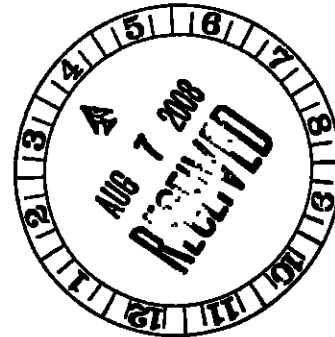


LAW OFFICES
JOHN D. HEFFNER, PLLC
1750 K STREET, N W
SUITE 200
WASHINGTON, D.C. 20006
PH: (202) 296-3333
FAX: (202) 296-3939

223118

FILED
AUG - 7 2008
**SURFACE
TRANSPORTATION BOARD**



August 7, 2008

Ms. Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street SW
Washington, DC 20423

ENTERED
Office of Proceedings
AUG - 7 2008
Part of
Public Record

VIA HAND DELIVERY

Re: Finance Docket No. 35141
U S Rail - Construction and Operation Exemption -
Brookhaven Rail Terminal

Dear Ms. Quinlan,

Enclosed please find an original and 10 copies of the
Construction and Operation Exemption Petition which we are
filing in this matter, together with a check representing the
filing fee and the certification of service.

Thank you for your time and consideration.

FEE RECEIVED
AUG - 7 2008
**SURFACE
TRANSPORTATION BOARD**

JHMS/mhd
Enc.

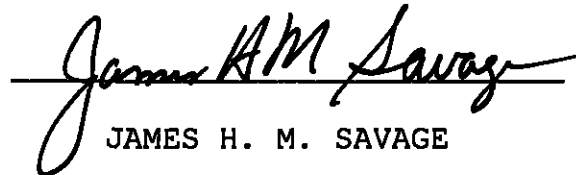
Respectfully submitted,
John D. Heffner, PLLC

James H. M. Savage
By: James H. M. Savage

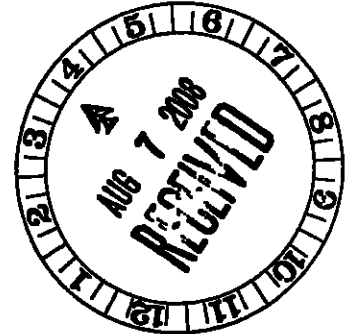
/

CERTIFICATION OF SERVICE

I, James H.M. Savage, an attorney-at-law of the District of Columbia, hereby Certify under penalty of perjury that I served a copy of the within pleading upon all parties identified on the Service List for this proceeding as well as all parties identified on the Service List for the proceeding bearing STB Docket No. FD-35036 by First Class Mail on this 7th day of August, 2008.


JAMES H. M. SAVAGE

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Finance Docket No. 35141

U S RAIL CORPORATION
-- CONSTRUCTION AND OPERATION EXEMPTION --
BROOKHAVEN RAIL TERMINAL

ENTERED
Office of Proceedings
AUG - 7 2008
Part of
Public Record

PETITION FOR EXEMPTION
UNDER 49 U.S.C. 10502
FROM THE REQUIREMENTS OF 49 U.S.C. 10901

FILED

AUG - 7 2008

**SURFACE
TRANSPORTATION BOARD**

FEE RECEIVED
AUG - 7 2008
**SURFACE
TRANSPORTATION BOARD**

Respectfully submitted,

John D. Heffner
John D. Heffner, PLLC
1750 K Street, N.W.
Suite 350
Washington, D.C. 20006
Telephone: (202) 296-3334

Counsel for Petitioner

James H. M. Savage
1750 K Street, N.W.
Suite 350
Washington, D.C. 20006
Telephone: (202) 296-3335

Of Counsel

DATED: August 7, 2008

EXPEDITED HANDLING REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35141

**U S RAIL CORPORATION
-- CONSTRUCTION AND OPERATION EXEMPTION --
BROOKHAVEN RAIL TERMINAL**

**PETITION FOR EXEMPTION
UNDER 49 U.S.C. 10502
FROM THE REQUIREMENTS OF 49 U.S.C. 10901**

I

INTRODUCTION

Pursuant to 49 U.S.C. 10502, U S Rail Corporation (hereafter "U S Rail" or "Petitioner"), an existing class III short line common carrier by rail, having its principal place of business in Toledo, OH, seeks an exemption from 49 U.S.C. 10901 permitting it to construct a new line of railroad and related rail facilities (hereafter "the Line") at a new, yet-to-be constructed 28 acre site to be known as the Brookhaven Rail Terminal (hereafter "BRT") in Brookhaven, Suffolk County, NY.¹ The total length of the track to be constructed is about 11,000

¹ The site is located within the hamlet of Yaphank, a part of the Town of Brookhaven

feet and connects with an existing rail line of the Long Island Rail Road (hereafter "LIRR") over which freight service is provided by the New York & Atlantic Railway (hereafter "NY&A"), 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 (hereafter "Sills"), which owns the underlying property and its affiliates and related companies (collectively, "Sills Group").

U S Rail submits with this Petition as Exhibit A, the verified statement of U S Rail President Gabriel Hall (hereafter "Hall VS") describing the proposed railroad operations, as Exhibit B maps showing the relationship of the facility to be constructed to the existing LIRR/NY&A line as well as to the Long Island Expressway, as Exhibit C a drawing (hereafter "Drawing") of the proposed facility, and as Exhibit D the verified statement of Sills Chief Financial Officer and General Counsel Gerard Drumm (hereafter "Drumm VS") explaining the background and purpose of the BRT as well as a description of the operations to be performed at this site.

Finally, for the reasons discussed herein, U S Rail requests expedited handling with a decision served by December 31, 2008, effective immediately upon service. In that regard, Petitioner submits as Exhibit E a proposed schedule for processing this Petition and the related environmental actions, which U S Rail has already initiated.

II

FACTUAL BACKGROUND

Petitioner U S Rail seeks to construct and operate a rail facility to be located at the future BRT to be constructed on Sills' property near Yaphank, NY. Towards that end, U S Rail has entered into an agreement with Sills for lease of that property. Once constructed, the Line will extend approximately 200 feet from a connection with LIRR's existing line of railroad into a rail yard to be constructed by U S Rail. The lead track will then branch out into a series of yard tracks that total about 11,000 feet in length. Upon receiving authority from the Board, U S Rail will also construct facilities substantially in accordance with the Drawings to permit the transloading of freight between rail cars and trucks.

Initially, U S Rail anticipates that the Sills Group will be its only rail customer; however, as a common carrier, it will solicit freight business from any customer seeking to use its services and the facilities of BRT. The initial traffic to be handled through this facility consists of about 5,000 car loads annually of inbound aggregate crushed stone. This traffic will be used in road and building construction by customers on Long Island. Currently, this traffic moves in very limited quantities by rail. Sills desires to replace truck with rail transportation because increased fuel costs, higher tolls, lower

gross vehicle weights over bridge crossings and increasing highway congestion on and off Long Island make motor carrier transportation non-economical and impractical. Drumm VS at 2.

U S Rail recognizes that this exemption will be subject to completion of an environmental review by the Board's Section of Environmental Analysis ("SEA"). However, for the reasons stated herein, Petitioner seeks expedited consideration with a decision requested by December 31, 2008.

Sills originally intended to develop the BRT as a rail facility to serve the needs of Sills Group and third parties, and designated Suffolk and Southern Rail Road ("Suffolk"), a newly established non-carrier affiliate, to build and operate the BRT.

Due to changed circumstances, Sills entered into an agreement with U S Rail to build and operate the BRT as an exempt spur. However, the Board ruled the trackage subject to its jurisdiction, and invited U S Rail to apply for construction authority. U S Rail thereupon began preparing to file this Petition.

III

DESCRIPTION OF THE PROPOSED LINE AND PLANNED OPERATIONS

Petitioner's proposal entails the construction of a railroad yard on a 28 acre parcel of land in central Suffolk

County, Long Island. Although this track would extend about 11,000 feet if laid end-to-end, at its broadest point the entire parcel only extends about one-half mile from one side to the other. The Line connects with the LIRR mainline at approximately milepost 58 near Yaphank, NY. That connection is approximately 58 miles east of Penn Station in Manhattan and approximately 34 miles west of the mainline terminus at Greenport in eastern Suffolk County.

Historically, Suffolk County was largely rural with numerous farms and vacant fields. Today it is a fast growing residential and commercial area in need of improved freight rail facilities. Classified as a nonattainment area, Suffolk County's 2006 total population was 1,469,715. Yaphank is an unincorporated community within the Town of Brookhaven, which has a total population of approximately 480,000.

The site for the BRT is currently a flat parcel of undeveloped land that was formerly overgrown with trees and brush. The site is zoned for industrial and commercial purposes, and is included in the Town's Empire Zone, an area of approximately 1,200 acres dedicated to industrial and commercial development. It is bounded on the north by the Long Island Expressway, an extremely busy six lane limited access highway extending the length of Long Island to Riverhead (74 miles), and to the south by the LIRR. Principal commercial activities

conducted in the Yaphank-Brookhaven area near the BRT include light manufacturing and commercial wholesale and retail business. There are no residences, schools, playgrounds, hospitals, nursing homes or assisted living facilities adjoining the BRT.

U S Rail seeks to build the rail facilities at the BRT to accommodate the needs of Sills Group and growing industrial development on eastern Long Island that currently lacks access to adequate rail service. Specifically, as both witnesses note, there are very few industry sidings located along the LIRR's main routes available to serve the Sills Group's requirement for crushed aggregate stone and very few public delivery tracks or facilities of sufficient size. Moreover, western and central Long Island is so overdeveloped that there are few locations where a rail facility like the BRT could be located. Consequently, the vast majority of freight destined to or from Long Island moves by truck over congested highways such as the Long Island Expressway.

Initially, service at the BRT will consist of a twice weekly train of approximately 40 to 50 cars of inbound crushed aggregate stone. NY&A will transport this traffic to the BRT on the LIRR line that terminates at Greenport, NY. Inasmuch as BRT traffic is expected to operate outside normal LIRR rush hour windows, and the line sees only limited passenger service east

of Ronkonkoma (approximately 10 miles west of the proposed BRT location), there should be no adverse impact on either the LIRR's operations or NY&A's own service. Upon arriving at the switch lead into the BRT, the NY&A will then interchange this traffic to U S Rail which will haul the cars the rest of the way into that facility. U S Rail will then break and sort the train, switching and spotting cars for delivery. Once the cars are unloaded, U S Rail will reassemble the cars into a train to be interchanged back to the NY&A for movement from the BRT. Ultimately, U S Rail hopes to attract additional in and outbound traffic at this facility. Hall VS at 1.

The need for the BRT is critical. Gerard Drumm notes in his verified statement that rail service is essential if Sills Group companies are to meet their contractual commitments to customers for the supply of stone. While those customers are currently using truck and inadequate rail capacity today, truck transportation will not economically handle the expected volumes of crushed stone the Sills Group has agreed to receive and will only add to the congestion afflicting Long Island's road system. The BRT's customers will be unable to meet their commitments to supply aggregate for Long Island building needs unless and until they have access to reliable and economical rail service. Drumm VS at 1.

Because of the engineering characteristics of connecting the BRT to the LIRR mainline, U S Rail is considering only one right-of-way alignment. That alignment and the rail facilities to be located on the BRT are depicted in Exhibit C. The right-of-way will generally be at least 100 feet wide. The track layout within the BRT will include multiple sidings and switches. There will be no public access and no public grade crossings. The Line will not cross any navigable waterways. There are no known endangered animal or plant species potentially affected by this project. To the best of Petitioner's knowledge the proposed right-of-way does not traverse any ancient Indian burial grounds, archeological sites, unique land forms, or federal lands.

Regarding environmental impacts, Petitioner believes this project will be environmentally beneficial. It anticipates that the environmental effects of its proposed construction project will be minimal. The subject area is a nonattainment area. U S Rail believes that the utilization of rail instead of truck will promote energy conservation and reduce air and noise pollution. Furthermore, use of rail will improve highway safety and reduce traffic congestion.

IV
ARGUMENT

A. THE SERVICES TO BE PERFORMED ENTAIL RAIL TRANSPORTATION

As a preliminary matter, there is no question that construction and operation of the proposed BRT is within the jurisdiction of the I.C.C. Termination Act for the purposes of federal preemption. 49 U.S.C. 10501(b) provides that the Board has exclusive jurisdiction over the transportation by rail carriers and the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities. Those remedies are exclusive and preempt remedies provided under Federal or State law. Moreover, there is no question that U S Rail is a "rail carrier" within the meaning of the Act insofar as it is providing railroad transportation for compensation over its existing line in Ohio and will be providing transportation for compensation here upon inception of operations. 49 U.S.C. 10101(5). The facilities to be constructed and/or operated include equipment used in connection with a railroad, the road used by a rail carrier under an agreement, and switches, spurs, tracks, terminals, terminal facilities, freight depots, yards, and related grounds used for transportation, all of which are encompassed by the term "railroad." 49 U.S.C. 10102(6). The

services to be rendered at Brookhaven Rail Terminal include, among other things, the loading and unloading of rail cars, the storage of rail freight prior to loading or after unloading, the transfer of rail freight between trucks and rail cars. Hall VS at 1. These services clearly fit the statutory definition of rail transportation. 49 U.S.C. 10102(9); New England Transrail, LLC d/b/a Wilmington & Woburn Terminal Railway - Construction, Acquisition and Operation Exemption - In Wilmington And Woburn, MA, STB Finance Docket No. 34797, slip op. served July 10, 2007 at pages 10-11.

All rail transportation, construction and operation necessarily preempts state and local laws regardless of whether U S Rail obtained authority pursuant to a Board decision or claimed the right to construct and operate by reason of its status as the operator of "excepted track" under 49 U.S.C. 10906. Buffalo Southern Railroad, Inc. v. Village of Croton-on-Hudson, et al, 434 F.Supp. 2d 241, 2006 U.S. Dist. LEXIS 42725 (S.D. N.Y. 2006); New England Transrail, supra at 12.

B. A GRANT OF THIS EXEMPTION IS REQUIRED

Petitioner seeks an exemption under 49 U.S.C. 10502 from 49 U.S.C. 10901 to permit it to construct approximately 11,000 feet of new railroad to serve the BRT. As pertinent, §10901(a) provides that a person may construct an extension to any of its

rail lines or construct an additional railroad line only if the Board issues a certificate authorizing such construction. Furthermore, the 1995 revision to §10901(c) directs the Board to issue a certificate authorizing construction unless it finds that such construction would be inconsistent with the public convenience and necessity. Board precedent establishes a clear presumption favoring [emphasis supplied] construction proposals. Midwest Generation, LLC - Exemption From 49 U.S.C. 10901 - For Construction in Will County, IL, STB Finance Docket No. 34060, slip op. at 7-8 (served March 21, 2002).

Petitioner's construction proposal follows the national trend that has been set in cases such as Effingham RR Co.-Pet. For Declaratory Order, 2 S.T.B. 606 (1997) involving the construction, acquisition, and /or operation of common carrier rail facilities by short line railroads to serve industrial parks and transload facilities. This trend is necessitated in part by the disappearance of facilities around major cities for shippers to get access to rail lines as well as the shift from handling car load traffic to and from rail shippers to public rail terminals.²

² See, e.g., See, e.g., SMS Rail Service, Inc - Petition for Declaratory Order, STB Finance Docket No. 34483 (served Jan. 24, 2005), citing SMS Rail Service, Inc. - Lease and Operation Exemption - Pureland Association, Inc., Finance Docket No. 32494 (ICC served May 26, 1994), Penn-Jersey Rail Lines - Acquisition and Operation Exemption - Lines in Penn Warner Industrial Park, Falls Township, Bucks County, PA, STB Finance Docket

Moreover, while the proposed construction would be subject to approval under the formal requirements of 49 U.S.C. 10901 and the related regulations, the Board has almost invariably allowed smaller construction proposals such as that here to utilize the individual exemption procedures of 49 U.S.C. 10502 to obtain approval. See, e.g., Ellis County Rural Rail Transportation District -- Construction and Operation Exemption -- Ellis County, TX, STB Finance Docket No. 33731, (served Feb. 15, 2000) (hereafter Ellis County); Pemiscot County Port Authority - Construction of a Line of Railroad - In Pemiscot County, MO, STB Finance Docket No. 34117 (served July 2, 2002) (hereafter Pemiscot); and Southwest Gulf Railroad Company - Construction And Operation Exemption - Medina County, TX, STB Finance Docket No. 34284 (served May 19, 2003) (hereafter Southwest).

Under §10502(a), Congress intended for the Board, in a matter related to a rail carrier providing rail transportation subject to its jurisdiction, to exempt a person, class of persons, transaction or service whenever it finds that the application of a provision of this subtitle - (1) is not necessary to carry out the transportation policy of §10101a of this title; and (2) either (a) the transaction or service is of limited scope, or (b) the application of a provision of this

No. 33835 (served May 5, 2000), and SMS Rail Service, Inc. - Acquisition and Operation Exemption - Valero Refining Company-New Jersey, STB Finance Docket No. 33927 (served Sept. 22, 2000), Yolo Shortline Railroad Company - Lease and Operation Exemption - Port of Sacramento, STB Finance Docket No. 34114, (served Feb. 3, 2003)

subtitle is not needed to protect shippers from the abuse of market power.

The legislative history behind §10505 [the predecessor section to the current §10502] makes clear Congress' intent that the Interstate Commerce Commission and [now the Board] use its exemption authority liberally to free certain transactions and services from the administrative and financial costs associated with continued regulation. In discussing the exemption powers of the Board's predecessor -- the ICC -- the Staggers Act legislative history states:

The policy underlying this provision is that while Congress has been able to identify broad areas of Commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemptions from remaining regulation.

H.R. Rep. No. 96-1430, 96th Cong. 2d Sess. 105 (1980); see also, Exemption from Regulation--Boxcar Traffic, 367 I.C.C. 424, 428 (1983), vacated and remanded on other grounds, Brae Corp. v. United States, 740 F.2d 1023 (D.C. Cir. 1984). This statement applies equally to the Board as the ICC's successor.

Exemption of the proposed construction from §10901 is exactly the type of minor transaction Congress contemplated when it enacted §10502. The transaction proposed here falls squarely

within the four corners of §10502 and its predecessor statute. Indeed, with the enactment of the ICC Termination Act of 1995, Board policy clearly favors the approval of short railroad construction projects by exemption. See, e.g., Ellis County, supra.; Pemiscot, supra.; and Southwest, supra.

C. APPLICATION OF §10901 IS NOT NECESSARY TO
FURTHER NATIONAL TRANSPORTATION POLICY

Requiring Petitioner to comply with the formal requirements of §10901 is not necessary to carry out the transportation policy of 49 U.S.C. 10101a. That section, originally added to the Act by the Staggers Rail Act amendments and incorporated into the ICC Termination Act, represents Congress' most recent expression of rail transportation policy. Of these, a grant of the petition would satisfy subsections (2) and (7) by minimizing federal regulatory control over and granting expedited consideration of Petitioner's request to construct a self-contained rail yard. It would also satisfy subsections (4) and (5), by providing a shipper lacking adequate rail access the option of rail transportation, ensuring the development of a sound transportation system with effective competition and coordination between railroads and other transportation modes, and fostering sound economic conditions in the transportation industry. See, e.g., Ellis County and Southwest, supra; and Alamo North Texas Railroad Corporation-Construction and Operation Exemption-Wise County, STB Finance Docket No. 34002

(served Nov. 8, 2001) (hereafter Alamo). Of particular significance to Long Island and Suffolk County, a grant of this exemption would promote transportation safety by removing numerous trucks from area highways, thereby enhancing highway safety. Finally, a grant of this exemption would satisfy subsection (14) by promoting energy conservation through increased use of energy efficient rail transportation.

D. THE TRANSACTION IS ONE OF LIMITED SCOPE

The transaction unquestionably satisfies the limited scope test of §10502(a). The proposed trackage totals only 11,000 feet, in a facility encompassing only 28 acres of land. The Line would initially serve one major customer. Petitioner believes the Line will initially handle about 5,000 carloads of freight annually after construction. By any measurement the Board chooses to use, this construction proposal is clearly limited in scope within the meaning of 49 U.S.C. 10502(a)(2)(A). A finding to that effect would be consistent with -- and is indeed required by -- the relevant facts of this case and relevant precedent. See, e.g., Ellis County, supra (4.8 miles of new construction), Pemiscot, supra (5 miles), Alamo, supra (2.25 miles), and Southwest, supra (7 miles).

E. APPLICATION OF §10901 IS NOT NECESSARY
TO PROTECT SHIPPERS FROM ABUSE OF MARKET POWER

Because this transaction satisfies the limited scope test of §10502(a), Petitioner does not need to show that it also meets the alternative test that there is no opportunity to expose shippers to abuse of market power. But even if the limited scope test were not satisfied, the exemption sought herein would still be warranted by virtue of §10502(a)(2)(B) inasmuch as the subject railroad will offer an additional form of modal competition to the shippers. See, Alamo and Southwest, supra. In fact, this case is similar to both Alamo and Southwest because all three cases involve proposals to construct new rail lines to provide direct rail service to shippers that would otherwise be dependent largely on truck service for their transportation needs. Moreover, U S Rail is constructing this facility at the behest of and for the benefit of the Sills Group.

V

EXPEDITED HANDLING REQUESTED

U S Rail requests that the Board expeditiously consider and grant its proposal. Any unreasonable delay could adversely affect its ability to provide rail service at the BRT. Sills Group and U S Rail have entered into commitments for the delivery of aggregate stone that contemplate that the rail construction will be approved during late 2008 and completed during early 2009. Any significant delays in obtaining construction approvals will significantly affect the ability of

U S Rail and Sills Group to meet their commitments. Moreover, delays could result in unnecessary utilization of motor carrier transportation of aggregate material over congested Long Island roads and highways to the detriment of the public generally.

U S Rail does not believe that this construction proposal will have any significant adverse environmental, historic, or community impacts. Officials in the Town of Brookhaven opposed efforts to construct the subject trackage as "exempt spur" trackage under 49 U.S.C. 10906 because of the lack of any sort of environmental reviews and community input. Handling this matter through the Board's construction approval procedures should allay their concerns by giving all affected parties a chance to voice their comments and obtain any mitigation that might be required.

U S Rail doubts that this proposal will present the sort of issues that other construction proposals typically involve. The project does not cross any navigable bodies of water so the jurisdiction and permitting processes of the Army Corps of Engineers are not implicated. U S Rail is not aware of the presence of any Indian artifacts or cultural resources or unique land forms on the site. Furthermore, there are no buildings or structures of any sort currently on the property. Accordingly, there should be no impacts under the National Historic Preservation Act warranting attention. U S Rail is also not aware of any endangered animal or plant species on the property that would require the preparation of a Section 7 biological assessment.

As to community impact and safety, BRT would eliminate significant inbound truck traffic which otherwise would move on area highways. Potential truck traffic from the BRT will not generate any significant increases in air or noise pollution. Additionally, the impacts on the local population should be modest as there are no residences, schools, hospitals, recreation facilities, or shopping centers nearby.

U S Rail has reviewed other fairly straight forward construction proposals such as those filed in Ellis County, Pemiscot, Alamo, and Southwest, and found that the time required from the date of filing the petition to the date of the final decision ran between 6 and 16 months. In view of the BRT's simplicity, U S Rail proposes and asks the Board to adopt the approval schedule found in Exhibit E that began to run from the date of U S Rail's request to SEA for a waiver of the six month pre-filing notice requirement.

In order to facilitate the Board's prompt handling of this Petition, U S Rail and Sills 1) have begun to work with community leaders in an effort to resolve their concerns, 2) have obtained waiver of the six month pre-filing notice required by 49 CFR 1110(a)(1), and 3) entered into an MOU with Gannett Fleming, Inc. and the SEA authorizing Gannett's retention as an SEA-approved independent third party environmental consultant to promptly commence environmental review of this project.

VI

CONCLUSION

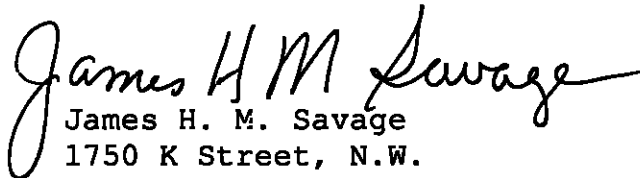
Accordingly, U S Rail Corporation requests that the Board expeditiously grant it an exemption from the provisions of 49 U.S.C. 10901 to permit it to construct and operate a new line of railroad to serve the Brookhaven Rail Terminal. U S Rail also requests that the Board grant its Petition in accordance with the proposed schedule, with the decision effective upon service.

Respectfully submitted,



John D. Heffner, PLLC
John D. Heffner
1750 K Street, N.W.
Suite 350
Washington, D.C. 20006
Telephone: (202) 296-3334

Counsel for Petitioner



James H. M. Savage
1750 K Street, N.W.
Suite 350
Washington, D.C. 20006
Telephone: (202) 296-3335

Of Counsel

DATED: August 7, 2008

EXHIBIT A

VERIFIED STATEMENT OF GABRIEL D. HALL

I, Gabriel D. Hall, of full age, state the following, under penalty of perjury:

I am the President of U S Rail Corporation ("U S Rail"), an existing class III common carrier railroad having its principal place of business in Toledo, OH. I am fully familiar with the facts and circumstances of this matter from my personal knowledge.

I submit this verified statement affidavit in support of the petition of U S Rail for authority to construct and operate a new Line of railroad in Brookhaven, NY.

In 2007 Sills entered into an agreement with Sills Road Realty LLC ("Sills") to construct and operate the Brookhaven Rail Terminal ("BRT").

Initially, service at the BRT will consist of a twice weekly train of approximately 40 to 50 cars of inbound crushed aggregate stone. NY&A will transport this traffic to the BRT on the LIRR line that terminates at Greenport, NY. Upon arriving at the switch lead into the BRT, the NY&A will then interchange this traffic to U S Rail which will haul the cars the rest of the way into that facility. U S Rail will then break and sort the train, switching and spotting cars for delivery. Once the cars are unloaded, U S Rail will reassemble the cars into a

train to be interchanged back to the NY&A for movement from the BRT.

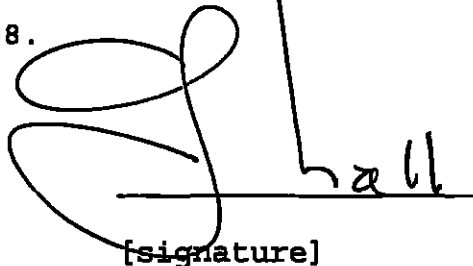
The services to be rendered at BRT by U S RAIL will include, among other things, the loading and unloading of rail cars, the storage of rail freight prior to loading or after unloading, the transfer of rail freight between trucks and rail cars.

Ultimately, U S RAIL hopes to attract additional in and outbound traffic at this facility.

VERIFICATION

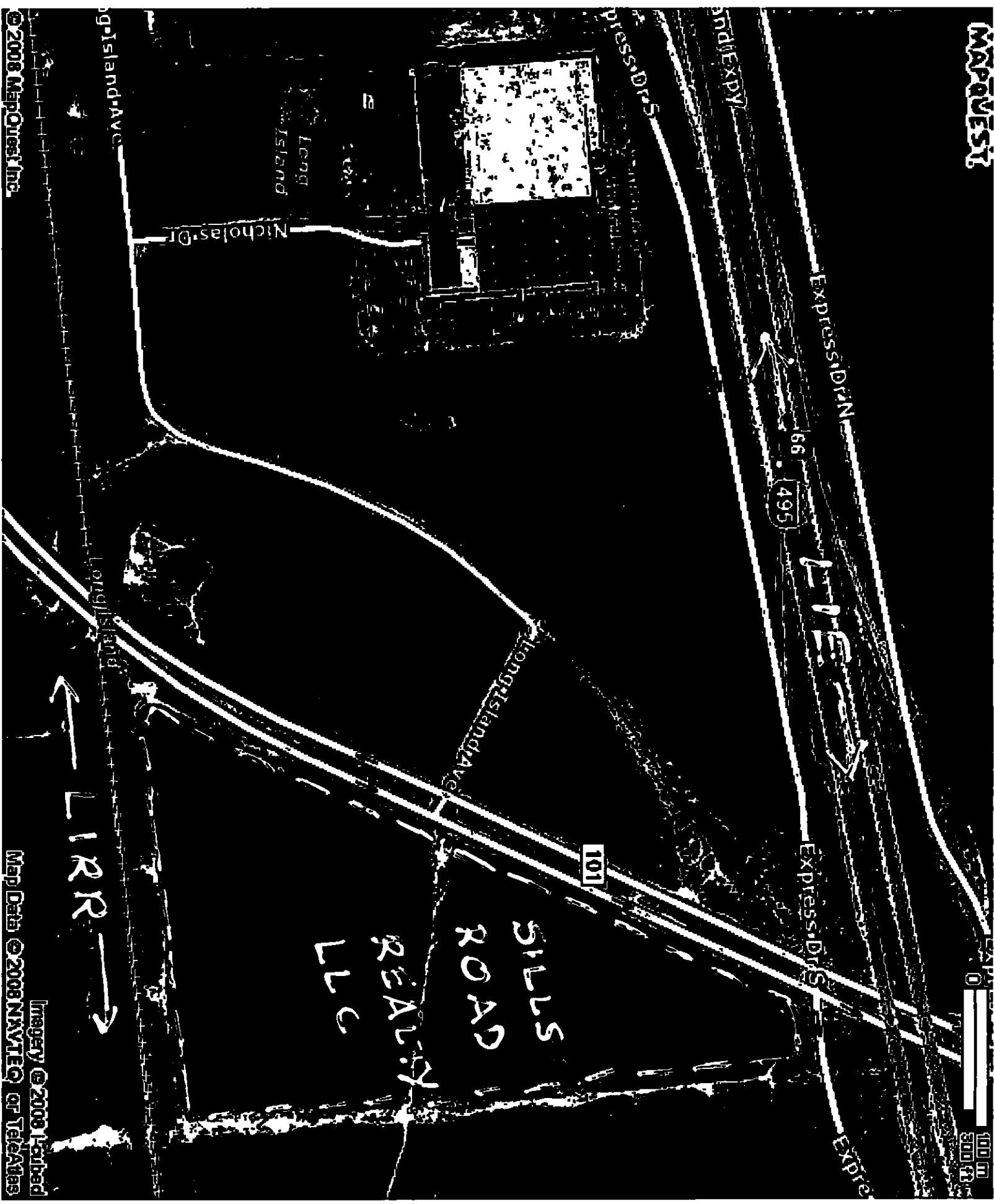
Pursuant to 28 U.S.C 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct

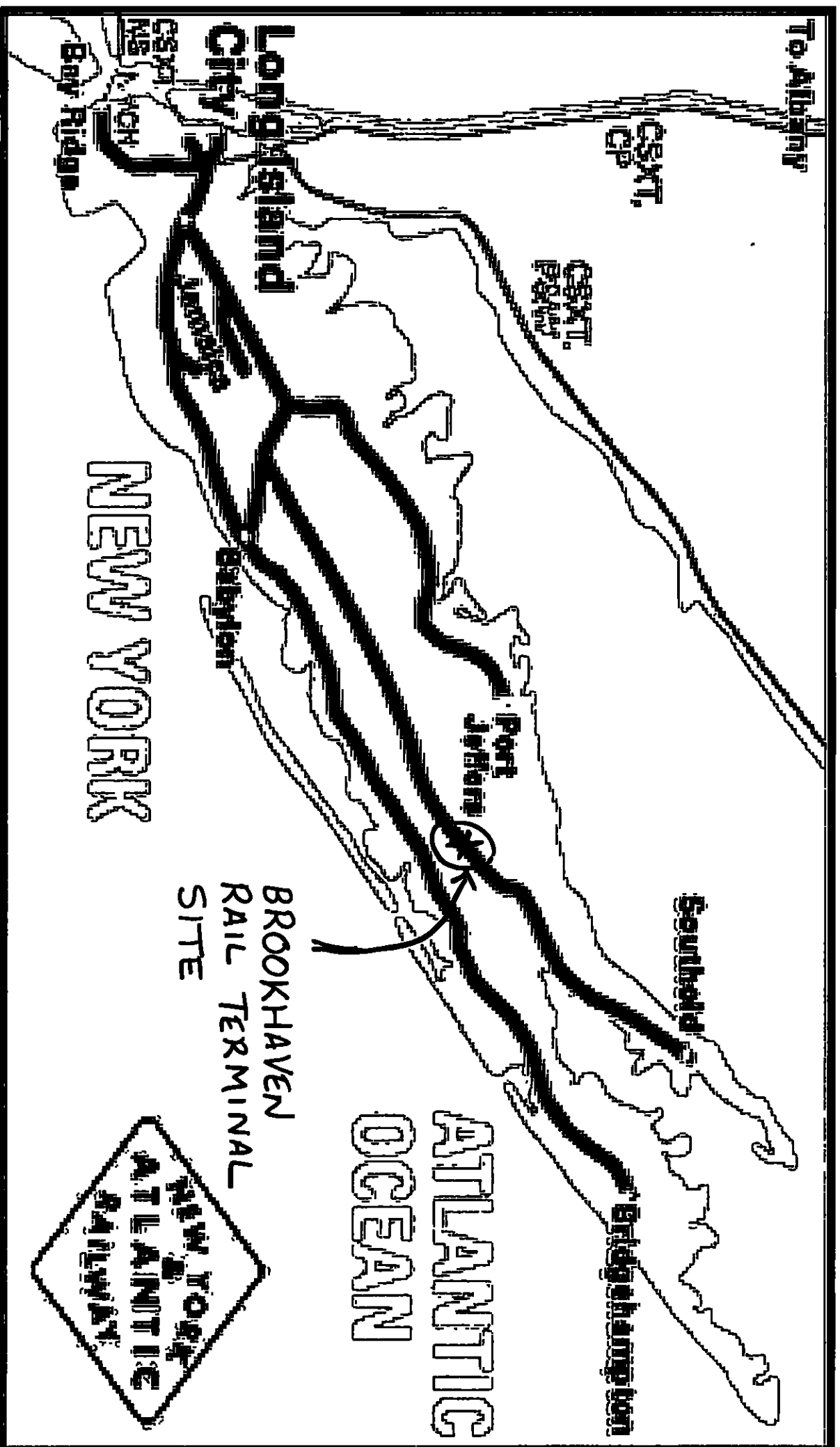
Executed on. July 15, 2008.



[signature]

EXHIBIT B





To Albany

CSXT,
CP

CSXT,
Port Authority

Southold

Bridgehampton

Port

Jervis

Long Island
City

Brooklyn

Bay Ridge

NEW YORK

BROOKHAVEN
RAIL TERMINAL
SITE

ATLANTIC
OCEAN

NEW YORK
AT THE ATLANTIC
RAILWAY

NEW YORK

CONNECTICUT

NEW JERSEY

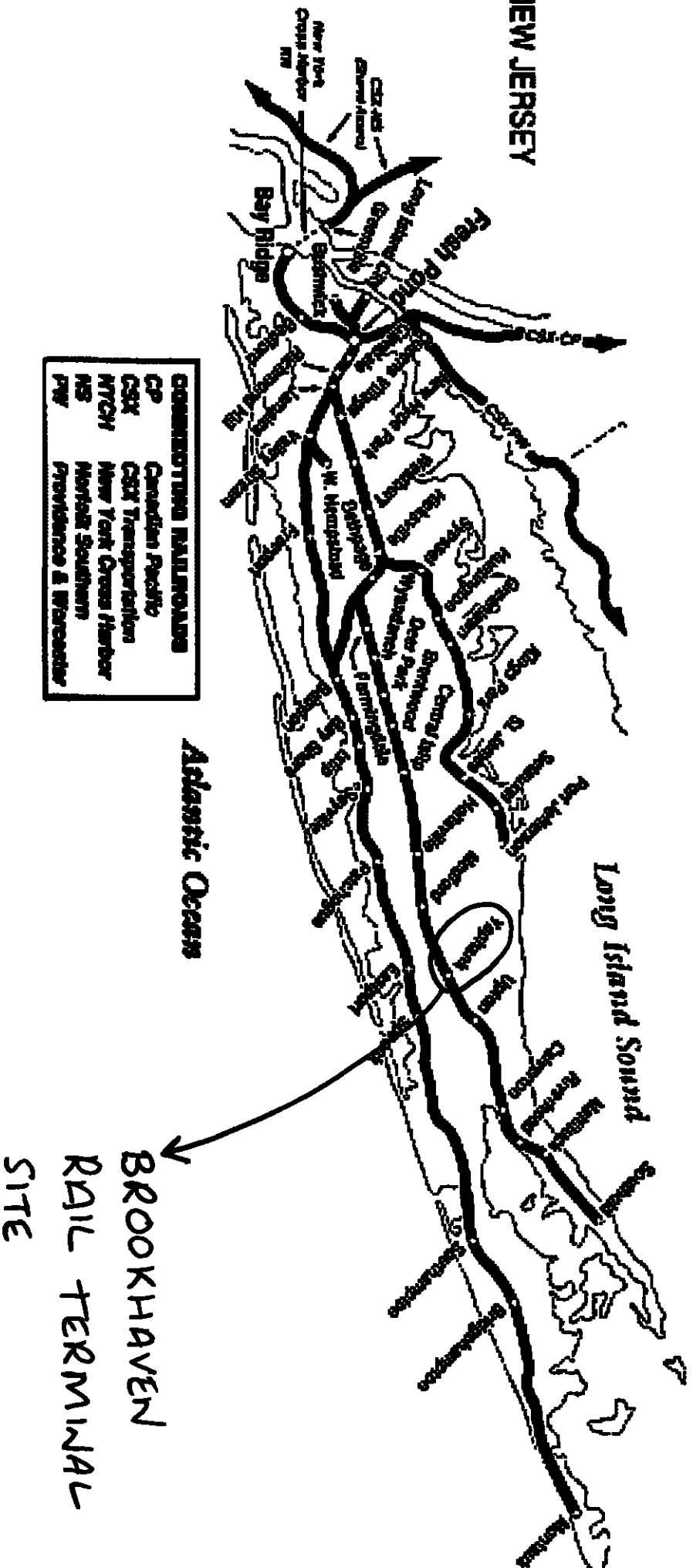


EXHIBIT C

EXHIBIT D

VERIFIED STATEMENT OF GERARD T. DRUMM

I, Gerard T. Drumm, of full age, state the following, under penalty of perjury:

I am the Chief Financial Officer and General Counsel of Sills Road Realty, LLC ("Sills"). I am responsible for financial and legal matters with respect to Sills and its affiliated companies. I am fully familiar with the facts and circumstances of this matter from my personal knowledge.

I submit this verified statement affidavit in support of the petition of U S Rail for authority to construct and operate a new Line of railroad in Brookhaven, NY.

Sills was formed to develop a rail facility on eastern Long Island that would economically meet the needs of its members for the transportation of construction aggregates and related materials (collectively "stone"), as well as serve the broader Long Island market for such products. Sills acquired a 28-acre tract of land in Yaphank, Town of Brookhaven, Suffolk County, Long Island, New York, which was ideally suited for this purpose. The site is called the "Brookhaven Rail Terminal" ("BRT").

Access to reliable rail service is essential if Sills is to be able to fulfill contractual commitments to its affiliates and customers for the supply of crushed stone.

The principal purpose of the BRT is to facilitate the transloading of stone between freight cars and trucks, as well as to provide areas for the transfer of freight. The BRT will interchange freight cars with the NY&A along railroad sidings connecting through a switch to the existing Long Island Rail Road ("LIRR") track adjoining the property's southern boundary. The initial traffic to be handled at this facility will consist of about 5,000 annual carloads of inbound aggregate crushed stone originating off Long Island. This traffic will be used in road and building construction by customers on Long Island. Currently, this traffic moves in very limited quantities by rail to a facility of inadequate size to accommodate the needs of Sills customers and affiliates. Sills desires to utilize rail transportation because highway congestion, capacity constraints and increasing fuel and other costs make motor transportation both impractical and uneconomical.

The location of the BRT is ideally suited for a rail facility because it is located in an area zoned for commercial and industrial development bordering the Long Island Expressway and an existing LIRR rail line. The site is not adjacent to any residences, schools, hospital, nursing homes, assisted living or recreational facilities.

Sills entered into an agreement with U S Rail, an existing Class III short line railroad, to construct and operate the BRT.

VERIFICATION

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct

Executed on: August 6, 2008.



Gerard T. Drumm

EXHIBIT E

EXHIBIT E: PROPOSED SCHEDULE

COMPLETED	Initial Meeting between Petitioner, SEA and proposed independent third party Environmental Consultant.
COMPLETED	Petitioner selects and advises Board of its selection of independent third party environmental consultant.
COMPLETED	SEA grants waiver of six months advance notice.
COMPLETED	SEA approves choice of environmental consultant, furnishes Petitioner and consultant with memorandum of understanding (MOU) for review.
COMPLETED	MOU executed; consultant begins work.
08/07/08	Petition for Exemption filed.
08/28/08	STB publishes notice of Petition.
09/05/08	SEA or consultant sends out consultation letter to affected state, local, and federal agencies.
09/18/08	Public comments due on Petition for Exemption.
10/06/08	Responses to consultation letters due.
10/20/08	Site visit occurs. Need for public scoping meeting and/or detailed studies to be determined based upon results of consultation letters and site visit.
11/06/08	Consultant distributes draft work plan, SEA issues class of action determination. Consultant formally begins preparation of the NEPA documentation.
11/26/08	Consultant in conjunction with SEA publishes Draft EA/EIS.
12/16/08	Comments on Draft EA/EIS due.

12/24/08	Consultant in conjunction with SEA publishes Final EA/EIS.
12/31/08	STB issues decision on merits of Petition. Decision becomes effective absent any stay.