

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
November 24, 2021

BROOKHAVEN RAIL LLC – CONSTRUCTION AND
OPERATION EXEMPTION – SUFFOLK COUNTY,
NEW YORK, AND UNDOCKETED APPLICATION FOR
A LAND-USE EXEMPTION UNDER 49 U.S.C. § 10909

)
)
) Docket No. FD 36398
) Docket No. FD 36399 (~~Sub-No. 1~~)
)
)

U S RAIL CORP. – CONSTRUCTION AND
OPERATION EXEMPTION – BROOKHAVEN
RAIL TERMINAL

)
)
) Docket No. FD 35141
)
)

BROOKHAVEN RAIL TERMINAL AND
BROOKHAVEN RAIL, LLC – PETITION FOR
DECLARATORY ORDER

)
)
) Docket No. FD 35819
)
)

SPECTRUM RR HOLDINGS, LLC – OPERATION
EXEMPTION – RAILROAD LINE IN THE TOWN
OF BROOKHAVEN, NY

)
)
) Docket No. FD 36376
)
)

SILLS ROAD REALTY LLC – ACQUISITION
EXEMPTION – RAILROAD LINE IN THE TOWN
OF BROOKHAVEN, NY

)
)
) Docket No. FD 36384
)
)

SPECTRUM RAILROAD HOLDINGS, LLC –
ACQUISITION AND OPERATION EXEMPTION –
LINE OF SILLS ROAD REALTY LLC, IN THE
TOWN OF BROOKHAVEN, NY

)
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) Docket No. FD 36385
)
)

**PETITION FOR A DECLARATORY ORDER
AND/OR FOR AN ORDER TO SHOW CAUSE AND SUSPEND**

FILED
November 24, 2021
**SURFACE
TRANSPORTATION BOARD**

By:

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November 24, 2021

**SURFACE
TRANSPORTATION BOARD**

Dated: November 23, 2021

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**PETITION FOR A DECLARATORY ORDER
AND/OR FOR AN ORDER TO SHOW CAUSE AND SUSPEND**

Pursuant to 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, the Citizens Campaign for the Environment (“CCE”) respectfully submits this Petition for a Declaratory Order for the Surface Transportation Board (“Board” or “STB”) to issue an order declaring that:

- (1) the rail line construction plans within two of four large, adjacent parcels of land located in Yaphank, Suffolk County, New York, denominated Parcels B and C involve common carrier lines subject to the Board’s jurisdiction under 49 U.S.C. § 10901, including the requirement for prior authorization for the construction along with associated environmental review, and the proposed construction and operation should be treated as a connected project as part of the FD 36398 and the FD 36399 (Sub-No. 1) undocketed Section 10909 application;
- (2) any initiatives by interested parties to construct, acquire, operate, or use such lines, or any new lines on any of the four Parcels denominated Parcels A, B, C, or D (collectively, “Parcels”), absent prior agency approval, including any related construction work such as the recently announced plans to clear-cut a substantial 150-foot wide strip across 50 acres of Parcel D, are prohibited and should cease and desist, and are subject to further proceedings and investigation, including continuing civil penalties for each day the violations continue under 49 U.S.C. § 11901; and
- (3) earlier decisions granting construction and operating authority for some lines on the Parcels, and declaring that no authorization was needed for the construction and operation of other new lines on the Parcels, were based on misrepresentations by the rail carrier and/or made in error, and must be reopened, revoked, and rescinded, and any petitions, requests, or authorizations for authority by the common carrier railroad participating in FD 36398 and FD 36399 (Sub-No.1) (undocketed § 10909 application), should be stayed or held in abeyance until the matters raised in this Petition are fully and finally resolved.¹

¹ While fully warranted, CCE does not seek, at this time, to enjoin the railroad operations that are currently being conducted in the Brookhaven Rail Terminal on Parcel A.

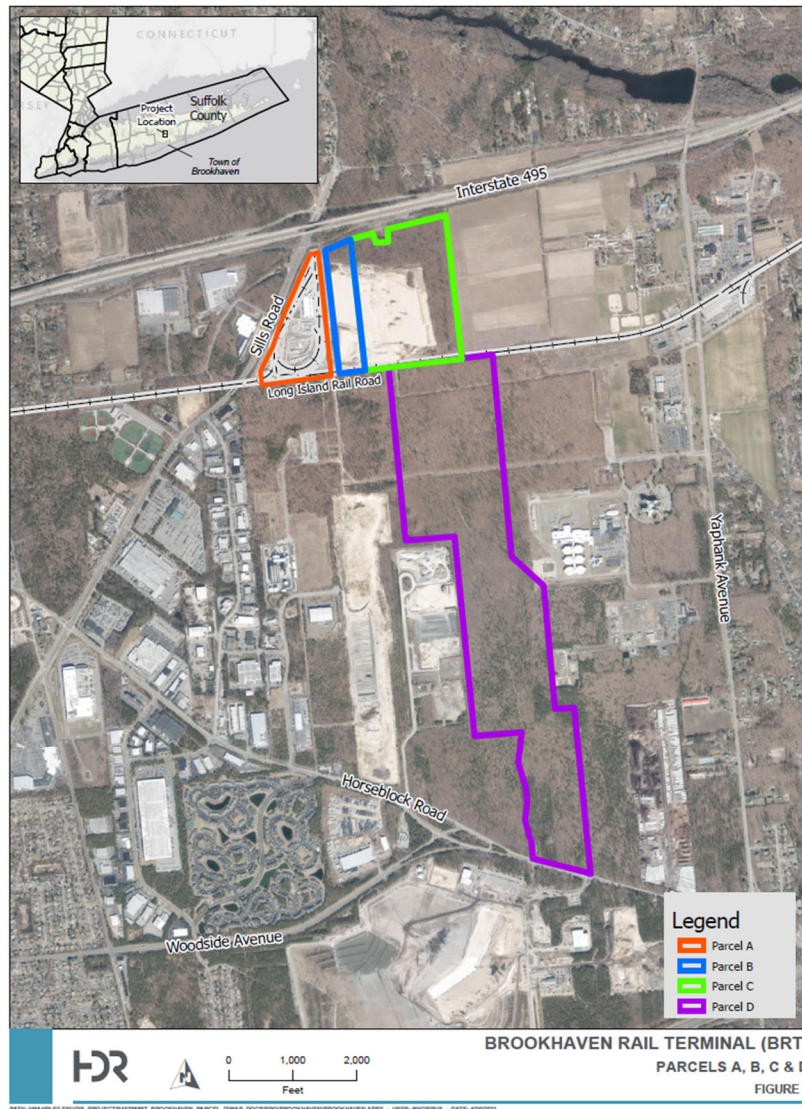
CCE believes that this Petition presents sufficient and compelling reasons for the Board to grant the requested relief immediately. Nonetheless, because this matter has been the subject of prior and continuing disputes before the Board and in the courts, and involves other interested parties, the Board may wish to proceed by initiating an appropriate declaratory order proceeding for the receipt of comments and evidence by interested parties. If the Board elects to proceed in this manner, CCE respectfully requests that the Board: (1) institute a proceeding for the directly involved parties to answer appropriate questions and provide responsive documents; (2) order those parties to show cause why the Board should not grant the relief requested; (3) allow responses to those replies by interested parties such as CCE; and (4) suspend, stay, and/or hold in abeyance any further actions in FD 36398 and FD 36399 (undocketed § 10909 application) until the issues are resolved, and enjoin recently announced massive forest clearcutting and related construction being made in support of the rail line construction project proposed in FD 36398 through an appropriate cease and desist order(s). In addition, the Board should consider conducting its own independent investigation under 49 U.S.C. § 11701.

In further support of its Petition, CCE states as follows:

I. SUMMARY AND FACTUAL BACKGROUND

The need for the remedial actions requested in this Petition arises from, and is perhaps the inevitable result, of a series of actions taken and tactics adopted by a railroad, developers, and a major waste hauler in complex and contested proceedings before the Board and the courts spanning over a decade with regard to the Parcels. The map below, issued by

the Office of Environmental Analysis (“OEA”) in FD 36398 in July 2021, depicts the four
Parcels:



A. The Prior and Continuing Unauthorized Rail Line Construction Activities Conducted on the Parcels

Starting in 2007, the involved short line railroad, Brookhaven Railroad, LLC (“BHR”), formerly known as U S Rail Corporation, has actively worked in partnership with developers of the Parcels to enable the developers to use BHR’s status as a STB certificated

common carrier railroad to successfully utilize the Board’s jurisdiction to evade normal local project review and permitting of rail lines. This scheme continues today.

Winters Bros. Waste Systems of Long Island, LLC (“Winters Bros.”), a major regional trash hauler based on Long Island, New York, recently created a new affiliate, Shamrock Rail, to acquire BHR, and BHR now remains under Winters Bros. full control. (collectively, “BHR/Winters”²). Winters Bros. has been using BHR as the vehicle to obtain the first ever exemption issued by the Board under 49 U.S.C. § 10909, to override and preempt state and local land use and zoning law to establish the largest solid waste rail transfer facility (“SWRTF”) in the State of New York, if not the country, to be located on Parcel D.³ The combined project (the “Project”) also entails the proposed construction and operation of approximately 4.5 miles of new rail line across an undisturbed and protected conservation easement and forested areas located on Parcel D.

BHR filed its rail line construction Petition with the Board on June 25, 2020 in FD 36398.⁴ The initial environmental review of the Project was recently suspended by the Office of Environmental Analysis (“OEA”), pending full Board review of the retention of the third-party contractor.

² BHR has referred to itself as “BHR/Winters” in communications with the Board’s Office of Environmental Analysis (“OEA”).

³ The Board previously denied BHR’s petition for exemption from the prior approval requirements of § 10909 to construct its proposed SWRTF in *Brookhaven Rail LLC – Petition for Exemption from Requirements of 49 U.S.C. § 10909*, FD 36399 (STB served Oct. 23, 2021).

⁴ *Brookhaven Rail LLC – Constr. & Operation Exemption – Suffolk Cnty., N.Y.*, FD 36398.

1. The Use of a Short Line to Cloak Unauthorized Construction Activities

Allegations of illegal rail line construction activities on Parcel A prompted the STB to issue an extraordinary cease and desist order on its own motion in 2007.⁵ Faced with the cease-and-desist order, the developers eventually partnered with BHR (then known as U S Rail), to use BHR as a proxy to obtain Board construction authority,⁶ and the developers then proceeded to finance, construct, and install the lines themselves as they always had intended, in direct contravention of the Board’s authorization decision.

Acting in this manner allowed BHR and the developers to appropriate the benefits of federal preemption under 49 U.S.C. § 10501(b) for the rail line construction in the 2010 proceeding in FD 35141 and then later in the 2016 declaratory order proceeding in FD 35819.⁷ This scheme enabled BHR and the developers to evade and overcome the Board’s prior cease-and-desist orders.

2. The Recent Disclosure of the Scheme

BHR would have likely succeeded in its ongoing scheme with the developers to enable unauthorized rail line construction even with major litigation having been filed

⁵ *Suffolk & S. R.R. – Lease & Operation Exemption – Sills Rd. Realty, LLC*, FD 35036 (STB served Oct. 12, 2007), *petition for reconsideration denied* FD 35036 (STB served Dec. 20, 2007).

⁶ *U S Rail Corp. – Constr. & Operation Exemption – Brookhaven Rail Terminal*, FD 35141 (STB served Sept. 9, 2010). U S Rail Corporation was later renamed Brookhaven Rail, LLC (“BHR”), and remains the rail carrier serving the Brookhaven Rail Terminal on Parcel A. In this filing, any references to BHR shall also include its predecessor, U S Rail Corporation (“U S Rail”).

⁷ *Brookhaven Rail Terminal & Brookhaven Rail, LLC – Petition for Declaratory Order*, FD 35819 (STB served Aug. 30, 2016).

against them in New York federal district court for illegal construction and land mining activities on the Properties,⁸ but for a recent dispute. In 2019, the developers, the so-called Sills Parties,⁹ turned against their self-chosen railroad partner, BHR, and attempted to obtain their own railroad certification in FD Nos. 36376,¹⁰ 36384¹¹ and 36385¹² (“FD 36376 *et al.*”). The developers aired some of their secret “dirty-laundry” in those proceedings, admitting that they had, with BHR’s full cooperation and partnership, engaged in, undertaken, and paid for **all** of the rail line construction on Parcels A and B to date:

BHR had no presence on the Line at the time that US Rail secured Board authorization for construction of the Line – a regulatory undertaking that BHR may not realize that Sills, not US Rail, funded entirely on US Rail’s behalf. (Sills, for example, funded US Rail’s line construction proceeding legal costs.) BHR did not emerge as a Board-authorized carrier on the Line until several months following completion of construction.

⁸ *Town of Brookhaven v. Sills Road Realty LLC, et al.*, No. 14-2286 (E.D.N.Y filed Apr. 9, 2014). In that litigation, the Town of Brookhaven asserted that BHR and the developers engaged in a sham claim of constructing a *bona fide* railroad spur on Parcels B and C to avoid local review and substantial fines for their activities under the guise of federal preemption. They did so to (1) illegally mine sand for resale, and (2) engage in other improper activities, including dumping thousands of tons of highly contaminated, imported fill material on Parcel B. In that proceeding, the defendants aggressively relied on Board’s rail line construction and declaratory order decisions in FD 35141 and FD 35819, in claiming that railroad federal preemption principles barred the underlying federal court claims and that the Board’s decisions fully permitted their construction and excavation activities.

⁹ The “Sills Parties” include Sills Road Realty LLC, Brookhaven Terminal Operations LLC, Brookhaven Rail Freight Services LLC, and Spectrum RR Holdings, LLC.

¹⁰ *Spectrum RR Holdings, LLC – Operation Exemption – R.R. Line in the Town of Brookhaven, NY*, FD 36376.

¹¹ *Sills Road Realty LLC – Acquisition Exemption – R.R. Line in the Town of Brookhaven, NY*, FD 36384.

¹² *Spectrum RR Holdings, LLC – Acquisition & Operation Exemption – Line of Sills Road Realty LLC, in the Town of Brookhaven, NY*, FD 36385.

Sills Parties Reply, FD 36384 and FD 36385 (filed Mar. 23, 2020), at 10 n.14.

Such activities directly contravened the Board's decisions authorizing only the **railroad**, and not the **developers**, to construct the lines. Their initiative backfired when the Board's Director of the Office of Proceedings issued two decisions in FD 36376 *et al.* on January 17, 2020 and June 16, 2020 ("OP Director's Decisions"). The OP Director's Decision of January 17, 2020 asked the Sills Parties to explain how, among other things, the rail track was owned by the developer, and not the railroad. *Id.* at 2. The OP Director's Decision of June 16, 2021 rejected the developer's class exemption petition describing as "unusual" and "not appropriate," the "seeking [of] acquisition authority to remedy a prior unauthorized construction of a rail line." *Id.* at 4.¹³

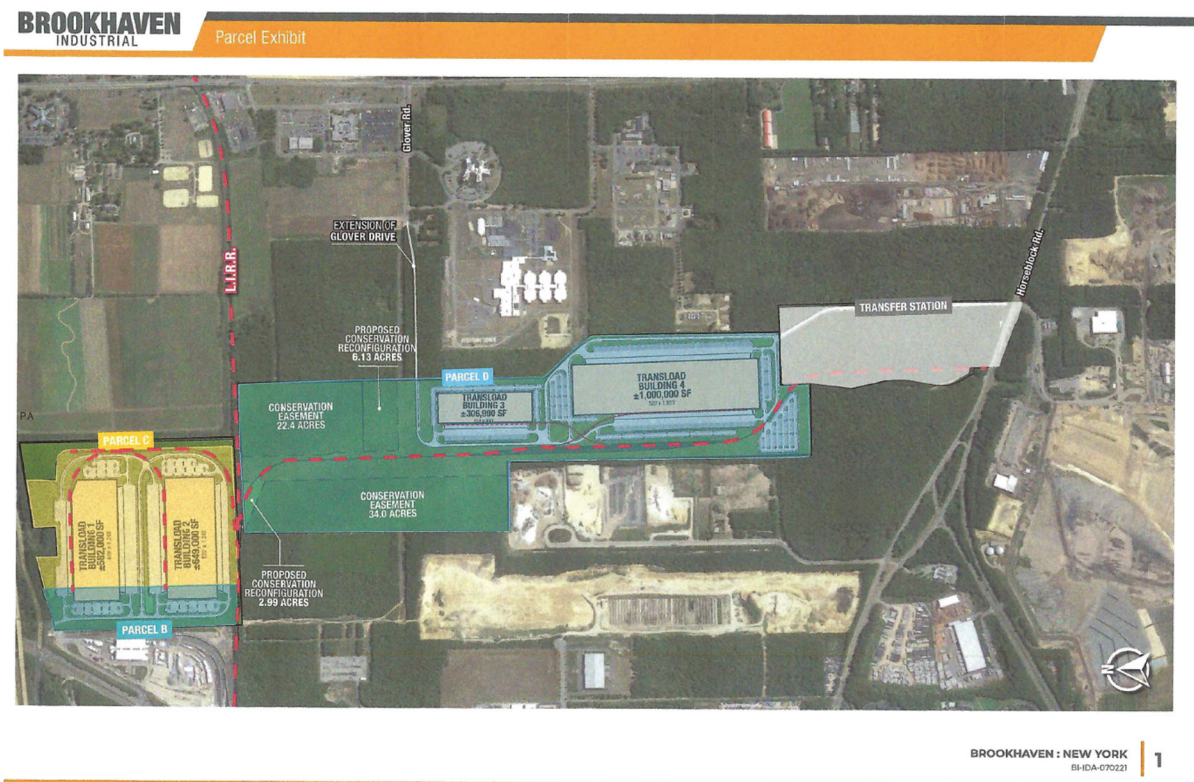
B. BHR/Winters Bros. Recent Efforts to Avoid § 10901 Rail Line Construction and Environmental Review on Parcels B/C, and to Engage in Construction on Parcel D in Advance of Board Review and Approval

As part of OEA's initial review of the combined Project in FD 36398 and FD 36399, on July 5, 2021, BHR/Winters sent a letter to OEA (EI-30903) informing OEA that its initial construction plans had changed, and affiliates of NorthPoint Development, Winters Bros., and BHR (collectively, "NP/Winters") had acquired the entirety of the 228-acre Parcel

¹³ The Decision ordered that "[i]n any future request for authority Sills Road should explain why the parties decided that U S Rail would seek construction authority." *Id.* at 5. It also requested additional information on the construction of the line and the parties' roles in the prior proceedings requesting construction authority, and sought relevant agreements and documents explaining why the developer, rather than the railroad, had constructed the line. *Id.* at 5-6.

D on which BHR/Winters proposes to construct and operate its new SWRTF.¹⁴

BHR/Winters further informed OEA that the new development plan would include the construction of two new large warehouse structures of over 1.3 million square feet being on the Parcel, along with the proposed new SWRTF. BHR/Winters sent OEA the following schematic reflecting the new development plans (at Attachment 2).



On July 28, 2021, CCE replied to BHR/Winters' July 5, 2021 letter (EI-31209). CCE explained that BHR had substantially understated the project's scope, especially by neglecting to advise OEA that NP/Winters were engaged in a much larger

¹⁴ BHR/Winters further informed OEA that Winters Bros. Shamrock Rail Realty LLC, another affiliate of Winters Bros., acquired the 50-acre portion of Parcel D on which the proposed SWRTF is to be sited, which portion was renamed the "Winters Rail Terminal."

project that included substantial new development on Parcels B and C, as clearly reflected on BHR's own map submitted to OEA shown above. CCE explained that the Project actually consists of *four* large-scale warehouse and distribution facilities spread over three neighboring parcels, not *two* additional buildings spread over one parcel, and with far more expansive track infrastructure, all directly and inextricably connected to and a part of the previously described project.

CCE's July 28, 2021 reply letter also explained that "the project *in its entirety* is required to be incorporated into and reviewed as part of the Board's Environmental Impact Statement for the Project, as well as its § 10909 review." CCE further noted that the proposed Parcel B/C track designed to extend operations to reach and serve multiple new customers does not qualify as yard, switching, or other excepted track under 49 U.S.C. § 10906 or governing precedent,¹⁵ and instead requires prior STB construction and operating authority under 49 U.S.C. § 10901, such that "[a]t a minimum, BHR is required to resubmit or substantially amend its application in FD 36398." A copy of CCE's July 28, 2021 letter to OEA is included at **Attachment A**.

BHR/Winters sent OEA an email response on July 30, 2021 (EI-31210) alleging that CCE had "misstated key facts." BHR/Winters contended that the contemplated line construction on Parcels B/C would be overseen solely by its new partner, NorthPoint Development, which it claimed was "an entirely separate entity from NP/Winters, Brookhaven Rail and Winters Bros. Shamrock Realty LLC." BHR/Winters further insisted

¹⁵ *E.g., Chicago Rail Link, L.L.C. – Lease & Operation Exemption – Union Pacific R.R.*, FD 33323 (STB served Dec. 31, 1997, and Sept. 18, 1998).

that NorthPoint Development would develop Parcels B and C “**consistent with the STB’s decisions in Docket No. FD 35819**” (emphasis added).

The OEA Director acknowledged CCE’s concerns in a decision dated September 17, 2021 (EO-3566) (“OEA Director’s Decision”). While the OEA Director’s Decision found that all of the NP/Winters’ facilities, including those planned on Parcels B/C were connected and “reasonably foreseeable,” it declined to address and resolve the Parcel B/C rail line regulatory status issue. Instead, it instructed the parties seek a determination from the Board on these issues:

In response to your July 28, 2021 letter questioning the development of the future N/P Winters project that BHR presented in its July 5, 2021 letter to OEA, OEA notes that BHR has represented that NP/Winters (which appears to be a non-carrier entity) is proposing to construct certain warehouse and other facilities on Parcels B, C, and D. . . . BHR has not indicated that these facilities need authority from the Board to be constructed and operated, nor has BHR or any other entity filed anything with the Board seeking such authority. OEA can only conduct environmental reviews of projects for which a rail carrier has sought authority, or in the near future will seek authority, from the Board. If a party believes that authority from the Board is required for the proposed N/P Winters project, it may seek a determination from the Board concerning whether such authority is required. Any such jurisdictional determination would be for the Board to make, and not OEA. Based on the current information before OEA and because development of both N/P Winters’ facilities appears to be reasonably foreseeable, the most OEA could do at this time would be to evaluate the proposed N/P Winters development as a cumulative impact in the EIS analysis to be prepared for the Proposed Project.

Finally, in a recent email to OEA dated November 11, 2021 (EI-31313), BHR reversed course on its previous “misstated clear facts” allegations of July 30, 2021 (EI-31210). BHR now finally admits that that NP/Winters actually does have control over and is

actively developing Parcels B/C. At the same time BHR informs OEA that its affiliates are actively proceeding to clear cut a wide swath of forest and trees on Parcel D consisting of a “150-foot wide strip of the 50 acres” in furtherance of the rail construction, but without prior review or permission from the STB. BHR insists that it is somehow not involved in the clear cutting even though such activities would benefit and be in support of BHR’s proposed rail line construction on Parcel D.

In other words, the railroad seeking permission and authority to construct and operate new rail lines now candidly admits that major components of construction for a project in FD 36398 constituting a major federal action under the National Environmental Policy Act, including massive tree and forest clearcutting are being made **without STB authorization**, and far in advance of the Board’s substantive project and environmental review as required under 49 U.S.C. § 10901 and § 10909.

II. ARGUMENT

A. There is a Compelling Need for the Issuance of A Declaratory Order in the Face of Clear Controversy

The Board is empowered under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 to issue a declaratory order to terminate controversies or remove uncertainty. *Norfolk S. Ry. – Pet. for Declaratory Order*, FD 35701 (STB served Nov. 4, 2013). There are compelling reasons in this instance for the Board to exercise its authority and discretion at this time and issue a declaratory order and guidance to eliminate controversy and remove uncertainty.

First, a real, present dispute exists over the regulatory status of the rail line proposed for construction over Parcels B/C. That dispute requires resolution before the

agency can proceed to consider other components of the BHR/Winters¹⁶ proposed Project. If the new lines proposed to be constructed on Parcels B and C are determined to be § 10901 track, then BHR will likely be required to revise and resubmit its Petition in FD 36398 to incorporate the new line because without the new line, its Petition would be incomplete on its face. Until the issue of the status of the line is determined, it would be premature and wasteful for the Board to devote further resources to the review of BHR's petition.

Second, the statement in the OEA Director's Decision that "OEA can only conduct environmental reviews of projects for which a rail carrier has sought authority, or in the near future will seek authority, from the Board" (*id.* at 3) begs the question whether authority is needed for the proposed construction on Parcels B/C. The OEA Director's Decision determined that the proposed construction of "both N/P Winters' facilities," which as designed requires construction of the rail line on Parcels B/C, is "reasonably foreseeable." *Id.* However, the decision advised that the parties need to seek a decision on the regulatory status of the line from the Board itself to determine whether construction and use authority under § 10901 and related environmental review is required because the "jurisdictional determination would be for the Board to make, and not OEA." *Id.* Therefore, CCE is seeking a declaration and determination from the Board in accordance with OEA's specific instructions that the parties seek a rail line regulatory status determination from the Board.

¹⁶ As discussed *supra*, BHR has recently admitted to OEA (EI-31313) that NP/Winters now owns and controls Parcels B and C, and that the Parcel B/C project is connected with the Parcel D project.

Third, a decision on the regulatory status of the existing and to be constructed Parcels B and C lines is clearly necessary before OEA commences its environmental review in FD 36398 and in the proposed § 10909 application proceeding. As noted, the OEA Director's Decision determined that the additional rail line construction on Parcels B/C as proposed is an at least "reasonably foreseeable" part of the proposed projects under review. One of the first steps of the EIS process is to prepare a summary of the project, with appropriate maps and descriptions, to be sent to consulting agencies. OEA then must prepare a draft scope of study, receive comments on that draft scope, and then prepare a final scope of study.

Prior to proceeding with its environmental review of the Project, OEA must know in advance all its components, including whether its review will include the proposed new rail lines on Parcels B/C. In that regard, it is CCE's understanding and belief that a major reason OEA has declined to approve BHR's request for a waiver of the six-month prefilling notice under 49 C.F.R. § 1105.10(a) to date is precisely because of the Project's expanding and changing scope and BHR's related inability to provide an adequate, full description of the project essential for OEA's environmental review. The uncertainty of the regulatory status of the Parcel B/C line adds further confusion over actual Project scope that should be resolved before OEA proceeds with any further environmental review.

Fourth, the facts known to date show that BHR has knowingly partnered with the developers to allow them to use its name and status as a rail carrier to seek and obtain STB authority to construct track, but with no intention of ever engaging in any of the construction activities and, at the time, operating activities, that were sought. Based on the

facts known to date, BHR/Winters has intentionally used and abused the streamlined Board exemption and declaratory order procedures in a deliberate scheme to use federal preemption to avoid local review. BHR's participation in the scheme is made more serious by its status as a certificated rail carrier.

Under 49 U.S.C. § 11901(c) and related provisions, "[a] person knowingly authorizing, consenting to, or permitting a violation of sections 10901 through 10906 of this title . . . is liable to the United States Government" for monetary penalties. As mentioned *supra*, BHR was recently purchased by and is now controlled by Winters Bros. and has announced that it intends to file very shortly a new § 10909 application.

Additionally, BHR/Winters recently informed OEA of planned and imminent massive forest/tree clearcutting on Parcel D in support of their proposed rail line construction on Parcel D, and without STB review or approval. Under the circumstances, the clearcutting must be enjoined by the Board, immediately.

Further, appropriate full review and investigation of BHR/Winters' prior regulatory violations and abuses, and its Winters Bros. continuing involvement in regulatory activities with respect to FD 36398 and the proposed § 10909 application is in order. Such actions are especially warranted and required here where the integrity of the Board's decisions and processes are at stake and there have been documented repeated violations of the Board's rules and procedures.

B. Reopening, An Order to Show Cause, and Further Investigation Are Warranted

As necessary, the Board should reopen the above-captioned proceedings that have been closed. The governing statute, 49 U.S.C. §1322(c), gives the Board wide latitude to reopen the record of a proceeding, and reconsider prior decisions rendered in that proceeding. Specifically, § 1322(c), and 49 C.F.R. § 1115.4, provide that Board decisions may be reopened at any time in the event of material error, new evidence, or substantially changed circumstances – all three of which are clearly shown here. *See Soo Line R.R. D/B/A Canadian Pac. Ry. – Acquisition & Operation Exemption – BNSF Ry. Co.*, FD 35068 (STB served Dec. 29, 2020) at 5 (Board reopened exemption proceeding 11 years after consummation). The Board issued its construction authorization decision in FD 35141 based on representations of construction by a railroad, and not as it turns out, for construction by non-railroad developers, and developers and other non-railroads may not on their own, or in secret agreement with the railroad, assume the rights of a railroad for construction or any other purposes.

Furthermore, the decision to proceed by exemption, as BHR did so here, carries the risk that the exemption may be revoked at any time. 49 U.S.C. § 10502(d); 49 C.F.R. § 1121.4(f). Similarly, the Board issued its declaratory order decision in FD 35819 based on BHR's representations that BHR was constructing a spur to its existing common carrier track, and that the operations were in furtherance of the terminal's existing operations, and not as it turns out, for construction of new common carrier track by non-railroad developers to serve brand new shippers. A declaratory order founded on incomplete, misleading, or no longer operative facts does not remove uncertainty, but instead creates it.

Also, a declaratory order founded on erroneous premises should be re-opened, investigated, and revised when different and substantial new facts become apparent, as is the case here.

The Board should also consider whether additional measures such as requiring the BHR and the involved developers to show cause why the relief requested should not be granted. At a minimum, BHR should be required to answer all questions and provide all materials requested in the OP Director's Decisions in FD 36376 *et al.*

In addition, BHR should be required to provide all documents in its possession pertaining to its acquisition and control by an affiliate of Winters Brothers, all prior and current agreements with Winters Bros. and its affiliates with respect to its provision of rail construction and service, and its regulatory activities in FD 36398, FD 36399 and its contemplated § 10909 application. This should include documentation of which entity paid for all legal and consulting services obtained in conjunction with BHR's involvement in those proceedings, both before and after BHR's recent acquisition.

Alternatively, or in addition, the Board should consider initiating its own investigation under 49 U.S.C. § 11701 as to these matters in view "of the impacts of the potential violation on national or regional rail traffic, customers, or third parties, or the geographic scope of the alleged violation."

CONCLUSION

For the reasons stated above, CCE respectfully requests that the Board issue a Declaratory Order in the form as requested in the initial paragraph of this Petition and suspend and stay any further actions in FD 36398 and FD 36399 (Sub-No.1) (undocketed § 10909 application), along with issuing appropriate cease-and-desist orders, pending further

consideration and resolution of the matters raised in this Petition. At a minimum, the Board should institute an appropriate declaratory order proceeding and take additional actions in the manner set forth in the second paragraph to this Petition. CCE also respectfully requests that the Board reopen closed proceedings, and consider issuing appropriate show cause orders, and/or itself engage in an independent review of the facts and circumstances, as necessary to protect the integrity of the Board's decisions and processes.

There is a compelling and extraordinary need for such actions and steps under the circumstances. The facts provided to date show that BHR/Winters has intentionally used and abused the streamlined Board exemption and declaratory order procedures in a deliberate scheme to evade both local and federal review of rail line construction and operation activities. The relief requested is especially necessary here in light of the forthcoming application to be filed by BHR under 49 U.S.C. § 10909, to obtain the first such authorization since the Clean Railroads Act was enacted, as well as the recently announced plans for massive timber clearcutting in furtherance of the rail line construction on Parcel D without prior STB review or authorization.

Respectfully submitted,

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*Attorneys for Citizens Campaign
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Dated: November 23, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have this 23rd day of November, 2021, caused a copy of the foregoing filing to be served by U.S. Mail, postage prepaid or by more expedited means upon all parties of record in the above-captioned dockets.

/s/

Katherine F. Waring

ATTACHMENT A



SLOVER & LOFTUS LLP

ATTORNEYS AT LAW

PETER A. PFOHL

July 28, 2021

Via E-Filing

Danielle Gosselin
Acting Director
Office of Environmental Analysis
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: FD 36398, *Brookhaven Rail LLC – Construction and Operation
Exemption – Suffolk County, New York, and undocketed application
for a land-use exemption under 49 U.S.C. § 10909*

Dear Ms. Gosselin:

The Citizens Campaign for the Environment (“CCE”) writes to respond to the July 5, 2021 letter from Brookhaven Rail LLC (“BHR”) disclosing what BHR depicts as “slight modifications” of its contemplated track for purposes of the OEA’s review of BHR’s rail line construction and operation exemption and a promised application for a proposed land-use exemption for a solid waste rail transfer facility (“SWRTF”) under 49 U.S.C. § 10909 that would be served by the proposed rail line (the “Projects”). Based on even the very limited information provided and available to CCE, BHR’s July 5, 2021 letter is incomplete and highly misleading and raises broader questions requiring additional review and follow-up by both OEA and the Board regarding the proposed Projects.

BHR explains that affiliates of Northpoint Development, Winters Bros. Waste Systems of Long Island, and BHR (collectively, “NP/Winters”) have acquired the remaining 178-acre portion of the Parcel D adjacent to the 50 acres on that same parcel on which BHR proposes to construct and operate a SWRTF. BHR further explains that minor modifications to its proposed track design for the Projects are necessary to accommodate newly planned construction on Parcel D of “two rail served warehouse building structures of approximately 306,000 square feet and 1,000,000 square feet, respectively,” pursuant to a development plan proposed by NP/Winters. BHR describes that while in its Petition, “there were no prospective rail shippers identified other than the SWRTF” and “the type of other facilities and rail service BHR might provide were not known, this is no longer the case.” BHR describes that the two large new facilities will be “occupied and operated by industrial tenants of NP/Winters” for intermodal and warehousing purposes. BHR states that the involved 228-acre property has been renamed the Winters Rail Terminal.

Unfortunately, BHR fails to advise OEA that NP/Winters project is much more expansive in size and scope than described in its July 5 letter. On June 14, 2021 NP/Winters filed an Application for Financial Assistance with the Town of Brookhaven Industrial Development Agency (“Brookhaven IDA”). In its cover letter and Application, NP/Winters advises that not only has it purchased Parcel D, but it has, as of May 7, 2021, a pending contract to acquire neighboring Parcels B and C that is scheduled to close in September 2021.

The Application materials depict this development of Parcels B, C, and D as one large, interconnected project of “rail contiguous warehouse and distribution facilities developed in four buildings.” The Short Environmental Assessment Form dated June 12, 2021, under “Name of Action or Project” states that it is for the “Proposed Development of Parcels B, C, and D.” It also states that the “[a]pplication [is] for Economic Benefits in connection with development of approximately 2,538,604 square feet of rail-oriented warehouse and distribution facilities,” with the total site size listed as 273.735+/- acres. The cover letter describes the enclosed site plan showing the location of the four proposed buildings “as well as the rail spurs running off the LIRR main line.” Total project cost is estimated to be \$410,000,000. Construction of the four buildings is scheduled to commence in 2022, the first building to be completed in March 2023, and the remaining three buildings to be completed over a five-year period. The Application seeks tens of millions of dollars of tax incentives and economic assistance from the Town of Brookhaven. A copy of the June 14, 2021 Application, cover letter, and Short Environmental Assessment Form are enclosed.

It is also clear that development of Parcels B, C, and D by NP/Winters is for the direct benefit and to facilitate rail access for the SWRTF. The *Brookhaven Rail Terminal: Economic & Fiscal Impact Assessment* dated April 28, 2021 (“EFIA”) defines the “Project” as “the construction of four rail-served industrial buildings totaling approximately 2.5 million square feet” (EFIA at 2), and that “the Project will provide a rail connection for the proposed Solid Waste Rail Transfer Facility...to the Long Island Railroad and eventually to the Norfolk Southern and CSX rail lines....(EFIA at 4). A copy of the EFIA is also enclosed.

The Brookhaven IDA Application presents a Project double in size of that described in BHR’s July 5 letter, with far more expansive track infrastructure. As noted, it also describes Parcels B/C buildings to be served from “rail spurs running of the LIRR main line.” While BHR failed to describe any of the planned Parcel B/C development in its July 5 letter, these buildings and track are reflected in Attachment 2 to its letter. Also, in response to questions that OEA raised in the parties’ ex parte monthly meeting on July 6, 2021, BHR responded by email that same day stating that Attachment 2 to BHR’s July 5 letter to OEA inaccurately depicts a planned turnout off from the LIRR main line onto Parcel B/C. BHR explained that “Northport has no intention of installing an additional switch to create a northern turnout onto these two parcels.” Instead, it said that “track eventually constructed on Parcels B and C will connect to track already on Parcel A, as planned under the 2016 Stipulation and related documents.” BHR does not explain whether its intended return to its original plans for track construction also involves the construction of a tunnel under the

LIRR for the track to reach Parcel D as originally planned, which would avoid the need for a *breach of the Parcel D conservation easements*.

There are several issues raised by BHR's July 5 letter and NP/Winters' proposed new project. First, contrary to BHR's July 5 letter, the project is, as explained, double in size of that presented by BHR, and consists of four large-scale warehouse and distribution facilities spread over three neighboring parcels, not two additional buildings spread over one Parcel. The fact that this is a singular, integrated project is confirmed and verified in the NP/Winters recent Brookhaven IDA Application. BHR simply fails to provide a full description of the project essential for OEA's review.

Second, all of this this proposed new construction is directly and inextricably connected to and a part of the previously described Projects. As such, the project *in its entirety* is required to be incorporated into and reviewed as part of the Board's Environmental Impact Statement for the Project, as well as its § 10909 review. This necessitates an expanded review of all of the associated impacts, including on the transportation system (e.g., truck, rail impacts), land use, energy, air and noise, safety, biological resources, water, and environmental justice. As CCE explained in its letter to OEA of April 1, 2021, the omissions and misstatements in the Initial Notice for STB Docket No. FD 36399 are glaring, and significantly minimized the Project's scope and its potential impacts. This new development, combined with the previous omissions and issues identified, at a minimum requires new consultation letters to be prepared and distributed, and an additional comment period allowed, *before* OEA initiates its environmental review and draft Scope of Study, and certainly before OEA finalizes any scope of work to be performed by its environmental consultant.

Third, BHR intimates, and OEA's meeting minutes describe, that the construction of the Parcel B/C track may be considered so-called spur track, under 49 U.S.C. § 10906, excepted from STB review and the OEA's environmental review. However, as mentioned, NP/Winters Brookhaven IDA Application materials describe the track to be constructed as connecting directly to a second railroad, the LIRR, and as such cannot be considered BHR spur track, rather than common carrier track under 49 U.S.C. § 10901. Also, BHR's follow-up to OEA appears to contradict the Brookhaven IDA Application, and describes the new Parcel B/C track as connecting to the new shippers from Parcel A, rather from a direct connection to the LIRR, however, the schematic that BHR provided shows the opposite. Also, the track connection changes that counsel describes for Parcel B/C are substantial, and appear infeasible under the design submitted with its Brookhaven IDA Application, at least without major building and site design changes. Regardless, because the new track is intended to be used by BHR to extend its operation to reach and serve multiple new customers, it does not qualify as yard, switching, or other excepted track under § 10906.¹

¹E.g., *Chicago Rail Link, L.L.C. – Lease & Operation Exemption – Union Pacific R.R.*, FD 33323 (STB Decisions served Dec. 31, 1997 and Sept. 18, 1998).

Ms. Danielle Gosselin

July 28, 2021

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Therefore, this new Parcel B/C line requires prior STB construction and operation authorization. At a minimum, BHR is required to resubmit or substantially amend its application in FD 36398. As such, BHR's non – or incomplete – disclosures provide a further reason in addition to the reasons stated in CCE's letter of May 6, 2021, for OEA to deny BHR's request for a waiver of the six-month prefiling notice under 49 C.F.R. § 1105.10(a).

CCE respectfully requests that OEA consider suspending further review of the Project until these matters can be reviewed and addressed, especially as it appears that the Board may need to determine the status of BHR's proposed new line construction on Parcels B/C, that, for the reasons stated, are an integral part of the Project. OEA must also require that BHR properly define the scope of the Project, which appears to be a moving target, so that OEA and interested parties may proceed with a meaningful review, and so that resources are not wasted evaluating hypothetical proposals.

CCE requests that the OEA investigate this matter further, with the assistance of the Board, if and as necessary.

Respectfully submitted,

/s/ Peter A. Pfohl
Robert D. Rosenberg
Katherine F. Waring
Slover & Loftus LLP
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

*Attorneys for Citizens Campaign
for the Environment*

Enclosure (Brookhaven IDA Application)

cc: Service List for FD 36398

**APPLICATION FOR FINANCIAL ASSISTANCE TOWN OF
BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY
1 Independence Hill, 2nd Floor, Farmingville, New York 11738**

DATE: JUNE 14, 2021

APPLICATION OF: NP/WINTERS LONG ISLAND INDUSTRIAL, LLC

**ADDRESS: 4825 NW 41ST STREET
RIVERSIDE, MO 64150**

Type of Application: ☐ Tax-Exempt Bond ☐ Taxable Bond
 ☒ Straight Lease ☐ Refunding Bond

Please respond to all items either by filling in blanks, by attachment (by marking space "see attachment number 1", etc.) or by N.A., where not applicable. Application must be filed in two copies. A non-refundable application fee is required at the time of submission of this application to the Agency. The non-refundable application fee is \$3,000 for applications under \$5 million and \$4,000 for applications of \$5 million or more.

Transaction Counsel to the Agency may require a retainer which will be applied to fees incurred and actual out-of-pocket disbursements made during the inducement and negotiation processes and will be reflected on their final statement at closing.

Information provided herein will not be made public by the Agency prior to the passage of an official Inducement Resolution, but may be subject to disclosure under the New York State Freedom of Information Law.

Prior to submitting a completed final application, please arrange to meet with the Agency's staff to review your draft application. Incomplete applications will not be considered. The Board reserves the right to require that the applicant pay for the preparation of a Cost Benefit Analysis, and the right to approve the company completing the analysis.

PLEASE NOTE: It is the policy of the Brookhaven IDA to encourage the use of local labor and the payment of the area standard wage during construction on the project.

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Part I: Owner & User Data

1. **Owner Data:**

A. Owner (Applicant for assistance):

NP/WINTERS LONG ISLAND INDUSTRIAL, LLC

Address: **4825 NW 41ST STREET
RIVERSIDE, MO 64150**

Federal Employer ID #: **86-2688807**

Website: **WWW.BEYONDTHECONTRACT.COM**

NAICS Code: **531390**

Owner Officer Certifying Application: **NATHANIEL HAGEDORN**

Title of Officer: **MANAGER (OF MANAGER OF OWNER)**

Phone Number: **816-888-7380**

E-mail: **JSWEENEY@NORTHPOINTKC.COM**

B. Business Type:

Sole Proprietorship ☐ Partnership ☐ Limited Liability Company **X**

Privately Held ☐ Public Corporation ☐ Listed on _____

State of Incorporation/Formation: **DELAWARE**

C. Nature of Business:

(e.g., "manufacturer of _____ for _____ industry"; "distributor of _____"; or
"real estate holding company") **REAL ESTATE DEVELOPER**

D. Owner Counsel:

Firm Name: **FARRELL FRITZ, P.C.**

Address: **400 RXR PLAZA
UNIONDALE, NEW YORK 11556**

Individual Attorney: **PETER L. CURRY, ESQ.**

Phone Number: **516-227-0772** E-mail: **PCURRY@FARRELLFRITZ.COM**

E. Principal Stockholders, Members or Partners, if any, of the Owner:

Name	Percent Owned
NP LI Investments, LLC	35.9475%
Winters Bros. Industrial Park Realty LLC	37.0672%
NPE 2021, LLC	26.9853%

F. Has the Owner, or any subsidiary or affiliate of the Owner, or any stockholder, partner, member, officer, director or other entity with which any of these individuals is or has been associated with:

- i. ever filed for bankruptcy, been adjudicated bankrupt or placed in receivership or otherwise been or presently is the subject of any bankruptcy or similar proceeding? (if yes, please explain) **TO OWNER'S KNOWLEDGE, NO**
- ii. been convicted of a felony, or misdemeanor, or criminal offense (other than a motor vehicle violation)? (if yes, please explain) **TO OWNER'S KNOWLEDGE, NO**

G. If any of the above persons (see "E", above) or a group of them, owns more than 50% interest in the Owner, list all other organizations which are related to the Owner by virtue of such persons having more than a 50% interest in such organizations.

THE MEMBERS OF OWNER HOLD INTERESTS IN SEVERAL OTHER COMMERCIAL REAL ESTATE VENTURES

H. Is the Owner related to any other organization by reason of more than a 50% ownership? If so, indicate name of related organization and relationship:

SEE ANSWER G

I. List parent corporation, sister corporations and subsidiaries:

NONE PRESENTLY

J. Has the Owner (or any related corporation or person) been involved in or benefited by any prior industrial development financing in the municipality in which this project is located, whether by this agency or another issuer? (Municipality herein means city, town or village, or if the project is not in an incorporated city, town or village, the unincorporated areas of the county in which it is located.) If so, explain in full:

NO

K. List major bank references of the Owner:

Mark Nuss (913.752.5301, Mark.Nuss@simmonsbank.com) – Simmons Bank 1251 NW Briarcliff Parkway, Suite 150 Kansas City, MO 64116
Edward Hockenberg (816.860.8045, edward.hockenberg@umb.com) – UMB Bank 1010 Grand Boulevard 2nd floor Attn: Ed Hockenburg Kansas City, MO 64106

2. User Data

**** (for co-applicants for assistance or where a landlord/tenant relationship will exist between the owner and the user) ****

- A. User (together with the Owner, the "Applicant"): **THE OWNER WILL DEVELOP THE SUBJECT PROJECT FOR USE BY VARIOUS INTERNATIONAL AND NATIONAL ENTITIES SEEKING THE TYPES OF LOGISTICAL FACILITIES CONTEMPLATED HEREIN. THE OWNER HAS NO AGREEMENTS WITH ANY PROSPECTIVE USERS AT THIS TIME.**

Address: _____

Federal Employer ID# _____ Website: _____

NAICS Code: _____

User Officer Certifying Application: _____

Title of Officer: _____

Phone Number: _____ E-mail: _____

B. Business Type:

Sole Proprietorship ☐ Partnership ☐ Privately Held ☐

Public Corporation ☐ Listed on _____

State of Incorporation/Formation: _____

C. Nature of Business:

(e.g., "manufacturer of _____ for _____ industry"; "distributor of _____"; or "real estate holding company")

D. Are the User and the Owner Related Entities? Yes ☐ No ☐

- i. If yes, the remainder of the questions in this Part I, Section 2 (with the exception of "F" below) need not be answered if answered for the Owner.

- ii. If no, please complete all questions below.

E. User's Counsel:

Firm Name: _____

Address: _____

Individual Attorney: _____

Phone Number: _____ E-Mail: _____

F. Principal Stockholders or Partners, if any:

Name	Percent Owned

G. Has the User, or any subsidiary or affiliate of the User, or any stockholder, partner, officer, director or other entity with which any of these individuals is or has been associated with:

- i. ever filed for bankruptcy, been adjudicated bankrupt or placed in receivership or otherwise been or presently is the subject of any bankruptcy or similar proceeding? (if yes, please explain)

- ii. been convicted of a felony or criminal offense (other than a motor vehicle violation)? (if yes, please explain)

H. If any of the above persons (see "F", above) or a group of them, owns more than 50% interest in the User, list all other organizations which are related to the User by virtue of such persons having more than a 50% interest in such organizations.

I. Is the User related to any other organization by reason of more than a 50% ownership? If so, indicate name of related organization and relationship:

J. List parent corporation, sister corporations and subsidiaries:

K. Has the User (or any related corporation or person) been involved in or benefited by any prior industrial development financing in the municipality in which this project is located, whether by this agency or another issuer? (Municipality herein means city, town or village, or if the project is not in an incorporated city, town or village, the unincorporated areas of the county in which it is located.) If so, explain in full:

L. List major bank references of the User:

Part II – Operation at Current Location

***** (if the Owner and the User are unrelated entities, answer separately for each) ** N/A***

1. Current Location Address: _____

2. Owned or Leased: _____

3. Describe your present location (acreage, square footage, number buildings, number of floors, etc.):

4. Type of operation (manufacturing, wholesale, distribution, retail, etc.) and products and/or services:

5. Are other facilities or related companies of the Applicant located within the State? Yes ☐ No ☐

A. If yes, list the Address: _____

6. Will the completion of the project result in the removal of any facility or facilities of the Applicant from one area of the state to another OR in the abandonment of any facility or facilities of the Applicant located within the State? Yes ☐ No ☐

A. If no, explain how current facilities will be utilized: _____

- B. If yes, please indicate whether the project is reasonably necessary for the Applicant to maintain its competitive position in its industry or remain in the State and explain in full:
-

7. Has the Applicant actively considered sites in another state? Yes ☐ No ☐

A. If yes, please list states considered and explain: _____

8. Is the requested financial assistance reasonably necessary to prevent the Applicant from moving out of New York State? Yes ☐ No ☐

A. Please explain: _____

9. Number of full-time employees at current location and average salary (indicate hourly or yearly salary):
-

Part III – Project Data

1. Project Type:

A. What type of transaction are you seeking? (Check one)

Straight Lease **X** Taxable Bonds ☐ Tax-Exempt Bonds ☐
Equipment Lease Only ☐

B. Type of benefit(s) the Applicant is seeking: (Check all that apply)

Sales Tax Exemption **X** Mortgage Recording Tax Exemption **X**
PILOT Agreement: **X**

2. Location of project:

A. Street Address: _____

B. Tax Map: District _____ Section _____ Block _____ Lot(s) _____
LIST ATTACHED

C. Municipal Jurisdiction:

i. Town: **BROOKHAVEN**
ii. Village: _____
iii. School District: **SOUTH COUNTRY AND LONGWOOD**

D. Acreage: **APPROXIMATELY 271 ACRES**

3. Project Components (check all appropriate categories):

A. Construction of a new building **X** Yes ☐ No
i. Square footage: **APPROXIMATELY 2,538,604 SQUARE FEET**

B. Renovations of an existing building ☐ Yes **X** No
i. Square footage: _____

C. Demolition of an existing building ☐ Yes **X** No
i. Square footage: _____

D. Land to be cleared or disturbed **X** Yes ☐ No
i. Square footage/acreage: **184 ACRES (INCLUDING OFFSITE IMPROVEMENTS)**

III. 2. B.

Tax Lots

B 0200-663.00-03.00-029.001
C 0200-663.00-03.00-003.000
C 0200-663.00-03.00-010.001
C 0200-663.00-03.00-007.001
C 0200-663.00-03.00-018.001
C 0200-705.00-01.00-032.001
C 0200-663.00-03.00-025.003
C 0200-663.00-03.00-026.000
C 0200-664.00-02.00-023.001
C 0200-664.00-02.00-017.001
C 0200-664.00-02.00-029.001
C 0200-664.00-02.00-008.001
C 0200-664.00-02.00-002.000
C 0200-664.00-02.00-033.001
C 0200-664.00-02.00-053.001
C 0200-664.00-02.00-044.001
C 0200-664.00-02.00-035.001
C 0200-664.00-02.00-037.000
C 0200-663.00-03.00-012.007
C 0200-664.00-02.00-042.001
C 0200-664.00-02.00-059.000
C 0200-664.00-02.00-057.000
C 0200-704.00-03.00-006.001
C 0200-704.00-03.00-009.001
C 0200-704.00-03.00-010.000
C 0200-704.00-03.00-022.001
C 0200-704.00-03.00-022.001
C 0200-704.00-02.00-023.001
C 0200-664.00-02.00-040.001
C 0200-705.00-01.00-017.001
C 0200-705.00-01.00-017.001
C 0200-705.00-01.00-021.001
C 0200-704.00-02.00-029.001
C 0200-705.00-01.00-040.001
C 0200-705.00-01.00-077.001
C 0200-705.00-01.00-073.001
C 0200-705.00-01.00-054.001
C 0200-705.00-01.00-079.000
C 0200-705.00-01.00-085.001
C 0200-705.00-01.00-089.001
C 0200-705.00-01.00-092.001
C 0200-705.00-01.00-019.000
C 0200-705.00-01.00-110.001
D 0200-815.00-01.00-006.002
D 0200-815.00-01.00-004.004

- E. Construction of addition to an existing building ☐ Yes ☒ No
 i. Square footage of addition: _____
 ii. Total square footage upon completion: _____
- F. Acquisition of an existing building ☐ Yes ☒ No
 i. Square footage of existing building: _____
- G. Installation of machinery and/or equipment ☒ Yes ☐ No
 i. List principal items or categories of equipment to be acquired: **THESE WOULD BE TENANT SPECIFIC AND ARE UNKNOWN AT THIS POINT**

BUILDING FIXTURES, RAIL EQUIPMENT

4. Current Use at Proposed Location:

- A. Does the Applicant currently hold fee title to the proposed location? **OWNER CURRENTLY OWNS THE PORTION OF THE PROPERTY REFERRED TO AS "PARCEL D"**
 i. If no, please list the present owner of the site: **THE PORTION OF THE PROPERTY KNOWN AS "PARCELS B&C" IS CURRENTLY OWNED BY SILLS ROAD REALTY, LLC (AND AFFILIATES) AND IS SUBJECT TO PENDING CONTRACT TO ACQUIRE SUCH PARCELS WITH NORTHPOINT DEVELOPMENT, LLC**
- B. Present use of the proposed location: **VACANT LAND**
- C. Is the proposed location currently subject to an IDA transaction (whether through this Agency or another?) ☐ Yes ☒ No
 i. If yes, explain: _____
- D. Is there a purchase contract for the site? (if yes, explain): ☒ Yes ☐ No
PARCELS B AND C ARE UNDER CONTRACT WITH AN EFFECTIVE DATE OF MAY 7, 2021.
- E. Is there an existing or proposed lease for the site? (if yes, explain): ☐ Yes ☒ No

5. Proposed Use:

- A. Describe the specific operations of the Applicant or other users to be conducted at the project site: **THE OWNER ANTICIPATES THAT MOST USERS WILL BE HIGH CREDIT TENANTS SEEKING RAIL-ORIENTED MODERN BULDINGS FOR USE AS DISTRIBUTION WAREHOUSES**

- B. Proposed product lines and market demands:

OWNER RESEARCH INDICATES THAT THERE IS A STRONG DEMAND FOR THIS COMMERCIAL PRODUCT ON LONG ISLAND AND THROUGHOUT THE NEW YORK METROPOLITAN REGION

- C. If any space is to be leased to third parties, indicate the tenant(s), total square footage of the project to be leased to each tenant, and the proposed use by each tenant:

THE ENTIRE FACILITY WILL BE LEASED TO THIRD PARTY OCCUPANTS

- D. Need/purpose for project (e.g., why is it necessary, effect on Applicant's business):

NORTHPOINT DEVELOPMENT, LLC, AN AFFILIATE OF OWNER IS A NATIONAL DEVELOPER WITH SIGNIFICANT EXPERIENCE IN RAIL-SERVED INDUSTRIAL REAL ESTATE DEVELOPMENT. ITS RESEARCH CONFIRMS THAT LONG ISLAND IS AN UNDERSERVED MARKET, AND THAT THERE WILL BE A STRONG DEMAND FOR THE PROJECT.

- E. Will any portion of the project be used for the making of retail sales to customers who personally visit the project location? Yes ☐ No ☒

- i. If yes, what percentage of the project location will be utilized in connection with the sale of retail goods and/or services to customers who personally visit the project location? _____

- F. To what extent will the project utilize resource conservation, energy efficiency, green technologies and alternative / renewable energy measures?

THE OWNER IS CURRENTLY ANALYZING THE CONSTRUCTION METHODS AND MATERIALS TO BE USED FOR THE FACILITY, BUT ITS PROJECTS ARE COMMONLY CONSTRUCTED TO A "GREEN GLOBES" STANDARD.

6. Project Work:

- A. Has construction work on this project begun? If yes, complete the following:

i.	Site Clearance:	Yes	☐	No	☒	% Complete	_____
ii.	Foundation:	Yes	☐	No	☒	% Complete	_____
iii.	Footings:	Yes	☐	No	☒	% Complete	_____
iv.	Steel:	Yes	☐	No	☒	% Complete	_____
v.	Masonry:	Yes	☐	No	☒	% Complete	_____
vi.	Other:	_____					

- B. What is the current zoning? **L1**

C. Will the project meet zoning requirements at the proposed location?

Yes ☒

No ☐

D. If a change of zoning is required, please provide the details/status of the change of zone request: N/A

E. Have site plans been submitted to the appropriate planning department?

Yes ☒

No ☐

7. Project Completion Schedule:

A. What is the proposed commencement date for the acquisition and the construction/renovation/equipping of the project?

i. Acquisition: **PARCEL D – CLOSED EARLY MAY, 2021; PARCELS B/C – CLOSING TARGETED FOR SEPTEMBER, 2021**

ii. Construction/Renovation/Equipping: **COMMENCE CONSTRUCTION OF FIRST BUILDING ON PARCEL D EARLY 2022**

B. Provide an accurate estimate of the time schedule to complete the project and when the first use of the project is expected to occur: **ONE YEAR OF CONSTRUCTION WITH FIRST USE IN MARCH, 2023, REMAINING THREE BUILDINGS TO BE CONSTRUCTED OVER A 5 YEAR PERIOD AFTER COMPLETION OF THE FIRST BUILDING**

Part IV – Project Costs and Financing

1. **Project Costs**

- A. Give an accurate estimate of cost necessary for the acquisition, construction, renovation, improvement and/or equipping of the project location:

<u>Description</u>	<u>Amount</u>
Land and/or building acquisition	\$ 90,294,732.00
Building(s) demolition/construction	\$235,346,073.00
Building renovation	N/A
Site Work	\$27,181,535.00
Machinery and Equipment	N/A
Legal Fees	\$5,400,000.00
Architectural/Engineering Fees	\$1,990,000.00
Financial Charges	\$25,664,283.00
Other (due diligence items and development soft costs)	\$19,602,983.00
Total	\$409,739,630.00

Please note, IDA fees are based on the total project costs listed above. At the completion of your project, you are required to provide both a certificate of completion along with a cost affidavit certifying the final project costs. The IDA fees may be adjusted as a result of the certified cost affidavit. Money will not be refunded if the final project cost is less than the amount listed above.

2. Method of Financing:

	Amount	Term
A. Tax-exempt bond financing:	\$ 0.00	_____ years
B. Taxable bond financing:	\$ 0.00	_____ years
C. Conventional Mortgage:	\$ 0.00	_____ years
D. SBA (504) or other governmental financing:	\$ 0.00	_____ years
E. Public Sources (include sum of all State and federal grants and tax credits):	\$ 0.00	_____ years
F. Other loans: <i>see below</i>	\$ 451,339,471	_____ years
G. Owner/User equity contribution:	\$ 163,119,649	_____ years

Total Project Costs \$409,739,630.00

THE PROJECT WILL BE FINANCED IN PHASES WITH CONSTRUCTION LOANS BEING APPLIED FOR AT THE START OF EACH PHASE. AS THE BUILDINGS BECOME FULLY OCCUPIED AND STABILIZED, THE APPLICANT ANTICIPATES THAT IT WILL REFINANCE THE CONSTRUCTION DEBT TO PERMANENT DEBT IN AN AMOUNT OF UP TO THE SUM LISTED IN 2.F. ABOVE.

i. What percentage of the project costs will be financed from public sector sources?

0%

3. Project Financing:

A. Have any of the above costs been paid or incurred (including contracts of sale or purchase orders) as of the date of this application? Yes **X** No ☐

i. If yes, provide detail on a separate sheet. **SEE FOLLOWING PAGE**

B. Are costs of working capital, moving expenses, work in progress, or stock in trade included in the proposed uses of bond proceeds? Give details: **NO**

C. Will any of the funds borrowed through the Agency be used to repay or refinance an existing mortgage or outstanding loan? Give details: **NO**

D. Has the Applicant made any arrangements for the marketing or the purchase of the bond or bonds? If so, indicate with whom: **N/A**

IV. 3. A.

Description	Invoiced	Commitments (POs & Contracts)	Invoice Detail
Engineers-Civil			
Total	135,421.58	928,844.00	
Engineers-Structural			
Total	4,500.00		
Special Inspections		25,000.00	
Traffic study			
Total	4,900.00	57,700.00	
Environmental/Phase I/II Studies		65,080.00	
Environmental Testing/Natural Resources			
Surveying			
Total	15,800.00	15,800.00	
Miscellaneous	63,605.91		
Legal-Transactional			
Total	113,019.00		
Legal-Incentives/Entitlement			
Total	9,535.50	9,000.00	
Earnest Money/Other Deposit			
Total	1,750,000.00		
Legal-Entitlement			
Total	2,096,781.99	1,101,424.00	

Part V – Project Benefits

1. Mortgage Recording Tax Benefit:

- A. Mortgage Amount for exemption (include sum total of construction/permanent/bridge financing):

\$451,339,471.00

- B. Estimated Mortgage Recording Tax Exemption (product of Mortgage Amount and .75%):

\$3,385,046.00

2. Sales and Use Tax Benefit:

- A. Gross amount of costs for goods and services that are subject to State and local Sales and Use Tax (such amount to benefit from the Agency's exemption):

\$157,516,565.00 (60% OF PART IV.A. CONSTRUCTION AND SITE WORK COSTS)

- B. Estimated State and local Sales and Use Tax exemption (product of 8.625% and figure above):

\$13,585,804.00

- C. If your project has a landlord/tenant (owner/user) arrangement, please provide a breakdown of the number in "B" above:

i. Owner: **\$13,585,804.00**

ii. User: \$ _____

3. Real Property Tax Benefit:

- A. Identify and describe if the project will utilize a real property tax exemption benefit other than the Agency's PILOT benefit: **NO**

- B. Agency PILOT Benefit:

i. Term of PILOT requested: **20 YEARS**

ii. Upon acceptance of this application, the Agency staff will create a PILOT schedule and attach such information to Exhibit A hereto. Applicant hereby requests such PILOT benefit as described on Exhibit A.

**** This application will not be deemed complete and final until Exhibit A hereto has been completed. ****

Part VI – Employment Data

1. List the Applicant's and each users present employment, and estimates of (i) employment at the proposed project location at the end of year one and year two following project completion and (ii) the number of residents of the Labor Market Area* ("LMA") that would fill the full-time and part-time jobs at the end of year second year following completion:

Present number of employees: N/A

_____ Date

_____ Average Annual Salary of Jobs to be Retained

PLEASE SEE THE ANNEXED BROOKHAVEN RAIL TERMINAL: ECONOMIC AND FISCAL IMPACT STATEMENT, PREPARED BY MRB GROUP, DATED APRIL 28, 2021, WHICH CONTAINS AN ANALYSIS OF THE CONSTRUCTION AND OPERATIONAL EMPLOYMENT FOR THE PROJECT.

First Year: _____ (fill in year)

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
Full-time													
Part-time													

Second Year: _____ (fill in year)

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
Full-time													
Part-time													

Number of Residents of LMA:

Full-Time: _____

Part-Time: _____

Cumulative Total Employees After Year 2 _____

* The Labor Market Area includes the County/City/Town/Village in which the project is located as well as Nassau and Suffolk Counties.

** Agency staff converts Part-Time jobs into FTEs for state reporting purposes by dividing the number of Part-Time jobs by two (2).

2. Salary and Fringe Benefits:

Category of Jobs to be Created	Average Salary	Average Fringe Benefits
Salary Wage Earners		
Commission Wage Earners		
Hourly Wage Earners		

1099 and Contract Workers		
------------------------------	--	--

What is the annualized salary range of jobs to created? _____ to _____

Note: The Agency reserves the right to visit the facility to confirm that job creation numbers are being met.

Part VII – Representations, Certifications and Indemnification

1. Is the Applicant in any litigation which would have a material adverse effect on the Applicant's financial condition? (if yes, furnish details on a separate sheet)

Yes ☐

No ☒

2. Has the Applicant or any of the management of the Applicant, the anticipated users or any of their affiliates, or any other concern with which such management has been connected, been cited for a violation of federal, state or local laws or regulations with respect to labor practices, hazardous wastes, environmental pollution or other operating practices? (If yes, furnish details on a separate sheet)

Yes ☐

No ☒

3. Is there a likelihood that the Applicant would proceed with this project without the Agency's assistance? (If no, please explain why; if yes, please explain why the Agency should grant the benefits requested)

Yes ☐

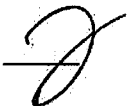
No ☒

GIVEN THE HIGH COST OF CONSTRUCTION AND OPERATING EXPENSES ON LONG ISLAND, OBTAINING THE AGENCY'S ECONOMIC ASSISTANCE IS CRUCIAL TO MAKING THE DEVELOPMENT OF THIS FACILITY FEASIBLE, AND PROVIDING THE CONSTRUCTION AND OPERATIONAL JOBS THAT WILL ASSIST IN KEEPING EMPLOYMENT IN THE TOWN OF BROOKHAVEN AT A HIGH LEVEL.

4. If the Applicant is unable to obtain financial assistance from the Agency for the project, what would be the impact on the Applicant and on the municipality?

WITHOUT THE REQUESTED AGENCY ASSISTANCE, THE APPLICANT CANNOT PROCEED WITH THE PROJECT. THIS WOULD RESULT IN THE LOSS OF APPROXIMATELY 1,000 JOBS, TENS OF MILLIONS OF DOLLARS IN DIRECT ANNUAL WAGES AND PILOT PAYMENTS IN AMOUNTS WELL IN EXCESS OF THE CURRENT REAL ESTATE TAXES.

5. The Applicant understands and agrees that in accordance with Section 858-b(2) of the General Municipal Law, except as otherwise provided by collective bargaining agreements, new employment opportunities created as a result of the project will be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300) in which the project is located (collectively, the "Referral Agencies"). The Applicant also agrees, that it will, except as otherwise provided by collective bargaining contracts or agreements to which they are parties, where practicable, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies.

Initial 

6. The Applicant confirms and acknowledges that the submission of any knowingly false or knowingly misleading information may lead to the immediate termination of any financial

assistance and the reimbursement of an amount equal to all or part of any tax exemption claimed by reason of the Agency's involvement in the Project as well as may lead to other possible enforcement actions.

Initial J

7. The Applicant confirms and hereby acknowledges that as of the date of this Application, the Applicant is in substantial compliance with all provisions of Article 18-A of the New York General Municipal Law, including, but not limited to, the provision of Section 859-a and Section 862(1) of the New York General Municipal Law.

Initial J

8. The Applicant represents and warrants that to the Applicant's knowledge neither it nor any of its affiliates, nor any of their respective partners, members, shareholders or other equity owners, and none of their respective employees, officers, directors, representatives or agents is, nor will they become a person or entity with who United States persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control (OFAC) of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List or under any statute, executive order including the September 24, 2001, Executive Order Block Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, or other governmental action and is not and will not assign or otherwise transfer this Agreement to, contract with or otherwise engage in any dealings or transactions or be otherwise associated with such persons or entities.

Initial J

9. The Applicant confirms and hereby acknowledges it has received the Agency's fee schedule attached hereto as Schedule A and agrees to pay such fees, together with any expenses incurred by the Agency, including those of Transaction Counsel, with respect to the Facility. The Applicant agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the project. The IDA fees are based on the total project costs listed in this application. At the completion of the project, you are required to provide both a certificate of completion along with a cost affidavit certifying the final project costs. The IDA fees may be increased as a result of the certified cost affidavit. Monies will not be refunded if the final costs are below the amount listed in the application.

Initial J

10. The Applicant confirms and hereby acknowledges it has received the Agency's Construction Wage Policy attached hereto as Schedule B and agrees to comply with the same.

Initial J

11. The Applicant hereby agrees to comply with Section 875 of the General Municipal Law. The Company further agrees that the financial assistance granted to the project by the Agency is subject to recapture pursuant to Section 875 of the Act and the Agency's Recapture and Termination Policy, attached hereto as Schedule C.

Initial J

12. The Applicant confirms and hereby acknowledges it has received the Agency's PILOT Policy attached hereto as Schedule D and agrees to comply with the same.

Initial J

13. The Company hereby authorizes the Agency, without further notice or consent, to use the Company's name, logo and photographs related to the Facility in its advertising, marketing and communications materials. Such materials may include web pages, print ads, direct mail and various types of brochures or marketing sheets, and various media formats other than those listed (including without limitation video or audio presentations through any media form). In these materials, the Agency also has the right to publicize its involvement in the Project.

Initial J

Part VIII – Submission of Materials

1. Financial statements for the last two fiscal years (unless included in the Applicant's annual report).
2. Applicant's annual reports (or 10-K's if publicly held) for the two most recent fiscal years.
3. Quarterly reports (form 10-Q's) and current reports (form 8-K's) since the most recent annual report, if any.
4. In addition, please attach the financial information described in items A, B, and C of any expected guarantor of the proposed bond issue.
5. Completed Environmental Assessment Form.
6. Most recent quarterly filing of NYS Department of Labor Form 45, as well as the most recent fourth quarter filing. Please remove the employee Social Security numbers and note the full-time equivalency for part-time employees.

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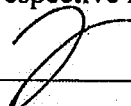
Part IX – Special Representations

1. The Applicant understands and agrees that the provisions of Section 862(1) of the New York General Municipal Law, as provided below, will not be violated if financial assistance is provided for the proposed project. The Applicant hereby indicates its compliance with Section 862(1) by signing the applicable statement below. (Please sign only one of the following statements a. or below).

- a. The completion of the entire project will not result in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state.

Representative of the Applicant: _____ 

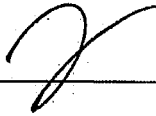
- b. The completion of this entire project will result in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state because the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry.

Representative of the Applicant: _____ 

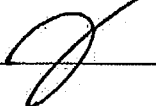
2. The Applicant confirms and hereby acknowledges that as of the date of this Application, the Applicant is in substantial compliance with all provisions of Article 18-A of the New York General Municipal Law, including, but not limited to, the provision of Section 859-a and Section 862(1) of the New York General Municipal Law.

Representative of the Applicant: _____ 

3. In accordance with Section 862(1) of the New York General Municipal Law the Applicant understands and agrees that projects which result in the removal of an industrial or manufacturing plant of the project occupant from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the project occupant within the State is ineligible for financial assistance from the Agency, unless otherwise approved by the Agency as reasonably necessary to preserve the competitive position of the project in its respective industry or to discourage the project occupant from removing such other plant or facility to a location outside the State.

Representative of the Applicant: _____ 

4. The Applicant confirms and acknowledges that the owner, occupant, or operator receiving financial assistance for the proposed project is in substantial compliance with applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

Representative of the Applicant: _____ 

Part X – Certification

Nathaniel Hagedorn deposes and says that he is the Manager of NP/WINTERS LONG ISLAND INDUSTRIAL, LLC, the entity named in the attached application; that he or she has read the foregoing application and knows the contents thereof; and that the same is true to his knowledge.

Deponent further says that he is duly authorized to make this certification on behalf of the entities named in the attached Application (the "Applicant") and to bind the Applicant. The grounds of deponent's belief relative to all matters in said Application which are not stated upon his personal knowledge are investigations which deponent has caused to be made concerning the subject matter this Application, as well as in formation acquired by deponent in the course of his duties in connection with said Applicant and from the books and papers of the Applicant.

As representative of the Applicant, deponent acknowledges and agrees that Applicant shall be and is responsible for all costs incurred by the Town of Brookhaven Industrial Development Agency (hereinafter referred to as the "Agency") in connection with this Application, the attendant negotiations and all matters relating to the provision of financial assistance to which this Application relates, whether or not ever carried to successful conclusion. If, for any reason whatsoever, the Applicant fails to conclude or consummate necessary negotiations or fails to act within a reasonable or specified period of time to take reasonable, proper, or requested action or withdraws, abandons, cancels or neglects the application or if the Applicant is unable to find buyers willing to purchase the total bond issue required, then upon presentation of invoice, Applicant shall pay to the Agency, its agents or assigns, all actual costs incurred with respect to the application, up to that date and time, including fees to bond or transaction counsel for the Agency and fees of general counsel for the Agency. Upon successful conclusion of the transaction contemplated herein, the Applicant shall pay to the Agency an administrative fee set by the Agency in accordance with its fee schedule in effect on the date of the foregoing application, and all other appropriate fees, which amounts are payable at closing.

The Applicant hereby subscribes and affirms under the penalties of perjury that the information provided in this Application is true, accurate and complete to the best of his or her knowledge.

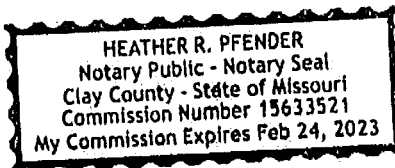
NP/WINTERS LONG ISLAND INDUSTRIAL, LLC

By: NPD Management, LLC, a Missouri limited liability company,
its Manager

By: _____
Nathaniel Hagedorn, Manager

Sworn to me before this 15th
day of June, 2021

(seal)



**** Note: If the entities named in this Application are unrelated and one individual cannot bind both entities, Parts VII, IX and X of this Application must be completed by an individual representative for each entity ****

EXHIBIT A

Proposed PILOT Schedule

Upon acceptance of the Application and completion of the Cost Benefit Analysis, the Agency will attach the proposed PILOT Schedule to this Exhibit.

Town of Brookhaven Industrial Development
Schedule of Fees

Application -	\$3,000 for projects with total costs under \$5 million \$4,000 for projects with total costs \$5 million and over (non-refundable)
Closing/Expansion Sale/Transfer/Increase of Mortgage Amount/Issuance of Refunding Bonds	¾ of one percent up to \$25 million total project cost and an additional 1/4 of one percent on any project costs in excess of \$25 million. Projects will incur a minimum charge of \$10,000 plus all fees incurred by the Agency including, but not limited to publication, legal, and risk monitoring.
Annual Administrative	\$2,000 administrative fee plus \$500 per unrelated subtenant located in the project facility. This fee is due annually.
Termination	Between \$1,000 and \$2,500
Refinance (excluding refunding bonds)	1/4 of one percent of mortgage amount or \$5,000, whichever is greater.
Late PILOT Payment	5% penalty, 1% interest compounded monthly, plus \$1,000 administrative fee.
PILOT extension	a minimum of \$15,000
Processing Fee	\$275 per hour with a minimum fee of \$275
Lease of Existing Buildings (partial or complete)	Fee is based on contractual lease amount.

The Agency reserves the right to adjust these fees.

Updated: November 17, 2020

SCHEDULE B

CONSTRUCTION WAGE POLICY

EFFECTIVE January 1, 2005

The purpose of the Brookhaven IDA is to provide benefits that reduce costs and financial barriers to the creation and to the expansion of business and enhance the number of jobs in the Town.

The Agency has consistently sought to ensure that skilled and fair paying construction jobs be encouraged in projects funded by the issuance of IDA tax exempt bonds in large projects.

The following shall be the policy of the Town of Brookhaven IDA for application for financial assistance in the form of tax-exempt financing for projects with anticipated construction costs in excess of \$5,000,000.00 per site received after January 1, 2005. Non-profit corporations and affordable housing projects are exempt from the construction wage policy.

Any applicant required to adhere to this policy shall agree to:

- (1) Employ 90% of the workers for the project from within Nassau or Suffolk Counties. In the event that this condition cannot be met, the applicant shall submit to the Agency an explanation as to the reasons for its failure to comply and;
- (2) Be governed by the requirements of Section 220d of Article 8 of the Labor Law of the State of New York; and when requested by the Agency, provide to the Agency a plan for an apprenticeship program;

OR

- (3) Provide to the Agency a project labor agreement or alternative proposal to pay fair wages to workers at the construction site.

Furthermore, this policy may be waived, in the sole and final discretion of the Agency, in the event that the applicant demonstrates to the Agency special circumstances or economic hardship to justify a waiver to be in the best interests of the Town of Brookhaven.

Adopted: May 23, 2005

SCHEDULE C

RECAPTURE AND TERMINATION POLICY

EFFECTIVE JUNE 8, 2016

Pursuant to Sections 874(10) and (11) of Title 1 of Article 18-A of the New York State General Municipal Law (the “Act”), the Town of Brookhaven Industrial Development Agency (the “Agency”) is required to adopt policies (i) for the discontinuance or suspension of any financial assistance provided by the Agency to a project or the modification of any payment in lieu of tax agreement and (ii) for the return of all or part of the financial assistance provided by the Agency to a project. This Recapture and Termination Policy was adopted pursuant to a resolution enacted by the members of the Agency on June 8, 2016.

I. Termination or Suspension of Financial Assistance

The Agency, in its sole discretion and on a case-by-case basis, may determine (but shall not be required to do so) to terminate or suspend the Financial Assistance (defined below) provided to a project upon the occurrence of an Event of Default, as such term is defined and described in the Lease Agreement entered into by the Agency and a project applicant (the “Applicant”) or any other document entered into by such parties in connection with a project (the “Project Documents”). Such Events of Default may include, but shall not be limited to, the following:

- 1) Sale or closure of the Facility (as such term is defined in the Project Documents);
- 2) Failure by the Applicant to pay or cause to be paid amounts specified to be paid pursuant to the Project Documents on the dates specified therein;
- 3) Failure by the Applicant to create and/or maintain the FTEs as provided in the Project Documents;
- 4) A material violation of the terms and conditions of the Project Agreements; and
- 5) A material misrepresentation contained in the application for Financial Assistance, any Project Agreements or any other materials delivered pursuant to the Project Agreements.

The decision of whether to terminate or suspend Financial Assistance and the timing of such termination or suspension of Financial Assistance shall be determined by the Agency, in its sole discretion, on a case-by-case basis, and shall be subject to the notice and cure periods provided for in the Project Documents.

For the purposes of this policy, the term “Financial Assistance” shall mean all direct monetary benefits, tax exemptions and abatements and other financial assistance, if any, derived solely from the Agency’s participation in the transaction contemplated by the Project Agreements including, but not limited to:

- (i) any exemption from any applicable mortgage recording tax with respect to the Facility on mortgages granted by the Agency on the Facility at the request of the Applicant;

- (ii) sales tax exemption savings realized by or for the benefit of the Applicant, including and savings realized by any agent of the Applicant pursuant to the Project Agreements in connection with the Facility; and
- (iii) real property tax abatements granted under the Project Agreements.

II. Recapture of Financial Assistance

The Agency, in its sole discretion and on a case-by-case basis, may determine (but shall not be required to do so) to recapture all or part of the Financial Assistance provided to a project upon the occurrence of a Recapture Event, as such term is defined and described in the Project Documents. Such Recapture Events may include, but shall not be limited to the following:

- 1) Sale or closure of the Facility (as such term is defined in the Project Documents);
- 2) Failure by the Applicant to pay or cause to be paid amounts specified to be paid pursuant to the Project Documents on the dates specified therein;
- 3) Failure by the Applicant to create and/or maintain the FTEs as provided in the Project Documents;
- 4) A material violation of the terms and conditions of the Project Agreements; and
- 5) A material misrepresentation contained in the application for Financial Assistance, any Project Agreements or any other materials delivered pursuant to the Project Agreements.

The timing of the recapture of the Financial Assistance shall be determined by the Agency, in its sole discretion, on a case-by-case basis, and is subject to the notice and cure periods provided for in the Project Documents. The percentage of such Financial Assistance to be recaptured shall be determined by the provisions of the Project Documents.

All recaptured amounts of Financial Assistance shall be redistributed to the appropriate affected taxing jurisdiction, unless agreed to otherwise by any local taxing jurisdiction.

For the avoidance of doubt, the Agency may determine to terminate, suspend and/or recapture Financial Assistance in its sole discretion. Such actions may be exercised simultaneously or separately and are not mutually exclusive of one another.

III. Modification of Payment In Lieu of Tax Agreement

In the case of any Event of Default or Recapture Event, in lieu of terminating, suspending or recapturing the Financial Assistance, the Agency may, in its sole discretion, adjust the payments in lieu of taxes due under the Project Agreements, so that the payments in lieu of taxes payable under the Project Agreements are adjusted upward retroactively and/or prospectively for each tax year until such time as the Applicant has complied with the provisions of the Project Agreements. The amount of such adjustments shall be determined by the provisions of the Project Documents.

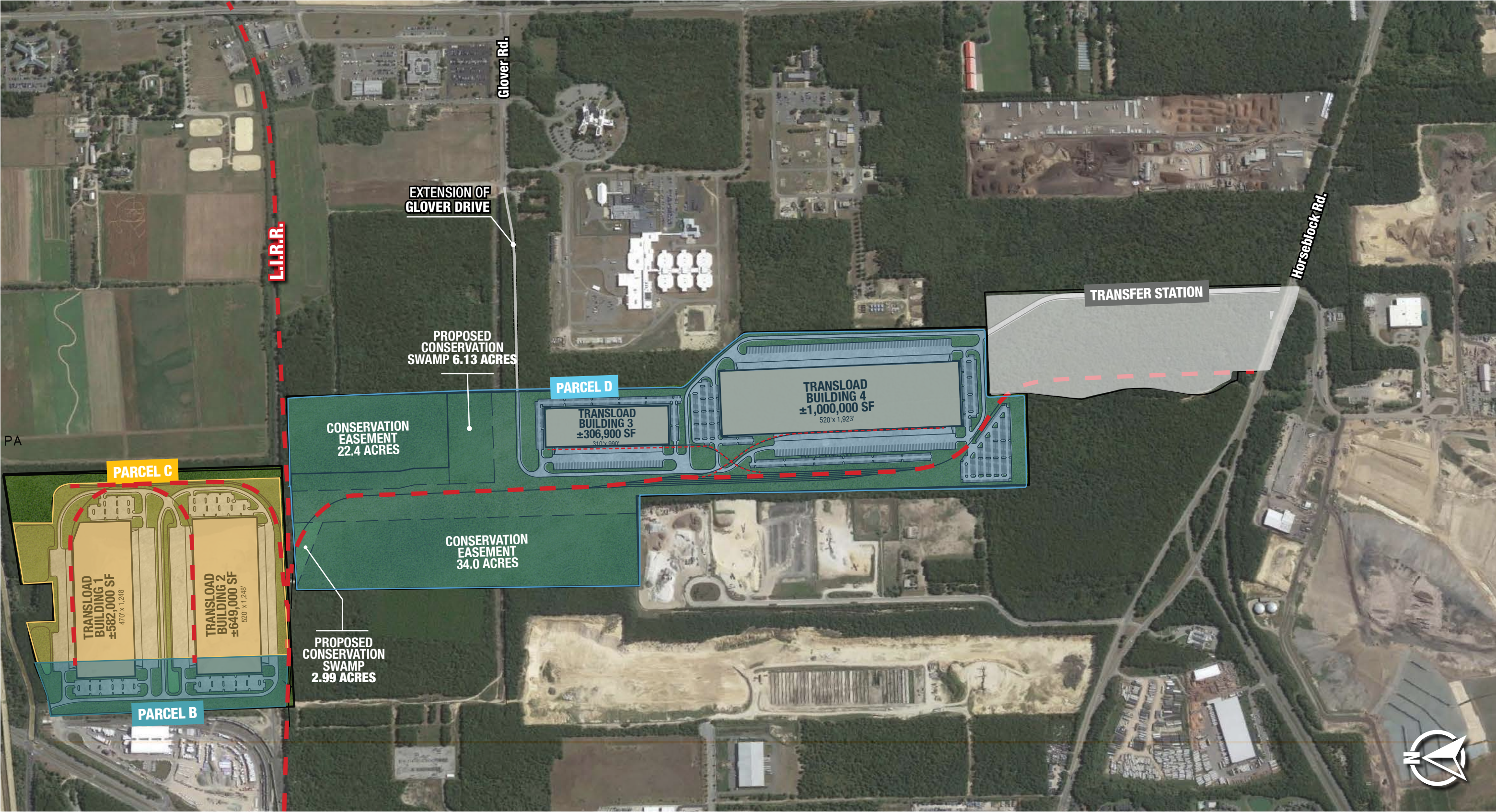
SCHEDULE D

Agency Payment in Lieu of Taxes (PILOT) Policy

An annual fee of \$1,000 will be due to the Agency in addition to the PILOT payment to cover ongoing costs incurred by the Agency on behalf of the project.

1. The Town of Brookhaven Industrial Development Agency (IDA) may grant or be utilized to obtain a partial or full real property tax abatement for a determined period. To be eligible for this abatement there would be a requirement of new construction, or renovation, and a transfer of title of the real property to the Town of Brookhaven IDA.
2. The Chief Executive Officer (CEO) or their designee shall consult with the Town Assessor to ascertain the amounts due pursuant to each PILOT Agreement. Thereafter, the PILOT payment for each project shall be billed to the current lessees. The lessees can pay the PILOT payment in full by January 31st of each year, or in two equal payments due January 31st and May 31st of each year of the PILOT Agreement. The CEO or their designee shall send all PILOT invoices to the lessees on a timely basis.
3. The Town of Brookhaven IDA shall establish a separate, interest bearing bank account for receipt and deposit of all PILOT payments. The CEO or their designee shall be responsible for depositing and maintaining said funds with input from the Chief Financial Officer (CFO).
4. The CEO or their designee shall remit PILOT payments and penalties if any, to the respective taxing authorities in the proportionate amounts due to said authorities. These remittances shall be made within thirty (30) days of receipt of the payments to the Agency.
5. Payments in lieu of taxes which are delinquent under the agreement shall be subject to a late payment penalty of five percent (5%) of the amount due. For each month, or part thereof, that the payment in lieu of taxes is delinquent beyond the first month, interest shall on the total amount due plus a late payment penalty in the amount of one percent (1%) per month until the payment is made.
6. If a PILOT payment is not received by **January 31st** of any year or **May 31st** of the second half of the year the lessee shall be in default pursuant to the PILOT Agreement. The Agency may give the lessee notice of said default. If the payment is not received within thirty (30) days of when due, the CEO shall notify the Board, and thereafter take action as directed by the Board.
7. The CEO shall maintain records of the PILOT accounts at the Agency office.
8. Nothing herein shall be interpreted to require the Agency to collect or disburse PILOT payments for any projects which are not Agency projects.

9. Should the Applicant fail to reach employment levels as outlined in their application to the Agency, the Board reserves the right to reduce or suspend the PILOT Agreement, declare a default under the Lease or the Installment Sale Agreement, and/or convey the title back to the Applicant.
10. This policy has been adopted by the IDA Board upon recommendation of the Governance Committee and may only be amended in the same manner.





June 14, 2021

Town of Brookhaven Industrial Development Agency
Office of Economic Development
1 Independence Hill
Farmingville, NY 11738

Re: NorthPoint Development Application for Financial Assistance

Members of the Board:

I write to introduce Northpoint Development (the "Applicant") and provide a narrative of the proposed rail logistical facility which is the subject of the Application I submit with this letter. NorthPoint Development is an industrial real estate development firm headquartered in Missouri. It operates in twenty four states and owns a portfolio of almost 100,000,000 square feet, much of which involves transportation logistics. The Applicant is a nationally-recognized leader in developing rail solutions and intermodal facilities providing enormous economic value to the communities in which they are located.

This Application is submitted in connection with the construction of approximately 2,461,000 square feet of rail-contiguous warehouse and distribution facilities developed in four buildings. The subject site lies in two separate parcels located east of Sills Road, south of the Long Island Expressway and adjacent on both sides of the Long Island Railroad tracks in Yaphank, New York. The parcels aggregate approximately 271 acres in area, and are known to the Town of Brookhaven as Parcels B and C (north of the LIRR tracks) and part of parcel D (south of the LIRR tracks). For the Board's convenience, I attach a rough site plan indicating the location of the proposed buildings, as well as the rail spurs running off the LIRR main line.

NorthPoint has been reviewing the proposed development with the Town of Brookhaven Planning Department and other concerned departments. We believe that this proposed use of the Yaphank site complies with type of development the Town contemplated when it settled certain legal disputes with prior developers several years ago. Once the land use approval process is completed, the Applicant anticipates starting the actual construction of the initial building in early 2022, and finishing the last building in 2028. The total project cost is estimated to approach \$410,000,000. As part of this submission, I include renderings of the typical elevation and appearance of NorthPoint's buildings of this type.

Included with the Application is the Brookhaven Rail Terminal: Economic and Fiscal Impact Assessment prepared by MRB Associates. I encourage Board members to review the Assessment in depth. I can confirm that it estimates direct construction employment



at approximately 1,150 personnel, with an additional indirect effect of another 670 jobs, and an overall economic impact of more than \$124,000,000. The ongoing annual direct and indirect operational employment is estimated at a range between 1,477 and 1,846 jobs. The annual wages would range between \$77,300,000 and \$96,600,000. Clearly, the construction and operation of this facility will be a major economic boon to the Town of Brookhaven.

NorthPoint has not negotiated agreements with any end-users of the development. However, its experience in the operation of industrial buildings leads it to believe that Long Island has significantly less of this product than the region will need and, with the Agency's assistance, it looks forward to meeting that need.

We look forward to presenting this Application and discussing its merits with the Town of Brookhaven Industrial Development Agency.

Very truly yours,

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

Chad Meyer
President
NorthPoint Development

Short Environmental Assessment Form

Part 1 - Project Information

Instructions for Completing

Part 1 – Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 – Project and Sponsor Information			
Name of Action or Project: Proposed Development of Parcels B, C and D			
Project Location (describe, and attach a location map): 321± acres situated on the east side of Sills Road and south side of LIE South Service Road, bounded by LIE South Service Road to the north and Horseblock Road to the south, Yaphank, Town of Brookhaven, Suffolk County, NY (see attached Site Location Map)			
Brief Description of Proposed Action: Application for Economic Benefits in connection with development of approximately 2,538,604 square feet of rail-oriented warehouse and distribution facilities.			
Name of Applicant or Sponsor: NP/Winters Long Island Industrial, LLC		Telephone: 816-888-7380 E-Mail: jsweeney@northpointkc.com	
Address: 4825 NW 41st Street			
City/PO: Riverside		State: MO	Zip Code: 64150
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO ☐
			YES ☐
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval: *See Page 3 - Bottom of Page			NO ☐
			YES ☒
3. a. Total acreage of the site of the proposed action? 273.735± acres b. Total acreage to be physically disturbed? 200± acres c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? 273.735± acres			
4. Check all land uses that occur on, are adjoining or near the proposed action:			
5. ☐ Urban ☐ Rural (non-agriculture) ☒ Industrial ☐ Commercial ☐ Residential (suburban) ☒ Forest ☒ Agriculture ☐ Aquatic ☒ Other(Specify): County facilities ☐ Parkland			

5. Is the proposed action,	NO	YES	N/A
a. A permitted use under the zoning regulations?	☐	☒	☐
b. Consistent with the adopted comprehensive plan?	☐	☒	☐
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	☐	☒	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area?	NO	YES	
Name:SGPA, Name:Central Suffolk Pine Barrens, Reason:Protect groundwater, Reason:Benefit to human health If Yes, identify: & protect drinking water, Agency:Long Island Regional Planning, Agency:Suffolk County, Date:3-19-93, Date:2-10-88	☐	☒	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO	YES	
	☐	☒	
b. Are public transportation services available at or near the site of the proposed action?	☒	☐	
c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	☒	☐	
9. Does the proposed action meet or exceed the state energy code requirements?	NO	YES	
If the proposed action will exceed requirements, describe design features and technologies: _____ _____	☐	☒	
10. Will the proposed action connect to an existing public/private water supply?	NO	YES	
If No, describe method for providing potable water: _____ _____	☐	☒	
11. Will the proposed action connect to existing wastewater utilities?	NO	YES	
If No, describe method for providing wastewater treatment: _____ _____	☐	☒	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?	NO	YES	
	☒	☐	
b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	☒	☐	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? *See Below	NO	YES	
	☐	☒	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?	☒	☐	
If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____			

*National Wetlands Inventory (NWI) freshwater ponds located approximately 1,129 feet west from the center of the boundary of Parcel D and two freshwater emergent wetland areas are located approximately 1,077 feet and 2,763 feet west from the northwestern boundary of Parcel D.

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: ☐ Shoreline ☒ Forest ☐ Agricultural/grasslands ☐ Early mid-successional ☐ Wetland ☐ Urban ☒ Suburban		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered? Ecological Study was conducted and appropriate mitigation measures have been incorporated into the project. Northern Long-eared Bat, Persius Duskywing	NO	YES
	☐	☒
16. Is the project site located in the 100-year flood plan?	NO	YES
	☒	☐
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe:	NO	YES
	☐	☒
	☒	☐
	☐	☒
Subsurface drainage structures are proposed to accommodate an eight-inch rainfall pursuant to Town of Brookhaven Stormwater Management Program Plan.		
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment:	NO	YES
	☒	☐
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe:	NO	YES
	☒	☐
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe:	NO	YES
	☐	☒
See Item 20 - Remediation below		
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE		
Applicant/sponsor/name: NP/Winters Long Island Industrial, LLC Date: June 16, 2021		
Signature: <u>Rebecca R Morrow</u> Title: Sr. Environmental Planner/Project Manager		
Rebecca Morrow, CFM P.W. Grosser Consulting, Inc. as environmental consultant to the Applicant		

Item 2 - Required Permits and Approvals: Town of Brookhaven Planning Board (site plan approval), Suffolk County Water Authority (water connection), Suffolk County Department of Health Services (water supply and sanitary disposal, for any use/storage of handling of toxic or hazardous materials, including transloading of oil on Parcels B, C, or D), New York State Department Transportation (Highway Work Permit-LIE South Service Road), Long Island Power Authority (access agreement over Northpoint property to LIPA T&D assets, acquisition of LIPA assets and easements on Parcel C in compliance with LIPA's guidelines for property disposition pursuant to the Public Authorities Law and State Finance Law), Long Island Rail Road (easements, design approvals) United States Surface Transportation Board (petition for declaratory order for Northpoint operations on Parcel D).

Item 20 - Remediation: The EAF Mapper noted the proposed action or an adjoining property has been the subject of remediation (ongoing or completed) for hazardous waste. The site is identified as 152246 - Suffolk County Firematics. Review of the NYSDEC DECinfo Locator indicates Suffolk County Firematics is a State Superfund Program site and located 1,135 feet from the central western boundary of Parcel D. Current remediation efforts are for the presence of perfluorooctane sulfonic acid (PFOS) and perfluorooctanoic acid (PFOA) above the USEPA lifetime health advisory levels in private water supplies.

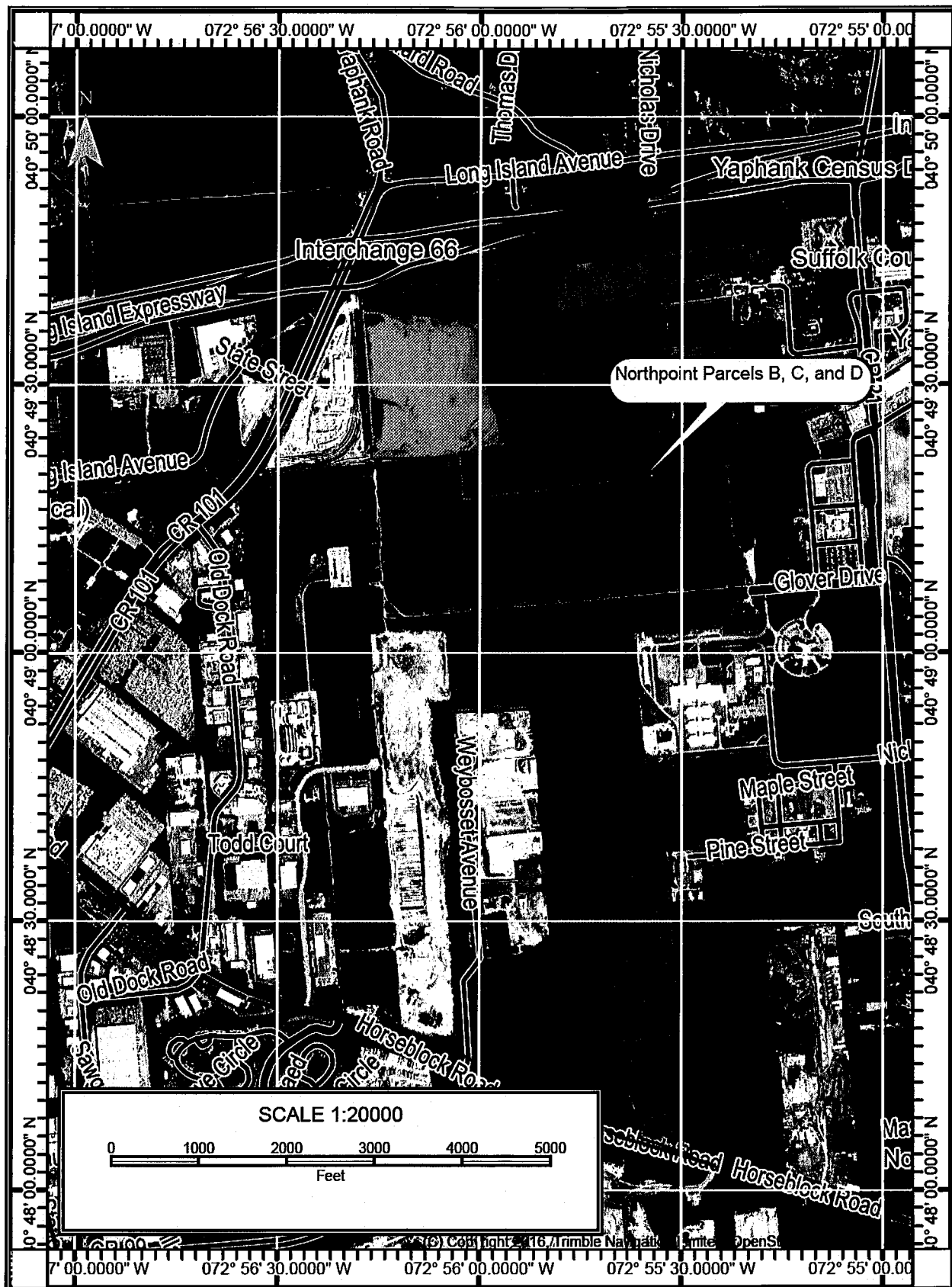
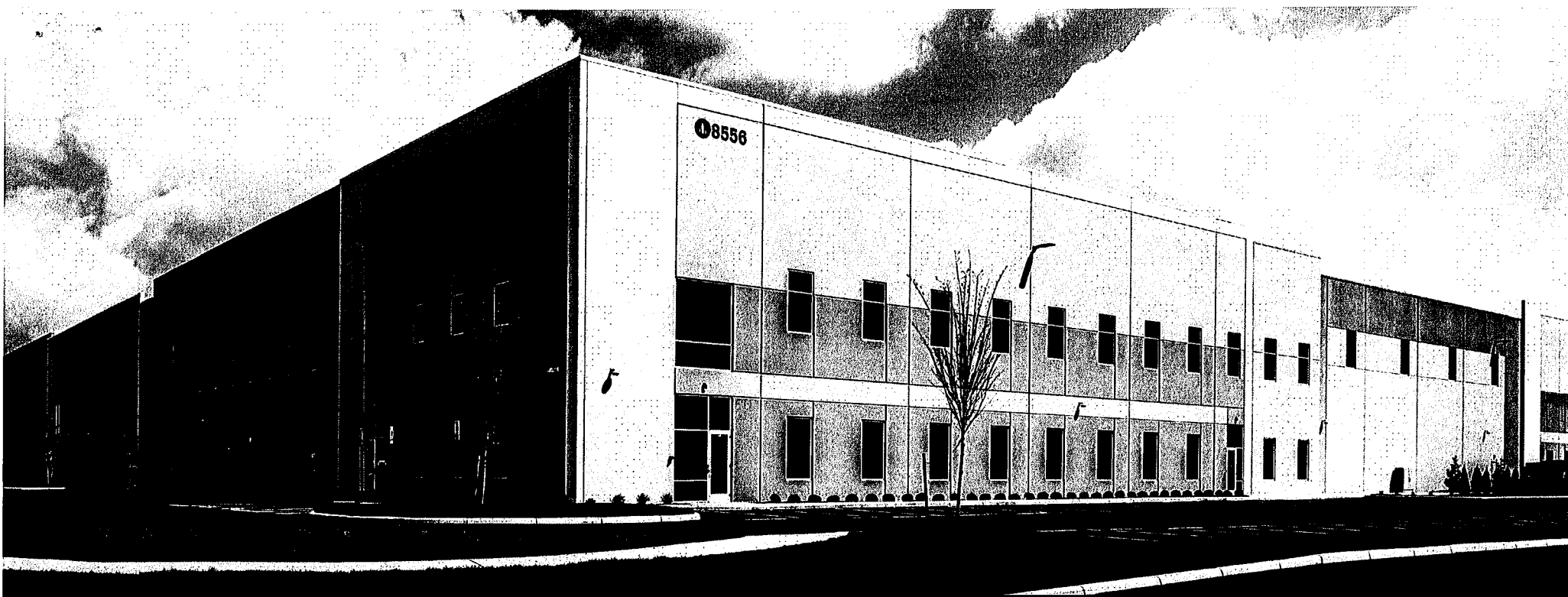


Figure 1 - Site Location Map

Northpoint Development Parcels B, C, and D
 East side of Sills road and south side of LIE South Service Road,
 Bounded by LIE South Service Road to the north and Horseblock Road to the south
 Yaphank, Town of Brookhaven, Suffolk County, NY



Brookhaven Rail Terminal: Economic & Fiscal Impact Assessment

Prepared by:

MRB | *group*

Prepared for:
NorthPoint Development, LLC

Date:
April 28, 2021

Executive Summary

NorthPoint Development, LLC (the "Developer") is proposing an industrial real estate development project located south of the Long Island Expressway, north of Horseback Road, and West of Yaphank Avenue in the Town of Brookhaven (the "Site"). The proposed project includes the construction of four rail-served industrial buildings totaling approximately 2.5 million square feet (the "Project"). The Developer has requested an economic and fiscal impact analysis from MRB Group to enumerate the impacts of the Project on the Town of Brookhaven (the "Town"), Suffolk County (the "County"), the South Country Central School District (the "South Country CSD"), the Longwood Central School District (the "Longwood CSD"), and other affected taxing jurisdictions.

MRB Group conducted an assessment of the economic and fiscal impacts of the Project, including both the one-time construction phase impacts as well as the ongoing impacts of the operation phase once the Project is complete and future industrial tenants (the "Tenants") occupy the Site. The economic impacts considered in this analysis include the direct and indirect jobs, wages, and sales created by the Project. The fiscal impacts include one-time and ongoing new sales tax revenue created by the Project as well as revenue to be received by the various taxing jurisdictions under a presumed Payment in Lieu of Taxes (PILOT) agreement between the Developer and the Town of Brookhaven Industrial Development Agency (IDA).

Note that, because the exact employment counts of the Tenants are not yet known, we provide two cases in our analysis: the "Low Case" is based upon the assumption of one Tenant job per 2,250 square feet of space created and the "High Case" is based upon the assumption of one Tenant job per 1,800 square feet of space created.

Economic Impact Summary

As shown in the table to the right, we estimate that the construction phase of the Project will create 1,151 direct, on-site construction jobs and 670 indirect jobs. Therefore, in total, the construction phase of the Project will create 1,821 jobs generating \$124.4 million in wages in the County.

When occupied by the Tenants, we estimate between 1,094 and 1,367 ongoing, permanent jobs will be created on Site, with a further 383 to 479 indirect jobs. Therefore, in total, we

Summary of Economic Impacts

	Direct	Indirect	Total
Construction Jobs	1,151	670	1,821
Construction Wages	\$81,313,295	\$43,064,638	\$124,377,933
Ongoing Jobs - Low Case	1,094	383	1,477
Ongoing Wages - Low Case	\$55,502,073	\$21,826,637	\$77,328,710
Ongoing Jobs - High Case	1,367	479	1,846
Ongoing Wages - High Case	\$69,352,225	\$27,273,320	\$96,625,545

estimate that the Project will create between 1,477 and 1,846 permanent jobs in the Town with associated annual earnings of between \$77.3 million and \$96.6 million¹.

Fiscal Impact Summary

In terms of fiscal benefits, the Project will increase tax revenues for the County, Town,² South Country CSD, and Longwood CSD³. We estimate that the County will earn sales tax revenue in the amount of \$925,061 during the construction phase of the Project, as a result of a portion of the construction phase worker earnings being spent locally. During the 20-year term of the presumed PILOT, we estimate the County will collect a further \$15.7 million of sales tax revenue as a result of the operation phase earnings.

As shown in the table below, under the terms of the presumed PILOT, we estimate the County will collect \$9.4 million *more* in PILOT payments from the Project than the property taxes it would otherwise collect without the Project. Therefore, in total, we estimate the County's fiscal benefit from the Project over the 20 years of the presumed PILOT would be \$26.0 million.

The Town of Brookhaven would likewise collect \$13.0 million more in PILOT payments than it would in property taxes without the Project; the Longwood CSD would collect \$31.0 million more than it would without the Project; and the South Country CSD would collect \$26.1 million more than it would without the Project. Therefore, in total, all four jurisdictions would collectively benefit from \$96 million in new revenues as a result of the Project moving forward.

Summary of Fiscal Benefits Over 20 Year PILOT Term

	County	Town	Longwood CSD	South Country CSD	Total
Sales Tax, One-Time	\$925,061				\$925,061
Sales Tax, Operations (Midpoint)	\$15,717,784				\$15,717,784
Increase In Property Tax Revenues	\$9,364,636	\$12,980,829	\$30,997,967	\$26,112,910	\$79,456,342
Total Fiscal Benefits	\$26,007,480	\$12,980,829	\$30,997,967	\$26,112,910	\$96,099,187

¹ Note that the jobs reported for the construction phase are with respect to Suffolk County, whereas the operation phase jobs are with respect to the Town of Brookhaven. The direct, ongoing wages reported include estimated employee benefits. See the body of this report for the definition and explanation of "Indirect" jobs and wages.

² As noted elsewhere in this report, the fiscal impacts to the Town include the Town's general funds, highway funds, and various special districts of the Town. See Appendix B for representative tax bills that show all relevant districts.

³ Note that the Site spans the border of the two school districts mentioned.

Other Benefits of the Project

In addition to those impacts described above, the Project will also benefit the Town of Brookhaven and Long Island in a number of indirect ways. One such way is that the Project will provide a rail connection for the proposed Solid Waste Rail Transfer Facility (SWRTF) to the Long Island Railroad and eventually to the Norfolk Southern and CSX rail lines, thereby allowing for the environmentally friendly transportation of waste by rail to off-Island disposal sites.

Specifically, there is a solid waste disposal crisis on Long Island which will worsen with the planned closure of the Brookhaven Landfill in 2024. A cost-effective and environmentally sound process is needed to manage the thousands of tons of waste that Long Island's inhabitants and businesses produce daily. The Brookhaven landfill currently accepts about 1,200,000 tons per year of construction waste, automobile fluff from metal shredders, and ash from incinerators. The rail transfer facility will allow the material to be processed and then transported by rail to distant landfills for proper disposal. Without a rail-served solid waste facility, an additional 60,000 truck trips per year will be needed to transport this waste.

Therefore, the Project's rail connection to the proposed SWRTF allows the Town to avoid this additional truck traffic while still allowing for the proper disposal of these solid waste streams.

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Introduction

NorthPoint Development, LLC is proposing an industrial real estate development project located south of the Long Island Expressway, north of Horseback Road, and West of Yaphank Avenue in the Town of Brookhaven. The proposed project includes the construction of four rail-served industrial buildings totaling approximately 2.5 million square feet. The Developer has requested an economic and fiscal impact analysis from MRB Group to enumerate the impacts of the Project on the Town of Brookhaven, Suffolk County, the South Country Central School District, the Longwood Central School District, and other affected taxing jurisdictions.

MRB Group conducted an assessment of the economic and fiscal impacts of the Project, including both the one-time construction phase impacts as well as the ongoing impacts of the operation phase once the Project is complete and future industrial tenants occupy the Site. The economic impacts considered in this analysis include the direct and indirect jobs, wages, and sales created by the Project. The fiscal impacts include one-time and ongoing new sales tax revenue created by the Project as well as revenue to be received by the various taxing jurisdictions under a presumed Payment in Lieu of Taxes (PILOT) agreement between the Developer and the Town of Brookhaven Industrial Development Agency (IDA).

Market Overview

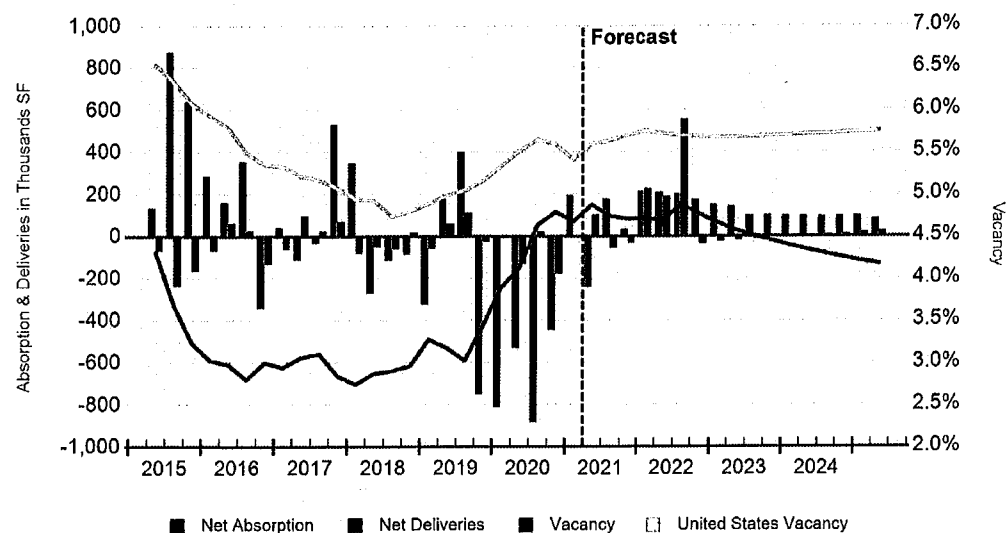
Long Island's industrial real estate market has exhibited low vacancy rates in recent years, as shown in the table to the right. Vacancy rates have remained under 5%, well below national averages. (Source: CoStar.)

The COVID-19 pandemic has impacted nearly every property type of real estate. Industrial space and logistics, however, have been less sensitive to these adverse conditions and, in many cases, demand for logistics and distribution space has actually increased.

The Long Island industrial market has yet to capture much of this demand, likely due to the limited highway capacity to get on and off the island and lack of inventory. In its most recent Long Island industrial space market commentary, CoStar analysts stated:

"Though the logistics industry is better positioned than other property types in the pandemic, Long Island has not captured much of this demand. [...] Once a major area for rail freight transportation, New York City and Long Island have seen commercial railroading all but disappear, ***amplifying reliance on highway connections*** for the local logistics industry. I-495 (the Long Island Expressway) runs east-west through the entirety of Long Island and Queens, providing access to the more than 900,000 households in the metro. The route also provides access to roughly 1.7 million households across Brooklyn and Queens. The bulk of the inventory is located within four miles of the Long Island Expressway, and ***large modern buildings are generally an anomaly*** in the metro. [...] Development is hindered by a lack of industrial sites available for development and [Long Island's] relative isolation."⁴

NET ABSORPTION, NET DELIVERIES & VACANCY



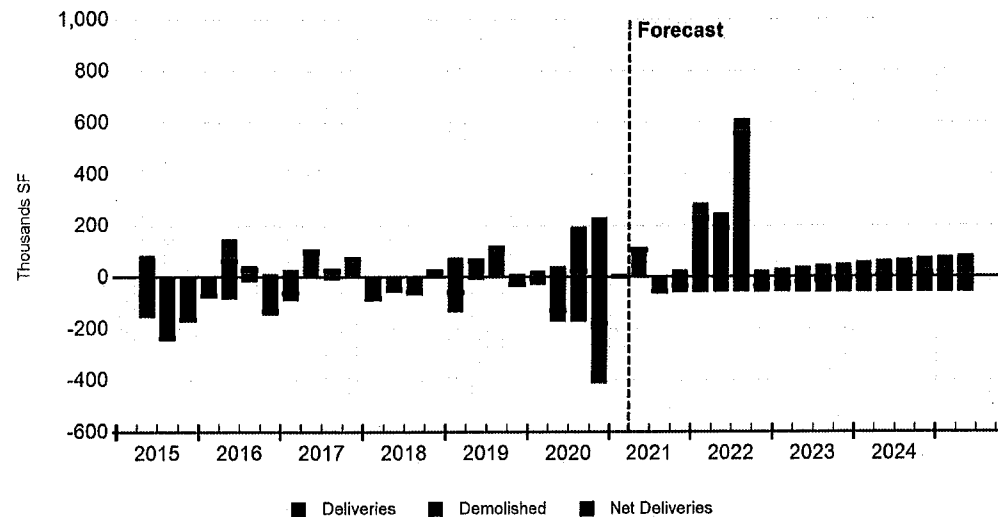
⁴ Emphasis added. Source: CoStar Industrial Market Report for Long Island NY, accessed April 2021, pages 3 and 9.

Indeed, the data show that deliveries in the Long Island industrial real estate market have been minor in recent years. There has been only one quarter where deliveries exceeded 200,000 sf, and most quarters actually saw negative net deliveries due to demolitions.

It appears that the proposed project would substantially improve the Long Island industrial market, bringing nearly 2.5 million square feet of new space to the market with rail access, circumventing the need to rely on an already-congested road network.

Therefore, we conclude that the proposed Project, providing Tenants with large, modern buildings and access to freight transportation routes, is additive to the market and represents product not currently available. We thus treat any new Tenants as "net new" to the Suffolk County economy.

DELIVERIES & DEMOLITIONS



Economic Impact Analysis

The Project would have economic impacts on the County and Town in a number of ways. These include one-time impacts to jobs, earnings, and sales during the construction phase of the Project, which we estimate for the entire County. They also include ongoing impacts related the operations of the Project, which we estimate for the Town.⁵

Methodology

Both one-time, construction-phase impacts and ongoing, operation-phase impacts have “direct” and “indirect” components. For the construction phase:

- Direct jobs, wages, and sales are those that occur on-site related to labor and materials used in the construction of the Project.
- Indirect jobs, wages, and sales are those caused by the direct impacts, and result from business-to-business purchases (e.g. a contractor buying a piece of equipment from a dealer) and from employees spending a portion of their wages locally.

For the operation phase:

- Direct jobs, wages, and sales are those created from the operations of the presumed Tenants (e.g. on-site warehousing employment).
- Indirect jobs, wages, and sales are those caused by the direct impact, such as business-to-business purchases by the Tenants and by the Tenants’ employees spending a portion of their wages locally.

To estimate the direct and indirect impacts, MRB Group employed the Emsi⁶ economic modeling system. We used data from the Developer and from publicly-available and proprietary data sources as inputs to the Emsi modeling system. Where needed, we adjusted the Emsi model to best match the Project specifics. We then reported the results of the modeling.

⁵ By their nature, construction-related impacts tend to be somewhat more diffuse, which is why we report them as County-level impacts.

⁶ Emsi, formerly “Economic Modeling Systems, Intl.,” uses data from the US Bureau of Labor Statistics, the US Bureau of Economic Analysis, the US Census, and other data sources to model out economic impacts.

Construction Phase

The Developer provided an estimate of the total cost of construction of the Project at \$262 million.⁷ For the construction, we used an estimate of 75% for the portion of materials and labor to be sourced from within the County. Therefore, in total, the construction phase of the Project will result in \$196.4 million of construction spending in the County.

Construction Spending In County

	\$ Total	% Region	\$ Region
Materials & Labor	\$261,920,591	75%	\$196,440,443

Source: Developer, MRB

In-County construction spending of \$196,440,443 (direct "sales" in the table) was used as an input into the Emsi economic modeling system and was attributed to "Industrial Building Construction" (NAICS 236210). This level of spending is projected to result in the creation of approximately 1,151 direct jobs and direct earnings of approximately \$81.3 million. Indirect impacts resulting from direct spending were also modeled, with 670 new jobs, \$43.1 million in new earnings, and \$122.9 million in new sales. Therefore, the total, one-time, construction-phase impacts of the Project on the County would be 1,821 jobs, \$124.4 million in wages, and \$319.3 million in sales.

Economic Impact of Construction Phase, One-Time

	Direct	Indirect	Total
Jobs	1,151	670	1,821
Earnings	\$81,313,295	\$43,064,638	\$124,377,933
Sales	\$196,440,443	\$122,850,555	\$319,290,998

Source: Emsi, MRB

⁷ To isolate the actual construction costs, we ignored the Developer's costs related to land acquisition as well as legal and financial costs.

Operation Phase

An important distinction between construction and operation phase impacts is the geographical level at which impacts were measured. Because the operational impact will be more localized in comparison to the County-level construction impacts, the economic impact of the operation phase was measured for the Town of Brookhaven.⁸

Note that, because the exact employment counts of the Tenants are not yet known, we provide two cases in our analysis: the "Low Case" is based upon the assumption of one Tenant job per 2,250 square feet of space created and the "High Case" is based upon the assumption of one Tenant job per 1,800 square feet of space created. Therefore, the Low Case yields 1,094 direct on-Site jobs and the High Case yields 1,367 direct, on-Site jobs across the four proposed buildings.

We modeled these direct jobs using the "General Warehousing and Storage" industry code (NAICS 493110) and adjusted the model for earnings of \$55.5 million and \$69.4 million annually for the Low Case and High Case, respectively.⁹ Indirect impacts include 383 to 479 additional jobs earning \$21.8 to \$27.3 million in wages, and \$60.9 million to \$76.1 million in indirect sales.

Therefore, we estimate that the Project will generate annual, operation-phase impacts of between 1,477 and 1,846 jobs, \$77.3 million and \$96.6 million in earnings, and between \$235.0 million and \$293.7 million in sales in the Town.

Economic Impact of Operation Phase - Low Case

	Direct	Indirect	Total
Jobs	1,094	383	1,477
Earnings	\$55,502,073	\$21,826,637	\$77,328,710
Sales	\$174,134,746	\$60,891,664	\$235,026,411

Source: Emsi, MRB

Economic Impact of Operation Phase - High Case

	Direct	Indirect	Total
Jobs	1,367	479	1,846
Earnings	\$69,352,225	\$27,273,320	\$96,625,545
Sales	\$217,588,847	\$76,086,751	\$293,675,597

Source: Emsi, MRB

⁸ For purposes of this analysis, the Town of Brookhaven was approximated using 36 ZIP codes that best cover the Town's geographical boundaries. A map and full list of these ZIP codes are included in Appendix A.

⁹ Annual earnings figure includes both the salary and benefits of the associated positions, provided by the Developer.

Fiscal Impact Analysis

The Project would also have fiscal impacts on the various taxing jurisdictions by virtue of new tax revenues being created through the sales tax and a presumed PILOT agreement. Using the following assumptions, we are able to approximate the increase in tax revenue generated by the Project.

Assumptions

- The current assessed value (AV) of the Site is \$77,926, and the uniform percentage of value is 0.77%, yielding a current market value (MV) for tax purposes of \$10 million across all parcels. Currently these parcels generate approximately \$295,755 in property tax revenue for the various taxing jurisdictions. Note that all parcels fall within the County and Town. However, Parcels B & C fall within the Longwood CSD and Parcel D falls within the South Country CSD. See Appendix C.
- The Developer provided us estimates of the future AV of the Site, based on future square footages, of \$861,149 for Parcels B & C and \$889,228 for Parcel D. Using the same uniform percentage of value of 0.77%, we arrived at a total future MV of over \$227 million.
- We began with the current tax rates applicable to each parcel (see "Year 1" in the table on the following page) and escalated them at 2% per year for twenty years. Note that "Town" includes all Town general/highway funds and relevant special districts.
- As described more fully below, for this analysis, we have assumed a 20-year PILOT agreement whereby the Site would pay full taxes on the current AV, plus a gradually-increasing percentage of the value of the improvements created by the Project.

Current Market and Assessed Value

Line	Value
Parcels B & C - Market Value	\$3,752,078
Parcel D - Market Value	\$6,368,182
Total Current Market Value	\$10,120,260
Uniform % Value	0.77%
Parcels B & C - Assessed Value	\$28,891
Parcel D - Assessed Value	\$49,035
Total Current Assessed Value	\$77,926

Future Market and Assessed Value

Line	Value
Parcels B & C - Market Value	\$111,837,520
Parcel D - Market Value	\$115,484,120
Total Future Market Value	\$227,321,640
Uniform % Value	0.77%
Parcels B & C - Assessed Value	\$861,149
Parcel D - Assessed Value	\$889,228
Total Future Assessed Value	\$1,750,377

Tax Rates

- The table below shows the current (Year 1) tax rates and future tax rates used in this analysis. Please note that "Town" includes all Town general/highway funds and relevant special districts. Because the set of special districts differs between Parcels B & C and Parcel D, the total Town rate changes. See Appendix B for two representative tax bills that show the districts and tax rates of each.

Tax Rates

Year	Parcels B & C				Parcel D			
	Longwood CSD	County	Town	Total	South Country CSD	County	Town	Total
Year 1	301.851	45.379	59.558	406.788	251.880	45.379	66.215	363.474
Year 2	307.888	46.287	60.749	414.924	256.918	46.287	67.539	370.743
Year 3	314.046	47.212	61.964	423.222	262.056	47.212	68.890	378.158
Year 4	320.327	48.157	63.203	431.687	267.297	48.157	70.268	385.722
Year 5	326.733	49.120	64.467	440.320	272.643	49.120	71.673	393.436
Year 6	333.268	50.102	65.757	449.127	278.096	50.102	73.107	401.305
Year 7	339.933	51.104	67.072	458.109	283.658	51.104	74.569	409.331
Year 8	346.732	52.126	68.413	467.272	289.331	52.126	76.060	417.517
Year 9	353.667	53.169	69.782	476.617	295.118	53.169	77.581	425.868
Year 10	360.740	54.232	71.177	486.149	301.020	54.232	79.133	434.385
Year 11	367.955	55.317	72.601	495.872	307.040	55.317	80.716	443.073
Year 12	375.314	56.423	74.053	505.790	313.181	56.423	82.330	451.934
Year 13	382.820	57.552	75.534	515.906	319.445	57.552	83.977	460.973
Year 14	390.476	58.703	77.045	526.224	325.834	58.703	85.656	470.192
Year 15	398.286	59.877	78.586	536.748	332.350	59.877	87.369	479.596
Year 16	406.252	61.074	80.157	547.483	338.997	61.074	89.117	489.188
Year 17	414.377	62.296	81.760	558.433	345.777	62.296	90.899	498.972
Year 18	422.664	63.542	83.396	569.601	352.693	63.542	92.717	508.951
Year 19	431.118	64.812	85.063	580.993	359.747	64.812	94.571	519.130
Year 20	439.740	66.109	86.765	592.613	366.942	66.109	96.463	529.513

Property Taxes Without the Project

We begin this portion of the analysis by estimating the future property tax payments that would be made on the Site if the Project were not to move forward. We applied the current AV to the tax rates shown on the previous page. As shown in the table below, if the Project did not occur, the Site would generate \$2.1 million for the Longwood SCD, \$3.0 million for the South Country CSD, \$0.9 million for the County, and \$1.2 million for the Town.

Property Taxes Without the Project

Year	Parcels B & C				Parcel D				Total				
	Longwood CSD	County	Town	Total	South Country CSD	County	Town	Total	Longwood CSD	South Country CSD	County	Town	Total
Year 1	\$ 87,208	\$ 13,110	\$ 17,207	\$ 117,525	\$ 123,509	\$ 22,252	\$ 32,469	\$ 178,229	\$ 87,208	\$ 123,509	\$ 35,362	\$ 49,675	\$ 295,755
Year 2	\$ 88,952	\$ 13,373	\$ 17,551	\$ 119,876	\$ 125,980	\$ 22,697	\$ 33,118	\$ 181,794	\$ 88,952	\$ 125,980	\$ 36,069	\$ 50,669	\$ 301,670
Year 3	\$ 90,731	\$ 13,640	\$ 17,902	\$ 122,273	\$ 128,499	\$ 23,151	\$ 33,780	\$ 185,430	\$ 90,731	\$ 128,499	\$ 36,791	\$ 51,682	\$ 307,703
Year 4	\$ 92,546	\$ 13,913	\$ 18,260	\$ 124,719	\$ 131,069	\$ 23,614	\$ 34,456	\$ 189,139	\$ 92,546	\$ 131,069	\$ 37,526	\$ 52,716	\$ 313,857
Year 5	\$ 94,396	\$ 14,191	\$ 18,625	\$ 127,213	\$ 133,691	\$ 24,086	\$ 35,145	\$ 192,921	\$ 94,396	\$ 133,691	\$ 38,277	\$ 53,770	\$ 320,134
Year 6	\$ 96,284	\$ 14,475	\$ 18,998	\$ 129,757	\$ 136,364	\$ 24,568	\$ 35,848	\$ 196,780	\$ 96,284	\$ 136,364	\$ 39,043	\$ 54,846	\$ 326,537
Year 7	\$ 98,210	\$ 14,764	\$ 19,378	\$ 132,352	\$ 139,092	\$ 25,059	\$ 36,565	\$ 200,715	\$ 98,210	\$ 139,092	\$ 39,823	\$ 55,943	\$ 333,068
Year 8	\$ 100,174	\$ 15,060	\$ 19,765	\$ 134,999	\$ 141,873	\$ 25,560	\$ 37,296	\$ 204,730	\$ 100,174	\$ 141,873	\$ 40,620	\$ 57,061	\$ 339,729
Year 9	\$ 102,178	\$ 15,361	\$ 20,161	\$ 137,699	\$ 144,711	\$ 26,071	\$ 38,042	\$ 208,824	\$ 102,178	\$ 144,711	\$ 41,432	\$ 58,203	\$ 346,524
Year 10	\$ 104,221	\$ 15,668	\$ 20,564	\$ 140,453	\$ 147,605	\$ 26,593	\$ 38,803	\$ 213,001	\$ 104,221	\$ 147,605	\$ 42,261	\$ 59,367	\$ 353,454
Year 11	\$ 106,306	\$ 15,982	\$ 20,975	\$ 143,262	\$ 150,557	\$ 27,125	\$ 39,579	\$ 217,261	\$ 106,306	\$ 150,557	\$ 43,106	\$ 60,554	\$ 360,523
Year 12	\$ 108,432	\$ 16,301	\$ 21,395	\$ 146,128	\$ 153,568	\$ 27,667	\$ 40,371	\$ 221,606	\$ 108,432	\$ 153,568	\$ 43,968	\$ 61,765	\$ 367,734
Year 13	\$ 110,601	\$ 16,627	\$ 21,823	\$ 149,050	\$ 156,640	\$ 28,220	\$ 41,178	\$ 226,038	\$ 110,601	\$ 156,640	\$ 44,848	\$ 63,000	\$ 375,088
Year 14	\$ 112,813	\$ 16,960	\$ 22,259	\$ 152,031	\$ 159,773	\$ 28,785	\$ 42,001	\$ 230,559	\$ 112,813	\$ 159,773	\$ 45,745	\$ 64,260	\$ 382,590
Year 15	\$ 115,069	\$ 17,299	\$ 22,704	\$ 155,072	\$ 162,968	\$ 29,361	\$ 42,842	\$ 235,170	\$ 115,069	\$ 162,968	\$ 46,659	\$ 65,546	\$ 390,242
Year 16	\$ 117,370	\$ 17,645	\$ 23,158	\$ 158,173	\$ 166,227	\$ 29,948	\$ 43,698	\$ 239,873	\$ 117,370	\$ 166,227	\$ 47,593	\$ 66,857	\$ 398,047
Year 17	\$ 119,718	\$ 17,998	\$ 23,621	\$ 161,337	\$ 169,552	\$ 30,547	\$ 44,572	\$ 244,671	\$ 119,718	\$ 169,552	\$ 48,545	\$ 68,194	\$ 406,008
Year 18	\$ 122,112	\$ 18,358	\$ 24,094	\$ 164,564	\$ 172,943	\$ 31,158	\$ 45,464	\$ 249,564	\$ 122,112	\$ 172,943	\$ 49,515	\$ 69,558	\$ 414,128
Year 19	\$ 124,554	\$ 18,725	\$ 24,576	\$ 167,855	\$ 176,402	\$ 31,781	\$ 46,373	\$ 254,556	\$ 124,554	\$ 176,402	\$ 50,506	\$ 70,949	\$ 422,410
Year 20	\$ 127,045	\$ 19,099	\$ 25,067	\$ 171,212	\$ 179,930	\$ 32,416	\$ 47,301	\$ 259,647	\$ 127,045	\$ 179,930	\$ 51,516	\$ 72,368	\$ 430,859
Total	\$ 2,118,919	\$ 318,549	\$ 418,082	\$ 2,855,551	\$ 3,000,953	\$ 540,655	\$ 788,900	\$ 4,330,507	\$ 2,118,919	\$ 3,000,953	\$ 859,205	\$ 1,206,982	\$ 7,186,059

PILOT Payments with the Project

To calculate the payments that would occur under the presumed 20-year PILOT, we first calculate the equivalent taxable AV for each year under the terms of the presumed PILOT. As noted above, the presumed PILOT payment would be based on the current AV of the Site, plus a phased-in portion of the improvements to the Site, starting a 0% in Year 1 and ending at 95% in Year 20, after which the PILOT would terminate and the Site would pay full property taxes. We show the results of these calculations in the table below.

PILOT-Equivalent Taxable Assessed Value

	Parcels B & C				Parcel D			
Year	Current AV	% Value Subject*	Improv. Taxable AV	Total Equivalent Taxable AV	Current AV	% Value Subject*	Improv. Taxable AV	Total Equivalent Taxable AV
Year 1	\$ 28,891	0%	\$ -	\$ 28,891	\$ 49,035	0%	\$ -	\$ 49,035
Year 2	\$ 28,891	5%	\$ 41,613	\$ 70,504	\$ 49,035	5%	\$ 42,010	\$ 91,045
Year 3	\$ 28,891	10%	\$ 83,226	\$ 112,117	\$ 49,035	10%	\$ 84,019	\$ 133,054
Year 4	\$ 28,891	15%	\$ 124,839	\$ 153,730	\$ 49,035	15%	\$ 126,029	\$ 175,064
Year 5	\$ 28,891	20%	\$ 166,452	\$ 195,343	\$ 49,035	20%	\$ 168,039	\$ 217,074
Year 6	\$ 28,891	25%	\$ 208,064	\$ 236,955	\$ 49,035	25%	\$ 210,048	\$ 259,083
Year 7	\$ 28,891	30%	\$ 249,677	\$ 278,568	\$ 49,035	30%	\$ 252,058	\$ 301,093
Year 8	\$ 28,891	35%	\$ 291,290	\$ 320,181	\$ 49,035	35%	\$ 294,067	\$ 343,102
Year 9	\$ 28,891	40%	\$ 332,903	\$ 361,794	\$ 49,035	40%	\$ 336,077	\$ 385,112
Year 10	\$ 28,891	45%	\$ 374,516	\$ 403,407	\$ 49,035	45%	\$ 378,087	\$ 427,122
Year 11	\$ 28,891	50%	\$ 416,129	\$ 445,020	\$ 49,035	50%	\$ 420,096	\$ 469,131
Year 12	\$ 28,891	55%	\$ 457,742	\$ 486,633	\$ 49,035	55%	\$ 462,106	\$ 511,141
Year 13	\$ 28,891	60%	\$ 499,355	\$ 528,246	\$ 49,035	60%	\$ 504,116	\$ 553,151
Year 14	\$ 28,891	65%	\$ 540,968	\$ 569,859	\$ 49,035	65%	\$ 546,125	\$ 595,160
Year 15	\$ 28,891	70%	\$ 582,581	\$ 611,472	\$ 49,035	70%	\$ 588,135	\$ 637,170
Year 16	\$ 28,891	75%	\$ 624,193	\$ 653,084	\$ 49,035	75%	\$ 630,145	\$ 679,180
Year 17	\$ 28,891	80%	\$ 665,806	\$ 694,697	\$ 49,035	80%	\$ 672,154	\$ 721,189
Year 18	\$ 28,891	85%	\$ 707,419	\$ 736,310	\$ 49,035	85%	\$ 714,164	\$ 763,199
Year 19	\$ 28,891	90%	\$ 749,032	\$ 777,923	\$ 49,035	90%	\$ 756,173	\$ 805,208
Year 20	\$ 28,891	95%	\$ 790,645	\$ 819,536	\$ 49,035	95%	\$ 798,183	\$ 847,218

*The percentage of improvement value subject to tax.

To calculate the PILOT payments, we apply the "Equivalent Taxable AV" from the table on the previous page to the estimated tax rates for each year of the analysis. The table below shows the results of this calculation. Over course of the 20-year PILOT, the Site would generate a total of \$33.1 million for the Longwood CSD, \$29.1 million for the South Country CSD, \$10.2 million for the County, and \$14.2 million for the Town.

PILOT Payments with Project

Year	Parcels B & C				Parcel D				Total				
	Longwood CSD	County	Town	Total	South Country CSD	County	Town	Total	Longwood CSD	South Country CSD	County	Town	Total
Year 1	\$ 87,208	\$ 13,110	\$ 17,207	\$ 117,525	\$ 123,509	\$ 22,252	\$ 32,469	\$ 178,229	\$ 87,208	\$ 123,509	\$ 35,362	\$ 49,675	\$ 295,755
Year 2	\$ 217,073	\$ 32,634	\$ 42,831	\$ 292,537	\$ 233,910	\$ 42,141	\$ 61,491	\$ 337,542	\$ 217,073	\$ 233,910	\$ 74,775	\$ 104,321	\$ 630,079
Year 3	\$ 352,098	\$ 52,933	\$ 69,472	\$ 474,503	\$ 348,677	\$ 62,818	\$ 91,661	\$ 503,156	\$ 352,098	\$ 348,677	\$ 115,751	\$ 161,133	\$ 977,659
Year 4	\$ 492,437	\$ 74,031	\$ 97,162	\$ 663,631	\$ 467,941	\$ 84,305	\$ 123,014	\$ 675,259	\$ 492,437	\$ 467,941	\$ 158,336	\$ 220,176	\$ 1,338,890
Year 5	\$ 638,249	\$ 95,952	\$ 125,932	\$ 860,133	\$ 591,836	\$ 106,626	\$ 155,584	\$ 854,045	\$ 638,249	\$ 591,836	\$ 202,578	\$ 281,516	\$ 1,714,179
Year 6	\$ 789,697	\$ 118,720	\$ 155,814	\$ 1,064,231	\$ 720,500	\$ 129,806	\$ 189,407	\$ 1,039,713	\$ 789,697	\$ 720,500	\$ 248,526	\$ 345,222	\$ 2,103,943
Year 7	\$ 946,947	\$ 142,360	\$ 186,841	\$ 1,276,148	\$ 854,073	\$ 153,871	\$ 224,521	\$ 1,232,466	\$ 946,947	\$ 854,073	\$ 296,231	\$ 411,363	\$ 2,508,613
Year 8	\$ 1,110,171	\$ 166,898	\$ 219,047	\$ 1,496,116	\$ 992,702	\$ 178,846	\$ 260,964	\$ 1,432,512	\$ 1,110,171	\$ 992,702	\$ 345,745	\$ 480,011	\$ 2,928,628
Year 9	\$ 1,279,545	\$ 192,361	\$ 252,466	\$ 1,724,372	\$ 1,136,533	\$ 204,759	\$ 298,775	\$ 1,640,068	\$ 1,279,545	\$ 1,136,533	\$ 397,121	\$ 551,242	\$ 3,364,440
Year 10	\$ 1,455,250	\$ 218,776	\$ 287,134	\$ 1,961,161	\$ 1,285,721	\$ 231,637	\$ 337,994	\$ 1,855,353	\$ 1,455,250	\$ 1,285,721	\$ 450,413	\$ 625,129	\$ 3,816,514
Year 11	\$ 1,637,472	\$ 246,171	\$ 323,088	\$ 2,206,731	\$ 1,440,422	\$ 259,508	\$ 378,663	\$ 2,078,593	\$ 1,637,472	\$ 1,440,422	\$ 505,679	\$ 701,751	\$ 4,285,324
Year 12	\$ 1,826,400	\$ 274,573	\$ 360,366	\$ 2,461,339	\$ 1,600,797	\$ 288,402	\$ 420,823	\$ 2,310,021	\$ 1,826,400	\$ 1,600,797	\$ 562,975	\$ 781,188	\$ 4,771,360
Year 13	\$ 2,022,231	\$ 304,014	\$ 399,005	\$ 2,725,249	\$ 1,767,011	\$ 318,347	\$ 464,517	\$ 2,549,875	\$ 2,022,231	\$ 1,767,011	\$ 622,360	\$ 863,522	\$ 5,275,124
Year 14	\$ 2,225,164	\$ 334,522	\$ 439,045	\$ 2,998,731	\$ 1,939,232	\$ 349,374	\$ 509,791	\$ 2,798,398	\$ 2,225,164	\$ 1,939,232	\$ 683,896	\$ 948,837	\$ 5,797,129
Year 15	\$ 2,435,405	\$ 366,129	\$ 480,528	\$ 3,282,062	\$ 2,117,636	\$ 381,516	\$ 556,691	\$ 3,055,843	\$ 2,435,405	\$ 2,117,636	\$ 747,644	\$ 1,037,219	\$ 6,337,905
Year 16	\$ 2,653,167	\$ 398,866	\$ 523,494	\$ 3,575,527	\$ 2,302,400	\$ 414,803	\$ 605,262	\$ 3,322,466	\$ 2,653,167	\$ 2,302,400	\$ 813,669	\$ 1,128,757	\$ 6,897,993
Year 17	\$ 2,878,664	\$ 432,766	\$ 567,987	\$ 3,879,417	\$ 2,493,708	\$ 449,269	\$ 655,554	\$ 3,598,531	\$ 2,878,664	\$ 2,493,708	\$ 882,036	\$ 1,223,541	\$ 7,477,949
Year 18	\$ 3,112,120	\$ 467,863	\$ 614,050	\$ 4,194,033	\$ 2,691,747	\$ 484,948	\$ 707,615	\$ 3,884,311	\$ 3,112,120	\$ 2,691,747	\$ 952,811	\$ 1,321,665	\$ 8,078,344
Year 19	\$ 3,353,763	\$ 504,191	\$ 661,729	\$ 4,519,682	\$ 2,896,711	\$ 521,875	\$ 761,496	\$ 4,180,082	\$ 3,353,763	\$ 2,896,711	\$ 1,026,065	\$ 1,423,225	\$ 8,699,764
Year 20	\$ 3,603,827	\$ 541,784	\$ 711,068	\$ 4,856,679	\$ 3,108,796	\$ 560,084	\$ 817,250	\$ 4,486,130	\$ 3,603,827	\$ 3,108,796	\$ 1,101,868	\$ 1,528,318	\$ 9,342,809
Total	\$ 33,116,887	\$ 4,978,652	\$ 6,534,269	\$ 44,629,808	\$ 29,113,862	\$ 5,245,188	\$ 7,653,543	\$ 42,012,593	\$ 33,116,887	\$ 29,113,862	\$ 10,223,840	\$ 14,187,812	\$ 86,642,401

Increase in Property Tax Revenue

Because we want to isolate only the **increase** in revenue to the various taxing jurisdictions that result from the Project, we subtract the "Property Taxes Without the Project" from the estimated "PILOT Payments with Project." The table to the right shows that, if the Project moves forward, the Longwood CSD will collect \$31 million **more** in PILOT payments than property taxes over the next 20 years. The figure for the South Country CSD is \$26.1 million, the County's is \$9.4 million, and the Town's is \$13.0 million.

Increase in Property Tax Revenue

Year	All Parcels				
	Longwood CSD	South Country CSD	County	Town	Total
Year 1	\$ -	\$ -	\$ -	\$ -	\$ -
Year 2	\$ 128,121	\$ 107,930	\$ 38,706	\$ 53,652	\$ 328,410
Year 3	\$ 261,367	\$ 220,178	\$ 78,960	\$ 109,451	\$ 669,956
Year 4	\$ 399,892	\$ 336,872	\$ 120,809	\$ 167,460	\$ 1,025,033
Year 5	\$ 543,853	\$ 458,145	\$ 164,301	\$ 227,746	\$ 1,394,044
Year 6	\$ 693,412	\$ 584,135	\$ 209,483	\$ 290,376	\$ 1,777,407
Year 7	\$ 848,736	\$ 714,982	\$ 256,407	\$ 355,420	\$ 2,175,546
Year 8	\$ 1,009,996	\$ 850,828	\$ 305,125	\$ 422,950	\$ 2,588,899
Year 9	\$ 1,177,367	\$ 991,823	\$ 355,688	\$ 493,039	\$ 3,017,917
Year 10	\$ 1,351,029	\$ 1,138,116	\$ 408,152	\$ 565,762	\$ 3,463,060
Year 11	\$ 1,531,166	\$ 1,289,865	\$ 462,573	\$ 641,197	\$ 3,924,801
Year 12	\$ 1,717,968	\$ 1,447,229	\$ 519,007	\$ 719,423	\$ 4,403,627
Year 13	\$ 1,911,630	\$ 1,610,371	\$ 577,513	\$ 800,522	\$ 4,900,035
Year 14	\$ 2,112,351	\$ 1,779,460	\$ 638,152	\$ 884,576	\$ 5,414,539
Year 15	\$ 2,320,337	\$ 1,954,668	\$ 700,985	\$ 971,673	\$ 5,947,663
Year 16	\$ 2,535,796	\$ 2,136,173	\$ 766,076	\$ 1,061,900	\$ 6,499,946
Year 17	\$ 2,758,947	\$ 2,324,156	\$ 833,491	\$ 1,155,347	\$ 7,071,941
Year 18	\$ 2,990,008	\$ 2,518,804	\$ 903,296	\$ 1,252,108	\$ 7,664,216
Year 19	\$ 3,229,209	\$ 2,720,309	\$ 975,560	\$ 1,352,276	\$ 8,277,353
Year 20	\$ 3,476,782	\$ 2,928,866	\$ 1,050,353	\$ 1,455,951	\$ 8,911,951
Total	\$ 30,997,967	\$ 26,112,910	\$ 9,364,636	\$ 12,980,829	\$ 79,456,342

Sales Tax Revenue

As per the economic impact analysis, we anticipate approximately \$124.4 million in total earnings during the construction phase of the Project. We assume 70% of those earnings will be spent in Suffolk County and 25% of that spending amount will be subject to the sales tax, yielding \$21.8 million in taxable sales within the County.

Therefore, applying the County's sales tax rate of 4.25%, we conclude that the construction phase earnings will lead to \$925,061 in sales tax revenue for the County.

Likewise, we estimated between \$77.3 million and \$96.6 million in total new earnings in Year 1 for the jobs associated with the operation phase of the Project. We use the midpoint of those figures, or \$87.0 million, and again assume 70% of earnings will be spent in the County and 25% of those will be on items subject to the sales tax, yielding \$15.2 million in taxable sales.

Applying the County's sales tax rate of 4.5%, we arrive at \$646,892 in sales tax revenue for the County in Year 1 of the analysis. We then applied an escalation factor of 2% per year to those taxable sales over the presumed 20-year PILOT agreement to arrive at total sales tax revenue related to the operation phase of the Project of \$15.7 million.

County Sales Tax Revenue - Construction Phase

Line	Value
Total New Earnings	\$124,377,933
% Spent in County	70%
\$ Spent in County	\$87,064,553
% Taxable	25%
\$ Taxable	\$21,766,138
County Sales Tax Rate	4.25%
\$ County Sales Tax Revenue	\$925,061

Source: Developer, MRB

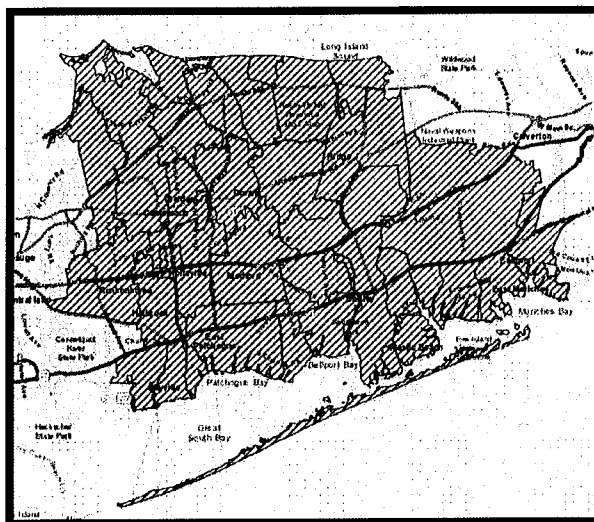
County Sales Tax Revenue - Operation Phase

Line	Value
Total New Earnings - Year 1*	\$86,977,128
% Spent in County	70%
\$ Spent in County	\$60,883,989
% Taxable	25%
\$ Taxable	\$15,220,997
County Sales Tax Rate	4.25%
\$ County Sales Tax Revenue - Year 1	\$646,892
Total Sales Tax Rev. - Years 1-20**	\$15,717,784

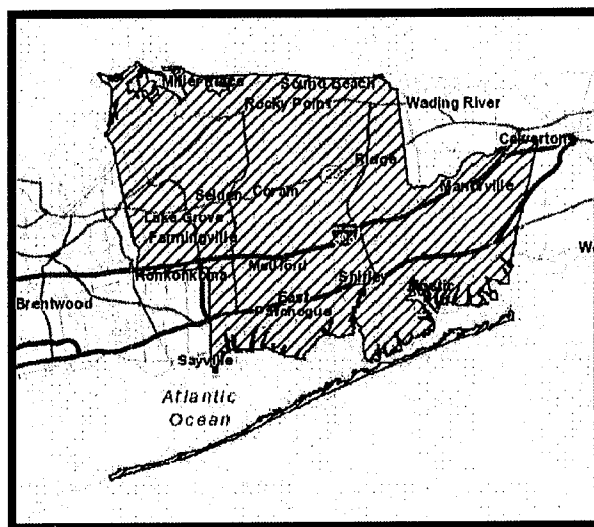
Source: MRB. *Year 1 earnings are the midpoint earnings between the "High Case" and "Low Case" **Escalated at 2% per year.

Appendix A – Town ZIP Codes

36 ZIP Codes of the Town of Brookhaven



Town of Brookhaven



ZIP	Description
11705	Bayport, NY (in Suffolk county)
11713	Bellport, NY (in Suffolk county)
11715	Blue Point, NY (in Suffolk county)
11719	Brookhaven, NY (in Suffolk county)
11727	Coram, NY (in Suffolk county)
11733	East Setauket, NY (in Suffolk county)
11738	Farmingville, NY (in Suffolk county)
11741	Holbrook, NY (in Suffolk county)
11742	Holtsville, NY (in Suffolk county)
11755	Lake Grove, NY (in Suffolk county)
11763	Medford, NY (in Suffolk county)
11764	Miller Place, NY (in Suffolk county)
11766	Mount Sinai, NY (in Suffolk county)
11772	Patchogue, NY (in Suffolk county)
11776	Port Jefferson Station, NY (in Suffolk county)
11777	Port Jefferson, NY (in Suffolk county)
11778	Rocky Point, NY (in Suffolk county)
11779	Ronkonkoma, NY (in Suffolk county)
11782	Sayville, NY (in Suffolk county)
11784	Selden, NY (in Suffolk county)
11786	Shoreham, NY (in Suffolk county)
11789	Sound Beach, NY (in Suffolk county)
11790	Stony Brook, NY (in Suffolk county)
11934	Center Moriches, NY (in Suffolk county)
11940	East Moriches, NY (in Suffolk county)
11941	Eastport, NY (in Suffolk county)
11949	Manorville, NY (in Suffolk county)
11950	Mastic, NY (in Suffolk county)
11951	Mastic Beach, NY (in Suffolk county)
11953	Middle Island, NY (in Suffolk county)
11955	Moriches, NY (in Suffolk county)
11960	Remsenburg, NY (in Suffolk county)
11961	Ridge, NY (in Suffolk county)
11967	Shirley, NY (in Suffolk county)
11973	Upton, NY (in Suffolk county)
11980	Yaphank, NY (in Suffolk county)

Appendix B – Representative Tax Bills

Property SCTM Number: 0200705000100040001

STATEMENT OF TAXES: 2020-2021

PHYSICAL ADDRESS: PLEASANT ST
 SCTM: 0200-705.00-01.00-040.001
 ITEM NUMBER: 2401811
 CURRENT AS OF: 1618295964000
 SCHOOL PHONE: 631-345-2782

OWNER NAME: SILLS ROAD REALTY LLC
 STAR SAVINGS:

LAND ASSESSMENT	FULL ASSESSED VALUE	UNIFORM %	FULL VALUE	
810	810	WHICH IS 0.79% of	102,531	
LEVY DESCRIPTION	TAXABLE VALUE	TAX RATE PER 100	TAX AMOUNT W/ EXEMPTIONS	TAX AMOUNT W/O EXEMPTIONS
School Tax	74.2% OF TOTAL BILL		\$2,444.99	\$2,444.99
SCHOOL DISTRICTS - LONGWOOD CSD	810	286.958	\$2,324.36	\$2,324.36
LIBRARY DISTRICTS - LONGWOOD CSD	810	14.893	\$120.63	\$120.63
County Tax	11.16% OF TOTAL BILL		\$367.57	\$367.57
COUNTY OF SUFFOLK	810	2.894	\$23.44	\$23.44
COUNTY OF SUFFOLK - POLICE	810	42.485	\$344.13	\$344.13
Town Tax	6.02% OF TOTAL BILL		\$198.43	\$198.43
TOWN - TOWN WIDE FUND	810	5.836	\$47.27	\$47.27
HIGHWAY - TOWN WIDE FUND	810	1.564	\$12.67	\$12.67
TOWN - PART TOWN FUND	810	2	\$16.20	\$16.20
HIGHWAY - PART TOWN FUND / SNOW REMOVAL	810	15.097	\$122.29	\$122.29
Other Taxes	8.62% OF TOTAL BILL		\$284.00	\$284.00
NEW YORK STATE MTA TAX	810	.142	\$1.15	\$1.15
OPEN SPACE PRESERVATION	810	2.207	\$17.88	\$17.88
FIRE DISTRICTS - YAPHANK	810	27.602	\$223.58	\$223.58
LIGHTING DISTRICTS - BROOKHAVEN	810	1.201	\$9.73	\$9.73
REAL PROPERTY TAX LAW	810	3.008	\$24.36	\$24.36
OUT OF COUNTY TUITION	810	.691	\$5.60	\$5.60
SUFFOLK COUNTY COMMUNITY COLLEGE TAX	810	.21	\$1.70	\$1.70
Total Tax Rate/Tax Amounts		406.788	\$3,294.99	\$3,294.99

BILLED AMOUNTS

1ST HALF: \$1,647.50 - 2ND HALF: \$1,647.49 - TOTAL: \$3,294.99

PAYMENTS

Type	Process Date	RCPT	Pmt_Date	Penalty	Amt Paid	Payor	Operid
FN	01/14/2021	NBIL	01/11/2021		\$1,647.50	NEW YORK COMMUNITY BANK	N

Zoom to

Property SC TM Number: 0200815000100006002

STATEMENT OF TAXES: 2020-2021

PHYSICAL ADDRESS: ASTOR ST
 SCTM: 0200-815.00-01.00-006.002
 ITEM NUMBER: 3731094
 CURRENT AS OF: 1618295964000
 SCHOOL PHONE: 631-730-1501

OWNER NAME: NEW YORK SITE OPERATIONS LLC
 STAR SAVINGS:

LAND ASSESSMENT	FULL ASSESSED VALUE	UNIFORM %	FULL VALUE	
26,615	27,815	WHICH IS 0.79% of	3,520,886	
LEVY DESCRIPTION	TAXABLE VALUE	TAX RATE PER 100	TAX AMOUNT W/ EXEMPTIONS	TAX AMOUNT W/O EXEMPTIONS
School Tax	69.3% OF TOTAL BILL		\$70,060.42	\$70,060.42
SCHOOL DISTRICTS - SOUTH COUNTRY CSD	27,815	238.63	\$66,374.93	\$66,374.93
LIBRARY DISTRICTS - SOUTH COUNTRY CSD	27,815	13.25	\$3,685.49	\$3,685.49
County Tax	12.48% OF TOTAL BILL		\$12,622.17	\$12,622.17
COUNTY OF SUFFOLK	27,815	2.894	\$804.97	\$804.97
COUNTY OF SUFFOLK - POLICE	27,815	42.485	\$11,817.20	\$11,817.20
Town Tax	6.74% OF TOTAL BILL		\$6,813.84	\$6,813.84
TOWN - TOWN WIDE FUND	27,815	5.836	\$1,623.28	\$1,623.28
HIGHWAY - TOWN WIDE FUND	27,815	1.564	\$435.03	\$435.03
TOWN - PART TOWN FUND	27,815	2	\$556.30	\$556.30
HIGHWAY - PART TOWN FUND / SNOW REMOVAL	27,815	15.097	\$4,199.23	\$4,199.23
Other Taxes	11.48% OF TOTAL BILL		\$11,603.87	\$11,603.87
NEW YORK STATE MTA TAX	27,815	.142	\$39.50	\$39.50
OPEN SPACE PRESERVATION	27,815	2.207	\$613.88	\$613.88
FIRE DISTRICTS - BROOKHAVEN	27,815	22.115	\$6,151.29	\$6,151.29
LIGHTING DISTRICTS - BROOKHAVEN	27,815	1.201	\$334.06	\$334.06
AMBULANCE DISTRICT - SOUTH COUNTRY	27,815	12.144	\$3,377.85	\$3,377.85
REAL PROPERTY TAX LAW	27,815	3.008	\$836.68	\$836.68
OUT OF COUNTY TUITION	27,815	.691	\$192.20	\$192.20
SUFFOLK COUNTY COMMUNITY COLLEGE TAX	27,815	.21	\$58.41	\$58.41
Total Tax Rate/Tax Amounts		363.474	\$101,100.30	\$101,100.30

BILLED AMOUNTS

1ST HALF: \$50,550.15 - 2ND HALF: \$50,550.15 - TOTAL: \$101,100.30

PAYMENTS

Type	Process Date	RCPT	Pmt_Date	Penalty	Amt Paid	Payor	Operid
FR	12/30/2020	0098	12/30/2020		\$50,550.15	WINTER BROS WASTE SYSTEM	1

Appendix C – List of Tax ID Numbers, AV, Rate and Taxes

List of Tax ID Numbers, AV, Rate and Taxes

Parcel ID	AV	Rate	Taxes	Parcel ID	AV	Rate	Taxes
B 0200-663.00-03.00-029.001	\$ 7,800	\$ 406.788	\$ 31,729	C 0200-704.00-03.00-010.000	\$ 75	\$ 406.788	\$ 305
C 0200-663.00-03.00-003.000	\$ 5	\$ 406.788	\$ 20	C 0200-704.00-03.00-022.001	\$ 835	\$ 406.788	\$ 3,397
C 0200-663.00-03.00-010.001	\$ 125	\$ 406.788	\$ 508	C 0200-704.00-03.00-022.001	\$ 835	\$ 406.788	\$ 3,397
C 0200-663.00-03.00-007.001	\$ 260	\$ 406.788	\$ 1,058	C 0200-704.00-02.00-023.001	\$ 1,225	\$ 406.788	\$ 4,983
C 0200-663.00-03.00-018.001	\$ 925	\$ 406.788	\$ 3,763	C 0200-664.00-02.00-040.001	\$ 460	\$ 406.788	\$ 1,871
C 0200-705.00-01.00-032.001	\$ 855	\$ 406.788	\$ 3,478	C 0200-705.00-01.00-017.001	\$ 860	\$ 406.788	\$ 3,498
C 0200-663.00-03.00-025.003	\$ 550	\$ 406.788	\$ 2,237	C 0200-705.00-01.00-017.001	\$ 860	\$ 406.788	\$ 3,498
C 0200-663.00-03.00-026.000	\$ 145	\$ 406.788	\$ 590	C 0200-705.00-01.00-021.001	\$ 200	\$ 406.788	\$ 814
C 0200-664.00-02.00-023.001	\$ 955	\$ 406.788	\$ 3,885	C 0200-704.00-02.00-029.001	\$ 1,630	\$ 406.788	\$ 6,631
C 0200-664.00-02.00-017.001	\$ 935	\$ 406.788	\$ 3,803	C 0200-705.00-01.00-040.001	\$ 810	\$ 406.788	\$ 3,295
C 0200-664.00-02.00-029.001	\$ 950	\$ 406.788	\$ 3,864	C 0200-705.00-01.00-077.001	\$ 180	\$ 406.788	\$ 732
C 0200-664.00-02.00-008.001	\$ 970	\$ 406.788	\$ 3,946	C 0200-705.00-01.00-073.001	\$ 840	\$ 406.788	\$ 3,417
C 0200-664.00-02.00-002.000	\$ 110	\$ 406.788	\$ 447	C 0200-705.00-01.00-054.001	\$ 841	\$ 406.788	\$ 3,421
C 0200-664.00-02.00-033.001	\$ 920	\$ 406.788	\$ 3,742	C 0200-705.00-01.00-079.000	\$ 80	\$ 406.788	\$ 325
C 0200-664.00-02.00-053.001	\$ 930	\$ 406.788	\$ 3,783	C 0200-705.00-01.00-085.001	\$ 280	\$ 406.788	\$ 1,139
C 0200-664.00-02.00-044.001	\$ 200	\$ 406.788	\$ 814	C 0200-705.00-01.00-089.001	\$ 250	\$ 406.788	\$ 1,017
C 0200-664.00-02.00-035.001	\$ 120	\$ 406.788	\$ 488	C 0200-705.00-01.00-092.001	\$ 140	\$ 406.788	\$ 570
C 0200-664.00-02.00-037.000	\$ 120	\$ 406.788	\$ 488	C 0200-705.00-01.00-019.000	\$ 140	\$ 406.788	\$ 570
C 0200-663.00-03.00-012.007	\$ 415	\$ 406.788	\$ 1,688	C 0200-705.00-01.00-110.001	\$ 95	\$ 406.788	\$ 386
C 0200-664.00-02.00-042.001	\$ 140	\$ 406.788	\$ 570	D 0200-815.00-01.00-006.003	\$ 10,045	\$ 363.474	\$ 36,511
C 0200-664.00-02.00-059.000	\$ 15	\$ 406.788	\$ 61	D 0200-815.00-01.00-006.002	\$ 27,815	\$ 363.474	\$ 101,100
C 0200-664.00-02.00-057.000	\$ 50	\$ 406.788	\$ 203	D 0200-815.00-01.00-004.004	\$ 11,175	\$ 363.474	\$ 40,618
C 0200-704.00-03.00-006.001	\$ 380	\$ 406.788	\$ 1,546				
C 0200-704.00-03.00-009.001	\$ 380	\$ 406.788	\$ 1,546	Total	\$ 77,926		\$ 295,755