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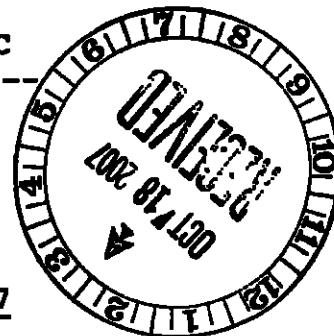
ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35036

SUFFOLK & SOUTHERN RAIL ROAD LLC
-- LEASE AND OPERATION EXEMPTION --
SILLS ROAD REALTY, LLC

PETITION FOR STAY
OF
DECISION SERVED OCTOBER 12, 2007



ENTERED
Office of Proceedings

OCT 18 2007

Part of
Public Record

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Of Counsel

Dated: October 18, 2007

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**SUFFOLK & SOUTHERN RAIL ROAD LLC
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**PETITION FOR STAY
OF
DECISION SERVED OCTOBER 12, 2007**

INTRODUCTION AND BACKGROUND

Sills Road Realty LLC ("Sills"), and U S Rail Corporation ("U S Rail") petition the Board to stay its decision served on October 12, 2007, directing Suffolk & Southern Rail Road ("Suffolk"), Sills, or U S Rail, or any other related entity conducting rail construction in Yaphank, Brookhaven, or in the vicinity to immediately cease that activity and either obtain construction authority pursuant to 49 U.S.C. 10901(a) or a decision of the Surface Transportation Board ("Board") finding that such activity does not require Board approval. By separate petition to be filed on or before November 1, 2007,

Petitioners will be seeking reconsideration of that decision on the grounds that it contains material error.¹

This proceeding dates back to May 18, 2007, when Suffolk, a non-carrier, filed a verified notice of exemption under 49 CFR 1150.31 to lease and operate about 11,000 feet of track that Sills was going to construct as a private side track on a 28 acre parcel of land in Yaphank, Suffolk County, NY,² owned by Sills, also a non-carrier. Believing that Suffolk's proposed construction was subject to its approval under 49 U.S.C. 10901(a), the Board found Suffolk's exemption notice incomplete in a decision served June 1, 2007 and directed Suffolk to file, by June 21, 2007, supplemental information describing, in detail, the construction activities on the trackage undertaken to date and any construction anticipated in the future. On June 15, 2007, Suffolk filed a letter requesting withdrawal of its notice of exemption due to a change in circumstances. Subsequently, by decision served August 13, 2007, the Board found that Suffolk had failed to explain the situation to its satisfaction and directed Suffolk to file, by August 23, 2007, the information required by the June 1

¹ See, 49 CFR 1115.3(e).

² The subject trackage will consist of a transloading facility with a small network of yard tracks and will be known as the Brookhaven Rail Terminal.

decision. In addition, the Board ordered Suffolk to provide a substantive reason for its request to withdraw and to explain in more detail whether it or Sills anticipated that for-hire service will be provided over the trackage being constructed. In reply, Suffolk advised the Board that Sills never undertook the construction at the Sills Road location and that Suffolk withdrew its May 18th exemption notice because it never concluded any agreement or other relationship with Sills regarding the proposed transaction. The Board accepted that explanation and permitted Suffolk to withdraw its notice of exemption.³

After Suffolk requested its notice of exemption be withdrawn, Sills entered into an agreement with U S Rail, an existing class III rail carrier,⁴ to construct and operate the subject trackage as an "exempt spur" under 49 U.S.C. 10906. Accordingly, U S Rail did not and does not require any Board authority to construct or operate over the subject track.

³ The Board further stated that it would view with disfavor any future request for authority to commence rail operations over trackage at this location unless that construction had first been authorized by the Board.

⁴ The Great Miami & Scioto Railway Company - Change in Operator Exemption - Certain Lines of the City of Jackson, OH, STB Finance Docket No. 32417 (Jan. 20, 1994) Suffolk had originally intended to engage U S Rail to operate the subject track as a contractor under Suffolk's STB operating authority.

The Board's October 12, 2007 "cease and desist" order is solely based upon a letter, dated October 2, 2007, from the Town Attorney for the Town of Brookhaven, NY, (Exhibit A), and an article dated October 1, 2007, appearing in *Newsday*, a local newspaper, concerning U S Rail's construction of a rail facility at Yaphank. (Exhibit B). The Board also referenced in its October 12th order, two letters, dated July 12, 2007 (Exhibit C) and July 25, 2007 (Exhibit D) sent by the undersigned to the Town Attorney for the Town of Brookhaven. The Board concluded in its October 12th decision, that the facility Suffolk had been proposing to construct and U S Rail is attempting to construct were one and the same.

On October 4, 2007, Melvin F. Clemens, Director of the Board's Office of Compliance and Consumer Assistance, wrote to the undersigned as counsel for U S Rail about the subject rail construction stating his belief that it requires Board approval under 49 U.S.C. 10901(a). (Exhibit E).

In his letter, Mr. Clemens directed counsel for U S Rail to:

"[A]dvise the Board in detail, by a response due to me no later than October 9, 2007, of any and all activities undertaken, or being undertaken, in Yaphank, Brookhaven, or anywhere in that vicinity,

by U S Rail Corporation, or by any entity on its behalf, or by any other entity that you represent. If you believe that any of these activities do not require Board approval (whether as an 'exempt spur' or otherwise), tell us why you believe that to be the case."

Mr. Clemens further ordered U S Rail not to resume work in any form until Board authority is obtained or the Board determines that its authorization is not required. On October 9, 2007, U S Rail filed a timely and detailed response to Mr. Clemens' letter, describing the activities undertaken to date,⁵ describing the proposed facility in detail, and maintaining that the proposed construction is an "exempt spur" under 49 U.S.C. 10906. (Exhibit F).

The Board's October 12th decision imposing a "cease and desist" stop-work order upon petitioners references neither Mr. Clemen's October 4, 2007 letter, nor U S Rail's October 9, 2007 response thereto.

This petition for a stay of the Board's October 12, 2007 decision follows.

⁵ Those activities have included attending meetings between Sills Road Realty (the owner of the land on which the facility is being constructed) with state and local officials to discuss this project, consultations with officials at the New York State Department of Transportation about funding for the project, discussions and negotiations with the New York & Atlantic Railroad (NY&A) and CP Rail about through transportation of inbound and outbound cargo, design of the rail terminal and related facilities, ordering of material for the construction of those facilities, and the clearing of land in anticipation of construction of those facilities. As yet, neither U S Rail nor any other entity has constructed any railroad track.

ARGUMENT

The Board's Rules of Practice provide that any party may petition for a stay of agency action pending judicial review. 49 CFR 1115.5(a). Petitioners intend to seek timely reconsideration of the Board's decision and may, depending upon the outcome of that reconsideration request, seek judicial review. Petitioners maintain that the October 12 decision involves material error and inflicts irreparable injury upon the movants without any corresponding harm to other parties.

The Board will grant a stay in a proceeding where (a) there is a substantial likelihood that the movant will prevail on the merits, (b) the movant will be irreparably harmed absent the stay, (c) the stay would not harm other parties, and (d) issuance of a stay is in the public interest. Hilton v. Braunskill, 481 U.S. 770, 776 (1987); Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958). Moreover, the Board has the power to stay its own decision without such showings on the merits where it needs additional time to consider difficult issues presented in a case. City of Alameda - Acquisition

Exemption - Alameda Belt Line, STB Finance Docket No. 34798

(served Dec. 15, 2005) (stay granted). Such is the case here.

1. There is a substantial likelihood that
Petitioners will prevail on the merits.

Petitioners maintain that construction of the Brookhaven Rail Terminal as a "disconnected spur" (of U S Rail) prior to the Board's October 12, 2007 "cease and desist" order, was lawful, as it was taking place under a recognized exemption to the Board's authorization requirements. Accordingly, Petitioners will be seeking reconsideration of the Board's October 12th decision on the grounds of material error, specifically the fact that the decision did not cite and discuss any legal authority requiring U S Rail to terminate its construction activities despite the detailed arguments for a contrary result set forth in Petitioners' October 9th response letter.

It appears that, at most, the Board relied entirely on the Town of Brookhaven's October 2, 2007 letter, and the October 1st *Newsday* article.

Upon receiving Mr. Clemens' October 4, 2007 letter, the undersigned contacted his office seeking permission to extend time to submit U S Rail's reply from October 9th to October 12th so as to afford Petitioners and their counsel

ample opportunity to present the Board with the most complete and accurate record possible. Petitioners' counsel further based his request for this short extension upon the fact that a response would be due the day following the conclusion of the intervening three day Columbus Day weekend and the reply schedule dictated by Mr. Clemens' letter provided scant time (not more than about two and one half working days) in which to present an appropriate reply. In denying this request, petitioners' counsel was advised on the afternoon of October 4th that it was essential that Petitioners submit their reply by October 9, 2007 so that the Board could consider it in making their decision.

The October 12th Board decision, however, did not in any way reference either Mr. Clemens' letter or Petitioners' very detailed October 9, 2007 reply thereto. This provides irrefutable evidence that the Board reached its decision without considering the law and evidence presented by Petitioners' counsel in the October 9th reply. In so acting, the Board improperly issued its decision following a review of only a partial record, consisting of a short letter from the Town of Brookhaven to the Board , and a news report from a local newspaper . Such unsubstantiated rumor, innuendo and hearsay falls well

short of the clear and convincing evidence of a substantial likelihood of irreparable harm needed by this Board to impose the drastic remedy of a cease and desist order.

Administrative due process requires both notice and a meaningful opportunity to be heard. In this matter the time-constrained notice provided by this Board, coupled with a decision issued without affording U S Rail an opportunity to be heard constitutes a serious deprivation of petitioners' rights. Under these circumstances the best remedy would be for the Board to stay its 'cease and desist' order pending a thorough review of the law and evidence submitted by petitioners in support of their petition for reconsideration.

As the Board knows well, the determination as to whether a specific piece of railroad is an "exempt spur" under 49 U.S.C. 10906 (for which no licensing authority is necessary in order to construct or operate) or a "line of railroad" under 49 U.S.C. 10901 (for which authority is required) is a mixed question of fact and law. New Orleans Terminal Co. v. Spencer, 366 F.2d 160, 164 (5th Cir. 1966), cert. denied 386 U.S. 942, 87 S. Ct. 974, 17 L. Ed. 2d 873 (1967). Cited in Illinois Commerce Com. v. United States, 779 F.2d 1270 (7th Cir. 1985).

Moreover, whether a given piece of track may be regarded as an exempt spur or a line of railroad depends upon the specific facts presented including the use to which the track is put.

It is well established that the determination of whether a particular track segment is a "line of railroad", requiring Commission authorization pursuant to section 10901(a), or a "spur, industrial, team, switching, or side track," exempt from Commission [now Board] jurisdiction turns on the intended use of the track segment, not on the label or cost of the segment. Nicholson v. Interstate Commerce Com., 711F.2d 364 (D.C. Cir. 1983).

Nicholson holds that Congress intended to subject to the entry requirements of section 10901(a) so-called main or branch lines of railroad, that is, lines designed and used for continuous transportation service by through trains between different points of shipment or travel, and to exclude from those requirements all that mass of "tracks" (as distinguished from "lines") naturally and necessarily designed and used for loading, unloading, switching, and other purposes connected with, and incidental to, but not actually and directly used for such transportation service. Detroit & M.Ry. v. Boyne City, G. & A.R.R., 286 F. 540, 546 (E.D. Mich. 1923). Thus, track

segments which are intended to be used to carry through trains between points of shipment and delivery, particularly those segments which extend a railroad's service into new territory, must be approved by the Board pursuant to section 10901(a). On the other hand, track segments which are merely incidental to, and not required for, a railroad's service between points of shipment and delivery are exempted from the requirements of section 10901(a). New Orleans Terminal Co. v. Spencer, 366 F.2d 160, 165-66 (5th Cir. 1966), cert. denied, 386 U.S. 942 (1967). Such is the case herein.

Determining whether a specific piece of track is an "exempt spur" or a regulated "line of railroad" requires the Board to consider various factors, no one of which is itself controlling. The Board's analysis focuses on a series of fact-based indicia including (1) the length of the track, (2) the number of customers to be served, (3) whether stub-ended, (4) whether there is scheduled service, (5) the volume of traffic moving over the track, (6) who owns and maintains the track, (7) the weight of the rail, (8) the condition of the track, (9) the proposed use of the track, and (10) the existence or absence of a "station" through which traffic is solicited. See CNW-Aoan. Exemp.-
In McHenry County, IL, 3 I.C.C.2d 366 (1987), rev'd on

other grounds sub nom. Illinois Commerce Com'n v. ICC, 879 F.2d 917 (D.C. Cir. 1989).

In their October 9th reply, Petitioners went to great lengths to describe in detail and analyze under applicable precedent the exemption pursuant to which the Brookhaven Rail Terminal is being constructed, including, providing a chronology of events, a site plan, and an aerial photo. Using the well-established criteria, cited above, there can be no doubt that U S Rail's construction and operation of the subject rail facility qualifies as an "exempt spur" under 49 U.S.C. 10906 for which no authority is needed. The length of track is short, about 11,000 feet if laid out "end-to-end" on 28 acres of land. One principal customer, Sills Road Materials LLC, will be serviced by the Terminal. The facility will be a stub-ended network of tracks, with service to be provided on demand rather than on any scheduled basis. The weight of the rail will not exceed 115 pounds, a weight consistent with current standards for building new rail-served industrial facilities but far too light for a line of railroad. The condition of the track will be good because it will be newly constructed to the currently applicable industry standards. The proposed use of the tracks will be for loading, unloading, switching, and storage of rail cars for a single principal user, all

uses consistent with the character of exempt industrial or yard tracks. The purpose of this transaction will be to bring stone to Long Island by rail instead of by truck movement over congested highways. Traffic moving to or from the Terminal will be interchanged with the New York & Atlantic Railway ("NY&A"), and through it, with other railroads comprising the national rail system. There will be no "station" listed in a tariff through which traffic will be solicited. The October 12th Board decision does not acknowledge or reference, let alone discuss, this evidence which clearly demonstrates, under controlling Board precedent, that the activities in question can only be characterized as the construction of an exempt spur.

Cognizant of the fact that the Brookhaven Rail Terminal is disconnected from the rest of its system, U S Rail cited three Board decisions involving spurs that were disconnected from rail lines of carriers, the construction of which, either implicitly or explicitly, required no Board authorization.

Under controlling precedent, Brookhaven Rail Terminal meets all of the indicia of an exempt spur which may be constructed and operated by an existing common carrier, even though the spur in question is disconnected from the

carrier's other operations. The likelihood of success on the merits appears undoubtable.

While Petitioners appreciate the Board's guidance in inviting them to file a Petition for Declaratory Relief, the existence and availability of alternative modes for seeking relief is beside the point where, as here, the petitioners proceeded with plans to construct a disconnected rail spur based upon a good faith belief that their actions are justified under existing law, only to encounter the "cease and desist" order from which relief is sought herein.

2. Petitioners will be irreparably harmed absent a stay.

Petitioners submit with this filing two verified statements detailing the irreparable harm they will suffer as a result of the Board's failure to stay its "cease and desist" order. In his October 16, 2007 verified statement (Exhibit G) U S Rail's President, Gabriel Hall documents that there are customers who have made commitments to use this facility for moving aggregate from points in upstate New York to the Brookhaven Rail Terminal for construction projects on eastern Long Island. He explains why truck is inadequate or even unavailable for these movements and that there are no other suitable transload facilities located on

Long Island to meet this critical need. In his October 16, 2007 verified statement (Exhibit 'H) Sills' CFO, Gerard Drumm describes the efforts made to develop the Brookhaven Rail Terminal and the opportunity costs and construction costs associated with each day of delay.

3. Issuance of a stay will not harm any other parties.

The Town of Brookhaven is the only entity that has contacted the Board about U S Rail's activity at the Brookhaven Rail Terminal. The Town's lone disclosed participation in this proceeding amounts to filing its October 2, 2007 letter with the Board, a letter that does not demand that U S Rail's activities be stopped. Although the Town of Brookhaven has indicated their concern that no review of this project has occurred under either federal or New York environmental laws, the Town concedes that U S Rail's actions may be, in its words, "justified" (i.e., exempt from state and local oversight) if it is acting under Board authority. Thus the thrust of Brookhaven's letter and any petition for declaratory relief it may file is whether U S Rail has the legal authority to construct and operate the Terminal, the very same issue that U S Rail's October 9, 2007 letter explains in detail and which the Board failed to consider.

Neither the Town of Brookhaven nor any other entity has specified what harm will occur if U S Rail resumes site preparation. The land upon which Brookhaven Rail Terminal is being built is unused industrial-zoned property. There are no adjacent residences, schools or recreational facilities. Furthermore, U S Rail and Sills have both informed the Town of Brookhaven that they have no intention of collecting municipal solid waste at this site, apparently the real concern of the Town.

4. Whether issuance of the stay is in the public interest.

There should be no question that the public interest requires the issuance of a stay. By now, the Board is well aware of the lack of rail facilities east of the Hudson River generally and on Long Island specifically. See Coastal Distribution, LLC et al v. Town of Babylon et al, 216 Fed. Appx. 97 (U.S.C.A. 2d Cir. 2007). Long Island-based consumers have only two means of transporting inbound products they need: highway or rail. Highway transportation to eastern Long Island necessarily entails the use of the Long Island Expressway, aptly nicknamed the "world's longest parking lot" as well as some congested local roads. Other highways serving Long Island are not available for freight transportation as access is limited

to private automobiles.⁶ This leaves the alternative of rail transportation in the form of the Long Island Rail Road ("LIRR") and its designated freight carrier, the NY&A.⁷ Indeed, New York State has long recognized the urgent need for additional transloading and intermodal freight facilities on Long Island and is developing its own plans for a facility at Brentwood, Long Island comparable to the Brookhaven Rail Terminal

Furthermore, in determining the appropriate course of action here, the Board should not lose sight of the fact that this country has both a well documented shortage of fossil fuel and a global warming problem. The issue that cases like this present is whether the public should be able to utilize rail as an energy efficient, environmentally friendly form of transportation or should it continue its wasteful polluting ways of moving goods while engaging in painstakingly slow studies on the environment. Simply stated, does the Board want Sills' Long Island-bound traffic to move (or not move) on congested highways while its alleged impacts are studied?

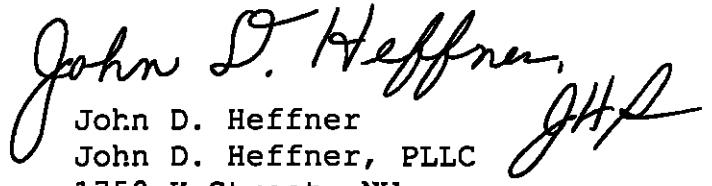
⁶ Long Island has two other major east-west highways -the Northern State Parkway and the Southern State Parkway. Commercial vehicles are barred from using these two parkways

⁷ Historically, the LIRR provided both freight and commuter rail passenger service. In 1997 the LIRR granted the NY&A an exclusive franchise to perform freight service over its tracks.

CONCLUSION

Petitioners request that the Board stay its decision served October 12, 2007, to permit U S Rail to continue preparation of Brookhaven Rail Terminal pending a decision on the Petition for Reconsideration that Petitioners will file shortly.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John D. Heffner", followed by a large, stylized monogram "JH".

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(202) 296-3334

Counsel for

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and U S Rail Corporation

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Suite 350
Washington, DC 20006
(202) 296-3335

Of Counsel

Dated: October 18, 2007

EXHIBIT A



Town of Brookhaven Long Island

Brian X. Foley, Supervisor

October 2, 2007

Surface Transportation Board
Attention: Nancy Beiter, Esq.
395 E Street, S.W.
Washington, DC 20423-001

Re: U.S. Rail Corporation Facility/Yaphank, New York

Dear Ms. Beiter:

The Town of Brookhaven, New York has been in communication with representatives of U.S. Rail Corporation ("U.S. Rail") concerning a proposed rail facility on property that they have leased in Yaphank, Town of Brookhaven, New York. U.S. Rail has alleged that as a common carrier railroad, their construction and operation of this "Rail Yard" is governed by federal law, rules and regulations and subject to the exclusive jurisdiction of the Surface Transportation Board. They, therefore, claim that local laws, rules and regulations have no applicability to this project. A copy of identical letters from their counsel, John D. Heffner, one faxed July 12, 2007 and the other received by mail on July 27, 2007 are attached.

Although representatives of the Town have demanded proof of that authority, such as a copy of any documents or exemptions, U.S. Rail has not provided them. They appear to be relying on their authority to act because they are an authorized rail corporation.

Without obtaining the necessary permits under New York State and Town of Brookhaven laws, rules and regulations, representatives of U.S. Rail have commenced clearing and possibly sand mining on the premises. We are particularly disturbed that apparently no environmental review under either NEPA or New York State's SEQRA was undertaken.

Department of Law

Robert F. Quinlan, Town Attorney

One Independence Hill • Farmingville • NY 11738 • Phone (631) 451-6500 • Fax (631) 698-4489 • Fax (631) 451-6505

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Surface Transportation Board
Attention: Nancy Beiter, Esq.
October 2, 2007
Page -2-

Re: US Rail Corporation Facility/Yaphank, New York

The Town realizes that if U.S. Rail is acting under the authority of the Surface Transportation Board, than their actions may be justified. As we have not received adequate documentation from U.S. Rail or their counsel to prove their authority, the Town of Brookhaven will be filing a formal petition for a declaratory order with the Surface Transportation Board shortly.

The purpose of this letter is to advise you of that intended action as well as to ascertain if there is any existing process initiated by U.S. Rail on this action.

Very truly yours,



Robert F. Quinlan
Town Attorney

RFQ:dah
Enclosures

EXHIBIT B

newsday.com/news/local/crime/ny-lirail025398794oct02,0,6482362.story

Newsday.com

Jumping gun on big dig

Rail company, Syosset firm start on massive clearing project for Yaphank transfer site - but work is halted for lack of permits

BY JENNIFER SMITH AND ERIK GERMAN

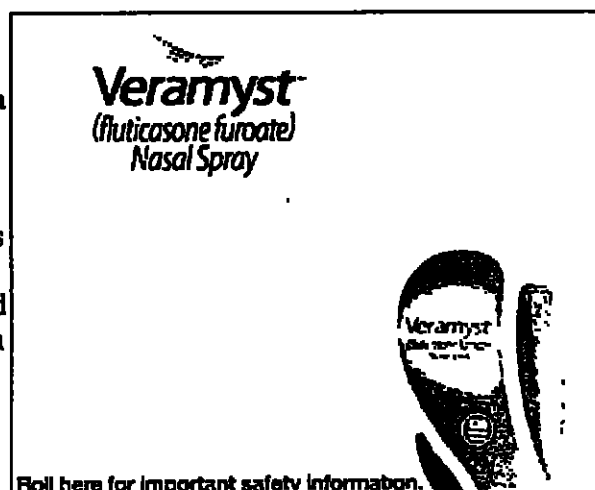
jennifer.smith@newsday.com, erik.german@newsday.com

October 2, 2007

An Ohio rail company working with Long Island asphalt plant owners has cleared 18 acres in Yaphank and excavated mountains of sand in preparation for building a rail-to-truck transfer site - without having sought any government approvals.

The state Department of Environmental Conservation has issued citations for mining without a permit to Watral Bros., the Bay Shore subcontractor preparing the site, and to the owner of the land - Sills Road Realty, a consortium of local asphalt plant and construction business owners with offices in Syosset.

Work at the site was voluntarily halted by Wednesday evening, said DEC regional director Peter Scully. "The most serious concern is that a development project that calls for the clearing of a 28-acre site and the mining of hundreds of thousands of cubic yards of material could move forward without any environmental review," Scully said last week.



Federal defense

The railroad involved - U.S. Rail Corp. of Toledo, Ohio, which has signed a 30-year lease with Sills Road Realty - says federal law allows railroads to undertake such projects without state and local permits. Earlier this year, the same landowners attempted to set up their own railroad to operate a rail spur at the site only to abandon the tack when the process became "unduly complex and complicated," said Gerard Drumm, the chief financial officer and council for Sills Road Realty. And this summer, the state rejected the company's bid for rail bond funding in part because the Department of Transportation didn't have evidence that Sills Road Realty or U.S. Rail were authorized to operate as rail companies in the state.

The DEC visited the Yaphank site yesterday to make sure work had not resumed, said Scully. Drumm and U.S. Rail president Gabriel Hall said their companies are "in discussions" with the DEC about the

citations, which could lead to an administrative hearing if the parties cannot resolve their differences.

A big haul

Brookhaven town spokesman Tom Burke said a town inspector estimated about 1,000 cubic yards of sand was being removed from the site each day. "Judging by the size of the hole it could have been going on for six weeks," Burke said. At that rate, at current prices, the sand could sell for \$330,000 to \$750,000.

"We're not a sand-mining operation," said Drumm. "We're excavating for a construction project ... under state law that isn't mining." Drumm said Friday the sand was being sold.

Residents say they first learned of the project in late August, when they saw machinery toppling trees at the site, which is about a mile from homes.

"We had no clue who, when, where, what was going on," said Fran Hurley, president of the Yaphank Taxpayers and Civic Association. Hurley said residents are concerned about the traffic from the project, and whether the excavation could affect groundwater resources deep below the site.

Representatives of U.S. Rail and Sills Road Realty say they have communicated a number of times with the town and that they are working to address residents' concerns.

Drumm said the industrially zoned site is suited for their facility because it is close to the LIE. He added that it also lies within the town's Empire Zone - an area where businesses get state tax credits for ventures that attract capital and create jobs. He also said the facility would reduce local truck traffic.

Sills Road Realty first discussed the project with Brookhaven officials in January. They then met with the Suffolk planning department, Drumm said. Town and county officials characterized the discussions as preliminary.

Quite a surprise

County public works department's chief engineer William Hillman said his department had no idea that work had started until late August, when they saw bulldozers in action. Hurley said the company only met with her group after she contacted them herself.

Brookhaven town spokesman Burke said the town exercised "due diligence" and recommended that the railroad contact local civic groups.

U.S. Rail told Brookhaven officials in a July 12 letter that they intended to start work in the next 30 days. On July 20, town officials met with a project backer, who they said repeated that they could bypass local and state controls because railroads are overseen by the federal Surface Transportation Board. Said Burke: "It is arguable whether the town should have demanded to see the exemption, but it certainly exists in law and ... we presumed they qualified for the exemption," Burke said.

Earlier this year Sills Road Realty had tried to set up its own short-line rail company under the name Suffolk and Southern Rail Road. In May, Suffolk and Southern filed a notice of exemption with the

Surface Transportation Board seeking federal authority for the project. But the board indicated that the project would require Board authorization - as well as an environmental review.

Fall into disfavor

That's when Suffolk and Southern withdrew its application. The board's decision in the matter, released last week, said that it would "view with disfavor any future request for authority to commence rail operations of trackage at this location unless the construction of that trackage has first been authorized by the Board."

U.S. Rail has not submitted filings on the Yaphank project to the Board. Railroad president Gabriel Hall said his company does not have to file a notice of exemption because U.S. Rail is already recognized by the Board as a common carrier in Ohio.

A Surface Transportation Board staff attorney said the board could not determine whether U.S. Rail has operating authority for the Yaphank project unless a complaint is filed. As of yesterday, nobody had formally done so.

About the project

LOCATION

28-acre parcel of industrially zoned land in Yaphank owned by Sills Road Realty.

WHAT'S BEING BUILT

A transload facility where stone, lumber and other construction materials would be shipped in via an 11,000-foot rail spur and loaded onto trucks.

ESTIMATED TRAFFIC

2,500 to 3,000 rail cars a year initially, with about 7,500 trucks picking up material.

EXCAVATION

Over six weeks, about 1,000 cubic yards of sand were removed each day, town officials said.

The track record

To prevent local and state regulations from bogging down interstate rail commerce, a 1995 federal law gave the Surface Transportation Board exclusive jurisdiction over railroads and all related facilities and activities. Previously states had been allowed to control the construction or removal of railroad spurs and other ancillary tracks.

Under the 1995 law, rail carriers need board approval to build a new railroad line but are allowed to make improvements and add new facilities to an existing line. If there is a concern that the federal pre-emption is being wrongly used to shield non-transportation activities, parties can ask the board to issue an order or a stay, or take the matter to court.

EXHIBIT C

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By overnight courier and facsimile to
(631) 698-4489

July 12, 2007

Robert P. Quinlan, Esq.
Town Attorney
Department of Law
Town of Brookhaven
One Independence Hill
Farmingville, New York 11738

Re: Real Property Described in Attachment A (the "Real Property")

Dear Mr. Quinlan:

I am writing on behalf of U S Rail Corporation ("U S Rail"), an Ohio-based company and common carrier short line railroad operating pursuant to authority granted by the former Interstate Commerce Commission (now the Federal Surface Transportation Board). U S Rail has leased the Real Property and intends to construct and operate as an "exempt spur" within the meaning of 49 U.S.C. 10906, a line of rail and related side tracks, yard tracks, turn outs, switches and connecting track (collectively, the "Rail Yard") thereon for the purpose of operating a common carrier railroad and transload facility at that location.

The Rail Yard will provide rail transportation services to customers shipping and receiving and /or transloading aggregate stone and other stone products as well as lumber, plywood, sheetrock and related construction materials and other merchandise freight. As a common carrier railroad, U S Rail's construction and operation of the Rail Yard are governed by federal law, rules and regulations and subject to the exclusive jurisdiction of the Surface Transportation Board thereunder.

U S Rail desires to work with you and other community leaders to develop a very positive relationship. We are available to meet with you at your earliest convenience but anticipates commencing construction of the Rail Yard within the next thirty days.

Should you have any questions, please feel free to contact me at your convenience.

Very truly yours,

John D. Heffner, Esq.

cc: Gabriel D. Hall
President
U S Rail Corporation

Attachment A

**County of Suffolk
Town of Brookhaven
District: 0200**

Section 663.00, Block: 03.00, Lot(s): 001.00, 027.001, 027.002, 027.003 & 027.004

Section 704.00, Block: 04.00, Lot(s): 001.000 & 002.000

Section 704.00, Block: 05.00, Lot(s): 001.000 & 002.000

**Section 704.00, Block: 02.00, Lot(s): 001.000, 002.000, 030.000, 031.000, 032.000,
033.000, 034.000, 035.000 & 036.000**

EXHIBIT D

UJ1-U4-ZUU/ THU 09:21 AM IOW Law Dept.

FAX NO. 6314518505

P. 08

JOHN D. HEFFNER, PLLC

1920 N STREET, N.W.

SUITE 800

WASHINGTON, D.C. 20036

(202) 263-4180

FAX (202) 296-3639

j.heffner@verizon.net

JUL 27 2 11:24 PM '07

By facsimile to
(631) 698-4489

July 25, 2007

Robert F. Quinlan, Esq.
Town Attorney
Department of Law
Town of Brookhaven
One Independence Hill
Farmingville, New York 11738

Re: Real Property Described in Attachment A (the "Real Property")

Dear Mr. Quinlan:

I am writing on behalf of U S Rail Corporation ("U S Rail"), an Ohio-based company and common carrier short line railroad operating pursuant to authority granted by the former Interstate Commerce Commission (now the federal Surface Transportation Board). U S Rail has leased the Real Property and intends to construct and operate as an "exempt spur" within the meaning of 49 U.S.C. 10906, a line of rail and related side tracks, yard tracks, turn outs, switches and connecting track (collectively, the "Rail Yard") thereon for the purpose of operating a common carrier railroad and transload facility at that location.

The Rail Yard will provide rail transportation services to customers shipping and receiving and /or transloading aggregate stone and other stone products as well as lumber, plywood, sheetrock and related construction materials and other merchandise freight. As a common carrier railroad, U S Rail's construction and operation of the Rail Yard are governed by federal law, rules and regulations and subject to the exclusive jurisdiction of the Surface Transportation Board thereunder.

U S Rail desires to work with you and other community leaders to develop a very positive relationship. We are available to meet with you at your earliest convenience but anticipates commencing construction of the Rail Yard within the next thirty days.

Should you have any questions, please feel free to contact me at your convenience.

Very truly yours,

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

John D. Heffner, Esq.

cc: Gabriel D. Hall
President
U S Rail Corporation

001-04-2007 THU 09:21 AM TUB Law Dept.

FAX NO. 8314518505

P. 08

Attachment A

**County of Suffolk
Town of Brookhaven
District: 0200**

Section 663.00, Block: 03.00, Lot(s): 001.00, 027.001, 027.002, 027.003 & 027.004

Section 704.00, Block: 04.00, Lot(s): 001.000 & 002.000

Section 704.00, Block: 05.00, Lot(s): 001.000 & 002.000

**Section 704.00, Block: 02.00, Lot(s): 001.000, 002.000, 030.000, 031.000, 032.000,
033.000, 034.000, 035.000 & 036.000**

EXHIBIT E



Surface Transportation Board
Washington, D.C. 20423-0001

October 4, 2007

Office of Compliance and Consumer Assistance
395 E Street, S W, Suite 1180
Washington, DC 20423-0001

202-245-0278
FAX 202-245-0462

John D. Heffner, Esq.
1750 K Street, N.W.
Suite 350
Washington, DC 20006

RE: Activities by U S Rail Corporation
In Yaphank, NY

Dear Mr. Heffner:

This letter is directed to you in your capacity as representative of U S Rail Corporation

Katherine Bezold, a member of the Board's Office of Compliance and Consumer Assistance, spoke with you yesterday to inquire about press reports that U S Rail Corporation is clearing and excavating land in preparation for building a rail-to-truck transfer facility in Yaphank, NY. The story, which appeared in Newsday on October 1, 2007, attributes to U S Rail a statement that "federal law allows railroads to undertake such projects without state and local permits." In reply to Ms. Bezold's inquiry you did not deny that the construction of the facility in question was taking place and did not assert that U S Rail has received any authority from the Board to undertake such activities in Yaphank.

The Board also received a letter, copy attached, from the Town of Brookhaven, NY, signed by Robert F. Quinlan, the Town Attorney. Mr. Quinlan recites that the town has been in communication with representatives of U S Rail Corporation, who have asserted "their construction and operation of this 'Rail Yard' is governed by federal law, rules and regulations and [is] subject to the exclusive jurisdiction of the Surface Transportation Board." The letter also notes that representatives of the Town have demanded proof that U S Rail's project is governed by federal rather than state or local law, "such as a copy of any documents or exemption," and that U S Rail has failed to provide the requested documentation. The Board subsequently received copies of two letters (one dated July 12, 2007, and a second dated July 25, 2007) from you to Mr. Quinlan, in which you state that U S Rail intends to construct and operate, "as an 'exempt spur' within the meaning of 49 U.S.C. 10906, a line of rail" and other facilities "for the purpose of operating a common carrier railroad and transload facility at that location."

U S Rail Corporation has received no authority from this agency to construct any rail facilities at Yaphank, NY. Construction of rail facilities requires a license from this agency, pursuant to 49 U.S.C. 10901. You are directed to advise the Board in detail, by a response due to me no later than October 9, 2007, of any and all activities undertaken, or being undertaken, in Yaphank, Brookhaven, or anywhere in that vicinity, by U S Rail Corporation, or by any entity on its behalf, or by any other entity that you represent. If you believe that any of these activities do not require Board approval (whether as an "exempt spur" or otherwise), tell us why you believe that to be the case.

I understand from the media account that work has been suspended. Work should not resume in any form until Board authority is obtained or the Board determines that its authorization is not required.

Sincerely,

A handwritten signature in black ink, appearing to read "Melvin F. Clemens", with a large, stylized flourish at the end.

Melvin F. Clemens

EXHIBIT F

LAW OFFICE
JOHN D. HEFFNER, PLLC
1750 K STREET, N W
SUITE 350
WASHINGTON, D.C 20006
PH (202) 296-3333
FAX: (202) 296-3939

October 9, 2007

BY HAND DELIVERY

Mr. Melvin F. Clemens
Surface Transportation Board
Office of Compliance and Consumer Assistance
395 E Street, S.W., Suite 1180
Washington, D.C. 20006

**RE: Activities by U S Rail Corporation
In Yaphank, NY**

Dear Mr. Clemens:

I am responding on behalf of U S Rail Corporation ("U S Rail") in response to your inquiry dated October 4, 2007. You wrote to follow up a discussion that I had with Ms. Katherine Bezold of your staff concerning press reports that U S Rail is clearing and excavating land preparatory to building a rail-to-truck transfer facility in Yaphank, NY ("the Brookhaven Rail Terminal" or "Terminal"). Your letter also references correspondence received from the Town Attorney for Brookhaven, NY, in connection with this project.

Your letter directs U S Rail "to advise the Board in detail, by a response due no later than October 9, 2007, of any and all activities undertaken, or to be undertaken, in Yaphank, NY, or anywhere in that vicinity, by U S Rail Corporation, by any entity on its behalf, or by any other entity that you represent." To the extent that U S Rail believes that its activities do not require Board approval, your letter asks why that is the case. Finally, your letter directs U S Rail to suspend work until Board authority is obtained or the Board determines that no authorization is required.

U S Rail contemplates that the Brookhaven Rail Terminal will provide inbound bulk freight services, principally for aggregates and other stone products as well as other construction related materials, such as lumber, and intermodal freight services to central Suffolk County. That market currently lacks adequate transloading facilities and relies predominantly on truck freight transportation. Truck safety and roadway congestion are major transportation issues within that market which the Terminal will help to address.

Activities occurring to date at this site have included meetings between Sillis Road Realty (the developers of this facility) with state and local officials (see attached chronology) to discuss this project, consultations with officials at the New York Department of Transportation about funding for the project, discussions and negotiations with the New York & Atlantic Railroad (NY&A) and CP Rail about through transportation of inbound and outbound cargo, design of the rail terminal and related facilities (see attached site plan and rail layout), ordering of material for the construction of those facilities, and the clearing of land in anticipation of construction of those facilities. As yet, neither U S Rail nor any other entity has constructed any railroad track. As the attached site plan details, once constructed, the Terminal will comprise about 11,000 feet of terminal and switching track (about 11,000 linear feet if laid end to end) consisting of about six individual yard tracks ranging from 800 to 1,800 feet in length and occupying approximately 28 acres of previously undeveloped industrial/commercial-zoned land within the Brookhaven Empire Zone and there are no adjacent residences, schools or recreational facilities (please refer to the attached aerial photo of the site).

U S Rail maintains that Board authority is not required for this construction and operation on the grounds that the subject track is spur, industrial, team,

¹ The developers of this site (Sillis Road Realty LLC) originally planned to construct it as a private railroad to be operated by an entity named the Suffolk and Southern Rail Road LLC. Suffolk and Southern sought an exemption from the Board to lease and operate this track once constructed. Suffolk and Southern subsequently withdrew that exemption after it failed to reach an agreement with Sillis Road Realty LLC.

switching, or side track within the meaning of 49 U.S.C. 10906 for which no Board authority is needed for construction, operation, or abandonment.

U S Rail is an existing class III rail carrier with operations in central Ohio. Several years ago U S Rail acquired control of The Great Miami & Scioto Railway Company and recently changed that entity's name to U S Rail. I am enclosing for your attention copies of both that company's ICC operating authority and the corporate name change documents. A new common carrier railroad initiating operations must seek Board authority; however, it may add additional lines or operations as either a regulated transaction (i.e. an acquisition or operation transaction subject to Board entry authority) or an exempt spur depending upon the specific facts. Texas Central Business Lines Corporation- Operation Exemption - MidTexas International Center, STB Docket No. 33997, served September 20, 2002.

It is well established that the determination of whether a particular track segment is a "railroad line", requiring Commission authorization pursuant to section 10901(a), or a "spur, industrial, team, switching, or side" track, exempt from Commission jurisdiction turns on the intended use of the track segment, not on the label or cost of the segment. Nicholson v. Interstate Commerce Com., 229 U.S. App. D.C. 86 (D.C. Cir. 1983).

Nicholson holds that Congress intended to subject to the entry requirements of section 10901(a) so-called main or branch lines of railroad, that is, lines designed and used for continuous transportation service by through trains between different points of shipment or travel, and to exclude from those requirements all that mass of "tracks" (as distinguished from "lines") naturally and necessarily designed and used for loading, unloading, switching, and other purposes connected with, and incidental to, but not actually and directly used for such transportation service. Detroit & M.Ry. v. Boyne City, G. & A.R.R., 286 F. 540, 546 (E.D. Mich. 1923).

Thus it can be said that track segments which are intended to be used to carry through trains between points of shipment and delivery, particularly those segments which extend a railroad's service into new territory, must be

approved by the Board pursuant to section 10901(a). On the other hand, track segments which are merely incidental to, and not required for, a railroad's service between points of shipment and delivery are exempted from the requirements of section 10901(a). New Orleans Terminal Co. v. Spencer, 366 F.2d 160, 165-66 (5th Cir. 1966), cert. denied, 386 U.S. 942 (1967).

In determining whether a specific piece of track is an exempt spur or a regulated line of railroad, the Board considers various factors, no one of which is controlling. The Board's analysis focuses on a series of fact-based indicia including (1) the length of the track, (2) the number of customers to be served, (3) whether stub-ended, (4) whether there is scheduled service, (5) the volume of traffic moving over the track, (6) who owns and maintains the track, (7) the weight of the rail, (8) the condition of the track, (9) the proposed use of the track, and (10) the existence or absence of a "station" through which traffic is solicited. See CNW-Alan. Exemp.-In McHenry County, IL, 3 I.C.C.2d 366 (1987), *rev'd on other grounds sub nom. Illinois Commerce Com'n v. ICC*, 879 F.2d 917 (D.C. Cir. 1989).

Under these criteria, U S Rail's operation of the subject rail facility qualifies as an "exempt spur" under 49 U.S.C. 10906 for which no construction authority is needed. The length of track is short, about 11,000 feet if laid out "end-to-end" on 28 acres of land. One principal customer, Sills Road Materials LLC, will be serviced by the Terminal. The Terminal is a stub-ended network of tracks. Service will be provided on demand rather than on any scheduled basis. The weight of the rail will not exceed 115 pounds, a weight consistent with current standards for building new rail-served industrial facilities. The condition of the track is good because it is newly constructed to the currently applicable industry standards. The proposed use of the tracks is for loading, unloading, switching, and storage of rail cars for a single principal user, all uses consistent with the character of exempt industrial or yard tracks. The purpose of this transaction is to bring stone from northern New York to Long Island by rail instead of by truck movement over congested highways. Traffic moving to or from the Terminal will be interchanged with the NY&A, and through it, with other railroads

comprising the national rail system. There will be no "station" listed in a tariff through which traffic will be solicited.

Another issue this matter presents is whether a regulated rail carrier can construct a small segment of track at another location as an exempt spur. The answer is "yes." For example, in The New York City Economic Development Corporation - Petition for Declaratory Order, STB Finance Docket No. 34429, served July 15, 2004, the Board declared the construction and rehabilitation of a spur track 6,744 feet in length, owned by a New York City agency, identified by the Board as a noncarrier, to be both an exempt spur outside the Board's entry jurisdiction and entitled to preempt state or local law under 49 U.S.C. 10501(b). Significantly, in allowing the City to construct this trackage without any agency licensing approval or environmental review, the Board tacitly authorized the construction of a disconnected piece of railroad as a spur.¹ The decision indicated that some combination of Consolidated Rail Corporation, Norfolk Southern Railway (NS), and CSX Transportation, Inc. (CSX), would provide service once the line was constructed. However, neither NS nor CSX provided service in their own right in the area.

Similarly, Tri-State Brick and Stone of New York, Inc., et al., STB Finance Docket No. 34824, served August 11, 2006, involved a situation where CP Rail had been serving a railroad yard located at 65th Street in Brooklyn, NY, that was owned by the very same New York City Economic Development Corporation that was the subject of the above-cited case. As the decision and record in that case indicate CP Rail was serving the yard as either an "exempt spur" for which it needed no entry and exit authority or as an unauthorized carrier for which it needed entry and exit authority and had neither. CP Rail's principal operations

¹ At the time of the Board's July 15 decision, 3,650 feet of track were missing between the proposed construction and the national rail system. In STB Finance Docket No. 34428, the Board allowed the Port Authority of New York and New Jersey to construct that track without authority on the theory that this track replaced an unsatisfactory route consisting of a long discontinued car float service and other track segments that are either long out of service, abandoned, or active but heavily congested. Port Authority of New York and New Jersey - Petition for Declaratory Order, served Jan. 21, 2004

are in northern and western New York State. Although it had trackage rights from the Albany area to the Fresh Pond Yard in the Queens section of New York City, it had no authority to provide and provided no service³ between Fresh Pond and the 65th Street Yard, a distance of about 9.5 miles.

Finally, in Raritan Central Railway, L.L.C. - Operation Exemption - Heller Industrial Parks, Inc., STB Finance Docket No. 34514, served June 25, 2007, Consolidated Rail Corporation argued that Raritan Central could have served the Heller facility as an "exempt spur" instead of a regulated line of railroad although the track is physically disconnected from Raritan's other track. The Board rejected Conrail's request for a stay but never decided its request to revoke Raritan's exemption because the parties settled their dispute and Raritan withdrew its exemption request.

Accordingly, U S Rail submits that its construction of this line is an exempt spur under 49 U.S.C. 10906. As such, U S Rail also enjoys the preemption rights conferred under 49 U.S.C. 10501(b). In its recent ruling in the New England Transrail case, the Board clearly stated at 12:

"[I]n enacting ICCTA, Congress broadened the Federal preemption provision contained in 49 U.S.C. 10501(b) to specifically apply to the acquisition, operation and construction of spur tracks. Those activities would therefore nevertheless be preempted from state regulation. *Because they would also be excepted by section 10906 from Board licensing, the Board would not undertake any environmental review of the proposed service and could not impose any conditions for the protection of the environment.*"

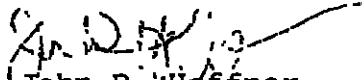
[emphasis supplied].

In conclusion, U S Rail may construct the subject track without Board approval. Please confirm your agreement in writing so that U S Rail can resume its work.

³ It provided service through a haulage agreement with NY&A which itself did not have STB authority to serve the yard (presumably serving it as a spur)

U S Rail appreciates the Board's time and consideration in this matter and trusts that the Board will, in turn, appreciate the need to address this matter expeditiously.

Sincerely yours,


John D. Heffner

cc: Mr. Gabriel Hall

Meeting Chronology Brookhaven Rail Terminal

January 23, 2007 - Meeting with David Woods, Director of Planning, Town of Brookhaven, New York, Lynn Weynant, Director of Traffic Safety, Town of Brookhaven, New York and staff, and Fred Krebs, President of New York & Atlantic Railway (NY&A), to discuss the Brookhaven Rail Terminal business plan and to present the preliminary site plan for the project

February, 2007 - Meeting with Thomas Isles, Director of Planning, County of Suffolk, New York and staff to discuss the Brookhaven Rail Terminal business and to present the preliminary site plan for the project.

February, 2007 – Submission of grant application for the Brookhaven Rail Terminal to the New York State Department of Transportation

January - June, 2007 – Various meetings and telephone conversations with representatives of NY&A to discuss design and operation of the Brookhaven Rail Terminal

June, 2007 – Meeting with Kevin Law, Deputy County Executive, Suffolk County, New York

July 10, 2007 - Meeting with Karen J. Rae, Deputy Commissioner Policy & Strategy, and Donald V. Hannon, Director, Office of Program Development & Management, New York State Department of Transportation to discuss State grant assistance for the Brookhaven Rail Terminal

July, 2007 – Delivery of various legal memoranda to the Town Attorney, Town of Brookhaven, New York regarding preemption of local permitting procedures.

July 12, 2007 John Heffner, Esq., on behalf of U S Rail Corporation, submits notice of U S Rail's intent to commence construction to the Town Attorney, Town of Brookhaven, New York

July 20, 2007 – Meeting with Brian Foley, Town Supervisor, Town of Brookhaven, New York and Raymond Donnelly, Director of Economic Development, Town of Brookhaven, New York to discuss the Brookhaven Rail Terminal business plan and to advise regarding the commencement of construction.

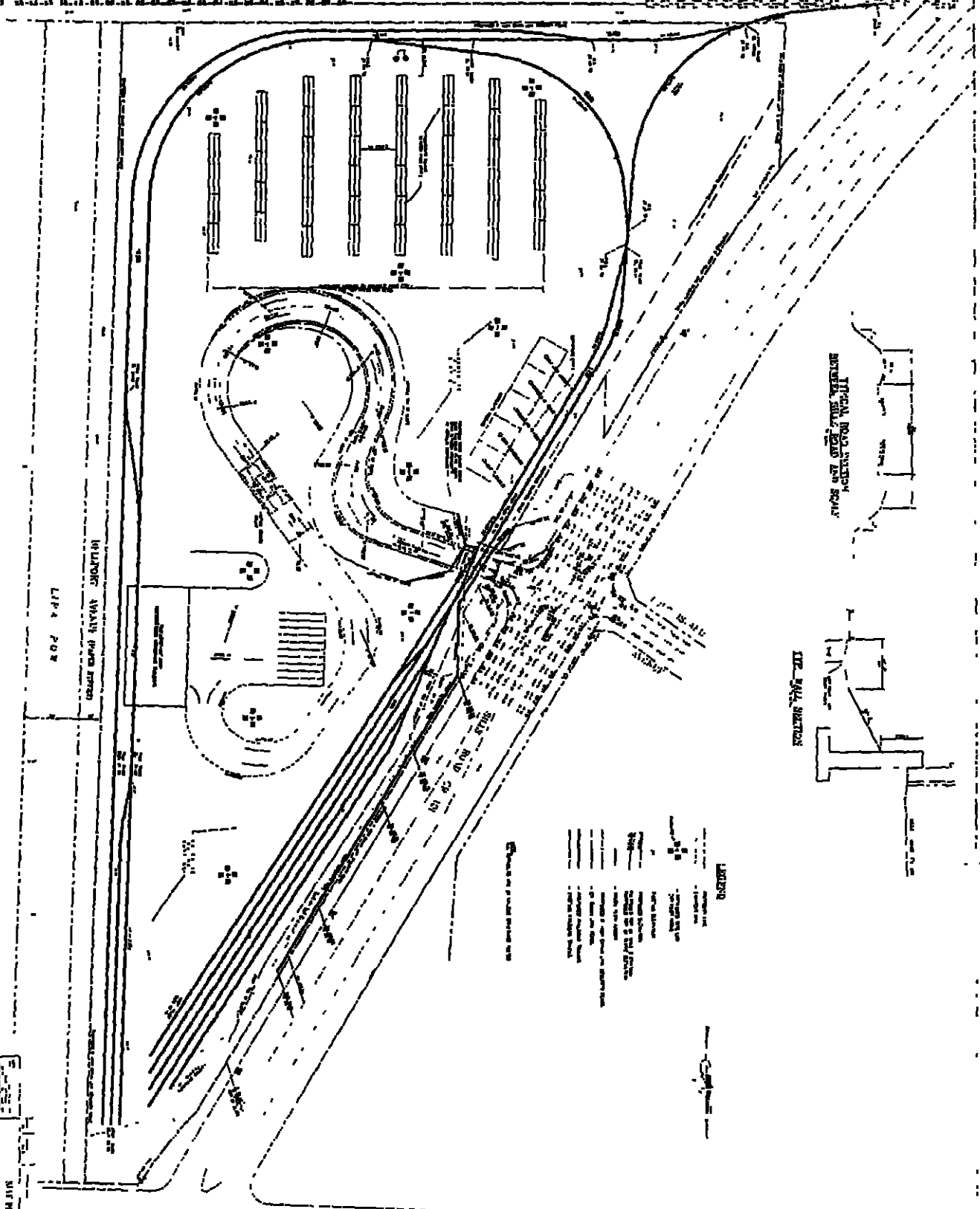
August 20, 2007 - Site clearing commences.

September 5, 2007 – Meeting with Highway Department, Suffolk County, New York to discuss traffic ingress and egress and site traffic signage.

September 12, 2007 – Meeting with Timothy Bishop's office, US Congressman, District 1 to discuss Brookhaven Rail Terminal.

September 12, 2007 – Meeting with Yaphank Civic and Taxpayers Association

LONG ISLAND RAILROAD



ROAD FROM STATION

STATION

LEGEND

- 1. TRACKS
- 2. STATION
- 3. ROAD
- 4. LIFE POOL
- 5. STORAGE YARD
- 6. CURVED TRACK
- 7. RAIL CAR
- 8. MATERIALS
- 9. FENCE
- 10. DRAINAGE
- 11. ELEVATION
- 12. DISTANCE
- 13. DIRECTION
- 14. SCALE
- 15. DATE
- 16. DRAWN BY
- 17. CHECKED BY
- 18. APPROVED BY
- 19. REVISIONS
- 20. NOTES

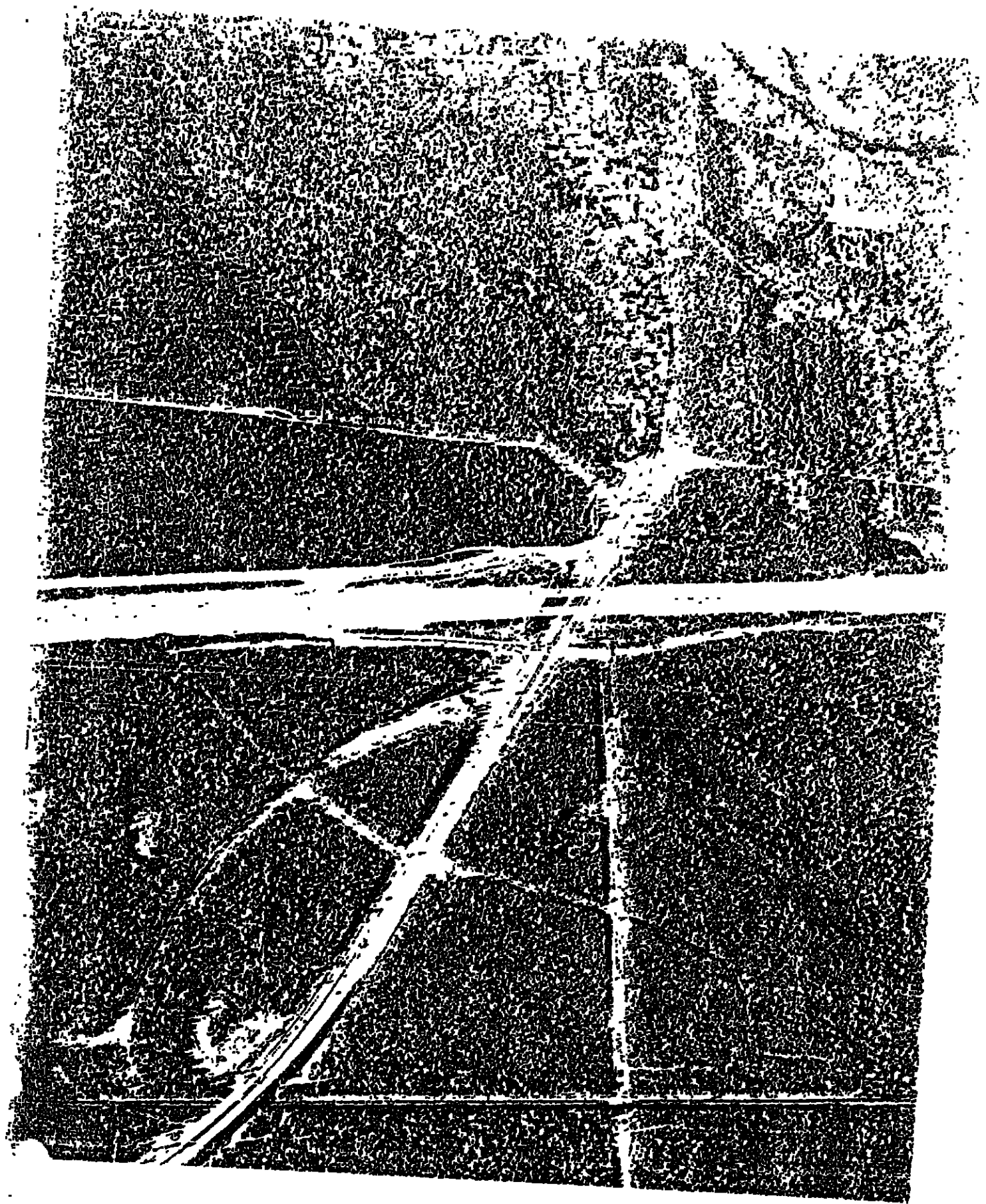
LIFE POOL

LONG ISLAND RAILROAD

STATION

STATION

STATION



DO

FR-7035-01-P

INTERSTATE COMMERCE COMMISSION

NOTICE

[Finance Docket No. 32417

SERVICE DATE:

JAN 20 1994

THE GREAT MIAMI & SCIOTO RAILWAY COMPANY--CHANGE IN
OPERATOR EXEMPTION--CERTAIN LINES OF THE CITY OF JACKSON, OH

The Great Miami & Scioto Railway Company (GMR), a noncarrier, has filed a notice of exemption pursuant to 49 CFR 1150.31 for GMR to operate approximately 60.36 miles of rail line presently owned by the City of Jackson, OH, from milepost 32.76, near Firebrick, OH, to milepost 0 00/127 0, near Hamden, OH; (1) from milepost 0 00/127 0, near Hamden, OH, to milepost 112.3, near West Junction, OH; (2) from milepost 127 0, near Hamden, OH, to milepost 112.3, near West Junction, OH; (3) from milepost 112.3,² at West Junction, OH, to milepost 91.6 at RA Junction;³ and (4) from milepost 127-71, near

¹ This is the point where the GMR's north-south line (formerly the old Portsmouth Subdivision of CSXT, the owner of the line prior to its acquisition by the City of Jackson) at milepost 0.00 and its intersection with the east-west line, also formerly owned by CSXT, at milepost 127.0.

² Also known as milepost 95.5

³ In City of Jackson, OH--Exemption Acquisition--Certain Lines Baltimore and Ohio

Railroad

Cheapeake and Ohio Finance Docket No - 31020 (ICC served Apr 24, 1987), the City of Jackson acquired 52.83 route miles of line from Firebrick, OH (milepost 32.76) to Hamden, OH (milepost 0 00/127 0) to West Junction (milepost 112.3/95.5) to RA Junction (milepost 91.6). This description for 52.83 route miles appears to match the 51.36 miles described in (1), (2), and (3) g.U@ra. There is no explanation for the 1.47-mile discrepancy.

Incidental trackage rights were also acquired over 5.9

stay the transaction

Decided. January 13, 1994

By the Commission, David M Konschnik, Director,
of Proceedings

Office

Sidney L. Strickland, Jr

Secretary

(SEAL)

DATE	DOCUMENT ID	DESCRIPTION	FILING	EXP-D	PENALTY	CERT	COPY
07/08/2007	200718602006	DOMESTIC/AMENDMENT TO ARTICLES (AMD)	\$0.00	.00	00	00	00

Receipt

This is not a bill. Please do not remit payment.

ROETZEL & ANDRESS
155 E BROAD ST., 12TH FLOOR
PAT HENDERSON
COLUMBUS, OH 43215

STATE OF OHIO CERTIFICATE

Ohio Secretary of State, Jennifer Brunner

857501

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

US RAIL CORPORATION

and, that said business records show the filing and recording of

Document(s)
DOMESTIC/AMENDMENT TO ARTICLES

Document No(s)
200718602006



United States of America
State of Ohio
Office of the Secretary of State

Witness my hand and the seal of
the Secretary of State at Columbus,
Ohio this 3rd day of July, A.D.
2007

A handwritten signature in cursive script, appearing to read "Jennifer Brunner".

Ohio Secretary of State

EXHIBIT G

**VERIFIED STATEMENT
OF GABRIEL HALL**

Gabriel Hall, being duly sworn, deposes and states as follows:

My name is Gabriel Hall. My office address is U S Rail Corporation, 7846 Central Ave., Toledo, Ohio 43617. In my capacity as President of U S Rail Corporation ("U S Rail"), I am responsible for all aspects of marketing, strategic planning, and corporate growth. I spend much of my time looking for new opportunities to expand the services my company offers.

U S Rail began about six years ago when we acquired stock control of an existing class III short line railroad operating about 100 miles of track in central Southern Ohio. That company was called the Great Miami & Scioto Railroad and has since been renamed U S Rail Corporation.

My goal since then has been to find other rail properties and facilities that are strategically located around the country where we can offer customers our expertise in railroad transportation. After Suffolk & Southern and Sills Road failed to complete arrangements for Suffolk to commence service at the Brookhaven Rail Terminal, Sills Road asked U S Rail to initiate service once that facility was open for operation. U S Rail has since then leased from Sills the necessary land upon which to build the railroad facilities at the Brookhaven Rail Terminal and has begun the work of

clearing the land so that construction of tracks and related facilities so that service can commence next Spring. This activity has been undertaken at great expense and upon reliance of current STB case law that we believe permits U S RAIL to engage in the construction activity for the terminal as a spur.

In that regard, U S Rail immediately began looking to develop traffic for that site. Along with Sills Road we negotiated arrangements for the initial traffic move, shipments of aggregate from a quarry in upstate New York served by CP Rail to the Brookhaven Rail Terminal for ultimate distribution to customers on Long Island. Those arrangements contemplated that CP Rail would be the originating carrier on its line and would handle this traffic using its "East of the Hudson" trackage rights over CSX Transportation's Hudson Division to the Bronx and thence to Fresh Pond, NY, for interchange with the New York & Atlantic Railway ("NY&A"). The NY&A will interchange the traffic to U S Rail at the Brookhaven Rail Terminal. U S Rail will then break up the train, switching cars to the appropriate tracks, unload the cargo, turn and service the equipment, and ready inbound cars for outbound movements.

I have grave concerns regarding the Surface Transportation Board's October 12, 2007, decision asking U S Rail to cease rail construction activities, absent either Board approval of this project or a ruling that no Board authority is required. If allowed to stand, this decision will cause U S Rail great irreparable harm without any corresponding injury to the Town of Brookhaven, the only other entity involved in this proceeding. U S Rail has made contractual commitments to move inbound aggregate product for customers on Long Island. Aside from any economic loss occasioned by a breach of contract, U S Rail will face significant damage to our business reputation by being seen as unable to perform a contract. This will damage our ability to obtain other contracts in the future.

In addition, U S RAIL will suffer daily expenditures for its assignment of personnel to the Brookhaven Terminal construction operation. We will suffer great economic harm because of our reliance on developing the Brookhaven Terminal traffic from our existing and future customers. This represents a significant opportunity to grow our east coast customer base. By being delayed or denied this opportunity, U S RAIL will lose a major source for future revenues and numerous customer opportunities. We are committed to opening the terminal by 1st Q, 2008, and have ordered two locomotives to be deployed at Brookhaven. This expense is significant.

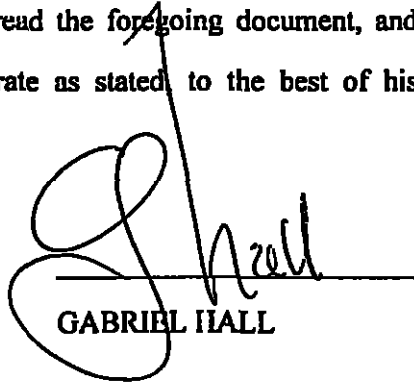
Other than by rail, there is no way for that traffic to move in the volumes contemplated, approximately 600,000 tons and 6,000 car loads per year. Congested regional and local highways are incapable of handling that traffic. Moving this cargo by highway would require approximately 27,000 truck roundtrips per year, inflicting considerable damage on area highways as well as unnecessary fuel consumption and air pollution. Moreover, there are no other transload facilities on eastern Long Island that are equipped or suitable for handling aggregate , or any volume of freight by rail.

I strongly believe that the Brookhaven Rail Terminal is in the best interest of the surrounding Long Island community. Its construction and operation will promote the reduction of highway congestion, fuel conservation and encourage the increased use of the national rail system.

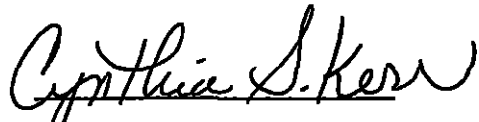
VERIFICATION

STATE OF OHIO)
) SS :
COUNTY OF LUCAS)

GABRIEL HALL, being duly sworn according to law, hereby deposes and states that he is authorized to make the Verification, has read the foregoing document, and knows the facts asserted therein are true and accurate as stated to the best of his knowledge, information and belief.


GABRIEL HALL

Subscribed and sworn to before me, a Notary Public, in and for the County of Lucas in the State of Ohio, this 16 day of October, 2007.


Notary Public

My Commission expires:

CYNTHIA S. KERR
Notary Public, State of Ohio
My Commission Expires 09-06-2011

EXHIBIT H

**UNITED STATES DEPARTMENT OF TRANSPORTATION
SURFACE TRANSPORTATION BOARD**

**SUFFOLK & SOUTHERN RAIL ROAD LLC
SILLS ROAD REALTY, LLC and
U S RAIL CORPORATION**

**STB FINANCE
DOCKET NO.
35036**

**VERIFIED STATEMENT OF GERARD T. DRUMM
IN SUPPORT OF THE PETITION FOR A STAY**

Gerard T. Drumm, being duly sworn, deposes and states as follows, under penalty of perjury:

1. My name is Gerard T. Drumm. I am the Chief Financial Officer and General Counsel of Silks Road Realty, LLC ("Silks Road Realty"). My office address is Silks Road Realty, LLC, 485 Underhill Boulevard, Suite 103, Syosset, New York 11791. I am responsible for financial and legal matters with respect to Silks Road Realty and its affiliated companies. I am fully familiar with the facts and circumstances of this matter from my personal knowledge.

2. I submit this verified statement in support of the petition of Silks Road Realty and U S Rail Corporation ("U S Rail") seeking a stay of the decision of the Surface Transportation Board (the "Board"), served on October 12, 2007. That decision directed Silks Road Realty, U S Rail, Suffolk & Southern Rail Road LLC or any other related entity to stop certain construction activities in Yaphank, New York and either

obtain construction authority from the Board pursuant to 49 U.S.C. § 10901(a) or a Board decision finding that such activity does not require Board approval.

3 If allowed to stand, the October 12th Board decision will cause Sills Road Realty irreparable harm without any corresponding injury to the Town of Brookhaven or any other entity. It will also cause irreparable harm to U.S. Rail. (See verification of Gabriel Hall, submitted herewith.)

4 Sills Road Realty was formed for the purpose of developing a rail-served facility on Long Island that would economically meet the needs of its members for construction aggregates ("Stone"), as well as serve the broader Long Island market for such products. The vast majority of the Long Island market to be served by the facility for crushed Stone aggregates is currently supplied by a single vendor by either barge or truck. Sills Road Realty's business model planned to use rail transportation of Stone to reduce costs, particularly with the increasing cost of fuel, the reduction in the allowable gross vehicular weight permissible on metropolitan New York area bridges, and the need to improve reliability of deliveries away from congested traffic arteries. Unfortunately, no adequate rail transloading facilities exist in the Long Island market we hope to serve. To provide adequate facilities, Sills Road Realty acquired a tract of land in Yaphank, New York, which was ideally suited as a rail transloading facility, and began to plan for the development of what is now known as the Brookhaven Rail Terminal.

5 Sills Road Realty has leased the Brookhaven Rail Terminal site to U.S. Rail, which is a class III short line railroad. (See verification of Gabriel Hall.) The Brookhaven Rail Terminal is an intermodal transportation center that will incorporate

switching and a railroad siding from existing Long Island Rail Road tracks located on the property's southern boundary, as well as freight transfer areas.

6 I am advised by my attorneys that because the Brookhaven Rail Terminal is an "exempt spur" as defined under 49 U.S.C. § 10906, Board authority to construct or operate it is not required. Pursuant to this statutory exemption, in or around August 2007, U.S. Rail began the work of clearing the land, to be followed by construction of tracks and related facilities, so that transloading service can commence in March 2008.

7 Through an affiliated company, Sills Road Realty has entered into a long-term agreement with an upstate quarry for the annual delivery of up to 500,000 tons of Stone to serve the Long Island market. Currently, the Stone is shipped to a small site in Yaphank capable of handling only approximately ten per cent of the quantities of Stone contemplated by the Agreement. More importantly, that site is under a lease which is expiring, without the possibility for extension. Sills Road Realty and its affiliate will be unable to fulfill the agreement with the quarry without the construction of the Brookhaven Rail Terminal.

8. Moreover, members of Sill Road Realty are engaged in commercial contracting and manufacturing businesses which, given current and projected price constraints and supply limitations, require the Stone to meet their business obligations. The failure to receive the Stone will place them in potential breach of those contractual obligations, or, at best, cause them to face significant economic loss in meeting them. Additionally, the quarry, an affiliate of which is a member, has made significant expenditures for the acquisition of over one hundred dedicated rail cars and other new

rail infrastructure to meet its obligations under the long term supply agreement referred to in Paragraph 7

9 Furthermore, Sills Road Realty has engaged in substantial marketing efforts to make potential customers aware of its entry into the Long Island market and has committed to the availability of Stone supply commencing in March, 2008 Sills Road Realty will face significant and permanent damage to its business reputation by being seen as unable to meet such commitments unless this stay petition is granted Such damage, particularly to a new entrant into a significant market that relies heavily on time sensitive deliveries would be incalculable and irreparable

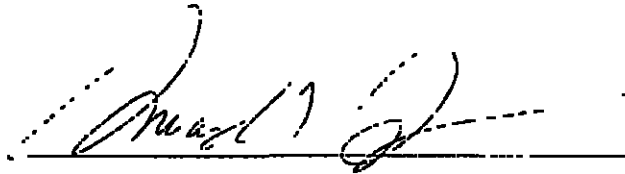
10 Of course, neither Sills Road Realty nor its members have anyone to sue to recover the losses and damages they will suffer due to the decision of the Board These losses and damages will be permanent, and cannot be offset by the future commencement of operations at the Brookhaven Rail Terminal

11 The injury to consumers of Stone shipped through the Brookhaven Rail Terminal and to residents of Long Island in general is also irreparable Because of new limitations on the gross vehicular weight of trucks crossing bridges to Long Island, there is no economical way for Stone to move, in the volumes contemplated, other than by rail, and there are no other rail transload facilities on eastern Long Island that are available to handle Stone in the volumes contemplated

Moreover, already congested highways and bridges would be further burdened by handling tens of thousands of additional truck trips, inflicting considerable damage on area highways as well as unnecessary fuel consumption and air pollution

12 I strongly believe that the Brookhaven Rail Terminal is in the best interest of the surrounding Long Island community. Its construction and operation will promote reduce highway congestion, enhance highway safety, promote fuel conservation and encourage the increased use of the national rail system

13 Accordingly, Sills Road Realty urges the Board to stay its October 12, 2007, decision and allow the construction of facilities at the Brookhaven Rail Terminal to proceed

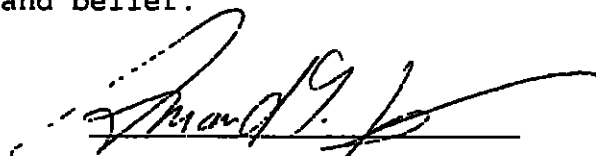
A handwritten signature in black ink, appearing to read "Gerard F. Drumm", is written over a solid horizontal line. There are dashed lines extending from the ends of the signature.

GERARD F. DRUMM

VERIFICATION

STATE OF NEW YORK)
) SS
COUNTY OF NASSAU)

Gerard T. Drumm, being duly sworn according to law, hereby deposes and states that he is authorized to make the Verification, has read the foregoing document, and knows the facts asserted therein are true and accurate as stated, to the best of his knowledge, information and belief.



Subscribed and sworn to before me, a Notary Public, in and for the County of Nassau in the State of New York, this 16th day of October, 2007



Notary Public

My Commission expires:

April 19, 2008

CHRIS ECONOMOU
Notary Public, State of New York
No. 02EC8108943
Qualified in Nassau County
Commission Expires April 19, 2008