

306192

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
February 22, 2023
Part of
Public Record

Docket No. FD 36670

GRAFTON AND UPTON RAILROAD COMPANY
—ACQUISITION AND OPERATION EXEMPTION—
CSX TRANSPORTATION, INC.

VERIFIED NOTICE OF EXEMPTION

James E. Howard
57 Via Buena Vista
Monterey, CA 93940
831-324-0233
jim@jehowardlaw.com

Attorney for Grafton and Upton
Railroad Company

Date: February 22, 2023

FILED
February 22, 2023
SURFACE TRANSPORTATION BOARD

FEE RECEIVED
February 22, 2023
SURFACE TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36670

GRAFTON AND UPTON RAILROAD COMPANY
—ACQUISITION AND OPERATION EXEMPTION—
CSX TRANSPORTATION, INC.

VERIFIED NOTICE OF EXEMPTION

Pursuant to 49 C.F.R. § 1150.41, *et seq.*, Grafton and Upton Railroad Company (“G&U”), a Class III carrier, files this Verified Notice of Exemption from the prior approval requirements of 49 U.S.C. § 10902 to acquire by easement and continue to operate local and overhead service as a common carrier over approximately 8.4 miles of rail lines referred to as the Milford Secondary between milepost QVG 0 and milepost QVG 8.4 in Milford, Bellingham and Franklin, MA (the “Line”), which is currently owned by CSX Transportation, Inc. (“CSXT”) and which, as described below, is expected to be owned by the Massachusetts Bay Transportation Authority (“MBTA”) subject to a freight easement retained by CSXT and, in turn, assigned to G&U.¹

¹ G&U currently operates over the Line pursuant to an easement (the “2020 Easement”). *Grafton and Upton Railroad Company-Acquisition and Operation Exemption-CSX Transportation, Inc.*, Docket No. FD 36444 (served October 14, 2020) (“2020 Easement Notice”). As part of a sequence of transactions related to Massachusetts Bay Transportation Authority’s (“MBTA”) planned acquisition of the Milford Secondary assets, CSXT will transfer the Milford Secondary assets to MBTA subject to CSXT’s retention of a permanent and exclusive freight common carrier service easement (the “New Easement”). At that time, the 2020 Easement will terminate and be replaced by the New Easement. See *Massachusetts Bay Transportation Authority-Acquisition Exemption-CSX Transportation, Inc.*, Docket No. FD 36669, Verified Notice of Exemption and Motion to Dismiss, both filed February 13, 2023. Immediately upon MBTA’s closing upon the Milford Secondary assets, CSXT will assign the New Easement to G&U.

In accordance with the requirements of 49 C.F.R. § 1150.43, G&U submits the following information:

Name and Address of Applicant: 49 C.F.R. § 1150.43(a)

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

Grafton and Upton Railroad Company
42 Westboro Road
North Grafton, MA 01536

Applicant's Representative: 49 C.F.R. § 1150.43(b)

G&U's representative to whom correspondence regarding this transaction should be sent is James E. Howard, 57 Via Buena Vista, Monterey, CA 93940, 831-324-0233,

jim@jehowardlaw.com.

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

G&U expects to execute an Assignment of Permanent Freight Easement Agreement (the "Assignment") with CSXT to transfer the New Easement. G&U also will execute an Operating Agreement with the MBTA (the "Milford Operating Agreement") which, together with the New Easement, will govern, among other things, MBTA's commuter rail operations and maintenance of the Milford Secondary, and G&U's freight common carrier operations over the Line upon G&U's assumption of the New Easement rights from CSXT.

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

G&U has been operating the Line since 2020 pursuant to the *2020 Easement Notice*. On February 13, 2023, MBTA filed a Notice of Exemption in FD 36669 (the "MBTA Notice") to acquire the Milford Secondary assets subject to a permanent freight easement retained by CSXT. MBTA concurrently sought dismissal of on the basis that the transaction, as structured, does not require Board authorization under a line of precedent beginning with *Maine, Department of*

Transportation—Acquisition & Operation Exemption—Maine Central Railroad, 8 I.C.C.2d 835 (1991). Should the Board dismiss the MBTA Notice, the parties intend that, upon closing of the MBTA-CSXT transaction for the Milford Secondary assets, G&U will continue to serve as the Line's common carrier service provider, albeit under the terms of the New Easement, rather than under G&U's 2020 Easement rights.

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

G&U seeks authority to continue to operate as a common carrier on approximately 8.4 miles of rail line in Milford, Bellingham and Franklin, MA. The Assignment provides for an initial term of ten years, subject to three five-year extensions if certain conditions are met. The Assignment is subject to CSXT's possible reacquisition of the easement, subject to any necessary Board authorization associated with such reacquisition.

(1) The name and address of the transferring railroad is:

CSX Transportation, Inc.
500 Water St., J-885
Jacksonville, Florida 32202

(2) The proposed time schedule for consummation of the transaction:

G&U intends to consummate the proposed transaction after this notice of exemption becomes effective and subject to Board dismissal of the MBTA Notice.

(3) The mileposts of the subject property:

The Milford Secondary is located between milepost QVG 0 and milepost QVG 8.4.

(4) The total route miles being acquired:

The total length of the Line is approximately 8.4 miles (not inclusive of any ancillary track between milepost QVG 0 and milepost QVG 8.4).

Map: 49 C.F.R. § 1150.43(f)

A map of the Line is attached as Exhibit 2.

Certificate of Compliance: 49 C.F.R. § 1150.43(g)

G&U certifies that its projected revenues will not exceed that of a Class III railroad. A certificate complying with the provisions of 49 CFR § 1150.43(g) is set forth in Exhibit 1 attached to this Verified Notice.

Interchange Commitment: 49 C.F.R. § 1150.43(h)

G&U certifies that the proposed acquisition of the Line does not involve a provision or agreement that may limit future interchange with a third-party connecting carrier. A certification complying with the provisions of 49 CFR § 1150.43(h) is set forth in Exhibit 1 attached to this Verified Notice.

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

The projected annual revenue of the Line together with the projected annual revenues of G&U are not anticipated to exceed \$5 million. Accordingly, the advance notice and posting requirements of 49 C.F.R. § 1150.42(e) are not applicable. Certification to this effect is made in Exhibit 1 to this Verified Notice.

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

Under 49 C.F.R. § 1105.6(c)(1), environmental assessments are not normally prepared where 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). G&U does not anticipate that the present transaction will 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), G&U's easement over the Line also is excepted from historic preservation reporting requirements. The proposed transaction is for the purpose of continued rail operations. Further, Board approval is required to discontinue 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 C.F.R. § 1150.44

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

Respectfully submitted,

/s/ James E. Howard

James E. Howard
57 Via Buena Vista
Monterey, CA 93940
831-324-0233
jim@jehowardlaw.com

Attorney for Grafton and Upton
Railroad Company

EXHIBIT 1

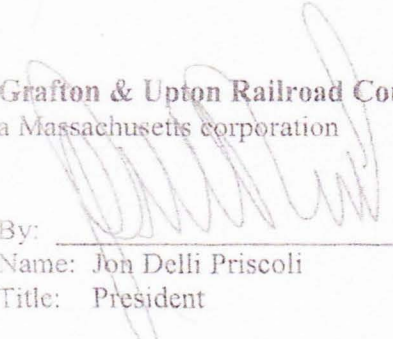
VERIFICATION AND CERTIFICATION

I, Jon Delli Priscoli, declare under penalty of perjury that I am the President of Grafton and Upton Railroad Company ("G&U"), that I have read the foregoing Verified Notice of Exemption and know the facts asserted therein, and that the foregoing is true and correct. Further, I certify that I am qualified and authorized to cause the foregoing Verified Notice to be filed with the Board.

I hereby certify that (1) G&U's projected annual revenues as a result of the transaction are not expected to result in G&U becoming a Class I or II rail carrier under the thresholds set forth at 49 C.F.R. § 1201(1-1) and (2) G&U's annual revenues from the Line together with G&U's projected annual revenues will not exceed \$5 million.

I further certify that the G&U's proposed acquisition of the Line does not involve a provision or agreement that may limit future interchange with a third-party connecting carrier.

Grafton & Upton Railroad Company,
a Massachusetts corporation

By: 

Name: Jon Delli Priscoli

Title: President

Grafton and Upton Railroad Company

Dated: February 17, 2023

EXHIBIT 2
Map

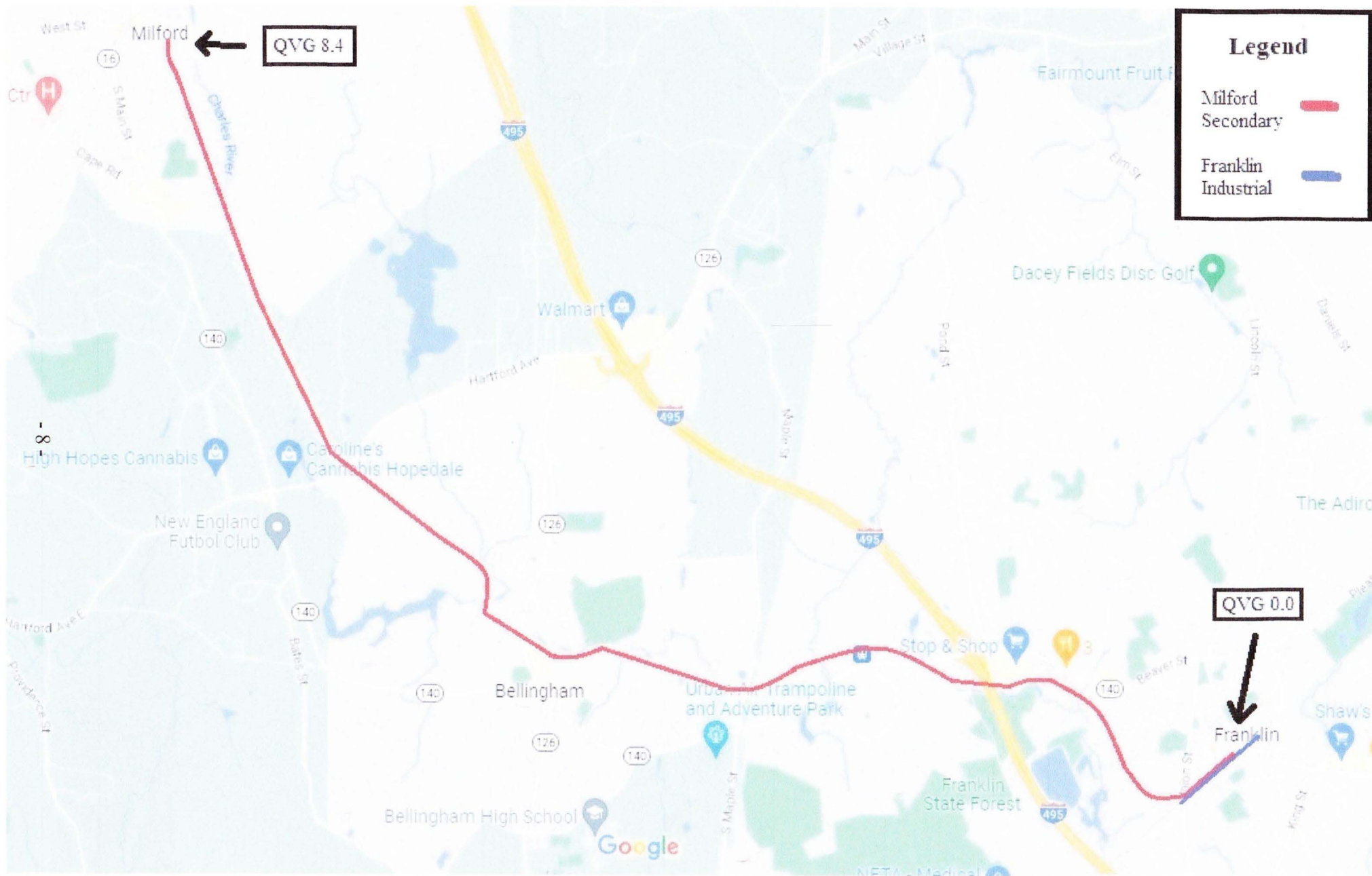


EXHIBIT 3

SURFACE TRANSPORTATION BOARD

Docket No. FD 36670

GRAFTON AND UPTON RAILROAD COMPANY —ACQUISITION AND OPERATION EXEMPTION— CSX TRANSPORTATION, INC.

Grafton and Upton Railroad Company (“G&U”), a carrier, has filed a Verified Notice of Exemption (“the Notice”) to acquire by easement the right to conduct common carrier operations, and to conduct such operations, over certain railroad assets currently owned by CSX Transportation, Inc. (“CSXT”) and to be sold to the Massachusetts Bay Transportation Authority, subject to a freight easement to be retained by CSXT (which retained easement CSXT will assign, in turn, to G&U): 8.4 miles of rail lines referred to as the Milford Secondary between milepost QVG 0 and milepost QVG 8.4 in Milford, Bellingham and Franklin, MA. Comments must be filed with the Board and served on James E. Howard, 57 Via Buena Vista, Monterey, CA 93940, 831-324-0233, jim@jehowardlaw.com.

The 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 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.