

MEMORANDUM OF AGREEMENT
AMONG
THE SURFACE TRANSPORTATION BOARD,
THE TEXAS HISTORICAL COMMISSION,
THE UNION PACIFIC RAILROAD COMPANY,
AND THE TEXAS DEPARTMENT OF TRANSPORTATION
REGARDING DOCKET NO. AB 33 (SUB-NO. 324X)
UNION PACIFIC RAILROAD COMPANY
-- ABANDONMENT EXEMPTION --
IN BAYTOWN, TEXAS

WHEREAS, Union Pacific Railroad Company (UP) on March 9, 2017, filed a Notice of Exemption with the Surface Transportation Board (the Board) under 49 C.F.R. § 1152.50 to abandon and discontinue service over a 2.23-mile portion of a line of railroad known as the U.S. Steel Industrial Lead (the Line) between Milepost 2.4 and Milepost 4.63 in Harris and Chambers Counties, Texas, in Docket No. AB 33 (Sub-No. 324X); and in an April 27, 2017 decision, the Board imposed certain conditions under Section 106 of the National Historic Preservation Act (NHPA); and

WHEREAS, the proposed abandonment would include removal and salvage of the vertical lift bridge at the Cedar Bayou (Bridge); and

WHEREAS, the Board is the lead federal agency for the purposes of compliance with the NHPA for this abandonment; and

WHEREAS, the Board has determined that the rail line abandonment constitutes an Undertaking under Section 106 of the NHPA, 54 U.S.C. § 306108, and has consulted with the Texas Historical Commission (the State Historic Preservation Officer or SHPO) pursuant to Section 106 of NHPA, and its implementing regulations, 36 C.F.R. § 800; and

WHEREAS, removal of the Bridge is the only feasible option because the bridge is currently not operable; a buyer willing to purchase, relocate, and preserve the bridge has not been identified; and the United States Coast Guard (Coast Guard) considers the bridge to be a potential hazard to navigation; and

WHEREAS, based on the recommendation of a qualified historical consultant and in consultation with the SHPO, the Board determined that the Bridge is eligible for listing in the National Register of Historic Places (the National Register) under Criterion C for its design and

engineering, meeting Criteria Consideration B for moved properties, pursuant to 36 C.F.R. § 800.4; and

WHEREAS, the Board, in consultation with the SHPO pursuant to 36 C.F.R. § 800.5, determined that the removal of the Bridge would constitute an adverse effect to a National Register-eligible historic property; and

WHEREAS, the Board consulted with the Advisory Council on Historic Preservation (ACHP), notifying the ACHP that an adverse effect determination had been made in accordance with 36 C.F.R. § 800.6(a)(1); and

WHEREAS, in a letter dated November 18, 2016, the ACHP declined to participate in this Memorandum of Agreement (MOA); and

WHEREAS, UP is the project proponent and has been invited to participate in this consultation and to sign this MOA as an Invited Signatory; and

WHEREAS, the Historic Bridge Foundation, the Harris County Historical Commission, and the Chambers County Historical Commission have been invited to participate in this consultation as Consulting Parties; and

WHEREAS, the Historic Bridge Foundation has agreed to participate in this consultation as a Consulting Party; and

WHEREAS, the United States Army Corps of Engineers (Corps) declined to participate in this MOA citing Corps rules and regulations providing that "jurisdiction of the Secretary of Transportation and the Coast Guard over bridges and causeways includes authority to approve the removal of such structures when the owners thereof desire to discontinue their use." *Department of Defense, Department of the Army, Engineers Corps; Regulatory Program, Federal Register Part II (July 19, 1977), pg. 37143*; and

WHEREAS, in a letter dated July 28, 2018, the Coast Guard declined to participate in this MOA but set forth conditions related to the Bridge removal work; and

WHEREAS, the Texas Department of Transportation (TxDOT) will be performing the removal of the Bridge on behalf of UP and has been invited to participate to sign this MOA as an Invited Signatory with regard to the Coast Guard's conditions related to the Bridge removal work only; and

WHEREAS, pursuant to 36 C.F.R. § 800.6, the Board has consulted with the SHPO and UP regarding ways to avoid, minimize, or mitigate potential effects to the historic resource as a result of the proposed abandonment, and the Board, the SHPO, and UP have all agreed upon the measures described below under "Stipulations;" and

WHEREAS, the definitions listed in 36 C.F.R. § 800.16 are applicable throughout this MOA.

NOW, THEREFORE, the Board, the SHPO, and UP agree that this Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties. The execution of this MOA by the parties hereto and its subsequent submission to the ACHP in accordance with 36 C.F.R. § 800.6(b)(1)(iv), shall, pursuant to 36 C.F.R. § 800.6(c), be considered to be an agreement with the ACHP for the purposes of Section 110(1) of the NHPA. Execution and submission of the MOA, and implementation of its terms, evidences that the Board has afforded the ACHP an opportunity to comment on the proposed action relating to the Line, and that the Board has taken into account the effects of the abandonment on historic properties and is satisfying the requirements of Section 106 of the NHPA.

STIPULATIONS

The Board shall ensure that the following measures are carried out:

I. DOCUMENTATION

As mitigation for removal of the Cedar Bayou Bridge, UP shall complete photographic and written documentation for the property subject to the provisions outlined below. Once the photographic documentation and written documentation and narratives have been approved by the SHPO, and following the completion of the Board's abandonment process, the Board will notify UP that it may commence with the removal of the Cedar Bayou Bridge. The actions that implement this MOA shall include the following:

- 1. Recordation of Historic Properties.** Prior to removal of any portion of the Bridge, UP shall complete documentation equivalent to the *Secretary of the Interior's Standards and Guidelines for Architectural and Engineering Documentation, HABS/HAER Standards* (Standards). This shall include, as described below: measured drawings; professional quality digital photographs, printed on archival paper with an accompanying archival "gold" compact disc (CD); and an architectural and historical narrative, all in an archive-stable format.
 - A. Photographs.** UP shall complete photographic documentation of the Bridge. This documentation shall include no more than 20 digital photographs to include, to the extent feasible, all four elevations of the bridge, bridge details, and at least one context photograph. The documentation shall include a photograph key showing the location and view direction of each image. Final versions of the photographs shall be professionally printed on 8½ x 11", acid-free, 100-year archival paper, and the digital photographs shall be submitted electronically on archival CDs.
 - B. Architectural and Historical Narrative.** The narrative shall contain a description of the bridge, information on the construction in its original location over the St. Francis River in Cody, Arkansas, and the relocation of the bridge to Cedar Bayou. In addition to the

circumstances and history of its move, the narrative shall include: a summary history of the Missouri Pacific Railroad in Arkansas and Texas, construction of the U.S. Steel Lead, and the acquisition by UP; a history of the development of truss bridges and movable spans, with emphasis on vertical lift bridges; and a history of the firm Waddell and Harrington, its two principal engineers, and its successor firms.

- C. **Measured Drawings of the Bridge.** The documentation shall include reproduction of all existing drawings of the current bridge, minus duplicates. A site plan/aerial photograph of the bridge and the U.S. Geological Survey quadrangle map of the area shall also be included. The final version of these drawings shall be submitted on archival CDs and printed in hard copy on 11 x 17, acid-free, 100-year archival paper. No new drawings shall be produced.
2. **Public Dissemination of Historic Documentation.** Also prior to the removal of any portion of the Cedar Bayou Bridge, UP shall prepare an article for public audiences describing the Cedar Bayou Bridge and a history of its construction and move. The article shall be of an appropriate length for publication in railroad and/or bridge history magazine(s) to maximize the availability of the information and shall use language appropriate for readability by the general public. UP will reach out to various railroad magazines and websites and will ensure that the article is published in some capacity. Proof of publishing will be sent to the SHPO.

II. REVIEW AND COMMENT

- A. Prior to the start of demolition activity, UP shall prepare the draft HAER documentation in accordance with Stipulation I and shall distribute it via electronic mail or CD to the Board and via the electronic THC Review and Compliance (eTRAC) system or CD to the SHPO for review. The Board and the SHPO shall review and provide comments to UP within 30 calendar days of receipt of the photographic documentation.
- B. If comments requiring material change are provided to UP regarding the HAER documentation, UP shall revise the narrative and drawings in response to the comments, as needed, and resubmit the report within 30 calendar days of receipt of comments. If no comments requiring material changes are provided to UP by the end of the 30-day comment period, UP shall finalize the HAER narrative and drawings as described in Stipulation III and submit a final copy to the Board and the SHPO within 15 calendar days of the end of the comment period.
- C. UP shall prepare the draft public narrative and measured drawings in accordance with Stipulations I.B. and I.C. and shall distribute them via electronic mail or CD to the Board and via eTRAC or CD to the SHPO for review within 180 calendar days of the execution of this MOA. The Board and the SHPO shall review and provide comments to UP within 30 calendar days of receipt of the draft HAER narrative and measured drawings.
- D. If comments requiring material change are provided to UP regarding the public narrative or measured drawings, UP shall revise the narrative and drawings in response to the

comments, as needed, and resubmit the report within 30 calendar days of receipt of comments. If no reasonable comments requiring material change are provided to UP by the end of the 30-day comment period, UP shall finalize the HAER narrative and measured drawings as described in Stipulation III and submit a final copy to the Board and the SHPO within 15 calendar days of the end of the comment period.

III. FINALIZATION

- A. Final HAER documentation shall be produced on acid-free, 100-year archival paper, with the photographs and drawings on archival CDs.
- B. Upon finalization of the HAER documentation, UP shall submit copies of the documentation to the Texas SHPO, the Surface Transportation Board Office of Environmental Analysis (the OEA), the Baytown library and the Houston Metropolitan Research Center. Documentation shall be made available in print on acid-free, 100-year archival paper and electronically on archival CDs.
- C. Upon finalization of the article for public dissemination, UP shall submit the article to a railroad historical magazine for publication. If the article is not accepted for publication by the initial magazine, UP shall submit the article for publication to two additional magazines. UP shall also submit the public article to the website www.bridgehunter.com. Proof of publications and/or publication attempts shall be submitted to the Texas SHPO.
- D. The documentation shall be considered final upon issuance of a written notice from the Board that all comments have been satisfactorily addressed. However, the parties acknowledge that, if the bridge is determined by UP to be subject to imminent failure or other physical breakdown, UP would notify the Board and the SHPO and would commence the bridge removal immediately in coordination with the Board.
- E. UP shall bear the cost for document production and delivery in Stipulations I, II and III.
- F. OEA shall post a summary of the historic documentation, along with photographs of the bridge, on the interactive Rail Heritage Map on the Board's Railroad Map Depot. OEA shall also submit an article to the Historic Bridge Foundation describing the Railroad Map Depot and the Rail Heritage Map.

IV. BRIDGE REMOVAL

UP and TxDOT acknowledge the following requirements of the Coast Guard regarding the removal of the Bridge:

- 1. The Bridge is to be removed in its entirety including removal of all piers 5 feet below the mud line.
- 2. Following the removal of the Bridge, the TxDOT will provide the Bridge Administration Branch of the Coast Guard with confirmation that the Bridge was removed in accordance

with the requirements set forth in the July 28, 2018 letter from the Coast Guard to TxDOT.

3. TxDOT shall obtain approval from Coast Guard Sector Houston-Galveston before the operation begins.

V. DURATION

This MOA will expire if the terms have not been implemented within three years of execution. At such time, and prior to work continuing on the Undertaking, the Board shall either (a) execute a new MOA pursuant to 36 C.F.R. § 800.6, or (b) request comment from, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. Prior to such time, the Board may consult with the signatories to reconsider the terms of the MOA and amend it, including extension of its duration, in accordance with Stipulation IX below. The Board shall notify the signatories as to the course of action it will pursue.

VI. UNANTICIPATED DISCOVERIES

If the Board determines after bridge removal has commenced, that the Undertaking will affect a previously unidentified property that may be eligible for inclusion in the National Register, the Board will address the discovery in accordance with 36 C.F.R. § 800.13(b)(3). The Board may assume the discovered property to be eligible for the National Register in accordance with 36 C.F.R. § 800.13(c).

VII. DISPUTE RESOLUTION

Should any signatory or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the Board shall consult with such party to resolve the objection. If the Board determines that such objection cannot be resolved, the Board will:

- A. Forward all documentation relevant to the dispute, including the Board's proposed resolution, to the ACHP. The ACHP shall provide the Board with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Board shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and signatories and provide them with a copy of this written response. The Board will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the 30-day time period, the Board may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Board shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories to the MOA, and provide them and the ACHP with a copy of such written response.
- C. The Board's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remains unchanged.

VIII. MONITORING AND REPORTING

Each year following the execution of this MOA until it expires, is terminated, or stipulations I through III are completed, UP shall provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such a report shall include all proposed scheduling changes and disputes or objections received in UP's efforts to carry out the terms of this MOA.

IX. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

X. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation IX, above. If within 30 days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the Undertaking, the Board must either (a) execute a new MOA pursuant to 36 C.F.R. § 800.6, or (b) request comment from, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. The Board shall notify the signatories as to the course of action it will pursue. Under no circumstances shall UP be obligated to restore any portion of the bridge that has been demolished or removed under the terms of this MOA.

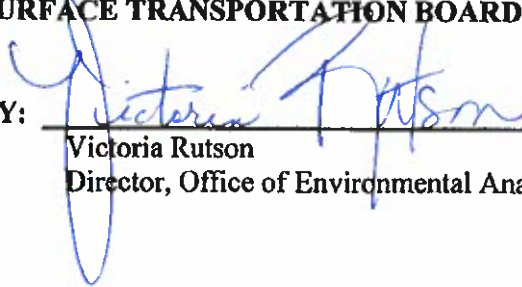
Execution of this MOA by the Board and SHPO and implementation of its terms evidence that the Board has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

ACCEPTED AND AGREED

SIGNATORY PARTIES:

SURFACE TRANSPORTATION BOARD

BY:



Victoria Rutson
Director, Office of Environmental Analysis

DATE:

Oct. 25, 2018

TEXAS STATE HISTORIC PRESERVATION OFFICER

BY: Mark Wolfe DATE: 9/11/18
Mark Wolfe
State Historic Preservation Officer

Invited Signatory:

UNION PACIFIC RAILROAD COMPANY

BY: Chris Goble DATE: 10/4/18
Chris Goble
AVP Real Estate

Invited Signatory:

TEXAS DEPARTMENT OF TRANSPORTATION

BY: James M Bass DATE: 10/19/18

Concurring Signatory:

HISTORIC BRIDGE FOUNDATION

BY: Kitty Henderson

Kitty Henderson
Executive Director

DATE: 10/22/18