

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36398

**BROOKHAVEN RAIL LLC – CONSTRUCTION AND OPERATION EXEMPTION
- IN SUFFOLK COUNTY, NEW YORK**

DOCKET NO. FD 36399

**BROOKHAVEN RAIL LLC - PETITION FOR EXEMPTION FROM
REQUIREMENTS OF 49 U.S.C. §10909**

**REPLY TO NOVEMBER 10, 2021 FILING
OF CITIZENS CAMPAIGN FOR THE ENVIRONMENT**

Pursuant to 49 C.F.R. §1104.13(a), Brookhaven Rail LLC (“Brookhaven Rail”) hereby replies to the filing made by Citizens Campaign for the Environment (“CCE”) in the captioned dockets on November 10, 2021 (“CCE Letter”). CCE has characterized its letter and attachments thereto as being in opposition to a November 3, 2021 letter submitted to the Acting Director of the Board’s Office of Environmental Analysis (“OEA”) by counsel for Brookhaven Rail.¹ That letter concerned a request by Brookhaven Rail submitted on April 23, 2021 for waiver of the 6-month pre-filing notice in 49 C.F.R. §1105.10(a)(1) that would have otherwise applied to an Application for Land-Use Exemption Permit (“Application”) which Brookhaven Rail intends to file in Docket No. FD 36399 (Sub - No. 1).² The initial April waiver request had been

¹ Brookhaven Rail filed a copy of the November 3, 2021 letter and subsequent correspondence between its counsel and the OEA acting Director in these dockets on November 12, 2021

² Attachment A.

supplemented and expanded as described in the correspondence attached to Brookhaven Rail's letter submitted in these dockets on November 12, 2021 and further discussed herein, but OEA had taken no action on it.

A. Introduction

Brookhaven Rail's November 3 letter sets out in detail how the waiver request is clearly no longer necessary for the Application. The limited purpose of providing OEA with six months prior written notice of an application or petition is to enable it to familiarize itself with the proposed project and prepare to conduct its environmental review pursuant to the National Environmental Policy Act ("NEPA").³ In this case, OEA has known about Brookhaven Rail's rail construction project and proposed solid waste rail transfer facility ("Facility") since January 2020, and it has known since October 2020 that Brookhaven Rail intends to file the Application. Pursuant to OEA and Board practices and for transparency, Brookhaven Rail has engaged in an ongoing dialogue with OEA since June 2020 to provide it with updates of relevant actions by third parties that may affect OEA's analysis of the potential environmental impacts of both projects. Consequently, OEA has not only prepared to conduct its environmental review of the Application pursuant to NEPA, OEA actually began conducting that review over 12 months ago.⁴

³ STB Finance Docket No. 30186 (Sub-No. 3), *Tongue River Railroad Company – Construction and Operation – Western Alignment* (served April 16, 1998) ("*Tongue River*") at 3.

⁴ See November 3, 2021 Letter at 3. In any event, "the purpose of the prenotification period is not . . . to enable the agency to perform an environmental review of the proposal. Rather, only preliminary environmental analysis is undertaken during this period." The full scope of the environmental review is determined after the relevant application is filed. *Tongue River* at 5 and 4.

It is the Board's and OEA's well-established practice, which has been in place for approximately 25 years,⁵ that requests for waivers of the pre-filing notification requirement are handled in the first instance by OEA pursuant to the authority delegated to it by the Board. Such requests are routinely granted.⁶ Nevertheless, the CCE Letter was submitted directly to the Board, and not OEA, because by letter dated November 5, 2021 the Acting Director of OEA informed counsel for Brookhaven Rail that "[b]ecause objections to your waiver request are already before the Board in the formal docket, this issue will be addressed by the Board, not OEA." Subsequent email correspondence with the OEA Acting Director⁷ revealed the sole "objection" that provided the basis for her position that the issue was out of OEA's hands and "before the Board" was that on June 2, 2021 the New York State chapter of the NAACP had raised a vague objection in a letter submitted in Docket No. FD 36398 to "the six-month notification requirement in STB's regulations so that the STB may consider this project sooner."⁸

B. Preliminary Issues

There are procedural and substantive issues respecting both the CCE Letter and the position taken by OEA that precipitated it. First, CCE misfiled its letter in Docket No. FD 36398. The waiver request that CCE is purporting to oppose relates solely to the forthcoming Application to

⁵ The process was also utilized by OEA's predecessor, the Section on Environmental Analysis.

⁶ Indeed, *Tongue River* stands as the only case where a decision to waive the requirement was appealed. In these proceedings, OEA waived the prefiling notification requirement for both of the Petitions for Exemption filed by Brookhaven Rail in these dockets on May 26, 2020 based only on an "initial meeting" with OEA held on January 24, 2020. Attachment B.

⁷ This email correspondence is attached to Brookhaven Rail's November 12, 2021 letter filed in these dockets.

⁸ Docket No. FD 36398, Letter from Juan D. Reyes III to Cynthia T. Brown and "the Commissioners of the Surface Transportation Board" dated June 2, 2021 at 2.

be filed in Docket No. FD 36399 (Sub – No. 1).⁹ The November 3 letter and the Acting Director’s November 5 response reference that docket. The April 2021 waiver request by Brookhaven Rail had nothing at all to do with the pending Petition for Exemption in Docket No. FD 36398 governing Brookhaven Rail’s rail construction project.

Second, the position taken by the Acting Director¹⁰ appears to be without precedent and, as discussed in more detail below, Brookhaven Rail respectfully submits that if it is accepted as a new Board practice, it will open the door to unintended consequences that will adversely affect the Board’s and OEA’s well-established processes for conducting the NEPA review of railroad projects. Brookhaven Rail also notes that the position is inconsistent with repeated representations made by OEA that the waiver request was still being reviewed by it after the June 2, 2021 NAACP letter.¹¹ Also, at no time did OEA ever indicate to Brookhaven Rail that the waiver request, as repeatedly supplemented by Brookhaven Rail, was incomplete or deficient.

⁹ CCE’s filing was also made in Docket No. FD 36399, which Brookhaven Rail understands from Board staff is being utilized by the Board to accept filings that relate to the Application until the Application is filed in Docket No. FD 36399 (Sub-No.1), which was created for that purpose in March 2021.

¹⁰ The position taken by the Acting Director was to not exercise her delegated authority to rule on a waiver request instead of issuing a ruling one way or the other. Such a ruling would have been subject to an appeal by Brookhaven Rail or another party of record pursuant to 49 C.F.R. §1105.2. It is not entirely clear whether, under these circumstances, the Acting Director’s position constitutes an actual appealable decision.

¹¹ The waiver request was an agenda item for calls between Brookhaven Rail, OEA and the third-party consultant for the project held on July 6, August 3, and September 14, 2021. These calls had been scheduled monthly since June 2020 to discuss the projects and the OEA’s NEPA review. Copies of the meeting minutes for these three calls are attached as Attachment C. The minutes of the July call recount how “BHR inquired about the status of OEA’s response to its six-month pre-filing waiver request and OEA indicated that the matter is under review.” The minutes of the August 3 call stated “OEA’s response to BHR’s six-month waiver request is still under review.” And finally, the minutes of the September 14 call state that OEA advised Brookhaven Rail that “OEA currently has the Waiver Request under review.” A final conference call prior to the suspension of OEA’s environmental review on October 21, 2021 review was held on October 12, 2021, but OEA has not posted any minutes from that call on the Board’s website.

C. Response to Specific Allegations in the CCE Letter and Attachments

The CCE Letter briefly touches on the waiver request related to the Application, but its primary purpose appears to be a vehicle for CCE to continue its previous efforts to make unsubstantiated and false claims about the scope of Brookhaven Rail's proposed projects and its overall the intentions.¹² In general, CCE has sought to oppose Brookhaven Rail's two projects before the Board in part by advancing the false narrative that, because Brookhaven Rail has prudently elected to provide updates to OEA about the development plans of *other, non-affiliated parties* which may be relevant to OEA's environmental review of Brookhaven Rail's proposals, this somehow supports a contention that "*BHR* has modified *its* plans significantly"¹³ to include the construction and operation of rail infrastructure to support 2.5 million square feet of warehouse facilities and infrastructure on not only Parcel D, but Parcels B and C of the former Brookhaven Rail Terminal ("BRT"). CCE then seeks to tie this narrative it knows to be false to the waiver request for the Application. Brookhaven Rail responds to the CCE Letter with the following relevant chronology of events:

- When the Petition for Exemption was filed in Docket No. FD 36399 on July 27, 2020, Parcel D of the BRT was owned by New York Site Operations, LLC, and Winters Bros. Waste Systems of Long Island, LLC ("Winters Bros.") had contracted for either it or its designee to acquire it.¹⁴
- 100% Brookhaven Rail's ownership interests had previously been purchased from Oakland Transportation Holdings by Shamrock Rail, LLC, a Winters Bros. affiliate, in

¹² CCE followed its CCE Letter with a Petition for Declaratory Order and/or For an Order to Show Cause and Suspend filed in these and multiple other dockets on November 23, 2021 which contains similar unfounded and false allegations. Brookhaven Rail will present the reasons as to why that petition should be summarily rejected in due course pursuant to the Board's procedural rules.

¹³ CCE Letter at 2 (emphasis supplied).

¹⁴ Petition for Exemption in Docket No. FD 36399 at 7.

May of 2020.¹⁵ However, Brookhaven Rail remains a stand-alone Class III railroad and it currently conducts common carrier operations on Parcel A of the former BRT.

- Brookhaven Rail’s rail construction proposal in its Petition for Exemption in Docket FD 36398 contemplates that Brookhaven Rail will lease or otherwise acquire the land necessary to construct and operate the proposed rail lines from the owner of Parcel D. In June 2020, it was not definitively known what entity or entities would acquire Parcel D or what rail-served industry would locate on Parcel D and need rail service other than the proposed Facility covered by the Petition for Exemption in Docket No. FD 36399 which would occupy a portion of Parcel D.¹⁶
- Brookhaven Rail’s Petition for Exemption in Docket No. FD 36399 contemplated that Brookhaven Rail would lease an approximately 50-acre tract of Parcel D from its eventual owner and construct and operate the Facility there. The plans to lease the land, and the size, scope, and configuration of the proposed facility have not materially changed.¹⁷
- Brookhaven Rail submitted its request for waiver of the 6-month prefilng notice requirement related to the Application on April 23, 2021. The letter was first supplemented on May 10, 2021 at the request of OEA.¹⁸
- All of the efforts of Brookhaven Rail have been focused on the aspects of developing Parcel D as described in the Petitions for Exemption in Docket No. FD 36398 and Docket No. FD 36399. Brookhaven Rail has not proposed to construct any rail tracks on Parcels B and C.
- By letter dated July 5, 2021, Brookhaven Rail notified OEA of certain developments regarding the ownership and proposed development of Parcel D that appeared to relate to OEA’s ongoing environmental review.¹⁹ This update was provided in accordance with Board practice and precedent and served on CCE and other parties of record in Docket No. FD 36398.²⁰ Specifically, Brookhaven Rail updated its prior statements about the recently consummated purchase and sale of Parcel D and informed OEA that 178 acres of the 228-acre tract had been acquired by a newly formed entity named NP/Winters Long Island Industrial, LLC (“NP/Winters”). Critically, for purposes of CCE’s allegations, NP/Winters is **not** an affiliated company of Brookhaven Rail. Brookhaven Rail has no control over the actions or decisions of NP/Winters. An entity named Winters Bros. Industrial Park Realty, LLC is a minority member of NP/Winters but it does not control the management and development decisions made by that entity.

¹⁵ *Id.* at 3-4.

¹⁶ *Id.* at 7 and 10.

¹⁷ Petition for Exemption in Docket No. FD 36399 at 9, 11-15.

¹⁸ A copy of the May 10, 2021 Letter is included as Attachment D.

¹⁹ Attachment E.

²⁰ See Footnote 1 to July 5, 2021 letter.

- Brookhaven Rail’s July 5 letter also informed OEA that NP/Winters had announced that it planned to construct 1.2 million square feet of rail-served warehouses on the 178 acres it had purchased on Parcel D. Brookhaven Rail remains the intended lessee of the acreage necessary to construct and operate the proposed lines of rail covered by FD 36398, as originally described in its Petition for Exemption and modified as described in the July 5 letter.
- Brookhaven Rail’s July 5 letter further informed OEA that the approximately 50 acres on which the Facility is proposed to be constructed had been purchased by Winters Bros. Shamrock Rail Realty, LLC (“Shamrock Realty”), which is an affiliate of Brookhaven Rail. Brookhaven Rail remains the intended lessee of the approximately 50-acre portion of Parcel D for the purpose of constructing and operating the Facility, as first outlined in the Petition for Exemption in Docket No. FD 36399.
- Finally, the July 5 letter also included a map prepared for NorthPoint Development LLC (“NorthPoint”) that delineated for OEA the planned location(s) of the rail-served warehouse facilities on the portion of Parcel D purchased by NP/Winters and certain changes to the rail track alignment originally proposed by Brookhaven Rail. The map also showed the location of the Facility on the 50-acre parcel. It also showed planned development of Parcels B & C for rail-served warehousing²¹ to be developed by NorthPoint, which had contracted to purchase those two parcels.²² Brookhaven Rail had, and has, no plans, rights or agreements with either NorthPoint or NP/Winters to construct any rail tracks on Parcels B & C.
- The foregoing updated ownership information and conceptual development plans provided by Brookhaven Rail in the context of OEA’s ongoing NEPA review were discussed with OEA and the third-party consultant retained by Brookhaven Rail during the aforementioned phone calls of July 6, August 3, and September 14. During these calls OEA informed Brookhaven Rail that the information concerning the development of Parcels B, C and the two parcels of D by their respective new owners would be incorporated into the NEPA analysis as “a cumulative impact” that would be analyzed and reviewed in the EIS.²³

²¹ CCE’s Letter and attachments seek to make much of the fact that the conceptual design map prepared for NorthPoint appeared to show that NorthPoint proposed to construct a new connection and turnout extending northward from the Long Island Rail Road main line on to Parcels B and C. Brookhaven Rail confirmed from NorthPoint that this was in fact not the case and informed OEA of this fact by an email dated July 6, 2021.

²² See attachment to CCE Letter at PDF page 22.

²³ See attached meeting notes from calls of July 6, 2021 (where “OEA explained that BHR would need to provide information on the projected number of daily trains and trucks/vehicles for the environmental analysis. And if this is not included in BHR’s Application, OEA will pose this question to BHR in the first information request that will follow”) and August 3, 2021 (“OEA reminded BHR that the EIS will consider the North Point Project as a cumulative impact relative to potential local and downline impacts.”).

- By emails dated July 30, 2021, and November 11, 2021,²⁴ Brookhaven Rail continued to update OEA respecting additional developments that may affect its NEPA review even though they are not part of Brookhaven Rail's projects, notably that prior to the closing date for the purchase of Parcels B and C, NorthPoint assigned its acquisition rights to NP/Winters and that NP/Winters became the owner of Parcels B and C on October 20, 2021.
- In its November 11, 2021 email Brookhaven Rail informed OEA that NP/Winters was proceeding with its plans to construct warehousing facilities on Parcels B and C and the 178 acres it had purchased on Parcel D, and that the plans included applying to the Town of Brookhaven for permission to clear the trees from certain portions of the latter tract, as well as a portion of the approximately 50-acre tract in conjunction with the construction of an access road to the planned warehouse facilities. While Brookhaven Rail has no control over the development plans or decisions of NP/Winters, Brookhaven Rail and Shamrock Realty advised NP/Winters that any applications it made to the Town of Brookhaven to clear trees on Parcel D should contain provisions that specifically referenced (i) the pending Petition for Exemption in Docket No. FD 36398, (ii) the proposed Facility and forthcoming Application, and (iii) the ongoing NEPA review by OEA and the Board. Brookhaven Rail has thus far received no response from OEA to the November 11, 2021 email imparting this information.

The foregoing confirms that there have been developments concerning the acquisition, sale and planned development of Parcels B, C, and D of the BRT over the past six months. However, these developments, with the exception of the purchase of the approximately 50-acre tract of Parcel D, are due to actions taken by parties other than Brookhaven Rail or any affiliate of Brookhaven Rail. Brookhaven Rail's proposals for which it is seeking (or will soon seek in the case of the Facility) construction and operating authority from the Board continue to be substantially the same two projects on Parcel D Brookhaven Rail first described to OEA in January 2020 and formally proposed in the summer of 2020. Their purpose and scope have not been materially changed or expanded.

Brookhaven Rail acknowledges that the land ownership developments and the plans by NP/Winters to construct rail-served warehouse facilities on Parcels B, C, and D may be relevant

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to OEA's review of the potential cumulative environmental impacts of Brookhaven Rail's proposals on Parcel D. Brookhaven Rail has therefore endeavored to keep OEA apprised of such developments so it can incorporate this new information into the EIS it is preparing for Brookhaven Rail's projects as may be necessary. Throughout this process CCE has followed the OEA's actions and its correspondence with Brookhaven Rail very closely, and, in that context, CCE unquestionably knows the falseness of its assertion that "BHR has omitted and misstated crucial facts, minimized and significantly characterized the massive project scope and its potential environmental impacts."²⁵

In summary, the unquestioned limited purpose of the requirement of providing OEA six months prior notice before filing the Application was to help OEA familiarize itself with the project and prepare to conduct the necessary level of environmental review. In this case, OEA is extremely familiar with the proposed Facility, OEA actually began its NEPA review in June 2020 and, until it suspended its efforts on October 20, 2021, it expanded and adapted the scope of that review to the preparation of an EIS based on information from parties such as CCE, information it requested of Brookhaven Rail, and as the developments described above have occurred. For all the reasons set out in the November 3, 2021 letter to the Acting Director and this reply, it is simply preposterous and unnecessary for OEA to need any additional advance notice of the forthcoming Application.

C. The Acting Director's Position Will Lead to Unintended, Negative Consequences

For the reasons set forth above and in the relevant correspondence, OEA and the Board should conclude that the waiver request is no longer necessary for the Application and so the CCE

²⁵ CCE Letter at 1. Brookhaven Rail's May 10, 2021 letter to OEA responded to similar false assertions made by CCE.

Letter asking for denial of the request is moot. Brookhaven Rail further submits that the Board's concurrence with this conclusion will avoid setting a precedent that will have unintended, negative consequences for the well-established process OEA uses to review and grant such waivers through its delegated authority. Allowing consideration of a waiver request to be summarily removed from OEA's delegated authority and placed before the full Board by a party simply making a single, vague objection in a letter filed in "the formal docket"²⁶ appears to have no precedent. If this was to become OEA and Board policy for rail projects requiring NEPA review, it is not unreasonable to foresee opponents of such projects preemptively lodging vague objections to waiver requests in letters to the Board or individual Board members for the sole purpose of delaying a project by avoiding OEA's established processes – which are informal by design – and instead substituting formal Board review of such requests. Consequently, the Board would find itself making determinations that were delegated to OEA to make, and which it has made for 25 years.

Fortunately, the Board does not have to open that door in this proceeding because the facts clearly demonstrate that a waiver from the 6-month prefilling notice is no longer necessary for the Application. While there have been developments concerning land ownership and proposed rail-served industrial development of the property on which Brookhaven Rail's projects will be constructed and operated, the Brookhaven Rail projects themselves have remained substantially the same size and scope since they were first proposed to the Board and described to OEA in early 2020. Brookhaven Rail has kept OEA apprised of such developments to assist in its analysis of

²⁶ Brookhaven Rail reiterates that NAACP's "objection" was not even made in the formal docket assigned to the Application but was lodged in Docket No. FD 36398 through a letter generally addressed to "the Commissioners of the Surface Transportation Board."

potential environmental impact(s) of the Facility as well as the rail construction project pursuant to established procedures precedent of the Board.

Consequently, CCE's assertion that the waiver request applicable to the Application should be denied as moot, and CCE's request that the Board suspend its review of Brookhaven Rail's proposed projects should be denied.

Respectfully submitted,



Thomas W. Wilcox

Attorney for Brookhaven Rail LLC

November 30, 2021

ATTACHMENT A

LAW OFFICE OF THOMAS W. WILCOX, LLC
1629 K. STREET, NW SUITE 300
WASHINGTON, DC 20006

(202) 508-1065
TOM@TWILCOXLAW.COM

April 23, 2021

Via Email

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

Re: FD No. 36399 (Sub No. 1), Brookhaven Rail, LLC – *Application for Land Use Exemption Permit*; Request for Waiver of Six-Month Pre-filing Notice Requirement under 49 C.F.R. §1105.10(a)(1)

Dear Ms. Gosselin:

Following up on a recent request from Diana Wood of your staff, Brookhaven Rail LLC (“BHR”) through its undersigned counsel, respectfully requests a waiver of 49 C.F.R. §1105.10(a)(1), which requires applicants seeking authority for projects that typically entail the preparation of an Environmental Impact Statement (“EIS”) to provide the Office of Environmental Assessment (“OEA”) with “written notice of its forthcoming proposal” at least six months prior to filing its application. The subject of this waiver request, which is made pursuant to §1105.10(c)(2), is BHR’s forthcoming Application for a “land use exemption permit” under 49 U.S.C. §10909 and 49 C.F.R. Part 1155 (“Application”) to enable the construction and operation by BHR of a solid waste rail transload facility (“SWRTF”) on a 228-acre parcel of land in Brookhaven, New York (referred to as “Parcel D” of the Brookhaven Rail Terminal site in prior filings and discussions).

Under §1105.10(c)(2), a request for a waiver of §1105.10(a)(1) “must describe as completely as possible the anticipated environmental effects of the proposed action, and the timing of the proposed action, and show that all or part of the six-month lead period is not appropriate.”

As a threshold point, an additional six-month lead period is not appropriate in these circumstances because OEA has had actual notice of BHR’s forthcoming Application for the past six months. This is because it is being prepared as a result of a decision served on October 23, 2020 by the Surface Transportation Board (“Board” or “STB”) in Docket No. FD 36399 that

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rejected a petition filed by BHR seeking an exemption from the full requirements of 49 U.S.C. §10909 governing the issuance of a “land use exemption permit” for the same SWRTF that will now be the subject of the Application (“10909 Exemption Petition”).¹ BHR informed OEA of its intent to file a full Application immediately after the Board issued its decision, and BHR’s preparation of the Application was immediately incorporated into the ongoing discussions between OEA, BHR and the Third-Party Contractor(s) retained for this project of the potential environmental impacts of the SWRTF.² Indeed, references to the Application appear in the written materials of OEA dating back to at least December 9, 2020. Consequently, BHR believes the purpose and intent of the requirement to provide six months written notice in §1105.10(a)(1) has been met, if not exceeded, for the forthcoming Application and further lead time is not necessary or appropriate.

As for the timing of the filing of the Application, BHR has kept OEA informed of its preparation of the Application and has consistently said for several months that BHR intends to file the Application as soon as it is complete. Finalizing the filing has been delayed by other activities related to the rail construction project proposed in Docket No. FD 36398, including a mediation session involving BHR and the Town of Brookhaven that was held on March 15, 2021. BHR also recently elected to replace the original Third-Party Contractor retained to assist OEA, which took some time to put in place. Moreover, BHR has recently discussed with OEA how pending federal and state court litigation related to the development of Parcel D for rail-served industry has been the subject of a potential commercial settlement. If successful, the settlement would remove present uncertainties about elements of the development that entail potential environmental impacts. All of these activities have contributed to the delay in finalizing the Application and submitting it to the Board, but BHR still intends to file it as soon as possible.

Finally, as to describing the anticipated environmental effects of the SWRTF, the potential impacts have been the subject of previous letters and formal filings submitted to OEA and the STB, respectively. They have also been the subject of the monthly calls between BHR, OEA and the Third-Party contractor. Nevertheless, BHR provides updated information on the SWRTF and the anticipated environmental effects below.

¹ On May 26, 2020, OEA granted a May 14, 2020 letter request of BHR for a waiver of 1105.10(a)(1) for the 10909 Exemption Petition and a Petition for Exemption from the prior approval requirements of 49 U.S.C. 10901 for the proposed construction and operation of certain lines of railroad by BHR that will be used to serve the new SWRTF and other entities that locate on “Parcel D” of the Brookhaven Rail Terminal.

² The potential environmental impacts of the project and the appropriate level of review under the National Environmental Policy Act (“NEPA”) were first raised in June of 2020. That analysis began as potentially consisting of an Environmental Assessment covering both components of the overall development of Parcel D, but due in part to the level of opposition to the projects, OEA elected to the prepare an EIS that will analyze and contain mitigation measures for the potential environmental impacts of both the rail construction project and the SWRTF. The timing, cost, and scope of the EIS has been the primary topic of our monthly conference calls and other correspondence concerning the project.

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BHR has stated on numerous occasions that it believes the overall environmental effects of constructing the SWRTF at this location will be positive, since the SWRTF will enable millions of tons of municipal solid waste ("MSW") and construction and demolition debris ("C&D") to be transported off Long Island by railroad instead of by thousands of trucks. As BHR explained in its May 14, 2020 waiver request letter, there are already numerous environmental mitigation measures in place. Specifically, the project would be located on property that is already zoned for industrial use which has long been planned for development as a rail-served industrial park. The potential environmental impacts of the construction and operation of new rail tracks and of a rail transload facility on Parcel D were reviewed and accounted for in the 2017 Voluntary Draft Environmental Impact Statement ("VDEIS") that BHR previously provided to OEA to assist its efforts in evaluating the two projects proposed by BHR. BHR also provided OEA with a copy of the Adoption of the SEQRA Negative Declaration in Connection with the Proposed Brookhaven Rail Terminal Expansion, adopted by the Brookhaven Town Board on September 14, 2017 (Exhibit A to May 14, 2020 letter). This document further described the Proposed Action on Parcel D covered by the VDEIS, the potential environmental impacts, and the mitigation measures that were established in those documents for the plans for Parcel D at that time. BHR has not objected to any of those mitigation measures being applied to the rail construction project or the SWRTF.³

As BHR and OEA have discussed, while the foregoing environmental review and mitigation measures were for extensive rail construction and truck to rail transloading operations on Parcel D, they did not address the additional potential environmental impacts from a SWRTF constructed on Parcel D. As such, much of the discussions BHR has had with OEA has been about how to identify and evaluate these additional impacts. An updated summary of the anticipated rail and waste handling and transload operations based on current plans is attached to this letter (Exhibit A). It does not vary in any material respects from the summary provide in May of 2020. In terms of incremental potential environmental impacts from the SWRTF as opposed to those from truck to rail transload operations of other commodities, OEA has discussed with BHR the need for the EIS that OEA is preparing to take into account the federal review process under the NEPA particularly with regard to potential groundwater contamination, potential adverse impacts on air quality, potential nuisance impacts from odor, vectors and litter, the desire and need for a traffic study to review the impacts of trucking MSW and C&D into the facility, and more recently, issues such as environmental justice, climate change impacts, and potential downline impacts from rail operations.

³ Moreover, as BHR has discussed with OEA, some of the plans for development of Parcel D have changed in a manner that will lessen the potential environmental impacts. While relating more to the rail construction project than the SWRTF, it is nevertheless noteworthy that (1) the original plans to install an underpass under the tracks of the Long Island Rail Road have been eliminated, and (2) the Town has agreed to a net expansion of the conservation easement areas near the LIRR line in conjunction with the construction of a turnout to provide more efficient and less destructive access to Parcel D. These actions will result in significantly less impacts to the land and underground water sources because they will result in substantially less soil and sand being excavated from the northern end of Parcel D. This should also have a positive effect on grading plans associated with the railroad construction.

Law Office of Thomas W. Wilcox, LLC

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In terms of timing for the construction of the SWRTF if it is approved, BHR has stressed from the beginning of its discussions with OEA in 2020 that time is of the essence in obtaining the necessary approvals from the Board to construct and operate the railroad tracks and the land use exemption permit for the SWRTF due to the impending closure of the Town of Brookhaven's landfill in 2024. The urgency to find a replacement for that landfill capacity became even more acute earlier this year when the Town announced that it would not construct an "ashfill" at its landfill site, which would have permitted millions of tons of MSW to continue to be incinerated on Long Island and the ash disposed of in the Town's landfill. As such, subject to STB and state agency review and requirements, BHR anticipates that site preparation will begin in the first quarter of 2022 and that the rail infrastructure would be installed on Parcel D in the third quarter of 2022. Current plans call for the SWRTF to be operational by first quarter of 2023, again subject to STB and state approvals and completion of the appropriate level of NEPA review.

In closing, construction and operation of the new line of railroad and the SWRTF are anticipated to result in significant environmental and economic benefits to the Town of Brookhaven and the entire Long Island community more broadly. Once operations begin, movement of solid waste by rail instead of truck will immediately alleviate the severe highway congestion on the limited roadways and bridges leading in and out of Long Island, along with reductions in associated air and noise pollution and energy consumption. Moreover, Suffolk County is a non-attainment area for ozone and particulate matter, which decreased trucking of waste should help mitigate. The SWRTF will also be environmentally beneficial because it will be a state-of-the-art, efficient waste disposal and recycling facility that will significantly expand existing means of recycling waste on Long Island, while providing essential additional solid waste disposal capacity.

Based on all of the foregoing, the undersigned, on behalf of BHR, respectfully requests OEA to waive the 6-month prefilings notice required under 49 CFR §1105.10(a)(1).

Please do not hesitate to call me or email me if you have any questions or desire additional information.

Sincerely,



Thomas W. Wilcox
Attorney for Brookhaven Rail LLC

Cc: Diana F. Wood
Attachments

EXHIBIT A

April 23, 2021

**Proposed Solid Waste Rail Transfer Facility
in the Town of Brookhaven, Suffolk County, New York**

Supplemental Summary Description of Proposed Facility and Rail Operations

This summary supplements the "Summary Description of Proposed Facility and Rail Operations" dated April 10, 2020 that was attached to the May 14, 2020 letter from Brookhaven Rail LLC ("BHR") to Ms. Diana Wood and is again attached hereto as Exhibit 1.

The proposed Facility will be located at the end of a 13,400-foot line of railroad to be constructed, owned and operated by BHR as part of the overall development of the 228-acre parcel of land referred to in prior filings as "Parcel D" of the Brookhaven Rail Terminal site. The track would consist of 115 lb or larger single-track rail (built to AREMA standards) and extend generally south from a point of connection at milepost 57.5 of the main line track of the Long Island Rail Road, over which track the New York & Atlantic Railway (NY&A) operates rail freight services. The connection would be by means of a #10 turnout and switch to be installed by BHR and NY&A. The track on Parcel D would be augmented by additional #10 turnouts leading to siding and spur tracks that will be constructed in order to provide rail service to the solid waste rail transfer facility. Additional industrial spur tracks and connections will be constructed as new businesses located along the newly constructed track on Parcel D are established and request rail service.

Rail service to and from the Facility would be provided by BHR pursuant to the common carrier authority to construct and operate it has sought to obtain through its Construction Exemption Petition in Docket No FD 36398. BHR anticipates its operations and interface with NY&A will be very similar to the manner in which the two railroads combine to serve the rail shippers on Parcel A of the Brookhaven Rail Terminal site. Specifically, BHR will switch cars and trains in and out of the Facility (and other shippers locating on Parcel D) and will hand them off to NY&A pursuant to the terms of an Interchange Agreement and an agreement governing the terms and conditions for the switching cars offered to BHR and NY&A by the Facility and other rail shippers in the industrial park.

A. Operations and Activities at and Within the Facility

As stated in other documents submitted by BHR, the Facility will be constructed on a 50-acre plot in Parcel D that BHR will acquire pursuant to a long-term lease. The Facility will consist of a scale house and scales to weigh inbound and outbound trucks carrying municipal solid waste ("MSW") and construction and demolition debris ("C&D"), a 100,000 square foot waste Transfer Building, a 20,000 square foot Maintenance Building to which a 5,000 square foot Administration Building will be attached, and associated roads and parking/storage areas for trucks and other vehicles. A schematic of the current Facility layout is attached as Exhibit 2. The Facility will also consist of two stub end tracks and a short rail spur located at the end of the new line of railroad as well as associated rail tracks and other transloading infrastructure.

All of the tracks, buildings and other components of the Facility will be financed by, constructed under the control of BHR. The solid waste transfer services of the facility will be offered by BHR and its

agent operator as part of BHR's provision of transportation services as a common carrier railroad. BHR will establish the services and the charges associated with recovering the operating costs and capital costs of the Facility, and the processing and loading of solid waste into railcars as part of its holding out to provide rail transportation services. These rail transportation services and associated charges will be published by BHR in a tariff or other publicly available document(s). The rail transportation activities of the Facility will be divided between BHR and its agent operator pursuant to a contract that meets applicable legal standards.

The Facility will have the capacity to accept C&D, MSW and recyclables, provide sorting and processing, then compaction of the waste which comes in by truck to be transloaded on to railcars and shipped out to off-island permitted disposal facilities. The C&D and MSW will be delivered in trucks that will pick up the solid waste from generators on Long Island. These materials will be weighed, inspected and classified upon entering the Facility grounds via a road extending from Horseblock Road and through the Scale House. Each of the materials will then be unloaded onto an area of the tipping floor of the Waste Transfer Building designated for the particular solid waste being delivered within the waste tipping, processing and transloading building of the Facility. Movement of the materials on the tipping floor will be by payloaders and skid steer loaders. Recyclable materials will be extracted from the C&D recyclable material, sorted and separated by commodity, and then baled and loaded onto gondola railcars or trucks. The loading of all railcars will take place at the transloading section within the Waste Transfer Building.

Empty railcars will be delivered by NY&A off the LIRR main line to the interchange with BHR at Milepost 57.5, and then all movement of railcars to and at the Facility will be performed by BHR. Empty railcars will be moved by BHR to railcar storage track locations and then to the track passing through the Waste Transfer Building as needed. Depending on the type of railcar and containerization required by the receiver of the waste or a participating line haul railroad, the MSW will either be loaded into shipping containers and put on flat bed railcars or baled and loaded into gondola railcars. The actual process and equipment used in loading MSW and C&D into railcars will vary depending on the material and the type of railcar being loaded. MSW in containers will be loaded onto flatbed railcars using cables connected to a crane. Baled MSW and recyclables will be lifted into gondola railcars with a bale-clamp connected to a crane. C&D will be loaded into gondola railcars using a grapple connected to an excavator.¹ Once the railcars are loaded they will be covered as required and then be moved by BHR from the Facility to the interchange with NY&A where they will be removed by NY&A out onto the LIRR main line.

In summary, all waste materials arriving by truck will be processed and loaded into railcars for transportation off Long Island for disposal, and recyclable commodities will be transported by either rail or truck depending on the market in which they are sold.

B. Projected Volumes

Current estimates are that in the first year of operations 133 trucks will deliver approximately 2,000 tons of solid waste and/or recyclables each day to be processed. How much these initial volumes increase over subsequent years of operation will depend on other developments on Long Island to address

¹ As part of the transfer process, a scale house operation with at least two (2) truck scales will be used to track and record the weight of all material delivered to the solid waste rail transfer station. Weighing material will permit accurate tracking and charging for the processing and disposal of waste commodities and recyclables delivered to the Facility. The Facility will also have two (2) railcar scales to assure the loaded railcars are the proper weight before leaving the Facility.

the solid waste crisis. However, the Facility will be constructed to be capable of handling up to 6,000 tons of waste materials per day, including MSW, C&D, and recyclables, which is potentially possible by the fifth year of the Facility's operation.

Based on these projected volumes, approximately 3,500 100-ton loaded carloads annually would be transported by BHR to the interchange with the NY&A in 20 to 32-car blocks or trains that would be assembled on the Facility property. The expectation is for one to two trains per day in years one and two, rising to a constant two trains per day by the end of year two of operations. Volumes are anticipated to increase when the Brookhaven landfill closes in 2024. The Project is being designed to manage the processing and rail transportation of this volume without requiring additional acreage on Parcel D.

EXHIBIT 1

April 10, 2020

Proposed Solid Waste Rail Transfer Facility
in the Town of Brookhaven, Suffolk County, New York

Summary Description of Proposed Facility and Rail Operations

Winters Bros. Recycling of Long Island (Winters Bros.) through its Class III railroad subsidiary Brookhaven Rail, LLC ("BHR") or another rail carrier affiliate of Winters (both BHR and potential affiliate referred to as "Carrier"), will use approximately 50 acres of the approximately 228 total acres of "Parcel D" of the Brookhaven Rail Terminal area to develop a long-term, cost-effective, and environmentally sound solution for the management of municipal solid waste ("MSW"), construction and demolition waste ("C&D"), and recyclables generated primarily on Long Island, NY. As currently planned (subject to modification as the Surface Transportation Board and state and local analysis and coordination evolves) the following operations and structures would be located on the approximately 50 acres:

Solid Waste Rail Transfer Facility

Solid waste management operations at the facility will involve acceptance of MSW, C&D and recyclables generated in the Long Island region, processing them, and loading the remaining waste into railcars for delivery to locations off Long Island for disposal. Processed recyclables will be either loaded and shipped out by rail or removed by truck depending on the market in which they are sold. These materials will be delivered to the solid waste rail transfer facility by truck and weighed, inspected and classified upon entering the facility. Each of the materials will then be unloaded onto an area of the tipping floor designated for the particular material being delivered within the waste tipping, processing and transloading building of the facility. Movement of the materials on the tipping floor will be by payloaders and skid steer loaders.

The C&D will be processed to extract recyclable material using sorting and separation equipment. The C&D waste for disposal will be loaded into gondola railcars and covered in accordance with receiver or line haul railroad requirements. Recyclables will be sorted and separated by commodity and then be baled and loaded onto gondola railcars or truck. Depending on the type of railcar and containerization required by the receiver of the waste or a participating line haul railroad, the MSW will either be loaded into shipping containers and put on flat bed railcars or baled and loaded into gondola railcars. In summary, all waste materials arriving by truck will be processed and loaded into railcars for transportation off Long Island for disposal, and recyclable commodities will be transported by either rail or truck.

The loading of all railcars will take place at the transloading section within the waste handling building. Empty railcars will be delivered by New York and Atlantic Railway ("NY&A")

off the Long Island Rail Road ("LIRR")¹ main line to an interchange with the Carrier, and then all movement of railcars to and at the facility will be performed by the Carrier. Empty railcars which have come into the facility on the main line track will be moved to railcar storage track locations and then to the track passing through the waste handling building as needed. The actual process and equipment used in loading the railcars will vary depending on the material and the type of railcar being loaded. MSW in containers will be loaded onto flatbed railcars using cables connected to a crane. Baled MSW and recyclables will be lifted into gondola railcars with a bale-clamp connected to a crane. C&D will be loaded into gondola railcars using a grapple connected to an excavator.

Once the railcars are loaded they will be moved by the Carrier from the solid waste rail transfer facility to the interchange with NY&A where they will be removed by NY&A out onto the LIRR main line.

As part of the transfer process, a scale house operation with at least two (2) truck scales will be used to track and record the weight of all material delivered to the solid waste rail transfer station. Weighing material will permit accurate tracking and charging for the processing and disposal of waste commodities and recyclables delivered to the facility. The facility will also have two (2) railcar scales to assure the loaded railcars are the proper weight before leaving the facility.

Hours of Operation and Estimated Railcar and Truck Moves

The expectation is that the solid waste rail transfer facility will operate to receive material from truck delivery 14 hours per day (4 am to 6 pm) The facility will have the capability to process and transload material 24 hours per day, as may be required by the tonnage of incoming material. The movement of railcars on-site will be determined by the tonnage of material processed and to be transloaded. Movement of railcars off-site will be determined by service provided by the NY&A. The facility will operate Monday through Friday during its regular hours of operation and on Saturday for up to 8 hours. The facility will not routinely operate on Sundays or holidays. Current estimates are that in the first year of operations 133 trucks will deliver approximately 2,000 tons of waste and/or recyclables each day to be processed, and that this number will increase to 400 trucks per day delivering up to 6,000 tons of materials by the 5th year of operation. Loaded railcars would be assembled by Carrier into 32-car blocks for delivery to the NY&A interchange. The expectation is for 1 to 2 trains per day in years 1 and 2, rising to a constant 2 trains per day by the end of year 2 of operations. These numbers are subject to change if the Town of Brookhaven landfill closes sooner than anticipated.

Collection and Hauling Operations

The facility will house a hauling division to serve the solid waste rail transfer facility, which operation will serve as a hub for the collection of waste and recyclables which will be processed

¹ The NY&A conducts freight rail operations on the LIRR line. The NY&A and BHR currently conduct very similar operations on Parcel A of the Brookhaven Rail Terminal to the activities contemplated on Parcel D.

at the facility and transferred off of Long Island by rail, or by truck for some recyclables. Approximately 80 collection vehicles will be utilized on a daily basis to perform the collection services. When not on the road in service the trucks will be parked at the facility. Drivers will depart the facility in the early morning and use the trucks to collect waste and recyclables. As the trucks reach capacity, they will deliver the material to the tipping floor of the facility. At the end of the day when collection is complete for the day, the empty trucks will be parked in a designated area at the facility. Personnel in a dispatch office operated at the facility will direct the work of the collection trucks out on collection routes. The trucks will be directed by facility operations personnel while unloading at the facility.

Included in the hauling operation will be a container repair and fabrication shop. Waste and recycling containers and dumpsters are pieces of standard equipment used for the collection and management of solid waste. Containers, like all equipment, must be regularly maintained to ensure they are functioning properly.

A typical container arriving at the container repair shop will be sand blasted to remove old paint and rust. Worn out or damaged metal will be replaced using welding and grinding tools. Once repairs are made to the metal, a new coat of paint is applied to the dumpster. New decals, wheels and lids are placed onto the dumpsters. The newly refurbished containers are placed in storage so that they are ready to be deployed to help customers across Long Island who need well-maintained equipment to place their recyclables or waste prior to collection. Approximately 200 containers of various sizes will be stored at the container repair facility at any one time.

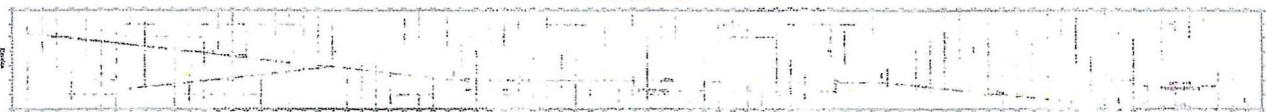
Also included in the hauling operation is a truck maintenance and repair facility. The fleet of collection hauling trucks serving the solid waste rail transfer facility will be maintained and repaired at the facility. Typical routine maintenance will include oil changes, lubrication, tire replacement, brake replacement, lighting repair /replacement, serving hydraulics, etc. The repair facility will also have the capability to perform more extensive repairs and part replacement, all of which will be conducted at the facility by certified, professional mechanics.

EXHIBIT C

FILE NAME: C:\Users\N\Documents\Rail\Map\Map.mxd DATE PLOT: 1/9/2020 2:45 PM USER: Rujun.Dong

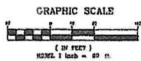
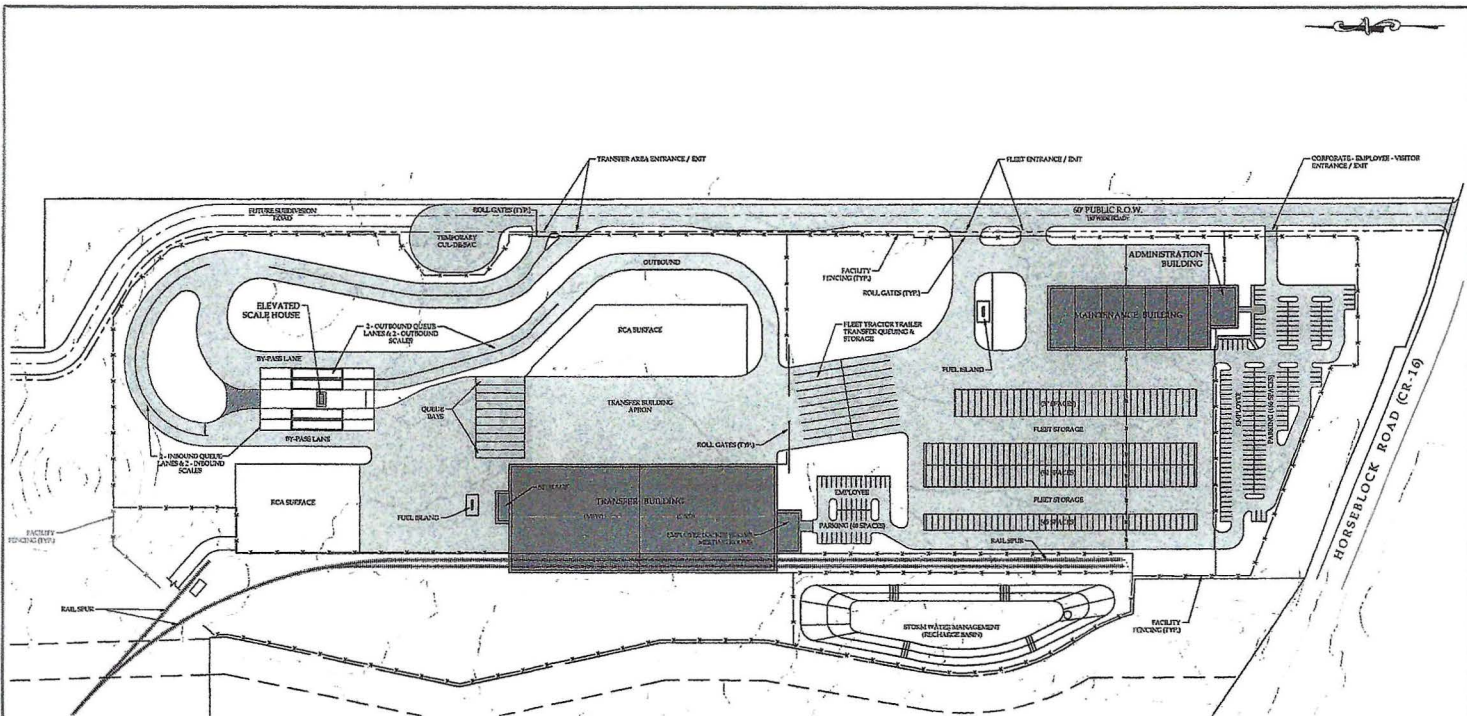


PROPOSED RAIL ALIGNMENT



DATE: 1/7/2020 BY: J. D. K.		UNIVERSITY OF NEW MEXICO UNIVERSITY ENVIRONMENTAL CENTER GRANTEE: STATE	PC	DESIGNED BY: J. D. K.		HENDERSON CONSULTANTS ARCHITECTS ENGINEERS PLANNERS ENVIRONMENTALISTS	DRAFT NOT FOR CONSTRUCTION	PROJECT: UNIVERSITY ENVIRONMENTAL CENTER GRANTEE: STATE	DATE: 1/7/2020	BY: J. D. K.	1/7/2020			
												UNIVERSITY ENVIRONMENTAL CENTER GRANTEE: STATE	DATE: 1/7/2020	BY: J. D. K.

EXHIBIT 2



NO.	DESCRIPTION	DATE

CONSTRUCTION OF THIS PROJECT IS SUBJECT TO THE REVIEW AND APPROVAL OF THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

CAMERON ENGINEERING & ASSOCIATES, LLP
 1000 ROUTE 90, SUITE 200
 BROOKHAVEN, NEW YORK 11793
 TEL: 516/466-1000
 FAX: 516/466-1001
 WWW.CAMERON-ENG.COM

WINTERS BROS.
BROOKHAVEN ENVIRONMENTAL COMPLEX
 HORSEBLOCK ROAD, YAPHANK
 SUFFOLK COUNTY, NEW YORK

SITE-ALIGNMENT PLAN
 CIVIL

PROJECT NO. 023300A
 DATE: 07/21/2020
 DRAWN BY: AS SHOWN

1
 SHEET 1 of 1

ATTACHMENT B



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

May 26, 2020

Thomas W. Wilcox
CKG Law
The Foundry
1055 Thomas Jefferson Street NW
Washington, DC 20007

Re: STB Docket No. FD 36398, Brookhaven Rail, LLC – Construction and Operation Exemption – In Suffolk County, New York; and FD No. 36399, Brookhaven Rail, LLC – Petition for Exemption from the Requirements of 49 USC 10909; Wavier approval of six-month prefiling notice requirement

Dear Mr. Wilcox:

Pursuant to 49 C.F.R. § 1105.10(c)(2), we are granting your amended May 14, 2020 request for a waiver of the six-month prefiling notice generally required for construction projects under 49 C.F.R. § 1105.10(a)(1). On January 24, 2020, the Surface Transportation Board's (Board) Office of Environmental Analysis (OEA) and Office of Public Assistance, Governmental Affairs and Compliance met with representatives from Brookhaven Rail, LLC (BHR), Winters Bros. Recycling of Long Island (Winters) and outside legal counsel to discuss two related prospective construction projects subject to Board approval. First, BRH plans to petition the Board for exemption authority under 49 U.S.C. § 10901 to construct and operate up to approximately 25,000 feet of new common carrier track (the Line) in the Town of Brookhaven, Suffolk County, New York. Second, BHR plans to petition the Board for a land use exemption under 49 U.S.C. § 10909 to construct and operate a solid waste transfer facility (SWTF) that would connect to the Line.

As discussed in the meeting, the Line and SWTF would be constructed on approximately 50 acres of an approximately 228-acre parcel that is under contract to be purchased by Winters or a party to be designated by Winters. The 228-acre parcel, known as Parcel D, is one of four contiguous parcels that comprise the 335-acre Brookhaven Rail Terminal (BRT), located near the Long Island Railroad's (LIRR) in Yaphank, Town of Brookhaven, New York.

The SWTF would handle incoming and outgoing municipal solid waste (MSW), construction and demolition waste (C&D), and recyclable commodities generated in the Long

Island region. As explained, the two proposed projects would fill a need in Long Island because the Brookhaven Landfill is scheduled to close in 2024 and there are no plans for a replacement.

As explained in the January meeting, BRH anticipates minimal environmental effects from both the proposed rail construction project and the SWTF. In 2017, the Town of Brookhaven, acting as lead agency in cooperation with the New York State Department of Environmental Conservation, reviewed a voluntary draft environmental impact statement (VDEIS) for the proposed BRT expansion. The VDEIS was prepared in connection with the State Environmental Quality Review Act (SEQRA) and a Stipulation of Settlement dated March 17, 2016 with the original property owner and developer, Sills Road Realty, LLC. The VDEIS analyzed the entire proposed BRT expansion comprising Parcels A through D.¹ For Parcel D, the VDEIS assumed there would be clearing and grading for construction of new access ways and on-site roads, as well as buildings and other infrastructure to support rail terminal operations. In addition to numerous mitigation measures required by the Stipulation of Settlement, and later a SEQRA Negative Declaration, Parcel D includes a permanent 62-acre permanent conservation easement. On September 14, 2017, the Brookhaven Town Board adopted the SEQRA Negative Declaration (submitted as Exhibit A with the waiver request), which concluded that the proposed BRT expansion would not have a significant adverse impact on the environment. OEA will review the existing state and local environment reviews to provide helpful context and background as we begin our own federal environmental analyses.

Based on current plans (submitted as Exhibits B and C with the waiver request letter), the SWTF would operate between 4 A.M to 6 P.M. Monday through Friday and up to 8 hours on Saturday to receive MSW and C&D wastes and recyclable materials delivered by truck. The material would then be sorted and processed at the facility for transport off Long Island. MSW and C&D wastes would be transported by rail on LIRR's mainline via the New York and Atlantic Railway's interchange and recyclables would be transported by rail or truck. C&D waste for disposal would be loaded into gondola railcars and covered in accordance with receiver or line haul railroad requirements. Recyclables would be sorted and separated by commodity and then baled and loaded onto gondola railcars or truck. Depending on the type of railcar and containerization required by the receiver of the waste, MSW would either be loaded into shipping containers and put on flat bed railcars or baled and loaded into gondola railcars. BHR anticipates that the number of train trips needed per day would be between one and two (two to four roundtrips including the return of empty railcars) the first year and two (four roundtrips) by the end of the second year.

At the January meeting, OEA provided a general overview of the Board's environmental review process, OEA's role in conducting the environmental review, and the role of third-party contractors. In addition, OEA discussed the importance of adequate public outreach, as well as the role of the public in the review process. Based on the information from this initial meeting,

¹ No change would occur on Parcel A which is developed and subject to an earlier Stipulation Settlement dated June 26, 2013.

OEA believes that it has adequate information and the applicant is sufficiently aware of the environmental process to grant this request.

If we can be of further assistance, please contact Diana Wood of my staff at 202-245-0302 or diana.wood@stb.gov.

Sincerely,

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

Victoria Rutson
Director
Office of Environmental Analysis

ATTACHMENT C



**Surface Transportation Board
Brookhaven Rail Environmental Impact Statement
Monthly Meeting (STB/BHR/HDR) Minutes
July 6, 2021**

Attendees: Diana Wood (STB-OEA)
Michael White (BHR)
Thomas Wilcox (BHR)
Josh Gillespie (HDR)
Audrey Heffernan (HDR)

1. Roll Call
 - Teleconference meeting started at 10 am.
2. Application
 - BHR continues to work on the Application.
3. Six Month Waiver Request
 - BHR inquired about the status of OEA's response to its six-month pre-filing waiver request and OEA indicated that the matter is under review.
4. Project Status
 - As a follow-up from BHR's July 5, 2021 letter with information on future transloading operations, BHR confirmed that North Point Development Co. will partner with BHR to develop two warehouses that would connect with the new BHR rail line on the central portion of Parcel D. The two warehouses would be leased to tenants who would also use the new BHR rail line connected with the LIRR to ship commodities. OEA explained that BHR would need to provide information on the projected number of daily trains and trucks/vehicles for the environmental analysis. And if this is not included in BHR's Application, OEA will pose this question to BHR in the first information request that will follow.
 - North Point Development Co. will also purchase Parcels B and C for development. OEA noted that the map attachment to BHR's July 5, 2021 letter shows that these parcels would have direct access to the LIRR line even though this is excepted 10906 track. BHR later confirmed in an email that Parcels B and C would access to the LIRR line through Parcel A.

- BHR will provide further details on the revised plans for Parcel D and related projects proposed by North Point Development Co.

5. Next Meeting

- Next meeting is scheduled for August 5th.



**Surface Transportation Board
Brookhaven Rail Environmental Impact Statement
Monthly Meeting (STB/BHR/HDR) Minutes
August 3, 2021**

Subject: Monthly Meeting on the Brookhaven Rail EIS

Attendees: Diana Wood (STB-OEA)
Will Flower (BHR)
Michael White (BHR)
Thomas Wilcox (BHR)
Josh Gillespie (HDR)
Audrey Heffernan (HDR)

Agenda:

- Meeting started at 10 am.
- BHR is preparing an updated project map to include with its Application to STB.
- OEA's response to BHR's six-month waiver request is still under review.
- BHR provided a summary of its outreach efforts which includes a project web site; meetings with state, county and local stakeholders, political leaders and Civic groups; and recent articles in several business journals. BHR also explained that it has met with communities in Queens to discuss how project-related unit freight trains operated by NYAR would pass through the Fresh Ponds Junction facility without the need to stop for disassembly/reassembly before connecting with CSX and/or NS lines to reach the final destination. BHR intends to follow-up with a more detailed outreach summary to OEA.
- OEA reminded BHR that the EIS will consider the North Point Project as a cumulative impact relative to potential local and downline impacts.
- Next meeting is scheduled for September 7th.



**Surface Transportation Board
Brookhaven Rail Environmental Impact Statement
Monthly Meeting (STB/BHR/HDR) Minutes
September 14, 2021**

Subject: Monthly Meeting on the Brookhaven Rail EIS

Attendees: Diana Wood (STB-OEA)
Andrea Poole (STB-OEA)
Will Flower (BHR)
Michael White (BHR)
Thomas Wilcox (BHR)
Josh Gillespie (HDR)
Audrey Heffernan (HDR)

Agenda:

1. Roll Call
 - Teleconference meeting started at 10 am.
2. Introductions to new STB OEA Team Member
 - OEA introduced a new project team member, Andrea Poole, who will be guiding and reviewing the NEPA process and NEPA documentation.
 - BHR also introduced themselves and provided Andrea with an overview of the proposed project and project goals.
3. Draft Application
 - BHR is continuing to prepare updated project information for the Draft Application to STB.
4. Six Month Waiver Request
 - OEA currently has the Waiver Request under review.
5. Next Meeting
 - Next meeting is scheduled for October 12th.

ATTACHMENT D

LAW OFFICE OF THOMAS W. WILCOX, LLC
1629 K. STREET, NW SUITE 300
WASHINGTON, DC 20006

(202) 508-1065
TOM@TWILCOXLAW.COM

May 10, 2021

Via Email

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

Re: Docket No. FD 36399 (Sub No. 1), *Brookhaven Rail LLC – Application for Land Use Exemption Permit*; Request for Waiver of Six-Month Pre-filing Notice Requirement under 49 C.F.R. §1105.10(a)(1)

Dear Ms. Gosselin:

This letter is being submitted at the request of Diana Wood of your staff to provide the Office of Environmental Assessment (“OEA”) with more clarity on the estimated daily truck traffic at the proposed Brookhaven Rail LLC (“BHR”) solid waste rail transfer facility (“SWRTF”) in the first five years of its operation. This information updates trucking estimates that were previously provided by BHR in its Petition for Exemption from Requirements of 49 U.S.C. §10909 (“10909 Exemption Petition”) filed in Docket No. FD 36399 on July 27, 2020, and more recently in the “Supplemental Summary Description of Proposed Facility and Rail Operations” (“Supplement”) attached to my letter to you dated April 23, 2021 requesting a waiver of 49 C.F.R. §1105(a)(1), which was also submitted at the request of Ms. Wood.

This letter also responds to the letter you received from counsel for the Citizens Campaign for the Environment (“CCE”) dated May 6, 2021 objecting to BHR’s waiver request.

A. Additional Trucking Information

At pages 13-14 of the 10909 Exemption Petition BHR stated “The project will be implemented in three phases. The first phase will involve approximately 2,000 tons per day of mostly C&D, and within five years of operation expand to 6,000 tons per day of C&D as well as MSW.” The 10909 Exemption Petition also stated, “[c]urrent estimates are that in the first year

Letter to Danielle Gosselin

May 10, 2021

Page 2

of operations 133 trucks will deliver approximately 2,000 tons of waste and/or recyclables each day to be processed, and that this number will increase to 400 trucks per day delivering up to 6,000 tons of materials per day by the 5th year of operation. Loaded railcars would be assembled by BHR into blocks of up to 32 cars for delivery to the NY&A interchange. The expectation is for one to two trains per day in years one and two, rising to a constant two trains per day by the end of year two of operations.”

The Supplement reiterated the 2,000 tons and 133 trucks per day figures but did not specifically address the subsequent phases or the 6,000 tons per day figure. This is because, as BHR has discussed with OEA, the plans for the SWRTF have continued to be developed and refined over the past nine months since the Petition was filed. The changes and updates will be explained in greater detail in the Application for a land use exemption permit being prepared by BHR. However, Ms. Wood requested more clarity now on this component of the proposed project as OEA and the third-party contractor conduct their analysis of the potential impacts of the SWRTF. Accordingly, the updated estimates as to volumes, and numbers of trucks and railcars per day expected at the SWRTF are as follows:

Phase 1 – The estimates for Phase 1 – the first year of operation - continue to be for 2,000 tons of MSW and mostly C&D waste per day in aggregate, which would be delivered by approximately 133 trucks per day. This volume would result in 20 loaded railcars per day of processed waste, which may or may not be transported the same day, depending on the interactions between BHR and the New York & Atlantic Railway (“NY&A”).

Phase 2 – Starting in the second year of operation BHR estimates that daily tonnages of MSW and C&D will increase to 4,000 tons per day in aggregate, which would be approximately 270 trucks per day and 40 railcars, the latter of which again would be transported by BHR and the NY&A according to coordinated train scheduling. The rate of 4,000 tons per day is expected to be the routine operating capacity of the facility on a daily basis under anticipated daily MSW and C&D production on Long Island. Additionally, BHR’s plan is to provide a number of recycling operations designed to reduce, reuse and recycle waste materials generated on Long Island. The added capacity is needed to ensure Long Island has sufficient capacity to grow recycling rates while also making sure that excess capacity is available for peak volumes of solid waste that is generated during certain times of the year and following storm events.

In response to comments submitted by CCE on the 10909 Exemption Petition BHR clarified that the 6,000 tons per day estimate in the petition was an estimate of the maximum design capacity of the SWRTF in its fifth year of operation.¹ BHR further clarifies here that the 6,000 tons per day figure is considered the maximum design capacity of the facility that would be available to handle “peak” volumes in extreme events, such as a natural disaster (e.g. Super Storm

¹ See BHR’s October 5, 2020 Reply to Reply to Opposition of the Citizen’s Campaign for the Environment (“Reply to Reply”), at page 16.

Letter to Danielle Gosselin

May 10, 2021

Page 3

Sandy), or other events that would result in large volumes of solid waste being generated on Long Island. Facilities that provide infrastructure for the important task of managing and recycling waste must be properly sized to avoid backups when society produces greater volumes of waste. Again, BHR stresses that the proper management of solid waste is critical to avoid public health issues. Having sufficient capacity is needed to ensure the safety and well-being of the Long Island community.

The actual throughput of the SWRTF will vary depending on a number of factors. Subsequently, the inbound truck traffic and outbound rail car traffic will also vary to properly manage the waste. In terms of the potential environmental impact of trucking operations at the proposed SWRTF, it is important to note that presently approximately 200 to 300 trucks a day deliver C&D, incinerator ash and toxic car shredding waste to the Brookhaven Landfill. Again, those 200 plus trucks (400 truck trips) are only for C&D, incinerator ash and the car shredding waste. The actual truck traffic in and out of the Landfill facility is much higher and includes deliveries of MSW and recyclables, plus the vehicles of employees and contractors who work at the Landfill facility. Closure of the Brookhaven Landfill in 2024 will therefore result in a tremendous reduction in truck traffic which will substantially offset the potential impact of trucks serving the SWRTF. BHR recognizes that part of OEA's NEPA review of the SWRTF will entail conducting a traffic study to supplement the traffic study conducted as part of the 2017 Voluntary Draft Environmental Impact Statement ("VDEIS") that has previously been furnished to OEA, and BHR remains ready to assist with this study as desired and requested by OEA.

B. Response to CCE May 6 Letter

CCE's letter sets out several baseless reasons why CCE would like OEA to deny BHR's request for waiver of 49 C.F.R. §1105.10(a)(1), all of which are obviously offered as part of CCE's ongoing campaign to oppose BHR's proposed rail construction and SWRTF projects at every turn. BHR briefly responds to each of CCE's allegations here. First, CCE has a misguided view of §1105.10(a)(1). This regulation states unambiguously that, absent the waiver that BHR is requesting, prospective applicants of projects that typically involve an Environmental Impact Statement ("EIS") must "provide the Office of Environmental Analysis with written notice of its forthcoming proposal at least 6 months prior to filing its application." There is no requirement, as CCE seems to try to imply, that BHR or any other prospective applicant is required to provide such advance notice to the public at large. In this case, OEA has had *actual* notice that BHR is preparing its Application for six months and the EIS process has been underway. Consequently, BHR believes the intent and purpose of the notice requirement of §1105.10(a)(1) have been clearly met as to this project and so a six-month lead time is not appropriate for its Application. CCE's incoherent argument on this point is simply a reflection of its goal try to further delay the proposed projects and OEA's environmental analysis under NEPA.

CCE's claim that BHR's waiver request "relies in large part on highly erroneous and misleading statements" is patently false, as CCE well knows. First, BHR has never implied, let alone stated, that the proposed site for the SWRTF is zoned for that use, as CCE asserts. Indeed,

Law Office of Thomas W. Wilcox, LLC

Letter to Danielle Gosselin

May 10, 2021

Page 4

CCE reveals the absurdity of its position by stating what has been well known to OEA and in the public record for at least nine months: the reason for the 10909 Exemption Petition, and why BHR is preparing its Application under 49 U.S.C. §10909, is to seek an exemption from the Town of Brookhaven's zoning law that does not allow the siting and operation of a SWRTF on the relevant parcel of land. Second, CCE's statement that BHR is asking OEA to rely solely on the VDEIS to evaluate the environmental impacts of the proposed SWRTF is also false, something CCE has also known for months,² and CCE ignores BHR's reaffirmation in its April 23, 2021 letter that the VDEIS and related environmental review "did not address the additional potential environmental impacts from a SWRTF constructed on Parcel D" and that the current EIS process will focus largely on the potential additional impacts of the SWRTF. In the remainder of its letter CCE merely takes issue with the extent BHR has described the environmental impacts of the proposed project for purposes of requesting the waiver of §1105.10(a)(1), and CCE offers its own views on those potential impacts, something CCE will have ample opportunity to do during the NEPA process and the Board's consideration of the Application once it is filed. BHR submits that its description of the potential environmental effects of the proposed SWRTF in its April 23, 2021 letter, as supplemented by this letter and coupled with OEA's existing extensive knowledge of those potential effects and the public record to date, meet and exceed the requirements of §1105.10(c)(2).

In conclusion, if OEA desires additional information on daily trucking and waste volumes, or any other information, please let me know and BHR will supply it. Otherwise, BHR respectfully asks you to grant its request for waiver of §1105.10(a)(1) at your earliest opportunity and reject CCE's transparent attempts to manifest its opposition to the proposed rail construction project and SWRTF through positions that have no basis in fact or law.

Sincerely,


Thomas W. Wilcox

Cc: Diana F. Wood

² See Reply to Reply at 12 ("CCE seeks to make much of the fact that while the prior environmental analysis and development plans contemplated the construction and operation of extensive truck to rail transload operations, they did not contemplate a SWRTF. However, this aspect of CCE's Reply is puzzling because it merely points out something that BHR has readily acknowledged, which is that the prior efforts did not contemplate a SWRTF on Parcel D, although they did contemplate extensive rail track structure and truck to rail transload operations.").

ATTACHMENT E

LAW OFFICE OF THOMAS W. WILCOX, LLC
1629 K. STREET, NW SUITE 300
WASHINGTON, DC 20006
(202) 508-1065
TOM@TWILCOXLAW.COM
WWW.TWILCOXLAW.COM

July 5, 2021

Via Email

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

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

Dear Ms. Gosselin:

This letter is submitted on behalf of Brookhaven Rail LLC (“BHR”) to inform you and the Office of Environmental Analysis (“OEA”) of several relatively recent developments with the proposed rail construction project that relate to OEA’s review of the potential environmental impacts of the project. These developments concern the ownership of the 228-acre parcel of land on which the new rail tracks would be constructed (the “Subject Property”), previously known as “Parcel D” of the Brookhaven Rail Terminal (“BRT”), the type of rail-served facilities being constructed there, and a minor modification to the design and configuration of the railroad track to be constructed and operated by BHR.¹

When the Petition for Exemption was filed in this docket on June 25, 2020, the Subject Property was owned by New York Site Operations, LLC (“NYSO”) and Winters Bros. Waste Systems of Long Island, LLC (“Winters Bros.”) had contracted with NYSO for Winters Bros., or its designee to purchase the Subject Property (the “Parcel D PSA”). The intention at that time was for Shamrock Rail, LLC (“Shamrock Rail”) - a newly created affiliate of Winters Bros. - to acquire the parcel for development of rail-served industrial and logistics businesses in conjunction with

¹ Informing OEA of changes to a rail construction project that could affect OEA’s review of environmental impacts, as opposed to a formal filing with the Secretary that is served on all parties, is the preferred means of conveying this information to the Board. STB Finance Docket No. 34079, *San Jacinto Rail Ltd. Construction Exemption and The Burlington Northern and Santa Fe Railway Company Operation Exemption – Build-out to the Bayport Loop Near Houston, Harris County TX* (Served December 2, 2002). While service on all parties is not required, BHR is nevertheless providing copies of this letter to all persons on the official service list for this docket.

Law Office of Thomas W. Wilcox, LLC

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BHR through leases and other appropriate agreements to facilitate the construction and operation of rail infrastructure.² The purchase of the Subject Property was anticipated to be completed near the end of 2020. The plan of Winters Bros., Shamrock Rail, and BHR described in the Petition was in part (and still is) for BHR to secure leasehold and/or easement rights to the necessary land for the new rail track and to construct and operate the rail tracks and rail infrastructure as generally contemplated by NYSO and the owners of the other three parcels that made up the BRT, and the development goal remains to attract industries who desire transloading and other rail freight service such as those currently provided by BHR on Parcel A of the BRT. As explained in the Petition at page 4 and shown on Attachment C to the Petition:³

In general, over the three phases the tracks will consist of (1) an approximately 11,000 foot, stub ended rail line that will run south from a connection with the LIRR; (2) an approximately 4,000 foot line of rail that will run off of the main section of track to enable service to shippers locating on the eastern portion of Parcel D; and (3) approximately 9,000 feet of track to be utilized for storage.

The proposed design as set out in the Petition varies from the original conceptual rail construction plans of the BRT landowners by establishing rail access to the Subject Property via the installation of a new switch connection with the Long Island Rail Road ("LIRR") and a southeast turning #10 turnout for the purpose of enabling the freight operator of the LIRR line - New York & Atlantic Railway ("NY&A") - to directly interchange traffic to and from shippers on Parcel D with BHR. BHR also explained in the Petition that Winters Bros., Shamrock Rail and BHR contemplate that the proposed rail lines will provide freight service to a proposed solid waste rail transfer facility ("SWRTF") to be constructed, owned and operated under the control of BHR on approximately 50 acres of the Subject Property, the realty right(s) to which BHR would also acquire via a long-term lease. Finally, at the time the Petition was filed there were no concrete arrangements for rail shipper facilities other than the SWRTF to locate on the Subject Property and require rail service from BHR.

Subsequent to the filing of the Petition there have been several developments concerning the ownership of the Subject Property and the plans for developing it for rail-served industrial use. As stated, these developments will result in a minor modification to the design and configuration of the track to be constructed by BHR. These developments have also clarified the type of rail service that will be provided by BHR and the timeline on which such service will be required. Specifically, on or around May 6, 2021, Winters Bros. Industrial Park Realty LLC, an affiliate of Winters, Shamrock Rail, and BHR, joined with two affiliates of Northpoint Development to create NP/Winters Long Island Industrial, LLC ("NP/Winters"). Effective May 6, 2021, NP/Winters acquired approximately 178 acres of the Subject Property pursuant to the Parcel D PSA. On that

² On May 11, 2020 the membership shares in BHR were acquired by Shamrock Rail, a non-railroad affiliate of Winters Bros. BHR's status as an independent Class III short line railroad was unchanged by the transfer of its membership shares.

³ A copy of Exhibit C is Attachment 1 to this letter for your convenience and ready reference.

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July 5, 2021

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date Winters Bros. Shamrock Rail Realty LLC ("Winters Shamrock Realty"), another affiliate of Winters Bros., purchased the remaining approximately 50 acres of the Subject Property which is the planned location for the proposed SWRTF. The entire Subject Property has been renamed the Winters Rail Terminal.⁴

The manner in which the simultaneous closings transferring ownership of the Subject Property from NYSO occurred will have little or no practical impact on BHR's acquisition of the necessary interest in the land associated with the proposed track. It is still anticipated that BHR will lease the necessary land for the rail construction and operation from NP/Winters and Winters Shamrock Realty as the owners of the Winters Rail Terminal. While there were no prospective rail shippers identified other than the SWRTF when the Petition was filed, and so the type of other facilities and rail service BHR might provide were not known, this is no longer the case. Over the past five months a development plan has been formulated by NP/Winters and BHR which provides for the construction on the N/P Winters portion of the Winters Rail Terminal of two rail served warehouse building structures of approximately 306,000 square feet and 1,000,000 square feet, respectively. See Attachment 2 (prepared by Northpoint Development). It is contemplated that these facilities will be constructed and owned by NP/Winters and occupied and operated by industrial tenants of NP/Winters. The planned use for such structures is the receipt of inbound loaded railcars of commodities from BHR for transloading into trucks for warehousing and logistics operations; distribution to locations on Long Island; and for BHR to potentially pick up outbound loaded railcars for delivery to NY&A. None of the commodities received at or shipped from either of the warehouses would be solid waste. Neither NP/Winters nor BHR currently have estimates of the number of railcars and trucks that will be involved in the warehouse operations.

The construction of these two structures will result in the track configuration being slightly modified and a reduction of the total feet of track. While the connection to LIRR and the main 11,000 stub ended track will be largely unchanged, the overall length of trackage to be constructed will be less than the proposed 23,685 feet due to (1) the elimination of approximately 4,000-foot section of track that would have branched off of the main track for the purpose of serving individual rail shipper facilities that might have thereafter located there; and (2) a reduction in the planned 9,000 feet of storage track. See Attachment 2.

In terms of timing, NP/Winters is currently in the process of obtaining the necessary development approvals from the Town of Brookhaven, as well as other local government approvals. It is anticipated that all necessary local approvals associated with construction of the two structures will be received before the end of 2021, and that construction of the 306,000 square foot structure could then begin in 2022, with occupancy and use commencing in the second quarter of 2023. Construction and operation of the second, 1,000,000 square foot facility would follow some time thereafter.

⁴ <https://wintersrailterminal.com/>

Law Office of Thomas W. Wilcox, LLC

Letter to Danielle Gosselin

July 5, 2021

Page 4

Please do not hesitate to call or email me with any questions, or if you would like BHR to provide any additional information.

Sincerely,

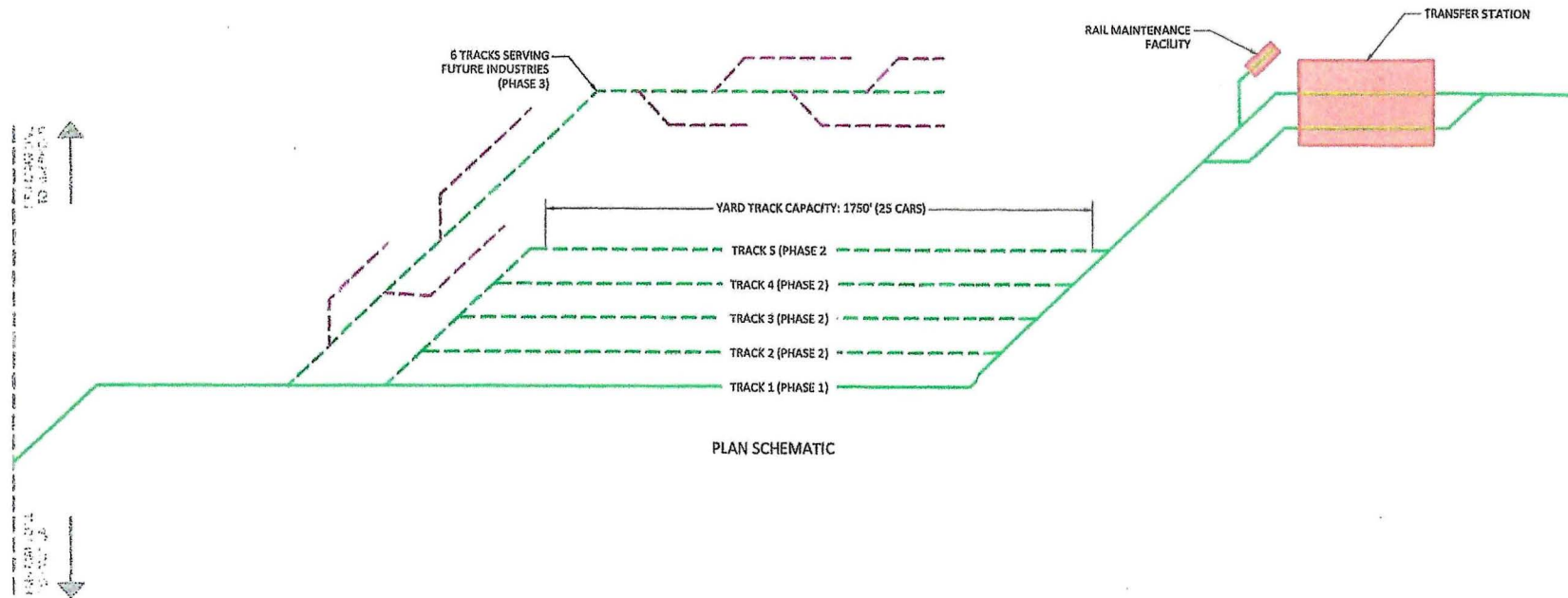


Thomas W. Wilcox

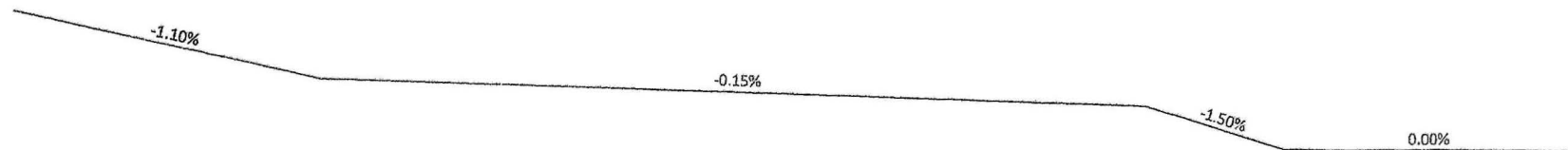
Attorney for Brookhaven Rail LLC

Cc: Ms. Diana Wood

ATTACHMENT 1
(EXHIBIT C TO PETITION FOR EXEMPTION)



PLAN SCHEMATIC

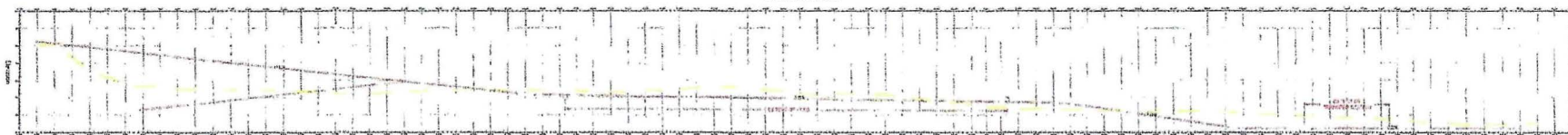


PROFILE SCHEMATIC

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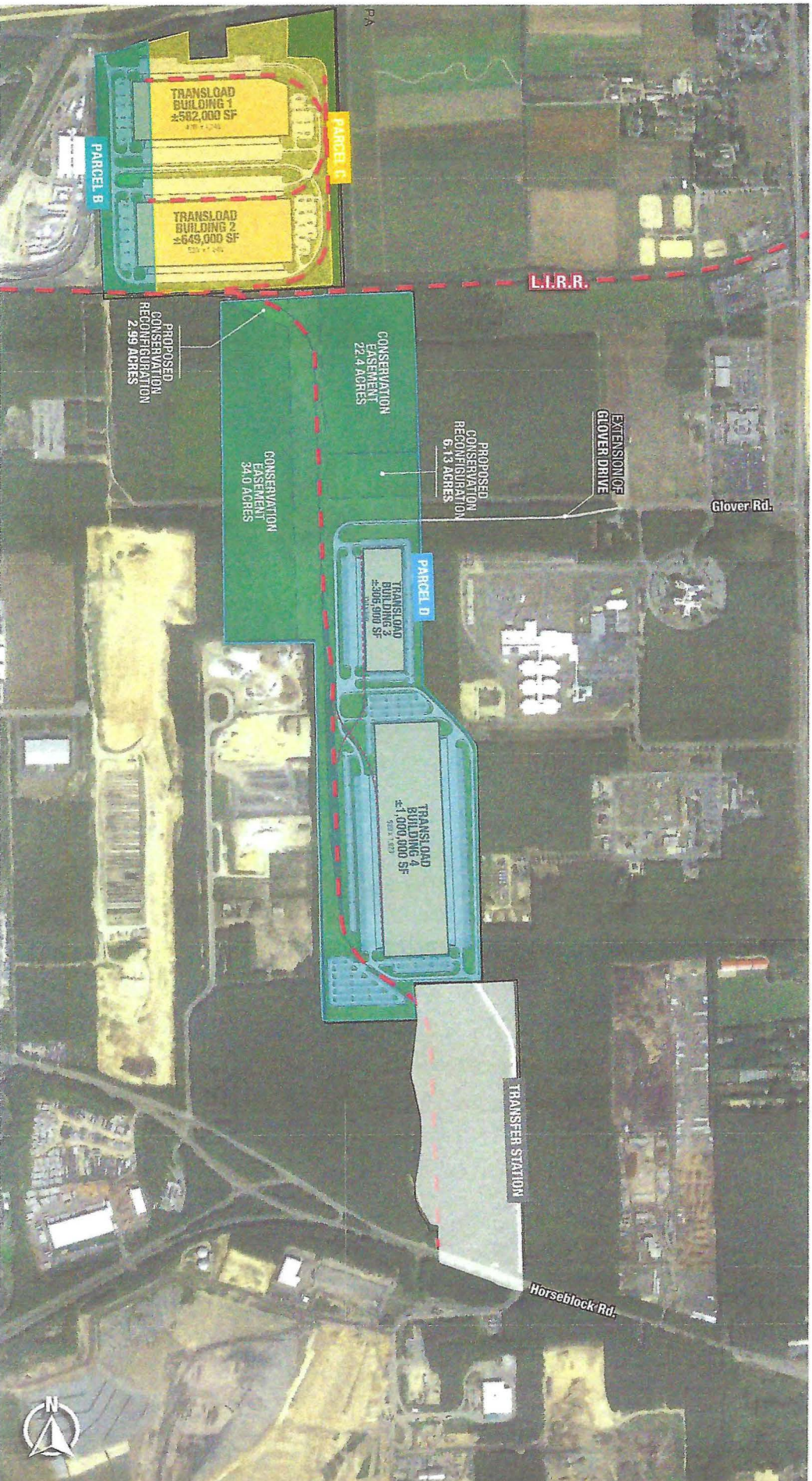


Main Track 1 PROFILE



				IT IS A VIOLATION OF THE PROFESSIONAL LICENSE LAW FOR ANY PERSON TO ALTER THIS DOCUMENT IN ANY WAY UNLESS THAT PERSON IS ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL. THE LICENSED PROFESSIONAL SHALL AFFIX TO THIS DOCUMENT THE SEAL AND THE NOTATION "ALTERED BY", FOLLOWED BY THE AUTHORIZED SIGNATURE AND THE DATE OF THE ALTERATION.	PE	DESIGNED BY:	 HENNINGSON, DUNHAM & BROWN ARCHITECTS AND ENGINEERS, P.C.	DRAFT NOT FOR CONSTRUCTION	PROJECT: BODORHAY ENVIRONMENTAL COMPLEX	SCALE: 1"=300'	CONTRACT NUMBER: N/A
						DRAWN BY:			DRAWING TITLE:	REVISION NUMBER: -	DATE: 2/7/2020
						CHECKED BY:			DRAFT RAIL ALIGNMENTS ALTERNATIVE 1	DRAWING NUMBER:	SHEET NO: 01 OF 12/A
						APPROVED BY:					

ATTACHMENT 2



ATTACHMENT F

Tom Wilcox

From: Tom Wilcox
Sent: Friday, July 30, 2021 11:49 AM
To: Danielle Gosselin - Surface Transportation Board (danielle.gosselin@stb.gov)
Cc: Wood, Diana; Peter Pfohl
Subject: CCE Letter of 7/28

Danielle - Brookhaven Rail LLC is in receipt of a copy of the letter submitted to you on July 28 by counsel for CCE. As per usual, CCE has misstated key facts and, relying on those inaccurate statements of "fact," jumped to unsupported conclusions. Brookhaven Rail will prepare and submit a detailed response to the letter, but as an initial point please note a material misstatement of fact by CCE. As noted in Brookhaven Rail's July 5, 2021 letter to you, 178 acres of the property in Yaphank, NY commonly known as Parcel D (now the Winters Rail Terminal) was acquired by NP/Winters Long Island Industrial, LLC ("NP/Winters"), and the remaining 50 acres were acquired by Winters Bros. Shamrock Rail Realty LLC. Neither of these entities acquired any ownership rights, nor does either have a pending contract or an option to acquire any ownership rights, in Parcels B or C, as CCE wrongly asserts. Rather, as page 10 of the document attached to CCE's letter states (in capitalized, bold letters nonetheless) the entity with contractual rights to acquire Parcels B and C is Northpoint Development, LLC ("Northpoint"), an entirely separate entity from NP/Winters, Brookhaven Rail and Winters Bros. Shamrock Realty LLC.

If, and when, Northpoint acquires Parcels B and C, it will oversee their development, which Brookhaven Rail understands will be pursuant to the terms, conditions, and mitigation measures included in the 2016 "So Ordered Stipulation and Settlement" and related documents discussed in Brookhaven Rail's filings in Dockets FD 36398 and 36399, and will also be consistent with the STB's decisions in Docket No. FD 35819. Since much of the rest of CCE's letter proceeds from this material misstatement, its various additional assertions are also erroneous, which Brookhaven Rail will address in more detail in due course.

Regards,
Tom Wilcox

Thomas W. Wilcox
Law Office of Thomas W. Wilcox, LLC
Office: 202.508.1065
Mobile: 202.365.8409
1629 K. Street, NW Suite 300
Washington, DC 20006
tom@twilcoxlaw.com | www.twilcoxlaw.com

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Tom Wilcox

From: Tom Wilcox
Sent: Thursday, November 11, 2021 10:30 AM
To: Danielle Gosselin - Surface Transportation Board (danielle.gosselin@stb.gov); Wood, Diana
Cc: mwhite@wintersbros.com
Subject: Brookhaven Rail - Additional Update on Ownership Issues

Danielle and Diana –

This email updates the information I provided to you, on behalf of Brookhaven Rail LLC, in my email of July 30, 2021, about the ownership of Parcels D, B and C of the former Brookhaven Rail Terminal properties. At that time, NorthPoint Development, LLC (“Northpoint”) had acquired the contractual right to purchase Parcels B and C and develop them. Prior to the closing date for that purchase, NorthPoint assigned its acquisition rights to NP/Winters Long Island Industrial, LLC (“NP/Winters”). Brookhaven Rail is not an affiliated company of NP/Winters. Subsequently, NP/Winters became the owner of Parcels B and C on October 20, 2021. My prior email informed you that NP/Winters had acquired approximately 178 acres of Parcel D on May 6, 2021. The plan remains for Brookhaven Rail to lease approximately 18.5 of the 178 acres on Parcel D from NP/Winters to construct and operate the lines of railroad generally described in its Petition for Exemption in Docket FD 36398 as updated by the schematic/map for Parcel D submitted to OEA in my letter of July 5, 2021.

In my July 5 letter I also provided you and OEA with an update of the planned development of Parcel D for rail-served industry, namely the plans of NP/Winters to construct two rail and truck served warehouses of 306,000 and 1,000,000 square feet, respectively, on the 178 acres. Brookhaven rail understands that NP/Winters is now implementing plans to design and construct those facilities. Of relevance to OEA’s analysis of the potential environmental impacts of Brookhaven Rail’s proposed rail construction project and proposed solid waste rail transfer facility, NP/Winters will submit applications to the Town of Brookhaven that in part ask for permission to begin clearing trees on parts of Parcel D that NP/Winters has determined are needed for the construction of the warehouse buildings, utilities, access roads, parking lots, etc. Brookhaven Rail understands that the application will not include the approximately 18.5 acres to be leased by it from NP/Winters to construct and operate the lines of railroad covered by its Petition for Exemption, as updated. The NP/Winters application will also include a request for permission to clear trees on a 150-foot wide strip of the 50 acres of Parcel D purchased by Winters Bros. Shamrock Realty LLC on which Brookhaven Rail’s proposed solid waste rail transfer facility would be constructed. Brookhaven Rail understands this clearing is required for the construction of an access road to the NP/Winters’ warehouses that will connect to Horseblock Road at the southern end of Parcel D.

Brookhaven Rail and Winters Bros. Shamrock Realty LLC have advised NP/Winters that any clearing activities on Parcel D should take into account the STB’s jurisdiction over the pending rail construction project petition for exemption and the proposed solid waste rail transfer facility, and that the applications to the Town seeking permission to clearing trees on Parcel D should contain language to this effect.

As always, please do not hesitate to call or email me if you have questions or desire additional information.

Regards,
Tom

Thomas W. Wilcox
Law Office of Thomas W. Wilcox, LLC
Office: 202.508.1065

Mobile: 202.365.8409
1629 K. Street, NW Suite 300
Washington, DC 20006
tom@twilcoxlaw.com | www.twilcoxlaw.com

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CERTIFICATE OF SERVICE

I hereby certify that, on this 30th day of November 2021, a copy of the foregoing Reply to November 10, 2021 Filing of Citizens Campaign for the Environment was served by email on all parties on the official Service Lists for Docket No. FD 36398 and Docket No. FD 36399.

/ss/ Thomas W. Wilcox