

**BEFORE THE SURFACE TRANSPORTATION BOARD
Washington, D.C.**

239509
239510
239511

REPLY TO CITY'S REQUEST FOR CLARIFICATION

ENTERED

**IN RE: Motion for Determination that Documents
Filed with Board as "Confidential" and
"Highly Confidential" Should be Unsealed**

Office of Proceedings
November 6, 2015
Part of
Public Record

**By Intervenors:
212 Marin Boulevard, LLC
247 Manila Avenue, LLC
280 Erie Street, LLC
317 Jersey Avenue, LLC
354 Cole Street, LLC
389 Monmouth Street, LLC
415 Brunswick Street, LLC
446 Newark Avenue, LLC**

Limited Liability Companies of New Jersey.

**In
Conrail Petition For Exempt Abandonment
Hudson County, New Jersey
STB Docket: AB-167-1189-X
And Related Proceedings
AB-55-686-X
AB-290-306-X**

DANIEL E. HORGAN, DC BAR # 239772
WATERS, McPHERSON, McNEILL, P.C.
300 Lighting Way
Secaucus, New Jersey 07096
Telephone: 201-863-4400
Fax: 201-863-2866
E-mail: dehorgan@lawwmm.com
Counsel for Intervenors

DATED: November 6, 2015

REPLY TO CITY'S REQUEST FOR CLARIFICATION

The eight LLC intervenors (“Intervenors”)¹ hereby reply as follows to the “Request for Clarification” that the City of Jersey City, Rails to Trails Conservancy, and PRR Harsimus Stem Embankment Preservation Coalition (“City”) filed on November 3, 2015 (“November 3 Request”), regarding the order that the Surface Transportation Board (“Board”) served in the above-captioned proceeding on November 2, 2015 (“November 2 Order”). The City represents that CNJ Railroad (“CNJ”) supports its request.

1. The November 2 Order, inter alia, grants Intervenors’ motion to un-designate as “highly confidential” the statement by the putative shipper, and requires the City to file a version with “confidential” information redacted by November 12, 2015. The November 2, 2015 Order defines what information may be treated as confidential, and therefore subject to redaction. However, by requiring the redacted version to be filed, the Board has required that the public have access to the non-confidential portions of the statement. Particularly inasmuch as City’s November 3 Request did not request a stay, City remains bound to comply with the November 2 Order.

2. City, with CNJ’s support, contends that CNJ should be responsible for the resubmission because CNJ “originally produced the statement,” “originally designated it as highly confidential,” and “is in a superior position to ascertain what information continues to merit confidential treatment.” November 3 Request at 1-2. Intervenors care

¹ The Intervenors are 212 Marin Boulevard, LLC, 247 Manila Avenue, LLC, 280 Erie Street, LLC, 317 Jersey Avenue, LLC, 354 Cole Street, LLC, 389 Monmouth Street, LLC, 415 Brunswick Street, LLC, and 446 Newark Avenue, LLC.

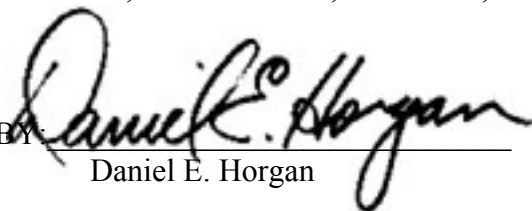
little which entity (City or CNJ) redacts and submits the redesignated documents, so long as it is done timely and properly.

3. City's alternative suggestion that Intervenors prepare the redaction, or be responsible for inadvertent disclosure, id. at 2, is nonsense. City submitted the statement to the Board for the purpose of persuading the Board. City's attorney is a long-time practitioner, familiar with the Board's requirements and expectations. As between City and the Intervenors, City bears the burden of any inappropriate designation or submission. Intervenors cannot reasonably be held responsible for any improper designations of a document they did not procure or file initially under seal with the Board.

4. Redaction and resubmission should be a quick and simple matter. If the document cannot be timely redacted and resubmitted, it should be struck from the record of the proceeding, along with any attempted reliance on it. In particular, City, which submitted the statement on December 23, 2014, for the purpose of persuading the Board, should not be allowed to continue to rely upon it if it is not timely and properly resubmitted.

Respectfully submitted,

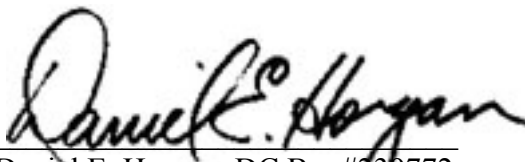
WATERS, McPHERSON, McNEILL, P.C.

BY: 
Daniel E. Horgan

Dated: November 6, 2015

CERTIFICATE OF SERVICE

I, Daniel E. Horgan, hereby certify that I caused a copy of the foregoing to be served by First Class mail upon those on the attached Service List by depositing same with the U.S. Postal Service on November 6, 2015.

A handwritten signature in black ink that reads "Daniel E. Horgan". The signature is fluid and cursive, with the first name "Daniel" being the most prominent.

Daniel E. Horgan, DC Bar #239772
Waters, McPherson, McNeill, P.C.
300 Lighting Way
Secaucus, New Jersey 07094
Phone: 201-330-7453
Fax: 291-863-2866
E-mail: dehorgan@lawwmm.com
Counsel for Intervenors
Dated: November 6, 2015

SERVICE LIST

Counsel for Jersey City, Coalition, RTC:

Charles H. Montange
426 NW 162nd Street
Seattle, WA 98177

Counsel for Rails to Trails Conservancy (RTC)

Andrea Ferster, Esq.
General Counsel
2121 Ward Court NW, 5th floor
Washington, D.C. 20037

Counsel for Conrail:

Robert M. Jenkins, III, Esq.
Mayer Brown LLP
1999 K Street, NW
Washington, D.C. 20006-1101

Former Counsel for LLCs

Fritz Kahn, Esq.
1919 M Street, NW
7th Floor
Washington, D.C. 20036

And the following self-represented individuals or entities:

Robert Martin
Daniel D. Saunders
NJ Department of Environmental Protection
State Historic Preservation Office
P.O. Box 420
Trenton, NJ 08625-0420

Massiel Ferrara, Director
Hudson County Planning Division
595 County Avenue
Bldg. 1, Second Floor
Secaucus, NJ 07094

Ron Emrich - **UNKNOWN**
Executive Director
Preservation New Jersey
310 W. State Street
Trenton, NJ 08618

Michael D. Selender
Vice President
Jersey City Landmarks Conservancy
P.O. Box 68
Jersey City, NJ 07303-0068

Eric Fleming
President
Harsimus Cove Association
344 Gove Street
P.O. Box 101
Jersey City, NJ 07302

Jennifer Greely – **UNABLE TO FORWARD**
President
Hamilton Park Neighborhood Assoc.
22 West Hamilton Place
Jersey City, NJ 07302

Jill Edelman
President
Powerhouse Arts District Nbd Ass'n
140 Bay Street, Unit 6J
Jersey City, NJ 07302

Robert Crown
Vice President of Communications
The Village Neighborhood Association
365 Second Street
Jersey City, NJ 07302

Dan Webber
Vice President
Van Vorst Park Association
289 Varick Street
Jersey City, NJ 07302

Gretchen Scheiman
President
Historic Paulus Hook Ass'n
121 Grand Street
Jersey City, NJ 07302

Robert Vivien
President
Newport Nbd Ass'n
ADDRESS UNKNOWN

Delores P. Newman
NJ Committee for the East
Coast Greenway
ADDRESS UNKNOWN

Gregory A. Remaud
Conservation Director
NY/NJ Baykeeper
52 West Front Street
Keyport, NJ 07735

Sam Pesin
President
Friends of Liberty State Park
580 Jersey Avenue, Apt. 3L
Jersey City, NJ 07302

Daniel H. Frohwirth
Jersey City Landmarks Conservancy
P.O. Box 68
Jersey City, NJ 07303

Valerio Luccio
Civic JC
ADDRESS UNKNOWN

Eric S. Strohmeyer
Vice President, COO
CNJ Rail Corporation
81 Century Lane
Watchung, NJ 07069

Maureen Crowley
Embankment Preservation Coalition
263 Fifth Street
Jersey City, NJ 07302

Karen Votava - **UNDELIVERABLE**
East Greenway Alliance
27 North Road
Wakefield, RI 02879

Non-Parties of Record – Provide copies of Pleadings only

Kenneth Koschek - **UNDELIVERABLE**
New Jersey Department of Environment Protection
P.O. Box 418
Trenton, NJ 08625-0418

New Jersey Department of Environmental Protection - **UNDELIVERABLE**
P.O. Box 402
Trenton, NJ 08625

New Jersey Department of Environmental Protection - **UNDELIVERABLE**
Bureau of Coastal and Land Use
P.O. Box 422
Trenton, NJ 08625

New Jersey Historic Preservation Office
P.O. Box 404
Trenton, NJ 08625-0404

Greg Remaud
NY/NJ Baykeeper
52 w. Front Street
Keyport, NJ 07732

U.S. Fish and Wildlife Service
927 N. Main Street
Building D
Pleasantville, NJ 08232-1451

**BEFORE THE SURFACE TRANSPORTATION BOARD
Washington, D.C.**

Supplemental Certification of Service

**By Intervenors:
212 Marin Boulevard, LLC
247 Manila Avenue, LLC
280 Erie Street, LLC
317 Jersey Avenue, LLC
354 Cole Street, LLC
389 Monmouth Street, LLC
415 Brunswick Street, LLC
446 Newark Avenue, LLC
NZ Funding, LLC
Limited Liability Companies of New Jersey.**

**In
Conrail Petition For Exempt Abandonment
Hudson County, New Jersey
STB Docket: AB-167-1189-X
And Related Proceedings
AB-55-686-X
AB-290-306-X**

DANIEL E. HORGAN, DC BAR # 239772
WATERS, McPHERSON, McNEILL, P.C.
300 Lighting Way
Secaucus, New Jersey 07096
Telephone: 201-863-4400
Fax: 201-863-2866
E-mail: dehorgan@lawwmm.com
Counsel for Intervenors

DATED: November 6, 2015

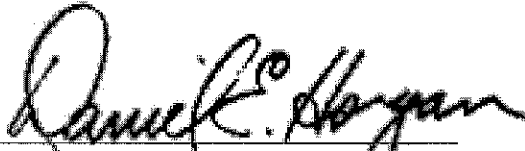
SUPPLEMENTAL CERTIFICATE OF SERVICE

I, Daniel E. Horgan, hereby update the Certificate of Service filed with the Intervenor's response to City's request for clarification of the Board's November 2, 2015 decision as follows. I certify that I caused a copy of the foregoing to be served by First Class mail upon the following by depositing same with the U.S. Postal Service on November 6, 2015.

James Riffin
P.O. Box 4044
Timonium, MD 21094

Stephen Marks
County of Hudson
583 Newark Avenue
Jersey City, NJ 07306

Brian P. Stack
411 Palisade Avenue
Jersey City, NJ 07307



Daniel E. Horgan, DC Bar #239772
Waters, McPherson, McNeil, P.C.
300 Lighting Way
Secaucus, New Jersey 07094
Phone: 201-330-7453
Fax: 291-863-2866
E-mail: dehorgan@lawwmm.com
Counsel for Intervenor
Dated: November 6, 2015