

213046

FOUR PENN CENTER
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1600 JOHN F. KENNEDY BLVD.
PHILADELPHIA, PA 19103-2808
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GRIFFIN
& EWING
ATTORNEYS - AT - LAW

ERIC M. HOCKY
DIRECT DIAL 215.320.3720
emhocky@ggelaw.com

FILED

January 18, 2005
VIA: UPS Overnight

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
Mercury Building, #711
1925 K Street, N.W.
Washington, DC 20423-0001

JAN 19 2005



Re: STB Finance Docket No. 34644
Finger Lakes Railway Corporation -
- Trackage Rights Exemption -
CSX Transportation, Inc.
Notice of Exemption

Dear Secretary Williams:

Enclosed for filing please find the original and ten (10) copies of the above-referenced Trackage Rights Notice of Exemption, along with twenty (20) extra copies of the map. A check in the amount of \$1,000 representing the filing fee is also enclosed.

Please time stamp the extra copy of this letter to indicate receipt, and return it to me in the stamped self-addressed envelope provided for your convenience.

Respectfully,

* ENTERED
Office of Proceedings

JAN 19 2005

Part of
Public Record

Eric M. Hocky
ERIC M. HOCKY

FILED

JAN 19 2005

Enclosures

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ERIC M. HOCKY

Enclosures

GOLLATZ, GRIFFIN & EWING, P.C.

WEST CHESTER

PHILADELPHIA

WILMINGTON

BEFORE THE
SURFACE TRANSPORTATION BOARD
FINANCE DOCKET NO. 34644



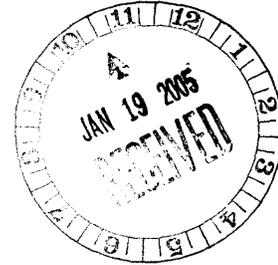
FINGER LAKES RAILWAY CORPORATION
- TRACKAGE RIGHTS EXEMPTION -
CSX TRANSPORTATION, INC.

NOTICE OF EXEMPTION

Eric M. Hocky
Gollatz, Griffin & Ewing, P.C.
Four Penn Center Plaza
1600 John F. Kennedy Blvd.
Suite 200
Philadelphia, PA 19103-2808
(215) 563-9400
Attorney for
Finger Lakes Railway Corporation

DATED: January 18, 2005

BEFORE THE
SURFACE TRANSPORTATION BOARD
FINANCE DOCKET NO. ~~34464~~
34644
FINGER LAKES RAILWAY CORPORATION
- TRACKAGE RIGHTS EXEMPTION -
CSX TRANSPORTATION, INC.



NOTICE OF EXEMPTION

Finger Lakes Railway Corporation ("FGLK"), a Class III railroad, files this Notice of Exemption pursuant to 49 C.F.R. §1180.2(d)(7) to exempt from the provisions of 49 U.S.C. §11323 the grant of trackage rights by CSX Transportation, Inc. ("CSXT") to FGLK. The trackage rights are based on a written agreement and are not being filed or sought in a responsive application.

Required Information

In accordance with the provisions of 49 C.F.R. §1180.4(g), FGLK provides the following information as required by 49 C.F.R. §1180.6(a)(1)(i)-(iii), (a)(5), (a)(6), and (a)(7)(ii):

(a)(1)(i) CSXT is granting trackage rights to FGLK over the following segments of railroad totaling approximately 1.5 miles, and as shown on the map attached as Exhibit A: (1) CSXT/NYSW Interchange Track between the CSXT/NYSW property line and the Geddes Lead Track; (2) Geddes Lead Track for its entire length to the Auburn Secondary; (3) Auburn Secondary Track between its connection to the Geddes Lead Track and its connection to the CSXT/FGLK Interchange Track; and (4) CSXT/FGLK Interchange Track between the CSXT/FGLK property line and the connection to the Auburn Secondary Track (the "Subject Trackage"). The Subject Trackage is located in the State of New York.

The name, business address and telephone number of Applicant are: Finger Lakes Railway Corporation, PO Box 1099, Geneva, NY 14456; (315) 781-1234.

The name, business address and telephone number of counsel to whom questions regarding the transaction can be addressed are: Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., Four Penn Center Plaza, Suite 200, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103-2808; (215) 563-9400.

(a)(1)(ii) FGLK intends to commence operations under the trackage rights on or after January 26, 2005.

(a)(1)(iii) The trackage rights will allow FGLK to access another Class III carrier in furtherance of the principles of the Railroad Industry Agreement.

(a)(5) FGLK currently operates in the State of New York, and the Subject Trackage is also located in the State of New York.

(a)(6) A map showing the Subject Trackage is attached as Exhibit A. Twenty extra copies of the map are also included.

(a)(7)(ii) A copy of the trackage rights agreement is attached as Exhibit B.¹ Although the trackage rights agreement is dated as of September 29, 2004, FGLK has not exercised its rights thereunder, and will not do so until at least seven days after the filing of this Notice.

Labor Protection

Applicant understands that any employees adversely affected by the trackage rights are entitled to protection under the conditions imposed in *Norfolk and Western Railway Company* –

¹ The copy of the trackage rights agreement attached hereto has been redacted to protect the confidentiality of the compensation terms.

Trackage Rights – Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified by Mendocino Coast Railway, Inc. – Lease and Operate – California Western Railroad, 360 I.C.C. 653 (1980).

Environmental and Historic Reports

Under 49 C.F.R. §1105.6(c)(4) and 49 C.F.R. §1105.8(b)(3), no environmental or historic documentation is required.

Caption Summary

Attached as Exhibit C is the caption summary required by 49 C.F.R. §1180.4(g)(2)(i).

Respectfully submitted,



Eric M. Hoeky
Gollatz, Griffin & Ewing, P.C.
Four Penn Center Plaza
1600 John F. Kennedy Blvd.
Suite 200
Philadelphia, PA 19103-2808
(215) 563-9400
Attorney for
Finger Lakes Railway Corporation

DATED: January 18, 2005

VERIFICATION

I, Michael V. Smith, President of Finger Lakes Railway Corporation, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on ~~December~~ ^{January 18, 2005} ~~___~~, 2004.

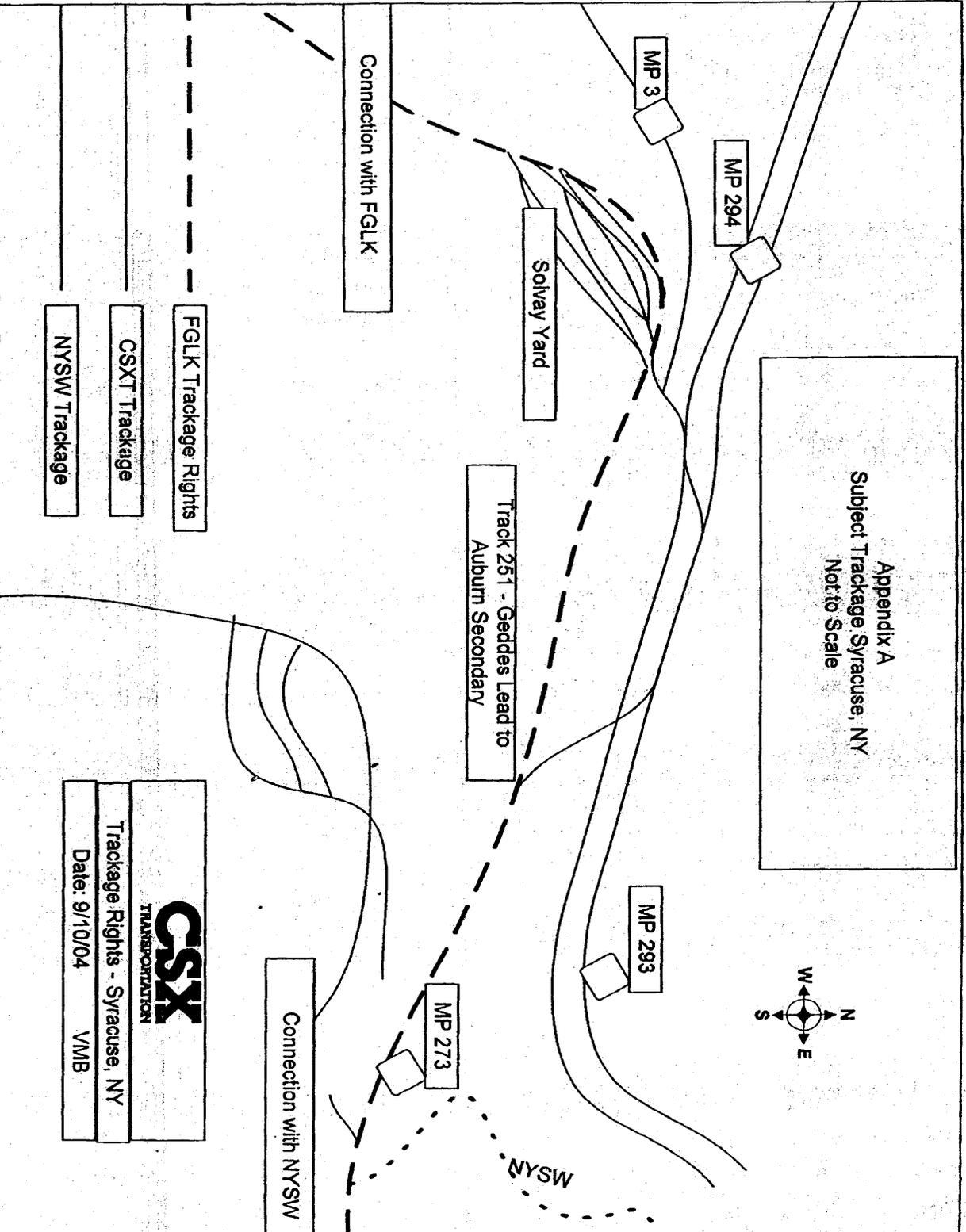


Michael V. Smith

MAP

EXHIBIT A

Appendix A
Subject Trackage Syracuse, NY
Not to Scale



- FGLK Trackage Rights
- CSXT Trackage
- NYSW Trackage

CSX
TRANSPORTATION

Trackage Rights - Syracuse, NY

Date: 9/10/04 VMB

TRACKAGE RIGHTS AGREEMENT

EXHIBIT B

T R A C K A G E R I G H T S A G R E E M E N T

THIS AGREEMENT, entered into as of this 29th day of September 2004, by and between **CSX TRANSPORTATION, INC.**, a Virginia corporation, (hereinafter referred to as "CSXT" or "Owner") and **FINGER LAKES RAILWAY CORPORATION**, a New York corporation, (hereinafter referred to as "FGLK" or "User");

WITNESSETH:

WHEREAS, in April of 1998, the Surface Transportation Board ("STB") conducted two days of informal hearings to examine issues of rail access and competition in today's railroad industry; and

WHEREAS, in Ex Parte No. 575, the STB described the areas of concern expressed by the Short Line Railroads; and

WHEREAS, an agreement of September 10, 1998 known as the Railroad Industry Agreement ("RIA") was reached between the Association of American Railroads ("AAR") representing Class I railroads, and the American Short Line and Regional Railroad Association ("ASLRRA") representing Class II and Class III railroads (collectively Smaller Railroads), to address issues of Class I - Smaller Railroad relationships raised in Ex Parte No. 575; and

WHEREAS, CSXT, FGLK and the New York, Susquehanna and Western Railway Corporation ("NYSW") have subscribed to the terms and principals of the RIA; and

WHEREAS, CSX Corporation ("CSX"), parent to CSXT and Norfolk Southern Corporation ("NSC"), have entered into a Transaction Agreement (the "Transaction Agreement") among themselves; CSXT, a wholly-owned subsidiary of CSX; Conrail, Inc. ("CRR"); Consolidated Rail Corporation ("CRC"), a wholly-owned subsidiary of CRR; and others; and

WHEREAS, CSX and NSC have indirectly acquired all the outstanding capital stock of CRR; and

WHEREAS, pursuant to the Transaction Agreement, certain assets of CRC, including the Geddes Lead Track and Auburn Secondary have been allocated to NYC, which is a wholly-owned subsidiary of CRC, to be operated by CSXT under the terms of an Allocated Asset Operating Agreement ("the CSXT Operating Agreement") between NYC and CSXT; and

WHEREAS, FGLK and NYSW desire to acquire certain rail freight business, specifically iron and steel scrap, which originates on NYSW and terminates on FGLK in the vicinity of Auburn, New York; and

WHEREAS, pursuant to the principles of the Rail Industry Access Agreement (RIA), FGLK has requested trackage rights over CSXT's Geddes Lead and Auburn Secondary between the FGLK/CSXT property line at Solvay, New York and the CSXT/NYSW property line at Syracuse, New York to facilitate the movement of the iron and steel scrap between FGLK and NYSW; and

WHEREAS, CSXT is agreeable to granting such rights to FGLK, subject to 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, CSXT hereby grants to FGLK the limited right to operate its trains, locomotives, cars and equipment with its own crews and at its own expense (hereinafter referred to as the "Trackage Rights") over the following segments of railroad (hereinafter referred to as the "Subject Trackage"):

CSXT/NYSW Interchange Track between the CSXT/NYSW property line and the Geddes Lead Track;

Geddes Lead Track for its entire length to the Auburn Secondary;

Auburn Secondary Track between its connection to the Geddes Lead Track and its connection to the CSXT/FGLK Interchange Track; and

CSXT/FGLK Interchange Track between the CSXT/FGLK property line and connection to the Auburn Secondary Track.

The above Subject Trackage being a total of approximately one and one half (1 ½) miles as generally depicted in Appendix A herein attached.

ARTICLE 2. USE OF SUBJECT TRACKAGE

- (a) FGLK's use of the Subject Trackage shall be in common with CSXT and any other user of the Subject Trackage, and CSXT's right to use the Subject Trackage shall not be diminished by this Agreement. CSXT shall retain the exclusive right to grant to other persons rights of any nature on the Subject Trackage.
- (b) Except as may otherwise be provided by this Agreement, FGLK shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing cars or equipment, or the making or breaking up of trains.
- (c) CSXT shall have exclusive control of the management and operation of the Subject Trackage. FGLK shall not have any claim against CSXT and NYC for liability account of loss or damage of any kind in the event the use of the Subject Trackage by FGLK is interrupted or delayed at any time from any cause.

ARTICLE 3. RESTRICTION ON USE

- (a) The Trackage Rights herein granted are granted for the sole purpose of FGLK using same for bridge traffic only (as is more specifically defined below) between the terminals of Subject Trackage and FGLK shall not perform any local freight service whatsoever at any point located on Subject Trackage.
- (b) Said bridge traffic to be handled by FGLK shall be restricted to loaded and empty cars, diesel locomotives and cabooses in FGLK's account. Bridge traffic handled by FGLK shall be solely limited and restricted to Iron and steel scrap (Standard Transportation Commodity Code 40211)

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which originates on NYSW and terminates on FGLK in the vicinity Auburn, New York, together with return movements of empty cars between FGLK and NYSW, as the NYSW and FGLK rail systems exist as of the date first above written.

- (c) Such bridge traffic is limited to the movement of not more than [] loaded iron and steel scrap cars, locomotives and cabooses per year, unless specific alternative arrangements are negotiated and agreed to between the parties.
- (d) Commodities authorized under this Article 3 may be added or deleted from time to time during the term hereof with the mutual consent of the parties.

ARTICLE 4. MISCELLANEOUS SPECIAL PROVISIONS

- (a) When operating over the Subject Trackage, FGLK's locomotives and crews will be equipped to communicate with CSXT on radio frequencies normally used by CSXT in directing train movements on the Subject Trackage.
- (b) Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of CSXT's representative or his designee.
- (c) Before FGLK enters upon the Subject Trackage, FGLK must verify that FGLK has the ability to make a complete and continuous movement onto NYSW or FGLK's own line of railroad.
- (d) FGLK hereby represents and warrants that FGLK has secured an understanding with NYSW as to conditions and operations over NYSW tracks and that CSXT shall have no obligation associated with FGLK's operations over NYSW. FGLK shall assume all responsibility and liability in connection therewith, and shall hold CSXT harmless from any liability there from.

ARTICLE 5. COMPENSATION

- (a) For the use it makes of the Subject Trackage for iron and steel scrap rail freight business, FGLK shall pay to CSXT, the sum of [] per year for the first [] carloads moved under the provisions of this Agreement. The above charges are hereinafter referred to as the "Current Charge". The Current Charge is based on, and limited to, FGLK's movement of not more than [] loaded iron and steel scrap cars, locomotives and cabooses per year on the Subject Trackage. In the event FGLK moves in excess of [] carloads, including locomotives and cabooses in any calendar year, the Current Charge shall be [] per year in addition to the above charges.
- (b) FGLK will furnish at the end of each month, a statement of the number of locomotive units, cabooses, and loaded and empty iron and steel scrap cars, operated over the Subject Trackage during the month to the following address:

CSX Transportation, Inc.
Director Expenditures Billing
CSX II Building, 3rd Floor, J686
6735 Southpoint Drive South
Jacksonville, FL 32216-6177

FGLK Trackage Rights Agreement
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Failure to report accurate and timely information will be grounds for CSXT to suspend this agreement, until such time as FGLK complies with its obligation to provide information as described herein.

- (c) Compensation for Annual volumes exceeding those specified in Article 5 (a) shall be subject to such terms as may be negotiated in accordance with Article 3 (c) or (d)
- (d) The Current Charges may be further revised each year to reflect any revisions in the aforesaid Current Charges in accordance with Article 6.

ARTICLE 6. REVISION OF CURRENT CHARGES

- (a) The Current Charges shall be subject to change to reflect any increases or decreases in labor, material and other costs as hereinafter provided.
- (b) The Current Charges shall be revised upward or downward, effective July 1 of each year, beginning July 1, 2005 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 Charges shall be revised by calculating the percent of increase or decrease in the index of the latest calendar year (2004 Index for the first annual adjustment) as related to the index for the previous calendar year (2003 Index for the first annual adjustment) and applying that percent to the Current Charges.
- (c) By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2003; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2004; "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)
$$\frac{B - A}{A} = D$$
 - (2)
$$(D \times C) + C = \text{revised Current Charge, effective July 1 of the year being revised.}$$
- (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) CSXT shall be responsible for annual calculation of Current Charges and notification to FGLK of adjusted amounts owed to CSXT. Said Notification will be supplied no later than Thirty (30) days prior to date payment is due.

ARTICLE 7. PAYMENT OF BILLS

- (a) The Current Charges shall be paid annually, in advance, and shall be due and payable by FGLK to CSXT on or before January 1 of each year beginning January 1, 2005. The payment due January 1, 2005 shall include on a pro-rata basis, movements made by FGLK on the Subject Trackage during the calendar year 2004. Payments shall be sent to the following address:

CSX Transportation, Inc.
P. O. Box 641949
Pittsburgh, PA 15264 - 1949

- (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 CSXT at the time any work is performed by CSXT for FGLK.
- (c) 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.

ARTICLE 8. ACCOUNTING RECORDS

The records of FGLK, insofar as they pertain to matters covered by this Agreement, shall be retained for a period of two (2) years and shall be open at all reasonable times to inspection by CSXT or its designated representative during such period. These records shall include waybills and train consists (lists) indicating, as a minimum, car initials and numbers with associated car type code, the origin and destination, commodity and route of movement.

ARTICLE 9. MAINTENANCE OF SUBJECT TRACKAGE

- (a) CSXT shall maintain, repair and renew the Subject Trackage with its own supervision and labor. CSXT shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but CSXT does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. CSXT shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, except as may be otherwise provided in Article 16, FGLK shall not by reason of failure or neglect on the part of CSXT to maintain, repair or renew the Subject Trackage, have or make any claim or demand against CSXT or their parent corporations, 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 FGLK resulting from any such failure or neglect.
- (b) CSXT shall perform, at the expense of FGLK, such additional maintenance as FGLK may reasonably require or request.

ARTICLE 10. INSURANCE

- (a) During the term, and any continued term, of this Agreement, FGLK, at its own expense, shall procure and maintain in effect a policy of public liability insurance, with limits of not less than

FGLK Trackage Rights Agreement
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\$5 million single limit, bodily injury and/or property damage, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to, or destruction of property, including the loss of use thereof, in any one occurrence, subject to a self-insured retention limit not to exceed One Hundred Thousand Dollars (\$100,000), including contractual liability insurance, which names CSXT as an additional insured and provides for a minimum of thirty (30) days advance written notice to CSXT prior to any changes or cancellation. Failure to procure and maintain such insurance in force shall constitute a breach of contract hereunder.

- (b) This insurance coverage shall be effected under standard form policies issued by insurers of financial responsibility, which are rated "A" or better by either Best's Insurance Reports, Standard & Poor's Rating Service or Moody's Investors Service. CSXT reserves the right to reject as inadequate, coverage provided by an insurance company rated less than "A" by the aforementioned rating services.
- (c) If the insurance provided under this section takes the form of a "Claims Made Policy", FGLK shall purchase whatever supplemental coverage may be necessary to provide continuous coverage of its potential liability under this Agreement, with annual occurrence and annual aggregate limits no less than those required hereunder, for a period of time at least five (5) years following the termination of this Agreement. FGLK shall immediately give CSXT written notice of any claim, or notice of incident, or notice of potential claim, that is required to be reported to FGLK's insurance company.
- (d) FGLK shall provide annually, satisfactory evidence of coverage, written notice of any claim and any other correspondence dealing with insurance and insurance matters should be directed to:

Law Department – Insurance
CSX Transportation, Inc.
500 Water Street – J150
Jacksonville, FL 32202

ARTICLE 11. CONSTRUCTION AND MAINTENANCE OF NEW CONNECTIONS

- (a) Existing connections or facilities which are jointly used by the parties hereto under existing agreements 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 required by FGLK will be subject to CSXT's approval (including design) and shall be constructed, maintained, repaired and renewed as follows:
 - (i) FGLK 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 FGLK or others which connect the respective lines of the parties hereto.
 - (ii) CSXT shall furnish all labor and material and shall construct, maintain, repair and renew at the sole cost and expense of FGLK such portions of the tracks located on the CSXT right-of-way which connect the respective lines of the parties hereto. Upon termination of this Agreement, CSXT may at its option remove portion of trackage and appurtenances located on CSXT property, at the sole cost and expense of FGLK. The salvage material removed shall be released to FGLK or, as otherwise agreed upon, CSXT will credit FGLK the current fair market value for said salvage.

FGLK Trackage Rights Agreement
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ARTICLE 12. ADDITIONS, RETIREMENTS AND ALTERATIONS

- (a) CSXT, 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 FGLK's operations beyond that required by CSXT to accommodate its operations, CSXT shall construct the additional or altered facilities and FGLK shall pay to CSXT the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities.

ARTICLE 13. MANAGEMENT AND OPERATIONS

- (a) FGLK 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, cars and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. FGLK shall indemnify, protect, defend, and save harmless NYC, CSXT and their parent corporations, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon NYC, CSXT or their parent corporations, 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 FGLK to comply with its obligations in this regard.
- (b) FGLK in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of CSXT, and the movement of FGLK's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of CSXT. FGLK's trains shall not include locomotives, cars or equipment 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, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by CSXT's operating rules and regulations without the prior consent of CSXT.
- (c) FGLK shall make such arrangements with CSXT as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Subject Trackage qualified for operation thereover, and FGLK shall pay to CSXT, upon receipt of bills therefor, any cost incurred by CSXT in connection with the qualification of such employees of FGLK, as well as the cost of pilots furnished by CSXT, until such time as such employees are deemed by the appropriate examining officer of CSXT to be properly qualified for operation as herein contemplated.
- (d) In the event of any investigation or hearing concerning the violation of any operating rule or practice by FGLK's employees while on CSXT operated trackage, FGLK shall be notified in

FGLK Trackage Rights Agreement

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advance of any such investigation or hearing, and such investigation or hearing may be attended by any official designated by FGLK, and any such investigation or hearing shall be conducted in accordance with the collective bargaining agreements, if any, that pertain to FGLK's employee or employees required to attend such hearings.

- (e) CSXT shall have the right to exclude from CSXT trackage any employee of FGLK determined by above, to be in violation of CSXT's rules, regulations, orders, practices, or instructions issued by CSXT's Timetable or otherwise. FGLK shall release, indemnify, defend, and save harmless CSXT and its parent corporations, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.
- (f) The trains, locomotives, cars and equipment of FGLK, CSXT, 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 will afford the most economical and efficient manner of movement of all traffic.
- (g) In the event that a train of FGLK shall be forced to stop on the Subject Trackage, and such stoppage is due to insufficient hours of service remaining among FGLK's crew, or due to mechanical failure of FGLK'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 FGLK fails to maintain the speed required by CSXT on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of FGLK's trains on the Subject Trackage, CSXT shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew FGLK'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 FGLK shall reimburse CSXT for the cost of rendering any such assistance.
- (h) 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 CSXT, and FGLK shall reimburse CSXT for the cost thereof.
- (i) In the event CSXT and FGLK agree that CSXT should retain employees or provide additional employees for the sole benefit of FGLK, the parties hereto shall enter into a separate agreement under which FGLK 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 CSXT and which would not have been incurred had the retained or additional employees not been provided.

ARTICLE 14. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in FGLK's trains on the Subject Trackage shall be assumed by FGLK and reported and paid directly by FGLK.

ARTICLE 15. CLEARING OF WRECKS

Whenever FGLK's use of the Subject Trackage requires re-railing, wrecking service or wrecking train service, CSXT 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 16 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which is owned by or under the management and control of or used by FGLK at the time of such wreck, shall be promptly delivered to it.

ARTICLE 16. 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, judgements, 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 17. 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 will 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 CSXT or FGLK 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 parties and their parent corporations, 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. 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 17 shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 16.

ARTICLE 18. DEFAULT AND TERMINATION

- (a) In the event of any substantial failure on the part of FGLK 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 CSXT, CSXT shall have the right to terminate the Trackage Rights and FGLK's use of the Subject Trackage. The exercise of such right by CSXT shall not impair its rights under this Agreement or any cause or causes of action it may have against FGLK for the recovery of damages.
- (b) In the event of termination of this Agreement for any reason, and if this Agreement was filed by FGLK with the STB pursuant to Part (a) of Article 19, FGLK shall immediately make the necessary filing with the Surface Transportation Board ("STB") to discontinue FGLK's rights covered by this Agreement. Should FGLK fail to make such a filing within thirty (30) days of said termination or cancellation date, FGLK hereby expressly authorizes CSXT to make such a filing on FGLK's behalf and FGLK shall not oppose such a filing and shall be responsible for reimbursing CSXT for any cost associated with said filing, including attorney and filing fees.

ARTICLE 19. REGULATORY APPROVAL

- (a) Should this Agreement require the prior approval of the Surface Transportation Board (STB), FGLK at its own cost and expense will initiate and thereafter diligently pursue an appropriate application, petition or notice to secure such approval. CSXT will assist and support efforts of FGLK 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 arrangement, FGLK, solely, shall be responsible for any and all payments in satisfaction of such conditions.

ARTICLE 20. DISCONTINUANCE OF OPERATION

Nothing herein shall preclude CSXT from discontinuing the operation of or abandoning all or any part of the Subject Trackage at any time, subject only to such prior governmental authorization as may be necessary. Upon such discontinuance or abandonment, this Agreement shall terminate, except for any liability occurring prior to the discontinuance, and CSXT shall have no further obligation to

FGLK Trackage Rights Agreement
9/28/2004
11 of 15

FGLK with respect to FGLK operations over the discontinued line.

ARTICLE 21. TERM

- (a) This Agreement shall be effective the day and year first above written or, in the event Surface Transportation Board (STB) approval is required, on the effective date such approval is secured, and shall remain in full force and effect for One (1) Year, subject to an annual extension with the concurrence of both parties; provided, however, that any party hereto shall have the right to terminate this Agreement upon Sixty (60) days advance written notice to the other parties.
- (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 22. ARBITRATION

Any irreconcilable 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 or such other arbitration association as the parties may mutually agree. 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 FGLK and CSXT. 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

FGLK shall not transfer or assign this Agreement, or any of its rights, interests or obligations hereunder, to any person, firm, or corporation without obtaining prior written consent of CSXT and NYC.

Article 24. CONFIDENTIALITY

Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement or as may be necessary or appropriate for a party hereto to enforce its rights under this Agreement, during the term of this Agreement and during three (3) years after termination of this Agreement, the terms and provisions of this Agreement and all information to which access is provided or obtained hereunder will be kept confidential and will not be disclosed by either CSXT or FGLK to any party other than each party's respective parent corporation, subsidiaries and affiliates, and their respective directors, officers, agents, employees and attorneys, without the prior written approval of the other parties.

ARTICLE 25. NOTICE

Any notice required or permitted to be given by one party to the others 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:

- (a) If to CSXT: General Manager – Intercarrier Agreements
CSX Transportation, Inc. J801
500 Water Street
Jacksonville, FL 32202
- b) If to FGLK: President
Finger Lakes Railway Corp.
P. O. Box 1099
Geneva, New York 14456
- c) Any party may provide changes in the above addresses to the other party by personal service or U.S. mail.

ARTICLE 26. GENERAL PROVISIONS

- (a) This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any other party. Nothing herein contained shall be taken as creating or increasing any right of any other party to recover by way of damages or otherwise against any of the parties hereto.
- (b) This Agreement contains the entire understanding of the parties hereto and supersedes any and all oral understandings among 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 all 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) No party hereto may disclose the provisions of this Agreement to another 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.

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

WITNESS

Seah L. Lett

CSX TRANSPORTATION, INC.

By Jay S. Heston
Title: AVF Passenger/Joint Facility Contracts

WITNESS

Samuel Egan

FINGER LAKES RAILWAY CORP.

By [Signature]
Title: President

CAPTION SUMMARY

EXHIBIT C

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 34644

**FINGER LAKES RAILWAY CORPORATION
- TRACKAGE RIGHTS EXEMPTION -
CSX TRANSPORTATION, INC.**

CSX Transportation, Inc. ("CSXT") has agreed to grant trackage rights to Finger Lakes Railway Corporation ("FGLK") over the following segments of railroad totaling approximately 1.5 miles: (1) CSXT/NYSW Interchange Track between the CSXT/NYSW property line and the Geddes Lead Track; (2) Geddes Lead Track for its entire length to the Auburn Secondary; (3) Auburn Secondary Track between its connection to the Geddes Lead Track and its connection to the CSXT/FGLK Interchange Track; and (4) CSXT/FGLK Interchange Track between the CSXT/FGLK property line and the connection to the Auburn Secondary Track (the "Subject Trackage"). The Subject Trackage is located in the State of New York.

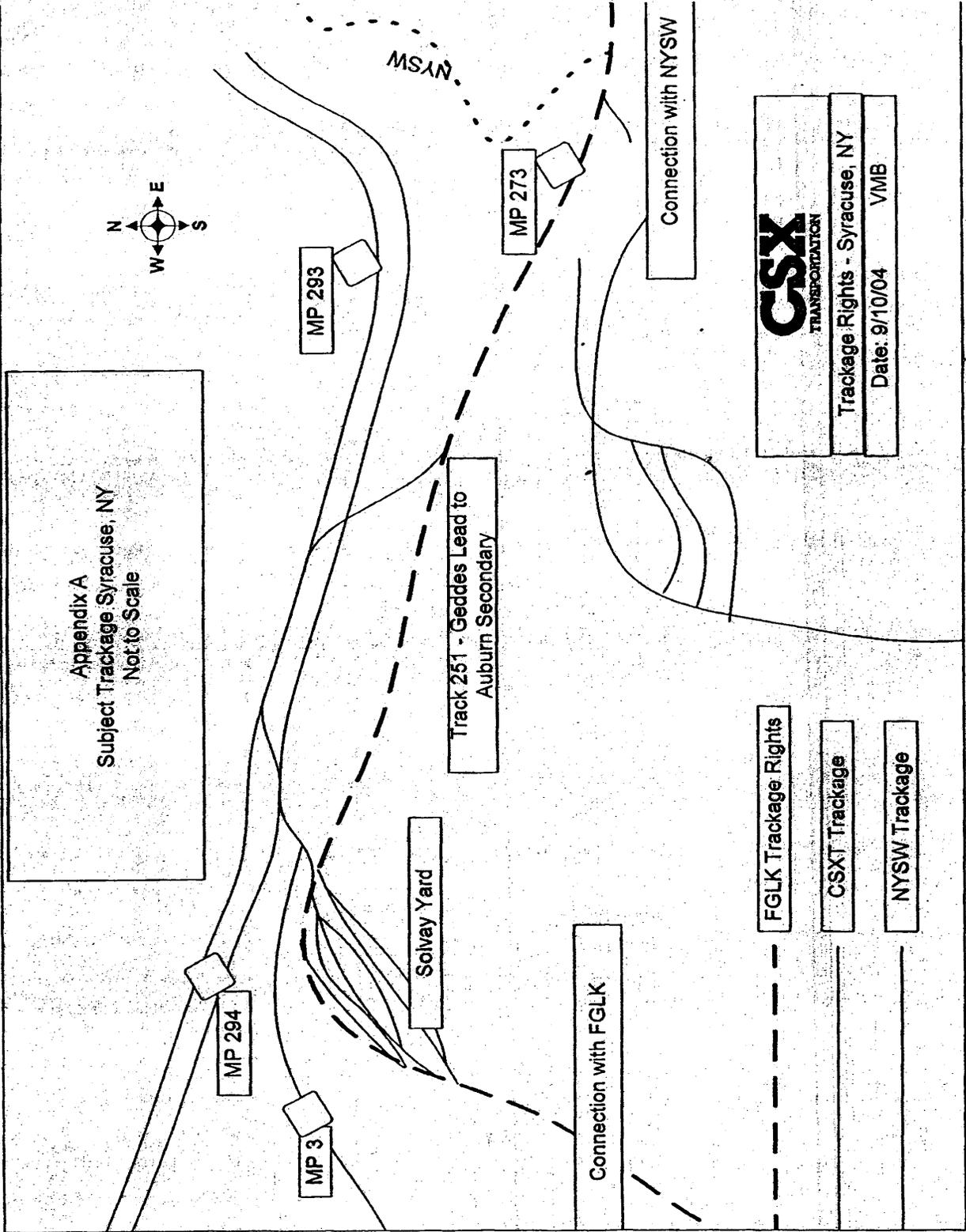
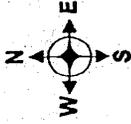
The Notice is filed under 49 C.F.R. §1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. §10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Board,

Vernon Williams, Secretary

Appendix A
Subject Trackage Syracuse, NY
Not to Scale



- FGLK Trackage Rights
- CSXT Trackage
- NYSW Trackage

CSX
TRANSPORTATION

Trackage Rights - Syracuse, NY

Date: 9/10/04 VMB