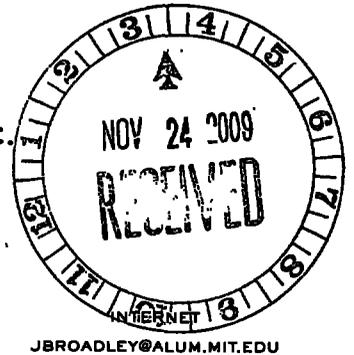


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November 24 2009

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JOHN H. BROADLEY

Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D. C. 20423

226061

RE: Finance Docket No. 35314 (Sub-No. 1), *Massachusetts Coastal Railroad, LLC-Trackage Rights Exemption-CSX Transportation, Inc.*

Dear Ms. Brown:

Enclosed for filing are the original and ten copies of a Verified Notice of Exemption under 49 C.F.R. § 1180.2(d)(7), a diskette with the file in WORD and pdf format, 20 extra copies of the map, and a check covering the \$1,200.00 filing fee for the Notice.

Please time and date stamp the extra copy of this letter and the Verified Notice of Exemption and return them with our messenger.

Thank you for your assistance. If you have any questions, please contact me.

Sincerely yours,

Louis E. Gitomer, Esq.
Attorney for CSX Transportation, Inc.

John H. Broadley, Esq.
Attorney for Mass Coastal Railroad, LLC

Enclosure

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35314 (Sub-No. 1X)

MASSACHUSETTS COASTAL RAILROAD, LLC
—TRACKAGE RIGHTS EXEMPTION—
CSX TRANSPORTATION, INC.

VERIFIED NOTICE OF EXEMPTION

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Counsel for CSX Transportation, Inc.

Counsel for Massachusetts Coastal
Railroad, LLC

Dated: November 24, 2009

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35314 (Sub-No. 1X)

**MASSACHUSETTS COASTAL RAILROAD, LLC
—TRACKAGE RIGHTS EXEMPTION—
CSX TRANSPORTATION, INC.**

VERIFIED NOTICE OF EXEMPTION

Massachusetts Coastal Railroad, LLC (“Mass Coastal”) submits this Verified Notice of Exemption pursuant to the class exemption at 49 C.F.R. §1180.2(d)(7) for overhead trackage rights over the rail line of CSX Transportation, Inc. (“CSXT”) (1) between Mass Coastal’s interchange tracks at Taunton, approximately at milepost QN 11.6, and Mass Coastal’s freight operation at milepost QN 13.4, a distance of about 1.8 miles; and (2) connecting at milepost QN 13.3, between milepost QNB 13.3 and Mass Coastal’s interchange tracks at Middleboro, approximately at milepost QNB 20.4, a distance of about 7.1 miles, for a total distance of 8.9 miles (the “Trackage Rights Line”). The trackage rights will enable Mass Coastal to connect the permanent freight easement it is acquiring from CSXT in the directly related acquisition application with its existing lines and to efficiently interchange traffic with CSXT. The parties have entered a written agreement for the trackage rights (Exhibit B), which are not sought as a responsive application in a rail consolidation proceeding.

Mass Coastal is seeking to acquire the permanent freight easement from CSXT over the South Coast Lines consisting of (1) the New Bedford Subdivision, which is 18.40 miles between

milepost QN 13.40 at Cotley Jct. and milepost QN 31.80 at New Bedford, (2) the Fall River Subdivision, which is 14.20 miles between milepost QNF 0.00 at Myricks and milepost QNF 14.20 at Fall River, and (3) 0.08 mile of the North Dartmouth Industrial Track between milepost QND 0.00 and milepost QND 0.08. See *Massachusetts Coastal Railroad, LLC-Acquire-CSX Transportation, Inc.*, Finance Docket No. 35314, which was concurrently filed with this notice of exemption (the “Mass Coastal Acquisition”).

Pursuant to the Surface Transportation Board’s (the “Board”) regulations at 49 C.F.R. § 1180.4(g), Mass Coastal submits the following information:

Section 1180.6 Supporting Information

(a)(1)(i) Description of Proposed Transaction

Mass Coastal is acquiring overhead trackage rights over the Middleboro Subdivision rail line of CSXT (1) between Mass Coastal’s interchange tracks at Taunton, approximately at milepost QN 11.6, and Mass Coastal’s freight operation at milepost QN 13.4, a distance of about 1.8 miles; and (2) connecting at milepost QN 13.3, between milepost QNB 13.3 and Mass Coastal’s interchange tracks at Middleboro, approximately at milepost QNB 20.4, a distance of about 7.1 miles, for a total distance of 8.9 miles, as a matter directly related to the Mass Coastal Acquisition.

The carriers involved in this transaction and their business addresses are:

Massachusetts Coastal Railroad, LLC
68 Center Street, Suite 20
Hyannis, MA 02601

CSX Transportation, Inc.
500 Water Street J-150
Jacksonville, FL 32202

Questions and correspondence concerning this notice may be addressed to:

John H. Broadley, Esq.
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JBroadley@alum.mit.edu

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(a)(1)(ii) Consummation Date.

The transaction is scheduled to be consummated on May 14, 2010.

(a)(1)(iii) Purpose Sought to be Accomplished.

As a result of the Mass Coastal Transaction, Mass Coastal will expand its rail lines by 32.68 miles. In order to connect to two of its lines at the termini of the Trackage Rights Line and to provide for an efficient interchange with CSXT, Mass Coastal and CSXT have agreed to the overhead trackage rights.

(a)(5) List of States in which the Party's Property is Situated.

Mass Coastal operates about 58.5 miles of railroad in the Commonwealth of Massachusetts.

CSXT owns and operates about 21,000 miles of railroad in the States of Alabama, Connecticut, District of Columbia, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia, and the Canadian Provinces of Ontario and Québec.

The overhead trackage rights are located in the Commonwealth of Massachusetts.

(a)(6) Map.

A map illustrating the involved trackage rights is attached as Exhibit A, which is in color and at the end of this pleading.

(a)(7)(ii) Agreement.

A copy of the redacted Trackage Rights Agreement is attached as Exhibit B. An unredacted copy of the Trackage Rights Agreement has been filed under seal.

Labor Protection.

Any employees of Mass Coastal or CSXT who are adversely affected by the acquisition of the overhead trackage rights that are the subject of this Notice are entitled to protection under the conditions imposed in *Norfolk and Western Railway Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc. —Lease and Operate*, 360 I.C.C. 653 (1980).

Section 1180.4(g)(4)(i) Supporting Information.

(i)(A) Pursuant to the TRA, Mass Coastal is prohibited from using the Trackage Rights Line for interchange with any other carrier that connects with the Trackage Rights Line. CSXT has agreed to grant Mass Coastal overhead trackage rights for the sole purpose of Mass Coastal connecting to its two lines at the end points of the Trackage Rights Line and to effect efficient

interchange with CSXT.

(i)(B) A copy of the redacted Trackage Rights Agreement is attached as Exhibit B.

Environmental and Historic Matters.

Environmental and historic impacts associated with trackage rights transactions generally are considered to be insignificant. Therefore, environmental and historical reports and documentation normally need not be submitted for this type of transaction, pursuant to 49 C.F.R. § 1105.6(c)(4) and § 1105.8(b)(3).

Respectfully submitted,



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Counsel for CSX Transportation, Inc.

Counsel for Massachusetts Coastal
Railroad, LLC

Dated: November 24, 2009

EXHIBIT A - MAP

See end of pleading

EXHIBIT B - AGREEMENT

TRACKAGE RIGHTS AGREEMENT
Between
CSX TRANSPORTATION, INC.
And
MASSACHUSETTS COASTAL RAILROAD, LLC

THIS AGREEMENT, entered into as of this 14th day of May 2010, by and between CSX TRANSPORTATION, INC., a Virginia corporation, (hereinafter referred to as "Owner") and Massachusetts Coastal Railroad, LLC, a Massachusetts limited liability company, (hereinafter referred to as "User");

WITNESSETH:

WHEREAS, Owner sold the line of railroad between Middleboro, MA and Taunton, MA, among other lines, to the Commonwealth of Massachusetts, pursuant to an agreement dated December 16, 1982 (the "Old Colony Sale") and retained an exclusive and permanent freight operating easement; and;

WHEREAS, as a provision of the Old Colony Sale, Owner has the right to grant trackage rights to third parties; and;

WHEREAS, User has requested trackage rights over the line of railroad between Middleboro, MA and Taunton, MA; and;

WHEREAS, Owner is agreeable to granting such rights to User under the following terms and conditions;

NOW, THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE 1. GRANT OF TRACKAGE RIGHTS

Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate its trains (locomotives or cars) with its own crews (hereinafter referred to as the "Trackage Rights") over the following segments of Owner's railroad shown on the plan attached hereto, made a part hereof and marked Exhibit "I" (hereinafter referred to as the "Subject Trackage"):

(i) Owner's Middleboro Subdivision, between User's interchange tracks at Taunton, at approximate milepost QN 11.6 and User's freight operation at milepost QN 13.4, a distance of approximately 1.8 miles; and

(ii) Owner's Middleboro Subdivision, connecting at milepost QN 13.3, between milepost

QNB 13.3 and User's interchange tracks at Middleboro, at approximate milepost QNB 20.4, a distance of approximately 7.1 miles

ARTICLE 2. USE OF SUBJECT TRACKAGE

- A. User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement. Owner shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage.
- B. Except as may otherwise be provided by this Agreement, User shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing cars or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of Owner, preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purposes.
- C. Owner shall have exclusive control of the management and operation of the Subject Trackage. User shall not have any claim against Owner for liability account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause.

ARTICLE 3. RESTRICTION ON USE

The Trackage Rights herein granted are granted for the sole purpose of User using same to connect User's local line segments and User shall not perform any local freight service whatsoever at any point located on Subject Trackage.

ARTICLE 4. MISCELLANEOUS SPECIAL PROVISIONS

- A. When operating over the Subject Trackage, User's locomotives and crews shall be equipped to communicate with Owner on radio frequencies normally used by Owner in directing train movements on the Subject Trackage.
- B. Procedures for qualification and occupancy of the Subject Trackage shall be arranged by the local supervision of each carrier. All control and usage shall be subject to the approval of Owner's representative or his designee.

ARTICLE 5. COMPENSATION

- A. The factor to be used in calculating payments to be made by User for the Trackage Rights

covered by this Agreement shall be . (hereinafter referred to as the "Current Charge"). Both parties agree that the mileage to be used for the compensation calculation is 8.9 miles, unless otherwise agreed in writing by the parties.

- B. User shall pay Owner a sum computed by multiplying: (i) the Current Charge, as may be revised in accordance with Article 6, by (ii) the number of cars (loaded and empty) and locomotive units moved by User with its own crews and power over the Subject Trackage by (iii) the miles of Subject Trackage used. Each locomotive unit, for the purpose of this Agreement, shall be counted as one car. With respect to articulated units, the number of cars shall be determined by the AAR Car Type Code as defined in the UMLER Specification Manual. The second numeric in the Car Type Code field covering codes "Q" and "S" shall be the factor in determining the car count for an articulated unit. For example, AAR Car Type Code "S566" would equate to a five (5) car count as these type cars have five wells capable of handling 40' to 48' containers in each well. (Car count data for articulated units subject to change upon development of technology to separate units by Car Numbers.)
- C. On or before the 15th day of each calendar month during the term hereof, User shall provide Owner with an accurate count of loaded and empty cars and all locomotives traversing the Subject Trackage during the preceding calendar month. Owner shall on or about the tenth day of the following month render billing to User for User's use of the Subject Trackage computed in accordance with the terms and conditions of this Agreement.
- D. User shall furnish Owner information concerning all loaded and empty cars in Electronic Data Interchange (EDI) transmission between the carriers. This procedure shall be required at the time the Association of American Railroads (AAR) defines the standard reporting procedures for trackage rights carriers. The carriers shall determine the minimal data requirements.

ARTICLE 6. REVISION OF CURRENT CHARGE

- A. The Current Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs as hereinafter provided.
- B. The Current Charge shall be revised upward or downward each year, beginning with the bill rendered for the month of July 2010 to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Charge-Out Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads (hereinafter referred to as "AAR"). In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East District shall be used. The Current Charge shall be revised by calculating the percent of increase or

decrease in the index of the latest calendar year (2009 Index for the first annual adjustment) as related to the index for the previous calendar year (2008 Index for the first annual adjustment) and applying that percent to the Current Charge.

- C. By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2008; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2009; "C" to be the Current Charge; and "D" to be the percent of increase or decrease; the revised Current Charge stated herein would be revised by the following formula:

$$(1) \frac{B - A}{A} = D \text{ (rounded to the third decimal place)}$$

$$(2) (D \times C) + C = \text{revised Current Charge (rounded to the third decimal place), effective July 1 of the year being revised.}$$

- D. In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration as provided hereinafter.
- E. At the option of either party hereto, the compensation provided for in this Agreement shall be open for renegotiation every five (5) years from the Commencement Date, as hereinafter defined. In the event the parties fail to reach agreement upon such renegotiation, such failure shall not constitute a breach of this Agreement, and the parties shall continue to be bound by the terms of compensation provided in this Agreement until the matter is settled or submitted to binding arbitration.

ARTICLE 7. PAYMENT OF BILLS

- A. All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of two (2) years from the date of billing.
- B. Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Article 5, shall include direct labor and material costs, together with the surcharges,

overhead percentages and equipment rentals as specified by Owner at the time any work is performed by Owner for User.

ARTICLE 8. MAINTENANCE OF SUBJECT TRACKAGE

- A. Owner shall maintain, repair and renew the Subject Trackage with its own supervision and labor. Owner shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Subject Trackage or that operations thereover shall not be interrupted. Owner shall take all reasonable steps to ensure that any interruptions shall be kept to a minimum. Furthermore, except as may be otherwise provided in Article 14, User shall not by reason of failure or neglect on the part of Owner to maintain, repair or renew the Subject Trackage, have or make any claim or demand against Owner or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from any such failure or neglect.
- B. Owner shall perform, at the expense of User, such additional maintenance as User may reasonably require or request.

ARTICLE 9. CONSTRUCTION AND MAINTENANCE OF NEW CONNECTIONS

- A. Existing connections or facilities that are jointly used by the parties hereto shall continue to be maintained, repaired and renewed by and at the expense of the party or parties responsible for such maintenance, repair and renewal under such agreements.
- B. Any additional connections to the Subject Trackage which may be requested by User shall be subject to the Owner's approval (including design), at Owner's sole and absolute discretion, and shall be constructed, maintained, repaired and renewed as follows:
 - (i). User or others shall furnish all labor and material and shall construct, maintain, repair and renew at its sole cost and expense such portions of the tracks located on the right-of-way of User or others which connect the respective lines of the parties hereto.
 - (ii). Owner shall furnish all labor and material and shall construct, maintain, repair and renew at the sole cost and expense of User such portions of the additional tracks located on the right-of-way of Owner which connect the respective lines of the parties hereto. Upon termination of this Agreement, Owner may at its option remove the portion of such trackage and appurtenances as may be located on property of Owner, at the sole cost and expense of User. The salvage material

removed shall be released to User or, as otherwise agreed upon, Owner shall credit User the current fair market value for said salvage.

ARTICLE 10. ADDITIONS, RETIREMENTS AND ALTERATIONS

- A. Owner, from time to time and at its sole cost and expense, may make changes in, additions and betterments to or retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

- B. If the parties agree that changes in or additions and betterments to the Subject Trackage, including changes in communication or signal facilities, are required to accommodate User's operations beyond that required by Owner to accommodate its operations, Owner shall construct the additional or altered facilities and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities.

ARTICLE 11. MANAGEMENT AND OPERATIONS

- A. User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains (locomotives and cars) while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon Owner or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of User to comply with its obligations in this regard.

- B. User in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of Owner, and the movement of User's trains (locomotives and cars,) over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives or cars which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives or cars which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by Owner's operating rules

and regulations without the prior consent of Owner.

- C. User shall make such arrangements with Owner as may be required to have all of its employees who shall operate its trains, locomotives and cars over the Subject Trackage qualified for operation thereover, and User shall pay to Owner, upon receipt of bills therefor, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.
- D. Owner may conduct an investigation at its option if a User's employee working on Owner's property is alleged to have violated Owner's safety rules, operating rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. To exercise its option, Owner shall schedule the investigation and notify User's local Transportation Officer in the territory thereof, who shall, in turn, arrange to issue proper notice to the User's employee(s) of the investigation. Owner's scheduling of the investigation must comply with the time limits provided in the applicable agreement on User's railroad. Owner shall provide its regulations, supplements, and safety rules to User at no cost.
- E. ~~If Owner conducts an investigation, Owner shall have the right to exclude from the Subject Trackage any employee of User except officers, determined by Owner, as the result of Owner's investigation or hearing described below, to be in violation of Owner's rules, regulations, orders, practices or instructions.~~
- F. In a major offense, such as violation of Rule "G", dishonesty, insubordination, or a serious violation of operating rules, wherein Owner desires to bar User's employee from service on Owner's territory pending an investigation by Owner, immediate verbal notification shall be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.
- G. If Owner conducts an investigation, its officer shall conduct the investigation, but an officer of User shall be present to assure compliance with User's labor agreement and practices with respect to investigation procedures. After the investigation is concluded, Owner shall promptly furnish User with two copies of the transcript and a recommendation as to the discipline to be assessed. User's Transportation Officer shall arrange to assess discipline, subject to receipt of Owner's recommended discipline, within the applicable time limits. If Owner recommends dismissal, User reserves the right to change the recommendation to the extent of barring the individual from operating over Owner's territory.
- H. It is understood that Owner shall reimburse User for all payments that User might be required to make as a result of a challenge being made by the employee or his representative as to the discipline recommended by Owner and assessed by User. User

agrees to notify Owner before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, Owner shall be given an opportunity to review User's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which User may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.

- I. The trains, locomotives, cars and equipment of User, Owner, and any other present or future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to either party and in such manner as shall afford the most economical and efficient manner of movement of all traffic.
- J. In the event that a train of User shall be forced to stop on Subject Trackage, and such stoppage is due to insufficient hours of service remaining among User's crew, or due to mechanical failure of User's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.
- K. If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by Owner, and User shall reimburse Owner for the cost thereof.
- L. In the event Owner and User agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such retained or additional employees provided, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the retained or additional employees not been provided.

ARTICLE 12. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in User's trains on the Subject Trackage shall be assumed by User and reported and paid by it directly to the owner of such cars.

ARTICLE 13. CLEARING OF WRECKS

Whenever User's use of the Subject Trackage requires re-railing, wrecking service or wrecking train service, Owner shall perform or provide such service, including the repair and restoration of roadbed, track and structures. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Article 14 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck, shall be promptly delivered to it.

ARTICLE 14. LIABILITY

The responsibility and liability between the parties for: (i) any personal injury or death of any person (including employees of the parties and third persons), (ii) any real or personal property damage of any person (including property of the parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, settlements, claims, judgments, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by either party as described herein, all of which are collectively referred to as a "Loss", shall be divided as follows:

- A. If a Loss occurs involving the trains, locomotives, engines and/or employees of only one of the parties, then the involved party should be solely responsible for the Loss, even if caused partially or completely by the other party.
- B. If a Loss occurs on the Subject Trackage involving the trains and locomotives of both Owner and User, then: (i) each is solely responsible for any Loss to its own employees, locomotives and equipment in its own account including lading and (ii) the parties are equally responsible for any Loss to the Subject Trackage and Loss sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Loss.
- C. For purposes of assigning responsibility of a Loss under this Article as between the parties hereto, a Loss involving one of the parties to this Agreement and a third party or parties shall be construed as being the sole responsibility of that one party to this Agreement.
- D. Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against that liability, cost and expense assumed by that party or apportioned to it,

regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers agents, or employees.

- E. In every case of death or injury suffered by an employee of either User or Owner, when compensation to such employees or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' liability or other law, and either of said parties, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.
- F. For purposes of determining liability, pilots furnished by Owner to User pursuant to this Agreement shall be considered as the employees of User while such employees are on duty as pilots.
- G. For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Article 9 B(ii), all work performed by Owner shall be deemed performed for the sole benefit of User and, User shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of Owner. User shall protect, indemnify, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which User is responsible.
- H. If any suit or action shall be brought against either party for damages which under the provisions of this Agreement are in whole or in part the responsibility of the other party, said other party shall be notified in writing by the party sued, and the party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and costs, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.
- I. In the event of a Loss as set out herein, the parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.
- J. Notwithstanding any and all of the forgoing provisions of this article, in the event a Loss occurs while the Subject Trackage is being used by Owner and/or User, and such Loss is attributable solely to the willful or wanton negligence of only one of the parties to this Agreement, then the party hereto which was so willfully or wantonly negligent shall be solely responsible for such Loss.

ARTICLE 15. CLAIMS

- A. Except as provided in Subarticle B below, all claims, injuries, death, property damages and losses arising out of or connected with this Agreement shall be investigated, adjusted and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.
- B. Each party shall investigate, adjust and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706.
- C. In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment and defense of such claim or suit.
- D. All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time agents, full-time attorneys and other full-time employees of either party engaged directly or indirectly in such work shall be borne by such party.
- E. Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706, neither party shall settle or compromise any claim, demand, suit or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds THIRTY-FIVE THOUSAND DOLLARS (\$35,000).
- F. Each party agrees to indemnify and hold harmless the other party and its parent corporation, subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, either pursuant to a collective bargaining agreement or employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement. It is the intention of the parties that each party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees.
- G. It is understood that nothing in this Article 15 shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 14.

ARTICLE 16. INSURANCE

- A. During the term of this Agreement User agrees to procure and maintain at its sole cost and expense railroad operating and liability insurance, hereinafter called "Insurance", naming User as the insured and covering the liability assumed by it and its agents under the terms of this Agreement and by virtue of User's usage of Owner's trackage. Owner shall be listed as an additional insured. The Insurance shall include liability for foreign rolling stock and cargo in the care, custody or control of User and contain a contractual liability endorsement that shall specifically grant coverage for all liability assumed under this Agreement. The Insurance shall be in an amount not less than Five Million Dollars (\$5,000,000) combined single limit for personal injury and property damage per occurrence.
- B. The Insurance shall contain provisions obligating the insurer to provide Owner with notice of cancellation, material modification or non-renewal at least thirty (30) days prior to the effective date thereof.
- C. The Insurance shall be evidenced by a current certificate of insurance, naming Owner as an additional insured, and addressed to Owner (Risk Management Department C907; CSX Transportation, Inc.; 500 Water Street; Jacksonville, FL 32202) which certificate shall be subject to the prior approval of Owner's Risk Management Department. All of the required endorsements and notice provisions shall be stated on the certificate of insurance that is provided to Owner. User shall subsequently furnish annual renewal certificates of insurance to Owner's Risk Management Department.
- D. All of the required endorsements and notice provisions shall be stated on the certificate of insurance that is provided to Owner. In addition, User shall provide Owner's Insurance Department notice of any claim and any other correspondence dealing with insurance and insurance matters.

ARTICLE 17. DEFAULT AND TERMINATION

In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Subject Trackage, subject to any regulatory approval or exemption that may be required under governing law. The exercise of such right by Owner shall not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.

ARTICLE 18. REGULATORY APPROVAL

- A. Should this Agreement require the prior approval of the Surface Transportation Board (STB), User at its own cost and expense shall initiate and thereafter diligently pursue an appropriate application or petition to secure such approval. Owner shall assist and support efforts of User to secure any necessary STB approval of this Agreement.
- B. Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the exemption of this Agreement from regulation, User, solely, shall be responsible for any and all payments in satisfaction of such conditions.

ARTICLE 19. ABANDONMENT OF SUBJECT TRACKAGE

Notwithstanding the provisions of Article 20, Owner may abandon and/or discontinue its use of the Subject Trackage during the term of this Agreement or any renewals thereof, upon giving User not less than ninety (90) days' notice of Owner's intent to abandon. In the event regulatory authority is required to effect such abandonment, User shall not interfere with Owner's actions to seek and to exercise such authority. In the event regulatory authority is required for User to discontinue its own operations over the Subject Trackage, User shall seek and exercise such regulatory authority at the same time that Owner seeks regulatory authority to abandon the Subject Trackage. Owner and User shall exercise the abandonment and discontinuance authority within thirty (30) days from the date Owner and User obtain the aforementioned regulatory authority. Upon the date established by Owner for abandonment of the Subject Trackage by its aforesaid notice to User or upon the above specified date of exercise of the regulatory authority to abandon and discontinue operations, whichever is later, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

ARTICLE 20. TERM

- A. This Agreement shall be effective the day and year first above written or, in the event STB approval is required, on the effective date such approval is secured and shall remain in effect for twenty-five (25) years, and shall continue in effect thereafter until terminated by User upon sixty (60) days advance written notice to Owner of its intent to terminate this Agreement or until User receives authority to discontinue the rights herein granted, whichever occurs first.
- B. Termination of this Agreement shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

ARTICLE 21. FORCE MAJEURE

Owner shall not be responsible to User for delays or failure to perform under this Agreement if such delays or failure to perform are covered by circumstances beyond its control, including, but not limited to, Acts of God, terrorism or threatened acts of terrorism, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, war, blockade, insurrection, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, strike, lockout or labor disputes experienced by the parties hereto, embargoes or AAR service orders; Federal Railroad Administration (FRA) orders, or governmental laws, orders or regulations.

ARTICLE 22. ARBITRATION

Any dispute arising between the parties with respect to this Agreement shall be jointly submitted for binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association by either party. The decision of the arbitrator shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensations, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator, if any, shall be borne equally by the parties hereto. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws.

ARTICLE 23. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns, by merger or otherwise, of the parties hereto. Neither party hereto shall transfer or assign this Agreement, or any of its rights, interests or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of the other party to this Agreement.

ARTICLE 24. NOTICES

Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may agree, and shall be addressed as follows:

If to Owner: Director – Passenger and Joint Facility Agreements
 CSX Transportation, Inc.
 500 Water Street, J315
 Jacksonville, FL 32202

If to User: Vice President - Marketing
 Massachusetts Coastal Railroad, LLC
 68 Center Street, Suite 20
 Hyannis, MA 02601

Either party may provide changes in the above addresses to the other party by personal service or U.S. mail.

ARTICLE 25. GENERAL PROVISIONS

- A. This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either of the parties hereto.
- B. This Agreement contains the entire understanding of the parties hereto and supersedes any and all oral understandings between the parties.
- C. No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by both parties to this Agreement.
- D. All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.
- E. All Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- F. As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars and equipment shall be considered those of the other party under this Agreement.
- G. This Agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

- H. Neither party hereto may disclose the provisions of this Agreement to a third party, excluding a parent, subsidiary or affiliate company, without the written consent of the other party, except as otherwise required by law, regulation or ruling.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

Witness for Owner:

Joanna Cr. With

CSX TRANSPORTATION, INC.

By: S.A. Potter

Name: S.A. Potter

Title: AVP - Network Planning
& Joint Facilities

Witness for User:

MASSACHUSETTS COASTAL
RAILROAD, LLC

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

Witness for Owner:

CSX TRANSPORTATION, INC.

By: _____

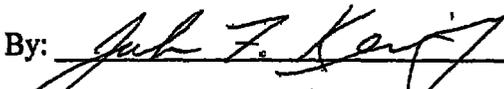
Name: _____

Title: _____

Witness for User:



MASSACHUSETTS COASTAL
RAILROAD, LLC

By: 

Name: JOHN F. KENNEDY

Title: PRESIDENT

**EXHIBIT C - FEDERAL REGISTER
NOTICE**

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 35314 (Sub-No. 1X)

MASS COASTAL RAILROAD, LLC—TRACKAGE RIGHTS EXEMPTION—
CSX TRANSPORTATION, INC.

CSX Transportation, Inc. (“CSXT”) has agreed to grant overhead trackage rights to Massachusetts Coastal Railroad, LLC (“Mass Coastal”) over CSXT’s Middleboro Subdivision (1) between Mass Coastal’s interchange tracks at Taunton, approximately at milepost QN 11.6, and Mass Coastal’s freight operation at milepost QN 13.4, a distance of about 1.8 miles; and (2) connecting at milepost QN 13.3, between milepost QNB 13.3 and Mass Coastal’s interchange tracks at Middleboro, approximately at milepost QNB 20.4, a distance of about 7.1 miles, for a total distance of 8.9 miles (the “Line”). The overhead trackage rights will be effective on or after December 24, 2009, but consummation of the transaction is not anticipated until May 14, 2010.

As a condition to this exemption, any employee affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Railway Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc. — Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it 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.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35285, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on John H. Broadley, John H. Broadley & Associates, PC, Canal Square, 1054 Thirty-First Street NW, Suite 200, Washington, DC 20007, (202) 333-6025, JBroadley@alum.mit.edu, and Louis E. Gitomer, Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204, Lou_Gitomer@verizon.net.

Dated:

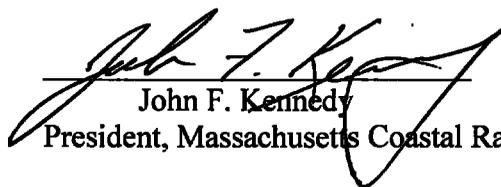
By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary

VERIFICATION BY JOHN F. KENNEDY
Pursuant to 28 U.S.C. 1746

I verify under penalty of perjury that I am President of the Massachusetts Coastal Railroad, LLC, that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption, and know the facts asserted therein are true and accurate to the best of my knowledge, information and belief.

Executed on November 6, 2009



John F. Kennedy
President, Massachusetts Coastal Railroad, LLC

CERTIFICATE OF SERVICE

I hereby certify that I have caused the Verified Notice of Exemption in Finance Docket 35315 (Sub-No. 1X), *Massachusetts Coastal Railroad, LLC—Trackage Rights Exemption—CSX Transportation, Inc.*, to be served by first class mail, postage pre-paid on the Secretary of the United States Department of Transportation, the Attorney General of the United States, the Federal Trade Commission and the Governor, Public Service Commission, and Department of Transportation of the Commonwealth of Massachusetts.



John H. Broadley, Esq.
November 24, 2009

EXHIBIT A

