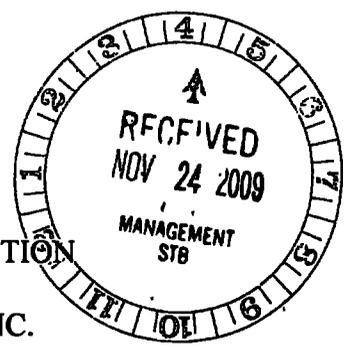


226067

BEFORE THE  
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35312



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

VERIFIED NOTICE OF EXEMPTION PURSUANT TO 49 CFR 1150.31

ENTERED  
Office of Proceedings

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Keith G. O'Brien  
Robert A. Wimbish  
Baker & Miller PLLC  
2401 Pennsylvania Ave., N.W.  
Suite 300  
Washington, DC 20037  
Phone: (202) 663-7820  
Facsimile: (202) 663-7849

Attorneys for the Massachusetts  
Department of Transportation

Dated: November 24, 2009

BEFORE THE  
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35312



MASSACHUSETTS DEPARTMENT OF TRANSPORTATION  
– ACQUISITION EXEMPTION –  
CERTAIN ASSETS OF CSX TRANSPORTATION, INC.

VERIFIED NOTICE OF EXEMPTION PURSUANT TO 49 CFR 1150.31

Pursuant to 49 CFR 1150.31, et seq., the Massachusetts Department of Transportation (“MassDOT”), a non-carrier, hereby files this Verified Notice of Exemption to acquire from CSX Transportation, Inc (“CSXT”) certain physical assets of railroad lines and associated rights-of-way including the following: (1) portions of the Grand Junction Branch, extending 4.87 miles between milepost QBG 0.00 and milepost QBG 2.70, and between milepost QBG 5.70 and milepost QBG 7.87; (2) a portion of the Boston Terminal Running Track, extending 1.10 miles between milepost QBB 0.00 and milepost QBB 1.10; (3) the New Bedford Secondary, extending 18.48 miles between milepost QN 13.40 (at Cotley Junction) and milepost QN 31.80 (at New Bedford), including CSXT’s property interests in the right-of-way and track assets of the North Dartmouth Industrial Track (also known as the Watuppa Branch) between milepost QND 0.0 and QND 0.08 and CSXT’s property interests in the right-of-way but not the track assets between QND 0.08 and QND 6.0 (which assets are owned and operated by the Bay Colony Railroad Corporation); (4) the Fall River Secondary, extending 14.20 miles between milepost QNF 0.00 (at Myricks) to milepost QNF 14.2 (at Fall River – Massachusetts state line); (5) the Framingham to Worcester segment of the Boston Main Line (the “BML-West”), extending approximately

22.92 miles between milepost QB 21.38 (at Framingham) and milepost QB 44.30 (at Worcester); and (6) the track assets, but not the underlying real estate, constituting the 9.71-mile rail line between milepost QB 1.12 (at CP Cove) and milepost QB 10.83 (at Newton/Riverside) (the “BML-East”). The aforementioned properties will be referred to collectively herein as the “Railroad Assets.”

Because CSXT will retain a permanent, exclusive freight operating easement on the Railroad Assets and MassDOT will acquire neither the right nor ability to provide or to materially interfere with freight service on them, MassDOT is concurrently filing a motion to dismiss this notice of exemption pursuant to Maine DOT – Acq. Exmpt. – ME Central R. Co., 8 I.C.C.2d 835 (1991) (“State of Maine”) and the numerous subsequent Board decisions addressing State of Maine. This two-step process allows parties to obtain an advance jurisdictional determination that a non-carrier’s purchase of the subject rail assets, without transfer of any common carrier rights or obligations associated with those assets, is not subject to the Board’s licensing provisions of 49 U.S.C 10901.

In accordance with the requirements of 49 CFR 1150.33, MassDOT submits the following information:

**Full name and address of applicant: 49 CFR 1150.33(a)**

Massachusetts Department of Transportation  
Ten Park Plaza  
Boston, MA 02116-3974

**Applicant’s Representative: 49 CFR 1150.33(b)**

Keith G. O’Brien  
Robert A. Wimbish  
Baker & Miller PLLC  
2401 Pennsylvania Ave., NW, Ste. 300  
Washington, DC 20037  
(202) 663-7852

**Statement that an agreement has been reached or details about when an agreement will be reached: 49 CFR 1150.33 (c)**

The Commonwealth of Massachusetts (“Commonwealth”), acting through its Executive Office of Transportation and Public Works (“EOTPW”), and CSXT executed a Definitive Agreement providing for acquisition of the Railroad Assets, subject to (among other things) a retained, permanent and exclusive freight operating easement for CSXT, under which CSXT, and its successors or assignees will remain the freight common carrier on the Railroad Assets.<sup>1</sup> CSXT’s retained easement is specifically memorialized in the Definitive Agreement and also, with respect to the BML-East assets, in a 1985 Trackage Rights Agreement (the “1985 Agreement”) between the Massachusetts Bay Transportation Authority (“MBTA”) and CSXT’s predecessor in interest, Conrail. MBTA – an authority of the Commonwealth to which MassDOT will entrust day-to-day oversight and management of the Railroad Assets – and CSXT have also entered into (as relevant here) an Operating Agreement (the “2009 Operating Agreement”) setting forth terms and conditions for the continued shared use of the BML-West by MBTA (for commuter rail purposes), Amtrak (for intercity passenger rail purposes), and CSXT (for rail freight purposes) after MassDOT’s acquisition of the BML-West assets.<sup>2</sup> A copy of the Definitive Agreement (and the First Amendment to that agreement), the 2009 Operating Agreement,

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<sup>1</sup> Effective November 1, 2009, the Commonwealth has reconfigured its transportation agency structure. As relevant to this transaction, EOTPW has been eliminated and in its place the Commonwealth has established MassDOT. Most of the agreements underlying the subject transaction predate MassDOT’s existence and were executed by and between CSXT and EOTPW. MassDOT has succeeded to EOTPW’s responsibilities and obligations and, where appropriate, the parties have amended, or will amend, the relevant agreements to substitute MassDOT for EOTPW. Regardless, MassDOT is the successor in interest to EOTPW’s contractual obligations by operation of law.

<sup>2</sup> The portion of the BML-West between mileposts 21.38 and 22.40 will be governed by the 1985 Agreement, rather than by the 2009 Operating Agreement.

and the 1985 Agreement (as amended) are all included as exhibits to MassDOT's concurrently-filed motion to dismiss in this docket.

**Operator of the property: 49 C.F.R. 1150.33(d)**

As indicated above, CSXT will retain a permanent freight easement over the Railroad Assets permitting CSXT to continue to provide service to shippers using the Railroad Assets. At such time as MassDOT and CSXT close on the sale of the New Bedford Secondary (including CSXT's interests in the Watuppa Branch) and the Fall River Secondary (collectively, the "South Coast Assets"), CSXT simultaneously will convey its retained permanent freight easement rights over the South Coast Assets (excluding the 5.92 miles of the Watuppa Branch, over which CSXT does not now possess such rights) to the Massachusetts Coastal Railroad, LLC ("Mass Coastal"), a Class III short line, pursuant to a separate proceeding docketed under STB Finance Docket No. 35314. Upon consummation of the easement sale transaction encompassed by the STB Finance Docket No. 35314 proceeding, Mass Coastal will assume freight service operations on the South Coast Assets.

As indicated above, the National Railroad Passenger Corporation ("Amtrak") operates over the BML-West line segment and the BML-East line segment, and it will continue in both cases to operate as a tenant of CSXT following the proposed transaction pursuant to an existing agreement between Amtrak and CSXT dated as of June 1, 1999, until such time as that agreement is modified, amended, discontinued or succeeded by a subsequent agreement between MBTA and Amtrak.

**Summary of the proposed transaction: 49 C.F.R. 1150.33(e)**

The name and address of the railroad transferring operating interests in the subject property:

CSX Transportation, Inc.  
500 Water Street  
Jacksonville, FL 32202

MassDOT is an instrumentality of the Commonwealth of Massachusetts and a non-carrier. Pursuant to the Definitive Agreement (as amended), MassDOT, as successor to EOTPW, will acquire from CSXT the track assets and rights-of-way of the following railroad properties: (1) portions of the Grand Junction Branch, extending 4.87 miles between milepost QBG 0.00 and milepost QBG 2.70, and between milepost QBG 5.70 and milepost QBG 7.87;<sup>3</sup> (2) a portion of the Boston Terminal Running Track, extending 1.10 miles between milepost QBB 0.00 and milepost QBB 1.10; (3) the New Bedford Secondary, extending 18.48 miles between milepost QN 13.40 (at Cotley Junction) and milepost QN 31.80 (at New Bedford), including the North Dartmouth Industrial Track (also known as the Watuppa Branch) between milepost QND 0.00 and QND 0.08;<sup>4</sup> (4) the

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<sup>3</sup> According to CSXT, the foregoing milepost description of the Grand Junction Branch represents the full scope of CSXT's ownership interest in this rail line, and CSXT does not have any ownership interest to convey in the intervening section of this branch between milepost QBG 2.70 and milepost QBG 5.70.

<sup>4</sup> CSXT previously sold the track and material on the Watuppa Branch between milepost QND 0.08 and QND 6.00 to the Bay Colony Railroad Corporation ("BCLR"), and leased the underlying real estate to BCLR. See Bay Colony Railroad Corporation – Acquisition and Operation Exemption – CSX Transportation, Inc., as Operator for New York Central Lines, LLC, STB Finance Docket No. 34446 (STB served Jan. 16, 2004). In this transaction, CSXT will convey the full scope of its ownership interest in the Watuppa Branch to MassDOT, subject to BCLR's rights and interests and CSXT's retained easement over the first 0.08 miles of the branch. Pursuant to the agreement between CSXT and MassDOT, CSXT will assign the BCLR lease to MassDOT. BCLR will continue to provide common carrier service over the 5.92 miles of the Watuppa Branch west of milepost QND 0.08, and MassDOT will acquire only the real estate underlying this section

Fall River Secondary, extending 14.20 miles between milepost QNF 0.00 (at Myricks) to milepost QNF 14.2 (at Fall River – Massachusetts state line); (5) the Framingham to Worcester segment of the Boston Main Line (the “BML-West”), extending approximately 22.92 miles between milepost QB 21.38 (at Framingham) and milepost QB 44.30 (at Worcester); and (6) the track assets, but not the underlying real estate, constituting the 9.71-mile rail line between milepost QB 1.12 (at CP Cove) to milepost QB 10.83 (at Newton/Riverside) (the “BML-East”).<sup>5</sup>

MassDOT will acquire a total of 61.57 miles of real estate, right-of-way, and track material (the BML-West, South Coast Assets excluding the Watuppa Branch, the Grand Junction Branch, and the Boston Terminal Running Track), will acquire an additional 9.71 miles of track and track structure excluding the underlying real estate (the BML-East assets), and will purchase an additional 5.92 miles of real estate underlying the Watuppa Branch (excluding track material). In sum, MassDOT will acquire 71.28 miles of rail line.

The aforementioned rail asset sale will take place in two stages, pursuant to two separate closings. The first closing, scheduled to take place on May 14, 2010, would involve the sale of the Grand Junction Branch and Boston Terminal Running Track assets (collectively, the “BPY Assets”), along with the South Coast Assets, while the second closing, scheduled to take place after the first closing but on or before September 15, 2012, would involve the sale of the BML-West and BML-East assets.

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of the branch. Because of BCLR’s interest in 5.92 miles of the Watuppa Branch, MassDOT has excluded that 5.92 miles from the mileage total for the New Bedford Secondary.

<sup>5</sup> CSXT has represented that it owns the track assets that constitute the BML-East, but that it does not own the underlying real estate, which was conveyed by a CSXT predecessor to the Massachusetts Turnpike Authority in 1962.

As stated above, CSXT will in all cases retain a permanent freight easement over the Railroad Assets permitting CSXT to continue to provide service to shippers located on those Railroad Assets. CSXT's retained perpetual easement will be specifically reserved in deeds between CSXT and MassDOT, and will be subject to the terms and conditions of the Definitive Agreement (as amended) and the 2009 Operating Agreement between MBTA and CSXT. CSXT already has retained easement rights over the BML-East assets pursuant to the deed under which CSXT's predecessor in interest, the New York Central Railroad, conveyed the land underlying the BML-East trackage to the Massachusetts Turnpike Authority in 1962. Pursuant to its retained easements, CSXT will continue to have the exclusive right and ability to provide rail freight service on the Railroad Assets.

At the same time that MassDOT and CSXT engage in the first closing, however, CSXT will sell its retained permanent freight easement rights over the South Coast Assets to Mass Coastal, an existing Class III short line. The deed retaining the permanent freight easement for CSXT in the South Coast Assets allows for the transfer of those rights to Mass Coastal.

**Map: 49 CFR 1150.33(f)**

Maps showing the Railroad Assets and surrounding areas are attached as Exhibit A to this notice.

**Certificate of compliance: 49 CFR 1150.33(g)**

A Certificate of Compliance with the provisions of 49 CFR 1150.33(g) is attached as Exhibit B to this notice.

**Interchange commitments: 49 CFR 1150.33(h)**

The proposed acquisition of the Railroad Assets by MassDOT will not involve any provision or agreement that would limit future interchange with a third-party connecting carrier. In any event, the agreements governing the subject transaction have been included with the accompanying Motion to Dismiss.

**Advance Notice (Posting): 49 CFR 1150.32(e)**

The proposed transaction will not result in the creation of a carrier, but, in any event, the projected annual operating revenue of MassDOT relating to this transaction does not exceed \$5 million, and, accordingly, the advance notice requirements of 49 CFR 1150.32(e) are not applicable to this transaction. See Exhibit B.

**Environmental and Historic Prescription Data: 49 CFR 1105**

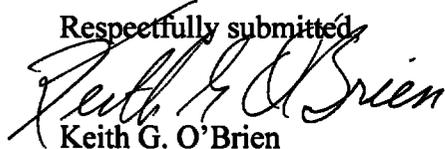
Under 49 CFR 1105.6(c)(2), MassDOT's proposed acquisition of the Railroad Assets is exempt from environmental reporting requirements. The proposed acquisition will not result in significant changes in freight carrier operations. i.e., changes that exceed the thresholds established in 49 CFR 1105.7(e)(4) or (5).

Under 49 CFR § 1105.8(b)(1), MassDOT's proposed acquisition of the Railroad Assets also is exempt from historic preservation reporting requirements. The proposed acquisition is for the purpose of continued rail operations. Further Board approval would be required if CSXT and/or Mass Coastal were to choose to discontinue or abandon any service and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

**Caption Summary: 49 CFR 1150.34**

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

Respectfully submitted,



Keith G. O'Brien  
Robert A. Wimbish  
Baker & Miller PLLC  
2401 Pennsylvania Ave., N.W.  
Suite 300  
Washington, DC 20037  
(202) 663-7852

Attorneys for the Massachusetts  
Department of Transportation

Dated: November 24, 2009

## **COMPLIANCE WITH MASSACHUSETTS ENVIRONMENTAL POLICY**

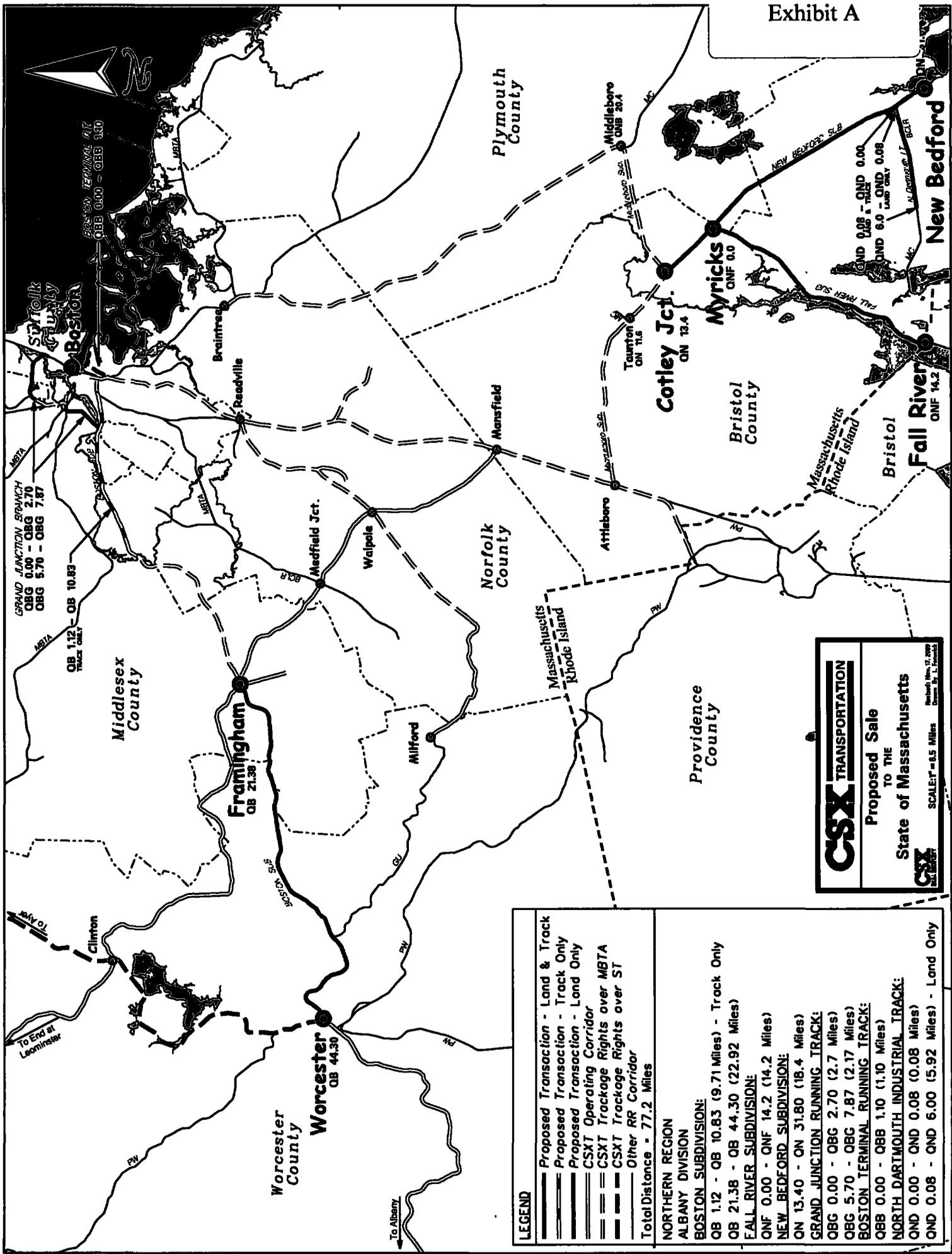
The Commonwealth of Massachusetts has established a strong policy of minimizing the environmental impacts associated with the preparation and filing of documents prepared by the Commonwealth or on its behalf. Specifically, the Commonwealth encourages greater use of recycled and environmentally preferable products to minimize waste and to promote further recycling. To the extent practicable in light of STB filing requirements, this Verified Notice of Exemption filing adheres to the Commonwealth's policies by using recycled paper with a minimum post-consumer content of 30%, recyclable and/or re-usable binding materials, and other products that contain recycled content.

VERIFICATION

Pursuant to 28 U.S.C. 1746, I declare under the penalty of perjury under the laws of the United States that I am authorized to make this verification on behalf of the Massachusetts Department of Transportation, and that the foregoing notice of exemption is true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Jeffrey B. Mulligan  
Secretary and Chief Executive Officer  
Massachusetts Department of Transportation

November 23, 2009



**CSX TRANSPORTATION**  
**Proposed Sale**  
**TO THE**  
**State of Massachusetts**

SCALE 1" = 6.5 Miles

Revised May 17, 2009  
 Drawn by L. Farnick

<b>LEGEND</b>	<ul style="list-style-type: none"> <li>Proposed Transaction - Land &amp; Track</li> <li>Proposed Transaction - Track Only</li> <li>Proposed Transaction - Land Only</li> <li>CSXT Operating Corridor</li> <li>CSXT Trackage Rights over MBTA</li> <li>CSXT Trackage Rights over ST</li> <li>Other RR Corridor</li> </ul> <p>Total Distance - 77.2 Miles</p>
<b>NORTHERN REGION</b>	
<b>ALBANY DIVISION</b>	
<b>BOSTON SUBDIVISION:</b>	
OB 1.12 - OB 10.83 (9.71 Miles) - Track Only	
OB 21.38 - OB 44.30 (22.92 Miles)	
<b>FALL RIVER SUBDIVISION:</b>	
ONF 0.00 - ONF 14.2 (14.2 Miles)	
<b>NEW BEDFORD SUBDIVISION:</b>	
ON 13.40 - ON 31.80 (18.4 Miles)	
<b>GRAND JUNCTION RUNNING TRACK:</b>	
OBG 0.00 - OBG 2.70 (2.7 Miles)	
OBG 5.70 - OBG 7.87 (2.17 Miles)	
<b>BOSTON TERMINAL RUNNING TRACK:</b>	
QBB 0.00 - QBB 1.10 (1.10 Miles)	
<b>NORTH DARTMOUTH INDUSTRIAL TRACK:</b>	
OND 0.00 - OND 0.08 (0.08 Miles)	
OND 0.08 - OND 6.00 (5.92 Miles) - Land Only	

**CERTIFICATION**

I, Jeffrey B. Mullan of, the Massachusetts Department of Transportation ("MassDOT") hereby certify that MassDOT's projected annual revenues resulting from the consummation of the proposed transaction would not exceed \$5 million annually, and would not result in MassDOT becoming a Class I or Class II carrier under the provisions of 49 CFR 1201(1-1).

  
\_\_\_\_\_  
Jeffrey B. Mullan  
Secretary and Chief Executive Officer  
Massachusetts Department of Transportation

November 23, 2009

## SURFACE TRANSPORTATION BOARD

## Notice of Exemption

STB Finance Docket No. 35312

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MASSACHUSETTS DEPARTMENT OF TRANSPORTATION  
– ACQUISITION EXEMPTION –  
CERTAIN ASSETS OF CSX TRANSPORTATION, INC.

The Massachusetts Department of Transportation (“MassDOT”), a non-carrier has filed a verified notice of exemption to acquire from CSX Transportation, Inc (“CSXT”) certain physical assets of railroad lines and associated rights-of-way including the following: (1) portions of the Grand Junction Branch, extending 4.87 miles between milepost QBG 0.00 and milepost QBG 2.70, and between milepost QBG 5.70 and milepost QBG 7.87; (2) a portion of the Boston Terminal Running Track, extending 1.10 miles between milepost QBB 0.00 and milepost QBB 1.10; (3) the New Bedford Secondary, extending 18.48 miles between milepost QN 13.40 (at Cotley Junction) and milepost QN 31.80 (at New Bedford), including the North Dartmouth Industrial Track (also known as the Watuppa Branch) between milepost QND 0.00 and QND 0.08;<sup>1</sup> (4) the Fall River Secondary, extending 14.20 miles between milepost QNF 0.00 (at Myricks) to milepost QNF 14.2 (at Fall River – Massachusetts state line); (5) the Framingham to

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<sup>1</sup> CSXT previously sold the track and material on the Watuppa Branch between milepost QND 0.08 and QND 6.00 to the Bay Colony Railroad Corporation (“BCLR”), and leased the underlying real estate to BCLR. See Bay Colony Railroad Corporation – Acquisition and Operation Exemption – CSX Transportation, Inc., as Operator for New York Central Lines, LLC, STB Finance Docket No. 34446 (STB served Jan. 16, 2004). In this transaction, CSXT will convey the full scope of its ownership interest in the Watuppa Branch to MassDOT, subject to BCLR’s rights and interests and CSXT’s retained easement over the first 0.08 miles of the branch. Pursuant to the agreement between CSXT and MassDOT, BCLR will continue to provide common carrier service over the 5.92 miles of the Watuppa Branch west of milepost QND 0.08, and MassDOT will acquire only the real estate underlying this section of the branch. Because of BCLR’s interest in 5.92 miles of the Watuppa Branch, MassDOT has excluded that 5.92 miles from the mileage total for the New Bedford Secondary.

Worcester segment of the Boston Main Line (the “BML-West”), extending approximately 22.92 miles between milepost QB 21.38 (at Framingham) and milepost QB 44.30 (at Worcester); and (6) the track assets, but not the underlying real estate, constituting the 9.71-mile rail line between milepost QB 1.12 (at CP Cove) to milepost QB 10.83 (at Newton/Riverside) (the “BML-East”).<sup>2</sup> MassDOT will acquire 71.28 miles of rail operating assets.

The projected annual operating revenue of MassDOT relating to this transaction does not exceed \$5 million, and, accordingly, the advance notice requirements of 49 CFR 1150 32(e) are not applicable to this transaction.

The transaction is expected to be consummated in two stages, pursuant to two separate closings. The first closing, scheduled to take place on May 14, 2010, would involve the sale of the Grand Junction Branch and Boston Terminal Running Track Assets (collectively, the “BPY Assets”), along with the New Bedford Secondary and the Fall River Secondary (collectively, the “South Coast Assets”), while the second closing, scheduled to take place after the first closing but on or before September 15, 2012, would involve the sale of the BML-West and BML-East assets.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to reopen the proceeding 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 effectiveness of the exemption. Stay petitions must be filed by December 10, 2009.

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<sup>2</sup> Because CSXT will retain a permanent, exclusive freight service easement on the lines and MasDOT will acquire neither the right nor the ability to provide (or to unreasonably interfere with) freight service on them, MassDOT has concurrently filed a Motion to Dismiss this notice of exemption pursuant to Maine DOT – Acq. Exmpt. – ME Central R. Co., 8 I.C.C.2d 835 (1991) and its progeny.

Pursuant to the Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term “solid waste” is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35312, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 395 E Street, SW, Washington, DC 20523-0001. In addition, a copy of each pleading must be served on MassDOT’s representative, Keith G. O’Brien, Baker & Miller PLLC, 2401 Pennsylvania Avenue, N.W., Suite 300, Washington, DC 20037.