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August 20, 2018

246243

BY HAND DELIVERY

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

ENTERED
Office of Proceedings
August 20, 2018
Part of
Public Record

Re: Rock & Rail, LLC – Acquisition And Operation Exemption – Rail Lines Of
Martin Marietta Materials, Inc.
FD 36214

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding is an original plus eleven copies of a Verified Notice of Exemption (the "Notice") filed on behalf of Rock & Rail, LLC, a Class III rail carrier, pursuant to 49 CFR §1150.41, et seq. Also, included with this filing is the requisite filing fee of \$2,000. Please acknowledge receipt and filing of the enclosed materials by date stamping the extra copy provided, and returning it to the courier for return to our offices.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance with this matter.

Respectfully submitted,

William A. Mullins
Attorney for Rock & Rail, LLC

Enclosures

FEE RECEIVED
August 20, 2018
SURFACE
TRANSPORTATION BOARD

FILED
August 20, 2018
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36214

**ROCK & RAIL, LLC
– ACQUISITION AND OPERATION EXEMPTION –
RAIL LINES OF MARTIN MARIETTA MATERIALS, INC.**

VERIFIED NOTICE OF EXEMPTION PURSUANT TO 49 CFR §1150.41, ET SEQ.



**William A. Mullins
Crystal M. Zorbaugh
Baker & Miller PLLC
2401 Pennsylvania Ave., N.W.
Suite 300
Washington, DC 20037
Phone: (202) 663-7820
Facsimile: (202) 663-7849**

Dated: August 20, 2018

Attorneys for Rock & Rail, LLC

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36214

**ROCK & RAIL, LLC
– ACQUISITION AND OPERATION EXEMPTION –
RAIL LINES OF MARTIN MARIETTA MATERIALS, INC.**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 CFR §1150.41, ET SEQ.**

Pursuant to 49 CFR §1150.41, et seq., Rock & Rail, LLC, a Class III common carrier,¹ hereby files this Verified Notice of Exemption to acquire from Martin Marietta Materials, Inc. (“MMM”) and operate MMM’s tracks from Milepost (“MP”) 14.97 to 15.48, including existing yard, switching, and industry tracks (the “Lines”) as common carrier track. MMM’s tracks are located within MMM’s existing industry facility. The facility is known by Union Pacific Railroad Company (“UP”) as the Kelim Station, Kelim, Weld County, Colorado and known by R&R as the Rock & Rail Highway 34 Facility (the “Facility”).² Pursuant to 49 U.S.C. 10906, R&R currently has the right to operate and perform switching and other types of operations on the Lines. R&R desires to convert its Section 10906 operations to common carrier operations in order to provide common carrier service to MMM and potentially other shippers who may utilize

¹ R&R became a carrier in 1999. See Rock & Rail, Inc. – Acquisition and Operation Exemption – The Burlington Northern and Santa Fe Railway Company, FD 33738 (STB served April 30, 1999). R&R is owned and controlled by MMM. See Martin Marietta Materials, Inc.—Acquisition of Control Exemption—Rock & Rail, Inc., FD 35966 (STB served Oct. 23, 2015). After its acquisition from MMM, R&R converted from a corporation to a limited liability company.

² In addition to R&R’s ability to perform Section 10906 operations, UP is the only other common carrier capable of serving the Facility. The milepost designations are UP designations.

R&R's services at the Facility. In accordance with the requirements of 49 CFR §1150.43, R&R submits the following information:

Full name and address of Class III rail carrier applicant: 49 CFR §1150.43(a)

Rock & Rail, LLC
309 South 11th St
Canon City, CO 81212

Applicant's Representatives: 49 CFR §1150.43(b)

William A. Mullins
Crystal M. Zorbaugh
Baker & Miller PLLC
2401 Pennsylvania Ave., NW, Ste. 300
Washington, DC 20037
Telephone: (202) 663-7820
E-mail: wmullins@bakerandmiller.com

Statement that an agreement has been reached or details about when an agreement will be reached: 49 CFR §1150.43(c)

MMM and R&R have reached an agreement pursuant to which MMM will transfer its interests in the Lines and other related facilities to R&R.

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

R&R will be the owner and operator of the Lines. R&R will interchange with UP at the Facility pursuant to an interchange agreement with UP.

Brief summary of the proposed transaction: 49 C.F.R. §1150.43(e)

The MMM Kelim Station, Kelim, Weld County, Colorado Facility consists of 133.35 acres of real property, a concrete ready-mix plant, a 6,412 foot loop track, and 1,315 feet of loading and unloading tracks. MMM is currently the only company located in the Facility. It leases the underlying real property from Gerrard Investments, LLC, but owns the Lines and the ready-mix plant. R&R will obtain from MMM an assignment or sublease of the underlying lease and ownership of the Lines, the ready-mix plant, and any improvements on the site.

As noted, the Facility includes a loop track and several other tracks that are capable of being used for switching, storage, and the loading, unloading, and transloading of various raw materials and finished products. See Exhibit A for a map of the Facility's tracks. The Lines in the Facility connect with UP at the south end of the Facility.

Under an agreement between R&R and MMM, R&R has the right and obligation to provide MMM with necessary switching operations, loading, unloading, and transloading services at the Facility. To the extent R&R provides such services, it is pursuant to 49 U.S.C. §10906. R&R has determined also to obtain common carrier rights at the Facility. This will allow R&R to provide common carrier services (as well as other related rail services) to parties in addition to MMM and for compensation. This should also encourage other customers to locate within the industrial complex or to utilize it for transloading purposes. Accordingly, R&R seeks to acquire the MMM Lines and to operate them as common carrier track, as well as perform continued Section 10906 services.

Name And Address Of Party Transferring Property: 49 C.F.R. §1150.43(e)(1) –

Martin Marietta Materials, Inc.
2710 Wycliff Rd
Raleigh, NC 27607

Proposed Time Schedule: 49 C.F.R. §1150.43(e)(2)

R&R anticipates that the subject rail line acquisition and operation transaction will be consummated on or after September 29, 2018 (30 days after R&R files this notice of exemption).

Mileposts and Description: 49 C.F.R. §1150.43(e)(3) & (4)

R&R seeks to acquire the line from MP 14.97 to 15.48, including the loop track and the yard, switching, storage, and loading/unloading tracks. R&R will also acquire any facilities and rail related facilities, including the concrete ready-mix plant. The Lines are shown on Exhibit A:

Map: 49 CFR §1150.43(f)

A Map showing the Line and surrounding area is attached as Exhibit A to this Notice.

Certificate of compliance: 49 CFR §1150.43(g)

Certification of compliance with the provisions of 49 CFR 1150.43(g) is attached as Exhibit B to this Notice.

Interchange commitments: 49 CFR §1150.43(h)

R&R's acquisition and operation of the Lines will not involve any provision or agreement between MMM, R&R, or UP that would limit future interchange with a third-party connecting carrier.

Advance Notice (Posting): 49 CFR §1150.42(e)

The proposed transaction will not result in the creation of a carrier with projected annual operating revenues exceeding \$5 million, and, accordingly, the advance notice requirement of 49 CFR §1150.42(e) is not applicable to this transaction. See Exhibit B.

Environmental and Historic Preservation Information: 49 CFR §1105

Under 49 CFR §1105.6(c)(2), R&R's proposed acquisition and operation of the Lines is exempt from environmental reporting requirements because the proposed acquisition will not result in significant changes in carrier operations (i.e., changes that exceed the thresholds established in 49 CFR §1105.7(e)(4) or (5)). Accordingly, this action will not significantly affect either the quality of the human environment or energy conservation.

Under 49 CFR §1105.8(b)(1), R&R's proposed acquisition of the Lines also is exempt from historic preservation reporting requirements. Further STB approval would be necessary for R&R to discontinue or abandon the Lines and there are no plans to dispose of or alter properties subject to STB jurisdiction that are 50 years old or older, especially given that there are no such properties.

Caption Summary: 49 CFR §1150.44

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

Respectfully submitted,



William A. Mullins
Crystal M. Zorbaugh
Baker & Miller PLLC
2401 Pennsylvania Ave., N.W.
Suite 300
Washington, DC 20037
(202) 663-7820

Attorneys for Rock & Rail, LLC

August 20, 2018

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36214

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– ACQUISITION AND OPERATION EXEMPTION –
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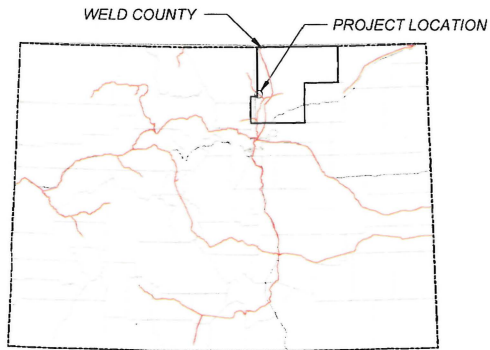
**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 CFR §1150.41, ET SEQ.**

EXHIBIT A

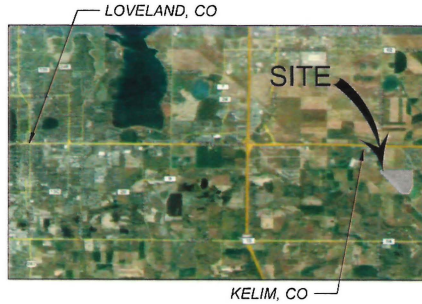
MAP



SERVED BY



State of Colorado



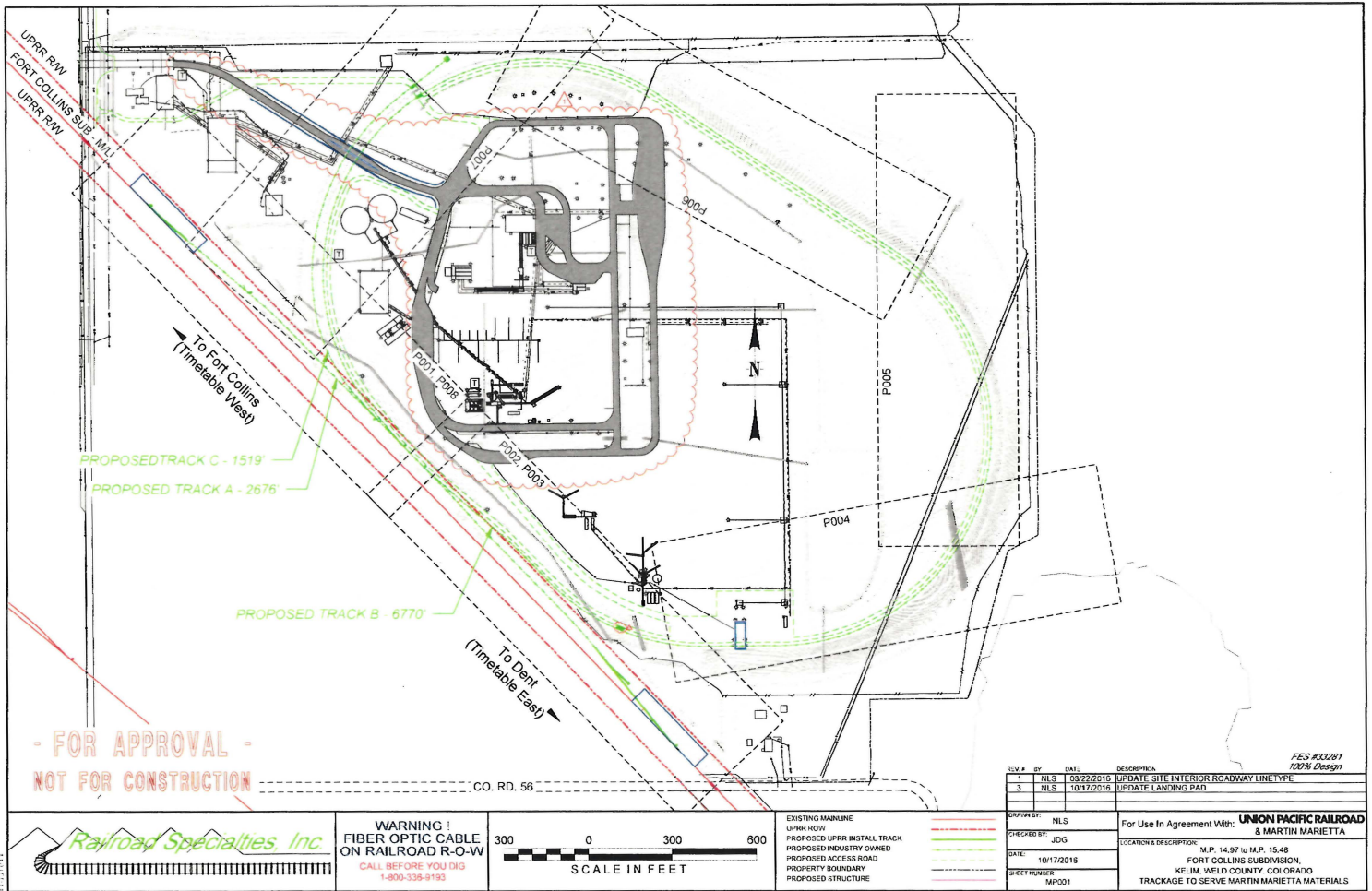
Project Location Map



**M.P. 14.97 to M.P. 15.48
FORT COLLINS SUBDIVISION,
KELIM, WELD COUNTY, COLORADO,
TRACKAGE TO SERVE MARTIN MARIETTA MATERIALS**

**FOR APPROVAL -
NOT FOR CONSTRUCTION**

**LAST REVISED
OCTOBER 17, 2016**



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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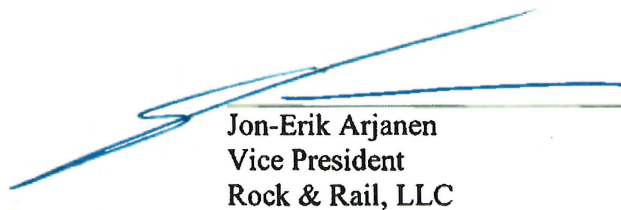
**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 CFR §1150.41, ET SEQ.**

EXHIBIT B

49 CFR §1150.33(g) – CERTIFICATION

CERTIFICATION

I, Jon-Erik Arjanen, Vice President, Rock & Rail, LLC, hereby certify that R&R's projected annual rail revenues resulting from the consummation of the proposed transaction will not exceed \$5 million annually, and will not result in R&R becoming a Class I or Class II carrier.



Jon-Erik Arjanen
Vice President
Rock & Rail, LLC

8-20-2018

August 20, 2018

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EXHIBIT C

49 CFR §1150.44 – CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

FD 36214

ROCK & RAIL, LLC – ACQUISITION AND OPERATION EXEMPTION – RAIL LINES OF MARTIN MARIETTA MATERIALS, INC.

Rock & Rail, LLC (“R&R”), a Class III common carrier,¹ has filed a Verified Notice of Exemption to acquire from Martin Marietta Materials, Inc. (“MMM”) the MMM owned railroad tracks from milepost 14.97 to 15.49,² including the loop track and the existing yard, switching, storage, and loading/unloading tracks and rail related facilities (the “Lines”). The Lines are currently located within an industrial development yard owned and operated by MMM known by UP as the Kelim Station, Kelim, Weld County Colorado and known by R&R as the Rock & Rail Highway 34 Facility. Upon consummation of the transaction, R&R will be the owner and operator of the Lines. R&R’s projected annual rail operating revenues, even after consummation of this transaction, will not exceed \$5 million, and, accordingly, the advance notice requirement of 49 CFR §1150.42(e) is not applicable to this transaction. R&R anticipates that the subject rail line acquisition transaction will be consummated on or after September 29, 2018.

¹ R&R became a carrier in 1999. See Rock & Rail, LLC – Acquisition and Operation Exemption – The Burlington Northern and Santa Fe Railway Company, FD 33738 (STB served April 30, 1999). R&R is owned and controlled by MMM. See Martin Marietta Materials, Inc. — Acquisition of Control Exemption—Rock & Rail, LLC, FD 35966 (STB served Oct. 23, 2015). After MMM’s acquisition of R&R, R&R converted from a corporation to a Limited Liability Company (“LLC”).

² Union Pacific Railroad Company (“UP”) currently has the ability to provide common carrier service to the Facility. The milepost designations are UP designations.

All pleadings or comments relating to this transaction must be filed with the Surface Transportation Board, 395 E Street, SW, Washington, DC 20523-0001. In addition, a copy of each pleading must be served on R&R's representative, William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Avenue, N.W., Suite 300, Washington, DC 20037.

The notice is filed under 49 CR §1150.41, et seq. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to reopen 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 transaction. Stay petitions must be filed by

_____.

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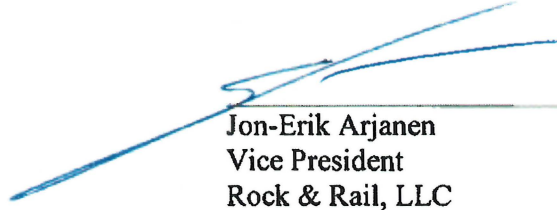
**VERIFIED NOTICE OF EXEMPTION
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EXHIBIT D

VERIFICATION

VERIFICATION

Pursuant to 28 U.S.C. 1746, I, Jon-Erik Arjanen, declare under the penalty of perjury under the laws of the United States that I am authorized to make this verification on behalf of Rock & Rail, LLC, a Class III rail carrier, and that the foregoing notice of exemption is true and correct to the best of my knowledge and belief.



8-20-2018

Jon-Erik Arjanen
Vice President
Rock & Rail, LLC

August 20, 2018