

**Wayland, Joshua**

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**From:** Wayland, Joshua  
**Sent:** Tuesday, November 15, 2016 7:08 AM  
**To:** 'Kitty Henderson'  
**Cc:** 'Lydia Woods'  
**Subject:** Fwd: Notification of Adverse Effect--Railroad Abandonment in Baytown, Texas  
**Attachments:** Historic Summary Report (AB 33 324X).pdf

Ms. Henderson,

I believe you have received all of the documents in this case. I am forwarding the original email chain with the referenced report attached, which was sent to you and Ms. Woods on October 5, in case it was lost in the shuffle.

Best,

Josh Wayland

Environmental Protection Specialist  
Office of Environmental Analysis  
Surface Transportation Board

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**From:** Joshua Wayland  
**Sent:** Wednesday, October 05, 2016 7:23 AM  
**To:** 'Lydia Woods' <Lydia.Woods@thc.texas.gov>  
**Cc:** kitty@historicbridgefoundation.com; Linda Henderson <Linda.Henderson@thc.texas.gov>  
**Subject:** RE: Notification of Adverse Effect--Railroad Abandonment in Baytown, Texas

Lydia,

Thank you for following up with this. We had hoped that the attached document would meet the requirements you specify so that we can move forward with consultation. The document discusses in detail the Board's regulatory authority in railroad abandonment cases, alternatives to abandonment, and limitations on the Board's ability to mitigate adverse impacts. I believe that the railroad would be willing to provide a report detailing the bridge's condition, but since our authority is limited to economic regulation of railroads, the condition of the bridge is not an issue from our perspective; I am not aware of any safety or operational concerns with the bridge.

I should also clarify that at this point the anticipated adverse effect from abandonment would fall under 36 CFR § 800.5(a)(2)(iv) because abandonment would result in the transfer of the bridge out of federal control. Once abandonment is finalized, however, UP would be able to dismantle the bridge without additional review by the Board. My understanding is that UP is willing to negotiate a sale of the bridge or a railbanking/trails-use agreement if a willing purchaser or trails-use sponsor can be identified. In the past, our MOAs have contained provisions specifying how and for how long a railroad will advertise a bridge for sale; something similar may be an option in this case. We hope that your office will be able to assist us in setting up the appropriate process for identifying an interested party to take responsibility for the bridge.

Thanks again for your time. Best regards,

Josh Wayland

Environmental Protection Specialist  
Office of Environmental Analysis  
Surface Transportation Board

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**From:** Lydia Woods [<mailto:Lydia.Woods@thc.texas.gov>]  
**Sent:** Tuesday, October 04, 2016 2:28 PM  
**To:** Joshua Wayland <[Joshua.Wayland@stb.gov](mailto:Joshua.Wayland@stb.gov)>  
**Cc:** [kitty@historicbridgefoundation.com](mailto:kitty@historicbridgefoundation.com); Linda Henderson <[Linda.Henderson@thc.texas.gov](mailto:Linda.Henderson@thc.texas.gov)>  
**Subject:** RE: Notification of Adverse Effect--Railroad Abandonment in Baytown, Texas

Mr. Wayland,

Thank you for the clarification of your involvement with 4(f). As you requested this morning, here is the exact wording from Section 106 discussing the additional information we require before we can move forward to mitigation.

36 CFR Part 800-Protection of Historic Properties § 800.6 – Resolution of adverse effects states: (a) *Continue consultation*. The agency official shall consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effect on historic properties.

We understand that due to the abandonment of the rail line that a replacement bridge is not proposed at this time. However, this still means that you or Union Pacific need to provide information showing that you have considered alternative solutions that could avoid and solutions that could minimize the adverse effect, which is the demolition of the bridge. For example, in other Section 106 projects that we have seen where rail lines are being decommissioned, the railroad will look into removing the rail line approaches, while leaving the bridge in place. Rail lines have also been turned into walking trails and the bridges are repurposed for walking traffic. If needed, a consulting party can be brought in to look into possible alternatives for avoiding and minimizing the adverse effect. We need to understand how UP and the STB came to the conclusion that demolishing the bridge would be the best solution to the abandonment of the bridge before we move forward to mitigation possibilities.

If you have any additional questions please let me know.

Thank You,

**Lydia Woods**  
East Texas Project Reviewer  
Architecture Division  
Texas Historical Commission  
PO Box 12276  
Austin, Texas 78711-2276  
512-463-9122  
[www.thc.texas.gov](http://www.thc.texas.gov)



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**From:** Joshua Wayland [<mailto:Joshua.Wayland@stb.gov>]  
**Sent:** Tuesday, October 04, 2016 11:19 AM  
**To:** Lydia Woods <[Lydia.Woods@thc.texas.gov](mailto:Lydia.Woods@thc.texas.gov)>  
**Cc:** [kitty@historicbridgefoundation.com](mailto:kitty@historicbridgefoundation.com); Linda Henderson <[Linda.Henderson@thc.texas.gov](mailto:Linda.Henderson@thc.texas.gov)>  
**Subject:** RE: Notification of Adverse Effect--Railroad Abandonment in Baytown, Texas

Hi Lydia,

The Surface Transportation Board is an independent decision-making body separate from DOT, so Section 4(f) doesn't directly apply to Board actions. It does come up occasionally in rail construction cases where there are road crossings that would be constructed under DOT authority or using DOT funds that would affect 4(f) properties, but I am not aware of any 4(f) review in past abandonment cases.

My understanding is that TxDOT may end up having a role in this project and they would certainly have 4(f) responsibilities. I will reach out to the railroad to clarify this and see who to contact at TxDOT in case they need to be brought into this discussion.

Best,

Josh Wayland

Environmental Protection Specialist  
Office of Environmental Analysis  
Surface Transportation Board

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**From:** Lydia Woods [<mailto:Lydia.Woods@thc.texas.gov>]  
**Sent:** Tuesday, October 04, 2016 11:41 AM  
**To:** Joshua Wayland <[Joshua.Wayland@stb.gov](mailto:Joshua.Wayland@stb.gov)>  
**Cc:** [kitty@historicbridgefoundation.com](mailto:kitty@historicbridgefoundation.com); Linda Henderson <[Linda.Henderson@thc.texas.gov](mailto:Linda.Henderson@thc.texas.gov)>  
**Subject:** RE: Notification of Adverse Effect--Railroad Abandonment in Baytown, Texas

Mr. Wayland,

Thank you for copying me on the information you submitted to the ACHP. Since we do not often work with the Surface Transportation Board I am inquiring how STB manages their possible 4(f) requirements.

Thank you,

**Lydia Woods**  
East Texas Project Reviewer  
Architecture Division  
Texas Historical Commission  
PO Box 12276  
Austin, Texas 78711-2276  
512-463-9122  
[www.thc.texas.gov](http://www.thc.texas.gov)



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**From:** Joshua Wayland [<mailto:Joshua.Wayland@stb.gov>]

**Sent:** Monday, October 03, 2016 3:45 PM

**To:** [e106@achp.gov](mailto:e106@achp.gov)

**Cc:** [mackshumate@up.com](mailto:mackshumate@up.com); Lydia Woods <[Lydia.Woods@thc.texas.gov](mailto:Lydia.Woods@thc.texas.gov)>; [kitty@historicbridgefoundation.com](mailto:kitty@historicbridgefoundation.com); [aschmidt@summite.com](mailto:aschmidt@summite.com)

**Subject:** Notification of Adverse Effect--Railroad Abandonment in Baytown, Texas

The attached documents pertain to a proposed railroad abandonment in Harris and Chambers Counties, Texas. Union Pacific Railroad company intends to seek authority from the Surface Transportation Board to abandon approximately 2.23 miles of rail line in Baytown, Texas, which could result in the removal or alteration of a vertical lift span bridge over Cedar Bayou, a historic property that is eligible for listing in the National Register of Historic Places. The purpose of this notification is to (1) notify the ACHP of a finding that an undertaking may adversely affect historic properties, and (2) invite the ACHP to participate in Section 106 consultation. Please contact me at the number below if you need additional information.

Best regards,

Josh Wayland  
Environmental Protection Specialist  
Office of Environmental Analysis  
Surface Transportation Board

**SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC 20423**

**HISTORIC SUMMARY REPORT**

**Docket No. AB 33 (Sub-No. 324X)**

**Union Pacific Railroad Company—Abandonment Exemption—  
in Harris and Chambers Counties, Texas**

**BACKGROUND**

Union Pacific Railroad Company (UP) intends to file with the Surface Transportation Board (the Board) a notice or a petition under 49 C.F.R. § 1152.50 seeking exemption from the requirements of 49 U.S.C. § 10903 to abandon and discontinue rail service over a line of railroad located in Harris and Chambers County, Texas. The rail line extends from UP Milepost 2.4 in Baytown to Milepost 4.63 at the Eastside of Cedar Bayou, a distance of 2.23 miles (the Line). A map of the Line is appended to this document. If the Board were to grant abandonment authority, UP would be able to salvage any track and related material from the rail corridor, dismantle any rail-related structures within the corridor, and dispose of the right-of-way.

The Board's Office of Environmental Analysis (OEA) is responsible for ensuring the agency's compliance with the National Environmental Policy Act and the National Historic Preservation Act (NHPA). OEA has prepared this report to summarize the information available to date regarding the prospective abandonment of the Line and its potential effects to historic properties listed in or eligible for listing in the National Register of Historic Places (the National Register). At such a time as UP requests abandonment authority from the Board, OEA would prepare an Environmental Assessment (EA) and, following a public comment period, a Final EA that would document OEA's final determinations and recommended environmental and historic mitigation measures. The purpose of this document is to provide parties interested in participating in the Section 106 process for this undertaking with relevant background information, including the Board's findings regarding the impact of the proposed abandonment on historic properties, the Board's regulatory authority to protect historic properties, potential alternatives to the proposed abandonment, and the process by which the Board proposes to mitigate impacts to historic properties from the proposed abandonment.

**HISTORY OF THE LINE**

Pursuant to the Board's environmental rules at 49 C.F.R. § 1105.7(b), UP submitted its combined Environmental and Historic Report to OEA and served the report on a number of

appropriate federal, state, and local agencies, including the Texas Historical Commission (the State Historic Preservation Officer or SHPO).<sup>1</sup>

According to UP's Environmental and Historic Report, the Line was constructed in approximately 1968 by Missouri Pacific Railroad to serve a steel mill owned by U.S. Steel and located at Cedar Bayou. The steel mill closed permanently in 1988 and the site was redeveloped as the Cedar Point Industrial Park. There has been no local or overhead traffic over the Line for at least two years.

### **HISTORICAL STRUCTURES IN THE AREA OF POTENTIAL EFFECT**

In railroad abandonment cases, OEA typically determines the Area of Potential Effect (APE) to comprise the rail right-of-way. Examples of historic properties may include bridges, culverts, depots, other rail-related structures, or, in some cases, the rail line itself. In this case, the rail line and most of the structures associated with it are less than 50 years old and do not appear to be of historical significance. There are three bridges on the Line, two of which were apparently constructed at the same time as the Line and appear to be of ordinary and common design and construction.

Railroad applicants seeking to abandon a rail have been delegated the authority to contact SHPOs before the Section 106 process under NHPA officially begins. By letter dated January 20, 2016, the SHPO responded to a request for scoping information about the Line from UP. In response, the SHPO noted that the third bridge, a vertical lift span bridge over Cedar Bayou (the Cedar Bayou Bridge), was originally constructed in 1912 over the St. Francis River at Cody, Arkansas as part of the St. Louis, Iron Mountain and Southern Railway and was moved to its current location in 1967. The SHPO asked that either OEA or UP evaluate the eligibility of the bridge for National Register listing.

UP complied with SHPO's request in its Environmental and Historic Report, where it concluded that no historic properties listed in or eligible for listing in the National Register would be affected by the proposed abandonment. UP explained that it reached this conclusion because none of the structures within the rail right-of-way, including the Cedar Bayou Bridge, have been in place for more than 50 years. UP reasoned that, although the Cedar Bayou Bridge was originally constructed in 1912 (104 years ago), it has been in place in its current location for only 49 years and therefore does not meet the criteria for being "in place for 50 years."

By letter dated April 20, 2016, the SHPO submitted additional comments stating that, although the Bridge was moved to its current location in 1967, the structure may be eligible for listing in the National Register. The SHPO notes that, although location is one of the seven

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<sup>1</sup> The Environmental and Historic Reports are available for viewing on the Board's website at [www.stb.dot.gov](http://www.stb.dot.gov) by going to "E-Library," selecting "Filings," and then conducting a search for AB 33 (Sub-No. 324X).

aspects of historic integrity, structures relocated from their original location may be eligible for listing in the National Register if they meet Criteria Consideration B: Moved Properties of the National Register criteria of eligibility and are significant primarily for their architectural or engineering value. The SHPO requested that the Board consult with the SHPO to make a determination regarding the eligibility of the Bridge for listing in the National Register.

After receiving the SHPO's comments, UP engaged Summit Envirosolutions, Inc. (Summit) to undertake a Historic Resources Evaluation of the Cedar Bayou Bridge. According to the evaluation report, which has been provided to the SHPO and has been made available to the public on the Board's website at [www.stb.dot.gov](http://www.stb.dot.gov), the bridge was designed by the firm Waddell & Harrington, whose principals were prominent bridge engineers in the early twentieth century and among the foremost designers of vertical lift span bridges during that period. Because only nine vertical lift span bridges are known to have been built nationwide prior to 1912, the Cedar Bayou Bridge is an early example of this bridge type and was an example of an unusual bridge type in its original location in Arkansas. In its current location, the bridge is a rare extant example of the bridge type, as it may be other only existing example of a pre-World War II vertical lift span bridge in Texas.

The Historic Resources Evaluation report concluded that the Cedar Bayou Bridge may be eligible for listing in the National Register under Criterion C, as a rare extant example of a vertical lift truss span dating from the early twentieth century. The report also concluded that the bridge meets Criteria Consideration B: Moved Properties because it retains excellent integrity of materials, design and workmanship; its major features are of original materials and those components that have been replaced are similar to the originals. Because it remained in use as a railroad crossing following its relocation, the bridge also retains integrity of feeling, association, and setting in its current location, according to Summit. OEA has not been made aware of any information suggesting that the bridge is not serviceable for continued use as a rail bridge or that the structure presents a safety hazard or an obstacle to navigation.

After reviewing the available information provided by Summit and UP, and in consultation with the SHPO, OEA has determined that the Cedar Bayou Bridge is a historic property that is eligible for inclusion in the National Register under Criterion C as an example of an uncommon and distinctive bridge type. Although it was moved to its present location in 1967, OEA concurs that the move from its original location does not diminish the property's integrity or ability to convey historical significance and that the structure therefore meets Criteria Consideration B for moved properties.

### **EFFECTS ON HISTORIC PROPERTIES**

By letter dated July 27, 2016, the SHPO informed UP that, based on its review of the Historic Resources Evaluation report prepared by Summit, the SHPO believes that the demolition of the Bridge would constitute an adverse effect on a historic property eligible for

listing in the National Register. By letter dated August 12, 2016, Summit, on behalf of UP, requested that the Board make a determination of adverse effect to a historic property and inform the SHPO and the Advisory Council on Historic Preservation (ACHP) of the adverse effect in order to move forward with the Section 106 process. OEA has determined that abandonment of the Line would result in an adverse effect to the historic property because, should the Board grant abandonment authority, UP would be authorized to remove the Cedar Bayou Bridge.

### **ALTERNATIVES TO ABANDONMENT**

Alternatives to proposed railroad abandonments include rejection, discontinuance of service without abandonment, and continued operation by another operator. Under any of those alternatives, the Line would not be abandoned and no adverse effect to historic properties listed in or eligible for listing in the National Register would occur.

In cases where a line of railroad has been out of service and there are no shippers located on the rail line proposed for abandonment, denial of abandonment is rare and must be based on extraordinary economic need for the continued service over the line. The Board cannot deny authority for a railroad to abandon a rail line solely on the grounds that it would adversely affect historic resources.<sup>2</sup>

Historic properties associated with rail line are sometimes preserved through the conversion of the rail line into a multiuse trail under the interim trails use (railbanking) provisions of the National Trails System Act (Trail Act).<sup>3</sup> Under the Trails Act, railbanking is a voluntary agreement between a railroad company and a trail sponsor, which may be a private organization or a governmental organization. Once an agreement is reached between the parties, the abandonment is held in abeyance and the rail corridor is preserved until such a time as the line is reactivated for rail service.

The Board's role under the Trails Act is ministerial.<sup>4</sup> The Board cannot require that a railroad enter into a trail use agreement or specify the terms of that agreement.<sup>5</sup> In the present case, OEA believes that currently, there are no plans for UP to enter into trails use negotiations with any potential trail use sponsor.

### **MITIGATION OF ADVERSE EFFECTS**

The Board's ability to protect historic properties is limited. With respect to rail line abandonments, the Board can impose historic preservation conditions only to the extent that the particular property is owned by the railroad seeking abandonment—either full ownership in fee

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<sup>2</sup> See Implementation of Environmental Laws, 7 I.C.C.2d 807, 828-29 (1991).

<sup>3</sup> See 16 U.S.C. § 1247(d).

<sup>4</sup> See Goos v. ICC, 911 F.2d 1283, 1295 (8<sup>th</sup> Cir. 1990).

<sup>5</sup> See Georgia Great S. Div.—Aban. & Discontinuance Exemption—Between Albany & Dawson, in Terrell, Lee & Dougherty Counties, Ga., 6 S.T.B. 902, 907 (2003).

or a long-term interest in the property—and the property has a sufficient nexus to the proposal under review. When the Board imposes historic preservation conditions on a particular property, the Board cannot force the applicant to sell off or donate its property, or impose a restrictive covenant upon the deed. Documentation of the historic resources, which may include taking photographs or preparing a history before they are altered or removed, is generally the only form of nonconsensual mitigation the Board can impose.

Although the Board has limited authority to protect historic properties, if the consulting parties agree to undertake additional mitigation beyond what the Board may require, such consensual mitigation can be incorporated into a memorandum of agreement (MOA) or, more rarely, a programmatic agreement (PA). The execution of a PA or MOA completes the Section 106 process for Board actions that may adversely affect historic properties.

A signatory to an MOA or PA has full legal rights under the agreement and can make amendments or terminate the agreement where such provisions are included. Concurring parties who sign agreement documents only do so to note their agreement or concurrence with the document, but have no legal authority under the agreement to make changes or objections of any kind.<sup>6</sup> The signatories to an MOA or PA generally consist of OEA, the railroad applicant, and the SHPO or THPO. ACHP may also be signatory to an MOA or PA if it has entered the Section 106 process for a particular Board action. OEA may also include other signatories at its discretion.

## **CONCLUSIONS**

Because UP has not requested abandonment authority from the Board in this proceeding, there is currently no federal action before the Board that would constitute an undertaking requiring Section 106 review. At such a time as UP requests abandonment authority from the Board, OEA would issue an EA that would analyze the potential impacts of the proposed abandonment to the environment and to historic resources listed in or eligible for listing in the National Register, including the Cedar Bayou Bridge. The EA would be made available to the public on the Board's website at [www.stb.dot.gov](http://www.stb.dot.gov). In order to facilitate public comment, all relevant correspondences and submissions are also posted publically to the Board's website.<sup>7</sup> In the present case, these include the Environmental and Historic Report submitted by UP, the Historic Resources Evaluation Report prepared by Summit, and the comments submitted by the SHPO and other agencies, all of which are available on the Board's website.

Following a public comment period, OEA would issue a Final EA. If, at the time of the issuance of the Final EA, an MOA has been executed regarding the Cedar Bayou Bridge, and provided that no additional historic properties are identified during the public comment period, then OEA would consider the Section 106 process to have been completed. If, however, new

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<sup>6</sup> See 36 C.F.R. § 800.6(c)

<sup>7</sup> See 49 C.F.R. § 1105.7

information is revealed regarding historic properties other than the Bridge, OEA would recommend the imposition of a condition that would prevent UP from consummating the abandonment until impacts to those properties can be assessed.

Based on the information available to date, OEA has determined that, if UP should request abandonment authority from the Board, the abandonment of the Line as described in UP's Environmental and Historic Report would result in an adverse effect to the Cedar Bayou Bridge, a historic property that is eligible for listing in the National Register. OEA intends to inform the SHPO and ACHP regarding this potential adverse effect and to invite those agencies and other concerned parties to participate in drafting a MOA that would specify the specific mitigation measures to be taken by UP prior to beginning any potential salvage activity associated with the abandonment.

AB 33 (Sub-No. 324X)  
Abandonment Exemption  
in Harris and Chambers Counties, Texas

