

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36723

SAVANNAH INDUSTRIAL LOGISTICS, LLC
— CONSTRUCTION EXEMPTION —
IN EFFINGHAM COUNTY, GA

FD 36723 (SUB-NO. 1)

SAVANNAH INDUSTRIAL TRANSPORTATION, LLC
— LEASE AND OPERATION EXEMPTION —
LINE OF SAVANNAH INDUSTRIAL LOGISTICS, LLC
IN EFFINGHAM COUNTY, GA

**PETITIONS FOR EXEMPTION OF
SAVANNAH INDUSTRIAL LOGISTICS, LLC AND
SAVANNAH INDUSTRIAL TRANSPORTATION, LLC
PURSUANT TO 49 U.S.C. § 10502(a)**

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**ATTORNEYS FOR SAVANNAH
INDUSTRIAL LOGISTICS, LLC AND
SAVANNAH INDUSTRIAL
TRANSPORTATION, LLC**

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Pursuant to 49 U.S.C. § 10502, the regulations of the Surface Transportation Board (the "Board") at 49 C.F.R. § 1121, and the Board's order served in *Savannah Industrial Transportation, LLC — Operation Exemption — In Effingham County, GA*, FD 36489 (STB served Aug. 1, 2023) (the "*August Order*"), Savannah Industrial Logistics, LLC ("SIL") petitions the Board for an after-the-fact exemption from the prior approval requirements of 49 U.S.C. § 10901(a) for the construction of a rail line (the "Track") located in an industrial park (the "Facility") sited near Rincon, in Effingham County, Georgia.

In a related sub-docket, Savannah Industrial Transportation, LLC (“SIT”), an affiliate of SIL,¹ petitions the Board for an after-the-fact exemption from the prior approval requirements of 49 U.S.C. § 10901 to operate the Track pursuant to lease with SIL.² A map showing the location of the Track is attached to these petitions as Exhibit A.

As shown below, SIL’s construction of the Track, and SIT’s lease and operation of the same, meet the criteria for the individual exemptions sought.³

The Board held in the *August Order* that SIL’s construction of the Track and SIT’s operation should receive environmental review by the Board’s Office of Environmental Analysis (“OEA”). SIL and SIT initiated that consultation process with OEA several weeks ago, as directed. SIL completed significant environmental review and permitting of the construction of the Track with federal, state, and local governmental agencies in conjunction with construction of the Track. SIL has supplied OEA with extensive documentation of the permitting and approvals processes to which the Track construction was subjected. SIL understands that OEA is reviewing those materials currently.⁴ SIL and SIT anticipate further consultation with OEA going forward.

¹ SIT and SIL are each holdings of OmniTRAX Holdings Combined, Inc. (“OmniTRAX”).

² In the *August Order*, the Board exempted SIT’s operations on the Track from the prior approval requirements of 49 U.S.C. § 10901 for the limited purpose of providing common carrier service to customers that were, as of August 1, 2023, receiving rail service at the Facility from SIT.

³ Due to the common facts for both matters, SIT and SIL are filing a singular petition for both proceedings.

⁴ At OEA’s direction, the applicants asked for a waiver of the pre-filing environmental notification of 49 C.F.R. § 1105.10(a)(1). OEA granted the waiver on September 26, 2023. We understand OEA is considering the nature of the environmental documentation under 49 C.F.R. § 1105.6 it will require (or the scope of a third party consultant’s work under 49 C.F.R. § 1150.10(c)).

I. IDENTIFICATION OF PETITIONERS

SIL is a non-common carrier by rail formed to acquire and manage the extensive real estate necessary to accommodate the Track, and to construct the Track. SIL currently owns the Track and related ancillary and yard tracks within the Facility, and the rail-related land within the Facility. SIL owns no other land or track outside of the Facility.

SIT is currently a common carrier as authorized and limited by the Board in the *August Order*. SIT provides all rail service within the Facility and conducts interchange with Norfolk Southern Railway Company (“NSR”) and CSX Transportation, Inc. (“CSXT”), its connecting line-haul carriers.

OmniTRAX and HGS Railway Holdings, Inc. (“HGS”)⁵ previously secured Board authority to control SIT upon SIT becoming a common carrier railroad. *OmniTRAX Holdings Combined, Inc., and HGS Railway Holdings, Inc. — Control Exemption — Savannah Industrial Transportation, LLC*, FD 36490 (STB served May 27, 2021) (“*SIT Control*”). OmniTrax and HGS are under joint managerial and operational control. *See OmniTRAX Holdings Combined, Inc., and HGS Railway Holdings, Inc. — Control Exemption — The Winchester and Western Railroad Company*, FD 36338 (STB served Aug. 22, 2019), 1; *and see also HGS Ry. Holdings, Inc. — Continuance in Control Exemption — HGS-FCR, LLC*, FD 36180 (STB served May 23, 2018), 2-3 at n.3.

⁵ Collectively, OmniTRAX and HGS are referred to herein as “Omni-HGS.”

The complete names and addresses of SIL and SIT are:

Savannah Industrial Logistics, LLC
252 Clayton Street, 4th Floor
Denver, CO 80206

Savannah Industrial Transportation, LLC
252 Clayton Street, 4th Floor
Denver, CO 80206

II. FACTUAL BACKGROUND

The Track, which has no mileposts, is approximately 11,404 feet in length (exclusive of connecting ancillary and yard trackage), extending from a connection with NSR at approximately NSR milepost 16.6 to a connection with CSXT at approximately CSXT milepost S484.0. The length and limits of the Track are depicted in green on Exhibit A, attached hereto. The Track spans the width of the Facility, and is connected through turnouts to various ancillary and yard tracks, which are depicted in other colors on Exhibit A.

As the Board is aware, OmniTRAX began planning for Track construction roughly six years ago. In January of 2018, representatives of OmniTRAX met with members of OEA to discuss what steps would need to be undertaken if the Track were to be constructed and operated as common carrier track. In July 2018, Savannah Industrial Railway, LLC (“SIR”), another subsidiary of Omni-HGS no longer involved with the Facility, requested a waiver of the six-month prefiling notice requirements of 49 C.F.R. § 1105.10(a)(1).

Ultimately, OmniTRAX leadership decided to construct and operate the Track, intending they would not operate the Track as a common carrier. SIL completed Track construction in the latter half of 2020, and SIT commenced operations shortly thereafter.

In working through the commercial relationships that SIT would establish with NSR and CSXT, Omni-HGS determined that the intermittent payment schemes implemented by

those Class 1 carriers were inconsistent with SIT's need for cash flow to properly operate the Track. SIT therefore determined to seek authority to operate the Track as a common carrier.⁶ Acknowledging the unusual fact that SIT had already assumed operating the Track many months earlier, SIT filed a petition for exemption to secure the desired operating authority. *See Savannah Industrial Transportation, LLC — Operation Exemption — In Effingham County, GA*, FD 36489 (STB filed May 11, 2021). Having associated the May 11 Petition for Exemption to OmniTRAX' past consultations with OEA in connection with the proposed SIR project, and finding that SIL intended all along to construct a federally-regulated line of railroad when it undertook to construct the Track (and SIR had filed to begin the process to secure Board authorization to do so), the Board in the *August Order* directed SIL to seek after-the-fact construction authority for the Track, and further directed SIT to request after-the-fact authority to operate the Track as a common carrier. SIL and SIT now seek those mandated authorities through these jointly filed petitions.⁷

⁶ As noted in *Savannah Industrial Transportation, LLC — Operation Exemption — Effingham County, GA*, FD 36489, Sep. 28, 2021, Verified Letter filing of SIT, OmniTRAX and OmniTRAX, Inc., 2, the OmniTRAX personnel that decided to seek common carrier operating authority for SIT were unaware of the prior communications that OmniTRAX held with OEA regarding the Facility.

⁷ Although not referenced by the Board in the *August Order*, because SIL will become a common carrier upon securing after-the-fact authority to construct the Track and to own it post-authorization, Omni-HGS concurrently is filing a notice of exemption to remain in control of SIL once SIL becomes a common carrier. *See OmniTRAX Holdings Combined, Inc., and HGS Railway Holdings, Inc. — Continuance in Control Exemption — Savannah Industrial Logistics, LLC*, FD 36723 (Sub-No. 2). As previously mentioned, Omni-HGS are already authorized to control SIT. *See SIT Control*.

III. JURISDICTION AND STATUTORY STANDARDS

A. The Board’s jurisdiction over, and presumption favoring, line construction under 49 U.S.C. § 10901

The Board found in the *August Order* that it has jurisdiction over SIL’s construction and SIT’s operation of the Track as common carriers pursuant to 49 U.S.C. § 10901(a). That statutory section, as amended by the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (“ICCTA”), provides that a line of rail may not be constructed or operated without authority from the Board. The Board shall grant such authority “unless the Board finds that such activities are inconsistent with the public convenience and necessity.” 49 U.S.C. § 10901(c). As the Board has recognized, ICCTA changed the previous statutory standard for line construction, and there is now “a presumption that rail construction projects are in the public interest and should be approved unless shown otherwise.” *Seven County Infrastructure Coalition — Rail Construction and Operation Exemption — In Utah, Carbon, Duchesne, and Uintah Counties, UT*, FD 36284 (STB served Dec. 15, 2021) (“*Seven County*”), 5. The default way the Board acts on that presumption is through the “application” process 49 U.S.C. § 10901 contemplates and the corresponding application requirements of 49 C.F.R. Part 1150, Subpart A.

B. Exemption criteria for line construction projects under 49 U.S.C. § 10502

Notwithstanding the formalities and requirements of an application, 49 U.S.C. § 10502(a) requires the Board to exempt a person, transaction or service from the statutory and regulatory requirements otherwise applicable to a rail carrier when the Board determines that: (1) application of those requirements is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction is of limited scope or (b) regulation is not needed to protect shippers from an abuse of market power. In enacting the Staggers Rail Act of

1980, Pub. L. No. 96-448, 94 Stat. 1895, Congress made clear its intent that the Interstate Commerce Commission (as predecessor to the Board) use the expanded exemption authority under former Section 10505 to free certain transactions and service from the administrative and financial costs associated with continued regulation:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Conf. Rep. No. 1430, 96th Cong., 2d Sess. 105 (1980). Congress reaffirmed this policy in the conference report accompanying ICCTA, which reenacted the existing exemption provisions as Section 10502. H.R. Conf. Rep. No. 422, 104th Cong. 1st Sess. 168-169 (1995).

Railroad line construction projects establishing new rail service are precisely the kind of undertaking meant to be exempted under Section 10502, and which in fact the Board and the ICC before it have consistently so exempted. *See, e.g., Seven County; Hastings Industrial Link Railroad Company — Construction and Operation Exemption — Hastings, NE*, FD 32984 (STB served Dec. 10, 1996); *Missouri Pacific Railroad Company — Construction and Operation Exemption — Harris and Chambers Counties, TX*, FD 32571 (ICC served Jun. 30, 1995).

After-the-fact exemptions pursuant to Section 10502 from the prior approval requirements of Section 10901 for SIL's construction and SIT's operation of the Track would be consistent with the standards set forth in Section 10502.

IV. APPLICATION OF THE STANDARDS OF SECTION 10502

A. Regulation is not necessary for satisfaction of the Rail Transportation Policy.

Regulation of the construction and operation of the Track is not necessary to carry out the Rail Transportation Policy of 49 U.S.C. § 10101. Rather, granting the requested exemptions will promote several provisions of the rail transportation policy and will not run counter to any of those goals.

Granting the exemptions would be consistent with the goals set forth at 49 U.S.C. § 10101(4) and (5), to ensure the development and—in light of the after-the-fact elements of these exemption requests—the continuation of a sound rail transportation system with effective competition among rail carriers and with other modes to meet the needs of the public, and to foster sound economic conditions in transportation and ensure effective competition and coordination between rail carriers and other modes. The Track would continue to provide alternative transportation options for all current and future tenants at the Facility, who are and will be afforded nearby connections to Class I carriers NSR and CSXT, thus maintaining and enhancing competition among carriers and with other transportation modes. *See, e.g., Palmetto Railways — Construction & Operation Exemption — In Berkeley County, SC*, FD 36095, 3 (STB served Jul. 22, 2019) (proposed line would enhance competition by providing a freight rail transportation option that did not previously exist, consistent with § 10101(4) & (5)); *Six County Association of Governments — Construction & Operation Exemption — Rail Line Between Levan & Selina, UT*, FD 34075, 3 (STB served Oct. 19, 2001) (proposed line would provide a rail service option to shippers in an area where no rail service exists, thereby increasing competition consistent with § 10101(4)).

Further, consistent with the goals at § 10101(7), granting after-the-fact exemptions under Section 10502 would reduce regulatory barriers to entry into the rail industry, relieving SIL and SIT of the need to comply with the more taxing requirements of formal applications under Section 10901 in situations where such compliance clearly would be unnecessary. Relatedly, granting the requested exemptions under the circumstances would also be consistent with the goals at Section 10101(15), to provide for the expeditious handling and resolution of proceedings.

B. Construction and operation of the Track are of limited scope.

Construction and operation of approximately 11,404 feet of track clearly satisfies the requirement that the project be of limited scope. *See, e.g., Omaha Public Power District — Construction Exemption — In Otoe County, NE*, FD 32630 (ICC served May 2, 1995) (5-mile line in rural area in single county found to be limited in scope); *Elk River Railroad Company — Construction and Operation Exemption — In Clay and Kanawha Counties, WV*, FD 31989 (ICC served May 28, 1992) (construction of 30-mile rail line found to be limited in scope).

C. Regulation is not necessary to protect shippers from market power abuse.

Because after-the-fact regulation of the construction of the Track and operation of the same is of limited scope, SIL and SIT do not need to demonstrate that regulation is unnecessary to protect shippers from market power abuse. 49 U.S.C. § 10502(a)(2). Even so, after-the-fact construction and operation authorization for the Track would not, and cannot, subject current or future tenants of the Facility to any market power abuse. The requested exemptions will provide Facility tenants with competitive access to both NSR and CSXT. As the ICC explained many years ago, “[t]he proposed construction is designed to increase, not diminish competition.” *Kansas City Southern Railway Company — Construction and Operation*

Exemption — To Exxon Corporation's Plastics Near Baton Rouge and Baker, LA, FD 32547

(ICC served Jun. 12, 1995), 3. The requested exemptions would, in fact, reduce the prospect of market power abuse, not increase it.

V. INTERCHANGE COMMITMENT

In accordance with 49 C.F.R. § 1121.3(d), SIT hereby certifies that the lease of the Track does not involve a provision or agreement that may limit interchange with a third-party connecting carrier. Thus, the balance of the information required under Section 1121.3(d) is not applicable to this transaction.

VI. LABOR PROTECTION

Pursuant to 49 U.S.C. § 10901(c), no labor protection conditions may be imposed upon a grant of these petitions for exemption.

For the above reasons, SIL and SIT respectfully request that the Board grant these petitions and after-the-fact exemptions from the prior approval requirements of 49 U.S.C.

§ 10901 SIL's construction, and SIT's lease and operation, of the Track,

Respectfully submitted,

By: /s/ *R.A. Wimbish*

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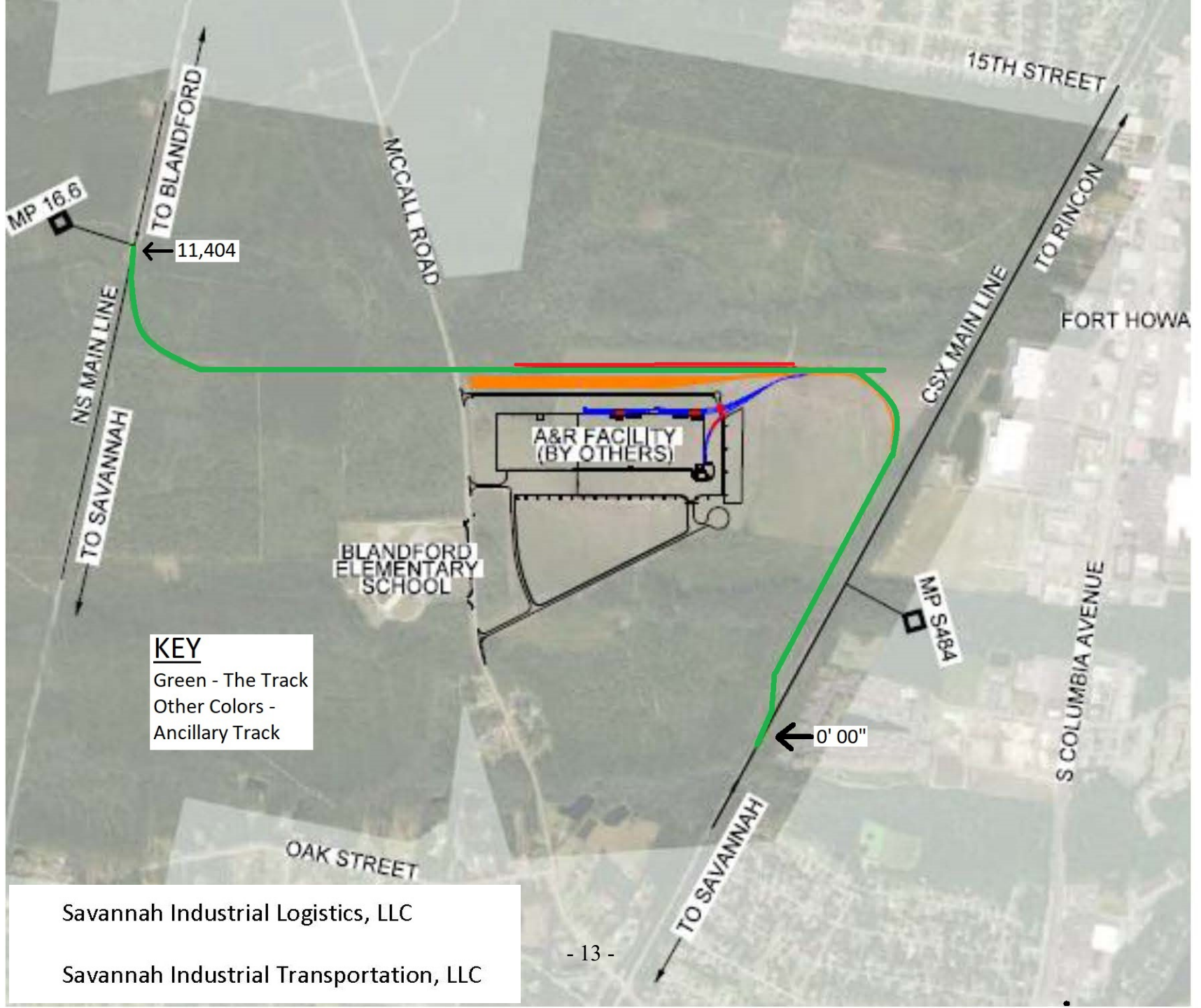
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EXHIBIT A

MAP



CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of September, 2023, a copy of the foregoing Petitions for Exemption was served via electronic mail upon the following parties:

John P. Patelli
Chief Regulatory Counsel
CSXT Law Department
500 Water Street, J150
Jacksonville, Florida 32202
Tel. 904-359-3276
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John_Patelli@csx.com

Hanna M. Chouest
Deputy General Counsel
Norfolk Southern Corporation
650 W Peachtree St NW
Atlanta, Georgia 30308
Hanna.Chouest@nscorp.com

Additionally, I hereby certify that on this same date, a copy of the foregoing Petitions for Exemption was served via overnight mail on the following party:

Quantix SCS, Inc.
1004 Gateway Parkway
Rincon, GA 31326

/s/ *Thomas Healey*

Thomas J. Healey