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ENTERED

Office of Proceedings

February 13, 2020

Part of

Public Record

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February 13, 2020

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20006

Re: **Docket No. FD 36384**
Sills Road Realty LLC – Acquisition Exemption –
Railroad Line in the Town of Brookhaven, New York

Docket No. FD 36385
Spectrum RR Holdings, LLC – Acquisition and Operation Exemption –
Railroad Line in the Town of Brookhaven, New York

Docket Nos. FD 36384 and FD 36385 -- Motion for Partial Dismissal

Dear Ms. Brown:

Offered for filing in the above-captioned proceeding are – (1) a **Verified Notice of Exemption of Sills Road Realty LLC**; and (2) a **Verified Notice of Exemption of Spectrum RR Holdings LLC**, each filed pursuant to 49 C.F.R. part 1150, subpart D. Payment of the applicable filing fees of \$4,200.00 has been tendered electronically with this filing via Pay.gov.

Also filed today in both of the above-referenced dockets is a **Joint Motion for Partial Dismissal**.

If you have any questions regarding this filing, please contact me at either rwimbish@fletcher-sippel.com or (312) 252-1504. Thank you for your assistance on this matter.
Kind regards.

Respectfully submitted,



Robert A. Wimbish
Attorney for Sills Road Realty LLC, and
Spectrum RR Holdings, LLC

Enclosures **FEE RECEIVED**
February 13, 2020
SURFACE
TRANSPORTATION BOARD

FILED
February 13, 2020
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36385

SPECTRUM RR HOLDINGS, LLC
-- ACQUISITION AND OPERATION EXEMPTION --
LINE OF SILLS ROAD REALTY LLC, IN THE TOWN OF BROOKHAVEN, NEW YORK

**VERIFIED NOTICE OF EXEMPTION OF
SPECTRUM RR HOLDINGS, LLC
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEY FOR SPECTRUM RR
HOLDINGS, LLC**

Dated: February 13, 2020

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36385

SPECTRUM RR HOLDINGS, LLC
-- ACQUISITION AND OPERATION EXEMPTION --
LINE OF SILLS ROAD REALTY LLC, IN THE TOWN OF BROOKHAVEN, NEW YORK

**VERIFIED NOTICE OF EXEMPTION OF
SPECTRUM RR HOLDINGS, LLC
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

Pursuant to 49 C.F.R. part 1150, subpart D, Spectrum RR Holdings, LLC (“SRHL”), a non-carrier, hereby files this Verified Notice of Exemption (the “Notice”) to acquire ownership of, and to operate, approximately 16,710 feet of track (the “Line”) in Brookhaven, New York, owned by Sills Road Realty LLC. Based upon projected annual revenues, SRHL expects to be a Class III rail carrier following consummation of the proposed transaction, and it anticipates that its annual operating revenues will be below \$5 million.

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

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

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

Spectrum RR Holdings, LLC
205 Sills Road
Yaphank, NY 11980

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

SRHL's representative to whom correspondence regarding this transaction should be sent is as follows:

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, IL 60606-3208
(312) 252-1500

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

SRHL, a non-carrier, is an indirectly-controlled subsidiary of Sills Road Realty LLC ("Sills Road"). Sills Road owns certain railroad track assets in Brookhaven, New York, known as the Brookhaven Rail Terminal (the "BRT"), including the Line, which is operated by a third party, Brookhaven Rail, LLC ("Brookhaven Rail").

Sills Road and SRHL have reached an agreement whereby, upon the effectiveness of Sills Road becoming a Board-authorized rail common carrier (by virtue of its to-be-Board-authorized ownership of the Line and its own, contemporaneously-filed notice of exemption in Docket No. FD 36384), SRHL will acquire the Line from Sills Road (among other assets), will assume a common carrier status with respect to the Line,¹ and, as such, will possess the authority to commence common carrier operations over it.

Operator of the Property: 49 C.F.R. § 1150.33(d)

At present, Brookhaven Rail is the lone rail common carrier service provider on the Line. By virtue of the present class exemption notice, SRHL will become a Board-

¹ Once the proposed transfer of the Line is consummated, Sills Road will cease to be a rail common carrier, because, at such time, Sills Road will no longer own any railroad lines subject to the Board's jurisdiction.

authorized common carrier, subject to the rights and obligations of such legal status, including the right and obligation to provide service upon reasonable request.

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

SRHL incorporates herein by reference the facts set forth in *Sills Road Realty LLC – Acquisition Exemption – Railroad Line in the Town of Brookhaven, New York*, Docket FD 36384. As explained in greater detail there, the purpose of this transaction, and that set forth in the FD 36384 proceeding, collectively, is to establish SRHL as the railroad common carrier owner of the Line. To that end, Sills Road will convey to SRHL ownership of the rail assets, including the Line, located within the BRT. In response to the issues that the Board raised in *Spectrum RR Holdings, LLC – Operation Exemption – Railroad Line in the Town of Brookhaven, N.Y.*, Docket No. FD 36376 (STB served Jan. 17, 2020) (“*Spectrum-Notice-1*”), and SRHL’s recent decision to assume ownership of the Line, SRHL requested Board leave to withdraw its notice of exemption in that proceeding. SRHL and Sills Road seek through their respective, simultaneously-filed class exemption notices to address the Board’s concerns, and to resolve issues that appear to warrant remedial action.

Accordingly, SRHL hereby invokes the Board’s class exemption procedures to assume ownership of, and a common carrier status over, a line of railroad consisting of roughly 16,710 feet of track (the Line) located in Brookhaven, New York, currently owned by Sills Road, extending generally eastward and then northward from a connection with the tracks of the Long Island Rail Road (and a corresponding connection to the New York & Atlantic Railway Company, which possesses freight common carrier operating rights over the Long Island Rail Road). The Line does not have mileposts.

The complete name and address of the owner of the Line is as follows:

Sills Road Realty LLC
205 Sills Road
Yaphank, NY 11980

SRHL anticipates consummating its acquisition of the Line at such time as this Notice takes effect (March 14, 2020 – 30 days from the date of the filing of this Notice) or as soon thereafter as is possible. SRHL acknowledges that, in assuming a common carrier status over the Line, it will also assume a right and obligation to provide common carrier service. Nevertheless, SRHL has no immediate plans to commence rail operations over the Line, either in place of, or alongside, Brookhaven Rail. Brookhaven Rail will remain as a common carrier on the line, and additional Board action beyond the scope of this proceeding would be necessary for Brookhaven Rail's common carrier status on the Line to be terminated.

Map: 49 C.F.R. § 1150.33(f)

Maps showing the Line and the Balance of the BRT is attached as Exhibit A.

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

Certification of eligibility to invoke the subject class exemption procedures is attached as Exhibit B.

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

The proposed transaction does not involve, and the agreement between SRHL and Sills Road will not include, any provision or agreement that would limit future interchange with a third-party connecting carrier.

Advance Notice: 49 C.F.R. § 1150.32(e)

The projected annual revenue of SRHL is not expected to exceed \$5 million, and, accordingly, the advance notice requirements of 49 C.F.R. § 1150.32(e) are inapplicable. See Exhibit B.

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

Under 49 C.F.R. § 1105.6(c)(1) (i), SRHL's proposed operation of the Line is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), SRHL's purchase of the Line also is exempt from historic preservation reporting requirements. The proposed transaction is for the purpose of continued rail service. Additional Surface Transportation Board approval would be required to abandon the Line or discontinue railroad service over it, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

Caption Summary: 49 C.F.R. § 1150.47

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

Other Matters:

Although under no regulatory mandate to do so, SRHL hereby certifies that it will serve a copy of this Notice upon counsel for Brookhaven Rail (current operator on the Line) and for New York & Atlantic Railway Company (the only freight rail carrier currently able to interchange traffic with the Line's current operator).

In a joint Motion for Partial Dismissal (the "Motion") tendered with this Notice, SRHL and Sills Road jointly seek partial dismissal of the class exemptions filed in both dockets. For reasons set forth in the Motion, Sills Road and SRHL seek to distinguish between the roughly 2,500-foot portion of the Line that they believe should be regarded as a § 10901 line of railroad, and the roughly 14,210 feet of the Line that they believe should be regarded as § 10906 ancillary track.

Finally, as with the *Spectrum Notice-1* proceeding, SRHL anticipates that the Board may have questions that, despite genuine efforts here to resolve the Board's concerns, may yet warrant the provision of additional information or explanation. With such a possibility in mind, SRHL stands ready to respond to the Board's questions or concerns, with the hope and expectation that the Board will facilitate (subject to appropriate guidance, if any) the transfer of ownership of the Line to SRHL.

Respectfully submitted,

By: R. A. Wimbish

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEY FOR SPECTRUM RR
HOLDINGS, LLC**

Dated: February 13, 2020

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. FD 36385

**SPECTRUM RR HOLDINGS, LLC
-- ACQUISITION AND OPERATION EXEMPTION --
LINE OF SILLS ROAD REALTY LLC, IN
THE TOWN OF BROOKHAVEN, NEW YORK**

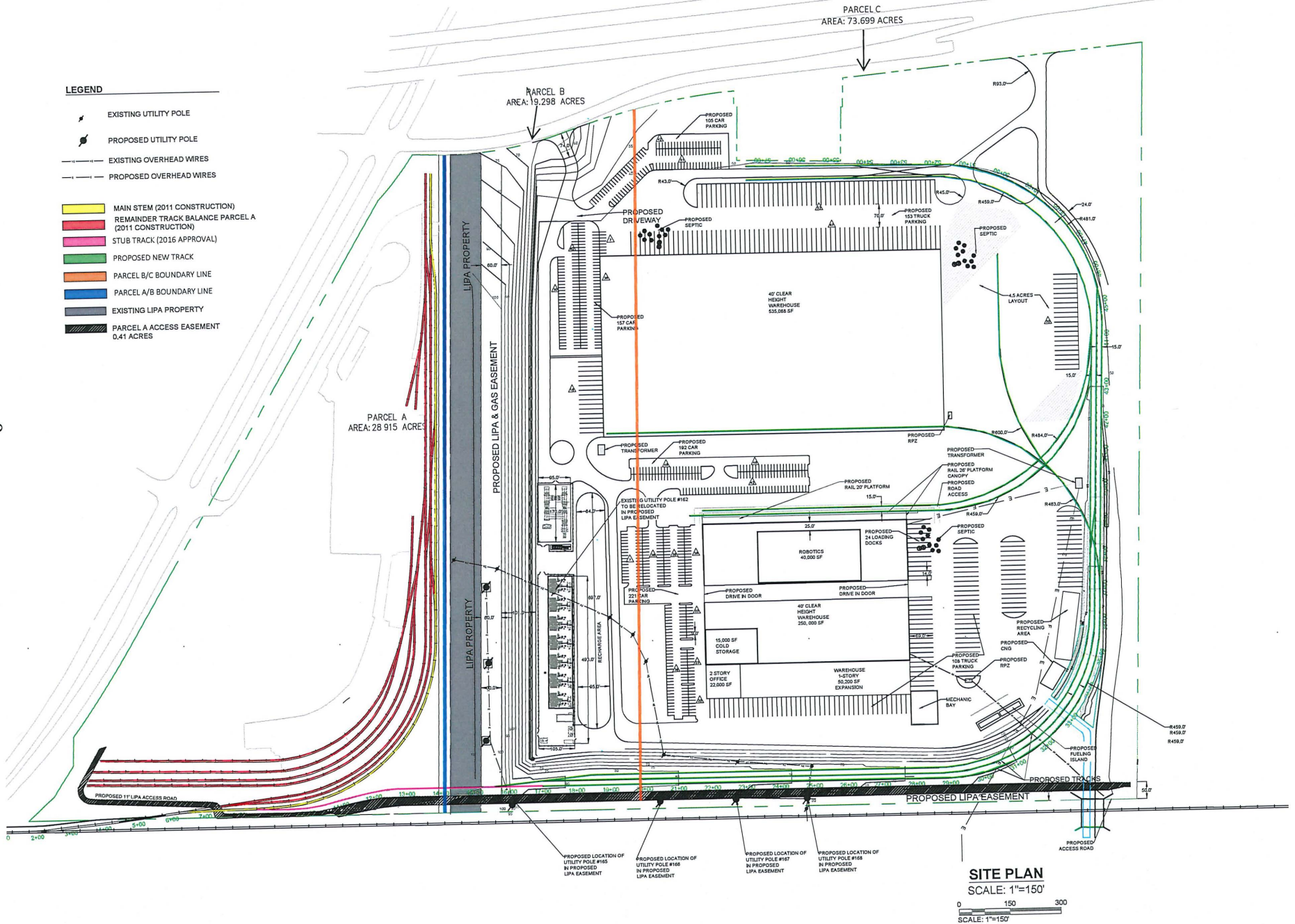
EXHIBIT A

MAPS



LEGEND

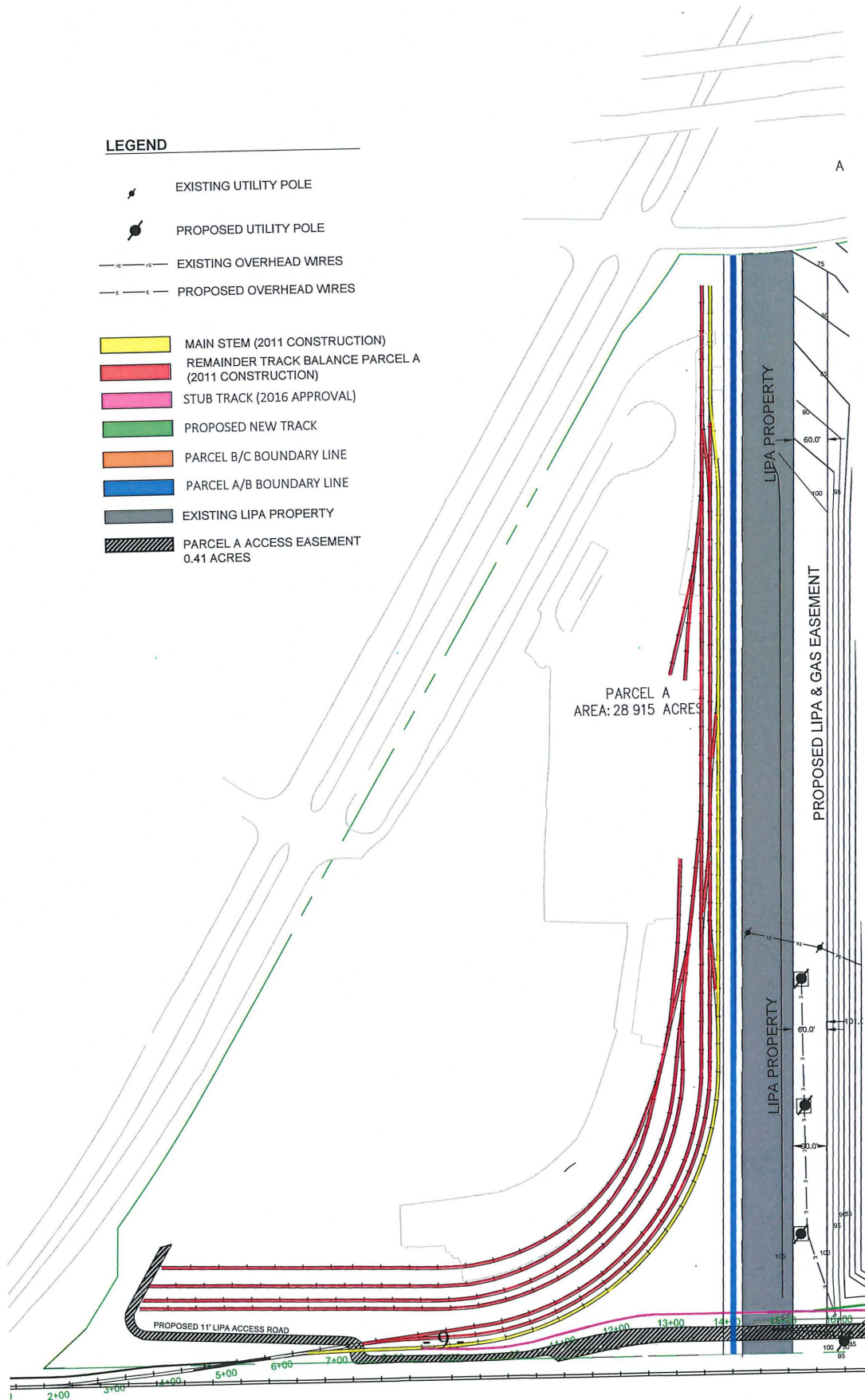
- EXISTING UTILITY POLE
- PROPOSED UTILITY POLE
- EXISTING OVERHEAD WIRES
- PROPOSED OVERHEAD WIRES
- MAIN STEM (2011 CONSTRUCTION)
- REMAINDER TRACK BALANCE PARCEL A (2011 CONSTRUCTION)
- STUB TRACK (2016 APPROVAL)
- PROPOSED NEW TRACK
- PARCEL B/C BOUNDARY LINE
- PARCEL A/B BOUNDARY LINE
- EXISTING LIPA PROPERTY
- PARCEL A ACCESS EASEMENT 0.41 ACRES





LEGEND

- EXISTING UTILITY POLE
- PROPOSED UTILITY POLE
- EXISTING OVERHEAD WIRES
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. FD 36385

**SPECTRUM RR HOLDINGS, LLC
-- ACQUISITION AND OPERATION EXEMPTION --
LINE OF SILLS ROAD REALTY LLC, IN
THE TOWN OF BROOKHAVEN, NEW YORK**

EXHIBIT B

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

DOCKET NO. FD 36385

SPECTRUM RR HOLDINGS, LLC
-- ACQUISITION AND OPERATION EXEMPTION --
LINE OF SILLS ROAD REALTY LLC, IN THE TOWN OF BROOKHAVEN, NEW YORK

Spectrum RR Holdings, Inc. ("SRHL"), a non-carrier, has filed a Verified Notice of Exemption to acquire and operate approximately 16,710 feet of track (the "Line") located in Brookhaven, New York, and owned by Sills Road Realty LLC ("Sills Road") extending generally eastward and then northward from a connection with the tracks of the Long Island Railroad (and a corresponding connection to the New York & Atlantic Railway Company, which possesses freight common carrier operating rights over the Long Island Railroad). The Line does not have mileposts.

SRHL expects to consummate the subject transaction on or after March 14, 2020, or as soon thereafter as possible.¹

Comments must be filed with the Board and served on:

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

¹ Sills Road and SRHL have jointly filed in this proceeding and in FD 36384 a Motion for Partial Dismissal, under which each has requested that the Board establish that roughly 2,500 feet of the Line is actually a § 10901 line of railroad, while also clarifying that the balance of the Line (roughly 14,210 feet) is § 10906 ancillary track.

This Notice is filed under 49 C.F.R. § 1150.31. If the Notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: February __, 2020

By the Board

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. FD 36385

**SPECTRUM RR HOLDINGS, LLC
-- ACQUISITION AND OPERATION EXEMPTION --
LINE OF SILLS ROAD REALTY LLC, IN
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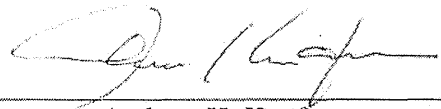
CERTIFICATION AND VERIFICATION

CERTIFICATION AND VERIFICATION

I, Andrew H. Kaufman, hereby certify and verify under penalty of perjury as follows:

1. I am the president of Spectrum RR Holdings, LLC ("SRHL"), and, accordingly, I am qualified and authorized to make the subject "Certification and Verification" on behalf SRHL.
2. The annual rail revenues of SRHL are not expected to exceed \$5 million, and SRHL's anticipated revenues will not result in SRHL becoming Class I or II rail carrier under the thresholds set forth at 49 C.F.R. § 1201(11).
3. I have read the foregoing Notice of Exemption, and hereby verify that the facts stated therein are true and correct.

Executed on: February 13, 2020.



Andrew H. Kaufman