



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

EO-2872

202-245-0260
FAX 202-245-0460

December 21, 2016

Charles Montange
426 NW 162nd Street
Seattle, WA 98177

*Re: STB Docket No. AB-167 (Sub-No. 1189X), Consolidated Rail Corporation -
Abandonment Exemption - in Hudson County, NJ*

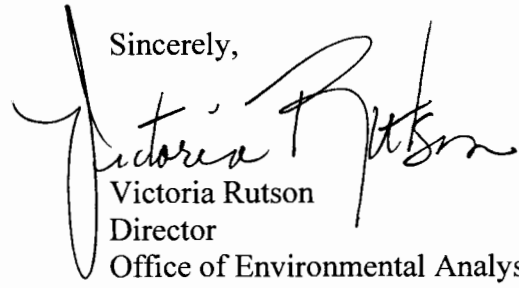
Dear Mr. Montange:

The Surface Transportation Board's (Board) Office of Environmental Analysis (OEA) received your December 9, 2016 letter regarding the process the Board is using to comply with Sections 106 and 110(k) of the National Historic Preservation Act (NHPA) in the Harsimus Branch abandonment proceeding. As OEA has previously indicated, the Board will fully consider the Section 110(k) question as part of making its determination on whether or not to authorize the abandonment of the Harsimus Branch. But OEA continues to believe that, given the circumstances presented in this proceeding, the most efficient and expeditious way to proceed is for OEA to continue to move forward with the Section 106 review while the formal record on Section 110(k) is developed and before the Board makes a determination with respect to Section 110(k). Based on our discussion with ACHP and their lack of any subsequent objections, our understanding is that ACHP does not object to this approach. Please refer to my September 21, 2016 letter to Charlene Dwin Vaughn, explaining our intended process (copy attached).

With respect to your claims regarding discovery, OEA points out that in a May 22, 2015, discovery order (copy attached), the Board expressly permitted discovery relevant to Section 110(k) to go forward. After more than a year in which the parties were entitled to seek discovery in accordance with the Board's orders, the Board referred all discovery issues to Judge Dring, an Administrative Law Judge at the Federal Energy Regulatory Commission. As a result, should you and your clients have any concerns about discovery, those concerns should be raised with Judge Dring.

OEA has removed no correspondence related to this proceeding from the Board's website. I have personally checked our Environmental Correspondence Tracking (ECT) system on the Board's website and have verified that my letter dated September 21, 2016 appears on ECT under the document number "EO-2861." If you continue to have trouble locating the document, please do not hesitate to call me and I will help you find it.

Thank you for your continued participation in the environmental and historical review process.

Sincerely,

Victoria Rutson
Director
Office of Environmental Analysis

Enclosures

cc: Charlene Dwin Vaughn
Najah Duvall Gabriel



Office of Environmental Analysis

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

EO-2861

202-245-0295
FAX 202-245-0454

September 21, 2016

Charlene Dwin Vaughn
Assistant Director
Office of Federal Agency Programs
Advisory Council on Historic Preservation
401 F Street NW
Washington DC 20001-2637

*Re: STB Docket No. AB-167 (Sub-No. 1189X), Consolidated Rail Corporation -
Abandonment Exemption - in Hudson County, NJ*

Dear Ms. Vaughn,

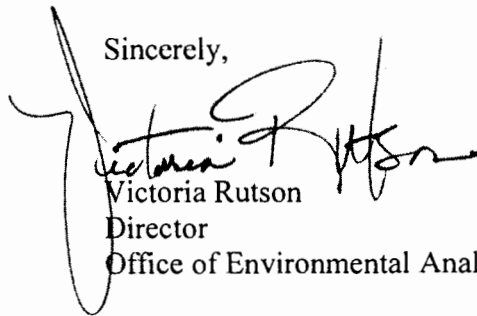
The Surface Transportation Board's (Board) Office of Environmental Analysis (OEA) appreciates your August 4, 2016, letter regarding the National Historic Preservation Act (NHPA) Section 106 process for the Harsimus Branch rail abandonment proceeding and the need to address the question of whether a Section 110(k) violation may have occurred. As OEA has previously indicated, the Board will fully consider the Section 110(k) question in making its final determination on whether or not to authorize the abandonment of the Harsimus Branch and, if so, what conditions to impose to avoid, minimize, or mitigate adverse effects. For the reasons discussed below, OEA agrees with ACHP that it is appropriate to proceed with the Section 106 process (and the environmental review process under the National Environmental Policy Act (NEPA)) while investigating but before making a determination with respect to Section 110(k).

As you know, OEA formally re-initiated the Section 106 consultation process in this case approximately a year ago. Since then, OEA has made significant progress and the assessment of adverse effects of the undertaking on historic properties is well underway. Attempting to conclude the Section 110(k) inquiry prior to proceeding with OEA's Section 106 review would be counterproductive and would result in unnecessary delay. Discovery is currently ongoing, and the Board has expressly held that the parties may seek discovery of information and documents that are relevant to the question of whether a Section 110(k) violation occurred under the circumstances at issue here. Following the close of discovery, the parties will present arguments to the Board addressing, among other matters, whether, in their view, a Section 110(k) violation took place. The discovery and subsequent pleading process before the Board in this proceeding is unlikely to conclude for some time. Until it does, the Board will not have before it a full record on the Section 110(k) issue.

As a result, the most expeditious and efficient way to proceed is for OEA to continue with the Section 106 (and NEPA) process at the same time discovery and the filing of pleadings to the Board based on that discovery is taking place. After discovery ends, the parties' final pleadings are filed, and OEA completes its environmental and historic review, and makes final conclusions and recommendations to the Board (following ample opportunity for input from the Advisory Council on Historic Preservation (ACHP), the State Historic Preservation Officer, consulting parties, and the public), the Board will have the information it needs to rule on the proposed abandonment and address the environmental and historic preservation issues, including those involving Section 110(k). Allowing OEA to continue moving forward with the Section 106 review while the Board is conducting its Section 110(k) inquiry will, I believe, encourage a more efficient and effective review of this proceeding.

We are pleased that ACHP has decided that it will participate in the Section 106 review here and look forward to continuing to work closely with you, as well as all interested parties, as the Board continues to meet its NHPA obligations in this proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "Victoria Rutson", is written over the typed name and title.

Victoria Rutson

Director

Office of Environmental Analysis

44098
EB

SERVICE DATE – MAY 22, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 167 (Sub-No. 1189X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN HUDSON
COUNTY, NJ

Docket No. AB 55 (Sub-No. 686X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—IN
HUDSON COUNTY, NJ

Docket No. AB 290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE
EXEMPTION—IN HUDSON COUNTY, NJ

Digest:¹ This decision: (1) grants in part, and denies in part, a motion of the City of Jersey City (the City), Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (collectively, City Parties) to compel discovery from Consolidated Rail Corporation (Conrail), Norfolk Southern Railway, and CSX Transportation, Inc.; (2) grants in part, and denies in part, the City Parties' motion to compel discovery from a group of limited liability companies (LLCs) that intervened in this proceeding; (3) denies the LLCs' motion to compel responses to requests for admissions from the City Parties and Conrail; (4) grants the City Parties' motion to compel offer of financial assistance valuation information from Conrail; (5) denies the City Parties' motion for leave to file a reply; (6) denies the City Parties' motion to strike; (7) denies the LLCs' motion to require the City to provide an original or color copies of a parcel map; and (8) defers ruling on the LLCs' motion to unseal until the Board sets a due date for offers of financial assistance.

Decided: May 21, 2015

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

BACKGROUND

This proceeding involves a request to abandon an approximately 1.36-mile portion of a line of railroad, known as the Harsimus Branch, located in an urban area of Jersey City, N.J. Among the pleadings filed by the parties in this matter are a series of requests for discovery. This decision addresses those requests.

In January 2006, the City of Jersey City (the City), Rails to Trails Conservancy, Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (collectively, City Parties), and New Jersey Assemblyman Louis M. Manzo asked the Board for a declaratory order finding that the Harsimus Branch was a line of railroad subject to the Board's abandonment authority, rather than a spur exempt from Board licensing under 49 U.S.C. § 10906. In 2007, the Board found that the Harsimus Branch is a line of railroad subject to its abandonment authority. City of Jersey City—Pet. for Declaratory Order, FD 34818, slip op. at 1 (STB served Aug. 9, 2007).² The courts ultimately agreed. Consol. Rail Corp. v. STB, 571 F.3d 13, 19 (D.C. Cir. 2009) (sending case to district court for a determination of the status of the Harsimus Branch); City of Jersey City v. Consol. Rail Corp., 968 F. Supp. 2d 302 (D.D.C. 2013), aff'd, No. 13-7175 (D.C. Cir. Feb. 19, 2014) (Harsimus Branch was conveyed as a line of railroad in 1976).

Following the Board's 2007 finding that the Harsimus Branch is a line of railroad, Consolidated Rail Corporation (Conrail) filed a notice of exemption to abandon the Harsimus Branch (Harsimus Abandonment Proceeding).³ Although an Environmental Assessment was issued for public review and comment, the Board subsequently issued a decision holding the proceeding in abeyance while the federal court litigation went forward.⁴ The Board vacated the abeyance order and reinstituted the Harsimus Abandonment Proceeding in an August 11, 2014 decision, after the courts had found that the Harsimus Branch is a line of railroad subject to the Board's abandonment authority.⁵ That decision also granted the request of a group of limited

² The Board reaffirmed this decision in December 2007 in response to a petition for reconsideration. City of Jersey City—Pet. for Declaratory Order, FD 34818, slip op. at 1 (STB served Dec. 19, 2007).

³ Consol. Rail Corp.—Aban. Exemption—in Hudson Cnty., N.J., AB 167 (Sub-No. 1189X); CSX Transp., Inc.—Discontinuance of Serv. Exemption—in Hudson Cnty., N.J., AB 55 (Sub-No. 686X); Norfolk S. Ry.—Discontinuance of Serv. Exemption—in Hudson Cnty., N.J., AB 290 (Sub-No. 306X) (STB served Mar. 18, 2009). Collectively, these three dockets are referred to in this decision as Harsimus Abandonment Proceeding, and all decisions under these three dockets will be titled as such.

⁴ Harsimus Abandonment Proceeding, AB 167 (Sub-No. 1189X), et al., (STB served Apr. 20, 2010).

⁵ Harsimus Abandonment Proceeding, AB 167 (Sub-No. 1189X), et al., (STB served Aug. 11, 2014).

liability companies (the LLCs)⁶ to intervene and discussed the limited scope of the ongoing Board proceeding (i.e., completion of the environmental review process through preparation of a Supplemental and Final Environmental Assessment by the Board's Office of Environmental Analysis, the conclusion of the review process under section 306108 of the National Historic Preservation Act (NHPA), and a decision on whether to allow Conrail's notice of exemption to become effective).⁷

After the Board reinstituted this abandonment proceeding, the parties filed multiple motions seeking discovery. This decision addresses motions to compel and other motions related to discovery filed by the City Parties and the LLCs.

The City Parties have filed two motions seeking to compel responses to document requests. The first of the City Parties' motions was filed on September 18, 2014, and requests that the Board compel Conrail, Norfolk Southern Railway (NSR), and CSX Transportation, Inc. (CSXT) to respond to requests for production of documents. Conrail, NSR, and CSXT filed a reply in opposition on October 7, 2014. Then, on October 24, 2014, the City Parties filed a motion seeking a Board order to compel responses to document requests served on the LLCs. On November 13, 2014, the LLCs filed a reply in opposition.

The LLCs filed a motion on December 8, 2014, seeking a Board order to compel responses to the requests for admissions served on the City Parties and Conrail. Conrail replied in opposition on December 19, 2014, and the City Parties replied in opposition on December 29, 2014.

The City Parties also filed a motion on December 23, 2014, seeking a Board order compelling the production of valuation information from Conrail pursuant to the Board's rules regarding offers of financial assistance (OFAs). Conrail filed a reply in opposition on January 12, 2015. The City Parties then filed a Motion for Leave to file a Reply and a Motion to Strike.

On March 4, 2015, the LLCs filed a motion requesting that the City be required to file an original or accurate color copy of a parcel map it attached as an exhibit to a filing. The City filed a reply in opposition on April 7, 2015.

⁶ The LLCs are described as: 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. The LLCs have an ownership interest in a set of properties along the Harsimus Branch (collectively, the Embankment).

⁷ Harsimus Abandonment Proceeding, AB 167 (Sub-No. 1189X), et al., slip op. at 6-7 (STB served Aug. 11, 2014).

On March 18, 2015, the LLCs filed a motion asking the Board to unseal a document that was filed as a sealed attachment to the City Parties' motion to compel valuation information. The City Parties filed a reply in opposition on April 7, 2015.

DISCUSSION AND CONCLUSIONS

In Board proceedings, parties generally are entitled to discovery "regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding." 49 C.F.R. § 1114.21(a)(1). Further, it "is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Id. § 1114.21(a)(2). However, discovery is typically disfavored in abandonment cases. Thus, parties seeking discovery in abandonments must demonstrate relevance and need. Cent. R.R. of Ind.—Aban. Exemption—in Dearborn, Decatur, Franklin, Ripley, & Shelby Cntys., Ind. (Dearborn), AB 459 (Sub-No. 2X) (STB served Apr. 1, 1998).

The City Parties' Motions to Compel Documents. On September 18, 2014, the City Parties filed a motion asking the Board to compel Conrail, NSR, and CSXT to respond to document requests.⁸ The document requests seek the production of a broad range of documents, including documents relating to the sale or potential sale of the Harsimus Branch; documents relating to any contract or agreement between Conrail and the LLCs; documents relating to Conrail's real estate policies for a 12-year period; Conrail board member and advisor identification and contact information; certain communications with the New Jersey Department of Transportation; documents relating to the legal status of the Harsimus Branch; and documents relating to compliance with laws in other states for a 12-year period.⁹ Conrail did not produce any of the documents requested and, instead, raised various objections to all of the requests.¹⁰

The City Parties then filed a similar motion on October 24, 2014, asking the Board to compel the LLCs to respond to document requests.¹¹ The City Parties are seeking: documents relating to the sale or potential sale of the Harsimus Branch; certain communications with the New Jersey Department of Transportation; documents relating to the legal status of the Harsimus Branch; documents relating to the ownership of the LLCs; documents identifying advisors to the LLCs on the purchase of the Embankment; documents relating to the demolition of the

⁸ See City Parties' Mot. to Compel Conrail to Respond to Discovery (Document) Requests (City Parties' Mot. to Compel Conrail).

⁹ See City Parties' Mot. to Compel, Ex. A.

¹⁰ See City Parties' Mot. to Compel, Ex. B.

¹¹ See City Parties' Mot. to Compel LLCs to Respond to Discovery (Document) Requests (City Parties' Mot. to Compel LLCs).

Embankment; communications with Chicago Title Company; and documents relating to claims made by the LLCs against Conrail. The LLCs objected to the City Parties' document requests.¹²

In both motions to compel, the City Parties argue that they are entitled to the requested documents because they relate to the claim that Conrail and NSR and/or CSXT intended to avoid the requirements of section 306108 of the NHPA.¹³

Again, the Board does not typically permit discovery in abandonment cases, and most of the document requests made by the parties are overly broad and seek documents not relevant to the issues in this proceeding. Nevertheless, the circumstances presented here are unique due to the history of the Harsimus Branch and the procedural history of this proceeding, and some of the information sought is potentially relevant to the City Parties' claims regarding alleged violations of the NHPA process. The Board will therefore permit reasonable discovery of potentially relevant information where the information requested would not be overly broad. See Dearborn, slip op. at 4. The Board will grant, in part, the City Parties' motion to compel documents from Conrail, NSR, and CSXT, as provided in Appendix A to this decision. The Board will also grant, in part, the City Parties' motion to compel documents from the LLCs, as set out in Appendix B.

The LLCs' Motion to Clarify/Compel Admissions. In a motion filed on December 8, 2014, the LLCs seek to compel responses to requests for admission served on the City Parties and Conrail. The requests for admission relate to the sale of, deed for, use of, location of, and abandonment of the Harsimus Branch and the Hudson Industrial Track.¹⁴ The City Parties objected to all of the requests for admission, but nevertheless did respond to some of them.¹⁵

¹² See City Parties' Mot. to Compel LLCs, Ex. B.

¹³ The NHPA provides, in relevant part, that a federal "agency will not grant a . . . license . . . to an applicant who, with intent to avoid the requirements of section 306108 of this Act, has intentionally significantly adversely affected a historic property." 54 U.S.C. § 306113. Section 306108 requires that the Board take into account the effect of an abandonment on any historic property. Id. § 306108.

¹⁴ Conrail's 2008 initial notice of intent to initiate abandonment proceedings stated that Conrail intended to file a notice of exemption to abandon the lines that constituted line code 1440 (the Hudson Street Industrial Track) and line code 1420 (the Harsimus Branch). See Harsimus Abandonment Proceeding, AB 167 (Sub-No. 1189X), Notice of Intent (filed March 12, 2008). Conrail later notified the Board that it would only seek abandonment authority for the Harsimus Branch and its subsequent Notice of Exemption only applied to that trackage. Id., Comments of Conrail (filed January 7, 2009); id., Verified Notice of Exemption (filed Feb. 26, 2009).

¹⁵ See LLCs' Mot. to Clarify Response to Requests for Admission & to Otherwise Compel Proper Responses (LLCs' Mot. to Clarify/Compel Admissions), Ex. A.

Conrail objected to all of the requests and declined to admit or deny any of them.¹⁶ The LLCs argue that the status and location of the Harsimus Branch the Hudson Street Industrial Track are unresolved and that it is unclear what trackage Conrail is seeking to abandon.¹⁷

Both the Board and the courts have already found that the Harsimus Branch is a rail line subject to the Board's abandonment authority, so the issue as to the status of the relevant property has been addressed and resolved. See 212 Marin Boulevard, LLC—Pet. for Declaratory Order, FD 35825 (STB served Apr. 24, 2015). Moreover, the record shows that Conrail is seeking abandonment authority for the Harsimus Branch in this proceeding and not the Hudson Street Industrial Track, so requests associated with the latter are clearly beyond the scope of issues here. Accordingly, the requests do not seek information that is relevant to this ongoing proceeding, and will therefore be denied.

The City Parties' Motion to Compel Valuation Information. On December 23, 2014, the City Parties filed a motion asking the Board to compel Conrail to provide valuation information pursuant to 49 C.F.R. § 1152.27(a), which would supply the City Parties with the information they argue is necessary to file an OFA. The City Parties state that a shipper has approached them "with an urgent need for service."¹⁸ Conrail responded by arguing that the City Parties will be unable to meet the criteria for a successful OFA.¹⁹

Pursuant to our regulations, an abandoning railroad must provide, upon request, to a party considering an OFA, the information enumerated in 49 C.F.R. §§ 1152.27(a), (d); see also Norfolk S. Ry.—Pet. for Exemption—in Balt. City & Balt. Cnty., Md., AB 290 (Sub-No. 311X), slip op. at 4 (STB served Mar. 22, 2010). Conrail's claim that the City Parties will be unable to submit a successful OFA may ultimately prove correct, but the Board's determination of whether to grant a request for an OFA occurs after the valuation information has been provided and an OFA is filed. Thus, the Board typically does not consider or address the factors necessary to determine whether an OFA might be granted until the offeror receives the valuation information in 49 C.F.R. §§ 1152.27(a) and (d) (which is in the abandoning railroad's possession) and files an OFA. Accordingly, we will grant the City Parties' motion to compel Conrail to produce the valuation information described in 49 C.F.R. §§ 1152.27(a), (d) limited to the operation of and property comprising the Harsimus Branch only. Conrail must provide this valuation information to the City Parties no later than June 1, 2015. Normally, in class exemption cases, OFAs are due 30 days after the Federal Register publication of the notice, and, if a formal expression of intent

¹⁶ See LLCs' Mot. to Clarify/Compel Admissions, Ex. B.

¹⁷ See generally LLCs' Mot. to Clarify/Compel Admissions.

¹⁸ City Parties' Mot. to Compel Conrail Immediately to Supply Valuation Information Required Pursuant to 49 C.F.R. § 1152.27(a) (City Parties' Motion to Compel Valuation Information) at 2.

¹⁹ See Conrail's Reply to City Parties' Mot. to Compel Valuation Information at 3-4.

to file an OFA is filed, the effective date of the exemption is postponed until 40 days after the notice is published. 49 C.F.R. § 1152.27(c)(2)(i). Here, because of the unique circumstances of this case, the Board will decide whether to make the notice of exemption effective and will set a due date for OFAs in a future decision.²⁰

Motions Related to the Motion to Compel Valuation Information.²¹ In their Motion to Compel Valuation Information from Conrail, the City Parties assert that they have a shipper with a need for rail service.²² They also attach letters of support from the Mayor of the City of Jersey City and several New Jersey state assembly members and senators.²³ In reply, the LLCs and Conrail challenge the veracity of the City Parties' assertion regarding a shipper's interest.²⁴ The LLCs also imply that the letters from the state politicians were ghost-written by the Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition.²⁵

The City Parties' filed a Motion for Leave to File a Reply to the replies by the LLCs and Conrail. We will deny the City Parties' motion because a reply to a reply is not permitted under our rules, nor is one necessary here to complete the record. See 49 C.F.R. § 1104.13(c). As noted, our decision to grant the City Parties' Motion to Compel Valuation Information is based on the Board's consistent application of the OFA rules. As such, arguments about matters such as whether there is actually a potential shipper are not relevant to our determination that Conrail should provide the valuation information required by the Board's regulations.

Additionally, on February 10, 2015, the LLCs filed a reply to the City Parties' Motion for Leave to File a Reply, to which the City responded with a Motion to Strike. As stated, our rules do not permit replies to replies. See 49 C.F.R. § 1104.13(c). However, the LLCs' February 10, 2015 reply is a response to the City Parties' *Motion* for Leave to File a Reply. Accordingly, the February 10, 2015 reply is an appropriate reply to a motion, and we will deny the City Parties' Motion to Strike.

²⁰ Harsimus Abandonment Proceeding, AB 167 (Sub-No. 1189X), et al., slip op. at 7 (STB served Aug. 11, 2014).

²¹ There is an outstanding motion filed by the LLCs' asking that the Board hold that a document filed as confidential by the City Parties does not meet Board standards for a confidential designation. The time for replying to this motion has not yet passed and, because it is not yet ripe for our review, it is not addressed here.

²² City Parties' Mot. to Compel Valuation Information at 2.

²³ See City Parties' Mot. to Compel Valuation Information, Exs. C, D.

²⁴ See generally Conrail's Reply to City Parties' Mot. to Compel Valuation Information; LLCs' Reply to City Parties' Mot. to Compel Valuation Information.

²⁵ LLCs' Reply to City Parties' Mot. to Compel Valuation Information at 7-8.

Finally, the LLCs filed a motion on March 18, 2015, asking that the Board unseal a document filed by the City Parties as an attachment to their motion to compel valuation information. Specifically, to support their claim of need for the valuation information in the Board OFA regulations, the City Parties filed a statement under seal from the proposed shipper who they state has approached them.²⁶ The LLCs argue that the information in the shipper statement does not qualify as “Confidential” or “Highly Confidential” under the Board’s September 24, 2014 protective order and that, therefore, it should be unsealed. Because the shipper letter may be relevant to our consideration of any OFA that may be filed, we will rule on the LLCs’ motion when we address the due date for the filing of OFAs.

Motion to Provide Original or Color Copy of Map. On March 4, 2015, the LLCs filed a motion asking the Board to require the City to file an original or a fully accurate color copy of the “Parcel Map” that was attached as an exhibit to the City Parties’ January 20, 2015 Motion for Leave to File a Reply. Because the requested map relates to the LLCs’ argument relating to whether the Board retains jurisdiction over the Harsimus Branch, an issue that already has been addressed and resolved by the Board and the courts,²⁷ the map has no relevance to the issues currently before the Board. Therefore, this motion will be denied.

The Board recognizes the lengthy history of this proceeding and the complex and controversial issues that have been presented. That is why the Board is permitting a reasonable amount of discovery in this proceeding, notwithstanding the normal practice of limiting discovery in abandonment proceedings. We note, however, that the record has become voluminous and, in our opinion, needlessly so. Although the Board cannot limit the filings submitted by the parties in the future, we expect the parties to exercise sound judgment when weighing the need for future motions or objections.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The City Parties’ Motion to Compel Conrail to Respond to Discovery (Document) Requests is granted in part and denied in part as set forth in Appendix A.

2. The City Parties’ Motion to Compel the LLCs to Respond to Discovery (Document) Requests is granted in part and denied in part as set forth in Appendix B.

²⁶ City Parties’ Mot. to Compel Valuation Information at 2, Ex. D.

²⁷ See 212 Marin Boulevard, LLC—Pet. for Declaratory Order, FD 35825 (STB served Apr. 24, 2015).

3. The LLCs' Motion to Clarify Responses to Requests for Admission and to Otherwise Compel Proper Responses to Requests for Admissions is denied.

4. The City Parties' Motion to Compel Valuation Information from Conrail is granted. Conrail must produce valuation information described in 49 C.F.R. §§ 1152.27(a), and (d) pertaining to the Harsimus Branch by June 1, 2015.

5. The City Parties' Motion to File a Reply is denied.

6. The City Parties' Motion to Strike is denied.

7. The LLCs' Motion to Compel Provision of a Map is denied.

8. This decision is effective on its date of service.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.

Appendix A
Specific rulings on the City Parties' Motion to Compel Conrail to Respond to Discovery
(Document) Requests

Req. No.	City Parties' Request	Decision	Modification, if relevant ²⁸
Email Req. No. 1 ²⁹	[A]ll documents . . . bearing upon or relating to sales or transfers, or projected sales or transfers, of property interests of Consolidated Rail Corporation to any interest controlled or owned by Steve Hyman or Victoria Hyman, or the Port Authority of New York and New Jersey (PATH), or any other party (a) in or near the former Waldo Yard in Jersey City, (b) between any portion of the former Waldo Yard in Jersey City and the Harsimus Branch, (c) along the former Pennsylvania Railroad mainline between Journal Square and Newark Avenue in Jersey City, and/or (d) along the former River Line (or connections thereto from National Docks Secondary or the Harsimus Branch) between the Bergen Arches Cut and CP Waldo in Jersey City from January 1, 2006 to the date of response. Conrail is specifically requested to produce all maps relating to such sales or transfers, or projected sales or transfers, in	Denied. This request is overly broad and seeks documents with no apparent relevance to this ongoing proceeding involving the Harsimus Branch.	

²⁸ Strikethrough text indicates that this language is cut from the original request; underlined text indicates that this language is added to the original request.

²⁹ The City includes two unnumbered requests in its letter to Conrail.

	its custody or control.		
Email Req. No. 2	[A]ll documents . . . constituting, reflecting, or arising out of proposed transactions between Conrail and (a) Victoria Hyman, (b) Steve Hyman, or (c) any company owned or controlled by Victoria or Steve Hyman involving (i) any portion of the Harsimus Branch or (ii) any property in Jersey City owned or controlled by Conrail from January 1, 2003, to the date of response.	Denied. This request is overly broad and seeks documents with no apparent relevance to this proceeding. Documents relating to “proposed” transactions, transactions other than those involving the Harsimus Branch, and documents related to transactions not close in time to the sale of the Embankment are among those requested that are not relevant to either allegations of a violation of 54 U.S.C. § 306113 or the other issues to be addressed in the Supplemental and Final Environmental Assessment.	
1	All versions of the following documents as referenced in the Memorandum of Understanding executed by “Conrail,” SLH Holding Company, and “the LLCs” signed October 12, 2007 by Jonathan Broder and a person believed to be S. Hyman, which Memorandum of Understanding was filed by the LLCs as document 94-02 (filed 11/08/12) in U.S.D.C. 09-1900: (a) “Agreement of Sale dated June 24, 2003” (b) “letters dated September 22, 2003, May 7, 2004, and September 15, 2004”	Granted in part as modified. This request as written is overly broad and includes requests for documents with no apparent relevance to this ongoing proceeding. As modified herein, the request is limited to documents reasonably calculated to lead to the discovery of admissible evidence.	Final or executed All versions of the following documents as referenced in the Memorandum of Understanding executed by “Conrail,” SLH Holding Company, and “the LLCs” signed October 12, 2007 by Jonathan Broder and a person believed to be S. Hyman, which Memorandum of Understanding was filed by the LLCs as document 94-02 (filed 11/08/12) in U.S.D.C.

	(c) "Amendment of Agreement of Sale dated October 27, 2004" (d) All writings that relate in any way to the foregoing (a), (b), or (c). (e) Any other amendments or modifications to any agreement for the sale of any portion of the Harsimus Branch to any interest owned or controlled, directly or indirectly, by Victoria or Steve Hyman.		09-1900: (a) "Agreement of Sale dated June 24, 2003" (b) "letters dated September 22, 2003, May 7, 2004, September 15, 2004" (c) "Amendment of Agreement of Sale dated October 27, 2004" (d) All writings that relate in any way to the foregoing (a), (b), or (c). (e) Any other amendments or modifications to any agreement for the sale of any portion of the Harsimus Branch to any interest owned or controlled, directly or indirectly, by Victoria or Steve Hyman.
2	All versions of the Memorandum of Understanding signed or dated October 12, 2007, by Broder and Hyman as referenced above, and any other agreements or documents reflecting written or oral understandings between one or more of Conrail, the LLCs, or SLH Holding Company "to maintain the benefit of the 2005 sale" of portions of the Harsimus Branch to SLH Holding Company or the LLCs.	Granted in part as modified. This request as written is overly broad and includes requests for documents with no apparent relevance to this ongoing proceeding. As modified herein, the request is limited to documents reasonably calculated to lead to the discovery of admissible evidence.	<u>Final or executed versions</u> All versions of the Memorandum of Understanding signed or dated October 12, 2007, by Broder and Hyman as referenced above, and any other agreements or documents reflecting written or oral understandings between one or more of Conrail, the LLCs, or SLH Holding Company "to maintain the benefit of the 2005 sale" of portions of the

			Harsimus Branch to SLH Holding Company or the LLCs.
3	Documents sufficient to show any policy of Conrail for approval by officers and/or the board of directors of Conrail for real estate, including but not limited to the Harsimus Branch, applicable from 2002 to the date of this document request, including but not limited to any requirements for board approval for sales exceeding certain valuations.	Denied. This request is ambiguous; it is unclear what a policy “for real estate” is and how a “real estate” policy has any relevance to this ongoing proceeding.	
4	All documents, including but not limited to, corporate minutes and communications with, to, from or concerning the board of directors of Conrail, including presentations to the board of directors of Conrail, concerning the sale of any portion of the Harsimus Branch to SLH Holding Company or “the LLCs,” including but not limited to any documents relating to approval or to withholding of approval of sales agreements, or amendments of sales agreement, relating to any portion of the Harsimus Branch.	Granted in part as modified. Portions of this request are denied as overly broad and seeking documents with no apparent relevance to this proceeding. Specifically, this request seeks documents that are outside the time period relevant to allegations of a potential violation of 54 U.S.C. § 306113 and that are not otherwise relevant to the issues to be addressed in the Supplemental and Final Environmental Assessment. As modified herein, the request is limited to documents reasonably calculated to lead to the discovery of admissible evidence.	All documents, including but not limited to, Corporate minutes from January 1, 2003 until January 1, 2005 containing and communications with, to, from or concerning the board of directors of Conrail, including presentations to the board of directors of Conrail concerning the sale of any portion of the Harsimus Branch to SLH Holding Company or “the LLCs,” including but not limited to any documents relating to approval or to withholding of approval of sales agreements, or amendments of sales agreement, relating to any portion of the Harsimus Branch.
5	All documents, including but	Granted in part as	All documents;

	not limited to, corporate minutes and communications with, to, from or concerning the board of directors of Conrail, including presentations to the board of directors of Conrail, concerning the Memorandum of Understanding signed October 12, 2007 by Broder and Hyman as referenced above.	modified. Portions of the request that are denied are overly broad and seek documents with no apparent relevance to this proceeding. Specifically, this request seeks documents that are outside the time period relevant to allegations of a potential violation of 54 U.S.C. § 306113 and that are not otherwise relevant to the issues to be addressed in the Supplemental and Final Environmental Assessment. As modified herein, the request is limited to documents reasonably calculated to lead to the discovery of admissible evidence.	including but not limited to, Corporate minutes from January 1, 2003 until January 1, 2008 containing and communications with, to, from or concerning the board of directors of Conrail, including presentations to the board of directors of Conrail, concerning the Memorandum of Understanding signed October 12, 2007 by Broder and Hyman as referenced above.
6	Documents sufficient to set forth the name and current business address of members of the Conrail board of directors 2002 to the date of this document request (or a list with relevant dates of service, names and business addresses).	Denied. This request is overly broad and seeks documents with no apparent relevance to this ongoing proceeding.	
7	All documents relating to agreements or understandings purporting to toll any statute of limitations defense that may be asserted by Conrail or an attorney representing any party (including but not limited to Conrail) to the Agreement of Sale dated June 24, 2003, as later amended.	Denied. This request seeks documents with no apparent relevance to this ongoing proceeding.	
8	All documents relating to any communication to or from the	Granted in part as modified.	All documents relating to Any communication

	New Jersey Department of Transportation concerning sale or purported sale of the Harsimus Branch or the need for regulatory action by the Surface Transportation Board concerning same, other than pleadings filed on behalf of the New Jersey Department of Transportation or the attorney general of New Jersey in U.S.D.C. 09-1900.	This request is overly broad and includes requests for documents with no apparent relevance to this ongoing proceeding. As modified herein, the request is limited to documents reasonably calculated to lead to the discovery of admissible evidence.	<u>between January 1, 2003 and January 1, 2005</u> to or from the New Jersey Department of Transportation concerning sale or purported sale of the Harsimus Branch or the need for regulatory action by the Surface Transportation Board concerning same, other than pleadings filed on behalf of the New Jersey Department of Transportation or the attorney general of New Jersey in U.S.D.C. 09-1900.
9	All documents relating to sale or potential sale of land or interests in land containing the portion of the Harsimus Branch between CP Waldo and the portion of the Harsimus Branch purportedly sold to SLH Holding Company and/or the LLCs, including but not limited to proposed sales, proposed brokerage agreements, or any other proposal that might result in non-railroad use of that portion of the Harsimus Branch.	Denied. This request is overly broad and includes requests for documents with no apparent relevance to this ongoing proceeding.	
10	Documents sufficient to identify (by name, current business address and position during all relevant times at the railroads) all persons advising or taking action for Conrail or recommending action by Conrail in connection with the sale of any portion of the	Denied. This request is overly broad and seeks documents with no apparent relevance to this ongoing proceeding.	

	Harsimus Branch from 2000 to date.		
11	Documents sufficient to identify (by name, current business address and position during all relevant times at SLH Holding Company or the LLCs) all persons advising or taking action for SLH Holding Company or the LLCs in connection with the sale of the Harsimus Branch from 2000 to date.	Denied. This request is overly broad and seeks documents with no apparent relevance to this ongoing proceeding.	
12	All documents reflecting any inquiry by Conrail employee Ryan or Conrail attorney Fiorilla or any other employee or agent of Conrail directed to any other person employed by, retained by, or acting as an agent for Conrail, CSX or NS concerning whether the Harsimus Branch was a line of railroad requiring STB abandonment authorization prior to sale to SLH Holding Company or the LLCs, and all documents responsive thereto.	Granted in part as modified. This request is overly broad and includes requests for documents with no apparent relevance to this ongoing proceeding. Specifically, this request seeks documents that are outside the time period relevant to allegations of a potential violation of 54 U.S.C. § 306113 and that are not otherwise relevant to the issues to be addressed in the Supplemental and Final Environmental Assessment. As modified herein, the request is limited to documents reasonably calculated to lead to the discovery of admissible evidence.	All documents <u>recording reflecting</u> any inquiry, or response thereto, <u>prior to January 1, 2005</u> Conrail employee Ryan or Conrail attorney Fiorilla or any other employee or agent of Conrail directed to any other person employed by, retained by, or acting as an agent for Conrail, CSX or NS concerning whether the Harsimus Branch was a line of railroad requiring STB abandonment authorization prior to sale to SLH Holding Company or the LLCs; and all documents responsive thereto.
13	All documents in the files of CSX or NS, including the files of their attorneys, consultants, agents, employees, officers and board members, relating to the	Denied. This request is overly broad and includes requests for documents with no apparent relevance to this	

	rail regulatory status, historic nature, or sale of Harsimus Branch from 2000 to date other than pleadings in F.D. 34818, U.S.D.C. 09-1900, or appeals or petitions for review therefrom, or pleadings in this abandonment proceeding.	ongoing proceeding. To the extent that this request includes a request for potentially relevant documents, those documents would be responsive to other requests.	
14	All documents (other than pleadings prepared by Conrail seeking to contest the constitutionality of N.J.S.A. 48:12-125.1) showing NS, CSX or Conrail compliance with, or objection to, any state law that creates a preferential purchase right for public agencies in connection with railroad lines that are subject to STB abandonment proceedings, including but not limited to N.H. Rev. Stat. 228:60-b; Vermont Stat. Ann. § 3404; Mass. Gen., Law, chap 161C, § 7; Conn. Stat. 13b-36(c); New York's Transportation Law § 20.	Denied. This request is overly broad and seeks documents with no apparent relevance to this ongoing proceeding.	

Appendix B
Specific rulings on the City Parties' Motion to Compel the LLCs to Respond to Discovery
(Document) Requests

Req. No.	Request	Decision	Modification, if relevant ³⁰
1	All versions of the following documents as referenced in the Memorandum of Understanding executed by "Conrail," SLH Holding Company, and "the LLCs" signed October 12, 2007 by Jonathan Broder and a person believed to be S. Hyman, which Memorandum of Understanding was filed by the LLCs as document 94-02 (filed 11/08/12) in U.S.D.C. 09-1900: (a) "Agreement of Sale dated June 24, 2003" (b) "letters dated September 22, 2003, May 7, 2004, September 15, 2004" (c) "Amendment of Agreement of Sale dated October 27, 2004" (d) All writings that relate in any way to the foregoing (a), (b), or (c). (e) Any other amendments or modifications to any agreement for the sale of any portion of the Harsimus Branch to any interest owned or controlled, directly or indirectly, by Victoria or Steve Hyman.	Granted in part as modified. This request is overly broad and includes requests for documents with no apparent relevance to this ongoing proceeding. As modified herein, the request is limited to documents reasonably calculated to lead to the discovery of admissible evidence.	<u>Final or executed</u> All versions of the following documents as referenced in the Memorandum of Understanding executed by "Conrail," SLH Holding Company, and "the LLCs" signed October 12, 2007 by Jonathan Broder and a person believed to be S. Hyman, which Memorandum of Understanding was filed by the LLCs as document 94-02 (filed 11/08/12) in U.S.D.C. 09-1900: (a) "Agreement of Sale dated June 24, 2003" (b) "letters dated September 22, 2003, May 7, 2004, September 15, 2004" (c) "Amendment of Agreement of Sale dated October 27, 2004" (d) All writings that relate in any way to the

³⁰ Strikethrough text indicates that this language is cut from the original request; underlined text indicates that this language is added to the original request.

			foregoing (a), (b), or (c). (e) Any other amendments or modifications to any agreement for the sale of any portion of the Harsimus Branch to any interest owned or controlled, directly or indirectly, by Victoria or Steve Hyman.
2	All versions of the Memorandum of Understanding signed or dated October 12, 2007, by Broder and Hyman as referenced above, and any other agreements or documents reflecting written or oral understandings between one or more of Conrail, the LLCs, or SLH Holding Company “to maintain the benefit of the 2005 sale” of portions of the Harsimus Branch to SLH Holding Company or the LLCs.	Granted in part as modified. This request is overly broad and includes requests for documents with no apparent relevance to this ongoing proceeding. As modified herein, the request is limited to documents reasonably calculated to lead to the discovery of admissible evidence.	<u>Final or executed versions</u> All versions of the Memorandum of Understanding signed or dated October 12, 2007, by Broder and Hyman as referenced above, and any other agreements or documents reflecting written or oral understandings between one or more of Conrail, the LLCs, or SLH Holding Company “to maintain the benefit of the 2005 sale” of portions of the Harsimus Branch to SLH Holding Company or the LLCs.
3	Documents sufficient to show the ownership of the LLCs and NZ and any changes in ownership from 2003 to date.	Denied. This request is overly broad and seeks documents with no apparent relevance to this ongoing proceeding.	
4	All documents relating to agreements or understandings purporting to toll any statute of limitations defense that may be asserted by Conrail or an attorney	Denied. This request seeks documents with no apparent relevance to this ongoing proceeding.	

	representing any party (including but not limited to Conrail) to the Agreement of Sale dated June 24, 2003, as later amended.		
5	All documents relating to any communication to or from the New Jersey Department of Transportation concerning sale or purported sale of the Harsimus Branch or the need for regulatory action by the Surface Transportation Board concerning same, other than pleadings filed on behalf of the New Jersey Department of Transportation or the attorney general of New Jersey in U.S.D.C. 09-1900.	Denied. This request seeks documents with no apparent relevance to this ongoing proceeding.	
6	All documents relating to sale or potential sale of land or interests in land containing the portion of the Harsimus Branch between CP Waldo and the portion of the Harsimus Branch purportedly sold to SLH Holding Company and/or the LLCs, including but not limited to proposed sales, proposed brokerage agreements, or any other proposal that might result in non-railroad use of that portion of the Harsimus Branch.	Denied. This request is overly broad and seeks documents with no apparent relevance to this ongoing proceeding.	
7	Documents sufficient to identify (by name, current business address and position during all relevant times at the railroads) all persons advising or taking action for Conrail or recommending action by Conrail connection with the sale of any portion of the Harsimus Branch from 2000 to date.	Denied. This request is overly broad and seeks documents with no apparent relevance to this ongoing proceeding.	
8	Documents sufficient to identify (by name, current business address and position during all	Denied. This request is overly broad and seeks documents	

	relevant times at SLH Holding Company or the LLCs) all persons advising or taking action for SLH Holding Company or the LLCs or NZ in connection with the sale of the Harsimus Branch from 2000 to date.	with no apparent relevance to this ongoing proceeding.	
9	All documents reflecting any inquiry any representative of the LLCs or SLH Holding Company prior to acquisition of any portion of the Harsimus Branch by SLH or the LLCs concerning whether the Harsimus Branch was a line of railroad requiring STB abandonment authorization prior to sale to SLH Holding Company or the LLCs, and all documents responsive thereto.	Granted in part as modified. This request is overly broad and includes requests for documents with no apparent relevance to this ongoing proceeding. As modified herein, the request is limited to documents reasonably calculated to lead to the discovery of admissible evidence.	All documents <u>that were provided to or were provided by Conrail and which record reflecting</u> any inquiry, or response thereto, any representative of the LLCs or SLH Holding Company prior to acquisition of any portion of the Harsimus Branch by SLH or the LLCs inquiries concerning whether the Harsimus Branch was a line of railroad requiring STB abandonment authorization prior to sale to SLH Holding Company or the LLCs; and all documents responsive thereto.
10	All documents relating to demolition of the Harsimus Embankment by or on behalf of the LLCs.	Denied. This request is overly broad and requests documents with no apparent relevance to this ongoing proceeding.	
11	All documents relating to offers to donate the Harsimus Embankment as fill to Hoboken or any other entity or individual.	Denied. This request seeks documents with no apparent relevance to this ongoing proceeding. To the extent that relevant	

		documents may be included in this request, those documents would also be responsive to other document requests.	
12	All documents relating to any sale or exchange or joint development agreement or similar transaction, or any proposed sale or exchange or joint development agreement or similar transaction, of any portion of the Harsimus Branch by the LLCs (or NZ) and any entity or individual other than Conrail or the City of Jersey City.	Denied. This request seeks documents with no apparent relevance to this ongoing proceeding.	
13	All documents embodying or discussing communications, oral or in writing, by the LLCs and/or NZ with CNJ Rail Corporation, or any agent or representative of same, relating to the Harsimus Branch or litigation concerning the Harsimus Branch.	Denied. This request is overly broad and includes requests for documents with no apparent relevance to this ongoing proceeding.	
14	All documents embodying or discussions communications, oral or in writing, with Chicago Title Company, or any agent or representative of same, relating to the parcels the Harsimus Branch purportedly acquired by the LLCs or NZ, or litigation relating to those parcels.	Granted in part as modified. This request is overly broad and includes requests for documents with no apparent relevance to this ongoing proceeding. As modified herein, the request is limited to documents reasonably calculated to lead to the discovery of admissible evidence.	All documents embodying or discussions communications, oral or in writing, with to or from Chicago Title Company, or any agent or representative of same, relating to the <u>regulatory status of the</u> parcels the Harsimus Branch purportedly acquired by the LLCs or NZ <u>if shared with Conrail,</u> or litigation relating to those parcels.
15	All documents embodying claims, or reservation of claims,	Denied. This request is overly	

	made by the LLCs or NZ against attorneys, Consolidated Rail Corporation, or other individuals or entities arising from fraudulent or negligent misrepresentation of the regulatory status of the Harsimus Branch to the LLCs.	broad and includes requests for documents with no apparent relevance to this ongoing proceeding. To the extent that this request includes potentially relevant documents, those documents would be responsive to other requests.	
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