



Thomas Sean McGowan

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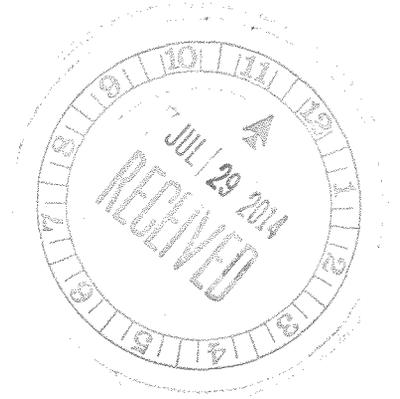
smcgowan@thompsoncoburn.com

July 29, 2014

VIA MESSENGER DELIVERY

The Honorable Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20024

236367
ENTERED
Office of Proceedings
July 29, 2014
Part of
Public Record



Re: STB Finance Docket No. 35847, *Fort Bend County Toll Road Authority--Acquisition Exemption-- Metropolitan Transit Authority of Harris County, Texas's Right to Restore Service over Rail Banked Right-of-Way in Harris, Fort Bend, Austin, Wharton, and Colorado Counties, Texas*

Dear Ms. Brown:

Enclosed please find one (1) original and ten (10) copies of a Verified Notice of Exemption under 49 C.F.R. § 1150.31 for filing with the Board in the above-referenced proceeding. Enclosed please also find one (1) additional copy that we would appreciate you file, time, and/or date-stamping and returning to us via our courier.

Fort Bend County Toll Road Authority is a local government corporation created by and acting on behalf of Fort Bend County, Texas, and as such, is a state or local government entity for which filing fees are waived pursuant to 49 C.F.R. § 1002.2(e)(1).

Please note that the exemption requested in the attached filing is contingent upon the Surface Transportation Board's issuance of an exemption to Metropolitan Transit Authority of Harris County, Texas in Finance Docket No. 35846, which request is being filed simultaneously herewith.

Very truly yours,

Thompson Coburn LLP

By

Thomas Sean McGowan

FEE RECEIVED

July 29, 2014

SURFACE

TRANSPORTATION BOARD

FILED

July 29, 2014

SURFACE

TRANSPORTATION BOARD

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Fort Bend County Toll Road)
Authority – Acquisition Exemption –)
Metropolitan Transit Authority)
of Harris County, Texas’s Right to Restore Rail)
Service over Rail Banked)
Right-of-Way in Harris, Fort Bend,)
Austin, Wharton, and Colorado)
Counties, Texas)

Finance Docket No. 35847



**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1150.31**

Sean McGowan
Kathleen E. Kraft
Thompson Coburn LLP
1909 K St. NW, Suite 600
Washington, D.C. 20006
(202) 585-6900
(202) 585-6969 (fax)
smcgowan@thompsoncoburn.com
kkraft@thompsoncoburn.com

Attorneys for Fort Bend County Toll
Road Authority

Dated: July 29, 2014

NOTE: The exemption requested herein is contingent upon the Surface Transportation Board’s issuance of an exemption to Metropolitan Transit Authority of Harris County, Texas in Finance Docket No. 35846, which request is being filed simultaneously herewith.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Fort Bend County Toll Road)	
Authority – Acquisition Exemption –)	
Metropolitan Transit Authority)	
of Harris County, Texas’s Right to Restore Rail)	Finance Docket No. 35847
Service over Rail Banked)	
Right-of-Way in Harris, Fort Bend,)	
Austin, Wharton, and Colorado)	
Counties, Texas)	

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1150.31**

NOTE: The exemption requested herein is contingent upon the Surface Transportation Board’s issuance of an exemption to Metropolitan Transit Authority of Harris County, Texas in Finance Docket No. 35846, which request is being filed simultaneously herewith.

Pursuant to 49 C.F.R. § 1150.31, the Fort Bend County Toll Road Authority (FBCTRA), a non-carrier, hereby provides this verified notice of exemption for its acquisition from the Metropolitan Transit Authority of Harris County, Texas (METRO) of the right to restore rail service (restoration right) over a rail banked right-of-way for the line between the Bellaire Branch’s milepost 20, approximately 2,020 feet east of the Harris County-Fort Bend County line, to milepost 61.2 near Eagle Lake, in Colorado County, Texas, a distance of 41.2 miles in Harris, Fort Bend, Austin, Wharton, and Colorado Counties, Texas.

BACKGROUND

In 1992, Southern Pacific Transportation Company (SP) conveyed to METRO multiple pieces of property, including the Westpark Line, stretching from milepost 3.48 near Bellaire Junction in Houston, Harris County, Texas, to milepost 61.2 near Eagle Lake, in Colorado County, Texas (the Westpark Line). SP retained an operating easement to conduct freight

operations and to otherwise fulfill SP's obligations as a common carrier railroad over the Westpark Line (the Railroad Easement). See generally *Metropolitan Transit Authority of Harris County, TX-Petition for Declaratory Order*, 9 I.C.C.2d 559, F.D. 32260 (Apr. 15, 1993) (finding that METRO-SP transaction was not subject to the jurisdiction of the Commission).

In 1996, Union Pacific Railroad Company (UP) became the successor in interest to SP pursuant to the Board's authority granted in *Union Pacific/Southern Pacific Merger*, 1 S.T.B. 233 (1996). UP succeeded to SP's rights under the Railroad Easement. In 2001 and 2008, UP sought abandonment of the Westpark Line in two separate proceedings. *Union Pacific Railroad Company--Abandonment--In Harris, Fort Bend, Austin, Wharton, and Colorado Counties, Tx*, AB-33 (Sub-No. 156); *Union Pacific Railroad Company—Abandonment Exemption—In Colorado and Wharton Counties, Tx*, AB-33 (Sub-No. 253X).

In May 2001, UP and METRO reached an agreement for rail banking and interim trail use of the portion of the right of way referenced in AB-33 (Sub-No. 156) (the Sub-No. 156 ROW). The rail banking agreement was accompanied by a deed without warranty, pursuant to which UP conveyed the Railroad Easement, together with all of UP's other rights, title, and interests in and to the Sub-No. 156 ROW, to METRO, subject to certain conditions and exceptions. Thus, pursuant to the rail banking agreement and deed without warranty, METRO became the interim trail user and the holder of the restoration rights for the Sub-No. 156 ROW. The Sub-No. 156 ROW remains rail-banked.

In December 2008, UP and METRO reached an agreement for rail banking and interim trail use of the portion of the right of way referenced in AB-33 (Sub-No. 253X) (the Sub-No. 253X ROW and together with the Sub-No. 156 ROW, the Line). The rail banking agreement was accompanied by a deed without warranty, pursuant to which UP conveyed the Railroad

Easement, together with all of UP's other rights, title, and interests in and to the Sub-No. 253X ROW, to METRO, subject to certain conditions and exceptions. Thus, pursuant to the rail banking agreement and deed without warranty, METRO became the interim trail user and the holder of the restoration rights for the Sub-No. 253X ROW. The Sub-No. 253X ROW remains rail-banked.

When METRO acquired the restoration right to the Line, it was not aware of the requirement to obtain an exemption from 49 U.S.C. § 10901 under 49 C.F.R. § 1150.31, *et seq.* Therefore, on July 29, 2014, METRO filed a notice of exemption seeking retroactive authority to acquire the right to restore rail service over the Line. *See Metropolitan Transit Authority of Harris, County, Texas--Acquisition Exemption--Union Pacific Railroad Company's Right to Restore Rail Service over Rail Banked Right-of-Way in Harris, Fort Bend, Austin, Wharton, and Colorado Counties, Texas*, STB Finance Docket No. 35846. **FBCTRA's request for an exemption herein is contingent upon the Board's issuance of an exemption to METRO in Finance Docket No. 35846.**

METRO and FBCTRA have entered into negotiations pursuant to which FBCTRA intends to purchase from METRO approximately 480.59 acres of real property in Harris, Fort Bend, Austin, Wharton, and Colorado Counties, Texas (the Property). The Property includes a 41.2-mile portion of the Line, between the Bellaire Branch's milepost 20, approximately 2,020 feet east of the Harris County-Fort Bend County line, to milepost 61.2 near Eagle Lake, in Colorado County, Texas (the Subject ROW) and METRO's restoration rights over the Subject ROW. Concurrent with the purchase, FBCTRA also intends to become the interim trail user over the Subject ROW through an assignment of METRO's rail banking agreements covering the Subject ROW. Concurrently herewith, METRO and FBCTRA are jointly filing a petition to

transfer interim trail use over the Subject ROW from METRO to FBCTRA. *See Union Pacific Railroad Company--Abandonment--In Harris, Fort Bend, Austin, Wharton, and Colorado Counties, Tx, AB-33 (Sub-No. 156); Union Pacific Railroad Company—Abandonment Exemption—In Colorado and Wharton Counties, Tx, AB-33 (Sub-No. 253X).*

The purchase of the Property will allow FBCTRA to extend the Westpark Tollway, a limited-access toll road serving western Houston and Harris County and northeastern Fort Bend County, and expand Farm to Market Road 1093 (FM 1093). FBCTRA's immediate development plans include the expansion of the Westpark Tollway for a 13-mile stretch beginning at milepost 20, approximately 2,020 feet east of the Harris-Fort Bend County border.

METRO and FBCTRA have executed an Interlocal Agreement to provide for the development of transportation projects permitted by, and the cooperative preservation of the Subject ROW under, the National Trails System Act (Trails Act) and its implementing regulations, while providing for the transfer of ownership and control of the Subject ROW and assignment of the trail use agreement for the Subject ROW to FBCTRA. In the Interlocal Agreement, METRO and FBCTRA have pledged to maintain the Subject ROW for future rail transit use.

Acquisition by a non-carrier of the restoration rights over a rail banked right-of-way requires an exemption from 49 U.S.C. § 10901 under 49 C.F.R. § 1150.31, *et seq.* *See Norfolk and Western Railway Company—Abandonment Between St. Mary's and Minister in Auglaize County, OH, 9 I.C.C.2d 1015 (1993); King County, Wash.—Acquisition Exemption—BNSF Railway, STB Finance Docket No. 35148 (STB served Sept. 18, 2009).* Accordingly, FBCTRA now seeks an exemption to acquire the restoration rights over the Subject ROW from METRO.

INFORMATION REQUIRED BY 49 C.F.R. § 1150.33

(a) The full name and address of the applicant:

Applicant is the Fort Bend County Toll Road Authority, P.O. Box 2789, Sugar Land, TX 77487-9740.

(b) The name, address, and telephone number of the representative of the applicant who should receive correspondence:

Applicant's representative is Sean McGowan, Thompson Coburn, LLP, 1909 K St. NW, Suite 600, Washington, DC 20006, (202) 585-6900, smcgowan@thompsoncoburn.com.

(c) A statement that an agreement has been reached or details about when an agreement will be reached:

METRO and FBCTRA reached an agreement in principle for the sale of the Property, which includes the Subject ROW, in February 2014. METRO and FBCTRA anticipate closing the contemplated transaction no earlier than thirty (30) days following the date on which FBCTRA's exemption becomes effective.

(d) The operator of the property:

The Subject ROW is a rail banked right-of-way under the National Trails System Act, 16 U.S.C. § 1247(d). There will be no operator of the property, unless and until rail service is restored.

(e) A brief summary of the proposed transaction, including

(1) The name and address of the railroad transferring the subject property:

The entity transferring the right to restore rail service over the right-of-way is Metropolitan Transit Authority of Harris County, Texas, 1900 Main St., Houston, TX 77002.

(2) The proposed time schedule for consummation of the transaction:

The transaction will be consummated no earlier than thirty (30) days after the filing of the exemption.

(3) The mile-posts of the subject property, including any branch lines:

The Subject ROW extends from milepost 20, approximately 2,020 feet east of the Harris County-Fort Bend County line, to milepost 61.2 near Eagle Lake, Colorado County, Texas.

(4) The total route miles being acquired:

The right to restore rail service is over 41.2 miles in Harris, Fort Bend, Austin, Wharton, and Colorado Counties, Texas.

(f) A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and States:

A map that clearly indicates the Subject ROW, where the acquired restorations right lies, is attached as **Appendix 1**.

(g) A certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier:

Per 49 C.F.R. § 1201, the amount of projected revenues that exceed qualification as a Class III carrier are \$20 million after applying the railroad revenue deflator formula. FBCTRA will become the holder of the restoration right over the Subject ROW pursuant to its agreement

with METRO. FBCTRA is not a railroad with a common carrier obligation to provide freight service over the Subject ROW and does not intend to operate freight service over the Subject ROW. A certificate that FBCTRA has no revenues from freight operations is attached as **Appendix 2**.

(h) Transactions imposing interchange commitments:

This information is not applicable here.

The remaining required information is attached to this notice or has been provided by other parties.¹ A verification is attached as **Appendix 3**. The required Caption Summary is attached as **Appendix 4**. A certification that the annual freight revenues that would result from the transaction would be less than \$5 million is attached as **Appendix 5**. Copies of the Verified Notice and attachments are being served simultaneously on counsel for METRO.

CONCLUSION AND REQUESTED RELIEF

FBCTRA respectfully requests that the Director of the Board's Office of Proceedings publish a notice in the Federal Register within sixteen (16) days of this filing per 49 C.F.R. § 1150.32(b). FBCTRA notes that the exemption will be effective thirty (30) days after this filing.

¹ The proposed acquisition does not require environmental or historic reporting or assessment. *See* 49 C.F.R. § 1105.6(c)(2)(i) and 49 C.F.R. § 1105.8(b)(1). By virtue of 49 U.S.C. § 10901(c), labor protections do not apply to this transaction.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Sean McGowan", is written over a horizontal line.

Sean McGowan

Kathleen E. Kraft

Thompson Coburn LLP

1909 K St. NW, Suite 600

Washington, D.C. 20006

(202) 585-6900

(202) 585-6969 (fax)

smcgowan@thompsoncoburn.com

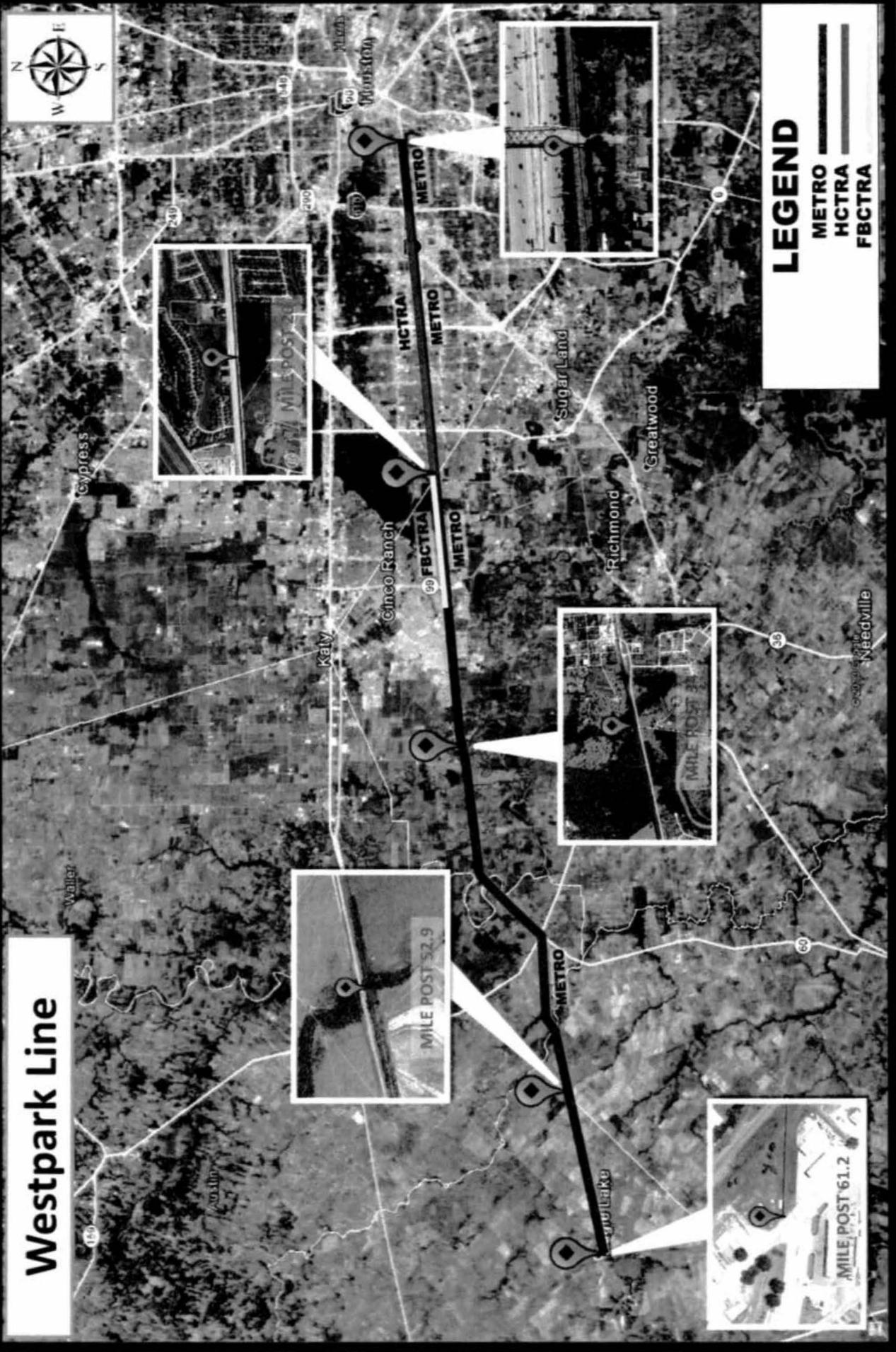
kkraft@thompsoncoburn.com

Attorneys for Fort Bend County Toll
Road Authority

Dated: July 29, 2014

Map of the Subject ROW

Westpark Line



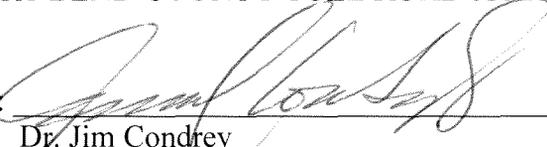
LEGEND

- METRO
- HCTRA
- FBCTRA

Certificate per 49 C.F.R. 1150.33(g)

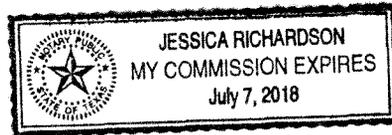
I, Dr. Jim Condrey, hereby certify that the Fort Bend County Toll Road Authority (FBCTRA) will not conduct freight operations on the line segment involved in this proceeding, and therefore, FBCTRA will not have any revenues from freight operations.

FORT BEND COUNTY TOLL ROAD AUTHORITY

By: 
Dr. Jim Condrey
Chairman

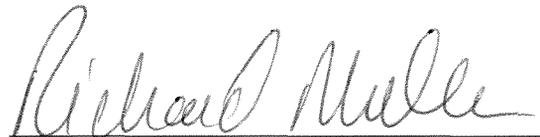
SUBSCRIBED and SWORN to
before me this 11th day of July, 2014.


Notary Public



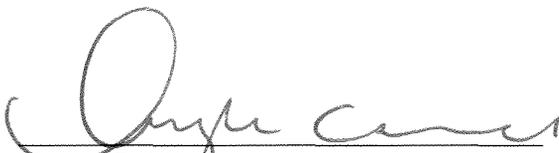
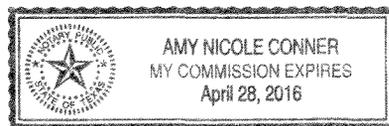
Verification

I, Richard Muller, being duly sworn, state that I am familiar with the facts asserted in this Verified Notice of Exemption and that all facts are true and correct.



Richard Muller
General Counsel
Fort Bend County Toll Road Authority

SUBSCRIBED and SWORN to
before me this 17th day of July, 2014.


Notary Public

SURFACE TRANSPORTATION BOARD

Notice of Exemption

FINANCE DOCKET NO. 35847

FORT BEND COUNTY TOLL ROAD AUTHORITY

—ACQUISITION EXEMPTION—

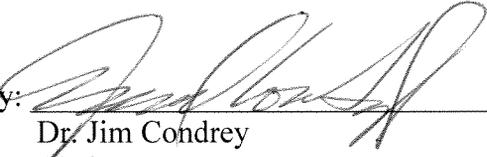
METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TEXAS' RIGHT TO RESTORE RAIL SERVICE OVER RAIL BANKED RIGHT-OF-WAY IN HARRIS, FORT BEND, AUSTIN, WHARTON, AND COLORADO COUNTIES, TEXAS

The Fort Bend County Toll Road Authority has filed a notice of exemption to acquire the Metropolitan Transit Authority of Harris County, Texas's right to restore rail service over rail banked right-of-way on the portion of the Westpark Line from milepost 20, approximately 2,020 feet east of the Harris County-Fort Bend County line, to milepost 61.2 near Eagle Lake, Colorado County, Texas, a distance of 41.2 miles in Harris, Fort Bend, Austin, Wharton, and Colorado Counties, Texas. Comments must be filed with the Board and served on Sean McGowan, Thompson Coburn LLP, 1909 K St. NW, Suite 600, Washington, DC 20006, (202) 585-6900 (phone). The Notice is filed under § 1150.31. If the Notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Certification

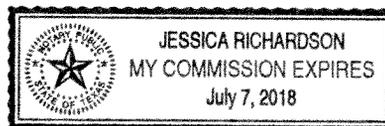
I, Dr. Jim Condrey, hereby certify that the annual revenues for freight operations that would result from the transaction involved in this proceeding would be less than \$5 million because the line segment involved in this proceeding is rail banked under the National Trails System Act (Trails Act) and FBCTRA will not conduct freight operations on the line segment involved in this proceeding.

FORT BEND COUNTY TOLL ROAD AUTHORITY

By: 
Dr. Jim Condrey
Chairman

SUBSCRIBED and SWORN to
before me this 10 day of July, 2014.


Notary Public



Certificate of Service

I hereby certify that on July 29, 2014, I served a copy of the foregoing Verified Notice of Exemption under 49 C.F.R. § 1150.31 by first class mail, postage prepaid on the following:

Metropolitan Transit Authority of Harris County, Texas
Attn: Alva Trevino, General Counsel
1900 Main St.
Houston, TX 77002

A handwritten signature in black ink, appearing to read "Sean McGowan", written over a horizontal line.

Sean McGowan
Kathleen E. Kraft
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