

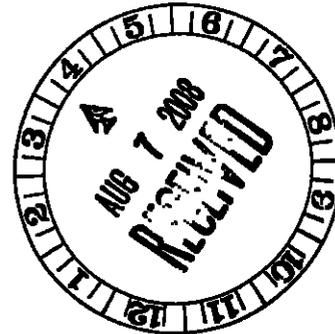
## **Appendix B: Board and Petitioner's Correspondence**

- Exhibit 1 U S Rail's petition for Construction and Operation Exemption
- Exhibit 2 U S Rail's request for waiver of EIS requirements
- Exhibit 3 Board's response to U S Rail's request for waiver of EIS requirements
- Exhibit 4 U S Rail's request for waiver of the six month pre-filing notice
- Exhibit 5 Board's response to U S Rail's request for waiver of the six month pre-filing notice
- Exhibit 6 U S Rail's request for Third-Party Contractor
- Exhibit 7 Board's approval of Third-Party Consultant
- Exhibit 8 U S Rail's agreement to the New York State Environmental Quality Review Act (SEQRA) Negative Declaration with the Town of Brookhaven
- Exhibit 9 U S Rail's Stipulation of Settlement with the Town of Brookhaven

**Exhibit 1 U S Rail's petition for Construction and Operation Exemption**

LAW OFFICES  
**JOHN D. HEFFNER, PLLC**  
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PH: (202) 296-3333  
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223118



**FILED**  
AUG - 7 2008  
**SURFACE  
TRANSPORTATION BOARD**

August 7, 2008

Ms. Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street SW  
Washington, DC 20423

ENTERED  
Office of Proceedings  
AUG - 7 2008  
Part of  
Public Record

VIA HAND DELIVERY

Re: Finance Docket No. 35141  
U S Rail - Construction and Operation Exemption -  
Brookhaven Rail Terminal

Dear Ms. Quinlan,

Enclosed please find an original and 10 copies of the  
Construction and Operation Exemption Petition which we are  
filing in this matter, together with a check representing the  
filing fee and the certification of service.

Thank you for your time and consideration.

**FEE RECEIVED**  
AUG - 7 2008  
**SURFACE  
TRANSPORTATION BOARD**

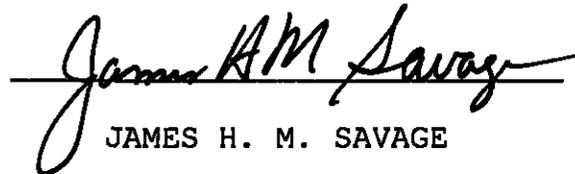
Respectfully submitted,  
John D. Heffner, PLLC

*James H. M. Savage*  
By: James H. M. Savage

JHMS/mhd  
Enc.

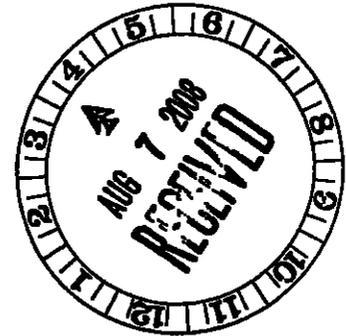
/  
CERTIFICATION OF SERVICE

I, James H.M. Savage, an attorney-at-law of the District of Columbia, hereby Certify under penalty of perjury that I served a copy of the within pleading upon all parties identified on the Service List for this proceeding as well as all parties identified on the Service List for the proceeding bearing STB Docket No. FD-35036 by First Class Mail on this 7<sup>th</sup> day of August, 2008.

  
JAMES H. M. SAVAGE

223118

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



**STB Finance Docket No. 35141**

**U S RAIL CORPORATION  
-- CONSTRUCTION AND OPERATION EXEMPTION --  
BROOKHAVEN RAIL TERMINAL**

**PETITION FOR EXEMPTION  
UNDER 49 U.S.C. 10502  
FROM THE REQUIREMENTS OF 49 U.S.C. 10901**

**FILED**

**AUG - 7 2008**

**SURFACE  
TRANSPORTATION BOARD**

**ENTERED  
Office of Proceedings  
AUG - 7 2008  
Part of  
Public Record**

**FEE RECEIVED  
AUG - 7 2008  
SURFACE  
TRANSPORTATION BOARD**

Respectfully submitted,

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Counsel for Petitioner

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Of Counsel

DATED: August 7, 2008

**EXPEDITED HANDLING REQUESTED**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**STB Finance Docket No. 35141**

**U S RAIL CORPORATION  
-- CONSTRUCTION AND OPERATION EXEMPTION --  
BROOKHAVEN RAIL TERMINAL**

**PETITION FOR EXEMPTION  
UNDER 49 U.S.C. 10502  
FROM THE REQUIREMENTS OF 49 U.S.C. 10901**

**I**

**INTRODUCTION**

Pursuant to 49 U.S.C. 10502, U S Rail Corporation (hereafter "U S Rail" or "Petitioner"), an existing class III short line common carrier by rail, having its principal place of business in Toledo, OH, seeks an exemption from 49 U.S.C. 10901 permitting it to construct a new line of railroad and related rail facilities (hereafter "the Line") at a new, yet-to-be constructed 28 acre site to be known as the Brookhaven Rail Terminal (hereafter "BRT") in Brookhaven, Suffolk County, NY.<sup>1</sup> The total length of the track to be constructed is about 11,000

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<sup>1</sup> The site is located within the hamlet of Yaphank, a part of the Town of Brookhaven

feet and connects with an existing rail line of the Long Island Rail Road (hereafter "LIRR") over which freight service is provided by the New York & Atlantic Railway (hereafter "NY&A"), The purpose of this construction is to enable U S Rail to serve the BRT as a common carrier railroad and to service the rail freight requirements of Sills Road Realty, LLC (hereafter "Sills"), which owns the underlying property and its affiliates and related companies (collectively, "Sills Group").

U S Rail submits with this Petition as Exhibit A, the verified statement of U S Rail President Gabriel Hall (hereafter "Hall VS") describing the proposed railroad operations, as Exhibit B maps showing the relationship of the facility to be constructed to the existing LIRR/NY&A line as well as to the Long Island Expressway, as Exhibit C a drawing (hereafter "Drawing") of the proposed facility, and as Exhibit D the verified statement of Sills Chief Financial Officer and General Counsel Gerard Drumm (hereafter "Drumm VS") explaining the background and purpose of the BRT as well as a description of the operations to be performed at this site.

Finally, for the reasons discussed herein, U S Rail requests expedited handling with a decision served by December 31, 2008, effective immediately upon service. In that regard, Petitioner submits as Exhibit E a proposed schedule for processing this Petition and the related environmental actions, which U S Rail has already initiated.

## II

### FACTUAL BACKGROUND

Petitioner U S Rail seeks to construct and operate a rail facility to be located at the future BRT to be constructed on Sills' property near Yaphank, NY. Towards that end, U S Rail has entered into an agreement with Sills for lease of that property. Once constructed, the Line will extend approximately 200 feet from a connection with LIRR's existing line of railroad into a rail yard to be constructed by U S Rail. The lead track will then branch out into a series of yard tracks that total about 11,000 feet in length. Upon receiving authority from the Board, U S Rail will also construct facilities substantially in accordance with the Drawings to permit the transloading of freight between rail cars and trucks.

Initially, U S Rail anticipates that the Sills Group will be its only rail customer; however, as a common carrier, it will solicit freight business from any customer seeking to use its services and the facilities of BRT. The initial traffic to be handled through this facility consists of about 5,000 car loads annually of inbound aggregate crushed stone. This traffic will be used in road and building construction by customers on Long Island. Currently, this traffic moves in very limited quantities by rail. Sills desires to replace truck with rail transportation because increased fuel costs, higher tolls, lower

gross vehicle weights over bridge crossings and increasing highway congestion on and off Long Island make motor carrier transportation non-economical and impractical. Drumm VS at 2.

U S Rail recognizes that this exemption will be subject to completion of an environmental review by the Board's Section of Environmental Analysis ("SEA"). However, for the reasons stated herein, Petitioner seeks expedited consideration with a decision requested by December 31, 2008.

Sills originally intended to develop the BRT as a rail facility to serve the needs of Sills Group and third parties, and designated Suffolk and Southern Rail Road ("Suffolk"), a newly established non-carrier affiliate, to build and operate the BRT.

Due to changed circumstances, Sills entered into an agreement with U S Rail to build and operate the BRT as an exempt spur. However, the Board ruled the trackage subject to its jurisdiction, and invited U S Rail to apply for construction authority. U S Rail thereupon began preparing to file this Petition.

### III

#### DESCRIPTION OF THE PROPOSED LINE AND PLANNED OPERATIONS

Petitioner's proposal entails the construction of a railroad yard on a 28 acre parcel of land in central Suffolk

County, Long Island. Although this track would extend about 11,000 feet if laid end-to-end, at its broadest point the entire parcel only extends about one-half mile from one side to the other. The Line connects with the LIRR mainline at approximately milepost 58 near Yaphank, NY. That connection is approximately 58 miles east of Penn Station in Manhattan and approximately 34 miles west of the mainline terminus at Greenport in eastern Suffolk County.

Historically, Suffolk County was largely rural with numerous farms and vacant fields. Today it is a fast growing residential and commercial area in need of improved freight rail facilities. Classified as a nonattainment area, Suffolk County's 2006 total population was 1,469,715. Yaphank is an unincorporated community within the Town of Brookhaven, which has a total population of approximately 480,000.

The site for the BRT is currently a flat parcel of undeveloped land that was formerly overgrown with trees and brush. The site is zoned for industrial and commercial purposes, and is included in the Town's Empire Zone, an area of approximately 1,200 acres dedicated to industrial and commercial development. It is bounded on the north by the Long Island Expressway, an extremely busy six lane limited access highway extending the length of Long Island to Riverhead (74 miles), and to the south by the LIRR. Principal commercial activities

conducted in the Yaphank-Brookhaven area near the BRT include light manufacturing and commercial wholesale and retail business. There are no residences, schools, playgrounds, hospitals, nursing homes or assisted living facilities adjoining the BRT.

U S Rail seeks to build the rail facilities at the BRT to accommodate the needs of Sills Group and growing industrial development on eastern Long Island that currently lacks access to adequate rail service. Specifically, as both witnesses note, there are very few industry sidings located along the LIRR's main routes available to serve the Sills Group's requirement for crushed aggregate stone and very few public delivery tracks or facilities of sufficient size. Moreover, western and central Long Island is so overdeveloped that there are few locations where a rail facility like the BRT could be located. Consequently, the vast majority of freight destined to or from Long Island moves by truck over congested highways such as the Long Island Expressway.

Initially, service at the BRT will consist of a twice weekly train of approximately 40 to 50 cars of inbound crushed aggregate stone. NY&A will transport this traffic to the BRT on the LIRR line that terminates at Greenport, NY. Inasmuch as BRT traffic is expected to operate outside normal LIRR rush hour windows, and the line sees only limited passenger service east

of Ronkonkoma (approximately 10 miles west of the proposed BRT location), there should be no adverse impact on either the LIRR's operations or NY&A's own service. Upon arriving at the switch lead into the BRT, the NY&A will then interchange this traffic to U S Rail which will haul the cars the rest of the way into that facility. U S Rail will then break and sort the train, switching and spotting cars for delivery. Once the cars are unloaded, U S Rail will reassemble the cars into a train to be interchanged back to the NY&A for movement from the BRT. Ultimately, U S Rail hopes to attract additional in and outbound traffic at this facility. Hall VS at 1.

The need for the BRT is critical. Gerard Drumm notes in his verified statement that rail service is essential if Sills Group companies are to meet their contractual commitments to customers for the supply of stone. While those customers are currently using truck and inadequate rail capacity today, truck transportation will not economically handle the expected volumes of crushed stone the Sills Group has agreed to receive and will only add to the congestion afflicting Long Island's road system. The BRT's customers will be unable to meet their commitments to supply aggregate for Long Island building needs unless and until they have access to reliable and economical rail service. Drumm VS at 1.

Because of the engineering characteristics of connecting the BRT to the LIRR mainline, U S Rail is considering only one right-of-way alignment. That alignment and the rail facilities to be located on the BRT are depicted in Exhibit C. The right-of-way will generally be at least 100 feet wide. The track layout within the BRT will include multiple sidings and switches. There will be no public access and no public grade crossings. The Line will not cross any navigable waterways. There are no known endangered animal or plant species potentially affected by this project. To the best of Petitioner's knowledge the proposed right-of-way does not traverse any ancient Indian burial grounds, archeological sites, unique land forms, or federal lands.

Regarding environmental impacts, Petitioner believes this project will be environmentally beneficial. It anticipates that the environmental effects of its proposed construction project will be minimal. The subject area is a nonattainment area. U S Rail believes that the utilization of rail instead of truck will promote energy conservation and reduce air and noise pollution. Furthermore, use of rail will improve highway safety and reduce traffic congestion.

#### IV

#### ARGUMENT

##### A. THE SERVICES TO BE PERFORMED ENTAIL RAIL TRANSPORTATION

As a preliminary matter, there is no question that construction and operation of the proposed BRT is within the jurisdiction of the I.C.C. Termination Act for the purposes of federal preemption. 49 U.S.C. 10501(b) provides that the Board has exclusive jurisdiction over the transportation by rail carriers and the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities. Those remedies are exclusive and preempt remedies provided under Federal or State law. Moreover, there is no question that U S Rail is a "rail carrier" within the meaning of the Act insofar as it is providing railroad transportation for compensation over its existing line in Ohio and will be providing transportation for compensation here upon inception of operations. 49 U.S.C. 10101(5). The facilities to be constructed and/or operated include equipment used in connection with a railroad, the road used by a rail carrier under an agreement, and switches, spurs, tracks, terminals, terminal facilities, freight depots, yards, and related grounds used for transportation, all of which are encompassed by the term "railroad." 49 U.S.C. 10102(6). The

services to be rendered at Brookhaven Rail Terminal include, among other things, the loading and unloading of rail cars, the storage of rail freight prior to loading or after unloading, the transfer of rail freight between trucks and rail cars. Hall VS at 1. These services clearly fit the statutory definition of rail transportation. 49 U.S.C. 10102(9); New England Transrail, LLC d/b/a Wilmington & Woburn Terminal Railway - Construction, Acquisition and Operation Exemption - In Wilmington And Woburn, MA, STB Finance Docket No. 34797, slip op. served July 10, 2007 at pages 10-11.

All rail transportation, construction and operation necessarily preempts state and local laws regardless of whether U S Rail obtained authority pursuant to a Board decision or claimed the right to construct and operate by reason of its status as the operator of "excepted track" under 49 U.S.C. 10906. Buffalo Southern Railroad, Inc. v. Village of Croton-on-Hudson, et al, 434 F.Supp. 2d 241, 2006 U.S. Dist. LEXIS 42725 (S.D. N.Y. 2006); New England Transrail, supra at 12.

B. A GRANT OF THIS EXEMPTION IS REQUIRED

Petitioner seeks an exemption under 49 U.S.C. 10502 from 49 U.S.C. 10901 to permit it to construct approximately 11,000 feet of new railroad to serve the BRT. As pertinent, §10901(a) provides that a person may construct an extension to any of its

rail lines or construct an additional railroad line only if the Board issues a certificate authorizing such construction. Furthermore, the 1995 revision to §10901(c) directs the Board to issue a certificate authorizing construction unless it finds that such construction would be inconsistent with the public convenience and necessity. Board precedent establishes a clear presumption favoring [emphasis supplied] construction proposals. Midwest Generation, LLC - Exemption From 49 U.S.C. 10901 - For Construction in Will County, IL, STB Finance Docket No. 34060, slip op. at 7-8 (served March 21, 2002).

Petitioner's construction proposal follows the national trend that has been set in cases such as Effingham RR Co.-Pet. For Declaratory Order, 2 S.T.B. 606 (1997) involving the construction, acquisition, and /or operation of common carrier rail facilities by short line railroads to serve industrial parks and transload facilities. This trend is necessitated in part by the disappearance of facilities around major cities for shippers to get access to rail lines as well as the shift from handling car load traffic to and from rail shippers to public rail terminals.<sup>2</sup>

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<sup>2</sup> See, e.g., See, e.g., SMS Rail Service, Inc - Petition for Declaratory Order, STB Finance Docket No. 34483 (served Jan. 24, 2005), citing SMS Rail Service, Inc. - Lease and Operation Exemption - Pureland Association, Inc., Finance Docket No. 32494 (ICC served May 26, 1994), Penn-Jersey Rail Lines - Acquisition and Operation Exemption - Lines in Penn Warner Industrial Park, Falls Township, Bucks County, PA, STB Finance Docket

Moreover, while the proposed construction would be subject to approval under the formal requirements of 49 U.S.C. 10901 and the related regulations, the Board has almost invariably allowed smaller construction proposals such as that here to utilize the individual exemption procedures of 49 U.S.C. 10502 to obtain approval. See, e.g., Ellis County Rural Rail Transportation District -- Construction and Operation Exemption -- Ellis County, TX, STB Finance Docket No. 33731, (served Feb. 15, 2000) (hereafter Ellis County); Pemiscot County Port Authority - Construction of a Line of Railroad - In Pemiscot County, MO, STB Finance Docket No. 34117 (served July 2, 2002) (hereafter Pemiscot); and Southwest Gulf Railroad Company - Construction And Operation Exemption - Medina County, TX, STB Finance Docket No. 34284 (served May 19, 2003) (hereafter Southwest).

Under §10502(a), Congress intended for the Board, in a matter related to a rail carrier providing rail transportation subject to its jurisdiction, to exempt a person, class of persons, transaction or service whenever it finds that the application of a provision of this subtitle - (1) is not necessary to carry out the transportation policy of §10101a of this title; and (2) either (a) the transaction or service is of limited scope, or (b) the application of a provision of this

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No. 33835 (served May 5, 2000), and SMS Rail Service, Inc. - Acquisition and Operation Exemption - Valero Refining Company-New Jersey, STB Finance Docket No. 33927 (served Sept. 22, 2000), Yolo Shortline Railroad Company - Lease and Operation Exemption - Port of Sacramento, STB Finance Docket No. 34114, (served Feb. 3, 2003)

subtitle is not needed to protect shippers from the abuse of market power.

The legislative history behind §10505 [the predecessor section to the current §10502] makes clear Congress' intent that the Interstate Commerce Commission and [now the Board] use its exemption authority liberally to free certain transactions and services from the administrative and financial costs associated with continued regulation. In discussing the exemption powers of the Board's predecessor -- the ICC -- the Staggers Act legislative history states:

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 exemptions from remaining regulation.

H.R. Rep. No. 96-1430, 96th Cong. 2d Sess. 105 (1980); see also, Exemption from Regulation--Boxcar Traffic, 367 I.C.C. 424, 428 (1983), vacated and remanded on other grounds, Brae Corp. v. United States, 740 F.2d 1023 (D.C. Cir. 1984). This statement applies equally to the Board as the ICC's successor.

Exemption of the proposed construction from §10901 is exactly the type of minor transaction Congress contemplated when it enacted §10502. The transaction proposed here falls squarely

within the four corners of §10502 and its predecessor statute. Indeed, with the enactment of the ICC Termination Act of 1995, Board policy clearly favors the approval of short railroad construction projects by exemption. See, e.g., Ellis County, supra.; Pemiscot, supra.; and Southwest, supra.

C. APPLICATION OF §10901 IS NOT NECESSARY TO  
FURTHER NATIONAL TRANSPORTATION POLICY

Requiring Petitioner to comply with the formal requirements of §10901 is not necessary to carry out the transportation policy of 49 U.S.C. 10101a. That section, originally added to the Act by the Staggers Rail Act amendments and incorporated into the ICC Termination Act, represents Congress' most recent expression of rail transportation policy. Of these, a grant of the petition would satisfy subsections (2) and (7) by minimizing federal regulatory control over and granting expedited consideration of Petitioner's request to construct a self-contained rail yard. It would also satisfy subsections (4) and (5), by providing a shipper lacking adequate rail access the option of rail transportation, ensuring the development of a sound transportation system with effective competition and coordination between railroads and other transportation modes, and fostering sound economic conditions in the transportation industry. See, e.g., Ellis County and Southwest, supra; and Alamo North Texas Railroad Corporation-Construction and Operation Exemption-Wise County, STB Finance Docket No. 34002

(served Nov. 8, 2001) (hereafter Alamo). Of particular significance to Long Island and Suffolk County, a grant of this exemption would promote transportation safety by removing numerous trucks from area highways, thereby enhancing highway safety. Finally, a grant of this exemption would satisfy subsection (14) by promoting energy conservation through increased use of energy efficient rail transportation.

D. THE TRANSACTION IS ONE OF LIMITED SCOPE

The transaction unquestionably satisfies the limited scope test of §10502(a). The proposed trackage totals only 11,000 feet, in a facility encompassing only 28 acres of land. The Line would initially serve one major customer. Petitioner believes the Line will initially handle about 5,000 carloads of freight annually after construction. By any measurement the Board chooses to use, this construction proposal is clearly limited in scope within the meaning of 49 U.S.C. 10502(a)(2)(A). A finding to that effect would be consistent with -- and is indeed required by -- the relevant facts of this case and relevant precedent. See, e.g., Ellis County, supra (4.8 miles of new construction), Pemiscot, supra (5 miles), Alamo, supra (2.25 miles), and Southwest, supra (7 miles).

E. APPLICATION OF §10901 IS NOT NECESSARY  
TO PROTECT SHIPPERS FROM ABUSE OF MARKET POWER

Because this transaction satisfies the limited scope test of §10502(a), Petitioner does not need to show that it also meets the alternative test that there is no opportunity to expose shippers to abuse of market power. But even if the limited scope test were not satisfied, the exemption sought herein would still be warranted by virtue of §10502(a)(2)(B) inasmuch as the subject railroad will offer an additional form of modal competition to the shippers. See, Alamo and Southwest, supra. In fact, this case is similar to both Alamo and Southwest because all three cases involve proposals to construct new rail lines to provide direct rail service to shippers that would otherwise be dependent largely on truck service for their transportation needs. Moreover, U S Rail is constructing this facility at the behest of and for the benefit of the Sills Group.

V

EXPEDITED HANDLING REQUESTED

U S Rail requests that the Board expeditiously consider and grant its proposal. Any unreasonable delay could adversely affect its ability to provide rail service at the BRT. Sills Group and U S Rail have entered into commitments for the delivery of aggregate stone that contemplate that the rail construction will be approved during late 2008 and completed during early 2009. Any significant delays in obtaining construction approvals will significantly affect the ability of

U S Rail and Sills Group to meet their commitments. Moreover, delays could result in unnecessary utilization of motor carrier transportation of aggregate material over congested Long Island roads and highways to the detriment of the public generally.

U S Rail does not believe that this construction proposal will have any significant adverse environmental, historic, or community impacts. Officials in the Town of Brookhaven opposed efforts to construct the subject trackage as "exempt spur" trackage under 49 U.S.C. 10906 because of the lack of any sort of environmental reviews and community input. Handling this matter through the Board's construction approval procedures should allay their concerns by giving all affected parties a chance to voice their comments and obtain any mitigation that might be required.

U S Rail doubts that this proposal will present the sort of issues that other construction proposals typically involve. The project does not cross any navigable bodies of water so the jurisdiction and permitting processes of the Army Corps of Engineers are not implicated. U S Rail is not aware of the presence of any Indian artifacts or cultural resources or unique land forms on the site. Furthermore, there are no buildings or structures of any sort currently on the property. Accordingly, there should be no impacts under the National Historic Preservation Act warranting attention. U S Rail is also not aware of any endangered animal or plant species on the property that would require the preparation of a Section 7 biological assessment.

As to community impact and safety, BRT would eliminate significant inbound truck traffic which otherwise would move on area highways. Potential truck traffic from the BRT will not generate any significant increases in air or noise pollution. Additionally, the impacts on the local population should be modest as there are no residences, schools, hospitals, recreation facilities, or shopping centers nearby.

U S Rail has reviewed other fairly straight forward construction proposals such as those filed in Ellis County, Pemiscot, Alamo, and Southwest, and found that the time required from the date of filing the petition to the date of the final decision ran between 6 and 16 months. In view of the BRT's simplicity, U S Rail proposes and asks the Board to adopt the approval schedule found in Exhibit E that began to run from the date of U S Rail's request to SEA for a waiver of the six month pre-filing notice requirement.

In order to facilitate the Board's prompt handling of this Petition, U S Rail and Sills 1) have begun to work with community leaders in an effort to resolve their concerns, 2) have obtained waiver of the six month pre-filing notice required by 49 CFR 1110(a)(1), and 3) entered into an MOU with Gannett Fleming, Inc. and the SEA authorizing Gannett's retention as an SEA-approved independent third party environmental consultant to promptly commence environmental review of this project.

VI

CONCLUSION

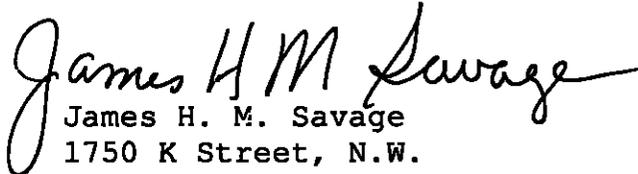
Accordingly, U S Rail Corporation requests that the Board expeditiously grant it an exemption from the provisions of 49 U.S.C. 10901 to permit it to construct and operate a new line of railroad to serve the Brookhaven Rail Terminal. U S Rail also requests that the Board grant its Petition in accordance with the proposed schedule, with the decision effective upon service.

Respectfully submitted,



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Washington, D.C. 20006  
Telephone: (202) 296-3334

Counsel for Petitioner



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Suite 350  
Washington, D.C. 20006  
Telephone: (202) 296-3335

Of Counsel

DATED: August 7, 2008

## EXHIBIT A

**VERIFIED STATEMENT OF GABRIEL D. HALL**

I, Gabriel D. Hall, of full age, state the following, under penalty of perjury:

I am the President of U S Rail Corporation ("U S Rail"), an existing class III common carrier railroad having its principal place of business in Toledo, OH. I am fully familiar with the facts and circumstances of this matter from my personal knowledge.

I submit this verified statement affidavit in support of the petition of U S Rail for authority to construct and operate a new Line of railroad in Brookhaven, NY.

In 2007 Sills entered into an agreement with Sills Road Realty LLC ("Sills") to construct and operate the Brookhaven Rail Terminal ("BRT").

Initially, service at the BRT will consist of a twice weekly train of approximately 40 to 50 cars of inbound crushed aggregate stone. NY&A will transport this traffic to the BRT on the LIRR line that terminates at Greenport, NY. Upon arriving at the switch lead into the BRT, the NY&A will then interchange this traffic to U S Rail which will haul the cars the rest of the way into that facility. U S Rail will then break and sort the train, switching and spotting cars for delivery. Once the cars are unloaded, U S Rail will reassemble the cars into a

train to be interchanged back to the NY&A for movement from the BRT.

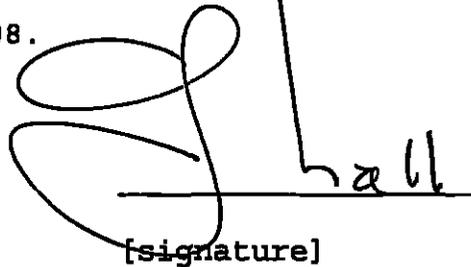
The services to be rendered at BRT by U S RAIL will include, among other things, the loading and unloading of rail cars, the storage of rail freight prior to loading or after unloading, the transfer of rail freight between trucks and rail cars.

Ultimately, U S RAIL hopes to attract additional in and outbound traffic at this facility.

#### VERIFICATION

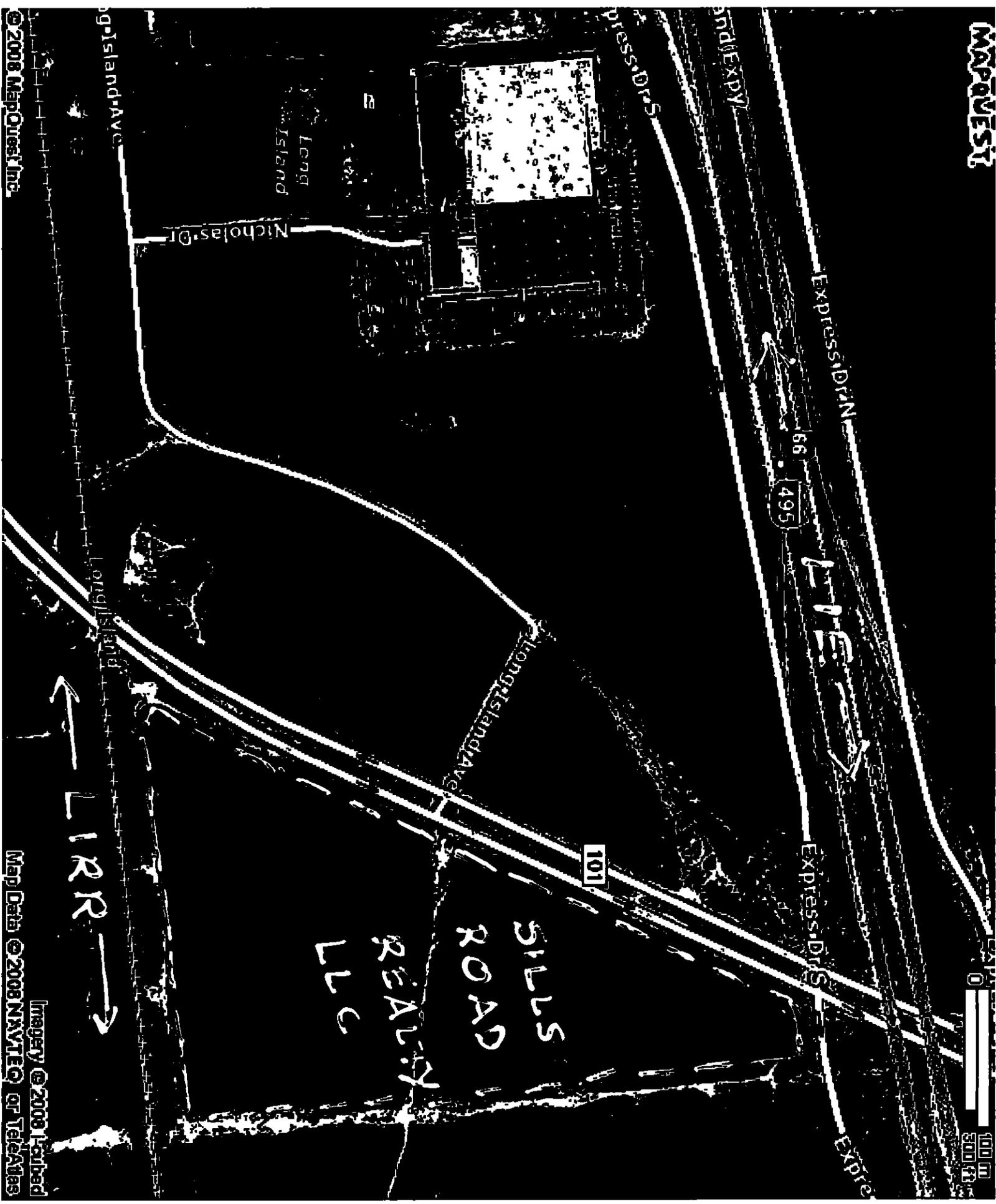
Pursuant to 28 U.S.C 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct

Executed on. July 15, 2008.



[signature]

## **EXHIBIT B**



Expressway

495

Expressway

Expre

101

Long Island Ave

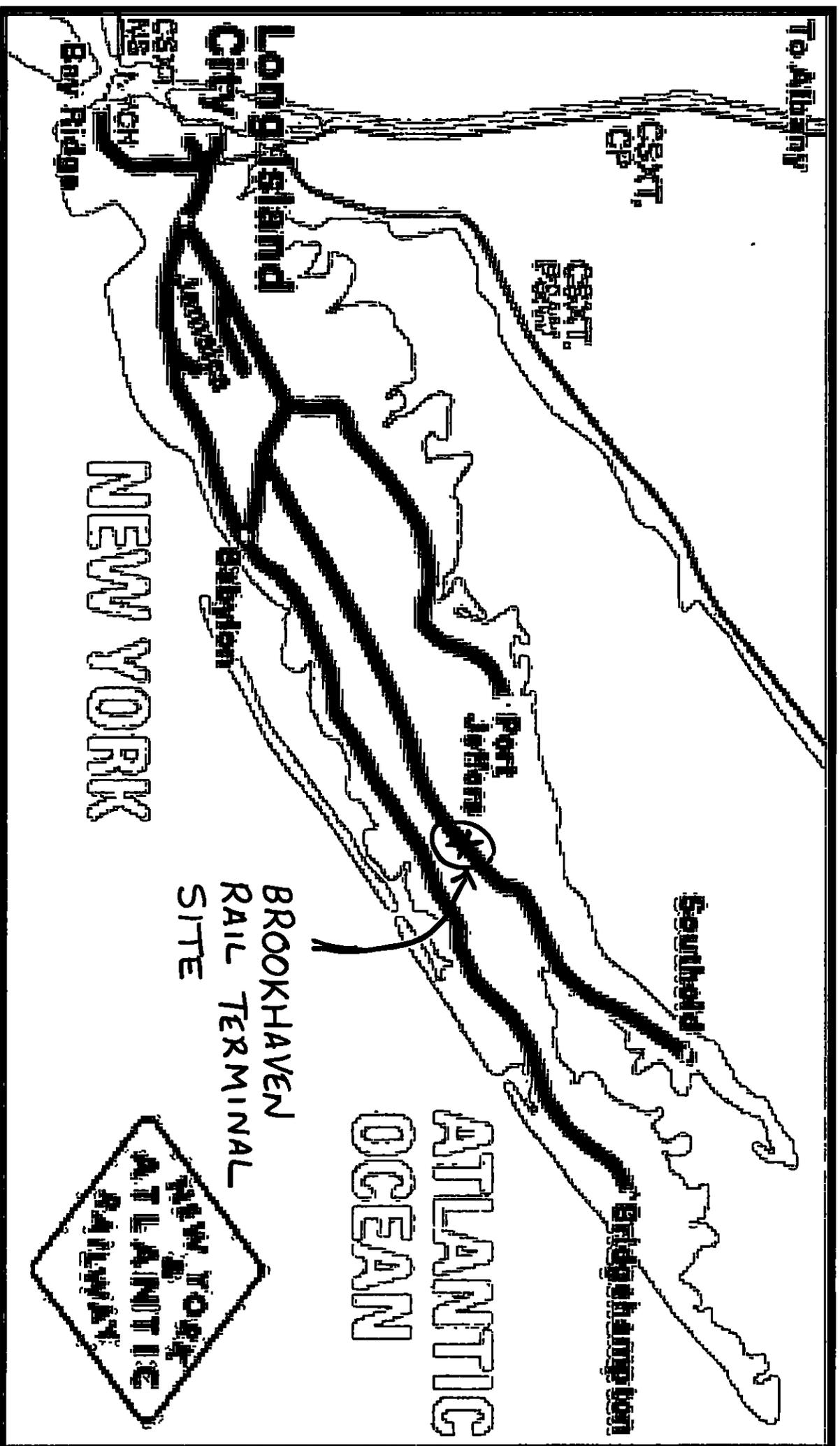
Nicholas Dr

Long Island Ave

Long Island

SILLS ROAD REALTY LLC

LIRR



To Albany

ESSEX  
CO.

ESSEX  
CO.  
Port Jervis

Southold

Bridgehampton

Port  
Jervis

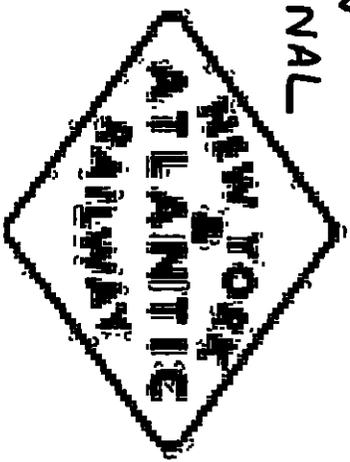
Long Island  
City

Kingston

BROOKHAVEN  
RAIL TERMINAL  
SITE

NEW YORK

ATLANTIC  
OCEAN

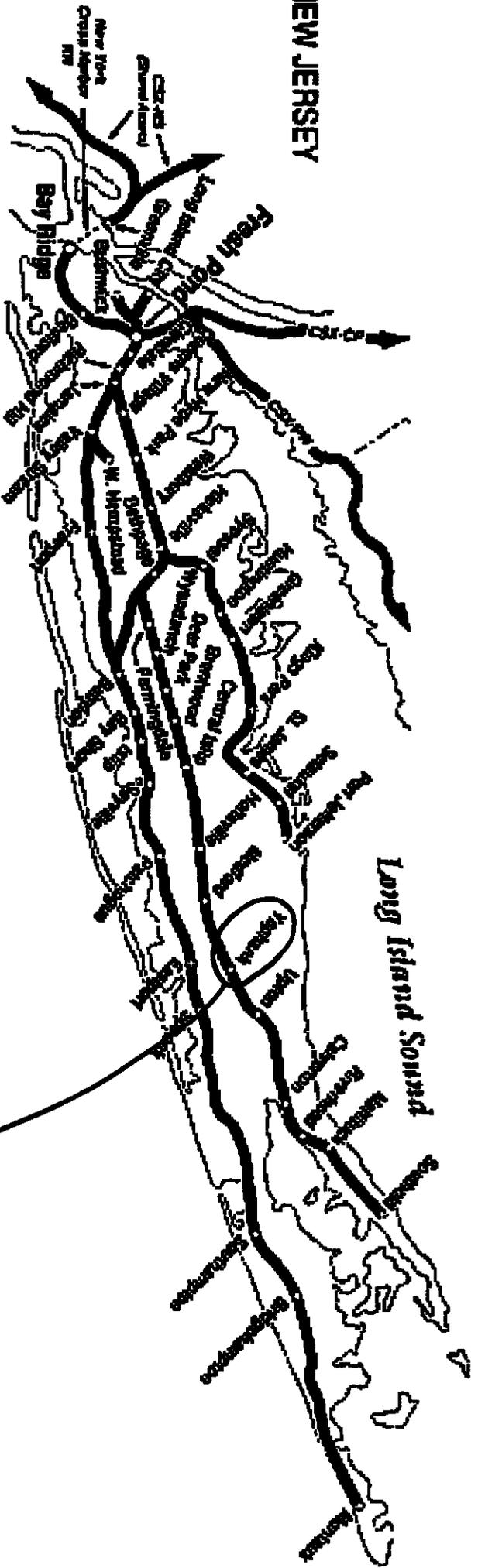


NEW YORK

CONNECTICUT

NEW JERSEY

CONNECTING RAILROADS	
CP	Canadian Pacific
CSX	CSX Transportation
NYCH	New York Cross Harbor
NS	Norfolk Southern
PV	Providence & Worcester



↖  
 BROOKHAVEN  
 RAIL TERMINAL  
 SITE

## EXHIBIT C



## EXHIBIT D

**VERIFIED STATEMENT OF GERARD T. DRUMM**

I, Gerard T. Drumm, of full age, state the following, under penalty of perjury:

I am the Chief Financial Officer and General Counsel of Sills Road Realty, LLC ("Sills"). I am responsible for financial and legal matters with respect to Sills and its affiliated companies. I am fully familiar with the facts and circumstances of this matter from my personal knowledge.

I submit this verified statement affidavit in support of the petition of U S Rail for authority to construct and operate a new Line of railroad in Brookhaven, NY.

Sills was formed to develop a rail facility on eastern Long Island that would economically meet the needs of its members for the transportation of construction aggregates and related materials (collectively "stone"), as well as serve the broader Long Island market for such products. Sills acquired a 28-acre tract of land in Yaphank, Town of Brookhaven, Suffolk County, Long Island, New York, which was ideally suited for this purpose. The site is called the "Brookhaven Rail Terminal" ("BRT").

Access to reliable rail service is essential if Sills is to be able to fulfill contractual commitments to its affiliates and customers for the supply of crushed stone.

The principal purpose of the BRT is to facilitate the transloading of stone between freight cars and trucks, as well as to provide areas for the transfer of freight. The BRT will interchange freight cars with the NY&A along railroad sidings connecting through a switch to the existing Long Island Rail Road ("LIRR") track adjoining the property's southern boundary. The initial traffic to be handled at this facility will consist of about 5,000 annual carloads of inbound aggregate crushed stone originating off Long Island. This traffic will be used in road and building construction by customers on Long Island. Currently, this traffic moves in very limited quantities by rail to a facility of inadequate size to accommodate the needs of Sills customers and affiliates. Sills desires to utilize rail transportation because highway congestion, capacity constraints and increasing fuel and other costs make motor transportation both impractical and uneconomical.

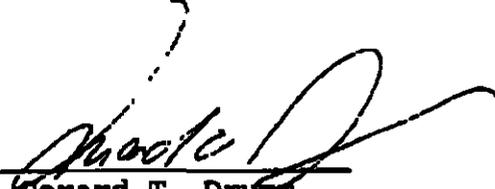
The location of the BRT is ideally suited for a rail facility because it is located in an area zoned for commercial and industrial development bordering the Long Island Expressway and an existing LIRR rail line. The site is not adjacent to any residences, schools, hospital, nursing homes, assisted living or recreational facilities.

Sills entered into an agreement with U S Rail, an existing Class III short line railroad, to construct and operate the BRT.

**VERIFICATION**

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct

Executed on: August 6, 2008.

  
Gerard T. Drumm

## EXHIBIT E

**EXHIBIT E: PROPOSED SCHEDULE**

COMPLETED Initial Meeting between Petitioner, SEA and proposed independent third party Environmental Consultant.

COMPLETED Petitioner selects and advises Board of its selection of independent third party environmental consultant.

COMPLETED SEA grants waiver of six months advance notice.

COMPLETED SEA approves choice of environmental consultant, furnishes Petitioner and consultant with memorandum of understanding (MOU) for review.

COMPLETED MOU executed; consultant begins work.

08/07/08 Petition for Exemption filed.

08/28/08 STB publishes notice of Petition.

09/05/08 SEA or consultant sends out consultation letter to affected state, local, and federal agencies.

09/18/08 Public comments due on Petition for Exemption.

10/06/08 Responses to consultation letters due.

10/20/08 Site visit occurs. Need for public scoping meeting and/or detailed studies to be determined based upon results of consultation letters and site visit.

11/06/08 Consultant distributes draft work plan, SEA issues class of action determination. Consultant formally begins preparation of the NEPA documentation.

11/26/08 Consultant in conjunction with SEA publishes Draft EA/EIS.

12/16/08 Comments on Draft EA/EIS due.

12/24/08            Consultant in conjunction with SEA publishes  
Final EA/EIS.

12/31/08            STB issues decision on merits of Petition.  
Decision becomes effective absent any stay.

**Exhibit 2 U S Rail's request for waiver of EIS requirements**

LAW OFFICES  
**JOHN D. HEFFNER, PLLC**  
1750 K STREET, N.W.  
SUITE 200  
WASHINGTON, D.C. 20006  
PH: (202) 296-3333  
FAX: (202) 296-3939

February 20, 2009

**VIA ELECTRONIC FILING**

Ms. Victoria J. Rutson  
Chief, Section of Environmental Analysis  
Surface Transportation Board  
395 E Street, SW  
Room 1106  
Washington, DC 20423-001

Re: **STB Finance Docket No. 35141, U S Rail Corporation – Construction and Operation Exemption – Brookhaven Rail Terminal**

**Request for waiver of requirements of 49 CFR 1105.6 (a)**

Dear Ms. Rutson:

I am writing on behalf of U S Rail Corporation (“U S Rail”) in connection with the above-captioned proceeding. The purpose of this letter is to request a waiver of the requirements of 49 CFR 1105 (a) for the preparation of an environmental impact statement (“EIS”) for this railroad construction proposal. For the reasons stated below, U S Rail believes that an environmental assessment (“EA”) should be adequate to address the environmental impacts of the proposed construction. In support of this request, U S Rail submits the following information:

On August 7, 2008, U S Rail filed with the Board a Petition for Exemption under 49 U.S.C. 10502 from the requirements of 49 U.S.C 10901 permitting U S Rail to construct a new line of railroad and related rail facilities at a 28 acre site in Brookhaven, Suffolk County, New York to be known as the Brookhaven Rail Terminal (“BRT”). The operations to be performed at BRT by U S Rail will include the interchange of freight cars with the New York & Atlantic Railway (“NY&A”), the delivery of rail cars to the BRT over a 200 foot lead track to be constructed connecting the BRT with the existing mainline of the Long Island Rail Road (“LIRR”), loading and unloading of rail cars, storage of rail freight prior to loading or after unloading, and the transfer of freight between trucks and rail cars. The total length of terminal track to be constructed within the BRT is approximately 11,000 feet.. The purpose of this construction is to enable U S Rail to serve the BRT as a common carrier railroad and to service the rail freight

requirements of Sills Road Realty, LLC ("Sills"), which owns the underlying property, and its affiliated and related companies (together with Sills, "Sills Group").

On March 17, 2008, representatives of U S Rail and Sills, including the undersigned, participated in a pre-filing meeting with you, members of your staff and representatives of Gannett Fleming, Inc. ("Gannett"), the proposed independent third party consultant, to review the parameters of the proposed construction project and applicable environmental review procedures and requirements. Subsequently, on March 26, 2008, U S Rail petitioned SEA for a waiver of the six months pre-filing notice required by the Board's environmental regulations and formally requested approval of its retention of Gannett to act as the independent third party consultant for the preparation, under the Board's direction and supervision, of environmental documentation for the project. On April 21, 2008, the Town of Brookhaven ("Brookhaven") submitted a letter of objection to U S Rail's notice waiver request. On April 29, 2008, U S Rail submitted a response to Brookhaven's letter of objection. By letter dated June 17, 2008, your office granted U S Rail's waiver request and subsequently approved the retention of Gannett as independent third party consultant. Following Gannett's approval by SEA, U S Rail, Gannett and SEA entered into a Memorandum of Understanding defining the relationships among the parties and the conditions and procedures to be followed, under applicable regulations and Board policies, in preparation of all environmental documentation.

On October 14, 2008, SEA sent consultation letters to all affected federal, state and local agencies and political subdivisions, as well as to the LIRR and NY&A, seeking comments on the proposed construction of the BRT. Responses to the consultation letters were received from EPA and the MTA/LIRR. Those responses are referenced herein.

On January 12, 2009, Craig Shirk of Gannett Fleming (the independent environmental consultant) and Troy Brady of your office inspected the site along with representatives of U S Rail and Sills.

The Board's regulations provide that an EIS normally is prepared in connection with a rail construction project. See, 49 C.F.R. 1105.6(a). However, 49 C.F.R. 1105.6(d) provides for flexible exceptions to the general rule:

The Board may reclassify or modify these requirements for individual proceedings.... [I]n a rail construction, an applicant can seek to demonstrate (with supporting information addressing the pertinent aspects of 49 C.F.R. 1105.7 (e)) that an EA, rather than an EIS, will be sufficient because the particular proposal is not likely to have a significant environmental impact.

U S Rail respectfully submits that an EA is sufficient, in this case, under the standards of 49 C.F.R. 1105.6(a) because the proposed construction of the BRT is not likely to have a significant environmental impact. Referring to the pertinent aspects of 49 C.F.R. 1105.7(e) and supported by the results of prior environmental documentation related to

the site, the site field inspection referred to above and the responses to SEA's consultation letters, U S Rail's reasons for concluding that the proposed construction is not likely to have a significant environmental impact are as follows:

(1) Proposed Action and Alternatives

U S Rail proposes to construct and operate a rail yard on 28 acres of property in Brookhaven, Suffolk County, New York consisting of a new switch to connect the BRT with the existing LIRR mainline, a 200 foot lead track and approximately 11,000 feet of terminal track arranged within the facility substantially as set forth in a proposed site plan that has previously been submitted to SEA and the Board ("Site Plan"). In addition to the tracks, U S Rail will construct and operate (i) an unloading pit to receive aggregate stone products, (ii) related bunkered storage to temporarily store stone products prior to loading these materials into trucks, (iii) an enclosed transload dock to handle merchandise freight, (iv) facilities to load, unload and store containerized freight and (v) a scale house and scales, all in accordance with the Site Plan. Initially, the Sills Group will be the only customer of U S Rail receiving approximately 5,000 carloads annually of crushed aggregate stone and similar products for wholesale distribution within the Sills Group and to third party customers; however, as a common carrier, U S Rail will solicit freight business from any customer seeking to use its services and the facilities of the BRT. It is anticipated that initial rail traffic at the BRT will consist of two inbound and outbound trains per week.

Three alternative sites for the BRT were considered but rejected for various reasons including size constraints, lack of proximity to existing rail infrastructure, lack of easy access to the interstate highway system, zoning restrictions, the absence of development incentives, and the potential for adverse impacts on residential and community development.

(2) Transportation System

Freight currently moves to and from Long Island almost exclusively by truck. Construction and operation of the BRT is expected to significantly reduce regional reliance on truck transportation, enhance roadway safety, reduce petroleum hydrocarbon emissions and ameliorate traffic congestion. The proposed action will not result in a diversion of freight traffic from rail to any other transportation systems or modes.

(3) Land Use

The BRT will be located within an Empire Development Zone of the Town of Brookhaven. Empire Zones are specifically dedicated to industrial and commercial development, with which the BRT is consistent, and attract such development with a variety of tax benefits and financing and training incentives. The BRT site is presently undeveloped with no adjoining residential or community uses, and is neither prime agricultural land nor located within a designated coastal zone.

(4) Energy

Although the proposed action will result in new rail traffic and, thus, a modest increase in energy use for train operations, diversion of freight traffic from truck to rail transportation is expected to result in an overall net reduction in the use of energy resources. Furthermore, crushed stone aggregates, the principal bulk commodity to be handled at the BRT, are routinely recycled in the production of asphalt, concrete and other construction products.

(5) Air

U S Rail proposes to construct a new line of rail under 49 U.S.C. 10502 in what the EPA classifies as a moderate non- attainment area for ozone and an attainment area for PM 2.5 that will accommodate fewer than the action level of three trains per day<sup>1</sup> and no significant adverse impact on local or regional air quality is expected as a result of the construction and operation of the BRT. Indeed, as a result of the diversion of freight traffic from truck to rail transportation, significant improvement in local and regional air quality may occur.

(6) Noise

Consistent with current rail freight movement patterns along the LIRR mainline, expected low speed operation of rail movements within the BRT and the BRT's proximity to the interstate highway system, U S rail does not expect incremental increases in noise above approved thresholds. Furthermore, there are no sensitive receptors in the project area

(7) Safety

The BRT will be an entirely self-contained gated facility within a perimeter chain link fence. The site and does not encroach on any public rights-of-way or public highways. Consequently, offsite safety impacts are not a major consideration.

(8) Biological Resources

Relatively recent environmental studies of the BRT site have been provided by the independent third party environmental consultant for the SEA's review. Results of the field inspection confirm the absence of any endangered or threatened species at the site or areas designated as a critical habitat. There are no wildlife sanctuaries or refuges, national or state park or forests that would be affected by the proposed action.

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<sup>1</sup> As the MTA/LIRR notes, service to the new facility would add four freight movements per week (two in each direction) to NY&A's existing volume of 10 such freight movements per week. By way of comparison MTA/LIRR diesel powered commuter trains currently generate 48 movements per week through Yaphank (passing the BRT site) at significantly higher speeds and consequent higher noise levels.

(9) Water

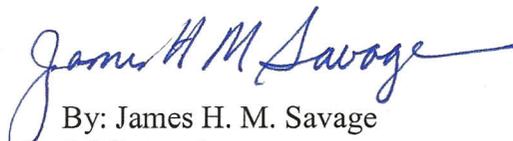
No waters of the United States, any wetlands or any 100-year flood plains are impacted by construction and operation of the BRT and the proposed action is consistent with applicable federal, state and local water quality standards. Prior environmental studies of the site confirm that construction of the BRT would have no adverse effect on surface or groundwater resources. EPA recommends special consideration be given to preventing possible contamination of groundwater, as the site is located over the Nassau/Suffolk Sole Source Aquifer. However, the site is not in a deep water recharge area, and the adjoining property has been approved for construction of a gas fired power generating facility with oil back-up.

(10) Cultural Resources

Prior environmental reviews of the site and the field inspection revealed no known historic or archaeological sites, no historic structures or potential historic, archaeological, or cultural resources. EPA recommends an environmental justice analysis be performed. In view of the relative isolation of the BRT site from potentially affected environmental receptors, U S Rail respectfully disagrees with EPA.

U S Rail submits that the foregoing information, along with a review of prior environmental studies of the site and responses to the consultation letters as well as the results of the field visit, are sufficient under 49 C.F.R. 1105.6(a) to justify modification of the Board's requirements for an EIS to require only the preparation of an EA with respect to the BRT project. If your office requires any additional information in order to make that determination, please contact the undersigned at your convenience.

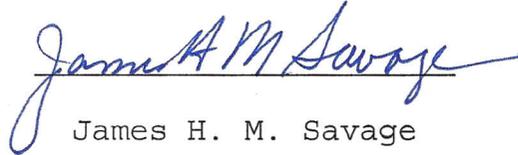
Respectfully submitted,  
John D. Heffner, PLLC

  
By: James H. M. Savage  
Of Counsel

cc: William Plumpton  
Troy Brady  
Mark Cuthbertson, Esq.

CERTIFICATION OF PROOF OF SERVICE

I certify that I served this day by electronic mail upon all parties a true copy of the within pleading.

  
James H. M. Savage

Dated: February 20, 2009

**Exhibit 3      Board's response to U S Rail's request for waiver of EIS requirements**

## ***SURFACE TRANSPORTATION BOARD***

Washington, DC 20423

**Office of Economics, Environmental Analysis, and Administration**

James H. Savage, Esq.  
1750 K Street, NW  
Suite 350  
Washington D.C. 20006

March 31, 2009

RE: Finance Docket No. 35141, U.S. Rail Corporation, Construction and Operation Exemption, Brookhaven Rail Terminal, Suffolk County, New York

Dear Mr. Savage:

I have received your letter of February 20, 2009, requesting a waiver of the preparation of an Environmental Impact Statement (EIS) for U.S. Rail Corporation's proposed rail line construction and operation project called the Brookhaven Rail Terminal. You also provided the Board's Section of Environmental Analysis (SEA) with preliminary information regarding the project, as well as the potential environmental affects discovered to date that may be associated with the proposed project. For the reasons detailed below, SEA believes that an Environmental Assessment appears to be the appropriate document for this proceeding and is granting your waiver request.

### Background

On August 7, 2008, U.S. Rail filed a petition for exemption with the Board seeking the Board's authority to construct and operate approximately two mile long rail line and other, related rail facilities on a 28 acre site in Brookhaven, Suffolk County, New York. The new rail line would serve the Brookhaven Rail Terminal.

The proposed rail construction project is located in an area that is zoned for industrial and commercial purposes. The land bounded by I-495 to the north, commercial/industrial businesses to the west, and a power generation facility to the south. SEA believes that because of the proposed project's largely commercial and industrial setting, impacts such as noise and vibration would be relatively minor. Further, SEA does not expect the proposed project to adversely affect or conflict with existing land use plans or local zoning.<sup>1</sup>

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<sup>1</sup> The Town of Brookhaven has noted that the proposed project appears to be consistent with existing zoning and permitted use as outlined in the Town's Town-Wide Land Use Plan adopted in 1996.

## SEA's Environmental Review To Date

On October 14, 2008, SEA contacted key Federal, state, and local agencies, provided them with information about the Brookhaven Rail Terminal proposal, included a map, and requested any preliminary information that they might have on the possible environmental effects of the proposal. In response to these consultation letters, the Federal, state, and local agencies did not identify any significant environmental issues with the proposed action.<sup>2</sup> Then, on January 12, 2009, SEA and its third party consultant for this proceeding, Mr. Craig Shirk of Gannett Fleming Inc., conducted a site visit to the project area. During the site visit, SEA noted the largely industrial area, the apparent absence of wetlands, and the lack of vegetation.<sup>3</sup>

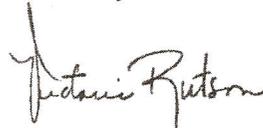
## Conclusion

Based on all the information available to date, we believe that the proposed rail project is unlikely to have any significant environmental impacts, and therefore, preparation of an Environmental Assessment is the appropriate level of environmental review. Moreover, we believe that any impacts can be addressed through appropriate mitigation measures. Accordingly, pursuant to 49 CFR 1105.6(d), SEA is granting your request for a waiver of 49 CFR 1105.6(a), which normally provides for the preparation of an EIS for rail line construction proposals.

After the Environmental Assessment is prepared, SEA will make the document available for public review and comment. Once the comment period has concluded, SEA will prepare a subsequent environmental document that discusses any comments received, appropriate modifications, and additional analysis that may be necessary. That document will also set forth the final recommended mitigation measures. Please be aware that if the Environmental Assessment process discloses unanticipated environmental impacts that are significant, we will require the preparation of an EIS at that time.

If you have any additional questions, please feel free to contact me or Troy Brady of my staff at (202) 245-0301 or e-mail at [Troy.Brady@stb.dot.gov](mailto:Troy.Brady@stb.dot.gov).

Sincerely,



Victoria Rutson  
Chief  
Section of Environmental Analysis

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<sup>2</sup> SEA received eleven comments in response to its consultation letters. The comments raised issues related to the Nassau/Suffolk Sole Source Aquifer, wetlands, environmental justice, traffic, and fauna and flora.

<sup>3</sup> SEA noted the existence of a narrow band of scrub growth along the perimeter of the proposed site. SEA also noted, on the west side of the proposed site, tree stumps that indicated the removal of scrub growth.

**Exhibit 4 U S Rail's request for waiver of the six month pre-filing notice**

E1-7551

**LAW OFFICE**  
**JOHN D. HEFFNER, PLLC**  
**1750 K STREET, N.W.**  
**SUITE 350**  
**WASHINGTON, D.C. 20006**  
**PH: (202) 296-3333**  
**FAX: (202) 296-3939**

March 26, 2008

Ms. Troy Brady  
Section of Environmental Analysis  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423

**RE: STB Finance Docket No. \_\_\_\_\_, U S Rail Corporation,  
Petition for waiver under 49 CFR 1105.10(a).**

Dear Mr. Brady:

Pursuant to 49 CFR 1105.10(c)(2) I am writing on behalf of U S Rail Corporation ("U S Rail"), to request a waiver of the six months pre-filing notice required by the Board's environmental regulations at 49 CFR 1105.10(a)(1). Within the next several weeks U S Rail plans to petition the Board for an individual exemption under 49 U.S.C. 10502 from the requirements of 49 U.S.C. 10901 to permit it to construct and operate a new rail-served facility ("the Brookhaven Rail Terminal" or "BRT") containing approximately 11,000 linear feet of track on a 28 acre site ("Site"), in the Town of Brookhaven in Suffolk County, NY. U S Rail submits that a waiver of the 6 months advance notice requirement is consistent with the regulations of the Section of Energy and Environment ("SEA") and the Board's policies. Because the owner of the Site, Sills Road Realty, LLC ("Sills Road"), requires rail service as soon as possible in order to continue receiving inbound shipments of stone aggregate and to meet ongoing, long term commitments, U S Rail asks the SEA to promptly consider and grant this waiver request.

For your information, U S Rail is an existing class III short line railroad that presently conducts operations under the name the Greater Miami & Scioto Railroad in the State of Ohio. I am enclosing with this letter a copy of

its Interstate Commerce Commission operating authority.

U S Rail has leased the Site for the BRT from Sills Road and will construct and operate the facility as a class III railroad. U S Rail will connect with the New York & Atlantic Railway ("NY&A") which is a class III rail carrier that provides freight service over the lines of the Long Island Rail Road. The traffic currently consists of stone aggregate originating at quarries near Saratoga Springs, NY, served by CP Rail, and delivered in a dedicated, private fleet. CP Rail moves this traffic to Long Island via CSX Transportation's Hudson Line and interchanges this traffic to the NY&A at the Fresh Ponds Yard. The current traffic has been delivered to a leased facility, which lease has not been renewed. Upon completion of the BRT once traffic bound for the BRT arrives at the facility's entrance, NY&A will interchange traffic to U S Rail which will then switch the train to the appropriate yard tracks for unloading. U S Rail will then turn the equipment and reassemble the empty cars for interchange back to the NY&A for movement off Long Island.

The waiver provisions of the Board's environmental rules require a party seeking a waiver to describe as completely as possible the environmental effects and timing of the proposed action and to show that all or part of the six month lead period is not appropriate. Moreover, the regulations require a party seeking a waiver to indicate (1) whether the area affected is a nonattainment area, (2) the number of trains per day that would be involved and the commodities and tonnage that would be handled, and (3) the impacts, if any, on endangered species.

In response to these inquiries and as a result of prior, extensive environmental analyses of the Site and its surrounding communities, U S Rail anticipates that the environmental effects of the construction and operation of the BRT will be minimal. Regarding the questions identified above, the subject area is a nonattainment area. The BRT has been designed to handle about 5,000-6,000 carloads annually utilizing one train making a single daily roundtrip, at 40 carloads per trip. Inbound traffic will consist of stone aggregate required by entities related to Sills Road in their current businesses and other construction related products.

Regarding environmental impacts, movement of increased

volumes of stone aggregate made possible by construction of the BRT by rail instead of truck will be very beneficial due to reduced highway congestion and associated air and noise pollution and energy consumption impacts. The trackage at the BRT will not cross any public highways or navigable waterways. The BRT will be built on 28 acres of undeveloped land owned by Sills Road. The surrounding land uses are predominantly industrial and utility in nature. There are no residential parcels or community services of any type within 2,000 feet of the Site. The Town of Brookhaven's racial demographics will not trigger any "environmental justice" issues.

The Site has previously been analyzed in connection with a proposal to build a gas-fired electric power plant and by consulting engineers in connection with the design of the BRT. Based on these analyses, the following conclusions can be drawn:

- The soils on the Site consist mainly of sands and loamy sands.
- Depth to groundwater is approximately 66 to 77 feet and depth to bedrock is approximately 1,500 feet.
- Nassau and Suffolk Counties of Long Island have been designated by the US Environmental Protection Agency as a sole source aquifer. There are no surface waters or wetlands on the Site.
- There are no federally listed threatened or endangered animal or plant species that will be potentially affected by this project. While there are two rare state listed plants noted as occurring in the vicinity, none are known to occur on the Site.
- As to air quality, it is moderate attainment for 8-hour ozone and nonattainment for PM 2.5.
- As to noise, the existing daytime noises levels on the Site are 63 dBA and evening levels are 55 dBA.

As disclosed in the prior analyses, there are no past or current structures on the Site. Phase 1A and 1B archeological surveys have previously been conducted and no non-modern artifacts have been found.

Because the environmental effects of this project are

negligible, U S Rail believes that the six months lead time is unnecessary and should be waived.

Please date stamp and return one copy of this letter.

Sincerely yours,



John D. Heffner

Enclosure

cc: Ms. Vicki Rutson  
Gerard Drumm  
Andrew Kauffman  
Gabriel Hall

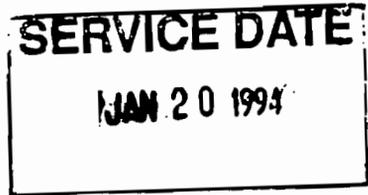
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FR-7035-01-P

INTERSTATE COMMERCE COMMISSION

NOTICE

[Finance Docket No. 32417



**THE GREAT MIAMI & SCIOTO RAILWAY COMPANY--CHANGE IN  
OPERATOR EXEMPTION--CERTAIN LINES OF THE CITY OF JACKSON, OH**

The Great Miami & Scioto Railway Company (GMR), a noncarrier, has filed a notice of exemption pursuant to 49 CFR 1150.31 for GMR to operate approximately 60.36 miles of rail line presently owned by the City of Jackson, OH, from milepost 32.76, near Firebrick, OH, to milepost 0.00/127.0, near Hamden, OH; (2) from milepost 127.0, near Hamden, OH, to milepost 112.3, near West Junction, OH; (3) from milepost 112.3,<sup>2</sup> at West Junction, OH, to milepost 91.6 at RA Junction;<sup>3</sup> and (4) from milepost 127-71, near

<sup>1</sup> This is the point where the GMR's north-south line (formerly the old Portsmouth Subdivision of CSXT, the owner of the line prior to its acquisition by the City of Jackson) at milepost 0.00 and its intersection with the east-west line, also formerly owned by CSXT, at milepost 127.0.

<sup>2</sup> Also known as milepost 95.5

<sup>3</sup> In City of Jackson, OH--Exemption Acquisition-- Certain Lines Baltimore and Ohio

Railroad

Cheapeake and Ohl. Finance Docket No. 31020 (ICC served Apr. 24, 1987), the City of Jackson acquired 52.83 route miles of line from Firebrick, OH (milepost 32.76) to Hamden, OH (milepost 0.00/127.0) to West Junction (milepost 112.3/95.5) to RA Junction (milepost 91.6). This description for 52.83 route miles appears to match the 51-36 miles described in (1), (2), and (3) g.U@ra. There is no explanation for the 1.47-mile discrepancy.

Incidental trackage rights were also acquired over 5.9

**Exhibit 5      Board's response to U S Rail's request for waiver of the six month pre-filing notice**



**SURFACE TRANSPORTATION BOARD**  
**Washington, DC 20423**

*Office of Economics, Environmental Analysis and Administration*

June 17, 2008

John D. Heffner, Esq.  
1750 K Street, NW  
Suite 350  
Washington, DC 20006

**Re: Finance Docket No. 35141, U.S. Rail Corporation Construction and Operation of the Brookhaven Rail Terminal – Suffolk County, New York; Waiver of Six-Month Prefiling Notice**

Dear Mr. Heffner:

Pursuant to 49 CFR 1105.10(c), we are granting your request of March 26, 2008, for waiver of the six-month prefiling notice generally required for construction projects under 49 CFR 1105.10 (a)(1).

On March 17, 2007, the Surface Transportation Board’s Section of Environmental Analysis (SEA) met and consulted with representatives of U.S. Rail Corporation (U.S. Rail) regarding the potential environmental impacts associated with the construction and operation of 11,000 feet of new rail line in Suffolk County, NY. Also attending this meeting were representatives of Sills Road Realty, LLC (Sills Road). The representatives of U.S. Rail and Sills Road explained that, if approved, U.S. Rail would construct and operate a new rail line for the sole purpose of transporting stone aggregate to a proposed new rail served facility, Brookhaven Rail Terminal (BRT), which would be owned and operated by Sills Road. The proposed new rail line, as well as BRT, would be constructed on a 28 acre parcel that is located within the Town of Brookhaven’s North Belleport Empire Development Zone and owned by Sills Road.

If approved, the new rail line would ship to BRT between 5,000 and 6,000 carloads of aggregate stone, in bulk or as gabions (wire mesh baskets) annually for use by Sills Road. U.S. Rail would operate two trains per day (one train making a single daily roundtrip) comprising 40 carloads per trip. U.S. Rail and Sills Road have also indicated that the BRT may also be used for the temporary storage of intermodal containers.

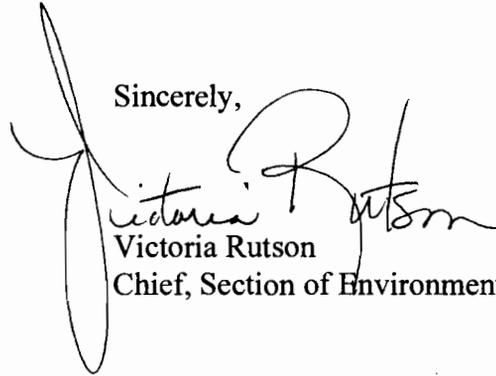
On April 21, 2008, the City of Brookhaven (City) submitted a letter requesting that SEA deny U.S. Rail’s request for a waiver from the six-month prefiling requirement. In its submittal, the City makes the following assertions: 1) U.S. Rail has not fully described potential environmental impacts; 2) U.S. Rail’s proposal is a subterfuge to allow the U.S. Rail and others to preempt state and local environmental laws; and 3) U.S. Rail and others are likely to use the new rail line (if permitted ) to construction and debris materials from the BRT property.

In a letter dated April 29, 2008, U.S. Rail responded to the City's filing contesting the City's arguments.

SEA believes that it is inappropriate, at this preliminary juncture, to address the concerns raised by the City. Based on SEA's review of the criteria required by 49 CFR 1105.10(c), SEA believes that U.S. Rail has provided sufficient information to allow us to waive the six-month pre-filing requirement. Moreover, SEA notes that once the environmental review process is underway, the City will have ample opportunity to be heard and to fully air its concerns.

If we can be of further assistance, please do not hesitate to contact me or Troy Brady of my staff at (610) 793-4301.

Sincerely,

A handwritten signature in black ink, appearing to read "Victoria Rutson". The signature is stylized with a large, looped initial "V" and "R".

Victoria Rutson  
Chief, Section of Environmental Analysis

**Exhibit 6 U S Rail's request for Third-Party Contractor**

LAW OFFICE  
**JOHN D. HEFFNER, PLLC**  
1750 K STREET, N.W.  
SUITE 350  
WASHINGTON, D.C. 20006  
PH: (202) 296-3333  
FAX: (202) 296-3939

March 24, 2008

Ms. Troy Brady  
Section of Environmental Analysis  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423

RE: STB Finance Docket No. \_\_\_\_\_, U S Rail Corporation,  
Designation of Third Party Consultant

Dear Mr. Brady:

Pursuant to 49 CFR 1105.10(d), U S Rail Corporation ("U S Rail"), seeks approval by the Surface Transportation Board's Section of Environmental Assessment ("SEA") to retain an independent third-party consultant to develop the appropriate environmental and historic documentation for the proposed construction and operation of a new rail-served intermodal terminal ("the Brookhaven Rail Terminal" or "BRT") to be located in the Town of Brookhaven, Suffolk County, NY.

A detailed description of the proposed construction project is contained in the accompanying request for waiver of the six months advance notice requirement. The environmental documentation will be submitted in connection with the Petition for Exemption U S Rail intends to file in the next several weeks seeking Board approval to construct and operate this new rail facility.

If the Board grants this request for Designation of a Third Party Consultant, U S Rail proposes to retain Gannett Fleming, Inc. ("Gannett"), as the consultant to develop the necessary environmental and historic documents on behalf of the SEA. The primary contact for the project will be Mr. William M. Plumpton, CEP, Gannett Fleming, Inc., P.O. Box 67100, Harrisburg, PA 17106-7100.

Gannett has substantial experience in matters involving the implementation of the National Environmental Policy Act and the National Historic Preservation Act and has been previously approved by the SEA as well as other federal agencies to prepare third-party environmental documents in agency proceedings. Therefore, U S Rail believes that Gannett would be the appropriate third-party consultant and requests your approval to retain Gannett.

Let me know if you have any questions. Please date stamp and return one copy of this letter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John D. Heffner", with a long horizontal flourish extending to the right.

John D. Heffner

cc: Ms. Vicki Rutson  
Gerard Drumm  
Andrew Kauffman  
Gabriel Hall

**Exhibit 7      Board's approval of Third-Party Consultant**



***SURFACE TRANSPORTATION BOARD***  
***Washington, DC 20423***

*Office of Economics, Environmental Analysis and Administration*

June 4, 2008

John D. Heffner, Esq.  
1750 K Street, NW  
Suite 350  
Washington, DC 20006

**Re: Finance Docket No. 35141, U.S. Rail Corporation Construction and Operation of the Brookhaven Rail Terminal – Suffolk County, New York; Approval of Third-Party Consultant**

Dear Mr. Heffner:

Thank you for your March 24, 2008 letter regarding the proposed construction and operation by U.S. Rail Corporation (applicant) of an approximately 11,000 feet (roughly 2 miles) of new rail line to serve proposed facility in Yaphank, NY, the Brookhaven Rail Terminal. In your letter, you request approval under 49 CFR 1105.10(d) for the retention of Gannett Fleming, Inc., (Gannett) as an independent third-party consultant for the above referenced project. Your request is approved and we ask that you follow the directions below to ensure that the third-party process is successful for all concerned.

On March 17, 2008, the Surface Transportation Board's Section of Environmental Analysis (SEA) met with the applicant regarding the proposed project. At the meeting, SEA was provided with an overview of the project and viewed maps of the area surround the proposal. SEA also presented an overview of the Board's environmental process, SEA's role in the process, and the use of third-party consultants.

As explained at the March 17 meeting, Gannett will prepare the appropriate environmental document on behalf of the Board. While Gannett's costs will be paid by the applicant U.S. Rail, Gannett will work under the **sole** direction, control, and supervision of SEA.

I have enclosed a disclosure statement and ask that you forward it to Gannett to complete. Once the statement is signed by Gannett, Gannett should return the signed disclosure statement to me at the following address:

Victoria Rutson  
Section of Environmental Analysis  
395 E. Street SW  
Washington, DC 20423

I will ensure that the signed disclosure statement is posted on the Board's website. If you have questions or concerns, please do not hesitate to contact me or Troy Brady of my staff at (610) 793-4301 or [Troy.Brady@stb.dot.gov](mailto:Troy.Brady@stb.dot.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Victoria Rutson". The signature is written in a cursive style with a large initial "V".

Victoria Rutson  
Chief, Section of Environmental Analysis

Enclosure

**Exhibit 8 U S Rail's agreement to the New York State Environmental Quality Review Act (SEQRA) Negative Declaration with the Town of Brookhaven**

226735

ENTERED  
Office of Proceedings  
MAR 30 2010  
Public Records

LAW OFFICES  
**JOHN D. HEFFNER, PLLC**  
1750 K STREET, N.W.  
SUITE 200  
WASHINGTON, D.C. 20006  
PH: (202) 296-3333  
FAX: (202) 296-3939

March 30, 2010

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

VIA ELECTRONIC FILING

Re: STB Finance Docket No. 35141 U S Rail Corporation –  
Construction and Operation Exemption – Brookhaven Rail Terminal

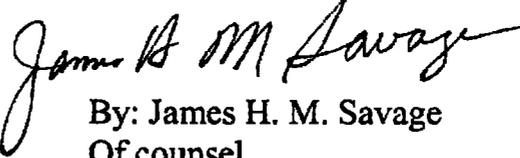
Dear Ms. Brown,

In concurrence with the Town of Brookhaven's ("Brookhaven") March 30, 2010 letter withdrawing all opposition to the Brookhaven Rail Terminal project ("the Project") and supporting the expedited approval of the Project, please accept Petitioner U S Rail Corporation's letter requesting the proceeding be immediately restored to the Board's active docket, and further requesting the Board issue a Scheduling Order providing for a final Decision being issued within 30 days after completion of the EA process. Petitioner believes expedited treatment is warranted both in view of the duration of this proceeding and particularly in view of the Town's findings of no significant environmental impact under SEQRA and SEA's own preliminary findings of no significant environmental impact.

Brookhaven's Resolution of Approval of Settlement and the New York State Environmental Quality Review Act (SEQRA) Negative Declaration and Notice of Determination of Non-Significance is attached.

We thank the Board for its time and consideration.

Very truly yours,  
John D. Heffner, PLLC

  
By: James H. M. Savage  
Of counsel

Attorneys for Petitioner  
U S Rail Corporation

JHS/mhd  
Att.

cc: Mark D. Cuthbertson (via electronic mail, w/att.)  
Robert Ryback (via First Class mail, w/att.)  
Thomas Stilling (via electronic mail, w/att.)

MEETING OF: MARCH 23, 2010

RESOLUTION NO. 2010-312

MOVED BY COUNCILMEMBER: CONNIE KEPERT

REVISION

SHORT TITLE: SEQRA NEGATIVE DECLARATION – AUTHORIZATION TO SETTLE CERTAIN MATTERS BETWEEN THE TOWN OF BROOKHAVEN, SILLS ROAD REALTY, LLC, US RAIL CORPORATION, WATRAL BROTHERS, INC., PRATT BROTHERS, INC., ADJO CONTRACTING CORP., AND SUFFOLK & SOUTHERN RAILROAD, LLC.

DEPARTMENT: Law

REASON:

PUBLIC HEARING REQUIRED:

DEPARTMENT OF FINANCE APPROVAL: YES NO

DOLLARS INVOLVED:

SEQRA REQUIRED:

DETERMINATION MADE: POSITIVE NEGATIVE

FEIS/FINDINGS FILED:

EXECUTION OF DOCUMENT REQUIRED:

Present	Absent		Motion	Aye	No	Abstain	Not Voting
		Councilmember Flore-Rosenfeld		✓			
		Councilmember Bonner		✓			
		Councilmember Walsh		✓			
		Councilmember Kepert	✓	✓			
		Councilmember Mazzel	✓	✓			
		Councilmember		✓			
		Supervisor Lesko		✓			

**RESOLUTION NO. 2010-312  
MEETING OF: MARCH 23, 2010**

**SEQRA NEGATIVE DECLARATION –  
AUTHORIZATION TO SETTLE CERTAIN  
MATTERS BETWEEN THE TOWN OF  
BROOKHAVEN, SILLS ROAD REALTY, LLC,  
US RAIL CORPORATION, WATRAL  
BROTHERS, INC., PRATT BROTHERS, INC.,  
ADJO CONTRACTING CORP., AND  
SUFFOLK & SOUTHERN RAILROAD, LLC.**

**WHEREAS, the Town Board is presently considering settling certain matters between the Town of Brookhaven, Silks Road Realty, LLC; US Rail Corporation, Watral Brothers, Inc., Pratt Brothers, Inc. ADJO Contracting Corp., and Suffolk & Southern Railroad, LLC; and**

**WHEREAS, the Division of Environmental Protection has completed an Environmental Assessment Form with respect to said proposed action, and has submitted same and recommendations to this Town Board for its consideration and review;**

**NOW, THEREFORE, BE IT RESOLVED, by the Town Board of the Town of Brookhaven that based upon the Town Board's examination of the Environmental Assessment Form and recommendations, and the appropriate criteria for determination of significance, the proposed action is an Unlisted action which will not have a "significant impact" on the environment, and, therefore, no Environmental Impact Statement need be prepared, and be it further**

**RESOLVED that this resolution constitutes a "negative declaration" pursuant to SEQRA and that this Board's Findings and Notice of this determination (as set forth in the notice of determination attached hereto) shall be filed to the extent required by the State Environmental Quality Review Act or as deemed necessary by this Town Board.**

**SEQR  
NEGATIVE DECLARATION  
NOTICE OF DETERMINATION OF NON-SIGNIFICANCE**

**LEAD AGENCY:** Town of Brookhaven Town Board  
One Independence Hill  
Farmingville, NY 11738

**TITLE OF ACTION:**  
Authorizing settlement with  
Sills Road Realty *et al* for  
the construction of a rail freight terminal

**APPLICANT:**  
Town of Brookhaven Town Board

**SEQR STATUS:** UNLISTED

**DESCRIPTION OF ACTION:**

To authorize a settlement between the Town of Brookhaven and Sills Road Realty *et al* for the construction of a rail freight terminal. The settlement discontinues a lawsuit commenced by the Town of Brookhaven against Sills Road Realty *et al* for starting the construction of a rail freight terminal without Town approvals. As part of the settlement, Sills Road Realty *et al* has agreed to various conditions and covenants that will reduce the impacts of the proposed rail freight terminal.

**LOCATION:** Sills Road (County Route 1010)  
Yaphank, New York

SCTM 0200 663.00 03.00 lots 001.000, 027.002, 027.003 and 027.004  
0200 704.00 04.00 lots 001.000 and 002.00  
0200 704.00 05.00 lots 001.000 and 002.00  
0200 704.00 02.00 lots 001.000, 002.00, 030.000, 031.000,  
033.000, 034.000, 035.000 and 036.000

This Notice is issued pursuant to 6 NYCRR Part 617 (State Environmental Quality Review) of the implementing regulations pertaining to Article 8 (State Environmental Quality Act) of the Environmental Conservation Law.

**REASONS SUPPORTING THIS DETERMINATION:**

1. The Town Board of the Town of Brookhaven, based on consultation with the Division of Environmental Protection of the Town of Brookhaven and upon reviewing the proposed action in accordance with 6 NYCRR Parts 617.3 and 617.6, using available documentation and then comparing this information with the thresholds set forth in 6 NYCRR Part 617.4 and 6 NYCRR Part 617.5, has

determined that the proposed action is an Unlisted Action. The proposed action is not an approval of the site plan or the proposed activity but is for the settlement of a lawsuit commenced by the Town of Brookhaven against Sills Road Realty *et al* for commencing work without Town approval. As part of the settlement, Sills Road Realty *et al* has agreed that all work shall be consistent the applicable standards in the Town code of the Town of Brookhaven, the Code of Suffolk County, and applicable federal standards.

2. The Town of Brookhaven Town Board, based on consultation with the Division of Environmental Protection of the Town of Brookhaven and a review and analysis of the proposed action, the Long Environmental Assessment Form, the criteria contained in 6 NYCRR Part 617.7, aerial photographs, field reconnaissance, cultural resource and wetland maps, and other information related to potential environmental concerns, finds that the proposed action is not anticipated to have a significant effect upon the environment.
3. No significant impact is expected to occur to: land resources, aesthetic resources, groundwater, surface water, archaeological resources, open space and recreation, transportation, energy, noise and odor, and public health. As part of the settlement, Sills Road Realty *et al* has agreed to various mitigation measures including the installation of dust control measures, retention of 5 inches of stormwater, establishing a vegetated buffer around the perimeter of the site to reduce noise and visual impacts, establishing a 50 foot landscape buffer along the site frontage to reduce noise and visual impacts and revegetating 30 percent of the site.
4. The property is zoned L-1 industrial and the proposed use of the property is consistent with its zoning; no significant impacts are expected to the growth and character of the community. The elevation of the site is lower than the existing grade which reduces the noise and visual impacts of the proposed rail terminal.
5. ~~The rail freight terminal will have the capability of handling the unloading and temporary storage of bulk commodities consisting principally of crushed stone aggregate, merchandise freight, and intermodal container shipper will reduce vehicle congestion of local roadways and will protect air quality by reducing vehicle miles traveled.~~
6. There shall be no collection, sorting, separation, processing, incineration, treatment, management, disposal, or transport of solid waste and construction and demolition debris, unless required under federal law.
7. The proposed construction of the rail freight terminal, because it requires federal approval and review by the Surface Transportation Board, is subject to the provisions of the National Environmental Policy Act which will specifically assess the environmental impacts of the construction and operation of the rail freight terminal.

---

**REVIEW AGENCY:** The Town of Brookhaven Town Board

**CONTACT PERSON:** Jeffrey Kassner, ACIP  
Department of Planning, Environment & Land Management

**ADDRESS:** One Independence Hill  
Farmingville, NY 11738

**TELEPHONE:** 631-451-6458

**COPIES OF THIS NOTICE SENT TO:**

Town of Brookhaven Town Clerk

**THIS DETERMINATION IS NOT COMPLETE UNTIL AUTHORIZED AS  
FOLLOWS:**

**ADOPTED BY RESOLUTION ON:** \_\_\_\_\_

**PATRICIA EDDINGTON, TOWN CLERK:** \_\_\_\_\_

---

## PART 2 PROJECT IMPACTS AND THEIR MAGNITUDE

Responsibility of Lead Agency

**General Information (Read Carefully)**

In completing the form the reviewer should be guided by the question: Have my responses and determinations been reasonable? The reviewer is not expected to be an expert environmental analyst. The Examples provided are to assist the reviewer by showing types of impacts and wherever possible the threshold of magnitude that would trigger a response in column 2. The examples are generally applicable throughout the State and for most situations. But, for any specific project or site other examples and/or lower thresholds may be appropriate for a Potential Large Impact response, thus requiring evaluation in Part 3. The impacts of each project, on each site, in each locality, will vary. Therefore, the examples are illustrative and have been offered as guidance. They do not constitute an exhaustive list of impacts and thresholds to answer each question. The number of examples per question does not indicate the importance of each question. In identifying impacts, consider long term, short term and cumulative effects.

**Instructions (Read carefully)**

- a. Answer each of the 20 questions in PART 2. Answer Yes if there will be any impact.
- b. Maybe answers should be considered as Yes answers.
- c. If answering Yes to a question then check the appropriate box (column 1 or 2) to indicate the potential size of the impact. If impact threshold equals or exceeds any example provided, check column 2. If impact will occur but threshold is lower than example, check column 1.
- d. Identifying that an impact will be potentially large (column 2) does not mean that it is also necessarily significant. Any large impact must be evaluated in PART 3 to determine significance. Identifying an impact in column 2 simply asks that it be looked at further.
- e. If reviewer has doubt about size of the impact then consider the impact as potentially large and proceed to PART 3.
- f. If a potentially large impact checked in column 2 can be mitigated by change(s) in the project to a small to moderate impact, also check the Yes box in column 3. A No response indicates that such a reduction is not possible. This must be explained in Part 3.

1	2	3
Small to Moderate Impact	Potential Large Impact	Can Impact Be Mitigated by Project Change

### Impact on Land

1. Will the Proposed Action result in a physical change to the project site?

NO  YES

**Examples that would apply to column 2**

• Any construction on slopes of 15% or greater, (15 foot rise per 100 foot of length), or where the general slopes in the project area exceed 10%.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Construction on land where the depth to the water table is less than 3 feet.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Construction of paved parking area for 1,000 or more vehicles.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Construction on land where bedrock is exposed or generally within 3 feet of existing ground surface.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Construction that will continue for more than 1 year or involve more than one phase or stage.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Excavation for mining purposes that would remove more than 1,000 tons of natural material (i.e., rock or soil) per year.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
• Construction or expansion of a sanitary landfill.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Construction in a designated floodway.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

The construction of railroad track, switches, scales, bulk storage facilities, buildings, entrance ramp all of which will be mitigated by project design.

2. Will there be an effect to any unique or unusual land forms found on the site? (i.e., cliffs, dunes, geological formations, etc.)

NO  YES

• Specific land forms:    Yes  No

**Impact on Water**

3. Will Proposed Action affect any water body designated as protected? (Under Articles 15, 24, 25 of the Environmental Conservation Law, ECL)

NO  YES

Examples that would apply to column 2

• Developable area of site contains a protected water body.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Dredging more than 100 cubic yards of material from channel of a protected stream.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Extension of utility distribution facilities through a protected water body.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Construction in a designated freshwater or tidal wetland.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

4. Will Proposed Action affect any non-protected existing or new body of water?

NO  YES

Examples that would apply to column 2

• A 10% increase or decrease in the surface area of any body of water or more than a 10 acre increase or decrease.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Construction of a body of water that exceeds 10 acres of surface area.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No



1	2	3
Small to Moderate Impact	Potential Large Impact	Can Impact Be Mitigated by Project Change

6. Will Proposed Action alter drainage flow or patterns, or surface water runoff?

NO     YES

Examples that would apply to column 2

- |  |                          |                          |                              |                             |
|--|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Proposed Action would change flood water flows                   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action may cause substantial erosion.                   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action is incompatible with existing drainage patterns. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will allow development in a designated floodway. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other impacts:   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

### IMPACT ON AIR

7. Will Proposed Action affect air quality?

NO     YES

Examples that would apply to column 2

- |   |                          |                          |                              |                             |
|---|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Proposed Action will induce 1,000 or more vehicle trips in any given hour.  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will result in the incineration of more than 1 ton of refuse per hour.  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Emission rate of total contaminants will exceed 5 lbs. per hour or a heat source producing more than 10 million BTU's per hour. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will allow an increase in the amount of land committed to industrial use.                                       | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will allow an increase in the density of industrial development within existing industrial areas.               | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other impacts:  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

### IMPACT ON PLANTS AND ANIMALS

8. Will Proposed Action affect any threatened or endangered species?

NO     YES

Examples that would apply to column 2

- |   |                          |                          |                              |                             |
|---|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Reduction of one or more species listed on the New York or Federal list, using the site, over or near the site, or found on the site. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
|---|--------------------------|--------------------------|------------------------------|-----------------------------|

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
• Removal of any portion of a critical or significant wildlife habitat.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Application of pesticide or herbicide more than twice a year, other than for agricultural purposes.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

g. Will Proposed Action substantially affect non-threatened or non-endangered species?

NO  YES

Examples that would apply to column 2

• Proposed Action would substantially interfere with any resident or migratory fish, shellfish or wildlife species.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Proposed Action requires the removal of more than 10 acres of mature forest (over 100 years of age) or other locally important vegetation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

### IMPACT ON AGRICULTURAL LAND RESOURCES

10. Will Proposed Action affect agricultural land resources?

NO  YES

Examples that would apply to column 2

• The Proposed Action would sever, cross or limit access to agricultural land (includes cropland, hayfields, pasture, vineyard, orchard, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Construction activity would excavate or compact the soil profile of agricultural land.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• The Proposed Action would irreversibly convert more than 10 acres of agricultural land or, if located in an Agricultural District, more than 2.5 acres of agricultural land.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

- |   | 1<br>Small to<br>Moderate<br>Impact | 2<br>Potential<br>Large<br>Impact | 3<br>Can Impact Be<br>Mitigated by<br>Project Change     |
|---|-------------------------------------|-----------------------------------|--|
| • The Proposed Action would disrupt or prevent installation of agricultural land management systems (e.g., subsurface drain lines, outlet ditches, strip cropping); or create a need for such measures (e.g. cause a farm field to drain poorly due to increased runoff). | <input type="checkbox"/>            | <input type="checkbox"/>          | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Other impacts:  | <input type="checkbox"/>            | <input type="checkbox"/>          | <input type="checkbox"/> Yes <input type="checkbox"/> No |

### IMPACT ON AESTHETIC RESOURCES

11. Will Proposed Action affect aesthetic resources? (If necessary, use the Visual EAF Addendum in Section 617.20, Appendix B.)

NO  YES

Examples that would apply to column 2

- |   |                          |                          |  |
|---|--------------------------|--------------------------|--|
| • Proposed land uses, or project components obviously different from or in sharp contrast to current surrounding land use patterns, whether man-made or natural.                              | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed land uses, or project components visible to users of aesthetic resources which will eliminate or significantly reduce their enjoyment of the aesthetic qualities of that resource. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Project components that will result in the elimination or significant screening of scenic views known to be important to the area.  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Other impacts:  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

### IMPACT ON HISTORIC AND ARCHAEOLOGICAL RESOURCES

12. Will Proposed Action impact any site or structure of historic, prehistoric or paleontological importance?

NO  YES

Examples that would apply to column 2

- |   |                          |                          |  |
|---|--------------------------|--------------------------|--|
| • Proposed Action occurring wholly or partially within or substantially contiguous to any facility or site listed on the State or National Register of historic places. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Any impact to an archaeological site or fossil bed located within the project site.   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will occur in an area designated as sensitive for archaeological sites on the NYS Site Inventory.   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

1  
Small to  
Moderate  
Impact

2  
Potential  
Large  
Impact

3  
Can Impact Be  
Mitigated by  
Project Change

Other impacts:

 Yes No

### IMPACT ON OPEN SPACE AND RECREATION

13. Will proposed Action affect the quantity or quality of existing or future open spaces or recreational opportunities?

 NO  YES

Examples that would apply to column 2

• The permanent foreclosure of a future recreational opportunity.

 Yes No

• A major reduction of an open space important to the community.

 Yes No

• Other impacts:

 Yes No

### IMPACT ON CRITICAL ENVIRONMENTAL AREAS

14. Will Proposed Action impact the exceptional or unique characteristics of a critical environmental area (CEA) established pursuant to subdivision 6NYCRR 617.14(g)?

 NO  YES

List the environmental characteristics that caused the designation of the CEA.

Examples that would apply to column 2

• Proposed Action to locate within the CEA?

 Yes No

• Proposed Action will result in a reduction in the quantity of the resource?

 Yes No

• Proposed Action will result in a reduction in the quality of the resource?

 Yes No

• Proposed Action will impact the use, function or enjoyment of the resource?

 Yes No

• Other impacts:

 Yes No

1	2	3
Small to Moderate Impact	Potential Large Impact	Can Impact Be Mitigated by Project Change

### IMPACT ON TRANSPORTATION

15. Will there be an effect to existing transportation systems?

NO     YES

Examples that would apply to column 2

- |  |                          |                          |                              |                             |
|--|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Alteration of present patterns of movement of people and/or goods. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will result in major traffic problems.             | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other impacts:   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

### IMPACT ON ENERGY

16. Will Proposed Action affect the community's sources of fuel or energy supply?

NO     YES

Examples that would apply to column 2

- |   |                          |                          |                              |                             |
|---|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Proposed Action will cause a greater than 5% increase in the use of any form of energy in the municipality.   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will require the creation or extension of an energy transmission or supply system to serve more than 50 single or two family residences or to serve a major commercial or industrial use. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other impacts:  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

### NOISE AND ODOR IMPACT

17. Will there be objectionable odors, noise, or vibration as a result of the Proposed Action?

NO     YES

Examples that would apply to column 2

- |  |                          |                          |                              |                             |
|--|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Blasting within 1,500 feet of a hospital, school or other sensitive facility.  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Odors will occur routinely (more than one hour per day).   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will produce operating noise exceeding the local ambient noise levels for noise outside of structures. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will remove natural barriers that would act as a noise screen.   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other impacts:   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

1	2	3
Small to Moderate Impact	Potential Large Impact	Can Impact Be Mitigated by Project Change

### IMPACT ON PUBLIC HEALTH

18. Will Proposed Action affect public health and safety?

NO     YES

- |  |                          |                          |  |
|--|--------------------------|--------------------------|--|
| <ul style="list-style-type: none"> <li>• Proposed Action may cause a risk of explosion or release of hazardous substances (i.e. oil, pesticides, chemicals, radiation, etc.) in the event of accident or upset conditions, or there may be a chronic low level discharge or emission.</li> </ul> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <ul style="list-style-type: none"> <li>• Proposed Action may result in the burial of "hazardous wastes" in any form (i.e. toxic, poisonous, highly reactive, radioactive, irritating, infectious, etc.)</li> </ul>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <ul style="list-style-type: none"> <li>• Storage facilities for one million or more gallons of liquefied natural gas or other flammable liquids.</li> </ul>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <ul style="list-style-type: none"> <li>• Proposed Action may result in the excavation or other disturbance within 2,000 feet of a site used for the disposal of solid or hazardous waste.</li> </ul>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <ul style="list-style-type: none"> <li>• Other impacts:</li> </ul>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

### IMPACT ON GROWTH AND CHARACTER OF COMMUNITY OR NEIGHBORHOOD

19. Will Proposed Action affect the character of the existing community?

NO     YES

Examples that would apply to column 2

- |   |                          |                          |  |
|---|--------------------------|--------------------------|--|
| <ul style="list-style-type: none"> <li>• The permanent population of the city, town or village in which the project is located is likely to grow by more than 5%.</li> </ul>                | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <ul style="list-style-type: none"> <li>• The municipal budget for capital expenditures or operating services will increase by more than 5% per year as a result of this project.</li> </ul> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <ul style="list-style-type: none"> <li>• Proposed Action will conflict with officially adopted plans or goals.</li> </ul>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <ul style="list-style-type: none"> <li>• Proposed Action will cause a change in the density of land use.</li> </ul>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <ul style="list-style-type: none"> <li>• Proposed Action will replace or eliminate existing facilities, structures or areas of historic importance to the community.</li> </ul>             | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <ul style="list-style-type: none"> <li>• Development will create a demand for additional community services (e.g. schools, police and fire, etc.)</li> </ul>                                | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
C Proposed Action will set an important precedent for future projects.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Proposed Action will create or eliminate employment.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

20. Is there, or is there likely to be, public controversy related to potential adverse environment impacts?

NO  YES

**If Any Action in Part 2 is Identified as a Potential Large Impact or If you Cannot Determine the Magnitude of Impact Proceed to Part 3**

## Part 3 - EVALUATION OF THE IMPORTANCE OF IMPACTS

### Responsibility of Lead Agency

Part 3 must be prepared if one or more impact(s) is considered to be potentially large, even if the impact(s) may be mitigated.

Instructions (if you need more space, attach additional sheets)

Discuss the following for each impact identified in Column 2 of Part 2:

1. Briefly describe the impact.
2. Describe (if applicable) how the impact could be mitigated or reduced to a small to moderate impact by project change(s).
3. Based on the information available, decide if it is reasonable to conclude that this impact is important.

To answer the question of importance, consider:

- ! The probability of the impact occurring
- ! The duration of the impact
- ! Its irreversibility, including permanently lost resources of value
- ! Whether the impact can or will be controlled
- ! The regional consequence of the impact
- ! Its potential divergence from local needs and goals
- ! Whether known objections to the project relate to this impact.

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TOWN OF  
**Brookhaven**  
LONG ISLAND, NEW YORK

**State Environmental Quality Review Act  
Full Environmental Assessment Form**

**Board of Zoning Appeals**  
One Independence Hill, Farmingville, NY 11738  
(631) 451-6477 FAX:(631) 451-6926

BZ-06 rev. 098

PLEASE TYPE OR PRINT CLEARLY

The Full Environmental Assessment Form (EAF) is intended to provide a method whereby applicants and agencies can be assured that the determination process has been orderly, comprehensive in nature, yet flexible to allow introduction of information to fit a project or action.

**Full EAF Components:** The full EAF is comprised of three parts:

- Part I:** Provides objective data and information about a given project and its site. By identifying basic data, it assists a reviewer in the analysis that takes place in Parts II and III.
- Part II:** Focuses on identifying the range of possible impacts that may occur from a project or action. It provides guidance as to whether an impact is likely to be considered small to moderate or whether it is a potentially large impact. The form also identifies whether an impact can be mitigated or reduced.
- Part III:** If any impact in Part II is identified as potentially large, then Part III is used to evaluate whether or not the impact is actually important.

**DETERMINATION OF SIGNIFICANCE – Type I and Unlisted Actions**

<sup>1</sup> Identify portions of EAF completed for project:  Part I  Part II  Part III

<sup>2</sup> Upon review of the information recorded on this EAF (Parts I, II and III if appropriate) and any other supporting information, and considering both the magnitude and importance of each impact, it is reasonably determined by the lead agency that:

- A. The project will not result in any large and important impact (s) and, therefore, is one that will not have a significant impact on the environment; therefore, a **NEGATIVE DECLARATION** will be prepared.
- B. Although the project could have a significant effect on the environment, there will not be a significant effect for this Unlisted Action because the mitigation measures described in PART 3 have been required; therefore, a **CONDITIONED NEGATIVE DECLARATION\*** will be prepared.
- C. The project may result in one or more large and important impacts that may have a significant impact on the environment; therefore, a **POSITIVE DECLARATION** will be prepared.

\*A conditioned Negative Declaration is only valid for Unlisted Actions.

3. NAME OF ACTION:	
4. NAME OF LEAD AGENCY:	
5. NAME OF OFFICER IN LEAD AGENCY:	
6. SIGNATURE OF RESPONSIBLE OFFICER IN LEAD AGENCY:	7. SIGNATURE OF PREPARER:
8. DATE:	



**Board of Zoning Appeals**  
One Independence Hill, Farmingville, NY 11738  
(631) 451-6477 FAX: (631) 451-6926

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PLEASE TYPE OR PRINT CLEARLY

**Part I - PROJECT INFORMATION**

Prepared by Project Sponsor

**NOTICE:** This document is designed to assist in determining whether the action proposed may have a significant effect on the environment. Please complete the entire form Part A through O. Answers to these questions will be considered as part of the application for approval and may be subject to further verification and public review. Provide any additional information you believe will be needed to complete Parts II and III.

It is expected that completion of the full EAF will be dependent on information currently available and will not involve new studies, research or investigation. If information requiring such additional work is unavailable, so indicate and specify each instance.

1. NAME OF PROJECT: <b>Brookhaven Rail Terminal</b>	
2. PROJECT LOCATION: <b>205 Sills Road at South Service Road, Yaphank, New York 11980</b>	
3. NAME AND ADDRESS OF APPLICANT/SPONSOR: <b>(see attachment 3)</b>	4. BUSINESS PHONE: <b>631-473-0200</b>
5. NAME AND ADDRESS OF OWNER, IF DIFFERENT:	
6. S.C. TAX PARCEL NUMBER: <b>(see attachment 6)</b>	7. PRESENT ZONING: <b>L-1</b>
8. DESCRIPTION OF ACTION (PLEASE BE SPECIFIC; ATTACH ADDITIONAL SHEET IF NECESSARY) <b>Construction and installation of a rail freight terminal as described in attachment 8.</b>	

**PLEASE COMPLETE EACH QUESTION - INDICATE "N/A" IF NOT APPLICABLE:**

**A. LAND USE:** (If not applicable, check here and go to Section B)  N/A  
Physical setting of overall project, both developed and undeveloped areas.

1. Present land use:  Urban  Industrial  Commercial  
 Residential Suburban  Rural (non-farm)  Forest  
 Agriculture  Other (Specify) \_\_\_\_\_

**B. CRITICAL ENVIRONMENTAL AREA:**

1. Is the site located in or substantially contiguous to a Critical Environment Area designated pursuant to Article 8 of the ECL, and 6 NYCRR 817?  
 YES  NO  N/A

**C. ZONING AND PLANNING INFORMATION:**

1. Does proposed action involve a planning or zoning decision?  
 YES  NO

If yes, complete 1-13 below; if no, go to section D:

Zoning Amendment  Zoning Variance  Special Use Permit  
 Subdivision  Site Plan  New (Revision) of Land Use Plan  
 Resource Management Plan  Other \_\_\_\_\_

2. What is the zoning classification(s) of the site? L-1

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**BROOKHAVEN RAIL TERMINAL  
Full Environmental Assessment Form**

**Attachment 3**

**Name and Address of Applicant**

**Sills Road Realty, LLC  
56 Comsewogue Road  
East Setauket, New York 11733**

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**BROOKHAVEN RAIL TERMINAL  
Full Environmental Assessment Form**

**Attachment 6**

**S.C. Tax Parcel Numbers**

**District 0.200, Section 663.00, Block 03.00, Lots 001.000, 027.001, 027.002, 027.003 and 027.004**

**District 0.200, Section 704.00, Block 04.00, Lots 001.000 and 002.00**

**District 0.200, Section 704.00, Block 05.00, Lots 001.000 and 002.00**

**District 0.200, Section 704.00, Block 02.00, Lots 001.000, 002.00, 030.000, 031.000, 032.000, 033.000,  
034.000, 035.000 and 036.000**

**BROOKHAVEN RAIL TERMINAL  
Full Environmental Assessment Form**

**Attachment 8**

**Project Description and Reference Site Plan**

The Project consists of the construction and installation of a rail freight terminal to be known as the Brookhaven Rail Terminal. The current design of the Terminal, attached hereto, contemplates a track configuration of approximately 18,000 lineal feet, 22 interior switches, one new main line switch, a transload yard with bulk storage space, heavy duty scales and related facilities and equipment. An entrance ramp will be constructed into the Terminal from Silfs Road as well as an emergency, secondary access from the South Service Road of the Long Island Expressway. The Terminal will include a scale house and covered transload dock as well as aggregate unloading and storage facilities and related equipment, including electric powered conveyor/stackers, front end loaders, fork lifts and container lifters.

The Brookhaven Rail Terminal will have the capability to handle the unloading and temporary storage of bulk commodities, consisting principally of crushed stone aggregates for sale to the construction industry, merchandise freight and intermodal container shipping

---

3. What is the maximum potential development of the site if developed as permitted by the present zoning?  
Maximum Far = 30% Maximum Building Size = 366,949 s.f.
4. What is the PROPOSED zoning of the site? L1 - No change
5. What is the maximum potential development of the site if developed as permitted by the proposed zoning?  
N/A
6. Is the proposed action consistent with the recommended used adopted or recommended in local land use plans?  
 YES       NO
7. What are the predominant land use(s) and zoning classifications within a ¼ mile radius of proposed action?  
Industrial
8. Is the proposed action compatible with adjoining/surrounding land used within a ¼ mile?  
 YES       NO
9. If the proposed action is a subdivision of land, what is the number of lots proposed? N/A  
 a. What is the minimum sized lot proposed? N/A
10. Will proposed action require any authorization(s) for the formation of sewer or water districts?  
 YES       NO
11. Is the project site presently used by the community or neighborhood as an open space or recreation area?  
 YES       NO
12. Will the proposed action create a significant demand for any community provided services (recreation, education, police, fire protection)?  YES       NO  
 a. If YES, is existing capacity sufficient to handle projected demand?  YES       NO
13. Will the proposed action result in the generation of traffic significantly above present levels?  YES       NO  
 a. If YES, are existing roads adequate to handle the additional traffic?  YES       NO

D. **SITE DESCRIPTION:** (If not applicable, check here & go to Section E)       N/A

Total Lot Area: 28.08       square feet       acres      **PRESENTLY**      **AFTER COMPLETION**

	PRESENTLY	AFTER COMPLETION
Meadow or Old Field (non-agriculture)	-	-
Forested	9.20 Ac	-
Agricultural (include orchards, pasture etc.)	-	-
Unvegetated (rock, earth or fill)	18.88 Ac	-
Roads, buildings and other paved surfaces	-	19.63 Ac
Beach, Dune or Bluff	-	-
Surface Water	-	-
Tidal Wetlands (as per Chapter 81 and Art. 25	-	-
Freshwater Wetlands or 24 of the ECL)	-	-
Landscaped	-	8.43 Ac
Other (indicate type)	-	-

**Sils Road - Brookhaven Rail Terminal**

<b>Proposed Area Site Description</b>	<b>Acreage</b>
Natural/revegetated	0
Landscaped	8.43
Paved	3.57
Pervious Pavement	8.85
Building Area	0.459
<u>Railroad Tracks</u>	<u>6.77</u>
<b>Total Developed</b>	<b>28.08</b>

**ZONING**

<b>Regulations</b>	<b>Required</b>	<b>Provided</b>
Width of Buffer (street frontage)		Varies 50' to 54.7'
<b>Zone</b>	<b>L1-Light Industry</b>	<b>L1-Light Industry</b>
Lot Area (min.) (sec. 85-313-A(3))	120,000 SF	1,223,205 SF
Width of Lot (min.) (sec. 85-313-B(3))	300'	1,116' +/-
Front Yard Setback (min.) (sec. 85-313-C(2))	100'	374.23'
Side Yard Setback (min.) (sec. 85-313-D(3))	50'	884.21'
Rear Yard Setback (min.) (sec. 85-313-E(1))	50'	56.86'
Floor Area Ratio (max.) (sec. 85-313-F(2))	30%	1.64%
Height (max.) (sec. 85-313-G(1))	50' or 3 stories	43.5' +/-, 1 story
Off-Street Parking (sec. 85-353) - Industrial	1/2,000 SF =20,000 SF/2,000 =10 spaces	12

**E. PROJECT DESCRIPTION:** (If not applicable, check here and go to Section F)  N/A

1. Physical dimensions and scale of project (fill in dimensions as appropriate):
  - a. Total contiguous acreage owned or controlled by project sponsor: 28.08 Ac
  - b. Project area to be developed: 28.08 initially; 28.08 ultimately  square feet  acres
  - c. Project area to remain undeveloped: 0  square feet  acres
  - d. Length of project, in feet and/or miles, if appropriate: 0  feet  miles
  - e. If the project is an expansion, indicate percent of expansion: No %
  - f. Number of off-street parking spaces existing: 0, proposed: 12
  - g. Maximum vehicular trips generated upon completion of the project? 60 hourly
  - h. Frontage along a public thoroughfare: 2,331 +/- linear feet
  - i. If residential: Number and type of housing units: N/A

	<u>ONEFAMILY</u>	<u>TWOFAMILY</u>	<u>MULTIFAMILY</u>	<u>CONDOMINIUM</u>
Initially:	_____	_____	_____	_____
Ultimately:	_____	_____	_____	_____
  - j. Dimensions of largest proposed structure:
 

<u>43.5 +/-</u> Height	<u>100'</u> Width	<u>200'</u> Length
------------------------	-------------------	--------------------
2. Will blasting occur during construction?  YES  NO
3. Will project require relocation of any facilities?  YES  NO  
If YES, explain \_\_\_\_\_

**F. LAND RESOURCES:** (If not applicable, check here and go to Section G)  N/A

1. What is/are the predominant soil type(s) on project site? (Please consult Suffolk County Soil Survey and Soil Conservation Service - Phone: 727-2315)  
List types: Haven Loam, Riverhead Sandy Loam, Plymouth Loamy Sand
2. Is project or any portion of project located in a 100-year flood plain?  
 YES  NO  N/A
3. Soil drainage:
 

Well-drained	<u>100</u> % of site
Moderately well drained of site	_____ % of site
Poorly drained	_____ % of site
4. If any agricultural land is involved, how many acres of soil are classified within soil groups 1 through 4 of the NYS Land Classification System? (See 1 NYCRR 370 (1)) \_\_\_\_\_ acres  N/A
5. Are there any dunes, bluffs, swales, kettleholes, strands or other geological formations on the project site?  
 YES  NO If YES, Describe: \_\_\_\_\_
6. Are there bedrock outcroppings on project site?  YES  NO
  - a. What is depth to bedrock? 1400 (in feet)  N/A
7. Approximate percentage of the project site with slopes (0-100%):  
0-10% 100% 10-15% \_\_\_\_\_ 15% or greater \_\_\_\_\_
8. How much natural material (i.e. rock, earth, etc.) will be removed from the site? 636,000 cubic yards
9. Will the disturbed areas be reclaimed?  YES  NO  N/A
  - a. If YES, for what intended purpose is the site being reclaimed? Rail Yard & landscape
  - b. Will topsoil be stockpiled for reclamation?  YES  NO area.
  - c. Will upper subsoil be stockpiled for reclamation?  YES  NO
10. Grading:  YES  NO  N/A If yes, complete a. through i.
  - a. Total area to be regraded: 28.08  square feet  acres
  - b. Total cubic yards of cut: 636,000 cubic yards
  - c. Total cubic yards of fill: 0 cubic yards
  - d. Greatest depth of excavation or cut: 25' feet (excluding recharge basin)
  - e. Greatest depth of any recharge basin: N/A feet
  - f. Greatest depth of fill: N/A feet
  - g. Greatest depth of excavation or cut: 25' feet (excluding recharge basins)
  - h. Maximum artificial slopes after construction (check one)
 

<input type="checkbox"/> 2:1 or greater	<input checked="" type="checkbox"/> 3:1	<input type="checkbox"/> 5:1	<input type="checkbox"/> 10:1 or less
---	---	------------------------------	---------------------------------------
  - i. Will the project require the use of retaining walls?  YES  NO
  - j. Briefly describe method(s) to reduce erosion/runoff during and after construction: \_\_\_\_\_  
During construction: silt fence and straw bales.  
After construction: dry wells, site will be paved and landscaped.

G. **VISUAL-CULTURAL RESOURCES:** (If not applicable, check here and go to Section H)  N/A

1. **Visual:**

- a. Will the project be noticeably visible from surrounding areas after its completion?  
 YES  NO  N/A
- b. Will the project remove vegetation that currently screens the project site from surrounding areas?  
 YES  NO  N/A
- c. Will the project partially or completely block, or contrast with, scenic views from surrounding areas or from the site?  
 YES  NO  N/A
- d. Does the present site include scenic views known to be important to the community?  
 YES  NO If yes, please explain: \_\_\_\_\_

2. **Cultural:**

- a. Does the project site contain a building or site, and/or is it located within or substantially contiguous to a building, site or district listed on the State or the National Registers of Historic Places or Register of National Landmarks?  
 YES  NO  N/A
- b. Does the project site contain a building or site, which is substantially contiguous to or within a Town Historic District or Town Historic District Transition Zone?  
 YES  NO  N/A
- c. Is the project site contiguous to or does it contain a site or building which is designated a Town Landmark?  
 YES  NO  N/A
- d. Will the project be noticeably visible from, be adjacent to, or result in the partial or complete demolition of any structures listed on the State or National Registers of Historic Places, or a Town Historic Landmark?  
 YES  NO  N/A
- e. Will the project result in the partial or complete demolition or relocation of any structures greater than 50 years old?  
 YES  NO  N/A
- f. Will the project result in the partial or complete removal of any documented or known Native American site?  
 YES  NO  N/A
- g. Does the project site contain or is it located adjacent to a cemetery or gravesite?  
 YES  NO  N/A

H. **WATER RESOURCES:** (If not applicable, check here and go to Section I)  N/A

1. Will there be a potential discharge as a result of an approval of this application into a body of water either on or off-site?  
 YES  NO  N/A  
If Yes, please explain: \_\_\_\_\_
2. Method of handling runoff (check all that apply):  
 Leaching Pools  Dry Wells  Recharge Basin (off-site)  
 Recharge Basin (on-site)  Other (describe): Surface Ponding
3. What is the minimum depth to the water table on site? 60 feet  
(Please cite date and source of information) Suffolk Co. Groundwater Maps  
a. Seasonal variation 5' +/- feet
4. Are there any lakes, ponds, swamps, bogs, marshes, or freshwater wetlands within or contiguous to project area?  
 YES  NO  N/A  
a. Name of lake/pond or wetland: \_\_\_\_\_
5. Are there any streams within or contiguous to the project site?  
 YES  NO  N/A Name: \_\_\_\_\_  
a. Name of body of water to which it is tributary: \_\_\_\_\_
6. Are there any Creeks, Embayments, Harbors or tidal wetland areas within or contiguous to the project area?  
 YES  NO  N/A Name(s) \_\_\_\_\_  
a. Name of body of water to which it is tributary: \_\_\_\_\_



4. Are there any point source discharges not previously described associated with this project?  
 YES  NO  N/A If yes, explain: \_\_\_\_\_
5. Will the project generate solid waste?  YES  NO  N/A  
 a. If yes, what is the amount per month? 0.5 tons  
 b. If yes, will an existing solid waste facility be used?  YES  NO  
 c. If yes, give name: \_\_\_\_\_ location: National Waste Services  
 d. Will any wastes not go into a sewage disposal system or into a sanitary landfill?  
 YES  NO If yes, explain: \_\_\_\_\_
6. Will the project involve the storage or disposal of solid waste?  YES  NO  
 (If yes, please attach a list itemizing same)  
 a. If yes, what is the anticipated rate of disposal? \_\_\_\_\_ tons/month.  
 b. If yes, what is the anticipated site life? \_\_\_\_\_ years.
7. As part of the construction or use of the site will the project routinely use herbicides or pesticides?  
 YES  NO  
 If yes, describe the type, amount and method of application: \_\_\_\_\_
8. Has the site ever been used for the disposal of solid or hazardous wastes?  
 YES  NO  UNKNOWN If yes, explain fully on a separate sheet.
9. If an industrial use is proposed for the site, describe the product and the manufacturing process involved:  
N/A
10. Will any hazardous or toxic substances or waste be stored or generated on site?  
 YES  NO  N/A  
 a. If yes, identify the substance, amount and method of storage or disposal: \_\_\_\_\_
11. Will project routinely project odors more than 1 hour/day?  YES  NO
12. Will project produce operating noise exceeding the local ambient noise levels?  YES  NO  
 If yes, source of noise: \_\_\_\_\_

**ECONOMICAL IMPACTS:** Completed for all commercial/industrial projects and residential projects greater than 10 units. (If not applicable, check here and go to Section M)  N/A

1. Does project involved Local, State or Federal funding?  YES  NO
2. If single phase project  
 anticipated period of construction 24 months, (including demolition)
3. If multi-phased: N/A  
 a. Total number of phases anticipated: \_\_\_\_\_  
 b. Expected date of commencement phase 1 (including demolition): \_\_\_\_\_  
 c. Approximate completion date of final phase: \_\_\_\_\_ month \_\_\_\_\_ year.  
 d. Is phase 1 functionally dependent on subsequent phases?  YES  NO
4. Number of jobs generated during construction 60 After project is complete 25
5. Number of jobs eliminated by this project: 0
6. What are the current tax revenues generated by the project site? 162,000 dollars
7. What tax revenues will project generate after completion? 162,000 dollars
8. What is the estimated cost of construction? 12.5 Million dollars
9. How many schoolchildren is the project expected to generate? \_\_\_\_\_  N/A
10. What is the estimated cost of educating the school-age children generated by the completion of this project? \_\_\_\_\_  N/A

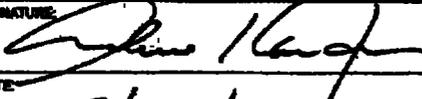
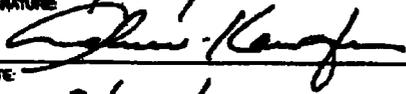
M. APPROVALS REQUIRED:		TYPE	SUBMITTAL DATE
Town Board	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		
Town Planning Board	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
Town Zoning Board	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
Town; Environmental Protection	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
Town; Building Department	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
Country Health Department	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
Local Agencies	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
State Agencies	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
Federal Agencies	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	STB	March 2008
Other Agencies	<input type="checkbox"/> YES <input type="checkbox"/> NO		

N. **ADDITIONAL INFORMATION:**

Attach any additional information as may be needed to clarify your project. If there are or may be any adverse impacts associated with your proposal, please discuss such impacts and the measures which you propose to mitigate or avoid them.

O. **VERIFICATION:**

I certify that the information provided above is true to the best of my knowledge.

1. NAME OF APPLICANT/SPONSOR: Sills Road Realty LLC	2. SIGNATURE: 
3. TITLE: President	4. DATE: 3/22/2010
5. NAME OF OWNER: Sills Road Realty LLC	6. SIGNATURE: 
7. TITLE: President	8. DATE: 3/22/2010

Note: *If the action is in the Coastal Area and you are a state agency, complete the Coastal Assessment Form before proceeding with the assessment.*

**Exhibit 9 U S Rail's Stipulation of Settlement with the Town of Brookhaven**

LAW OFFICES  
**JOHN D. HEFFNER, PLLC**  
1750 K STREET, N.W.  
SUITE 200  
WASHINGTON, D.C. 20006  
PH: (202) 296-3333  
FAX: (202) 296-3939

ENTERED  
Office of Proceedings  
APR 26 2010  
Part of  
Public Record

April 26, 2010

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

VIA ELECTRONIC FILING

Re: STB Finance Docket No. 35141  
U S Rail Corporation -- Construction and Operation Exemption --  
Brookhaven Rail Terminal

226895

And

STB Finance Docket No. 35036  
Suffolk & Southern Rail Road LLC-Lease and Operation Exemption-Sills  
Road Realty, LLC

226894

Dear Ms. Brown,

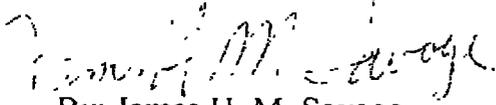
Please accept this letter supplementing the joint letter petition filed April 23, 2010 in behalf of U S Rail Corporation ("U S Rail") and the Town of Brookhaven ("Brookhaven" or "the Town") to provide the Stipulation of Settlement ("So Ordered Stipulation") entered April 22, 2010 in the U S District Court for the Eastern District of New York which document operates as the parties' agreement to resolve the Brookhaven Rail Terminal litigation. The parties submit same as an exhibit in support of their joint petition to vacate the Cease and Desist Order imposed by the Board's October 12, 2007 Decision in the related matter of Suffolk

& Southern Rail Road LLC-Lease and Operation Exemption-Sills Road Realty, LLC, STB Finance Docket No. 35036.

Mark Cuthbertson, attorney for the Town of Brookhaven has reviewed this letter and has approved its contents.

We thank the Board for its time and consideration.

Very truly yours,  
John D. Heffner, PLLC

  
By: James H. M. Savage  
Of counsel

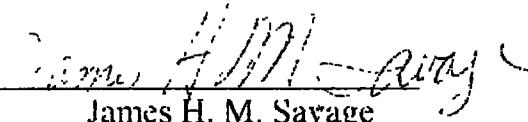
Attorneys for Petitioner  
U S Rail Corporation

Att.

cc: Mark D. Cuthbertson (via electronic mail w/att.)  
Robert Ryback (via First Class mail w/att.)  
Thomas Stilling (via electronic mail w/att.)

CERTIFICATION OF SERVICE

I, James H. M. Savage, an attorney-at-law of the District of Columbia, certify that I have served this day by electronic mail a true copy of the within pleading upon counsel for the Town of Brookhaven and by first class mail upon the New York State Department of Transportation.

  
James H. M. Savage

Dated: April 27, 2010

DF

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
SILLS ROAD REALTY, LLC, U S RAIL CORPORATION,  
WATRAL BROTHERS, INC., PRATT BROTHERS, INC.,  
ADJO CONTRACTING CORP. and  
SUFFOLK & SOUTHERN RAIL ROAD LLC,

Plaintiffs,

v.

THE TOWN OF BROOKHAVEN,

Defendant.

**SO-ORDERED  
STIPULATION**

**Index No. 07 CV 4584  
(TCP) (ETB)**

-----x  
**WHEREAS**, Plaintiffs, Sils Road Realty, LLC ("SRR"), U S Rail Corporation ("U.S. Rail"), Watral Brothers, Inc., Pratt Brothers, Inc., ADJO Contracting Corp., and Suffolk & Southern Rail Road LLC (collectively "Plaintiffs"), commenced this action seeking declaratory relief declaring that defendant the Town of Brookhaven, ("Town" or "Defendant") is pre-empted by federal law from interfering with the construction and operation of a rail terminal located on Sils Road in Yaphank, New York (hereinafter "Project" or "Rail Terminal") on a 28 acre property owned by SRR ("Property"). Plaintiffs also sought declaratory and injunctive relief against Defendant to prohibit it from: (i) prosecuting appearance tickets issued by Defendant to Plaintiffs (the "Appearance Tickets") and declaring the Appearance Tickets to be null and void; and (ii) taking any other action that interferes with Plaintiffs' construction or operation of the Rail Terminal. Plaintiffs also sought damages from the Town pursuant to 42 U.S.C. §§

1983 and 1985 for violations of their civil rights and seek damages for malicious prosecution under the Court's supplemental jurisdiction; and

**WHEREAS**, Plaintiffs filed an application, brought on by Order To Show Cause, seeking to preliminarily enjoin Defendant from: (i) taking any action to prosecute the Appearance Tickets issued by the Defendant on October 4, 2007, against the Plaintiffs in connection with the construction and operation of the Rail Terminal, (ii) issuing any additional Appearance Tickets to Plaintiffs in connection with the construction and operation of the Rail Terminal; and (iii) taking any other action to interfere with or obstruct the construction and operation of the Rail Terminal; and

**WHEREAS**, an evidentiary hearing was held on Plaintiff's motion for a preliminary injunction on December 5-6, 2007 before Magistrate Judge E. Thomas Boyle; and

**WHEREAS**, after consideration of post-hearing submissions by the parties, Magistrate Judge E. Thomas Boyle issued a Report and Recommendations ("R&R") dated July 18, 2008, in which he recommended that Plaintiffs' motion for a preliminary injunction be denied; and

**WHEREAS**, Plaintiffs filed objections to the R&R and Defendant filed opposition to Plaintiffs' objections; and

**WHEREAS**, the Plaintiffs and Defendant (collectively, the "Parties") are in receipt of a decision, dated June 30, 2009, from United States District Judge Thomas C. Platt adopting the R&R and denying the Plaintiffs' request for preliminary injunctive relief; and

**WHEREAS**, the Town has taken an adversarial posture with respect to a petition (“Petition”) submitted by US Rail to the United States Surface Transportation Board (“STB”) for Exemption under the 49 U.S.C. 10502 from the requirements of 49 U.S.C. 10901, which Petition is currently pending under Finance Docket No. 35141( the “STB Proceeding”); and

**WHEREAS** the Parties, based on the terms set forth below, desire to settle the above-captioned matter that is pending in the United States District Court for the Eastern District and to have the Town withdraw its objections to, and resolve all disputes regarding, the STB Proceeding and to resolve all local proceedings;

**NOW THEREFORE**, in consideration of the mutual promises and undertakings contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties, hereto, wishing to settle the above captioned matter and resolve all disputes relating to the STB Proceeding and the local proceedings, intending to be legally bound, hereby agree as follows:

1. Without prejudicing any arguments previously advanced and/or pleaded by the Parties and reserving same, the Parties agree that the purposes of this Stipulation are to further the Town’s objective to have the Project designed and constructed consistent with the Reference Site Plan and the Applicable Standards, each as defined in paragraph 2 below, and to further the Plaintiffs’ objective to construct and operate the Project and the terms of this Stipulation shall be construed henceforth to effectuate these purposes.

2. The Parties agree that the Project will be constructed consistent with the site plan (the “Reference Site Plan”) set forth in Attachment A, the Applicable Standards

and the other requirements of this Stipulation. For the purposes of this Stipulation, "Applicable Standards" means (i) those provisions of the Town Code of the Town of Brookhaven and the Code of Suffolk County set forth in the Reference Site Plan and (ii) all applicable federal standards. In the event of any conflict between or among the Reference Site Plan, the Applicable Standards or the other requirements of this Stipulation, the Reference Site Plan shall control. The Parties further agree that this Stipulation shall constitute full site plan review and approval of the Reference Site Plan for all purposes of New York State and local law. No additional approval of the Town or any agency or department thereof shall be required to construct or operate the Project as contemplated by the Reference Site Plan unless, as set forth in paragraph 10 below, the Project is found not to be subject to STB jurisdiction. The Plaintiffs will engage the services of Sidney B. Bowne & Son, LLP ("Bowne"), 235 East Jericho Turnpike, Mineola, New York 11501 or other firm of licensed professional engineers chosen by the Plaintiffs (together with Bowne, the "Engineers") to prepare and provide to the Town (a) during construction, engineering drawings relating to construction of the various phases of the Project prior to commencing construction of each such phase and (b) upon completion of construction, record plans for the Project. The Engineers will also prepare and provide to the Town (a) during construction, bi-monthly documentation to evidence the fact that the Engineers have inspected the Project and its certification that all site improvements on the Property covered in such report are in accordance with the Reference Site Plan and the Applicable Standards and (b) upon completion of construction, written certification that all site improvements constructed on the Property are in accordance with the Reference Site Plan and the Applicable Standards, including,

but not limited to, the setback and vegetation requirements set forth in the Reference Site Plan. The Engineers' costs and expenses in providing such services shall be paid for by the Plaintiffs.

3. In addition to Applicable Standards, the Project will be constructed consistent with Suffolk County Department of Public Works standards, if any, with respect to the re-grading of any County rights of way adjoining the Property, installation of retaining wall footings within such rights of way, installation and/or modification of the existing traffic signal and the granting of reasonable easements for future traffic signal maintenance.

4. To assist the Town in its construction of public improvements, the Plaintiffs, other than US Rail, shall collectively pay to the Town the sum of One Million & 00/100 (\$1,000,000.00) Dollars, payable in one installment of Two Hundred Thousand & 00/100 Dollars (\$200,000.00) payable on March 1, 2011 and in nine installments of Eighty-eight Thousand, Eight Hundred, Eighty-eight and 00/100 Dollars (\$88,888.88), payable on each January 1 thereafter, to pay a portion of the cost of such improvements.

5. The Project must comply in all regards with whatever mitigation and/or conditions are imposed by the STB inclusive of any mitigation and/or conditions resulting from any NEPA review in the STB Proceeding.

6. Plaintiffs agree that in the event the Project receives STB approval, operations at the Property shall not include the collection, sorting, separation, processing (including, but not limited to, baling, crushing, compacting and shredding), incineration, treatment, management, disposal, transport or transfer of solid waste and construction and demolition debris unless required under federal law or regulations. The term solid waste

shall mean "solid waste" as defined in Section 1004 of the Solid Waste Disposal Act, 42 USC 6903. Plaintiffs warrant and represent that neither they nor any of their respective affiliates, subsidiaries, successors or assigns shall make any application for permits to allow the activities prohibited by this paragraph, including but not limited to an application for a land-use exemption under 49 U.S.C. 10908 and 10909, and shall not petition or otherwise apply to the STB to have the Project or Property declared to be a solid waste rail transfer facility, without the prior consent of the Town. To the extent any of the foregoing is required under federal law and regulation, and further to the extent legally permissible, Plaintiffs, shall pay to the Town a fee in the amounts set forth on Attachment B for each ton of daily landfill cover, construction and demolition debris and incinerator ash ("Commodities") transported from the Property. Within five business days following the end of each calendar month after commencement of rail operations at the Property, Plaintiffs shall provide the Town with copies, certified, under penalty of perjury, as accurate and complete by an authorized officer of US Rail, of all records relating to shipments, if any, of Commodities during the preceding month, including records of the rail cars and or containers in which such Commodities were shipped. The Town shall have the right to periodically, but no more than quarterly or such shorter interval, but not less than 60 days, as the Town may determine, review US Rail's records regarding shipments of Commodities to determine the tonnage thereof being shipped. Every ninety (90) days the parties shall reconcile the amounts of Commodities shipped in the preceding ninety (90) days, and Plaintiffs shall pay semiannually, on each January 1 and July 1, any fee then due to the Town.

7. To secure the payment obligations under Paragraph 6, Plaintiffs shall, within thirty (30) days of the commencement of rail terminal operations at the Property, furnish a security bond or, if such Plaintiffs are unable to secure such bond, a letter of credit in the amount of: (a) for the first year of commercial operation, One Million Dollars (\$1,000,000.00) and (b), for each subsequent year, the greater of (i) One Million Dollars (\$1,000,000) and (ii) one hundred ten percent (110%) of the aggregate fees payable to the Town under Paragraph 6 above for the preceding year (the "Surety"), and shall thereafter maintain the same in full force and effect. Upon any breach of such Plaintiffs' payment obligations, the Town shall have the right to make a claim against the Surety. Once such a claim is made, such Plaintiffs shall increase the amount of the Surety as required by the Town, to a maximum of Three Million (\$3,000,000.00) Dollars in the aggregate.

8. Upon execution of this Stipulation, the Town will (i) move to dismiss all outstanding Appearance Tickets with prejudice, (ii) withdraw all existing "stop work" orders relating to the Property, (iii) permit Plaintiffs, subject to the prior approval of the New York State Department of Environmental Conservation and amending of the October 12, 2007 STB Cease and Desist Order to permit the resumption of pre-construction activity including excavation and grading as well as non-rail site work, consistent with the requirements of the phasing plan with accompanying milestone / deliverable list attached hereto as Attachment E and (iv) execute and deliver a letter, in the form of Attachment F hereto, to the STB withdrawing the Town's opposition to the Project and requesting expedited consideration by the STB of the Petition.

9. Upon execution of this Stipulation, the Town will commence and diligently pursue appropriate proceedings to abandon all of its right, title and interest in and to all mapped streets lying within the boundaries of the Property and consent to the grading, in accordance with the Reference Site Plan, of the mapped street known as Bellport Avenue adjoining the Property, to the extent that such grading is legally permissible.

10. Simultaneous with the execution of this Stipulation, Plaintiffs will execute and deliver the covenants and restrictions with respect to the setbacks and vegetation requirements reflected in the Reference Site Plan and the commitments set forth in paragraph 6 above attached hereto as Attachment C and Plaintiffs and Defendant will execute and deliver the mutual releases attached hereto as Attachment D.

11. In the event of a final, unappealable determination in the STB Proceeding that the Project is not subject to STB jurisdiction, the Plaintiffs acknowledge that construction of the Project will be subject to all applicable State and local rules and regulations.

12. "Effective Date" of this Stipulation is hereby defined as the date Defendant's attorney notifies counsel for Plaintiffs that Defendant has authorized its counsel, by Town Board resolution or other action, to execute this Stipulation of Settlement and the attached Stipulation of Discontinuance.

13. All notices hereunder shall be transmitted via facsimile to the fax numbers designated below for each counsel and additionally shall be transmitted by first class mail to each counsel.

14. The Court shall retain jurisdiction to resolve any dispute under this Stipulation and to enforce any of the provisions herein.

15. This Stipulation may not be changed or modified except by the execution of a writing signed by all of the Parties.

16. This Stipulation is intended to, and shall, bind and inure to the benefit of the Plaintiffs, Defendants and their respective successors, assigns, heirs and legal representatives.

17. All counsel represent that they are authorized to enter into this Stipulation on behalf of the clients for whom they have appeared, and to bind such parties to the provisions hereof, subject only to the terms hereof.

18. This Stipulation may be executed in counterparts and by facsimile, and shall be binding upon all Parties and their counsel when so executed, provided that any Party or counsel executing a copy hereof by facsimile agrees to provide all others with duplicate original counterparts within three (3) business days thereafter.

19. This Stipulation constitutes the entire agreement and understanding between the Parties with respect to the matters contained herein, and there are no prior oral or written promises, representations, warranties, conditions, provisions, or terms related thereto other than those set forth in this Stipulation. The Parties further represent and acknowledge that, in entering into this Stipulation; they do not rely upon and have not relied upon any representations or statements (beyond those contained in this Stipulation).

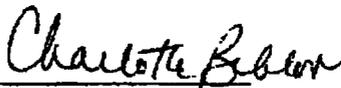
20. This Stipulation shall be construed in accordance with the laws of the State of New York without regard to its conflicts of laws principles.

21. This Stipulation is a compromise of disputed claims and has been entered into to avoid the time, expense, uncertainty, and inconvenience of contested litigation. This Stipulation does not constitute an adjudication or finding on the merits of any of the Parties' allegations.

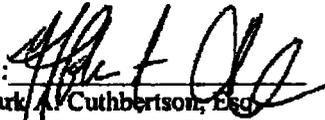
22. The Parties hereto participated jointly in the preparation of this Stipulation and each Party has had the opportunity to review, comment upon and redraft this Stipulation. Accordingly, it is agreed that no rule of construction shall apply against any Party or in favor of any Party and any uncertainty and ambiguity shall not be interpreted against any Party in favor of the other.

23. The Parties shall cooperate to effectuate the purposes of this Stipulation and shall execute reasonable and customary documents and take reasonable and customary actions that may be necessary or appropriate to give full force and effect to the terms of this Stipulation.

FARRELL FRITZ, P.C.

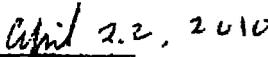
By:   
Charlotte A. Biblow, Esq.  
Aaron E. Zerykier, Esq.  
*Attorneys for Plaintiffs*  
1320 RexCorp Plaza  
Uniondale, NY 11556-1320  
Tel: (516) 227-0700  
Fax: (516) 227-0777  
[chiblow@farrellfritz.com](mailto:chiblow@farrellfritz.com)  
[azerykier@farrellfritz.com](mailto:azerykier@farrellfritz.com)

LAW OFFICES OF MARK CUTHBERTSON

By:   
Mark A. Cuthbertson, Esq.  
Jessica P. Driscoll, Esq.  
*Attorneys for Defendant*  
434 New York Avenue  
Huntington, NY 11743  
Tel: (631) 351-3501  
Fax: (631) 614-4314  
[mcuthbertson@cuthbertsonlaw.com](mailto:mcuthbertson@cuthbertsonlaw.com)  
[jdricoll@cuthbertsonlaw.com](mailto:jdricoll@cuthbertsonlaw.com)

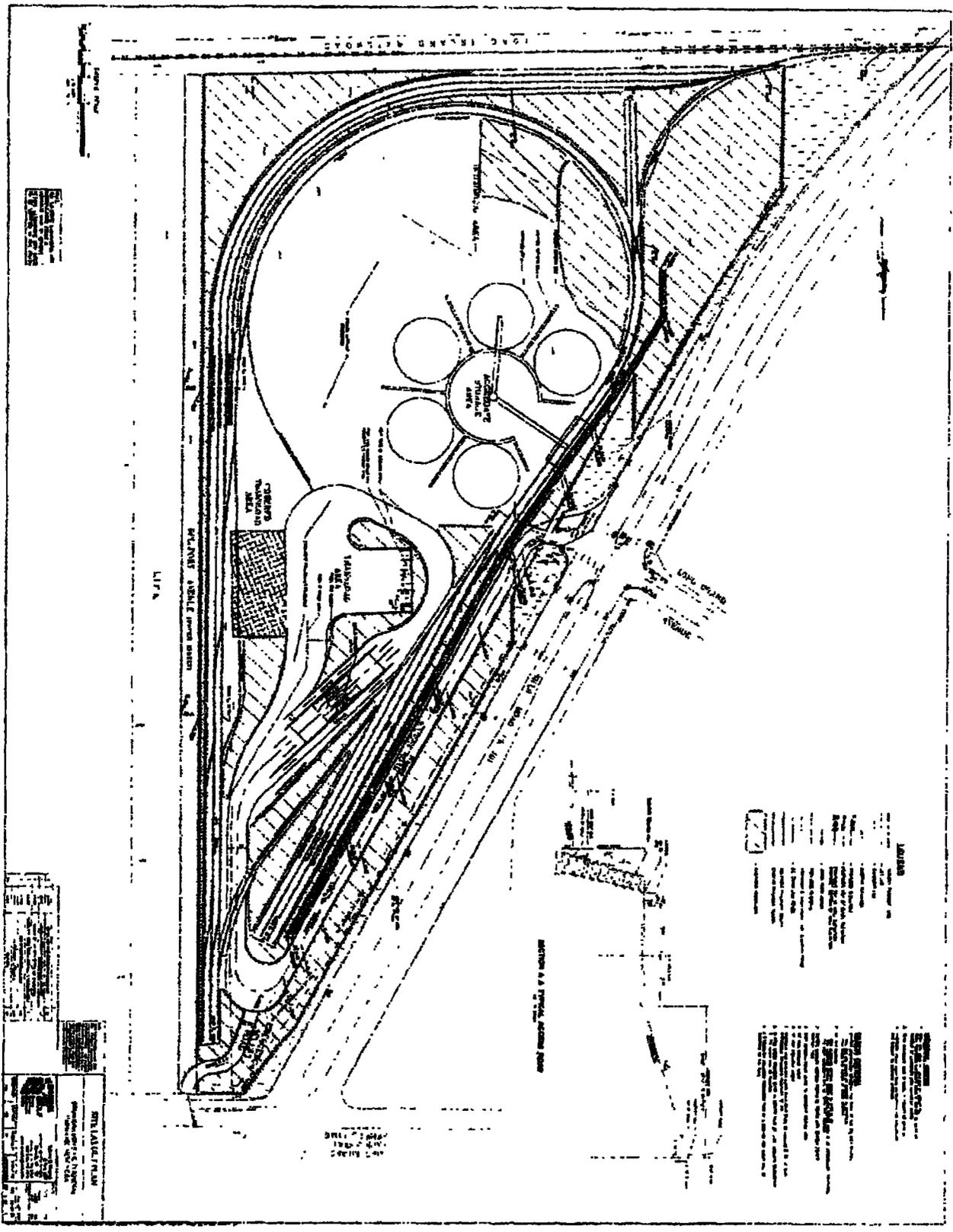
SO-ORDERED:

Hon. Thomas C. Platt  
United States District Judge

  
Date April 22, 2010

**ATTACHMENT A**

**Reference Site Plan**



**ATTACHMENT B**

**Processed or Unprocessed Daily Landfill Cover**

**Surcharge/Ton  
\$ 7.60**

**Construction and Demolition Debris  
(C&D)**

**Surcharge/Ton  
\$17.84**

**Resource Recovery Facility and/or Incinerator Residue (Ash)  
Surcharge/Ton  
\$19.60**

**DECLARATION OF COVENANTS AND RESTRICTIONS**

THIS DECLARATION, made this \_\_\_ day of April, 2010, by SILLS ROAD REALTY, LLC, a New York limited liability company with offices located at 485 Underhill Boulevard, Suite 203, Syosset, New York (hereinafter referred to as the "DECLARANT").

**WITNESSETH**

**WHEREAS**, DECLARANT and the Town of Brookhaven entered into the So-Ordered Stipulation, Index No. 07 CV 4584 (TCP) (ETB), ("Stipulation");

**WHEREAS**, the Town Board of Town of Brookhaven, pursuant to the Stipulation, has agreed not to interfere with the construction and operation of a rail terminal located at Sills Road in Yaphank, New York on a 28 acre property now owned by the DECLARANT (the "Property"), subject to the filing of certain covenants and restrictions upon the subject property by the DECLARANT; and

**WHEREAS**, the Property is identified on the Suffolk County Tax Map as Section 663.00, Block 03.00, Lots 01.000, 27.001 to 27.004; Section 704, Block 04.00, Lots 001.00 and 002.00; Section 704, Block 05.00, Lots 001.00 and 002.00; and Section 704, Block 02.00; Lots 002.000, 001.001, 030.000 to 036.000 and is more particularly described as set forth in Exhibit "A" attached hereto.

1. Operations at the Property shall not include the collection, sorting, separation, processing (including, but not limited to, baling, crushing, compacting and shredding), incineration, treatment, management, disposal, transport or transfer of solid waste and construction and demolition debris unless required under federal law or regulations. The term solid waste shall mean "solid waste" as defined in

Section 1004 of the Solid Waste Disposal Act, 42 USC 6903. In addition, no application shall be made for permits to allow the aforementioned prohibited activities, including but not limited to an application for a land-use exemption under 49 U.S.C. 10908 and 10909, nor shall DECLARANT or any of its affiliates, subsidiaries, successors or assigns petition or otherwise apply to the Surface Transportation Board of the United States of America to have the Property declared to be a solid waste transfer facility, without the prior consent of the Town of Brookhaven. To the extent any of the foregoing is required under federal law and regulation, and further to the extent legally permissible, DECLARANT shall pay to the Town a fee in the amounts set forth on Exhibit "B" for each ton of daily landfill cover, construction and demolition debris and incinerator ash transported from the Property. Within five business days following the end of each calendar month after commencement of rail operations at the Property, Plaintiffs shall provide the Town with copies, certified, under penalty of perjury, as accurate and complete by an authorized officer of US Rail, of all records relating to shipments, if any, of Commodities during the preceding month, including records of the rail cars and or containers in which such Commodities were shipped. The Town shall have the right to periodically, but no more than quarterly, review US Rail's records regarding shipments of construction and demolition debris and incinerator ash to determine the tonnage of such materials being shipped. Every ninety (90) days the parties shall reconcile the amounts of Commodities shipped in the preceding ninety (90) days, and

Plaintiffs shall pay semiannually, on each January 1 and July 1, any fee then due to the Town.

2. DECLARANT, its successors and assigns shall maintain the setbacks and landscape coverage set forth in the Site Plan annexed hereto as Exhibit "C", including a landscape area of 367,216 square feet on the Property, which is an amount equal to thirty (30%) percent of the total square footage of 1,223,205 square feet.
3. The Property described in Exhibit "A" shall hereinafter and forever be held, sold and conveyed subject to the covenants and restrictions recited herein which shall run with the land and shall be binding upon the DECLARANT, its successors and assigns and shall inure to the benefit of, and be enforceable by the Town of Brookhaven.
4. If any one or more of the provisions of this Declaration shall be deemed or declared to be invalid or otherwise unenforceable, such determination shall in no manner affect the validity of the remaining provisions hereof and those remaining provisions shall remain in full force and effect.
5. The failure to enforce any of the provisions hereof shall not be deemed a waiver of the right to do so as to any continuing or subsequent violation.
6. If the DECLARANT its heirs, successors, or assignees shall violate or attempt to violate any of the covenants herein, it shall be lawful for the Town of Brookhaven to prosecute any proceedings at law or in equity against the persons or entities violating or attempting to violate any such covenants either to prevent said

violation and/or to recover damages or other relief for such violation.

**IN WITNESS WHEREOF**, the DECLARANT above-named has executed the foregoing Declaration the day and year first above written.

**SILLS ROAD REALTY, LLC**, a New York  
limited liability company

By: Suffolk & Southern Railroad LLC,  
its Managing Member

By: \_\_\_\_\_  
Name: Andrew Kaufman  
Title: President

STATE OF NEW YORK    )  
                                  ) ss.:  
COUNTY OF SUFFOLK    )

On the \_\_\_ day of April in the year 2010 before me, the undersigned, personally appeared Andrew Kaufman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**EXHIBIT A**

ALL that certain plot, piece or parcel of land, situate, lying and being at Yaphank, Town of Brookhaven, County of Suffolk and State of New York bounded and described as follows:

BEGINNING at a point on the southerly side of Long Island Expressway (New York State Route 495; south service road) where same is intersected by the southeasterly side of Sills Road

RUNNING THENCE along the southerly side of said Long Island Expressway the following two (2) courses and distances:

- (1) North 84 degrees 06 minutes 52 seconds East, 71.07 feet;
- (2) Along the arc of a curve bearing to the left having a radius of 1030.00 feet a distance of 16.15 feet to the westerly side of Bellport Avenue (not open);

THENCE along the westerly side of Bellport Avenue South 05 degrees 50 minutes 33 seconds East, 1931.62 feet to the northerly side of land of the Long Island Rail Road;

THENCE along said last mentioned land, South 82 degrees 58 minutes 07 seconds West, 1079.92 feet;

THENCE North 05 degrees 10 minutes 04 seconds West, 245.33 feet to the southeasterly side of Sills Road;

THENCE along said last mentioned road the following two (2) courses and distances:

- (1) Along the arc of a curve bearing to the left having a radius of 2939.79 feet a distance of 330.72 feet;
- (2) North 23 degrees 04 minutes 16 seconds East, 198.72 feet;

THENCE South 05 degrees 32 minutes 19 seconds East, 104.42 feet to a Right of Way taking line;

THENCE North 23 degrees 04 minutes 16 seconds East, 336.66 feet to a monument found;

THENCE South 77 degrees 04 minutes 31 seconds East, 39.81 feet;

THENCE North 23 degrees 04 minutes 16 seconds East, 74.82 feet;

THENCE North 89 degrees 52 minutes 37 seconds West, 15.06 feet;

THENCE North 05 degrees 33 minutes 18 seconds West, 156.55 feet to the southeasterly side

of Sills Road;

**THENCE** along the southeasterly side of Sills Road the following two (2) courses and distances:

- (1) North 23 degrees 04 minutes 16 seconds East, 836.37 feet;  
Along the arc of a curve bearing to the left having a radius of 982.00 feet a distance of 151.99 feet to the southerly side of the Long Island Expressway at the point or place of

**BEGINNING.**

**EXHIBIT B**

**Processed or Unprocessed Daily Landfill Cover**

**Surcharge/Ton  
\$ 7.60**

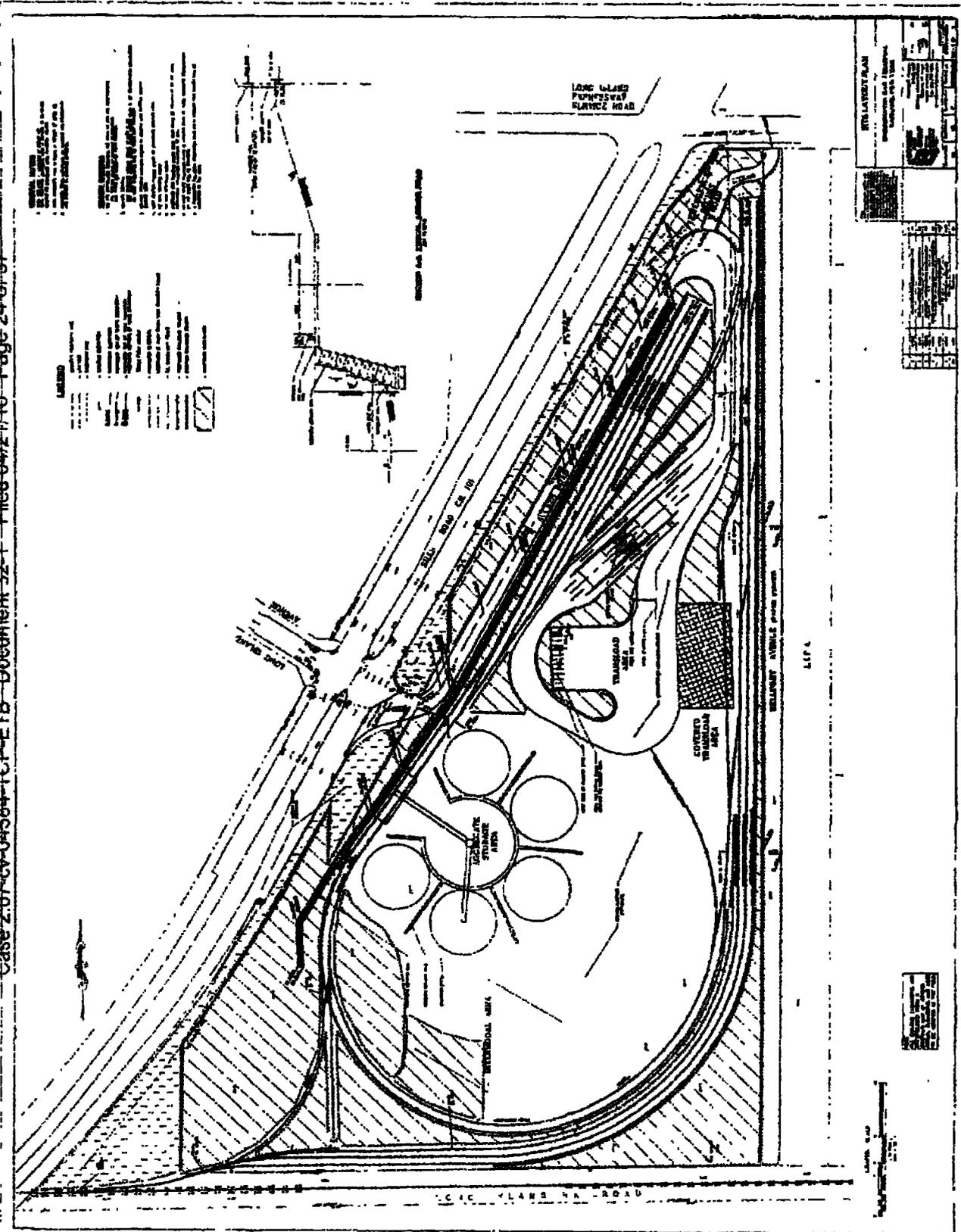
**Construction and Demolition Debris  
(C&D)**

**Surcharge/Ton  
\$17.84**

**Resource Recovery Facility and/or Incinerator Residue (Ash)  
Surcharge/Ton  
\$19.60**

**EXHIBIT C**

Case 2:07-cv-04584-TCP-ETB Document 32-1 Filed 04/21/10 Page 24 of 37



**ATTACHMENT D**

**Form of Releases**

***TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY  
CONCERN,***

***KNOW THAT***

**SILLS ROAD REALTY, LLC, U S RAIL CORPORATION,  
WATRAL BROTHERS, INC., PRATT BROTHERS, INC.,  
ADJO CONTRACTING CORP. and  
SUFFOLK & SOUTHERN RAIL ROAD LLC,**

**as**

**RELEASORS,**

in consideration of the sum of ten dollar(s) (\$10.00), and other good and valuable  
consideration,  
received from

**THE TOWN OF BROOKHAVEN**

**as**

**RELEASEE,**

receipt whereof is hereby acknowledged, releases and discharges

the RELEASEE, RELEASEE'S heirs, executors, administrators, successors and assigns from  
all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds,  
bills, specialties, covenants, contracts, controversies, agreements, promises, variances,  
trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in  
law, admiralty or equity, which against the RELEASEE, the RELEASORS, RELEASORS'  
heirs, executors, administrators, successors and assigns ever had, now have or hereafter can,  
shall or may, have for, upon, or by reason of any matter, cause or thing whatsoever from the  
beginning of the world to the day of the date of this RELEASE.

The words "RELEASOR" and "RELEASEE" include all releasors and all releasees  
under this RELEASE.

This RELEASE may not be changed orally.

**[SIGNATURE PAGE TO FOLLOW]**

*In Witness Whereof*, each RELEASOR has hereunto set their hand and seal on the \_\_\_\_\_ day of March, 2010.

**SILLS ROAD REALTY, LLC**, New York  
limited liability company

By: Suffolk & Southern Railroad LLC,  
its Managing Member

By: \_\_\_\_\_  
Name: Andrew Kaufman  
Title: President

**U S RAIL CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**WATRAL BROTHERS, INC.**

By: \_\_\_\_\_  
Name:  
Title

**PRATT BROTHERS, INC.,**

By: \_\_\_\_\_  
Name:  
Title

**ADJO CONTRACTING CORP.**

By: \_\_\_\_\_

Name:  
Title

**SUFFOLK & SOUTHERN RAIL ROAD**

**LLC,**

By: \_\_\_\_\_  
Name:  
Title

State of New York )  
 ) ss.:  
County of )

On March \_\_\_ 2010 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

State of New York )  
 ) ss.:  
County of )

On March \_\_\_ 2010 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

State of New York )  
 ) ss.:

County of \_\_\_\_\_ )

On March \_\_\_ 2010 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

State of New York )  
 ) ss.:  
County of \_\_\_\_\_ )

On March \_\_\_ 2010 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

State of New York )  
 ) ss.:  
County of \_\_\_\_\_ )

On March \_\_\_ 2010 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public



**TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY  
CONCERN,  
KNOW THAT**

**THE TOWN OF BROOKHAVEN**

as

**RELEASORS,**

in consideration of the sum of ten dollar(s) (\$10.00), and other good and valuable consideration,  
received from

**SILLS ROAD REALTY, LLC, U S RAIL CORPORATION,  
WATRAL BROTHERS, INC., PRATT BROTHERS, INC.,  
ADJO CONTRACTING CORP. and  
SUFFOLK & SOUTHERN RAIL ROAD LLC**

as

**RELEASEES,**

receipt whereof is hereby acknowledged, releases and discharges

the RELEASEES, RELEASEES' heirs, executors, administrators, successors and assigns from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity, which against the RELEASEES, the RELEASOR, RELEASOR'S heirs, executors, administrators, successors and assigns ever had, now have or hereafter can, shall or may, have for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of this RELEASE.

The words "RELEASOR" and "RELEASEE" include all releasors and all releasees under this RELEASE.

This RELEASE may not be changed orally.

**[SIGNATURE PAGE TO FOLLOW]**



## **ATTACHMENT E**

### **Phasing Plan**

#### **PHASE I:**

- Prior to the start of any "pre-construction" excavation or any site work, any and all Cease and Desist Orders issued by the Surface Transportation Board ("STB") must be amended to permit the resumption of pre-construction activity including excavation and grading as well as non-rail site work. A copy of such decision or amendment shall be provided to the Town before any pre-construction, excavation or related site work occurs.
- The STB has previously determined that non-rail construction and preliminary site work are within the regulatory purview of the Town. Prior to the start of the "pre-construction" site work ("Work") outlined in the attached phasing plan ("Phasing Plan"), Sills Road Realty shall obtain approval from NYSDEC as required by Paragraph 8 of the proposed Stipulation of Settlement ("Stipulation Agreement").
- Upon receipt by the Town of Brookhaven ("Town") of the STB decision or amendment lifting all Cease and Desist Orders and approval from NYSDEC the Town shall issue a Notice to Commence Work in accordance with the terms and conditions set forth in the Stipulation Agreement.
- Sills Road Realty shall continue to cooperate with, and provide all requested assistance to, the Surface Transportation Board's Section of Environmental Analysis ("SEA") in SEA's completion of an Environmental Analysis ("EA") of the project.
- Within 60 calendar days of commencement of the Work, Sills Road Realty shall have delivered on site railroad ties, ballast stone and track required to complete site track construction relating to Phase I of the Phasing Plan and 50% of the required railroad ties and track required for Phase II of the Phasing Plan. The Project Engineer, Sidney B. Bowne & Son, LLP ("Bowne") shall inventory and confirm in writing to the Town, within 10 days after final delivery of above specified material, that all required material has been delivered to the Project Site.
- Prior to the start of the Work, Sills Road Realty shall provide the Town with a copy of the engineering retainer agreement with Bowne. The retainer agreement shall reflect the services that are contemplated in Paragraph 2 of the Stipulation Agreement.

- Within 60 calendar days of execution of the Stipulation Agreement, Sills Road Realty shall through its engineer, Bowne, submit 60% complete site grading and drainage drawings, which will represent not less than 25% of the complete engineering drawings related to the construction of the project.
- Within 90 calendar days of the execution of the Stipulation Agreement, SEA shall issue the proposed EA for public comment ("Comment Period"). In the event that the SEA fails to issue the EA for public comment, all work shall immediately cease until such time that the SEA issues the proposed EA for public comment.
- Under Phase I, Sills Road Realty is permitted to excavate up to 75,852 cubic yard of material in compliance with the Phasing Plan. In the event that Sills Road Realty fails to meet any of the above dates for the deliverables all work shall immediately cease until such time that compliance is achieved.

**PHASE II:**

- All items listed in Phase I must be completed to the Town's satisfaction prior to commencement of Phase II.
- The STB must issue a decision accepting and / or adopting the EA and SEA's conditions prior to the commencement of Phase II.
- Within 60 calendar days of commencement of Phase II work, Sills Road Realty shall have delivered on site the remaining balance of railroad ties and track required to complete site track construction relating to Phase II of the Phasing Plan. The Project Engineer, Bowne, shall inventory and confirm in writing to the Town, within 10 days after final delivery of the above specified material, that all required material has been delivered to the Project Site.
- Sills Road Realty must provide the Town with satisfactory proof of compliance with all SEA conditions, in any, applicable to the project which can be reasonably complied with during Phase II of the Phasing Plan prior to resuming any excavation or site work.
- Provided the above conditions are met, the Work may continue whereby Sills Road Realty shall be permitted to excavate up to an additional 91,852 cubic yard of material in compliance with the Phasing Plan.
- During Phase II, construction of precast concrete open-faced retaining walls backfilled with earth and planted with drought-resistant plantings, as shown on the Site Plan, shall commence and continue to the extent practicable in light of the requirements of the Phasing Plan and sound engineering practices.

**PHASE III:**

- No further Work shall occur until such time as the Surface Transportation Board has issued its decision to permit construction of the project.
- Upon such approval, all work to complete the project may resume in compliance with the Reference Site Plan set forth in the Stipulation Agreement.

**ATTACHMENT F**

**Form of STB Letter**



**Town of Brookhaven  
Long Island**

26757

Mark Lesko, Supervisor

ENTERED  
Office of Proceedings

APR 05 2010

Part of  
Public Record



March 30, 2010

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

Re: STB Finance Docket No. 35141 U S Rail Corporation -  
Construction and Operation Exemption - Brookhaven Rail Terminal

Dear Ms. Brown,

Pursuant to the settlement agreement concluded between the parties and approved by the Town Board at a public meeting on March 23, 2010, the Town of Brookhaven ("Brookhaven") hereby withdraws its opposition to the Brookhaven Rail Terminal project ("the Project").

Brookhaven joins with Petitioner in respectfully requesting the Board to restore this matter to its active docket, and, in view of the substantial passage of time since the filing of this matter, to afford the proceeding expedited consideration.

Brookhaven believes that the changes to the Project plans incorporated by the Petitioner at the Town's request, as well as the other matters covered by the settlement agreement, adequately address the concerns raised by the Town at an earlier stage of this proceeding.

The Petitioner has made the representations set forth in the following paragraph and if these representations are true the Project will have beneficial impacts.

The Project will have a strong positive economic impact upon the Town. Local jobs will be created on-site. Potentially significant economic synergy exists as a result of the Project's location, ideally situated adjacent to and between the major East-West highway and rail thoroughfares transecting Long Island. Significant reduction in long haul truck traffic of aggregate commodities such as stone will result from the introduction of a suitable capacity

<sup>1</sup> The following pending motions by Brookhaven are hereby being withdrawn: Motion to Compel Discovery, filed October 13, 2009; and, Motion to Strike, filed January 19, 2010.

Office of the Supervisor  
One Independence Hill • Farmingville • NY 11738 • Phone (631) 451-0100 • Fax (631) 451-6677  
www.brookhaven.org

Printed on recycled paper

Page 2

3/30/10

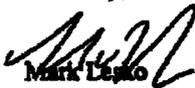
C. Brown

Re: STB Finance Docket No. 35141 U S Rail Corporation -  
Construction and Operation Exemption - Brookhaven Rail Terminal

truck-train transload terminal in Eastern Long Island, more than 60 miles east of the heavily congested highway bridges connecting Long Island to New York, New Jersey and New England. Other local businesses may benefit from the availability of nearby rail freight transportation facilities. Local truck traffic not destined for Brookhaven will have immediate access to the Long Island Expressway and will consequently not have to make extensive use of local roads. The Project site is located in an industrial zone not near to any sensitive receptors such as schools, hospitals, or senior living facilities.

We thank the Board for affording the parties the opportunity to resolve their differences, and in particular thank the mediator, Thomas Stilling, for his assistance in facilitating the amicable resolution of this matter.

Sincerely,

  
Mark Lesko  
Supervisor

cc: Sills Road Realty  
Robert F. Quinlan, Town Attorney