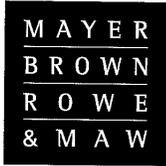


204675



February 1, 2002

**BY HAND**

Office of the Secretary  
Case Control Unit  
STB Finance Docket No. 34079  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423-0001



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Attn: Ms. Dana G. White, Section of Environmental Analysis,  
Environmental Filing

Re: Finance Docket No. 34079, San Jacinto Rail Limited—  
Authority to Construct—and The Burlington Northern and Santa  
Fe Railway Company—Authority to Operate—Petition for an  
Exemption from 49 U.S.C. § 10901—Build-In to the Bayport  
Industrial Loop Area Near Houston, Harris County, Texas

ENTERED  
Office of the Secretary  
FEB 04 2002  
Part of  
Public Record

Dear Ms. White:

The Burlington Northern and Santa Fe Railway Company (BNSF) and San Jacinto Rail Limited (SJRL) submit these comments on the Surface Transportation Board (STB)'s Draft Scope of Study, 66 Fed. Reg. 59046, for the Environmental Impact Statement (EIS) that is being prepared by the Section of Environmental Analysis (SEA) in the above-captioned proceeding.

First, BNSF and SJRL believe that the scoping meetings were very helpful in providing an opportunity for the public to become directly involved with the agency in the development of the scope of study for the project. Such input by the public is integral to the environmental review process under NEPA. We note, however, that some of the comments provided both informally and formally address issues that are not germane to this proceeding, irrelevant to the scope of study on which SEA sought comments, or otherwise not complete or accurate. Accordingly, we will not undertake at this time to address such comments, but reserve the right to address those matters at an appropriate time during the environmental review process should it become necessary to complete the record.

Second, we believe it appropriate to bring to your attention the following testimony presented by Union Pacific Railroad (UPRR) on January 28, 2002 in the Legislative Forum on Impacts of Future Development of Southeast Harris County:

Office of the Secretary

February 1, 2002

Page 2

Some have said the solution to the concerns expressed about the San Jacinto project is to have UP grant BNSF trackage rights over our line to Strang Yard and then along Highway 225. That's the way UP moves its Bayport chemical traffic today. We're not going to do that unless BNSF agrees to compensate us for all of our lost revenues, and it won't. We spent \$5.9 billion for the SP. Being the only railroad serving the chemical complex at Bayport was an attractive element in the purchase, and BNSF is going to take much of that value away from it. BNSF has no legal right to run over the former SP route. If they are to compete with us, they need to make their own investment, or as they have in this case, get the chemical companies to invest in a build out. Forcing them over our SP line would be like making K Mart give half its store to Wal Mart instead of Wal Mart building a new one or making the Houston Chronicle turn some of its presses over to another publisher so that Houston could again have competing daily newspapers.

Testimony of Joe Adams, Chairman's Special Representative, UPRR (Testimony) at 7 (copy enclosed). As the public raised questions during scoping about the feasibility of BNSF and SJRL using UPRR's existing trackage to serve the Bayport shippers, UPRR's statement is clear that it will not permit BNSF and SJRL to do so. Beyond providing needed information to answer concerns of the public, this information is also relevant to the alternatives analysis required under NEPA in consideration of the feasibility of alignments 3 and 4.

Third, during the scoping meetings, some commenters raised concerns about BNSF and SJRL's projection of anticipated rail traffic on the new line. Accordingly, we thought it appropriate to clarify the issue. BNSF and SJRL have projected an average of two linehaul trains per day, one inbound and one outbound. Trains will consist on average of approximately 36 to 66 railcars. This projection accounts for not only traffic anticipated to be carried initially over the new line for the four shippers who are partners in SJRL, but also the traffic of a number of other shippers who could be served by the line if the necessary connections were to be built. *See San Jacinto Rail Limited and The Burlington Northern and Santa Fe Railway Company's Reply to Union Pacific Railroad Company's "Comments on Infrastructure and Safety for the Build-Out to the Bayport Loop" at 2-3 (dated Oct. 29, 2001).*

After BNSF and SJRL's October 29 filing, UPRR's outside counsel filed a letter with the STB, dated November 15, 2001, correcting its initial assertions about estimated traffic levels available at Bayport and confirming that the Bayport Loop generates an average of 300 cars total per day, loaded and empty, on a typical day. This was again confirmed by UPRR's representative Joe Adams (Testimony at 4-5). Accordingly, BNSF and SJRL's estimate of 33 to 66 cars per day on average in each direction represents between 22 and 44 percent of the available carload traffic, a healthy and not insubstantial amount for a new market entrant with incomplete access to all traffic available to UPRR. Even if, as UPRR postulated in the recent local legislative hearings, BNSF were to capture two-thirds of all the chemical traffic in the Bayport Loop—which is at this point speculative and highly unlikely given that BNSF will not be able to access all 19 other shippers in the Bayport Loop—that would total only 200 cars,

Office of the Secretary  
February 1, 2002  
Page 3

loaded and empty, on average per day in both directions. One linehaul train can accommodate 100 cars. Thus, even under this highly unlikely scenario, BNSF still would be able to handle such volume of traffic without adding new train service beyond one linehaul train trip per day on average in each direction.

Finally, some comments from the scoping meetings address matters previously discussed in correspondence directed to another federal agency—the U.S. Army Corps of Engineers (the Corps)—which is performing an EIS on an unconnected project involving the Port container facility. Other comments raise matters concerning preexisting conditions, a topic discussed at length in BNSF and SJRL's January 29, 2002 response to the January 9, 2002 letter of the Galveston Bay Conservation and Preservation Association. To the extent that any of the commenters are raising matters again that have been previously addressed, we incorporate by reference the positions of BNSF and SJRL as set forth in those prior submissions to the Board and the Corps.

It is our understanding that requests have been made to extend the public comment period on the draft scope of study. While we support the public's right to continue its participation in the NEPA process, and note that there are additional opportunities to do so in the future, there has been thorough scoping and substantial public participation already. Because no new issues have surfaced warranting extension of the comment period, issuance of the final scope of study at this time is consistent with NEPA's purposes. We are available to provide information to SEA and the public as may be needed to complete the environmental review for the project.

Sincerely,



Kathryn A. Kusske

Enclosure

cc: Victoria J. Rutson  
Alan Summerville  
All Parties of Record

Legislative Forum

Impacts of Future Development  
Southeast Harris County

State Representative John E. Davis

State Representative Rick Noriega

Testimony of

Joe Adams

Chairman's Special Representative

Union Pacific Railroad

January 28, 2002

Let me provide some background about the San Jacinto project from Union Pacific's perspective. To overcome the opposition of the chemical industry to the Union Pacific (UP) Southern Pacific (SP) merger, which itself was a reaction to the earlier merger of the Burlington Northern with the Santa Fe Railway, Union Pacific had to agree to several things. We had to give BNSF extensive trackage rights over our rail lines so that every shipper who had service from both UP and SP (and no other railroad) would have service from UP and BNSF, a much stronger railroad than the financially distressed SP. And, as is the issue here, we had to preserve the possibility of future competition by agreeing to give BNSF future trackage rights so as to allow them to build from a UP line to an industry formerly served only by SP or from a former SP line to a UP-served industry. Accordingly, Union Pacific is not opposed to the San Jacinto proposal. Currently, BNSF also has projects underway for "build outs" at Seadrift, Texas, and to a power plant in Arkansas, and several other "build outs" are planned in other areas.

The Surface Transportation Board in Washington D.C. must approve or grant an exemption to allow construction of new rail lines, and it must consider the environmental effects of the new operations. While we are on record as supporting the "build out" concept, UP has asked the STE in the Bayport proceeding to make sure that BNSF funds necessary improvements to the UP lines

in Southern Harris County over which BNSF will operate its added trains to reach Bayport. The lines in question are shown on the attached map. Our goals are to be sure that GH&H line is safely operated, to reduce the interference of the BNSF trains with our existing train traffic, and to avoid adverse impacts on the neighborhoods through which our lines run. Our concerns are spelled out in our STB filing which I have made available to you with copies of my remarks.

We have asked the BNSF to add capacity to its facilities and our lines to reduce these adverse impacts. We asked BNSF to help:

- a. By agreeing to a traffic control system;
- b. By installing two powered switches at Graham siding where they would come out onto our GH&H line;
- c. By adding a long siding north along the GH&H so that trains can pass along a 13-mile stretch that takes 45 minutes to traverse because of a 20-mph speed limit;
- d. By constructing a siding along our Harrisburg Sub;
- e. By constructing a new turnout so that their trains can go directly into their New South Yard rather than going past it and backing in across a busy rail line as they have to do today.

This backing maneuver at a location known as T&NO Junction (see attached maps) not only blocks the line we use to run 20 or so trains to and from Freeport, Corpus Christi and Brownsville

but also ties up vehicular traffic on Griggs Road and Long Drive. These movements often take 40 minutes or more. And, I know from experience when a train blocks a crossing, all railroads are viewed as culprits.

We need the sidings and the power switches to which I just referred not only to keep our trains moving, but also to avoid crossing blockages along Highway 3 and along Griggs Road. Dispatchers need a place to hold long trains without blocking roadways. To cite an example, a UP train coming north from Galveston would have to stop on the main line somewhere south of Clear Lake City Boulevard if a BNSF train were coming out ahead of it onto the GH&R at Ellington Field. These problems are compounded without power switches since the BNSF crew would have to stop their train and hand throw the switch and then reset it after their train had cleared. Then the crewman would have to walk the length of the train back to the locomotive. Similar problems occur if a UP train was going south north of the airport while the BNSF wanted to come off their San Jacinto Railroad. Without a siding to allow the trains to pass, the BNSF train would have to hold along the edge of the airport for up to 45 minutes or the UP train would have to hold out on the GH&R line north of Griggs Road for up to 45 minutes until the BNSF train cleared onto the Harrisburg Sub.

BNSF has filed an answer with the STE opposing all of our requested improvements. They say that they are only going to run

one daily train each way from Bayport and they shouldn't have to do any of this. In fact, they've filed a general request with the STB asking for a ruling for all "build outs" under which BNSF would have no duty to pay to ameliorate the impacts on Union Pacific even if the interference is "unreasonable" whenever the remedies would affect BNSF's ability to compete.

At the same time, BNSF does not have adequate facilities in Houston to handle its existing traffic. It has made minimal capacity investments. BNSF's New South Yard is the leading cause of rail delays in the Houston Terminal. The yard does not have enough tracks to accommodate BNSF's existing traffic and trains are held out and rail routes blocked. BNSF will say that it is making plans to switch cars at locations outside of Houston and route some trains around the city. But they haven't been able to solve the problems with existing levels of rail traffic. In contrast, since acquiring the SP, which was unable to invest very much into its facilities, UP has spent \$130 million for capacity improvements in Houston and made nearly \$1 billion in capital investments in the Texas Gulf region.

Let me turn to the only one train a day issue, which is the reason BNSF claims no improvements on the UP line are necessary. If it's one train, down the road it's going to be a mighty long one. Today, UP handles 300 or more cars on an average day into and out of Bayport. At busy times, the volume can approach 600 cars. As BNSF over time gets all the business of the three

largest Bayport shippers who are investing millions into the San Jacinto project and as it takes business from 19 other shippers on the Bayport loop, its volumes will grow. One reason for the projected slow BNSF start (33 cars) is that some of the chemical company investors' traffic is under contract with UP for several more years and then it will go to BNSF. And you can rightly expect BNSF to aggressively seek new customers. As an example, they now handle about 2/3 of all the chemical traffic from UP/BNSF competitive points along the Ship Channel. Finally, there is no projection in the BNSF analysis for traffic growth from new or expanded plants - which are likely to come on line.

Let me now address the rate issue because of allegations made about UP's pricing for Bayport customers in news articles and elsewhere.

First, rates are higher where there is only one railroad and a commodity not readily susceptible to truck or barge competition. UP does it; BNSF does it. Chemical companies charge more for patented products. Like the airlines, railroads need to charge different prices to different customers to survive given the huge investment requirements we have for track and locomotives. And unlike trucks and airlines, we don't enjoy government-funded facilities.

Second, shippers who feel their rates are unfairly too high can file a complaint with the ICC which can order their rates to be lowered.

Third, shippers with multiple plants can negotiate package deals involving single served and multi-railroad served locations to exert leverage. In certain circumstances, they can truck products to a competing railroad and load them into rail cars.

Fourth, it would be dumb for a railroad to charge rates that were so high a shipper would be forced to close a plant. The railroad would lose all the traffic. Transportation costs are an economic factor but there are others. Why did Equistar close a plastics plant last March at Williams, Texas that "enjoyed" competitive rail services while keeping single railroad served plants open? And most shippers continue to locate new plants on a single railroad.

Fifth, a Houston Chronicle editorial said "some chemical executives claim it's cheaper for them to ship cargo from Canada to the Gulf Coast than from Bayport to Louisiana". Well, if you cherry pick rail rates you can find an example of anything. In reality, my understanding is that Bayport rail shippers pay anywhere from just over \$500 per car to somewhat over \$2500 to ship commodities to points in Louisiana. So prices are all over the lot depending on contract terms and marketplace issues. Finally, we've told Equistar, Lyondell, Atcfina and Basell that we're always willing to talk about their needs as customers.

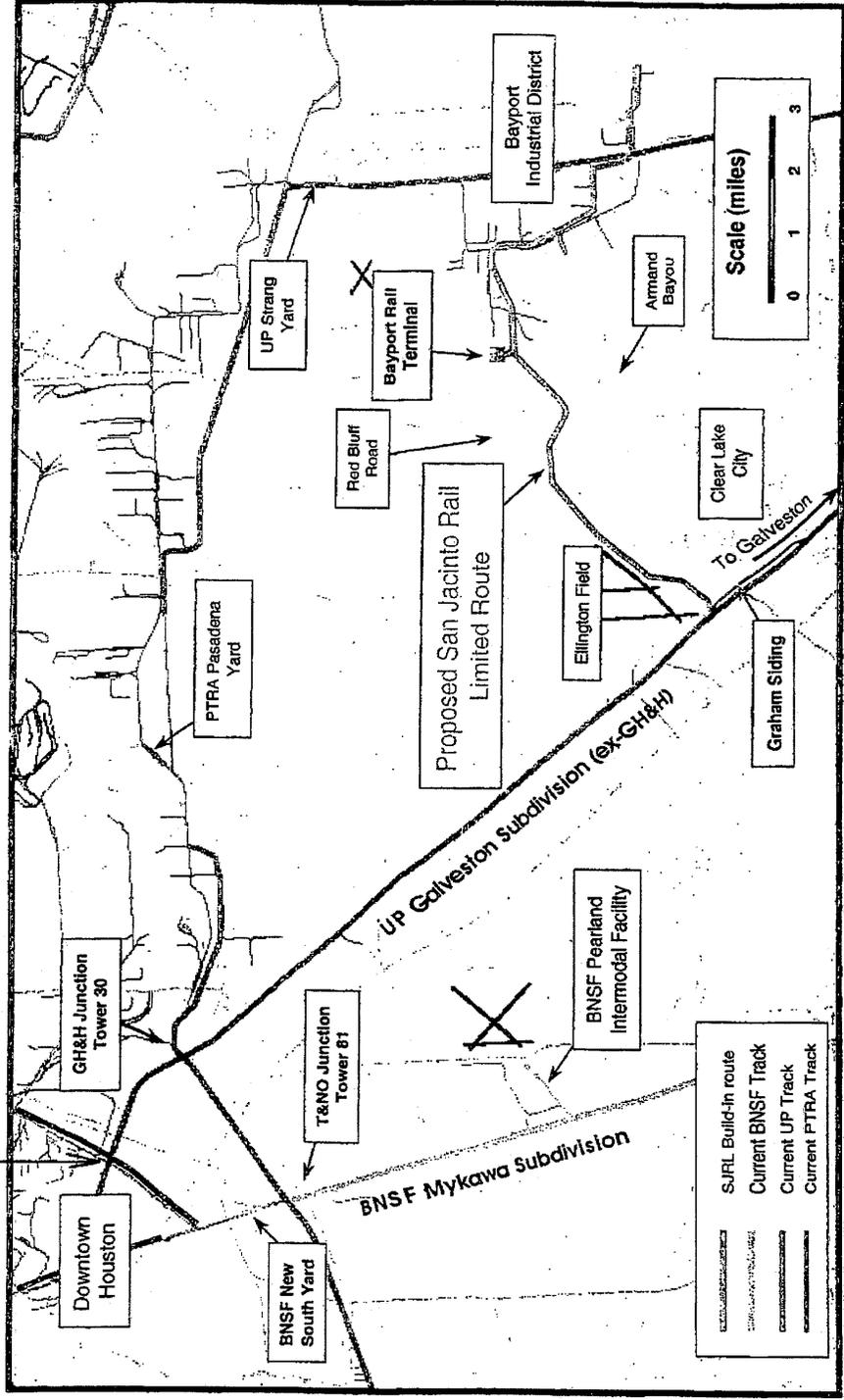
In closing, I need to address still one more issue. Some have said the solution to the concerns expressed about the San

Jacinto project is to have UP grant BNSF trackage rights over our line to Strang Yard and then along Highway 225. That's the way UP moves its Bayport chemical traffic today. We're not going to do that unless BNSF agrees to compensate us for all of our lost revenues, and it won't. We spent \$5.9 billion for the SP. Being the only railroad serving the chemical complex at Bayport was an attractive element in the purchase, and BNSF is going to take much of that value away from it. BNSF has no legal right to run over the former SP route. If they are to compete with us, they need to make their own investment, or as they have in this case, get the chemical companies to invest in a build out. Forcing them over our SP line would be like making K Mart give half its store to Wal Mart instead of Wal Mart building a new one or making the Houston Chronicle turn some of its presses over to another publisher so that Houston could again have competing daily newspapers.

Thanks for the chance to tell you of our concerns. I'd be happy to try to answer your questions.

# HOUSTON AREA LINES

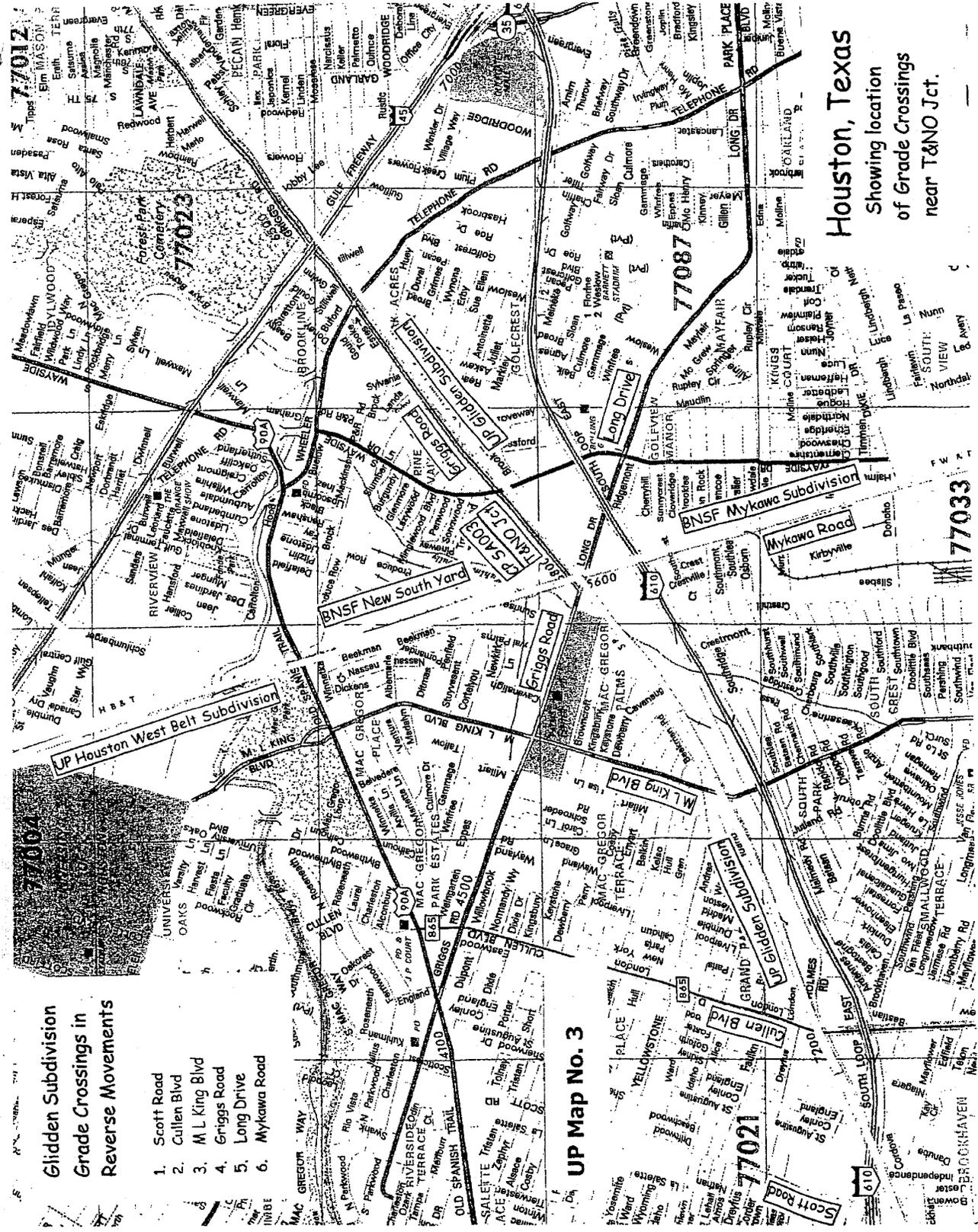
UP Map No. 2



BNSF Trackage  
Rights on UP

**Glidden Subdivision  
Grade Crossings in  
Reverse Movements**

1. Scott Road
2. Cullen Blvd
3. M L King Blvd
4. Griggs Road
5. Long Drive
6. Mykawa Road



**Houston, Texas**  
Showing location  
of Grade Crossings  
near T&NO Jct.

**UP Map No. 3**

UP Map No. 4

