

EO-1183

SURFACE TRANSPORTATION BOARD

Washington, DC 20423

Office of Economics, Environmental Analysis, and Administration

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

March 31, 2009

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

Dear Mr. Savage:

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

Background

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

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

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

SEA's Environmental Review To Date

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

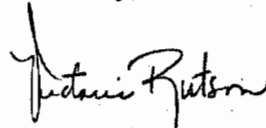
Conclusion

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

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

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

Sincerely,



Victoria Rutson
Chief

Section of Environmental Analysis

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

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