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ENTERED

Office of Proceedings

February 13, 2020

Part of
Public Record

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February 13, 2020

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20006

Re: **Docket No. FD 36384**
Sills Road Realty LLC – Acquisition Exemption –
Railroad Line in the Town of Brookhaven, New York

Docket No. FD 36385
Spectrum RR Holdings, LLC – Acquisition and Operation Exemption –
Railroad Line in the Town of Brookhaven, New York

Docket Nos. FD 36384 and FD 36385 -- Motion for Partial Dismissal

Dear Ms. Brown:

Offered for filing in the above-captioned proceeding are – (1) a **Verified Notice of Exemption of Sills Road Realty LLC**; and (2) a **Verified Notice of Exemption of Spectrum RR Holdings LLC**, each filed pursuant to 49 C.F.R. part 1150, subpart D. Payment of the applicable filing fees of \$4,200.00 has been tendered electronically with this filing via Pay.gov.

Also filed today in both of the above-referenced dockets is a **Joint Motion for Partial Dismissal**.

If you have any questions regarding this filing, please contact me at either rwimbish@fletcher-sippel.com or (312) 252-1504. Thank you for your assistance on this matter.
Kind regards.

Respectfully submitted,



Robert A. Wimbish
Attorney for Sills Road Realty LLC, and
Spectrum RR Holdings, LLC

Enclosures **FEE RECEIVED**
February 13, 2020
SURFACE
TRANSPORTATION BOARD

FILED
February 13, 2020
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36384

SILLS ROAD REALTY LLC
-- ACQUISITION EXEMPTION --
RAILROAD LINE IN THE TOWN OF BROOKHAVEN, NEW YORK

**VERIFIED NOTICE OF EXEMPTION OF
SILLS ROAD REALTY LLC
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-2832
(312) 252-1500

ATTORNEY FOR SILLS ROAD REALTY LLC

Dated: February 13, 2020

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36384

SILLS ROAD REALTY LLC
-- ACQUISITION EXEMPTION --
RAILROAD LINE IN THE TOWN OF BROOKHAVEN, NEW YORK

**VERIFIED NOTICE OF EXEMPTION OF
SILLS ROAD REALTY LLC
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

Pursuant to 49 C.F.R. part 1150, subpart D, Sils Road Realty LLC (“Sills Road”) hereby files this Verified Notice of Exemption (the “Notice”) to authorize its ownership of approximately 16,710 feet of track (the “Line”) in Brookhaven, New York. Based upon projected annual revenues, Sils Road expects to be a Class III rail carrier following consummation of the proposed transaction, and it anticipates that its annual operating revenues will be below \$5 million.

As additional background, the present transaction involves a rail transload facility located on Long Island known generally as the Brookhaven Rail Terminal (“BRT”). The rail and track assets currently located within the BRT were constructed, and have been owned since construction, by Sils Road. The underlying real property that comprises BRT consists of three separate, but generally contiguous, parcels of land typically known as Parcel A, Parcel B, and Parcel C.¹ Parcel A contains roughly 16,710 linear feet of track generally laid out in a railroad transload yard configuration. 90 linear feet of track exist on the LIPA land, another 50 feet of

¹ Technically, Parcels A and B are separated by a roughly 90-foot strip of land (the “LIPA Strip”) owned by the Long Island Power Authority. Sils Road possesses sufficient easement rights over the LIPA Strip to install connecting track over it.

track exist on Parcel B, and no track has been constructed, or is currently located, upon Parcel C. Taken together, the BRT track on Parcel A, the LIPA strip, and Parcel B totals 16,850 linear feet.

There are plans to construct extensive additional transload facility trackage on the Parcel B and C components of the BRT, but that trackage has not yet been built. The existing BRT trackage is shown on the color-coded maps attached as Exhibit A. The Exhibit A maps also depict, among other things – (1) the location and configuration of all track currently located within the BRT (highlighted in red, yellow and magenta); (1) the boundaries of Parcels A, B and C; (2) the location of the LIPA strip of land located immediately to the east of the eastern side of Parcel A; (3) the track segment that runs from Parcel A, over the LIPA strip, and into Parcel B (highlighted in magenta); and (4) the location and configuration of the track that Sills Road anticipates in the future that it will construct on Parcels B and C (highlighted in green).

In 2010, U S Rail Corporation (“USRC”), a predecessor in interest to an entity known as Brookhaven Rail, LLC (“Brookhaven Rail”),² sought and obtained Board authority to construct and operate approximately 18,000 feet of railroad track on the Parcel A component of the BRT.³ The trackage that was the subject of the FD 35141 construction proceeding was described at the time as a “railroad yard on a 28 acre parcel of land.”⁴ Although USRC indicated that the construction involved the installation of a railroad yard, as the maps offered as Exhibit A

² See *Nevada 5, Inc. and Oakland Transportation Holdings LLC – Control Exemption – GTR Leasing LLC and US Rail Holdings LLC*, Docket No. FD 35635 (STB served Jun. 15, 2012); and see also, *Gabriel D. Hall – Corporate Family Transaction Exemption – US Rail New York, LLC and US Rail Corporation*, Docket No. FD 35458 (STB served Jan. 7, 2011), (collectively “*Nevada 5*.”)

³ *U S Rail Corporation – Construction and Operation Exemption – Brookhaven Rail Terminal*, Docket No. FD 35141 (STB served Sep. 9, 2010).

⁴ *U S Rail Corporation – Construction and Operation Exemption – Brookhaven Rail Terminal*, Docket No. FD 35141 (individual petition for exemption filed on August 7, 2008) (the “Construction Petition”) at 5.

bear out, neither USRC's Construction Petition, nor subsequent filings in the FD 35141 proceeding, nor the Board appear to have sought to clarify or distinguish between that portion of the proposed Parcel A construction that involved the installation of a regulated line of railroad triggering the need for Board-authorization under 49 U.S.C. § 10901, and the related construction of railroad yard track (falling under 49 U.S.C. § 10906). Sills Road suspects that failing to distinguish between a "§ 10190 railroad line" on Parcel A, and "§ 10906 yard track" on the same parcel may have stemmed from the fact that the scope of the Board's NEPA analysis included an examination of the impacts of the construction and operation of all of the track proposed to be built, not just that which best qualified as a Board-regulated § 10901 railroad line.

But USRC did not construct the track located on Parcel A pursuant to Board authorization. Rather, Sills Road constructed the trackage in 2011, in keeping with Board-imposed conditions. Sills Road owns the Parcel A trackage, along with the land that comprises Parcel A. Also, Sills Road ultimately did not construct on Parcel A all 18,000 feet of track as USRC had proposed to the Board; it instead opted to construct only 16,710 linear feet of track on that land. The FD 35141 rail line construction proceeding, initiated in 2010, was not formally concluded until an order served on January 18, 2018, at which time the Board found that there were no unresolved issues concerning "compliance with the Board's environmental conditions," and thereupon ordered the proceeding closed.

Similarly, although Brookhaven Rail appears to have Board authority under the FD 35141 and *Nevada 5* proceedings to "lease," and operate as a common carrier over, some 18,000 feet of track on Parcel A as originally proposed, practically speaking, its authority currently extends, at most, to the extant 16,710 feet of track installed on Parcel A. Brookhaven

Rail operates over the track installed on BRT Parcel A pursuant to a Railroad Operating and Sublicense Agreement (the “BR Agreement”).

Sills Road has determined that, although its ownership of the Line warrants being recognized as a rail common carrier subject to the jurisdiction of the Board, it would prefer to transfer that status, and by extension, ownership of the Line, to an indirect subsidiary newly-created for that purpose, Spectrum RR Holdings, LLC (“SRHL”). Originally, SRHL was intended to acquire from Sills Road contractual rights to operate within the BRT, and with that plan in mind, SRHL filed on December 20, 2019, a notice of exemption (the “Notice”) to become authorized to operate as a common carrier over 0.47 miles (approximately 2,500 feet) of rail line located entirely within BRT Parcel A. SRHL also planned to operate over the balance of the extant 16,850 feet of track located on Parcels A, B and the LIPA Strip as un-regulated yard or spur track under § 10906. In response to SRHL’s exemption filing (the “Notice”), the Acting Director of the Office of Proceedings issued an order on January 17, 2020, suspending the effective date of the Notice, pending the Board’s review of certain specified supplemental information and explanations that SRHL was expected to provide.⁵

Having examined the substance of the Board’s *Spectrum Notice-1* order, SRHL and Sills Road have determined that, rather than address (and remedy) the Board’s stated concerns within the scope of that proceeding, it would be more prudent to address those concerns through two interrelated notices of exemption – the present proceeding (to authorize Sill Road’s ownership of an existing § 10901 lines(s)); and another in which SRHL seeks an exemption to

⁵ *Spectrum RR Holdings, LLC – Operation Exemption – Railroad Line in the Town of Brookhaven, N.Y.*, Docket No. FD 36376 (STB served Jan. 17, 2020) (“*Spectrum-Notice-1*”).

acquire (from Sills Road) the Parcel A rail assets, and thereby to become a rail common carrier in place of Sills Road, upon the effectiveness of Sills Road's present class exemption.⁶

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

Name and Address of Applicant: 49 C.F.R. § 1150.33(a)

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

Sills Road Realty LLC
205 Sills Road
Yaphank, NY 11980

Applicant's Representative: 49 C.F.R. § 1150.33(b)

Sills Road's representative to whom correspondence regarding this transaction should be sent is as follows:

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, IL 60606-3208
(312) 252-1500

Statement Concerning Agreement: 49 C.F.R. § 1150.33(c)

Sills Road is a non-carrier, having not previously sought or obtained Board authority to own a § 10901 railroad line (located on Parcel A) currently operated by a third-party rail common carrier (Brookhaven Rail). Sills Road has chosen to invoke the Board's class exemption procedures as a remedial step intended to address the Board's request in *Spectrum*

⁶ See *Spectrum RR Holdings – Acquisition and Operation Exemption – Sill Road Realty LLC*, Docket No. FD 36385 (filed simultaneously with the present class exemption notice). Incidental to SRHL's proposed acquisition of the railroad assets that are the subject of both this and the FD 36385, SRHL will also obtain SRHL's rights and interests in the rail assets located on the LIPA strip and Parcel B, and the right to construct yard track within Parcels B and C (as shown on the map provided as Exhibit A).

Notice-1 to explain why Sills Road does not have, and believes it does not need, Board authority to own a rail line under 49 U.S.C. § 10901.⁷ Rather than to attempt to *explain* its current situation as non-Board-authorized owner of a § 10901 rail line, Sills Road believes that it would be better to address the Board's concerns in the form of this class exemption notice, and to secure prospective Board authorization to own the subject Line.

There is no governing agreement governing Sills Road's ownership of the Line, merely Sills Road's determination to properly acknowledge that its ownership of Board-regulated railroad assets (which were approved for construction pursuant to an individual exemption from the formal requirements of § 10901) warranted that it should assume a common carrier status in accordance with appropriate authorization procedures.

Operator of the Property: 49 C.F.R. § 1150.33(d)

Sills Road seeks Board authority to continue in its ownership of the Line. It has not operated, and does not plan to operate, the Line, although it recognizes that the present class exemption would extend to Sills Road permissive authorization to conduct common carrier operations in the unlikely event that it ever chose to do so. At present, Brookhaven Rail is the lone rail common carrier service provider on the Line, but, Sills Road anticipates that, through the simultaneously-filed notice of exemption in FD 36385, SRHL will obtain authorization to operate over the Line as a rail common carrier as well if it were ever to elect, or be required, to do so.

Summary of the Transaction: 49 C.F.R. § 1150.33(e)

As noted above, in *Spectrum Notice-1*, the Board raised a valid concern about whether Sills Road could own a § 10901 line of railroad (the "Line") without Board

⁷ *Spectrum-Notice-1* at 2.

authorization. The subject “transaction” entails Sills Road’s acknowledgement that its ownership of the Line *should* be Board authorized, and its invocation of the subject class exemption procedures is designed to secure remedial authorization to own the Line.

The complete name and address of the owner of the Line is Sills Road (address provided above).

Sills Road expects that its common carrier status as the owner of the Line will become effective prospectively 30 days from the date of the filing of this Notice (on March 14, 2020) or as soon thereafter as possible.

Map: 49 C.F.R. § 1150.33(f)

Maps showing the Line and the Balance of the BRT are attached as Exhibit A.

Certificate of Compliance: 49 C.F.R. § 1150.33(g)

The appropriate certification of eligibility to invoke the subject class exemption procedures is attached as Exhibit B.

Interchange Commitments: 49 C.F.R. § 1150.33(h)

The proposed transaction does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier.

Advance Notice: 49 C.F.R. § 1150.32(e)

The projected annual railroad revenue of Sills Road is not expected to exceed \$5 million, and, accordingly, the advance notice requirements of 49 C.F.R. § 1150.32(e) are inapplicable. See Exhibit B.

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

Under 49 C.F.R. § 1105.6(c)(1)(i), Sills Road's proposed assumption of a common carrier status as the Board-authorized owner of the Line is exempt from environmental reporting requirements. Sills Road's assumption of a common carrier status 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).

Under 49 C.F.R. § 1105.8(b)(1), Sills Road's assumption of a common carrier status as a consequence of its ownership of the Line also is exempt from historic preservation reporting requirements. The proposed transaction is for the purpose of continued rail service. Additional Board approval would be required to abandon the Line or discontinue service over it, and there are no properties subject to Board jurisdiction within the BRT that are fifty years old or older.

Caption Summary: 49 C.F.R. § 1150.47

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

Other Matters:

Although under no regulatory mandate to do so, Sills Road hereby certifies that it will serve a copy of this Notice upon counsel for Brookhaven Rail (current operator on the Line) and for New York & Atlantic Railway Company (the only freight rail carrier currently able to interchange traffic with the Line).

In a joint Motion for Partial Dismissal (the "Motion") tendered with this Notice, Sills Road and SRHL jointly seek partial dismissal of the class exemptions filed in both dockets. For reasons set forth in the Motion, Sills Road and SRHL seek to distinguish between the roughly 2,500-foot portion of the Line that they believe should be regarded as a § 10901 line of

railroad, and the roughly 14,210 feet of the Line that they believe should be regarded as § 10906 ancillary track.

Finally, as with the *Spectrum Notice-1* proceeding, Sills Road anticipates that the Board may have questions that, despite genuine efforts here to resolve the Board's concerns, may yet warrant the provision of additional information or explanation. With such a possibility in mind, Sills Road stands ready to respond to the Board's questions or concerns, with the hope and expectation that the Board will accommodate Sills Road's attempt to address past regulatory oversights and to implement its plan to transfer ownership of the Line to SRHL pursuant to SRHL's simultaneously-filed class exemption notice.

Respectfully submitted,

By: 
Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

ATTORNEY FOR SILLS ROAD REALTY LLC

Dated: February 13, 2020

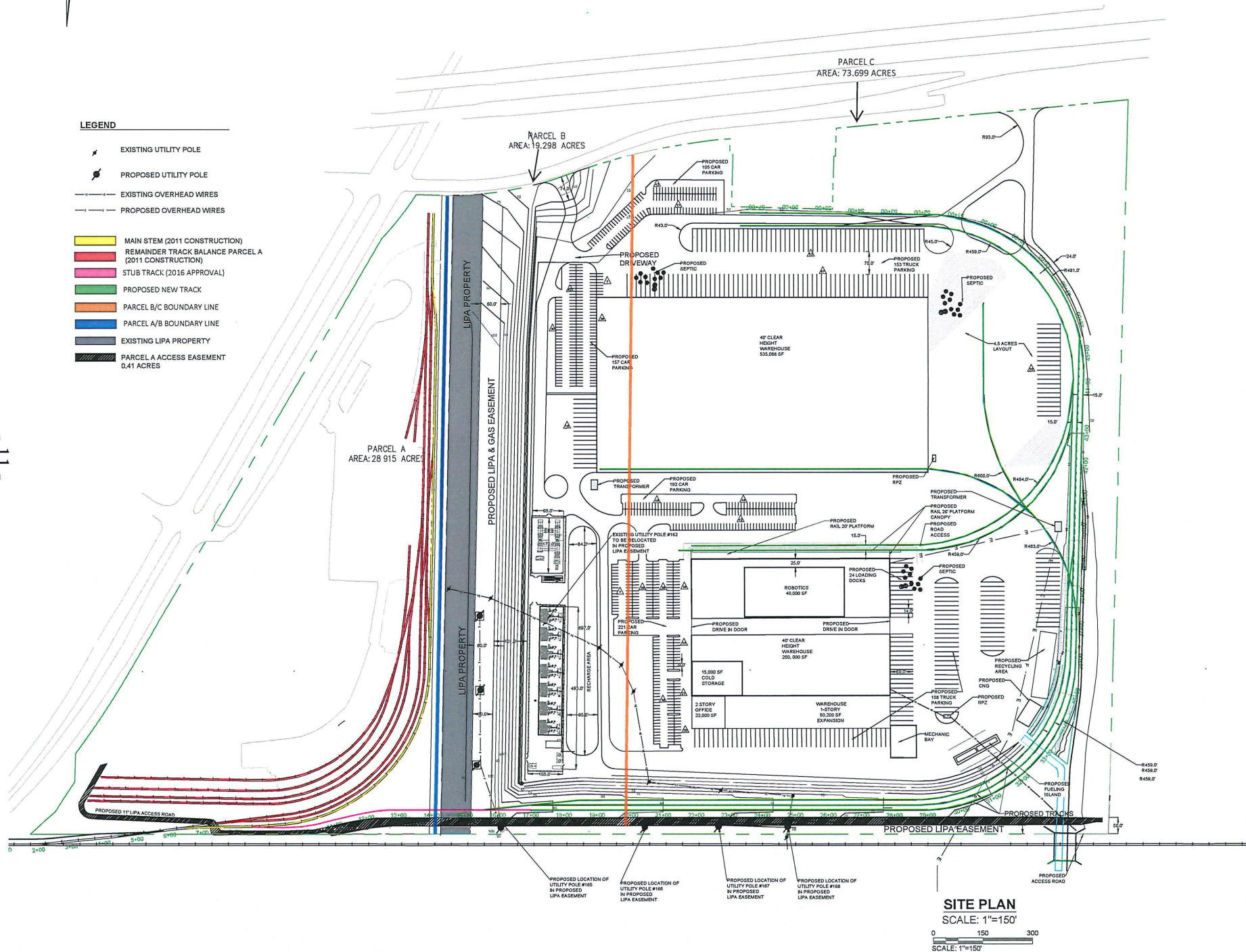
**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. FD 36384

**SILLS ROAD REALTY LLC
-- ACQUISITION EXEMPTION --
RAILROAD LINE IN THE TOWN OF BROOKHAVEN, NEW YORK**

EXHIBIT A

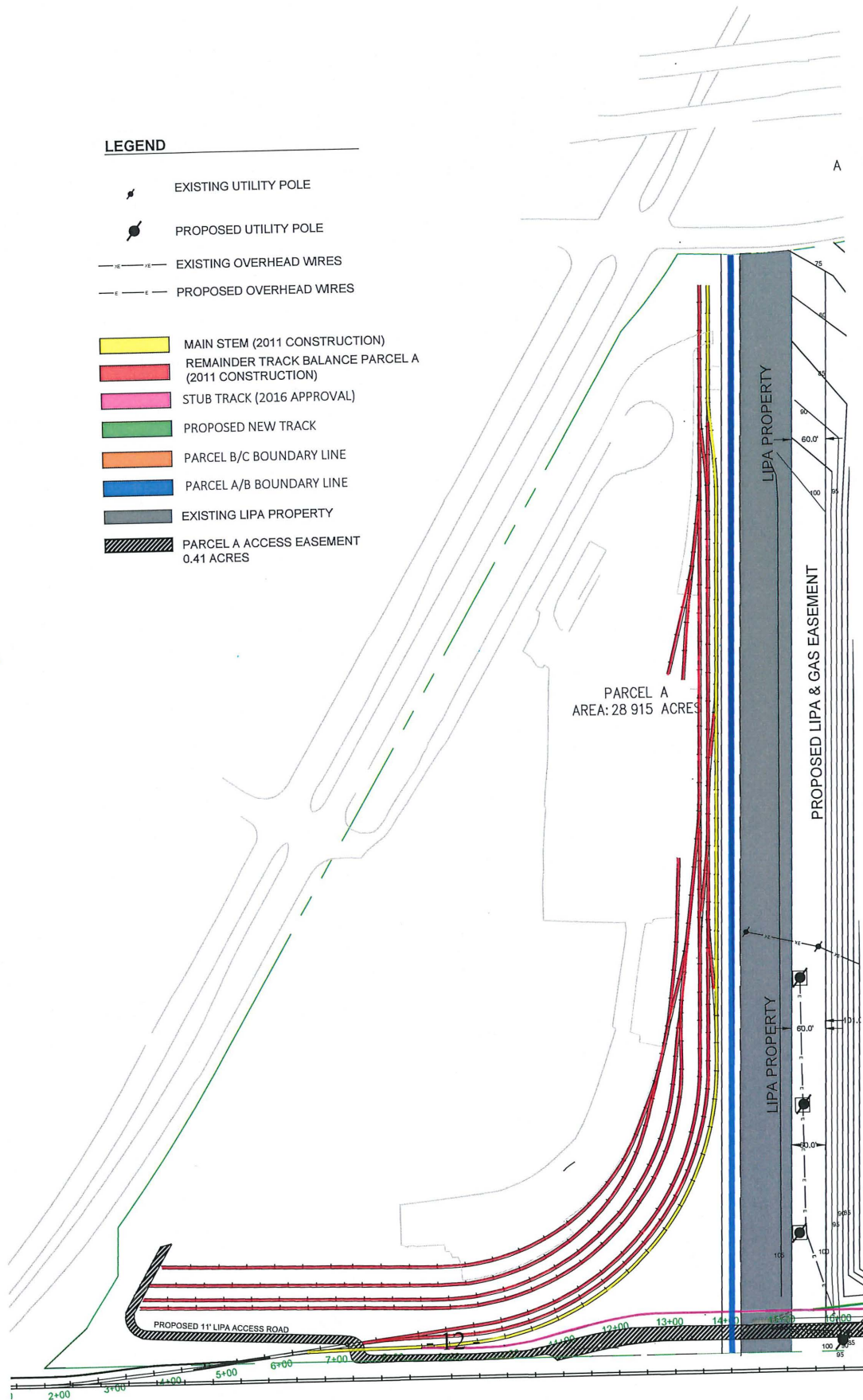
MAPS





LEGEND

- EXISTING UTILITY POLE
- PROPOSED UTILITY POLE
- EXISTING OVERHEAD WIRES
- PROPOSED OVERHEAD WIRES
- MAIN STEM (2011 CONSTRUCTION)
- REMAINDER TRACK BALANCE PARCEL A (2011 CONSTRUCTION)
- STUB TRACK (2016 APPROVAL)
- PROPOSED NEW TRACK
- PARCEL B/C BOUNDARY LINE
- PARCEL A/B BOUNDARY LINE
- EXISTING LIPA PROPERTY
- PARCEL A ACCESS EASEMENT 0.41 ACRES



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. FD 36384

**SILLS ROAD REALTY LLC
-- ACQUISITION EXEMPTION --
RAILROAD LINE IN THE TOWN OF BROOKHAVEN, NEW YORK**

EXHIBIT B

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

DOCKET NO. FD 36384

SILLS ROAD REALTY LLC
-- ACQUISITION EXEMPTION --
RAILROAD LINE IN THE TOWN OF BROOKHAVEN, NEW YORK

Sills Road Realty LLC (“Sills Road”), a non-carrier, has filed a Verified Notice of Exemption to acquire (by ownership) approximately 16,710 feet of track located in Brookhaven, New York, extending generally eastward and northward from a connection with the tracks of the Long Island Rail Road (and a corresponding connection to the New York & Atlantic Railway Company, the latter of which possesses freight common carrier operating rights over the Long Island Rail Road).¹

The subject Notice is related to Docket No. FD 36385, Spectrum RR Holdings, LLC – Acquisition and Operation Exemption, wherein Spectrum RR Holdings, LLC (“SRHL”), seeks to acquire, and to operate over, the Line immediately upon Sills Road’s commencement of assuming a common carrier status over the Line or as soon thereafter as possible.²

Sills Road expects to consummate the subject transaction on or after March 14, 2020, or as soon thereafter as possible.

¹ The Line does not have mileposts.

² Sills Road and SRHL have jointly filed in this proceeding and in FD 36385 a Motion for Partial Dismissal, under which each has requested that the Board establish that roughly 2,500 feet (0.47 miles) of the Line is actually a § 10901 line of railroad, while also clarifying that the balance of the Line (roughly 14,210 feet) is § 10906 ancillary track.

Comments must be filed with the Board and served on:

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

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. 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.

Dated: February __, 2020

By the Board

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. FD 36384

**SILLS ROAD REALTY LLC
-- ACQUISITION EXEMPTION --
RAILROAD LINE IN THE TOWN OF BROOKHAVEN, NEW YORK**

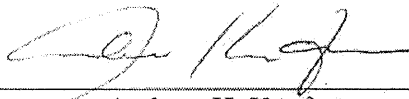
CERTIFICATION AND VERIFICATION

CERTIFICATION AND VERIFICATION

I, Andrew H. Kaufman, hereby certify and verify under penalty of perjury as follows:

1. I am the president of Sills Road Realty LLC ("Sills Road"), and, accordingly, I am qualified and authorized to make the subject "Certification and Verification" on behalf Sills Road.
2. The annual railroad operating revenues of Sills Road are not expected to exceed \$5 million, and Sills Road's anticipated revenues will not result in it becoming a Class I or II rail carrier under the thresholds set forth at 49 C.F.R. § 1201(11).
3. I have read the foregoing Notice of Exemption, verify that the facts stated therein are true and correct.

Executed on: February 13, 2020.



Andrew H. Kaufman