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Office of Proceedings
February 13, 2023
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BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36669

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY
— ACQUISITION EXEMPTION —
CSX TRANSPORTATION, INC.

**VERIFIED NOTICE OF EXEMPTION PURSUANT
TO 49 C.F.R. PART 1150, SUBPART E**

Robert A. Wimbish
Bradon J. Smith
Stephen J. Foland
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, Illinois 60606-3268
Telephone: (312) 252-1504
Facsimile: (312) 252-2400

FILED
February 13, 2023
SURFACE
TRANSPORTATION BOARD

**ATTORNEYS FOR THE
MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY**

Dated: February 13, 2023

FEE RECEIVED
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FD 36669

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY
— ACQUISITION EXEMPTION —
CSX TRANSPORTATION, INC.

**VERIFIED NOTICE OF EXEMPTION OF
MASSACHUSETTS BAY TRANSPORTATION AUTHORITY
PURSUANT TO 49 C.F.R. PART 1150, SUBPART E**

The Massachusetts Bay Transportation Authority (“MBTA”), a division of the Massachusetts Department of Transportation and an agency of the Commonwealth of Massachusetts,¹ files this verified Notice of Exemption (the “Notice”) under 49 C.F.R. part 1150, subpart E to acquire certain railroad assets owned by CSX Transportation, Inc. (“CSXT”). However, in keeping with the conventions of Board practice and the desired outcome in this docket, MBTA is concurrently filing a Motion to Dismiss the Notice (the “Motion”) to obtain a determination under “*State of Maine*”² that the subject transaction, as structured, does not require the Board’s regulatory authorization.

MBTA seeks to acquire interests in a total of approximately 8.86 miles of track consisting of: (1) an 8.4-mile segment of railroad track generally known as the Milford Secondary Line (the “Milford Secondary”) between milepost QVG 0.0, at Franklin, Norfolk

¹ MBTA is a common carrier by virtue of its ownership of lines of railroad not directly involved in this proceeding. *See, e.g., Boston & Me. Corp.—Discontinuance of Service Exemption—In Middlesex Cty., Mass.*, AB-32 (Sub-No. 56X) (STB served Feb. 10, 1994).

² *State of Me., Dep’t of Transp.—Acquisition Exemption, Me. Cent. R.R. Co.*, 8 I.C.C.2d 835 (1991) (“*State of Maine*”).

County, MA, and milepost QVG 8.4, at Milford, Worcester County, MA; and (2) a 0.46-mile portion of the Franklin Industrial Track (the “Franklin Industrial”), contiguous with the Milford Secondary,³ extending between valuation station 1456+00 and valuation station 1480+40, all within Franklin, Norfolk County, MA (collectively, the “Assets”). MBTA will acquire the Assets subject to one freight common carrier service easement that will be retained by CSXT (the “Easement”). CSXT will operate over the Franklin Industrial pursuant to the Easement and the Grafton & Upton Railroad Company (“G&U”) will operate over the Milford Secondary via assignment of CSXT’s retained easement over that portion of the Assets. The Easement prohibits MBTA from – (i) providing freight common carrier service itself, and (ii) unreasonably interfering with the common carrier operations of the freight service provider over both track segments.

As the Motion describes, CSXT and G&U will be assured the rights to provide common carrier freight service over the Franklin Industrial (CSXT) and the Milford Secondary (G&U and CSXT) without unreasonable interference from MBTA, resulting in the Asset sale transaction being consistent with *State of Maine* precedent. CSXT will retain the permanent and exclusive freight common carrier easement on the Franklin Industrial. G&U, a Class III carrier, will provide freight common carrier service over the Milford Secondary pursuant to – (a) the retained permanent and exclusive freight service easement that G&U will acquire from CSXT;⁴

³ The Milford Secondary commences at milepost QVG 0.0 from a direct connection with the Franklin Industrial, as shown on the map attached as Exhibit A. Also as shown on the Exhibit A map, the Franklin Industrial runs directly parallel with a portion of the Milford Secondary for most of the Franklin Industrial’s length.

⁴ G&U currently holds an easement in the Milford Secondary pursuant to a transaction authorized by *Grafton & Upton R.R. Co.—Acquisition and Operation Exemption—CSX Transp., Inc.*, FD 36444 (STB served Sept. 28, 2020). However, as part of the sequence of events to occur at the time of the closing on the present Assets transaction, G&U’s current easement will terminate. CSXT, in turn, will sell the Assets to MBTA subject to CSXT’s retention of a

and (b) an operating agreement with MBTA (referred to herein as the “Milford Operating Agreement”).

Pursuant to 49 C.F.R. § 1150.43, MBTA submits the following information:

Full name and address of applicant: 49 C.F.R. § 1150.43(a)

Massachusetts Bay Transportation Authority
10 Park Plaza, Suite 5610
Boston, MA 02116

Applicant’s representative: 49 C.F.R. § 1150.43(b)

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, IL 60606-3268
Telephone: (312) 252-1504
rwimbish@fletcher-sippel.com

Statement Concerning Agreement: 49 C.F.R. § 1150.43(c)

Under a contract for sale dated April 11, 2022, MBTA will purchase CSXT’s rights, title, and interests in the right-of-way, track, and related physical assets of the Assets subject to CSXT’s retention of a common carrier freight service easement. CSXT will, in turn, assign the portion of the common carrier service easement over the Milford Secondary to G&U and CSXT will retain the easement to operate over the Franklin Industrial.

permanent, exclusive freight easement covering both lines. CSXT simultaneously will assign the portion of the easement over the Milford Secondary to G&U (CSXT will keep its easement interest in the Franklin Industrial). *See* Mot. to Dismiss at 2 n. 3. In order to secure Board authorization to acquire from CSXT the CSXT-retained easement on the Milford Secondary contemporaneous with MBTA’s proposed Assets purchase, G&U soon will be filing its own notice of exemption pursuant to 49 C.F.R. part 1150, subpart E.

Operator of the Property: 49 C.F.R. § 1150.43(d)

Post-transaction, G&U will operate over the Milford Secondary and CSXT will operate over the Franklin Industrial. MBTA will possess the right to provide commuter rail service over the Assets; this service falls beyond the scope of the Board's regulatory oversight.⁵ As relevant to the Motion, MBTA will be contractually foreclosed from providing freight common carrier service itself, and from unreasonably interfering with G&U and CSXT common carrier service conducted on the Assets. MBTA will also be foreclosed from providing freight common carrier service itself because it will not obtain such authority from the Board.

Summary of the Proposed Transaction: 49 C.F.R. § 1150.43(e)

The name and address of the railroad transferring its ownership interest in the Assets is:

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

CSXT will convey the Assets to MBTA, including the Milford Secondary between mileposts QVG 0.0 at Franklin and QVG 8.4 at Milford, and the Franklin IT between valuation station 1456+00 and valuation station 1480+40 (all in Franklin), subject to the above-described freight easement.

MBTA and CSXT have agreed not to close on the subject Assets sale until the effective date of a favorable decision on the Motion (mooting the authority under this notice) and the effectiveness of the G&U Notice.

⁵ See 49 U.S.C. § 10501(c)(2)(A).

Map: 49 C.F.R. § 1150.43(f)

A map of the Assets and the area surrounding them is attached as Exhibit A.

Certification of Class III Carrier Status: 49 C.F.R. § 1150.43(g)

Because G&U and CSXT will have an exclusive freight easement over separate portions of the Assets and MBTA does not currently operate freight common carrier service (and thus generates no freight common carrier service revenues), MBTA qualifies as a Class III carrier.⁶

Transactions Imposing Interchange Commitments: 49 C.F.R. § 1150.43(h)

The transaction which is the subject of this Notice does not involve any provision or agreement limiting future interchange with a third-party connecting carrier.

Advance notice (posting): 49 C.F.R. § 1150.42(e)

As MBTA currently has no freight common carrier revenue and will not generate any freight transportation revenue from the Assets, MBTA freight common carrier revenue does not, and would not, exceed the \$5 million threshold of 49 C.F.R. § 1150.42(e). For these reasons, the advance notice requirements of § 1150.42(e) are not applicable. *See* Certification and Verification attached.

⁶ *See, e.g., Mass. Dep't of Transp.—Acquisition Exemption—Certain Assets of Pan Am S. LLC*, FD 35943 (STB served Aug. 28, 2015, and Dec. 4, 2015).

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

Pursuant to 49 C.F.R. § 1105.6(c)(2), MBTA's proposed acquisition of the Assets is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes to rail freight operations, *i.e.*, changes which exceed the thresholds established at 49 C.F.R. §§ 1105.7(e)(4)-(5).

MBTA's proposed acquisition of the Assets will promote continued rail operations so as to exempt the acquisition from historical preservation reporting requirements under C.F.R. § 1105.8(b)(1). Neither CSXT nor G&U will discontinue service or abandon any part of the Asset as a result of this transaction. MBTA has no plans to dispose of or alter properties subject to the Board's jurisdiction which are fifty years old or older.

Caption Summary: 49 C.F.R. § 1150.44

A caption summary in appropriate form is attached as Exhibit B.

Respectfully submitted,

/s/ *R.A. Wimbish*

Robert A. Wimbish

Bradon J. Smith

Stephen J. Foland

Fletcher & Sippel LLC

29 North Wacker Drive, Suite 800

Chicago, IL 60606-3268

Telephone: (312) 252-1504

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**ATTORNEYS FOR THE MASSACHUSETTS
BAY TRANSPORTATION AUTHORITY**

Dated: February 13, 2023

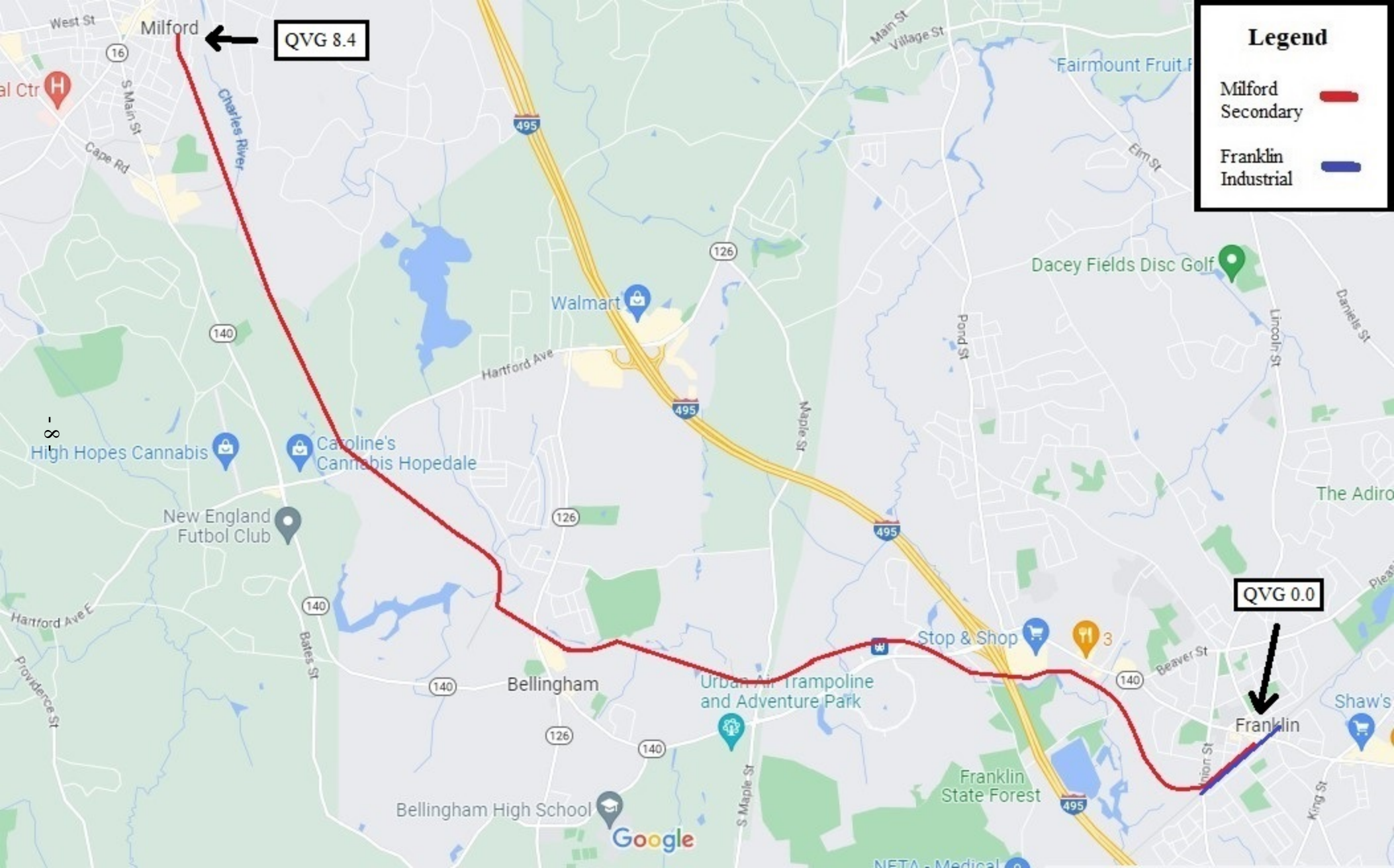
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—ACQUISITION EXEMPTION—
CSX TRANSPORTATION, INC.

EXHIBIT A

MAPS

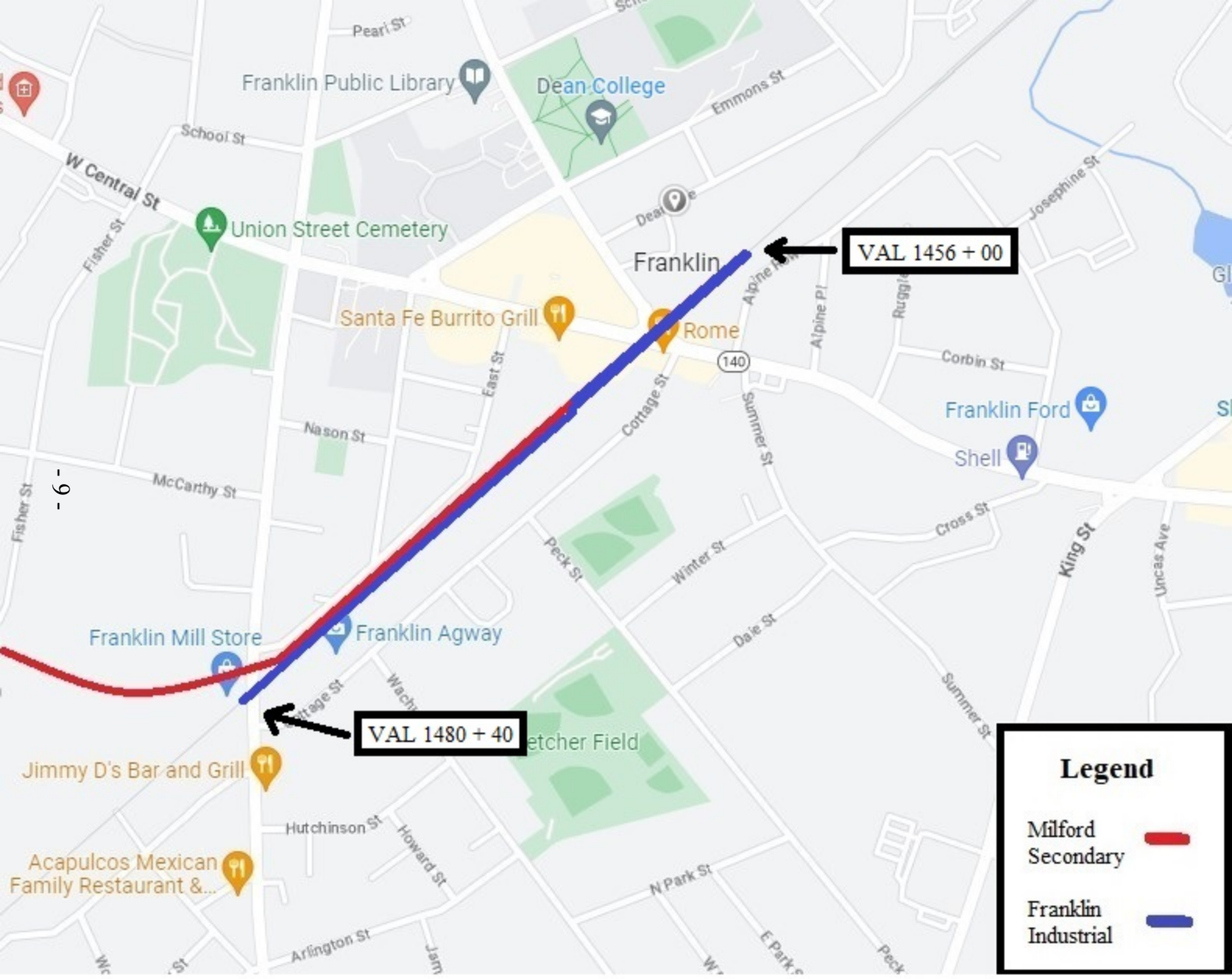


QVG 8.4

Legend

- Milford Secondary —
- Franklin Industrial —



QVG 0.0



VAL 1456 + 00

VAL 1480 + 40

Legend

- Milford Secondary 
- Franklin Industrial 

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EXHIBIT B

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

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—ACQUISITION EXEMPTION—
CSX TRANSPORTATION, INC.

The Massachusetts Bay Transportation Authority (“MBTA”), a division of the Massachusetts Department of Transportation and an agency of the Commonwealth of Massachusetts, has filed a verified notice of exemption under 49 C.F.R. part 1150, subpart E, to acquire from CSX Transportation, Inc. (“CSXT”) approximately 8.86 miles of track, including as follows: (1) an 8.4-mile segment of railroad track between milepost QVG 0.0, at Franklin, Norfolk County, MA, and milepost QVG 8.4, at Milford, Worcester County, MA, generally known as the Milford Secondary Line; and (2) a roughly 0.46-mile segment of railroad track connecting to the Milford Secondary, extending between valuation station 1456+00 and valuation station 1480+40 within Franklin, Norfolk County, MA, generally known as the Franklin Industrial Track.

This Notice is filed under 49 C.F.R. § 1150.41. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to re-open 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.

By the Board, _____, Director, Office of Proceedings.

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CERTIFICATION AND VERIFICATION

CERTIFICATION AND VERIFICATION

I, John Ray, being duly sworn, hereby certify and verify under penalty of perjury as follows:

1. I am Assistant General Manager, Commuter Rail Operations of Massachusetts Bay Transportation Authority (“MBTA”), and I am authorized to make this certification and verification on behalf of MBTA;
2. I certify that the anticipated annual freight common carrier revenues of MBTA do not and will not exceed \$5 million annually, and, by extension that MBTA is qualified, and will remain qualified (following consummation of the proposed railroad assets transaction), to be deemed a Class III railroad carrier;
3. I certify that the agreements governing the proposed railroad assets transaction contain no restrictions on interchange with third-party connecting railroads; and
4. I hereby verify that I have read the foregoing notice of exemption, know the contents thereof, and that the same are true as stated to the best of my knowledge, information and belief.



John Ray

Dated: February 13, 2023