

Central Oregon & Pacific Railroad, Inc. – Abandonment and Discontinuance of Service – in Coos, Douglas, and Lane Counties, Oregon (Coos Bay Rail Line)

Dated: August 4, 2008

Central Oregon & Pacific Railroad, Inc. – Abandonment and Discontinuance of Service – in Coos, Douglas, and Lane Counties, Oregon (Coos Bay Rail Line)

Docket No. AB-515 (Sub-No. 2)

Central Oregon & Pacific Railroad Inc. ("CORP") hereby responds to the Motion for Board Order to Re-Designate Certain Information Currently Designated Highly Confidential by the Applicant in Its Abandonment Application (the "Motion to Redesignate") filed in the above-captioned proceeding on July 30, 2008 by the Oregon International Port of Coos Bay (the "Port"). The Port's Motion asks the Board to require CORP to redesignate as either "Public" or "Confidential" the vast majority of the data and information that CORP has designated as "Highly Confidential" pursuant to the terms of the Protective Order issued in the above-captioned proceeding on July 15, 2008. Indeed, the Port objected to giving CORP the ability to protect the confidentiality of any data or information contained in the Application by filing a motion seeking reconsideration and "withdrawal" of the Protective Order. In denying that motion, the Board determined that "CORP was entitled to seek protection for information it deemed appropriate" and that "good cause was found to grant the motion" for a Protective Order in this case. STB Docket No. AB-515 (Sub-No. 2), *Central Oregon & Pacific R. Co. – Abandonment and Discontinuance of Service* (served August 1, 2008) ("*Protective Order Reconsideration Decision*") at 4.

The Motion to Redesignate is premised on a strained interpretation of the terms of the Protective Order, and hyper-technical objections to the redaction of certain non-confidential information on Attachments to the Verified Statement of witness Williams that consist primarily of data and information (such as shipper-specific traffic data) that is unquestionably Highly Confidential – even though the non-confidential information on those Attachments appears elsewhere in the “Public” version of the Abandonment Application. More fundamentally, the Port – which is represented by experienced transportation counsel and several outside consultants in connection with this abandonment proceeding and the Port’s related Feeder Line Application – has failed to demonstrate that CORP’s designations adversely affect the Port’s ability to participate fully in this proceeding. In short, the Port has failed to articulate a legitimate basis for complaint with CORP’s confidentiality designations, and its Motion should be denied.

I. CORP’S DESIGNATIONS DO NOT PREJUDICE THE PORT’S ABILITY TO PARTICIPATE FULLY IN THIS ABANDONMENT PROCEEDING.

The Port has not demonstrated that CORP’s designation of certain data and information as “Highly Confidential” prejudices the Port’s ability to participate actively in this abandonment proceeding. As the Board observed in the *Protective Order Reconsideration Decision* (at 4), “[t]he Port has retained the services of outside counsel and expert consultants who have access to the confidential material protected by the order.” Those representatives of the Port have complete access to all data and information that CORP designates as “Highly Confidential” in either this abandonment case or in the related proceedings on the Port’s Feeder Line Application. Indeed, the Port’s counsel executed the required Undertaking and obtained the Highly Confidential version of the Application within 24 hours after the Board issued the Protective Order in this case. Parties routinely participate in STB proceedings in which certain information is restricted to outside counsel and consultants. The Port has offered no reason why it cannot

likewise participate fully in this proceeding while abiding by the terms of the Board's standard protective order.

The Port's contention that data and information contained in the Application should be made public, regardless of its commercial sensitivity, simply because this proceeding involves a proposed abandonment that is an "important issue for the state, citizens and businesses in a large area of southwestern Oregon (Motion to Redesignate at 5) lacks merit. The Board routinely issues protective orders in cases that raise issues of local, regional and national significance. The Port's further suggestion that CORP's designations interfere with the ability of the public generally to participate in this proceeding is belied by the fact that no party other than the Port has requested access to the Highly Confidential version of the Application. In any event, the Port's supposed concern about "public" access to CORP's confidential information rings hollow in light of the Port's July 23, 2008 letter to CORP counsel, in which the Port proposed that several categories of confidential data and information be made available to in-house personnel for the Port only, while remaining "Highly Confidential" to the public generally. Motion to Redesignate, Exhibit 1 (the "July 23 Letter") at 3, 4. Mindful of the clear inconsistency between the July 23 Letter and its Motion to Redesignate, the Port now says that it "did not like the solution" set forth in the July 23 Letter and "withdraws such an idea under this proceeding." Motion to Redesignate at 15, n.8. Nevertheless, the July 23 Letter reveals the true motivation for the Port's motion -- to obtain for its own in-house personnel access to proprietary and commercially sensitive information that would give the Port an advantage in negotiations with CORP, UP and other parties in connection with its attempt to acquire the Coos Bay Subdivision under the Feeder Line statute. The Board should not depart from its well-established practice of

enabling litigants to protect commercially sensitive information from unnecessary public disclosure solely to promote the Port's business interests.

II. CORP WILL REDESIGNATE AGGREGATED TRAFFIC, REVENUE AND COST INFORMATION SET FORTH IN THE APPLICATION AS "PUBLIC."

As the Motion to Redesignate indicates, at the time the Port filed its Motion, counsel for CORP and the Port were engaged in discussions regarding a negotiated resolution of the Port's objections to CORP's confidentiality designations. Indeed, the Port acknowledges that "in fact, CORP's counsel was the party to suggest that an agreement could be reached between the parties." Motion to Redesignate at 13. Following the parties' initial discussions, and at the suggestion of CORP counsel, counsel for the Port prepared a detailed item-by-item proposal for the redesignation of certain data and information, which was set forth in the July 23 Letter.

The July 23 Letter proposed generally that CORP redesignate as "Public" certain aggregated information, including CORP's total revenues for the Coos Bay Subdivision, the line's total operating costs and the total "avoidable loss" from operations. In addition, the Port proposed that the terms of the Cooperative Marketing Agreement ("CMA") between CORP and UP (other than the specific Handling Carrier Charges paid to CORP and the mechanism for annual escalation of those charges) be redesignated as "Confidential," but that CORP allow the Port's in-house personnel access to certain information (including the entire CMA and the appraised value of specific land parcels) notwithstanding the fact that such information would remain "Highly Confidential" as to the public generally. *See* Motion to Redesignate, Exhibit 1, July 23 Letter, ¶¶ 2, 4.

Counsel for the parties discussed the proposals set forth in the July 23 Letter on July 29. CORP's counsel advised counsel for the Port that CORP was willing to consider making certain Highly Confidential information available to the Port's in-house personnel on a business basis,

but preferred that such disclosure be made pursuant to a private confidentiality agreement outside the context of this proceeding rather than by creating "exceptions" to CORP's designations under the Protective Order. Based upon that discussion, counsel for CORP understood that the Port's counsel would present the idea of a private confidentiality agreement with her client, and that the parties would talk again within a day or two. However, the Port never responded to CORP's suggestion. Instead, the Port filed its Motion to Redesignate on Wednesday, July 30, 2008.

As the following discussion shows, many of the Port's objections could have been resolved by continuing the parties' negotiations. Specifically, CORP does not object to redesignating as "Public" the following information discussed at pages 14, 16 and 17 of the Port's Motion to Redesignate:

- Application: Pages 2, 8, 11 (references to total avoidable loss from Exhibit 1, Line 7); Page 8 (percent increase in operating expenses from Base Year to Forecast Year); Page 20 (reference to estimated subsidy payment from Exhibit 1, Line 19).
- Exhibit 1, Lines 1-4 (aggregated revenue data); Line 5 (total on-branch costs); Line 6 (total off-branch costs); Line 7 (total avoidable costs and total avoidable loss); and Lines 8-19 (subsidy and aggregated NLV information).
- Verified Statement of witness Baranowski: redactions on Page 3 (aggregated carloads and revenues); Page 9 (references to total off-branch costs and working capital from Exhibit 1); Page 10 (references to aggregate land and track asset NLV data from Verified Statements of witnesses Rex and Bader); Pages 13-14 (total Forecast Year revenues, avoidable on-branch costs, avoidable off-branch costs and total avoidable loss); and Page 14 (estimated percent increase in operating expenses between Base Year and Forecast Year); Attachment 4 (opportunity cost).
- Verified Statement of witness Williams: Attachments C and E.
- Verified Statement of witness Rex: Page 3 (aggregate NLV of land); Attachment 1, Pages 1-7 (explanation of methodology).
- Verified Statement of Marc Bader: Page 4 (aggregate NLV of track assets)

Copies of revised pages reflecting these redesignations, to be substituted in the "Public" version of Application, are set forth in Exhibit 1 to this Reply.

In addition to the redesignations listed above, the Port asks the Board to require CORP to redesignate as "Public" (1) the names of shippers, carload totals and column headings for the years "2005, "2006", and "2007" on Attachment B to the Verified Statement of witness Williams); (2) the stations names, carload totals and column headings for the years "2005, "2006", and "2007" on Attachment D to the Verified Statement of witness Williams; and (3) operating income figures for the Coos Bay Subdivision for 2002 and 2003, which appear at page 5 of the Application. The Port's objections to these designations are both hyper-technical and pointless. The names of shippers served by the Coos Bay Subdivision appear in Table 3, Table 4 and Table 5 of the Application (*see* Application at 21-23), and several of those shippers are referred to elsewhere in the Application and accompanying testimony. The carload totals at the bottom of Attachments B and D are provided in multiple places elsewhere in the "Public" version of the Application. *See* Application at 2, 5; V.S. Lundberg at 4; V.S. Williams at 3. The names of the stations served by the Coos Bay Subdivision likewise appear elsewhere in the "Public" version of the Application. *See e.g.*, Application, Exhibit 4 at 1-2. Requiring CORP to redesignate portions of Attachments B and D simply to provide an additional reference to this information would serve no useful purpose. Indeed, re-publishing a "Public" version of Attachment B in the form proposed by the Port (*i.e.*, redacting only the number of cars transported by specific shippers) would create the misleading impression that all of the shippers listed on Attachment B actually used the line in each of 2005, 2006, 2007 and the Base Year, when in fact (as the Highly Confidential version of Attachment B shows) many of those shippers did not ship any cars during one or more of those years. The Port's insistence that CORP

redesignate the reference to its 2002 and 2003 operating income for the line is also pointless. As the Port itself acknowledges, those figures are already part of the public record in the related Show Cause proceeding, Finance Docket No. 35130, *Central Oregon & Pacific Railroad, Inc. – Coos Bay Rail Line*.

As the Board stated in denying the Port's request for reconsideration of the Protective Order, "to the extent that certain information may have already been released to the public, the Port cannot argue that the public has been denied the right to view it." *Protective Order Reconsideration Decision* (served August 1, 2008) at 2. The Port's hyper-technical objections to the designation of these items should be rejected.

III. THE PORT'S REMAINING OBJECTIONS TO CORP'S DESIGNATIONS ARE MERITLESS.

The remaining items for which the Port asks the Board to order a redesignation by CORP are the following:

1. The Port requests that CORP be required to redesignate the CMA between CORP and UP as "Confidential."
2. The Port requests that CORP be required to redesignate the appraised value of specific parcels of right-of-way land as "Public."
3. The Port requests that CORP be required to redesignate Attachments 1, 2 and 3 to the Verified Statement of witness Bader, which contain the values assigned to specific track assets in determining the NLV of the line, as "Public."
4. The Port requests that CORP be required to redesignate information regarding the detailed calculation of operating costs for the line to be redesignated as "Confidential."

The Port has failed to demonstrate that CORP's designation of these materials as "Highly Confidential" is in any way inconsistent with the terms of the Protective Order or with CORP's legitimate interest in protecting proprietary and commercially sensitive information from

unnecessary public dissemination. Nor has the Port shown that its ability to participate in this abandonment proceeding is prejudiced by those designations.

A. The CORP/UP Commercial Marketing Agreement

The Port's contention that the Board should require CORP to redesignate its CMA with UP as "Confidential" is based upon a strained interpretation of the Protective Order. Citing the reference to "confidential terms of contracts" in the definition of "Confidential Information" set forth in Paragraph 1(b) of the Protective Order, the Port claims that that CORP "proposed" [in the Protective Order submitted to, and approved by, the Board] to designate all contracts as "Confidential" rather than "Highly Confidential." This assertion ignores the plain language of Paragraph 6 of the Protective Order, which specifies that information regarding "division of rates, trackage rights compensation levels, [and] other compensation between carriers" are to be treated as "Highly Confidential" under the Protective Order. This language is standard in virtually every Protective Order issued by the Board, and such information has routinely been classified as "Highly Confidential" in other Board proceedings. The CMA, which establishes the compensation received by CORP for handling traffic in UP's account, is clearly an agreement relating to "division of rates" and "compensation between carriers." Accordingly, CORP's designation of the CMA as "Highly Confidential" is consistent with both the letter and the intent of the Protective Order.

Moreover, as the Port acknowledges (Motion to Redesignate, Exhibit 1 at 3), the CMA prohibits either party from disclosing its terms without the consent of the other party. CORP contacted UP to determine whether it would object to CORP producing the CMA in this proceeding, and UP advised that it would not object "so long as the documents are designated 'highly confidential'." See Exhibit 2 (email message dated July 23, 2008 from UP counsel Robert Opal to Terence Hynes). Thus, CORP's designation of the CMA as "Highly

Confidential” was consistent with – indeed, it was required by – CORP’s contractual obligations to UP.

The Port’s suggestion that access to the confidential terms of the CMA is necessary to enable its in-house personnel to “evaluate whether to file an OFA” or to “make a reasoned and intelligent decision regarding the future prospects for rail service on the line” (Motion to Redesignate at 9) is unpersuasive. The specific terms of the CMA are irrelevant to a potential OFA, which is based upon the estimated subsidy required to offset ongoing operating losses plus the opportunity cost of maintaining service on the line. As discussed in Part II above, CORP has agreed to redesignate as “Public” all of the aggregated data upon which its estimated subsidy calculation is based. Nor is access to the CMA necessary to enable the Port to pursue its pending Feeder Line Application in Finance Docket No. 35160. As the Port has acknowledged in that proceeding, CORP’s agreements with UP are not transferable to a potential purchaser of the line, and the Port will be required to negotiate its own arrangements with UP. Indeed, disclosing the confidential terms of the CMA to the Port’s in-house personnel would give the Port an unfair competitive advantage in such negotiations with UP. Accordingly, the Board should reject the Port’s motion to redesignate the CMA as “Confidential.”

B. Parcel-Specific Land Appraisal Information

As discussed in Part II above, CORP has agreed to reclassify as “Public” all references to the aggregate NLV of the land constituting the Coos Bay Subdivision’s right-of-way. The Port’s further request that the Board require CORP to redesignate parcel-specific information regarding the appraised value of right-of-way land as “Public” should be rejected. Paragraph 6 of the Protective Order explicitly included “confidential information regarding the appraised value of CORP-owned land” within the materials that may properly be designated as “Highly Confidential.” Nor can there be any real dispute that CORP’s parcel-by-parcel appraisal of the

value of the real property underlying the Coos Bay Subdivision is both highly confidential and commercially sensitive. Public disclosure of such information would be extremely prejudicial to CORP because it would inform prospective purchasers of CORP-owned land of CORP's assessment of the value of that land. Such knowledge would confer a substantial competitive advantage on potential buyers in land sale negotiations and would, in all likelihood, reduce the amount that CORP might otherwise obtain for its property if the line were liquidated. Indeed, even redesignating this information as "Confidential" (and thereby making it available to the Port's in-house personnel) would place CORP at a competitive disadvantage in negotiations with the Port aimed at a possible resolution of the issues in this abandonment proceeding and the related feeder line proceeding in Finance Docket No. 35160.

The Port does not articulate any compelling reason why public disclosure of parcel-specific land appraisals is necessary. As the Board observed in denying the Port's petition for reconsideration of the Protective Order, the Port has retained outside counsel and several consultants (including a land appraisal expert) in connection with the abandonment and feeder line application proceedings. *Protective Order Reconsideration Decision* at 4. Those counsel and consultants will have full access to the Highly Confidential parcel-specific information for purposes of this proceeding.

The Port's assertion that information regarding the status of CORP's title to specific parcels is "a matter of public record" (Motion to Redesignate at 12) and therefore should be designated as "Public," is incorrect. CORP's appraisal is supported by a legal analysis of the status of CORP's title to each individual parcel, presented by witness Chapman, an attorney with more than 20 years experience with Oregon real estate law. Witness Chapman's detailed analysis and conclusions regarding specific parcels is not a "matter of public record." As with

the potential dissemination of the appraised value of specific parcels, public disclosure of CORP's assessment of title would prejudice CORP in land sale negotiations.

Finally, it should be noted that the Port's July 23 Letter proposed that parcel specific appraisal information remain "Highly Confidential" (although it further proposed that the Port alone would be able to view such information). *See* Motion to Redesignate, Exhibit 1 at 3-4. The Board should sustain CORP's designation of parcel-specific appraisal information as "Highly Confidential."

C. Specific Track Asset Values

As discussed in Part II above, CORP has agreed to reclassify as "Public" all references to the aggregate NLV of the track assets on the Coos Bay Subdivision. The Port's further request that the Board require CORP to redesignate parcel-specific information regarding the appraised value of right-of-way land as "Public" should be rejected.

The Motion to Redesignate does not articulate any compelling reason why public disclosure of CORP's assessment of the value of specific track assets is either necessary or appropriate. The Port has retained R. L. Banks & Associates, an experienced transportation consulting firm, to assist it in connection with this abandonment proceeding and the Port's Feeder Line Application. The Port does not explain why review and analysis of CORP's detailed valuation of track assets by R.L. Banks and the Port's counsel is not sufficient to enable the Port to prepare its evidence in this case.

At the same time, public disclosure of the specifics of CORP's track asset NLV calculations would be prejudicial not only to CORP (in potential negotiations with the Port) but also to the third party vendors (L.B. Foster and Unitrac) that provided detailed NLV estimates to CORP. Specifically, the Attachments to witness Bader's testimony contain details regarding the values assigned by those vendors to specific classes of track assets, and reveal the (somewhat

different) methodologies that those firms employ in evaluating potential rail line salvage projects. Redesignation of such information as "Public" would give competing vendors access to the details of the L.B. Foster and Unitrac estimates (thereby conferring on those third parties an advantage in bidding against L.B Foster and/or Unitrac for a potential Coos Bay Subdivision salvage project). More generally, it would reveal to those competitors important information regarding the methodologies that L.B. Foster and Unitrac use in preparing bids on such projects. Requiring public dissemination of the details of the L.B. Foster and Unitrac estimates in this case would also discourage salvage firms from providing similar estimates to applicant carriers in future abandonment proceedings. The Board should deny the Port's request to redesignate this proprietary and commercially sensitive material.

D. Detailed Operating Costs

As discussed in Part II above, CORP has agreed to reclassify as "Public" the aggregated figures for total on-branch costs (Exhibit 1, Line 5), total off-branch costs (Exhibit 1, Line 6), total avoidable costs, and total avoidable loss(Exhibit 1, Line 7), as well as all references to those data in the Application and testimony. The Port's further request that the Board require CORP to redesignate the more detailed cost calculations set forth in Exhibit 1 (Lines 5 and 6) and in the Verified Statement of witness Baranowski as "Confidential" (so that such information can be viewed by the Port's in-house personnel) should be denied.

Again, the Port has not articulated any compelling reason why such a redesignation is necessary. Specifically, the Port has not shown that review and analysis of CORP's detailed cost calculations by R.L. Banks and the Port's counsel is not sufficient to enable the Port to participate meaningfully in this case.

As CORP explained in its reply to the Port's motion for reconsideration of the protective order, CORP's Coos Bay Subdivision accounts for nearly one-third of the total trackage operated

by CORP. Disclosure of detailed information regarding operating costs on the Coos Bay Subdivision would provide significant insight into the costs that CORP incurs in operating the adjoining portions of its rail system. Such disclosure could cause substantial competitive harm to CORP. The potential for such competitive harm in this case (which involves the abandonment of nearly one third of a short line carrier's track) is far greater than that which might result from the disclosure of the same information in a case involving a short segment of track operated by a Class I railroad. For example, *Union Pacific Railroad Co. – Abandonment – In Carver and Scott Counties, MN*, STB Dkt. No. AB-33 (Sub-No. 255) (filed Dec. 13, 2007) – one of the cases cited by the Port in its petition for reconsideration of the protective order – involved the proposed abandonment by UP of a 5.6-mile rail line with only one active shipper. Public disclosure of UP's revenues from, and costs of operating, such a miniscule portion of its rail system clearly would not reveal meaningful information regarding UP's overall cost structure or revenues from other traffic. The Port's suggestion that CORP is seeking "entitlement to differing treatment" of its data and information based solely upon its status as a Class II carrier (Motion to Redesignate at 7), and that CORP should be required to disclose this information because applicants in certain prior abandonment cases have done so, misses the point. It is the nature and likelihood of competitive harm to CORP from disclosing details regarding the cost of operating a major portion of its rail system – not CORP's status as a Class II carrier – that warrants treatment of that information as Highly Confidential in the circumstances of this case. Moreover, as the Board found in its *Protective Order Reconsideration Decision* (at 4), the fact that other abandonment applicants may not have sought similar protection for their confidential cost data is irrelevant. In this case, the Port has failed to demonstrate that CORP's designation of detailed cost information as Highly Confidential was inappropriate.

IV. THE BOARD SHOULD EXPAND THE PROTECTIVE ORDER IN THIS PROCEEDING TO COVER THE EXCHANGE OF CONFIDENTIAL DATA AND INFORMATION IN THE RELATED PROCEEDINGS IN FINANCE DOCKET NO. 35160.

To date, the Port has refused to seek the issuance of a protective order to govern the exchange of confidential data and information in connection with its Feeder Line Application in Finance Docket No. 35160, *Oregon International Port of Coos Bay – Feeder Line Application – Coos Bay Line of the Control Oregon & Pacific R. Co.* The Port's apparent reason for declining to do so was its concern that seeking a protective order in the that proceeding might prejudice its request that the Board "withdraw" the protective order in this case (which request was denied by the Board in the *Protective Order Reconsideration Decision*). In the absence of a protective order in the feeder line proceeding, CORP has declined to produce to the Port copies of Highly Confidential documents that are otherwise responsive to the Port's discovery requests. (CORP made clear to the Port's counsel that it would produce those materials as soon as a protective order is in place.) CORP likewise will be serving discovery requests on the Port in connection with the feeder line proceeding, several of which are addressed to information that the Port will, in all likelihood, view as proprietary and/or commercially sensitive.

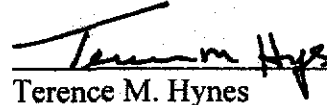
For this reason, CORP hereby requests that the Board extend the application of the Protective Order issued in this proceeding on July 15, 2008 to cover the exchange and use of confidential information in the Finance Docket No. 35160. Such action will facilitate discovery in that proceeding, and will enable the parties to make use of proprietary and commercially sensitive information without undue risk of competitive harm to the owner of such information. In its Motion to Redesignate (at 1, n. 1), the Port similarly suggested that "the Protective Order could be modified to cover both proceedings."

CONCLUSION

For all of the foregoing reasons, CORP respectfully urges the Board to deny the Port's Motion in its entirety.

Scott G. Williams
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Respectfully submitted,



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Dated: August 4, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Response of Applicant In Opposition To Port of Coos Bay's Motion For Board Order To Re-Designate Certain Information Currently Designated Highly Confidential By The Applicant In Its Abandonment Application to be served by email and/or first class mail, postage prepaid, this 4th day of August 2008 on all parties of record and the following persons:

Governor Theodore R. Kulongoski
State of Oregon
160 State Capitol
900 Court Street
Salem, Oregon 97301-4047

Lee Beyer, Chairman
Public Utility Commission of Oregon
550 Capitol St. N.E. #215
P.O. Box 2148
Salem, OR 97308-2148

Matthew Garrett, Director
Oregon Department of Transportation
355 Capitol St. N.E.
Salem, OR 97301-3871

I have also caused the foregoing to be served by email and/or first class mail, postage prepaid, this 4th day of August 2008 on all parties who participated in STB Finance Docket No. 35130, *Central Oregon & Pacific Railroad, Inc.—Coos Bay Rail Line*.

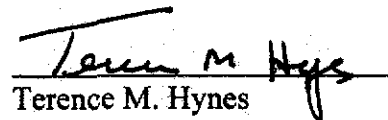

Terence M. Hynes

Exhibit 1

Under the governing statute, an application to abandon or discontinue service over a rail line should be granted where "the present or future public convenience and necessity require or permit the abandonment or discontinuance." 49 U.S.C. § 10903(d); *see, e.g., Union Pac. R.R. Co.—Abandonment—in Lancaster & Gage Ctys., NE, and Marshall Cty., KS*, STB Docket No. AB-33 (Sub-No. 140). The Board implements this standard by "balanc[ing] the potential harm to affected shippers and communities against the present and future burden that continued operation could impose on the railroad and on interstate commerce." *Id.* (citing *Colorado v. United States*, 271 U.S. 153 (1926)).

In this case, the balance weighs decidedly in favor of approving the Application. CORP has incurred massive losses from operation of the Coos Bay Subdivision. In the twelve months prior to the embargo of the Coos Bay Subdivision in September 2007,⁴ the line generated an avoidable operating loss of approximately \$1.3 million. *See* Exh. 1 and V.S. Baranowski. Traffic on the line has declined by 11 percent since 2006 and by 37 percent since 2003. V.S. Williams at 3. The decision by a major shipper, Weyerhaeuser Corporation, to close its paper manufacturing facility at Cordes, OR in 2004 resulted in the loss of approximately 3,000 carloads of rail traffic per year on the line. Traffic volume on the line has continued to exhibit a downward trend, with total volumes of 5,193 carloads in 2005, 5,363 carloads in 2006 and 4,018 carloads in 2007 (through the date of the embargo). This downward trend in rail shipments has

⁴ Because no traffic has moved over the Coos Bay Subdivision since it was embargoed in September 2007, for the purposes of this Application CORP defined the Base Year as the twelve-month period before the line was embargoed—*i.e.*, September 2006 through August 2007. In similar situations where an embargo preceded the abandonment application the Board has used a 12 month period before the embargo as the base year. *See Boston & Maine Corp.—Abandonment—in Essex Cty., MA & Rockingham Cty., NH*, Docket No. AB-32 (Sub-No. 90) (Oct. 3, 2001); *Idaho No. & Pac. R.R. Co.—Abandonment Exemption—in Wallowa & Union Ctys., OR*, Docket No. AB-433X (Mar. 12, 1997) (rejecting carrier's proposed base year because it included time when line was embargoed).

arrangement provide for negotiation of the fuel adjustment. Rather, UP unilaterally modifies the fuel adjustment from time to time. Any increase in the Carrier Handling Charge (other than the annual adjustment based on _____ is likewise solely within the discretion of UP. The annual adjustments in the Handling Carrier Charge and fuel payments that CORP has received in recent years have not been sufficient to keep pace with rising operating expenses, particularly in an economic environment of dwindling traffic volumes. Indeed, as Exhibit 1 graphically demonstrates, the _____ cap on the annual adjustment to the Handling Carrier Charge is likely to result in increasing losses from operations on the Coos Bay Subdivision even if traffic were to increase significantly. As shown on Exhibit 1, based upon the RCAF-A, operating expenses would increase by 19 percent between the Base Year and the Forecast Year. However, under the terms of its arrangement with UP, CORP's freight revenues would increase by only _____ percent during the same period. As a result, even though witness Baranowski (conservatively) assumed that traffic would grow by nearly 600 cars (or 12 percent) from the Base Year to the Forecast Year, the avoidable loss would increase from approximately \$1.3 million in the Base Year to \$2.1 million in the Forecast Year. See Application Exh. 1; V.S. Baranowski at 15.

B. Significant Tunnel Repairs Are Necessary to Restore Service on the Coos Bay Subdivision.

The viability of the Coos Bay Subdivision is further impaired by the deterioration of several timber-lined tunnels on the line.⁶ In October 2006, a joint inspection of the Coos Bay Subdivision by the Federal Railroad Administration ("FRA") and the Oregon Department of Transportation ("ODOT") revealed significant deterioration in Tunnel No. 15 (located near

⁶ Any attempt to portray the current condition of the tunnels as the result of alleged "neglect" by CORP ignores the fact that the tunnels are nearly a century old, and that they did not receive substantial investment from CORP's predecessors, including RailTex and SP.

(approving abandonment in spite of shipper's claim that abandonment would increase its shipping costs by \$1.6 million, reasoning that "[t]here is no reason that this cost should be borne by [the railroad] rather than [the shipper], which is the user of this transportation service"); *see also Boston & Me. Corp. — Abandonment — in Hartford & New Haven Counties, CT*, STB Docket No. AB-32 (Sub-No 23) (service date April 22, 1998) (approving abandonment where a protesting shipper claimed 25% increase in costs from trucking).

D. The Combination of Ongoing Operating Losses and Significant Tunnel Rehabilitation Costs Justifies Abandonment and Discontinuance.

Given the substantial losses incurred by CORP in operating the Coos Bay Subdivision, an investment by CORP of at least \$2.9 million in the short-term (and an additional \$3.8 million in the longer term — *see V.S. Lundberg at 5*) to rehabilitate tunnels on the Coos Bay Subdivision cannot be economically justified.⁷ As the testimony of witness Baranowski shows, the avoidable loss from operations on the Coos Bay Subdivision — even before the cost of tunnel repairs is taken into account — was approximately \$1.3 million in the Base Year and would be \$2.1 million in the Forecast Year. With operating losses of that magnitude, and no opportunity for CORP to increase its revenues by raising rates or attracting substantial new business to the line, there is no realistic prospect that CORP would be able to earn any return on such an investment.⁸ Pouring millions of dollars into the Coos Bay Subdivision would also divert funds that could otherwise be available to address the capital needs of other portions of CORP's system.

⁷ If rehabilitation activity caused one or more tunnels to collapse, as occurred during the repairs to Tunnel No. 15 in 2006, the cost of performing even short-term repairs to the tunnels would be substantially higher than the \$2.9 million estimated by Shannon & Wilson.

⁸ UP, the carrier for whose account CORP handles most of the traffic on the line, agrees that the line "has generated insufficient traffic to support reinvestment in the line." *See Exhibit 4, Letter dated April 29, 2008 from J. Michael Hemmer to Hon. Charles D. Nottingham, at 2.*

3. **§ 1152.22(d)(3): Estimated Subsidy Payment for Base Year**

See Exhibit 1 and the Verified Statement of Michael Baranowski. As Exhibit 1 shows, the estimated subsidy payment for the Base Year is \$7,860,995.

E. **§ 1152.22(e): Rural and Community Impact**

1. **§ 1152.22(e)(1): Name and population of each community in which a station on the line is located**

The name and population of each county and incorporated municipality in which a station on the Coos Bay Subdivision is located are as follows:

Population of Communities on Coos Bay Subdivision
Table 2

	2007 Estimated Population ¹¹	2000 Census Population ¹²
COUNTIES		
Coos County, OR	63,050	62,788
Douglas County, OR	104,675	100,399
Lane County, OR	343,140	322,977
CITIES		
Coos Bay, OR	16,210	15,372
Coquille, OR	4,215	4,184
Lakeside, OR	1,545	1,421
North Bend, OR	9,830	9,544
Reedsport, OR	4,305	4,378

2. **§ 1152.22(e)(2): Identification of significant users by name, address, principal commodity, and tonnage and carloads for each of the 2 calendar years preceding to filing of the application, for that part of the current year for which information is available, and for the Base Year**

Table 3 identifies the Significant Users of the Coos Bay Subdivision as defined by 49 C.F.R. § 1152.2(l) and their respective carloads and tons shipped and received for calendar year 2006. Because the data maintained by CORP in the normal course of business do not

¹¹ Source: Portland State University Population Research Center, 2007 Oregon Population Report, available at http://www.pdx.edu/media/p/r/PRC_2007_Population_Report2_rev.pdf.

¹² Source: 2000 U.S. Census.

Central Oregon & Pacific Railroad Company
Computation of Revenue Attributable to the Line, Avoidable Costs,
And Reasonable Return on the Value of the Line to be Abandoned For
Branch name: Coos Bay

Revenue for:		Base Year	Forecast Year
1	Freight originated and/or terminated on-branch	\$2,730,889	\$3,306,341
2	Bridge traffic	\$0	\$0
3	All other revenue and income	\$340,533	\$412,290
4	Total attributable revenue (Sum Ln 1 through Ln 3)	\$3,071,422	\$3,718,631
Avoidable Costs for:			
5	On-branch costs (Lines 5a-5k)		
a	Maintenance of way & structures costs		
b	Maintenance of equipment		
c	Transportation see note in H 11		
d	General administrative		
e	Deadheading, taxi and hotel		
f	Overhead movement/other		
g	Freight car cost - non-ROI		
h	ROI expense freight cards		
i	ROI expense locomotives		
j	Revenue taxes		
k	Property taxes		
	Total on-branch costs (Sum Ln.5a through Ln 5k)	\$3,550,895	\$4,748,339
6	Off-branch Costs (Lines 6a-6d)		
a	Off-branch costs excluding freight car ROI		
b	Off-branch freight car ROI costs		
c	Off-branch URCS multiple car adjustment		
d	Make-whole adjustment off branch		
	Total off-branch costs (Sum Ln.6a through Ln 6d)	\$815,536	\$1,090,553
7	Total on & off-branch avoidable costs (L.5 + L.6 Totals)	\$4,366,431	\$5,838,892
	Avoidable gain or (loss) from operations (L.4-L.7)	(\$1,295,010)	(\$2,120,261)
Subsidization Costs for:			
8	Rehabilitation	\$0	\$2,861,000
9	Administrative costs (subsidy year only)	\$0	\$0
10	Casualty reserve account	\$0	\$0
11	Total subsidization cost (L.8+L.9+L.10)	\$0	\$2,861,000
Return on value			
12	Valuation of road property		
a	Working capital	\$137,208	\$183,477
b	Income tax consequences	\$0	\$0
c	Net liquidation value (track, bridges & land)	\$19,540,729	\$19,540,729
	Total valuation of property (L.12a+b+c)	\$19,677,937	\$19,724,206
13a	Nominal rate of return	14.60%	14.60%
13b	Real rate of return	10.50%	10.50%
14	Nominal return on value (L.12*L.13a)	\$2,872,979	\$2,879,734
15	Holding gain or (loss)(L.12.c Col. B* (L.13a Col b-L.13b Col b))	\$0	\$801,170
16	Total return on value (L.14-L.15)	\$2,872,979	\$2,078,564
17	Avoidable gain or (loss) from operations (L.4-L.7)	(\$1,295,010)	(\$2,120,261)
18	Estimated forecast year loss (L.4-L.7-L.16)		(\$4,198,825)
19	Estimated subsidy payment (L.4-L.7-L.11-L.14)		(\$7,860,995)

revenues and costs to the Subject Line. In the following sections of my testimony, I explain the detailed inputs and assumptions underlying the financial results set forth in Exhibit 1.

A. Revenues

Traffic and revenues attributable to the Subject Line were developed from CORP internal accounting records and represent the total CORP revenue for all traffic originating and/or terminating at stations along the Abandonment Segment and/or the Discontinuance Segment. Table 1 below summarizes the Base-Year carloads and revenues by traffic type – local, interline forwarded and interline received.

Table 1 Summary of Subject Line Base-Year Traffic		
<u>Type</u>	<u>Carloads</u>	<u>Revenue</u>
Local	312	\$219,609
Interline Forwarded	4,021	2,343,764
Interline Received	440	167,516
Total	4,773	\$2,730,889

In addition to freight revenue derived from traffic moving on the Subject Line, CORP also generates non-freight revenue associated with car hire, demurrage, real estate and other miscellaneous activities. From its internal accounting system, CORP provided the non-freight revenues attributable to the entire Coos Bay Subdivision. For the Base Year, those non-freight revenues attributable to the Coos Bay Subdivision totaled \$340,533.

B. Avoidable On-Branch Costs

Costs attributable to the Subject Line were derived from financial data provided by CORP. Specifically, through its internal accounting systems, CORP was able to provide expenditure information for the entire Coos Bay Subdivision between Coquille and Eugene, OR. A summary of the Base-Year costs, along with a description of the standard service unit(s) used

portion of loss and damage assignable to the Off-Branch portion of the movement. I therefore eliminated this relatively minor cost item from my calculation of Off-Branch costs.

Based upon this methodology, total URCS-based Off-Branch Costs for movement of Subject Line traffic over other portions of the CORP system are \$815,536. Details of my URCS calculations are set forth in Attachment 3.

D. Rehabilitation Costs

As explained in the Verified Statement of Paul Lundberg, after incurring substantial capital expense to repair Tunnel No. 15 in 2006, CORP engaged the geotechnical and environmental services firm of Shannon & Wilson, Inc. to evaluate the condition of all nine tunnels on the Coos Bay Subdivision. During an inspection of the tunnels, Shannon & Wilson identified "severe liner and/or rock deterioration and instability" in Tunnel Nos. 13, 15 and 18. See V.S. Lundberg, Attachment 1. Shannon & Wilson estimated that it would cost a minimum of \$2,861,000 in short-term expenditures (within 6-12 months) to return the tunnels to a condition that would allow for relatively safe train passage. Shannon & Wilson also recommended that CORP perform more extensive repairs to the tunnels on the Subject Line (at an estimated additional cost of \$3.8 million) within 12-48 months. The total cost of all tunnel work recommended by the Shannon & Wilson report is approximately \$6.7 million. I have conservatively included only Shannon & Wilson's short-term tunnel repair cost estimate of \$2,861,000 as my rehabilitation cost estimate for the Subject Line.

E. Working Capital

In accordance with the Board's regulations, I have calculated the allowable working capital for the Subject Line based on 15 days of On-Branch avoidable costs less depreciation. The amount of working capital for the Base Year is \$137,208.

F. Net Liquidation Value

The Net Liquidation Value of the Abandonment Segment has been developed separately for land assets and for track, track materials and facilities located on the Abandonment Segment of the Subject Line. Witness Rex developed the Net Liquidation Value of land based on the current appraised corridor property value for other than transportation purposes based upon their highest and best use, and complying with applicable zoning, land use and environmental regulations, less the cost of disposition. Mr. Rex estimates the net liquidation value for land at \$5,697,000.

The Net Liquidation Value for track, track materials and facilities is based predominately on the relay and scrap values of rail, ties and other track material inventories along the Abandonment Segment, less appropriate cost for removal and transportation of such materials to market. As witness Bader explains, two reputable independent salvage companies – L.B. Foster and UNITRAC -- were asked to provide bids for the salvageable assets along the Abandonment Segment. L.B. Foster estimated the gross liquidation value of the Abandonment Segment track assets at \$ See V.S. Bader, Attachment. 2. L.B. Foster estimated total liquidation costs at \$ See *id.* The resulting NLV, as estimated by L.B. Foster, is \$15,151,308. *Id.* Unitrac estimated that the extended value of the Abandonment Segment's track and materials was \$ its estimated liquidation costs were \$ and its estimate of net liquidation value was \$12,536,149. For the net liquidation value of the Abandonment Segment, Mr. Bader took the simple average of the estimates developed by L.B. Foster and UNITRAC, or \$13,843,729, which I have adopted.

would be closer to the 4,773 carloads that moved during the most recent twelve-month period during which the Subject Line was active.

In order to estimate revenues for the Forecast Year, I computed the average revenue per car for the 5,363 cars that moved in 2006. These cars generated \$ [REDACTED] in Handling Carrier Charges (exclusive of fuel surcharge) for CORP in 2006, or an average of \$ [REDACTED] per car. To estimate Forecast Year revenues, I indexed the Handling Carrier Charge to year-end 2008 levels using [REDACTED], as prescribed by CORP's agreement with UP. To this adjusted Handling Carrier Charge, I added a fuel adjustment in the amount of [REDACTED] percent of the Handling Carrier Charge, again consistent with the fuel surcharge arrangement between CORP and UP that became effective April 1, 2008. I also calculated non-freight revenues using the same relative percentage to freight revenues as for the Base Year. Based upon this methodology, total revenues attributable to the Subject Line for the Forecast Year total \$3,718,631.

B. On-Branch Costs

To develop On-Branch Costs for the Forecast Year, I calculated the average On-Branch cost per carload by major on-branch cost category for the Base Year, indexed that amount to the Forecast Year levels using the Board's Rail Cost Adjustment Factor Adjusted for Railroad Productivity (RCAF-A) and multiplied the average On-Branch cost by the number of cars (5,363) assumed to move during the Forecast Year. Calculated in this manner, On-Branch costs attributable to the Subject Line for the Forecast Year total \$4,748,339.

C. Off-Branch Costs

To develop Off-Branch Costs for the Forecast Year, I calculated the average Off-Branch cost per carload by major off-branch cost category for the Base Year, indexed that amount to the Forecast Year levels using the Board's Rail Cost Adjustment Factor Adjusted for Railroad

Productivity (RCAF-A) and multiplied the average off-branch cost by the number of cars (5,363) assumed to move during the Forecast Year. Off-Branch costs attributable to the Subject Line for the Forecast Year total \$1,090,553.

Based upon these calculations, the avoidable loss for the Forecast Year is \$2,120,261. The substantial increase in the avoidable loss from the Base Year to the Forecast Year is attributable in large part to the cap on the annual adjustment to the Handling Carrier Charge that CORP receives from UP. Based upon the RCAF-A, operating expenses would increase by 19 percent between the Base Year and the Forecast Year. However, CORP's freight revenues would increase by only percent during the same period. As a result, the avoidable loss for the Forecast Year grew substantially notwithstanding my assumption that traffic volume would increase from 4,773 cars in the Base Year to 5,363 cars in the Forecast Year.

IV. OPPORTUNITY COST

Using the units described in Section II above, I calculated the annual opportunity cost of operating the Subject Line for the Forecast Year. See Attachment 4. Details of my calculations are included in my work papers.

Attachment 4

PAGE 1

AB-515 (Sub-No. 2)

**Central Oregon & Pacific Railroad Company
Opportunity Cost of Operating the Line for:
Branch name: Coos Bay**

	Base Year	Forecast Year
1 Market value of non-revisionary land	\$5,697,000	\$5,697,000
2 Value of salvageable scrap & secondhand materials	\$18,725,439	\$18,725,439
3 Cost of removal	(\$4,881,711)	(\$4,881,711)
4 Working capital	\$183,477	\$183,477
5 Income tax benefits	\$0	\$0
6 Valuation of road property (L.1 through L.5)	\$19,724,206	\$19,724,206
7 Current nominal cost of capital	14.60%	14.60%
8 Opportunity cost (L.6*L.7)	\$2,879,734	\$2,879,734

Attachment C
Trends in Coos Bay Branch Traffic by Commodity

Commodity	Year			Base Year
	2005	2006	2007	
Farm Products	6	9	19	20
Lumber Products				
Plywood	1,171	1,065	818	968
Lumber	2,425	2,272	1,680	2,000
Logs	266	441	261	323
Pulpwood	1,068	1,031	879	1,024
Veneer	52	256	288	324
Other Lumber Products	2	-	-	-
Sub-total	4,984	5,065	3,926	4,639
Petroleum Products	43	41	21	27
Metal Products	117	46	38	44
Scrap Products	43	197	14	42
N/A	-	5	-	1
Grand Total	5,193	5,363	4,018	4,773

Source: CORP Traffic Database.

Note: Where data fields for specific movements were missing in the CORP Traffic Database, I attributed those movements to customers, commodities, or stations based on the characteristics of similar movements.

Attachment E
State-to-State Flows For Coos Bay Branch Traffic

Type of Traffic	Origin State	Destination State	2006 Carloads	% of Total
Originating	OR	CA		
	OR	OR		
	OR	IL		
	OR	AZ		
	OR	TN		
	OR	WA		
	OR	UT		
	OR	MI		
	OR	MN		
	OR	OK		
	OR	KS/MO		
	Sub-Total		5,114	
Terminating	BC	OR		
	AB	OR		
	AR	OR		
	WA	OR		
	WY	OR		
	Sub-Total			
Total			5,363	100%

Source: 2006 Carload Waybill Sample

Value of that land, based on the appraisal and the estimated costs of selling those parcels, all using standard, well-accepted methodologies and in accordance with applicable professional standards and practices. See Attachment 1 (Report). I used the Across The Fence ("ATF") methodology to estimate the value of all land parcels that CORP owns in fee simple. This (ATF) is the same valuation methodology the Board accepted and used in the CSXT abandonment proceeding I discussed above. See STB Dkt. No. AB-55 (Sub-No. 643X), *CSX Transportation – Abandonment* Decision at 4-5.

I then estimated the time and cost of disassembling and selling those parcels, including the holding cost, cost of sales, and yield rate an investor would require in order to undertake the sale of the parcels. Finally, based upon the appraised value of the parcels and the estimate cost of selling those parcels, I developed an estimate of the NLV of the property. Based on my appraisal and analysis, I estimate the NLV of the subject property (the Abandonment Segment right of way and surrounding land) to be \$5,697,000. See Attachment 1.



1200 CENTRAL AVENUE, SUITE 330 • WILMETTE, ILLINOIS 60091
847.920.9033 • FAX 847.920.9450

CHARLES W. (SANDY) REX III, MAI
SUSAN MOTYCKA REX

NET LIQUIDATION VALUATION OF
THE COOS BAY LINE IN
LANE, DOUGLAS, AND COOS COUNTIES, OREGON

PREPARED FOR
TODD N. CECIL
VICE PRESIDENT - REAL ESTATE
RAILAMERICA, INC.
1355 CENTRAL PARKWAY SOUTH, SUITE 700
SAN ANTONIO, TEXAS 78232

DATE OF VALUE: MAY 19, 2008
DATE OF REPORT: JULY 11, 2008

PREPARED BY
RMI MIDWEST



1200 CENTRAL AVENUE, SUITE 330 • WILMETTE, ILLINOIS 60091
847.920.9033 • FAX 847.920.9450

CHARLES W. (SANDY) REX II, MAJ
SUSAN MOTYCKA REX

July 11, 2008

Todd N. Cecil
Vice President - Real Estate
RailAmerica, Inc.
1355 Central Parkway South, Suite 700
San Antonio, Texas 78232

RE: Net liquidation value estimate of the Coos Bay Line in Lane, Douglas, and Coos Counties, Oregon

Dear Mr. Cecil:

At your request, I have prepared an estimate of the net liquidation value (NLV) of the rail line referenced above. The date of valuation is May 19, 2008. This is a complete appraisal communicated in a summary format; a self-contained narrative report can be prepared at your request.

SCOPE OF WORK

The subject property was inspected by helicopter, by car, and by aerial photography from May 12 through 15, 2008. The subject inspection by helicopter was also recorded on a digital camcorder. Across-the-fence (ATF) land uses were classified at that time based on physical observation, as well as analysis of ortho-rectified aerial photography and by various local government land use and zoning overlay GIS files. Changes in land use were plotted in ArcGIS using GPS data acquired during inspection. ArcGIS was used to calculate the areas of the corridor from georeferenced railroad valuation maps in tagged image file format (.tif). ATF land use lines were then plotted in ArcGIS where the segment areas were calculated.

A search for sales comparable to the ATF land uses was undertaken in Lane, Douglas, and Coos Counties. Each sale was plotted in ArcGIS, and all accessible sales were inspected between May 12 and 19, 2008.

The sales and listings were analyzed, and an ATF value was estimated for each segment along the line. Since this is an NLV estimate, ATF value estimates were applied only to those portions of

July 11, 2008

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Todd N. Cecil
July 11, 2008
Page 3

the segments owned in fee. The title was mapped using a title study provided to us by Gleaves Swearingen Potter & Scott LLP (Addendum C), together with the "Schedule of Property" on each railroad Valuation Map (Val Map).

The NLV was then estimated based on the expected time it would take to disassemble and sell the fee parcels, taking into consideration holding cost, cost of sales, and risk, or yield rate required by an investor to undertake the selling of the dissembled parcels.

This appraisal does *not* include the valuation of any improvements, nor does it consider the cost of land clearing or grading.

As requested, this is a summary appraisal; therefore, the descriptions of the subject property and valuation analysis are summarized in compliance with USPAP Standards Rule 2-2 (b).

PURPOSE AND INTENDED USE

The purpose of this valuation is to provide an NLV estimate to assist in the legal abandonment of the rail line and in contemplation of an offer of financial assistance (OFA) or feeder line acquisition as part of the abandonment process before the Surface Transportation Board (STB). It is anticipated that the users of this report are RailAmerica personnel, their legal counsel, as well as STB staff.

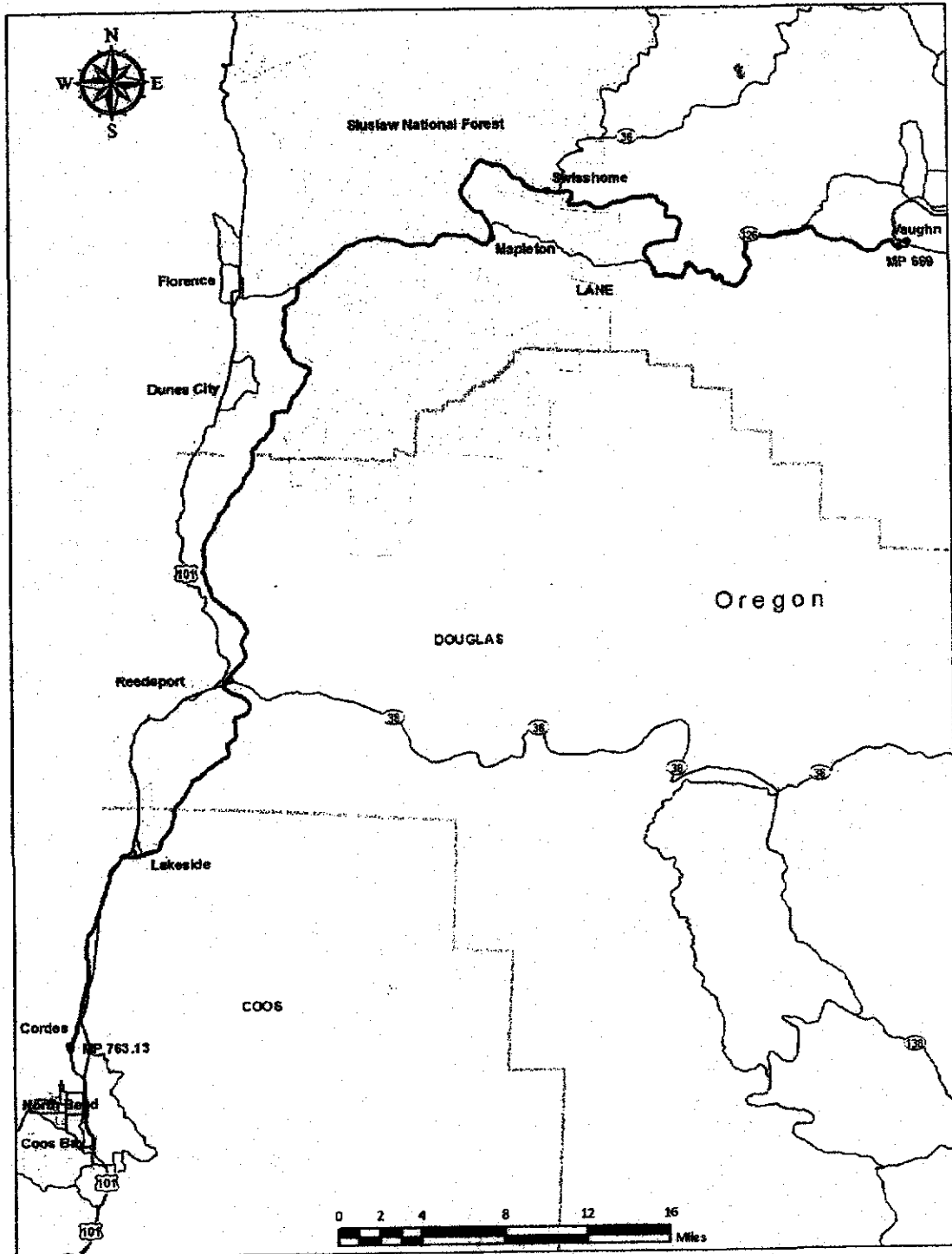
DEFINITION OF NET LIQUIDATION VALUE

Net liquidation value shall be determined by computing the current appraised market value of the corridor property for other than rail transportation purposes, less all costs of dismantling and disposition of improvements necessary to make the remaining properties available for their highest and best use and complying with applicable zoning, land use, and environmental regulations.¹ *This is an appraisal of the land only; the net salvage value of any improvements is not included.*

SUBJECT PROPERTY DESCRIPTION

The subject property is an approximately 94.13-mile corridor extending from Mile Post 669.0 at Vaughn to Mile Post 763.13 at Cordes. A map of the subject is on the following page.

¹ 49 C.F.R. §1152.34 (c)(1)(iii).



A legal description was not provided for the subject property. It is, however, shown on the Val Maps identified by the following map numbers:

V-2/6	V-2/13	V-2/S-18	V-2/23	V-2/28
V-2/7	V-2/14	V-2/19	V-2/S-23	V-2/S-28
V-2/8	V-2/S-14	V-2/S-19a	V-2/S-23a	V-2/29
V-2/S-8	V-2/15	V-2/S-19b	V-2/24	V-2/30
V-2/9	V-2/S-15	V-2/20	V-2/S-24	V-2/S-30a
V-2/S-9	V-2/16	V-2/S-20	V-2/S-24a	V-2/S-30b
V-2/10	V-2/S-16	V-2/21	V-2/25	V-2/S-30c
V-2/S-10	V-2/17	V-2/S-21a	V-2/S-25	
V-2/S-10a	V-2/S-17	V-2/S-21b	V-2/26	
V-2/11	V-2/S-17a	V-2/22	V-2/S-26	
V-2/12	V-2/18	V-2/S-22	V-2/27	

The subject contains approximately 1,676± acres, of which 216± acres of which are owned in less-than-fee title. Approximately 1357± acres are in fee, and an additional 103± acres are fee less other rights. Only the 1460± acres of fee-titled ownership are used to estimate the NLV.

Located in rural central western Oregon, the subject corridor is a portion of the Central Oregon & Pacific Railroad right-of-way, running between Eugene and Coos Bay. The subject runs through the small communities of Swisshome, Mapleton, Reedsport, and Lakeside. Within these communities, the subject passes through mostly single-family/rural residential uses and some industrial and commercial uses. Outside of these communities, the subject property is primarily bordered by large timber acreage, some farm acreage, and rural residential. The terrain in this region is mountainous, with the subject running through river valleys, along coastal lagoons and lakes and through several tunnels.

At the time of inspection, the subject property was under a service embargo, due to safety concerns in one or more tunnels.

Maps showing the subject property segments and fee title parcels are included in Addendum D: RMI Midwest Map Book. This appraisal should be used only in conjunction with this addendum volume.

INTEREST APPRAISED

This is an NLV estimate of the fee simple interest, taking into account rights held by others (e.g. roads.) Determining whether the railroad holds fee to the property is based solely upon advice provided by Gleaves Swearingen Potter Scott, LLP. A copy of this firm's report is included in Addendum C. The identification and size of the particular Val Map parcels is based solely on the location depicted on the Val Maps. Areas of each parcel and segment are calculated using ArcGIS.

ZONING/LAND USE

Portions of the ATF are zoned by Lane, Douglas, and Coos Counties. The predominant zoning/land-use classification is forest land; however, portions are zoned residential, commercial, industrial, recreational, and farm. In classifying the ATF land uses, we considered current zoning and land-use codes.

MARKET ANALYSIS

The subject market area is the western portions of Lane, Douglas and Coos Counties. More specifically, from the town of Noti in Lane County west to the outskirts of the town of Florence in Lane County, then south to that portion of North Bend on the north side of the Coos Bay in Coos County. The major communities include: Noti, Swisshome, Mapleton, Florence, Reedsport, Lakeside and North Bend.

While the residential market for the subject communities has recently experienced a downturn of approximately 6% in average annual median home sale value over the past year, due to oversupply and an increase in foreclosures, the five and ten year sales histories for the subject communities show an average annual increase in median home sale value of 13 and 25 percent, respectively. The industrial market shows an oversupply and little demand, while the commercial and acreage market does not appear to be affected by the current residential downturn.

HIGHEST AND BEST USE

By definition, the highest and best use of the subject property for an NLV estimate is for the disassemblage of the corridor and sale to adjacent land owners. Accordingly, this valuation assumes that the subject property is hypothetically sold to a single purchaser for such purpose.

VALUATION

In a net liquidation valuation, the present value of disassembling the subject corridor and selling the fee parcels to mostly adjoining property owners is estimated by valuing all fee-owned ATF parcels based on their land uses. The corridor is divided into segments based on ATF land use changes on one side or the other. Where the land use is different on each side of the corridor, the average unit value for each land use is used. The ATF unit value is then multiplied by the size of the segment. The total ATF value is then discounted, taking into account the time required to sell the individual parcels, holding costs, the cost of sales, and the yield rate required by a potential purchaser. Estimated ad valorem taxes are accounted for by adding the weighted average effective tax rate to the discount rate.

The following ATF land uses are found along the subject corridor:

- Acreage (timber)
- Pasture
- Wetlands
- Rural residential
- Single-family residential
- Commercial
- Industrial

A map showing the locations of all comparable ATF sales is included in the Addendum.

Figure 1, on the following page, shows the ATF unit values used for the subject corridor.

III. CONCLUSION AND NET LIQUIDATION VALUE OF TRACK ASSETS

A. L.B. Foster Company Estimate

L.B. Foster estimated the gross liquidation value of the Abandonment Segment track assets at \$ See Attachment 2. L.B. Foster estimated total liquidation costs at \$ See *id.* The resulting NLV, as estimated by L.B. Foster, is \$15,151,308. *Id.*

B. Unitrac Estimate

Unitrac estimated the "Extended Value" that could be generated from the track material (sales price of salvaged materials less costs of shipping those materials less required profit) at \$ See Attachment 3. Unitrac deducted from its Extended Value estimate the cost of removal of the rail assets and miscellaneous costs to derive its "Net bid amount" of \$12,536,149. See *id.* This "net bid amount" represents Unitrac's estimate of the amount it would be willing to pay for the rail assets, *i.e.*, its independent estimate of the NLV of the fixed rail assets of the Abandonment Segment.

C. Average NLV

Based on my review of the two independent, objective third-party estimates, I determined that a reasonable way to estimate the NLV of the rail assets is to calculate the average of the high and low estimates submitted by Foster and Unitrac. The average of Foster's bid of \$15,151,308 and Unitrac's bid of \$12,536,149 is \$ 13,843,729. See Attachments 2 and 3. Thus, based on the analysis summarized in this statement, I have determined that a reasonable NLV for the track assets of the Abandonment Segment is \$13,843,729.

Exhibit 2

Hynes, Terence M.

From: RTOPAL@up.com
Sent: Wednesday, July 23, 2008 11:29 AM
To: Hynes, Terence M.
Subject: AB-515 (Sub-No. 2) CORP Abandonment/Discontinuance - Coos Bay Line

Confirming my phone message on the Port's discovery requests, UP has no objection to CORP producing the commercial marketing agreement or the summary "speed sheets" applicable to this line so long as the documents are designated "highly confidential."

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