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6 October 2017

Surface Transportation Board
Att: Victoria Rutson and
Joshua Wayland, Office of Environmental Analysis
395 E Street, S.W.
Washington, D.C. 20472

Re: STB/OEA and NHPA Section 110(k), Conrail
Environmental Correspondence filed Sept. 8,
Continued Error in OEA's 2009 EA

Conrail - Ab. Ex. - in Hudson County, NJ,
AB 167-1189X (Harsimus Branch)

Dear Ms. Rutson and Mr. Wayland:

This submission is on behalf of City of Jersey City ("City"), Rails to Trails Conservancy ("RTC"), and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition ("Coalition"), collectively "City et al." It is directed, first, at a letter dated September 8, 2017, filed as an environmental comment by Consolidated Rail Corporation ("Conrail") claiming that a New Jersey state court ruling somehow absolves Conrail from responsibility under section 110(k) of the National Historic Preservation Act, 54 U.S.C. 306113,¹ and, second, at errors (to which we have previously

¹ Section 110(k) provides as follows: "Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant that, with intent to avoid the requirements of [section 106] of this Title, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, has allowed the significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting the assistance

objected) made concerning section 110(k) by the Office of Environmental Analysis (OEA) in its Environmental Assessment (EA) filed March 23, 2009 in this proceeding. For the reasons stated herein, the Conrail letter is irrelevant to issues in the proceeding, and the 2009 EA remains in error on section 110(k).

I. Conrail's Erroneous Claim of Exculpation

By letter dated September 8, 2017, Robert Jenkins, counsel for applicant for abandonment Conrail submitted a letter to OEA contending that a decision by a New Jersey trial court somehow showed that Conrail did not intentionally evade this Board's abandonment authority in selling a portion of the Harsimus Branch rail line to a developer for demolition and non-rail purposes. The case in question was brought against Conrail by Chicago Title Company (as title insurer for the eight commonly owned limited liability companies - hereinafter referred to as "the developer," or "the Hyman interests," or simply the "LLCs"). We begin by noting that City et al were never part of this state court proceeding, the proceeding in no way is binding upon any litigant in AB 167-1189X or related cases, and the case raised state law claims that are unrelated to the Section 110k issues involved in this proceeding.

In all events, Conrail's various claims about what the decision demonstrates are nonsense. Conrail has stipulated that it will not contest in this proceeding the fact that the Harsimus Branch was conveyed to Conrail as a line of railroad. In light of this stipulation, the Section 110k issue that must be addressed in AB 167-1189X boils down to this: was there a legitimate and lawful basis for Conrail to treat the Harsimus Branch as anything other than a line of railroad subject to STB abandonment jurisdiction at the times relevant herein? As demonstrated herein, there was not.

City et al attach hereto a Verified Statement (V.S.) by an expert well familiar with federal abandonment jurisdiction (Thomas McFarland, Esq., 52 years' experience, over 100 rail abandonments). Mr. McFarland, acting in his expert capacity and not as an advocate for a litigant, explains that the "guiding principle in ICC-STB jurisprudence" is that "once a line of railroad, always a line of railroad." V.S. at 4. He notes that this principle was clearly articulated in the Chelsea Property

despite the adverse effect created or permitted by the applicant."

Owners - Aband. - Portion of the Consolidated Rail Corporation's West 30th Street Secondary Track in NY, NY, 8 ICC2d 773, involving Conrail in 1992 (Chelsea Property Owners or Highline" case). He explains that "it would not be credible" (V.S. at 5) that Conrail was unaware of that case; the Chelsea Property Owners resulted in an internationally famous elevated rail trail in Manhattan.² and the decision was issued prior to Conrail's illegal transfer of the Embankment portion of the Harsimus Branch to a developer.

Mr. McFarland notes that the record shows two "allegations" by Conrail's outside counsel Fiorilla that the Harsimus Branch is a "spur" and not a line. As Mr. McFarland says,

"[n]o legal authority nor reasoning was provided by Mr. Fiorilla in support of the allegation. Mr. Fiorilla is a longtime railroad attorney and representative of Conrail. He was surely familiar with the principle of 'once a railroad line, always a railroad line' that was applied in the [Chelsea Property Owners or "Highline"] decision ... Mr. Fiorilla surely knew, or had good reason to know that his allegation, that the Embankment was a spur, was false." V.S. p.6 (emphasis in original).

Indeed, Mr. McFarland emphasizes that both Jonathan Broder (current Conrail general counsel) and Mr. Fiorilla held similar positions in 1992 when Chelsea Property Owners was decided, and in 2005 when Conrail sold the Harsimus Embankment to the developer without seeking or obtaining abandonment authority from this Board. V.S. at 4. They therefore at all times were aware, or should have been aware, of this most basic of legal principles in agency abandonment jurisdiction. Conrail clearly breached any conceivably applicable standard of care when it arbitrarily deemed the Harsimus Branch to be an unregulated "spur."

² Conrail is owned in part by CSX, which is seeking discontinuance authority in a proceeding related to AB 167-1189X. CSX testified extensively concerning the benefits and popularity of "Highline" trail that resulted from the Chelsea Property Owners decision in this Board's informational hearing held July 8, 2009, entitled "Twenty-Five Years of Rail Banking: A Review and Look Ahead," STB Ex Parte 690, served May 21, 2009. A video of the testimony is available on the STB website.

The unsupportable allegation of Fiorilla that the Branch was a "spur" was the primary support for the state court decision on which Conrail relies in its September 8 letter. As Mr. McFarland states

"[t]he result surely would have been different if it had been explained to the Court that it is judicially settled that Conrail acquired the Embankment as a rail line, and that under settled ICC-STB precedent, the Embankment remained a rail line requiring STB authorization for its abandonment when it was sold to the LLCs without the requisite abandonment authority." V.S. p. 7.

Otherwise the state court would have been ignoring well-established federal law. This would be contrary to the Constitution.

Mr. McFarland concludes that he is "firmly of the opinion that when Conrail conveyed the Embankment to the LLCs in 2005, Conrail knew, or had good reason to know, that the Embankment was every bit as much a railroad line as the Highline was determined to be only a short time earlier." V.S. p. 8.

Wholly apart from the case on which Conrail relies, the best that can be said for Conrail's "intention" in 2005 is that the railroad (including its legal department and its outside counsel) was acting with "willful blindness" to the facts and law applicable to the Harsimus Branch. But willful blindness is the equivalent of knowing and intentional conduct. In sum, Mr. McFarland's expert verified statement establishes that Conrail, at the very highest levels, knowingly and intentionally breached the law.

This conclusion is supported by other relevant evidence of record. For example, in discovery in F.D. 34818, Conrail produced a document entitled "Spur Decisions Made by Law Department."³ The document - a table - indicates that Harsimus Branch, line code 10-1420, was determined to be a "spur" by attorney "JPP" on 4/14/1994 at the request of "J.W. Fallon."⁴ Mr. Paylor gives no reasoning for his conclusion.

³ That document is Exhibit F to City et al's "Summary Statement Concerning Section 110(k)" filed January 21, 2009 in AB 167 (Sub-no. 1189X).

⁴ "JPP" is John P. Paylor, at the time Associate General Counsel for Conrail.

For the same reasons stated by Mr. McFarland, Mr. Paylor either knew or reasonably should have known that the Harsimus Branch (Embankment) was a line, not a spur, for abandonment purposes. Mr. Paylor was involved as counsel for Conrail in about a half dozen "two year out-of-service" abandonment exemption cases, and most of these are short segments of trackage. Indeed, roughly half involve rail lines shorter than the Harsimus Branch. See, e.g., AB 167-1178X, served May 21, 1997 (.59 miles, Black Rock Industrial Track in Buffalo, NY); AB 167-1173X, served Dec. 5, 1996 (.45-mile, Honey Creek Secondary in City of Anderson, Indiana); AB 167-1183X, served May 22, 1998 (.42 miles, Berks Street Industrial, in Philadelphia). The Highline decision would have been (or should have been) fresh in the minds of all in Conrail's Law Department in 1994, including the mind of Mr. Paylor. In all events, the Conrail law department is charged with knowledge that they cannot arbitrarily designate what is clearly a line to spur status.

Conrail clearly had a profit motivation to evade STB abandonment jurisdiction and attendant application of section 106 of the NHPA. The railroad from the mid-90's onward was attempting to sell the property for redevelopment, and was actively seeking assistance from the Jersey City Redevelopment Agency (JCRA). Both Conrail and the developer in numerous filings in AB 167-1189X have alluded to this.

Had Conrail sought abandonment authority for the Branch during its course of dealings with JCRA, this would have triggered the Section 106 process. Conrail was aware as early as 1999 -- long before the railroad sold the Embankment parcels to the LLCs -- that the entire Branch, and certainly the Embankment, were potentially eligible for the State and National Registers. If either the Embankment or the Branch were designated as eligible, then JCRA would withdraw from the negotiation with Conrail.

Conrail has admitted as much contemporaneously with the events in question. For example, in 1999, Conrail's president stated to New Jersey SHPO that, in effect, JCRA could not participate in a redevelopment project involving an historic asset.⁵ Conrail (again, at the highest level) believed that it

⁵ See notarized Letter, Conrail President (T. O'Toole) to D. Guzzo, DEO (NJ SHPO), dated June 4, 1999, contained in City et

would economically benefit from suppressing a finding that the Branch and/or the Embankment were eligible for the State and National Registers. For similar reasons, Conrail publicly opposed Jersey City's designation of the Embankment as a City Historic Landmark in 2003. That was ample motivation for evading (or contriving to be willfully blind to) ICC or STB abandonment requirements.

Despite Conrail's opposition, in 1999 the New Jersey State Historic Preservation Officer (SHPO) officially determined the Embankment eligible for the State Register.⁶ Conrail's president, in a June 4, 1999 notarized letter, protested this determination on the ground that it would interfere with Conrail's effort to sell the property for development. See note 5.⁷ SHPO nonetheless included the Embankment in the State Register, and, as feared by Conrail, JCRA withdrew.

Rather than initiating an abandonment proceeding and engaging in the Section 106 process, Conrail chose to market the Embankment portion of the Branch to anyone willing to buy it without an STB abandonment authorization. Ironically, the documents describing the parcels for sale indicated that they were part of a line of railroad. The Hyman LLCs were the only bidder in 2003, evidently taking an option, which resulted in the 2005 sale.

The circumstances surrounding the 2005 sale to the LLCs further confirm that Conrail was aware that the Branch was an STB-regulated line of railroad. Indeed, the sale to the LLCs appears to have been rushed through because Conrail not only had learned that the City retained eminent domain counsel (Mr. Curley) to acquire the property but also was faced with demands by Mr. Curley that Conrail show either an abandonment authorization or proof that none was required. By letter dated June 7, 2005,⁸ Mr. Curley asked Conrail if it had an abandonment authorization. By letter dated June 17, 2005, Conrail's outside

al Comments filed Sept. 25, 2014 in AB 167 (Sub-no. 1189X) at pp. 92-93.

⁶ See certificate of eligibility, copy attached in Exhibit G to City et al Comments filed Jan. 23, 2009 in AB 167-1189X (p. 108 of 292).

⁷ Letter, Guzzo to Conrail, Jan. 25, 2000, contained in City et al's Comments filed Sept. 25, 2014 in AB 167-1189X at p. 94.

⁸ See City et al Comments filed in AB 167-1189X 25 Sept. 2014 at pp. 65-66.

attorney (Fiorilla) advised City's eminent domain counsel (Curley) that Conrail was not required to have abandonment authority. He gave no reasoning.⁹

As required by the New Jersey Title Standards Manual,¹⁰ Mr. Curley's office per letter from Ms. Middleton then asked for proof that no abandonment authorization was required.¹¹ Conrail, of course, had never sought abandonment, and for (among other things) the reasons stated by Mr. McFarland, could not prove that STB approval was not required.

Subsequent to the Middleton letter (note 11), and indeed for purposes of response to it, Conrail rushed the unlawful sale to the developer. By letter dated July 18, 2005, Fiorilla for Conrail informed Mr. Curley in response to the Middleton letter that Conrail had sold the properties on July 13, 2005, and "no longer has any interest actual or equitable in those properties."¹² That was a flagrant violation of the law. As Mr. McFarland states, Conrail either knew or should have known that an abandonment authorization was required. It was

⁹ A copy of his letter is found in Exhibit K to City et al's Comments in AB 167-1189X filed Jan. 21, 2009 (pp. 167-68 of 292) and at pp. 67-68 of City et al's 25 September 2014 comments.

¹⁰ See L. Fineberg, Handbook of New Jersey Title Practice, 2d ed. 2000, pp. 98-4 to 6; id. 3d ed., 2005, pp. 98-1 to 6. These pages are attached in Appendix I to City et al's Comments filed September 25, 2014 in AB 167-1189X at pp. 34-44. It appears that neither the developer (Steve Hyman) nor his LLCs, nor his title company (Chicago Title) complied with published New Jersey title practice standards. None requested proof that an abandonment authorization was not required. Instead, they all breached the standard, with the Hyman interests evidently relying on their title insurance commitment from Chicago Title, and the title insurer electing to rely on a (mis-)representation by Conrail through its attorney that the Harsimus Branch was a "spur" without seeking any "proof." Conrail conveyed the property to the LLCs by quitclaim deed (in each case the deed stated that the property in fact was part of a line of railroad), as is, without warranties

¹¹ Letter, J. Middleton to J. Fiorilla, June 28, 2005, contained in Appendix II of City et al.'s Comments filed Sept. 25, 2014 (p. 69 of STB e-library version).

¹² See pp. 70-71 of City et al 25 Sept. 2014 Comments in AB 167-1189X.

definitely on notice of the City's concern before the illegal sale.

Conrail (again, at the highest level) was obviously of the belief that it would economically benefit from suppressing a finding that the Branch and/or the Embankment were eligible for the State and National Registers. That was ample motivation for evading (or contriving to be willfully blind to) ICC or STB abandonment requirements. The historic nature of the Embankment parcels was the only apparent reason for Conrail to evade seeking STB abandonment authorization for the Harsimus Branch. In any event, Conrail's actions in evading STB jurisdiction amounted to a scheme to evade section 106 (part of the STB abandonment process) and this is the hallmark of a Section 110k violation.

Nothing in the decision by the New Jersey state court in the Chicago Title litigation in any way alters this conclusion. While the New Jersey courts may believe that Chicago Title (and/or the LLCs) assumed the risk of STB's preemptive jurisdiction over the line, or alternatively were negligent in their own title investigations for failure to insist (in accordance with the New Jersey Title Practice manual) for proof that no STB abandonment license was required, this certainly does not exculpate Conrail from its intentional evasion (or willful blindness) of STB regulation (inclusive of section 106 regulation). In short, the issue is not whether Conrail is liable to Chicago Title for misrepresentation, or whether Chicago Title is responsible for its own failure to insist on compliance with New Jersey Title Standards, but instead is whether Conrail acted illegally in respect to timely fulfilling federal rail regulatory obligations. Since Conrail does not contest that the property was conveyed to it as a line, and since Conrail is charged with knowledge that once a line, always a line, then Conrail acted illegally either with knowledge of, or at the very least with willful blindness to, the law. The SHPO has now determined, in response to the section 106 process undertaken by STB after Conrail's illegal de facto abandonment in 2005, that the bulk of the Branch (i.e., all the Branch from Marin Boulevard to Waldo and not just the Embankment parcels) is eligible for the State and National Registers.¹³ That enhances

¹³ Letter, K. Marcupol (NJ SHPO) to V. Rutson (STB OEA), July 14, 2017, p. 6 of 11, filed as incoming environmental correspondence in AB 167-1189X.

the significance of the historic assets involved, and makes it all the more imperative that the STB impose sanctions and remedies on Conrail for the railroad's flagrant violation of section 110(k) of the National Historic Preservation Act. For the same reasons, Conrail's actions and mis-actions clearly deprived the public of meaningful opportunity for comment under section 106 of the NHPA, 54 U.S.C. 306108.

II. Conrail's Intent to Harm Historic Assets

STB OEA has repeatedly represented to City et al that STB OEA is not examining section 110(k) issues in the context of its Section 106 review. However, since Conrail has now sought to contest section 110(k) matters before OEA as manifest in Conrail's September 8 letter, debunked above, City et al now again reiterate their objections to STB OEA's prior and only discussion of section 110(k) issues. That discussion is found in OEA's 2009 EA¹⁴, which prematurely and without examination of relevant evidence wrongfully dismisses Section 110k concerns. The EA rationale for dismissing section 110(k) concerns is somewhat different from the misguided arguments in Conrail's September 8 letter. OEA's 2009 EA simply (and incorrectly) asserts that City et al has failed to show that Conrail intended to harm historic assets.

As indicated, the EA seems to assume that City et al must show that Conrail intended to harm historic assets when it knowingly or with willful blindness illegally failed to seek abandonment authority. Presumably it is STB's (OEA's) duty to examine environmental and historic preservation issues, including section 110(k) issues, not the duty of City et al to "prove" an issue.

Moreover, if OEA is truly not considering section 110(k), then at the very least all portions of the 2009 EA dealing with the matter should be deleted. OEA should do so immediately. But if OEA is not considering 110(k) issues, then OEA should clearly state where and in what context section 110(k) arguments should be directed at STB. Section 110(k) is part of the environmental

¹⁴ Despite OEA's position that it is not looking into and is not equipped to investigate section 110(k) issues, OEA's EA in this proceeding purports to dismiss section 110(k) concerns. See EA served March 23, 2009 at p. 14.

laws of the United States applicable in STB licensing proceedings. STB must somewhere consider it. If the agency's environmental staff are not doing so, then the agency clearly must articulate who is and provide relevant procedures. It has so far failed to do so.

However, the real point to underscore, once again, is that the EA's conclusion that the evidence does not show that Conrail intended to harm historic evidence is clearly unsupportable. Assuming arguendo that City et al had a burden of proof, it has been fully discharged. The proof was simply ignored by OEA. We will reiterate it here, with some further corroborating evidence, since the agency is supposed to be re-examining the issues.

Conrail's intentional evasion of abandonment jurisdiction and knowledge that it would impact section 106 assets. Conrail knew that the Harsimus Embankment (a six-block-long earthen-fill structure) was listed on the State Register and eligible for the National Register since the year 1999 and certainly by 2000. Conrail's president signed a notarized letter objecting to that status as conflicting with the railroad's effort to redevelop the property for non-rail purposes. NJ SHPO responded by advising Conrail in 2000 that the Embankment nonetheless was listed. In the face of this certainty, the railroad sold the Embankment to a developer without retaining any legal or equitable interest in it (see Fiorilla letter to John Curley, supra). Conrail does not contest that the property was conveyed to Conrail as a line in this proceeding. Once a line, always a line, for regulatory purposes. As Mr. McFarland's Verified Statement explains, the railroad thus knew, or was willfully blind to the fact, that the Embankment was part of a line of railroad. Conrail nonetheless sold the line, in the face of City's inquiry for proof of abandonment authority or that none was required. Conrail's failure to seek, much less obtain, abandonment authority is thus an intentional evasion of the section 106 process in advance of seeking a federal license.

Further evidence of intent to harm the historic assets. Conrail's intent to evade the National Historic Preservation Act is further demonstrated by subsequent events. This Board confirmed that the Harsimus Branch was a line of railroad by its decision in F.D. 34818 filed on August 9, 2007. The railroad

did not seek reconsideration of this STB decision.¹⁵ Nor did it attempt to alleviate the adverse impact of any of its prior actions on the historic Embankment. Instead, Conrail entered into a contract with the developer in essence obligating it to ensure that the developer's scheme to demolish the Embankment and convert the Harsimus Branch to non-rail purposes was accomplished.¹⁶ This contract is signed by Jonathan Broder as Vice President and General Counsel of Conrail. A copy is attached for the convenience of OEA. Conrail's board of directors adopted the document Broder signed.¹⁷ Conrail is a corporation. The intent of a corporation in violating law can and generally must be inferred from the actions of its officers and employees. Here, Mr. Broder as Conrail's General Counsel, backed by the Conrail board of directors, has clarified that it is the intent of the railroad to demolish the Embankment, all before seeking abandonment authorization.

But that was not all. The railroad then signed as co-applicant onto the developer's demolition permit requests for the historic Embankment.¹⁸ Conrail's joinders in the demolition permits for the Embankment were dated December 13, 2007. The joinders were all signed by Jonathan Broder, as Conrail's vice president and General Counsel. Copies are again attached to this letter for the convenience of OEA. Again, these actions by Conrail's General Counsel demonstrate Conrail's anticipatory demolition intentions. Conrail, on notice it was dealing with a regulated line, nonetheless signed onto demolition permits for the Embankment (which it knew was protected by section 106) before seeking abandonment authority.

Only after re-dedicating itself to the destruction of the historic Embankment, and signing onto its demolition did the railroad finally initiate an abandonment licensing process, in response to the STB's declaratory judgment in 2007 confirming that the branch was an STB-regulated line of railroad. More specifically, Conrail filed a notice of intent to initiate the

¹⁵ The LLCs sought reconsideration, which this agency denied by a decision served Dec. 19, 2007 in F.D. 34818.

¹⁶ See Memorandum of Understanding (made Oct. 12, 2007), contained in City et al's Comments filed Sept. 25, 2014 at pp.108-09.

¹⁷ See Horgan V.S., para 25 at p. 104 of City et al's 25 Sept. 2014 Comments.

¹⁸ Copies were furnished STB as Exhibit B to City et al's comments filed April 28, 2008 in AB 167-1189X.

AB 167 (Sub-no. 1189X) abandonment proceeding on March 12, 2008. However, the railroad did not actually file its "notice of exemption" seeking an abandonment license until January 6, 2009. STB rejected this notice, and Conrail re-filed on February 26, 2009. Conrail and the LLCs then spent six years attempting to evade STB abandonment jurisdiction and the application of the National Historic Preservation Act in judicial proceedings, and -- in the case of the LLCs -- an ill-fated STB declaratory proceeding, which have been recounted elsewhere.

We summarize the relevant destruction-first, regulatory-compliance-only-under-duress chronology below:

Relevant Chronology

1970's - Harsimus Branch (former mainline for freight of PRR with through service to Manhattan) conveyed to Conrail as a line of railroad and used by Conrail for thousands of carloadings per year from multiple customers

1992 - ICC confirms the "once a railroad line always a railroad line" principal in Highline case, ironically involving an elevated line just across the Hudson River from the Harsimus Branch Embankment

1994 - Conrail law department arbitrarily designates the Harsimus Branch as a "spur"

1999 - SHPO finds Embankment eligible for State Register

1999 - Conrail president in a notarized letter protests that historic listing for the Embankment harms redevelopment prospects

1999/2000 - SHPO informs Conrail that the Embankment is officially included in the State Register and eligible for the National Register of Historic Places (the property would be included as listed in the National Register except for Conrail's objection)

2004-05 - City (and others) inquire into Harsimus Branch abandonment status

2005 - Conrail illegally sells the historic Embankment over City objection and despite City's request for proof that abandonment authorization is not required

2006 (January) - negotiations unsuccessful, developer threatens stanchions (and removes one), City et al file petition for declaratory order that the Branch is a line of railroad

2007 - STB (in response to City et al's petition) determines that the Harsimus Branch is a line of railroad requiring STB abandonment authorization

2007 - Conrail contractually commits itself to do whatever is necessary to secure the developer's interests in the Harsimus Branch

2007 - Conrail joins in demolition permit requests for the Embankment

2008 - Conrail (finally) states that it intends to initiate an abandonment proceeding

2009 - Conrail (finally) initiates an abandonment proceeding

2009 - STB publishes an 1152.50 abandonment authorization but stays its effectiveness pending completion of environmental and historic reviews

2007-2014 - Conrail and the LLCs engage in litigation in (among other forums) the D.C. Circuit and U.S.D.C. for D.C. to evade STB abandonment jurisdiction

2015 - STB OEA formally re-starts the section 106 process

2017 - NJ SHPO determines, in response to the agency's section 106 process, that the entire Branch is eligible for the State and National Registers

In short, Conrail knowingly and intentionally bound itself to destroy historic assets and was co-applicant for their destruction even before it sought, much less obtained, an abandonment license in the face of this agency's instruction that an abandonment license was required. Signing onto permit applications to demolish a section 106 asset *after* STB's determination that an abandonment license is required demonstrates Conrail's intention to harm the historic asset before seeking abandonment authority. Indeed, it is hard to imagine how a railroad can more clearly evince an intent to harm historic assets than to co-sign demolition permit applications concerning those assets and bind itself by contract to pursue that end, all in advance of obtaining abandonment authority, much less initiation let alone completion of the section 106

process, in the face of an STB determination that the property in question is part of a line of railroad requiring abandonment authority.

Conrail joined in demolition requests for the Embankment, after it knew that STB regarded the line as regulated and long after it knew that the Embankment was eligible for the National Register of Historic Places. The EA's assertion that City et al had not showed Conrail's intent to harm was not supportable by OEA in 2009 (City had already supplied Conrail's joinder in the demolition permit requirements to STB months before the EA was issued). It certainly is unsupportable in the face of the evidence as re-supplied and corroborated herein and is reversible error.

Under the National Environmental Policy Act and the NHPA, STB is obligated to take a "hard look" at environmental and historic preservation concerns. It cannot simply accept an abandonment licensee's litigation position on section 106 or section 110(k), especially where the licensee, in advance of any license, has sought to demolish an historic asset before any compliance with any of the relevant statutes.

Remedies. If OEA is examining these issues, OEA should recommend that STB void the deeds to the developer or require Conrail to reacquire the property. These remedies at this point are the only means available to the agency to correct the anticipatory demolition ensuing from Conrail's illegal 2005 sale. Any other result would reward Conrail's willful evasion of federal law and deprive the public, the Advisory Council on Historic Preservation, and other consulting parties of any meaningful opportunity to comment on the undertaking in violation of section 106.¹⁹ In addition, any other result would amount to assisting Conrail in its intentional evasion of federal regulation. If STB is unable or unwilling to supply an effective remedy, then section 110(k) among other things requires denial of Conrail's abandonment application between

¹⁹ The City of Jersey City timely filed a notice of intent to file an "offer of financial assistance" ("OFA") in this proceeding. The Board has vacated the schedule provided in otherwise applicable regulations for the filing of an OFA. If the City's OFA is successful, it would also provide a full and complete remedy against Conrail's willful evasion of federal law.

Marin Boulevard and CP Waldo.²⁰ This would at least preserve the relevant Branch under STB jurisdiction as a line of railroad, thus preventing the railroad and its chosen developer from further demolition activities.

If OEA (as it claims) is not examining these issues, then the agency needs to devise a procedure for examining these issues and alert the public, and this letter should be made part of the record of that proceeding.

III. Conclusion

The claims and conclusions of Conrail in its September 8 letter are wrong in their assumptions, wrong as to the facts, and prejudicially wrong as to the law. If relevant at all, Conrail's arguments amount to advocacy of a meaningless standard of care for law departments of rail carriers regulated by this agency, as well as a meaningless standard of care for the executives of rail carriers regulated by this agency. Accepting such arguments would sanction the disregard of rudimentary and well-established ICC and STB legal principles. In the case of the Embankment, Conrail's position requires this agency to disregard the compelling evidence that ICC-STB principles were intentionally violated, or ignored (through willful blindness), by Conrail in connection with the line involved in AB 167-1189X at all times relevant in AB 167-1189X.

As to the March 2009 EA in AB 167-1189X, the rail line was conveyed as a line, and once a line always is, until lawfully abandoned. It should be crystal clear that when a railroad joins in demolition permit requests for historic assets on a line before seeking abandonment approval, it intends harm to those assets. Conrail's intent to engage in unlawful anticipatory demolition in advance of even seeking abandonment authorization is obvious. The March 2009 EA is wrong on section 110(k) as a matter of law, and its conclusion on 110(k) needs to be corrected. If OEA is truly considering 110(k) issues, OEA must find that Conrail has in fact engaged in exactly the kind of anticipatory demolition that 110(k) is directed against.

²⁰ As City et al have already indicated to OEA, the City has already preserved an effective transportation corridor (sufficient for rail, trail, and street purposes) east of Marin Boulevard in the form of Sixth Street extended, owned in fee by the City.

Respectfully submitted,



Charles H. Montange
for City of Jersey City, et al.

Of counsel:

Andrea Ferster, Esq.

General Counsel, Rails to Trails Conservancy

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Attachments:

1. Verified Statement of Thomas McFarland, Esq.
(with exhibits)
2. Conrail's contract with the LLCs (2007)
3. Conrail's joinder in demolition permit applications
Against the historic Harsimus Embankment (2007)

cc. Robert M. Jenkins III (for Conrail) (email and USPS)
Consulting and interested parties per updated SHPO list
City, RTC, Coalition (email)
(all with the attachments)

Attachment 1

Verified Statement of Thomas McFarland, Esq.
(including exhibits)

VERIFIED STATEMENT OF THOMAS F. McFARLAND

My name is Thomas F. McFarland. I am an attorney having an office at 208 South LaSalle Street, Suite 1666, Chicago, IL 60604. I am a sole practitioner and sole shareholder of Thomas F. McFarland, PC, a professional corporation.

I have been requested by the City of Jersey City, N.J., Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (collectively referred to as Jersey City, et al.) to provide an expert opinion on whether or not, when Conrail conveyed the Harsimus Embankment Property, (the Embankment) to a group of limited liability companies (LLCs) for nonrail use in July, 2005, Conrail knew or reasonably should have known that the Embankment was a "railroad line" within the meaning of that term in 49 U.S.C. § 10903(d), rather than a "spur, industrial, team, switching or side track" (collectively referred to as a spur) within the meaning of those terms in 49 U.S.C. § 10906.

For the reasons explained in this statement, it is my firm opinion that Conrail knew or reasonably should have known at that time that the Embankment was a railroad line.

I am qualified to render this opinion by virtue of 52 years of experience in railroad law exclusively, with particular focus on railroad abandonment law, including differentiating between railroad lines and spurs in an abandonment context.

Upon graduation from Loyola University School of Law in 1965, I was employed as a Commerce Attorney in the Law Department of Illinois Central Railroad Company at Chicago, IL. My duties in that position included helping to prepare applications to the Interstate Commerce Commission (predecessor of the Surface Transportation Board (STB)) for authority to abandon

railroad lines, and determining whether particular right-of-way and/or trackage was a railroad line or a spur.

In 1970, I became employed by the Chicago law firm of Belnap, Spencer, Hardy & Freeman (Belnap Firm) as an associate attorney. I became a partner in the Belnap Firm in 1977. The Belnap Firm practiced railroad law exclusively. My specialty in that practice was railroad abandonment law.

I remained in the private practice of railroad law for the next 47 years, to date. Over that period, my partners either retired or died, such that since 2001 I have been a sole practitioner as sole survivor of the Belnap Firm.

During my 52 years of railroad practice, I have litigated over 100 railroad abandonments, representing both applicants for abandonment authority and opposing parties. I am reasonably certain that no other attorney in the United States has nearly that much experience in railroad abandonment.

During the course of my career, I have often been called upon to render opinions as to whether particular railroad right-of-way and track constituted a railroad line or a spur. I have also been involved in litigation in regard to that issue. One such example is *Battaglia Distributing Co., Inc. v. Burlington Northern R. Co.*, 2 S.T.B. 323 (1997), *pet. to reopen den.* 1998 WL 857070.

I reviewed the following materials, among others, in order to prepare my testimony in this matter:

1. Decision of the Surface Transportation Board (STB) in its Docket No. F.D. 34818, *City of Jersey City, et. al -- Petition for Declaration Order*, service date August 9, 2007;
2. Decision of the STB in its Docket No. F.D. 34818, *City of Jersey City, et. al -- Petition of Declaratory Order*, service date December 19, 2007;
3. *City of Jersey City, et. al v. Consolidated Rail Corporation*, 968 F.Supp. 2d 302 (USDC, DC, 2013);
4. Decision of the United States Court of Appeals for The DC Cir. No. 13-7175, (unpublished) that summarily affirmed the decision in number 3 above;
5. Decision of the Interstate Commerce Commission (ICC) in *The Atchison, T. & SF Ry. Co. -- Aband. Exempt. -- in Lyon County, KS*, 1991 WL 120344 (ICC Docket No. AB-52 [Sub-No. 71X], decided June 11, 1991);
6. Decision of the STB in *Chelsea Property Owners -- Aband. -- Portion of the Consolidated Rail Corporation's West 30th Street Secondary Track, in New York, NY*, 8 ICC 2d 773 (1992);
7. Decision of the STB in *Battaglia Distrib. Co., Inc. v. Burlington Northern R. Co.*, 2 STB 323 (1997);
8. Decision of the STB denying a petition to reopen the decision in No. 7 above, at 1998 WL 857070;
9. Decision of the Superior Court of New Jersey in its No. HUD-L-5801-09, *212 Marin Boulevard v. Chicago Title Insurance Co.*, filed August 31, 2017;
10. Letter of Robert M. Jenkins, III, Mayer Brown LLP to Victoria Rutson, Director, Office of Environmental Analysis, STB, dated September 8, 2017;
11. Compilation headed "Spur Decisions Made By Law Department", dated 9-4-97;
12. Memorandum dated July 11, 2005, from John K. Fiorilla, Esq. to Bridget McLaughlin re July 13 Sale Embankment Jersey City;
13. Letter dated October 4, 2005 from John K. Fiorilla to Carmine R. Alampi, Esq. re Consolidated Rail Corporation to SLH Holding Company Inc., Our File No. 0476-50485.

I am familiar with the issues involved in Docket No. AB-167 (Sub-No. 1189X) and related proceedings as a result of reviewing the STB's decisions in those matters as they appeared on the STB's website. Because the issues in those cases were of general interest to me, I also read the related Court decision in *City of Jersey City v. Consolidated Rail Corporation*, 968 F.Supp.2d 302 (USDC, DC, 2013).

By virtue of the latter decision, it is judicially settled that the Embankment was conveyed to Conrail in 1976 as a railroad line subject to STB abandonment jurisdiction. Thus, it is clear that in 1976 the Embankment was a railroad line, not a spur. The issue I am to address is whether or not Conrail reasonably could have believed that the Embankment was no longer a railroad line, but instead was a spur, when it conveyed the Embankment to the LLCs in 2005. For the reasons explained below, it is my firm opinion that Conrail could not have reasonably so believed.

There is a widely-known principle in ICC-STB jurisprudence to the effect that "once a line of railroad, always a line of railroad". Thus, where, as here, railroad property has been determined to constitute a railroad line, such property cannot lawfully be treated as a spur at a later time, even though as a result of passage of time the property may have taken on many of the physical characteristics of a spur.

Thus, in *The Atchison, Topeka and Santa Fe Railway Co. -- Abandonment Exemption -- in Lyon County, KS*, 1991 WL 120344 (Docket No. AB-52 [Sub-No. 71X], decided on June 11, 1991) (*Atchison Topeka* case), the ICC said (at *3):

Because this track was clearly part of a rail line at one time, we find that it cannot be converted into an exempt spur and the Commission divested of jurisdiction over it solely through the railroad's unilateral decision to change its use of the track segment over time. To find that this is a spur would be inconsistent with our well-established policy that where a carrier decides to reduce or cease service and/or remove track, the carrier's common carrier obligation remains until appropriate abandonment authority is obtained . . .

Fully in accord with that ruling is the ICC's decision in *Chelsea Property Owners - Abandonment - Portion of the Consolidated Rail Corporations West 30th Street Secondary Track in New York, NY*, 8 ICC 2d 773, 1992 WL 233599 (Docket No. AB-167 [Sub-No. 1094], decided August 28, 1992) (*the Highline case*). There, the ICC said (8 I.C.C.2d at 791, 1992 WL 233599 at *11):

Given the Highline's history as a regulated rail line, we continue to have jurisdiction over it, even though the track in question now possesses many of the characteristics of a spur. We recently addressed the status of a rail line unused for 15 years. In holding that the track's use as part of a line haul rail operation prior to the unauthorized cessation of service made it a railroad line subject to our abandonment regulation, we stressed the well established principle that a carrier cannot escape our abandonment jurisdiction simply by terminating service or removing track (citing the *Atchison Topeka case*, *supra*). . .

It would not be credible for Conrail to contend that it was not aware of the determination that the Highline is a railroad line when it conveyed the Embankment to the LLCs. That determination was made in regard to a Conrail property located in the same general territory as the Embankment in a proceeding in which Conrail was an active party. Like the Embankment proceeding, *the Highline case* generated widespread publicity because it involved an intense dispute over a potentially expensive removal of an elevated Conrail right-of-way. The finding that the Highline is a railroad line was made not long before the dispute involving the

Embankment. It is likely that a number of key Conrail personnel participated actively in both the Highline and the Embankment disputes. It is my understanding that Conrail's General Counsel, Jonathan Broder, and Conrail's outside railroad counsel, John Fiorilla, both held similar positions in 1992 when the *Highline* case was decided and in 2005 when the Embankment was conveyed to the LLCs.

My expert opinion is not at all changed upon consideration of two allegations by Conrail outside counsel John Fiorilla in 2005 that the Embankment was a spur. The first of such allegations was made virtually on the eve of closing of sale of the Embankment to the LLCs in a memorandum to Ms. Bridget McLaughlin dated July 11, 2005, a copy of which is attached as my Appendix TFM-1. The allegation regarding the spur nature of the Embankment is in numbered paragraph 6 of the memo. No legal authority nor reasoning was provided by Mr. Fiorilla in support of the allegation. Mr. Fiorilla is a longtime railroad attorney and representative of Conrail. He was surely familiar with the principle of "once a railroad line, always a railroad line" that was applied in the *Highline* decision, a case with which he undoubtedly was familiar. Mr. Fiorilla surely knew, or had good reason to know that his allegation, that the Embankment was a spur, was false.

The second such allegation was made in a letter from Mr. Fiorilla to Carmine R. Alampi, Esq., an attorney for the LLCs, dated October 4, 2005, a copy of which is attached as my Appendix TFM-2. That allegation was made in response to an "ICC/STB issue". That allegation, too, was not supported by any citation of legal authority or legal reasoning. For the

same reasons as spelled out in regard to appendix TFM-1, Mr. Fiorilla knew or had good reason to know that the allegation, that the Embankment was a spur, was not true.

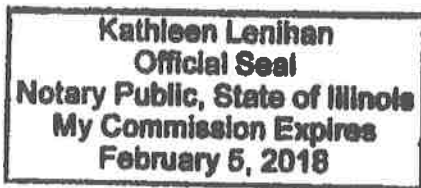
Neither is my expert opinion at all affected by the fact that the Harsimus Branch was characterized as a spur by a member of the Conrail Law Department in a compilation headed "Spur Decisions Made By Law Department" dated September 4, 1997 that appeared in the record in *212 Marin Boulevard v. Chicago Title Insurance Co., supra*. That compilation is attached as my Appendix TFM-3. No legal reasoning of any kind was cited in support of that characterization. That characterization is flatly inconsistent with the determination of the Court in *Jersey City et. al v. Consolidated Rail Corporation, supra*, that the Embankment was conveyed to Conrail in 1976 as a railroad line.

The unsupported allegations of Mr. Fiorilla and the unsupported spur characterization of the Conrail Law Department were the purported underpinnings of the State Court's decision in *212 Marin Boulevard v. Chicago Title Insurance Co.*, Superior Court, N.J., No. HUD-L-5801-09, filed August 31, 2017, that the title insurance company failed to prove that Conrail fraudulently or negligently misrepresented that the Embankment was a spur not requiring STB authority for its abandonment. Jersey City, et. al were not parties in that case. The result surely would have been different if it had been explained to the Court that it is judicially settled that Conrail acquired the Embankment as a rail line, and that under settled ICC-STB precedent, the Embankment remained a railroad line requiring STB authority for its abandonment when it was sold to the LLCs without the requisite abandonment authority.

Attached to my statement as Appendix TMF-4 is a copy of a letter from Robert M. Jenkins, III, Esq., an outside attorney for Conrail, to the Director of the STB's Section of Environmental Assessment, dated September 8, 2017, alleging that the Court's decision in *212 Marin Boulevard v. Chicago Title Insurance Co., supra*, supports a determination that Conrail did not act intentionally or negligently in regard to the sale of the Embankment to the LLCs. I strongly disagree. As I have explained, the Court's decision in the *212 Marin Boulevard* case would surely have been different if it had been explained to the Court that the Embankment was conveyed to Conrail as a railroad line, not a spur, in 1976, and that under settled ICC-STB precedent the Embankment remained a railroad line when it was conveyed to the LLCs in 2005 notwithstanding that as a result of the passage of time it may have taken on some characteristics of a spur. That being the case, I strongly believe that when Conrail conveyed the Embankment to the LLCs in 2005, Conrail knew or had good reason to believe that the Embankment was every bit as much a railroad line as its Highline was determined to be only a short time earlier.

VERIFICATION

THOMAS F. McFARLAND, being duly sworn, states that he has knowledge of the factual assertions set forth in this Verified Statement; and that all of those assertions are true and correct.



Thomas F. McFarland
THOMAS F. McFARLAND

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

SUBSCRIBED and SWORN to before me
this 27th day of September, 2017.

Kathleen Lenihan
Notary Public

My Commission expires: 2/5/2018

0.59

From: John K. Florilla [mailto:jflorilla@capehart.com]
Sent: Monday, July 11, 2005 1:27 PM
To: Bridget McLaughlin
Cc: Ryan, Bob; calamp1@alamplaw.com
Subject: July 13 Sale Embankment Jersey City

Bridget: I spoke to Carmine this morning and after consultation with my client I would appreciate if you would let him know the following:

1. Real Estate transfer tax is NOT exempt from payment since this is not active railroad property. However our agreement with your client indicates that the buyer will pay this tax regardless of what the local custom is.
2. Regarding real estate tax adjustments, we are working on these and should have them by the end of the day.
3. Regarding the tax declarations faxed to us they appear to apply only to individuals and not corporations. Our client indicated that they recently checked the box regarding the fact that it was not an individual, estate or trust and was exempt. I note that we would sign both that form and the non residency form but there is no withholding.
4. We are obtaining copy of that tax bill for Block 446 Lot 18a as Carmine requested.
5. Conrail will NOT provide an affidavit of title since the deeds involved are quitclaim deeds and this is mentioned in the contract for sale.
6. The properties abandoned constituted "Spur tracks" over which the STB and previously the ICC had no authority pursuant to 49 USC§ 10906. Therefore no formal abandonment of the property was ever filed. (I have attached a copy of that section of the 49 USC to this email).
7. Regarding the payment of the moneys owed, we have sent the info regarding wiring the funds to our account. Later this week we will wire to your account \$ 1,000,000 from our client Conrail to your trust account on behalf of Steve Hyman reflecting option funds held by our client Conrail in this matter. Please confirm that we can send a letter with wording like this later in the week. We will also send a check for the amount of the real estate transfer tax which will have been sent to us along with the \$ 3,000,000 from the bank so that your firm can pay those charges on behalf of the buyers pursuant to the agreement of sale.

Let me know if you have any comments regarding this.

John K. Florilla, Esq.
Capehart & Scatchard P.A.
8000 Midlantic Drive, Suite 300
Mount Laurel, NJ 08054

Confidentiality Note

This transmission is intended only for the addressee, and may contain privileged and/or confidential information from the law firm of Capehart & Scatchard, P.A. If you are not the intended recipient, please do not use, disseminate, or copy this material. If you have received this transmission in error, please notify us immediately by telephone, return this transmission, and delete or destroy any copies.

Thank you.



0 60

John K. Fiorilla
856.914.2054
jfiorilla@capehart.com

October 4, 2005

12x16
10/7/05

Via Fax and Regular Mail

Carmine R. Alampi, Esq.
Carmine R. Alampi, L.L.C.
Suite 404
1 University Plaza
Hackensack, NJ 07601

Re: Consolidated Rail Corporation - Jersey City Railroad Embankment
Consolidated Rail Corporation to S.L.H. Holding Company, Inc.
Our File No. 0476.50485

Dear Carmine:

Recently, I met with our clients and reviewed with them the status of the abandonment of the line that formerly traversed the Jersey City Embankment parcels. Based upon this review, the line at issue was reviewed and we continue to be confident that it was properly abandoned under the governing criteria for Spur Lines under the applicable federal statute and that no filing was required before the Interstate Commerce Commission at that time (nor would there be any requirement to file before the Surface Transportation Board at this time).

In any event, since the City of Jersey City and the State of New Jersey were given the opportunity to purchase the parcels and specifically decided NOT to purchase same, the sale to your client should not be disturbed. Neither the City, nor the State has been disadvantaged in any way by Conrail's abandonment of the property. It was offered for sale to the City and the City chose not to bid. The City still has the right to legally condemn the property should it so choose. Accordingly, the ICC/STB issue, we respectfully submit, is a red herring.

Please call me if you have any further questions.

Sincerely,
CAPEHART & SCATCHARD, P.A.

John K. Fiorilla

JKF/ajd

cc: Jonathan M. Broder, Esq.
Mr. Robert W. Ryan

AJD508696

Spur Decisions Made by Law Department
(Do Not Revoke STB Filings)

0 48

Line Name	Type	LC	MP 1	MP 2	RL MI.	Atty	Decision Date	Requested by
Arlington Ave. I.T. (Indianapolis, IN)	Line	80-8342	0.80	0.70	1.80	JJP	5/1/95	F. R. Stapleton
Alford Br. (Athol, MA)	Spur	unknown				JJP	8/24/93	R. C. Krafty
Avonmore I.T. (Avonmore, PA)	Spur				1.80	JJP	11/15/95	F. B. Gosic
Axle Works I.T. (Homestead, PA)	Spur				0.80	JJP	11/1/99	M. A. Hutchinson
Beaver I. T. (Lovett, PA)	Spur	20-2144				JJP	6/1/93	J. W. Fallon
Bena Creek (Portage Dune Trk)	Spur	20-2149	0.00	0.68	0.88	JJP	4/28/93	J. W. Fallon (04/12/93)
Bloodgood Br. (Union County, NJ)	Spur	10-0632	19.81	20.05	0.14	JJP	5/8/94	Z. Drzewiecki
Bloomfield / Belleville, NJ	Spur	unknown				JJP	5/12/93	Z. J. Drzewiecki
C-A-P Br. (Scranton, PA)	Spur				0.00	JJP	11/7/96	G. Smith
Claremont R.T. (Baltimore, MD)	Spur	20-			1.10	JKE	11/7/95	G. Comstock
Dad's Dog Food Lead (Meadville, PA)	Line	40-6501			0.50	JJP	5/10/96	F. B. Gosic
Dillsburg Br.	Spur				0.60	JJP	8/16/95	J. Ahonen
Edgemoor I. T. (Edgemoor, DE)	Spur	10-1262	0.00	1.00	1.00	JJP	8/2/93	M. C. Rosemilla
Engleide I. T. (Phila, PA)	Spur	10-1183	0.00	0.30	0.30	JJP	6/4/93	Richard Cross
Enola Branch (Marysville, PA)	Jt. Project	xx-1328	74.00	74.40	0.40	JJP	8/8/96	A. T. Bankton
Exon Lead (Shannonville Yard Lead)	Spur	80-8211	0.00	0.67	0.67	JJP	1/4/98	F. R. Stapleton
Former Beech Creek	Spur	unknown				JJP	5/12/93	J. W. Fallon
Fort Wayne Ind. Lead	Spur	unknown				JJP	8/24/93	R. D. Threlkeld (land sale)
Frankford St. I. T. (Trenton Ave. Ln)	Spur	10-1174				JJP	8/24/96	N. J. Prosperi (track lease)
Franklin I. T. (Franklin, OH)	Spur	80-8268	3.80	4.20	0.80	JJP	5/7/93	M. S. Scime
Gettysburg I. T. (Carlisle, PA)	Spur	20-8315	0.00	0.80	0.80	JJP	11/4/93	J. W. Fallon
Grand Jct. (East Boston I. T.)	Spur	30-1132	7.67	9.50	1.83	JJP	10/8/96	J. H. Ahonen
Greencastle I. T.	Spur	unknown				JJP	8/3/93	J. W. Fallon
Harasmus Br. (Jersey City, NJ)	Spur	10-1420	0.00	1.36	1.36	JJP	4/14/94	J. R. Beard (02/16/94)
Hartings Branch (Hastings Jct., PA)	Spur	20-xxxx	0.00	2.60	2.60	JJP	8/2/93	J. W. Fallon
Hartimer Spur (Hartimer, NY)	Spur				0.00	JKE	10/28/95	J. Hindman
Hudson Sec. (Maybrook, NY)	Spur	30-0101	0.00	2.10	2.10	unknown	no letter on file	
Hudson St. I. T. (Jersey City, NJ)	Spur	10-1440	0.00	1.30	1.30	JJP	4/29/93	T. P. Dwyer
Hurley Lumber Ld (Perth Amboy)	Spur	unknown				JJP	1/20/93	Z. J. Drzewiecki (12/15/92)
Indian Run Ind. Trk (Kensington, PA)	Spur	40-2288	1.10	1.30	0.20	JJP	11/9/94	F. B. Gosic
Johnstown I.T. (Johnstown, PA)	Line		1.10	1.60	0.50	JKE	11/10/96	G. R. Comstock
Kalamazoo Br. (Grand Rapids, MI)	Spur	50-6341	94.00	94.45	0.45	JJP	5/15/96	J. Kelly
Kennedy Valve Spur (Elmira, NY)	Spur	30-6304	246.90	249.10	2.20	JJP	8/12/98 - JJP	
Lancaster Mills I. T.	Spur	30-4182	0.60	1.50	0.90	JJP	5/14/93	M. G. Peterson
Langhorne Team Track / Ind. Lead	Spur	unknown				JJP	12/16/93	M. C. Rosemilla (land sale)
Mardella I. T. (Salisbury, MD)	Spur	10-1239	38.40	40.80	1.40	unknown	no letter on file	
Marginal Branch	Spur	40-2244			0.48	JJP	6/27/97	Brian Harrison
Middle Canal/Lumber (Williamsport, PA)	Spur	20-2316	217.80	218.10	0.20	JJP	11/22/94	A. K. Robbins / G. L. Smith
Millbrook Siding (Elmira, NY)	Spur	unknown				JJP	8/2/93	M. B. Phillips (land sale)
Muncy Br. (Muncy, PA)	Spur	unknown	0.00	0.80	0.80	JJP	2/23/95	C. A. Archer (Fallon, 02/02/94)

Spur Decisions Made by Law Department

0 19

Line Name	Type	LC	MP 1	MP 2	RL Mi.	Atty	Decision Date	Requested by
Niles IT (South Bend, IN)	Spur	60-5348	9.90	10.90	0.70	JJP	7/30/97	R. Dietz (Asset Opt. Dept.)
Oberlin Ind. Lead (Harrisburg, PA)	Spur	unknown	0.00	1.04	1.04	JJP	3/18/98	K. Robbins (Harrisburg Div.)
Pappas Lead (Washington, DC)	Spur	unknown				RSN	1/27/95	Donald Shappel
Perth Amboy Br.	Spur	10-0510	17.00	18.00	1.00	JJP	4/29/93	Z. J. Drzewiecki (04/13/93)
Red Key L.T. (Sweetser, IN)	Line	xx-3107	182.05	183.20	1.15	JJP	5/14/92	W. Schoelwer
S. Canton Br. (Canton, OH)	Spur	40-2402			0.00	JJP	10/5/95	F. Gosalo
S. Chester Trk. (Marcus Hook, PA)	Exempt	unknown	Market St.	Green St.		JJP	4/29/94	P. Kiliani
Speedway I.T. (Indianapolis, IN)	Spur	60-8564	4.18	4.70	0.52	JJP	5/31/94	
Thoroughfare Track (Phila. PA)	Spur	unknown				JJP	7/2/93	P. H. Kiliani
Toms River I. T. (Toms River, NJ)	Spur	10-0219	4.82	5.00	0.38	JJP	8/24/93	M. C. Rosemilla
Union Belt (Marion, OH)	Spur	unknown				JJP	11/4/93	W. A. Schoelwer (request to remove track)
Wellton Secondary (Collier, WV)	Line		35.70	36.40	2.70	JKE	2/25/98	F. B. Gosalo
Westland Br. (Houston, PA)	Spur	40-	0.00	0.97	0.97	JJP	11/9/94	F. Gosalo

September 8, 2017

Victoria Rutson
Director, Office of Environmental Analysis
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: STB Docket No. AB 167 (1189X) and associated
dockets

Dear Ms. Rutson:

Consolidated Rail Corporation ("Conrail") wishes to bring the attached court decision to your attention. The decision was issued on August 31, 2017 by the Superior Court of New Jersey (hereinafter, "the Court") and addresses claims against Conrail brought by Chicago Title Insurance Company, the title insurer for the Harsimus Embankment properties at issue in AB 167 (1189X) and associated dockets. Chicago Title alleged that Conrail fraudulently or negligently misrepresented the jurisdictional status of the Embankments when Conrail sold them to the LLCs. Conrail had stated that the Embankments were non-jurisdictional track for which STB abandonment authority was not required. Following a two-day non-jury trial in which the Court heard live witnesses and considered various documentary evidence, the Court concluded that Conrail's statements were neither fraudulent nor even negligent.

The Court stated that "Chicago Title has failed to provide any evidence that the statements made by Conrail were fraudulent. . . . [T]here was no credible proof . . . that Conrail made a false representation about the nature of the Embankment that detrimentally and prejudicially induced Chicago Title to rely on those statements." Slip op. at 17-18; *see also id.* at 19 (stating that "no credible proof exists" that Conrail witnesses Ryan and Fiorilla, who testified at trial and were Conrail's representatives for the sale, "knew that the parcel was a designated rail line and, nevertheless, represented otherwise"). "Chicago Title has not proven by clear and convincing evidence that the statement, that it characterizes as a representation, was anything other than a reasoned and informed opinion as to the belief that the parcel was a spur track. . . . Despite the arguments advanced by Chicago Title that there was nefarious purpose in making these statements with the knowledge of their falsity, the record simply does not support this conclusion." *Id.* at 21.

The Court also found that "Chicago Title has similarly failed to provide this Court with evidence of negligence on the part of Conrail when it made the statements about the nature of the Embankment." *Id.* at 23. "The record does not bear out the contentions that Conrail's representatives failed to act properly in their determinations." *Id.* at 24.

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Victoria Rutson
September 8, 2017
Page 2

This decision (which, as noted, followed a two-day trial in which live testimony and documentary evidence were presented) is consistent with, and provides further support for, the Board's rejection of the allegations by the City of Jersey City and other commenters that Conrail intentionally violated Section 110(k)—allegations that the City and others have made repeatedly since at least 2008 and continue to make to this day. Specifically, the Court's decision buttresses the Board's conclusion in the March 2009 Environmental Assessment that there is no evidence of "any intent on Conrail's part to harm historic sites or structures." Environmental Assessment, slip op. at 14 (served Mar. 23, 2009). Thus, the City, the New Jersey State Historic Preservation Office, and a financially-motivated title insurer have all failed to show that, in selling the property without first seeking abandonment authority, Conrail intentionally acted to evade legal duties (or even acted negligently, for that matter).

As Conrail demonstrated in its June 29, 2017 letter to you, the City and other commenters have had abundant opportunities to find support for their baseless Section 110(k) allegations. That they have not been able to has not stopped them from continuing to beat the drum. The attached decision provides conclusive, judicial support for a finding that "there is no there there."

Sincerely,

Robert M. Jenkins III^{/acs}

Robert M. Jenkins III
Enclosure

cc: Consulting and Interested Parties
Charles H. Montange
Eric Strohmeier

Attachment 2

Conrail 2007 Contract with LLCs

CHARLES H. MONTANGE
ATTORNEY AT LAW
426 NW 162ND STREET
SEATTLE, WASHINGTON 98177
(206) 546-1936
FAX: (206) 546-3739



24 September 2014
By Express Delivery

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, D.C. 20423-0001

236736
236737
236738

ENTERED
Office of Proceedings
September 25, 2014
Part of
Public Record

Re: AB 167 (Sub-no. 1189X): Conrail - Aban.
Exemption - In Hudson County,
and related proceedings
AB 55 (Sub-no. 686X): CSX- Disc. Exemption,
AB 290 (Sub-no. 306X): NS Rwy - Disc. Exemption

Dear Ms. Brown:

Enclosed please find for filing the original (unbound) and ten copies of Additional Supplemental Comments on behalf of City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition ("City et al") on the Environmental Assessment served 3/23/2009, especially concerning the violation of NHPA section 110(k), the evasion of federal abandonment licensing requirements, and the various unlawful actions by and agreements between Consolidated Rail Corporation ("Conrail") and a developer d/b/a 212 Marin Boulevard LLC, et al. that have occurred.

Thank you for your assistance in this matter.

Very truly,

Charles H. Montange
for City et al

Encls. (orig and ten)
cc. Service list (w/encl.)

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is made this 12th day of October, 2007, between Consolidated Rail Corporation ("Conrail"), a Pennsylvania corporation, with its principal offices at Two Commerce Square, 2001 Market Street, Philadelphia, Pennsylvania 19103, SLH Holding Co., LLC ("SLH"), having a mailing address c/o Carmine Alampi, Esq., One University Plaza, Suite 404, Hackensack, New Jersey 07601, and 212 Marin Boulevard, LLC, 247 Manila Avenue, LLC, 280 Erie Street, LLC, 317 Jersey Avenue, LLC, 354 Coles Street, LLC, 389 Monmouth Street, LLC, 415 Brunswick Street, LLC and 446 Newark Avenue, LLC (collectively referred to as "LLCs"), "Conrail", "SLH" and "LLCs" collectively referred to as "Parties".

Whereas, Conrail and SLH entered into an Agreement of Sale dated June 24, 2003, with respect to 6.2 acres of property ("Property") in Jersey City, New Jersey, which Agreement was amended by letters dated September 22, 2003, May 7, 2004 and September 15, 2004 and by Amendment to Agreement of Sale dated October 27, 2004 (collectively referred to as "Agreement"); and

Whereas, SLH assigned its rights under the Agreement to the LLCs; and

Whereas, on July 13, 2005 Conrail conveyed title to the Property to the LLCs; and

Whereas, after the sale, LLCs obtained a number of approvals for development of the Property from local governmental authorities; and

Whereas, on August 9, 2007, the Surface Transportation Board ("STB") issued a decision finding that the Property sold to LLCs remains part of the national rail system until appropriate abandonment authority is obtained.

Whereas, Conrail, SLH and the LLCs desire to maintain the benefit of the 2005 sale of the Property for all Parties.

NOW, THEREFORE, Conrail, SLH and the LLCs agree, this 12th date of October, 2007, as follows:

1. Conrail will seek approval from the STB for abandonment of rail service over the Property. Conrail will decline any public use or trail use conditions and, as soon as practicable, upon the effective date of the abandonment, execute any such documents as may be required to effectuate and/or confirm the 2005 sale of the Property.

2. If any governmental entity commences condemnation proceedings with respect to the Property Conrail will assign to LLCs its rights to defend any condemnation proceedings and to receive all monies obtained either by final settlement or condemnation award or judgment.



3. Conrail will cooperate with the LLCs on any necessary applications or reapplications with government authorities to secure all necessary approvals to develop the Property.

4. The Parties agree to file timely appeals of the STB's August 9 decision pursuant to 28 U.S.C. § 2321(a).

5. Conrail agrees that if the proceedings in Docket No. HUD-L-4908-05 in the Superior Court of New Jersey are not dismissed, Conrail will not in that or any other proceeding claim that SLH's or the LLC's failure to seek relief against Conrail precludes them from seeking relief against Conrail in any other proceeding.

6. The Parties agree that implementation and enforcement of the foregoing terms is subject to negotiation of any mutually agreeable documents as are necessary to carry out the terms of this Memorandum of Understanding, and its approval by Conrail's Board of Directors.

CONSOLIDATED RAIL CORPORATION

By:

Title:

Date:

Jonathan M. Boer
VP - General Counsel
Oct. 12, 2007

SLH HOLDING CO., LLC

By:

Title:

Date:

A. Hyn
member
Oct. 12 2007

Attachment 3

Conrail joinder in demolition permit requests

CHARLES H MONTANGE
ATTORNEY AT LAW
426 NW 162ND STREET
SEATTLE WASHINGTON 98177
TEL (206) 546-1936
FAX (206) 546 3739



222196

25 April 2008
by express

Hon. Anne Quinlan
Secretary
Surface Transportation Board
395 E Street SW
Washington, D.C. 20024

Section of Environmental Analysis
Surface Transportation Board
395 E Street SW
Washington, D.C. 20024

Mr. Mel Clemens
Director
Office of Compliance and Consumer Assistance
Surface Transportation Board
395 E Street SW
Washington, D.C. 20024

ENTERED
Office of Proceedings
APR 28 2008
Part of
Public Record

Re: Consolidated Rail Corporation - Abandonment
Exemption - in Hudson County, NJ,
AB 167 (Sub-no. 1189X) and related proceedings.

Madams/Sirs:

This letter is on behalf of City of Jersey City, the
Pennsylvania Railroad Harsimus Stem Embankment Preservation
Coalition ("Embankment Coalition"), and Rails to Trails
Conservancy (collectively referred to as "Commenters").

Consolidated Rail Corporation (Conrail) submitted an
"environmental report" (ER) and an "historic report" (HR) for a
proposed fast-track "class exemption" abandonment pursuant to a
letter dated March 6, 2008, in this proceeding. Because of the
abbreviated period suggested in the cover letter (three weeks)
within which to provide comments on the ER/HR, and because the
railroad represented that it intended to file a class exemption
on or about April 7, 2008, Commenters hastened to provide
comments, which we also supplemented, as quickly as possible, and

certainly prior to April 7. Commenters understand that many other entities also filed comments concerning Conrail's manifestly inadequate ER/HR and the proposed action (abandonment) which it embodies.

By letter dated April 17, 2008, Conrail advised the Board that it is postponing filing a class exemption notice, purportedly to address the comments. In light of Conrail's postponement, Commenters wish to draw the Board's attention, and Conrail's, to two additional concerns.

I.

City, the Embankment Coalition and RTC are concerned that Conrail (along with its developer ally "SLH Properties,"¹ the entity to whom Conrail unlawfully sold the Harsimus Branch without STB abandonment authority) is simply buying more time to continue to thwart this Board's jurisdiction at the local level.

In a state court suit in which Conrail is participating, SLH Properties obtained a trial court order dated March 28, 2008, requiring Jersey City regulatory bodies (over the City's opposition) to ignore this Board's actions and to process SLH/Conrail permits to destroy the Harsimus Branch solely under local law. See Exhibit A.

The March 28 order in the view of Commenters is literally an unconstitutional order, in that it ignores the Supremacy Clause, 49 U.S.C. 10501(b), and this Board's decision in City of Jersey City, et al., Petition for a Declaratory Order, STB Finance Docket 34818, served August 8, 2007. The latter decision held that the Harsimus Branch is a "line of railroad" over which this Board, not City of New Jersey or the Superior Court of Hudson County, has abandonment jurisdiction. Since no one has sought, much less obtained, abandonment authority for the Harsimus Branch as germane here, it is plainly improper to treat it as abandoned, much less to require the City to so treat it. That is extraordinarily prejudicial to the Commenters rights before this agency, including their rights to seek compliance with NEPA, NHPA, and other relevant statutes before abandonment is authorized, and certainly before it is consummated. To make

¹ SLH Properties as used herein refers to the series of LLC's, all under common control, that intervened on the side of Conrail in F.D. 34818, otherwise known as "212 Marin Boulevard, et al." See Decision in F.D. 34818, served August 8, 2007, at footnote 2.

matters worse, Conrail's chosen developer has sued the City and Joanne Monahan (an assistant city attorney) for civil rights violations (28 U.S.C. 1983) due to alleged delays by the City in allowing destruction of the Harsimus Branch. But section 1983 suits for delay when the delay is the result of Conrail's (and SLH's) failure to act lawfully under the ICC Termination Act is nothing more than an indirect attack on this Board's authority. This contravenes decisions like Dave v. Rails to Trails Conservancy, 79 F.3d 940 (9th Cir. 1996) (upholding trial court dismissal of section 1983 claim against RTC and various Washington State officials as indirect attack on STB orders and jurisdiction).

Conrail's continued active efforts to destroy the Harsimus Branch in the face of this Board's clear jurisdiction is perhaps best manifest in the certificates which we attach as part of Exhibit B. These certificates, all signed on December 13, 2007, by Jonathan Broder, Conrail's Vice President and General Counsel, state that Conrail joins in and consents to issuance of demolition permits for the Sixth Street Embankment. Moreover, Mr. Broder for Conrail also indorses the issuance of a Certificate of Economic Hardship, which if issued would further justify under local law immediate demolition of the Embankment.

Mr. Broder's actions on behalf of Conrail fly in the face of City of Jersey City, et al., Petition for a Declaratory Order, STB Finance Docket 34818, served August 8, 2007. In that decision, STB determined that the Harsimus Branch was a "line of railroad" for which Conrail needed abandonment authority. Yet on December 13, 2007, Mr. Broder for Conrail is found seeking and supporting demolition authority for the Embankment without any abandonment authority from this agency whatsoever.

STB on April 23, 2008, issued a policy statement which included the following language, obviously directly germane here:

"In some cases railroads have taken actions affecting rail property without first seeking abandonment authority. When this occurs on inactive lines, we generally do not discover these actions until after the fact when the carrier seeks abandonment authority. Such actions are unlawful. Not only is the rail line unlawfully severed from the national transportation system when this occurs, but the Board's ability to carry out its obligations under NEPA and NHPA may then be adversely affected. The Board will continue to carry out its obligations under those statutes and will take whatever steps necessary to enforce compliance with them."

Preservation and Other Environmental Conditions, STB Ex Parte No. 678, served April 23, 2008, slip op. at p. 4.

Obviously Conrail is knowingly continuing to flout this Board's jurisdiction. Conrail knows that the Harsimus Embankment, which it is seeking through City permits to demolish immediately, is eligible for listing on the National Register of Historic Places (we have already supplied this Board with relevant papers so establishing). Now SLH has obtained an order that in effect requires the City to authorize demolition under local law considerations only, without taking into account STB's authority. The only possible conclusion is that the railroad in alliance with its chosen developer (SLH) is intentionally attempting to thwart this Board's ability to carry out its obligations under NEPA and NHPA. They certainly are working to foreclose options that would preserve the Embankment, and the Branch, before this Board has even had a chance to address the subject.

Conrail's unlawful efforts are in keeping with a letter Mr. Broder for Conrail sent to Mayor Healy of Jersey City dated October 23, 2007. In that letter, Mr. Broder appeared to call on the City to support a proposal by the railroad's chosen developer to put towers on the Embankment, gut it for parking, and move rail uses to congested city streets, and to support similar actions on 18 acres of additional railroad-owned properties in the City. In other words, Conrail's objective appears to be to ignore NEPA, NHPA and other remedial statutes not only on the Harsimus Branch. Indeed, Conrail is taking actions, and encouraging and supporting actions of others, to destroy the very assets NEPA and NHPA are supposed to protect before it even seems abandonment authority.

In keeping with the Policy Statement, the Board needs to take whatever steps are necessary to stop Conrail and the developer with which it has allied from thwarting this Board's jurisdiction, and from continued efforts that serve no purpose other than to adversely affect this Board's ability to discharge its duties under NEPA and NHPA. The Conrail sale to SLH, and all its de facto abandonment actions to date on the Branch, are unlawful. Conrail and SLH through their dogged and continuing efforts in state court to compel local officials to ignore this agency's authority, and through their delay in starting any kind of federal licensing process, appear to be seeking to draw maximum benefit from their unlawful conduct. They are not preserving the status quo, much less seeking to ameliorate the adverse consequences of what they have already and unlawfully done to date.

done to date.

II.

City, RTC and Embankment Coalition are concerned that Conrail has not accurately identified the Harsimus Branch in the maps filed with its ER/HR. Conrail's map purports to show it bending in a southeasterly direction at a point after it reaches Marin Boulevard. The Branch was the former Pennsylvania Railroad mainline to what effectively was a port facility (the Harsimus Cove) and at least one line would extend (in keeping with track charts) at least to water's edge. If and when Conrail seeks abandonment authority, it needs correctly to reflect the historic location of the Branch. This could be germane for connectivity of various rail transportation uses that one or more of the Commenters intend to seek in this proceeding, if Conrail ever formally initiates it. Commenters reserve all their rights to contest gerrymandering by Conrail of the Harsimus Branch.

By my signature below, I certify service of this document upon John K. Enright, counsel for Conrail, 1000 Howard Boulevard, 4th Floor, Mt. Laurel, NJ 08054 by U.S. Mail, postage pre-paid, on the date above.

Respectfully submitted,


Charles H. Montange

for City of Jersey City,
Pennsylvania Railroad Harsimus Stem
Embankment Preservation Coalition, and
Rails to Trails Conservancy

Of counsel:

Andrea Fester
General Counsel
Rails to Trails Conservancy
2121 Ward Court, NW, 5th Floor
Washington, D.C. 20037

Exhibits:

A - March 28, 2008, state court order

B - Conrail consents and joinders in demolition permits

cc. Jersey City

Coalition

RTC

Mr. Terry Karshner, Deputy

NJ Historic Preservation Office

NJ Department of Environmental Protection

P.O. 404

Trenton, NJ 08625-0404

Mr. Enright (Conrail)

Mr. Fritz Kahn

1920 N Street NW (8th Floor)

Washington, D.C. 20036-1601 (SLH Properties)

Exhibit A

Michele R. Donato, Esq.
106 Grand Central Avenue
P.O. Box 145
Lavallette, NJ 08735-0145
(732) 830-0777
Attorney for Plaintiffs

COPY

FILED

MAR 28 2008

MAURICE J. GALLIPOLI, A.J.S.C.

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,

Plaintiffs,

v.

CITY OF JERSEY CITY, JOANNE
MONAHAN, ASSISTANT
CORPORATION COUNSEL AND THE
PLANNING BOARD OF THE CITY OF
JERSEY CITY,

Defendants,

and

CITY OF JERSEY CITY,

Third-Party Plaintiff,

v.

CONSOLIDATED RAIL
CORPORATION,

Third-Party Defendant.

SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY
LAW DIVISION
DOCKET NO. L-4908-05

Civil Action

ORDER LIFTING RESTRAINTS AND
AUTHORIZING PLAINTIFFS TO
PURSUE DEVELOPMENT APPROVALS
AND PERMITS DURING THE STAY
OF LITIGATION

THIS MATTER having been brought before the Court by
Plaintiffs on a Motion to Reconsider the Prohibition on

Obtaining Development Approvals and Permits during the stay of litigation; and

Michele R. Donato, Esq. and Carmine Alampi, Esq. appearing on behalf of Plaintiffs; John K. Fiorilla, Esq. appearing on behalf of Third Party Defendant, Consolidated Rail Corporation, and John J. Curley, Esq., appearing on behalf of the City of Jersey City and Joanne Monahan, Assistant Corporation Counsel; and

The Court having considered the papers submitted in support of the motion together with any opposition papers submitted; and the Court having heard oral argument on the motion; and for good cause having been shown;

IT IS on this 28th day of March, 2008 ORDERED as follows:

1. Plaintiffs are entitled to pursue development applications, certificates of appropriateness and related approvals before the appropriate municipal agencies in the City of Jersey City; and

2. These applications and approvals shall be considered without regard to the decision of and proceedings before, the Surface Transportation Board. ~~The pending abandonment application does not affect the jurisdiction of municipal agencies to hear and decide applications filed by Plaintiffs and Conrail.~~

~~3. The City of Jersey City, Corporation Counsel, and the City's agents, attorneys and consultants are enjoined from raising and presenting any issues before the Planning Board, the Historic Preservation Commission and any municipal agency with jurisdiction, regarding the issues of railroad abandonment, the validity of title, ownership of Plaintiffs' property and the possible condemnation of Plaintiffs' property.~~

~~4. The Jersey City Planning Board, the Historic Preservation Commission and any municipal agency with jurisdiction are enjoined from considering any evidence or information regarding the issues of railroad abandonment, the validity of the title, ownership of Plaintiffs' property and the possible condemnation of Plaintiffs' property.~~

5. Any decision of the appropriate municipal agency shall not be based on abandonment, validity of title, ownership of Plaintiffs' property and the possible condemnation of Plaintiffs' property, but shall be based on legitimate land use and historic preservation considerations as set forth in the Zoning Ordinance of the City of Jersey City.

IT IS FURTHER ORDERED that a copy of this Order be served upon all parties within ⁷⁻~~ten~~ days of the date of this Order.


Maurice J. Gallipoli, A.J.S.C.

Motion was:

☒ Opposed

☐ Unopposed

Exhibit B

JOINDER AND CONSENT TO APPLICATION FOR RELIEF FROM THE
JERSEY CITY HISTORIC PRESERVATION COMMISSION

The undersigned hereby joins in and consents to the pending application of 212 MARIN BOULEVARD, LLC for a Certificate of Appropriateness for demolition of the Sixth Street Embankment and a Certificate of Economic Hardship and supplements the application with the following information:

Name: Consolidated Rail Corporation
Address: 2001 Market Street
Philadelphia, PA 19103
Telephone (Work): (215) 209-2000

12/13/07
Date


Consolidated Rail Corporation
VP + General Counsel

JOINDER AND CONSENT TO APPLICATION FOR RELIEF FROM THE
JERSEY CITY HISTORIC PRESERVATION COMMISSION

The undersigned hereby joins in and consents to the pending application of 389 MONMOUTH STREET, LLC for a Certificate of Appropriateness for demolition of the Sixth Street Embankment and a Certificate of Economic Hardship and supplements the application with the following information:

Name: Consolidated Rail Corporation
Address: 2001 Market Street
Philadelphia, PA 19103
Telephone (Work): (215) 209-2000

12/13/07
Date

Jonathan M. Bond
Consolidated Rail Corporation
VP + General Counsel

JOINDER AND CONSENT TO APPLICATION FOR RELIEF FROM THE
JERSEY CITY HISTORIC PRESERVATION COMMISSION

The undersigned hereby joins in and consents to the pending application of 354 COLE STREET, LLC for a Certificate of Appropriateness for demolition of the Sixth Street Embankment and a Certificate of Economic Hardship and supplements the application with the following information:

Name: Consolidated Rail Corporation
Address: 2001 Market Street
Philadelphia, PA 19103
Telephone (Work): (215) 209-2000

12/13/02
Date

Jonathan M. Puzder
Consolidated Rail Corporation
VP + General Counsel

JOINDER AND CONSENT TO APPLICATION FOR RELIEF FROM THE
JERSEY CITY HISTORIC PRESERVATION COMMISSION

The undersigned hereby joins in and consents to the pending application of 280 ERIE STREET, LLC for a Certificate of Appropriateness for demolition of the Sixth Street Embankment and a Certificate of Economic Hardship and supplements the application with the following information:

Name: Consolidated Rail Corporation
Address: 2001 Market Street
Philadelphia, PA 19103
Telephone (Work): (215) 209-2000

12/13/07
Date


Consolidated Rail Corporation
VP + General Counsel

CONSENT TO FILING APPLICATION

The undersigned hereby joins in and consents to the pending application of 317 JERSEY AVENUE, LLC for Certificate of Appropriateness and a Certificate of Economic Hardship for Demolition of portion of the Sixth Street Embankment on this tract, and supplements the application with the following information:

Name: Consolidated Rail Corporation
Address: 2001 Market Street
Philadelphia, PA 19103
Telephone (Work): (215) 209-2000

12/13/07
Date

Jonathan M. Bruck
Consolidated Rail Corporation
VP + Gen. Counsel

**JOINDER AND CONSENT TO APPLICATION FOR RELIEF FROM THE
JERSEY CITY HISTORIC PRESERVATION COMMISSION**

The undersigned hereby joins in and consents to the pending application of 247 MANILA AVENUE, LLC for a Certificate of Appropriateness for demolition of the Sixth Street Embankment and a Certificate of Economic Hardship and supplements the application with the following information:

Name: Consolidated Rail Corporation
Address: 2001 Market Street
Philadelphia, PA 19103
Telephone (Work): (215) 209-2000

12/13/07
Date

Jonathan M. Buck
Consolidated Rail Corporation