

Chapter 4

Mitigation

This chapter describes mitigation measures that, if imposed by the Surface Transportation Board (Board), would avoid, minimize, or mitigate potential environmental impacts of the Southern and Northern Rail Alternatives. The Office of Environmental Analysis (OEA) is preliminarily recommending mitigation measures for the proposed line based on the results of OEA's environmental analysis. If the Board decides to authorize the Southern or Northern Rail Alternative, the mitigation measures set out in this chapter could become conditions of the Board's decision.

As explained in this Draft EIS, OEA analyzed the effects of constructing and operating the associated commercial motor vehicles (CMV) Facility as well as those of the proposed line. The Draft Environmental Impact Statement (EIS) provides the information needed by federal agencies that have or may have actions related to the proposed line and associated CMV Facility and are participating in the EIS process, including the U.S. Coast Guard (USCG), International Boundary and Water Commission (IBWC), U.S. Army Corps of Engineers (USACE), and U.S. Customs and Border Protection (CBP), as discussed in *Chapter 1, Section 1.4.4, Other Federal Agencies*. The Board lacks jurisdiction to require mitigation for the associated CMV Facility.

4.1 Conditioning Power of the Board

The Board has the authority to impose conditions to mitigate environmental impacts, but that authority is not limitless. Any mitigation measure the Board imposes must relate directly to the transaction before the Board, must be reasonable, and must be supported by the record before the Board. OEA's consistent practice has been to recommend mitigation only for those impacts that would result directly from a proposed action. The Board does not require mitigation for pre-existing environmental conditions.

Sometimes applicants propose voluntary mitigation to address potential environmental impacts of their proposals. Voluntary mitigation could replace, supplement, or extend further than mitigation measures the Board might otherwise impose. The Board's practice is to require compliance with any voluntary mitigation agreed to by applicants in any final decision authorizing a proposed action. Green Eagle Railroad (GER) has not submitted any voluntary mitigations to date. However, as explained in the Draft EIS, GER's compliance with regulatory requirements applicable to the proposed line would minimize potential environmental impacts.

4.2 Cooperating Agency Mitigation

USCG is participating as a cooperating agency in this Draft EIS (*Section 1.4.2, Cooperating Agencies*). USCG will issue a separate decision concerning the New Rail Bridge and the New Road Bridge and use information in this EIS for its decision-making purposes. USCG could require additional mitigation measures in its decision documents and permits, as additional mitigation may apply to impacts related to the associated CMV Facility and the New Road Bridge that are discussed in this Draft EIS.

4.3 Preliminary Nature of the Mitigation Process

OEA's preliminary recommended mitigation measures are based on information available to date, consultation with appropriate agencies, and the environmental analysis presented in this Draft EIS. OEA emphasizes that the recommended mitigation measures are preliminary and invites the public and agencies to comment on these proposed mitigation measures. For OEA to assess the comments effectively, it is critical that the comments be specific regarding any desired mitigation and the reasons why the suggested mitigation would be appropriate.

After the comment period on the Draft EIS closes, OEA will prepare a Final EIS. The Final EIS will respond to all substantive comments received, include additional analyses if warranted, and make final recommendations to the Board on what mitigation to impose. After the conclusion of the EIS process, the Board will make its final decision considering both the transportation merits of the proceeding and the full environmental record — which includes this Draft EIS, the Final EIS, all public and agency comments received, and OEA's final recommended mitigation.

4.4 OEA's Preliminary Recommended Mitigation Measures

The following sections provide OEA's preliminary recommended mitigation measures that address potential impacts resulting from the proposed line. If a resource topic is not listed below, OEA did not identify any adverse impacts warranting mitigation.

4.4.1 Noise

If the Board authorizes the Southern Rail Alternative, OEA preliminarily recommends mitigation measure MM-Noise-01a:

MM-Noise-01a. GER shall install noise barriers on both sides of the proposed U.S. 277 and Barrera Street bridges to address the severe noise impacts on three receptors that OEA identified. See Receptors 38, 41, and 42 in *Chapter 3, Affected Environment and Environmental Consequences, Figure 3.6-5*.

If the Board authorizes the Northern Rail Alternative, OEA preliminarily recommends mitigation measure MM-Noise-01b:

MM-Noise-01b. GER shall install noise barriers on both sides of the proposed U.S. 277 and Barrera Street Bridges and along the south side of the New Rail Bridge to a point past the nearby residential development to address the severe noise impacts on 12 receptors that OEA identified. See Receptors 5, 6, 10, 13, 17, 18, 19, 20, 21, 38, 41, and 42 in *Chapter 3, Affected Environment and Environmental Consequences, Figure 3.6-7*.

4.4.2 Cultural Resources

MM-Cultural-01. Prior to drilling piles for new bridge piers on the rail line, GER shall conduct additional archaeological surveys via deep mechanical trenching of floodplain areas in the Area of Potential Effects (APE) to confirm the presence or absence of deeply buried archaeological deposits.

MM-Cultural-02. GER shall prepare and provide to OEA a construction monitoring plan no later than 30 days prior to the start of construction of the rail line and abide by the provisions of the plan, including any revisions by OEA, during rail construction activities. The plan shall address the following:

1. Training procedures to familiarize construction personnel with the identification and appropriate treatment of historic properties;
2. Monitoring of rail construction activities by a qualified professional archaeologist;
3. Provisions for the unanticipated discovery of archaeological sites or associated artifacts during construction activities, including procedures for notifying OEA and the Texas Historical Commission (THC) or Tribal Historic Preservation Officer (THPO), pursuant to 36 C.F.R. § 800.13(b), in the event of an unanticipated discovery; and
4. Provisions for complying with the Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001-3013) and other applicable federal, state, and local laws and regulations in the event of an unanticipated discovery of unmarked human remains during rail construction activities.

4.4.3 Biological Resources

MM-Biological-01. To ensure compliance with Section 7 of the Endangered Species Act (16 U.S.C. § 1536), GER shall implement the conservation, minimization, and mitigative measures developed with the U.S. Fish and Wildlife Service (USFWS) during the Section 7 consultation process for the protection of the federally listed or proposed threatened and endangered species that could be affected by the rail line.

MM-Biological-02. To ensure compliance with the Migratory Bird Treaty Act (16 U.S.C. § 703-712), GER shall clear vegetation in preparation for construction of the rail line before or after the breeding bird nesting season to avoid inadvertent removal of active nests (i.e., nesting adults, young, or eggs). If clearing is required during nesting season, GER shall consult with OEA and USFWS on appropriate nest survey methods for that area prior to any clearing or construction activities.