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VIA E-FILING

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

Re: Docket No. FD No. 36398, *Brookhaven Rail LLC – Construction and Operation Exemption – Suffolk County, New York*

Dear Ms. Brown:

This letter is respectfully filed on behalf of the Town of Brookhaven, New York (“Town”) in response to the filing submitted by the Citizens Campaign for the Environment (“CCE”) in this Docket on September 22, 2020. Its purpose is to clarify the Town’s position on the rail construction project proposed by Brookhaven Rail LLC (“BHR”) and described in its Petition for Exemption (identified as 228-acre Parcel D of the Brookhaven Rail Terminal).

The Town respectfully disagrees with the CCE position that the rail construction project proposed by BHR on Parcel D is “inextricably connected and inescapably intertwined” with the proposed solid waste rail transfer facility (“SWRTF”) for which BHR has sought a “land-use exemption” ruling pursuant to 49 U.S.C. §10909. Rather, the construction of railroad tracks and the establishment of rail-served industries on Parcel D of the Brookhaven Rail Terminal, not involving the processing and transloading of solid waste, have been extensively planned for many years. Indeed, BHR’s “Parcel D Conceptual Track Plan” was part of, and an Exhibit B to, the judicially “So Ordered” 2016 Stipulation (previously defined) at ECF Document 133, pp. 25-26, and was thereafter conditionally approved as part of the Town’s 2017 Negative Declaration under New York’s SEQRA Procedures conducted pursuant to the 2016 Stipulation.

The environmental and other impacts of that development have already been extensively studied under the Town’s direction. BHR’s proposed construction for which it seeks approval from the Board appears to carrying out those plans with certain

modifications described in the Petition. These tracks and the planned connection to the tracks of the Long Island Rail Road (“LIRR”) will facilitate the development of Parcel D for rail-served industries regardless of whether the SWRTF is constructed as currently planned. The Town therefore also respectfully disagrees with CCE that the rail lines proposed by BHR are “of no value” unless they connect to the proposed SWRTF¹.

It is the Town’s expectation and understanding that the current environmental review being conducted by the STB’s Office of Environmental Analysis will draw on and incorporate as necessary the mitigation and other provisions of the So-Ordered Stipulation of Settlement entered by the United States District Court for the Eastern District of New York on March 17, 2016; the Voluntary Environmental Impact Statement dated August 2017; and Negative Declaration and Notice of Determination of Significance Finding Negative Declaration dated September 14, 2017, and may impose additional mitigation measures as a result of public participation from the Town and other stakeholders and affected parties.

This proposed rail construction should therefore be evaluated and approved by the Board regardless of the Board’s decision on whether to commence a petition for exemption proceeding in Docket FD No. 36399 to grant BHR a land use exemption from the Town’s zoning law.

The undersigned certifies that a copy of this letter is being served on all parties of record. Please do not hesitate to call me if you have any questions.

Very truly yours,

ROSENBERG CALICA & BIRNEY LLP

By: 
Robert M. Calica
Judah Serfaty

RMC:ds

cc: Counsel and Parties of Record

¹ We emphasize that to the extent the BHR Petition proposes track access to Parcel D by means of a short spur off the LIRR Tracks traversing a small portion (3 acres) of the Town-owned 62-acre Conservation Easement for Open Space located on Parcel D, any such encroachment is expressly contingent upon reaching a formal agreement between the Town and BHR and required State legislative approval for the Town to alienate the current 3 acre Open Space portion, albeit in exchange for an additional grant of Open Space to the Town of Parcel D.