

Before the  
**SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36575

**TOWNLIN RAIL TERMINAL, LLC  
– CONSTRUCTION AND OPERATION OF A LINE OF RAILROAD –  
IN SUFFOLK COUNTY, NY**

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**TOWNLIN RAIL TERMINAL, LLC REPLY  
TO THE VERIFIED MOTION TO DISMISS PETITION OF TOWNLIN  
ASSOCIATION, INC., RICHARD & CAROL DIGRANDI, KEITH & PATRICIA  
MACARTNEY, AND BRIAN & KEEGAN HARRIS**

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**ASSOCIATION, INC., RICHARD & CAROL DIGRANDI, KEITH & PATRICIA**  
**MACARTNEY, AND BRIAN & KEEGAN HARRIS**

Townline Rail Terminal, LLC (“Townline Rail”) respectfully requests that the Board reject the Verified Motion to Dismiss the Townline Rail Petition for Exemption (“Petition”) filed by Townline Association, Inc., Richard & Carol DiGrandi, Keith<sup>1</sup> & Patricia Macartney, and Brian & Keegan Harris<sup>2</sup> (together referred to herein as the “Association”) because no basis exists for dismissing the Petition.

The Board should reject the Association’s Motion to Dismiss (the “Motion”) because the Townline Rail Petition to construct and operate a line of common carrier railroad, and thereby become a rail carrier, is squarely within the Board’s jurisdiction under long-standing Board practice where a petitioner seeks to hold itself out to provide common carrier rail service.

Further, the Board should deny the Association’s Motion arguing that Townline Rail should have instead filed a full application because the Board’s petition for exemption process is

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<sup>1</sup> President of the Fort Salonga Civic Association and on the Advisory Board of the Association. See <https://Townline Railassociation.org/> (last visited April 7, 2023).

<sup>2</sup> Secretary of the Association. See <https://Townline Railassociation.org/> (last visited April 7, 2023).

an appropriate regulatory mechanism for the Board to consider the merits of Townline Rail's Petition.

The Association's Motion asks the Board to deny the Petition citing opposition. However, this opposition has been generated by an Association letter writing campaign asserting unsubstantiated environmental impacts. Further, the Association would have the Board dismiss the Townline Rail Petition based on alleged environmental impacts of the proposed rail operations before the Board's Office of Environmental Analysis ("OEA") has even issued its draft environmental assessment of the Townline Rail proposal ("Draft EA").<sup>3</sup>

The Association would have the Board ignore OEA's EA process and substitute the unsubstantiated impact assertions of the Association's letter writing campaign. While the input of the neighboring communities is welcomed and encouraged in the EA process, the Board should not allow the Association to truncate OEA's analysis. As the Board has explained in past petition for exemption proceedings to construct a rail line – the Board will decide the transportation merits of a construction proposal when it has a complete record – including an environmental record.<sup>4</sup> The Association would have the Board reject the Petition before the record is complete. For this reason, Townline Rail respectfully requests that the Board deny the Association's Motion.

## **I. BACKGROUND**

### **A. The Townline Rail Petition for Exemption**

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<sup>3</sup> The Association's Motion also incorporates its opposition to the proposed transload facility that Townline Rail would serve as grounds to oppose the Townline Rail Petition for construction of the Propose Line, despite the fact that the transload facility is not part of the Townline Rail construction petition, and despite the fact that the transload facility is subject to Town of Smithtown zoning requirements and permitting by the New York State Department of Environmental Conservation ("DEC").

<sup>4</sup> *Savage Tooele Railroad Co. – Construction and Operation Exemption – Line of Railroad in Tooele County, Utah*, STB Finance Docket No. 36616, slip op. at 3 (served March 30, 2023).

Townline Rail filed its Petition on November 17, 2022, seeking Board authority to construct and operate approximately 5000 feet of new common carrier track and associated switching and sidetrack (the “Proposed Line”).<sup>5</sup> As noted in the Association’s Motion<sup>6</sup>, Townline Rail intends to serve a truck-rail transloading facility that Townline Rail’s affiliated entity, CarlsonCorp, will build (and permit) independently of Townline Rail. Townline Rail will hold itself out to transport incinerator ash, construction and demolition debris (“C&D”), and aggregates for various customers using the CarlsonCorp transloading facility as well as any shipper on the Proposed Line requesting rail service.<sup>7</sup> Townline Rail will interchange with the New York & Atlantic Railway (“NYAR”).

As stated in the Petition, Townline Rail will construct the Proposed Line on CarlsonCorp property where CarlsonCorp currently operates a New York State Department of Environmental Conservation (“DEC”) permitted waste transfer facility for the recycling and processing of recognizable uncontaminated concrete, asphalt pavement, rock, brick, and soil, woody yard waste, un-adulterated wood, yard waste, and horse manure.<sup>8</sup> The CarlsonCorp property (and hence the Proposed Line) is bordered by the Long Island Railroad (“LIRR”) Port Jefferson Branch. NYAR provides freight service over the Port Jefferson Branch. The CarlsonCorp property is not currently served by rail. Not including specials, LIRR operates at least 40 passenger movements (20 each way) per weekday and 28 passenger movements (14 each way) on weekends on this segment of its network.<sup>9</sup>

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<sup>5</sup> The proposed sidetrack would fall under 49 U.S.C. §10906 and does not require construction authority from the Board.

<sup>6</sup> Motion at 2.

<sup>7</sup> Townline Rail Petition at 3.

<sup>8</sup> *Id.*

<sup>9</sup> See MTA Long Island Railroad Port Jefferson Branch Timetable, *available at* <https://new.mta.info/document/85026> (last visited Apr. 24, 2023).

CarlsonCorp will construct and operate the transloading facility which will operate separately from Townline Rail.<sup>10</sup> The transload facility will require Town of Smithtown zoning approval and DEC approval for the processing of incinerator ash residue and C&D. Under the Townline Rail Petition, Townline Rail would provide rail service to the transloading facility, but Townline Rail is not seeking Board authority to build or operate that facility.

OEA is reviewing the potential environmental impacts of the Proposed Line. Townline Rail is working with OEA to comply with the Board's National Environmental Policy Act requirements under 49 CFR Part 1105. Townline Rail retained the third-party contractor VHB to work under the direction and supervision of OEA. Townline Rail understands that a Draft EA is scheduled to be released this spring and that the Draft EA will incorporate comments provided to date related to the potential environmental impacts of the Proposed Line. Following the release of the Draft EA, OEA will allow time for further public comment. OEA will incorporate those comments into a Final Environmental Assessment.

Townline Rail has not made a request to the Board for preliminary authority based on the transportation merits of its Petition.

B. Contrary to the Association's assertion that it lacked notice of the Proposed Line, the Association has provided comment on the rail aspects of the Town of Smithtown Draft Comprehensive Plan and the Proposed Line has been in the news months prior to Townline Rail filing the Petition.

In the Motion, the Association asserts that "surrounding communities were never advised by local, state, or federal officials that this rail project was under consideration."<sup>11</sup> This statement ignores the fact that the Association has filed comments in this proceeding even before the Board opened the public comment period upon release of the Draft EA. The Association's

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<sup>10</sup> Townline Rail Petition at 3

<sup>11</sup> Motion at 5.

Motion demonstrates notice of the Proposed Line. Further, the Association has been an active commentator in the development of the Town of Smithtown Comprehensive Plan and has publicly opposed the components of the plan that include railroad facilities.

1. *The Town of Smithtown has envisioned rail at the location of the Proposed Line dating back to 1961, rail on the site has been part of the town's comprehensive planning process since 2015, and the Association has provided comment on the Draft Comprehensive Plan as far back as 2016.*

The Town of Smithtown has envisioned the location of the Proposed Line for a rail facility since 1961. The 1961 Development Plan notes that the “Town Line Road Industrial Area” – the same area where the Proposed Line would be constructed – has “excellent transportation facilities” thanks to Route 25A, East Northport Road, and the railroad.<sup>12</sup> Fast forward to 2015, as part of its on-going process to update its Comprehensive Plan, the Town of Smithtown released a Draft Comprehensive Plan Update. In that draft, the Town proposes railroad improvements to include, the construction of “a railroad spur to the heavy industrial area near Old Northport Road and Townline Road.”<sup>13</sup> In 2016, the Association provided comments to the Draft Comprehensive Plan Update opposing rail facilities.<sup>14</sup> In response to public comment, the Planning Board adopted a resolution making “conclusions and recommendations to the Town Board relative to the Draft of the Comprehensive Plan Update.”<sup>15</sup> The Planning Board states, we appreciate that no single plan will be ideal to everyone, but this draft generally achieves a

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<sup>12</sup> Exhibit A, *Town of Smithtown, Development Plan*, at Page 9, Section 1(a) (July 1961)(excerpted).

<sup>13</sup> *Town of Smithtown, Comprehensive Plan Update, Volume VIII Draft Plan*, at 38 (February, 2015) available at <https://www.smithtownny.gov/DocumentCenter/View/1183/Volume-VIII-Draft-Plan?bidId=> (last visited April 17, 2023).

<sup>14</sup> Exhibit B, Letter from George W. Husted, Townline Rail Association President to David Flynn, Town Planning Director, Town of Smithtown (July 12, 2016).

<sup>15</sup> Exhibit C, Letter from Conrad A. Chayes, Sr., Chairman and Agnes J. Vion, Clerk of the Town of Smithtown Planning Board to Supervisor Patrick R. Vecchio and Members of the Town Board (Sept. 22, 2016).

balance of diverse interests.”<sup>16</sup> The Planning Board notes that “[t]here is opposition in the Old Northport Road area to heavy industrial uses.”<sup>17</sup> Finally, the Planning Board recommends the “amount of land used in the Old Northport Road corridor for heavy industry should be reduced.”<sup>18</sup> However, the resolution does not recommend a change to the Draft Comprehensive Plan’s recommendation for railroad facilities.

In June of 2021, the Town of Smithtown Planning Director presented amendments to the Draft Comprehensive Plan. The development of these amendments included community outreach meetings as well as written and emailed comments from the public. Recommended amendment 1 provides for changing a portion of the area where the Townline Rail Proposed Line will be from Light Industrial to Heavy Industrial (“HI”). The amendment notes, that Heavy Industrial “is an appropriate zone for this location because it is between existing HI-zoned land and the railroad and is more than 500 feet from Townline Road and all residential uses.” The amendment continues, the “railroad provides alternate access to the site, and if a rail siding were to be built, access to the railroad could reduce truck traffic on Old Northport Road.”<sup>19</sup>

*2. Local Town of Smithtown media began reporting on the Townline Rail proposal months before Townline Rail filed its Petition and one of the named parties to the Association’s Motion provided a public statement.*

Contrary to the Association’s attempt to suggest that the Townline Rail Petition occurred without the knowledge of the public, local media first reported on the Proposed Line on July 28,

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Exhibit D, *Town of Smithtown, Planning Advisory Report Draft Comprehensive Plan comments and amendments*, at 1-2 (June 2, 2021).

2022. The Smithtown News published a front-page story detailing the Proposed Line utilizing publicly available information from the Board’s website to explain the project.<sup>20</sup>

Another article published on August 17, 2022, in Newsday states in its headline, “Kings Park Rail plan would haul waste. Federal approval required to enable effort by businessman in hamlet.” Quoted in this article is Fort Salonga Association civic president Keith Macartney, a named party in this proceeding, an advisor to the Association, and presumably a member of the “surrounding community.” Mr. Macartney, in that article states that, “he’s worried about health risks from the ash in transit and train noise and fumes.”<sup>21</sup> However, others quoted in the same article are of a different opinion. According to the executive director of the Citizens Campaign for the Environment, “waste management should include waste reduction but ‘we need a viable option for ash disposal...a terminal in an already industrialized area is a reasonable option.’”<sup>22</sup>

Following Townline Rail’s Petition, The Smithtown News provided additional reporting and an editorial about the Petition on January 12, 2023. Under the headline, “Feds on the clock for train yard,” the paper reported that the “Board has 90 days, until February 15, 2023, to act on the Townline [Rail] petition.”<sup>23</sup> The article concludes,

The Smithtown News broke the story about the proposal (*sic*)rail yard in its July 28, 2022 edition. Since that time, the application has received no public opposition from the community, though one neighbor who lives in close proximity to the site has expressed concern about the impact it will have on the quality of life in the

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<sup>20</sup> Exhibit E, David Ambro, *Kings Park rail spur proposed, CarlsonCorp seeks 5,000-foot rail line to haul ash from L.I. incinerators*, THE SMITHTOWN NEWS, July 28, 2022 at 1.

<sup>21</sup> Exhibit F, Nicholas Spangler, *Kings Park Rail plan would haul waste. Federal approval required to enable effort by businessman in hamlet*, NEWSDAY, Aug. 17, 2022, available at 2022 WLNR 25855580.

<sup>22</sup> *Id.*

<sup>23</sup> Exhibit G, David Ambro, *Feds on the clock for trainyard*, THE SMITHTOWN NEWS, January 12, 2023 at 3.



adjacent residential community. There appears, however, to be no organized opposition to the proposed project.<sup>24</sup>

In the accompanying editorial, “Kings Park train yard on fast track”, the Smithtown News notes that “it is incredible that this project has not engendered some level of community concern and/or opposition.”<sup>25</sup> Enter, the Association and its letter writing campaign.

C. The Onslaught of Opposition cited by the Association is the result of an Association letter writing campaign citing unsubstantiated environmental impacts.

The Association argues that a proposed solid waste transfer facility is too controversial to be considered via petition and instead Townline Rail should file a full application. “The application process would provide the proper vetting for such a project, especially one that involves an inherently controversial solid waste transfer facility.”<sup>26</sup> First, Townline Rail is not seeking Board approval of the transload facility, Townline Rail is seeking approval of a line of railroad that would serve a transload facility. CarlsonCorp will construct and operate the transload facility and will acquire state and local approval for that facility.

Second, the noted “onslaught of opposition” and “avalanche” of letters reflect the unsubstantiated environmental impacts submitted to the Board in the Association’s comments, advertised by the Association on its website and print media, and copied by a Facebook Group<sup>27</sup> opposed to the Proposed Line.

The Association’s print advertisements state: “STOP Carlson Corp Freight Yard.” The advertisement asserts that the Proposed Line will include trains “hauling toxic ash” and the impact on the community will be an “Endless caravan of diesel freight trains & container trucks

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<sup>24</sup> Exhibit H, Editorial & comments, *Kings Park train yard on fast track.*” THE SMITHTOWN NEWS, Jan. 12, 2023 at 4.

<sup>25</sup> *Id.*

<sup>26</sup> Motion at 10.

<sup>27</sup> See <https://TownlineRailassociation.org/> (last visited April 17, 2023); See Exhibit I, STOP Carlson Corp Freight Yard and Exhibit J, *Facebook Group, We Oppose Townline Rail.*

[that] will come and go all hours of the night, idling all day, causing noise, fumes, pollution, vibrations, additional trucks, road congestion, traffic hazards, innumerable health risks, and more injurious outcomes.”<sup>28</sup> The ad lacks any citation to support these claims. Similarly, the Association’s website provides talking points and suggests content for community members to mimic. Again, no citations to substantiate these claims exist on the website.<sup>29</sup> The Association’s letter writing campaign began in late January/early February. Soon thereafter, the Association began uploading the “avalanche” of comments to this docket. The majority of these letters reflect the unsubstantiated impacts from the Association’s digital and print marketing materials.

An oft repeated impact in the Motion, the Association’s comments, and many of the commenters is a fear that the Proposed Line will impact the aquifer lying beneath this area of Long Island. Yet, according to the U.S. Geological Survey, the entirety of Long Island lies atop one of four aquifers and a large portion of Long Island are “recharge areas” to either the Magothy or Lloyd aquifers.<sup>30</sup> The Association has not provided any support for how the Proposed Line or rail operations would harm the aquifers.

D. The Association argues that the Proposed Line is unnecessary because other facilities – in other communities – could process their town’s incinerator ash, but not all of these facilities are permitted to do so and not all of these facilities are approved to operate.

Townline Rail is petitioning the Board for an exemption to construct a common carrier rail line that will serve customers to include CarlsonCorp. As stated in the Petition, CarlsonCorp will develop a transload facility under state and local regulation to transload incinerator ash from

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<sup>28</sup> *Id.*

<sup>29</sup> See <https://Townline Railassociation.org/> (last visited April 17, 2023).

<sup>30</sup> See Exhibit K, Excerpts of USGS, Simulation of Groundwater Flow in the Regional Aquifer System on Long Island, New York, for Pumping and Recharge Conditions in 2005-2015 Scientific Investigations Report 2020-5091 at 3, 23 (Dec. 16, 2020). Entirety of the report available at <https://pubs.er.usgs.gov/publication/sir20205091> (last visited Apr. 21, 2023).

trucks to rail cars, in addition to other commodities.<sup>31</sup> In his support letter, Town of Smithtown Supervisor Edward Wehrheim states that currently, Smithtown’s solid waste is converted to ash and that ash is delivered to the Brookhaven landfill.<sup>32</sup> That landfill is anticipated to close in 2024.<sup>33</sup> The Townline Rail Proposed Line provides a rail option to dispose of the Smithtown incinerator ash.

The Association evidently disagrees with the Supervisor. In its February 13 letters to the Board, the Association states that its “surrounding communities already bear the burden of several major sources of environmental blight.”<sup>34</sup> And asks, “[h]ow much of a burden is this one community expected to take?”<sup>35</sup>

The Association’s solution is for other facilities – in other communities – to receive the incinerator ash for transloading to rail. “We are also aware that there are far better locations moving forward to tackle the issue of removing ash off Long Island, such as the Winter Bros. 228-acres site in Yaphank.”<sup>36</sup> This sentiment is repeated in the Association’s Motion, suggesting that the Townline Rail Proposal is unnecessary because “there are already three other private rail waste transfer stations – in Yaphank, Brentwood, and Medford – in various stages of approval.”<sup>37</sup>

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<sup>31</sup> Townline Rail anticipates that its customers for rail service will include various companies that use the services of the transload facility.

<sup>32</sup> See *Petition*, Exhibit C.

<sup>33</sup> *Id.*

<sup>34</sup> See Exhibit L, Letter from Linda Henninger, Townline Rail Association Co-president to Marty Oberman, Chairman, Surface Transportation Board (Feb. 13, 2023).

<sup>35</sup> *Id.*

<sup>36</sup> See Exhibit M, Letter from Linda Henninger, Townline Rail Association Co-president to Marty Oberman, Chairman, Surface Transportation Board (Jan. 27, 2023).

<sup>37</sup> Motion at 3-4.

Considering that the Association filed its Motion before the Draft EA has been issued, the true environmental impact of the Proposed Line is currently unknown. However, the New York State Climate Justice Working Group’s list of disadvantaged communities does not include Kings Park – the area of the Proposed Line.<sup>38</sup> Conversely, the list of disadvantaged communities does include the Brentwood waste transfer facility.<sup>39</sup> It also shows that the proposed facility in Yaphank borders an identified disadvantaged community.<sup>40</sup>

While the Association would apparently prefer to have the Smithtown waste trucked to other communities (including a disadvantaged community), the Motion and the Association’s comments fail to state that the other private rail waste transfer facilities cited, the Peconic Environmental Services Rail Waste Transfer Facility in Medford and the Omni Brentwood Rail Transfer Facility in Brentwood are not permitted to accept ash residue.<sup>41</sup> And at this time, the third referenced facility in Yaphank is not yet operational.

The fact that there is disagreement between the Town and some residents about whether a transload facility for ash should be located in Kings Park, and whether it would be better to ship the ash to another community, does not constitute a controversy about whether the Townline Rail Petition for the Proposed Line and rail service is appropriate.

## II. ARGUMENT

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<sup>38</sup> “Other waste transfer stations are not included in the disadvantaged community, including Kings Park and Medford. Brentwood’s proposed site is included, as well as much of the Long Island’s waste infrastructure — positioned in communities of color.” J.D. Allen, WSHU PUBLIC RADIO, *These are Long Island’s “disadvantaged communities” set for climate funding*” available at <https://www.wshu.org/long-island-news/2023-03-29/these-are-long-islands-disadvantaged-communities-set-for-climate-funding>.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Motion, Exhibit A at 3, “Unacceptable Wastes”; Exhibit B at 3, “Unacceptable Wastes”.

A. The Board has jurisdiction over the Proposed Line because Townline Rail will make the line available as a common carrier rail line to any shipper that might request service.

The Board has jurisdiction over the Townline Rail Proposed Line because Townline Rail will hold out as a common carrier to any shipper requesting service. In its Petition, Townline Rail cites *Midwest Generation, LLC – Exemption from 49 U.S.C. 10901 – For Construction in Will County, IL*, STB Finance Docket No. 34060, (served Mar. 21, 2002) (“*Midwest*”) to explain why the Board has jurisdiction in this proceeding. In *Midwest*, the Board found that it had jurisdiction over a proposed 4007-foot rail line because the petitioner proposed to build a rail line and “provide common carriage to other shippers who could be served by the proposed project.”<sup>42</sup>

In *Midwest*, the Illinois Central argued that the Board did not have jurisdiction over the proposed line. The Board states that the “determinative factor” whether a proposed line of railroad falls within its jurisdiction is whether the petitioner “would make the line available as a common carrier line to any shippers that might request service.”<sup>43</sup> Here, as in *Midwest*, Townline Rail intends to make the Proposed Line available as a common carrier to any shippers that might request service. As stated in the Petition, “Townline Rail will be constructing the Proposed Line to potentially serve customers shipping C&D, incinerator ash, and aggregates.”<sup>44</sup> These customers will have access to Townline Rail and the Proposed Line through the transload facility. Further, Townline Rail states in its Petition that it “is willing to accept a common carrier obligation and to ‘hold out’ to provide rail service to the public at large.”<sup>45</sup>

Townline Rail’s proposal to hold itself out as a common carrier is consistent with Board precedent. In *Effingham RR Co.—Pet. For Declaratory Order*, 2 S.T.B. 606 (1997), the railroad,

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<sup>42</sup> *Midwest*, STB Finance Docket No. 34060, slip op. at 6.

<sup>43</sup> *Id.* at 4 n. 7.

<sup>44</sup> Townline Rail Petition at 7.

<sup>45</sup> *Id.*

“Effingham”, sought to build and operate less than 10,000 feet of new track to serve present and future customers in a recently established industrial park at the junction of two Class I railroads.<sup>46</sup> Although Effingham had argued that its proposal was exempt from the Board’s licensing jurisdiction as a “spur track”, the Board disagreed. The Board found that “the larger purpose and effect of [Effingham’s] proposal is to construct what will constitute [its] entire line of railroad to serve a new rail shipper.”<sup>47</sup> Further, the Board found that Effingham proposed “to construct and operate in territory it has not previously served.”<sup>48</sup> Here, Townline Rail is proposing to construct a line and hold out as a common carrier in territory not currently served by any rail carrier. Its operations, like those in Effingham fall within the jurisdiction of the Board.

The Association argues that the Proposed Line does not fall within the Board’s jurisdiction because, they argue, “CarlsonCorp or Townline cannot be a rail carrier.”<sup>49</sup> They assert that “there is nothing in the record demonstrating that Townline will be involved in offering or setting rates or service terms for any rail shippers that transload at this facility, or that it has entered into an interchange agreement with NYAR.”<sup>50</sup> The Association argues that “Townline will provide switching and transloading services as part of the CarlsonCorp transload

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<sup>46</sup> *Effingham RR Co.—Pet. For Declaratory Order*, 2 S.T.B. 606, 607 (1997).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*; Consistent with the Board’s decision in Effingham, other industrial entities have utilized the Board proceedings under 49 U.S.C. § 10901 and 49 C.F.R. 1150 Subpart D to acquire authority to become common carriers subject to Board jurisdiction over industrial track rather than to be “private carriers” outside that jurisdiction. *See ex, KS Railroad, A Division of Kinkisharyo International, L.L.C. – Operation Exemption Line in Piscataway, NJ*, STB Finance Docket No. 36618 (served Aug. 12, 2022); *Western Nevada Railroad, LLC – Lease and Operation Exemption – Line in Churchill County, NV*, STB Finance Docket No. 36573 (served Jan. 7, 2022); *Toledo Industrial Railroad LLC – Operation Exemption – Line in Lucas County, OH*, STB Finance Docket No. 36381 (served Feb. 20, 2020).

<sup>49</sup> Motion at 8.

<sup>50</sup> *Id.*

operation and that these “services do not rise to the level of holding out or providing common carrier rail service.”<sup>51</sup>

The Association fails to cite any governing law or regulations requiring an entity seeking an exemption to construct and operate a rail line to present as part of its petition evidence of an interchange agreement or evidence of rates or service terms. Nor does the Association cite any Board analysis of the Rail Transportation Policy at 49 U.S.C. §10101 (“RTP”) considering an interchange agreement<sup>52</sup> or evidence of rates and service terms, likely because there are none.<sup>53</sup> Neither of those steps are necessary until the Proposed Line is approved and constructed and service is ready to begin. Failing to provide any relevant case law for its novel theory that the Board lacks jurisdiction over the Proposed Line, the Association relies on inapplicable preemption case law.

This reliance is misplaced because in each of the cited cases,<sup>54</sup> the transloading entity was attempting to avoid local regulation by arguing that it fell within the Board’s jurisdiction. In

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<sup>51</sup> *Id.*

<sup>52</sup> Carriers are not required to enter into interchange agreements with each other. Under 49 U.S.C. §10742, carriers are required to “provide reasonable, proper, and equal facilities that are within its power to provide for the interchange of traffic between, and for the receiving, forwarding, and delivering of passengers and property to and from, its respective line and a connecting line of another rail carrier.” But carriers are not required to do so via an agreement.<sup>53</sup> In an effort to prove a negative, the following Board decisions (each unanimously approved) analyzing the RTP lack any reference to evidence of an interchange agreement or evidence of rates or service terms. *See Northwest Tennessee Regional Port Authority – Construction and Operation Exemption – in Lake County, TENN.* STB Finance Docket No. 35802 (served Apr. 21, 2016); *Lone Star Railroad, Inc and Southern Switching Co – Track Construction and Operation Exemption – In Howard County, Tex.*, STB Finance Docket No. 35874 (served Mar. 3, 2016); *City of Davenport, Iowa – Construction and Operation Exemption – in Scott County, Iowa*, STB Finance Docket 35237 (served Apr. 6, 2011). *Port of Moses Lake – Construction Exemption – Moses Lake, Washington*, STB Finance Docket No. 34936, *et al.* (served Aug. 27, 2009).

<sup>54</sup> *Town of Babylon and Pinelawn Cemetery*, STB Finance Docket No. 35057 (served Feb. 1, 2008); *Town of Milford, MA – Petition for Declaratory Order*, STB Finance Docket 34444 (served Aug. 12, 2004); *Hi Tech Trans, LLC – Pet. For Dec. Order – Newark, NJ*, STB Finance Docket No. 34192 (sub. No. 1)(served Aug. 14, 2003).

contrast, CarlsonCorp is not seeking Board authority to be a “rail carrier” for its transloading operations. Those operations will be regulated at the state and local level.

Townline Rail is the entity seeking to become a rail carrier to serve the CarlsonCorp transloading facility and any shipper that requires service on the Proposed Line. The Board’s regulations at 49 C.F.R. §1155.2(a)(10)(ii) make clear that the definition of “solid waste rail transfer facility” does not include the portion of a facility that is “comprised solely of the railroad transportation of solid waste after it is loaded for shipment in a rail car.” Therefore, the Proposed Line is not part of the CarlsonCorp transloading facility.

The Association’s argument is further strained by statements unsupported by the record. The Association states, “CarlsonCorp/Townline would only be offering transloading services to its customers directly. It will have direct contracts with customers – most of which are not located within the CarlsonCorp facility – for loading or unloading a railcar that is placed on these proposed tracks by NYAR.”<sup>55</sup> This statement is not cited and completely unsupported by the record. While CarlsonCorp may have contracts with customers for its transloading services, Townline Rail will independently bill customers for whom it provides rail service. In its zeal to utilize the Board’s transload preemption case law for “holding out” to its benefit, the Association appears to have simply invented facts to fit its narrative.

**B. The Board should reject the Association’s Motion and request for the Board to require Townline Rail to file a full application.**

The Board should reject the Association’s Motion because the Board’s petition for exemption procedures are appropriate for projects such as the Proposed Line.<sup>56</sup> Townline Rail’s

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<sup>55</sup> Motion at 8 and 9.

<sup>56</sup> See *Texas Railway Exchange LLC – Construction and Operation Exemption – Galveston County, Tex.*, STB Finance Docket 36186 (served Jan. 17, 2020); *Palmetto Railways – Construction and Operation Exemption in Berkeley County, S.C.*, STB Finance Docket 36095 (served July 22, 2019); *Northwest Tennessee Regional Port Authority – Construction and*



Proposed Line will extend 5,000 feet, will be developed entirely on private property, and has support from local political leaders.

In instances where the Board has required petitioners seeking an exemption for construction authority to instead file a full application, the Board has done so due to the magnitude of the project, concerns about project costs, funding sources, substantial-public interest, and the potential to impact local landowners.<sup>57</sup> However, simply because a proposed line has generated public comment does not necessitate a full application in place of a petition for exemption.<sup>58</sup>

*1. The Association claims “substantial opposition” to justify its request for a full application; however, the Association misstates the facts of the Townline Rail Petition and relies on opposition asserting unsubstantiated environmental impacts.*

The Board should reject the Association’s argument that “substantial opposition” justifies a Motion to Dismiss and its request that Townline Rail file a complete application because the Association relies on misstatements of fact. Further, the Association’s argument is premised on

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*Operation Exemption – In Lake County, Tenn.*, STB Finance Docket 35802 (served Apr. 21, 2016); *Port of Moses Lake – Construction Exemption – Moses Lake, Washington*, STB Finance Docket 34936 (served Aug. 27, 2009); *Pemiscot County Port Authority – Construction of a Line of Railroad - In Pemiscot County, MO*, STB Finance Docket 34117 (STB served July 2, 2002).<sup>57</sup> *Texas Central Railroad and Infrastructure, Inc. & Texas Central Railroad, LLC – Petition for Exemption – Passenger Rail Line Between Dallas and Houston, Tex.* Docket No. FD 36025, slip op at 15 (served July 16, 2020)(The proposed line in question involved a 240-mile high-speed passenger rail line requiring the use of eminent domain of private property); *Ozark Mountain Railroad – Construction Exemption*, I.C.C. Finance Docket No. 32204, 1994 WL 698676 (served Dec. 15, 1994)( the proposed line in question involved a 75-mile passenger excursion train utilizing steam locomotives.).

<sup>58</sup> *See Seven County Infrastructure Coalition – Rail Construction & Operation Exemption – in Utah, Carbon, Duchesne, and Uintah Counties, Utah*, STB Finance Docket No. 36284 (served Dec. 15, 2021) (The Board granted a petition for exemption although the proposed line involved an 85-mile rail line primarily shipping crude oil and fracking sand, and the Board’s docket showed 1,731 environmental comments).

“opposition,” but that opposition is driven by unsubstantiated environmental impacts of the Proposed Line.

In the Motion, the Association frames the legal standard for construction petitions under 49 U.S.C. §10505 as:

The Board has granted exemptions from section 10901 in construction cases in appropriate proceedings, wherein it has **preliminarily found** that the proposed construction satisfied the exemption criteria of section 10505, but withheld a final grant of the authority to build the line pending the completion of the analysis of the environmental impact of construction. The Board has explained that procedure works well in noncontroversial construction cases. But the Board does not normally employ it in cases where significant opposition has been expressed to the proposed project.<sup>59</sup>

The Association either fails to understand the Townline Rail Petition or is purposely attempting to create confusion because Townline Rail is not requesting preliminary authority based on the transportation merits pending the Board’s development of its environmental analysis. The Association’s Motion – if granted – would subvert the Board’s environmental review by rejecting the Townline Rail Petition before the Draft EA is released.

The Association’s pattern of either misunderstanding the Townline Rail Petition or purposely obfuscating continues when the Motion argues, “[t]he application process would provide the proper vetting for such a project, especially one that involves an inherently controversial solid waste transfer facility.”<sup>60</sup> The Association then cites to the Clean Railroads Act which restricts the Board’s authority over solid waste rail transfer facilities.<sup>61</sup>

This argument is irrelevant because Townline Rail is not seeking authority to build a transload facility. Townline Rail is seeking authority to construct a line of common carrier

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<sup>59</sup> Motion at 9-10 (emphasis added).

<sup>60</sup> Motion at 10.

<sup>61</sup> Motion at 10, n. 11.

railroad that will, in part, serve a transload facility. The Board’s regulations at 49 C.F.R. §1155.2(a)(10)(ii) make clear that the Proposed Line and proposed rail service would not be considered part of a “solid waste rail transfer facility” that is regulated by the Board. In fact, it is CarlsonCorp that will construct a transloading facility to transload incinerated ash, C&D, and aggregate. And, CarlsonCorp will obtain approval for its transloading facility from state and local governmental entities. Therefore, the transloading facility will obtain vetting through the state and local process. Thus, any issues the Association has with respect to the transfer facility is not a “controversy” with respect to the Proposed Line, and as such, does not warrant requiring Townline Rail to file a full application for the Proposed Line.

The Association asserts, “[i]n controversial cases, the filing party typically is required to submit a formal application.”<sup>62</sup> This is untrue. As referenced above, the Board approved the 85-mile crude-by-rail project in Utah through a petition despite substantial public interest.<sup>63</sup> In that case, the docket shows 1,731 Environmental Comments. The Association provides no Board precedent to support its assertions that opposition to a petition raising environmental issues triggers a full application.

Assuming *arguendo* that public opposition to a petition could trigger a full application, the Association’s “avalanche of opposition” melts on inspection because the asserted environmental impacts are unsubstantiated. The Association’s strategy is abundantly transparent. First, the Association complains of a lack of notice about the Proposed Line. Second, it develops its unsubstantiated environmental impacts of the Proposed Line. Third, it organizes a print and digital media letter writing campaign in opposition to the Proposed Line

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<sup>62</sup> Motion at 10.

<sup>63</sup> *Supra* n. 58.

asking the public to adopt its lack of notice and unsubstantiated environmental impact claims.

Fourth, based on these letters to the Board, it seeks a motion to dismiss citing “controversy.”

Conveniently, the Association orchestrates this “opposition” before OEA even releases the Draft EA which will of course consider environmental impacts of the Proposed Line.

- a) The Association had notice of intentions to construct rail facilities on this property and has been an active participant at the federal and local level.

The Association complains that “surrounding communities were never advised by local, state, or federal officials that this rail project was under consideration.”<sup>64</sup> The Association repeats this claim in its advocacy materials on the Association’s website and this suggestion is copied by the Facebook Group opposing the Townline Rail Petition.<sup>65</sup> But this complaint lacks merit because the Association has been aware of plans for rail facilities on the CarlsonCorp property and active participants in the public process.

Under the Board’s rules governing petitions for exemption in rail construction cases, a petitioner is not required to publish a notice of its petition in a local newspaper.<sup>66</sup> But the Board does provide an avenue for public comment. As the Board has explained, the Board’s OEA issues a draft EA, “evaluating alternative routings and potential environmental impacts and possible environmental mitigation for public review and comment.”<sup>67</sup> The Board continues, a “Final EA then will be issued addressing the public comments, containing appropriate additional

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<sup>64</sup> Motion at 5; See Exhibit N, “Dear Neighbors” Letter available at <https://TownlineRailassociation.org/wp-content/uploads/2023/03/Neighbors.pdf>; Exhibit J, *Facebook Group Talking Points*.

<sup>65</sup> See <https://TownlineRailassociation.org/> (last visited April 17, 2023); Exhibit J, *Facebook Group, We Oppose Townline Rail*.

<sup>66</sup> See *Ken Tenn Regional Rail Partners, Inc. – Construction & Operation Exemption – in Fulton County, KY. And Obion County, Tenn.* STB Finance Docket No. 36328, slip op. at 8 (citing 49 C.F.R. pt. 1121).

<sup>67</sup> *Id.*, slip op. at 8 n. 11.

analysis, and making final recommendations regarding reasonable and feasible alternatives and any appropriate environmental mitigation.”<sup>68</sup>

Here, the Association has already filed environmental comments with the Board, the Association has orchestrated a letter writing campaign, and even this Motion itself is an indication that the Association is fully aware of this project, and has had the opportunity to comment. It has done all this even before the Board has issued the Draft EA and opened the comment period. Moreover, the Association has commented on the Town of Smithtown Comprehensive Plan. In addition, one of the named parties in the Motion even commented publicly in an August 2022 newspaper article.<sup>69</sup> The Association’s complaints that the surrounding communities were not advised of this project, and that they will not have the opportunity to make their views known, is not credible.

b) The “substantial public opposition” the Association uses to justify their Motion reflect the unsubstantiated environmental impacts asserted by the Association in its print and digital media campaign.

The Association attempts to support the Motion by citing public opposition to the Proposed Line. But neither the Association nor the “substantial opposition” have cited to, or commented on, the Board’s Draft EA for the Townline Rail Proposal because it has yet to be released by OEA.

Instead, the letters submitted to the Board by the Association echo the Association’s comments as posted on the Association’s website,<sup>70</sup> print advertisement,<sup>71</sup> and copied by a

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<sup>68</sup> *Id.*

<sup>69</sup> Exhibit F, Nicholas Spangler, *Kings Park Rail plan would haul waste. Federal approval required to enable effort by businessman in hamlet*, *NEWSDAY*, Aug. 17, 2022, available at 2022 WLNR 25855580.

<sup>70</sup> See <https://Townline Railassociation.org/> (last visited April 17, 2023).

<sup>71</sup> Exhibit I, STOP Carlson Corp Freight Yard.

Facebook Group opposed to the Proposed Line.<sup>72</sup> The Association’s print advertisements assert that the Proposed Line will include trains “hauling toxic ash” and the impact on the community will be an “[e]ndless caravan of diesel freight trains & container trucks [that] will come and go all hours of the night, idling all day, causing noise, fumes, pollution, vibrations, additional trucks, road congestion, traffic hazards, innumerable health risks, and more injurious outcomes.”<sup>73</sup> The ad lacks any citation to anything in Townline Rail’s Proposal that would support these claims.

Another concern echoed in the Motion, the Association’s comment to the Board, the Facebook Group page, and by many of the citizen comments is a concern that the Townline Rail proposal “fails to show the surrounding area includes a federally classified deep recharge area for a sole source aquifer.”<sup>74</sup> Townline Rail does not yet know, if its Proposed Line will impact any of the aquifers below Long Island because as of the filing of the Motion, OEA has not yet released its Draft EA. However, the Association’s comments fail to note that the entirety of Long Island rests on top of one of four aquifers and according to the U.S. Geological Survey, a large portion of Long Island are recharge areas to these aquifers.<sup>75</sup>

The Association is asking the Board to dismiss the Townline Rail Petition based on opposition that the Association itself has led based on unsubstantiated environmental claims. The Association attempts to justify the Motion, in part, by citing opposition letters from the public instead of waiting to hear from the Board’s OEA to hear what OEA views the actual

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<sup>72</sup> Exhibit J, *Facebook Group, We Oppose Townline Rail*.

<sup>73</sup> *Id.*

<sup>74</sup> *See* Motion at 5.

<sup>75</sup> *See* Exhibit K at 62, Map A.

impacts of the Proposed Line will be. The Association would have the Board ignore its own environmental analysis and instead rely on the Association's orchestrated opposition.

As noted above, opposition to a petition for exemption based on potential environmental impacts alone does not justify an application instead of a petition for exemption. This is especially true in this proceeding where the opposition is grounded in unsupported environmental impacts.

*2. The Association's concern over the financial feasibility of the Proposed Line is misplaced because failure of Townline Rail to exercise the Board's authority would not negatively impact the affected community since the Townline Rail Proposal is to be constructed entirely on CarlsonCorp's property without public funding.*

The Association feigns concern for the Proposed Line's financial feasibility citing "funding sources for what appears to be a high dollar undertaking."<sup>76</sup> The Association's concern with the financial feasibility is unsupported.

In petition for exemption proceedings for construction authority, the availability of funds is not relevant to the Board's authorization of construction because authorization is permissive, not mandatory.<sup>77</sup> "The Board has repeatedly recognized that the ultimate decision to go forward with an approved project is in the hands of the applicant and the financial marketplace, not the agency."<sup>78</sup>

In construction proceedings brought to the Board through an application, the Board considers the financial condition of the applicant and the financial feasibility of the project to

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<sup>76</sup> Motion at 10-11.

<sup>77</sup> *Seven County Infrastructure Coalition – Rail Construction & Operation Exemption – In Utah, Carbon, Duchesne, and Uintah Counties, Utah*, STB Finance Docket 36284, slip op. at 6 (served Jan. 5, 2021) citing *Mid States Coal. For Progress*, 345 F.3d 520, 552 (8th Cir. 2003); *Cal. High-Speed Rail Auth. – in Fresno, Kings, Tulare, & Kern Cntys., Cal.*, FD 35724 (Sub-No. 1) (STB served Aug. 12, 2014).

<sup>78</sup> See *Ken Tenn Regional Rail Partners, Inc. – Construction & Operation Exemption – in Fulton County, KY. And Obion County, Tenn.* STB Finance Docket No. 36328, slip op. at 7-8.

protect “the affected communities from needless disruptions and environmental impacts if the applicant were to start construction but not be able to complete the project and provide the proposed service.”<sup>79</sup> Here, the Townline Rail Proposed Line is separated from the neighboring communities by the LIRR Port Jefferson Branch. Townline Rail will not be acquiring property via eminent domain or otherwise from any of those communities on the opposite side of the LIRR Port Jefferson Branch. If Townline Rail were unable to complete the project, the neighboring communities would not be negatively impacted. Moreover, since public funds will not be used, there would be no harm to the public or “wasted funds” if the project were not completed.

3. *The Association argument that the Proposed Line is unnecessary is contradicted by their own evidence in their Exhibits A and B.*

In the Motion, the Association argues that the Townline Rail Proposed Line is unnecessary due to “the lack of need for this transload facility in this area.”<sup>80</sup> The Association states, “there are already three other private rail waste transfer stations – in Yaphank, Brentwood, and Medford – in various stages of approval.”<sup>81</sup> Yet, two of these facilities are not permitted to transload incinerator ash.<sup>82</sup> And the third – at Yaphank – is still undergoing governmental reviews at this time. Therefore, it appears – as the Town of Smithtown Supervisor says – the need for the Proposed Line does in fact exist.

Even if other facilities do exist on Long Island to transport the commodities that Townline Rail seeks to transport, under the RTP, competition is encouraged. The RTP (4) and

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<sup>79</sup> *Tongue River Railroad Company, Inc. – Construction and Operation – Western Alignment*, STB Finance Docket No. 30186 (Sub-No. 3), slip op. at 14 (served Oct. 9, 2007).

<sup>80</sup> Motion at 10-11.

<sup>81</sup> Motion at 3-4.

<sup>82</sup> Association’s Motion, Exhibit A at 3, “Unacceptable Wastes”; Exhibit B at 3, “Unacceptable Wastes”.



(5) state: the policy of the United States is “to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes” and “to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes.”<sup>83</sup> Further, the RTP (2) and (7) provide that Board policy should “minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions . . .,” and “reduce regulatory barriers to entry into . . . the industry.”<sup>84</sup> Thus, it is clear that the RTP supports the Proposed Line. It does not support a motion to dismiss. Nor does it support requiring an application in place of a petition in this proceeding.

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<sup>83</sup> 49 U.S.C. §10101(4), (5).

<sup>84</sup> 49 U.S.C. §10101(2), (7).

## CONCLUSION

In conclusion, Townline Rail respectfully requests that the Board reject the Association's Motion to Dismiss because Townline Rail will meet the Board's standard for "holding out" and is eligible to request authority for an exemption to construct the Proposed Line. Further, the Board should reject the Association's request that the Board dismiss the Townline Rail Petition and order a full application because this request is largely based on environmental opposition that is unsubstantiated, and environmental impacts will nonetheless be considered by OEA as part of the EA process.

Respectfully submitted,



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*Counsel for  
Townline Rail Terminal, LLC*

Dated: April 24, 2023

# **Exhibit A**

**DEVELOPMENT  
PLAN**

**TOWN OF SMITHTOWN, N.Y.**

DEVELOPMENT PLAN

TABLE OF WITNESSES

prepared by

Richard L. DeBuck, Director of Planning  
Robert Friedlander, Special Consultant  
Thomas R. Thorsen, Assistant Director

TOWN BOARD

|                 |                      |
|-----------------|----------------------|
| Robert A. Brady | Supervisor           |
| Peter Nowick    | Justice of the Peace |
| Floyd Larisohn  | Justice of the Peace |
| Otto Schubert   | Councilman           |
| Levi T. Given   | Councilman           |

PLANNING BOARD

|                        |                 |
|------------------------|-----------------|
| Murry Levine, Chairman |                 |
| Harold E. Purick       | Arthur R. Jones |
| Vito Soverano          | Marlin Murphy   |
| Erhardt Olsen          | Joseph Herico   |

JULY 1961

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## INTRODUCTION

This development plan for Smithtown is intended to provide a comprehensive, but flexible, guide for the physical development of the town over the next 25 years. It includes the principles on which decisions relating to physical development are, or should be, based as well as major proposals for such development. It is hoped that adherence to this plan, with such revisions as may be made necessary by unforeseen future developments, will provide maximum practical benefits for the town in terms of efficiency, convenience, amenity and economics.

This plan is not intended to be a rigid blueprint for future development. Many of its proposals are flexible (e.g., general areas rather than fixed sites are usually indicated for the location of proposed local recreation facilities); and future developments, which cannot be unforeseen at this time, will undoubtedly necessitate revisions and amendments. The necessity for flexibility in following the proposals of the Plan does not mean, however, that its principles and standards can be ignored. They must be adhered to if the physical development of Smithtown is to be properly directed to ensure maximum benefits for its present and future residents.

Preliminary elements of a comprehensive plan for the development of Smithtown have been prepared over past years by the Town's planning staff and consultants. Material from these studies has been utilized and, where necessary, revised, modified or expanded and is summarized in this plan. There is no attempt made, however, to duplicate material already available in preliminary reports; therefore much of the information on which the findings and proposals contained in this plan are based can be obtained only by referring to these reports. All such preliminary reports are listed in the appendix.

of business use is proposed for Kings Park in the area presently zoned for residential use between the present central business district and the railroad. The location of this land between existing business and the railroad tracks makes it much more suitable for commercial development than for residential use. Similarly, deepening of the business district along Lake Avenue in Saint James is considered desirable.

### 3. Wholesale, Supply and Service

Most of the land along the Jericho Turnpike and Middle Country Road is in the "G-1" Commercial District, which was adopted in 1959. This zone, designed to provide wholesale, supply and service facilities to the Town's businessmen and residents and to the traveling public, is appropriate for this area; therefore the plan proposes that this use be continued along most of the Jericho Turnpike and Middle Country Road. In addition, it is proposed that land along both sides of Meadow Road west of Indian Reed Road in Kings Park be utilized for this purpose. Most of the developed land along this road is already so utilized and its location alongside the railroad lends itself to this kind of use. This use is also proposed for an area along Route 25A immediately north of the point where it crosses the railroad. This area is now partially developed in service uses, and the further development of such uses is appropriate for the area.

## Industrial Land Use

As previously indicated, Smithtown can expect a considerable increase in industrial development over the next 25 years if it makes adequate plans for such development. Most of this development should be well controlled light industry; since most of the prime industrial sites in the town are adjacent to good residential land, much of which is partially developed. The Planning Department study entitled Smithtown and Industry, presented in October 1959, which analyzed the industrial pattern and industrial zoning in Smithtown has been used as one of the bases for the development of the plan for industrial land use.

### 1. Light Industry

Proposed sites for light industry, to be developed in accordance with the requirements of the "G" Industrial District are as follows:

#### a. Town Line Road Industrial Area

This area of approximately 110 acres lies on the Huntington town line and is bounded, in addition, by East Northport Road and the proposed alignment of relocated Route 25A. The proposed construction of relocated Route 25A, together with existing East Northport Road, a concrete highway, and the railroad will provide excellent transportation facilities for this site. The site is now



predominantly vacant. Adequate public water supply can be obtained. The land is generally irregular and wooded, except for several level sites along East Northport Road; but it can be easily cleared and graded.

b. Indian Head Road Industrial Area

This area of approximately 210 acres is bounded on the west and south by Old Northport Road and on the east by Old Indian Head Road. It is bisected by the new Indian Head Road. This road, together with the proposed realignment of Route 25A, will provide excellent access. The area is largely vacant, and public water supply is good. The land is irregular and wooded, except for a cleared plateau at the north edge; but it can be easily cleared and graded.

c. Lawrence Road Industrial Area

This area, containing approximately 150 acres, is bounded by Kings Park State Hospital on the northwest, existing Route 25A on the north and the railroad on the southwest. It is bisected by the proposed alignment of relocated Route 25A which, together with existing Route 25A and the railroad, will provide excellent access. The area is almost entirely vacant and public water is easily available. The land is flat and cleared.

d. Wheeler Laboratory Industrial Area

This area of approximately 60 acres is bounded by the railroad on the southwest and the Smithtown-St. Johnland Road on the east. Approximately 20% of the area is used by Wheeler Laboratory; the remainder is vacant. Access is available from the railroad and the Smithtown-St. Johnland Road, and public water is available. The land is hilly and wooded.

e. Brentwood Industrial Area

This area of approximately 1330 acres is bounded on the northwest by the proposed Northern State Parkway Extension, and on the south and east by the Islip Town line. It presently has access from the Long Island Motor Parkway, Wicks Road and Old Willetts Path; and will have additional access from the Long Island Expressway. About 1100 acres are owned and used by the Mackay Radio and Telegraph Company but the remainder is largely vacant and available for industrial development. The land is generally level and wooded.

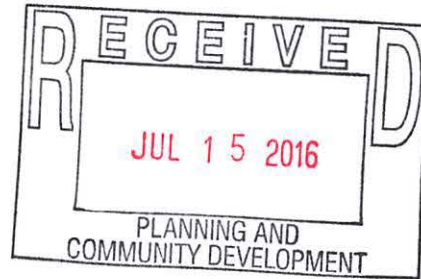
## **Exhibit B**



## Protecting Our Quality Of Life For Generations To Come

7/12/16

Mr. David Flynn  
Town Planning Director  
Town of Smithtown



Re. Draft Comprehensive Plan comments

Dear Mr. Flynn,

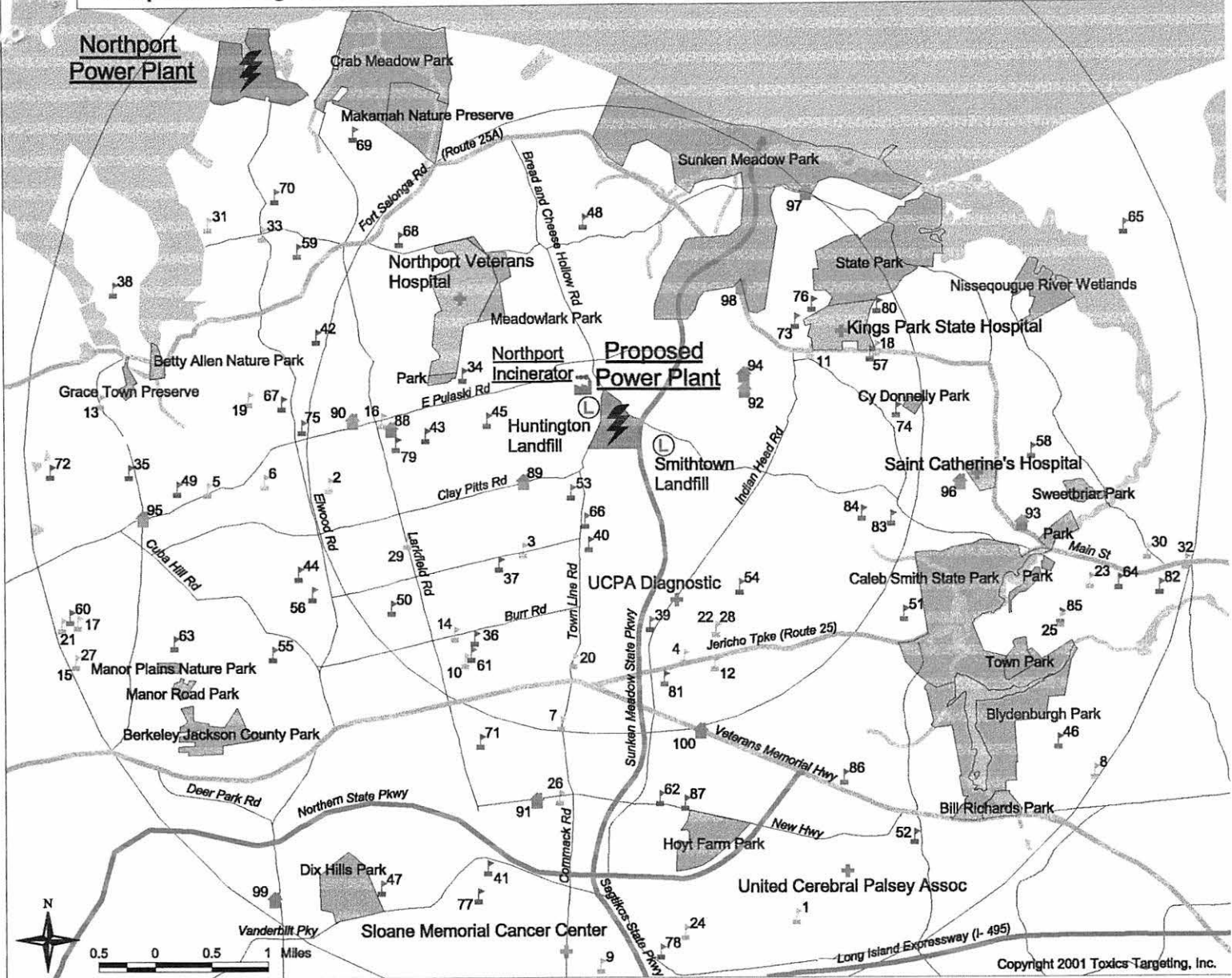
The Townline Association includes residents from Commack, Fort Salonga, E. Northport and Kings Park. They are impacted by the industrial area around Old Northport, Old Indian Head and Townline roads with over 96 schools, and dozens of senior residents and healthcare facilities within 5 miles (see map).

The core principals of Smithtown government have been quality of life for families and residents with safety and environmental protection.

The Draft Comprehensive Plan raises serious concerns and issues in achieving those goals. Proposals for power plants, railroad yards, waste transfer stations, sewage plants, shredders, scrap recycling, industrial storage, auto wrecking, rail sidings, strip mining, municipal solid waste, recyclables, organic waste, construction and demolition debris, hazardous waste, heavy industry, sewage plants, trucking terminals, and more are mentioned.

The Plan claims to be speaking for the residents. What “residents had an input into drafting the physical world desired by the residents”? What residents were consulted on “determining the economic development that supports the needs while maintaining the quality of life within the community”? Where is the “fairness of no portion of the population should be expected to bear unwarranted burdens with respect to costs, inconvenience, health, safety, etc.”? We fail to see how this is done with the communities’ interests with all the proposals of special uses like scrap, post offices, power plants, storage, rail yards and spurs, industrial storage, waste transfer, truck terminals, strip mining and other illegal land uses.

# Proposed Kings Park Power Plant / 5 Mile Affected Area / Vulnerable Populations



## Nursery Schools

- |                                      |  |                                       |  |
|--------------------------------------|--|---------------------------------------|--|
| 1 - Childtime Childrens Center       | 10 - Kiddie Care                       | 18 - New Discovery Nursery School     | 26 - Suffolk Youth Jewish Community Center |
| 2 - Creative Kids Preschool          | 11 - Kings Park Jewish Center          | 19 - Northport Nursery School         | 27 - Tender Years                          |
| 3 - Curiosity Corner Nursery         | 12 - Lilliput Nursery School           | 20 - Pumpkin Patch Day Nursery        | 28 - Tree of Life Nursery                  |
| 4 - Huggys Wonderland                | 13 - Little Friends Nursery School     | 21 - Rainbow Chimes Inc               | 29 - Tutor Time Child Care                 |
| 5 - Humpty Dumpty Day Nursery        | 14 - Little Lights Christian Preschool | 22 - Rainbow Preschool-Suffolk County | 30 - Tutor Time Child Care                 |
| 6 - Huntington Nursery School        | 15 - Love Of Learning Montessori       | 23 - Resurrection Pre School          | 31 - Village Pre School                    |
| 7 - Imagination Station              | 16 - Magic Circle Nursery School       | 24 - Serendipity Discovery World      | 32 - Village Presbyterian                  |
| 8 - Ivy League School Inc            | 17 - Miss Dawns Child Care             | 25 - Smithtown Christian Day Care     | 33 - Weekday Nursery School                |
| 9 - Kiddie Academy Child Care Center |  |                                       |  |

## Schools

- |                                      |                                     |   |                                    |
|--------------------------------------|-------------------------------------|---|------------------------------------|
| 34 - Bellerose Elementary School     | 48 - Fort Salonga Elementary School | 62 - Mandracchia Intermediate School    | 75 - Pulaski Road School           |
| 35 - Broadway School                 | 49 - Harborfields High School       | 63 - Manor Plains School                | 76 - Rogers Middle School          |
| 36 - Burr Intermediate School        | 50 - Harley Avenue School           | 64 - New York Avenue Junior High School | 77 - Rolling Hills School          |
| 37 - Cedar Road School               | 51 - Head of the River School       | 65 - Nissequogue School                 | 78 - Sagtikos School               |
| 38 - Centerport School               | 52 - Honey Hollow School            | 66 - North Ridge School                 | 79 - Saint Anthony of Padua School |
| 39 - Christ the King School          | 53 - Hubbs School                   | 67 - Northport High School              | 80 - San Remo School               |
| 40 - Commack High School             | 54 - Indian Hollow School           | 68 - Northport Middle School            | 81 - Smith Lane School             |
| 41 - Commack Middle School           | 55 - James H Boyd Elementary School | 69 - Norwood Road School                | 82 - Smithtown Elementary School   |
| 42 - Dickinson Ave Elementary School | 56 - John H Glenn High School       | 70 - Ocean Avenue School                | 83 - Smithtown Freshman Campus     |
| 43 - East Northport Middle School    | 57 - Kings Park High School         | 71 - Old Farms School                   | 84 - Smithtown High School West    |
| 44 - Elwood Middle School            | 58 - Landing School                 | 72 - Old Field Junior High School       | 85 - Sweetbriar School             |
| 45 - Fifth Avenue School             | 59 - Laurel Ave School              | 73 - Osgood Intermediate School         | 86 - The Pines School              |
| 46 - Forest Brook School             | 60 - Little Plains School           | 74 - Park View School                   | 87 - Wood Park School              |
| 47 - Forest Park School              | 61 - Long Acres School              |   |                                    |

## Senior Residences

- |                                     |                                    |                                   |   |
|-------------------------------------|------------------------------------|-----------------------------------|---|
| 88 - Atria Assisted Living          | 92 - Kings Park Manor              | 95 - Paumonok Village             | 98 - Sunken Meadow Adult Home             |
| 89 - Birchwood Adult Home           | 93 - Lutheran Center for the Aging | 96 - Sienna Village               | 99 - Sunrise Assisted Living of Dix Hills |
| 90 - Fairlawn Adult Home            | 94 - Martin Luther Terrace Apts    | 97 - St Johnland Nursing Home Inc | 100 - Tara Retirement Community           |
| 91 - Gurwin Jewish Geriatric Center |                                    |                                   |   |



## Protecting Our Quality Of Life For Generations To Come

The Plan mentions “some parts of the town have become unattractive (eg. Old Northport Rd.) a plan is needed to make them more desirable.” How is this Draft Plan making this area more desirable by endangering the environment and residents as well as breaking the intent of existing zoning laws?

Furthermore the Draft Plans assumes a cheerleading tone for such toxic applications: “These land uses tend to be unwanted by residents and surrounding property owners. Regarding some of these uses, courts have held that each town must accept its share of the region’s unwanted land uses. They should be allowed, but require regulations to site them in appropriate locations....” Vol. 7, p 33).

This completely contradicts other sections of the Draft Plan which professes concern for environmental and public health: “Different from most other places around the country, which obtain their drinking water from an exogenous source, Suffolk County sits atop its only drinking water source, which will likely remain the sole source of drinking water into the foreseeable future. As such, it is imperative to protect the groundwater resource from land-based pollutants....” Vol. 4, p. 58

and

“Long Island obtains its drinking water from the ground, unlike many places, which receive drinking water from surface water bodies. Inasmuch as we live directly over our water source, the way we use land can significantly affect the drinking water quality. This is often overlooked because we do not see our water supply. Both the quantity and quality of our drinking water supply is of concern.

Hydrologists have estimated that the amount of water contained in the underlying aquifer system is enough to sustain the future population of Long Island indefinitely. However, as noted, the groundwater is vulnerable to pollution and unless preventive measures are undertaken, groundwater quality will likely deteriorate further...” Vol. 3, p. 23 In addition salt water infiltration to the groundwater is becoming more of an issue for LI, making the safety of existing water even more important.



## **Protecting Our Quality Of Life For Generations To Come**

and

“The public tends to have concerns regarding the visual impact of the smoke stack, health impacts from emissions to the air, noise impacts from the turbines, traffic from fuel trucks, groundwater impacts from fuel leaks, and potential fires.”  
Vol. 7, p. 91-3

The aforementioned land uses present actual and potential health and environmental hazards. The biggest polluter on Long Island is the Long Island Rail Road. Just about every yard has had hazardous chemical and material spills and releases. Noise and diesel fumes would emit from the area since there is no electrification. Horns and engine exhaust would be heard. Yard lighting would be seen by the surrounding residents. Increased truck traffic would clog and make more dangerous the narrow, twisting, blind roads.

Power plants, cited in the Draft report as being gas turbine would cause similar problems. In addition, tens of thousands of gallons of backup fuel storage would be needed.

Waste transfer stations, sewage plants, shredders, scrap recycling, industrial storage, auto wrecking, rail sidings, strip mining, municipal solid waste, recyclables, organic waste, construction and demolition debris, hazardous waste, heavy industry, sewage plants, trucking terminals, etc. create odors, noise, vibration, truck traffic congestion (mostly up Indian Head and Townline Roads), fumes, emissions and hazardous chemical storage with release potential.

These are completely out of character with the area surrounded on all sides with schools, families and health facilities. Furthermore the Draft mentions how it lost control of zoning, where only a tiny core is heavy industrial and the rest is technically light industrial and residential (Vol. 5, p. 48). Encouraging such industries flies in the face of original intent of the Smithtown Zoning regulations.



**Protecting Our Quality Of Life  
For Generations To Come**

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The toxic heavy industrial uses suggested by the Draft Plan violate the Suffolk County Sanitary Code's Article 7 protection for Deep Recharge Special Aquifer Protection Zones. As mentioned in the Draft Plan Long Island is atypical in NYS in that its sole source of potable water is ground-sourced: "Long Island obtains its drinking water from the ground, unlike many places, which receive drinking water from surface water bodies. Inasmuch as we live directly over our water source, the way we use land can significantly affect the drinking water quality..... However, as noted, the groundwater is vulnerable to pollution and unless preventive measures are undertaken, groundwater quality will likely deteriorate further." Vol. 3, p. 23

Goundwater Management Protection Zone 1 underlies directly the Draft Plan's proposed heavy industrial uses near Townline Road and Old Nothport Road.

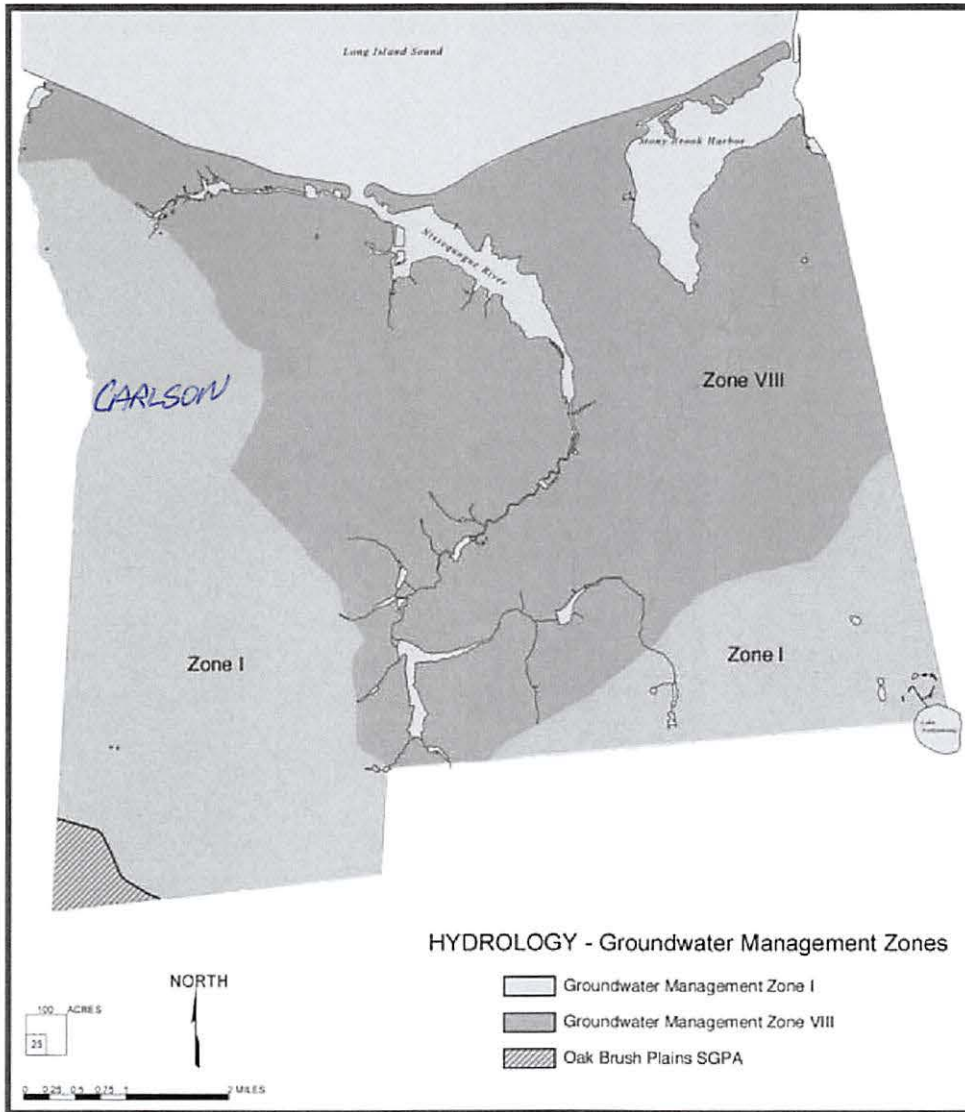


Fig. 15, Vol. 3, p. 23





## **Protecting Our Quality Of Life For Generations To Come**

Generating stations require hundreds of thousands of gallons of backup fuel oil storage prohibited by Article 7. The other industrial uses suggested in the Draft Plan have storage and spill potential of hazardous, prohibited chemicals specified in Article 7.

Much of the proposed industry would be located on or near the Carlson Property. A report by Toxics Targeting lists dozens of hazardous waste spills and releases over decades on these parcels. There are over 150 toxic waste sites and generators listed requiring NYS DEC and Superfund response. Toxic leachate plumes from the nearby Huntington and Smithtown landfills are ongoing. It defies reason that the Draft Plan proposes zone changes and encourages even more industrial uses further endangering the residents and environment.

Finally, environmental justice mitigates against further heavy industry in the Townline Rd./Old Northport Road area. We are subjected to a regional incinerator emitting pollution and carcinogens 24/7 along with its truck traffic. Regional asphalt and cement plants are present. Sand mining, industrial storage, pre-cast concrete, outdoor storage and yards, truck and auto repair are located there. The Draft Plan's suggestions of power plants, rail yards and spurs and other heavy industrial uses are unacceptable to an already heavily burdened community.

The Townline Road/Old Northport Road neighborhood is surrounded by schools, health care facilities and thousands of residents. It includes a Deep Recharge Aquifer Protection Zone specified in the Suffolk County Sanitary Code. There are few, straight, marked roads capable of handling high volumes of commercial traffic. It is already environmentally burdened with a regional incinerator, asphalt and cement plants. The Planning Department's Draft Comprehensive Plan shows serious deficiencies, contradictions and lack of judgment. In fact it proposes hazards and dangers to the residents and environment. It must be modified.



**Protecting Our Quality Of Life  
For Generations To Come**

The Planning Board may consider these suggestions:

- 1- The most hazardous and detrimental land uses to the environment and quality of life are power plants, rail yards AND RAIL SPURS. The Planning Board should explicitly state that and remove them from consideration.
- 2- Firmly enforce the original zoning and intent to minimize heavy, nuisance industries over the Aquifer protection Zone, and remove polluting, noxious uses that endanger the public and environment and lower home values.
- 3- Seek benign uses like public parks and playgrounds, Town Pool, solar and Wind farms, agriculture.

Sincerely,

A handwritten signature in cursive script that reads "George W. Husted".

Townline Association,

Fort Salonga Association, Commack Community Association

CC: Town Supervisor, Town Council

## **Exhibit C**



# TOWN OF SMITHTOWN

PLANNING and COMMUNITY DEVELOPMENT DEPARTMENT  
99 WEST MAIN STREET • P.O. BOX 575 • SMITHTOWN, NEW YORK 11787  
smithtownplanning@tosgov.com • www.smithtownny.gov • 631-360-7540

PLANNING BOARD  
CONRAD A. CHAYES, SR  
CHAIRMAN

JAMES EHRHARDT  
BARBARA DeSORBE  
THOMAS UNVERZAGT  
WILLIAM MARCHESI

September 22, 2016

Hon. Patrick R. Vecchio, Supervisor  
Members of the Town Board  
99 West Main St.  
Smithtown, NY 11787

Re: Comprehensive Plan Update

The Planning Board at their regularly scheduled meeting of September 21, 2016 adopted the following resolution:

BE IT RESOLVED that the Planning Board makes the following conclusions and recommendations to the Town Board relative to the Draft of the Comprehensive Plan Update:

1. Overall the draft plan would result in much more desirable Town than would the existing plan. The draft provides for a balance of protecting existing character of the Town, preserving the environment, providing goods and services, improving public health, improving government efficiency and sustainability, protecting property values, increasing employment, and improving problem areas.
2. We appreciate that no single plan will be ideal to everyone, but this draft generally achieves a balance of diverse interests.
3. It is not good planning to try to reconcile details at this stage. Professional planning experts state that a comprehensive plan is supposed to be general, but should layout the basic vision that a community seeks. The details will be addressed as time goes forward, and the plan will be used as a guide for methods and considerations for resolving the details.
4. The most significant conclusions from public input include:
  - *The medium density suburban character of the Tow should not be changed.*
  - *The visual quality of the residential neighborhoods is high.*
  - *The visual quality of many business districts and the Old Northport Road area are low.*
  - *The land uses that should be encouraged most: open space, 1-family homes, restaurants, stores, and agriculture.*
  - *The land uses that should be discouraged most: commercial parking in residential areas, heavy industry, outdoor storage, and apartments over 2 stories.*
  - *Park facilities in most demand: nature preserves, walking and biking trails, concert venues, kayak launches.*
  - *Park facilities in least demand: golf courses, hockey rinks, skateboard parks, basketball courts, and boating facilities.*

- *More areas should have sewers, especially high groundwater areas and downtown business districts.*
- *There is opposition in the Old Northport Road area to heavy industrial uses.*
- *Residents want to be able to walk to stores and community facilities.*

5. The public opinion survey suggests that the draft plan is largely consistent with the public's goal. The written comments are diverse, but suggest that some parts of the draft should be improved. Based on the information available at the present time, the Planning Board recommends that the plan be modified as described below.

#### Land Use

1. The amount of land used in the Old Northport Road corridor for heavy industry should be reduced.
2. The amount of land used for parkland, agriculture, and renewable energy should be increased
3. There should be some more flexibility for development of the Gyrodyne property. The essence of any development there should:
  - a. Support Stony Brook University, a major economic engine in the region
  - b. Provide a large buffer to maintain the natural and historic corridors
  - c. Limit overall density to be less intensive than if the property were to be fully built out in compliance with existing LI zoning
4. Rather than creating downtowns in Commack, Hauppauge, and Nesconset, the existing neighborhood retail areas should be enhanced, but not changed into downtowns that were developed before the advent of motor vehicles.
5. The visual quality of the downtowns should be improved.
6. The height of multi-family buildings should generally be limited to 2 stories.

#### Transportation

1. Pedestrian and bicycle circulation should be a high priority.
2. An LIRR yard should not be located in the Town unless the proposed yard would create less environmental and community impacts than uses permitted on the proposed site.
3. Paratransit service should be provided between the railroad stations and nearby retail centers.

#### Community Facilities

1. The plan should include components to reduce energy consumption and to increase renewable energy.
2. The parkland along Lake Ronkonkoma should be improved so as to beautify the lake area.
3. The plan should emphasize more trails for hiking and cycling.

#### Overall

1. The Inventory and Analysis volumes should be updated to either remove recommendations or ensure that the recommendations do not conflict with Volume VIII.

2. The goals and objectives should be modified so as to provide more guidance and to help establish priorities.

Very truly yours,  
Conrad A. Chayes, Sr., Chairman

  
Agnes J. Vion  
Clerk to the Board

AM/ajv

## **Exhibit D**

# TOWN OF SMITHTOWN

## SUPERVISOR

EDWARD R. WEHRHEIM

## TOWN COUNCIL

Thomas J. McCarthy  
Lynne C. Nowick  
Lisa M. Inzerillo  
Thomas W. Lohmann



## Planning Department

Peter Hans, Town Planning Director

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smithtownplanning@smithtownny.gov

June 2, 2021

## PLANNING ADVISORY REPORT

To: Supervisor Edward R. Wehrheim  
Members of the Town Board

From: Peter Hans, Town Planning Director

Re: Draft Comprehensive Plan comments and amendment

On December 15, 2020, H2M presented the draft Comprehensive Plan to the Town Board. At the same meeting, the Town Board adopted a SEQRA Positive Declaration and issued a draft scope for the Generic Environmental Impact Statement. Over the course of the following three months, the Planning Department and Department of Environment and Waterways conducted six community outreach meetings and received written and emailed comments from the public.

There were about 180 participants in the community outreach meetings, many of whom provided verbal comments. In addition, the Town received written and emailed comments from approximately 20 residents and business owners. The Department of Environment and Waterways reviewed all comments pertaining to the draft scope of the GEIS. The Planning Department reviewed all of the comments pertaining to the draft Comprehensive Plan.

In consideration of these comments and the Planning Department's review of the draft Plan, this Department recommends that the draft Plan be amended as follows by accepting this Planning Advisory Report as an amendment to the draft Plan.

### Recommended amendments

1. The draft Plan originally proposed changing 105 acres of land in the Townline Road/ Old Northport Road area from LI (Light Industrial) to HI (Heavy Industrial). This should be modified so that the vast majority of this land remains LI. The only expansion of HI should be about 11.5 acres on two split zoned tax lots on the south side of the LIRR. These lots are split zoned LI and HI. The southern parts of the lots, adjacent to Old Northport Road, are zoned HI. The Town has a need for heavy industrial acreage, in order to provide necessary and desired community services; however, the Town has a responsibility to ensure that the location of heavy industry is compatible with surrounding land uses, has adequate access to services, and minimizes traffic congestion on public streets. HI is an appropriate zone for this location because it is between existing HI-zoned land and the railroad and is more than 500 feet from Townline Road and all residential uses. The railroad provides alternate access to the site, and if a rail siding were to be



built, access to the railroad could reduce truck traffic on Old Northport Road. The expansion of HI in this area would be partially offset by elimination of approximately 3 acres of HI zoning on Meadow Road West in Kings Park and 2.5 acres on Henry Street in Commack.

2. Raleigh Farm and adjoining property on the west side of Kings Park Road (paper street) should remain zoned R-21; however, given the site's relative proximity to downtown Kings Park, the Town may consider allowing multi-family development at this location if it would provide a public benefit and would not create significant adverse environmental impacts as determined via a project-specific Environmental Impact Statement.
3. The NB zoning district should continue to permit retail uses.
4. The NB zone should allow front yard setbacks on Pulaski Road and North Country Road to be consistent with the average of existing nearby structures. The front yard setbacks in these two locations are typically less than the NB minimum setback of 50 feet.
5. Meadow Road East should be "right-zoned" to PB.
6. Consider allowing low intensity commercial uses on the north side of NYS Rte 25A, between Birch Road (paper street) and Cedar Road in Kings Park.
7. The multi-family zone proposed on W. Jericho Tpke should be a floating zone. The underlying zone should remain WSI-1 until such time as the Town receives a multi-family development proposal(s).
8. The NB zoning on the north side of W. Jericho Tpke, east of Morewood Drive, should extend only as far east as it does on the south side of the road.
9. The WSI-1 district should allow auto repair garage uses.
10. The four NB zoned tax lots that are part of the Vanderbilt Shopping Center (Vanderbilt Motor Parkway, Commack Road and Crooked Hill Road) should be "right-zoned" SCB.
11. The land along Commack Road south of Crooked Hill Road should remain OB, instead of PB.
12. The proposed zoning at NY Avenue School should be modified from TV-Core to the following:
  - a. Area currently zoned CB should be TV-T, not TV-Core as initially indicated
  - b. Area currently zoned R-10 should remain R-10, but all development should be clustered into townhouses or garden apartments to preserve the athletic fields and historic resources

*\* The plan should still support the transfer of development rights to this site.*
13. The Plan should be amended to allow expansion of the Lake Avenue District to the west side of 1<sup>st</sup> Avenue only as part of a larger development plan, and on a case-by-case basis. The west side of 1<sup>st</sup> Avenue is suitable for accessory parking or expansion of buildings that front Lake Ave, but there should not be commercial buildings fronting 1<sup>st</sup> Avenue.
14. Four tax lots on the south side of Moriches Road east of TD Bank on Lake Ave should be zoned PB instead of R-10.
15. The plan should be amended to eliminate the recommendation to rezone to LI the land between the intersection of NYS Rtes. 347 & 25 and Alexander Avenue. Rather the Plan should

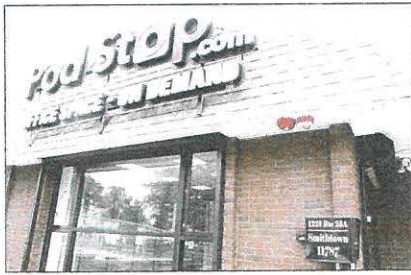
recommend that this area be developed with uses that are compatible with the Smith Haven Mall. This could include commercial development, offices or multi-family uses. Multiple zoning districts could support such development.

16. The area of the proposed Gyrodyne sewage treatment plant should not be zoned Park, and all references to such should be corrected (p 62 and in SJ Community Plan). The Plan should also recommend allowing uses that support SUNY Stony Brook and Stony Brook University Hospital, and require site design that maintains the character of the historic North Country Road corridor and Mills Pond Historic District.
17. The draft Plan should recommend modifying the procedure for obtaining a Certificate of Existing Use (CEU) so that uses made non-conforming as a result of recommended zoning amendments could easily obtain a CEU. This could be accomplished by notifying the property owners of all known non-conforming uses, automatically issuing CEU's for such uses, or some similar method.
18. Recommendations pertaining to enhancing the Town's bicycle network should be updated to reflect the recommendations of the 2020 Suffolk County Bike Master Plan. This section should also recommend working with Suffolk County and New York State, as well as other public and private entities to implement the 2020 Suffolk County Bike Master Plan projects in the Town of Smithtown.
19. Table 3, *Locations Identified or Potential Transportation Improvements from Public Workshops*, should be moved to the appendix, where the public comment summaries are located.
20. The Assessment of Future Transportation System Needs should be revised to reflect the anticipated rate of growth, based on AKRF's updated methodology (attached).
21. The Transportation Plan should be modified to clarify that for projects involving State or County roads, the Town should work with the County and/or State to implement the projects; however, the projects would primarily be County or State projects.

AM:am

cc: David A. Barnes, Environmental Protection Director  
Matthew V. Jakubowski, Town Attorney  
Constance Vavilis, Senior Environmental Planner, H2M Architects + Engineers

# **Exhibit E**



**Essentials for office offered at PodStop**

**-See story, page 9**



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# The Smithtown News

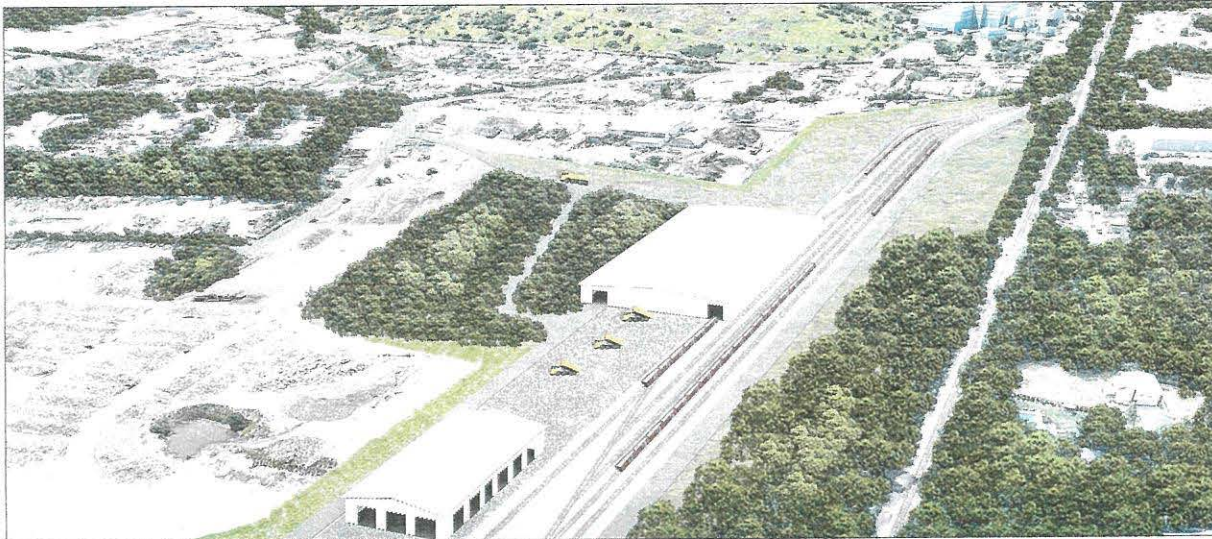
THE COMMUNITY'S WEEKLY NEWSPAPER

VOLUME 77, No. 63

July 28, 2022

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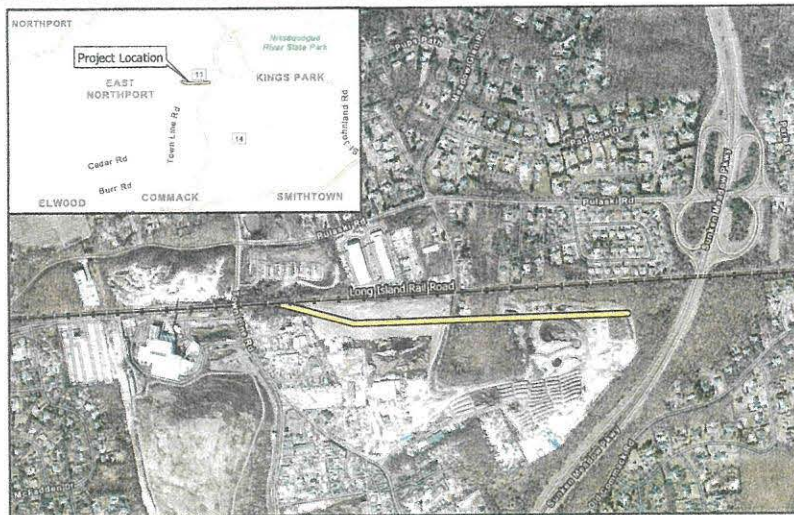
## Kings Park rail spur proposed

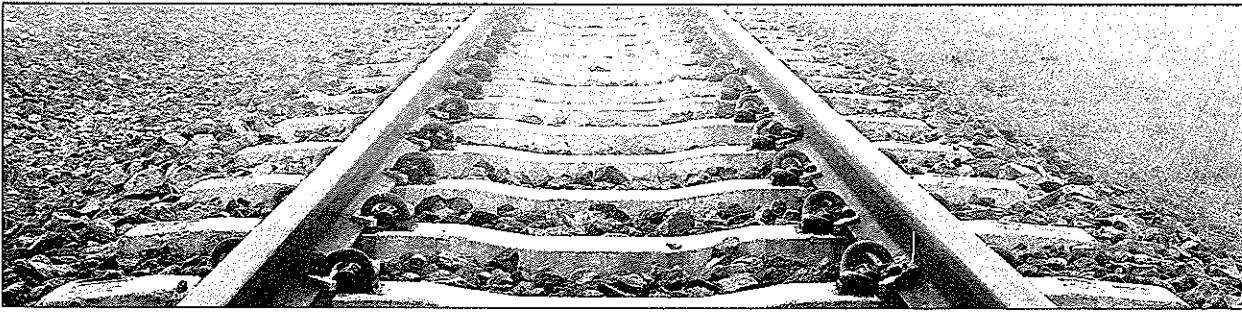


**CarlsonCorp seeks 5,000-foot rail line to haul ash from L.I. incinerators**

**-See story, page 3**

A rendering of the proposed Kings Park rail system (above) and a map of its proposed location (right).





# Kings Park rail spur under review

## CarlsonCorp proposes line for incinerator ash, other industrial hauling

By David Ambro

Doing business as Townline Rail Terminal, LLC, Toby Carlson and his company, CarlsonCorp, Inc., of 140 Old Northport Road, Kings Park, is proposing to build a new train rail spur in Kings Park for commercial use, including the disposal of incinerator ash. **The Smithtown News** learned this week.

The proposed rail spur will connect to the Long Island Rail Road Port Jefferson branch just east of the trestle on Town Line Road south of Pulaski Road. It will run 5,000 feet east parallel to the south side of the main rail line, five tracks wide in some spots, past Meadow Glen Road, to a terminus just west of the Sunken Meadow State Parkway. There will be two buildings constructed at the terminus of the spur, one of which will allow train cars to pull into it and the other will be alongside the tracks.

The proposed project also includes the construction of a new roadway network, with a loop road surrounding the tracks with grade crossings on both ends and with a new road from that loop across the heavy industrial property to Greenwood Road and then to Old Northport Road at the existing site of the CarlsonCorp Power Crush business.

New York & Atlantic Railway operate freight service on the Port Jefferson branch of the railroad and has entered into an agreement with Carlson to install a new switch connecting the proposed Carlson spur to the main rail line. Townline Rail Terminal, LLC proposes to initially transport incinerator ash from the Covanta Energy incinerator on Townline Road in East Northport as well as construction and demolition debris from the existing Carlson operation. The Brookhaven ash landfill is expected to reach capacity by 2024 and Long Island municipalities are currently looking for alternative disposal methods, the options either truck or train.

In addition to shipping ash and construction and demolition debris

from the proposed rail spur, Townline Rail Terminal, LLC plans to offer rail service for shipping goods and commodities to adjacent property owners including Kings Park Ready Mix, Kings Park Materials asphalt plant, and Pelkowski Precast Concrete.

Townline Rail Terminal, LLC was established in 2021 to operate as a common carrier railroad on the proposed spur. The company is an affiliate of CarlsonCorp Inc., which currently operates a waste transfer facility on an 82-acre site to which the rail spur will be built. The site, which is permitted by the New York State Department of Environmental Conservation (DEC) but is residentially zoned land for which there are no Town of Smithtown approvals, is used by Carlson to recycle and process uncontaminated concrete, asphalt pavement, rock, brick, and soil, woody yard waste, un-adulterated wood, yard waste, and horse manure.

CarlsonCorp, which was established in 1997, but has operated from the site for decades before that, also operates a municipal solid waste transfer station at the Brookhaven Town Landfill in Yaphank, which transports municipal solid waste to the incinerator in East Northport. CarlsonCorp is also the main transporter of incinerator ash from Covanta Energy to the Brookhaven landfill.

The proposal has been quietly moving through the federal review process since December 9, 2021 when Townline Rail Terminal, LLC representatives and legal council, and representatives from the Town of Smithtown met with federal officials from the Washington D.C. based Surface Transportation Board, Office of Environmental Analysis (OEA). February 7, 2022 the OEA granted Townline Rail Terminal, LLC a waiver of the six-month pre-filing notice generally required for rail construction projects. OEA sent a letter June 22 to state, county and town offices seeking their input about the proposed project.

According to OEA, Townline postulates that the rail spur will provide an alternative to trucking on

busy Long Island roads by providing efficient, direct rail transportation to the interstate rail network. The 82-acre site on which the rail spur is proposed to be built and on which CarlsonCorp is currently operating its construction and demolition debris facility, is owned by several different companies: Central Development Partners, LLC, Southwell Development Partners, LLC, and Short Street Development LLC. Townline Rail Terminal, LLC proposes to build the rail spur on the northern more boundary of the property which runs parallel to the south side of the Long Island Rail Road (LIRR) tracks.

All of the information related to the Townline Rail Terminal, LLC application is available to the public on the Surface Transportation Board website under docket number FD 36575.

Among the documents included on the website is a two-page July 19 letter to the OEA from Smithtown Town Supervisor Edward Wehrheim.

According to the supervisor, the proposed Carlson rail spur and associated internal roads and rails for trucks and trains falls within the town's land use jurisdiction and that town site plan approval and a town building permit will be required. Mr. Wehrheim informs the OEA that the town code does not currently permit a rail transfer facility and that the code would have to be amended to accommodate such a use. Mr. Wehrheim advises the OEA that the town is in the process of updating its comprehensive master plan, which is expected to be completed in 2023, and will include rail transfer as a potential use.

In his letter, Mr. Wehrheim also expresses concerns about the impacts the proposed facility could have on the surrounding community. "The town anticipates that the proposed rail terminal will increase the demand for industrial uses on the applicant's properties and will have potential environmental impacts including noise, fugitive dust and odors, ground and surface water and traffic," Mr. Wehrheim writes, adding that all of

these impacts will have to be under the New York State Environmental Quality Review Act (SEQRA).

In addition, Mr. Wehrheim suggests that if the application is advanced, it is in the town's best interest that the proposed site be rezoned from residential to heavy industry and light industry zoning classifications to adequately reflect the uses that are both ongoing and proposed for the site. The change of zoning will also require SEQRA review, according to the supervisor's letter.

"The town is mindful that there is an existing single-family neighborhood located northeast of the proposed rail site that may be impacted by the proposed rail line and transfer facility," the Wehrheim letter says.

Environmental Analyst Torey Kouril, of the New York State Department of Environmental Conservation's (DEC) Long Island office in Stony Brook, responded to OEA's request for input with a letter July 21. DEC staff, according to the letter, has determined that the installation of the rail would have the potential to impact solid waste management activities at the CarlsonCorp, Inc. facility, which has an active permit through February 7, 2027.

According to the Kouril letter, in order to undertake the construction of the rail spur onto the Carlson site, the CarlsonCorp permit would have to be modified because of the corresponding physical space reduction and new waste streams proposed for the facility. "Please be aware that this permit modification would be necessary regardless of whether the train is used for solid waste operations or not, because of the associated loss of the area available in the facility for storage of waste and for products derived from the waste. This aspect in and of itself would necessitate an updated Facility Manual and site plan, because of the site reconfiguration," the Kouril letter says. "Our preliminary review indicates that the facility's permit would also need to be modified to address the transfer of ash and construction and

(Continued on page 12)

*"The town is mindful that there is an existing single-family neighborhood located northeast of the proposed rail site that may be impacted by the proposed rail line and transfer facility."*

**-Smithtown Town Supervisor Edward Wehrheim**

# Train rail to haul ash, industrial materials under review by feds

(Continued from page 3) demolition (C&D) debris. This aspect of the project may require adjustments to the facility's throughput and storage capacity due to the addition of new waste streams and the loss of space for existing operations."

According to the Kouril letter, the DEC staff will provide CarlsonCorp, Inc. with the information and documentation DEC will require for a permit modification.

CarlsonCorp attorney Justin Marks, of the Washington D.C. law firm Clark Hill, outlined the project in a letter to OEA January 14, 2022. In his letter Mr. Marks discloses that CarlsonCorp wants to have the proposed rail line fully constructed and operational before the ash landfill closes in 2024.

"Townline believes that the environmental effects of the project will be limited," Mr. Marks concludes. He has requested that the Surface Transportation Board evaluate the project through its own environmental assessment rather than the environmental impact statement required locally because the project is not likely to have a significant impact on the environment.

"Townline does not believe that an environmental impact statement will be necessary because the impacts of the Proposed Line are negligible considering the surrounding land uses," says the Marks letter.

Mr. Marks points out that the site is currently used for processing recognizable, uncontaminated concrete, asphalt, brick, glass, rock and general fill (RUCARBs), woody yard waste, unadulterated wood, yard waste, and horse manure; that the rail will be along an existing train track, and will be within an industrial area operating with state DEC permit. He also points out that the town is in the process of modifying its master plan to allow such a rail transfer use.

"The proposed line will not cross any public or private roads and as such no safety impacts at rail crossings will result because of the construction of the Proposed Line. The Proposed Line will result in removal of one rail crossing at Meadow Glenn Road," writes Mr. Marks. "Townline's proposed project is consistent with historic industrial use of the property. The Proposed Line will result in new rail traffic, creating a

modest net increase in energy use for train operations but also removing truck traffic from local roadways."

According to Mr. Marks, the proposed transfer facility will be limited to five-day-a-week truck traffic and will be limited to eight truck trips

per day. "Anticipated rail traffic volume can be expected to lead to a corresponding increase in noise levels.

However, the Proposed Line is situated amongst industrial areas, a common carrier freight/commuter rail line, The Sunken Meadow State

Parkway, The Huntington Landfill, Covanta Energy, and the Iroquois Pipeline right-of-way and as such Townline does not anticipate that the Proposed Line will impact sensitive noise receptors," according to the Marks letter.

## The road once traveled

(Continued from page 5)

in the '30s and his spirit haunted the rooms.

While the upstairs was The Shining to the waitresses, it was a starving artist Bohemia to me. The bare walls, the wooden floor, and the sparse furniture let me pretend I was a writer who owned one set of decent clothes, rented a room on a weekly basis, and was forced to work at a restaurant in between the chapter rewrites of his novel. I'd have put my typewriter near the window overlooking the train trestle and hung my only coat on that bent nail protruding from the blank wall.

The beauty of my time at Angelo's was that even at age fourteen I knew I was part of something important. It was a popular restaurant to which everyone and his parents and his grandparents in town seemingly had a connection. Angelo's dripped with the vibe of yesterday and each shift brought me closer to the celebrated past. It brimmed with character, personified through its longevity and quirks. Though 155 West Main has not

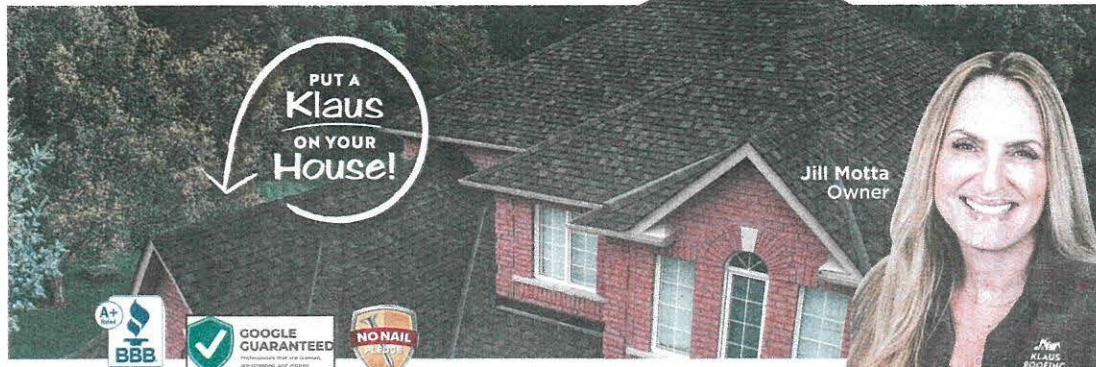
been Angelo's for close to twenty five years now, seeing the restaurant in that woeful state was still powerful for me, like seeing an ailing old friend.

When I got off the train, I walked over the hot tracks to get a closer look at the restaurant. With my suitcase in tow and mindful not to trespass, I walked the perimeter of the former Angelo's. Shouldn't the building fall under some protected law? Certainly there are establishments as old as Angelo's that have historical plaques on their fronts. Maybe I should write a letter to someone in charge of this sort of thing. I thought. Or maybe I'll keep my fingers crossed that a new restaurateur will buy the place, restore it to some of its former glory. I'd be the first guy in line to buy a beer there or plug a quarter (or more likely a dollar now) in the jukebox to play Hey Jude if and when that happens. For now, I'll wait, and be satisfied with the knowledge that I was lucky enough to have Angelo's, my old friend, as the setting to a crucial chapter in my life.

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# **Exhibit F**

8/17/22 Newsday 18  
2022 WLNR 25855580

Newsday (USA)  
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August 17, 2022

Section: NEWS

KINGS PARK Rail plan would haul waste Federal approval required to enable effort by businessman in hamlet

Nicholas Spangler/ [nicholas.spangler@newsday.com](mailto:nicholas.spangler@newsday.com)

By Nicholas Spangler

[nicholas.spangler@newsday.com](mailto:nicholas.spangler@newsday.com)

Before Long Island's biggest landfill closes, Kings Park businessman Toby Carlson is seeking federal approval for a rail spur to haul incinerator ash and construction debris from his waste transfer facility in the hamlet's industrial area to the Midwest.

Carlson envisions 5,000 feet of new rail on 82 acres he controls near Town Line and Pulaski roads. The rail would branch off the Long Island Rail Road's Port Jefferson line and terminate at a planned 100,000-square-foot transfer building. Working with freight line New York & Atlantic Railway, Carlson would run a 15- to 20-car train to that building weeknights.

Inbound trains would carry aggregate, lumber and automobiles for local distribution. Departing trains would carry sealed containers with up to 1,500 tons of ash from the incinerator at waste-to-energy plant operator Covanta's nearby Huntington Resource Recovery Facility and other material from his CarlsonCorp. transfer facility, Carlson said.

The proposal, laid out in documents submitted to a federal freight rail regulator, comes ahead of the scheduled 2024 closing of the Brookhaven landfill in Yaphank, which accepts more than 1 million tons of ash and construction debris yearly. Hauling that waste off-Island by road alone would mean thousands of new truck trips, worsening air pollution and drive times. Trucks already haul hundreds of thousands of tons of waste directly off-Island, negotiating bottlenecks and tolls at New York City bridges.

"We will have a crisis and we will need all avenues available," Carlson told Newsday.

A spokesman for regulator Surface Transportation Board didn't comment.

Smithtown Supervisor Edward Wehrheim said the spur, which needs local and state approvals, "would help remedy" a problem for which government and industry leaders have offered "no real concrete decisions."

Covanta Huntington processes 341,000 tons of municipal waste yearly, with trucks making 20 runs per day to the Brookhaven landfill. The spur would replace those runs with one truck making the trip between the plant and the transfer facility, Carlson said.

A Covanta spokeswoman said the company is "continuing to explore sustainable solutions for handling this ash, but we have not finalized plans after Brookhaven closes." LIRR is reviewing the proposal, an MTA spokeswoman said.



Elsewhere on Long Island, five waste-by-rail projects have been built or are in the approvals process, said Will Flower, vice president of Winters Bros., which has proposed perhaps the largest, in Yaphank. “There’s no more effective way to ship freight than rail,” Flower said, citing cost and greenhouse gas emissions cut by up to 75% versus truck hauling.

David Tonjes, a Stony Brook University professor who studies solid waste management, agreed rail promises greater efficiency but said it has its drawbacks.

To move freight off Long Island, a train must stop in Brooklyn and barge across the harbor or run north to Albany’s bridges. There are also issues of environmental justice for communities along rail lines, he said.

Fort Salonga Association civic president Keith Macartney said he’s worried about health risks from the ash in transit and train noise and fumes. Carlson and Wehrheim said berms and engineering solutions would buffer a Kings Park neighborhood northeast of the facility.

Adrienne Esposito, Citizens Campaign for the Environment executive director, said waste management should include waste reduction but “we need a viable option for ash disposal . . . a terminal in an already industrialized area is a reasonable option.”

---- Index References ----

Company: Surface Transportation Board; LONG ISLAND RAIL ROAD; MTA S.P.A.; Winters Brothers Waste Systems Inc; SMITHTOWN CENTRAL SCHOOL; COVANTA HOLDING CORPORATION; Stony Brook University

Industry: (Environmental (1EN24); Environmental Services (1EN69); Healthcare (1HE06); Healthcare Services (1HE13); Land Transportation (1LA43); Medical Waste Disposal (1ME51); Municipal Solid Waste Disposal (1MU11); Passenger Railroads (1PA89); Passenger Transportation (1PA35); Railroads (1RA98); Transportation (1TR48))

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Language: EN

Other Indexing: (Railway; Resource Recovery Facility; CarlsonCorp.; Newsday; Brookhaven; Fort Salonga Association; Carlson and Wehrheim; Citizens Campaign; the Environment; Surface Transportation Board; Long Island Rail Road; MTA; Winters Bros.; Smithtown; Covanta Huntington; Stony Brook University) (Nicholas Spangler; Toby Carlson; Edward Wehrheim; Will Flower; David Tonjes; Keith Macartney; Adrienne Esposito)

Edition: NASSAU AND SUFFOLK

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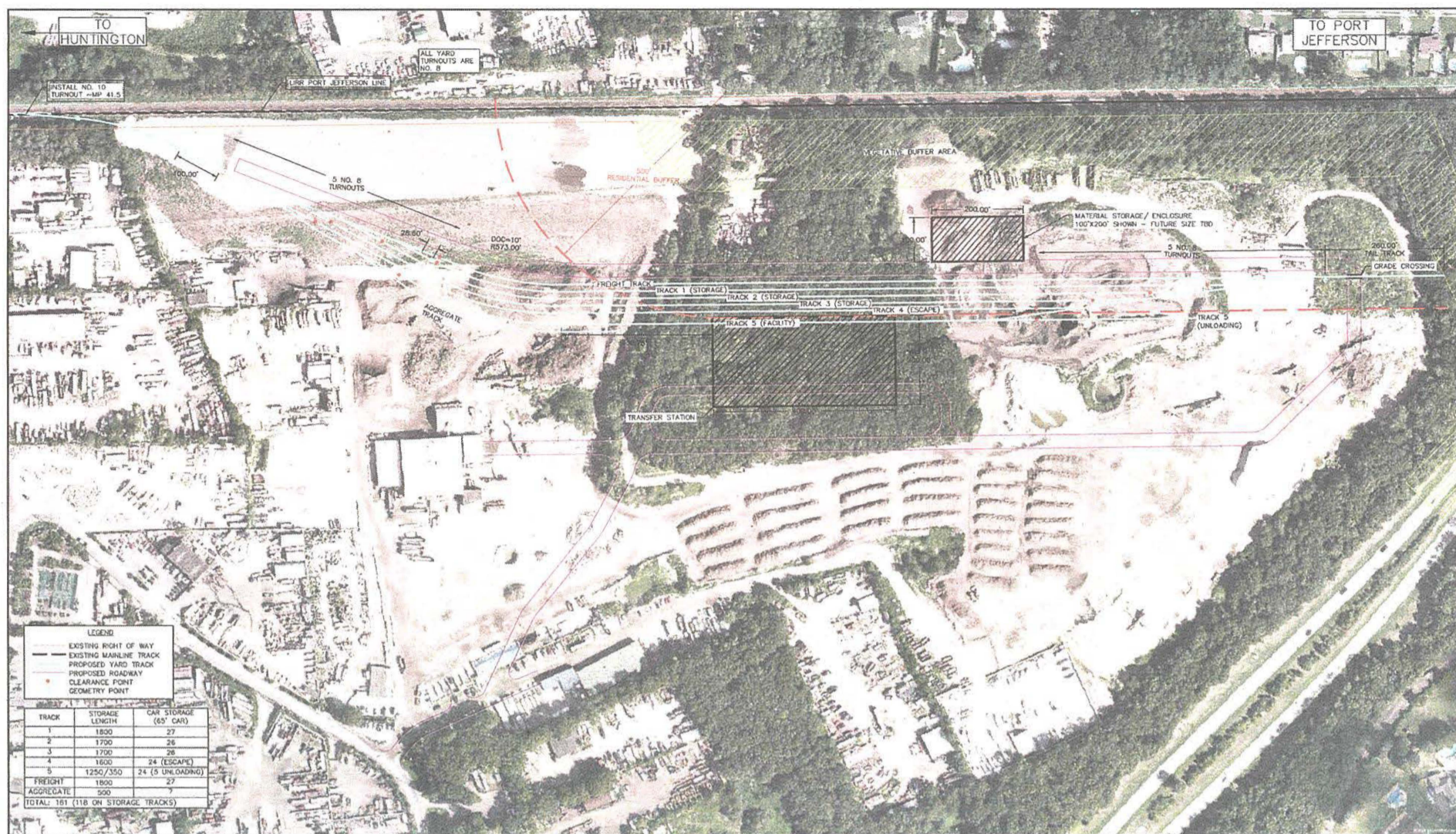
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**NewsRoom**

# **Exhibit G**



An aerial photograph of the area of Kings Park where a train yard is proposed to be built, the teal lines depicting where the train tracks will be built and the magenta lines depicting where the new loop road to the facility will be built. A rendering (below) is of the proposed facility.

# Feds on the clock for train yard

## U.S. Surface Transportation Board pondering Kings Park facility for ash disposal

By David Ambro

Townline Rail Terminal, LLC, an affiliate of CarlsonCorp, Inc., has been advancing plans to build a train yard in Kings Park to transport incinerator ash and construction and demolition debris off Long Island and vehicles and construction materials to Long Island.

After an 11-month preliminary review process, Townline petitioned the United States Surface

Transportation Board in Washington D.C. November 17, 2022 for approval for construction of the rail yard on the 82-acre CarlsonCorp. Inc. property at Meadow Glen Road that will be connected by a rail spur to the Port Jefferson branch of the Long Island Rail Road just east of Townline Road. The Board has 90 days, until February 15, 2023, to act on the Townline petition.

All of the information related to the application, including renderings of the proposed facilities as well

as a map of the proposed access road, is available for public inspection on the Surface Transportation Board website. Click "Search STB Records" on the home page and then input the application number, FD 36575.

Smithtown Supervisor Edward Wehrheim, on behalf of the town board, has written two letters to the STB board, one July 19, 2022 and the other October 28 2022, endorsing the project. Suffolk  
*(Continued on page 11)*



# Kings Park train yard approvals pending

(Continued from page 3)

County Legislator Robert Trotta (R-Fort Salonga) has also sent a letter September 27, 2022 to the STB in support of the rail yard plan.

Townline first presented its plan to the Surface Transportation Board (STB) December 9, 2021. In his July 19, 2022 letter, Supervisor Wehrheim notified the STB that the town is in the process of updating its comprehensive master plan to include modifications to the zoning code to accommodate the Townline train yard plan. According to the supervisor, that work to update the master plan is expected to be completed sometime during 2023.

The train yard will consist of five tracks and two buildings, one 80,000 square feet on the north side of the tracks with one of the train rails running through it, and the other 20,000 square feet the south side of the tracks. In Townline's original proposal the track capacity was 114 freight cars 65-feet each, with the storage length of the five tracks 1,780 feet, 1,653 feet, 1,660 feet, 1,645 feet and 800 feet. In an updated application November 17, the capacity has been increased to 161 cars, and the tracks increased in length to 1,800 feet, two of 1,700 feet, and two of 1,600 feet. The train yard will be 500 feet from the residential neighborhood on Glen Road and Glen Lane in Kings Park.

The total railway will be 5,000 feet, connecting to the Port Jefferson branch just east of the Townline Road/Pulaski Road intersection and running parallel to the south side of the existing commuter rail along the south side of Meadow Glen Road to a terminus just west of the Sunken Meadow State Parkway. The project also includes the construction of a trucking road to the rail yard from Old Northport Road. New York & Atlantic Railway operates freight service over the LIRR Port Jefferson line and will install a new switch to connect to the proposed Kings Park rail spur.

Ash from the Smithtown/Huntington incinerator on Townline Road just south of Pulaski Road is

disposed of at the Brookhaven landfill, which is expected to reach capacity in 2024, which has local municipalities scrambling for alternatives for incinerator ash disposal. The Smithtown Town Board supports the Kings Park rail yard as the most viable alternative and, therefore, has been supportive of the Townline Rail Terminal application. The Townline connection to the main rail road line will be just across Townline Road from the incinerator.

Townline received a waiver from the Surface Transportation Board, Office of Environmental Analysis (OEA) September 29, 2022 to forego the requirement for a full environmental impact statement (EIS) and to instead require a less detailed environmental assessment (EA) review. According to the petition filed in November, Townline has retained Vanasse Hangen Brustlin, Inc. (VHB), of Hauppauge, to work with OEA to prepare the environmental assessment in lieu of the EIS.

According to OEA, once the EA is completed the document will be available for public review and comment. "OEA will then prepare a final EA that responds to the substantive comments received and includes any appropriate modifications to its existing analysis or additional analysis," OEA Director Danielle Gosselin concluded in her September 29, 2022 determination to waive the environmental impact statement. "The Final EA will also set forth OEA's final recommended mitigation measures to the Board. The Board will then consider the entire environmental record, including the Draft EA, all comments received on the Draft EA, and the Final EA, when making its final decision in this proceeding. However, should the EA process disclose unanticipated impacts that are significant and unable to be mitigated, OEA would require the preparation of an EIS at that time."

The determination to approve the environmental waiver was based

on a preliminary request by OEA to governmental agencies for comment, which reportedly received minimal concerns. OEA staff also conducted a site visit during which it determined the project area is already disturbed and there is an existing New York State Department of Environmental Conservation (DEC) permitted waste transfer station operating on the property.

OEA further determined that very little wildlife remains on the land that can be impacted by the rail line and the proposed line will not cross water or wetlands. In addition, OEA said only one train per week is expect to move on the proposed rail, which is low volume with minimal potential impacts related to air quality, safety and noise.

"Based on OEA's site inspection and review of available satellite imagery, the presence of an existing operational rail line, intervening topography, and vegetative buffers further reduce the likelihood that operation of the proposed rail line would result in adverse noise impacts on noise-sensitive receptors, such as residences, schools, nursing homes, hospitals, and places of worship," writes OEA Director Gosselin.

In the November 17, 2022 petition to the Surface Transportation Board, Townline disclosed that CarlsonCorp currently hauls 12,000 truckloads of incinerator ash per year from the

incinerator to the Brookhaven landfill. Townline will provide a rail alternative of disposal to that amount of ash trucking.

According to the application, Kings Park Ready Mix Corp., another Carlson affiliate at 140 Old Northport Road, Kings Park Materials, and Pelkowski Precast, of 294A Old Northport Road, are other nearby customers that can potentially use trains rather than trucks for materials. In its petition to the Surface Transportation Board, Townline says it will also offer its rail yard services to any other interested parties.

"CarlsonCorp established Townline to develop this rail project because we see a transportation need for ourselves and other shippers, and we believe that Townline is the best solution to meeting this need," writes Toby Carlson, owner of CarlsonCorp in a November 17 letter to the Surface Transportation Board.

**The Smithtown News** broke the story about the proposal rail yard in its July 28, 2022 edition. Since that time, the application has received no public opposition from the community, though one neighbor who lives in close proximity to the site has expressed concern about the impact it will have on the quality of life in the adjacent residential community. There appears, however, to be no organized opposition to the proposed project.



MONTHLY MEETING

The Greater Smithtown Chamber of Commerce

**Tuesday, January 24, 2023**

**12:00 Noon**

**Join Us for Lunch  
at**

*Villa Sorrento*

823 Jericho Turnpike, St. James

**at our**

**ANNUAL INSTALLATION OF OFFICERS**

*Guest Speaker:*

**Supervisor Edward Wehrheim**

**\$35 Includes Lunch**

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Pre-Register & Pay Online @ [www.smithtownchamber.com](http://www.smithtownchamber.com)

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You can also pay at the door or call the Chamber office 631-979-8069

011223

## State ballot access bill signed

Governor Kathy Hochul signed legislation last week to improve access to the ballot by allowing voters more time to register and vote ahead of an election.

The new legislation allows voters to cast a ballot in an election if their registration forms are received by the board of elections by the tenth day ahead of an election, as compared to the 25 days ahead of an election under the old law.

"Too often, there are unnecessary obstacles for voters to pass through just to participate in the democratic process," Governor Hochul

said. "By removing these hurdles, more New Yorkers can bring their representation to the ballot box. By shortening this time period, more New Yorkers can be flexible with their voter registration and exercise their right to vote."

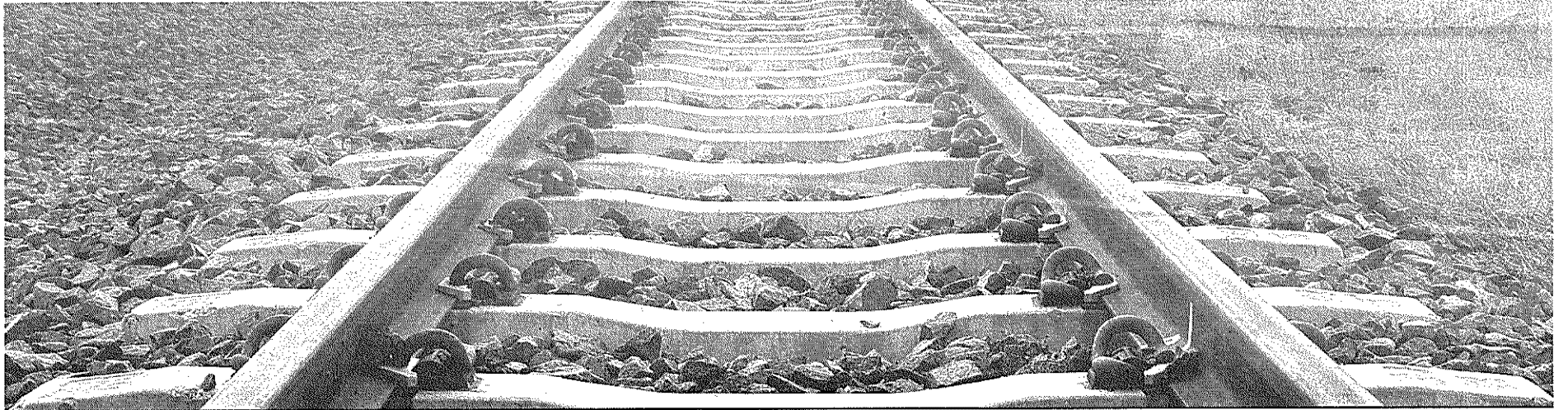
Voters will be eligible to vote in an election if they register in person by 10 days prior to an election; voters submitting registration forms by mail will be eligible to vote in an election if their forms are postmarked by 15 days prior to the election and received by the board of elections by 10 days prior to an election.

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# **Exhibit H**



## Editorials & comments

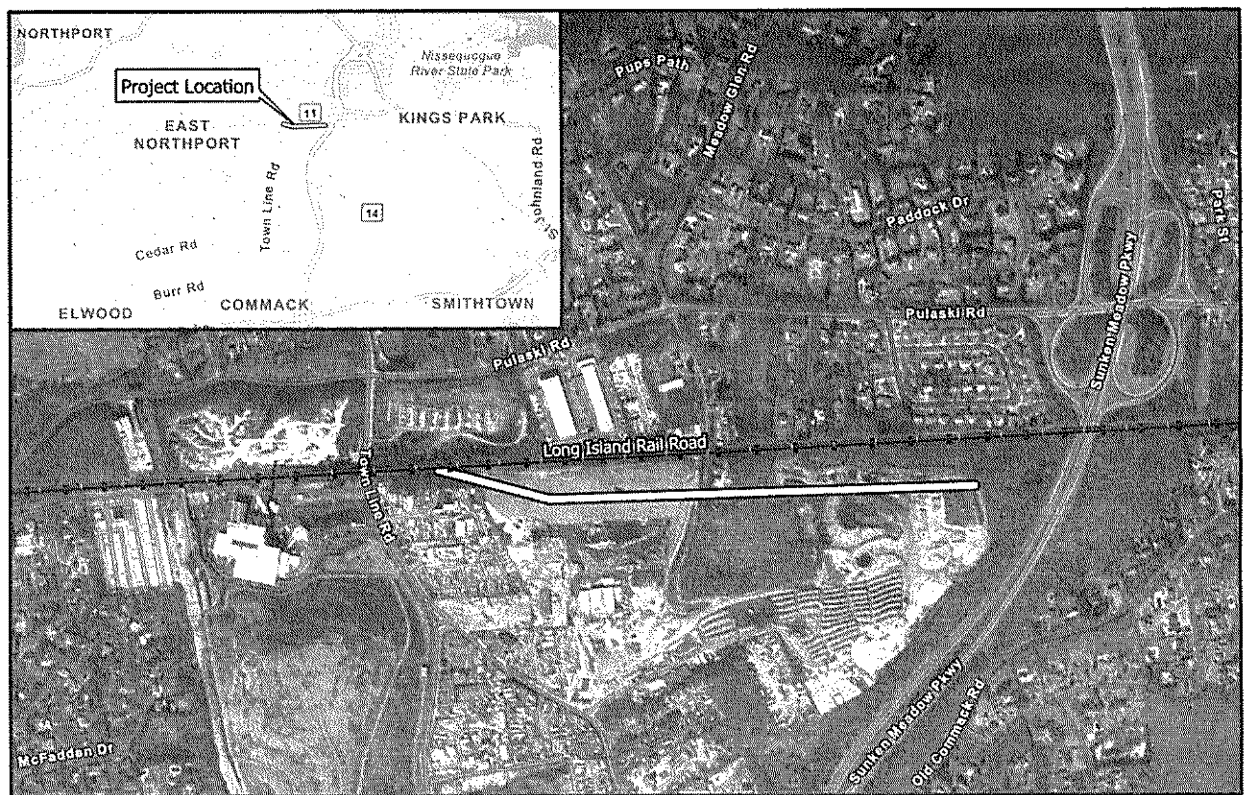
# Kings Park train yard on fast track

It's hard to tell if people see what's coming because there is no organized opposition, but the federal government is about to approve the construction of a train yard in Kings Park.

Townline Rail Terminal, LLC, an affiliate of CarlsonCorp. Inc, of Kings Park, proposes to build the train yard on 82 acres of CarlsonCorp property at the end of Meadow Glen Road, between Townline Road and the Sunken Meadow Road, within 500 feet of the residential neighborhoods on Glen Road and Glen Lane in Kings Park. It will be used to transport by rail incinerator ash and construction and demolition debris off Long Island and vehicles and construction materials onto Long Island.

This isn't going to be a rail spur that will allow a single train to roll in and roll out from time to time with a load of incinerator ash. This is going to be a regional train yard with a capacity to handle 161 train cars each, 65 feet long, that's 10,465 feet of train. There are going to be five tracks totaling 9,400 feet in the rail yard and several thousand feet of rail to connect the yard to the main branch, of the Long Island Rail Road's Port Jefferson branch, just east of the Towline Road/Pulaski Road intersection. There will also be 100,000 square feet of industrial buildings, an 80,000 building with one of the five rail lines running through it and a 20,000 square foot building alongside the tracks.

First reported about in the July 28, 2022 edition of **The Smithtown News**, it is incredible that this project has not engendered some level of community concern and/or opposition. Perhaps that is because



Smithtown Town Supervisor Edward Wehrheim and County Legislator Robert Trotta (R-Fort Salonga) both endorsed the project.

Something's missing and maybe it is that residents are just unaware of this project because it is pending approval from the federal government rather than local government. In a town where residents are fighting docks, townhouses, Airbnbs, etc., it makes little sense that a 161-train rail yard has gone unnoticed.

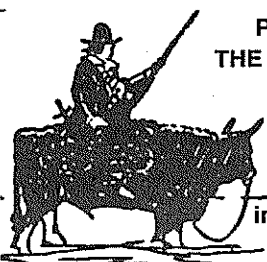
If there is any opposition out there, now is the time to speak out. The United States Surface Transportation Board (STB) has an application pending from Townline Rail Terminal LLC and

CarlsonCorp that is on the clock. It was submitted November 27 and the STB has 90 days to make a decision. An environmental assessment is underway and a public comment period will have to be held, but this application process is moving fast and it has town, county and federal officials all backing it (*see related news story, page 3*).

Perhaps it is a good idea to build a regional train yard for transporting incinerator ash, construction and demolition debris, vehicles and construction materials in Kings Park. It will no doubt bring jobs and commerce to the area. If there is, however, anybody who is concerned about this now is the time to speak up, not once a shovel is in the ground.

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 This newspaper will not be responsible for any error  
 in advertising beyond the cost of the space occupied by the error.

## Letters from our readers

### Thanks...

Editor, The NEWS:

To the wonderful persons that found my car keys in the BJ's parking lot in Commack just before Christmas. Thank you for bringing the keys to the Smithtown Library in Commack on Indian Head Road. Fortunately I had a Smithtown Library tag on my key ring. Thanks are also in order to the Smithtown Library in Commack for contacting me the same day! Happy New Year to all.

Art Drago  
 Smithtown

## Write!



Send letters to the editor to:  
 info@smithtownnews.com

# **Exhibit I**

# Advertising sign aimed at townhouse opposition

(Continued from page 2)

Better Townhomes Preserving 125 acres. Call for an appointment 631.582.8300."

Mr. Hayes has sent three emails to the Town of Huntington, specifically Supervisor Edmund Smyth and the town attorney's office, objecting to Northwind marketing the units prior to obtaining final approval. "We still, after three emails, have received no response from the town supervisor or the town attorney's office, which I think is pretty shabby," Mr. Hayes said.

"He's still selling these things. He's advertising them prematurely in our view, but he's still going ahead," Mr. Hayes said, adding that the town has ignored his inquiries about the premature marketing of the units, which he claims is unlawful until the project has been approved by the town.

FSPOA has filed a lawsuit in New York State Supreme Court challenging the December 15 ZBA approval of the Northwind special exception. The Huntington Planning Board has granted preliminary approval of the subdivision but has not yet voted on the final approval. The Indian Hills application is not on the March 1 planning board agenda for a vote. FSPOA is poised to file a second lawsuit against the town and the planning board challenging the subdivision approval.

Mr. Hayes said this week that the town has been uncooperative in terms of announcing when the planning board intends to act on the Indian Hills subdivision. "It is pretty obvious that they are trying to give us the absolute minimum notice, hoping it will wear down the turnout we are able to get," Mr. Hayes said. "Again, it is unnecessary and it is unbelievable that the town treats residents like this."

The Indian Hills development plan calls for 24-units in the Lookout Ridge cul-de-sac off Mystic Lane atop a bluff overlooking the Long Island Sound, 14-units on the Overlook Path cul-de-sac off Fresh Pond Road north of Breeze Hill Lane, and 36-units on the Serene Place cul-de-sac in place of the existing driving range, which will have a loop road with two access points on Breeze Hill Road, one just east of Makamah Road and the other looping around the back of the clubhouse to the access driveway to the country club.

Plans also call for the

clubhouse to be rebuilt and a fitness center built on the south side of Breeze Hill Road where the existing clubhouse is currently located. The existing clubhouse, which will be demolished, is 7,882-square-foot. The new clubhouse will be 10,234-square-foot. At two-stories, the new clubhouse will feature a 200-seat dining room on the upper floor and a 50-seat member dining room with a cocktail lounge, outdoor dining on the patio and member lockers.

The clubhouse at Indian Hills Country Club.



# STOP

## CarlsonCorp Freight Yard



**WHO**

Townline Rail Terminal, affiliate of CarlsonCorp

**WHERE**

Meadow Glen Road at Pulaski Road, between Townline Road & Sunken Meadow Pkwy.

**WHAT**

A regional train yard with 7 tracks totaling 9,400 feet, 2 buildings totaling 100,000 square feet and a 161 freight car capacity totaling 10,456 feet of train. Trains will be hauling toxic ash, construction & demolition debris, and goods & commodities



### WHAT YOU ARE NOT BEING TOLD

It is 500 feet from families in Kings Park, tightly bordering homes in Commack, E.NPT/NPT & Fort Salonga - Close to schools, playgrounds & nursing homes - Located in a federally classified deep recharge area for a Sole Source Aquifer.

### IMPACTS ON OUR COMMUNITIES

Endless caravan of diesel freight trains & container trucks will come and go all hours of the night, idling all day, causing noise, fumes, pollution, vibrations, additional trucks, road congestion, traffic hazards, innumerable health risks, and more injurious outcomes.

**Please Volunteer/Donate to Help STOP the Townline Rail Terminal**

Name \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_ Phone # \_\_\_\_\_

Amount: \$25 \_\_\_ \$50 \_\_\_ \$75 \_\_\_ \$100 \_\_\_ \$500 \_\_\_ Other \$ \_\_\_

Check payable to Townline Association, Inc.

Mail to Townline Association Inc., P.O. Box 119, Commack, NY 11725

Visit [www.townlineassociation.org](http://www.townlineassociation.org) to learn more



## **Exhibit J**

10:54



We Oppose Townline...



Talking Points for Letters to the Surface Transportation Board (STB) - you may have your own reasons, use them as well.

\* The area is already overburdened by many sources of pollution.

Within a five mile radius we are exposed to toxic pollution from the Northport Power Plant, the Huntington (Covanta) Incinerator, the medical waste incinerators at the Northport VA and St. Catherine's Hospitals, several capped landfills and their methane venting systems, and a cornucopia of businesses that add more pollutants from sand mining, concrete crushing and asphalt production. There are the emissions from the numerous trucks that serve the businesses in the area and the emissions from the LIRR diesel trains.

\* The property is located within feet of residential homes on Meadow Glen Road, Glen Road and Glen Lane in Kings Park. Additionally, it is located in close proximity to several densely populated residential neighborhoods in Ft. Salonga, Northport, East Northport, Commack, Smithtown, Greenlawn and Elwood.

\* The property is located in a federally designated deep recharge area of a sole source aquifer. If this highly sensitive area of the aquifer is compromised by the leakage of hazardous materials it would affect the drinking water for all of Long Island.

\* The property is located near many schools, playgrounds, ball fields and nursing homes. Children, the elderly and people with lung conditions and allergies are particularly sensitive to these pollutants.

\* According to Carlsoncorp's plans, the proposed freight train rail terminal would have freight trains coming and going between 10 pm and 5 am, while other operations related to loading toxic incinerator ash, aggregates (concrete, building materials, asphalt, etc) and unladen commodities (new cars, lumber, etc.) will take place anytime throughout the day and night.



Home



Friends



Watch



Marketplace



Notifications

Menu

10:54



We Oppose Townline...



\* This freight yard will create several types of pollution: sound (horns, screeching from trains, trucks, forklifts, machinery sounds), light (site must be illuminated at night), air (diesel fumes, dust, particulate matter, etc.), water (potential infiltration of the sole source aquifer) and vibrations from the freight trains moving on the tracks.

\* Carlsoncorp's failure to involve the community in its plans. Despite the fact that this plan has been in works for almost two years, Toby Carlson owner of Carlsoncorp, Smithtown Supervisor Edward Wehrheim and Suffolk County Legislator Robert Trotta have kept this a secret. The community only found out about this project when a story about it by David Ambro appeared in the Smithtown News.

\* Potential depreciation of residential property values in the surrounding communities.

\* Increased truck traffic on local streets. Carlsoncorp claims that it will decrease truck traffic on our roads by shipping the incinerator ash and aggregates off Long Island via freight train instead of trucks. However, they fail to mention that they have included space for 50 tractor trailers on their site plan and that commodities will be shipped to their site via incoming freight trains for distribution via trucks all over Long Island.

\* In order for this freight rail terminal to be built, the Town of Smithtown would need to change the existing zoning on the site. A change to Heavy Industry Zoning would set a precedent in the Old Northport Light Industrial area. Once Carlsoncorp receives the zoning change from Light Industry/Residential to Heavy Industry to accommodate this regional freight rail terminal it is likely that other businesses in the area will also make similar zoning change requests.

\* Make sure to personalize your letter! Mention if someone in your family has health concerns, or is in a vulnerable age category and mention the distance of the Carlsoncorp property to your home, etc.



Home



Friends



Watch



Marketplace



Notifications

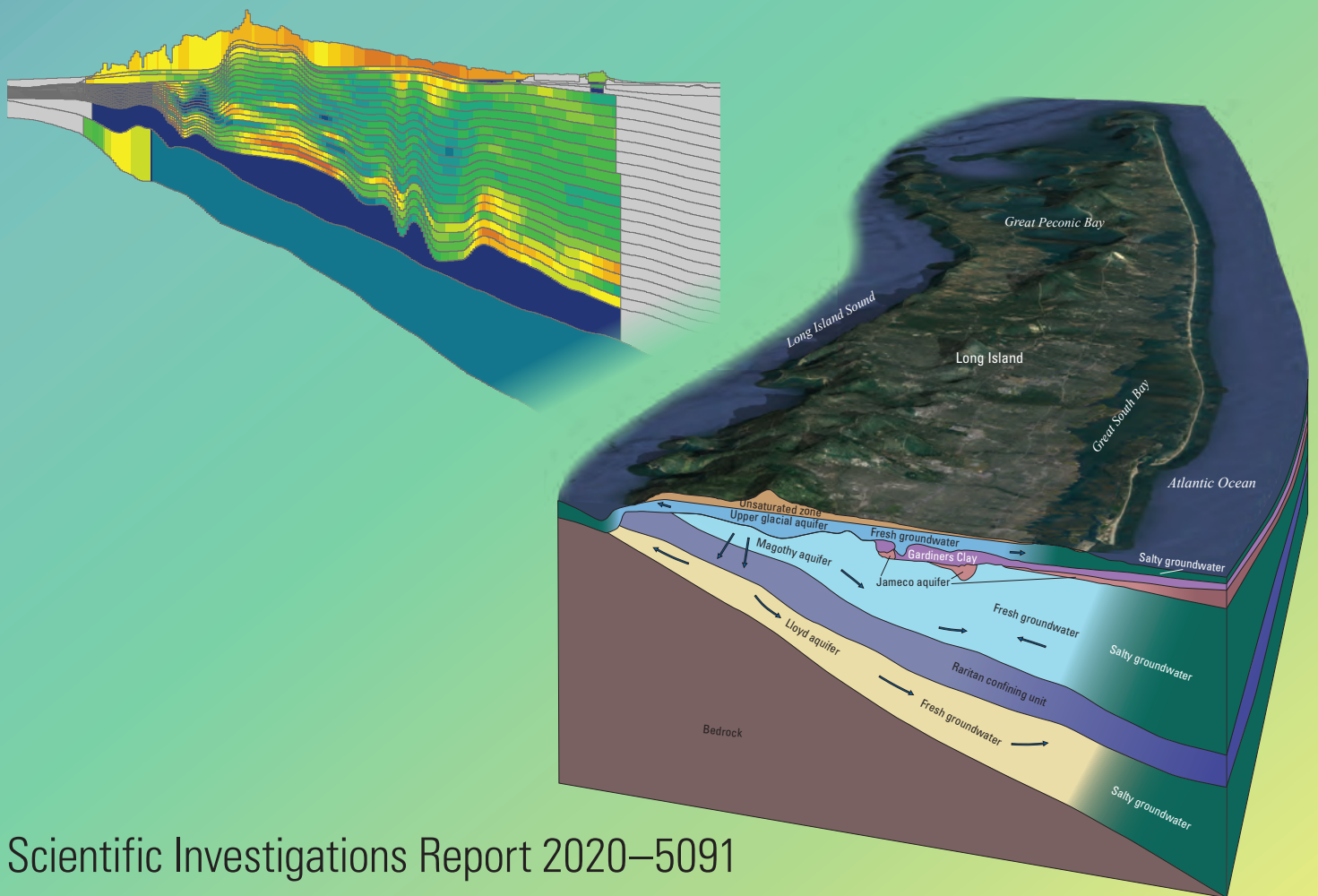
Menu

# **Exhibit K**

**National Water Quality Program**

Prepared in cooperation with the New York State Department of Environmental Conservation

# Simulation of Groundwater Flow in the Regional Aquifer System on Long Island, New York, for Pumping and Recharge Conditions in 2005–15



Scientific Investigations Report 2020–5091

about 7.9 million people in 2017 (U.S. Census Bureau, 2018). Most—about 5 million people—reside in Queens and Kings Counties, which are part of the New York City metropolitan area. The remaining population resides to the east, in Nassau and Suffolk Counties. Land use generally changes from west to east from urbanized to rural, with densely urbanized landscapes in New York City and areas of undeveloped and agricultural land in eastern Suffolk County.

Unconsolidated sediments underlying the island comprise a sole-source aquifer that supplies water to about 2.9 million people in Nassau and Suffolk Counties; the aquifer also contributes groundwater discharge to freshwater and marine ecosystems that are important recreational and economic resources. Anthropogenic activities have affected both the quantity and quality of groundwater, owing to the island's large population and the generally unconfined conditions prevalent across the aquifer system. For instance, groundwater withdrawals, particularly in the western part of the island, have resulted in large declines in water-table altitude and in the landward movement of the freshwater/saltwater interface, encroaching on local water supplies (Terraciano, 1996). Additionally, subsurface contamination emanating from numerous point sources, associated with industrial sites in developed areas in western Long Island, adversely affects downgradient water supplies (Misut and others, 2020).

Nutrients emanating from nonpoint sources associated with residential development and agricultural activities also have degraded water quality in shallow parts of the aquifer. Nitrogen entrained in groundwater discharge has caused eutrophication and degradation of aquatic ecosystems in coastal waters across the island, resulting in marine-habitat degradation, harmful algal blooms, and the loss of shell fisheries.

In 2016, the U.S. Geological Survey (USGS) began development of a regional-scale numerical model of the Long Island aquifer system, as part of the National Water Quality Program to assess the vulnerability of the area's water supply to contamination from anthropogenic and natural compounds. The regional model of Long Island is a synthesis of a diverse set of data on the physiography, geology, and hydrology of the island and represents the first public domain regional model of the island since the late 1980s (Buxton and Smolensky, 1999).

The model represents steady-state (average) conditions for 2005–15 and is suitable for simulation, at a regional scale, of current hydrologic conditions, including water levels and groundwater discharge to receiving waters. The model also can be used to estimate regional-scale groundwater travel times to wells and ecological receptors and subsurface groundwater ages. The model is most suitable for analyses at the regional scale but can be used to produce boundary conditions as input into inset models more suitable for local-scale analyses.

## Purpose and Scope

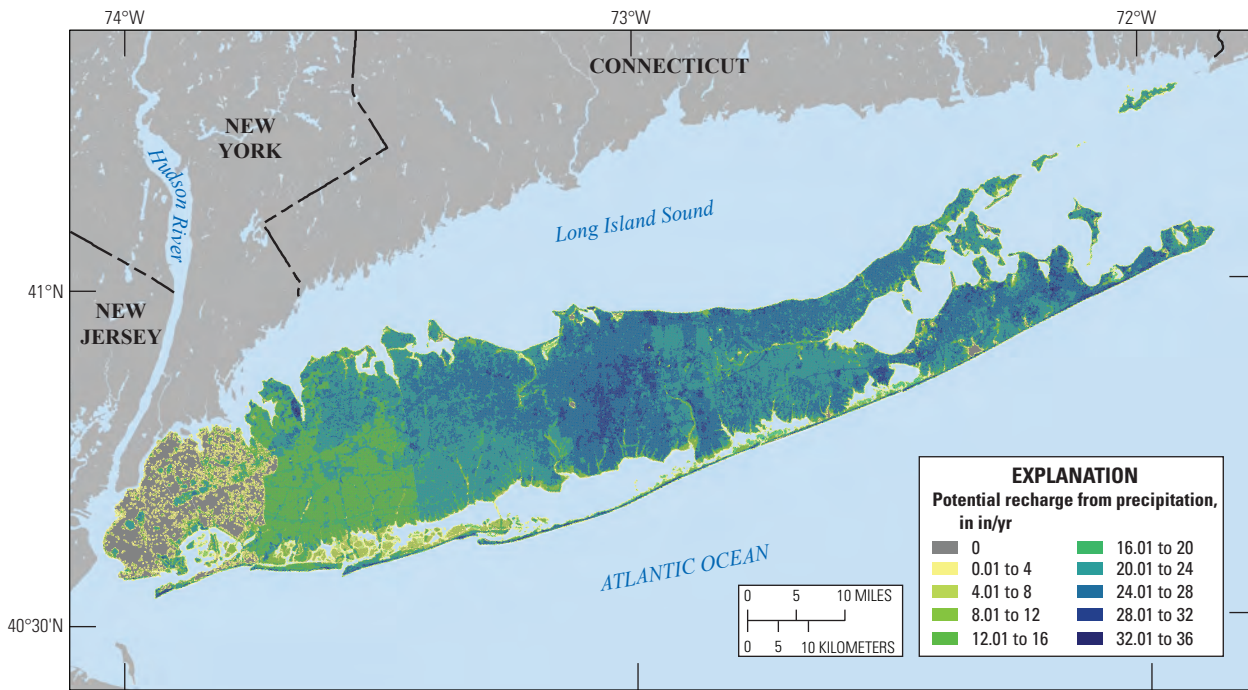
This report documents the development and calibration of a numerical model of the Long Island aquifer system and the use of that model to simulate hydrologic conditions for 2005–15. The report discusses the compilation and analysis of climatic, physiographic, geologic, hydrologic, and water-use data used to develop the numerical model. The use of a 1-meter (m; 3.3-foot [ft]) topobathymetric digital elevation model to estimate land-surface and seabed altitudes at the modeled scale is presented, and the incorporation of the data into representations of regional fresh and saline surface-water features are documented. The extents of surface altitudes of mapped hydrogeologic units from various sources are documented, and the methods used to develop a three-dimensional hydrogeologic framework are discussed. The three-dimensional distribution of water-transmitting properties, as represented in a grid-independent texture model, and the methods used to incorporate that data into the model are presented.

The use of a soil-water balance (SWB) model (Westenbroek and others, 2010) to estimate average recharge for 2005–15 from daily climate and spatial data—land-use, soil type, and soil-water capacity—is documented. The methods and assumptions used to estimate additional, anthropogenic components of recharge, including wastewater-return flow, recharge from urban runoff, and inflow from leaky infrastructure also are discussed. Groundwater withdrawals are presented for 2005–15 for various uses, including public supply, industrial, and remedial activities. The report also documents the hydrologic conditions in the aquifer, as indicated by observations of water levels in wells and streamflows, for 2005–15.

The model design is described in detail, including horizontal and vertical model discretization, the location and types of simulated hydrologic boundaries, the distribution of simulated recharge and the location of simulated wells. The initial values of hydraulic parameters—boundary leakances and horizontal and vertical hydraulic conductivity—are presented and the assumptions underlying them are discussed. The use of inverse-calibration methods to adjust these initial values to best match water levels and streamflows for 2005–15 also is discussed along with the parameterization of the model, the inverse techniques and assumptions used, and the fit between hydrologic observations and their simulated equivalents.

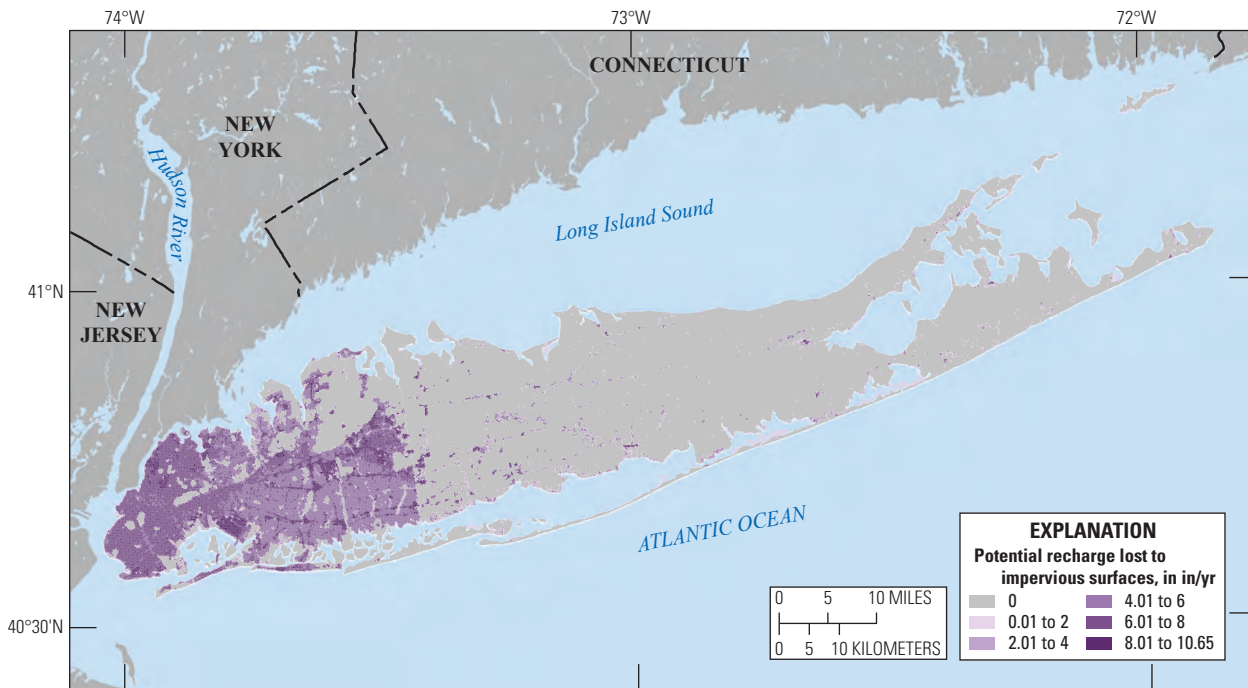
The report presents simulated hydrologic conditions of the Long Island aquifer system for 2005–15, as simulated by the calibrated model, and for hydrologic conditions approximating natural unstressed (predevelopment) conditions. A summary of the hydrologic budget, including both inflows and outflows, is discussed. Current (average) water-table altitudes and streamflows are presented as well as a summary of travel times—defined as the elapsed time of the movement of water from the water table to wells and ecological receptors. Limitations associated with the use of a numerical model to represent the aquifer system are discussed, including general limitations in the application of the numerical model and limitations specific to the regional model of Long Island.

**A. Recharge from precipitation**



Base map from U.S. Geological Survey National Atlas digital data, scale 1:1,000,000  
 New York [Long Island] State Plane projection  
 North American Datum of 1988

**B. Potential recharge lost from impervious surfaces**



Base map from U.S. Geological Survey National Atlas digital data, scale 1:1,000,000  
 New York [Long Island] State Plane projection  
 North American Datum of 1988

**Figure 12.** Maps showing distribution of estimated recharge from precipitation on Long Island, New York, for 2005–15 based on *A*, land use and impervious surfaces and *B*, estimated recharge lost to impervious surfaces for the same. in/yr, inch per year.

# **Exhibit L**





**Protecting Our Quality Of Life  
For Generations To Come**

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The Honorable Martin J. Oberman  
Chairman  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423

February 13, 2023

Re: Townline Rail Terminal, LLC - Docket Number: FD 36575

Dear Chairman Oberman,

The residents of Kings Park, Commack, Fort Salonga, Northport and East Northport only became aware of the above referenced petition approximately four weeks ago, when an article appeared in a local newspaper, the Smithtown News. Local government officials knew of this project for approximately a year, if not longer, yet never advised the community of this significant proposal. (See attached email dated December 7, 2022)

This is a project that will severely affect the residents in the orbit around this proposed regional freight rail yard.

According to the four corners of the November 17, 2022 petition, this regional train yard will have five tracks totaling 9,400 feet, two buildings totaling 100,000 square feet, and a 161-freight car capacity totaling 10,456 feet of train. These trains will be hauling not only ash, but unassociated construction & demolition debris and aggregates. It notes that Townline is willing to accept a common carrier obligation and to "hold out" to provide rail service to the public at large.

According to the petitioner, there will also remain an area that will be used for an existing fleet of 50 trucks already operating on the site.

If approved, Townline's proposed line intends to serve as a truck-rail transloading facility which will allow companies to move the longest leg of transport by hauling via rail and then moving the items to a truck when closer to the delivery.

Although the petitioner and Town Supervisor Ed Wehrheim continue to utter there will be only one train per day, for five days, the duly sworn petition does not support this claim. The language is clear, "*Townline will interchange with NYAR and anticipates an **initial** operation of one-train per day 5-days a week to utilize the Proposed Line.*"

The use of the word **initial** is critical in understanding the scope of this freight yard. Couple this language with the parameters the petition outlines, including a “161-freight car capacity,” community members are correct in their understanding that this project will not be a sleepy rail spur, as characterized by Mr. Carlson and the town’s supervisor. It will be a far-reaching regional freight yard.

This freight yard would be a chain link fence away from established residential neighborhoods in Kings Park (See photos) and in very close proximity to residential homes in Fort Salonga, Northport, East Northport and Commack, all which tightly border the projected area. There are several schools, stables, playgrounds and a nursing home in close proximity to the proposed yard.

The surrounding communities already bear the burden of several major sources of environmental blight, including the Huntington Resource Recovery Facility, the Northport power plant, the Huntington and Smithtown landfills and their methane burners/vents, medical waste incinerators at both Northport VA hospital & St. Catherine’s Medical Center, and the various heavy industrial uses that have been going on in this area for decades, many of which continue to operate illegally and unchecked.

How much of a burden is this one community expected to take? The freight yard’s proposed location is on the edge of a residentially zoned area (R43), plainly in the back yard of families, with inground pools and playsets. It is important to understand that in no way did anyone move into this area thinking they were going to be living right behind a diesel freight yard.

This proposed project will also have a detrimental impact on Long Island’s sole source aquifer as it sits a top a deep recharge basin.

Suffolk County Department of Health Services notes in its correspondence to the US Office of Environmental Analysis Surface Transportation Board (OEA), dated July 22, 2022, “*The project site is also in the 25–50-year groundwater contributing area to Smithtown Bay... It should be noted that this project site is in an **Article 7 restricted area** and storage of any toxic or hazardous materials, as defined in Article 7 of the Suffolk County Sanitary Code, is severely restricted.*” (See attached letter dated July 22, 2022, from Julia Priolo, Principal Environmental Analyst Office of Ecology, Suffolk County)

The surrounding communities were never advised by local, state or federal officials that this was ever a possibility. Just the opposite, the last the community knew, the petitioner was looking to site an indoor compost facility on this property. Community members were invited into town hall and shown a detailed PowerPoint presentation of that proposal. There has never been any type of communication that plans had changed for Mr. Carlson’s property.

The NYSDOT, in correspondence to the US Office of Environmental Analysis Surface Transportation Board (OEA), also dated July 22, 2022, advises, “In addition, it appears that the line being proposed will be constructed in or around a residential area. To that extent, NYSDOT recommends that public outreach be conducted regarding the proposal...” This was never done. (See attached letter dated July 22, 2022, from Richard Causin, NYSDOT Regional Director, Region 10)

Both the NYSDOT letter and the Suffolk County Department of Health letters, in response to OEA’s June 22, 2022 correspondence looking for information and comments regarding the proposal, noted that only limited information was provided by OEA. NYSDOT directly stated, “Without additional information, the NYSDOT is unable to provide detailed information at this time regarding what, if any, environmental resources may be affected by Townline’s proposal.”

A review of the STB site reveals no additional information was provided in order to help these interested parties provide informed input.

In a letter dated September 29, 2022, the OEA granted the petitioner's request for a waiver of 49 C.F.R. § 1105.6(a), which normally provides for the preparation of an EIS for rail line construction proposals, noting, "Based on the information available to date, OEA believes that the potential environmental impacts would not be significant, and any impacts could most likely be addressed through appropriate mitigation measures." (See attached letter dated September 29, 2022)

This conclusion by the OEA is predicated on incomplete information provided to interested parties, such as the NYSDOT and the Suffolk County Department of Health. The OEA knew further information was needed before it granted the waiver. The OEA was directly told so. A waiver should not have been granted and should, for the sake of fairness and justice, be reversed.

This is a petition that appears to be on a fast track, to the detriment of the community.

A few local elected officials have quietly supported this project for years, without a vote, without a resolution, without community input. They had a choice, and they chose to ignore the local community - to run over the residents, one might say.

Based upon the above, the community is respectfully requesting this petition be denied.

Thank you in advance for your consideration.

Respectfully submitted,

*Linda Henninger*

Linda Henninger  
Townline Association, Co-president  
townlinecivicassociation@gmail.com

**P.O. Box 119, Commack, New York 11725**

# **Exhibit M**



**Protecting Our Quality Of Life  
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January 27, 2023

The Honorable Martin J. Oberman  
Chairman  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423

RE: Surface Transportation Board Decision, Docket No. FD 36575

Dear Chairman Oberman,

It has recently become known to several Long Island communities that Townline Rail Terminal, LLC, an affiliate of CarlsonCorp, Inc., plans to construct and operate a new rail line in the hamlet of Kings Park, New York. According to the proposal, the line would extend approximately 5,000 feet on a portion of CarlsonCorp's property and would run parallel to the Long Island Railroad (LIRR) Port Jefferson Line.

This is not going to be a sleepy rail spur, with one freight train rolling in and out occasionally. It is going to be a regional train yard with five tracks totaling 9,400 feet, two buildings totaling 100,000 square feet, and a 161-freight car capacity totaling 10,456 feet of train. These trains will be hauling not only ash, but unassociated construction and demolition debris.

What the proposal fails to show is that the train yard will be only 500 feet from established residential neighborhoods in Kings Park and in very close proximity to residential homes in Fort Salonga, East Northport and Commack, all which tightly border the projected area. What the proposal fails to show is there are several schools, playgrounds and a nursing home in close proximity to the proposed rail yard. What the proposal fails to show is the surrounding area includes a federally classified deep recharge area for a sole source aquifer.

The surrounding communities were never advised by local, state or federal officials that this was ever a possibility. Just the opposite, the last the community knew, there was going to be an indoor compost facility on this property. Community members were invited into town hall and shown a detailed PowerPoint presentation of that proposal. There has never been any type of communication that plans had changed for Carlson's property.

The Town of Smithtown Supervisor, Edward Wehrheim, the town board, and Suffolk County Legislator Robert Trotta are in favor of this proposal. The latter stated there has been no organized opposition. Well, the surrounding communities were unaware of this proposal and now that we know, we are organized and we oppose it. The previously mentioned politicians failed in their duty as elected representatives to advise, educate and give community members an opportunity to be heard before they formally came out in support of this rail yard.

This proposal has more questions than answers, and more problems than solutions.

The rail yard's proposed location is on the edge of a light industrial/residentially zoned area, plainly in the back yard of families. No reasonable person would believe that a berm, which the town's supervisor has mentioned, would ever shroud the noise, fumes, lights, site, and health risks associated with this yard. Moreover, its proximity to so many residents, its history as a sand mine & dumping ground, and its closeness to a deep recharge area for Long Island's sole source aquifer; it is unconscionable that Townline Rail was able to receive a waiver to forego a full environmental impact statement.

It is important for the Surface Transportation Board to be aware that the surrounding communities already bear the burden of several major sources of environmental blight, including the Huntington Resource Recovery Facility, the Northport power plant, the Huntington and Smithtown landfills and their methane burners/vents, medical waste incinerators at both Northport VA hospital & St. Catherine's Medical Center, and the various heavy industrial uses that have been going on in this area for decades, many of which continue to operate illegally and unchecked.

We respectfully request that the Surface Transportation Board revisit its decision and stop this ill-conceived project in its tracks. We are aware of the eventual closing of the Brookhaven landfill, which will happen incrementally, starting in 2024. We are also aware that there are far better locations moving forward to tackle the issue of removing ash and unassociated construction and demolition debris off Long Island, such as the Winter Bros. 228-acre site in Yaphank, which is almost three times the size of the proposed Townline Rail Terminal, and is in a far less populated area.

It is important to understand what is happening here. CarlsonCorp is building something in far excess to what is needed to haul ash away from the Covanta facility. This project, if allowed to proceed, will unquestionably bring more trucks into our community and onto our roads, not less.

It has become a well-known and truthful axiom on Long Island, development of all kinds only succeeds when it comes from the bottom up, when the community is engaged. This did not and is currently not happening with respect to this multi-town impactful proposal.

Thank you in advance for your consideration.

Respectfully submitted,

*Linda Henninger*

Linda Henninger

Townline Association, president

Lh.townline@gmail.com

# **Exhibit N**



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Dear Neighbors,

The Surface Transportation Board (STB) will soon be reviewing the Carlsoncorp's request to build a railroad spur and a regional freight rail terminal on their property at 140 Old Northport Rd in Kings Park. Until now the community has had no opportunity to weigh in on this plan because it was kept hidden from everyone. Now is the time to let your voice be heard. We have included a talking points information sheet to help you write a letter to the STB. We encourage you to personalize your letter. Personalized letters have the greatest impact. The more input the STB receives from the residents the better. THIS IS TIME SENSITIVE MATTER! Please follow the directions below:

Please address your letter to: The Honorable Martin J. Oberman  
Chairman  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423

RE: Surface Transportation Board Decision, Docket No. FD\_36575

Email completed letters (preferably in PDF format) to: [townlinecivicassociation@gmail.com](mailto:townlinecivicassociation@gmail.com) – PLEASE INCLUDE THE DOCKET NUMBER FD\_36575 and your home and email address on your letter.

We will upload your letters to the Surface Transportation Board's website – it is a complicated procedure and we want to make sure that your letters make it into the docket so that the STB will be required to review them.

We need your letters as soon as possible

Please share this with your friends, neighbors and family so they can write letters too.  
Everyone 18 or over in a household should write a separate letter.

**P.O. Box 119, Commack, New York 11725**



## CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of April, 2023, I caused a copy of the foregoing to be served on all parties of record by email or first class mail.



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