Newgulf, Texas.

As part of the historic report required by the Surface Transportation Board, BNSF needs to know if there are any structures eligible for listing on the National Register of Historic Places and also if there are archaeological resources in the project area.

Enclosed are a map of the area and topographical maps of the area. Also enclosed are photographs of eight bridges that are 50 years old or older along the proposed abandonment. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336.

Your early response will be greatly appreciated.

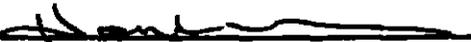
Sincerely,



Brian Nettles

/bn
Enclosures

**NO HISTORIC
PROPERTIES AFFECTED
PROJECT MAY PROCEED**

By 
for F. Lawrence Oaks
State Historic Preservation Officer
Date 7/8/04