
From: Wayland, Joshua
Sent: Wednesday, July 12, 2017 4:06 PM
To: Androy, Jerry L CIV USARMY CESWG (US)
Subject: RE: UPRR Bridge over Cedar Bayou, Chambers and Harris Counties, Texas
Attachments: AB 33 (Sub-No. 324X); Status of Section 106 Consultation.pdf; AB 33 (Sub-No. 324X); draft MOA language .docx

Mr. Androy,

I am following up on our conversation of several weeks ago regarding a proposed rail abandonment in Harris and Chambers Counties. I wanted to provide you with the attached letter, which provides some background to the case, as well as the draft language for an MOA between my agency, the Texas SHPO, and Union Pacific, the railroad applicant.

I also wanted to gauge your availability for and interest in participating a conference call next week with the consulting parties to discuss this project. Do you have some time available during the afternoon of Wednesday July 19?

Best,

Josh Wayland
Office of Environmental Analysis
Surface Transportation Board
202.245.0330

-----Original Message-----

From: Androy, Jerry L CIV USARMY CESWG (US) [mailto:Jerry.L.Androy@usace.army.mil]
Sent: Thursday, June 15, 2017 3:39 PM
To: Wayland, Joshua <Joshua.Wayland@stb.gov>; lydia.woods@thc.texas.gov
Subject: UPRR Bridge over Cedar Bayou, Chambers and Harris Counties, Texas

Good afternoon Mr. Wayland,

Earlier this week I had a conversation with Lydia Woods from the Texas Historical Commission regarding a UPRR Bridge over Cedar Bayou in Harris and Chambers Counties in Texas. It seems there is some confusion surrounding this project and who would be the Lead Federal Agency for the Section 106 review. I understand that the abandonment of the bridge would likely be considered no adverse effect but the demolition of the bridge would be an adverse effect if it were determined to be an eligible historic property.

I am the contact for the Corps for the Section 106 process and would appreciate it if you could contact me so we can clear up the confusion.

Regards,
Jerry Androy
Regulatory Archeologist and Tribal Liaison U.S. Army Corps of Engineers
2000 Fort Point Road
Galveston, TX 77550
(409) 766-3821
Jerry.L.Androy@usace.army.mil



SURFACE TRANSPORTATION BOARD
Washington, DC 20423
Office of Environmental Analysis

June 2, 2017

Re: Docket No. AB 33 (Sub-No. 324X), Union Pacific Railroad Company—Abandonment Exemption—In Harris and Chambers Counties, Texas; Status of Section 106 Consultation and Request for Review and Comment on Draft Memorandum of Agreement

Dear Section 106 consulting parties,

This letter provides the consulting parties with an update of the Section 106 historic preservation process under the National Historic Preservation Act (NHPA) in the above-referenced proceeding and requests your review and comment on the enclosed draft Memorandum of Agreement (MOA). To help the consulting parties understand how the NHPA and National Environmental Policy Act (NEPA) processes intertwine in the rail line abandonment proceedings filed with the Surface Transportation Board (Board), I have first provided information about how rail line abandonment filings are handled at the Board. I then discuss the background of this proceeding and describe the Section 106 process as it has progressed in this case. Finally, I explain why the time is ripe to move forward with the MOA and ask for your review and comment.

The railroad abandonment process

Railroads seeking to abandon a line of railroad must obtain authorization from the Board under 49 U.S.C. § 10903. Rail lines that have been out of rail service for two years or more are decided within 50 days of the filing of the abandonment with the Board. The streamlined process for such out-of-service rail lines does not have any effect on the Board's responsibility to comply with both NEPA and NHPA. Because authorization from the Board is required for a notice of exemption to become effective, railroad abandonments are considered federal actions under NEPA and a federal undertaking under Section 106. The Board's Office of Environmental Analysis (OEA) is responsible for preparing an Environmental Assessment (EA) under NEPA in an abandonment case and for ensuring that the Board's Section 106 responsibilities have been met. The Board's environmental rules specify that OEA prepare and issue an EA in the abandonment of an out-of-service rail line 25 days after the abandonment is filed with the Board. To meet the statutory time limit for the review of railroad abandonments, OEA makes the EA available to the public for a 15-day comment period, after which OEA issues a Final EA and the Board issues a decision imposing any environmental or historic mitigation conditions. These time limits apply to all abandonments cases before the Board involving out-of-service rail line.

In abandonment cases where the Section 106 process under NHPA has not been completed prior to the issuance of a Board decision, OEA will typically recommend that the Board impose a condition requiring the railroad to retain its interest in and take no steps to alter the historic integrity of any historic properties in the Area of Potential Effect (APE) that are listed in or eligible for listing in the National Register of Historic Places (the National Register) until the Section 106 process has been completed. In consultation with consulting parties, OEA ensures that the four-step Section 106 process is followed: initiating the Section 106 process, identifying historic properties in the APE, assessing effects to historic properties, and resolving adverse effects.

Adverse effects to historic properties in railroad abandonment cases typically are resolved through the development of an MOA that is then executed among OEA, the appropriate State Historic Preservation Officer (the SHPO), and the railroad applicant. The Board's authority to mitigate adverse impacts on historic properties in railroad abandonment cases is limited to documentation, which may include taking photographs or preparing a history. The Board cannot require the preservation of privately-owned property without the railroad's consent, as such an action would violate the Takings Clause of the Fifth Amendment. Because railroad property is privately owned, the Board cannot force the railroad applicant to sell or donate its property or dictate the terms of a sale. The Board also has no authority to regulate the actions of entities that are not railroads subject to Board jurisdiction.

Background of this undertaking

On March 3, 2017, Union Pacific Railroad Company (UP) filed a notice of exemption seeking Board authority for UP to abandon approximately 2.23-mile line of railroad in Harris and Chambers Counties, Texas. OEA issued an EA on April 3, 2017 for a 15-day public comment period, which ended on April 18, 2017. On April 27, 2017, the Board issued a decision making the notice effective and imposing several environmental conditions, including a historic preservation condition that prevents UP from taking any steps that would alter the historic integrity of National Register-eligible historic properties within the APE until the completion of the Section 106 process.

The historic property at issue in this case is the vertical lift span bridge over the Cedar Bayou at the eastern terminus of the line (the Cedar Bayou Bridge). The Cedar Bayou Bridge has been identified as a historic property that is eligible for listing in the National Register and the removal of the Cedar Bayou Bridge would constitute an adverse effect to a National Register-eligible historic property under Section 106. The Cedar Bayou Bridge has been out of service for many years and structural and mechanical damage have rendered the bridge nonoperational. As a result, the Cedar Bayou Bridge would need repairs to perform transportation functions again. OEA understands that UP intends to convey the Cedar Bayou

Bridge to the Texas Department of Transportation (TXDOT) and that TXDOT intends to remove the Cedar Bayou Bridge.

The Section 106 process in this case

Consultation under Section 106 in this proceeding has been ongoing since April 2016. UP submitted a historic report to the Texas Historical Commission (the Texas SHPO) on April 5, 2016 and requested that the Texas SHPO provide comments regarding the identification of historic properties within the APE for the proposed abandonment. On April 20, 2016, the Texas SHPO provided comments to UP and the Board identifying the Cedar Bayou Bridge as a historic-age property and requesting additional information in order to assess the eligibility of the Cedar Bayou Bridge for listing in the National Register. UP then engaged Summit Envirosolutions, Inc. (Summit) to evaluate the historic resources present in the APE of the proposed abandonment. Summit prepared a Historic Resources Evaluation report, which concluded that the Cedar Bayou Bridge is eligible for listing in the National Register under Criteria C of the National Register Criteria for Evaluation.

In August 2016, UP provided OEA and the Texas SHPO with the Historic Resources Evaluation report and requested that OEA issue a finding of adverse effects to historic properties. In consultation with the Texas SHPO, OEA invited the Harris County Historical Commission, the Chambers County Historical Commission, and the Historic Bridge Foundation to participate as consulting parties in the Board's Section 106 process. Among these parties, only the Historic Bridge Foundation expressed interest in participating as a consulting party.

On October 3, 2016 OEA wrote to the Texas SHPO and the Advisory Council on Historic Preservation (ACHP) notifying them of a potential adverse effect to historic properties eligible for listing in the National Register. OEA also provided the ACHP, the Texas SHPO, and the other consulting parties with a description of the railroad abandonment process, the Board's Section 106 process in abandonment cases, and potential alternatives to abandonment that OEA considered. By letter dated November 18, 2016, ACHP declined to participate in the Section 106 process for this project.

Texas SHPO staff called OEA on October 3, 2016 and indicated that the information provided by OEA was not sufficient to justify the undertaking—the abandonment of 2.23 miles of rail line and subsequent sale of the Cedar Bayou Bridge to TXDOT—because OEA did not document potential safety concerns related to the physical condition of the Cedar Bayou Bridge. OEA responded to the Texas SHPO that the Board is an economic regulatory agency and does not consider safety concerns when determining whether to authorize a railroad abandonment. Pursuant to 49 C.F.R. § 1152, rail lines that have been out of service for more than two years are exempt from regulation under 49 U.S.C. § 10903 and the Board generally must grant

abandonment authority except in extraordinary cases. Alternatives to abandonment include denial of abandonment authority, continued operation by another carrier, and discontinuance without abandonment, all of which must be based on economic considerations and are not applicable to this case. Rail lines proposed for abandonment are sometimes converted for use as recreational trails under the provisions of the National Trails System Act, but this process is voluntary on the part of the railroad applicant and is not appropriate in this case.

To address the Texas SHPO's concerns, UP voluntarily provided a report of the physical condition of the Cedar Bayou Bridge, as well as several photographs of the structure, which OEA forwarded to the Texas SHPO and the consulting parties on December 27, 2016. At that time, OEA also provided the Texas SHPO and the consulting parties with a copy of a letter, dated December 7, 2016, from the United States Coast Guard (USCG), in which USCG informed UP that the Cedar Bayou Bridge must either be removed or returned to an active transportation function to prevent a hazard to navigation within the Cedar Bayou. Also on December 27, 2016, OEA provided a copy of a resolution passed by the Cedar Bayou Navigation District registering support for the removal of the Cedar Bayou Bridge because of the hazard it poses to navigation and a copy of a resolution passed by the Commissions Court of Chambers County registering the support of Chambers County for the removal of the Cedar Bayou Bridge. OEA also forwarded to the Texas SHPO and the consulting parties a letter from UP, dated December 22, 2016, explaining that there is no viable transportation use for the Cedar Bayou Bridge because there are no current or potential rail customers in the project area and because there is no viable corridor for possible trails use. OEA also provided the Texas SHPO and the consulting parties with UP's estimate of the costs that would be required to return the Cedar Bayou Bridge to serviceable condition or to remove it; UP estimated that the cost for repairing the bridge would be between \$5.5 million and \$8.5 million, while the cost of removing it would be approximately \$3 million.

Also on December 27, 2016, OEA provided the Texas SHPO and the consulting parties with a draft MOA for review and comment. That draft MOA included stipulations that would have required UP to undertake documentation of the Cedar Bayou Bridge meeting the Secretary of the Interior's Standards and Guidelines for Architectural and Engineering Documentation, HABS/HAER Standards (HAER Standards), which are the typical standards required for Board projects involving historic bridges and other rail-related structures.

In an email dated January 10, 2017, Texas SHPO staff indicated that the information provided by UP and OEA was insufficient because it did not contain sufficient visual evidence of corrosion on the Cedar Bayou Bridge. During a phone call on January 18, 2017, Texas SHPO staff reiterated that the OEA and UP had not justified the removal of the Cedar Bayou Bridge. Texas SHPO staff also indicated that the stipulations outlined in the draft MOA would be insufficient mitigation if the Cedar Bayou Bridge were removed. However, Texas SHPO staff

agreed that the Texas SHPO would be willing to sign an MOA that included the following mitigation measures:

- UP would make the Cedar Bayou Bridge available for sale to entities other than TXDOT.
- UP and OEA would write an article about the Cedar Bayou Bridge to be public in a railroad magazine or other literature.
- OEA would post photos, history, drawings, and other information pertaining to the Cedar Bayou Bridge to the Board's interactive database that is available to the public.
- OEA would write an article about the Board's interactive database to be published in the National Bridge Foundation Newsletter.
- UP and OEA would make unspecified changes to the Historic Resources Evaluation upon review of that document by the Texas SHPO and other consulting parties.

In an email dated January 18, 2017, the Texas SHPO added the following stipulations provisions to those that would need to be included in an MOA that Texas SHPO would be willing to sign:

- OEA or UP would post photos, history, drawings, and other information pertaining to the Cedar Bayou Bridge to the website bridgehunter.com.
- OEA and UP would post the MOA in several public places, potentially including newspapers, libraries, local historical societies, county historical commissions, and allow the public to present any comments or concerns.

On March 3, 2017, UP voluntarily made the Cedar Bayou Bridge available for sale and posted notices of the availability of the Cedar Bayou Bridge in newspapers of general circulation and on the website of the Historic Bridge Foundation. The offer of sale was open for 20 days and ended on March 23, 2017. OEA understands that UP received no offers to purchase the Cedar Bayou Bridge during that period.

OEA has redrafted the MOA to include the other provisions requested by the Texas SHPO. The draft MOA includes the mitigation measures discussed above that were recommended by Texas SHPO staff and the Historic Bridge Foundation on a January 18, 2017 conference call and subsequently. In addition to those measures, the draft MOA also includes stipulations requiring documentation of the Cedar Bayou Bridge meeting HAER standards because professional documentation meeting those standards are typically required under the Board's Section 106 process for historic rail bridges.

To move forward with the final step in the Section 106 process—resolution of the unavoidable adverse effects to the Cedar Bayou Bridge—we are requesting that you review the attached draft MOA and provide your opinion regarding the adequacy of the proposed

stipulations to mitigate the adverse effect to the Cedar Bayou Bridge. We intend to reach out to you directly in order to schedule a conference call between all of the parties to discuss the draft MOA in the next several weeks.

By email dated January 18, 2017, Texas SHPO staff indicated that the Texas SHPO would not be willing to sign an MOA unless the Army Corps of Engineers (the Corps) is also a party to the MOA. OEA has repeatedly contacted the Corps regarding this project, but, to date, the Corps has not evidenced any interest in participating in the Section 106 process. OEA notes that UP would likely not require a Corps permit to consummate the abandonment of the rail line, but TXDOT may require a Corps permit related to the removal of the Cedar Bayou Bridge.

OEA will provide a copy of the attached draft MOA to TXDOT and the Corps for review and comment and will continue to request those agencies' participation in the Section 106 process. However, because TXDOT is not a rail carrier, the Board has no authority to require TXDOT to participate in the Board's Section 106 process, or to apply for a Corps permit, which would trigger the Corps' Section 106 process. Therefore, those parties' participation in the MOA would be voluntary.

If you have any questions about this case or the Board's Section 106 process, please feel free to contact Josh Wayland of my staff at (202) 245-0330, by email at Joshua.Wayland@stb.gov, or by mail at the address below:

Surface Transportation Board
Office of Environmental Analysis
Attn: Josh Wayland
395 E. Street, SW
Washington, DC 20423

Thank you very much for your time and guidance. We look forward to continuing consultation in this project.

Sincerely,

A handwritten signature in black ink, appearing to read "Victoria Rutson". The signature is fluid and cursive, with a large initial "V" and a stylized "R".

Victoria Rutson
Director
Office of Environmental Analysis

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

WHEREAS, Union Pacific Railroad Company (UP) intends to file 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 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

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

WHEREAS, the Board has determined that the rail line abandonment constitutes an Undertaking under Section 106 of the National Historic Preservation Act, 54 U.S.C. § 306108, (NHPA) 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 Cedar Bayou 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 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 Cedar Bayou Bridge is eligible for listing in the National Register of Historic Places (the National Register) under Criterion C for its design and engineering, as well as 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 Cedar Bayou 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 the negotiation of this Memorandum of Agreement (MOA); and

WHEREAS, the Board is the lead federal agency for the purposes of compliance with the NHPA for this abandonment; 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, 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 has 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 Cedar Bayou Bridge, UP shall complete documentation that meets 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 black and white 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 Cedar Bayou Bridge. This documentation shall include no more than 20 black and white 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 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 and a history of its construction and 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 a magazine of general readership and shall use language that is accessible to the general public.

II. REVIEW AND COMMENT

- A. Prior to the start of demolition activity, UP shall prepare the draft HAER documentation in accordance with Stipulation 1 and shall distribute it via electronic mail or CD to the Board and the SHPO for review. The Board and the SHPO shall review and provide comments to UP within 10 calendar day 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 as described in Stipulation III.B. 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 measured drawings as described in Stipulation IV 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 in accordance with Stipulations I.B. and I.C. and shall distribute them via electronic mail or CD to the Board and 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, UP shall revise the narrative and drawings in response to the comments, as needed, and resubmit the report as described in Stipulation III.C. 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 IV 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 one copy of the documentation to the Texas SHPO and one copy of the documentation to OEA. 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 magazine or other literature for publication. UP shall also post the public article on the website www.bridgehunter.com.

- 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. 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 VII below. The Board shall notify the signatories as to the course of action it will pursue.

V. 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).

VI. 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.

VII. MONITORING AND REPORTING

Each year following the execution of this MOA until it expires, is terminated, or the stipulations are completed as noted in Stipulation III.E., 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.

VIII. 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.

IX. 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 VII, 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: _____ **DATE:** _____
Victoria Rutson
Director, Office of Environmental Analysis

DRAFT

TEXAS STATE HISTORIC PRESERVATION OFFICER

BY: _____ **DATE:** _____

Mark Wolfe
State Historic Preservation Officer

DRAFT

Invited Signatory:

UNION PACIFIC RAILROAD COMPANY

BY: _____ **DATE:** _____
Tony Love
AVP Real Estate

DRAFT

Concurring Signatory:

HISTORIC BRIDGE FOUNDATION

BY: _____ **DATE:** _____
Kitty Henderson
Executive Director

DRAFT