

UNION PACIFIC RAILROAD  
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Mack H. Shumate, Jr.  
Senior General Attorney, Law Department

239478

October 29, 2015

**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

ENTERED  
Office of Proceedings  
November 2, 2015  
Part of  
Public Record

**RE: Petition for Exemption for Union Pacific Railroad Company ("UP") to abandon UP's freight easement upon the Boulder Industrial Lead from M.P. 0.70 near Commerce City to M.P. 9.27 near Eastlake, a distance of 8.57 miles in Adams County, Colorado (the "Line"). The Line is to be abandoned for freight service but shall be retained and rebuilt for future inclusion in the Regional Transit District ("RTD"). The UP docket for this filing is AB-33 (Sub-No. 323X).**

And

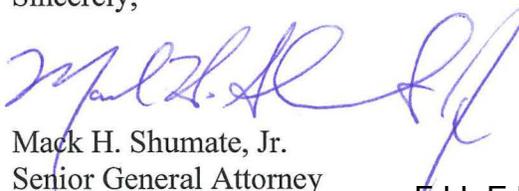
**Request Under 49 U.S.C. § 10502 to Exempt the Proposed Petition for Exemption for UP to Abandon UP's Freight Easement Upon the Above-Referenced Line from the Offer of Financial Assistance Provisions of 49 U.S.C. § 10904 and the Public Use Provisions of 49 U.S.C. § 10905 for Reasons of Overriding Public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

Pursuant to 49 U.S.C. §10502, Union Pacific Railroad Company ("UP") hereby submits by eFiling the Petition for Exemption for UP to Abandon UP's Freight Easement 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 Petition for Exemption in Docket No. AB-33 (Sub-No. 323X). Enclosed is a credit authorization voucher in the amount of \$6,700.00 for the filing fee.

Sincerely,

FEE RECEIVED  
November 2, 2015  
SURFACE  
TRANSPORTATION BOARD

  
Mack H. Shumate, Jr.  
Senior General Attorney

MHS/ev  
Attachments  
2015\_10\_27 STB-Ltr re Petition for Exemption.doc

FILED  
November 2, 2015  
SURFACE  
TRANSPORTATION BOARD



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  
4<sup>th</sup> Floor N.W., Auditors Building  
14<sup>th</sup> Street & Independence Ave., S.W.  
Washington, DC 20250

**State Clearinghouse (or alternate):**  
Governor's Office of Budget and Planning  
200 East Colfax, Room 111  
Denver, CO 80203

**Colorado Public Utilities Commission:**  
Colorado Public Utilities Commission  
1560 Broadway  
Suite 250  
Denver, CO 80202

Marla Lien, Esq.  
General Counsel  
Regional Transportation District  
1600 Blake Street  
Denver, CO 80202

Atlas Roofing Corporation  
802 Highway 19N  
Meridian, Mississippi 39307

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Leroy Industrial LLC  
5690 DTC Boulevard, Ste 285W  
Greenwood, Colorado 80111



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

STB No. AB-33 (Sub-No. 323X)  
Petition for Exemption to Abandon or  
To Discontinue Service

On October 29, 2015, Union Pacific Railroad Company filed with the Surface Transportation Board, Washington, D.C. 20423, a petition for exemption for Union Pacific Railroad Company ("UP") to abandon UP's freight easement upon, the Boulder Industrial Lead from M.P. 0.70 near Commerce City to M.P. 8.57 near Eastlake, a distance of 8.57 miles in Adams County, Colorado (the "Line"). The Line, including the right-of-way, trackage and structures, including bridges, was sold to the Denver Regional Transportation District ("RTD") in June of 2009. In that the Line was sold in its entirety the RTD in 2009 subject only to UP's freight easement, for the purpose of RTD to establish public commuter passenger rail service on the Line as a public use, UP is requesting that the STB exempt the proposed abandonment authority from both 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 by RTD. The Line traverses U.S. Postal Service Zip Codes 80022, 80640, 80229, 80233 and 80241. The proceeding has been docketed as No. AB-33 (Sub-No. 323X). 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 environmental 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.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**Docket No. AB-33 (Sub-No. 323X)**

**UNION PACIFIC RAILROAD COMPANY  
--DISCONTINUANCE AND ABANDONMENT OF FREIGHT EASEMENT--  
IN ADAMS COUNTY, COLORADO  
(BOULDER INDUSTRIAL LEAD)**

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**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**

UNION PACIFIC RAILROAD COMPANY  
Mack H. Shumate, Jr.  
Senior General Attorney  
101 North Wacker Drive  
Room 1920  
Chicago, IL 60606  
(312) 777-2055  
(312) 777-2065 FAX

Dated: October 29, 2015  
Filed: October 29, 2015

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**Docket No. AB-33 (Sub-No. 323X)**

**UNION PACIFIC RAILROAD COMPANY  
--DISCONTINUANCE AND ABANDONMENT OF FREIGHT EASEMENT--  
IN ADAMS COUNTY, COLORADO  
(BOULDER INDUSTRIAL LEAD)**

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**PETITION FOR EXEMPTION  
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**AND**

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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”) files this petition for exemption from the requirements of 49 U.S.C. § 10903 in accordance with 49 U.S.C. § 10502. The exemption, if granted, will permit UP to abandon that portion of its Boulder Industrial Lead freight operating easement (the “Freight Easement”), from Milepost 0.70 near Commerce City, Colorado, to the end of the Freight Easement at Milepost 9.27 near

Eastlake, Colorado, a distance of 8.57 miles in Adams County, Colorado (the "Line").

There are no longer any customers that use the Line, nor any likelihood of new rail-served customers locating on the Line. The Line is to be abandoned for freight service but shall be retained and rebuilt for future inclusion in the Denver Regional Transit District ("RTD") master plan for RTD's integrated mass transit system known as FasTracks (a regional public passenger rail and bus network for the greater Denver, Colorado area). This is the same transit use as is the planned use for the western portion of the Boulder Industrial Lead which was the subject matter of AB-33 (Sub No. 307X) having a service date of October 23, 2012 and consummated on August 16, 2013. UP does not expect that the proposed abandonment will have any negative impact upon any existing or future shippers in the area.

## **II. Petitioner's Background and Representative**

UP has rail operations in the states of Arizona, Arkansas, California, Colorado, Idaho, Illinois, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming. The Line is owned by the Denver Rapid Transit District (RTD), with UP retaining the Freight Easement over the Line. UP now desires to abandon its Freight Easement over the Line but retain the Freight Easement from milepost 0.20 to milepost 0.70. At this time, RTD is constructing a transit line, which will currently use the former right of way from MP 1.15 to MP 9.27.

The name, address, and telephone number of UP's representative is listed below:

Mack H. Shumate, Jr.  
Senior General Attorney  
101 North Wacker Drive, Room 1920  
Chicago, IL 60606  
(312) 777-2055  
(312) 777-2065 FAX

### **III. Line Description, Zip Code Information, and Map**

The proposed action involves UP's abandonment of UP's retained Boulder Industrial Lead freight operating easement (the "Freight Easement"), from Milepost 0.70 near Commerce City, Colorado, to the end of the Freight Easement at Milepost 9.27 near Eastlake, Colorado, a distance of 8.57 miles in Adams County, Colorado (the "Line"). The entire Boulder Industrial Lead (the "Lead"), right-of-way, trackage and structures, including all bridges from milepost 0.20 near Commerce City to Milepost 33.17 near Valmont, was sold to RTD, in June of 2009. UP retained the Freight Easement over the entire Lead. UP consummated the abandonment authority for the portion of the Lead from Milepost 9.27 near Eastlake to Milepost 33.17 near Valmont on August 16, 2013 in Docket No. AB-33 (Sub No. 307X). No overhead freight traffic or passenger service operates over the Line. The Line traverses U.S. Postal Service Zip Code 80022, 80640, 80229, 80233, and 80241.

The Line was originally constructed in 1909 by the Union Pacific Railroad Company. The Line is constructed primarily with 100-pound second-hand jointed rail put down in 1942.

A map of the Line is attached hereto as **Attachment 1** and hereby made a part hereof. Other rail lines in the area, principal highways, and other roads are also shown on the map of the Line. The Line does have five (5) structures (bridges) that are 50 years old, or older. No stations will be closed as a result of abandonment of the Line.

#### **IV. Shipper Information**

The proposed abandonment of the Line will have no adverse effect on any shippers, as no traffic or passenger service currently moves over the Line or is expected to use the Line in the future. Only one customer located on the Line, Atlas Roofing Corporation, has moved traffic over the Line within the past two years. RTD and Atlas Roofing Corporation and Leroy Industries LLC (the owner of the facility Atlas Roofing Corporation leases for its operations) entered into an agreement covering alternative transportation arrangements for service off the Line. The last Atlas Roofing Corporation shipment moved over the Line in February of 2015. No need for future rail service on the Line to Atlas Roofing Corporation or Leroy Industrial Lead or any other potential customer is anticipated.

As indicated in the attached Memorandum of Settlement Agreement and the Letter Agreements attached thereto, Atlas Roofing Corporation and Leroy Industrial LLC have no objection to and support UP's proposed abandonment. See **Attachment 2** which is attached hereto and hereby made a part hereof. The addresses for Atlas Roofing Corporation and Leroy Industrial LLC are as follows:

Atlas Roofing Corporation  
802 Highway 19N  
Meridian, Mississippi 39307

Leroy Industrial LLC  
5690 DTC Boulevard, Ste 285W  
Greenwood, Colorado 80111

Union Pacific is not including any traffic information to the Board with regard to Atlas Roofing Corporation because Atlas Roofing Corporation will no longer be adversely impacted by the proposed abandonment because of its transload operation, and because such traffic information could be utilized by Atlas Roofing Corporation's competitors. Leroy Industrial LLC is the owner of the real property and building that

Atlas Roofing Corporation uses for its business and does not ship on the Line and will not be adversely impacted by the proposed abandonment.

#### **V. Reasons for the Abandonment and Reasonable Alternatives**

The abandonment of the Line has broad public use benefits and is necessary because the switch for the only customer will be removed in order to convert the right of way into a rapid transit line by RTD. Continued operation of the Line would impose a significant burden upon interstate commerce. There appear to be no reasonable alternatives to UP's abandonment of the Line, and there is no reasonable likelihood that there will be any future demand for service on the Line. As noted above, Atlas Roofing Corporation will use transloading to receive inbound commodity at their facility which will no longer be rail served. Conversion of the right of way for transit use will make locations along the Line unsuitable for establishment of rail-served industries, but will support increased commercial, residential, and educational uses of the surrounding property. UP expects that the proposed abandonment will be beneficial to interstate commerce, as it will allow UP to redirect resources away from an unused rail line that has no likelihood of generating future freight business, and toward other UP freight rail service on actively used rail lines.

The abandonment, if approved, will not adversely impact transportation options in the area, as UP will continue to provide rail service over the small remainder of the Boulder Industrial Lead, and from the Greeley Subdivision which connects with the remaining portion of the Boulder Industrial Lead at MP 0.20 to MP 0.70 as shown on **Attachment 1**. Rail service is also available from the BNSF Brush Subdivision at Commerce City near MP 0.00, as well as from various Short Lines and industrial tracks

in the greater Denver area. The area is well served by various highways and local roads. The Line is on a north to south alignment with Interstate-25 lying parallel to the Line about 2 miles to the West, and Interstate-76 crossing the Line near MP 1.5, and with eight other major thoroughfares crossing the Line at various points.

## **VI. The Exemption Standards Have Been Met**

Rail line abandonments require authorization and approval of the Board pursuant to 49 U.S.C. § 10903. However, 49 U.S.C. § 10502 requires the Board to exempt transactions where 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. UP's proposed abandonment clearly satisfies these exemption standards.

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 UP's administrative costs and expenses that would otherwise be associated with pursuing the proposed abandonment through a full application proceeding. An exemption will expedite regulatory action and will reduce regulatory barriers to abandonment consistent with Sections 10101(2) and (7). An exemption will also foster sound economic conditions in the transportation industry consistent with Section 10101(5), by allowing UP to abandon its easement for freight operations on a line that is unlikely to be used again by any shipper.

Additionally, the proposed abandonment is clearly a transaction of limited scope. The Line is only 8.57 miles long and does not serve any shippers. Because there are

no shippers on the Line, regulation of this abandonment is not needed to protect them from an abuse of market power.

#### **VII. Land Area, Federal Grant Information, and Public Use**

The UP's interest in the right-of-way is in the form of an easement for freight operating purposes over a right of way and track structure owned by RTD. The easement, runs through industrial, commercial, and residential areas. The topography along the Line is generally level. Based upon information in UP's possession, the Line does not contain any federally granted right-of-way. Any documentation in UP's possession will be made available to those requesting it. A map of the Line is attached as **Attachment 1**.

UP believes that the highest and best purpose of the Line would be for RTD's FasTracks transit project.

#### **VIII. Labor.**

UP is agreeable to the labor protection conditions imposed in abandonment proceedings, as prescribed in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

#### **IX. Environmental and Historic Report**

The required environmental and historic information is contained in the Combined Environmental and Historic Report (the "CEHR"), which was filed on June 12, 2015. A copy of the CEHR transmittal letter is attached as **Attachment 3** and is hereby made a part hereof. The EHR was sent to the Honorable Cynthia T. Brown by E-File on June 12, 2015, for filing.

The CEHR was prepared pursuant to 49 C.F.R. § 1105.7 and § 1105.8.

Attachment 4 to said CEHR which is also attached hereto as **Attachment 4** and hereby made a part hereof, consists of the Final Environmental Impact Statement and the Section 4(f) Evaluation concerning Archaeological, Historic and Paleontological Resources dated January, 2011 (the "EIS). The EIS was produced by RTD and is twenty-three (23 ) pages long. In the EIS the state historic preservation offices for the State of Colorado ("SHPO") determined that the abandonment of the Line would have no adverse effect on historic places on the Line. (See **Attachment 4**).

In response to UP's initial proposed abandonment notice letter dated May 8, 2015, delivered pursuant to 49 C.F.R. Part 1152 and 49 C.F.R. Part 1105.7 for the subject proposed abandonment of the Line, the SHPO qualified its prior January, 2011 position and stated that, "Transfer of a historic property out of federal ownership or control can be an adverse effect (see 36 C.F.R. 800.5(a)(2)(vii) when the transfer is not accompanied by a legal agreement to ensure the preservation of the resource." (See SHPO Letter dated June 18, 2015, a copy of which is attached hereto as **Attachment 5** and hereby made a part hereof.).

In order to satisfy the SHPO's concerns for a legal agreement to ensure the preservation office resource, the US Army Corps of Engineers (the "Corps"), the Colorado State Historic Preservation Officer and the Denver Regional Transportation District entered into the Memorandum of Agreement dated October 3, 2015 (the "Memorandum of Agreement") which outlines the steps the Corps will undertake to ensure preservation of the historic resource. (See Memorandum of Agreement a copy of which is attached hereto as **Attachment 6** and hereby made a part hereof.)

For the reasons set forth above, UP is of the reasoned opinion that the concerns

expressed by the Colorado SHPO in its letter dated June 8, 2015 have been fully addressed by the Memorandum of Agreement with the Colorado SHPO and that the proposed abandonment of UP's freight easement on the Line should not be conditioned by application of Section 106 of National Historic Preservation Act.

**X. 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**

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 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.<sup>1</sup>

The entire Boulder Industrial Lead, including both the freight operating easement for the 23.90-mile right-of-way which UP consummated the abandonment of an August 16, 2013 under Docket No. AB-33 (Sub No. 307X) and the freight operating easement for the 8.57 mile right of way segment which UP is seeking to abandon now, along with the Lead's trackage, structures, and bridges, was sold to the Denver Regional

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<sup>1</sup> 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).

Transportation District (RTD) in June of 2009. UP retained a freight operating easement over the entire Lead. The entire line has been incorporated into the master plan for RTD's integrated mass transit system known as FasTracks (a regional public passenger rail and bus network for the greater Denver, Colorado area) and it would not be suitable for other public purposes, including roads or highways, or other forms of transportation, trails, conservation, energy production or transmission, or recreation. The area that the Boulder Industrial Lead served has now shifted away from rail oriented industries, and, as a consequence, no new shippers are expected to locate on the Line.

On June 27, 2012 in Docket No. AB-33 (Sub No. 307X) UP filed a Verified Notice of Exemption under 49 C.F.R. at. 1152 subpart F-Exempt Abandonments to abandon a 23.90 mile freight rail operating easement for that portion of the Boulder Industrial Lead extending from milepost 9.27 near Eastlake to the end of the line at milepost 33.17 near Valmont, in Adams, Wold and Boulder Counties Colorado. This Notice of Exemption became effective on November 22, 2012 and was consummated by UP by notice filed on August 16, 2013.

Prior to the Notice of Exemption becoming effective on November 22, 2013, UP filed a petition on July 20, 2012 as amended on July 25, 2012 seeking Board approval for exemptions from 49 U.S.C. § 10904, the offer of financial assistance (OFA) procedures and 49 U.S.C. § 10905, the public use conditions. The Board granted these UP petitions by decision dated October 17, 2012 with a Service Date of October 18, 2012 as follows:

**Exemption from Section 10904.** Under 49 U.S.C. §10904, a financially responsible person may offer to purchase, or subsidize continued rail

operations over, a rail line sought to be abandoned. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power. The Board has granted exemptions from the OFA provisions of 49 U.S.C. § 10904 when the record shows that the right-of-way is needed for a valid public purpose and there is no overriding public need for continued freight rail service. See, e.g., Norfolk S. Ry.-Aban. Exemption-in Norfolk & Va. Beach, Va., AB 290 (Sub-No. 293X) (STB served Nov. 6, 2007).

UP has justified an exemption from the OFA process. First, UP has demonstrated that the line is needed for a valid public purpose-inclusion in RTD's mass transit system. In addition, there is no overriding public need for continued freight rail service.<sup>2</sup> No freight traffic has moved over the Line for at least two years. With regard to future rail service needs, UP states that the development in the area of Boulder, Colo., served by the Lead is shifting away from rail-oriented industries, decreasing the likelihood that rail-oriented shippers would locate on the Lead. Accordingly, we find that a valid public purpose is present, and that there is no overriding public need for continued freight rail service.

We further conclude that applying the OFA provisions in this situation is not necessary to carry out the rail transportation policy. Allowing the abandonment that is the subject of the notice of exemption in this docket to become effective expeditiously, without the abandonment first being subject to these provisions, will minimize the need for Federal regulatory control over the rail transportation system, expedite the regulatory action, and reduce regulatory barriers to exit, consistent with 49 U.S.C. §§ 10101 (2) and (7). Other aspects of the rail transportation policy will not be adversely affected. As discussed above, regulation is not necessary to protect shippers from an abuse of market power because there are no shippers on the line.<sup>3</sup> Thus, the record here establishes that the proposed exemption from 49 U.S.C. § 10904 meets the criteria of 49 U.S.C. § 10502. **(See Board Decision in Docket No. AB-33 (Sub No. 307X with a service date of October 18, 2012 at pages 3 and 4).**

**Exemption from 49 U.S.C. § 10905.** UP also seeks exemption from the public use provisions of 49 U.S.C. § 10905. Section 10905 has been

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<sup>2</sup> See Can. Nat'l Ry Aban. Exemption in Niagara Cnty., N.Y., AB 279 (Sub-No. 6X), slip op. at 4 (STB served Aug. 3, 2012) (STB found no overriding need for continued freight rail service in authorizing rail freight carrier's cessation of its freight service obligation, and exemption from the OFA process, over the lined owned by bi-national commission in order to facilitate additional passenger rail service).

<sup>3</sup> Given our market power finding, we need not determine whether the proposed transaction is limited in scope.)

interpreted to promote the use of property for alternate public purposes such as roads, highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. UP's justification for its request is that the entire Boulder Industrial Lead, including the 23 .90-mile right-of-way, has been sold and incorporated into RTD's mass transit system, and therefore, the line is not suited for other public purposes. See, e.g., Wisconsin Cent.-Aban.-in Ozaukee, Sheboygan and Manitowoc Cntys. Wis., AB 303 (Sub-No. 27) (STB served Oct. 18, 2004).

For the same reasons discussed with respect to the § 10904 exemption above, the record here also establishes that the proposed exemption from 49 U.S.C. § 10905 meets the criteria of 49 U.S.C. § 10502. Therefore, we will exempt the abandonment that is the subject of the notice of exemption in this docket from this provision, as well. ***(See Board Decision in Docket No. AB-33 (Sub No. 307X) with a service date of October 18, 2012 at page 4).***

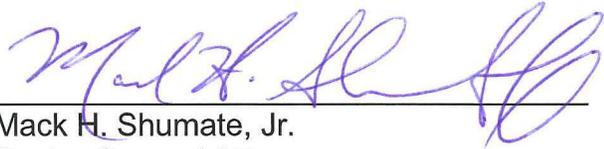
For the identical reasons and rational in the Board's decision in Docket No. AB-33 (Sub No. 307X), Union Pacific Railroad Company respectfully requests that the Board issue a decision granting that an exemption under 49 U.S.C. § 10502 from the Offer of Financial Assistance Provisions of 49 U.S.C. §10904 and from the Public Use Provisions of U.S.C. § 10905 is warranted in this matter in that the right-of-way which makes up the subject portion of the Boulder Industrial Lead covered by this Petition is needed for a valid public purpose by the Denver Regional Transportation District and there is no other overriding public need for continued freight rail service on said subject portion of the Boulder Industrial Lead.

WHEREFORE, Union Pacific Railroad Company respectfully requests that the Board issue a decision (1) exempting the proposed abandonment from the provisions of 49 U.S.C. § 10903 and (2) exempting 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.

Dated this 29<sup>th</sup> day of October, 2015.

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY



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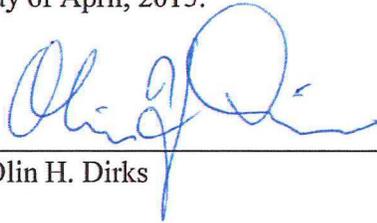
Mack H. Shumate, Jr.  
Senior General Attorney  
101 North Wacker Drive  
Room 1920  
Chicago, IL 60606  
(312) 777-2055  
(312) 777-2065 FAX

**VERIFICATION**

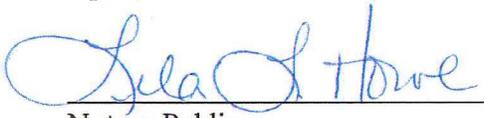
STATE OF NEBRASKA    )  
                                  )SS:  
COUNTY OF DOUGLAS    )

I, OLIN H. DIRKS, Senior Manager Rail Line Planning of Union Pacific Railroad Company, declare under penalty of perjury, under the law 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 10<sup>th</sup> day of April, 2015.

  
\_\_\_\_\_  
Olin H. Dirks

SUBSCRIBED AND SWORN TO  
before me this 10<sup>th</sup> day of  
April, 2015.

  
\_\_\_\_\_  
Notary Public

My Commission expires: Aug 5, 2015



**CERTIFICATE OF SERVICE AND PUBLICATION**

The undersigned hereby certifies that a copy of the foregoing Petition for Exemption in Docket No. AB-33 (Sub-No. 323X) by Union Pacific Railroad Company 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  
4<sup>th</sup> Floor N.W., Auditors Building  
14<sup>th</sup> Street & Independence Ave., S.W.  
Washington, D.C. 20250

**State Clearinghouse (or alternate):**

Governor's Office of Budget and  
Planning  
200 East Colfax, Room 111  
Denver, CO 80203

**Colorado Public Utilities**

**Commission:**

Colorado Public Utilities Commission  
1560 Broadway  
Suite 250  
Denver, CO 80202

Marla Lien, Esq.  
General Counsel  
Regional Transportation District  
1600 Blake Street  
Denver, CO 80202

Atlas Roofing Corporation  
802 Highway 19N  
Meridian, Mississippi 39307

Leroy Industrial LLC  
5690 DTC Boulevard, Ste 285W  
Greenwood, Colorado 80111

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:

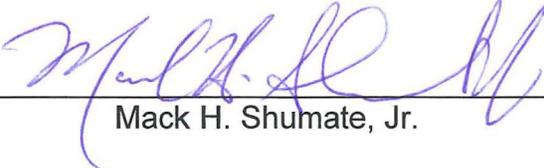
**County**  
Adams

**Newspaper**  
Denver Post

**Date**  
October 29, 2015

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 29<sup>th</sup> day of October, 2015.



---

Mack H. Shumate, Jr.

**The Denver Post, LLC**

**PUBLISHER'S AFFIDAVIT**

**City and County of Denver )  
State of Colorado )  
)**

The undersigned **Jean Birch** being first duly sworn under oath, states and affirms as follows:

1. He/she is the legal Advertising Reviewer of The Denver Post, LLC, publisher of The Denver Post and Your Hub.
2. The Denver Post and Your Hub are newspapers of general circulation that have been published continuously and without interruption for at least fifty-two weeks in Denver County and meet the legal requisites for a legal newspaper under Colo. Rev. Stat. 24-70-103.
3. The notice that is attached hereto is a true copy, published in The Denver Post on the following date(s):

October 29, 2015

Jean Birch  
Signature

Subscribed and sworn to before me this 29 day of October, 2015.

Cheryl L. Schmid  
Notary Public

**CHERYL L. SCHMID**  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20094029973  
MY COMMISSION EXPIRES SEPTEMBER 14, 2017

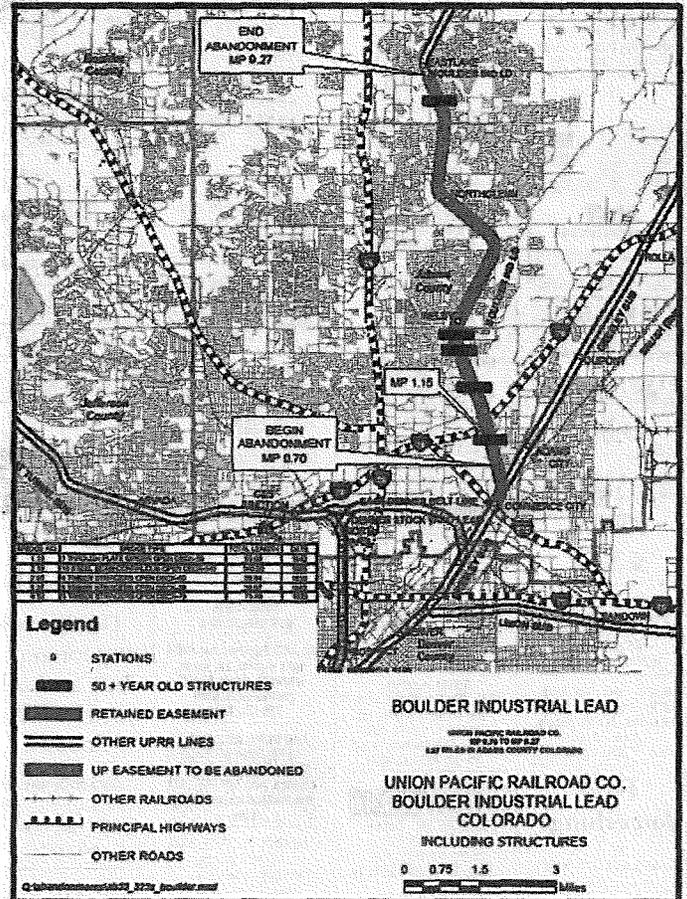
(SEAL)

**NOTICE OF INTENT TO DISCONTINUE RAIL SERVICE AND ABANDON RAIL LINE**

UNION PACIFIC RAILROAD COMPANY ("UP") gives notice that on or after October 29, 2015, UP intends to file with the Surface Transportation Board ("Board"), Washington, D. C. 20423, a 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, a portion of the Boulder Industrial Lead from milepost 0.70 to milepost 9.27 near Eastlake, in Adams County, Colorado. The line of rail traverses through United States Zip Codes 80022, 80640, 80229, 80233 and 80241 in Adams County, Colorado. The line is to be abandoned for freight service but will be retained and rebuilt for future inclusion in the Regional Transit District ("RTD") system. The UP docket for this petition is No. AB-33 (Sub-No. 323X).

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.



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

STB No. AB-33 (Sub-No. 323X)  
Petition for Exemption to Abandon or  
To Discontinue Service

On October 29, 2015, Union Pacific Railroad Company filed with the Surface Transportation Board, Washington, D.C. 20423, a petition for exemption for Union Pacific Railroad Company ("UP") to abandon UP's freight easement upon, the Boulder Industrial Lead from M.P. 0.70 near Commerce City to M.P. 8.57 near Eastlake, a distance of 8.57 miles in Adams County, Colorado (the "Line"). The Line, including the right-of-way, trackage and structures, including bridges, was sold to the Denver Regional Transportation District ("RTD") in June of 2009. In that the Line was sold in its entirety the RTD in 2009 subject only to UP's freight easement, for the purpose of RTD to establish public commuter passenger rail service on the Line as a public use, UP is requesting that the STB exempt the proposed abandonment authority from both 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 by RTD. The Line traverses U.S. Postal Service Zip Codes 80022, 80640, 80229, 80233 and 80241. The proceeding has been docketed as No. AB-33 (Sub-No. 323X). 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).

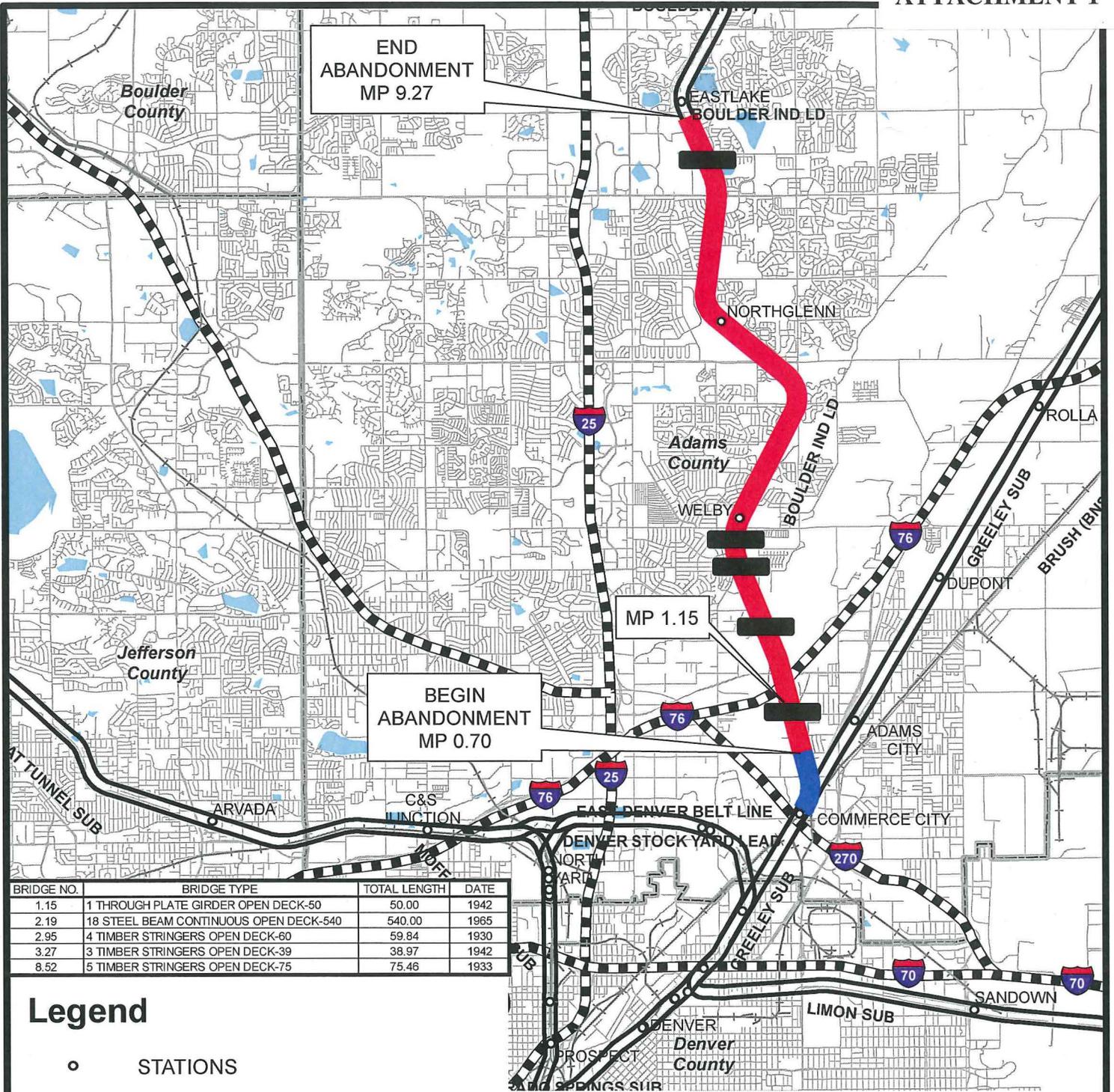
Any offer of financial assistance will be due no later than 10 days after service of a decision granting the petition for exemption.

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 environmental 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.



BRIDGE NO.	BRIDGE TYPE	TOTAL LENGTH	DATE
1.15	1 THROUGH PLATE GIRDER OPEN DECK-50	50.00	1942
2.19	18 STEEL BEAM CONTINUOUS OPEN DECK-540	540.00	1965
2.95	4 TIMBER STRINGERS OPEN DECK-60	59.84	1930
3.27	3 TIMBER STRINGERS OPEN DECK-39	38.97	1942
8.52	5 TIMBER STRINGERS OPEN DECK-75	75.46	1933

### Legend

- STATIONS
- 50 + YEAR OLD STRUCTURES
- RETAINED EASEMENT
- ▬ OTHER UPRR LINES
- UP EASEMENT TO BE ABANDONED
- ▬ OTHER RAILROADS
- ▬ PRINCIPAL HIGHWAYS
- ▬ OTHER ROADS

### BOULDER INDUSTRIAL LEAD

UNION PACIFIC RAILROAD CO.  
MP 0.70 TO MP 9.27  
8.57 MILES IN ADAMS COUNTY COLORADO

### UNION PACIFIC RAILROAD CO. BOULDER INDUSTRIAL LEAD COLORADO INCLUDING STRUCTURES



**MEMORANDUM OF SETTLEMENT AGREEMENT**

This MEMORANDUM OF SETTLEMENT AGREEMENT ("Memorandum") is made this 15 day of December, 2014, by and between the **REGIONAL TRANSPORTATION DISTRICT**, a political subdivision of the State of Colorado with a mailing address of 1600 Blake Street, Denver, Colorado 80202-1399 ("RTD"), and **LEROY INDUSTRIAL LLC**, a Colorado Limited Liability Company with a mailing address of 5690 DTC Boulevard, 285W, Greenwood Village, Colorado 80111 ("Landowner") and **ATLAS ROOFING CORPORATION**, a Mississippi Corporation with a mailing address of 802 Highway 19N, Meridian, Mississippi 39307 ("Tenant"). (The RTD, the Landowner and the Tenant will be referred to as "the Parties.")

**RECITALS**

- A. **WHEREAS**, the Parties have entered into a Settlement Agreement ("Settlement Agreement") dated December 15 discontinuing rail service on and to that certain real property at 11020 Leroy Drive, Northglenn, Colorado 80233 (the "Property and Premises")(legal description attached as Exhibit A); and
- B. **WHEREAS**, The Parties desire to execute this Memorandum, which will be recorded in the office of the Clerk and Recorder of Adams County, Colorado. The purpose of recording this document is so that third parties will have notice of the discontinued rail service on and to the Property and Premises and the continuing obligations of successors and assigns with respect to the Settlement Agreement.

**AGREEMENT**

The Parties have agreed as set forth below:

1. **Incorporation of Recitals.** The Recitals are incorporated into this Memorandum of Agreement as if fully set forth.
2. **Discontinuance of Rail Service.** Tenant shall cease and discontinue all rail delivery activities on and to the Property and Premises on or before February 28, 2015. Landowner and Tenant shall not request rail service in the future on and to the Property and Premises from any railroad or petition for service before any regulatory body requiring the use of the BIL, spurs, lead tracks or other related rail facilities that were configured to service this Property and Premises.
3. **Removal of Tanker Cars.** On or before February 28, 2015, Tenant shall remove any and all rail tanker cars existing on the Property and Premises from spurs, lead tracks or any other related rail facilities existing on the Property and Premises.
4. **Covenant Not to Sue or Collect (Landowner).** Landowner, on behalf of itself, its agents, employees, officers, directors, shareholders, and members and all others claiming by or through them – with the exception of Tenant and Tenant's customers and

*GR*

suppliers and anyone claiming by or through them - shall make no petition, claim, or request and shall not seek relief, including, but not limited to, any claim that RTD or its successors or any other person has interfered or is interfering with the ability of any rail carrier(s) that has/have the right, obligation, or opportunity to serve the Property and Premises to fulfill its/their common carrier obligation(s), in any regulatory, legal or equitable proceeding before the United States Surface Transportation Board, the Federal Railroad Administration, the Colorado Public Utilities Commission, other regulatory body, or any federal or state court for rail services to the Property and Premises for

A. rights to have installed, constructed, or maintained or to use any existing or future rail lines serving the Property and Premises for which existing easements are held by Landowner, and/or

B. any costs, losses or damages arising out of the discontinuance of any rail lines or rail connections currently serving the Property and the inability to have rail lines serve the Property and the Premises, and/or

C. the loss or damage to any easement, prescriptive or otherwise, that may be held by the Landowner for the use of the BIL, spurs, lead tracks or any other related rail facilities on and to the Property and Premises.

5. **Covenant Not to Sue or Collect (Tenant)**. Tenant, on behalf of itself, its agents, employees, tenants, subtenants, officers, directors, shareholders, customers and suppliers, and all others claiming by or through them shall make no petition, claim, request and shall not seek relief, including, but not limited to, any claim that RTD or its successors or any other person has interfered or is interfering with the ability of any rail carrier(s) that has/have the right or obligation to serve the Property and Premises to fulfill its/their common carrier obligation, in any regulatory, legal or equitable proceeding before the United States Surface Transportation Board, the Federal Railroad Administration, the Colorado Public Utilities Commission, or any federal or state court or other regulatory body for rail services to the Property and Premises for:

A. rights to have installed, constructed, or maintained or to use any existing or future rail lines serving the Property and Premises – for which existing easements are held by Tenant; and/or

B. any costs, losses or damages arising out of the discontinuance of any rail lines or rail connections currently serving the Property or the Premises or both and the inability to have rail lines serve the Property and the Premises, or either of them in the future; and/or

C. the loss or damage to any easement, prescriptive or otherwise, that may be held by the Tenant for the use of the BIL, spurs, lead tracks or any other related rail facilities on and to the Property and Premises.



**ATLAS ROOFING CORPORATION,**  
a Mississippi Corporation

By: [Signature]

Date: 12/15/2014

Printed Name: Jeffrey H. Fricks

Title: VP of Finance

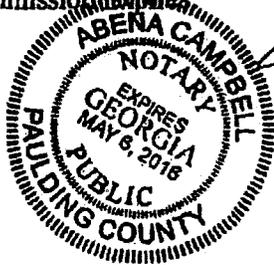
STATE OF COLORADO )  
 ) ss.

\_\_\_\_\_ COUNTY OF \_\_\_\_\_

Acknowledged before me this 15<sup>th</sup> day of December, 2014, by  
Fricks, Jeffrey for the Atlas Roofing.

WITNESS my hand and official seal.

My Commission Expires:



[Signature]  
NOTARY PUBLIC

[Handwritten mark]



December 15<sup>th</sup>, 2014

Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street - STOP 1690  
Omaha, NE 68179

*Re: Termination of Union Pacific Railroad Company ("UPRR") Track to Atlas Roofing Company ("Atlas") and Leroy Industrial LLC ("Leroy") at Northglenn, Colorado*

To Union Pacific Railroad Company:

UPRR currently provides rail service to Atlas and Leroy pursuant to the Industry Track Contract Articles of Agreement between UPRR and Leroy dated January 18, 2002, as supplemented by the Joint Use Agreement among UPRR, Atlas and Leroy, dated January 18, 2002 (UPRR Audit No. 226514/Folder No. 1888-24) (collectively, the "ITA"). The Regional Transportation District ("RTD") has undertaken certain real estate acquisition and relocation matters in connection with the portion of its FasTracks project commonly referred to as North Metro. In connection with RTD's project, RTD will acquire and ultimately remove a portion of track that UPRR uses to provide rail service to Atlas and Leroy.

After RTD removes the portion of track that UPRR uses to provide rail service to Atlas and Leroy, UPRR will be unable to provide such service. Atlas, Leroy and RTD have entered into an agreement to compensate Leroy and Atlas for the loss of rail service. RTD fully assumes all responsibilities for any required removal of rail and restorative grading of right of way related thereto.

Based upon information from RTD, Atlas and Leroy believe that UPRR intends to pursue abandonment on and in the vicinity of the portion of UPRR's track that is used to

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provide rail service to Atlas and Leroy. The purpose of this letter is to inform UPRR that, effective as of February 28, 2015, Atlas and Leroy: (a) will no longer require rail service from UPRR, (b) hereby provide notice of termination of the ITA pursuant to Section 6 of Exhibit B thereof, and (c) will not object to, and are willing to cooperate with UPRR by providing one or more letters of support for, UPRR's proposed abandonment. Atlas and Leroy's commitments set forth in the preceding sentence are conditioned upon receipt of all funds to be paid by RTD pursuant to the agreement to compensate Atlas and Leroy described above.

APPROVED:

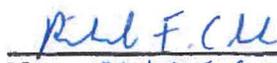
Atlas Roofing Company

  
Name: Jeffrey H. Frick  
Title: VP of Finance  
Date: 12/15/2014

Leroy Industrial LLC

  
Name: Hamid Simantob  
Title: Managing Member  
Date: 12/16/2014

Regional Transportation District

  
Name: RICHARD F. CLARKE  
Title: Assistant General Manager, Capital Program  
Date: 12/17/14



December 15, 2014

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

*Re: Proposed Discontinuance of Service of a Portion of Union Pacific Railroad Company's ("UPRR") Boulder Industrial Lead from M.P. 0.2 near Commerce City, to M.P. 9.27 near Eastlake, a total distance of 9.07 miles in Adams County, Colorado; Surface Transportation Board ("STB") Docket No. AB-33 (Sub-No. 323X)*

Dear Chief Brown:

UPRR currently provides rail service to Atlas Roofing Company, a Mississippi corporation ("Atlas"), and Leroy Industrial LLC, a Colorado limited liability company ("Leroy"). The Regional Transportation District, a political subdivision of the State of Colorado ("RTD"), has undertaken certain real estate acquisition and relocation matters in connection with the portion of its FasTracks Passenger Rail Network commonly referred to as North Metro. In connection with RTD's project, RTD will acquire and ultimately remove a portion of track that UPRR uses to provide rail service to Atlas and Leroy.

After RTD removes the portion of track that UPRR uses to provide rail service to Atlas and Leroy, UPRR will be unable to provide such service.

Atlas and Leroy understand that, following the removal of track by RTD, UPRR intends to pursue abandonment of the above-referenced portion of UPRR's Boulder Industrial Lead, which is used to provide rail service to Atlas and Leroy. The purpose of this letter is to inform the STB that, effective as of February 28, 2015, Atlas and Leroy:

The Honorable Cynthia T. Brown  
Surface Transportation Board  
December 15, 2014  
Page 2

(a) will no longer require rail service from UPRR, and (b) support UPRR's proposed abandonment of such portion of UPRR's Boulder Industrial Lead.

Please coordinate with UPRR if you need any additional information.

Sincerely,

Atlas Roofing Company

  
Name: Jeremy H. Ficks  
Title: VP of Finance  
Date: 12/15/2014

Leroy Industrial LLC

  
Name: Hamid Simantob  
Title: Managing Member  
Date: 12/16/2014

cc: Union Pacific Railroad Company, Real Estate Department, 1400 Douglas Street -  
STOP 1690, Omaha, NE 68179

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UNION PACIFIC RAILROAD  
101 North Wacker Drive, Room 1920  
Chicago, Illinois 60606-1718

P 312.777.2055  
F 877.213.4433  
[mackshumate@up.com](mailto:mackshumate@up.com)

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

June 12, 2015

VIA E-FILE

**TO: SEE ATTACHED SERVICE LIST**

**RE: Proposed Abandonment of UP's Freight Operating Easement and Discontinuance of Service on the portion of the Boulder Industrial Lead from Milepost 0.70 near Commerce City to Milepost 9.27 near Eastlake, a total distance of 8.57 miles all in Adams County, Colorado; STB Docket No. AB-33 (Sub-No. 323X)**

To whom it may concern:

On or after July 2, 2015, Union Pacific Railroad Company ("UP") expects to be filing with the Surface Transportation Board ("STB" or "Board") a Petition of Exemption seeking authority to abandon UP's freight operating easement in the portion of the Boulder Industrial Lead from Milepost 0.70 near Commerce City to Milepost 9.27 near Eastlake, a total distance of 8.57 miles, located in Adams County, Colorado (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.

Union Pacific is 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 Number:

Surface Transportation Board  
Section of Environmental Analysis (SEA)  
395 East Street, S.W., Room #100  
Washington, DC 20423-0001  
Tel: 202-245-0296

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.



June 12, 2015

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 email at [mackshumate@up.com](mailto:mackshumate@up.com), telephone at 312-777-2055 or by mail at 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

Yours very truly,

A handwritten signature in black ink that reads "Mack H. Shumate, Jr." in a cursive style.

Mack H. Shumate, Jr.  
Senior General Attorney

Attachment

o:\abandonments\2015\_06\_12 STB-EHR Agency Cover Ltr.doc

## SERVICE LIST

STB Docket No. AB-33 (Sub-No. 323X)

**State Clearinghouse (or alternate):**

Governor's Office of Budget and Planning  
200 East Colfax, Room 111  
Denver, CO 80203

**Colorado Public Utilities Commission:**

Colorado Public Utilities Commission  
1560 Broadway  
Suite 250  
Denver, CO 80202

**State Environmental Protection Agency:**

Colorado Department of Public Health  
and Environment  
4300 Cherry Creek Drive South  
Denver, CO 80246

**Colorado State Historical Association:**

Office of Archaeology and Historic  
Preservation  
1200 Broadway  
Denver, CO 80203

**State Coastal Zone Management Agency**

**(if applicable):**

Not applicable

**Communications and Outreach Branch,**

**NOAA, N/NGS12:**

National Geodetic Survey  
SS MC 3 #9202  
1315 East West Hwy  
Silver Springs, MD 20910

**National Park Service (Regional Office):**

National Park Service  
12795 Alameda Parkway  
Denver, CO 80225

**U.S. National Resources Conservation Svcs:**

U.S. National Resources Conservation Services  
Denver Federal Center  
Building 56, Room 2604  
P.O. Box 25426  
Denver, CO 80225  
AB-33 (Sub-No. 323X)\service.doc

**Environmental Protection Agency**

**(Regional Office):**

U.S. Environmental Protection Agency  
Region VIII  
80C-EISC  
1595 Wynkoop St.  
Denver, CO 80202-1129

**U.S. Fish and Wildlife:**

U.S. Fish and Wildlife Service  
P.O. Box 25486, DFC  
Denver, CO 80221

**U.S. Army Corps of Engineers:**

U.S. Army Corps of Engineers  
9307 South Wadsworth Blvd.  
Littleton, CO 80128

**Head of Each County:**

Adams County Commissioners  
4430 South Adams  
County Parkway  
Brighton, CO 80601

END  
ABANDONMENT  
MP 9.27

BEGIN  
ABANDONMENT  
MP 0.70

MP 1.15

BRIDGE NO.	BRIDGE TYPE	TOTAL LENGTH	DATE
1.15	1 THROUGH PLATE GIRDER OPEN DECK-50	50.00	1942
2.19	18 STEEL BEAM CONTINUOUS OPEN DECK-540	540.00	1965
2.95	4 TIMBER STRINGERS OPEN DECK-60	59.84	1930
3.27	3 TIMBER STRINGERS OPEN DECK-39	38.97	1942
8.52	5 TIMBER STRINGERS OPEN DECK-75	75.46	1933

**Legend**

- STATIONS
- 50 + YEAR OLD STRUCTURES
- RETAINED EASEMENT
- ▬ OTHER UPRR LINES
- UP EASEMENT TO BE ABANDONED
- - - OTHER RAILROADS
- ▬ PRINCIPAL HIGHWAYS
- OTHER ROADS

**BOULDER INDUSTRIAL LEAD**

UNION PACIFIC RAILROAD CO.  
MP 0.70 TO MP 9.27  
8.57 MILES IN ADAMS COUNTY COLORADO

**UNION PACIFIC RAILROAD CO.  
BOULDER INDUSTRIAL LEAD  
COLORADO  
INCLUDING STRUCTURES**





### 3.4 ARCHAEOLOGICAL, HISTORIC, AND PALEONTOLOGICAL RESOURCES

#### 3.4.1 Archaeological Resources (Prehistoric and Historic)

##### 3.4.1.1 Introduction to Analysis

This section describes archaeological resources in the North Metro corridor Area of Potential Effects (APE) and the effects that the No Action Alternative and Preferred Alternative would have on these resources. According to 36 *Code of Federal Regulations* (CFR) 800.16(d), the APE is “the geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of historic properties, if such properties exist. The APE is influenced by the scale and nature of the undertaking and may be different for different kinds of effects caused by the undertaking.”

##### Summary of Results

Of the 49 archaeological sites that were documented within the APE of the FEIS, 21 are eligible for inclusion in the National Register of Historic Places (NRHP) and 11 would be impacted directly. No indirect impacts to archaeological sites are anticipated. See Appendix D, Cultural Resources Information, for the Cultural Resource Atlas.

The overwhelming majority of the documented sites are historic in age and cultural affiliation and related to the following socioeconomic themes: transportation (railroad mainline, spurs, bridges, culverts, artifacts, and roads), irrigation (ditches, canals, siphons, and reservoirs), and ranching/farming (structural foundations and artifact scatters). The single documented prehistoric site is an open camp with artifacts (lithic and groundstone) and features.

The Preferred Alternative results in an Adverse Effect at two resources that are historic railroad stops (Quimby Railroad Stop and Eastlake Railroad Stop). No Adverse Effects occur at eight other resources, including rail lines and railroad features (BNSF Railway and Union Pacific [UP] Railroad Dent Branch, UP Borrow-pit), agricultural ditches (Clear Creek Ditch/Lower Clear Creek Canal, Signal Ditch, and German Ditch), a historic marker, and historic Brighton Boulevard.

##### Relevant Law

Because Federal Transit Administration (FTA) may provide some funding for the project, it is considered a federal undertaking. As such, Section 106 of the National Historic Preservation Act (NHPA) (Public Law 89-665, 15 October 1966; 16 *United States Code* 470 *et seq.*, as amended through 2006) requires FTA to take into account the effects of the undertaking upon historic properties in the APE. Historic properties are defined at 36 CFR 800.16(l)(1) as “any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places [NRHP].” The criteria for NRHP eligibility are set forth at 36 CFR 60.4:

*The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and*

- (a) *that are associated with events that have made a significant contribution to the broad patterns of our history; or*
- (b) *that are associated with the lives of persons significant in our past; or*
- (c) *that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or*
- (d) *that have yielded, or may be likely to yield, information important in prehistory or history.*

For the North Metro Corridor Environmental Impact Statement, the requirements of Section 106 of the NHPA are coordinated with the National Environmental Policy Act of 1969 (NEPA) process and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users milestone process. On 7 November 2006, in accordance with 36 CFR 800.8, FTA notified the Advisory Council on Historic Preservation (ACHP) that the NEPA process would be used for the purposes of Section 106, in lieu of the procedures set forth in Section 800.3-800.6.

Subsequently, due to schedule changes, and after consulting with the State Historic Preservation Officer (SHPO) and consulting parties, FTA notified ACHP that the NEPA process would not be used for the Section 106 process. On 12 March 2010, ACHP responded, acknowledging that the North Metro Corridor Project would follow the procedures in 36 CFR 800.3-800.6 for Section 106.

#### Coordination and Consultation

FTA, in cooperation with the Regional Transportation District (RTD), requested that the following agencies be accorded consulting parties status for the Section 106 process:

- ACHP
- National Trust for Historic Preservation
- The Colorado Historical Society (CHS) (SHPO)
- Colorado Preservation, Inc.
- Brighton Historic Preservation Commission
- Broomfield Historic Landmarks Board
- Denver Landmark Preservation Commission
- Northglenn Historic Preservation Commission
- Historic Denver
- Adams County
- Commerce City
- City and County of Denver (CCD)
- City of Northglenn
- City of Thornton
- Tribal Governments (see list on page 3.4-5)

Meetings for the Section 106 consulting parties were held on 15 November 2006, 8 May 2007, 29 October 2007, 17 December 2008, 29 April 2009, 14 September 2009, 15 January 2010, 26 February 2010, and 18 November 2010. The topics covered in these workshops included the Section 106 consultation process, issues scoping, project purpose and need, alternatives development and screening (for alignment and station options), survey methodology and information, APE definition, determination of eligibility, resource impacts, finding of effects, and mitigation. Additional meetings with SHPO will occur through Spring of 2011 to finalize the Memorandum of Agreement on mitigation for resources with an Adverse Effect. A summary of the Section 106 consulting party meetings is presented in Table 3.4-1; and Appendix F, Agency Correspondence, contains more detailed information on coordination.

**TABLE 3.4-1. NORTH METRO SECTION 106 COORDINATION PROCESS**

Step	Purpose	Schedule
Request to Be Consulting Party	<ul style="list-style-type: none"> <li>• Contacted consulting parties by mail to notify them of the project and invite them to participate in the Section 106 coordination process.</li> </ul>	Completed: 7 November 2006
Consulting Parties Meeting No. 1	<ul style="list-style-type: none"> <li>• Issues scoping.</li> <li>• Reviewed consultation process.</li> <li>• Reviewed Purpose and Need.</li> <li>• Reviewed Level 1 alternatives and screening.</li> <li>• Reviewed alignment alternatives for Level 2.</li> </ul>	Completed: 15 November 2006
Consulting Parties Meeting No. 2	<ul style="list-style-type: none"> <li>• Reviewed Level 2 and 3 alignment alternatives and screening.</li> <li>• Reviewed station locations.</li> </ul>	Completed: 8 May 2007
SHPO Meeting	<ul style="list-style-type: none"> <li>• Discussed the methodology for the initial APE.</li> </ul>	Completed: 15 October 2007
Consulting Parties Meeting No. 3	<ul style="list-style-type: none"> <li>• Discussed results of Level 3 screening.</li> <li>• Discussed the initial APE.</li> <li>• Discussed survey methodology.</li> <li>• Discussed alternatives to be included in DEIS.</li> </ul>	Completed: 29 October 2007
SHPO Meeting	<ul style="list-style-type: none"> <li>• Discussed the methodology for refining the APE to include areas of indirect impact.</li> <li>• Reviewed the updated APE.</li> </ul>	Completed: 16 July 2008
Consulting Parties Meeting No. 4	<ul style="list-style-type: none"> <li>• Discussed revised alternatives to be included in DEIS.</li> <li>• Identified the APE.</li> <li>• Discussed initial survey findings for Determination of Eligibility.</li> </ul>	Completed: 17 December 2008
Consulting Parties Meeting No. 5	<ul style="list-style-type: none"> <li>• Discussed effects and avoidance, minimization, or mitigation.</li> <li>• Discussed evaluation and preferred components of Build Alternative.</li> <li>• Discussed updated APE for new DUS access to the 38<sup>th</sup> Street segment.</li> </ul>	Completed: 29 April 2009
Consulting Parties Meeting No. 6	<ul style="list-style-type: none"> <li>• Discussed updated APE for the new alignment, A-3.</li> <li>• Discussed initial survey findings for Determination of Eligibility for Alignment A-3.</li> <li>• Initial evaluation for preferred components of Build Alternative.</li> </ul>	Completed: 14 September 2009

**TABLE 3.4-1. NORTH METRO SECTION 106 COORDINATION PROCESS**

Step	Purpose	Schedule
DEIS Consulting Parties Review	<ul style="list-style-type: none"> <li>Reviewed APE.</li> <li>Reviewed Determination of Eligibility.</li> <li>Reviewed Finding of Effects for Alternatives A-3, B-2, B-3, and B-4.</li> </ul>	Completed: 15 January 2010
Consulting Parties Meeting No. 7	<ul style="list-style-type: none"> <li>Discussed selection of the Preferred Alternative, including the selection of Alignment B-2, and made refinements to the Preferred Alternative.</li> <li>Discussed updated APE based on changes to the direct and indirect impact area resulting from refined design, stations, and mitigation for the Preferred Alternative.</li> <li>Discussed status of additional survey for archaeological and historic properties within the updated APE.</li> <li>Discussed opting out of using the NEPA process for Section 106 purposes.</li> </ul>	Completed: 26 February 2010
Consulting Parties Meeting No. 8	<ul style="list-style-type: none"> <li>Discussed updated APE based on changes to the direct and indirect impact area resulting from refined design, stations, and mitigations for the Preferred Alternative.</li> <li>Reviewed Finding of Effects for Preferred Alternative.</li> </ul>	Completed: 18 November 2010
FEIS/ROD	<ul style="list-style-type: none"> <li>Consult with SHPO/ACHP on MOA.</li> <li>Include MOA in ROD.</li> </ul>	Future Action: Spring 2011 (ROD)

Source: North Metro Corridor Project Team, 2010.

Notes:

- |  |  |
|--|--|
| ACHP = Advisory Council on Historic Preservation | MOA = Memorandum of Agreement                    |
| APE = Area of Potential Effects                  | NEPA = National Environmental Policy Act of 1969 |
| DEIS = Draft Environmental Impact Statement      | No. = number                                     |
| DUS = Denver Union Station                       | ROD = Record of Decision                         |
| FEIS = Final Environmental Impact Statement      | SHPO = State Historic Preservation Officer       |

Section 101(d)(6)(B) of the NHPA requires that federal agencies consult with any Indian tribe that attaches religious and cultural significance to historic properties that may be affected by the project. This requirement applies regardless of the location of the historic property, and the identified tribes shall be consulting parties. Federal agencies must provide tribes with a reasonable opportunity to identify their concerns about historic properties; advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance; articulate their views on the undertaking's effects on such properties; and participate in the resolution of adverse effects (36 CFR 800.2[c][2][ii][a]). Consultation with an Indian tribe recognizes the unique government-to-government relationship between the federal government and Indian tribes and should be conducted in a manner sensitive to the concerns and needs of the Indian tribe (36 CFR 800.2[c][2][ii][b]). Federal agencies must be sensitive to the fact that historic properties of religious and/or cultural significance to one or more tribes may be located on ancestral, aboriginal, or ceded lands beyond modern reservation boundaries (36 CFR 800.2[c][2][ii][d]).

On 7 November 2006, the FTA sent a letter to each of the following tribes:

- Comanche Nation of Oklahoma
- Cheyenne and Arapaho Tribes of Oklahoma
- Cheyenne River Sioux Tribe
- Apache Tribe of Oklahoma
- Crow Creek Sioux Tribe
- Kiowa Tribe of Oklahoma
- Northern Arapaho Tribe
- Northern Cheyenne Tribe
- Oglala Sioux Tribe
- Pawnee Nation of Oklahoma
- Rosebud Sioux Tribe
- Standing Rock Sioux Tribe

In this letter, the FTA expressed its desire to initiate formal consultation with each tribe, under the provisions of Section 106. The FTA invited each tribe to identify traditional cultural and religious sites, evaluate the significance of these sites, and indicate how this project might affect them. Should the project impact historic properties of religious or cultural significance to tribes, those tribes were invited to participate in deciding how best to avoid, minimize, or mitigate such impacts.

The Apache Tribe of Oklahoma responded to the FTA letter on 28 November 2006, indicating their desire to become a consulting party. They acknowledged that the project lies within their aboriginal territory. To date, none of the other tribes have responded.

#### **3.4.1.2 Affected Environment**

Archaeology is the systematic study of past human life and culture by the recovery and examination of the objects those people made, used, or modified (Joukowsky 1980). Material manifestations of past human activity include the following:

- Scatters of prehistoric and historic artifacts that vary in size and density
- Temporary use locations with a few features and low artifact frequency
- Habitation locales with many features and a complex assemblage of artifacts
- Landscape features of traditional cultural significance

The station footprints were intensively investigated for archaeological resources by one to three archaeologists walking multiple parallel transects, spaced 30 meters (100 feet) apart across the project study area. As they walked, the archaeologists carefully inspected the ground surface for evidence of past, patterned human activity, 30 years or older in the CCD (i.e., activity prior to 1978) or 40 years or older in Adams County (i.e., activity prior to 1968). When such evidence was encountered, the area was quickly reconnoitered to determine if the item was an isolated find, which is defined as a single artifact; or a site, which consists of two or more artifacts in close proximity (10 meters [30 feet] or less), cultural features, and/or standing structures. Each isolated find was described on the CHS, Office of Archaeology and Historic Preservation (OAHP) Isolated Find Form, its location was determined using global positioning system (GPS)

equipment and plotted on a project map, and it was photographed with archival quality black-and-white film or in digital format. Each site was described on the CHS OAHM Management Data Form, and the Prehistoric, Historic, Archaeological, or Linear Component Forms, depending on its apparent function; its location was ascertained using GPS equipment; and the site was photographed using archival quality black-and-white film and in digital format. The eligibility of each isolated find and site for listing in the NRHP was evaluated in the field.

Attributes of the sites are examined in regional environmental and cultural contexts to clarify patterns of prehistoric and historic use and assist in the evaluation of NRHP eligibility. The consulting parties, including SHPO, were consulted on the Determination of Eligibility for the NRHP for historic sites within the APE. SHPO concurred with the Determination on their Eligibility (see Appendix F, Agency Coordination). Table 3.4-2 describes all of the NRHP-eligible archaeological resources in project study area (APE), and Figures 3.4-1 through 3.4-3 illustrate the locations of these resources.

Slightly more than half of the archaeological resources are irrigation features (ditches, canals, reservoirs, and siphons). The remaining sites consist of railroad segments and related features (e.g., Eastlake), historic artifact scatters and features, roads or road segments, an historic marker, a utility line, and one prehistoric site. Approximately one-third of the sites date to the late nineteenth century, while the remaining sites date from the 1900s through the 1960s.

**TABLE 3.4-2. SUMMARY OF NRHP ELIGIBLE ARCHAEOLOGICAL RESOURCES IN THE AREA OF POTENTIAL EFFECTS**

Smithsonian Number	Temporary Site Number	Location (Township, Range, Section) or Address	Figure Number	Description	Integrity	Cultural Affiliation	Date	Size (ac)	NRHP Eligibility (Criterion)
5AM80.1	Re-Eval-1	2S, 68W, 25	3.4-2	Clear Creek Ditch.	Good	Historic	ca. 1880s	0.05	Eligible (a)
5AM80.7	NM-?-1 and NM-6	2S, 68W, 25	3.4-2	Clear Creek Ditch (with 1925 to 1930 railroad bridge).	Good	Historic	ca. 1880s	0.05	Eligible (a)
5AM464.15	NMC-5	3S, 68W, 13	3.4-1	Burlington and Colorado, Burlington and Missouri, Chicago Burlington and Quincy (Burlington Northern) Railroad.	Fair	Historic	1881 to Present	1.4	Eligible (a)
5AM464.16	None	3S, 68W, 12, 13	3.4-1	BNSF Railway.	Good	Historic	1881 to Present	0.56	Eligible (a)
5AM465.9	NM-1	3S, 68W, 1	3.4-1	Burlington Ditch (O'Brian Canal) (with 1941 railroad bridge).	Good	Historic	1885	7.9	Eligible (a)
5AM471.4	NM-36	1S, 68W, 12	3.4-3	German Ditch.	Good	Historic	ca. 1880s	4.6	Eligible (a)
5AM472.1	Re-Eval-5	1S, 68W, 12	3.4-3	UP Railroad Dent Branch <sup>1</sup> (at Darlow).	Poor	Historic	Unknown	0.2	Eligible (a)
5AM472.17	R.R.-Main	3S, 68W, 1, 12, 13, 3S, 67W, 6, 7, 36, 2S, 68W, 1, 2, 11, 12, 13, 24, 25, 36; 1S, 68W, 1, 12, 13, 24, 25, 26, 35, 36	3.4-1, 3.4-2, and 3.4-3	UP Railroad Dent Branch Mainline <sup>1</sup> (includes grade, 16-inch culverts, 6 timber pile bridges, and 2 spurs).	Good	Historic	1910 to 1990s	37	Eligible (a)
5AM473.1	NM-29	1S, 68W, 26	3.4-3	Signal Ditch.	Good	Historic	1909	0.02	Eligible (a)
5AM2410.1	None	Brighton Boulevard in Adams County	3.4-1	Brighton Boulevard.	Fair	Historic	1915 to 1930	4.7	Eligible (a)
5AM2111	NM-ID-3 and NM-15	2S, 68W, 13	3.4-2	Quimby Railroad Stop (feature and artifact concentration).	Fair	Historic	ca. 1900 to 1950s	2.3	Eligible (a, d)
5AM2114	NM-28	1S, 68W, 35	3.4-2, 3.4-3	Eastlake Railroad Stop.	Fair	Historic	ca. 1900 to 1950s	15.1	Eligible (a, d)

**TABLE 3.4-2. SUMMARY OF NRHP ELIGIBLE ARCHAEOLOGICAL RESOURCES IN THE AREA OF POTENTIAL EFFECTS**

Smithsonian Number	Temporary Site Number	Location (Township, Range, Section) or Address	Figure Number	Description	Integrity	Cultural Affiliation	Date	Size (ac)	NRHP Eligibility (Criterion)
5AM2115	NM-ID-6	Confidential Location	None (Confidential Location)	Prehistoric Camp.	Fair	Prehistoric	Unknown	0.44	Eligible (d)
5AM2083.2 and 5AM2083.3	None	3S, 68W, 13	3.4-1	Chicago, Rock Island, and Pacific Belt Line.	Good	Historic	1905 to Present	1.37	Eligible (a)
5AM2402	TT-1	1S, 68W, 1	3.4-3	UP Railroad Borrow-pit.	Good	Historic	1909 to 1951	15.6	Eligible (d)
5DV6247.1	None	3S, 68W, 23	3.4-1	Burlington and Colorado, Burlington and Missouri, Chicago Burlington, and Quincy (Burlington Northern) Railroad.	Good	Historic	1881 to present	0.3	Eligible (a)
5DV6247.2	None	3S, 68W, 22, 23, 27	3.4-1	Burlington and Colorado, Burlington and Missouri, Chicago Burlington, and Quincy (Burlington Northern) Railroad.	Good	Historic	1881 to present	3.9	Eligible (a)
5DV6247.3	None	3S, 68W, 13, 14, 23	3.4-1	Burlington and Colorado, Burlington and Missouri, Chicago Burlington, and Quincy (Burlington Northern) Railroad.	Good	Historic	1881 to present	5.2	Eligible (a)
5DV6247.6	None	3S, 68W, 27	3.4-1	Burlington and Colorado, Burlington and Missouri, Chicago Burlington, and Quincy (Burlington Northern) Railroad.	Good	Historic	1881 to present	6.8	Eligible (a)
5DV10616	None	Corner of Brighton Boulevard and York Street	3.4-1	Historic Marker for Platte River Trail.	Good	Historic	1932	Trace	Eligible (a)
5DV10617.1	None	Brighton Boulevard in Denver County	3.4-1	Brighton Boulevard.	Fair	Historic	1915 to 1930	4.7	Eligible (a)

**North Metro Corridor**

**TABLE 3.4-2. SUMMARY OF NRHP ELIGIBLE ARCHAEOLOGICAL RESOURCES IN THE AREA OF POTENTIAL EFFECTS**

Smithsonian Number	Temporary Site Number	Location (Township, Range, Section) or Address	Figure Number	Description	Integrity	Cultural Affiliation	Date	Size (ac)	NRHP Eligibility (Criterion)
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Source: North Metro Corridor Project Team, 2010.

Criteria:

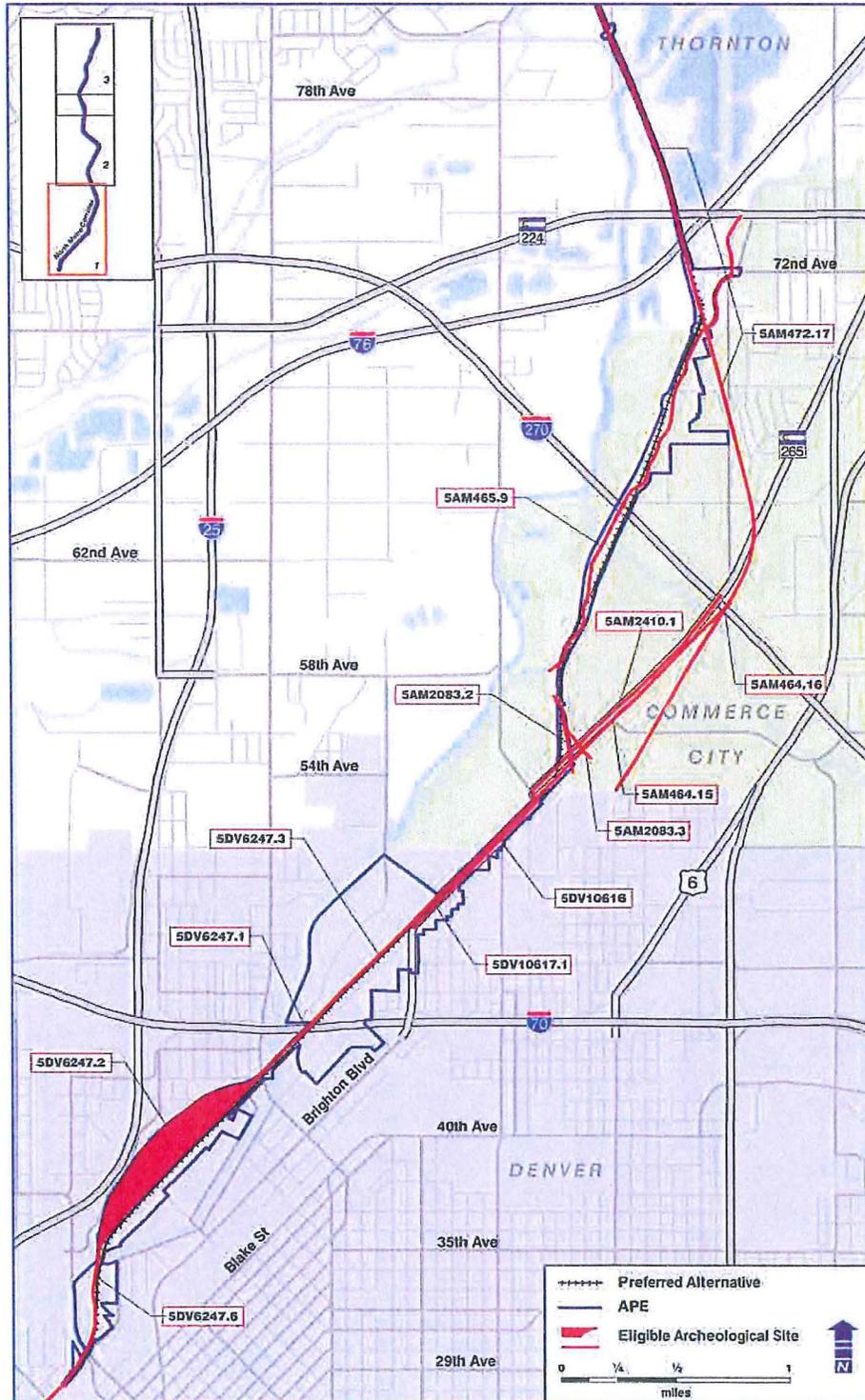
- (a) associated with significant historic events
- (d) likely to yield important archaeological information

Notes:

<sup>1</sup>Although this resource was recorded with the name "UP Railroad Dent Branch," the rail line is commonly referred to as the UP Boulder Branch.

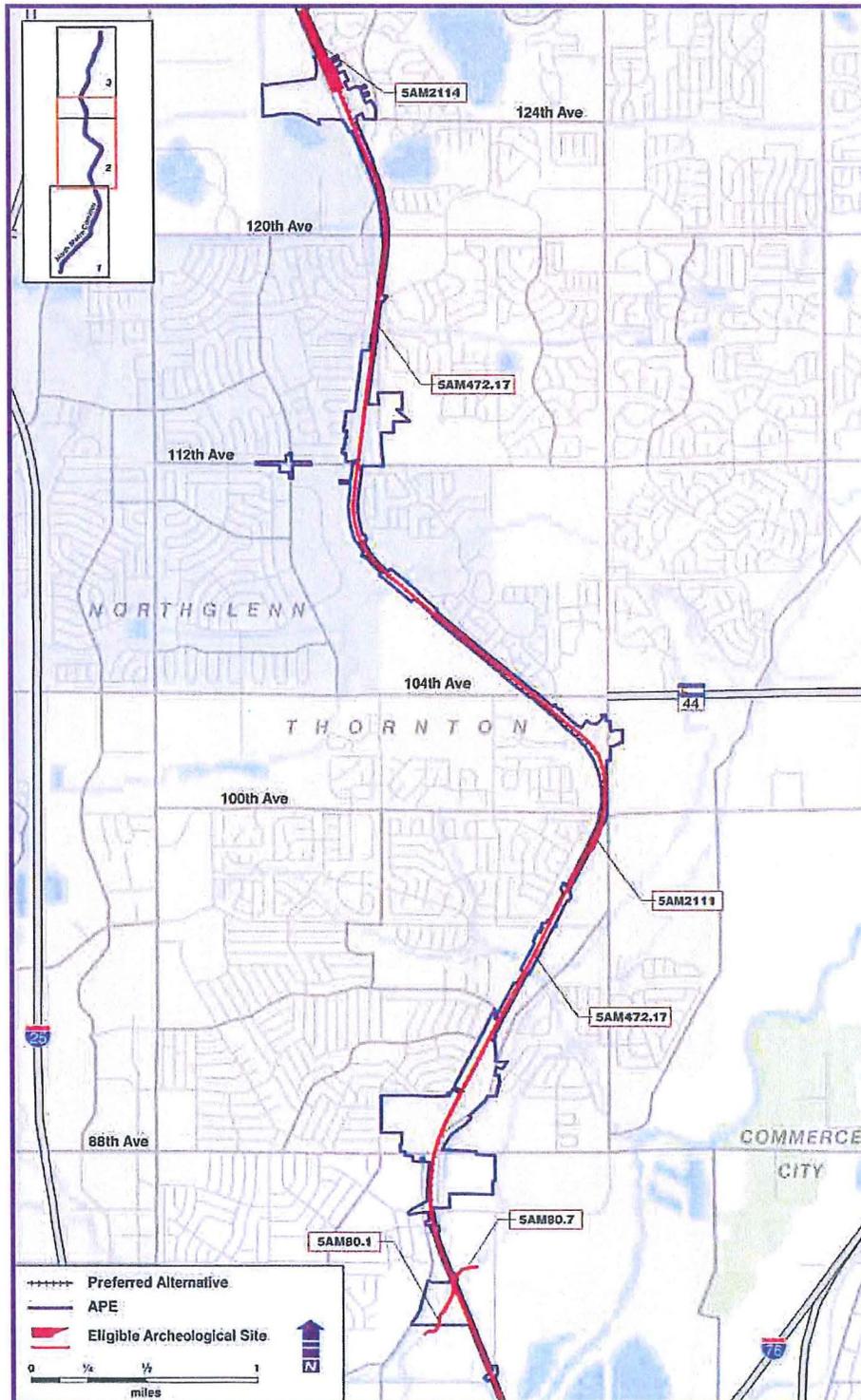
- ac = acre
- ca. = circa
- NRHP = National Register of Historic Places
- S = south
- UP = Union Pacific
- W = west

FIGURE 3.4-1. ELIGIBLE ARCHAEOLOGICAL RESOURCES (MAP 1 OF 3)



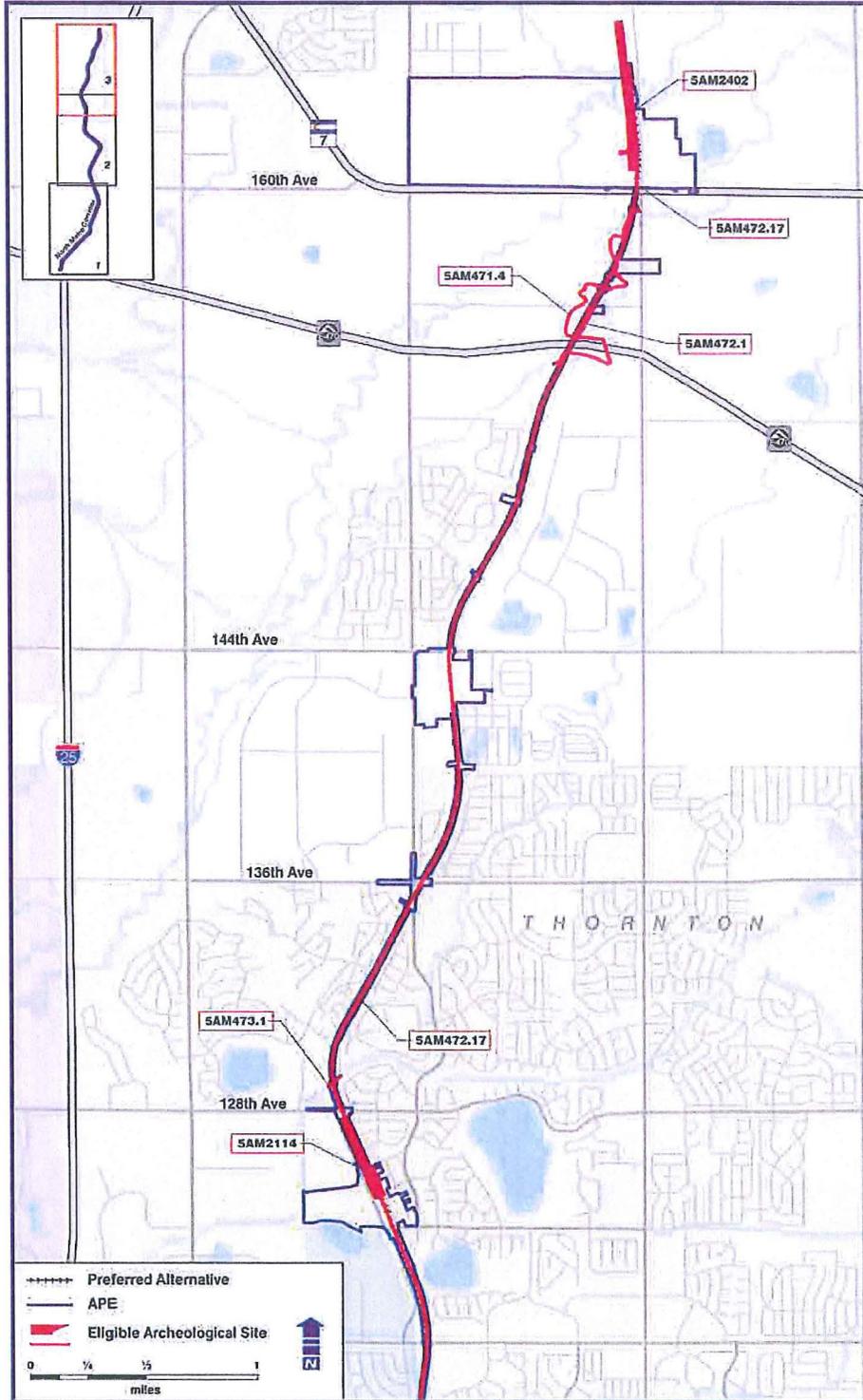
Source: North Metro Corridor Project Team, 2010.

FIGURE 3.4-2. ELIGIBLE ARCHAEOLOGICAL RESOURCES (MAP 2 OF 3)



Source: North Metro Corridor Project Team, 2010.

FIGURE 3.4-3. ELIGIBLE ARCHAEOLOGICAL RESOURCES (MAP 3 OF 3)



Source: North Metro Corridor Project Team, 2010.

### Area of Potential Effects

The Southern Section of the project study area, from Denver Union Station (DUS) to 84<sup>th</sup> Avenue, has been distinguished by mixed residential and industrial use since the early twentieth century. From that point north to the project terminus, the landscape has been dominated until the last few decades by ranching and farming, with the exception of railroad towns and sidings such as Eastlake, Quimby, and Darlow. Beginning in the 1940s and continuing until the present, the farm/ranch lands and small communities were absorbed into the fast-growing communities of Commerce City, Thornton, and Northglenn. As far north as E-470, the area is characterized by residential neighborhoods and commercial establishments. The extreme northern end of the project study area still reflects the traditional ranching and farming heritage, but that too is changing.

The APE for the archaeological resources consists of the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties (36 CFR 800.16[d]) (see Appendix D, Cultural Resources Information, for the Cultural Resource Atlas). In general, beginning at DUS, the Preferred Alternative traverses northeasterly adjacent to the BNSF Brush Subdivision right-of-way (ROW). Portions of the alignment would be constructed adjacent to the eastern edge of the BNSF ROW, with two locations encroaching into BNSF ROW. For the portion of the alignment adjacent to the BNSF ROW, the direct impact area western boundary is defined as the BNSF ROW, and the eastern boundary is defined as toe of slope for project improvements. The Preferred Alternative would avoid the Sand Creek Junction. Just south of the existing York Street underpass of the BNSF, the Preferred Alternative would climb over the BNSF Mainline on structure to cross over multiple railroad spurs through an industrial area on property owned by Suncor Energy (U.S.A.) Inc. It would then continue on structure adjacent to the O'Brian Canal and Metro Wastewater property before passing over Sand Creek and I-270. The Preferred Alternative would start to share ROW with freight operations at the south side of the 72<sup>nd</sup> Avenue Station. From this location north, the direct impact area includes the toe of slope for project improvements or the width of a bridge structure. The direct impact area for the stations is the station footprint. The direct impact area also includes the toe of slope for mitigation measures such as improvements to roadways, trails, and drainage. A 15-foot buffer has been added to these areas to account for the current level of design and potential construction and maintenance impacts.

Because this corridor has been significantly altered and disturbed over the last century by the activities of the UP Railroad and BNSF Railway and their predecessors, an intensive pedestrian inventory within the rail corridors was considered to be unnecessary. Affected railroad segments that had previously been recorded were reevaluated, while previously unrecorded segments were visited and recorded. Any non-railroad features (e.g., ditches and canals) that intersect the railroad ROWs were newly recorded or reevaluated. The Preferred Alternative was intensively investigated for archaeological, historic, and paleontological resources.

Indirect impacts such as visual, noise, vibration, and access were also considered and resulted in a slight refinement of the APE. Four types of potential visual impacts on cultural resources were considered: increased number of trains, catenary poles and overhead wires (the electric multiple unit [EMU] vehicles), new stations, and structures such as overpasses and noise walls. Two categories of noise impacts on cultural resources, based on FTA criteria as described in Section 3.8, Noise and Vibration, were considered: severe and upper moderate (top 50% of moderate impacts). In those indirect impact areas with severe or upper moderate noise impacts, and where background research indicated that the parcel is historic (i.e., 30 years or

older in the CCD and 40 years or older in Adams County), the APE was refined to include those parcels. Vibration impacts have been substantially diminished due to the nature of the underlying substrate and project design and thus did not influence the APE. There were no cultural resources impacted by changes in access, and therefore access relocations did not influence the APE.

#### 3.4.1.3 Impact Evaluation

This evaluation includes analysis of potential effects on archaeological resources for the Preferred Alternative and station locations with EMU vehicle technology. The EMU impacts are described below in Results.

##### Methodology

The ACHP developed regulations (36 CFR 800) that guide federal agencies on how to assess effects of their undertakings on historic properties and mitigate those effects, if necessary. As defined in the Section 106 regulations, an effect is “an alteration to the characteristics of a historic property qualifying it for inclusion or eligibility for the National Register of Historic Places” (36 CFR 800.16). Effects to archaeological resources are categorized as follows:

- **No Historic Properties Affected:** Either no historic properties are present, or historic properties are present but no effects of any kind, neither harmful nor beneficial to those characteristics that qualify the property for inclusion in the NRHP, are present.
- **No Adverse Effect:** An effect is present, but the effect is not harmful to those characteristics that qualify the property for inclusion in the NRHP.
- **Adverse Effect:** An effect is present, and that effect diminishes the qualities of significance that qualify the property for inclusion in the NRHP.

Effects to historic properties may be direct, indirect, or cumulative. Direct effects include, but may not be limited to, the physical destruction or modification of all or part of a resource. Indirect effects can include a variety of factors, such as the introduction of or an increase in noise and visual intrusions that alter the qualities that make a site eligible for the NRHP. Cumulative effects result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of the agency or organization that undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time. For this analysis, activities include development in the Denver metropolitan area between 1950 and 2035.

The current condition, location, and setting of all cultural resources, as well as the nature of the planned activities, within the APE were assessed to determine the likely impact of project activities and actions on those qualities. For linear resources (e.g., ditches, roads, or railroad grades), the project effects are based on an evaluation of the segment within the project APE in the context of the entire linear feature that constitutes the historic property. The effects determination applies to the entire eligible linear resource. In instances where multiple segments of the same linear resource would be impacted, the effect to the entire resource would be based on an assessment of the combined effects to the segments.

SHPO concurrence for NRHP eligibility and finding of effects, along with consulting parties correspondence, are included in the DEIS and FEIS Appendix F, Agency Correspondence.

## Results

### *No Action Alternative*

The UP Dent Branch Mainline (5AM472) could have direct or temporary impacts due to the road widening projects along 128<sup>th</sup> Avenue, 144<sup>th</sup> Avenue, and 160<sup>th</sup> Avenue. Widening of 128<sup>th</sup> Avenue from I-25 to York Street would include an at-grade crossing of this resource. This would likely require replacement of existing rails and ties but is not anticipated to impact the railroad grade and therefore, would likely result in No Adverse Effect. Impacts associated with the widening of 144<sup>th</sup> Avenue from Washington Street to Colorado Boulevard would have similar impacts and would also likely result in No Adverse Effect to this resource. The addition of through lanes to 160<sup>th</sup> Avenue (SH 7) from East 164<sup>th</sup> Avenue to US 85 would affect the existing railroad bridge that spans this roadway.

### *Preferred Alternative*

Table 3.4-3 presents a summary of anticipated direct and indirect impacts for archaeological resources from the proposed alignment and station options as well as the finding of effects. Only those resources that are eligible for inclusion in the NRHP are included. Indirect impacts such as visual, noise, and vibration are unlikely to affect archaeological resources because the North Metro corridor follows an existing railroad ROW, along which trains have traveled for more than a century.

### Direct and Indirect Impacts

The anticipated impacts to archaeological resources within the APE are described below and are grouped according to the following categories: No Historic Properties Affected, No Adverse Effect, and Adverse Effect.

Measures to avoid or minimize impacts also are described for each resource. In addition, unanticipated impacts may occur, if archaeological resources are encountered during the construction phase of this project. If archaeological resources are found, construction activities will stop until a qualified archaeologist can evaluate the resource and SHPO is consulted.

**TABLE 3.4-3. DIRECT AND INDIRECT IMPACTS SUMMARY — ARCHAEOLOGICAL RESOURCES**

Alternative	Archaeological Resources	Direct Impacts	Indirect Impacts	Finding of Effect	
<b>NO ACTION ALTERNATIVE</b> <b>SOUTHERN SECTION AND NORTHERN SECTION</b>	UP Dent Branch Mainline <sup>1</sup> (5AM472)	Road widening projects at 128 <sup>th</sup> Avenue and 144 <sup>th</sup> Avenue would include at-grade crossings that may require replacement of rails and ties but would not impact railroad grade (5AM472.17).	None	No Adverse Effect	
<b>PREFERRED ALTERNATIVE</b>					
<b>SOUTHERN SECTION — DUS Access to 84<sup>th</sup> Avenue</b>					
Alignment	Smithsonian Number (Segment Number)				
	5AM80 (5AM80.1 and 5AM80.7)	Clear Creek Ditch (Lower Clear Creek Canal)	The existing UP Railroad bridge would be replaced with three box culverts and used for the commuter rail. The ditch would not be realigned, but drainage improvements would be made and the east/west banks of the crossing would be graded.	None	No Adverse Effect
	5AM464 (5AM464.15 and 5AM464.16)  5DV6247 (5DV6247.1, 5DV6247.2, 5DV6247.3, and 5DV6247.6)	BNSF Railway	5AM464.15 and 5AM464.16 - In Adams County, would parallel the BNSF Railway outside the BNSF ROW and would span the BNSF ROW north of the Brighton Boulevard/York Street intersection.  5DV6247.1 (no impact) 5DV6247.2 (no impact) 5DV6247.3 - In Denver, two small slivers of BNSF ROW, but not tracks, would be impacted (see station numbers 263+00-267+00 and 274+00 -280+00 on design plans in Appendix C).  5DV6247.6 - At the 23 <sup>rd</sup> Street Yard, BNSF will relocate the tracks to improve their operations and accommodate North Metro prior to the building of North Metro.	None	No Adverse Effect <sup>2</sup>
	5AM465 (5AM465.9)	Burlington Ditch (O'Brian Canal)	The ditch would be crossed three times with bridge structures. The ditch would not be realigned, but a section of the ditch would be lined to narrow the width and match the existing lined ditch south of that section.	None	No Adverse Effect

**TABLE 3.4-3. DIRECT AND INDIRECT IMPACTS SUMMARY — ARCHAEOLOGICAL RESOURCES**

Alternative		Archaeological Resources	Direct Impacts	Indirect Impacts	Finding of Effect
Alignment (continued)	Smithsonian Number (Segment Number)				
	5AM472 (5AM472.17)	UP Railroad Dent Branch Mainline <sup>1</sup>	See Northern Section – this resource is in both the Northern Section and the Southern Section.	See Northern Section	See Northern Section
	5AM2083 (5AM2083.2 and 5AM2083.3)	UP Railroad and Chicago, Rock Island, and Pacific Belt Line	None. Alignment does not cross segment 5AM2083.3 and a new bridge would span segment 5AM2083.2.	None	No Historic Properties Affected
	5DV10616 (NA)	Historic Marker	Marker would be removed and relocated to another nearby location.	None	No Adverse Effect
	5AM2410 (5AM2410.1) 5DV10617 (5DV10617.1)	Brighton Boulevard	Brighton Boulevard (5AM2410.1 and 5DV10617.1) north of York Street would be realigned approximately 10 feet east of its current alignment for about 2,000 feet.	None	No Adverse Effect
<b>NORTHERN SECTION — 84<sup>th</sup> Avenue to 162<sup>nd</sup> Avenue Area</b>					
Alignment	Smithsonian Number (Segment Number)				
	5AM471 (5AM471.4)	German Ditch	The alignment would cross the ditch (5AM471.4) at five locations. The first (most southern) crosses the ditch twice via an existing bridge structure that also crosses over E-470. This structure would not be replaced. The third crossing would require the replacement of an existing culvert (the replacement would be longer for floodplain purposes). The fourth and fifth crossings are being recommended for culvert replacements as well, including replacing a siphon at the fifth crossing. The ditch alignment would not change at any of these crossing locations.	None	No Adverse Effect

**TABLE 3.4-3. DIRECT AND INDIRECT IMPACTS SUMMARY — ARCHAEOLOGICAL RESOURCES**

Alternative		Archaeological Resources	Direct Impacts	Indirect Impacts	Finding of Effect
Alignment (continued)	Smithsonian Number (Segment Number)				
	5AM472 (5AM472.17)	UP Railroad Dent Branch Mainline <sup>1</sup>	The existing grade (5AM472.17) would mostly remain intact. However, there would be a few sections widened to accommodate a passing track. Some trestles and other features may be replaced. Track would be removed for new overpasses at 104 <sup>th</sup> Avenue and 120 <sup>th</sup> Avenue. The alignment would be shifted slightly in six areas to improve operations, but these realignments would not alter the historic character of the railroad corridor. Ten features along this resource would be impacted. Replacement of ballast for existing track (5AM472.1) would directly impact the site of the Darlow siding. Power poles required for the Preferred Alternative with EMU technology would directly impact Darlow, but impacts would be minimized by designing the pole placement to be on the east side of the alignment and construction access would be from the east side of the alignment. A tail track would be provided on the existing railroad north of SH 7/162 <sup>nd</sup> Avenue Station.	None	No Adverse Effect
	5AM473 (5AM473.1)	Signal Ditch	The existing siphon (5AM473.1) would be replaced and a new headwall and trash rack would be constructed.	None	No Adverse Effect
	5AM2111 (NA)	Quimby Railroad Stop	New power poles required for EMU technology and fencing would impact the site. One of the artifact concentrations within this site would be impacted. Sub-surface features and artifacts that have not been identified could be impacted.	None	Adverse Effect
	5AM2114 (NA)	Eastlake Railroad Stop	The addition of new track and new power poles for EMU would occur within the existing UP Railroad ROW and would directly impact the site. The proposed walkways across the alignment connecting the station parking area and 1 <sup>st</sup> Street would directly impact the site. Sub-surface features and artifacts that have not been identified could be impacted.	None	Adverse Effect
5AM2115 (NA)	Prehistoric Camp	None.	None	None	No Historic Properties Affected

**TABLE 3.4-3. DIRECT AND INDIRECT IMPACTS SUMMARY — ARCHAEOLOGICAL RESOURCES**

Alternative		Archaeological Resources	Direct Impacts	Indirect Impacts	Finding of Effect
Alignment (continued)	Smithsonian Number (Segment Number)				
	5AM2402 (NA)	UP Railroad Borrow-pit	The tail track and platform proposed at the SH 7/ 162 <sup>nd</sup> Avenue Station would impact the borrow-pit at this site. However, a retaining wall would be constructed to avoid substantial encroachment into the borrow-pit. Construction activities would only intrude slightly into the borrow-pit to build the retaining wall. The impacts associated with the alignment are not anticipated to be harmful to the characteristics that qualify this resource for inclusion in the NRHP.	None	No Adverse Effect

Source: North Metro Corridor Project Team, 2010.

Notes:

<sup>1</sup>Although this resource was recorded with the name "UP Railroad Dent Branch," the rail line is commonly referred to as the UP Boulder Branch.

<sup>2</sup>FTA recommendation on finding of effect; SHPO is currently reviewing.

Shaded cells indicate an impacted parcel.

- DUS = Denver Union Station
- EMU = electric multiple unit
- NA = not applicable
- ROW = right-of-way
- UP = Union Pacific

No Historic Properties Affected

**The UP Railroad and Chicago, Rock Island and Pacific Belt Lines – 5AM2083 (Including 5AM2083.2 and 5AM2083.3)**  
The UP Railroad and Chicago, Rock Island and Pacific Belt Lines are eligible for inclusion in the NRHP under Criterion A because they are associated with the continued expansion of freight and passenger rail in the Denver metropolitan area. The Preferred Alternative would span 5AM2083.2 on a new bridge and does not cross 5AM2083.3. As a result, No Historic Properties are Affected.

**Prehistoric Open Camp – 5AM2115**

The site, which is eligible for inclusion in the NRHP under Criterion D, was likely used as a campsite or a food processing site as evidenced by the presence of animal bone and charcoal. The SH 7/162<sup>nd</sup> Avenue Station for the Preferred Alternative would not affect this site and would result in No Historic Properties Affected.

No Adverse Effect

**BNSF Railway in Denver and Adams County – 5AM464 and 5DV6247 (Including 5AM464.15, 5AM464.16, 5DV6247.1, 5DV6247.2, 5DV6247.3, and 5DV6247.6)**

The BNSF Railway is considered eligible for listing in the NRHP under Criterion A because of its association with the expansion of the railroad in the northern Rockies and the development of agricultural communities in the area. In the Southern Section, the Preferred Alternative would parallel the existing BNSF ROW to south of Sand Creek Junction and then span on bridge the ROW north of the existing Brighton Boulevard/York Street intersection (5AM464.15). Two small slivers of ROW (approximately 400 feet and 600 feet long) would be impacted at 5DV6247.3, but the tracks are not being relocated in these sections. In addition, the BNSF Railway is relocating tracks within the 23<sup>rd</sup> Street Yard (5DV6247.6) to improve its operations and provide an easement for the Preferred Alternative, which will impact a sliver of ROW approximately 2,200 feet. No impacts are anticipated at 5DV6247.1, 5DV6247.2, 5DV6247.6, 5AM464.15, or 5AM464.16. SHPO is currently reviewing FTA's finding of effect for this site.

**Clear Creek Ditch – 5AM80 (Including 5AM80.1 and 5AM80.7)**

The Clear Creek Ditch (Lower Clear Creek Canal) is eligible for inclusion in the NRHP under Criterion A because it is associated with the development and expansion of irrigation works in the north Denver metropolitan area and out on the northeastern plains. The existing railroad bridge would be removed and replaced with three new concrete box culverts. The ditch would not be realigned, but the east/west banks of the crossing would be graded. These impacts would not diminish those characteristics that make the property eligible for the NRHP and, therefore, a finding of No Adverse Effect has been made.

**Burlington Ditch (O'Brian Canal) – 5AM465 (Including 5AM465.9)**

The resource is eligible for inclusion in the NRHP under Criterion A for its association with the development and expansion of irrigation works into northeast Colorado, and with the creation of Barr Lake and the accompanying town of Barr City. The Preferred Alternative would cross the ditch three times with bridge structures. A section of the ditch would be lined to narrow the width and match the existing lined ditch south of this section, but this impact would not be harmful to those characteristics that qualify the resource for inclusion in the NRHP and, therefore, would constitute No Adverse Effect.

#### Historic Marker (5DV10616)

The monument for the Platte River Trail is eligible for inclusion in the NRHP under Criterion A because of its association with the early incarnation of the CHS and its historic marker program. Under the Preferred Alternative, the marker would be removed and relocated to a nearby location. The precise location of the marker is not significant as it is not located directly on the historic trail it describes. This impact is not anticipated to be harmful to those characteristics that qualify the resource for inclusion in the NRHP, and therefore, would constitute No Adverse Effect.

#### Brighton Boulevard – 5AM2410 and 5DV10617 (Including 5AM2410.1 and 5DV10617.1)

Brighton Boulevard is eligible for inclusion in the NRHP under Criterion A because of its association with the development of north Denver's post World War II commercial and industrial areas, and because of its function as a major transportation artery from Denver to the town of Brighton. North of the National Western Historic District (5DV10050), the Preferred Alternative parallels the existing Brighton Boulevard (SH 265) for approximately 0.75 mile. Between the BNSF and Brighton Boulevard ROWs, south of York Street, approximately 2,000 feet of Brighton Boulevard would be relocated 10 feet east of the current alignment. The road has been substantially altered (paved and widened) since its original construction but retains its historic aspect of location. The proposed relocation would not substantially alter the historic character of this resource, and therefore, would constitute No Adverse Effect.

#### UP Railroad Dent Branch Mainline – 5AM472 (Including 5AM472.17 and 5AM472.1)

The resource, which is commonly referred to as the UP Boulder Branch, is eligible for inclusion in the NRHP under Criterion A because of its association with the expansion of the railroad in northern Colorado, and the development of beet growing communities and expansion of the coal mining industry in the area.

In the Southern Section, under the Preferred Alternative, the existing grade would mostly remain intact. However, there would be a few sections modified to accommodate a passing track. Some trestles and other features may be replaced. An existing steel bridge over the South Platte River would be repainted and an emergency walkway added to it. In addition, four caissons will be built downstream and adjacent to this bridge to carry the catenary poles for the overhead electrification system. One existing timber bridge would be replaced with a concrete box culvert. Two existing culverts would be extended.

In the Northern Section, under the Preferred Alternative, the majority of the alignment would be single track and in line with the existing track alignment. There are three areas where a second, passing track would be added: a new track west of the existing railroad tracks from north of Thornton Parkway to just north of 104<sup>th</sup> Avenue; a new track east of the existing railroad tracks from south of 124<sup>th</sup> Avenue to just south of York Street; and a new track east of the existing track just north of 160<sup>th</sup> Avenue (SH 7) to just south of the Big Dry Creek crossing. Track would be removed and the vertical grade altered at two locations for new grade-separated crossings at 104<sup>th</sup> Avenue and 120<sup>th</sup> Avenue. A tail track would be provided on the existing railroad tracks north of the SH 7/162<sup>nd</sup> Avenue Station for layover trains before reversing their trip. Ten features along this resource, as described below, would be impacted, but the existing grade would remain intact. Two existing timber bridges would be replaced with concrete box culverts. Two existing culverts would be extended and three culverts would be replaced. One culvert would be removed and relocated. Two corrugated metal pipes (CMP) would be replaced with concrete culverts. The existing wing walls, trash rack and a siphon would be replaced at one location. The alignment would be shifted slightly in six areas to help improve operations. All of

the realignments occur within the existing ROW. At the site of the Darlow siding (5AM472.1), ballast for the existing track would be replaced, directly impacting the site. The power poles for the catenary system of the EMU vehicle technology would not impact the site as they would be placed on the east side of the alignment at this location. Construction access at this location would be specified to occur from the east side of the alignment to avoid impacting the Darlow site.

These impacts are not anticipated to be harmful to the historic character of the rail alignment and, therefore, would constitute No Adverse Effect.

**Signal Ditch – 5AM473 (Including 5AM473.1)**

The resource is eligible for inclusion in the NRHP under Criterion A for its association with the development and expansion of irrigation works, and beet farming, in northeast Colorado. The BNSF/UP Boulder Branch Alignment would cross the ditch once. The existing siphon would be replaced and a new headwall and trash rack would be constructed. These impacts are not anticipated to be harmful to those characteristics that qualify the resource for inclusion in the NRHP, and therefore, would constitute No Adverse Effect.

**German Ditch – 5AM471 (Including 5AM471.4)**

The site, which is eligible for inclusion in the NRHP under Criterion A, is associated with the development and expansion of agriculture and irrigation works in the north Denver metropolitan area. The alignment crosses the ditch at five locations. The first location (most southern) crosses the ditch twice via an existing bridge structure that also crosses over E-470. This structure would not be replaced. The third crossing would require the replacement of an existing culvert (the replacement would be longer for floodplain purposes). The fourth and fifth crossings are being recommended for culvert replacements as well, including a siphon at the fifth crossing. The ditch alignment would not change at any of these locations. These impacts are not anticipated to be harmful to those characteristics that qualify the resource for inclusion in the NRHP, and therefore, would constitute No Adverse Effect.

**UP Railroad Borrow-pit (5AM2402)**

This site is a large, rectangular, flat-bottomed pit that lies immediately west of the alignment. The pit was excavated sometime between 1909 and 1951 to build the adjacent berm for the UP Railroad, which is approximately 50 feet high in this area. This borrow-pit is eligible for inclusion in the NRHP under Criterion D because it provides useful information on historic railroad engineering practices.

As part of the Preferred Alternative, the tail track and platform proposed at the SH 7 / 162<sup>nd</sup> Avenue Station would impact the borrow-pit at this site. However, a retaining wall would be constructed to avoid substantial encroachment into the borrow-pit. Construction activities would only intrude slightly into the borrow-pit to build the retaining wall. The impacts associated with the alignment are not anticipated to be harmful to the characteristics that qualify this resource for inclusion in the NRHP and, therefore, this would constitute No Adverse Effect.

Adverse Effect

**Quimby Railroad Stop (5AM2111)**

This resource, which is eligible for inclusion in the NRHP under Criteria A and D, includes three concentrations of artifacts dating from the 1930s to 1950s and a sub-surface concrete vault. The vault and one of the artifact concentrations are on the east side of the tracks located inside of the existing UP Railroad ROW and another artifact concentration abuts the UP Railroad ROW. Additional sub-surface features and artifacts may also be present at this site.

The alignment for the Preferred Alternative would parallel the western boundary of this site. The alignment follows the existing UP Railroad track and would be shifted slightly west of its current alignment near 100<sup>th</sup> Avenue. A new track west of the re-aligned track would be added within the existing UP Railroad ROW. Under the Preferred Alternative, the area along the east side of the existing tracks would be regraded to provide adequate drainage of the ballast and sub-ballast. Additionally, two existing culverts would be replaced with larger culverts and fencing would be added along the alignment. These improvements would directly impact the site. No noise walls are proposed at this location.

The impacts associated with the Preferred Alternative would impact one of the artifact concentrations within this site and could impact features and artifact concentrations that have not been identified, which would result in an Adverse Effect to this resource. The location of the Quimby Railroad Stop is shown in Figure 3.4-4.



18 June 2015

HC #68425

Mack H. Shumate, Jr.  
Senior General Attorney  
Union Pacific Railroad  
101 N. Wacker Dr., Room 1920  
Chicago, IL 60606-1718

RE: Proposed Abandonment of a Portion of the Boulder Industrial Lead, Adams County

Dear Mr. Shumate:

Thank you for your recent correspondence dated 12 June 2015, concerning the proposed abandonment of a portion of the Boulder Industrial Lead between mileposts 0.70 to 9.27 in Adams County. Our office has reviewed the submitted materials. This line (5AM.472) is eligible for listing on the National Register of Historic Places.

It appears that the proposed abandonment of the Boulder Industrial Lead has the potential to have an adverse effect on historic resources. Transfer of a historic property out of federal ownership or control can be an adverse effect (see 36.CFR.800.5(a)(2)(vii)) when this transfer is not accompanied by a legal agreement to ensure the preservation of the resource. This can be accomplished by transferring the property to another federal agency, or to an agency that has federal oversight, or by drafting a legal agreement with the recipient party.

In this case, the Line will be transferred to the Regional Transportation District (RTD), which is not a federal or state agency. RTD's funding is a mixture of federal, state, and regional (sales tax) funding, along with revenue generated through passenger fares. Many of its actions are not subject to the provisions of the National Historic Preservation Act. In the absence of a legal agreement between RTD and the Railroad that holds RTD responsible for preserving the historic character of the resource, the proposed abandonment of the Line would have an adverse effect on historic resources.

In 2011, the State Historic Preservation Office (SHPO) reviewed RTD's plans for reuse of the Line for its North Metro ("N Line") light rail line. The SHPO found at the time that RTD's plans for the reuse of the line would have no adverse effect on historic properties. However, SHPO's response in that case was to a specific project funded in part by FTA dollars; the current undertaking, which involves abandonment of the Line, is a separate action. In this case the adverse effect stems not from a review of a planned project but rather from the fact that, post-abandonment, RTD may be able to adversely affect the line without having to afford other agencies the opportunity to comment under 36.CFR.800.

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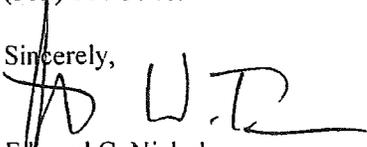
OFFICE OF ARCHAEOLOGY AND HISTORIC PRESERVATION  
303-866-3392 \* Fax 303-866-2711 \* E-mail: oahp@state.co.us \* Internet: www.historycolorado.org



However, if the Railroad does have an existing agreement with RTD in which RTD has agreed to preserve and protect historic resources, the funding of adverse effect may be avoided. If such an agreement is in place, we request that your office forward a copy to our office for review. Such an agreement could also be newly drafted as a means of avoiding/mitigating the adverse effect caused by the abandonment. In the absence of such an agreement, we would like to move forward towards exploring other ways to avoid or mitigate this adverse effect (through the signing of a Memorandum of Agreement).

If you have any questions, please contact Joseph Saldibar, Architectural Services Manager, at (303) 866-3741.

Sincerely,

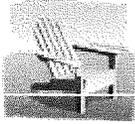


Edward C. Nichols  
State Historic Preservation Officer, and  
President, Colorado Historical Society

---

OFFICE OF ARCHAEOLOGY AND HISTORIC PRESERVATION

303-866-3392 \* Fax 303-866-2711 \* E-mail: [oahp@chs.state.co.us](mailto:oahp@chs.state.co.us) \* Internet: <http://www.coloradohistory-oahp.org>



**AB33 Sub 323X Boulder Ind Lead**

Penny L. Menchey to: Olin H. Dirks, Lynda Prucha, Michael N.  
Drelicharz, SARAH J. RIEF, Jeremy M.  
Berman, Daniel P. Hartmann, Mark A.  
Cc: Mack H. Shumate, Evelis Velazquez

06/30/2015 03:26 PM

Attached is the complete letter from the Office of Archaeology and Historic Preservation the first one we received was missing page 2.



2015\_06\_18 Lrt from Office of Archaeology & Historic Preservation.pdf

Penny Menchey  
Sr. Legal Records Specialist  
Chicago Law Dept.  
101 N. Wacker Drive  
Suite 1920  
Chicago, IL 60606  
312/777-2054  
Plmenche@up.com

only  
recd 1 pg  
in US mail

AB33 Sub323X

RECEIVED

JUN 23 2015



LAW DEPARTMENT  
UNION PACIFIC RR CO.

18 June 2015

HC #68425

Mack H. Shumate, Jr.  
Senior General Attorney  
Union Pacific Railroad  
101 N. Wacker Dr., Room 1920  
Chicago, IL 60606-1718

RE: Proposed Abandonment of a Portion of the Boulder Industrial Lead, Adams County

Dear Mr. Shumate:

Thank you for your recent correspondence dated 12 June 2015, concerning the proposed abandonment of a portion of the Boulder Industrial Lead between mileposts 0.70 to 9.27 in Adams County. Our office has reviewed the submitted materials. This line (5AM.472) is eligible for listing on the National Register of Historic Places.

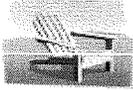
It appears that the proposed abandonment of the Boulder Industrial Lead has the potential to have an adverse effect on historic resources. Transfer of a historic property out of federal ownership or control can be an adverse effect (see 36.CFR.800.5(a)(2)(vii)) when this transfer is not accompanied by a legal agreement to ensure the preservation of the resource. This can be accomplished by transferring the property to another federal agency, or to an agency that has federal oversight, or by drafting a legal agreement with the recipient party.

In this case, the Line will be transferred to the Regional Transportation District (RTD), which is not a federal or state agency. RTD's funding is a mixture of federal, state, and regional (sales tax) funding, along with revenue generated through passenger fares. Many of its actions are not subject to the provisions of the National Historic Preservation Act. In the absence of a legal agreement between RTD and the Railroad that holds RTD responsible for preserving the historic character of the resource, the proposed abandonment of the Line would have an adverse effect on historic resources.

In 2011, the State Historic Preservation Office (SHPO) reviewed RTD's plans for reuse of the Line for its North Metro ("N Line") light rail line. The SHPO found at the time that RTD's plans for the reuse of the line would have no adverse effect on historic properties. However, SHPO's response in that case was to a specific project funded in part by FTA dollars; the current undertaking, which involves abandonment of the Line, is a separate action. In this case the adverse effect stems not from a review of a planned project but rather from the fact that, post-abandonment, RTD may be able to adversely affect the line without having to afford other agencies the opportunity to comment under 36.CFR.800.

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OFFICE OF ARCHAEOLOGY AND HISTORIC PRESERVATION  
303-866-3392 \* Fax 303-866-2711 \* E-mail: oahp@state.co.us \* Internet: www.historycolorado.org



**Re: AB33 Sub No 323X Boulder Ind Lead**   
Penny L. Menchey to: Gregg A. Larsen, Daniel A. Leis

06/23/2015 09:37 AM

Thanks Gregg..... Dan, please see attached email.

Penny Menchey  
Sr. Legal Records Specialist  
Chicago Law Dept.  
101 N. Wacker Drive  
Suite 1920  
Chicago, IL 60606  
312/777-2054  
Plmenche@up.com

Gregg A. Larsen

Penny, Please include Dan Leis on all correspon...

06/23/2015 09:34:53 AM

From: Gregg A. Larsen/UPC  
To: Penny L. Menchey/UPC@UP  
Cc: Daniel P. Hartmann/UPC@UP, David A. Connell/UPC@UP, Donna M. Kush/UPC@UP, Evelis Velazquez/UPC@UP, Gary L. Rethman/UPC@UP, James W. Thornhill/UPC@UP, Jeremy M. Berman/UPC@UP, Lynda Prucha/UPC@UP, Mack H. Shumate/UPC@UP, Mark A. Bristol/UPC@UP, Michael N. Drelicharz/UPC@UP, Olin H. Dirks/UPC@UP, Robert S. Culp/UPC@UP, SARAH J. RIEF/UPC@UP, Daniel A. Leis/UPC@UP  
Date: 06/23/2015 09:34 AM  
Subject: Re: AB33 Sub No 323X Boulder Ind Lead

---

Penny,

Please include Dan Leis on all correspondence regarding this Filing. Thank-you.

Gregg A. Larsen  
Senior Manager - Real Estate  
Union Pacific Railroad Company  
1400 Douglas Street  
Stop 1690  
Omaha, NE 68179-1690  
Phone: 402-544-8552  
Fax: 402-501-0340

Penny L. Menchey

Please see attached letter from the Office of Arc...

06/23/2015 09:02:22 AM

**MEMORANDUM OF AGREEMENT**  
**AMONG U.S. ARMY CORPS OF ENGINEERS,**  
**THE COLORADO STATE HISTORIC PRESERVATION OFFICER,**  
**AND**  
**REGIONAL TRANSPORTATION DISTRICT**  
**REGARDING THE PROPOSED RTD NORTH METRO PROJECT**  
**ADAMS COUNTY AND CITY AND COUNTY OF DENVER, COLORADO**

**WHEREAS**, Regional Transportation District (RTD) plans to construct a public transit commuter rail line project. The project will affect several resources that are eligible for listing on the National Register of Historic Places (NRHP). These NRHP-eligible resources are located within Adams County and the City and County of Denver, Colorado (Corps file number NWO-2006-80505-DEN); and

**WHEREAS**, the lead federal agency has changed from the Federal Transit Administration (FTA), who rescinded the Record of Decision for the RTD North Metro project in November 2014, to the U.S. Army Corps of Engineers (Corps) who has been asked to modify an existing Department of the Army permit in accordance with Section 404 of the Clean Water Act; and

**WHEREAS**, U.S. Army Corps (Corps) has been asked to authorize the project under Section 404 of the Clean Water Act, by a Department of the Army permit, thereby making the project an undertaking subject to review under Section 106 of the National Historic Preservation Act (54U.S.C.306108), and its implementing regulations (36 CFR Part 800); and

**WHEREAS**, Corps has defined the undertaking's area of potential effect (APE) as the entire RTD North Metro project corridor. The APE for this undertaking also includes any borrow areas, staging areas, and access roads that are created and/or modified for the completion of this project; and

**WHEREAS**, Corps has determined that the undertaking will have adverse effects to NRHP-eligible sites 5AM.2111, 5AM.2114, 5AM.2158, and 5DV.10050, and 5DV.6247, including NRHP-supporting segment 5DV.6247.8, that are located within the APE, and has consulted with the Colorado State Historic Preservation Officer (SHPO) in accordance to Section 106 of the National Historic Preservation Act; and

**WHEREAS**, Corps has coordinated with RTD regarding the effects of the undertaking on historic properties and has invited it to sign the Memorandum of Agreement (MOA) as an invited signatory; and

**WHEREAS**, in accordance to Section 106 of the National Historic Preservation Act, the Corps has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination providing the specified documentation, and the ACHP has chosen not to participate in the consultation;

**NOW, THEREFORE**, Corps and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the undertaking on historic properties.

## STIPULATIONS

Corps shall ensure that the following measures are carried out:

### I. MITIGATION

#### A. RESOURCE PROTECTION

1. Quimby Railroad Stop (5AM.2111)
  - a) The new track alignment will be shifted west of the existing track alignment near 100<sup>th</sup> Avenue to minimize impacts.
  - b) The new passing track will be built along the west side of the re-aligned existing track to minimize impacts.
  - c) The alignment was shifted to the west to minimize impacts to the Quimby Railroad Stop; therefore, outside catenary poles would not cause additional impacts. In addition, RTD prefers not to use center catenary poles due to safety concerns (maintenance workers would have to work between two tracks, which results in shutting down the entire system).
  - d) Construction access will be provided from the west side of the existing track at this location to minimize impacts.
2. 124<sup>th</sup> Avenue Farmstead (5AM.2158)
  - a) The 2035 parking structure will be built within the footprint of the 2020 surface parking area to minimize impacts to the site.

#### B. ARCHAEOLOGICAL DATA RECOVERY

1. Treatment Plan - RTD will prepare a detailed treatment plan which describes the data recovery to be completed at all sites.
2. Data Recovery Efforts
  - a) Quimby Railroad Stop (5AM.2111)
    - 1) Background research will be conducted to identify the probable locations of buildings and other features associated with the operations of the railroad stop.
    - 2) In the areas of direct impact, systematic shovel testing, coupled with the application of ground-penetrating radar (GPR), will be used to identify the location(s) of buried cultural features and/or structural remains.
    - 3) Where such buried features or remains are discovered, then excavations will be expanded to expose the nature and location of these features/remains. All excavations will be completely and properly documented.
  - a) Eastlake Railroad Stop (5AM.2114)
    - 1) Background research will be conducted to identify the probable locations of buildings and other features associated with the operations of the railroad stop.
    - 2) In the areas of direct impact, systematic shovel testing, coupled with the application of ground-penetrating radar (GPR), will be used to identify the location(s) of buried cultural features and/or structural remains.
    - 3) Where such buried features or remains are discovered, then excavations will be expanded to expose the nature and location of these features/remains. All

excavations will be completely and properly documented.

**C. ARCHIVAL DOCUMENTATION**

1. 124<sup>th</sup> Avenue Farmstead (5AM.2158)
  - a) Background research will be conducted to define clearly the full extent of the historic farmstead and associated buildings and features.
  - b) The existing property will be thoroughly recorded using Colorado Historical Society Office of Archaeology and Historic Preservation Level II documentation, which includes the following measures:
    - 1) Historical narrative
    - 2) Detailed drawings
    - 3) Medium-format photography
2. BNSF Marion Street Underpass (5DV.6247.8)
  - a) Background research will be conducted to define clearly the full history of the underpass.
  - b) The existing structure will be thoroughly recorded using Colorado Historical Society Office of Archaeology and Historic Preservation Level II documentation, which includes the following measures:
    - 1) Historical narrative
    - 2) Detailed drawings
    - 3) Medium-format photography. The structure will be photographed using archival methodology prior to the start of construction, though the final Level II reports may not be finalized prior to the start of construction.

**D. The Corps will implement the following review and comment mitigation measures:**

1. The Corps will afford SHPO thirty (30) days from the date of receipt to review and respond to any reports, plans, specifications, or other documentation provided for review pursuant to this MOA.

**II. DURATION**

This agreement will be null and void if its terms are not carried out within twenty (20) years from the date of its execution. Prior to such time, the Corps may consult with the other signatories to reconsider the terms of the agreement. Unless terminated pursuant to Stipulation VII, below, this MOA will be in effect through Corps' implementation of the stipulations of this MOA and will terminate and have no further force or effect when the Corps, in consultation with the SHPO, determines that the terms of this MOA have been fulfilled in a satisfactory manner. The Corps will provide the SHPO and RTD with written notice of its determination and of termination of this MOA.

**III. POST-REVIEW DISCOVERIES**

A. In the event that previously unidentified cultural resources are discovered during ground disturbing activities within the APE, the contractor shall halt all construction work involving subsurface disturbance in the area of the newly identified cultural resource and in the surrounding area where further subsurface remains can reasonably be expected to occur. RTD and the Corps shall notify and consult with the SHPO about the discovery.

B. The Corps, or a qualified archaeologist retained by RTD and approved by the Corps, will

immediately inspect the work site and determine the extent of the affected archaeological resource. Following agreement between the Corps and the SHPO, construction work may continue in the area outside of the newly identified resource.

C. Within 14 calendar days of the original notification of discovery, the Corps and RTD, in consultation with the SHPO, shall determine the National Register eligibility of the resource unless the Corps and RTD conclude that an extension is necessary. In that instance, an additional 7-day extension may be obtained by providing written notice to the SHPO prior to the expiration date of said 14-day calendar period.

D. If the resource is determined eligible for the NRHP, the Corps and RTD shall prepare a plan for its avoidance or mitigation and submit it to the SHPO for approval.

E. Following consultation with the SHPO, work in the affected area shall resume pending either:

1. Development and implementation of an appropriate data recovery or other recommended mitigation procedures, approved by the Corps, or
2. Determination by the Corps that the located cultural resources are not eligible for inclusion on the National Register.

#### **IV. MONITORING AND REPORTING**

Each year following the execution of this MOA until it expires or is terminated, RTD shall provide all parties to this MOA a summary report detailing work carried out pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in RTD efforts to carry out the terms of this MOA.

#### **V. DISPUTE RESOLUTION**

Should any signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the Corps shall consult with such party to resolve the objection. If Corps determines that such objection cannot be resolved, Corps will:

A. Forward all documentation relevant to the dispute, including the Corps proposed resolution, to the ACHP. The ACHP shall provide Corps 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, Corps 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 Corps 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 Corps may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Corps 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. It is Corps responsibility to carry out all other actions subject to the terms of this MOA that are not

the subject of the dispute.

#### VI. 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.

#### VII. TERMINATION

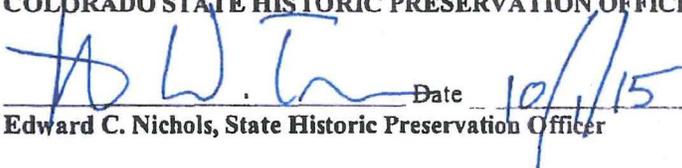
If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation VI, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment 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 Corps must either (a) execute an MOA in accordance to Section 106 of the National Historic Preservation Act, or (b) request, take into account, and respond to the comments of the ACHP in accordance to Section 106 of the National Historic Preservation Act. The Corps shall notify the signatories as to the course of action it will pursue.

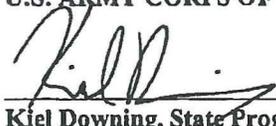
**EXECUTION** of this MOA by the Corps and SHPO and implementation of its terms evidence that Corps has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment. Nothing in this MOA alters or relieves the duties and responsibilities of Corps under Section 106 of the National Historic Preservation Act and its associated regulations. All Corps obligations under this MOA are subject to the availability of funds. If funds are not available then the Corps will reinitiate consultation in regards to mitigation.

#### SIGNATORIES:

##### COLORADO STATE HISTORIC PRESERVATION OFFICE

 Date 10/1/15  
Edward C. Nichols, State Historic Preservation Officer

##### U.S. ARMY CORPS OF ENGINEERS

 Date 10-1-15  
Kiel Downing, State Program Manager, Colorado Regulatory Office

#### INVITED SIGNATORIES:

##### REGIONAL TRANSPORTATION DISTRICT

 (for Dave Genova) Date 10/3/15  
David A. Genova, Interim General Manager, Regional Transportation District



18 June 2015

HC #68425

Mack H. Shumate, Jr.  
Senior General Attorney  
Union Pacific Railroad  
101 N. Wacker Dr., Room 1920  
Chicago, IL 60606-1718

RE: Proposed Abandonment of a Portion of the Boulder Industrial Lead, Adams County

Dear Mr. Shumate:

Thank you for your recent correspondence dated 12 June 2015, concerning the proposed abandonment of a portion of the Boulder Industrial Lead between mileposts 0.70 to 9.27 in Adams County. Our office has reviewed the submitted materials. This line (5AM.472) is eligible for listing on the National Register of Historic Places.

It appears that the proposed abandonment of the Boulder Industrial Lead has the potential to have an adverse effect on historic resources. Transfer of a historic property out of federal ownership or control can be an adverse effect (see 36.CFR.800.5(a)(2)(vii)) when this transfer is not accompanied by a legal agreement to ensure the preservation of the resource. This can be accomplished by transferring the property to another federal agency, or to an agency that has federal oversight, or by drafting a legal agreement with the recipient party.

In this case, the Line will be transferred to the Regional Transportation District (RTD), which is not a federal or state agency. RTD's funding is a mixture of federal, state, and regional (sales tax) funding, along with revenue generated through passenger fares. Many of its actions are not subject to the provisions of the National Historic Preservation Act. In the absence of a legal agreement between RTD and the Railroad that holds RTD responsible for preserving the historic character of the resource, the proposed abandonment of the Line would have an adverse effect on historic resources.

In 2011, the State Historic Preservation Office (SHPO) reviewed RTD's plans for reuse of the Line for its North Metro ("N Line") light rail line. The SHPO found at the time that RTD's plans for the reuse of the line would have no adverse effect on historic properties. However, SHPO's response in that case was to a specific project funded in part by FTA dollars; the current undertaking, which involves abandonment of the Line, is a separate action. In this case the adverse effect stems not from a review of a planned project but rather from the fact that, post-abandonment, RTD may be able to adversely affect the line without having to afford other agencies the opportunity to comment under 36.CFR.800.

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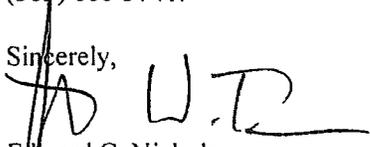
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However, if the Railroad does have an existing agreement with RTD in which RTD has agreed to preserve and protect historic resources, the funding of adverse effect may be avoided. If such an agreement is in place, we request that your office forward a copy to our office for review. Such an agreement could also be newly drafted as a means of avoiding/mitigating the adverse effect caused by the abandonment. In the absence of such an agreement, we would like to move forward towards exploring other ways to avoid or mitigate this adverse effect (through the signing of a Memorandum of Agreement).

If you have any questions, please contact Joseph Saldibar, Architectural Services Manager, at (303) 866-3741.

Sincerely,

  
Edward C. Nichols  
State Historic Preservation Officer, and  
President, Colorado Historical Society

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OFFICE OF ARCHAEOLOGY AND HISTORIC PRESERVATION

303-866-3392 \* Fax 303-866-2711 \* E-mail: [oahp@chs.state.co.us](mailto:oahp@chs.state.co.us) \* Internet: <http://www.coloradohistory-oahp.org>