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Office of Proceedings
January 6, 2023
Part of
Public Record

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January 6, 2023

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

Re: Portland & Western Railroad, Inc. – Abandonment Exemption –
In Washington County, OR
Surface Transportation Board Docket No. AB 541 (Sub-No. 3X)

Dear Ms. Brown:

Enclosed for filing in the above referenced docket is a notice for exempt abandonment being filed on behalf of Portland & Western Railroad, Inc. The filing fee has been paid via pay.gov.

If you have any questions related to this filing, please let me know.

Sincerely,

A handwritten signature in blue ink that reads 'Justin J. Marks'.

Justin J. Marks
Counsel to Portland & Western Railroad, Inc.

Enclosure

FILED
January 6, 2023
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
January 6, 2023
SURFACE
TRANSPORTATION BOARD

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB 541 (Sub-No. 3X)

PORTLAND & WESTERN RAILROAD, INC.
- ABANDONMENT EXEMPTION - IN WASHINGTON COUNTY, OR

NOTICE OF EXEMPTION

(color copies included)

Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523
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Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.
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jmarks@clarkhill.com

Counsel for
Portland & Western Railroad, Inc.

Dated: January 6, 2023

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB 541 (Sub-No. 3X)

PORTLAND & WESTERN RAILROAD, INC.
- ABANDONMENT EXEMPTION - IN WASHINGTON COUNTY, OR

NOTICE OF EXEMPTION

Portland & Western Railroad, Inc. (“PNWR”) is filing this Notice of Exemption under the Board’s class exemption procedures at 49 C.F.R. Part 1152, Subpart F, seeking exemption authority for its abandonment of the line of railroad extending between Milepost 10.28 in Forest Grove, OR and Milepost 4.68 in Hillsboro, OR (the “Subject Line”). PNWR owns a perpetual freight easement for the Subject Line, and the underlying property is owned by the Oregon Department of Transportation (“ODOT”). There are four stations on this line: Forest Grove (MP 10.28), Cornelius (MP 7.8), Hillsboro (MP 4.7) and Forest Grove Junction (MP 4.68). The Subject Line traverses through United States Postal Service ZIP Codes 97116, 97113, 97123, and 97124, entirely in Washington County, OR. A map of the Subject Line is attached as Exhibit A.

There has been no local or overhead freight service on the Subject Line since November 2015. Because this is a stub-ended line, there is no overhead traffic to be rerouted over other lines.

This Notice of Exemption is being filed pursuant to the requirements of 49 C.F.R. §1152.50 regarding exemptions for out of service rail lines. In accordance with such requirements, PNWR hereby provides the following information in support of its request for an abandonment exemption:

- 1) The exact name of the Applicant is Portland & Western Railroad, Inc.
- 2) PNWR is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, chapter 105.

PNWR has been a common carrier since approximately 1995.¹
- 3) The relief sought by PNWR is an exemption for the abandonment of the line of railroad extending between Milepost 10.28 in Forest Grove, OR and Milepost 4.68 in Hillsboro, OR.

There are four stations on this line: Forest Grove (MP 10.28), Cornelius (MP 7.8), Hillsboro (MP 4.7) and Forest Grove Junction (MP 4.68).
- 4) A Map of the Subject Line is attached hereto as Exhibit A.
- 5) The representative of PNWR to whom correspondence should be sent is: Justin J. Marks, Clark Hill PLC, 1001 Pennsylvania Ave. N.W., Suite 1300 South, Washington, DC 20004; (202) 772-0916 or Eric M. Hocky, Esq., Clark Hill, PLC, Two Commerce Square, 2001 Market St., Suite 2620, Philadelphia, PA 19103; (215) 640-8523.
- 6) The Subject Line traverses through United States Postal Service ZIP Codes 97116, 97113, 97123, and 97124.
- 7) PNWR believes that the right-of-way may be suitable for trail use or other public purposes.

PNWR understands that the Council Creek Regional Trail Partnership is interested in developing the right of way for trail use. Any trail use would potentially need the approval of ODOT as the owner of the underlying land.
- 8) PNWR proposes to consummate the abandonment on or after February 25, 2023.
- 9) PNWR certifies that:

¹ *Portland & Western Railroad, Inc. – Lease and Operation Exemption – Southern Pacific Transp. Co.*, ICC Financed Docket No. 32758 (served Sept. 13, 1995).

- a) No local or overhead traffic has moved over the Subject Line since November 2015.
- Because the Subject Line is not a “through line,” there is no overhead traffic on the Subject Line.
- b) No formal complaint by a user of rail service on the Subject Line, or a state or local government entity acting on behalf of such user, regarding cessation of service over the Subject Line either is pending with the Board or any U.S. District Court, or has been decided in favor of the complainant within the two year period.
- 10) Although no employees of the PNWR will be affected by the proposed abandonment, PNWR recognizes that its abandonment of the Subject Line will be made subject to the standard employee protective conditions as set forth in *Oregon Short Line Railroad Co .- Abandonment -- Goshen*, 360 I.C.C. 91 (1979).
- 11) PNWR filed an Environmental / Historic Report (“EHR”) with the Board on January 31, 2020 and a Revised EHR on November 23, 2022, more than twenty days prior to this filing.
- 12) PNWR certifies that it has complied with the legal (newspaper) notice requirements of 49 C.F.R. §1105.11. Notice of the proposed abandonment was published in the *Oregonian* on November 30, 2022. A copy of the form of notice and a copy of the proof of publication are attached as Exhibit B.
- 13) PNWR certifies that it has complied with the notice requirements of 49 C.F.R. §1152.50(d)(1). A copy of the notice dated February 4, 2020, sent to the required governmental agencies is attached hereto as Exhibit C.

For the reasons set forth above, the Board should find that PNWR's proposed abandonment satisfies the exemption requirements of 49 C.F.R. §1152.50, and should issue the appropriate notice.

Respectfully submitted,



Eric M. Hocky
Clark Hill PLC
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Suite 2620
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Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com

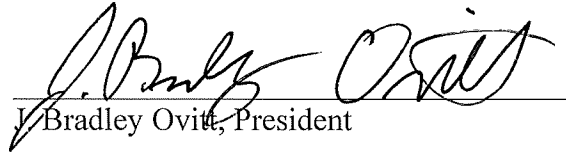
*Counsel for Portland & Western Railroad,
Inc.*

Dated: January 6, 2023

VERIFICATION

I hereby verify on behalf of Portland & Western Railroad, Inc., under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on 1/6/2023.



Bradley Ovitt, President

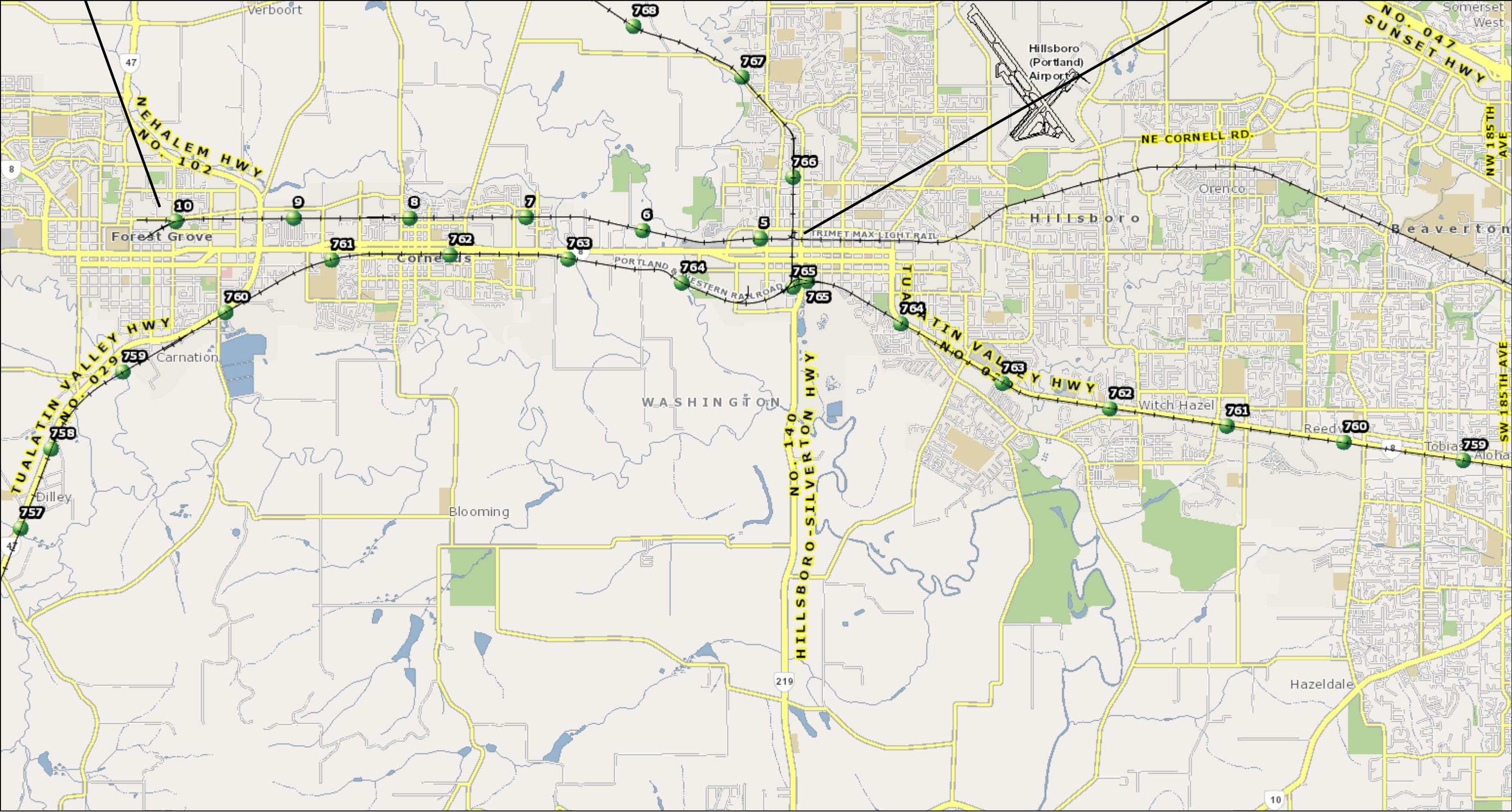
EXHIBIT A

MAP

Western Portion of Rail Line
to be Abandoned - MP 10.28

Forest Grove Abandonment

Eastern Portion of Rail Line to be
Abandoned - MP 4.68



— Rail Network ● Rail Mile Posts



0 0.75 1.5 3 mi

Created on November 12, 2019

Oregon Department of Transportation, Geographic Information Services Unit

ODOT - Geographic Information Services

This product is for informational purposes and may not be suitable for legal, engineering, or surveying purposes. Users of this product should review and consult the primary data sources to determine the usability

EXHIBIT B

NEWSPAPER NOTICE

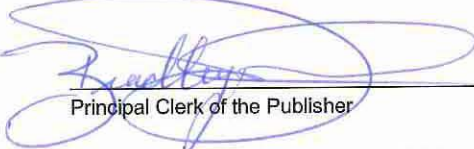
AD#: 0010508201

State of Oregon,) ss

County of Multnomah)

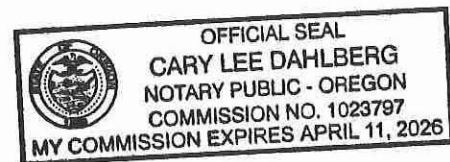
Bradley Dion being duly sworn, deposes that he/she is principal clerk of Oregonian Media Group; that The Oregonian is a public newspaper published in the city of Portland, with general circulation in Oregon, and this notice is an accurate and true copy of this notice as printed in said newspaper, was printed and published in the regular edition and issue of said newspaper on the following date(s):

The Oregonian 11/30/2022


Principal Clerk of the Publisher

Sworn to and subscribed before me this 7th day of December 2022


Notary Public



NOTICE OF INTENT TO ABANDON RAIL SERVICE

Portland & Western Railroad, Inc. (PNWR) issues this notice that on or about December 22, 2022, it intends to file with the Surface Transportation Board (STB or Board), Washington, DC 20423, a notice of exemption pursuant to the provisions of 49 CFR Part 1152 Subpart F - Exempt Abandonments and Discontinuances of Service and Trackage Rights permitting PNWR to abandon service over approximately 5.6 miles of the line of railroad between milepost 10.28 near Forest Grove, and milepost 4.68, near Hillsboro which traverses through United States Postal Zip Codes 97113, 97116, 97123, and 97124, in Washington County, Oregon. The PNWR proceeding will be docketed as STB Docket No. AB-541 (Sub-No. 3X).

The Board's Office of Environmental Analysis (OEA) will generally prepare an Environmental Assessment (EA), which will normally be available 25 days after the filing of the notice of exemption. Comments on environmental and energy matters should be filed no later than 15 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the Office of Environmental Analysis (OEA), Surface Transportation Board, Washington, DC or by calling that office at 202-245-0454.

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as offers of financial assistance to subsidize rail service) must be filed directly with the STB's Section of Administration, Office of Proceedings, 395 E Street, S.W., Washington, DC 20423-0001 [see 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicant's representative [see 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance, public use or trails use may be directed to the STB's Office of Public Assistance, Governmental Affairs and Compliance at 202-245-0238. Copies of any comments or requests for conditions should be served on PNWR's representative: Justin J. Marks, Clark Hill PLC, 1001 Pennsylvania Ave. N.W. Suite 1300 South, Washington, DC 20004; 202-772-0916.

EXHIBIT C

10-DAY NOTICE LETTERS



Justin J. Marks
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F +12027720919
Email: jmarks@ClarkHill.com

Clark Hill
1001 Pennsylvania Avenue N.W.
Suite 1300 South
Washington, DC 20004
T (202) 772-0909
F (202) 772-0919

November 29, 2022

VIA EMAIL AND/OR FIRST-CLASS MAIL

ALL AGENCIES ON THE
ATTACHED SERVICE LIST

Re: Portland & Western Railroad, Inc. – Abandonment Exemption –
In Washington County, OR
Surface Transportation Board Docket No. AB 541 (Sub. No. 3X)

To Whom it May Concern:

This letter is being sent to you pursuant to the requirements of 49 C.F.R. §1152.50(d), to advise you that Portland & Western Railroad, Inc. ("PNWR") intends to file a notice of exemption for PNWR to abandon rail service over the line of railroad described below, by filing a notice with the Surface Transportation Board ("STB") for an exemption under 49 USC §10502 from the provisions of 49 USC §10903 to enable PNWR to abandon the subject line, on or after December 22, 2022 in STB Docket No. AB 541 (Sub-No. 3X).

PNWR will invoke the STB's exemption procedures to abandon service of approximately 5.6 - miles of track between Milepost 10.28 in Forest Grove and Milepost 4.68 in Hillsboro, OR.

The Subject Line traverses through United States Postal Service ZIP Codes 97116, 97113, 97123, 97124. A map of the Subject Line is enclosed.

Based upon information in PNWR's possession, the Subject Line does not contain federally granted rights of way. Any documentation in PNWR's possession related to the abandonment of the Subject Line will be made available to those requesting it.

Sincerely,

A handwritten signature in blue ink that reads 'Justin J. Marks'.

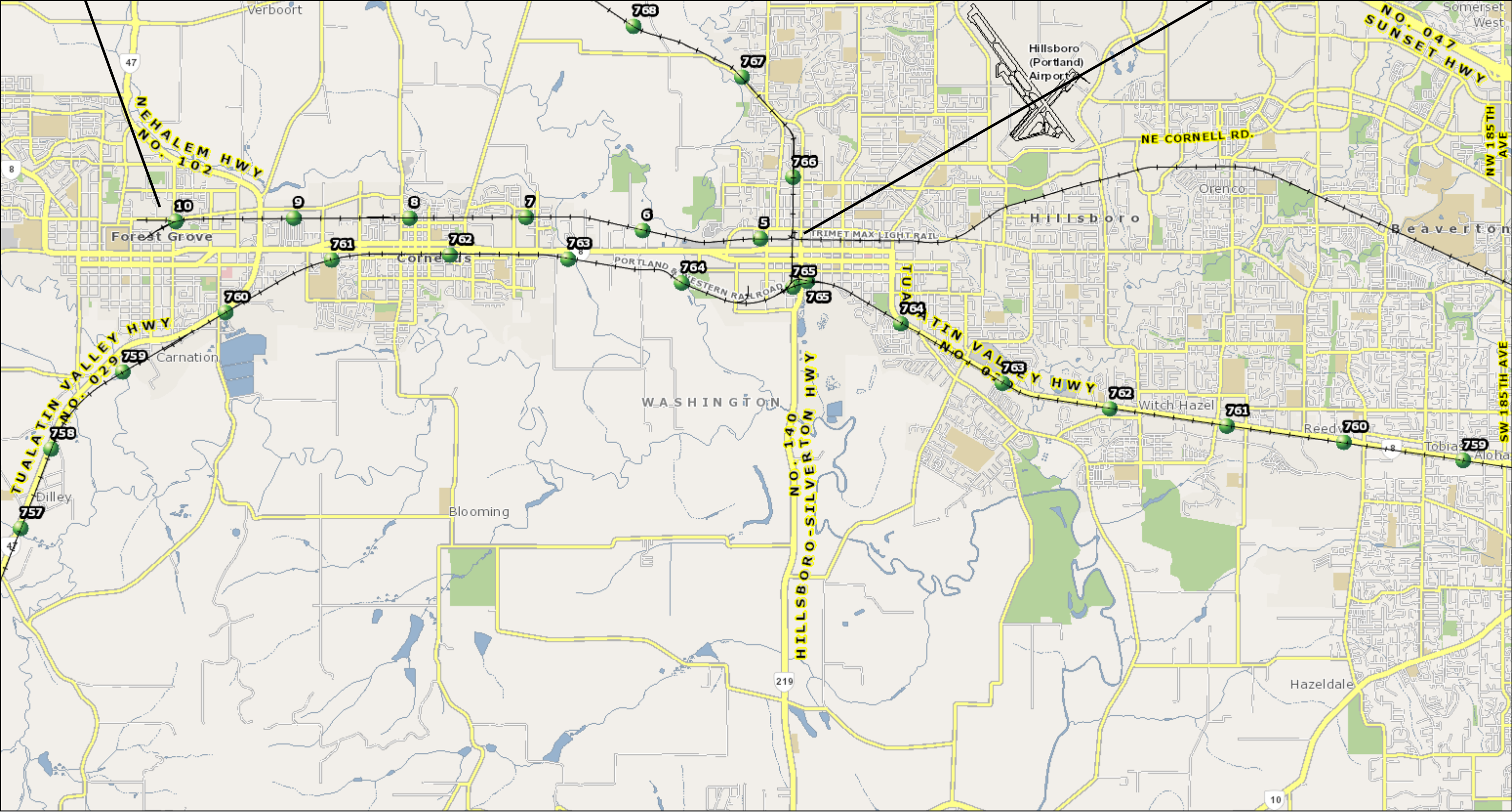
Justin J. Marks
Counsel to Portland & Western Railroad, Inc.

Enclosure

Western Portion of Rail Line
to be Abandoned - MP 10.28

Forest Grove Abandonment

Eastern Portion of Rail Line to be
Abandoned - MP 4.68



— Rail Network ● Rail Mile Posts



0 0.75 1.5 3 mi

Created on November 12, 2019

Oregon Department of Transportation, Geographic Information Services Unit

ODOT - Geographic Information Services

This product is for informational purposes and may not be suitable for legal, engineering, or surveying purposes. Users of this product should review and consult the primary data sources to determine the usability

Agency Service List

Oregon Department of Transportation
Rail and Public Transit Division
555 13th St. NE
Salem, OR 97301-4179

United States Department of the Army
Military Surface Deployment and Distribution
Command
Transportation Engineering Agency
ATTN: SDTE-SA (Railroads for National
Defense)
1 Soldier Way, Building 1900W
Scott AFB, IL 62225

U.S. Department of the Interior -
National Park Service
RTCA Program
1849 C Street, NW
Washington, DC 20240

Office of Chief of Forest Service
U.S. Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250-1111

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing Notice of Exemption was served on the persons shown on the attached list by email or first class mail, postage prepaid.

Oregon State Clearinghouse Oregon Department of Transportation 355 Capital Street, NE, MS 11 Salem, OR 97301-3871	The Natural Resources Conservation Service USDA 1201 NE Lloyd Blvd, Suite 900 Portland, OR 97232
Oregon Department of Environmental Quality 700 NE Multnomah Street, Suite 600 Portland, OR 97232-4100 nwraqpermits@deq.oregon.gov	Natural Resources Conservation Service USDA Office of the Chief 1400 Independence Ave., SW Room 5105-A Washington, DC 20250
State Historical Preservation Office Oregon Heritage Oregon Parks and Recreation Department 725 Summer Street NE, Suite C Salem, OR 97301 ORSHPO.Clearance@oregon.gov	U.S. Environmental Protection Agency Region 10 1200 Sixth Avenue, Suite 155 Seattle, WA 98101
Oregon Department of Transportation Rail and Public Transit Division 555 13th St NE Salem, OR 97301-4179 Robert.I.Melbo@odot.oregon.gov Howard.a.gard@odot.state.or.us	The National Geodetic Survey Communications and Outreach Branch, ngs.infocenter@noaa.gov
Oregon Coastal Zone Management Oregon Coastal and Ocean Program Management Department of Land Conservation and Development 800 Oregon Street, NE #18 Portland, OR 97223 dlcd.info@dlcd.oregon.gov	U.S. Bureau of Land Management Oregon-Washington State Office 1220 S.W. 3rd Avenue Portland, OR 97204
The Honorable Kathryn Harrington Chair, Board of Commissioners MS-21 155 N. First Ave, Suite 300 Hillsboro, OR 97124 bcc@washingtoncountyor.gov	U.S. Army Corps of Engineers Portland District P.O. Box 2946 Portland, OR 97208-2946 Robert.H.Fraley@usace.army.mil

The Honorable Jerry Willey Chair, Board of Commissioners MS-21 155 N. First Ave, Suite 300 Hillsboro, OR 97124 bcc@washingtoncountyor.gov	National Park Service Regional Office Pacific West Region 333 Bush Street #500 San Francisco, CA 94104
U.S. Fish and Wildlife Service Region 1 Eastside Federal Complex 911 NE 11th Avenue Portland, OR 97232-4181	National Park Service 1849 C Street, NW Washington, DC 20240



Justin J. Marks

Dated: January 6, 2023