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BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34276

MASSACHUSETTS PORT AUTHORITY  
- ACQUISITION EXEMPTION -  
CERTAIN ASSETS OF BOSTON AND MAINE CORPORATION



VERIFIED NOTICE OF EXEMPTION  
OF  
MASSACHUSETTS PORT AUTHORITY  
PURSUANT TO 49 C.F.R. 1150.31

**FILED**

NOV 05 2002

**TRANSPORTATION BOARD**

Pursuant to 49 C.F.R. § 1150.31 et seq., the Massachusetts Port Authority ("Massport") hereby files this Verified Notice of Exemption to acquire from Boston and Maine Corporation ("B&M") a certain railroad right-of-way and related improvements located in the State of Massachusetts. B&M is a Delaware corporation and is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, Chapter 105.

Pursuant to a Purchase and Sale Agreement entered into by and between Massport and B&M, Massport will acquire B&M's current interest in approximately 221,496 square feet of land encompassing a line of railroad known as the Mystic Wharf Branch in Charlestown, MA. The line of railroad extends from MP 0.00 to MP 1.45, a distance of 1.45 miles in Suffolk County, Commonwealth of Massachusetts. Massport is acquiring the subject property and related railroad track and fixtures subject to retention of an exclusive permanent rail service easement by B&M.

B&M will retain the exclusive permanent easement for the purpose of providing rail service on the subject line. B&M's affiliate Springfield Terminal Railway Company ("ST") provides service over the subject line and will continue to do so after the subject transaction is consummated. Massport will not obtain the right or obligation to provide rail freight service on the subject line.

Simultaneously with the Verified Notice, Massport is filing a Motion to Dismiss this Notice. Massport is utilizing this procedure as a means to obtain a jurisdictional determination regarding Massport's status in regard to its acquisition of the subject property. See Maine, DOT - Acq. Exemption - Me. Central R. Co., ICC 2d 835 (1991).

In accordance with the requirements of 49 C.F.R. § 1150.33, Massport submits the following:

**Advance Notice**

49 C.F.R. 1150.32 (e)

Massport will not conduct any freight rail operations on the subject line.

Accordingly, the requirements of 49 C.F.R. § 1150.32 (e) do not apply to this transaction.

**Name and Address of Applicant**

49 C.F.R. 1150.33 (a)

Massachusetts Port Authority  
One Harborside Drive  
Suite 200 S  
East Boston, MA 02128-2909

**Applicant's Representative**

49 C.F.R. 1150.33 (b)

Keith G. O'Brien  
Rea, Cross & Auchincloss  
Suite 570  
1707 L Street, N.W.  
Washington, DC 20036  
(202) 785-3700

**Statement Concerning Agreement**

49 C.F.R. 1150.33 (c)

Massport has entered into a Purchase and Sale Agreement with B&M and ST providing for Massport's acquisition of the subject line subject to B&M's retained freight easement. Massport, B&M and ST will also enter into an Operating Agreement which recognizes Massport's continuing interest in the preservation of the rail corridor and accessibility to rail service. The proposed Operating Agreement also affirms that B&M and ST will retain their established operating rights and responsibilities over the subject line.

**Operation of the Property**

49 C.F.R. 1150.33 (d)

B&M will retain a permanent easement in the subject line for continuation of rail operations and ST will continue its role in providing rail service on the line.

**Summary of Transaction**

49 C.F.R. 1150.33 (e)

Pursuant to a Purchase and Sale Agreement entered into between Massport and B&M, Massport will acquire B&M's interest in certain parcels of railroad right-of-way containing approximately 221,500 square feet of land and 1.45 route miles of rail line known as the Mystic Wharf Branch from MP 0.00 to MP 1.45 in Charlestown, County of Suffolk, Commonwealth of Massachusetts. Massport will also acquire related railroad tracks, ties, fixtures, easements, licenses and rights relating to the property.

Massport does not intend to conduct rail operations over the line and does not intend to undertake active or residual common carrier obligations for service over the line. While Massport is acquiring the property to preserve the rail right-of-way and availability of rail service to the Port. It may also want to establish an adjacent haul road on the property at a later date. B&M will retain an exclusive permanent easement on the

line for rail operations and B&M's affiliate ST will continue to be responsible for providing rail operations over the line.

The parties intend to consummate this transaction on November 13, 2002.

The name and address of the railroad transferring the subject line is as follows:

Boston and Maine Corporation  
Iron Horse Park  
North Billerica, MA 01862

**Map**

49 C.F.R. 1150.33 (f)

A map depicting the area served is attached as Exhibit A to this Notice.

**Certification of Class III Status**

49 C.F.R. 1150.33 (g)

A certificate complying with the provision of 49 C.F.R. 1150.33 (g) is attached as Exhibit B to this Notice. Massport will not conduct any freight operations and will not derive any revenue from continued operations by the incumbent operator. Therefore its annual freight revenue will be zero.

**Caption Summary**

49 C.F.R. 1150.34

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

**Environmental and Historic Preservation Data**

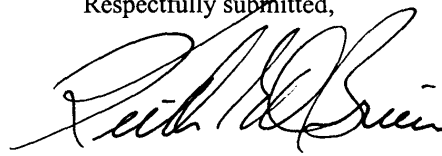
49 C.F.R. 1105

Pursuant to 49 C.F.R. 1105.6 (c)(2), the proposed transaction is exempt from environmental reporting requirements because it will not result in any operating changes that would exceed the thresholds established in 49 C.F.R. § 1105.7 (4) or (5).

In addition, this transaction is exempt from historic preservation reporting requirements under 49 C.F.R. 1105.8 (b)(1). Massport's acquisition of the subject line will not alter or disturb any existing rail carrier obligations on the subject line. Further,

Board approval is required to abandon existing service and there are no plans to dispose of or alter properties subject to Board jurisdiction that are forty years old or older.

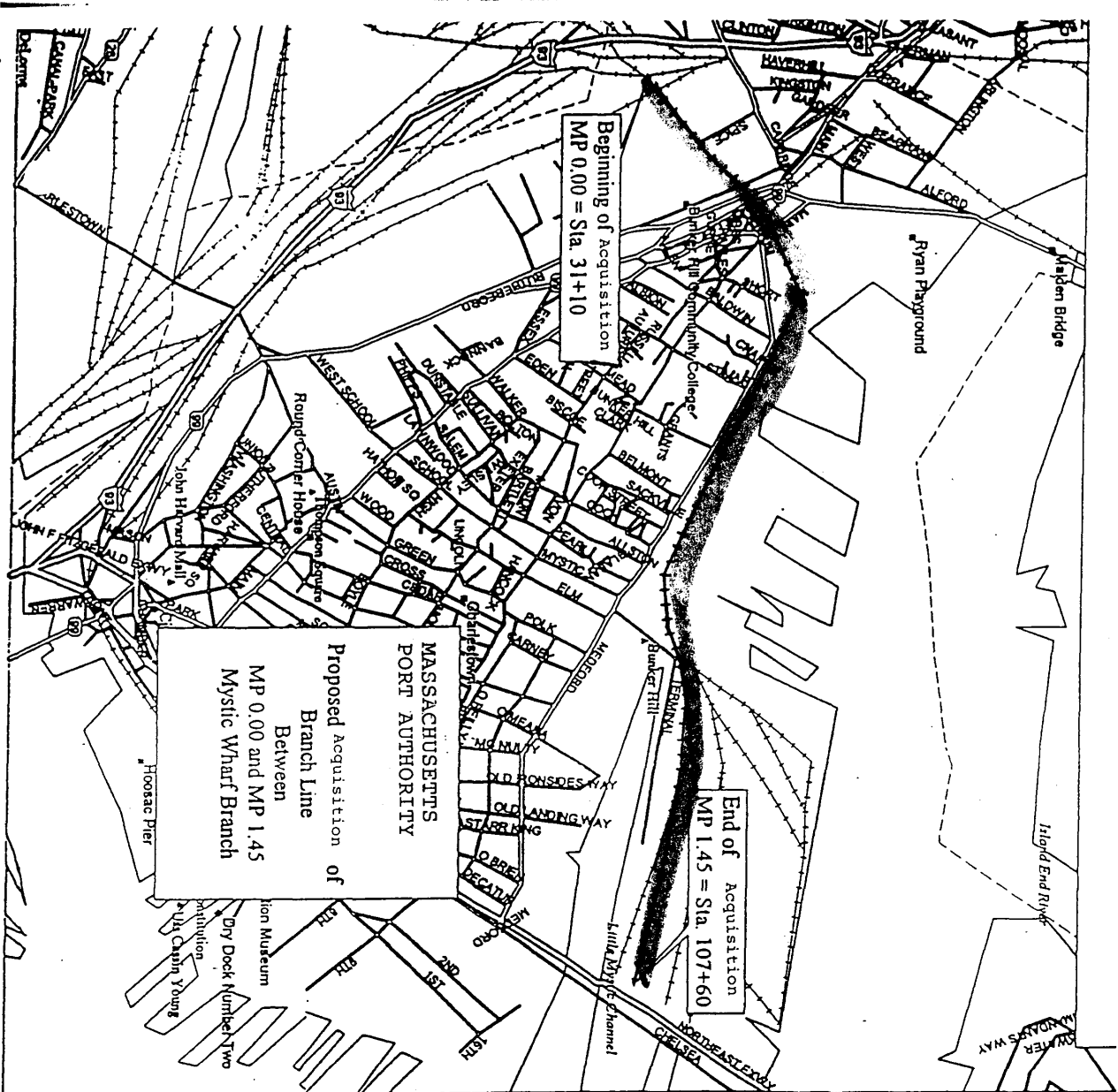
Respectfully submitted,

A handwritten signature in black ink, appearing to read "Keith G. O'Brien", written in a cursive style.

Keith G. O'Brien  
REA, CROSS & AUCHINCLOSS  
1707 L Street, NW  
Suite 570  
Washington, DC 20036  
(202) 785-3700

Counsel for:  
Massachusetts Port Authority

Dated: November 5, 2002



Scale 1:12,500 (at center)

1000 Feet  
200 Meters



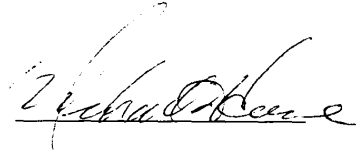
- Secondary SR, Road, Hwy Ramp
- Major Connector
- State Route
- Interstate/Limited Access
- Toll Highway
- Railroad
- Point of Interest
- Summit
- Park or Reservation
- Locale
- County Boundary
- Population Center
- Lake, Ocean, Large River
- PROPOSED Acquisition**

Finance Docket No. 34276

**EXHIBIT B**

**CERTIFICATION**

Michael A. Leone, being duly sworn, certifies that the projected rail freight revenues of the Massachusetts Port Authority upon consummation of the proposed transaction will not result in the creation of a Class I or Class II rail carrier under the provisions of 49 C.F.R. § 1201 (1-1).

A handwritten signature in dark ink, appearing to read "Michael A. Leone", is written over a horizontal line.

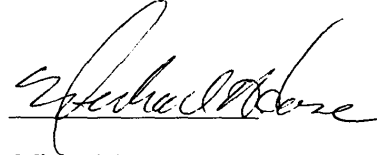
Michael A. Leone  
Port Director  
Massachusetts Port Authority

VERIFICATION

Commonwealth of Massachusetts  
Middlesex, ss.

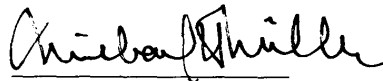
November 4, 2002

Michael A. Leone, being duly sworn, deposes and says that he is Port Director of the Massachusetts Port Authority, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.



Michael A. Leone  
Port Director  
Massachusetts Port Authority

Subscribed and Sworn to  
Before me this 4<sup>th</sup> day of November, 2002.



Notary Public

My Commission Expires: 11/27/03

MICHAEL H. MILLER, Notary Public  
My Commission Expires Nov. 27, 2003

**EXHIBIT C**

**SURFACE TRANSPORTATION BOARD**

**NOTICE OF EXEMPTION**

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**FINANCE DOCKET NO. 34276**

**MASSACHUSETTS PORT AUTHORITY  
ACQUISITION EXEMPTION  
CERTAIN ASSETS OF BOSTON AND MAINE CORPORATION**

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Massachusetts Port Authority ("Massport") a non-carrier, has filed a Verified Notice of Exemption to acquire from Boston and Maine Corporation ("B&M") certain railroad right-of-way and related improvements located in Massachusetts. Pursuant to a Purchase and Sale Agreement entered into by and between Massport and B&M, Massport will acquire B&M's right, title and interest in the so-called Mystic Wharf Branch line of railroad located between MP 0.00 and MP 1.45, a distance of 1.45 miles in Charlestown, MA. The line is located in Suffolk County, MA.

Massport does not intend to conduct rail operations over the line, but is acquiring it to preserve the rail right-of-way and availability of rail service to the Port. Massport may develop an adjacent haul road at a later date. B&M will retain an exclusive permanent easement on the line for rail operations and its affiliate Springfield Terminal

Railway Company ("ST") will continue to be responsible to provide rail operations over the line.<sup>1</sup>

Consummation of this transaction is expected to occur on November 13, 2002.

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.

An original and 10 copies of all pleadings, referring to STB Docket No. 34276 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition a copy of each pleading must be served on Keith G. O'Brien, REA, CROSS & AUCHINCLOSS, 1707 L Street, N.W., Suite 570, Washington, DC 20036.

Board decisions and notices are available on our website at "www.stb.dot.gov."

Decided \_\_\_\_\_

By the Board

Vernon A. Williams  
Secretary

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<sup>1</sup> Massport is simultaneously filing a motion to dismiss this proceeding, maintaining that the Board does not have jurisdiction over this transaction.