

211780



August 9, 2004



**VIA UPS NEXT DAY AIR**

**FILED**

AUG 10 2004

Mr. Vernon Williams, Secretary  
Surface Transportation Board  
1925 "K" Street, N.W., Room 504  
Washington, DC 20423-0001

**SURFACE  
TRANSPORTATION BOARD**

**RE: Docket No. AB-33(Sub-No.221X), Union Pacific Railroad Company  
- Abandonment Exemption - - In Santa Clara County, California  
(San Jose Industrial Lead)**

Dear Mr. Williams:

Pursuant to 49 U.S.C. §10502, Union Pacific Company submits the original and ten (10) copies of a Petition for Exemption, with Verification, to abandon the above-referenced rail 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). Three computer diskettes containing the draft Federal Register notice, as well as the Petition for Exemption and Certificate of Service and Publication is also enclosed.

Please file the Petition for Exemption in Docket No. AB-33 (Sub-No. 221X). Further, enclosed is Union Pacific's voucher for \$4,700 for the filing fee.

Sincerely yours,

**ENTERED  
Office of Proceedings**

AUG 10 2004

**Part of  
Public Record**

Enclosures

**FILE RECEIVED**

AUG 10 2004

**SURFACE  
TRANSPORTATION BOARD**

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

**UNION PACIFIC RAILROAD**  
101 N. Wacker Dr., Rm. 1920, Chicago, IL 60606-1718  
ph. (312) 777-2055 fx. (312) 777-2065

Mr. Vernon Williams  
Surface Transportation Board  
August 9, 2004  
Page 2

cc: MTMCTEA  
Attn: Railroads for National Defense  
720 Thimble Shoals Blvd., Suite 130  
Newport News, VA 23606-2574

U. S. Department of the Interior  
National Park Service  
Recreation Resources Assistance Div.  
P.O. Box 37127  
Washington, D.C. 20013-7127

U.S. Department of Agriculture  
Chief of the Forest Service  
4th Floor NW, Auditors Building  
14th Street & Independence Ave., S.W.  
Washington, D.C. 20250

California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102-3298

Santa Clara County Supervisors  
70 W Hedding, 10th Floor  
County Courthouse  
San Jose, CA 95110

Smurfit Stone Recycling  
205 East Alma Avenue  
San Jose, CA 95112

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Docket No. AB-33 (Sub-No. 221X)

UNION PACIFIC RAILROAD COMPANY  
-- ABANDONMENT EXEMPTION --

IN SANTA CLARA COUNTY, CALIFORNIA  
(SAN JOSE INDUSTRIAL LEAD)

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PETITION FOR EXEMPTION

UNION PACIFIC RAILROAD COMPANY

Mack H. Shumate, Jr.  
Senior General Attorney  
101 North Wacker Drive  
Room 1920  
Chicago, IL 60606  
Tel: 312/777-2055  
Fax: 312/777-2065

Dated: August 9, 2004  
Filed: August 10, 2004

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Docket No. AB-33 (Sub-No. 221X)

UNION PACIFIC RAILROAD COMPANY  
-- ABANDONMENT EXEMPTION --

IN SANTA CLARA COUNTY, CALIFORNIA  
(SAN JOSE INDUSTRIAL LEAD)

PETITION FOR EXEMPTION

I.

INTRODUCTION

Union Pacific Railroad Company ("UP") hereby petitions the Board, pursuant to 49 U.S.C. §10502, to grant an exemption from 49 U.S.C. §§10903 in order to permit abandonment and discontinuance of service over the San Jose Industrial Lead from milepost 16.3 to milepost 19.6, a distance of 3.30 miles in Santa Clara County, California (the "Line"). The portion of the Line from milepost 16.30 to milepost 17.49 is owned by the Santa Clara Valley Transportation Authority ("VTA"). UP is proposing to discontinue its trackage rights and abandon its freight easement over this portion of the Line. The portion of the Line from milepost 17.49 to milepost 19.6, which UP owns, will be abandoned. There are no shippers on the Line that will be adversely affected by the proposed abandonment.

The only shipper on the Line is Smurfit Stone Recycling Corporation ("Smurfit"). Smurfit will continue to receive rail service by UP on UP's line of railroad which is just southeast of the San Jose Industrial Lead. See **Attachment No. 3** for a general overview of the proximity and location of the planned alternate UP spur line connection with

Smurfit. There is no practicable possibility for substantial new rail business on the Line. Any overhead traffic can move over an adjacent UP line.

UP seeks exemption of this proposed abandonment from regulation under 49 U.S.C. §10903 in accordance with 49 U.S.C. §10502 and the Rules applicable thereto at 49 C.F.R. §1121 and 49 C.F.R. §1152 and the Special Rules at 49 C.F.R. §1152.60.

II.

PETITIONER'S BACKGROUND AND REPRESENTATIVE

UP has rail operations in the States of Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Tennessee, Texas, Utah, Washington, Wisconsin and Wyoming. The portion of the Line from milepost 16.3 to milepost 17.49 is owned by the VTA and UP is discontinuing its trackage rights and abandoning its freight easement over that segment. UP owns and operates over that portion of the Line from milepost 17.49 to milepost 19.6 in Santa Clara County, California.

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

Mack H. Shumate, Jr.  
101 North Wacker Drive  
Room 1920  
Chicago, IL 60606  
Tel: 312/777-2055  
Fax: 312/777-2065

### III.

#### LINE DESCRIPTIONS, ZIP CODE INFORMATION AND MAP

The proposed action involves the abandonment of UP's interest in the San Jose Industrial Lead from milepost 16.3 to milepost 19.6 in Santa Clara County. The portion of the Line from milepost 16.3 to milepost 17.49 is owned by the VTA and UP is discontinuing its trackage rights and abandoning its freight easement over this portion of the Line. UP owns and operates over that portion of the Line from milepost 17.49 to milepost 19.6 and UP is abandoning all of its interests in this segment of the Line.

The Line was constructed in 1921 by the Western Pacific Railroad. It is constructed primarily with 100-pound and 115-pound welded rail, with some additional short segments of 75-pound and 100-pound jointed rail. The freight easement and trackage rights transactions with VTA occurred in December, 2002. After abandonment, that portion of the Line which is owned by the UP between milepost 17.49 and milepost 19.6 will be salvaged and the UP's real property interest in the right-of-way that is not in the nature of a franchise in public thoroughfares will likely be sold to local governments or adjacent landowners. That portion of the Line which was sold previously to VTA between milepost 16.3 to milepost 17.49 is intended for future inclusion in the BART mass transit system and will not be dismantled.

The Line traverses U.S. Postal Service Zip Codes 95112, 95116 and 95122.

A map of the Line is attached hereto as **Attachment 1** and is hereby made a part hereof.

IV.

SHIPPER INFORMATION

Plant relocations and changes in logistical patterns have eliminated rail activity on the Line except for service to Smurfit. There is no practicable possibility for substantial new rail business on the Line. The only customer on the Line (Smurfit) and its associated rail shipment activity levels are as follows:

Smurfit Stone Recycling  
205 East Alma Avenue  
San Jose, CA 95112

2002: Scrap or Waste Paper, STCC 4024115, 138 cars, 8632 tons.

2003: Scrap or Waste Paper, STCC 4024115, 123 cars, 7001 tons.

First Quarter 2004: Scrap or Waste Paper, STCC 4024115, 26 cars, 1588 tons.

Base Year and Forecast Year:

Scrap or Waste Paper, STCC 4024115, 99 cars, 5823 tons.

The abandonment will have no adverse effect on Smurfit because Smurfit will continue to receive direct rail service from UP via a new spur connection to Smurfit's facility on the Line. The City of San Jose will continue to receive rail service from UP lines adjacent to or in the vicinity of the Line. The San Jose area is served by numerous major highways including Interstates 880, 280, and 680. It is unlikely that new rail-oriented customers would locate along the Line since development trends are moving away from such locations. Any overhead traffic through San Jose can move over an adjacent UP line.

V.

REASONS FOR THE ABANDONMENT

There appears to be no reasonable alternative to the abandonment. There will be minimal, if any, adverse effect on shippers on the Line. Development in the area of San Jose served by the San Jose Industrial Lead is shifting away from rail oriented industries, decreasing the likelihood that a major new rail oriented shipper would be interested in locating on the Line. Any overhead traffic through San Jose can move over an adjacent UP line. The Line is currently served by a local UP train on an as needed basis.

The Line is located entirely within central San Jose proper. As such, the Line is surrounded by existing streets, highways, mass transportation services, utilities and public parks. The segment of the Line between milepost 16.3 and 17.49 (William Street), over which UP will give up its operating rights, was sold to the VTA in December, 2002 and is intended for future inclusion in the BART mass transit system. We do not believe the right-of-way on that portion of the Line from milepost 17.49 to milepost 19.6 is suited for other public purposes including roads or highways, other forms of mass transportation, conservation, energy production or transmission, or recreation.

The UP is of the opinion that the proposed abandonment would be beneficial to the UP and interstate commerce.

VI.

REASONABLE ALTERNATIVE; VIABILITY

There appears to be no reasonable alternative to the abandonment. There will be no adverse effect on the former shippers on the Line in that except for Smurfit, they have all ceased using the Line. Smurfit will continue to receive direct rail service from UP via a new rail spur connection to Smurfit's facility on the Line. The City of San Jose will continue to receive rail service from UP lines adjacent to or in the vicinity of the Line. Given the absence of current rail activity and the low probability of any future business, abandonment is warranted. Except for that portion of the Line which has already been transferred to VTA, the property is generally not suitable for other public purposes including roads or highways, other forms of mass transportation, conservation, energy production or transmission, or recreation.

VII.

THE EXEMPTION STANDARDS HAVE BEEN MET

A. The abandonment requires an exemption from 49 U.S.C. §10903.

Abandonment of rail lines requires authorization and approval of the Board pursuant to 49 U.S.C. §10903. However, 49 U.S.C. §10502 requires the Board to exempt a transaction when 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 proposal for abandonment and discontinuance of operations clearly satisfies the standards for exemption under 49 U.S.C. §10502.

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 expense and the cost, preparation and review associated with progressing the proposed abandonment in a full application proceeding. An exemption will expedite regulatory action and will reduce regulatory barriers to exit from the Line consistent with Sections 10101(2) and (7). An exemption will foster sound economic conditions in the transportation industry consistent with Section 10101(5), by permitting UP's abandonment of the Line and avoiding the need to retain and operate a rail line that will not be used by any shipper.

The proposed abandonment is clearly a transaction of "limited scope." The Line is only 3.30 miles long and will have no recurring local traffic except the Smurfit traffic which will continue to receive direct rail service from UP in a new spur connection to Smurfit's facility on the Line. In addition, regulation of this abandonment is not needed to protect shippers from an abuse of market power, since shipper plant relocations, changes in logistical patterns and the establishment of a new rail spur connection to Smurfit's facility via another UP line have eliminated rail activity on the Line.

#### VIII.

#### LAND AREA, FEDERAL GRANT INFORMATION, AND PUBLIC USE

The right-of-way is approximately 3.30 miles in length. The terrain under this Line is essentially flat and all urban in nature. Right-of-way between milepost 16.3 and William Street (which belongs to VTA) is mostly 60 feet in width with some 80 foot width stretches. At William Street, UP's remaining ownership starts at William Street Yard, with an approximately 300' wide X 3,200' long strip containing various tracks parallel with the

main line. The width tapers down to 150' at the yard's south end (MP 18.4) and remains so until crossing nearby Keyes Street (MP 18.5), where the right-of-way narrows to a 60' width along the westerly edge of Senter Road. The Line then makes a ninety degree turn at about MP 19.0 and runs southwesterly to end at MP 19.6. The final 0.6 mile segment passes through an older industrial/commercial area of San Jose now mainly occupied by trucking/warehousing, material storage, scrap metal/recycling and vehicle repair businesses. Except for that portion of the Line which has already been transferred to VTA, the property is generally not suitable for other public purposes including roads or highways, other forms of mass transportation, conservation, energy production or transmission or recreation as this area is adequately served by existing roads and utility lines at the present time. An examination of those applicable original acquisition deeds which could be located revealed no title restrictions or reversionary interests affecting non-rail use of the property. Based on information in UP's possession, the Line does not contain federally granted right-of-way. Any documentation in UP's possession will be made available to those requesting it.

## IX.

### LABOR

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

X.

ENVIRONMENTAL AND HISTORIC REPORT.

The required environmental and historic information is contained in the Combined Environmental and Historic Report (the "CEHR") which was served on July 14, 2004. A copy of the CEHR transmittal letter is attached hereto as **Attachment 2**. The original and ten (10) copies of the CEHR were sent to Ms. Victoria Rutson, Section of Environmental Analysis, on February 13, 2004, for filing.

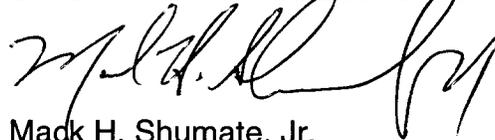
Subsequent to the filing of the combined CEHR no additional letters were received by UP from any federal, state or local governmental agency concerning any conditions to be imposed on the abandonment.

WHEREFORE, Union Pacific Railroad Company respectfully requests that the Board issue a decision exempting the proposed abandonment from the provisions of 49 U.S.C. §10903 and direct that the exemption be effective on the date of the Board's decision.

Dated this 9<sup>th</sup> day of August, 2004.

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY



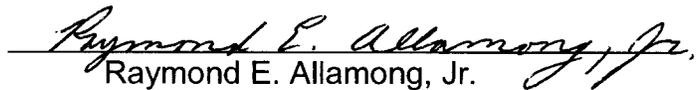
Mark H. Shumate, Jr.  
Senior General Attorney  
101 North Wacker Drive  
Room 1920  
Chicago, IL 60606  
Tel: 312/777-2055  
Fax: 312/777-2065

**VERIFICATION**

STATE OF NEBRASKA    )  
                                  ) ss:  
COUNTY OF DOUGLAS    )

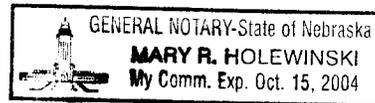
I, RAYMOND E. ALLAMONG, JR., Senior Manager Rail Line Planning of Union Pacific Railroad Company, declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing document and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of Union Pacific Railroad Company. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, I know that these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Omaha, Nebraska, this 30th day of July, 2004.

  
Raymond E. Allamong, Jr.

SUBSCRIBED AND SWORN TO  
before me this 30th day of  
July, 2004.

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



My Commission expires: October 15, 2004

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

STB No. AB-33 (Sub-No. 221X)  
Notice of Petition for Exemption to Abandon or  
to Discontinue Service

On August 10, 2004, Union Pacific Railroad Company filed with the Surface Transportation Board, Washington, D.C. 20423, a petition for exemption for the abandonment and discontinuance of service over the San Jose Industrial Lead from milepost 16.3 to milepost 19.6, a distance of 3.30 miles in Santa Clara County, California (the "Line"). The portion of the Line from milepost 16.30 to milepost 17.49 is owned by the Santa Clara Valley Transportation Authority ("VTA"). UP is proposing to discontinue its trackage rights and abandon its freight easement over this portion of the Line. The portion of the Line from milepost 17.49 to milepost 19.6, which UP owns, will be abandoned. There are no shippers on the Line that will be adversely affected by the proposed abandonment.

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, telephone (202) 565-1545.

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.

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. 221X) 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  
Attn: Railroads for National Defense  
720 Thimble Shoals Blvd., Suite 130  
Newport News, VA 23606-2574

California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102-3298

U. S. Department of the Interior  
National Park Service  
Recreation Resources Assistance Div.  
P.O. Box 37127  
Washington, D.C. 20013-7127

Santa Clara County Supervisors  
70 W Hedding, 10th Floor  
County Courthouse  
San Jose, CA 95110

U.S. Department of Agriculture  
Chief of the Forest Service  
4th Floor NW, Auditors Building  
14th Street & Independence Ave., S.W.  
Washington, D.C. 20250

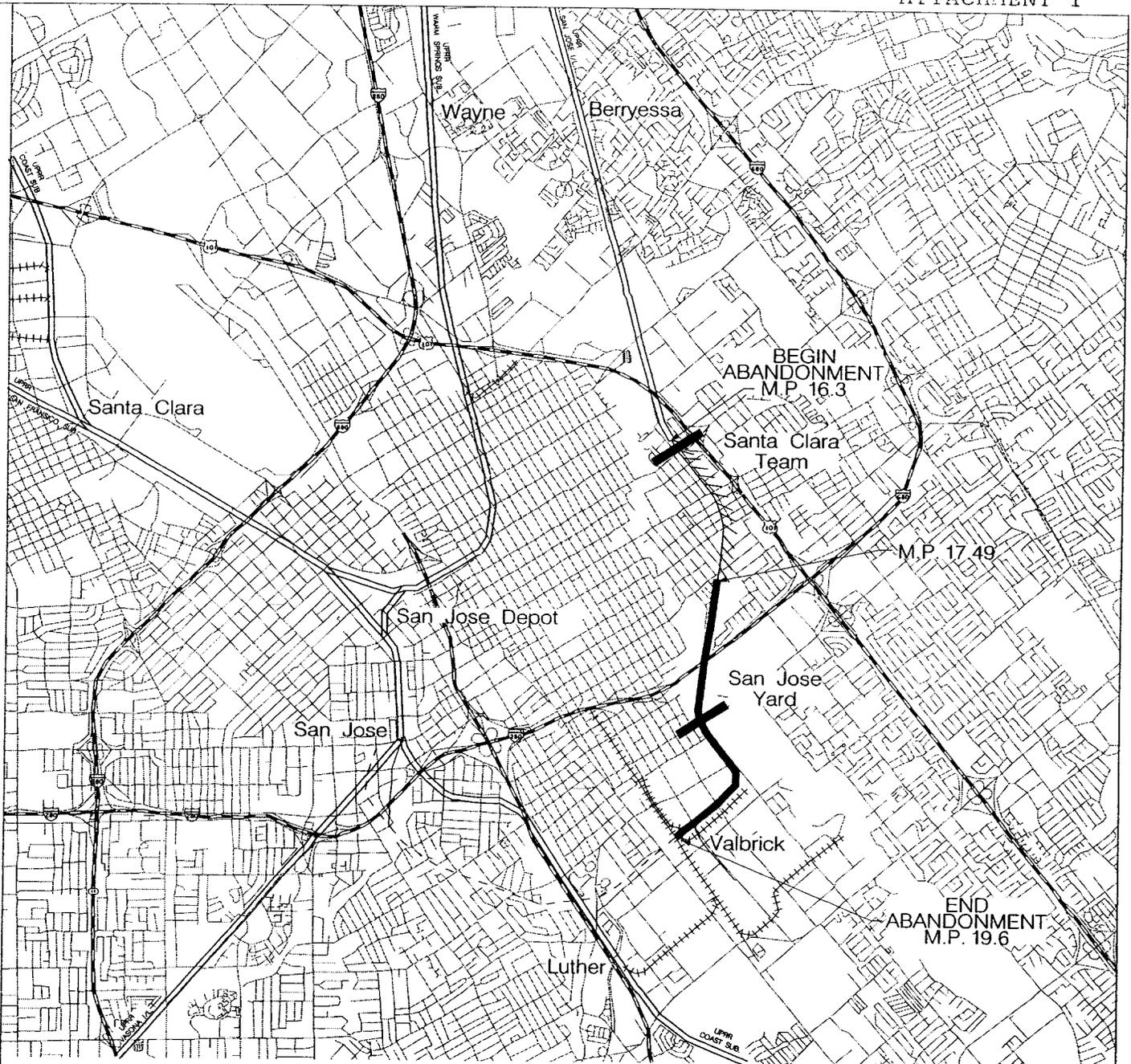
The undersigned further certifies that a notice of the abandonment was published one time in the County where the rail line is located as follows:

<u>County</u>	<u>Newspaper</u>	<u>Date</u>
Santa Clara	<i>San Jose Mercury News</i>	July 30, 2004

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 CFR 1105.12.

Dated this 9th day of August, 2004.

  
\_\_\_\_\_  
Charles W. Saylor



BRIDGE NO.	BRIDGE TYPE	TOTAL LENGTH	DATE
16.32	5 SPAN TPTBD	75'	UNKNOWN
18.43	13 SPAN TPTOD	260'	UNKNOWN

LEGEND

- UPRR LINES TO BE ABANDONED
- UPRR TRACKAGE RIGHTS OVER SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
- ABANDONED TRACK
- OTHER UPRR LINES
- OTHER RAILROADS
- PRINCIPAL HIGHWAYS
- OTHER ROADS
- 50+ YEAR OLD STRUCTURES

SAN JOSE INDUSTRIAL LEAD

MP 16.3 TO MP 19.6

TOTAL OF 3.3 MILES

IN SANTA CLARA COUNTY, CALIFORNIA

UNION PACIFIC RAILROAD CO.

SAN JOSE INDUSTRIAL LEAD

SANTA CLARA TEAM TO VALBRICK, CALIFORNIA  
INCLUDING 50+YEAR OLD STRUCTURES



FILE: q:\abandonments\ab0343\_san.jose.dgn

DATE: 06-May-04 09:40



COPY

July 13, 2004

VIA U.P.S. OVERNIGHT

Surface Transportation Board  
Section of Environmental Analysis  
1925 "K" St., N.W., Room 504  
Washington, DC 20423-0001

**Attention:** Victoria Rutson

**RE: Docket No. AB-33(Sub-No.221X), Union Pacific Railroad Company  
- Abandonment Exemption - - In Santa Clara County, California  
(San Jose Industrial Lead)**

Dear Ms. Rutson:

Enclosed for filing in the above-referenced docket is the original and ten (10) copies of a Combined Environmental and Historic Report prepared pursuant to 49 C.F.R. §1105.7 and §1105.8, with a Certificate of Service, and a transmittal letter pursuant to 49 C.F.R. §1105.11.

Union Pacific anticipates filing a Petition for Exemption in this matter on or after August 2, 2004.

Sincerely,

A handwritten signature in black ink, appearing to read "Mack H. Shumate, Jr." with a stylized flourish at the end.

Enclosures

O:\ABANDONMENTS\33-221X\STB-EHR.wpd

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

**UNION PACIFIC RAILROAD**  
101 N. Wacker Dr., Rm. 1920, Chicago, IL 60606-1718  
ph. (312) 777-2055 fx. (312) 777-2065

