

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 920
Chicago, Illinois 60606 2832

WILLIAM C. SIPPEL
(312) 252 1505
wsippel@fletcher-sippel.com



April 2, 2009

VIA FEDERAL EXPRESS

Ms Anne K Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S W
Washington, DC 20024

224822

Re. **Finance Docket No. 35110**
Florida Department of Transportation -- Acquisition
Exemption -- Certain Assets of CSX Transportation, Inc.

Dear Secretary Williams

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Verified Notice of Exemption of Florida Department of Transportation Pursuant to 49 C.F.R. § 1150.31**, dated April 2, 2009. A completed credit card payment form for the amount of \$1,800, representing the appropriate fee for this filing, and a computer diskette containing the text of the Notice and the *Federal Register* caption summary in MS Word 2003 format are attached.

One extra copy of the Notice and this letter also are enclosed. I would request that you date-stamp those items to show receipt of this filing and return them to me in the provided envelope.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

FILED

Respectfully submitted,

APR 03 2009

**SURFACE
TRANSPORTATION BOARD**


William C. Sippel
Attorney for Florida Department of Transportation

WCS:tjl

FEE RECEIVED

Enclosures

APR 03 2009

**SURFACE
TRANSPORTATION BOARD**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



FINANCE DOCKET NO 35110

**FLORIDA DEPARTMENT OF TRANSPORTATION
-- ACQUISITION EXEMPTION --
CERTAIN ASSETS OF CSX TRANSPORTATION, INC.**

**VERIFIED NOTICE OF EXEMPTION
OF
FLORIDA DEPARTMENT OF TRANSPORTATION
PURSUANT TO 49 C.F.R. § 1150.31**

**William C. Sippel
Thomas J Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500**

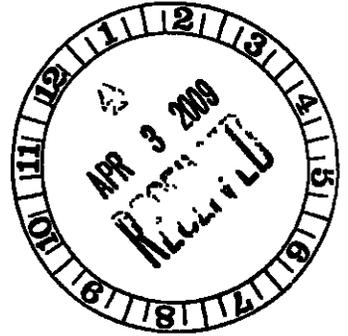
**ATTORNEYS FOR FLORIDA
DEPARTMENT OF TRANSPORTATION**

Dated. April 2, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35110

FLORIDA DEPARTMENT OF TRANSPORTATION
-- ACQUISITION EXEMPTION --
CERTAIN ASSETS OF CSX TRANSPORTATION, INC.



**VERIFIED NOTICE OF EXEMPTION
OF
FLORIDA DEPARTMENT OF TRANSPORTATION
PURSUANT TO 49 C.F.R. § 1150.31**

Pursuant to 49 C F R § 1150 31, et seq , Florida Department of Transportation ("FDOT"), a non-carrier, hereby files this Verified Notice of Exemption to acquire from CSX Transportation, Inc ("CSXT") certain physical assets of a railroad line and associated right-of-way in Volusia, Seminole, Orange and Osceola Counties, Florida extending from milepost A-749.7 in DeLand to milepost A-814.1 in Poinciana, a distance of approximately 61.5 miles (the "Orlando Line"). Because CSXT will retain a permanent, exclusive freight operating easement on the Orlando Line and FDOT will acquire neither the right nor ability to provide or control freight service on the line, FDOT is concurrently filing a motion to dismiss this notice of exemption pursuant to Maine DOT -- Acq Exempt. -- Maine Central R Co, 8 I C C 2d 835 (1991) ("Maine DOT") and its progeny. This two-step process allows parties to obtain an advance jurisdictional determination that a non-carrier's purchase of the assets of a rail line, without transfer of any common carrier rights or obligations on the line, is not subject to 49 U S C § 10901

In accordance with the requirements of 49 C.F.R. § 1150.33, FDOT submits the following information

Name and Address of Applicant: 49 C.F.R. § 1150.33(a)

The full name and address of the applicant herein is as follows

Florida Department of Transportation
District 5
719 South Woodland Boulevard
DeLand, FL 32720

Applicant's Representative: 49 C.F.R. § 1150.33(b)

FDOT's representative to whom correspondence regarding this transaction should be sent is as follows.

William C Sippel
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

Statement Concerning Agreement: 49 C.F.R. § 1150.33(c)

FDOT and CSXT have executed a Contract for Sale and Purchase providing for FDOT's acquisition of the Orlando Line, subject to (among other things) a retained, permanent and exclusive freight operating easement for CSXT under which CSXT remains the freight common carrier on the Orlando Line. CSXT's retained easement is specifically memorialized in the Deed included as Exhibit 4 to the Contract for Sale and Purchase. FDOT and CSXT have also entered into (as relevant here) a Central Florida Operating and Management Agreement (the "CFOMA") and a Transition Agreement setting forth terms and provisions for shared use of the Orlando Line by FDOT (for commuter rail purposes) and CSXT (for rail freight purposes) after FDOT's acquisition of the line. Copies of each of these agreements are included in the appendix to FDOT's concurrently-filed motion to dismiss in this docket.

Operator: 49 C.F.R. § 1150.33(d)

CSXT will continue to provide all common carrier rail freight service on the Orlando Line, and FDOT will acquire neither the right nor the ability to conduct rail freight operations as a result of the proposed transaction. Florida Central Railroad Company, Inc. ("FCEN"), an existing tenant of CSXT, will continue to operate over a portion of the Orlando Line for purposes of interchanging traffic with CSXT. The National Railroad Passenger Corporation ("Amtrak"), also an existing tenant of CSXT, will continue to operate four daily passenger trains over the length of the Orlando Line.¹

In cooperation with the Central Florida Commuter Rail Commission ("CFCRC"),² FDOT will develop and operate a commuter rail system (to be known as "SunRail") on the Orlando Line. FDOT will not conduct rail freight operations on the Orlando Line, and will have no right to do so.

Summary of the Transaction: 49 C.F.R. §.1150.33(e)

FDOT is a governmental department of the State of Florida and a non-carrier.³ Pursuant to the Contract for Sale and Purchase, FDOT will acquire from CSXT the track assets

¹ In addition, Amtrak's *Auto Train* service utilizes the north end of the Orlando Line to reach its southern terminus at Sanford, Florida.

² CRCFC is an interlocal governmental agency created by Orange, Osceola, Seminole and Volusia Counties and the City of Orlando.

³ In 1988, FDOT acquired a CSXT rail line between West Palm Beach and Miami, Florida in order to initiate commuter rail operations over the line. CSXT provides freight service pursuant to an exclusive retained freight easement. The 1988 transaction occurred prior to the issuance of Maine DOT, and was the subject of informal consultations with Interstate Commerce Commission staff at that time. The parties have entered into a new South Florida Operating and Management Agreement that will modify certain arrangements on the West Palm Beach-Miami line. Certain conditions must be met before changes to the existing arrangement will become effective, and it is unknown at this time whether those conditions will be satisfied. FDOT will seek a Maine DOT determination with respect to the new agreement prior to its implementation.

and right-of-way of the Orlando Line extending from milepost A-749 7 in DeLand to milepost A-814 1 in Poinciana, a distance of approximately 61 5⁴ miles in Volusia, Seminole, Orange and Osceola Counties, Florida FDOT also will obtain an option to acquire the portion of CSXT's Aloma Spur extending from a connection with the Orlando Line at milepost AU-766 0 in Sanford, Florida to milepost AU-771 8 near Airport Boulevard and the Orlando/Sanford International Airport, a distance of approximately 5 8 miles, and the CSXT DeLand Spur extending from a connection with the Orlando Line at milepost ASE-750 3 (DeLand Junction) to milepost ASE-753 3 near downtown DeLand, a distance of approximately 3.0 miles.⁵

CSXT will retain a perpetual, exclusive freight easement in the Orlando Line (and in the Aloma Spur and the DeLand Spur, should FDOT exercise its option to acquire those spurs). That perpetual easement is specifically reserved in the deed between CSXT and FDOT, and is subject to the terms and conditions of the CFOMA. Pursuant to its retained easement, CSX¹ will have the exclusive right and ability to provide rail freight service on the Orlando Line.

The complete name and address of the carrier transferring the Orlando Line to FDOT is as follows

CSX Transportation, Inc
500 Water Street
Jacksonville, FL 32202

⁴ Due to a prior relocation project in Sanford, the distance between milepost A-768 and milepost A-771 on the Orlando Line is only 749 feet This milepost equation is the reason that the actual length of the Orlando Line is 2.9 miles shorter than its milepost termini would otherwise indicate

⁵ While FDOT does not intend to acquire the Aloma Spur and DeLand Spur at this time, they are included in this notice of exemption so that any jurisdictional determination made by the Board pursuant to FDOT's motion to dismiss and Maine DOT will cover those tracks

Subject to final state legislative approval, FDOT intends to consummate, via an escrow arrangement, its acquisition of the assets of the Orlando Line on June 30, 2009

Map: 49 C.F.R. § 1150.33(f)

Maps showing the Orlando Line and the surrounding area are attached as Exhibits A-1 and A-2 to this notice

Certificate of Compliance: 49 C.F.R. § 1150.33(g)

A Certificate of Compliance with the provisions of 49 C F R § 1150 43(g) is attached as Exhibit B to this notice.

Interchange Commitments: 49 C.F.R. § 1150.33(h)

The proposed acquisition of the Orlando Line by FDOT does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier

Advance Notice: 49 C.F.R. § 1150:32(e)

The projected annual freight operating revenue of FDOT does not exceed \$5 million, and, accordingly, the advance notice requirements of 49 C F R § 1150 32(e) are not applicable to this transaction. See Exhibit B hereto

Environmental and Historic Preservation Data: 49 C.F.R. § 1105

Under 49 C F R § 1105 6(c)(2), FDOT's proposed acquisition of the Orlando Line is exempt from environmental reporting requirements. The proposed acquisition will not result in significant changes in freight carrier operations, i.e., changes that exceed the thresholds established in 49 C F R § 1105 7(e)(4) or (5)

Under 49 C.F.R. § 1105.8(b)(1), FDOT's proposed acquisition of the Orlando Line also is exempt from historic preservation reporting requirements. The proposed acquisition is for the purpose of continued rail operations. Further Surface Transportation Board approval is required to discontinue or abandon any service and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

Caption Summary: 49 C.F.R. § 1150.34

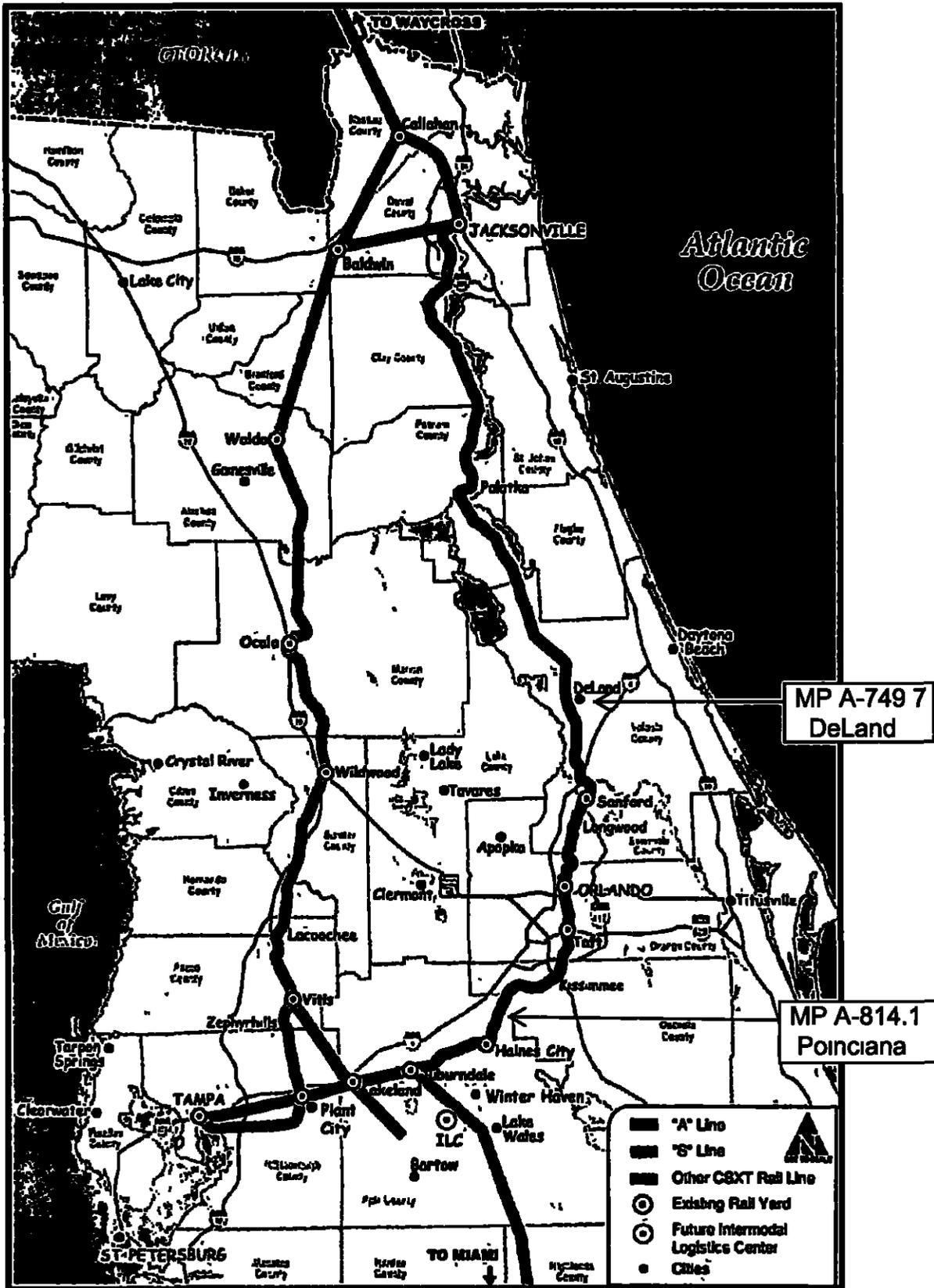
A caption summary in appropriate form is attached as Exhibit C to this notice.

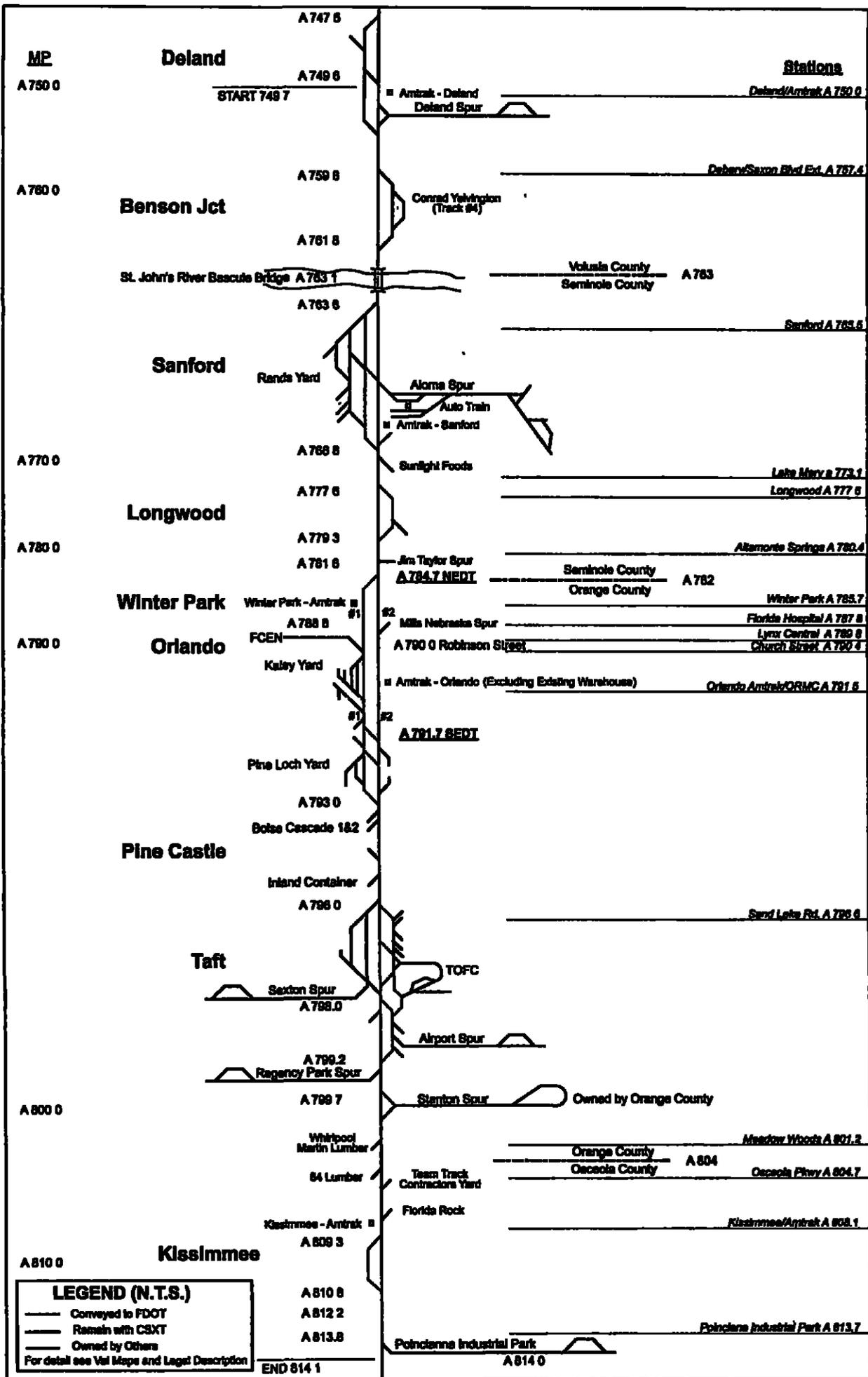
Respectfully submitted,

By: 
William C. Sippel
Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR FLORIDA
DEPARTMENT OF TRANSPORTATION**

Dated April 2, 2009

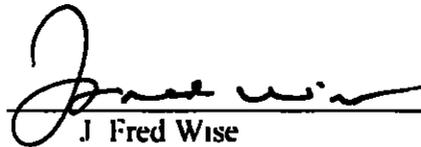




CERTIFICATION

State of Florida)
) ss
County of Leon)

J Fred Wise, being duly sworn, hereby certifies that the projected annual rail freight revenues of the Florida Department of Transportation upon consummation of the proposed transaction would not exceed \$5 million and would not result in the creation of a Class II or Class I carrier under the provisions of 49 C.F.R. § 1201 (1-1)



J Fred Wise
State Rail Manager

SUBSCRIBED AND SWORN TO
before me this 1st day of April, 2009
Affiant personally known and took an oath



Notary Public

My Commission expires

 **Nancy R. Jones**
Commission # DD563547
Expires August 10, 2010
Bonded Troy Fee - Insurance Inc. 800-388-7019

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO 35110

**FLORIDA DEPARTMENT OF TRANSPORTATION
-- ACQUISITION EXEMPTION --
CERTAIN ASSETS OF CSX TRANSPORTATION, INC**

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CSXT will retain a permanent, exclusive freight easement on the Orlando Line, and will continue to provide all rail freight service on the line. FDOT will not conduct rail freight operations on the line.

¹ Due to a prior relocation project in Sanford, the distance between milepost A-768 and milepost A-771 on the Orlando Line is only 749 feet. This milepost equation is the reason that the actual length of the Orlando Line is 2.9 miles shorter than indicated by its milepost termini.

FDOT has concurrently filed a motion to dismiss its Verified Notice of Exemption in this docket FDOT is utilizing this procedure to obtain a jurisdictional determination regarding its common carrier status on the Orlando Line See [Maine DOT -- Acq Exempt -- Maine Central R. Co.](#), 8 I C C 2d 835 (1991)

FDOT intends to consummate its acquisition of the Orlando Line assets by June 30, 2009, but not prior to a decision by the Board regarding FDOT's concurrently-filed motion to dismiss this notice of exemption

Comments must be filed with the Board and served on

William C Sippel
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

This Notice is filed under 49 C F R § 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

Dated April __, 2009

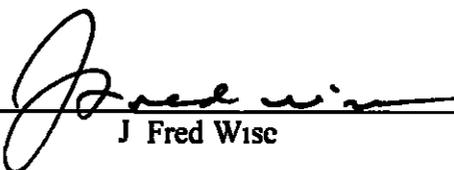
By the Board

Anne K. Quinlan
Acting Secretary

VERIFICATION

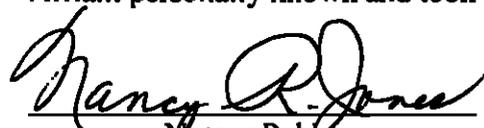
State of Florida)
) ss
County of Leon)

J Fred Wise, being duly sworn, deposes and says that he is State Rail Manager of the Florida Department of Transportation, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated



J Fred Wise

SUBSCRIBED AND SWORN TO
before me this 1st day April, 2009
Affiant personally known and took an oath



Notary Public

My Commission expires

