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30 June 2016

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Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, D.C. 20423

ENTERED  
Office of Proceedings  
June 30, 2016  
Part of  
Public Record

Re: Union Pacific RR Co. --  
Abandonment Exemption -  
In Alameda County, CA  
AB 33-326X

Comment on jurisdiction and  
Statement of Willingness-Fee Exempt

Dear Ms. Brown:

This comment and enclosed Statement of Willingness is on behalf of City of Alameda. Almost all the lines for which abandonment authority is sought are located within the City of Alameda. The City did not receive actual notice of the abandonment proceeding until on or about June 23 when former legal counsel noticed the Board's Environmental Assessment on the STB website and called the matter to the City's attention. Certain segments of the proposed abandonment apparently were de facto abandoned apparently without compliance with federal regulatory requirements years ago, and may have been sold, at least in part, to non-rail users. In any event, subsequent abandonments or discontinuances appear to have cut off all but one of the segments from the interstate rail network, raising jurisdictional issues. The City has not yet completed its analysis, but at this point has identified at least two direct interests in this proceeding. First, one of the segments ("track 7") proposed for abandonment is immediately adjacent to or perhaps in part inside a city park to which the segment might be added, to the extent actually owned by Union Pacific. Second, the City has an interest in preserving all or portions of another segment (UP's "Alameda Industrial Lead") for park and

trail purposes, and possibly to ensure preservation of an already railbanked rail line (the Alameda Belt Line, or "ABL") against claims of severance.

Jurisdictional issue. City of course supports timely compliance by railroads with federal abandonment licensing requirements. However, Union Pacific Railroad abandoned all trackage rights on the Alameda Belt Line (ABL) from MP 0 to MP 1.8 of same, commencing at what the agency calls Lincoln Junction (MP 10.4) on Union Pacific's "line" in Alameda, and ending at MP 1.8 (roughly St. Charles Avenue on Union Pacific's "line" in Alameda. Union Pacific Railroad Company - Discontinuance of Trackage Rights Exemption - in Alameda County, CA, AB 33-291X, served April 8, 2010.<sup>1</sup> The discontinuance of all trackage rights by Union Pacific over ABL severed all connection of all Union Pacific trackage west of St. Charles Avenue from the interstate rail network. This conclusion is fortified by the subsequent abandonment by ABL of MP 0.0 to MP 2.61.<sup>2</sup> All former ABL property is now owned by City of Alameda. City of Alameda is concerned to the extent that Union Pacific by inadvertence or otherwise purports to assert that there is any current common carrier obligation on any of the former ABL properties. Union Pacific discontinued all such claims pursuant to AB 33-291X, which in turn was part of a contractual requirement for the City's acquisition of ABL. It is our understanding that STB takes the position that it loses jurisdiction over track severed from the interstate rail network. No further abandonment authority is necessary for severed trackage.

Accordingly, the only portion of the Notice of Exemption over which City believes STB has jurisdiction is the segment called the "Alameda Industrial Lead" from MP 10.0 near Fruitvale

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<sup>1</sup> To City's knowledge, Union Pacific (or its predecessor in interest) de facto abandoned all operations of its trackage west of the former ABL yard long before 2010, other than as reflected in the trackage rights exemption, and may have sold off portions of those properties in whole or in part.

<sup>2</sup> Alameda Belt Line (ABL) subsequently received abandonment and railbanking authority for MP 0.0, which we believe coterminous with MP 10.4 (Lincoln Junction) on the STB OEA map, all the way to MP 2.61. See City of Alameda d/b/a Alameda Beltline Railroad - Ab. Ex. - in Alameda County, CA, AB 1090X (abandonment from MP 0.0 to MP 2.61, railbanking MP 0.0 to MP 1.85). The City also does not believe that trackage UP describes as "track 7" intersects with any railbanked portion of ABL.

to MP 10.4 near Lincoln Junction (and also near MP 0.0 of the former ABL line).

Railbanking. The City of Alameda is interested in negotiating possible acquisition of the Alameda Industrial Lead (MP 10 to 10.4) pursuant to 16 U.S.C. 1247(d), at least until we determine the nature of Union Pacific's title to that segment. Preservation of this segment may contribute to preserving STB jurisdiction for railbanking purposes against claims of severance in connection with ABL MP 0.0 to MP 1.85.

City of Alameda accordingly tenders the attached statement of willingness. Since the City is a municipality, the statement of willingness is fee exempt under 49 C.F.R. 1002.2(e)(1).

Public Use Condition. City seeks a public use condition pursuant to 49 U.S.C. 10904 and 49 C.F.R. 1152.28 relating to all land interests of Union Pacific in the Alameda Industrial Lead (MP 10 to MP 10.4), and, if this agency has jurisdiction, in "track 7" (all property in or adjacent to the ABL yard). As required by section 1152.28(a)(2), City states as follows:

- (1) Condition sought: bar on disposal of any interests in land, other than for public purposes, for 180 days or whatever longer period is allowed by law.
- (2) Public importance: in respect to "track 7," the ABL yard is now an important public park in the City of Alameda. The City has an interest in acquiring UP properties, if any, that intrude into or bound the park. Prior to learning of the proposed abandonment, the City had already begun discussions with UP in this regard. In respect to the Alameda Industrial Lead, the City has a potential interest in acquiring this segment in order to maintain a continuous connection to the interstate rail network in order to ensure maintenance of STB jurisdiction over the railbanked portion of the ABL, and better to ensure potential freight and passenger rail transit connections in the event the event of reactivation of rail service in the future. The City also has an interest in acquisition of the portion of this segment south of the Fruitvale Bridge for open space and allied purposes. "Track 7" and the Alameda Industrial Lead are appropriate for use for public purposes.
- (3) Period of time for which condition is sought: City seeks a bar on non-public disposal of the properties for a period of at least 180 days from the effective date of any abandonment authorization for either of

the two segments, which abandonment authorization is not otherwise stayed (e.g., to examine jurisdictional issues) by this agency.

- (4) Justification for time period: Based on experience with rail acquisitions to date, City expects title reports (and follow-up), appraisals, and negotiations for the rail properties at issue to consume at least 180 days and almost certainly a longer period. A public use condition of no less than 180 days is prudent to ensure the property is kept intact during this negotiation period.

Questions concerning filing. I can most easily be reached by e-mail in connection with any questions relating to this filing. Thank you for your assistance in this matter.

Certification of service. By my signature below, I certify service of this letter and attachments on the date above upon Jeremy Berman, counsel for Union Pacific, by First Class Mail, to his address of record, and by email and email attachment to his email address (jmberman@up.com).

Very truly,

  
Charles H. Montange  
for City of Alameda

Encls.  
cc. Mr. Berman with encls.  
City of Alameda with encls.

Before the Surface Transportation Board

Union Pacific RR Co. - )  
Abandonment Exemption - ) AB 33 (Sub.no. 326X)  
In Alameda County, CA )

STATEMENT OF WILLINGNESS TO ASSUME  
FINANCIAL RESPONSIBILITY

In order to establish interim trail use and railbanking under 16 U.S.C. 1247(d) and 49 C.F.R. 1152.29, The City of Alameda ("City" or "Interim Trail User") is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against certain right-of-way owned by Union Pacific Railroad Company and operated by same. The property, known as "UP's Alameda Industrial Lead," extends from beginning of abandonment at railroad milepost 10.0 near Fruitvale to end of line at Milepost 10.4, near Lincoln Junction, in Alameda County, CA. The right of way is part of a line of railroad proposed for abandonment in STB docket AB 33-326X.

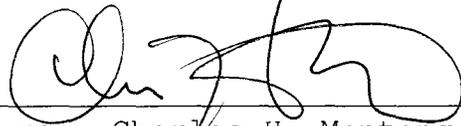
A map of the property depicting the right of way is attached.<sup>1</sup>

City acknowledges that use of the right of way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and

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<sup>1</sup> The map is the same used by STB Office of Environmental Analysis in connection with its environmental assessment in AB 33-326X.

reactivation of the right of way for rail service. A copy of this statement is being served on the railroad on the same date it is being served on the Board.

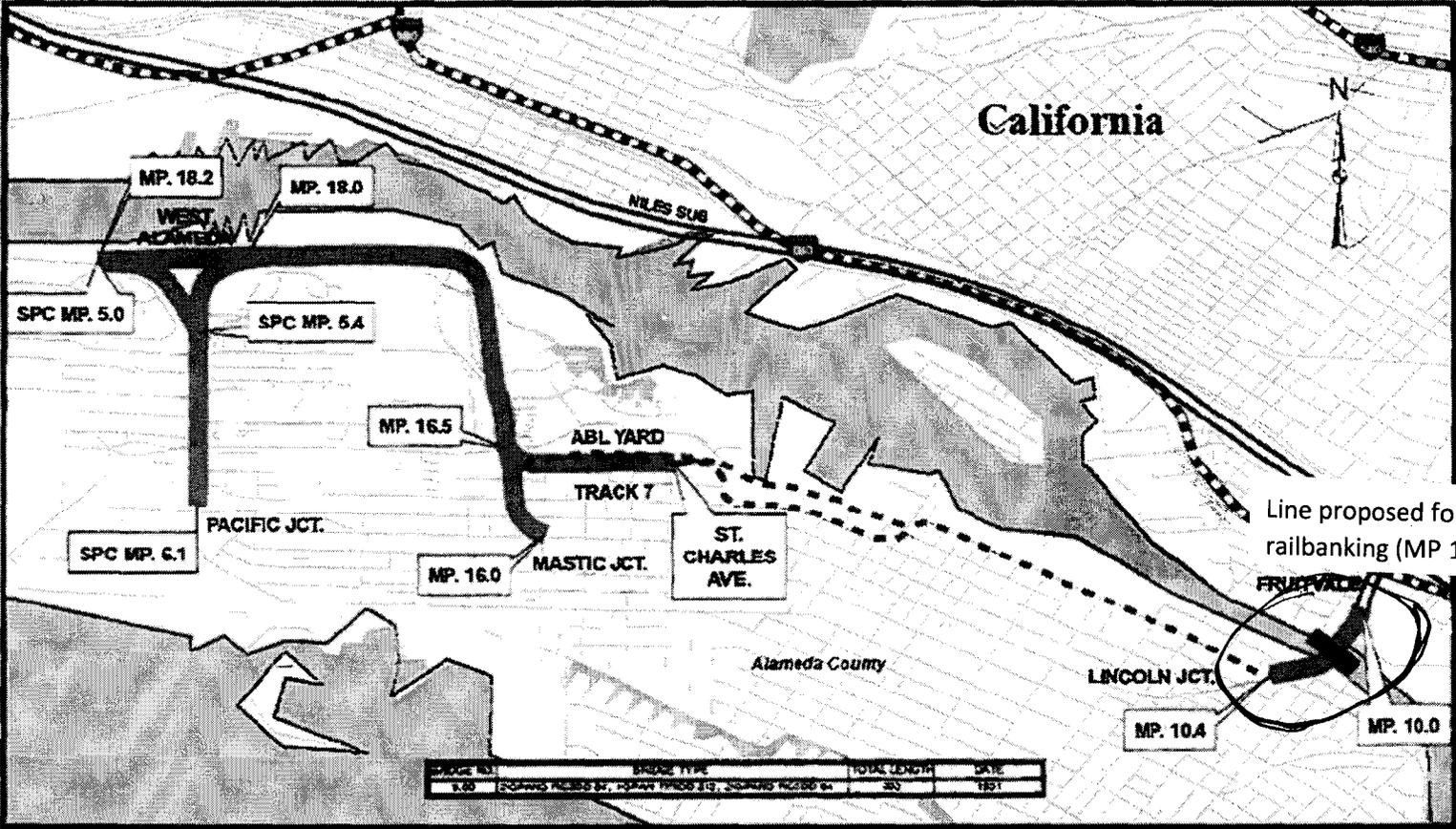


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Attachments: Map (as employed by STB OEA)

cc. Jeremy M. Berman (UP's Representative)  
General Attorney  
Union Pacific  
1400 Douglas St., #1580  
Omaha, NE 68179  
by USPS, first class, and  
Email to [jmberman@up.com](mailto:jmberman@up.com)



Line proposed for railbanking (MP 10 to 10.4)

BRIDGE NO.	BRIDGE TYPE	TOTAL LENGTH	DATE
1.00	SPANNING PACIFIC ST. IMPART. TRUSS BRG. SPANNING PACIFIC ST.	383	1951

**Legend**

- ABANDONMENT
- FORMER ABL TRACKAGE (see AB33-291X)
- OTHER TRACKS
- OTHER ROADS
- PRINCIPAL HIGHWAYS
- 50 + YEAR OLD STRUCTURES

**ALAMEDA ISLAND**

UNION PACIFIC RAILROAD CO.  
TOTAL OF 4.3 MILES IN ALAMEDA COUNTY  
IN CALIFORNIA

UNION PACIFIC RAILROAD CO.  
ALAMEDA ISLAND  
CALIFORNIA  
INCLUDING STRUCTURES

