

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 33 (Sub-No. 326X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—  
IN ALAMEDA COUNTY, CAL.

Decided: July 19, 2016

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon all of its remaining trackage on Alameda Island in Alameda County, Cal. (the Line). The Line totals approximately 4.3 miles and consists of five rail segments: (1) UP's Alameda Industrial Lead, from milepost 10.0 near Fruitvale to milepost 10.4 near Lincoln Jct. (Alameda Industrial Lead Segment 1); (2) the Alameda Industrial Lead from milepost 16.0 near Mastic Jct. to milepost 18.2 near West Alameda; (3) the former South Pacific Coast Railway mainline from milepost 5.0 at West Alameda to milepost 6.1 at Pacific Jct.; (4) the connection between the Alameda Industrial Lead at milepost 18.0 and South Pacific Coast milepost 5.4 near West Alameda; and (5) track #7, the connection between the Alameda Belt Line near St. Charles Avenue and the Alameda Industrial Lead at its milepost 16.5 near Constitution Way (Track #7). The Line also includes all other UP ancillary, industrial, switching, siding, and spur trackage on Alameda Island (the Line).<sup>1</sup> Notice of the exemption was served and published in the Federal Register on June 20, 2016 (81 Fed. Reg. 39,995). The exemption is scheduled to become effective on July 20, 2016.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) recommending that five conditions be imposed on any decision granting abandonment authority. In the EA, OEA stated that the National Geodetic Survey (NGS) had commented that there are three geodetic station markers that may be affected by the proposed abandonment. Therefore, OEA recommended that CSXT be required to consult with and notify NGS at least 90 days prior to beginning salvage activities that would disturb or destroy any geodetic station markers.

OEA also stated that the Line possibly passes through Coastal Zone Management Areas, 100-year floodplain, marsh land restoration areas, and other environmentally sensitive areas that may warrant further review by the appropriate agencies. Accordingly, OEA recommended that,

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<sup>1</sup> In its combined environmental and historic report, UP notes that since the Line was used in electric interurban service from 1911 to 1940, it appeared to have been reclassified by then-owner Southern Pacific Railroad and viewed as an unregulated switching spur. UP views the Line as potentially falling under STB jurisdiction and is seeking abandonment authority to clarify the record with regard to the Line.

(1)(a) prior to beginning any salvage activities, UP be required to consult with the San Francisco Bay Conservation and Development Commission to determine whether state coastal management consistency certification is required, pursuant to the Coastal Zone Management Act (16 U.S.C. § 1451 et seq.), and (b) UP may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until it reports the results of these consultations in writing to OEA and the Board has removed this condition; (2) prior to commencement of any salvage activities, consult with the U.S. Army Corps of Engineers (Corps) regarding its requirements and, if applicable, comply with the reasonable requirements of the Corps; and (3) to ensure that the 100-year floodplain is not adversely affected, UP shall consult with the Alameda County Public Works Agency prior to commencement of any salvage activities regarding potential impacts to the floodplain and comply with the reasonable requirements thereof.

In the EA, OEA noted that UP served a historic report on the California Office of Historic Preservation (State Historic Preservation Office or SHPO), pursuant to 49 C.F.R. § 1105.8(c). OEA stated that it had not heard from the SHPO and therefore has not been able to consider the SHPO's opinion before determining if the Line may be eligible for listing on the National Register of Historic Places (National Register). OEA therefore recommended that UP be required to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register until the Section 106 process of the National Historic Preservation Act (NHPA), 54 U.S.C. § 30618 (formerly 16 U.S.C. § 470f), has been completed. OEA also recommended that UP be required to report back to OEA regarding any consultations with the SHPO and the public and that UP may not file its consummation notice or initiating any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

OEA issued its final EA on July 14, 2016, noting that no comments to the EA were received by the July 12, 2016 due date and reiterating its recommendation that the five previously recommended conditions be imposed. Accordingly, the five conditions recommended by OEA in the EA will be imposed.

In the EA, OEA stated that the right-of-way may be suitable for other public use following abandonment and salvage of the Line. On June 30, 2016, the City of Alameda (the City), filed a request for the issuance of a notice of interim trail use or abandonment (NITU) to negotiate with UP for acquisition of Alameda Industrial Lead Segment 1 for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29. Pursuant to 49 C.F.R. § 1152.29, the City has also submitted a statement of willingness to assume financial responsibility for the right-of-way and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. In a response filed on July 11, 2016, UP states that it is willing to negotiate with the City for interim trail use.

Because the City's request complies with the requirements of 49 C.F.R. § 1152.29 and UP is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). If no agreement is reached within 180 days, UP may fully abandon the Line. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

The City also has requested imposition of a public use condition under 49 U.S.C. § 10905 for both Alameda Industrial Lead Segment 1 as well as Track #7. The City asks that UP be prohibited from disposing of any interest in the land on those segments (but not the tracks, ties, and signal equipment) except for public use on reasonable terms, for a 180-day period from the effective date of the abandonment authorization. The City's justification for its request is that these two segments have considerable value for public purposes and that the 180-day period is needed to assemble and review title information, appraisals, and begin negotiations with UP.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under § 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. 49 C.F.R. § 1152.28(a)(2). Because the City has satisfied these requirements, a 180-day public use condition will be imposed, requiring the City to keep intact the right-of-way (including trail-related structures such as bridges, trestles, culverts, and tunnels) on the two requested segments and to refrain from disposing of the corridor (other than tracks, ties, and signal equipment), commencing from July 20, 2016, the effective date of the exemption.

When proper requests for interim trail use/rail banking and public use conditions are made, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. Here, however, while both conditions will be imposed at this time, the public use condition will expire on January 16, 2017, while the trail use negotiating period will run 180 days from the service date of this decision and notice, until January 15, 2017. If a trail use agreement is reached for a portion of the right-of-way prior to January 16, 2017, UP must keep the remaining right-of-way intact for the remainder of the 180-day public use condition period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested

person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, UP is not required to deal exclusively with the City, but may engage in negotiations with other interested persons.

This decision, and the proposed abandonment if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on June 20, 2016, exempting the abandonment of the Line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit the City to negotiate with UP for trail use for Alameda Industrial Lead Segment 1 for a period of 180 days from the service date of this decision and notice, until January 15, 2017, and to permit public use negotiations as set forth below for Alameda Industrial Lead Segment 1 and Track #7 for a period of 180 days commencing from the effective date of the exemption, until January 16, 2017. The abandonment is also subject to the conditions that UP shall: (1) consult with and notify NGS at least 90 days prior to beginning salvage activities that would disturb or destroy any geodetic station markers; (2) (a) consult with the San Francisco Bay Conservation and Development Commission to determine whether state coastal management consistency certification is required, pursuant to the Coastal Zone Management Act (16 U.S.C. § 1451 et seq.), and (b) not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the results of these consultations has been reported, in writing, to OEA and the Board has removed this condition; (3) prior to commencement of any salvage activities, consult with the Corps regarding its requirements and, if applicable, comply with the reasonable requirements of the Corps; (4) to ensure that the 100-year floodplain is not adversely affected, consult with the Alameda County Public Works Agency prior to commencement of any salvage activities regarding potential impacts to the floodplain and comply with the reasonable requirements thereof; and (5)(a) retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register until the Section 106 process of the NHPA, has been completed, (b) report back to OEA regarding any consultations with the SHPO and the public, and (c) not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.
3. Consistent with the public use and interim trail/rail banking conditions imposed in this decision and notice, UP may discontinue service. UP shall keep intact the right-of-way for the Alameda Industrial Lead Segment 1 and Track #7, including potential trail-related structures on

those segments such as bridges, trestles, culverts, and tunnels, for a period of 180 days, until January 16, 2017, to enable any state or local government agency, or other interested person, to negotiate the acquisition of the right-of-way for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day public use condition period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the right-of-way.

4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 4 above.

6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2) and (h).

7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by January 15, 2017, for the portion of the right-of-way subject to the NITU, interim trail use may be implemented. If no agreement is reached, UP may fully abandon that portion of the Line, subject to any outstanding conditions.

9. This decision and notice is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.