

303586

January 25, 2022

BY E-FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

ENTERED
Office of Proceedings
January 25, 2022
Part of
Public Record

Re: *Knoxville and Cumberland Gap Railroad, LLC—Acquisition and Operation Exemption with Interchange Commitment—Rail Lines of Norfolk Southern Railway Company in Anderson, Campbell, Claiborne, Grainger, Knox, and Union Counties, Tennessee, Bell and Whitley Counties, Kentucky, and Lee County, Virginia* (Docket No. FD 36577)

Dear Ms. Brown:

Attached for filing in Docket No. FD 36577 are (1) a Verified Notice of Exemption Under 49 C.F.R. §§ 1150.31-1150.34, and (2) a Submission of Confidential Materials and Information Relating to Interchange Commitment.

The latter filing is made under seal, and is to be kept confidential by the Board, as provided in 49 C.F.R. § 1150.33(h)(1).

Sincerely,

/s/ David A. Hirsh

David A. Hirsh

*Counsel for Knoxville and Cumberland Gap
Railroad, LLC*

Enclosures

FILED
January 25, 2022
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
January 25, 2022
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 36577

**KNOXVILLE AND CUMBERLAND GAP RAILROAD, LLC
– ACQUISITION AND OPERATION EXEMPTION
WITH INTERCHANGE COMMITMENT –
RAIL LINES OF NORFOLK SOUTHERN RAILWAY COMPANY
IN ANDERSON, CAMPBELL, CLAIBORNE, GRAINGER,
KNOX, AND UNION COUNTIES, TENNESSEE,
BELL, AND WHITLEY COUNTIES, KENTUCKY,
AND LEE COUNTY, VIRGINIA**

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. §§ 1150.31-1150.34**

David A. Hirsh
James M. Guinivan
DENTONS US LLP
1900 K Street, N.W.
Washington, DC 20006
david.hirsh@dentons.com
james.guinivan@dentons.com
202-496-7500

*Counsel for Knoxville and Cumberland Gap
Railroad, LLC*

January 25, 2022

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 36577

**KNOXVILLE AND CUMBERLAND GAP RAILROAD, LLC
– ACQUISITION AND OPERATION EXEMPTION
WITH INTERCHANGE COMMITMENT –
RAIL LINES OF NORFOLK SOUTHERN RAILWAY COMPANY
IN ANDERSON, CAMPBELL, CLAIBORNE, GRAINGER,
KNOX, AND UNION COUNTIES, TENNESSEE,
BELL, AND WHITLEY COUNTIES, KENTUCKY,
AND LEE COUNTY, VIRGINIA**

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. §§ 1150.31-1150.34**

Knoxville and Cumberland Gap Railroad, LLC (“KXCG”),¹ a non-carrier, hereby files this Verified Notice of Exemption for authority to acquire approximately 112.0 miles of rail lines from Norfolk Southern Railway Company (“NSR”), to assume NSR’s lease of approximately 13.0 miles of rail line of CSX Transportation, Inc. (“CSXT”) and NSR’s trackage rights over approximately 6.3 miles of CSXT line, to acquire trackage rights over approximately 22.7 miles of NSR line (totaling approximately 154.0 miles), and to operate those lines.

In accordance with the requirements of 49 C.F.R. §§ 1150.32-1150.34, KXCG submits the following information:

¹ R. J. Corman Railroad Company, LLC (“RJCRC”), a non-carrier holding company that owns 100% of KXCG, and R. J. Corman Railroad Group, LLC (“RJCG”), a non-carrier that owns 100% of R. J. Corman Railroad Company, LLC, are filing a notice of exemption concurrently herewith in Docket No. FD 36578 (*R. J. Corman Railroad Company, LLC and R. J. Corman Railroad Group, LLC – Continuance in Control Exemption – Knoxville and Cumberland Gap Railroad, LLC*) for authority to continue in control of KXCG, together with 18 rail carriers that RJCRC and RJCG now control, upon KXCG’s becoming a rail common carrier through its acquisition of the lines that are the subject of this notice of exemption.

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

The full name and address of the Class III rail carrier applicant herein is as follows:

Knoxville and Cumberland Gap Railroad, LLC
101 R. J. Corman Drive
P.O. Box 788
Nicholasville, KY 40356

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

The name, address, and telephone number of KXCG's representative, who should receive all correspondence regarding this proceeding, are as follows:

David A. Hirsh
Dentons US LLP
1900 K Street, N.W.
Washington, DC 20006
david.hirsh@dentons.com
202-496-7500

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

On December 28, 2021, KXCG and RJCG executed a Transaction Agreement providing for KXCG's acquisition from NSR of:

- (1) the Jellico Line, running from the insulated joint in Clinton, Tennessee (at or around Milepost 20.9C+/-) to Lot, Kentucky (at or around Milepost 67.7+/-) and from Hyde, Tennessee (at or around Milepost 74C+/-) to Clairfield, Tennessee (at or around Milepost 80C+/-); and
- (2) the Middlesboro Line, running from the insulated joints of the wye track, north of the derails located in Beverly, Tennessee (at or near Milepost 5.8CG+/-) to Cumberland Gap, Tennessee (at or around Milepost 65CG+/-).

See Map 1.

The Transaction Agreement also provides for assignment to KXCG, with permission of CSXT, of NSR's:

- (1) lease of CSXT's lines (a) on the Harbell Branch between a point 125.3 feet south of the point of switch of the connecting track to NSR at Cumberland Gap, Tennessee just south of the end of the Cumberland Gap Tunnel, which point of

connection is at Milepost CV 219.5, and a point where the Harbell Branch connects near Milepost CV 216 in Middlesboro, Kentucky with the north leg of the wye track of Bennett's Fork Branch; (b) on Bennett's Fork Branch from and including the north and south legs of the aforesaid wye, to Stony Fork Junction and end of track near Milepost MR 221 north of Motch, Tennessee; (c) on Stony Fork Branch between Stony Fork Junction and end of track near Milepost MS 221.8 near Pioneer, Tennessee, including approximately one mile of track leased to Bell County Coal Corporation; and (d) on the Harbell Branch main track from the aforesaid north leg wye connection near Milepost CV 216 to Milepost CV 215.0 north thereof, including CSXT's Middlesboro Yard and related trackage (those lines, collectively, the "Middlesboro Leased Lines");² and

- (2) trackage rights over the CSXT line between Lot, Kentucky at approximately Milepost 67.7C and Hyde, Tennessee at approximately Milepost 74C (the "Lot-Hyde Line").³

As part of the Transaction Agreement, KXCG will also acquire trackage rights over NSR's line from the NSR switch at the connection with the Jellico Line at Clinton, Tennessee at approximately Milepost 20.9 C, continuing to the NSR switch at Coster, Tennessee connecting to the NSR Coster Line (Milepost 2.3C/7.9CO), and then to the NSR switch connecting to the Middlesboro Line at or near Beverly, Tennessee (Milepost 5.8CG+/- (3.8CO)) (the "Clinton-Beverly Line").⁴

² See Map 2. NSR's lease of these lines was exempted by the Board in *Norfolk Southern Railway—Lease Exemption—CSX Transportation, Inc.*, STB Finance Docket No. 32923 (STB served Aug. 6, 1996).

³ See Map 3. These trackage rights were granted by CSXT's predecessors in a 1904 agreement with NSR's predecessors. Neither the Board nor its predecessor, the Interstate Commerce Commission, have authorized these trackage rights, because they were acquired several years before any such regulatory authorization was required by law.

⁴ See Maps 4 & 5. The assignment of trackage rights over the Lot-Hyde Line and the grant of trackage rights over the Clinton-Beverly Line are properly within the scope of the exemption sought in this Notice, as provided in 49 C.F.R. § 1150.31(a)(4).

In connection with the line acquisition, trackage rights, and assignments of lease and trackage rights described above, KXCG is also acquiring the right to operate over NSR's line between Beverly (at or near MP 3.8CO) and NSR's Sevier Yard (at or near MP 0.0CO), a distance of approximately 3.8 miles, solely for the purpose of interchanging traffic with NSR at Sevier Yard. The acquisition of operating rights for purpose of interchange does not require Board approval. *Ind. R.R.—Exemption—Acquisition & Operation*, Finance Docket No. 30789 1987 WL 98241, at *2 (ICC Apr. 7, 1987), *aff'd Black v. ICC*, 837 F.2d 1175 (D.C. Cir. 1988);

The Jellico Line, the Middlesboro Line, the Middlesboro Leased Lines, the Lot-Hyde Line, and the Clinton-Beverly Line are referred to collectively as the “Lines.”

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

Under the Transaction Agreement, KXCG, currently a non-carrier, would acquire and operate the Lines, thereby becoming a rail common carrier.

- (1) Name and Address of railroad transferring the subject property:

Norfolk Southern Railway Company
650 West Peachtree Street NW
Atlanta, GA 30308

- (2) Proposed time schedule for consummation: KXCG intends to consummate the proposed transaction on February 25, 2022, provided that all necessary conditions set forth in the Transaction Agreement (including authorization of the transaction by the Board) have been satisfied.

- (3) Mileposts of the subject property: The mileposts of the Jellico Line, the Middlesboro Line, the Middlesboro Leased Lines, the Lot-Hyde Line, and the Clinton-Beverly Line are set forth above under “Statement Concerning Agreement (49 C.F.R. § 1150.33(c)).”

- (4) Route miles being leased and/or acquired: The Jellico Line and the Middlesboro Line together consist of approximately 112.0 miles; the Middlesboro Leased Lines consist of approximately 13.0 miles. The Lot-Hyde Line (a CSXT line over which KXCG is acquiring trackage rights by assignment from NSR) is approximately 6.3 miles long, and the Clinton-Beverly Line (over which KXCG is acquiring trackage rights granted by NSR) is approximately 22.7 miles long. Total mileage of all lines being acquired and leased, and over which KXCG is acquiring trackage rights, is approximately 154.0 miles.

Norfolk S. Ry.—Petition for Declaratory Order—Interchange with Reading Blue Mountain & N. Ry., STB Docket No. 42078, slip op. at 4 n.5 (STB served Apr. 29, 2003).

Maps (49 C.F.R. § 1150.33(f)):

Exhibit 1 to this notice provides a series of maps illustrating the subject transaction.

Map 1 shows the Jellico Line, the Middlesboro Line, the Middlesboro Leased Lines, the Lot-Hyde Line, and the Clinton-Beverly Line and their relationships to one another. Maps 2 through 5 are larger-scale maps showing in greater detail the Middlesboro Leased Lines, the Lot-Hyde Line, the southern end of the Jellico Line at Clinton, TN, and the southern end of the Middlesboro Line at Beverly, TN, respectively.

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

A Certificate of Compliance consistent with the provisions of 49 C.F.R. § 1150.33(g) stating that KXCG's projected annual revenues resulting from the transaction will not result in the creation of a Class I or II rail carrier is attached as Exhibit 2 to this Notice.

Interchange Commitments (49 C.F.R. § 1150.33(h)(1)):

The Transaction Agreement between KXCG and NSR contains an "interchange commitment" within the meaning of 49 C.F.R. § 1150.33(h). Accordingly, KXCG provides the following information regarding the interchange commitment:

- i. Existence of agreement and identification of affected interchange point: Under the Transaction Agreement, the affected interchange points are: Lot, KY, Hyde, TN, and Cumberland Gap, TN.
- ii. Confidential complete version of document: A confidential version of the Transaction Agreement is being filed with the Board under separate cover pursuant to 49 C.F.R. § 1104.14(a).

iii. List of shippers that have used the line over the past two years: The following shippers or consignees (“Shippers”) are currently using the Lines to ship or receive freight by rail or have done so since January 2019:

Middlesboro, KY:

Blue Diamond Industries
Four Rivers Coal
Middlesboro Mining Operations Inc.

Luttrell, TN:

Carmeuse Lime and Stone

Clinton, TN:

3M Company
Holston Gases
Dura-Line
GEON Performance Solutions
Samuel, Son & Company, Inc.
Techmer PM, LLC
The Carlstar Group, LLC

Pioneer, TN:

Kykenkee
Evergreen Packaging LLC

Clairfield, TN:

Kopper Glo Mining

iv. Aggregate number of carloads the Shippers originated or terminated over the NSR Line: The aggregate number of carloads the Shippers named above originated or terminated within the last two years is being filed under separate cover pursuant to 49 C.F.R. § 1104.14(a).

v. Certification that shippers have been provided notice of proposed transaction and interchange commitment: KXCG hereby certifies that it has provided notice of the proposed transaction and interchange commitment to the shippers identified in subparagraph (iii) above by serving them each a copy of this Verified Notice of Exemption.

vi. List of third-party railroads that could physically interchange with the Line:

CSX Transportation Inc.

vii. Estimated difference between sale or lease price with and without interchange

commitment: An estimate of the difference between the sale or lease price with and without the interchange commitment is being filed under separate cover pursuant to 49 C.F.R. § 1104.14(a).

viii. Identification of interchange commitment in case caption: The case caption of this

Verified Notice of Exemption identifies the existence of an interchange commitment.

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

The projected annual revenue of KXCG will not exceed \$5 million. Accordingly, advance notice to employees on the Lines and to the national offices of their labor unions is not required under 49 C.F.R. § 1150.32(e).

Environmental and Historic Preservation Data (49 C.F.R. Part 1105):

Under 49 C.F.R. § 1105.6(c)(1), the proposed transaction is categorically excluded from environmental reporting requirements. The proposed transaction will not result in significant changes in carrier operations (i.e., changes that exceed the thresholds for train and truck traffic, yard activity and for diversions of rail to motor carriage set out in 49 C.F.R. § 1105.7(e)(4) and (5)).

The proposed transaction also is excepted from historic preservation reporting requirements under 49 C.F.R. § 1105.8(b)(1). The proposed transaction is for the purpose of continued rail operations. Additional Board approval would be required to discontinue rail service or to abandon service. Moreover, there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older.

Caption Summary (49 C.F.R. § 1150.34):

A caption summary in an appropriate form is attached as Exhibit 3 to this Notice.

Respectfully submitted,

/s/ David A. Hirsh _____
David A. Hirsh
James M. Guinivan
DENTONS US LLP
1900 K Street, N.W.
Washington, DC 20006
david.hirsh@dentons.com
james.guinivan@dentons.com
202-496-7500

*Counsel for Knoxville and Cumberland Gap
Railroad, LLC*

January 25, 2022

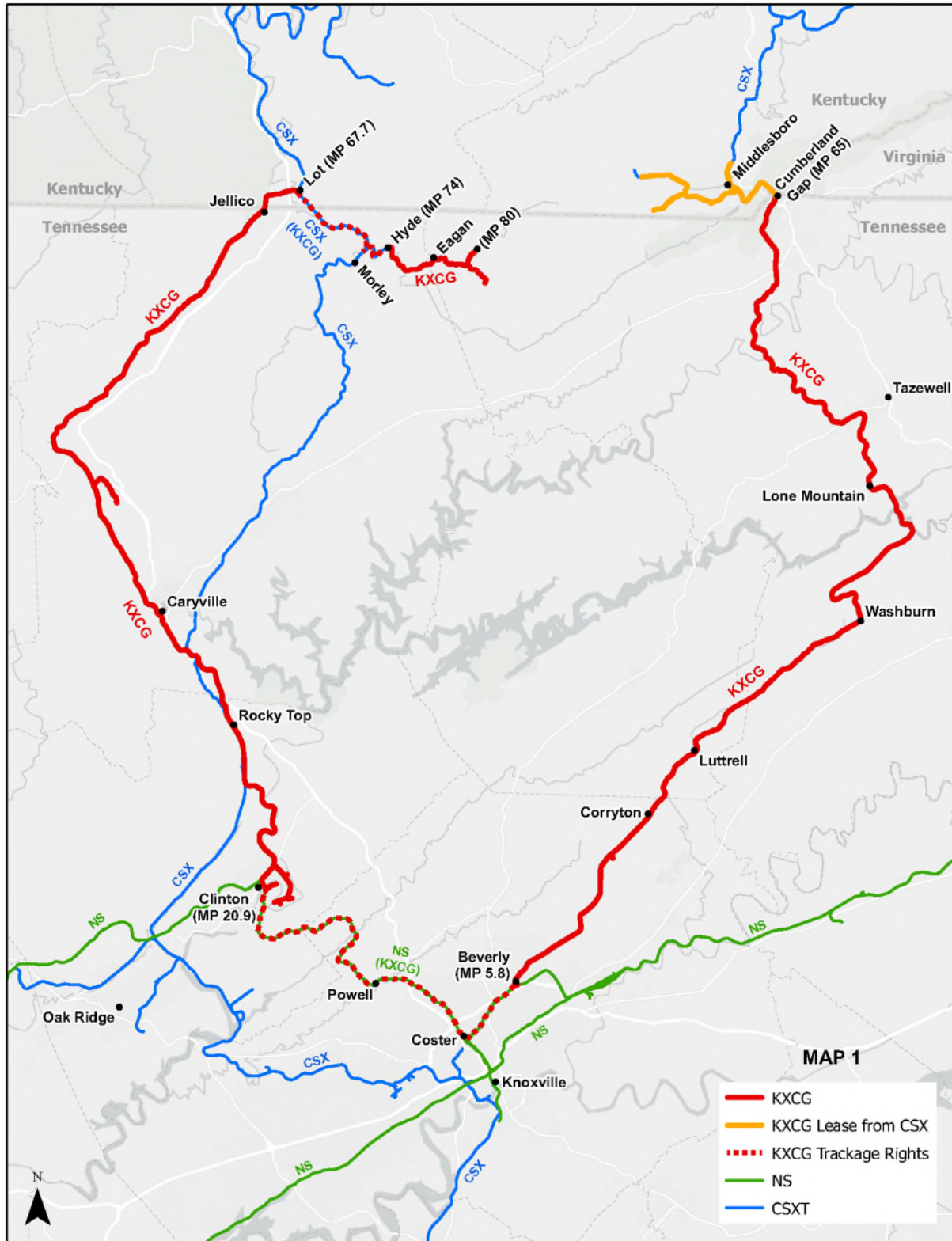
**BEFORE THE
SURFACE TRANSPORTATION BOARD**

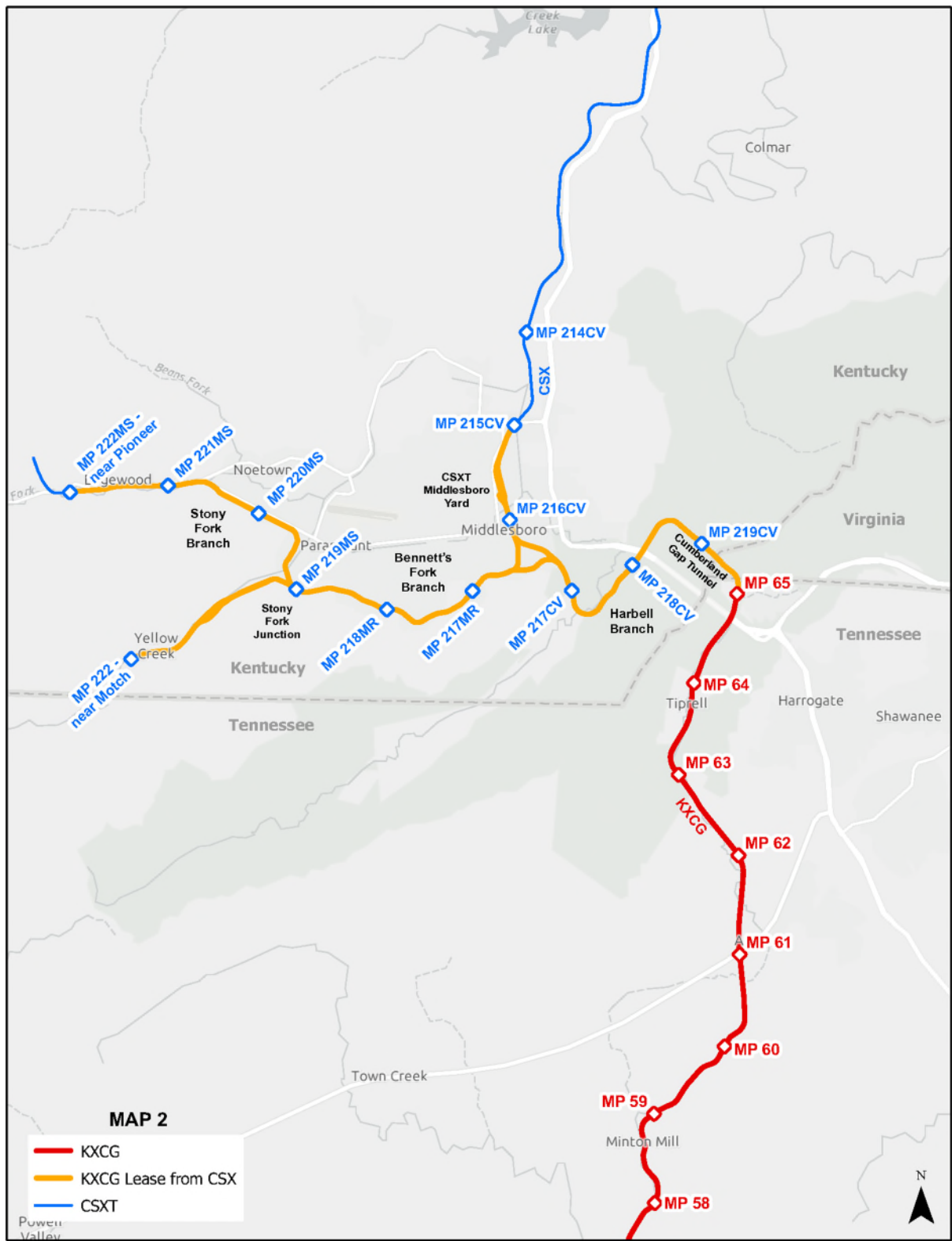
Docket No. FD 36577

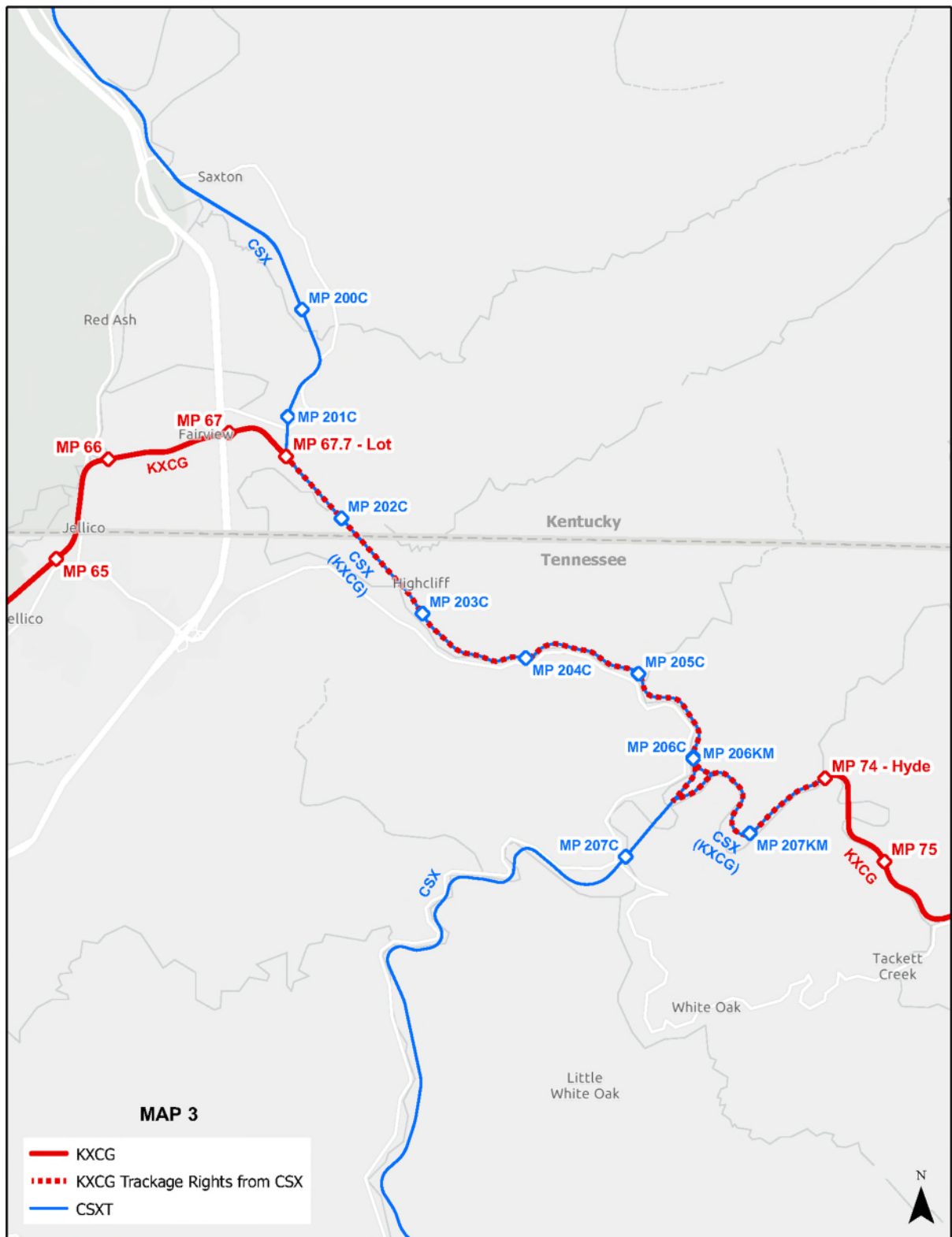
**KNOXVILLE AND CUMBERLAND GAP RAILROAD, LLC
– ACQUISITION AND OPERATION EXEMPTION
WITH INTERCHANGE COMMITMENT –
RAIL LINES OF NORFOLK SOUTHERN RAILWAY COMPANY
IN ANDERSON, CAMPBELL, CLAIBORNE, GRAINGER,
KNOX, AND UNION COUNTIES, TENNESSEE,
BELL, AND WHITLEY COUNTIES, KENTUCKY,
AND LEE COUNTY, VIRGINIA**

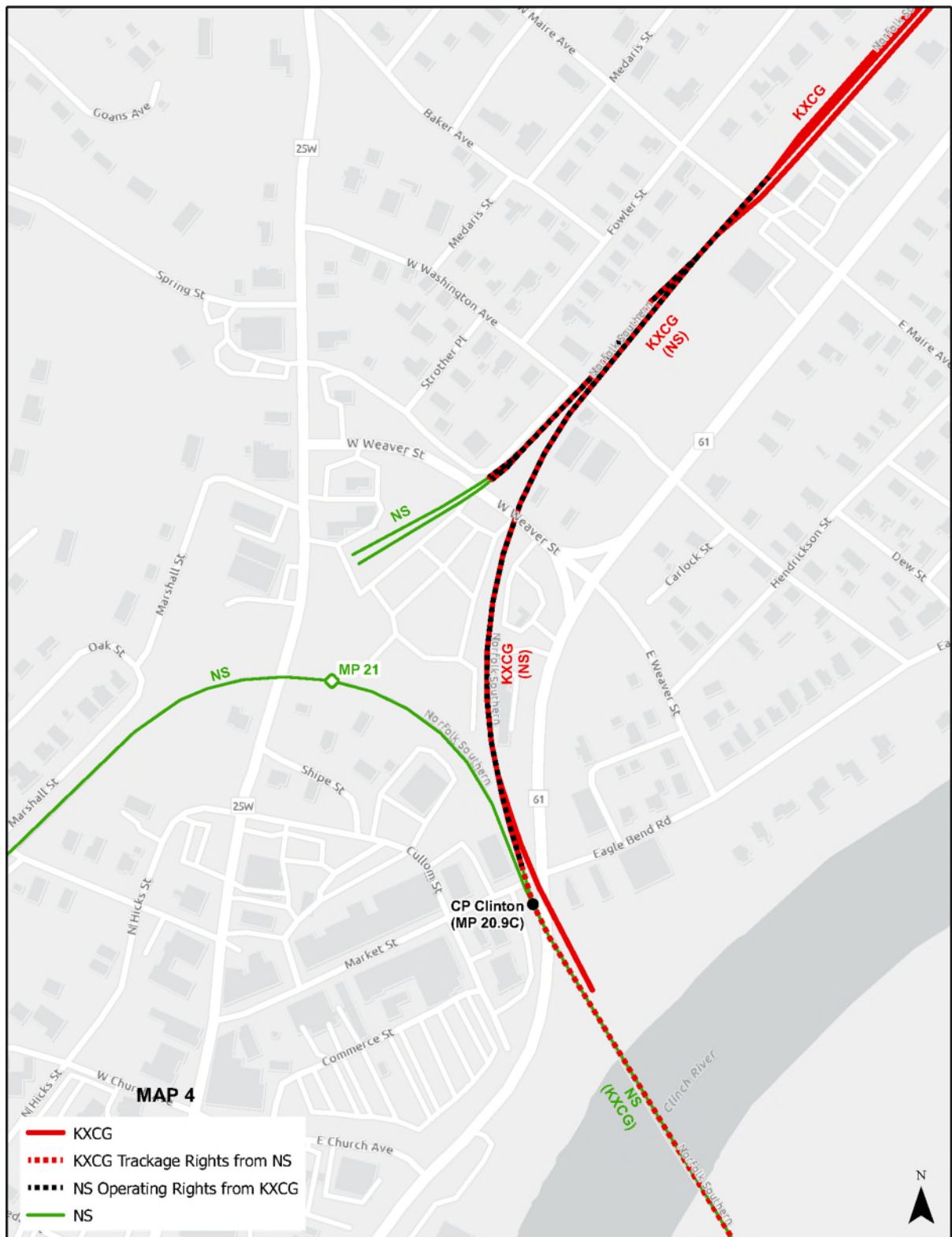
**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. §§ 1150.31-1150.34**

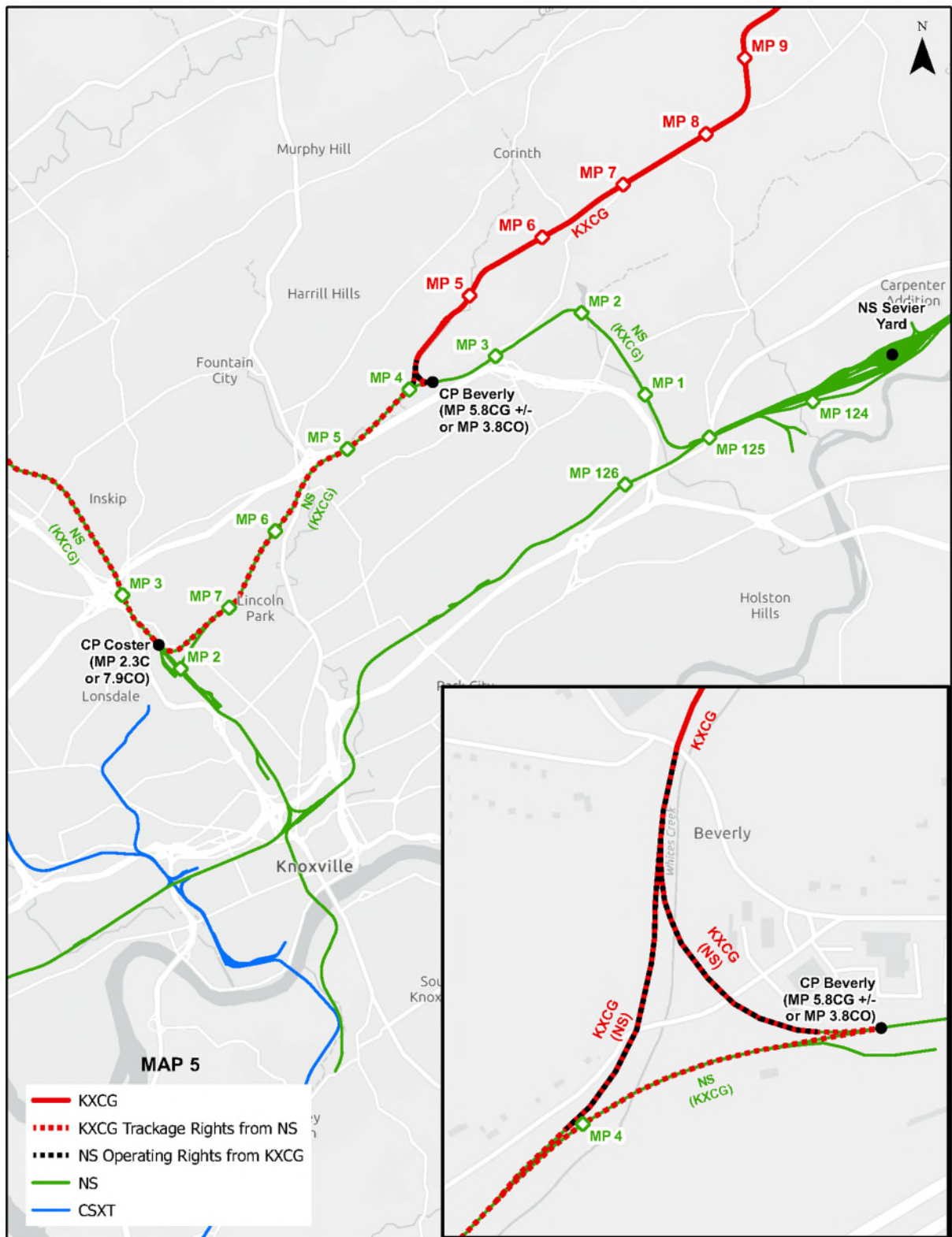
**EXHIBIT 1
(Maps)**











**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 36577

**KNOXVILLE AND CUMBERLAND GAP RAILROAD, LLC
– ACQUISITION AND OPERATION EXEMPTION
WITH INTERCHANGE COMMITMENT –
RAIL LINES OF NORFOLK SOUTHERN RAILWAY COMPANY
IN ANDERSON, CAMPBELL, CLAIBORNE, GRAINGER,
KNOX, AND UNION COUNTIES, TENNESSEE
BELL, AND WHITLEY COUNTIES, KENTUCKY,
AND LEE COUNTY, VIRGINIA**

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. §§ 1150.31-1150.34**

**EXHIBIT 2
(Knoxville and Cumberland Gap Railroad, LLC
Certification of Revenue under 49 C.F.R. § 1150.33(g)
and Verification of Notice of Exemption)**

CERTIFICATION AND VERIFICATION

I, Ray Goss, President of Knoxville and Cumberland Gap Railroad Company, LLC ("KXCG"), hereby certify that KXCG's projected annual revenues do not exceed those that would qualify it as a Class III rail carrier.

Furthermore, pursuant to 28 U.S.C. § 1746 and 49 C.F.R § 1104.5(b), I declare under penalty of perjury under the laws of the United States that the foregoing Verified Notice of Exemption, including all exhibits thereto, is true and correct to the best of my knowledge and belief. Further, I certify that I am qualified and authorized to file this pleading.

Executed on January 24th, 2022.


Ray Goss, President
Knoxville and Cumberland Gap Railroad
Company, LLC

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 36577

**KNOXVILLE AND CUMBERLAND GAP RAILROAD, LLC
– ACQUISITION AND OPERATION EXEMPTION
WITH INTERCHANGE COMMITMENT –
RAIL LINES OF NORFOLK SOUTHERN RAILWAY COMPANY
IN ANDERSON, CAMPBELL, CLAIBORNE, GRAINGER,
KNOX, AND UNION COUNTIES, TENNESSEE,
BELL, AND WHITLEY COUNTIES, KENTUCKY,
AND LEE COUNTY, VIRGINIA**

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. §§ 1150.31-1150.34**

**EXHIBIT 3
(Caption Summary)**

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

Docket No. FD 36577

**KNOXVILLE AND CUMBERLAND GAP RAILROAD, LLC
– ACQUISITION AND OPERATION EXEMPTION
WITH INTERCHANGE COMMITMENT –
RAIL LINES OF NORFOLK SOUTHERN RAILWAY COMPANY
IN ANDERSON, CAMPBELL, CLAIBORNE, GRAINGER,
KNOX, AND UNION COUNTIES, TENNESSEE,
BELL, AND WHITLEY COUNTIES, KENTUCKY,
AND LEE COUNTY, VIRGINIA**

Knoxville and Cumberland Gap Railroad, LLC (“KXCG”), a non-carrier, hereby files this Verified Notice of Exemption to permit KXCG to:

- (1) acquire and operate the following lines of Norfolk Southern Railway Company (“NSR”):
 - (a) the Jellico Line, running from the insulated joint in Clinton, Tennessee (at or around Milepost 20.9C+/-) to Lot, Kentucky (at or around Milepost 67.7+/-) and from Hyde, Tennessee (at or around Milepost 74C+/-) to Clairfield, Tennessee (at or around Milepost 80C+/-); and
 - (b) the Middlesboro Line, running from the insulated joints of the wye track, north of the derails located in Beverly, Tennessee (at or near Milepost 5.8CG+/-) to Cumberland Gap, Tennessee (at or around Milepost 65CG+/-);
- (2) to acquire by assignment NSR’s lease of, and to operate, the following lines of CSX Transportation, Inc. (“CSXT”):
 - (a) the Harbell Branch between a point 125.3 feet south of the point of switch of the connecting track to NSR at Cumberland Gap, Tennessee just south of the end of the Cumberland Gap Tunnel, which point of connection is at Milepost CV 219.5, and a point where the Harbell Branch connects near Milepost CV 216 in Middlesboro, Kentucky with the north leg of the wye track of Bennett’s Fork Branch;
 - (b) the Bennett’s Fork Branch from and including the north and south legs of the aforesaid wye, to Stony Fork Junction and end of track near Milepost MR 221 north of Motch, Tennessee;

- (c) the Stony Fork Branch between Stony Fork Junction and end of track near Milepost MS 221.8 near Pioneer, Kentucky, including approximately one mile of track leased to Bell County Coal Corporation; and
 - (d) the Harbell Branch main track from the aforesaid north leg wye connection near Milepost CV 216 to Milepost CV 215 north thereof, including CSXT's Middlesboro Yard trackage and various track leases;
- (3) to acquire by assignment from NSR trackage rights over, and to operate on, CSXT's line between Lot, Kentucky at approximately Milepost 67.7C and Hyde, Tennessee at approximately Milepost 74C; and
- (4) to acquire trackage rights over NSR's line from the NSR switch at the connection with the Jellico Line at Clinton, Tennessee at approximately Milepost 20.9 C, continuing to the NSR switch at Coster, Tennessee connecting to the NSR Coster Line (Milepost 2.3C/7.9CO), to the NSR switch connecting to the Middlesboro Line at or near Beverly, Tennessee (Milepost 5.8CG+/- (3.8CO)).

Comments must be filed with the Board and served on David A. Hirsh, Dentons US LLP, 1900 K Street, N.W., Washington, DC 20006 (david.hirsh@dentons.com; 202-496-7500).

This Notice is related to the Notice in Docket No. FD 36578, in which R. J. Corman Railroad Company, LLC ("RJCRC"), a non-carrier holding company that owns 100% of KXCG, and R. J. Corman Railroad Group, LLC ("RJCG"), a non-carrier holding company that owns 100% of RJCRC, are seeking authority to continue in control of KXCG upon its becoming a carrier, while remaining in control of 18 other rail carriers that they now control.

This Notice is filed under 49 C.F.R. § 1150.31. If this 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: _____, 2022

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.