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BEFORE THE
SURFACE TRANSPORTATION BOARD

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March 14, 2023
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Public Record

STB DOCKET NO. AB 1328X

CITY OF TACOMA, DEPARTMENT OF PUBLIC WORKS
D/B/A TACOMA RAIL MOUNTAIN DIVISION
-- DISCONTINUANCE OF SERVICE EXEMPTION --
IN PIERCE COUNTY, WASHINGTON

**PETITION FOR EXEMPTION OF CITY OF TACOMA,
DEPARTMENT OF PUBLIC WORKS D/B/A TACOMA RAIL MOUNTAIN DIVISION**

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**ATTORNEY FOR CITY OF TACOMA,
DEPARTMENT OF PUBLIC WORKS D/B/A
TACOMA RAIL MOUNTAIN DIVISION**

Dated: March 14, 2023

FILED
March 14, 2023
SURFACE
TRANSPORTATION BOARD

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March 14, 2023
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CITY OF TACOMA, DEPARTMENT OF PUBLIC WORKS
D/B/A TACOMA RAIL MOUNTAIN DIVISION
-- DISCONTINUANCE OF SERVICE EXEMPTION --
IN PIERCE COUNTY, WASHINGTON

Pursuant to 49 U.S.C. § 10502 and the corresponding regulations of the Surface Transportation Board (the “Board”) at 49 C.F.R. §§ 1121 and 1152.60, City of Tacoma, Department of Public Works d/b/a Tacoma Rail Mountain Division (“TRMW”) hereby petitions the Board for an exemption from the prior approval requirements of 49 U.S.C. § 10903 to be relieved of its common carrier obligation over approximately 3.5 miles of railroad line that it owns extending from milepost 2.11 at East C Street (USDOT Grade Crossing Inventory Number 396640U) to milepost 5.61 at McKinley Avenue (USDOT Grade Crossing Inventory Number No. 396659L) in the City of Tacoma, Pierce County, Washington (the “Line”). A map depicting the Line is attached as Exhibit A. A draft *Federal Register* notice of this Petition in the form prescribed at 49 C.F.R. § 1152.60(c) is attached as Exhibit B. Certification of compliance with the service requirement of 49 C.F.R. § 1152.60(d) and the newspaper publication requirement of 49 C.F.R. § 1105.12, respectively, are attached as Exhibit C.

TRMW, a division of the City of Tacoma, Washington, is the non-operating owner of the Line. The line is currently operated by the City of Tacoma, Washington, Department of Public Utilities d/b/a Tacoma Rail (“Tacoma Rail”), but, on March 8, 2023, TMBL petitioned for authorization to discontinue its operations on the Line pursuant to *City of Tacoma, Department of Public Utilities d/b/a Tacoma Rail – Discontinuance of Service*

*Exemption – In Pierce County, Washington, AB 1239 (Sub-No. 3X).*¹ TRMW hereby seeks individual discontinuance authorization, coterminous with TMBL’s recent request, to suspend all common carrier service over the Line as part of TRMW’s current strategic plans for its rail assets, and due to minimal, non-remunerative traffic levels handled over the Line by its operator, Tacoma Rail.

The Line hosts minimal, sporadic local traffic. In fact, the only local traffic over the Line in the past two years was a single carload (for Tacoma Steel Company – “Tacoma Steel”) that Tacoma Rail handled in April of 2021. Traffic volumes over the past seven years were not much larger, relatively speaking, with records indicating that, until the single, April 2021 carload moved, the most recent prior local traffic on the Line was three carload shipments in 2016. No significant traffic increases are expected, and no new shippers are anticipated. Tacoma Rail, on behalf of TRMW has advised Tacoma Steel of TRMW’s and Tacoma Rail’s respective plans to seek authority to discontinue service, and TRMW has no reason to believe that Tacoma Steel will object to TRMW’s present discontinuance plans. (Also, Tacoma Steel will be served with a copy of this Petition.) Any overhead traffic on the Line can be diverted to other through routes.

As is demonstrated below, the proposed discontinuance satisfies the exemption criteria of 49 U.S.C. § 10502, and, accordingly, this Petition should be granted.

¹ Originally, TRMW and Tacoma Rail, distinct but related divisions of the City of Tacoma, Washington, had planned to prepare and jointly petition the Board for respective discontinuance relief in a single, consolidated filing. In the interim, circumstances arose that prevented TRMW for being in a position to file for discontinuance authorization as soon as Tacoma Rail was able to do. Nevertheless, given that the two Petitions have been filed within a week of each other, TRMW contemplates that the Board may find it more efficient to grant the them both in a single order in both dockets, if possible.

I. IDENTIFICATION OF PETITIONER

TRMW is a non-operating Class III common carrier by rail which owns the Line and has arranged for common carrier operation by Tacoma Rail (whose own discontinuance petition for exemption covering the Line is pending).

The complete name and address of TRMW is:

City of Tacoma, Department of Public Works d/b/a
Tacoma Rail Mountain Division
747 Market Street, Room 408
Tacoma, WA 98402

II. DESCRIPTION OF THE LINE OVER WHICH SERVICE IS TO BE DISCONTINUED

The Line consists of approximately 3.5 miles of railroad track extending from milepost 2.11 at East C Street (USDOT Grade Crossing Inventory Number 396640U) to milepost 5.61 at McKinley Avenue (USDOT Grade Crossing Inventory Number No. 396659L) in the City of Tacoma, Washington. The Line traverses United States Postal Service ZIP Codes 98421, 98404 and 98418. Although not clearly relevant in the context of railroad common carrier service discontinuances short of abandonment, TRMW states that pursuant to 49 C.F.R. § 1152.60(d) and based on information in its possession, it does not believe that the Line contains federally-granted right-of-way. Any documentation in TRMW's possession relevant to the foregoing statement will be made available promptly to those requesting it, should a genuine need for such information arise.

III. JURISDICTION AND STATUTORY STANDARDS

The Board has exclusive jurisdiction over TRMW's discontinuance of common carrier service pursuant to 49 U.S.C. § 10903. Generally, a railroad common carrier (such as TRMW) must obtain authority from the Board under Section 10903 before discontinuing service over a line of railroad. However, 49 U.S.C. § 10502 requires the Board to exempt a person,

transaction or service from the formal statutory and regulatory requirements otherwise applicable to a rail carrier when the Board determines that: (1) application of those requirements is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction is of limited scope or (b) regulation is not needed to protect shippers from an abuse of market power. The proposed discontinuance meets the applicable exemption standards.

IV. CRITERIA OF 49 U.S.C. § 10502

A. Detailed scrutiny under 49 U.S.C. § 10903 is not necessary to carry out the Rail Transportation Policy of 49 U.S.C. § 10101.

Granting the Petition would be consistent with the goals articulated in the Rail Transportation Policy (“RTP”) set forth at 49 U.S.C. § 10101. Among other things, favorable action would promote the policy objectives of the RTP because it would facilitate TRMW’s plans to retain the Line as a non-operating asset.

The RTP directs the Board to minimize regulation of the rail transportation system and expedite regulatory decisions where appropriate, reduce barriers to exit, and expedite regulatory decisions. *See* 49 U.S.C. §§ 10101(2), (7), and (15). The Board previously—and repeatedly—has recognized that exempting discontinuances of service from the formal requirements of Section 10903 advances these three elements of the RTP in satisfaction of 49 U.S.C. § 10502(a)(1).²

The RTP similarly would be advanced here by granting the requested discontinuance petition for exemption, because favorable action would – (a) minimize the need

² *E.g., Savage, Bingham & Garfield Railroad Company — Discontinuance of Trackage Rights Exemption — In Whiting, Ind.*, Docket No. AB 1271X (STB served Mar. 1, 2019), 2 (“An exemption would expedite regulatory decisions, reduce regulatory barriers to exit, and provide for the expeditious handling and resolution of proceedings. 49 U.S.C. § 10101(2), (7), and (15)”) (citation in original).

for regulatory control over operation of the Line in accordance with 49 U.S.C. § 10101(2); (b) eliminate a regulatory barrier to TRMW's exit consistent with 49 U.S.C. § 10101(7); and (c) expedite the processes of allowing TRMW to be relieved of its common carrier obligation over the Line, consistent with 49 U.S.C. § 10101(15). Granting TRMW an exemption also would obviate the need for the expensive and time-consuming processes that formal applications under 49 U.S.C. § 10903 and 49 C.F.R. Part 1152 would require, and would therefore be consistent with Board's Section 10502(a) mandate in keeping with the RTP.

B. The transaction is of limited scope.

The transaction for which subject exemption is sought consists solely of the discontinuance of railroad common carrier service over a roughly 3.5-mile track segment that has served a single, low-volume customer that has shipped a single carload over the Line in the past two years, and four in the past seven years. Accordingly, the proposed discontinuance clearly is of limited scope. *See, e.g. San Diego & Imperial Valley Railroad Company, Inc. – Discontinuance of Service Exemption – in San Diego County, California*, AB-1029 (Sub-No. 1X) (STB Served May 14, 2009) (discontinue of service over a 1.35-mile railroad line); *Norfolk Southern Railway Company – Discontinuance of Service Exemption – in Hamilton County, Ohio*, AB 290 (Sub-No. 321X) (STB Served June 11, 2010) (discontinue of service over a 5.70-mile railroad line).

C. Regulation is not necessary to protect shippers from market power abuse.

Since this transaction is of limited scope, TRMW does not need to demonstrate that regulation is unnecessary to protect shippers from abuse of market power, 49 U.S.C. § 10502(a)(2). Even so, it is clear that this transaction will not subject customers to any market power abuse. The Line has hosted a total of four local carload shipments over the past seven

years (three in 2016 and one in 2021), and overhead traffic (which does not currently exist, incidentally) can be handled over other through routes. TRMW understands that the Line's sole local customer, Tacoma Steel, (which has been advised of TRMW's plans) will not object to the proposed discontinuance.

V. LEVEL OF LABOR PROTECTION TO BE IMPOSED

The appropriate level of employee protection to be imposed on this discontinuance is that established in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979). TRMW, which is the non-operating owner of the Line, anticipates no adverse impact on employment levels as a result of the proposed discontinuance.

VI. OFFERS OF FINANCIAL ASSISTANCE

Because this proceeding entails a request for discontinuance authority only (and does not involve abandonment of any railroad line), interested parties may only present offers of financial assistance to subsidize continued operation on the Line for a period of up to one year. *See, e.g., BNSF Railway Company – Abandonment Exemption – in Oklahoma Count, OK*, AB-6 (Sub-No. 430X), *et al.* (STB served Feb. 27, 2007), slip op. at 2 (“A party filing an OFA in a discontinuance proceeding is limited to providing a subsidy to keep service going for a 1-year period.”); *Iowa Northwestern Railroad – Abandonment Exemption – in Osceola and Dickinson Counties, IA*, AB-1067 (Sub-No. 1X) (STB served Apr. 10, 2006), slip op. at 4 (“Although ICR seeks to purchase the entire line, we have concluded that IANW can only discontinue service on the line and, therefore, ICR can only subsidize the portion of the line being discontinued.”).

VI. ENVIRONMENTAL REPORT

As a general rule, the Board does not require a carrier seeking to discontinue service over a rail line (as opposed to seeking to abandon it) to prepare and submit a combined Environmental and Historic Report under 49 C.F.R. §§ 1105.6(c) and 1105.8(b).³ TRMW believes that the Board's general rule applies here, and, accordingly, TRMW, as owner of the Line, has dispensed with the preparation of a combined Environmental and Historic Report.

In the interest of completeness, however, TRMW acknowledges that its proposed discontinuance will eliminate the prospect of direct service to a single shipper (Tacoma Steel) that has, over the past several years, made sparing use of the Line for its rail service needs, including just one carload shipment in the past two years (with that shipment having occurred in April of 2021). TRMW does not expect that carload volumes over the Line to or from Tacoma Steel would increase significantly if the Line were to remain active, and it does not forecast that any other shippers would locate on the line seeking direct railroad service in the foreseeable future. TRMW understands that discontinuance, if authorized, could possibly result in the diversion of a very modest amount of traffic from railroads to motor carriers (rail-to-truck diversions), at least locally. But even assuming, strictly for the sake of this discussion, a twenty-fold increase in current traffic volumes (from 0.5 carloads per year to 10 carload per year), TRMW has determined (and hereby certifies) that the proposed discontinuance would not exceed

³ See, e.g., *Norfolk Southern Railway Company — Discontinuance of Service Exemption — in Isle of Wight, Southampton, Greenville, and Brunswick Counties, Va.*, Docket No. AB 290 (Sub-No. 359X) (STB served Dec. 16, 2013) at 2 (“Because this is a discontinuance proceeding and not an abandonment, . . . no environmental or historical documentation is required”); *Columbus and Greenville Railway Company — Discontinuance of Service Exemption — in Greenwood, MS*, Docket No. AB 297 (Sub-No. 103X) (STB served July 3, 2007) at 2 n.2 (same); *Chillicothe-Brunswick Rail Maintenance Authority—Discontinuance Exemption—in Livingston, Linn, and Chariton Counties, MO*, STB Docket No. AB 1001X (STB served Feb 23, 2007) at 2 n.3 (same).

the air quality (rail-to-truck diversion) thresholds of 49 C.F.R. §§ 1105.7(e)(5)(i)(C) and 1105.7(e)(5)(ii)(C).

WHEREFORE, TRMW respectfully requests that the Board exempt from the prior approval requirements of 49 U.S.C. § 10903 TRMW's discontinuance of service over the Line extending from 3.5 miles of railroad line extending from milepost 2.11 at East C Street (USDOT Grade Crossing Inventory Number 396640U) to milepost 5.61 at McKinley Avenue (USDOT Grade Crossing Inventory Number No. 396659L) in the City of Tacoma, Washington.

Respectfully submitted,

By: /s/ *R. A. Wimbish*

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**ATTORNEY FOR CITY OF TACOMA,
DEPARTMENT OF PUBLIC WORKS D/B/A
TACOMA RAIL MOUNTAIN DIVISION**

Dated: March 14, 2023

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB 1328X

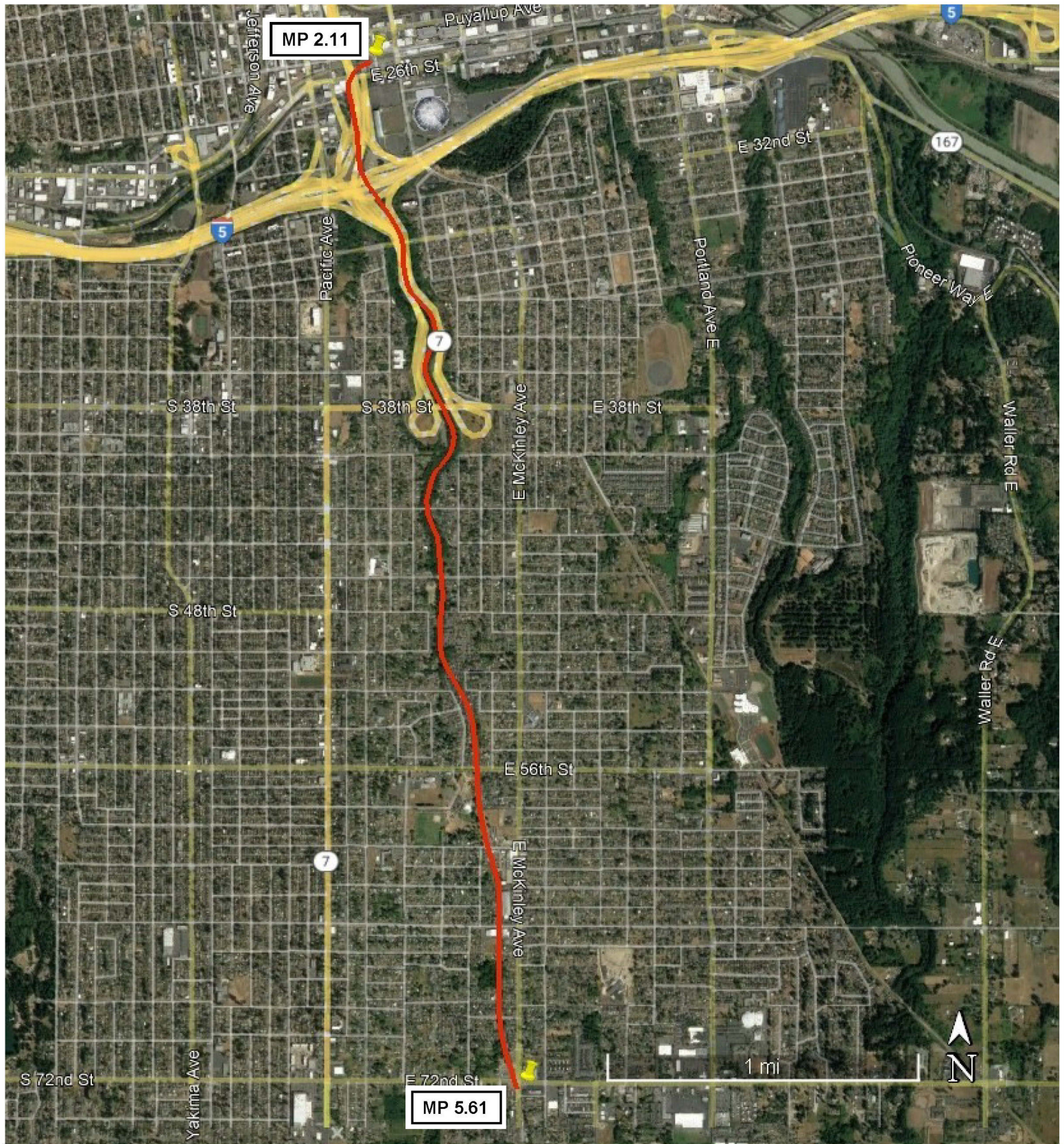
**CITY OF TACOMA, DEPARTMENT OF PUBLIC WORKS
D/B/A TACOMA RAIL MOUNTAIN DIVISION
-- DISCONTINUANCE OF SERVICE EXEMPTION --
IN PIERCE COUNTY, WASHINGTON**

EXHIBIT A

MAP

AB 1328X

City of Tacoma, Department of Public Works d/b/a Tacoma Rail Mountain Division -
Discontinuance of Service Exemption- In Pierce County, Washington



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB 1328X

**CITY OF TACOMA, DEPARTMENT OF PUBLIC WORKS
D/B/A TACOMA RAIL MOUNTAIN DIVISION
-- DISCONTINUANCE OF SERVICE EXEMPTION --
IN PIERCE COUNTY, WASHINGTON**

EXHIBIT B

DRAFT FEDERAL REGISTER NOTICE

DO

FR-_____

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Docket No. AB 1328X

CITY OF TACOMA, DEPARTMENT OF PUBLIC WORKS

D/B/A TACOMA RAIL MOUNTAIN DIVISION --

DISCONTINUANCE OF SERVICE EXEMPTION --

IN PIERCE COUNTY, WASHINGTON

On March 14, 2023, City of Tacoma, Department of Public Works d/b/a Tacoma Rail Mountain Division (TRMW) filed with the Surface Transportation Board (Board) a petition for exemption from the provisions of 49 U.S.C. § 10903 to permit TRMW to discontinue service on approximately 3.5 miles of rail line, extending from milepost 2.11 at East C Street (USDOT Grade Crossing Inventory Number 396640U) to milepost 5.61 at McKinley Avenue (USDOT Grade Crossing Inventory Number No. 396659L) in the City of Tacoma, Pierce County, Washington (the “Line”). The Line traverses United States Postal Service ZIP Codes 98421, 98404 and 98418.

To the best of TRMW’s information and belief (and to the extent relevant to the subject proceedings), the Line does not contain federally-granted right-of-way. Any documentation in TRMW’s possession relevant to the foregoing statement will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions specified in *Oregon Short Line R. Co. – Abandonment – Goshen*, 360 I.C.C. 91 (1979).

Any offer of financial assistance (OFA) to subsidize operations on the Line for up to one year will be due no later than 10 days after service of a decision granting the petition for exemption. Any person seeking to file an OFA must provide evidence that there is genuine shipper need for continued common carrier service.

TRMW does not believe that the line is suitable for other public use. Requests for interim trail use/rail banking and for issuance of public use conditions will not be entertained.

Persons seeking further information concerning the Board’s discontinuance of service procedures may contact the Surface Transportation Board or refer to the full abandonment and discontinuance regulations at 49 CFR Part 1152. Questions concerning environmental issues may be directed to the Board’s Office of Environmental Analysis (OEA) at (202) 245-0295. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

Board decisions and notices are available on our website at “WWW.STB.DOT.GOV.”

Decided: _____.

By the Board,

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB 1328X

**CITY OF TACOMA, DEPARTMENT OF PUBLIC WORKS
D/B/A TACOMA RAIL MOUNTAIN DIVISION
-- DISCONTINUANCE OF SERVICE EXEMPTION --
IN PIERCE COUNTY, WASHINGTON**

EXHIBIT C

**CERTIFICATES OF SERVICE AND
PUBLICATION**

Certificate of Service

49 C.F.R. § 1152.60(d) – Notice

I certify that, in keeping with 49 C.F.R. § 1152.60(d), and as committed to above, the following parties have been served with a copy of the foregoing discontinuance of service petition for exemption as of the date of this filing:

Washington State Department of Transportation
310 Maple Park Avenue SE
PO Box 47300
Olympia, WA 98504-7300

Military Surface Deployment & Distribution Command
Transportation Engineering Agency
Attn: SDTE-SA (Railroads for National Defense)
1 Soldier Way, Bldg. 1900W
Scott AFB, IL 62225-50067

Mr. Bob Ratcliffe
Division Chief, Conservation and Outdoor Recreation
National Park Service
1849 C Street NW
Washington, DC 20240-0001
Email: Bob_Ratcliffe@nps.gov

Mr. Randy Moore
Chief, Forest Service
U.S. Department of Agriculture
1400 Independence Avenue S.W.
Washington, DC 20250-1111
Email: randy.moore@usda.gov

Tacoma Steel
Attn: Mr. Keith Klein, President
701 E. 64th St.
Tacoma, WA 98404
Email: Keith@tacomasteel.com

March 14, 2023

/s/ *R. A. Wimbish*

Robert A. Wimbish
Attorney for City of Tacoma, Department of
Public Works d/b/a Tacoma Rail Mountain Division

CERTIFICATE OF NEWSPAPER PUBLICATION

I hereby certify that notice of TRMW's intent to seek authority to discontinue service over the line that is the subject of this proceeding was published in the form prescribed by the Surface Transportation Board for petitions for exemption (49 C.F.R. § 1105.12) on January 30, 2023 in *The News Tribune*, a newspaper of general circulation in Pierce County, Washington, where the subject rail line is located.

March 14, 2023

/s/ *R. A. Wimbish*

Robert A. Wimbish
Attorney for City of Tacoma, Department of Public
Works d/b/a Tacoma Rail Mountain Division