

BALL JANIK LLP

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September 16, 2004



BY HAND DELIVERY

FEE RECEIVED

SEP 16 2004

**SURFACE
TRANSPORTATION BOARD**

The Honorable Vernon Williams
Surface Transportation Board
1925 K Street, N.W., Suite 700
Washington, DC 20423-0001

Re: Finance Docket No. 34542, Fulton County Railway, LLC – Lease
and Operation Exemption – CSX Transportation, Inc.

Dear Secretary Williams:

Attached for filing are the original and ten copies of a Verified Notice of Exemption under 49 C.F.R. 1150.31 and a check covering the \$1,400.00 filing fee. Also enclosed is a 3.5-inch diskette containing the Notice and Summary.

Please time and date stamp the extra copy of the Notice of Exemption and return it with our messenger.

If you have any questions, please contact me.

Sincerely,

Karl Morell

Enclosures

FILED

SEP 16 2004

**SURFACE
TRANSPORTATION BOARD**

1

ENTERED
Office of Proceedings

SEP 17 2004

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34542

FULTON COUNTY RAILWAY, LLC
--LEASE AND OPERATION EXEMPTION--
CSX TRANSPORTATION, INC.

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1150.31, Et Seq.



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KARL MORELL
Of Counsel
BALL JANIK LLP
Suite 225
1455 F Street, N.W.
Washington, D.C. 20005
(202) 638-3307

Attorney for:
FULTON COUNTY RAILWAY, LLC

Dated: September 16, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34542

FULTON COUNTY RAILWAY, LLC
--LEASE AND OPERATION EXEMPTION--
CSX TRANSPORTATION, INC.

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1150.31, Et Seq.

Fulton County Railway, LLC ("FCR"), a non-carrier, files this Notice of Exemption pursuant to 49 C.F.R. Part 1150, Subpart D--Exempt Transactions, to permit FCR to lease from CSX Transportation, Inc. ("CSXT") and operate approximately 55 miles of rail lines located in Atlanta, Georgia.

In support of this Notice of Exemption, FCR submits the following information as required by 49 C.F.R. § 1150.33:

- (a) Full name and address of applicant:

Fulton County Railway, LLC
50 South Steele Street
Suite 250
Denver, CO 80209

(b) Applicant's Representative:

Karl Morell
Of Counsel
BALL JANIK LLP
Suite 225
1455 F Street, N.W.
Washington, DC 20005
(202) 638-3307

(c) Statement of Agreement:

FCR will shortly enter into agreements with CSXT for the lease of the rail lines.

(d) The operator of the property:

FCR will be the operator of the leased lines.

(e) Summary of proposed transaction:

(1) The name and address of the company leasing the subject property:

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

(2) The involved transaction is expected to be consummated on or shortly after October 15, 2004.

(3) The 55 miles of rail lines that FCR will lease are located: (1) from Milepost ANO 855.06, V.S. 3+30, at Fulco Junction, westerly to Milepost ANO 858.72, V.S. 196+31; (2) from Milepost ANO 858.72, V.S. 196+31 northeasterly to Milepost ANO 860.75, V.S. 304+70, at the northeast end of the line; and (3) from V.S. 196+31 = V.S. 0+00 southwesterly to V.S. 208+94, at the southwest end of the line, through the Fulco Industrial Park, including the track in the Fulco Yard, and the appurtenant sidings, and industrial tracks, in Atlanta, Georgia.

(4) The length of the rail lines being leased is approximately 55 miles.

(f) A map of the rail lines being leased is attached as Exhibit A.

(g) FCR hereby certifies that FCR's projected revenues as a result of this transaction will not result in FCR becoming a Class II or Class I rail carrier. FCR further certifies that the projected annual revenue of FCR will not exceed \$5 million. Accordingly, the requirements of 49 C.F.R. § 1150.32(e) do not apply to this transaction.

A caption summary, as required by 49 C.F.R. § 1150.34, is attached.

ENVIRONMENTAL AND HISTORIC IMPACTS

FCR is leasing the lines from CSXT for continued rail operations. Further Board approval is required for FCR to discontinue any service and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Hence, this Notice of Exemption does not require an historic report under 49 C.F.R. § 1105.8(b)(1).

FCR's lease and operation of the rail lines will not result in significant changes in carrier operations. There will not be a diversion of: (1) more than 1,000 rail carloads a year to motor carriage; or (2) an average of 50 carloads per mile per year for any part of this line to motor carriage. This transaction will not result in: (1) an increase in rail traffic of at least 100 percent or an increase of at least eight trains a day on any segment of the line; (2) an increase of rail yard activity of at least 100 percent; or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day. FCR's lease and operation of the rail lines will not affect a Class I or nonattainment area under the Clean Air Act. In any event, the thresholds of 49 C.F.R. § 1105.7(e)(5)(ii) will not be exceeded. Finally, the

transportation of ozone depleting materials is not contemplated. Therefore, no environmental documentation is required under 49 C.F.R. § 1105.6(c)(2).

This action will not significantly affect either the quality of the human environment or energy conservation.

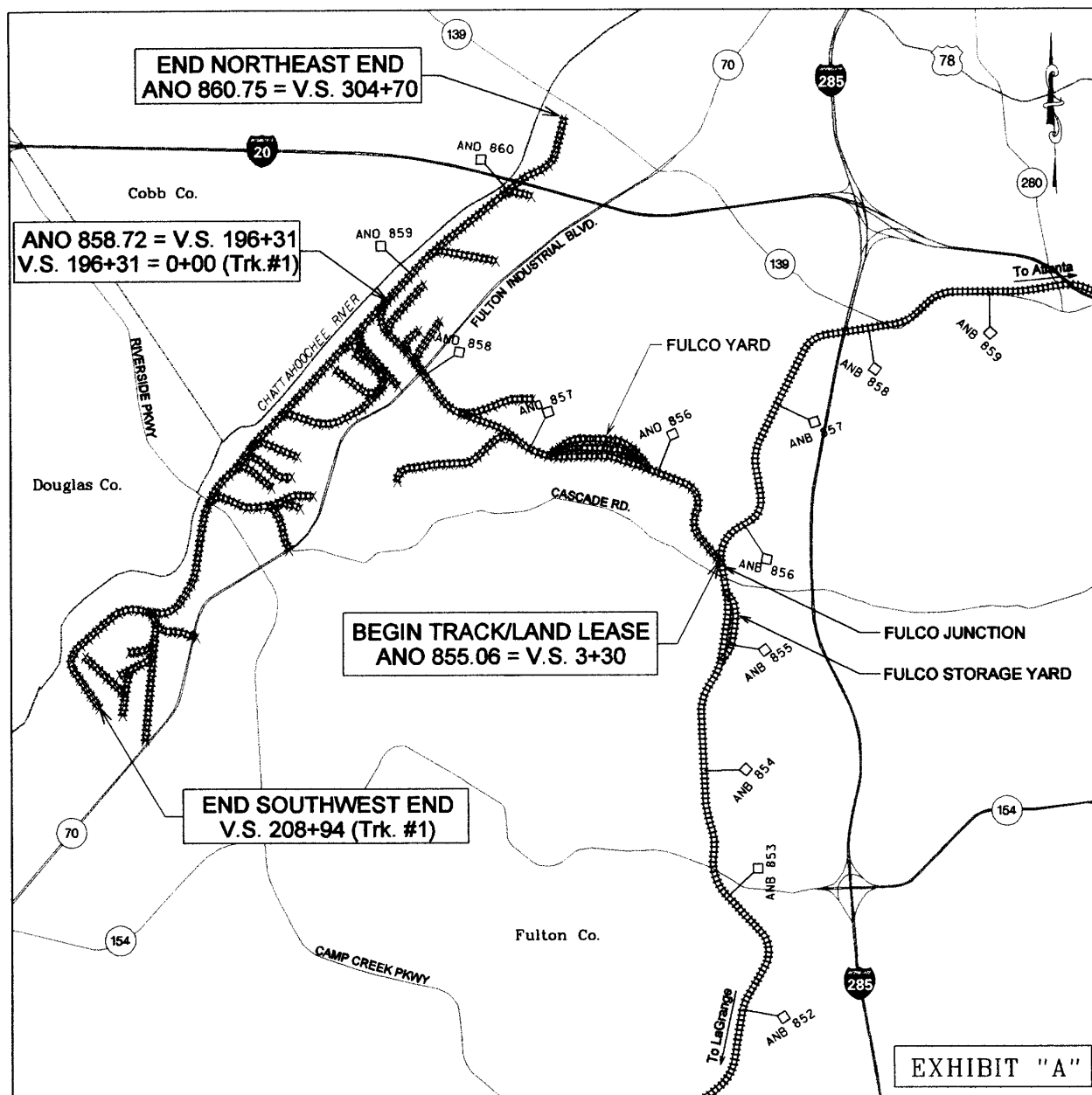
Respectfully submitted,

A handwritten signature in black ink, appearing to read "Karl Morell", is written over a horizontal line.

KARL MORELL
Of Counsel
BALL JANIK LLP
Suite 225
1455 F Street, N.W.
Washington, DC 20005
(202) 638-3307

Attorney for:
FULTON COUNTY RAILWAY, LLC.

Dated: September 16, 2004



LEGEND

PROPOSED LEASE

284 Acres (+/-) and
55 Miles of Track (+/-)

SOUTHERN REGION
ATLANTA DIVISION
FULCO BRANCH

3319' NORTH OF ANB 855
330' NW. FROM P.S. w/"ANB" LINE

S:\P\GA13\GA121\121-0211\GA-121-0994800\FULCO COLOR EXHIBIT\FULCO.DGN

CSX TRANSPORTATION

PROPOSED LEASE OF FULCO BRANCH TO FULTON COUNTY RAILWAY L.L.C.

City: Atlanta
County: Fulton
State: GA
Fips: 13-121-0211
Site ID: GA-121-0994800

VAL: V8GA/17-A,B,C
GIS: 07031 - 07033
Scale: 1" = 1 Mile
Date: 9/15/04
Drawn By: LF

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 34542

FULTON COUNTY RAILWAY, LLC
--LEASE AND OPERATION EXEMPTION--
CSX TRANSPORTATION, INC.

Fulton County Railway, LLC ("FCR"), a non-carrier, has filed a notice of exemption to lease from CSX Transportation, Inc., and operate approximately 55 miles of rail lines. The rail lines being leased are located: (1) from Milepost ANO 855.06, V.S. 3+30, at Fulco Junction, westerly to Milepost ANO 858.72, V.S. 196+31; (2) from Milepost ANO 858.72, V.S. 196+31 northeasterly to Milepost ANO 860.75, V.S. 304+70, at the northeast end of the line; and (3) from V.S. 196+31 = V.S. 0+00 southwesterly to V.S. 208+94, at the southwest end of the line, through the Fulco Industrial Park, including the track in the Fulco Yard, and the appurtenant sidings, and industrial tracks, in Atlanta, Georgia.

This transaction is related to STB Docket No. 34543, Patrick D. Broe and OmniTRAX, Inc. – Continuance In Control Exemption – Fulton County Railway, LLC, wherein Mr. Broe and OmniTRAX, Inc., have concurrently filed a verified notice to continue in control of FCR upon FCR becoming a Class III rail carrier.

Comments must be filed with the Board and served on Karl Morell, Of Counsel, BALL JANI LLP, Suite 225, 1455 F Street, N.W., Washington, DC 20005, (202) 638-3307.

This notice is filed under 49 C.F.R. 1150.31. If the notice contains false or misleading information, the exemption is void ab initio. The filing of a petition to revoke will not automatically stay the transaction.

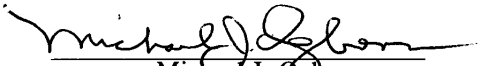
VERIFICATION

STATE OF COLORADO

CITY AND COUNTY OF DENVER

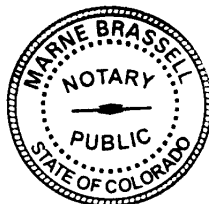
)
)
) ss.

I, Michael J. Ogborn, being duly sworn depose and state that I am Manager of Fulton County Railway, LLC, that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.


Michael J. Ogborn

SUBSCRIBED AND SWORN TO before me this 14 day of September, 2004, in the City and County of Denver, State of Colorado.

My Commission Expires: June 7, 2008 
Notary Public



My Commission Expires June 7, 2008