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208 SOUTH LASALLE STREET - SUITE 1890  
CHICAGO, ILLINOIS 60604-1112  
TELEPHONE (312) 236-0204  
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225422

THOMAS F. MCFARLAND

July 30, 2009

By e filing

Anne K. Quinlan, Esq.  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W., Suite 100  
Washington, DC 20024

FILED

Re: Docket No. AB-1035, *Lake County, Oregon -- Adverse Discontinuance of Rail Service -- Modoc Railway and Land Company, LLC and Modoc Northern Railroad Company*

Dear Ms. Quinlan:

Hereby transmitted is an Application For Adverse Discontinuance of Service, for filing with the Board in the above referenced matter.

Very truly yours,

*Tom McFarland*

Thomas F. McFarland  
*Attorney for Applicant*

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**FILED**  
JUL 30 2009  
SURFACE  
TRANSPORTATION BOARD

225422

BEFORE THE  
SURFACE TRANSPORTATION BOARD

LAKE COUNTY, OREGON -- ADVERSE )  
DISCONTINUANCE OF RAIL SERVICE ) DOCKET NO.  
-- MODOC RAILWAY AND LAND ) AB-1035  
COMPANY, LLC AND MODOC )  
NORTHERN RAILROAD COMPANY )

**FILED FEE WAIVED**

APPLICATION FOR ADVERSE  
DISCONTINUANCE OF SERVICE

LAKE COUNTY, OREGON  
513 Center Street  
Lakeview, Oregon 97630

Applicant

JAMES E. BAILEY, III  
BAILEY & YARMO, LLP  
780 NW York Drive, Suite 104  
Bend, OR 97701  
(541) 317-9000

THOMAS F. McFARLAND  
THOMAS F. McFARLAND, P.C.  
208 South LaSalle Street, Suite 1890  
Chicago, IL 60604-1112  
(312) 236-0204  
(312) 201-9695 fax  
mcfarland@aol.com

Attorneys for Applicant

DATE FILED: July 30, 2009

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SURFACE  
TRANSPORTATION BOARD

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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LAKE COUNTY, OREGON -- ADVERSE	)	
DISCONTINUANCE OF RAIL SERVICE	)	DOCKET NO.
-- MODOC RAILWAY AND LAND	)	AB-1035
COMPANY, LLC AND MODOC	)	
NORTHERN RAILROAD COMPANY	)	

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**APPLICATION FOR ADVERSE  
DISCONTINUANCE OF SERVICE**

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Pursuant to the Board's decision in this proceeding served June 15, 2009, granting a partial waiver of the Board abandonment and discontinuance regulations and exemptions from statutory requirements, LAKE COUNTY, OREGON ("the County") hereby applies for a Board determination under 49 U.S.C. § 10903 that the present and future public convenience and necessity permit or require discontinuance of the authority of Modoc Railway and Land Company, LLC (MR&L) and Modoc Northern Railroad Company (MNRR) to operate over a 55.41-mile rail line between Milepost 456.89 at or near Alturas, California and Milepost 512.30 at or near Lakeview, Oregon owned by the County. (Alturas-Lakeville Line)<sup>1/</sup>. The facts in this

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<sup>1/</sup> In note 5 on page 2 of the Board's decision served June 15, 2009 that partially granted waivers of the Board's abandonment regulations and exemptions from statutory requirements, the Board stated that the modified certificate of public convenience and necessity issued to the County in a decision served April 24, 1988 in Finance Docket No. 33581, *Lake County Railroad - Modified Rail Certificate*, covered milepost numbers that differ from those involved in the present case, i.e., Milepost 458.60 in Alturas, CA to Milepost 513.05 in Lakeview, OR (54.45 miles). The County acknowledges the accuracy of those milepost numbers. However, this Application is required to adversely discontinue the operating authority of MR&L and MNRR provided for, apparently on a mistaken basis, in Finance Docket Nos. 34995 and 34996, both served on February 28, 2007, i.e., Milepost 456.89 in Alturas, CA to

(continued...)

Application are verified by Commissioner Brad Winters of the County, whose Verification is attached to this Application as Appendix 4.

### STATEMENT OF THE CASE

This proceeding is governed by a line of decisions that grant adverse discontinuances of operating authority where the owner of a rail line proposes to replace an operator after the operator's contractual or property right to operate over the line has expired or been lawfully terminated, but the operator does not cooperate to give up its operating authority. *See, e.g., Fore River R.R. Co. - Discon. Exempt. - Norfolk County, MA*, 8 I.C.C.2d 307 (1992); *Cheatham County Rail Authority, Applic. & Pet. for Adverse Discon.*, 1992 ICC LEXIS 224 (Docket No. AB-379X, decision served Nov. 4, 1992); *Jacksonville Port Auth. - Adverse Discon. - in Duval County, FL*, 1996 STB LEXIS 200 (Docket No. 469, decision served July 17, 1996); and *Tacoma Eastern Ry. Co. - Adverse Discon. of Oper. Applic. - a Line of the City of Tacoma in Pierce, Thurston, and Lewis, WA*, 1998 STB LEXIS 790 (Docket No. AB-548, decision served October 16, 1998).

When operators MR&L and MNRR<sup>2/</sup> breached their lease with the County and failed to cure the breach on contractual notice, the County lawfully terminated their lease of the rail line. The County then assumed operation of the rail line pursuant to its residual common carrier obligation through its Lake County Railroad division (LCR). When the operating authority of MR&L and MNRR is lawfully discontinued, the County intends to lease the rail line to LRY,

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<sup>1/</sup>(...continued)  
Milepost 512.30 in Lakeview, OR (55.41 miles).

<sup>2/</sup> The County's lease is with both MR&L and MNRR. MNRR is believed to be the railroad operating division of MR&L.

d.b.a. Lake Railway (Lake Ry.) for common carrier operation. Lake Ry. is currently operating the line as agent of LCR. MR&L and MNRR have not cooperated in discontinuance of their operating authority in conjunction with termination of their lease. That has necessitated the filing of this application for adverse discontinuance of their operating authority.

**HISTORY AND CURRENT STATUS  
OF THE ALTURAS-LAKEVIEW LINE**

The Alturas-Lakeview Line was constructed and operated for many years by Southern Pacific Transportation Company (SP). In 1985, SP was authorized to abandon the Line. See Docket No. AB-12 (Sub-No. 84), *Southern Pac. Transp. Co. -- Aband. -- in Modoc County, CA and Lake County, OR*, decision served Oct. 20, 1985.

The County acquired the Line from SP after its abandonment. Through its Railroad Commission, the County contracted with The Great Western Railway Company (GWR) to operate the Line pursuant to a modified certificate of public convenience and necessity. (Modified Certificate). See Finance Docket No. 30777, *The Great Western Railway Co. -- Modified Rail Certificate*, notice served Feb. 26, 1986.

The County terminated rail operations by GWR, effective November 1, 1997. Thereafter, the County commenced operation of the Line through its Lake County Railroad division (LCR) pursuant to a Modified Certificate. See Finance Docket No. 33581, *Lake County Railroad -- Modified Rail Certificate*, notice served April 24, 1998.

In 2007, the County leased the Line to MR&L and MNRR. See Finance Docket No. 34995, *Modoc Railway and Land Company, LLC -- Acq. & Oper. Exempt. -- in Lake County*,

OR, notice served Feb. 28, 2007, and Finance Docket No. 34996, *Modoc Northern Railroad Co. -- Acq. & Oper. Exempt. -- in Lake County, OR*, notice served Feb. 28, 2007.

In 2009, MR&L and MNRR materially breached their lease agreement with the County. After that breach was not cured within the notice period required by that lease, the County duly terminated that lease, effective May 7, 2009. The County has resumed operation of the Line pursuant to its residual common carrier authority, with LRY d.b.a. Lake Railway (Lake Ry.) acting as the County's agent for the provision of rail service on the Line.

It is necessary for the County to file an application for adverse discontinuance of rail service by MR&L and MNRR because those entities operated the Line pursuant to authority granted by the Board rather than pursuant to a Modified Certificate, and because MR&L and MNRR have not undertaken to file a notice of exemption in their own behalf for discontinuance of their rail service over the Line.

**INFORMATION REQUIRED BY 49 C.F.R. § 1152.22 EXCEPT AS WAIVED**

(a) *General.* (1) *Exact name of applicant.*

Applicant is Lake County, Oregon, 513 Center Street, Lakeview, OR 97630.

(2) *Whether applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, chapter 105.*

Applicant owns the Alturas-Lakeview Line. Applicant has residual common carrier authority to operate that Line pursuant to the lease of the Line to MR&L and MNRR. See Finance Docket Nos. 34996 and 34997, *supra*. Applicant seeks to terminate the federal operating authority of MR&L and MNRR in conjunction with replacing them with a different operator of the Rail Line.

(3) *Relief sought (abandonment of line or discontinuance of service).*

Applicant seeks a determination by the Board that the present and future public convenience and necessity permit or require discontinuance of the authority of MR&L and MNRR to operate over the Alturas-Lakeview Line.

(4) *Detailed map of the subject line on a sheet not larger than 8x10½ inches, drawn to scale, and with the scale shown thereon. The map must show, in clear relief, the exact location of the rail line to be abandoned or over which service is to be discontinued and its relation to other rail lines in the area, highways, water routes, and population centers.*

The required map is attached to this Application as Appendix 1.

(5) *Reference to inclusion of the rail line to be abandoned or over which service is to be discontinued on the carrier's system diagram map or narrative, in compliance with Sec. Sec. 1152.10 through 1152.13, and the date upon which such line was first listed on the system diagram map or included in the narrative in category 1 in accordance with Sec. 1152.10(b)(1). A copy of the line description which accompanies the system diagram map shall also be submitted.*

Requirement was waived in the Board's decision served June 15, 2009, at 3.

(6) *Detailed statement of reasons for filing application.*

The Application is being filed to terminate the authority of MR&L and MNRR to operate over the Line because they have breached material terms by which they leased the Line from the County. The County has duly terminated that lease. A replacement operator will be chosen by the County to operate the Line.

(7) *Name, title, and address of representative of applicant to whom correspondence should be sent.*

James E. Bailey, III  
Bailey & Yarmo, LLP  
780 NW York Drive, Suite 104  
Bend, OR 97701  
(541) 317-9000

Thomas F. McFarland  
Thomas F. McFarland, P.C.  
208 South LaSalle Street, Suite 1890  
Chicago, IL 60604-1112  
(312) 236-0204  
(312) 201-9695 fax  
mcfarland@aol.com

(8) *List of all United States Postal Service ZIP Codes that the line proposed for abandonment traverses.*

The Line traverses the following USPS ZIP codes:

Alturas, California	96101
Davis Creek, California	96108
New Pine Creek, Oregon	97635
Lakeview, Oregon	97630

(b) *Condition of properties. The present physical condition of the line including any operating restrictions and estimate of deferred maintenance and rehabilitation costs (e.g., number of ties that need replacing, miles of rail that need replacing and/or new ballast, bridge repairs or replacement needed, and estimated labor expenses necessary to upgrade the line to minimum Federal Railroad Administration class 1 safety standards). The bases for the estimates shall be stated with particularity, and workpapers shall be filed with the application.*

Requirement was waived in the Board's decision served June 15, 2009, at 3-4.

(c) *Service provided. Description of the service performed on the line during the Base Year (as defined by Sec. 1152.2(c)), including the actual:*

- (1) *Number of trains operated and their frequency.*
- (2) *Miles of track operated (include main line and all railroad- owned sidings).*
- (3) *Average number of locomotive units operated.*
- (4) *Total tonnage and carloads by each commodity group on the line.*
- (5) *Overhead or bridge traffic by carload commodity group that will not be retained by the carrier.*
- (6) *Average crew size.*
- (7) *Level of maintenance.*
- (8) *Any important changes in train service undertaken in the 2 calendar years immediately preceding the filing of the application.*
- (9) *Reasons for decline in traffic, if any, in the best judgment of applicant.*

Requirement was waived in the Board's decision served June 15, 2009, at 3.

(d) *Revenue and cost data.*

(1) *Computation of the revenues attributable and avoidable costs for the line to be abandoned for the Base Year (as defined by Sec. 1152.2(c) and to the extent such branch level data are available), in accordance with the methodology prescribed in Sec. Sec. 1152.31 through 1152.33, as applicable, and submitted in the form called for in Sec. 1152.36, as Exhibit 1.*

(2) *The carrier shall compute an estimate of the future revenues attributable, avoidable costs and reasonable return on the value for the line to be abandoned, for the*

*Forecast Year (as defined in Sec. 1152.2(h)) in the form called for in Exhibit 1. The carrier shall fully support and document all dollar amounts shown in the Forecast Year column including an explanation of the rationale and key assumptions used to determine the Forecast Year amounts.*

*(3) The carrier shall also compute an "Estimated Subsidy Payment" for the Base Year in the form called for in Exhibit 1 and an alternate payment to reflect:*

*(i) Increases or decreases in attributable revenues and avoidable costs projected for the subsidy year; and*

*(ii) An estimate, in reasonable detail, of the cash income tax reductions, Federal and state, to be realized in the subsidy year. The bases for the adjustment, e.g., rate increase, changes in traffic level, necessary maintenance to comply with minimum Federal Railroad Administration class 1 safety standards, shall be stated with particularity.*

Requirement was waived in the Board's decision served June 15, 2009, at 3.

*(e) Rural and community impact.*

*(1) The name and population (identify source and date of figures) of each community in which a station on the line is located.*

There are no stations on the Line. The Line traverses the following communities, having the populations shown.

Alturas, California	Population 2,892 (2000 Census)
Davis Creek, California	Population apprx. 100 (Wikipedia)
Lakeview, Oregon	Population 2,474 (2000 Census)

*(2) Identification of significant users, as defined in Sec. 1152.2(l), by name, address, principal commodity, and by tonnage and carloads for each of the 2 calendar years immediately preceding the filing of the abandonment or discontinuance application, for that part of the current year for which information is available, and for the Base Year. In addition, the total tonnage and carloads for each commodity group originating and/or terminating on the line segment shall also be shown for the same time periods as those of the significant users.*

The name, address, principal commodity, and carloads shipped over the Line in 2008 for the two shippers on the Line are<sup>3/</sup>:

Cornerstone Industrial Minerals  
Corporation, USA  
96078 Industrial Lane  
P.O. Box 1278  
Lakeview, OR 97630  
Principal commodity - perlite  
2008 carloads - 858

The Collins Companies  
1600 Missouri Avenue  
P.O. Box 1340  
Lakeview, OR 97630  
Principal commodity - forest products  
2008 carloads - 170

*(3) General description of the alternate sources of transportation service (rail, motor, water, air) available, and the highway network in the proximate area.*

The Line is paralleled by US Highway 395 for its entire length. US Highway 395 is an all-weather major highway which connects with Interstate Highway I-80 at Reno, Nevada, and with Interstate Highway I-84 at Pendleton, Oregon. Numerous motor common carriers and specialized motor carriers operate over US Highway 395 in the area near the Line. In the event of abandonment of the Line, those motor carriers would be available to transport traffic currently moving over the Line. In addition, transloading from truck to rail is available at Klamath Falls, Oregon, via Oregon Highway 140.

*(4) Statement of whether the properties proposed to be abandoned are appropriate for use for other public purposes, including roads or highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. If the applicant is aware of any restriction on the title to the property, including any reversionary interest, which would affect the transfer of title or the use of property for other than rail purposes, this shall be disclosed.*

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<sup>3/</sup> Attached to this Application as Appendix 3-A and 3-B, respectively, are copies of letters from Cornerstone and Collins.

In Applicant's view, it is unlikely that the Line would be appropriate for use for other public purposes in the event of abandonment. In any event, continued rail use is contemplated by a new rail operator.

*(f) Environmental impact. The applicant shall submit information regarding the environmental impact of the proposed abandonment or discontinuance in compliance with Sec. 1105.7 and 1105.8. If certain information required by the environmental regulations duplicates information required elsewhere in the application, the environmental information requirements may be met by a specific reference to the location of the information elsewhere in the application.*

Requirement was waived in the Board's decision served June 15, 2009 at 4.

*(g) Passenger service. If passenger service is provided on the line, the applicant shall state whether appropriate steps have been taken for discontinuance pursuant to the Rail Passenger Service Act. (45 U.S.C. 501 et seq.)*

Not applicable. Passenger service is not provided.

*(h) Additional information. The applicant shall submit such additional information to support its application as the Board may require.*

No additional information is deemed necessary.

*(i) Draft Federal Register notice. The applicant shall submit a draft notice of its application to be published by the Board. In addition to the regular number of copies that must be filed with the Board, the applicant must submit a copy of the draft notice as data contained on a computer diskette compatible with the Board's current word processing capabilities. The Board will publish the notice in the Federal Register within 20 days of the application's filing with the Board.*

The required draft Federal Register notice, as modified in the manner approved by the Board in the decision served June 15, 2009, at 5, and including a statement that the interests of railroad employees will be protected by appropriate labor conditions, is attached to this Application as Appendix 2.

*(j) Verification. The original application shall be executed and verified in the form set forth below by an officer of the carrier having knowledge of the facts and matters relied upon.*

The required Verification of Lake County Commissioner Brad Winters is attached to this Application as Appendix 4.

Pursuant to the requirements of 49 C.F.R. § 1152.24(b), as modified in the Board's decision served June 15, 2009, at 5, an affidavit attesting to compliance with the notice requirements of 49 C.F.R. § 1152.20 is attached to this Application as Appendix 5.

**CONCLUSION AND REQUESTED RELIEF**

WHEREFORE, for the reasons stated, the Board should find that the present and future public convenience and necessity permit and require discontinuance of the authority of MR&L and MNRR to operate over the Line.

Respectfully submitted,

LAKE COUNTY, OREGON  
513 Center Street  
Lakeview, Oregon 97630

Applicant

<sup>TM</sup>  
James E. Bailey, III

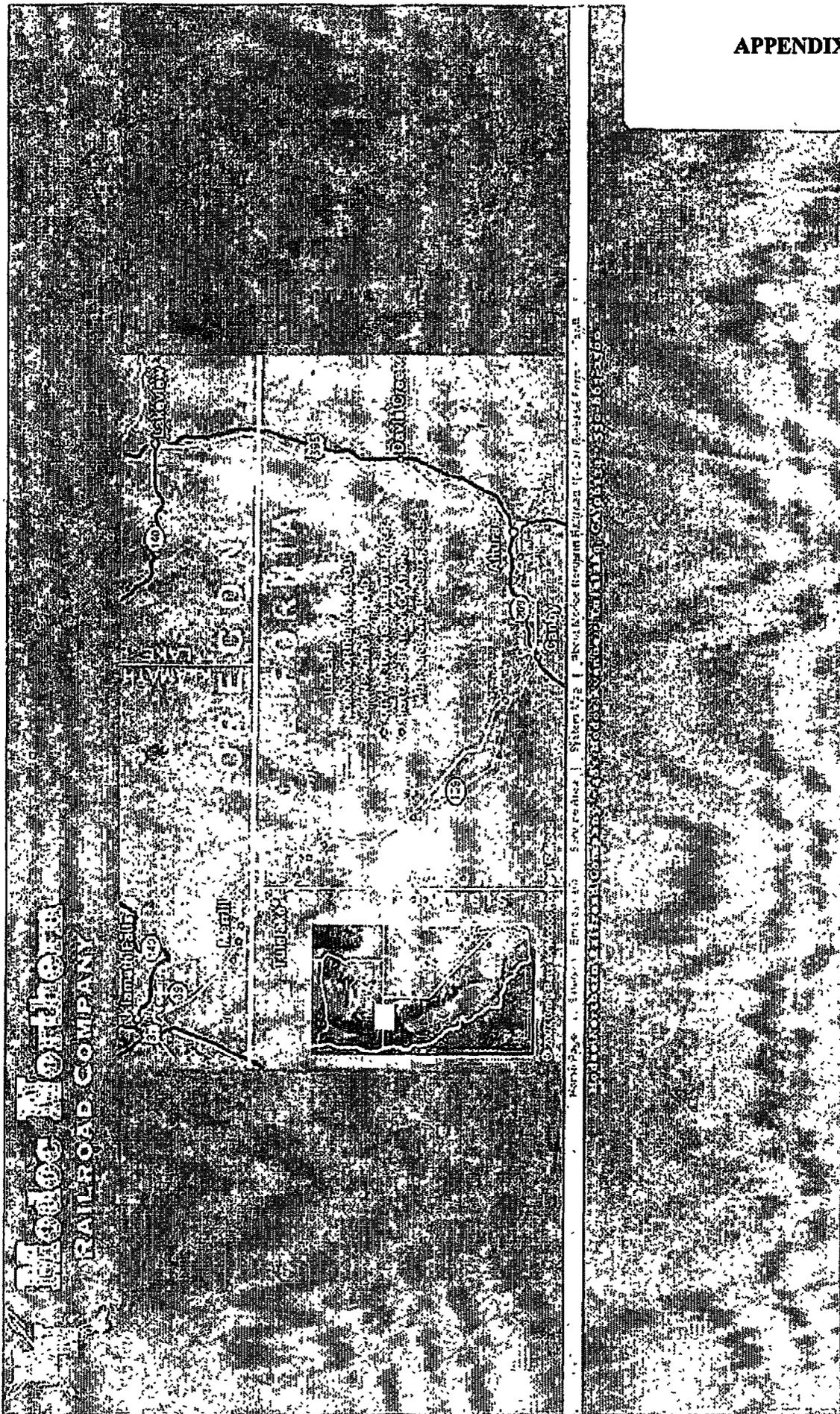
JAMES E. BAILEY, III  
BAILEY & YARMO, LLP  
780 NW York Drive, Suite 104  
Bend, OR 97701  
(541) 317-9000

Thomas F. McFarland

THOMAS F. McFARLAND  
THOMAS F. McFARLAND, P.C.  
208 South LaSalle Street, Suite 1890  
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mcfarland@aol.com

Attorneys for Applicant

DATE FILED: July 30, 2009



Draft Federal Register Notice

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C. 20423

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STB Docket No. AB-1035

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**LAKE COUNTY, OREGON  
-- ADVERSE DISCONTINUANCE OF RAIL SERVICE --  
MODOC RAILWAY AND LAND COMPANY, LLC AND  
MODOC NORTHERN RAILROAD COMPANY**

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LAKE COUNTY, OREGON (the County) gives notice that on July 30, 2009, it filed with the Surface Transportation Board (“the Board”), Washington, D.C. 20423, an application seeking adverse discontinuance of rail service provided by Modoc Railway and Land Company, LLC (MR&L) and Modoc Northern Railroad Company (MNRR) over a 55.41-mile rail line between Milepost 456.89 at or near Alturas, California and Milepost 512.30 at or near Lakeview, Oregon (the Rail Line). The Rail Line is situated in U.S. Postal Zip Codes 96101, 96108, 97630 and 97635. The Rail Line does not have stations. The reasons for the proposed discontinuance is non-performance of material provisions of their lease with the County by MR&L and MNRR, resulting in termination of that lease.

There is no documentation in the County’s possession that indicates that the line contains federally granted rights-of-way. Any such documentation relating to this discontinuance in the Applicant’s possession will be made available promptly to those requesting it. The application can be viewed on the Board’s webpage, *www.stb.dot.gov*, or a copy can be secured from

## APPENDIX 2

Applicant's counsel, whose name and address appear below. The Applicant's entire case for discontinuance was filed with the application.

Any interested person may file with the Surface Transportation Board its protest of, or written comments concerning, the proposed discontinuance identifying it by the proceeding's docket number. These filings are due 45 days after the application is filed. Persons who may oppose the discontinuance, but who do not wish to participate fully in the process by appearing at any oral hearings or by submitted verified statements of witnesses containing detailed evidence, should file comments. Persons opposing the proposed discontinuance that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following: (1) the protestant's name, address and business, (2) the protestant's interest in the proceeding, including their use of the line or the public interest represented, (3) the protestant's reasons for protesting or commenting on the proposed discontinuance, including their reliance on the involved service, and (4) any rebuttal of material submitted in the application.

Protests or comments need to be notarized or verified, and an unbound original and ten copies are required to be filed with the Secretary of the Board, at 395 E Street, S.W., Suite 100, Washington, DC 20024, together with a certificate of service attesting that copies of the comments or protests have been served on Applicant's counsel in this matter, Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112, phone 312-236-0204, fax 312-201-9695, mcfarland@aol.com. Written comments and protests must indicate the proceeding designation STB AB-1035.

## APPENDIX 2

Except as otherwise set forth in 49 C.F.R. § 1152, each document filed with the Board must be served on all parties to the discontinuance proceeding. Protests and comments will be considered by the Board in determining what disposition to make of the application. A commenting party or protestant may participate in the proceeding as its interest may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after that application is filed.

Those parties filing protests to the proposed discontinuance should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to 49 C.F.R. § 1152.25.

The interests of railroad employees will be protected by the labor protective conditions imposed in *Oregon Short Line R. Co. - Abandonment - Goshen*, 360 I.C.C. 91 (1979).

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Service at (202) 245-0230 or refer to the text of the discontinuance regulations at 49 C.F.R. § 1152.1, *et seq.*



APPENDIX 3-A

P.O. Box 1287 • 96078 Industrial Lane • Lakeview, Oregon 97630  
Telephone (541) 947-5755 • Fax (541) 947-5770  
[www.cornerstonemineral.com](http://www.cornerstonemineral.com)

July 18, 2009

Lake County Commissioners  
513 Center Street  
Lakeview, Oregon 97630

Gentlemen:

At this time on behalf of all Cornerstone Industrial Minerals employees, suppliers, and vendors we would like to offer our continued support for your decision to offer Lake Rail short line operator the opportunity to provide the rail service to our business. We were in desperate need of a promising change for the better.

We remain.

Respectfully yours,

A handwritten signature in black ink that reads 'Mick Stanley'. The signature is written in a cursive style with a large, sweeping 'M' and 'S'.

Mick Stanley  
President/Owner



Lakeview Sawmill

Date: 7/16/09

To: Whom It May Concern

Re: Lake Rail

We here at Collins Pine Company in Lakeview, would like to express support for Lake Rail. They have provided great service over the last few months. When we call with a question, we generally have an answer the same day. Lake Rail has also been very good about keeping in contact with us on the days that they are going to pull our cars.

Lake Rail has been a big improvement over the prior carrier, who was unreliable in pulling cars when scheduled and seldom returned phone calls. In addition, several derailments over the last couple of years caused problems with our customers receiving their lumber on time. This produced a situation where our sales team had to consider alternatives to rail delivery for our customers that required the lumber to be delivered by rail, creating a competitive disadvantage in moving our inventory.

Collins Pine Company would again like to express support for Lake Rail to be the new operator for Lake County. The good service and support for this line is vital to our company.

Sincerely,

Dee Brown  
Manager Lakeview Operations



**AFFIDAVIT**

Thomas F. McFarland, Attorney for Applicant, Lake County, Oregon, hereby attests that the notice requirement of 49 C.F.R. § 1152.20 was complied with as follows:

(1) The Notice of Intent to file a discontinuance application was filed with the Board and was served on the entities specified in 49 C.F.R. § 1152.20(a)(2) on July 1, 2009;

(2) The Notice of Intent was published for three successive and consecutive weeks in the following newspapers (see attached proof and affidavit of publication):

<b><u>Publication</u></b>	<b><u>Publication Dates</u></b>
Lake County Examiner	July 1, 8, 15, 2009
The Modoc County Record	July 2, 9, 16, 2009

(3) There are no agency stations on the Line at which the Notice of Intent could be posted; and

(4) The filing of an Environmental and Historic Report has been waived by the Board in its decision served on June 15, 2009.

*Thomas F. McFarland*

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Thomas F. McFarland

# Affidavit of Publication

STATE OF OREGON, }  
 County of Lake, } ss.

I, Matilda W. Flynn, being first duly sworn, depose and say that I am the

General Manager  
 Publisher, Editor or Business Manager

of the Lake County Examiner, a newspaper of general circulation printed and published at Lakeview in the aforesaid county and

state, as defined by Chapter 193ORS, that Notice of Intent To File An Application For Adverse

Discontinuance of Rail Service,

printed copy of which is hereto annexed, was published in the entire issue of said newspaper for Three successive and consecutive weeks in the following issues:  
July 7, 8, 15, 2009

Matilda W. Flynn

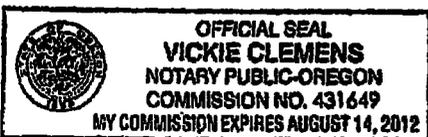
Subscribed and sworn to before me this

15<sup>th</sup> day of July  
2009

Vickie Clemens

Notary Public for Oregon

(My commission expires 8-14-2012)



## NOTICE OF INTENT TO FILE AN APPLICATION FOR ADVERSE DISCONTINUANCE OF RAIL SERVICE

LAKE COUNTY, OREGON ("the County") gives notice that on or about July 10, 2009, it intends to file with the Surface Transportation Board ("the Board"), Washington, D.C. 20423, an application seeking adverse discontinuance of the rail service of Modoc Railway and Land Company, LLC (MR&L) and Modoc Northern Railroad Company (MNR) over a 55.41-mile rail line between Milepost 456.89 at or near Alturas, California and Milepost 512.30 at or near Lakeview, Oregon (Alturas-Lakeview Line). The affected railroad line is situated in U.S. Postal Zip Codes 96101, 96108, 97630 and 97635. The Line does not have stations. The reason for the proposed discontinuance is non-performance of material provisions of their lease with the County by MR&L-MNR, resulting in termination of that lease. The proceedings have been docketed as STB Docket No. AB-1035.

There are no documents in the County's possession that indicate that the Line contains federally granted rights-of-way. Any such documentation that might come into the County's possession will be made available promptly to those requesting it.

The application, when filed, can be viewed following its filing on the Board's webpage, www.stb.dot.gov, or a copy can be secured from the County's counsel, whose name and address appear below. The application will include the County's entire case for discontinuance. Any interested person, after the application is filed on or about July 10, 2009, may file with the Surface Transportation Board its protest of

or written comments concerning, the proposed discontinuance identifying it, by the proceeding's docket number. These filings are due 45 days from the date of filing of the application.

Persons who may oppose the discontinuance, but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence, should file comments. Persons opposing the proposed discontinuance that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following: (1) the protestant's name, address and business, (2) the protestant's interest in the proceeding, including their use of the line or the public interest represented, (3) the protestant's reasons for protesting or commenting on the proposed discontinuance, including their reliance on the involved service, and (4) any rebuttal of material submitted in the application. Protests or comments need to be notarized or verified, and ten copies are required to be filed with the Secretary of the Board, at 395 E Street, S.W., Suite 100, Washington, DC, 20024, together with a certificate of service attesting that copies of the comments or protests have been served on Applicant's counsel in this matter, Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604, phone 312 236-0204, fax 312 201 9695; mcfarland@aol.com. Except as otherwise set forth in C.F.R. § 1152, each document filed with the Board must be served on all parties to the discontinuance proceeding.

Protests and comments will be considered by the Board in determining what disposition to make of the application

A commenting party or protestant may participate in the proceeding as its interests may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after that application is filed.

Those parties filing protests to the proposed discontinuance should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to C.F.R. § 1152.25.

The interests of railroad employees who might be adversely affected by the proposed discontinuance of rail service will be protected by the employee protective conditions imposed in Oregon Short Line R. Co. - Abandonment - Goshen, 360 I.C. 91 (1979).

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Service at (202) 245-0211, or refer to the text of the discontinuance regulations at 49 C.F.R. § 1152.25 et seq.

#3859

# PROOF OF PUBLICATION

Modoc County Record  
P.O. Box 531  
Alturas, CA 96101  
(530) 233-2632

State of California  
County of Modoc

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years; I am not a party to or interested in the notice published.

I am the publisher of the *Modoc County Record*, a newspaper of general circulation, printed and published weekly in the City of Alturas, County of Modoc.

The *Modoc County Record* has been adjudged a newspaper of general circulation by the Superior Court of the County of Modoc, State of California, under the date of July 30, 1958, Case Number 6356.

The notice of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

July 2, 9, AND 16,

All in the year 2009

I certify (or declare) under the penalty of perjury that the following is true and correct:

Dated at Alturas, California, this

16<sup>th</sup> day of JULY, 2009

Joe A. Halliday

PAGE 1 OF 2

NOTICE OF INTENT TO FILE AN APPLICATION FOR ADVERSE DISCONTINUANCE OF RAIL SERVICE LAKE COUNTY OREGON (the County) gives notice that on or about July 10, 2009, it intends to file with the Surface Transportation Board (the Board), Washington, D.C. 20423, an application seeking adverse discontinuance of the rail service of Modoc Railway and Land Company, LLC (MR&L) and Modoc Northern Railroad Company (MNRR), over a 55.41 mile rail line between Milepost 456.89 at or near Alturas, California and Milepost 512.30 at or near Lakeview, Oregon (Alturas-Lakeview Line). The affected railroad line is situated in U.S. Postal Zip Codes 96101, 96108, 97630, and 97635. The Line does not have stations. The reason for the proposed discontinuance is non-performance of material provisions of their lease with the County by MR&L-MNRR, resulting in termination of that lease. The proceedings have been docketed as STB Docket No. AB-1036. There are no documents in the County's possession that indicate that the Line contains federally granted rights-of-way. Any such documentation that might come into the County's possession will be made available promptly to those requesting it. The application, when filed, can be viewed following its filing on the Board's webpage, [www.stb.dot.gov](http://www.stb.dot.gov), or a copy can be secured from the County's counsel, whose name and address appear below. The application will include the County's

entire case for discontinuance. Any interested person, after the application is filed on or about July 10, 2009, may file with the Surface Transportation Board its protest of, or written comments concerning, the proposed discontinuance identifying it by the proceedings docket number. These filings are due 45 days from the date of filing of the application. Persons who may oppose the discontinuance, but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence, should file comments. Persons opposing the proposed discontinuance that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following: (1) the protestant's name, address and business; (2) the protestant's interest in the proceeding including their use of the line or the public interest represented; (3) the protestant's reasons for protesting or commenting on the proposed discontinuance, including their reliance on the involved service, and (4) any rebuttal of material submitted in the application. Protests or comments need to be notarized or verified and an unbound original and ten copies are required to be filed with the Secretary of the Board at 395 E Street, S.W., Suite 100, Washington, DC 20024, together with a certificate of service attesting that copies of the comments or protests have been served on Applicant's counsel in this matter, Thomas T. McFarland,

Thomas F. McFarland,  
P.C.: 208 South LaSalle  
Street, Suite 1890, Chicago,  
IL 60604-1112, phone  
312 236-0204, fax 312 201  
9695, mcfarland@aol.com.

Except as otherwise set  
forth in 49 C.F.R. § 1152,  
each document filed with  
the Board must be served  
on all parties to the dis-  
continuance proceeding.  
Protests and comments  
will be considered by the  
Board in determining  
what disposition to make  
of the application.

A commenting party or  
protestant may partici-  
pate in the proceeding as  
its interests may appear.

If an oral hearing is de-  
sired, the requester must  
make a request for an oral  
hearing and provide rea-  
sons why an oral hearing  
is necessary. Oral hearing  
requests must be filed with  
the Board no later than 10  
days after that application  
is filed.

Those parties filing pro-  
tests to the proposed dis-  
continuance should be  
prepared to participate  
actively either in an oral  
hearing or through the  
submission of their entire  
opposition case in the form  
of verified statements and  
arguments at the time  
they file a protest. Par-  
ties seeking information  
concerning the filing of  
protests should refer to 49  
C.F.R. § 1152.25.

The interests of railroad  
employees who might be  
adversely affected by the  
proposed discontinuance of  
rail service will be protect-  
ed by the employee protec-  
tive conditions imposed in  
*Oregon Short Line R. Co.  
Abandonment*, Goshen,  
360 I.C.C. 91 (1979).

Persons seeking further  
information concerning  
discontinuance procedures  
may contact the Board's  
Office of Public Service  
at (202) 245-0230 or refer  
to the text of the discon-  
tinuance regulations at 49  
C.F.R. § 1152.1, et seq.

Published in the *Modoc  
County Record* on July 2,  
9, and 16, 2009.

**CERTIFICATE OF SERVICE**

Pursuant to 49 C.F.R. § 1152.24(c), Applicant hereby certifies that service of the Application was made on July 30, 2009, by first-class, U.S. mail postage prepaid, on the following:

Mr. Don Blansett  
Modoc Land and Railway, LLC  
P.O. Box 819  
Tulelake, CA 96134

Mr. Ed Almaguer  
Modoc Northern Railroad  
4608 W 1150 S  
Ogden, UT 84404

Hon. Arnold Schwarzenegger, Governor  
State of California  
State Capitol Building  
Sacramento, CA 95814

Hon. Ted Kulongoski, Governor  
State of Oregon  
160 State Capitol  
900 Court Street  
Salem, OR 97301-4047

California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

California Department of Transportation  
P.O. Box 942873  
Sacramento, CA 94273-0001

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

The Collins Companies  
P.O. Box 1340  
1600 Missouri Avenue  
Lakeview, OR 97630

Cornerstone Industrial Minerals  
Corporation, U.S.A.  
96078 Industrial Lane  
P.O. Box 1278  
Lakeview, OR 97630

In addition, a copy of the Application is available for public inspection at the following locations:

Lake County, Oregon  
513 Center Street  
Lakeview, OR 97630

James E. Bailey, III, Esq.  
Bailey & Yarmo  
780 N.W. York Drive, Suite 104  
Bend, OR 97701

Thomas F. McFarland, Esq.  
Thomas F. McFarland, P.C.  
208 S. LaSalle St, #1890  
Chicago, IL 60604-1112

*Thomas F. McFarland*

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Thomas F. McFarland