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**BEFORE THE**
**SURFACE TRANSPORTATION BOARD**

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| Oregon International Port of Coos Bay – Feeder Line Application – Coos Bay Line of the Central Oregon & Pacific Railroad, Inc. | Finance Docket No 35160 |

# CENTRAL OREGON & PACIFIC RAILROAD, INC.'S PETITION FOR TECHNICAL CORRECTION OF DECISION


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Dated November 10, 2008

**BEFORE THE**
**SURFACE TRANSPORTATION BOARD**

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|---|---|
| Oregon International Port of Coos Bay – Feeder Line Application – Coos Bay Line of the Central Oregon & Pacific Railroad, Inc. | Finance Docket No 35160 |

**CENTRAL OREGON & PACIFIC RAILROAD, INC.'S**
**PETITION FOR TECHNICAL CORRECTION OF DECISION**

The Central Oregon & Pacific Railroad, Inc. ("CORP") respectfully submits this Petition For Technical Correction of the decision served by the Board in the above-captioned proceeding on October 31, 2008 (the "*October 31 Decision*").

In the *October 31 Decision*, the Board rejected the land valuation evidence submitted by the Oregon International Port of Coos Bay ("Port") and "accepted CORP's land value as the best evidence of record." *October 31 Decision* at 14 However, the Board stated that "CORP made an error in its discounted cash flow calculations in determining the gross potential sales at the beginning of year three." *Id* Based upon that finding, the Board reduced the NLV of the right-of-way land from $7,230,863 to $6,771,878, a difference of $458,985.

Upon reviewing the Board's workpaper underlying this adjustment to CORP's land valuation (which is attached as Exhibit 1), it appears that the Board inadvertently failed to include in its calculation of the gross potential sales at the beginning of Year Three (and subsequent years) the sales that were deferred in Year One and Year Two under the discounted cash flow methodology employed by CORP witness Rex. Witness Rex explained his discounted cash flow methodology as follows·

> Given the length of the corridor and number of parcels, the sellout period anticipated by a typical buyer of the entire corridor would be 10 years. Typically, the expectation is that the sales volume would be equally distributed over the sellout period On the other hand, the current downturn in the real estate market, especially in

> the residential segment, would impact the initial rate of sales. <u>To adequately reflect current economic conditions, it is assumed that the first-year volume would be 50% of a typical year, and the second-year volume would be 75%</u>. Because of an anticipated slow start, the sellout period is extended an additional year to 11 years

Response of CORP to Feeder Line Application, August 29, 2008, V S. Rex, Attachment 1 at 39 (emphasis added)

In order to implement this methodology, witness Rex first divided the total ATF value of gross potential sales ($24,561,610) by 11, to arrive at an assumed gross potential sales for a "typical" year during the sellout period of $2,232,874. *See* Exhibit 2, V S Rex at 2. Then, in order to take account of his assumption that sales volume in Year 1 would be only 50% of a typical year, witness Rex divided the assumed gross potential sales for that year by 2, resulting in Year 1 gross potential sales of $1,116,437 ($2,232,874 / 2 = $1,116,437). Witness Rex likewise reduced the gross potential sales volume for Year 2 by 25%, to $1,674,655 ($2,232874 x .75 = $1,674,655), to reflect his assumption that Year 2 sales volume would be only 75% of that in a typical year. *Id* at 2-3

For Years 3 through 11, witness Rex assumed that unsold property remaining as of the beginning of Year 3 ($24,561,610 less $1,116,437 less $1,674,655) would be sold on a pro-rata basis (with land value assumed to increase by 1% per year) In other words, the gross potential sales occurring in each year over the final 9 years of the analysis included not only the volume of sales assumed to occur in a typical year, but also a pro rata share of the sales volume that had been deferred in Years and 1 and 2 ($1,116,437 in Year 1 plus $ 558,219 in Year 2, or $1,674,656). Including those deferred sales in Years 3 through 11 is necessary to properly account for the sale of the entire $24,561,610 in ATF value over the eleven-year discounted cash flow period. *See* Exhibit 2, V.S. Rex at 2-3.

The workpapers underlying the Board's *October 31 Decision* indicate that, like witness Rex, the Board adopted a total ATF value of $24,561,610, an eleven-year sellout period, and developed an assumed gross sales volume of $ 2,232,874 per year ($24,561,610 / 11 = $2,232,873.64). *See* Exhibit 1 (STB Workpaper provided to CORP counsel via email on November 4, 2008.) Like witness Rex, the Board also reduced the assumed gross sales volume for Year 1 and Year 2 by 50% and 25%, respectively. *See* Exhibit 1. However, it does not appear that the Board's analysis added back in (or otherwise took account of) the sales that were deferred in Years 1 and 2 at any point during the remaining 9 years of the sellout period As a result, the Board's discounted cash flow analysis accounts for gross sales over the entire sellout period of only $22,886,954 – or $1,674,655 less than the total ATF gross sales value of $24,561,610 estimated by witness Rex and adopted by the Board in its analysis – *see* Exhibit 1. Under the Board's calculations, the dollar volume of ATF value deferred in Years 1 and 2 is not merely deferred, but is excluded altogether This omission (which appears to be inadvertent) resulted in a reduction in the total sales volume over the 11-year sellout period of $1,674,655, and a corresponding reduction in the NLV of land underlying the Coos Bay line of $458,985 ($7,230,863 - $6,771,878 = $458,985).

The reduction in gross sales volume of 50% and 25%, respectively, in Year 1 and Year 2 was premised on witness Rex's testimony that "the current downturn in the real estate market, especially in the residential segment, would impact the initial rate of sales " In other words, witness Rex assumed that current economic conditions would affect the rate of property sales during the first two years of his analysis, but not the volume of property ultimately sold (Both witness Rex and the Board assumed elsewhere that only 85% of the gross potential sales volume would, in fact, be sold. An adjustment to reflect that assumption is reflected elsewhere in the

Board's workpaper.) The Board's calculations result in the loss of $1,674,655 in gross sales, and a corresponding reduction in the NLV of $458,985.

Therefore, CORP respectfully requests that the Board correct the *October 31 Decision* to account for the full ATF gross sales volume of $24,561, 610 assumed by both witness Rex and (according to its workpaper) by the Board. Specifically, the Board should recalculate the land NLV of the Coos Bay line to include the $1,674,655 in gross potential sales volume deferred in Years 1 and 2 Such recalculation will result in an NLV for land of $7,230,863 rather than $6,771,878

Respectfully submitted,

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(561) 994-6015

*Counsel for Central Oregon & Pacific Railroad, Inc*

Dated: November 10, 2008

## CERTIFICATE OF SERVICE

I hereby certify that I have caused the Central Oregon & Pacific Railroad, Inc.'s Petition For Technical Correction of Decision to be served by hand-delivery this 10th day of November 2008 on.

Sandra Brown
Troutman Sanders
401 Ninth Street, N.W.
Washington, D.C. 20004-2134

and by first-class mail, postage prepaid, to all parties of record.

Terence M. Hynes

# EXHIBIT 1

**FD-35160** **CORP's response to Feeder Line Application**

$24,561,610 00 total ATF
$2,232,873 64 total ATF per year basis

| | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| gross potential sales | | $1,116,437 | $1,691,402 | $2,465,669 | $2,490,326 | $2,515,229 | $2,540,381 | $2,565,785 | $2,591,443 | $2,617,357 | $2,643,531 | $2,669,966 |
| percent sold | | 85% | 85% | 85% | 85% | 85% | 85% | 85% | 85% | 85% | 85% | 85% |
| likely sales income | | $948,971 | $1,437,692 | $2,095,819 | $2,116,777 | $2,137,945 | $2,159,324 | $2,180,917 | $2,202,727 | $2,224,753 | $2,247,001 | $2,269,471 |
| sales costs | 6% | $56,938 | $86,261 | $125,749 | $127,007 | $128,277 | $129,559 | $130,855 | $132,164 | $133,485 | $134,820 | $136,168 |
| net sales | | $892,033 | $1,351,430 | $1,970,070 | $1,989,770 | $2,009,668 | $2,029,764 | $2,050,062 | $2,070,563 | $2,091,268 | $2,112,181 | $2,133,303 |
| discounted cash flow | 18 8% | $750,870 | $957,548 | $1,174,985 | $998,935 | $849,263 | $722,016 | $613,835 | $521,863 | $443,672 | $377,196 | $320,680 |

| | | |
|---|---|---|
| present value | $7,730,863 | sum of cash flows at 18 8% |
| less timber rights | -$500,000 | |
| estimate of NLV | $7,230,863 | |

**STB Recalculations**
$24,561,610 00 total ATF
$2,232,873 64 total ATF per year basis

| | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| gross potential sales | | $1,116,437 | $1,691,402 | $2,277,754 | $2,300,532 | $2,323,537 | $2,346,773 | $2,370,240 | $2,393,943 | $2,417,882 | $2,442,061 | $2,466,482 |
| percent sold | | 85% | 85% | 85% | 85% | 85% | 85% | 85% | 85% | 85% | 85% | 85% |
| likely sales income | | $948,971 | $1,437,692 | $1,936,091 | $1,955,452 | $1,975,007 | $1,994,757 | $2,014,704 | $2,034,851 | $2,055,200 | $2,075,752 | $2,096,509 |
| sales costs | 6% | $56,938 | $86,261 | $116,165 | $117,327 | $118,500 | $119,685 | $120,882 | $122,091 | $123,312 | $124,545 | $125,791 |
| net sales | | $892,033 | $1,351,430 | $1,819,926 | $1,838,125 | $1,856,506 | $1,875,071 | $1,893,822 | $1,912,760 | $1,931,888 | $1,951,207 | $1,970,719 |
| discounted cash flow | 18 8% | $750,870 | $957,548 | $1,085,436 | $922,804 | $784,538 | $666,990 | $567,054 | $482,091 | $409,859 | $348,449 | $296,240 |

| | | |
|---|---|---|
| present value | $7,271,878 | sum of cash flows at 18 8% |
| less timber rights | -$500,000 | |
| estimate of NLV | $6,771,878 | |

CORP's calculation error occurs when they calculate the gross potential sales for year 3
The year 3 value should be the initial total ATF per year basis times the 101% appreciation in land value each year for the two preceding years

# EXHIBIT 2

**BEFORE THE**
**SURFACE TRANSPORTATION BOARD**

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|---|---|
| Oregon International Port of Coos Bay – Feeder Line Application – Coos Bay Line of the Central Oregon & Pacific Railroad, Inc. | Finance Docket No 35160 |

**VERIFIED STATEMENT OF CHARLES W. REX III**

My name is Charles W. "Sandy" Rex III I am co-owner of RMI Midwest ("RMI"), a firm specializing in real estate appraisal. I am the same Sandy Rex who previously submitted a verified statement in this proceeding. My business address is 1200 Central Avenue, Suite 330, Wilmette, Illinois 60091 My background and qualifications, which include more than thirty-four years of experience in real estate appraising, specializing in the valuation and analysis of railroad corridors and other rail properties, were described in my prior testimony.

The purpose of this Verified Statement is to bring to the Board's attention a calculation error relating to the NLV of land set forth in the Board's *October 31 Decision*. In the *October 31 Decision*, the Board "accepted CORP's land value as the best evidence of record." *October 31 Decision* at 14 However, the Board also found that "CORP made an error in its discounted cash flow calculations in determining the gross potential sales at the beginning of year three " *Id* Based upon its recalculation of the gross potential sales at the beginning of Year 3 (and subsequent years), the Board reduced the NLV of the right-of-way land from $7,230,863 to $6,771,878, a difference of $458,985

Upon reviewing the Board's workpaper underlying this adjustment (which is attached as Exhibit 1 to CORP's Petition), it appears that the Board inadvertently failed to include in its calculation of the gross potential sales at the beginning of Year Three (and subsequent years) the sales that I deferred in Year One and Year Two under the discounted cash flow methodology set forth in my Verified Statement filed on August 29, 2008. In that testimony, I explained my discounted cash flow methodology as follows:

> Given the length of the corridor and number of parcels, the sellout period anticipated by a typical buyer of the entire corridor would be 10 years Typically, the expectation is that the sales volume would be equally distributed over the sellout period. On the other hand, the current downturn in the real estate market, especially in the residential segment, would impact the initial rate of sales <u>To adequately reflect current economic conditions, it is assumed that the first-year volume would be 50% of a typical year, and the second-year volume would be 75%</u>. Because of an anticipated slow start, the sellout period is extended an additional year to 11 years

Response of CORP to Feeder Line Application, August 29, 2008, V.S. Rex, Attachment 1 at 39 (emphasis added).

In order to implement this methodology, I first divided the total ATF value of gross potential sales ($24,561,610) by 11, to arrive at an assumed gross potential sales for a "typical" year during the sellout period of $2,232,874. Then, in order to take account of my assumption that sales volume in Year 1 would be only 50% of a typical year, I divided the assumed gross potential sales for that year by 2, resulting in Year 1 gross potential sales of $1,116,437 ($2,232,874 / 2 = $1,116,437). I likewise reduced the gross potential sales volume for Year 2 by 25%, to $1,674,655 ($2,232874 x 75 = $1,674,655), to reflect my assumption that Year 2 sales volume would be only 75% of that in a typical year

For Years 3 through 11, I assumed that unsold property remaining as of the beginning of Year 3 ($24,561,610 less $1,116,437 less $1,674,655) would be sold on a pro rata basis (with land value assumed to increase by 1% per year). In other words, the gross potential sales occurring in each year over the final 9 years of my analysis included not only the volume of sales assumed to occur in a typical year, but also a pro rata share of the sales volume that had been deferred in Years and 1 and 2 ($1,116,437 in Year 1 plus $ 558,219 in Year 2, or $1,674,656). <u>Including those deferred sales in Years 3 through 11 is necessary to properly account for the sale of the entire $24,561,610 in ATF value over the eleven-year discounted cash flow period</u>

The workpaper underlying the Board's *October 31 Decision* indicates that the Board likewise adopted a total ATF value of $24,561,610, an eleven-year sellout period, and an assumed gross sales volume of $ 2,232,874 per year ($24,561,610 / 11 = $2,232,873.64) *See* Exhibit 1 (STB Workpaper provided to CORP counsel via email on November 4, 2008.) As I did, the Board also reduced the assumed gross sales volume for Year 1 and Year 2 by 50% and 25%, respectively. *See* Exhibit 1 However, it does not appear that the Board's analysis added back in (or otherwise took account of) the sales that were deferred in Years 1 and 2 at any point during the remaining 9 years of the sellout period As a result, the Board's discounted cash flow analysis accounts for gross sales over the entire sellout period of only $22,886,954 – or $1,674,655 less than the total ATF gross sales value of $24,561,610 accepted by the Board in its analysis – *see* Exhibit 1. <u>Under the Board's calculations, the dollar volume of ATF value deferred in Years 1 and 2 is not merely deferred, it is excluded altogether</u>. This omission (which appears to be inadvertent) resulted in a reduction in the total sales volume over the 11-year sellout period of $1,674,655, and a corresponding reduction in the NLV of land underlying the Coos Bay line of $458,985 ($7,230,863 - $6,771,878 = $458,985)

The reduction in gross sales volume of 50% and 25%, respectively, in Year 1 and Year 2 was premised on my testimony that "the current downturn in the real estate market, especially in the residential segment, would impact the <u>initial rate of sales</u> " In other words, I assumed that *current economic conditions would affect the rate of property sales during the first two years of* the analysis, but <u>not</u> the volume of property ultimately sold. (Both the Board and I assumed elsewhere that only 85% of the gross potential sales volume would, in fact, be sold, and we both made an adjustment to reflect that assumption.) The Board's calculations result in the loss of $1,674,655 in gross sales value, and a corresponding reduction in the NLV of $458,985.

In order to illustrate the Board's calculation error more clearly, I prepared a spreadsheet that eliminates the effect of inflation by replacing the 1% annual land value increase assumed in my testimony (and by the Board in its workpaper) with an assumed annual land value increase of 0 0%. *See* Figure 1 *This adjustment isolates the gross potential sales volume accounted for in* each year As Figure 1 shows, in my analysis, I added to the typical gross sales volume in each of Years 3 through 11 ($2,232,874) a pro rata share of the sales volume that I deferred in Years and 1 and 2 ($1,674,656 / 9 years remaining = $186,072.78 per year). Doing so takes account of total gross potential sales of $24,561,606 over the 11-year sellout period, consistent with the total ATF value adopted by the Board (*see* Exhibit 1).[1]

I also prepared the same spreadsheet for the Board's recalculation of my analysis – *see* Figure 2 Like Figure 1, Figure 2 eliminates the effect of inflation by replacing the 1% annual land value increase with an assumed annual land value increase of 0.0%, thereby isolating the gross potential sales volume accounted for in each year of the Board's analysis In each of Years 3 through 11, the difference between the gross potential sales accounted for in the Board's analysis (Figure 2) and in my analysis (Figure 1) is $186,072 — *i e* , the pro rata share of the gross sales deferred in Years 1 and 2. As Figure 2 shows, the Board accounted for only $22,886,958 in total gross potential sales over the eleven-year sellout period The shortfall between the total ATF value assumed in the Board's workpaper ($24,56,610) and the gross potential sales accounted for in the Board's discounted cash flow analysis ($22,886,958) is

[1] The difference between the total gross sales volume shown in Figure 1 ($ 24,561,606) and the $24,561,610 set forth in my prior testimony (and adopted by the Board) is due to rounding

$1,674,652 This shortfall resulted from the Board's failure to take account of the $1,674,655 in gross potential sales that were deferred in Years 1 and 2 under my methodology [2]

[2] The difference between this shortfall figure ($1,674,652) and the total value of gross potential sales deferred in Years 1 and 2 ($1,674,655) is likewise due to rounding

Figure 1 RMI Midwest Discounted Cash Flow for Coos Bay (Assuming 0% Land Value Increase)

| | | Year [illegible] | Year [illegible] | Year [illegible] | Year [illegible] | Year [illegible] | Year [illegible] | Year [illegible] | Year [illegible] | Year [illegible] | Year [illegible] | Year [illegible] |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Gross potential sales | | $ 1,116,437 | $ 1,674,855 | $ 2,418,946 | $ 2,418,946 | $ 2,418,946 | $ 2,418,946 | $ 2,418,946 | $ 2,418,946 | $ 2,418,946 | $ 2,418,946 | $ 2,418,946 |
| Percent sold | | 85% | 85% | 85% | 85% | 85% | 85% | 85% | 85% | 85% | 85% | 85% |
| Likely sales | | $ 948,971 | $ 1,423,457 | $ 2,056,104 | $ 2,056,104 | $ 2,056,104 | $ 2,056,104 | $ 2,056,104 | $ 2,056,104 | $ 2,056,104 | $ 2,056,104 | $ 2,056,104 |
| Less cost of sales @ | 6% | $ 56,938 | $ 85,407 | $ 123,366 | $ 123,366 | $ 123,366 | $ 123,366 | $ 123,366 | $ 123,366 | $ 123,366 | $ 123,366 | $ 123,366 |
| Net Sales | | $ 892,033 | $ 1,338,050 | $ 1,932,738 | $ 1,932,738 | $ 1,932,738 | $ 1,932,738 | $ 1,932,738 | $ 1,932,738 | $ 1,932,738 | $ 1,932,738 | $ 1,932,738 |
| | | | | | | | | | | | | |
| Present value @ | 18.80% | $7,437,768 | | | | | | | | | | |
| Less reserved timber rights | | $ 500,000 | | | | | | | | | | |
| Estimate of NLV | | $6,937,768 | | | | | | | | | | |

Figure 2 STB Revised Discounted Cash Flow for Coos Bay (Assuming 0% Land Value Increase)

| | | Year [illegible] | Year [illegible] | Year [illegible] | Year [illegible] | Year [illegible] | Year [illegible] | Year [illegible] | Year [illegible] | Year [illegible] | Year [illegible] | Year [illegible] |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Gross potential sales | | $ 1,116,437 | $ 1,674,855 | $ 2,232,874 | $ 2,232,874 | $ 2,232,874 | $ 2,232,874 | $ 2,232,874 | $ 2,232,874 | $ 2,232,874 | $ 2,232,874 | $ 2,232,874 |
| Percent sold | | 85% | 85% | 85% | 85% | 85% | 85% | 85% | 85% | 85% | 85% | 85% |
| Likely sales | | $ 948,971 | $ 1,423,457 | $ 1,897,943 | $ 1,897,943 | $ 1,897,943 | $ 1,897,943 | $ 1,897,943 | $ 1,897,943 | $ 1,897,943 | $ 1,897,943 | $ 1,897,943 |
| Less cost of sales @ | 6% | $ 56,938 | $ 85,407 | $ 113,877 | $ 113,877 | $ 113,877 | $ 113,877 | $ 113,877 | $ 113,877 | $ 113,877 | $ 113,877 | $ 113,877 |
| Net Sales | | $ 892,033 | $ 1,338,050 | $ 1,784,066 | $ 1,784,066 | $ 1,784,066 | $ 1,784,066 | $ 1,784,066 | $ 1,784,066 | $ 1,784,066 | $ 1,784,066 | $ 1,784,066 |
| | | | | | | | | | | | | |
| Present value @ | 18.80% | $6,996,320 | | | | | | | | | | |
| Less reserved timber rights | | $ 500,000 | | | | | | | | | | |
| Estimate of NLV | | $6,496,320 | | | | | | | | | | |

**VERIFICATION**

I, Charles W (Sandy) Rex, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

Charles W (Sandy) Rex

Executed on November 10, 2008