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February 20, 2009

VIA ELECTRONIC FILING

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

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

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

Dear Ms. Rutson:

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

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

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

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

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

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

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

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

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

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

(1) Proposed Action and Alternatives

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

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

(2) Transportation System

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

(3) Land Use

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

(4) Energy

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

(5) Air

U S Rail proposes to construct a new line of rail under 49 U.S.C. 10502 in what the EPA classifies as a moderate non-attainment area for ozone and an attainment area for PM 2.5 that will accommodate fewer than the action level of three trains per day¹ and no significant adverse impact on local or regional air quality is expected as a result of the construction and operation of the BRT. Indeed, as a result of the diversion of freight traffic from truck to rail transportation, significant improvement in local and regional air quality may occur.

(6) Noise

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

(7) Safety

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

(8) Biological Resources

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

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

(9) Water

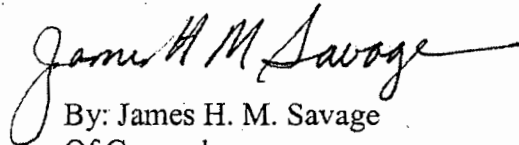
No waters of the United States, any wetlands or any 100-year flood plains are impacted by construction and operation of the BRT and the proposed action is consistent with applicable federal, state and local water quality standards. Prior environmental studies of the site confirm that construction of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

(10) Cultural Resources

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

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

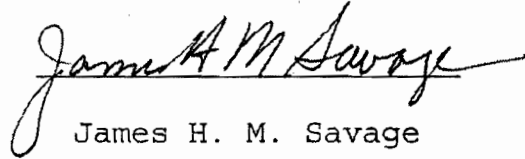
Respectfully submitted,
John D. Heffner, PLLC


By: James H. M. Savage
Of Counsel

cc: William Plumpton
Troy Brady
Mark Cuthbertson, Esq.

CERTIFICATION OF PROOF OF SERVICE

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


James H. M. Savage

Dated: February 20, 2009