

**Wayland, Joshua**

---

**From:** Andrew Schmidt <aschmidt@summite.com>  
**Sent:** Monday, October 24, 2016 3:28 PM  
**To:** Joshua Wayland  
**Cc:** OHDIRKS@up.com; Mack H. Shumate  
**Subject:** RE: Notification of Adverse Effect--Railroad Abandonment in Baytown, Texas  
**Attachments:** MOA AB33 324X Cedar Bayou Bridge 10-19-2016.doc

Josh,

Attached is a proposed Memorandum of Agreement from Union Pacific stipulating mitigation of the adverse effect to the Cedar Bayou Bridge. Note, two items need to be filled in: the date that the ACHP comments on your notification, which I assume will be to decline to participate; and if any of the invited parties wish to sign the MOA. I used the Angleton Bridge MOA you sent me as a template, but let me know if you have any questions or comments. Also, please let me know if you need any additional information from UP before you send the MOA to TxSHPO for review.

Thanks,  
Andrew

**Andrew Schmidt**

Director of Cultural Resources

Summit EnviroSolutions, Inc.

1217 Bandana Boulevard ♦ St. Paul, MN 55108

W: [651-842-4202](tel:651-842-4202) ♦ Fx: [651-647-0888](tel:651-647-0888) ♦ M: [612-845-4788](tel:612-845-4788)[aschmidt@summite.com](mailto:aschmidt@summite.com) ♦ [www.summite.com](http://www.summite.com)

---

**From:** Joshua Wayland [mailto:[Joshua.Wayland@stb.gov](mailto:Joshua.Wayland@stb.gov)]

**Sent:** Monday, October 3, 2016 3:45 PM**To:** [e106@achp.gov](mailto:e106@achp.gov)**Cc:** [mackshumate@up.com](mailto:mackshumate@up.com); [lydia.woods@thc.texas.gov](mailto:lydia.woods@thc.texas.gov); [kitty@historicbridgefoundation.com](mailto:kitty@historicbridgefoundation.com); Andrew Schmidt**Subject:** Notification of Adverse Effect--Railroad Abandonment in Baytown, Texas

The attached documents pertain to a proposed railroad abandonment in Harris and Chambers Counties, Texas. Union Pacific Railroad company intends to seek authority from the Surface Transportation Board to abandon approximately 2.23 miles of rail line in Baytown, Texas, which could result in the removal or alteration of a vertical lift span bridge over Cedar Bayou, a historic property that is eligible for listing in the National Register of Historic Places. The purpose of this notification is to (1) notify the ACHP of a finding that an undertaking may adversely affect historic properties, and (2) invite the ACHP to participate in Section 106 consultation. Please contact me at the number below if you need additional information.

Best regards,

Josh Wayland

Environmental Protection Specialist

Office of Environmental Analysis

Surface Transportation Board

**MEMORANDUM OF AGREEMENT**

**AMONG**

**THE SURFACE TRANSPORTATION BOARD,**

**THE TEXAS STATE HISTORIC PRESERVATION OFFICER,**

**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 an application with the Surface Transportation Board (Board) under 49 U.S.C. § 10903 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 abandonment will include removal and salvage of the vertical lift bridge at Cedar Bayou; and

**WHEREAS**, the Board has determined that the rail line abandonment constitutes an undertaking and has consulted with the Texas State Historic Preservation Officer (SHPO) pursuant to Section 106 of the National Historic Preservation Act, 54 U.S.C. § 306108 (NHPA), and its implementing regulations, 36 C.F.R. § 800; and

**WHEREAS**, demolition is the only feasible option because the bridge is currently not operable, a buyer willing to preserve and maintain the bridge has not been identified, and the United States Coast Guard (USCG) 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 Texas SHPO, the Board determined that the Cedar Bayou Bridge is eligible for listing in the National Register of Historic Places (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 Texas SHPO pursuant to 36 C.F.R. § 800.5, determined that the proposed abandonment will have an adverse effect on the Cedar Bayou Bridge because the bridge shall be removed; 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 **XXXXXX**, 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 and to sign this MOA as an Concurring Parties; and

**WHEREAS**, pursuant to 36 C.F.R. § 800.6, the Board has consulted with the Texas 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, Texas 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, Texas 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 Texas 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:

**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 particular 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.

## **II. REVIEW AND COMMENT**

- A. Prior to the start of demolition activity, UP shall prepare the draft HAER photographic documentation in accordance with Stipulation I.A. and shall distribute it via electronic mail or CD to the Board and the SHPO for review. The Board and Texas SHPO shall review and provide comments to UP within 10 calendar day of receipt of the photographic documentation.
- B. If comments are provided to UP regarding the photographic documentation, UP shall revise the photographic documentation in response to the comments, as needed, and resubmit the photographic documentation as described in Stipulation III.A. within 10 calendar days of receipt of comments. If no comments are provided to UP by the end of the 10-day comment period, the photographic documentation shall be declared complete and final.
- C. UP shall prepare the draft HAER narrative and measured drawings in accordance with Stipulations I.B. and I.C. and shall distribute them via electronic mail or CD to the Board and the Texas SHPO for review within 180 calendar days of the execution of this MOA. The Board and the Texas SHPO shall review and provide comments to UP within 30 calendar days of receipt of the draft HAER narrative and measured drawings.
- D. If reasonable comments requiring material change are provided to UP regarding the HAER narrative and measured drawings, 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 Texas SHPO within 15 calendar days of the end of the comment period.

## **III. FINALIZATION**

- A. Once photographic documentation is final as defined in Stipulation II.B., demolition of the bridge may proceed. No demolition of the bridge shall occur until the photographic documentation is declared final by the Texas SHPO, with the exception provided in Stipulation III.E.
- B. Final HAER documentation shall be produced on acid-free, 100-year archival paper, with the photographs and drawings on archival CDs.
- C. Upon finalization of the HAER documentation, UP shall submit one copy of the documentation to the Texas SHPO and shall offer one copy of the documentation to the Historic Bridge Foundation, and the Harris and Chambers County Historical Commissions. Documentation shall be made available in print on acid-free, 100-year archival paper and electronically on archival CDs. UP shall consult with the recipients to

determine which media the recipients wish to receive and whether they wish to receive all of the photographs and drawings or only selected images or sheets.

- D. Evidence of transfer to the recipients listed in Stipulation III.C., which may include a copy of the transmittal letters, shall be provided to the Texas SHPO by UP.
- E. The HAER 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 Texas SHPO and would commence the bridge removal immediately in coordination with the Board.
- F. UP shall bear the cost for document production and delivery in Stipulations I, II and III.

#### **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 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.

## **XI. 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 Texas 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:

????????????

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
??????  
[Title]

DRAFT