

UNION PACIFIC RAILROAD
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Chicago, Illinois 60606-1718

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mackshumate@up.com

Mack H. Shumate, Jr.
Senior General Attorney, Law Department

December 12, 2012

VIA E-FILE

The Honorable Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E. Street, S.W., Room #100
Washington, DC 20423-0001

233490
233491
ENTERED
Office of Proceedings
December 12, 2012
Part of
Public Record

RE: Joint Petition for Exemption for Union Pacific Railroad Company ("UP") to abandon UP's freight easement upon, and for Santa Clara Valley Transportation Authority ("VTA") to abandon VTA's residual common carrier obligation upon, the San Jose Industrial Lead from M.P. 5.38 to M.P. 7.35 near the rail station of Warm Springs (Community of Fremont), a distance of 1.97 miles in Alameda County, California (the "Line"). The Line is to be abandoned for freight service but shall be retained and rebuilt for future inclusion in the Bay Area Rapid Transit System ("BART"). The UP docket for this filing is AB-33 (Sub-No. 309X). The VTA docket for this filing is AB-980 (Sub-No. 2X)

And

Request Under 49 U.S.C. § 10502 to Exempt the Proposed Joint Petition for Exemption for UP to Abandon UP's Freight Easement Upon and for VTA to Abandon VTA's Residual Common Carrier Obligation Upon the Above-Referenced Line from the Offer of Financial Assistance Provisions of 49 U.S.C. § 10904 and the Public Use Provisions of 49 U.S.C. § 10905 for Reasons of Overriding Public Need

Pursuant to 49 U.S.C. §10502, Union Pacific Railroad Company ("UP") hereby submits by eFiling the Joint Petition for Exemption for UP to Abandon UP's Freight Easement Upon and for VTA to Abandon VTA's Residual Common Carrier Obligation Upon the Above-Referenced Line. The Certificate of Service and Publication pursuant to 49 C.F.R. §1152.60(d) and 49 C.F.R. §1105.12 is attached to the petition. Also enclosed is a draft Federal Register notice pursuant to 49 C.F.R. §1152.60(c). UP is also seeking under 49 U.S.C. § 10502 exemption from the offer of Financial Assistance Provisions of 49 U.S.C. § 10904 and Public Use Provisions of 49 U.S.C. § 10905 for reasons of overriding public need.

Please file the Joint Petition for Exemption in Docket No. AB-33 (Sub-No. 309X) and AB-980 (Sub-No. 2X). Enclosed is a credit authorization voucher in the amount of \$6,500.00 for the filing fee.

FEE RECEIVED
December 12, 2012
SURFACE

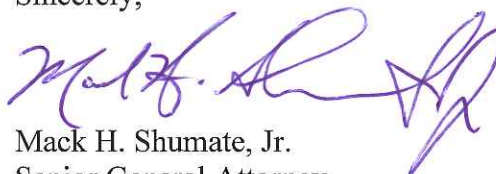
FILED
December 12, 2012
SURFACE
TRANSPORTATION BOARD

TRANSPORTATION BOARD



Surface Transportation Board
Section of Administration
December 12, 2012
Page 2

Sincerely,

A handwritten signature in purple ink, appearing to read "M. H. Shumate, Jr.", followed by a stylized flourish.

Mack H. Shumate, Jr.
Senior General Attorney

MHS:dro
Attachment

2012_12_12 STB-Ltr re Petition for Exemption.doc

cc (w/ enclosures):

MTMCTEA
Military Surface Deployment & Distribution Command
Transportation Engineering Agency
ATTN: SDTE - SA
(Railroads For National Defense)
709 Ward Drive, Building 1990
Scott AFB, IL 62225-5357

U.S. Department of the Interior
National Park Service
Legislative & Congressional Affairs Office
1849 C Street, N.W., Room 3309
Washington, DC 20240

U.S. Department of Agriculture
Chief of the Forest Service
4th Floor N.W., Auditors Building
14th Street & Independence Ave., S.W.
Washington, DC 20250

Executive Director
Public Utilities Commission of
the State of California
Attn: Tack Joe – Rail Safety
505 Van Ness
San Francisco, CA 94102

Rail Program Manager
Planning Division
California Transportation Department
1120 N. Street
Sacramento, CA 95814

Transportation Planner
Department of Transportation
1120 N. Street
Sacramento, CA 95814

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB-33 (Sub-No. 309X)

**UNION PACIFIC RAILROAD COMPANY
-- DISCONTINUANCE AND ABANDONMENT OF FREIGHT EASEMENT --
IN ALAMEDA COUNTY, CALIFORNIA
(SAN JOSE INDUSTRIAL LEAD)**

Docket No. AB-980 (Sub-No. 2X)

**SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
-- ABANDONMENT OF RESIDUAL COMMON CARRIER SERVICE --
IN ALAMEDA COUNTY, CALIFORNIA
(SAN JOSE INDUSTRIAL LEAD)**

**JOINT PETITION FOR EXEMPTION
UNDER 49 U.S.C. § 10502 AND APPLICABLE RULES**

AND

**REQUEST UNDER 49 U.S.C. § 10502 TO EXEMPT THE PROPOSED
ABANDONMENT FROM THE OFFER OF FINANCIAL
ASSISTANCE PROVISIONS OF 49 U.S.C. § 10904
AND THE PUBLIC USE PROVISIONS OF 49 U.S.C. § 10905
FOR REASONS OF OVERRIDING PUBLIC NEED**

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SANTA CLARA VALLEY
TRANSPORTATION
Dated and Filed: December 12, 2012

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB-33 (Sub-No. 309X)

**UNION PACIFIC RAILROAD COMPANY
-- DISCONTINUANCE AND ABANDONMENT OF FREIGHT EASEMENT --
IN ALAMEDA COUNTY, CALIFORNIA
(SAN JOSE INDUSTRIAL LEAD)**

Docket No. AB-980 (Sub-No. 2X)

**SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
-- ABANDONMENT OF RESIDUAL COMMON CARRIER SERVICE --
IN ALAMEDA COUNTY, CALIFORNIA
(SAN JOSE INDUSTRIAL LEAD)**

**JOINT PETITION FOR EXEMPTION
UNDER 49 U.S.C. § 10502 AND APPLICABLE RULES**

AND

**REQUEST UNDER 49 U.S.C. § 10502 TO EXEMPT THE PROPOSED
ABANDONMENT FROM THE OFFER OF FINANCIAL
ASSISTANCE PROVISIONS OF 49 U.S.C. § 10904
AND THE PUBLIC USE PROVISIONS OF 49 U.S.C. § 10905
FOR REASONS OF OVERRIDING PUBLIC NEED**

I. Introduction

Union Pacific Railroad Company ("UP") and Santa Clara Valley Transportation Authority ("SCVTA") file this joint petition for exemption from the requirements of 49 U.S.C. §10903 in accordance with 49 U.S.C. §10502, the applicable Rules at 49 C.F.R. §1121 and 49 C.F.R. §1152, and the applicable Special Rules at 49 C.F.R. §1152.60. This is a Joint Petition for Exemption for UP to discontinue and abandon UP's freight easement upon, and for SCVTA to abandon SCVTA's residual common carrier obligation upon, a portion of the San Jose Industrial Lead from M.P. 5.38 to M.P. 7.35

near the freight rail station of Warm Springs (City of Fremont), a distance of 1.97 miles in Alameda County, California (the "Line"). The Line is owned by SCVTA. The Line is to be abandoned for freight service but shall be retained and rebuilt for future inclusion in the Bay Area Rapid Transit System ("BART").

The Line is contiguous to the segment from MP 7.35 to MP 16.3, for which the Board granted UP and SCVTA abandonment authority in its Decision in Docket Nos. AB-33 (Sub-No. 303X) and AB-980 (Sub-No. 1X) (Service Date July 23, 2012), slip op. (the "July 23 Decision"). The petitioners will henceforth refer to that earlier proceeding as the "prior abandonment". A request submitted on August 29, 2012, to remove the historic preservation condition imposed in the prior abandonment is pending before the Board. In the July 23 Decision, the Board also granted UP's and SCVTA's requests for exemption from the requirements of the offer of financial assistance ("OFA") provisions at 49 U.S.C. § 10904. The Board dismissed the parties' requests for exemption from 49 U.S.C. § 10905 as moot. July 23 Decision at 5.

II. Petitioners' Background and Representatives

UP has rail operations in the States of Arizona, Arkansas, Iowa, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Tennessee, Texas, Utah, Washington, Wisconsin and Wyoming. The name, address and telephone number of UP's representative is listed below:

Mack H. Shumate, Jr.
Senior General Attorney
101 N. Wacker Drive
Room 1920
Chicago, IL 60606
312-777-2055
312-777-2065 (FAX)
Email: mackshumate@up.com

SCVTA is a public agency organized as a Special District under California law which conducts rapid transit passenger operations, and owns conventional rail facilities, in and near the County of Santa Clara, State of California. The name, address and telephone number of SCVTA's representative is listed below:

Allison I. Fultz
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, NW, Suite 800
Washington, DC 20036
202-955-5600
202-955-5616 (Fax)
Email: afultz@kaplankirsch.com

III. Line Description, Zip Code Information, and Map

The proposed action involves UP's discontinuance and the abandonment of its freight easement upon, and for SCVTA to abandon SCVTA's residual common carrier obligation upon a portion of the San Jose Industrial lead from milepost 5.38 to milepost 7.35 near the rail station of Warm Springs (City of Fremont), a distance of 1.97 miles, in Alameda County, California. The Line is owned by SCVTA and UP is discontinuing and abandoning its freight easement over the Line. SCVTA is abandoning SCVTA's residual common carrier obligation upon the Line. The Line to be abandoned for the above-referenced freight service is intended to be retained and rebuilt for future inclusion in the Bay Area Rapid Transit System ("BART").

The Line was constructed in 1921 by the Western Pacific Railroad. The majority of the Line, approximately 1.5 miles, is constructed with 100-pound jointed rail laid in 1955. The balance is primarily 119-pound welded rail laid in 1996. The Line was purchased from UP by SCVTA in December of 2002. The freight easement on the Line was granted to UP by SCVTA as part of the December 2002 purchase.

The Line is located generally within the Warm Springs section of Fremont, California. The Line is surrounded by existing streets, highways, mass transportation services, utilities and recreational public parks. The Line, over which UP will give up its operating rights, was sold to the SCVTA in December, 2002 and will be incorporated into the BART mass transit system.

The Line traverses U.S. Postal Service Zip Codes 94538 and 94539.

A map of the Line proposed for abandonment is attached hereto as **Attachment No. 1** and is hereby made a part hereof. Other rail lines in the area, principal highways and other roads are shown on the map. UP knows of no historic sites or structures or archeological resources in the project area.

IV. Shipper Information

The proposed abandonment will have no adverse effect on any customers. There will be no increase in rail traffic, rail yard activity or truck traffic as a result of the proposed action. There will be no effect on regional or local transportation systems and patterns and no diversion of traffic to other transportation systems or modes.

No changes to operations will occur due to the proposed action. The major reason for filing a petition is the fact that during a portion of the past two years, the Line was used to provide service to a bulk transloading company leasing several UP yard tracks located between the main track of the subject Line and UP's immediately

adjacent and parallel Warm Springs Subdivision. However, all service to the customer is now provided via a recently constructed connection to the yard tracks from the Warm Springs Subdivision and the tracks are now considered part of that line. The customer is:

Truck Rail Handling, Inc.
45051 Industrial Drive
Fremont, CA 94538

The Line was also used during a portion of the past two years for the movement of overhead traffic originating or terminating on the section of the San Jose line covered by the prior abandonment, including the Milpitas Yard and Industrial Park. The connection between the Warm Springs Subdivision and the Milpitas Yard described on Page 8 of the petition for the prior abandonment, filed on April 4, 2012, has been completed. Accordingly, all Milpitas traffic now moves through Warm Springs via the adjacent UP Warm Springs Subdivision.

The Fremont/Warm Springs area will continue to receive rail service from UP lines adjacent to or in the vicinity of the Line. BNSF also has access to the area as per existing agreements. The area is served by numerous state and local roads that connect to Interstate 880 paralleling the Line to the west and Interstate 680 paralleling the Line to the east.

The discontinuance and abandonments will have no adverse effect on either Truck Rail Handling, Inc. or the movement of overhead traffic originating or terminating on the Section of the San Jose line covered by AB-33 (Sub-No. 303X) and AB-980 (Sub-No. 1X) including the Milpitas Yard and Industrial Park. The area is served by

numerous local and state roads that tie into interstate 880 paralleling the Line to the west and Interstate 680 paralleling the Line to the east.

V. Reasons for the Abandonment and Discontinuance

The proposed action involves UP's discontinuance and the abandonment of UP's freight easement upon, and SCVTA's abandonment of SCVTA's residual common carrier obligation upon a portion of the San Jose Industrial lead from milepost 5.38 to milepost 7.35 near the rail station of Warm Springs (City of Fremont), a distance of 1.97 miles, in Alameda County, California. The Line is owned by SCVTA and UP is discontinuing and abandoning its freight easement over the Line. SCVTA is abandoning SCVTA's residual common carrier obligation upon the Line. **The Line to be abandoned for the above-referenced freight service is intended to be retained by SCVTA and rebuilt for future inclusion in the Bay Area Rapid Transit System ("BART").**

As stated above, the discontinuance and abandonments will have no adverse effect on either Truck Rail Handling, Inc. or the movement of overhead traffic originating or terminating on the Section of the San Jose line covered by AB-33 (Sub-No. 303X) and AB-980 (Sub-No. 1X) including the Milpitas Yard and Industrial Park.

VI. Reasonable Alternatives and Request for Exemption from Offer of Financial Assistance Provisions of 49 U.S.C. § 10904 and Public Use Provisions of 49 U.S.C. § 10905

There appears to be no reasonable alternative to the proposed discontinuance and abandonments. There are no shippers served by the Line. Development in the Warm Springs area of Fremont served by the San Jose Industrial Lead is shifting away from rail oriented industries, decreasing the likelihood that a major new rail oriented shipper would be interested in locating on the Line. All former overhead traffic now

moves over an adjacent UP line. After the discontinuance and abandonments sought in the Joint Petition for Exemption, UP will continue to provide rail service to the area via its Warm Springs Subdivision.

After Board authorization and implementation of the discontinuance and abandonment authority sought in this Joint Petition for Exemption, UP will continue to provide rail service to Warm Springs and Milpitas via the Warm Springs Subdivision and the realigned track thereon. BNSF also serves Warm Springs and Milpitas over UP lines as per existing agreements.

The Board has authority under 49 U.S.C. § 10502 to exempt the proposed abandonment from the Offer of Financial Assistance provisions of 49 U.S.C. § 10904 and the Public Use provisions of 49 U.S.C. § 10905. An exemption is typically granted when the right-of-way is needed for a valid public purpose, such as the use of the right-of-way for public passenger transportation purposes, and where, as here, there is no overriding public need for continued rail service on the Line for which abandonment authority is sought.¹

¹ See Missouri Pacific Railroad Company – Abandonment and Discontinuance of Operations Exemption – In Houston, Harris County, TX, Docket No. AB-3 (Sub-No. 139X) et. al., (STB Decision served December 31, 1996. Proposed abandonment exempted from §§ 10904 and 10905); Southern Pacific Transportation Company – Discontinuance of Service Exemption – In Los Angeles County, CA, Docket No. AB-12 (Sub-No. 172X), et. al., (ICC served December 23, 1994); Missouri Pacific Railroad Company – Abandonment – In Harris County, TX, Docket No. AB-3 (Sub-No. 105X) (ICC served December 22, 1992); Chicago & North Western Transportation Company – Abandonment Exemption – In Blackhawk County, IA, Docket No. AB-1 (Sub-No. 226X) (ICC served July 14, 1989); and Iowa Northern Railway Company – Abandonment – In Blackhawk County, IA, Docket No. AB 284 (Sub-No. 1X) (ICC served April 1, 1988).

VII. The Exemption Standards Have Been Met

A. The Abandonment of Rail Lines and Discontinuance of Freight Easements Requires an Exemption from 49 U.S.C. § 10903.

In the prior abandonment, the Board found that the limited scope of the proposed transaction, continued use of the subject line for public purposes, lack of harm to shippers, and lack of public need for continued freight rail service all justified the grant of an exemption from the requirements of 49 U.S.C. § 10903. July 23 Decision at 3. In the current proceeding, which concerns the contiguous line segment, the same facts and conditions apply to support the grant of an exemption from 49 U.S.C. § 10903.

Abandonment of rail lines and discontinuance of freight easements requires authorization and approval of the Board pursuant to 49 U.S.C. § 10903. However, 49 U.S.C. § 10502 requires the Board to exempt a transaction when it finds: (1) continued regulation is not necessary to carry out the Rail Transportation Policy of 49 U.S.C. § 10101; and (2) either the transaction is of limited scope or Board regulation is not necessary to protect shippers from an abuse of market power. This petition by UP and SCVTA for their respective proposed abandonments and discontinuance of freight easement clearly satisfies the standards for exemption under 49 U.S.C. § 10502.

Detailed scrutiny by the Board under 49 U.S.C. § 10903 is not necessary to carry out the Rail Transportation Policy of 49 U.S.C. § 10101. An exemption will minimize both UP's and SCVTA's administrative expense and the cost, preparation and review associated with processing the proposed abandonments and discontinuance of UP's freight easement in a full application proceeding. An exemption will expedite regulatory action and will reduce regulatory barriers to exit from the Line consistent with Sections 10101(2) and (7). An exemption will foster sound economic conditions in the

transportation industry consistent with Section 10101(5) by permitting UP to abandon and discontinue UP's freight easement upon, and for SCVTA to abandon SCVTA's residual common carrier obligation upon, the subject portion of the San Jose Industrial Lead, where there is no longer a demand for freight service.

The proposed abandonments and discontinuance of freight easement is clearly a transaction of "limited scope." The Line is only 1.97 miles long and will have no recurring local traffic. In addition, regulation of this abandonment and discontinuance of freight easement is not needed to protect shippers from an abuse of market power, in that there are no shippers remaining on the Line and there is no known potential for freight rail activity on the Line. UP continues to serve Truck Rail Handling, Inc., the customer previously served by the Line, from UP's adjacent Warm Springs Subdivision.

There will be no adverse effect on shippers on the Line. Development in the area of Fremont served by the San Jose Industrial Lead is shifting away from rail oriented industries, decreasing the likelihood that a major new rail oriented shipper would be interested in locating on the Line. All overhead traffic through the Warm Springs area moves over the UP's Warm Springs Subdivision, an adjacent UP line. UP's Warm Springs Subdivision abuts the west side of the Line between the abandonment and discontinuance start point at milepost 5.38 and the abandonment and discontinuance end point at milepost 7.35.²

² In conjunction with the prior abandonment and discontinuance of a portion of the San Jose Industrial Lead from milepost 7.35 to milepost 16.3 just south of the Line in AB-33 (Sub-No. 303X) and AB-980 (Sub No. 1X), new tracks extending from the Warm Springs line have been constructed, and some existing tracks realigned, so that freight trains are able to leave the Warm Springs line and travel south to UP's Milpitas Yard, which is no longer accessed by the Line. The Milpitas Yard includes a major auto handling facility. South of UP's Milpitas Yard additional realigned UP trackage has been constructed by UP and runs beside and then crosses over the Line to permit continuation of freight rail service to an industrial park at milepost 12.1. UP has relocated its common carrier obligation for that portion of the line between milepost 10 and milepost 12.1 via said additional realigned UP trackage adjacent to the Line.

VIII. Land Area, Federal Grant Information and Public Use

The Line is located in the Warm Springs section of Fremont. The Line is surrounded by existing streets, highways, mass transportation services, utilities and recreational public parks. The Line, over which UP will give up its operating rights, was sold to the SCVTA in December, 2002 and will be incorporated into the BART mass transit system. In that the Line will be incorporated into the BART mass transit system, UP and SCVTA do not believe the right-of-way which makes up the Line from milepost 5.38 to milepost 7.35 is suited to other public purposes including roads or highways, other forms of mass transportation, conservation, energy production or transmission, or recreation.

The terrain under this Line is essentially flat and all urban in nature. Right-of-way which belongs to SCVTA is mostly 60 feet in width with some 80 foot width stretches. The Line passes through an older industrial/commercial area of the Warm Springs section of Fremont now mainly occupied by trucking/warehousing, material storage, scrap metal/recycling and vehicle repair businesses.

The surrounding areas along the Line are well developed with existing streets and portions of this right-of-way could be used to improve local transportation. Municipalities would benefit mostly at locations where the Line parallels, or is within public streets. Consideration for trail purposes is unlikely due to the commercial nature of uses along the Line, the fact that the corridor will be served by UP railroad freight operations on the adjacent Warm Springs line and the fact that the Line will be

UP continues to provide rail service to Warm Springs and Milpitas via the Warm Springs Subdivision and the realigned track as described above. UP will continue to serve San Jose via its Warm Spring and Coast Subdivisions and connecting spurs. UP and BNSF have operating agreements under which BNSF also serves Warm Springs, Milpitas, and San Jose over UP lines as per existing agreements.

incorporated into the BART mass transit system. The Line is not suitable for conservation or energy production.

The Line does not contain reversionary property. Based upon information in UP's and SCVTA's possession, the Line does not contain any federally granted right-of-way. Any documentation concerning the Line in UP's and SCVTA's possession will be made available to those requesting it.

IX. Labor

UP and SCVTA agree to the labor protection conditions imposed in abandonment proceedings as prescribed in Oregon Short Line R. Co. – Abandonment – Goshen, 360 ICC 91 (1979).

X. Environmental and Historic Report

The required environmental and historic information is contained in the Combined Environmental and Historic Report (the "CEHR") which was served on September 24, 2012. A copy of the CEHR notice and service list is attached hereto as **Attachment No. 2** and is hereby made a part hereof. The original of the CEHR was e-filed with the Honorable Cynthia T. Brown, Chief, Section of Administration, on September 24, 2012 for filing.

At this time, UP knows of no historic sites or structures or archeological resources on the Line or in the project area. UP believes that there is nothing in the scope of the project that merits historical comment and that any archeological sites within the scope of the right-of-way would have previously been disturbed during the construction and maintenance of the Line.

UP provided the California Department of Park and Recreation, Office of Historic Preservation ("California SHPO") by letter dated April 13, 2012 two (2) photographs of the only railroad bridge affected by the proposed discontinuance and abandonments. The bridge is a single-tracked 114 foot through plate girder structure crossing over Mission Boulevard at milepost 6.72 and located on the trackway purchased by SCVTA for transit use from UP. The bridge will be replaced with a double-tracked structure dedicated to passenger rail traffic as part of the BART Extension project. The letter and pictures sent to the Office of Historic Preservation are attached hereto as **Attachment No. 3**, and are hereby made a part hereof.

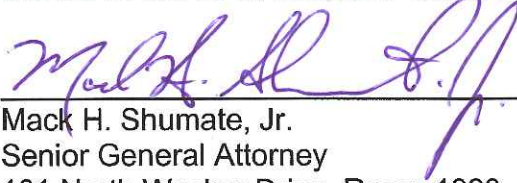
UP is pleased to inform the Board that by letter dated November 6, 2012, the California SHPO acknowledged that the "undertaking" has been consulted upon as the Silicon Valley Transit Corridor, a Federal Transit Administration Project, and that an executed Programmatic Agreement with a finding that no historic architectural properties will be affected by the "undertaking", has been reached. See **Attachment No. 4**, which is hereby made a part hereof.

WHEREFORE, Union Pacific Railroad Company and Santa Clara Valley Transportation Authority respectfully request that the Board find there is no overriding public need for continuing freight service on the Line and that the proposed discontinuance and abandonments are of very limited scope and will not constitute abuse of market power. UP and SCVTA respectfully request that this Board issue a decision (1) exempting UP's discontinuance and abandonment of UP's freight easement upon and SCVTA's abandonment of SCVTA's residual common carrier obligation upon the San Jose Industrial Lead from the provisions of 49 U.S.C. § 10903 and direct that

the exemptions be effective on the date of the Board's decision, (2) granting that an exemption under 49 U.S.C. § 10502 from the Offer of Financial Assistance Provisions of 49 U.S.C. § 10904 and from the Public Use Provisions of 49 U.S.C. § 10905 is warranted in this matter in that the right-of-way which makes up the San Jose Industrial lead is needed for a valid public use purpose by the Bay Area Rapid Transit System and there is no other overriding public need for continued freight rail service on the subject portion of the San Jose Industrial Lead and (3) acknowledging that pursuant to 36 CFR 800 the regulations implementing the Section 106 conditions of the National Historic Preservation Act have been satisfied. UP and SCVTA seek the requested abandonment authority for the same purposes described in and approved by this Board for the prior abandonment, which involved a contiguous track segment. Dated this 12th day of December, 2012.

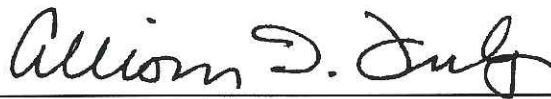
Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY

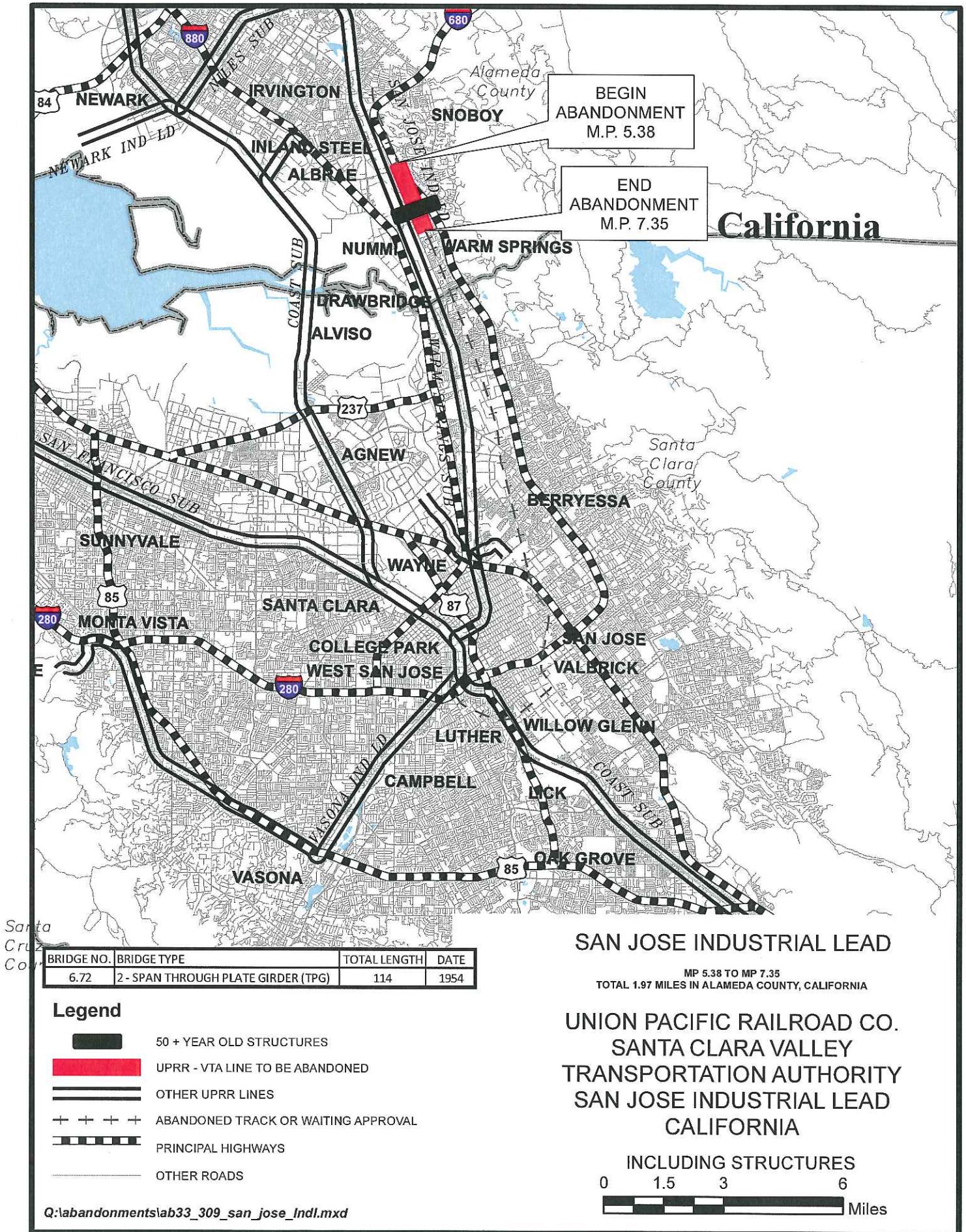


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**SANTA CLARA VALLEY TRANSPORTATION
AUTHORITY**



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Mack H. Shumate, Jr.
Senior General Attorney, Law Department

September 24, 2012

VIA E-FILE

TO: SEE ATTACHED SERVICE LIST

RE: Proposed Joint Exemption Filing for Union Pacific Railroad Company (UP) to discontinue trackage rights and abandon its freight easement upon, and for Santa Clara Valley Transportation Authority (VTA) to abandon its residual common carrier obligation upon, the San Jose Industrial Lead from milepost 5.38 to milepost 7.35 near Warm Springs, CA. The line is to be abandoned for freight service but be retained and rebuilt for future inclusion in the Bay Area Rapid Transit (BART). The UP docket for this filing is AB-33 (Sub No. 309x). The VTA docket for this filing will be AB-980 (Sub-No 2X)

To whom it may concern:

On or after October 15, 2012, Union Pacific Railroad Company ("UP") and Santa Clara Transportation Authority ("VTA") expect to be filing with the Surface Transportation Board ("STB" or "Board") a Joint Notice of Exemption seeking authority to abandon their respective common carrier by railroad interests in the San Jose Industrial Lead from Milepost 5.38 to Milepost 7.35 near Warm Springs, CA, a distance of 1.97 miles, located in Alameda County, California (collectively the "Line"). Attached is a Combined Environmental and Historic Report which describes the proposed action and any expected environmental and historic effects, as well as a map of the affected area.

UP and VTA are providing this report so that you may review the information that will form the basis for the STB's independent environmental analysis of this proceeding. If any of the information is misleading or incorrect, if you believe that pertinent information is missing, or if you have any questions about the Board's environmental review process, please contact the Section of Environmental Analysis (SEA) at the following address, and refer to the above-referenced Docket Numbers:

Surface Transportation Board
Section of Environmental Analysis (SEA)
395 East Street, S.W., Room #100
Washington, DC 20423-0001
Telephone No.: (202) 927-6211

Because the applicable statutes and regulations impose stringent deadlines for processing this action, your written comments to SEA (with a copy to our representative) would be appreciated within three (3) weeks.

ATTACHMENT 2



September 24, 2012

Page 2

Your comments will be considered by the Board in evaluating the environmental and/or historic preservation impacts of the contemplated action. If there are any questions concerning this proposal, please contact our representative directly. UP's representative in this matter is Mack H. Shumate, Jr., who may be contacted by telephone at (312) 777-2055 or by mail at 101 North Wacker Drive, Room 1920, Chicago, IL 60606. VTA's representatives in this matter are Charles a. Spitulnik and Allison I. Fultz, whom may be contacted by telephone at (202) 955-5600 or by mail at Kaplan Kirsch & Rockwell LLP, 1001 Connecticut Avenue, NW, Suite 800, Washington, D.C. 20036

Yours very truly,

A handwritten signature in black ink, reading "Mack H. Shumate, Jr." in a cursive script.

Mack H. Shumate, Jr.
Senior General Attorney

Attachment

Docket No. AB-33 (Sub-No. 309X)

SERVICE LIST

State Clearing (or alternate):

Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814

State Environmental Protection Agency:

California Environmental Protection Agency
1001 I Street
Sacramento, CA 95814

State Coastal Zone Management Agency (if applicable):

California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

Head of each County:

County of Alameda Administration Building
Board of Supervisors
1221 Oak Street, Room 536
Oakland, CA 94612

Environmental Protection Agency (Regional Office):

U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105

U.S. Fish and Wildlife:

U.S. Fish & Wildlife Service, Region 8
2800 Cottage Way W-2606
Sacramento, CA 95825

U.S. Army Corps of Engineers:

U.S. Army Corps of Engineers, San Francisco
1455 Market Street, Room 1667
San Francisco, CA 94103

National Park Service:

National Park Service
Pacific West Region
One Jackson Center
1111 Jackson Street, Suite 700
Oakland, Ca 94607

U.S. Natural Resources Conservation Service:

State Conservationist
Natural Resource Conversation Service
4625 W. Jennifer Avenue, Suite 109
Fresno, CA 93722

National Geodetic Survey:

National Geodetic Survey
Geodetic Services Division
Information Services
NOAAINGS12
1315 E-W Highway
Silver Spring, MD 20910-3282

State Historic Preservation Office:

Office of Historic Preservation
1725 23rd Street, Suite 100
Sacramento, CA 95816

UNION PACIFIC RAILROAD
1400 Douglas Street Omaha, Nebraska 68179

April 13, 2012

State Historic Preservation Office
Office of Historic Preservation
1725 23rd Street, Suite 100
Sacramento, CA, 95816.

RE: Proposed Joint Petition for Exemption Filing for Union Pacific Railroad Company (UP) to discontinue trackage rights and abandon its freight easement upon, and for Santa Clara Valley Transportation Authority (VTA) to abandon its residual common carrier obligation upon, the San Jose Industrial Lead from milepost 5.38 to milepost 7.35 near Warm Springs, CA. The line is to be abandoned for freight service but be retained and rebuilt for future inclusion in the Bay Area Rapid Transit (BART). The UP docket for this filing is AB-33 (Sub No. 309x). The VTA docket for this filing will be AB-980 (Sub-No 2X).

In a letter dated April 9, 2012, UP notified your office of its plan to discontinue trackage rights and abandon its freight easement upon, and of VTA's plans to request authority to abandon its residual common carrier obligation upon, the San Jose Industrial Lead from milepost 5.38 to milepost 7.35 near Warm Springs, CA. The line to be abandoned for freight service is intended to be retained and rebuilt for future inclusion in the Bay Area Rapid Transit (BART). In the same letter, UP attached a map which outlined the maps. In addition, we are enclosing color photographs.

The Surface Transportation Board ("STB") desires verification that your office sees no outstanding issues under Section 106 of National Historic Preservation Act. Accordingly, if you concur that there are no outstanding Section 106 issues regarding the Line, please verify by signing and dating the second page of this letter and return same to me in the enclosed self-addressed envelope, or if you prefer, you may respond via email to cgraham@up.com with a signed version of the letter in PDF format.

Sincerely,

Colleen K. Graham (Jeg)

Colleen K. Graham, Paralegal
Union Pacific Railroad
1400 Douglas St., Stop 1580
Omaha, NE 68179
(w) 402-544-1643
cgraham@up.com

State Historic Preservation Office
1416 9th Street, Room 1442
PO Box 942896
Sacramento, CA 94296

No Outstanding Section 106 Issues

By: _____

Title: _____

Dated: _____





**OFFICE OF HISTORIC PRESERVATION
DEPARTMENT OF PARKS AND RECREATION**

1725 23rd Street, Suite 100
SACRAMENTO, CA 95816-7100
(916) 445-7000 Fax: (916) 445-7053
calshpo@parks.ca.gov
www.ohp.parks.ca.gov



November 06, 2012

Reply To: STB_2012_0927_001

Mack H. Shumate, Jr.
Senior General Attorney
Union Pacific Railroad Company
101 North Wacker Dr., Suite 1920
Chicago, IL 60606

Re: Union Pacific Railroad Company- Discontinuance of Trackage Rights and Abandonment of Freight Easement, Alameda County, California (AB-33; Sub-No.309X) & Santa Clara Valley Transportation Authority – Abandonment of Residual Common Carrier Service, Alameda County, California (AB-980; Sub-No. 2x)

Dear Mr. Shumate:

You are seeking my comments on behalf of the STB pursuant to 36 CFR 800 regulations implementing Section 106 of the National Historic Preservation Act regarding the above referenced undertaking.

As I presently understand it, the project consists of a proposed joint undertaking for Union Pacific Railroad Company (UP) to discontinue trackage rights and to abandon its freight easement; and for Santa Clara Valley Transportation Authority (VTA) to abandon its residual common carrier obligation upon the San Jose Industrial Lead from milepost 5.38 to milepost 7.35 near Warm Springs, CA. Additionally, as I understand this further, the line is to be abandoned for freight service but to be retained and rebuilt for future inclusion in the Bay Area Rapid Transit (BART) ("undertaking").

The "undertaking" has been reviewed and was consulted upon under a Federal Transit Administration (FTA) project, the Silicon Valley Rapid Transit Corridor, and an executed Programmatic Agreement (PA) with a finding that no historic architectural properties will be affected. The PA also established protocols for the handling of unevaluated and unanticipated archeological resources that may be encountered during construction.

Thank you for considering historic properties in your planning process. If you have any questions, please contact Michelle C. Messinger, State Historian II of my staff at (916) 445-7005 or e-mail at MMessinger@parks.ca.gov.

Sincerely,

Susan K. Stratton for

Carol Roland-Nawi, Ph.D.
State Historic Preservation Officer

RECEIVED

NOV - 9 2012

ATTACHMENT 4

LAW DEPARTMENT
UNION PACIFIC RR CO.

VERIFICATION

STATE OF NEBRASKA)

COUNTY OF DOUGLAS)

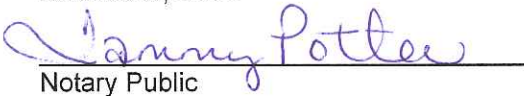
) ss:
)

I, RAYMOND E. ALLAMONG, JR., Senior Manager Rail Line Planning of Union Pacific Railroad Company, declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing document and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of Union Pacific Railroad Company.

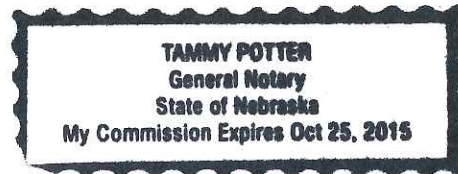
Dated at Omaha, Nebraska, this 11th day of December, 2012.


Raymond E. Allamong, Jr.

SUBSCRIBED AND SWORN TO
before me this 11th day of
December, 2012.


Notary Public

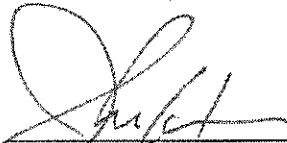
My Commission expires: Oct 25, 2015



VERIFICATION

STATE OF CALIFORNIA)
) SS.
COUNTY OF SANTA CLARA)

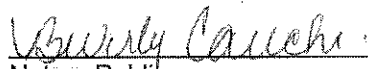
I, James M. Costantini, PE, Deputy Director – Engineering & Construction Division, for the Santa Clara Valley Transportation Authority, declare under penalty of perjury under the laws of the United States of America, that I have read the foregoing Joint Petition for Exemption under 49 U.S.C. §10502 and Applicable Rules, etc. and that its assertions as to the Santa Clara Valley Transportation Authority and its interests in the line that is the subject of this proceeding, are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of the Santa Clara Valley Transportation Authority.



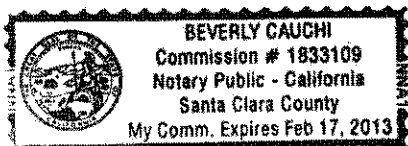
James M. Costantini, PE

STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Subscribed and sworn to (or affirmed) before me this 11th day of December, 2012, by James M. Costantini, PE, Deputy Director, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



Notary Public



CERTIFICATE OF SERVICE AND PUBLICATION

The undersigned hereby certifies that a copy of the foregoing Combined Petition for Exemption in Docket No. AB-33 (Sub-No. 309X) by Union Pacific Railroad Company and Docket No. AB-980 (Sub-No. 2X) by Santa Clara Valley Transportation Authority was served on the date indicated below by mailing a copy, first class mail postage prepaid to the following:

MTMCTEA

Military Surface Deployment &
Distribution Command
Transportation Engineering Agency
ATTN: SDTE - SA
(Railroads For National Defense)
709 Ward Drive, Building 1990
Scott AFB, IL 62225-5357

U.S. Department of the Interior
National Park Service
Legislative & Congressional Affairs Office
1849 C Street, N.W., Room 3309
Washington, DC 20240

U.S. Department of Agriculture
Chief of the Forest Service
4th Floor N.W., Auditors Building
14th Street & Independence Ave., S.W.
Washington, DC 20250

Executive Director
Public Utilities Commission of
the State of California
Attn: Tack Joe – Rail Safety
505 Van Ness
San Francisco, CA 94102

Rail Program Manager
Planning Division
California Transportation Department
1120 N. Street
Sacramento, CA 95814

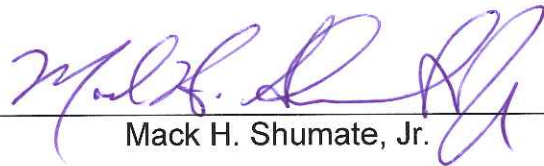
Transportation Planner
Department of Transportation
1120 N. Street
Sacramento, CA 95814

The undersigned further certifies that a Notice of Intent to Discontinue Rail Service and Abandon Rail Line was published one time in the counties where the Line is located as follows:

County	Newspaper	Date
Alameda	The Fremont Argus	November 11, 2012

The above newspaper is generally circulated in the county where the rail line is located. The Notice as published was in the form prescribed by the Board for a Petition for Exemption at 49 C.F.R. 1105.12. Proofs of Publication are attached hereto and hereby made a part hereof.

Dated this 12th day of December, 2012.



Mack H. Shumate, Jr.

876141 COS

Argus

c/o Bay Area News Group-East Bay
37468 Fremont Blvd.
Fremont, CA 94536
Legal Advertising
(800) 595-9595 opt. 4

Legal No.

0004685172

CALIF. NEWSPAPER SVC.
BILLING DEPT., PO BOX 60460
LOS ANGELES CA 90060

PROOF OF PUBLICATION

FILE NO. 2406592

In the matter of

Argus

The Argus

I am a citizen of the United States; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the Legal Advertising Clerk of the printer and publisher of The Argus, a newspaper published in the English language in the County of Alameda, State of California.

I declare that the Argus is a newspaper of general circulation as defined by the laws of the State of California as determined by this court's order, dated June 12, 1961, in the action entitled In the Matter of the Ascertainment and Establishment of the Standing of The Argus as a Newspaper of General Circulation, Case Number 314854, and as amended, April 25, 1967. Said order, as amended, states: "The Argus' has been established, printed and published in the County of Alameda, State of California; [] That it is a newspaper published daily for the dissemination of local and telegraphic news and intelligence of a general character and has a bona fide subscription list of paying subscribers; and ... THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED: ... That 'The Argus' is a newspaper of general circulation for the County of Alameda, California." Said order as amended, has not been revoked.

I declare that the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

11/11/2012

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated: November 13, 2012



Public Notice Advertising Clerk.

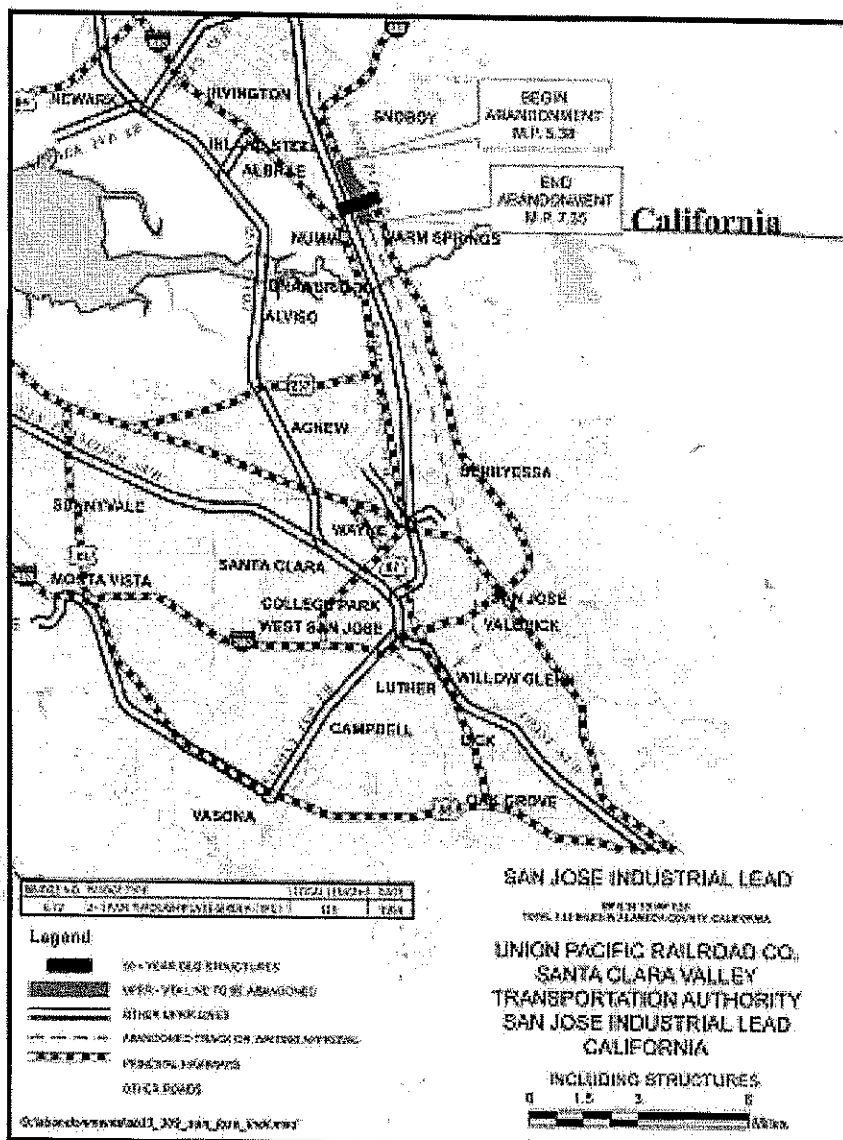


NOTICE OF INTENT TO DISCONTINUE RAIL SERVICE AND ABANDON RAIL LINE

UNION PACIFIC RAILROAD COMPANY ("UP") and Santa Clara Valley Transportation Authority ("VTA") give notice that on or after November 12, 2012, they intend to file with the Surface Transportation Board ("Board"), Washington, D.C. 20423, a combined Joint Petition for Exemption filing under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903, et seq., permitting UP to abandon its freight easement upon, and permitting VTA to abandon its residual common carrier obligation upon, a portion of the San Jose Industrial Lead from milepost 5.38 to milepost 7.35 near the rail station of Warm Springs, in the community of Fremont. The line of railroad traverses through United States Zip Codes 94538 and 94539 in Alameda County, California. The line is to be abandoned for freight service but will be retained and rebuilt for future inclusion in the Bay Area Rapid Transit ("BART") system. The UP docket for this joint petition is No. AB-33 (Sub-No. 309X) and the VTA docket for this joint petition will be AB-980 (Sub-No. 2X).

The Board's Office of Environmental Analysis (OEA) will generally prepare an Environmental Assessment (EA), which will normally be available 60 days after the filing of the joint petition for exemption. Comments on environmental and energy matters should be filed no later than 30 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to OEA, Surface Transportation Board, 395 E Street, SW, Washington, DC 20423, or by calling OEA at (202) 245-0295.

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use and offers of financial assistance) must be filed directly with the Board's Section of Administration, Office of Proceedings, 395 E Street, SW, Washington, DC 20423 [see 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicants' representatives [see 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Public Assistance, Governmental Affairs and Compliance at 202-245-0238. Copies of any comments or requests for conditions should be served on UP's representative: Mack H. Shumate, Jr., Senior General Attorney, 101 North Wacker Drive, Room 1920, Chicago, IL 60606; and on VTA's representative: Charles Spitulnik, Kaplan Kirsh & Rockwell, LLP, 1001 Connecticut Ave, NW, Ste 800, Washington, DC, 20036.



DRAFT FEDERAL REGISTER NOTICE
[49 C.F.R. § 1152.60(c)]

STB No. AB-33 (Sub-No. 309X) and STB No. AB-980 (Sub-No. 2X)
Joint Petition for Exemption to Abandon or
To Discontinue Service

On December 12, 2012, Union Pacific Railroad Company and Santa Clara Valley Transportation Authority filed with the Surface Transportation Board, Washington, D.C. 20423, a joint petition for exemption for Union Pacific Railroad Company ("UP") to abandon UP's freight easement upon, and for Santa Clara Valley Transportation Authority ("VTA") to abandon VTA's residual common carrier obligation upon, the San Jose Industrial Lead from M.P. 5.38 to M.P. 7.35 near the rail station of Warm Springs (Community of Fremont), a distance of 1.97 miles in Alameda County, California (the "Line"). The Line traverses U.S. Postal Service Zip Codes 94538 and 94539. The proceeding has been docketed as No. AB-33 (Sub-No. 309X) and AB-980 (Sub-No. 2X). There are no agency stations on the Line.

The Line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected as required by 49 U.S.C. 10903(b)(2).

Any offer of financial assistance will be due no later than 10 days after service of a decision granting the petition for exemption.

All interested persons should be aware that following abandonment of rail service and salvage of the Line, the Line may be suitable for other public use, including interim trail use.

Any request for a public use condition and any request for trail use/rail banking will be due no later than 20 days after notice of the filing of the petition for exemption is published in the Federal Register.

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR Part 1152. Questions concerning environment issues may be directed to the Board's Section of Environmental Analysis.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.