

SURFACE TRANSPORTATION BOARD
Washington, DC 20423
OFFICE OF ENVIRONMENTAL ANALYSIS

EO-1946

August 22, 2012

Najah Duvall-Gabriel
Advisory Council on Historic Preservation
The Old Post Office Building
1100 Pennsylvania Avenue, NW, Suite 803
Washington, DC 20004

Re: AB-33 (Sub-No. 170) – Union Pacific Railroad Company - Abandonment Exemption –
between MP 221.1 and MP 217.38 in the City of Des Moines, Iowa (Polk County)
Iowa SHPO Number: R&C #001277021

Dear Ms. Duvall-Gabriel:

Union Pacific Railroad Company (UP) filed for abandonment of the Bell Avenue Industrial Lead extending from MP 221.1 near SE 18th Street to MP 217.38 near SW 30th Street in the City of Des Moines, Iowa in September, 2001. The Board issued a decision imposing a Section 106 historic condition on the line pending evaluation. Following failed attempts to negotiate trails use agreements, UP believes that the Chicago Great Western Bridge (bridge) at MP 219.79 is a liability and needs to be dismantled. It was determined, in consultation with the Iowa Department of Cultural Affairs, State Historical Society of Iowa, that the bridge appears to be eligible for the National Register under criterion C, and that UP's intention to demolish the bridge would cause an Adverse Effect to a historic property.

The Office of Environmental Analysis is the office within the Board responsible for conducting the environmental review process pursuant to the National Environmental Policy Act, including the National Historic Preservation Act (NHPA). Please find enclosed a copy of the Memorandum of Agreement (MOA) which resulted from the consultation process pursuant to the regulations implementing Section 106 of NHPA. The filing of this MOA with the Council completes our compliance responsibilities under Section 106 of NHPA.

Sincerely,



Kenneth H. Blodgett
Office of Environmental Analysis

cc: Jerome Thompson, Iowa SHPO
Darin Bair, UP
Mark Deschenes, U.S. Army Corps of Engineers

**MEMORANDUM OF AGREEMENT BETWEEN
THE SURFACE TRANSPORTATION BOARD,
THE IOWA STATE HISTORIC PRESERVATION OFFICER,
THE UNITED STATES ARMY CORPS OF ENGINEERS,
AND THE UNION PACIFIC RAILROAD COMPANY**

**REGARDING DOCKET NO. AB 33 (SUB-NO. 170)
UNION PACIFIC RAILROAD COMPANY
-- ABANDONMENT EXEMPTION --
IN DES MOINES, IOWA**

WHEREAS, on September 28, 2001, Union Pacific Railroad Company (UP) filed an application with the Surface Transportation Board (Board) under 49 U.S.C. § 10903 to abandon and discontinue service over a 3.72-mile line of railroad known as the Bell Avenue Industrial Lead between milepost 221.10 near SE 18th Street and milepost 217.38 near SW 30th Street in the City of Des Moines (City), Polk County, Iowa, in Docket No. AB 33 (Sub-No. 170); and

WHEREAS, in a decision served on January 16, 2002, the Board imposed a condition for the proposed abandonment that requires UP to retain its interest in and take no steps to alter the historic integrity of the Des Moines River Bridge at milepost 219.79 until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f (NHPA); and

WHEREAS, the Board has determined that the rail line abandonment constitutes an Undertaking, as defined in 36 C.F.R. § 800.3(a); and

WHEREAS, for abandonments, the railroad right-of-way is the area of potential effects, defined at 36 C.F.R. § 800.16(d) as "the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist." In this case, the only property retained by UP is the Des Moines River Bridge and a 100-foot right-of-way extending westward from the levee to the street access at SE 1st Street; and

WHEREAS, UP proposes to remove and salvage the Des Moines River Bridge; and

WHEREAS, based on the recommendation of a qualified historical consultant and in consultation with the Iowa State Historic Preservation Office (SHPO), the Board determined that the Des Moines River Bridge is eligible for listing in the National Register of Historic Places (National Register), pursuant to 36 C.F.R. § 800.4; and

WHEREAS, the Board consulted with the SHPO pursuant to 36 C.F.R. § 800.5, and determined that the proposed abandonment will have an adverse effect on the Des Moines River Bridge; and

WHEREAS, the SHPO, in a letter dated February 17, 2012, concurred with the Board's determination of adverse effect and requested that UP seek interested parties that may be willing to relocate the Des Moines River Bridge in whole or part using a portion of demolition costs; and

WHEREAS, UP consulted with the City regarding its interest in relocating and retaining the Des Moines River Bridge in whole or in part using funds UP would otherwise spend on demolition, and the City declined; and

WHEREAS, the Board consulted with the Advisory Council on Historic Preservation (ACHP) in 2001 during abandonment proceedings and updated the ACHP in a letter dated May 11, 2012, 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 May 23, 2012, the ACHP declined to participate in the negotiation of this Memorandum of Agreement (MOA); and

WHEREAS, removal of the Des Moines River Bridge requires a permit from the United States Army Corps of Engineers (Corps). The Board is the lead federal agency for the purposes of compliance with the National Historic Preservation Act of 1966 (16 U.S.C. 470f) for this abandonment, and the Corps will participate as a signatory to this MOA; and

WHEREAS, pursuant to 36 C.F.R. § 800.6, the Board has consulted with the SHPO and Corps regarding ways to avoid, minimize, or mitigate potential effects to the historic resource as a result of the proposed abandonment, and the Board, SHPO and Corps 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, SHPO, and Corps 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. MITIGATION

As mitigation for removal of the Des Moines Bridge, UP shall complete photographic and written documentation for the property subject to the provisions outlined below. Once the photographic and written documentation has been approved by SHPO, the Board will notify UP that it may commence with the removal of the bridge. The actions that implement this MOA shall include the following:

Recordation of Historic Properties:

1. Prior to removal of any portion of the Des Moines River 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), Level III.
 - a. UP shall complete photographic documentation of the Des Moines River Bridge. This documentation shall be produced in compliance with the minimum camera requirements set forth in the federal standards for HABS/HAER referenced above and shall consist of large format (4x5 negative size) professional black and white photography, including a photo index.
 - b. UP shall submit a xerographic copy of the photographic documentation to SHPO for review; pending SHPO approval, one complete set of photographic documentation with contact prints and original negatives will be prepared for submittal to the SHPO, and an additional set of contact prints shall be prepared for submittal to the Des Moines Public Library.
 - c. The SHPO will determine whether the documentation meets the standards stipulated.
2. After the photographic documentation has been approved by SHPO, UP may begin demolition/salvage operations.
3. UP's architectural historian shall complete a written historical and descriptive report according to the "Outline Format" of the National Park Service Guidelines for HABS/HAER documentation. The report shall include a detailed description of the Des Moines River Bridge and a brief discussion of the contextual history of the bridge to the extent available to UP. The SHPO shall approve this written history in writing prior to completion of this portion of the documentation.

II. STANDARDS

Professional Qualifications: All historic preservation activities implemented pursuant to this MOA shall be carried out by or under the direct supervision of a person or persons meeting, at a

minimum, the *Professional Qualification Standards in the Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines* (48 FR 44738-44739).

III. REPORTING REQUIREMENTS

UP shall compile the final HAER photographic and written documentation and submit it to the SHPO within one year of the execution of this MOA. The SHPO shall determine if the documentation is complete and notify the Board of its completeness determination.

A. Comment Period: UP shall complete the photo and written documentation and submit a draft report to SHPO for review. The SHPO will have 30 days to comment on the documentation. UP shall modify the report in accordance with any SHPO comments provided within the comment period. Failure of SHPO to comment within the specified period shall be deemed by the Board to constitute SHPO approval of the documentation.

B. Distribution of Final Documentation: UP shall submit the final documentation package, including negatives, contact prints, and written report, to the SHPO. UP shall submit an additional set of contact prints and written report to the Des Moines Public Library.

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. UNANCTIPATED 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 thirty (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. 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.

VIII. 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 thirty (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.

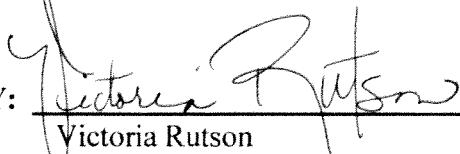
EXECUTION of this MOA by the Board and SHPO and implementation of its terms evidence that the Board has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

ACCEPTED AND AGREED

SIGNATORY PARTIES:

SURFACE TRANSPORTATION BOARD

BY:



Victoria Rutson

Director, Office of Environmental Analysis

DATE: 8-14-2012

IOWA STATE HISTORIC PRESERVATION OFFICE

BY:  **DATE:** 7/16/12
Jerome Thompson
Interim State Historic Preservation Officer

UNITED STATES ARMY CORPS OF ENGINEERS

BY: For Mark J. Deschenes DATE: 8/13/12
Mark J. Deschenes, Colonel, U.S. Army
U.S. Army Corps of Engineers, Rock Island District

Memorandum of Agreement Between the Surface Transportation Board, the Iowa State Historic Preservation Officer, the United States Army Corps of Engineers, and the Union Pacific Railroad Company Regarding Docket No. AB 33 (Sub No. 170) Union Pacific Railroad Company - Abandonment Exemption - in Des Moines, Iowa

UNION PACIFIC RAILROAD COMPANY

BY: Darin J. Bair **DATE:** 7/9/12
Darin Bair
Manager Special Projects/Assets