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November 13, 2003

VIA EXPRESS DELIVERY

ENTERED
Office of Proceedings

NOV 14 2003

Part of
Public Record

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

**Re: Finance Docket FD 34405
Transportation Agency of Monterey County—Acquisition Exemption—
Seaside Industrial Lead—Union Pacific Railroad Company**

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are an original and ten copies of a Motion to Dismiss the Notice of Exemption that was previously filed on behalf of the Transportation Agency of Monterey County. Please note that we are requesting expedited consideration of the Motion to Dismiss.

Should any questions arise relative to this filing, please feel free to contact me. Thank you for your assistance in this matter.

Very truly yours,



Michael N. Conneran

cc: Wm. Reichmuth
David J. Miller, Esq.
David C. Longinotti, Esq.
Mack H. Shumate, Jr., Esq. (Union Pacific)



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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34405

TRANSPORTATION AGENCY OF MONTEREY COUNTY
-- ACQUISITION EXEMPTION --
SEASIDE INDUSTRIAL LEAD
UNION PACIFIC RAILROAD COMPANY

TRANSPORTATION AGENCY OF MONTEREY COUNTY
MOTION TO DISMISS NOTICE OF EXEMPTION

EXPEDITED CONSIDERATION REQUESTED

ENTERED
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Public Record

Michael N. Conneran
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333 Market Street, Suite 2300
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**ATTORNEYS FOR TRANSPORTATION
AGENCY OF MONTEREY COUNTY**

Dated: November 13, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34405

TRANSPORTATION AGENCY OF MONTEREY COUNTY
-- ACQUISITION EXEMPTION --
SEASIDE INDUSTRIAL LEAD
UNION PACIFIC RAILROAD COMPANY



TRANSPORTATION AGENCY OF MONTEREY COUNTY
MOTION TO DISMISS NOTICE OF EXEMPTION

I. INTRODUCTION

Pursuant to a Purchase and Sale Agreement between Transportation Agency of Monterey County ("TAMC") and Union Pacific Railroad Company ("UP"), TAMC has acquired UP's right, title and interest in the 13.1 mile railroad right-of-way and related improvements located in Monterey County, California, known as the "Seaside Industrial Lead," and referred to herein as the "Subject Line." UP will retain an exclusive, perpetual easement (at least until their abandonment of the Subject Line is effective) for purposes of providing freight rail service on the Subject Line.

TAMC has filed a Notice of Exemption (the "Notice") pursuant to 49 C.F.R. Section 1150.31, et seq. to acquire the Subject Line. TAMC hereby moves the Board to dismiss the Notice. TAMC submits that, because of the nature and terms of the proposed transaction as described in the Notice and as set forth in the Trackage Rights Agreement ("Trackage Rights Agreement") and proposed Quitclaim Deed ("Quitclaim Deed") attached hereto, this transaction is not subject to Board jurisdiction and consummation of the transaction will not make TAMC a rail carrier.

UP has recently filed a “Revised Notice of Exemption” seeking to abandon the Subject Line (Union Pacific Railroad Company—Revised Exempt Abandonment and Discontinuance of Service and Trackage Rights—in Monterey County, CA (Seaside Industrial Lead between Castroville, CA and Seaside, CA (Docket No. AB-33 (Sub-No. 157X) STB served October 10, 2003). Following the effective date of the abandonment, TAMC does not wish to be a carrier or for this line to be subject to federal jurisdiction.

II. STATEMENT OF FACTS

TAMC is a public transit district organized under Title 7.89 (Sections 67930 et seq.) of the California Government Code. The jurisdiction served by TAMC is Monterey County, California. Currently, TAMC conducts regional transportation planning for the Monterey County area and distributes funding for transportation projects. TAMC owns no rolling stock, has no rail operations staff and provides no transit service of any kind.

TAMC plans to evaluate the feasibility of passenger rail operations over the Subject Line. Under the Purchase and Sale Agreement, TAMC acquired, inter alia, UP’s right, title and interest in the Subject Line and certain associated improvements. UP will retain an exclusive, perpetual easement to use the Subject Line to conduct freight rail service (the “Freight Easement”). See Quitclaim Deed.¹ However, in its abandonment exemption, UP indicated that no local service has operated over the line for the past two years.

Pursuant to the Freight Easement, UP will retain the right to “operate, use, construct, reconstruct, maintain, repair, relocate and/or remove existing and/or future railroad, rail and railroad-related equipment, facilities and transportation systems necessary for and related to [UP’s] freight rail operations.” In addition, UP will retain the right to “construct, maintain and operate freight rail sidings and related facilities upon . . . the Property as reasonably necessary

for [UP's] use and enjoyment of the [Freight Easement].” Thus, UP will retain the property rights necessary to conduct rail carrier operations on the Subject Line.

TAMC and UP will enter into a Trackage Rights Agreement² to govern their respective rights and obligations with respect to rail operations on the Subject Line. The Trackage Rights Agreement provides that TAMC will not have the right to operate freight rail service on any portion of the Subject Line. See Trackage Rights Agreement, Section 2. The Trackage Rights Agreement gives UP the exclusive right to:

- (a) set out, pick up or store freight cars, or switch freight cars upon the [Subject Line], or any part thereof, as necessary...; and
- (b) serve any industry, team or house track now existing or hereafter requiring rail service along the [Subject Line]; and
- (c) construct, maintain, replace, remove, use and operate existing and new industry tracks and related facilities on and across the [Subject Line] in order to fulfill UP's common carrier obligation to new and existing shippers and receivers of freight....

Trackage Rights Agreement, Section 2(a)-(c). UP is the current freight carrier over the Subject Line and will continue to be so until an abandonment is approved.

Under the Trackage Rights Agreement, UP will retain the right to make changes in and/or additions to the Subject Line, including the right to replace or remove existing and new industry tracks and related facilities on and across the Subject Line.

Under the applicable agreements, TAMC will obtain the property and contract rights it requires to operate passenger service on the Subject Line. UP will retain the property and contract rights it requires to operate freight rail operations on the Subject Line. Although it will own the Subject Line, TAMC will not have sufficient property or contract rights to materially

¹ The Quitclaim Deed is attached hereto as Exhibit B.

² The Trackage Rights Agreement is attached hereto as Exhibit A. Although styled as a “Trackage Rights Agreement,” Exhibit A is not an agreement between two rail carriers subject to 49 U.S.C. §11323.

interfere with UP's freight rail operations or UP's ability to continue to meet its rail carrier obligations. TAMC will not conduct freight rail operations on the Subject Line, and it will not hold itself out as willing or able to do so.

III. ARGUMENT

Under 49 U.S.C. Section 10901, the Board has exclusive jurisdiction over the acquisition of a railroad line by a non-carrier (including a public entity such as TAMC), where common carrier rights and obligations also are being transferred. Common Carrier Status of States, State Agencies, 363 I.C.C. 132, 133 (1980), aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982). Whether a particular transaction is an acquisition of a railroad line depends on whether the acquiring company is holding itself out to provide common carrier rail service and has the ability to provide common carrier rail service. Status of Bush Universal Inc., 342 I.C.C. 550, 564 (1973). This is an objective test; the Board (like the former Interstate Commerce Commission ("ICC")) looks at what the acquiring entity will do as opposed to how it labels itself. Los Angeles County Transportation Commission -- Petition for Exemption -- Acquisition from Union Pacific Railroad Company, Finance Docket No. 32374 (STB served July 23, 1996) ("LACTC/UP") at 5; see United States v. California, 297 U.S. 175,181 (1936).

Subtitle IV of Title 49 defines "railroad" to include "... the road used by a rail carrier and owned by it or operated under an agreement" 49 U.S.C. § 10102(6)(B). It defines "rail carrier" as a "person providing common carrier railroad transportation for compensation" 49 U.S.C. § 10102(5). The typical acquisition of a railroad line includes the conveyance of a property interest sufficient to permit the buyer to provide (or at least control) railroad transportation for compensation, and that interest forms the basis of the Board's jurisdiction over the transaction and the buyer. However, the Board (and the former ICC) have consistently recognized that under certain circumstances the acquisition of the physical assets of a rail line is

not subject to STB/ICC jurisdiction and does not make the buyer a rail carrier. Such precedent is applicable to and should govern the transaction proposed here.

In State of Maine Department of Transportation -- Acquisition and Operation Exemption -- Maine Central Railroad Company, 8 I.C.C. 2d 835 (1991) ("State of Maine"), the State of Maine, acting by and through its Department of Transportation ("MDOT"), sought an exemption to acquire certain railroad right-of-way and trackage from Maine Central Railroad Company ("MEC"), subject to MEC's retained easement for common carrier railroad operations. MDOT acquired the line for possible establishment of a public transit system using the acquired assets. MEC's retained easement included access rights for maintenance and renewal of the line and was permanent. As a result, MDOT's acquisition of the line's underlying physical assets did not impair freight railroad operations. The ICC found that no common carrier rights or obligations were transferred to MDOT, because nothing in the transaction disabled MEC's affiliate and lessee, Springfield Terminal Railroad ("SIR"), from meeting its common carrier obligation, and STR could not cease to offer service on the line without ICC approval. For these reasons, the ICC saw "no reason to impose upon the purchaser of the underlying rail assets an additional common carrier obligation." State of Maine, 8 I.C.C.2d at 837.

In LACTC/UP, the Los Angeles County Transportation Commission ("LACTC") acquired and leased certain rail lines from UP for the purpose of establishing commuter rail service in the Los Angeles area. UP retained a freight rail operating easement that gave priority to LACTC's commuter operations in the event of any conflict with freight service. The easement required UP's service to be conducted in a manner that minimized disruption with all commuter operations and UP's right to conduct competitive or time sensitive service was effective only during periods other than LACTC's scheduled service. LACTC/UP at 3. LACTC

was given control of dispatching and maintenance on the line. Nonetheless, the Board found that other provisions of the easement agreement and the low volume of freight traffic on the rail line made it unlikely that freight operations would be unduly affected by the commuter rail priority. Accordingly, the Board held that LACTC's acquisition did not require Board approval.

LACTC/UP at 6.

In Sacramento-Placerville Transportation Corridor Joint Powers Authority -- Acquisition Exemption -- Certain Assets of Southern Pacific Transportation Company, Finance Docket No. 33046 (STB served October 28, 1996), the Joint Powers Authority ("JPA") acquired the right-of-way and all improvements on a Southern Pacific ("SP") line segment. SP retained an exclusive and perpetual freight easement over the line. Under the terms of a shared use agreement, JPA was responsible for maintenance, management and dispatching on the shared track encumbered by the easement. SP had the right to monitor dispatching on the shared track, had the right to maintain the shared track if JPA failed to maintain it at FRA Class I standards, and was responsible for maintenance of track which JPA did not use. The Board ruled that JPA did not acquire carrier status in the transaction because it was unlikely that SP's freight service would be unduly affected. The Board noted that although JPA would control maintenance and dispatching on the shared track, SP's exclusive freight operating windows were of ample frequency and duration for SP to meet its common carrier obligations. The Board also noted that JPA had no power to require SP to discontinue or curtail freight service on the line. Accordingly, the Board held that JPA's acquisition was not subject to STB jurisdiction.

In Utah Transit Authority-- Acquisition Exemption -- Line of Union Pacific Railroad Company, Finance Docket No. 32186 (ICC decided December 23, 1992), the Utah Transit Authority (UTA) sought an exemption and simultaneously filed a motion to dismiss the notice of

exemption for acquisition of UP's right-of-way so that UTA could construct and operate light rail service. Pursuant to the transaction, UTA and the freight operator would share the right-of-way that UTA was to acquire.³ UTA and the freight operator would each conduct their own operations.

Pursuant to an Administration and Coordination Agreement, the freight Operator would have the exclusive right to conduct freight service over the line. In addition, the freight operator would be responsible for maintenance and repair of trackage dedicated to freight service and UTA would be responsible for maintenance of trackage dedicated to passenger service. After the commencement of passenger operations, UTA would be responsible for maintenance of the shared trackage, subject to the freight operator's right to maintain the trackage if UTA failed to maintain it to at least current standards. Operations on the shared trackage would be divided into two periods - a passenger service preference period and a freight service preference period.

The ICC granted UTA's motion to dismiss the notice of exemption. The ICC concluded that the transaction did not impose restrictions which would prevent the freight rail carrier from fulfilling its common carrier obligation. Instead, UP would "retain and convey ... a permanent easement for common carrier freight operations, including the right to operate freight trains and all contracts, agreements, permits, licenses and easements relating thereto." Also, the freight operator retained the right to control all activities on the freight trackage. Accordingly, the ICC determined that the transaction fell within the ambit of State of Maine and other related cases.

Taken together, State of Maine and subsequent cases establish that an entity may acquire the physical assets of a rail line without becoming a carrier, provided that another entity retains sufficient interest to operate as a rail carrier on the line and has autonomy to conduct carrier operations. Stated somewhat differently, if an acquisition of a rail line and trackage is subject to

³ UP's retained permanent easement was transferred to another railroad (the "Freight Operator").

the existing operating interests of a common carrier and the acquiring entity does not control the carrier's operations, the acquiring entity is not a rail carrier subject to Board jurisdiction.

Like the transaction in the State of Maine case and the other cases discussed above, the transaction between TAMC and UP includes several distinguishing and important features. Although TAMC will acquire certain real property and related improvements, TAMC will not acquire the property and contractual rights necessary to conduct or control common carrier freight operations on the Subject Line. Instead, UP will retain such property and contractual rights on the Subject Line. Although TAMC will acquire track that constitutes part of a line of "railroad" as that word is statutorily defined, TAMC will not acquire the right or ability to provide or control freight rail transportation thereon.

TAMC's passenger rail service will not materially interfere with UP's ability to conduct rail freight service. TAMC will acquire the Subject Line, but UP will retain a perpetual, exclusive easement in the Subject Line for freight railroad purposes and sufficient rights to control freight operations. The Freight Easement will enable UP to make changes to railroad, rail and railroad-related equipment, facilities and transportation systems on the Subject Line necessary for UP's freight rail operations. In addition, UP will be able to construct, maintain and operate freight sidings and related facilities on and across the Subject Line as necessary for its continuing freight operations. The Freight Easement will ensure that even after TAMC commences passenger rail operations on the Subject Line, UP will still be able to conduct and control freight rail service thereon.

Under the Trackage Rights Agreement and the Freight Easement, UP retains the right to make changes in and/or additions to the Subject Line. For example, UP retains the right to construct, operate and maintain existing and new industry tracks and related facilities on and

across the Subject Line. See Trackage Rights Agreement, Section 2(c). Thus, TAMC's right to make changes in and/or additions to the Subject Line will not materially interfere with UP's operations, particularly in light of its intention to abandon freight service over the Subject Line.

In summary, TAMC's acquisition of the Subject Line does not constitute an acquisition of a railroad line subject to the Board's jurisdiction. TAMC's ownership of the Subject Line does not make TAMC a rail carrier because TAMC will not have the right to control freight rail service thereon and will not hold itself out as willing or able to provide freight rail service on the Subject Line.

IV. EXPEDITED CONSIDERATION REQUESTED

TAMC seeks expedited consideration of this motion by the Board. In light of the pending request by UP to abandon this line, TAMC seeks a determination of its carrier status prior to that action becoming final. In order to fully understand the consequences of this transaction, TAMC respectfully requests that the Board issue and serve its determination on this motion as soon as practicable.

V. CONCLUSION

For the reasons set forth above, TAMC respectfully requests that the Board dismiss its Notice of Exemption filed herein for lack of jurisdiction.

Respectfully submitted,

By: _____

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**ATTORNEYS FOR TRANSPORTATION
AGENCY OF MONTEREY COUNTY**

EXHIBIT A

TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 10th day of September, 2003, between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("UP"), and TRANSPORTATION AGENCY FOR MONTEREY COUNTY ("TAMC").

WITNESSETH:

- A. Pursuant to Purchase and Sale Agreement dated September 10, 2003 ("PSA"), TAMC acquired from UP that certain line of railroad known as the Monterey Branch extending between Milepost 110.8, Castroville, and Milepost 123.3, Seaside, Monterey County, California (the "Joint Trackage", as defined below); and
- B. UP has previously discontinued freight rail service over the Joint Trackage; and
- C. Pursuant to the PSA, UP has agreed to seek authority from the Surface Transportation Board ("STB") to abandon the Joint Trackage, and has commenced the process of obtaining such abandonment authority; and
- D. UP desires to retain trackage rights upon the Joint Trackage for the purpose of meeting its common carrier obligations until the STB grants abandonment authority and such authority becomes effective; and
- E. TAMC is willing to grant to UP the requested trackage rights over the Joint Trackage, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, it is agreed between the parties as follows:

Section 1. TRACKAGE SUBJECT TO AGREEMENT.

Attached hereto, marked Exhibit "A" and by this reference incorporated herein, is a legal description of the line of railroad of TAMC over which UP is granted trackage rights ("Joint Trackage").

Section 2. GRANT OF TRACKAGE RIGHTS.

TAMC grants to UP the nonexclusive right to use the Joint Trackage for the operation of freight trains over the Joint Trackage, by itself or through its designees. UP's use shall be in common with TAMC and such other passenger railroad company or companies as TAMC has heretofore admitted or may hereafter at any time admit to the joint use by passenger trains of any or all of the Joint Trackage.

It is understood and agreed that UP shall have the exclusive right to:

(a) set out, pick up or store freight cars, or switch freight cars upon the Joint Trackage, or any part thereof, as necessary; and

(b) serve any industry, team or house track now existing or hereafter requiring rail service along the Joint Trackage; and

(c) construct, maintain, replace, remove, use and operate existing and new industry tracks and related facilities on and across the Joint Trackage in order to fulfill UP's common carrier obligation to new and existing shippers and receivers of freight; provided that (i) UP obtains the prior consent of TAMC to the construction of new industry tracks, which consent shall not be unreasonably withheld, conditioned or delayed, (ii) if the construction of new industry tracks requires the construction of new TAMC passenger rail facilities or modifications to existing TAMC passenger rail facilities, such construction or modifications shall be at the sole cost of entities other than TAMC; and (iii) at the sole cost of entities other than TAMC, and at TAMC's request, any new industry tracks may be relocated as reasonably necessary for TAMC's passenger rail operations, if such relocation does not materially impair the safety and efficiency of the industry track.

Section 3. TERM AND TERMINATION.

This Agreement shall become effective upon the date hereof, and shall remain in effect until December 31, 2099, provided that (a) UP may terminate this Agreement as to all or any portion of the Joint Trackage at any time by UP giving TAMC sixty (60) days notice of termination, and (b) this Agreement shall be terminated automatically upon the earlier of (i) the effective date (the "STB Order Effective Date") of the STB's order authorizing UP's abandonment of the Joint Trackage or (ii) sixty (60) days following the STB Order Effective Date if UP reconnects the Joint Trackage to UP's New Coast Main Line prior to the STB Order Effective Date.

Section 4. AMENDMENT OF AGREEMENT

In the event (a) UP determines in its sole discretion that it is necessary to re-institute freight service on the Joint Trackage prior to the STB Order Effective Date, or (b) UP's request for abandonment authority is denied by the STB or on appeal, or (c) TAMC determines in its sole discretion that it is necessary to commence passenger rail service on the Joint Trackage prior to the STB Order Effective Date, the parties will promptly negotiate in good faith and execute an amendment to this Agreement that will address such issues relating to joint passenger rail – freight rail operations as responsibility and payment for maintenance and changes and additions to the Joint Trackage, fair compensation, risk allocation, insurance, location of passenger stations, and such other matters as the parties may deem necessary or appropriate. Any such agreement will provide that passenger rail service will be given dispatching priority over freight service, provided, however, that such dispatching priority shall be subject to UPRR's right and obligation as a common carrier to provide rail service to shippers served from the Joint Trackage.

Section 5. MAINTENANCE

From the date of this Agreement and at all times prior to the commencement of any rail passenger service on the Joint Trackage, TAMC shall maintain the Joint Trackage at the maintenance level TAMC may from time to time deem appropriate in its sole discretion, at TAMC's sole cost and expense. From the date of this Agreement and at all times prior to the reinstatement of freight rail service by UPRR on the Joint Trackage, UPRR shall have no obligations with respect to repair or maintenance of, or changes or additions to, the Joint Trackage.

Section 6. INDEMNIFICATION

TAMC shall fully indemnify, defend and hold harmless and its officers, directors, employees, Contractors, agents, successors and assigns, from and against all liability, claims, suits, sanctions, costs or expenses for injuries to or death of any person and damage to or loss of property (including, but not limited to, property owned, leased, occupied or used or in the care, custody or control of person indemnified in this paragraph), arising out of or resulting from any act or omission by TAMC, its agents, employees or Contractors on or with respect to the Joint Trackage and/or in the performance of any TAMC obligation in this Agreement. TAMC's obligation to defend shall include the payment of all reasonable attorneys' fees and all other costs and expenses of suit and if any judgment is rendered against any person indemnified in this paragraph, TAMC shall, at its expense, satisfy and discharge the same.

UPRR shall fully indemnify, defend and hold harmless TAMC and its officers, directors, employees, Contractors and agents from and against all liability claims, suits, sanctions, costs or expenses for injuries to or death of any person and damage to or loss of property (including, but not limited to, property owned, leased, occupied or used or in the care, custody or control of any person indemnified in this paragraph), arising out of or resulting from any act or omission by UPRR, its agents, employees or Contractors on or with respect to the Joint Trackage after the date of this Agreement and/or in the performance of any UP obligation in this Agreement. UPRR's obligation to defend shall include the payment of all reasonable attorneys' fees and all other costs and expenses of suit and if any judgment is rendered against any person indemnified in this paragraph, UPRR shall, at its expense, satisfy and discharge the same.

It is the intention of the parties that should any term of this indemnity provision be found to be void or unenforceable, the remainder of the provision shall remain in full force and effect. This Section 6 shall survive the termination of this Agreement.

Section 7. INSURANCE

From the date of this Agreement and at all times prior to commencement of passenger rail service on the Joint Trackage, TAMC shall obtain and maintain general liability insurance, with minimum limits of Five Million Dollars (\$5,000,000) per occurrence. TAMC may self

insure all or a portion of this insurance requirement. UP shall be named as an additional insured on all policies of insurance obtained by TAMC in satisfaction of this requirement. TAMC's insurance shall be primary with respect to its obligations under this Agreement and with respect to the interest of UP as an additional insured. TAMC shall provide UP with a certificate of insurance evidencing compliance with the foregoing provisions at UP's request.

From the date of this Agreement and at all times prior to commencement of freight rail service on the Joint Trackage, UP shall maintain and shall continue to maintain, a catastrophic risk management program, allowing for its diverse risk exposures and financial condition, and in keeping with risks assumed by corporations of established size and reputation and consistent with programs of other Class I Railroads. UP shall maintain at all such times insurance coverage as is customary under its established risk management program. UP warrants and agrees that said insurance (or self insurance) coverage is, and shall be, at least as comprehensive in scope and amount as the insurance required to be carried by Owner under this Agreement. UP shall provide TAMC with a letter evidencing such insurance (or self insurance) at TAMC's request.

Section 8 ARBITRATION

8.1 Any and all claims, disputes, or controversies between TAMC and UP arising out of or concerning the interpretation, application, or implementation of this Agreement that cannot be resolved by the parties through negotiations shall be submitted to binding arbitration as hereinafter provided.

8.2 The procedure for arbitration shall be as follows:

(a) In the event a claim, dispute, or controversy subject to arbitration under this Agreement arises, either party may serve a written demand for arbitration upon the other party. If the claim, dispute, or controversy is not resolved by the parties within forty-five (45) calendar days after the service of the demand, the matter shall be deemed submitted to arbitration.

(b) Within thirty (30) calendar days of service of a demand for arbitration, the parties shall agree on an arbitrator. If the parties are unable to agree, the arbitrator shall be appointed by the Presiding Judge of the Superior Court for the County of Monterey within thirty (30) calendar days after application of either party after ten (10) days' written notice to the other party.

(c) The arbitrator shall have at least five (5) years experience in mediating or arbitrating matters involving the joint or adjacent operation of freight rail and passenger rail.

8.3. Except as otherwise provided in this Section 8, the arbitration hearing shall be conducted pursuant to the rules promulgated by the American Arbitration Association, and any successor or replacement provisions thereof.

8.4

(a) The arbitration hearing shall commence no later than four (4) months after service of the demand and shall be concluded no later than forty (40) calendar days after conclusion of the arbitration hearing.

(b) The arbitrator may extend the time for commencement of the arbitration hearings, conclusion of the arbitration hearings and/or the time for rendition of the arbitrator's decision and the award (but, with respect to rendition of the arbitration award, by no longer than an additional thirty (30) calendar days), upon motion of either party or upon the arbitrator's own motion upon a showing of good cause therefor.

8.5

(a) In the event either party reasonably finds that the issues of any claim, dispute, or controversy are likely to directly, imminently, materially and adversely affect human health or safety, either party may request, in the arbitration demand delivered pursuant to Section 8.2(a), an expedited arbitration procedure as set forth in this Section solely for the purpose of obtaining a provisional remedy that by law or in equity could be imposed in a court proceeding against a rail carrier subject to the jurisdiction of the Surface Transportation Board (e.g., temporary restraining order, preliminary injunction or injunction).

(b) Within five (5) calendar days after service of a demand for expedited arbitration, the parties shall agree on an arbitrator. If the parties fail to agree, the arbitrator shall be appointed by the Presiding Judge of the Superior Court for Monterey County, upon application of either party after twenty-four (24) hours' written notice to the other party.

(c) The expedited arbitration hearing shall commence no later than ten (10) calendar days after service of a demand for expedited arbitration and shall be concluded on the same day. The arbitration decision shall be rendered by the arbitrator(s) in writing on or before the calendar day following the arbitration hearing.

(d) Prior to rendering any decision, the arbitrator must find that the issues of the claim, dispute or controversy are likely to directly, imminently, materially and adversely affect human health or safety. In the event the arbitrator finds that the foregoing criteria have been not been met, the proceeding shall be dismissed without prejudice and the parties shall proceed with the arbitration procedure and schedule set forth in Section 8.2 and 8.4; provided, however, that no new demand for arbitration need be served by the party demanding arbitration.

8.6 During the pendency of such arbitration proceedings, the business and the operations to be conducted, and compensation for service under this Agreement, to the extent that they are the subject of such controversy, shall continue to be transacted, used and paid in the manner and form existing prior to the arising of such controversy, unless the arbitrator shall make a preliminary ruling to the contrary.

8.7 Each party shall solely bear the attorneys' fees, costs and expenses incurred by it in connection with such arbitration. Both parties shall share equally the costs and expenses attributable to the services of the arbitrator. Notwithstanding the foregoing, the arbitrator shall have the power to award attorney's fees and costs to either party if the arbitrator determines in its reasonable discretion that the position of the other party to the arbitration was frivolous.

Section 9. MISCELLANEOUS.

9.1 Third Parties. This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by way of damages or otherwise against any of the parties hereto.

9.2 Severability. If any covenant or provision of the Agreement not material to the right of UP to use the Joint Trackage shall be adjudged void, such adjudication shall not affect the validity, obligation or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of the Agreement be adjudged void, the parties shall make such other arrangements as will effect the purposes and intent of the Agreement.

9.3 Section Headings. All section headings are inserted for convenience only and shall not affect any construction or interpretation of the Agreement.

9.4 Amendments. No modifications, amendments or changes herein or hereof shall be binding upon any party unless set forth in a document, duly executed and delivered by all parties hereto. No provision of this Agreement shall be altered, amended, revoked or waived except by and instrument in writing signed by the party to be charged with such alteration, amendment, revocation or waiver.

9.5 No Recordation. Without the prior written consent of both parties, no party may record this Agreement.

9.6 Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given: (a) on the date of delivery, if delivered personally on the party to whom notice is given, or if made by telecopy directed to the party to whom notice is to be given at the telecopy number listed below and receipt has been confirmed either telephonically or by facsimile, or (b) on receipt, if mailed to the party to whom notice is to be given by overnight courier or first class mail, registered or certified, return receipt requested, postage prepaid and properly addressed as follows:

To TAMC: Transportation Authority of Monterey County
Attention: Executive Director
55-B Plaza Circle
Salinas, CA 93901
Telephone: (831) 775-0903
Facsimile: (831) 775-0897

With a Copy to: Hanson, Bridgett, Marcus, Vlahos & Rudy
Attention: David J. Miller, Esq.
333 Market Street, 23rd Floor
San Francisco, CA 94105
Telephone: (415) 777-3200
Facsimile: (415) 541-9366

To UP: Union Pacific Railroad Company
Attention: Mr. Jerry Wilmoth
10031 Foothill Boulevard, Suite 200
Roseville, CA 94757
Telephone: (916) 789-6360
Facsimile: (916) 789-6171

With a Copy to: Union Pacific Railroad Company
Attention: Christine Smith, Esq.
1416 Dodge Street, Room 830
Omaha, Nebraska 68179
Telephone: (402) 271-5761
Facsimile: (402) 271-5610

9.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except have additional signature pages executed by other parties to this Agreement attached thereto.

9.8 Relationship of UP and TAMC. Notwithstanding anything to the contrary contained herein, this Agreement shall not be deemed or construed to make UP and TAMC partners or joint venturers, principal and agent, or employer and employee, or to render one party liable for any of the debts or obligations of any other party unless expressly so provided in this Agreement.

9.9 Effect of Agreement. All negotiations relative to the matters contemplated by this Agreement are merged herein and there are no other understandings or agreements relating to the matters and things herein set forth other than those incorporated in this Agreement.

9.10 Waiver. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any party of any condition, or of any breach of any term, covenant, representation, or warranty contained herein, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or waiver of any other condition or of any breach of any other term, covenant, representation or warranty.

9.11 Time of Essence. Time is of the essence of this Agreement and of all parts hereof.

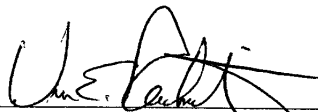
9.12 Governing Law. This Agreement shall be governed by the laws of the State of California without regard to California conflict of law provisions.

9.13 Construction. The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the parties hereto. Section headings of this Agreement are solely for convenience of reference and shall not govern the interpretation of any of the provisions of this Agreement. References to "Sections" are to Sections of this Agreement.

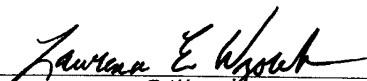
[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate the day and year first above written.

TRANSPORTATION AGENCY FOR
MONTEREY COUNTY, a public agency created
under California law

By: 
Name: Wm. E. Reichmuth, P.E.
Title: Executive Director

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: 
Name: Lawrence E. Wzorek
Title: Assistant Vice President - Law

APPROVED AS TO FORM:

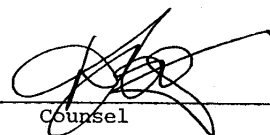

Counsel

EXHIBIT B

Original

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

Transportation Agency for Monterey County
55-B Plaza Circle
Salinas, CA 93901
Attn: Executive Director

WE CERTIFY THIS TO BE A TRUE AND
CORRECT COPY OF THE ORIGINAL

RECORDED 9/12/03 Series # 2003111066

By: KGT
First American Title Company

MAIL TAX STATEMENTS TO:

Transportation Agency for Monterey County
55-B Plaza Circle
Salinas, CA 93901
Attn: Executive Director

THIS INSTRUMENT IS EXEMPT FROM RECORDING FEES (GOVERNMENT CODE §6103) AND FROM DOCUMENTARY
TRANSFER TAX (REVENUE AND TAXATION CODE §11922).

(Space above line for Recorder's use only)

QUITCLAIM DEED

FOR VALUE RECEIVED, UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (formerly known as Southern Pacific Transportation Company, a Delaware corporation, successor by merger with Southern Pacific Company and Southern Pacific Railroad Company, corporate successor of Monterey Railroad Company, successor to Monterey and Salinas Valley Railroad Company) ("Grantor"), remises, releases and quitclaims to TRANSPORTATION AGENCY FOR MONTEREY COUNTY, a public agency created under California law ("Grantee"), all of Grantor's rights, title, and interest in and to that certain real property (the "Property") situated in the County of Monterey, State of California, described on Exhibit 1 attached hereto and incorporated by reference.

EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns (including, without limitation, lessees, sublessees, easement owners and licensees of Grantor) forever, all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered 500 feet or more below the surface, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals by any means or methods suitable to Grantor, its successors and assigns, but without entering upon or using the surface of the Property, and in such manner as not to damage the surface of said lands or to interfere with the use thereof by Grantee, its successors or assigns.

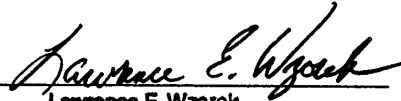
ALSO EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns, a perpetual, exclusive easement in, on, under, over and through the portion of the Property described below in this subparagraph, for purposes of conducting Grantor's freight rail operations and otherwise to fulfill Grantor's obligations as a common

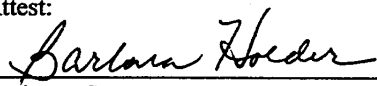
carrier railroad under applicable laws and regulations (the "Railroad Easement"). Grantor and its licensees, successors and assigns, shall have the right to use the Railroad Easement to operate, use, construct, reconstruct, maintain, repair, relocate and/or remove existing and/or future railroad, rail and railroad-related equipment, facilities and transportation systems necessary for and related to Grantor's freight rail operations. The Railroad Easement shall include only the portion of the Property located within twelve and one-half feet (12.5') on either side of the center line of the railroad tracks on the Property as such tracks are located on the date hereof, together with access thereto across, and the right to construct, maintain and operate freight rail sidings and related facilities upon, all other portions of the Property as reasonably necessary for Grantor's use and enjoyment of the Railroad Easement, provided that in the exercise of Grantor's rights outside the area twelve and one-half feet (12.5') on either side of the centerline of such then-existing tracks, Grantor shall not unreasonably interfere with Grantee's use of the Property for passenger rail operations. Grantor shall be entitled to all revenues derived from all current and future agreements to which Grantor is a party affecting freight rail operations on the Property. The Railroad Easement shall terminate automatically upon the effective date of an order, decision or notice of the Surface Transportation Board (or any successor agency) granting authority for Grantor to abandon all of its freight rail services on the Property and the expiration of any condition to such order, decision or notice that requires the continuation of freight rail service. Upon the termination of the Railroad Easement, Grantor shall, at the written request and expense of Grantee, execute and deliver to Grantee a recordable document terminating and quitclaiming to Grantee all of Grantor's right, title and interest in and to the Railroad Easement. Grantor's use of the Railroad Easement shall be subject to the terms of that certain Trackage Rights Agreement between Grantor and Grantee dated September 10, 2003. The foregoing provisions shall constitute covenants running with the land and shall bind and inure to the benefit of Grantor and Grantee and their respective successors and assigns.

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IN WITNESS WHEREOF, the undersigned have executed this Quitclaim Deed as of
September 10, 2003.

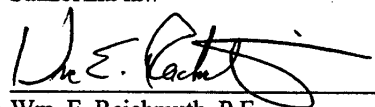
UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: 
Name: Lawrence E. Wzorek
Title: Assistant Vice President - Law

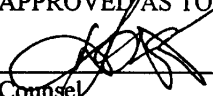
Attest:

Assistant Secretary

(SEAL)

**TRANSPORTATION AGENCY FOR
MONTEREY COUNTY, a public agency created
under California law**

By: 
Name: Wm. E. Reichmuth, P.E.
Title: Executive Director

APPROVED AS TO FORM:


Counsel

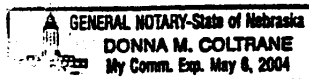
STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS)

On September 8, 2003, before me, a Notary Public in and for said County and State, personally appeared Lawrence E. Wzorek and Barbara Holder, who are the Assistant Vice President - Law and the Assistant Secretary, respectively, of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Donna M. Coltrane
Notary Public

(SEAL)



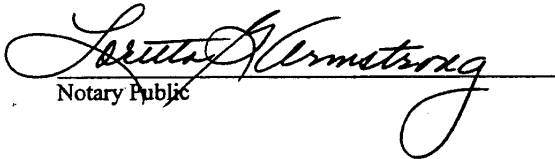
STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

)
) ss.
)

On September 10, 2003, before me, the undersigned Notary Public, personally appeared Wm. E. Reichmuth, P.E., ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity(ies), and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.


Notary Public



CERTIFICATE OF SERVICE

I, Helen C. Page, certify that I have this day caused copies to be served of the foregoing document upon all parties of record in this proceeding, by first class mail, postage prepaid:

California State Historical
Preservation Office
P. O. Box 942896
Sacramento, CA 94296-0001

California Public
Utilities Commission
Rail Operating & Safety Branch
505 Van Ness Avenue
San Francisco, CA 94102

The Hon. Gray Davis
State of California
State Capitol
Sacramento, CA 94514

Union Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179

Dated: 11.13.03

Helen C. Page