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Our File
No:

FILING FEE WAIVED

May 1, 2002

AB-581X - 205298

AB-529X - 205304

**ENTERED
Office of the Secretary**

MAY 02 2002

**Part of
Public Record**

Hon. Vernon Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

5500-236-02R

Re: 1411 Corporation Abandonment Exemption in Lancaster County, PA

Dear Hon. Williams:

Enclosed please find an original and ten copies of the Notice, Appeal and Petition Relating to Decision Served April 12, 2002, in the above-referenced matter for filing, along with a Certificate of Service of this document on the named individuals.

Thank you for your cooperation in this matter.

Very truly yours,

ZIMMERMAN, PFANNEBECKER,
NUFFORT & ALBERT

**ENTERED
Office of the Secretary**

MAY 02 2002

**Part of
Public Record**

By

Robert L. Pfannebecker

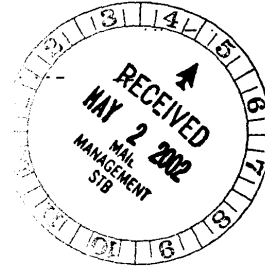
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Enclosures

Cc: Edward Arnold, Borough of Columbia (w/enclosure)

BEFORE THE SURFACE TRANSPORTATION BOARD

1411 Corporation)
Abandonment Exemption --) AB-581X (consolidated
in Lancaster County, PA) with AB-529X

Notice, Appeal and Petition Relating to Decision
Served April 12, 2002



This Notice, Appeal and Petition, pursuant to 49 C.F.R. Parts 1115 & 1117, is on behalf of the Borough of Columbia.

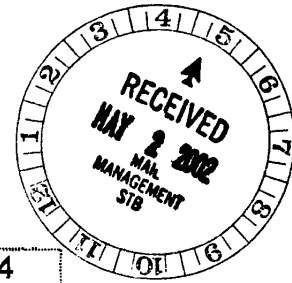
I. Decision Served April 12

Frank Sahd Salvage Center, Inc. ("Sahd" or "Sahd Salvage"), which has pursued an "offer of financial assistance" ("OFA"), professes concern about environmental contamination of the rail corridor which it has sought to acquire. After this Board set terms and conditions, including a purchase price of \$125,000, Sahd Salvage sought a modification of those terms to permit it to conduct environmental analysis, and to impose upon 1411 Corporation (the owner) certain conditions in 1411's contract with Shawnee Run Greenway, Inc. ("Shawnee"). This Board by decision served April 12, 2002, over objection, granted Sahd Salvage 45 days for purposes of conducting further environmental reviews, imposed a clause in the Shawnee/1411 contract, and further ordered an adjacent landowner and 1411 to obtain the express consent of Sahd prior to entry into any easement in connection with facilitation of environmental remediation on the property.

11. Position of Columbia Borough

Columbia Borough wishes to develop the inactive rail line

FILING FEE WAIVED



To: HON. VERNON WILLIAMS	Fax No.: 202-565-9004
From: Robert L. Pfannebecker, Esquire	File No.: 5500-236-02R

Date: May 2, 2002

Pages (Including Cover Sheet): 2

Message: Re: 1411 Corporation Abandonment Exemption in Lancaster County, Pennsylvania
In accordance with my telephone conversation with Ms. Hardy, enclosed please find a new cover page with the correct docket number. An original and ten copies to follow by mail.

☒ Original will not follow

☐ Original will follow by: ☐ mail
☐ overnight courier
☐ hand delivery

If transmission is not successful, please call Pat Hohman at (717) 299-0711 as soon as possible.
Thank you.

ZIMMERMAN, PFANNEBECKER, NUFFORT & ALBERT, LLP FAX NO. (717) 299-1092

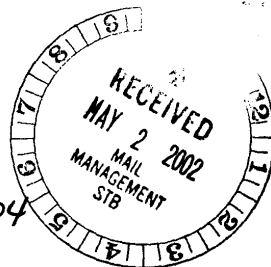
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BEFORE THE SURFACE TRANSPORTATION BOARD

1411 Corporation)
Abandonment Exemption --) AB-581X (consolidated
in Lancaster County, PA) with AB-579X) 205304

Notice, Appeal and Petition Relating to Decision
Served April 12, 2002



This Notice, Appeal and Petition, pursuant to 49 C.F.R.
Parts 1115 & 1117, is on behalf of the Borough of Columbia.

I. Decision Served April 12

Frank Sahd Salvage Center, Inc. ("Sahd" or "Sahd Salvage"), which has pursued an "offer of financial assistance" ("OFA"), professes concern about environmental contamination of the rail corridor which it has sought to acquire. After this Board set terms and conditions, including a purchase price of \$125,000, Sahd Salvage sought a modification of those terms to permit it to conduct environmental analysis, and to impose upon 1411 Corporation (the owner) certain conditions in 1411's contract with Shawnee Run Greenway, Inc. ("Shawnee"). This Board by decision served April 12, 2002, over objection, granted Sahd Salvage 45 days for purposes of conducting further environmental reviews, imposed a clause in the Shawnee/1411 contract, and further ordered an adjacent landowner and 1411 to obtain the express consent of Sahd prior to entry into any easement in connection with facilitation of environmental remediation on the property.

II. Position of Columbia Borough

Columbia Borough wishes to develop the inactive rail line

at issue in this proceeding as a trail and greenway. This use is the only use (a) consistent with applicable local land use plans and (b) justified by bona fide public need. Columbia Borough has been unable to ascertain any evidence that Sahd Salvage Company intends to employ the inactive rail line for rail purposes, or that there is any public rail need for the premises.¹

On April 8, 2002, Columbia Borough adopted a resolution reiterating its support for trail, greenway, and environmental remediation use of the property. The Resolution further supports railbanking of the property. Finally, the Resolution authorizes legal actions necessary to secure the acquisition of the property by the Borough. A copy of the Resolution is attached as Exhibit A.

III. Proposal to Sahd Salvage Company

On April 9, 2002, Columbia Borough, through its Council President, hand delivered to Sahd Salvage an offer which can only be implemented if the OFA Proceeding is terminated. A copy of this offer is attached as Exhibit B. Under this approach, Sahd must withdraw its OFA.²

¹ Columbia Borough sought information concerning Sahd Salvage's rail plans and needs by undated letter provided Sahd in January 2002, but received an adversarial rather than responsive answer by letter dated February 1. The Borough sought to palliate Sahd's concerns by letter dated February 8, but this was somewhat more politely rejected by Sahd on February 15. The four letters comprising these communications are set forth in Exhibit C.

² If the OFA is consummated, the abandonment proceeding is dismissed, rendering the property ineligible for 49 C.F.R. §1150, Subpart C regulation.

The property would be regulated under 16 U.S.C. § 1247(d) (i.e., "railbanked"). The Borough would acquire the property once railbanked under an assignment of the contract between 1411 Corporation and Shawnee. Because the line has been authorized for abandonment, it would qualify for 49 C.F.R. §§ 1150.21, et seq. (Subpart C) (modified certificate of public convenience and necessity or "modified PCN"). The Borough would contract with Sahd or its designee to operate the line. The operator would obtain a modified PCN under Subpart C. The parties would provide for terms and conditions to guard each party against loss in the operating contract. The rail operator would provide insurance acceptable to the Borough naming the Borough as a third party insured, and be responsible for its own accidents and environmental releases.³

This approach should have many attractive features for Sahd. In particular, under this approach, Columbia Borough would bear the purchase price for the property. (Sahd could presumably point to this substantial contribution for purposes of eliciting financial assistance for rail rehabilitation grants from other sources.) Further, since Sahd would not be the owner of the property, it would not have to fear additional environmental liabilities arising from such ownership. Finally, under modified PCN procedures, Sahd (or its designee as

³ The Borough understands that this approach was successfully implemented in Seattle, Washington. See Ballard Terminal RR Co. Q-Modified Rail Certificate, F.D. 33594, served Feb. 26, 1999.

operator) could specify in its contract with the Borough (which would presumably be adopted by this Board) minimum conditions which must be met (such as minimum carloadings or minimum subsidies to rehabilitate the line) before it needed to provide common carrier service. In short, Sand and/or its operator could protect themselves from losses.

The approach would have the following benefits for the Borough: the Borough could ensure that a trail and greenway was developed on the property, the Borough could ensure the property was kept intact, and the Borough could facilitate any necessary environmental remediation of the property, as well as adjoining properties, such as the adjacent Colonial Metals property.

The Borough is unable to be more specific in its proposal because, despite repeated inquiries by the Borough, Sand Salvage has refused to disclose any plans or data showing how it would use the line for rail purposes, or whether it will use the line for rail purposes at all. Candidly, the Borough has been unable to identify any current rail need for the line. As is already manifest in the record, the Master Planning process for the proposed greenway on the property also failed to identify any current rail need, noting that the cost of rehabilitation would be in the hundreds of thousands. The Borough is unaware of any shipper for whom the line would provide an economically attractive alternative if operated for rail purposes. Because the dimensions of the property are such that joint rail with trail development as envisioned in the Borough's proposal will

cost the Borough substantially more than simply trail and greenway development. The Borough (which has an obligation to protect the public fisc from needless expenditures) would wish sand to move forward with rehabilitation and use of the corridor for rail purposes within two years, or terminate the modified PCN. In the event joint use moved forward, the Borough would pay the cost of any track realignment within the property necessary to accommodate a safe and useful trail, but would otherwise not be responsible for rail rehabilitation expenses, other than provision of the land under the track free of charge.

As indicated in the Resolution (Exhibit A), local land use plans call for conversion of this property to greenway use. Furthermore, the only public need demonstrated for this property is for trail, greenway, and environmental remediation purposes. The proposal outlined above and in the letter attached as Exhibit B represents a good faith effort on the part of the Borough to avoid further proceedings and to accommodate all legitimate interests.

Absent timely acceptance of Columbia Borough's proposal, Columbia Borough reserves the right to take further actions to vindicate the public need with respect to this property. This proposal in no way is an admission against interest in the event of further proceedings.

IV. Protective Appeal

This Board's decision of April 12, 2002 is contrary to the interests of Columbia Borough. The Borough reads 49 C.F.R. Part

1115 to afford the Borough only twenty (2) days to file a timely administrative
4
appeal. If Sahd Salvage accepts the Borough's proposal outlined above, and
enters into an operating agreement consistent therewith, this administrative
appeal is moot. In order to preserve its administrative appeal rights, the Borough
states the following basic grounds for appeal.

1. Congress in adopting the ICC Termination Act emphasized in particular
a national transportation policy to "reduce regulatory barriers to entry into and
exit from the industry" (49 U.S.C. §10101(7), to minimize federal regulatory
control (id.(2)), to ensure a sound transportation system "to meet the needs of
the public" (id. (4)), to "foster sound economic conditions" (id. (5)), and to
"provide for expeditious handling and resolutions of all proceedings (id.(15)).

Based on statements by Wendell Dillinger to Columbia Borough,
the Borough is concerned that this proceeding has exhausted the
resources of 1411 Corporation and M&H Railroad, and diverted those
resources from rail needs elsewhere. Pursuit of the Sahd OFA against
a line on which no one has sought service in a decade, which may well be
contaminated, by an entity which has not used the line in at least a decade,
which eschewed an opportunity to acquire the line some years ago, and which
has declined to provide any plans for use of the line for rail purposes, is
inconsistent with all these transportation policies, especially in light of long-

4. The Borough notes that it has an absolute right to participate in
judicial review of this proceeding under 28 U.S.C. §2323.

standing local land use plans calling for conversion of the property into a greenway. The decision of April 12, 2002, by prolonging the proceeding, and by subjecting 1411 Corporation/M&H Railroad to yet further procedural obligations and negotiating responsibilities, only exacerbates the huge barrier to exit posed by this OFA for the small shortline owning this long inactive property.

2. This Board has repeatedly indicated that it will not allow its procedures to be employed to defeat local land use planning. Indeed, this Board and its predecessor even permit adverse abandonment applications by adjacent landowners or public agencies in order to prevent such abuses. See Modern Handcraft, 363 ICC 969 (1981). Accord, Conrail v. ICC, 29 F.3d 706 (2d Cir. 1994). Yet defeat of local land use plans is what is so far happening in this case. The transfer of this long unused line to Sahd Salvage flies in the face of local land use plans, and, at best, will substantially increase the cost of (and postpone addressing) those plans. The decision served April 12 exacerbates this problem by further delaying accomplishment of local land use plans, and, now, for the first time, making access easements to the property by adjacent landowners (e.g., Colonial) subject to Sahd's approval, even if the easements do not impose any burden on rail use, which is non-existent and has been for a decade. No commensurate public benefit is gained by these burdens.

3. Under the Fifth Amendment, the federal government may

take property only for a public purpose, and then only upon payment of just compensation. There is no public purpose served by the taking here, if the property is transferred to Sahd Salvage.⁵ To the contrary, the public purpose is disserved by the delays to date, and would be further disserved if the abandonment proceeding were dismissed in preference for the OFA, for the reasons heretofore stated. Moreover, as the Tenth Circuit indicated in rejecting an argument that a party invoking OFA procedures need not demonstrate a public purpose for a "taking" of the line,

"we are troubled by the constitutional problems inherent in [such an] interpretation. It would be difficult indeed to justify a statute that forces a rail carrier desiring to discontinue freight rail service to sell its lines solely because a 'financially responsible' person offers to purchase them." Kulmer & Schumacher v. STB, 236 F.3d 1255, 1257 (2001).

The line at issue in this proceeding has been granted an exempt abandonment, manifesting already a general determination that neither the public convenience nor necessity are contravened by discontinuance of rail service.

⁵ Unsubstantiated assertions by Sahd Salvage that it might desire rail service in the future are not evidence of public need, especially in the face of evidence that Sahd Salvage walked away from an acquisition in the past, and expressed no interest in the property again until the parties began implementation of a greenway conversion consistent with local land use plans. The Master Plan for this line shows no evidence for any rail need.

Moreover, the costs of proceeding have eroded the true value of the compensation provided.

4. The environmental condition imposed by the Board is without precedent. Sahd has had ample time to seek environmental information⁶ concerning the property. Moreover, the condition as imposed by the Board would permit Sahd to sever the corridor, or to reduce its utility for the public uses to which Columbia Borough seeks to put it, by purporting to exclude parcels. No public purpose is served by those conditions, only private purposes. The environmental condition, as STB's opinion implicitly recognizes, diverges from STB precedent.

Furthermore, to the extent that Sahd employs the condition to impose further costs upon 1411 Corporation, the condition amounts to a taking since Shawnee had indicated that it intended to acquire the entire property without any further⁷ environmental analysis. The Board's April 12 modification of the terms and conditions for Sahd's acquisition of the property thus leaves 1411 Corporation worse off than it would have been but for the "taking" ordered by this Board.

This constitutes a denial of the constitutional compensation required under Chicago & Northwestern Transp. Co. v. United States, 678 F.2d 665 (7th Cir. 1982) and its progeny.

⁶ Shawnee filed evidence indicating that Sahd Salvage had already Obtained environmental information.

⁷ Shawnee's Opposition to Sahd's Petition for Clarification at 5 (stating that Shawnee had completed all environmental reviews and was prepared to proceed). See also, Exhibit D (contract amendment under letter dated December 6, 2001.)

Especially given the violation of local land use plans represented by this diversion of a long-inactive rail line into a continued state of limbo, this Board should insist that Sahd not only establish a bona fide public rail need for the property, but also demonstrate that said need can only be economically satisfied by contravention of local land use plans before this Board authorizes Sahd to take this property. The Board's failure to do any such thing amounts to encouraging disruption of local land use planning for arbitrary and private reasons, as well as to diverting the federal taking power to private as opposed to public purposes. Given the lack of any evidence of public need for rail here, the taking authorized by the Board is unconstitutional.

In past administrative cases, this Board or its predecessor has taken care to ameliorate the risk of unconstitutional takings by exempting proceedings from OFA provisions where continued rail use conflicted with local land use plans, or worthy private projects. For example, in CSX Transportation-- Abandonment -- in Barbour, Randolph, Pocahontas and Webster Counties, WV, AB 55 (Sub-no. 500), served Jan. 9, 1997, STB exempted a line from OFA procedures to facilitate a sale to the State where there were no "active" shippers. In K&E Railway Company -- Exemption -- in Alfalfa, Garfield, and Grant Counties, OK, and Barber County, KS, AB 480X, served Dec. 23, 1996, STB exempted two line segments from OFA procedures in order to facilitate a flood control project by a local

government. In Norfolk & Western -- Exemption -- in Cincinnati, Ohio, AB 289 (Sub-no. 184X), served May 13, 1998. STB granted an exemption from OFA provisions with respect to a rail line required by Cincinnati for purposes of urban renewal and a new football stadium, despite requests by bona fide shortline railroads for an opportunity to acquire the line by OFA. See also Grand Trunk Western Railroad -- Adverse Discontinuance -- in Cincinnati, OH, AB 31 (Sub-no. 30), served May 13, 1998 (same); Southern Pacific Trans. Co. -- Exemption -- in Los Angeles County, AB-12 (Sub-no. 171X), served Jan. 9, 1995 (OFA exemption for line to be employed by public agency for mass transit). See also Missouri Pacific RR Co. -- Abandonment -- in Harris County, TX, AB-3 (Sub-no. 105X), served Dec. 22, 1992; Chicago & N.W. Trans. Co. -- Abandonment Exemption -- in Blackhawk County, IA, AB-1 (Sub-no. 226X), served July 14, 1989; Iowa Northern Railway Co. -- Abandonment -- in Blackhawk County, IA, AB 284 (Sub-no. 1X) served April 1, 1988. Indeed, STB has exempted lines from OFA procedures where there was no bona fide rail need, simply to facilitate worthwhile private projects. Thus, in Missouri Pacific Railroad Company -- Exemption -- in Houston, TX, AB 3 (Sub-no. 139X), served December 31, 1996, STB exempted a stub-end line from OFA procedures in order to facilitate the expansion of a private business (a warehouse), in the absence of any evidence of continued rail need.

This Board furthermore should not condition measures necessary or prudent for environmental remediation upon the

approval of Sahd Salvage, especially prior to acquisition of the property by Sahd Salvage, which acquisition has been long delayed by Sahd's own requests for modifications and further relief. Sahd has made no demonstration that anything sought by Colonial in order to facilitate environmental remediation will disrupt rail service, let alone rail service which has not existed for ten years. Moreover, it is the Borough's understanding that the environmental remediation is pursuant to regulatory requirements imposed by relevant state and federal agencies. Especially under these circumstances, to purport to vest veto authority over access to this long inactive, out of service rail line for environmental purposes in Sahd, a non-owner, is totally unjustified, especially without any showing of any interference or possibility of interference with any bona fide rail need. The Board has never before taken the position that transfers of interests or rights in rail corridors which do not disrupt rail service and which are required by or consistent with state and local law, are preempted unless voluntarily consented to by the railroad, or even more strangely, voluntarily approved by a possible future owner of the rail property.⁸ To the contrary, there is a large body of law, as well as oral advice from the Board's employees, that alienation of rail property interests (especially crossing type rights) is

⁸ Compare State of Texas DOT -- Pet for Declaratory Order, FD 32589, served Feb. 7, 1995 (where no burden on RR because acquiring party will pay all costs to construct needed substitute facilities, no preemption from state law).

perfectly acceptable provided rail service (note again that there is no rail service here, there has not been for a decade, and there are no known plans for any rail service in the future) is not unduly burdened. The unusual environmental condition should be removed.

V. Alternative Relief

As an alternative to the relief sought in the appeal (which is sought in the event Sahd Salvage is unwilling to take the actions necessary to implement Part III), the April 12 decision could be modified to impose the proposal outlined in Part III. This relief may also be imposed by treating this as a petition under 49 C.F.R. Part 1117 for relief not otherwise provided. The alternative relief is in the public interest, and indeed in Sahd's interest, for the reasons as substantially and concisely stated in Parts II through IV above. Although this approach is unusual, the Borough believes that this Board has authority to grant this relief as a partial exemption under 49 U.S.C. § 10592(a) from the full application of 49 U.S.C. § 10904 procedures in what otherwise is already an exemption proceeding under 49 C.F.R. § 1152.50 (two year out of service notice of exemption abandonment). Moreover, the Board has employed its broad authority to recharacterize transactions or proceedings for the benefit of the public interest and to better compose the interests of the parties in other settings.⁹

⁹ For example, in Southern Pacific Transp. Co. -- Abandonment Exemption -- Los Angeles County, CA, 8 ICC2d 494 and 9 ICC2d 385 (1993) (and related cases), ICC on its own motion

The partial exemption sought or needed to accomplish the relief outlined in Part III is justified because full regulation is not necessary To carry out the transportation policy under §10101, and the transaction is both of limited scope and full application of §10904 (OFA's) is certainly not necessary to protect any shipper from an abuse of market power. The Board has already authorized abandonment of this line, so the conditions for implementation of this line, so the conditions for implementation of 49 C.F.R. Part 1150, Subpart C, are otherwise established.

VI. Consents

Columbia Borough is authorized to state that 1411 Corporation and Shawnee Run Greenway, Inc. will consent to the proposal set forth in Part III above, provided the Borough pays or arranges for the payment of the full purchase price. Columbia borough is authorized to state that Shawnee Run Greenway, Inc. joins in this pleading, including the appeal aspects, without waiver of any position heretofore taken.

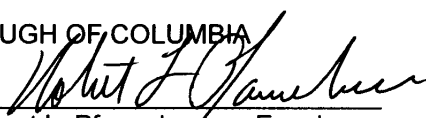
VII. Conclusion

Columbia Borough would appreciate the cooperation of this Board in facilitating the public interest in this proceeding, as manifest in the applicable local land use plans, and as set forth herein.

Granted individual exemptions to the Los Angeles County Transportation Commission to acquire operating rail lines, after determining that LACTC had failed otherwise to obtain proper authority. The agency exercised its power to grant individual exemptions at the time the railroad (Southern Pacific) which transferred the property to LACTC sought abandonment authority. ICC explained that the exemptions were granted to facilitate a public agency's acquisition of lines for non-freight purposes.

Respectfully submitted,

BOROUGH OF COLUMBIA

BY: 

Robert L. Pfannebecker, Esquire
Zimmerman, Pfannebecker, Nuffort &
Albert, LLP
22 South Duke Street
Lancaster, PA 17602
Phone: (717) 299-0711

Borough Solicitor

EXHIBIT A

RESOLUTION OF BOROUGH COUNCIL OF THE
BOROUGH OF COLUMBIA, LANCASTER COUNTY, PENNSYLVANIA

RESOLUTION NO. 02- 07

INTRODUCED April 8, 2002

ADOPTED BY COUNCIL April 8, 2002

WHEREAS, the Middletown & Hummelstown Railroad Company rail line ("M&H rail line"), more particularly described as milepost 39.23 in the Borough of Columbia to milepost 37.2 in West Hempfield Township, is currently the subject of an abandonment proceeding, including an "offer of financial assistance" ("OFA") proceeding, before the Surface Transportation Board ("STB") in STB docket number AB-529X, consolidated with STB docket number AB-581X;

WHEREAS, the M&H rail line has not been used for rail purposes for over ten years, the switch connecting the M&H rail line to the mainline has been removed, many road crossings over the M&H rail line are paved over, no shipper has requested service on the M&H rail line, and less expensive alternatives to the M&H rail line exist for the provision of rail service;

WHEREAS, no prospective shipper on the M&H rail line has indicated any intent to use the line for rail purposes;

WHEREAS, proponents of continued devotion of this inactive line to rail use have declined to provide any information, much less credible and substantial information, supporting such use despite request by the Borough;

WHEREAS, conversion of this long inactive rail line into a greenway is consistent with, and called for, by numerous land planning documents, including the Columbia Borough Comprehensive Plan (1995), the Columbia Borough Zoning Ordinance (1999), the West Hempfield Township Comprehensive Plan (2002), the Lancaster County Regional Open Space Plan (1992), the Lancaster -York Heritage Region Management Action Plan (2001), Lancaster County Pedestrian and Bicycle Plan (2000), and the Pennsylvania Greenways Action Plan for Creating Connections (2001);

WHEREAS, the Master Plan for the property in question, funded through an Intermunicipal Agreement between local governments and a non-profit corporation and completed after two years of public meetings, did not identify any rail need served by this inactive line at this time, or within the immediately foreseeable future, and instead developed a plan for a trail and greenway use of the property;

WHEREAS, possible future rail needs can be amply served by preserving the inactive line intact pursuant to the federal interim trail use and railbanking statute, 16 U.S.C. § 1247 (d);

WHEREAS, development of the M&H rail line as a greenway will assist in the environmental clean-up and remediation of the rail line corridor and adjacent properties, as well as restoration and enhancement of the Shawnee Run, a tributary to the Susquehanna River and the Chesapeake Bay;

WHEREAS, development of the M&H rail line as a greenway will provide not only an excellent and safe walking and bicycling trail for local residents but also a valuable recreational opportunity for the young, families and older citizens of our community;

WHEREAS, development of the M&H rail line as a greenway will connect various portions of our community, provide transportation alternatives, and facilitate local traffic patterns by removing unnecessary rail crossings; and

WHEREAS, there is no evidence that there is any bona fide rail need for this line at this time;

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED by the Borough Council of the Borough of Columbia, Lancaster County, Pennsylvania, as follows:

1. The Borough supports conversion of the M&H rail line to a greenway and related purposes, consistent with the applicable Master Plan and the various planning documents referenced above;
2. The Borough supports preservation of the M&H rail line for possible future rail use only in the context of a greenway conversion pursuant to 16 U.S.C. § 1247 (d);
3. The Borough supports, and authorizes the filing of such motions or applications, as are consistent with conversion of the inactive M&H rail line into a greenway, including any and all actions necessary to the filing of a "Declaration of Taking" and such other actions as may be necessary or prudent to effectuate acquisition of the property in question consistent with local land use plans and the public interest, including further filings at the Surface Transportation Board.

DULY ORDAINED AND ENACTED this 8th day of April, 2002, by the Borough Council of the Borough of Columbia, Lancaster County, Pennsylvania, in lawful session duly assembled.

BOROUGH OF COLUMBIA, LANCASTER
COUNTY, PENNSYLVANIA

By: [Signature]
Joseph M. Wright, Sr.
President of Borough Council

ATTEST:

[Signature]
Edward J. Arnold,
Secretary of Borough Council

EXHIBIT B

Borough of Columbia

Incorporated 1814

LEO S. LUTZ, Mayor
JOSEPH M. WRIGHT, SR., President
R. L. PFANNEBECKER, Solicitor
EDWARD J. ARNOLD, Borough Manager

Reincorporated 1886

April 29, 2002

Mr. Ronald G. Sahd, President
Frank Sahd Salvage Center, Inc.
1045 Lancaster Avenue
Columbia, PA 17512

Re: M&H Railroad, STB dkt. AB 481X; proposed settlement

Dear Mr. Sahd:

This responds to your public statements indicating that you wish to work with the Borough of Columbia to implement a rail with trail project on the former M&H Railroad corridor. This letter also responds to misgivings expressed by your attorney, Mr. Moreno, in a letter dated April 11 responding to a resolution (No. 02-07) adopted by Borough Council on April 8.

As you know, the land use plans for the Borough have long called for this rail corridor to be developed into a greenway and linear park, which would also serve the very important purpose of facilitating environmental cleanup of the adjacent Shawnee Run stream and so-called "Brownfields" redevelopment of contaminated property adjacent to the rail corridor.

The rail corridor in question has been unused for many years. The Borough has sought information to establish a bona fide rail interest in the corridor. No party, including Frank Sahd Salvage Center Inc., (Sahd Salvage) has indicated to us any specific plans to use or to develop the rail corridor for rail purposes. You have declined to respond to our requests for detailed information, stating that you wish to become owner of the corridor before discussing it. Please understand that developing a greenway and undertaking remedial action on the corridor has already been much delayed, and further delay is inconsistent with local and regional land use plans. In addition, developing a trail with rail on the corridor will cost the public more than simply constructing a trail. Developing a trail with rail on the corridor will be more expensive than trail alone, due in part to space limitations. It is difficult to justify this additional public expense if the rail is unused and there is no bona fide current need for it.

1. Sahd Salvage withdraws its OFA and allows the corridor in question to be railbanked.
2. The Borough of Columbia will contract with Shawnee Run Greenway, Inc. to assume Shawnee's obligation to purchase the corridor from M&H/1411 under the railbanking statute.
3. The Borough will file a "statement of willingness" with STB to railbank the corridor.
4. The Borough will acquire the corridor from M&H/1411 under the railbanking statute (16 U.S.C. § 1247 (d)).
5. The Borough will contract with Sahd Salvage or its designee to operate rail service on the corridor pursuant to STB's "modified PCN" program described at 49 C.F.R. subpart C, § 1150.21, et seq. (copies attached). As provided in subpart C, the Borough will not be a common carrier, but its operator will be a common carrier. However, in the operating agreement, the Borough and Sahd Salvage (or Sahd's designee) would specify terms and conditions, which must be met before service obligations arose. Those terms and conditions would include obligations, which ensure that neither the Borough nor Sahd Salvage must subsidize rail operations, except to the extent they voluntarily agreed to do so. Columbia Borough is prepared to bear the entire acquisition cost (\$125,000 plus closing costs) for this transaction, and to own the property in question.

This proposal should be very attractive to Sahd Salvage as it reduces the acquisition cost for your company to zero, and removes any risk of liability for environmental contamination, by third parties.

We all recognize that the current track requires considerable rehabilitation, including reconstruction of crossings and installation of switches, to be usable for rail purposes. Estimates for the cost to repair the track adequately for rail service exceed \$200,000. The Borough is prepared to agree to terms and conditions that the rail operator (Sahd Salvage or its designee) need not provide rail service unless a third party first contracts to pay this amount (or whatever amount you feel is required for repair). Since Columbia Borough will be providing the land for free, as well as the existing rail and ties for free, the rail operator's efforts to seek funding for rehabilitation from third parties should be facilitated, because Columbia Borough will have already provided an effective "match." In addition, the Borough is prepared to agree to terms and conditions that the rail operator (Sahd Salvage or its designee) need not provide rail service unless shippers commit (e.g., by take or pay contract) to sufficient carloadings to ensure that rail operating costs (including rail liability insurance premiums for a policy in an amount no less than \$2,000,000 per incident in which the Borough is a named co-insured) are covered. The operator would undertake to comply with all applicable FRA or state rail regulations, as well as STB requirements.

Columbia Borough would reserve the right to move the track to a side of the corridor so as not to interfere with the trail. Columbia Borough would arrange financing for any required movement of the track for this purpose (we would attempt to coordinate it with rehabilitation if the operator has arranged rehabilitation funding, but the Borough

Moreover, if there is a need, but you will not disclose it, it is not easy to plan a trail with rail in any event. All this raises the unhappy possibility that the Borough may be expending potentially hundreds of thousands of dollars to accommodate a rail line that has not been used for at least 10 years and may never be used.

As your attorney, Mr. Moreno points out in his April 11 letter, the railroad corridor, although authorized for abandonment, remains under the jurisdiction of the Surface Transportation Board (STB). Should you acquire it pursuant to your "Offer of Financial Assistance," the abandonment authorization will be dismissed. The Borough recognizes that in such an event, in order to pursue the public interest in implementing local and regional land use plans for a trail and greenway (and for environmental remediation), the Borough would have to obtain a voluntary agreement from you at least for trail and greenway uses, or alternatively exercise eminent domain over portions of the corridor unneeded for rail use, including possibly moving the currently unused rail line to another portion of the corridor (this approach is employed by transportation agencies in similar circumstances and is supported by STB precedent which we have reviewed). We note that this latter approach is potentially favorable since the line has long been unused, so it would neither disrupt nor burden any current rail operations. As an additional alternative, as I am certain Mr. Moreno could advise, the Borough could file an application for adverse abandonment of the unused line. We believe STB would entertain such an application given the important public purposes involved, which we are prepared to establish particularly given the lack of any rail use for years and the availability of economic alternatives for rail use. We are advised that we could then exercise eminent domain to acquire the entire corridor under the Supreme Court's Hayfield Northern decision. But we would much prefer to avoid any unnecessary legal proceeding by reaching some form of reasonable accommodation. We are hopeful that you share our desire to minimize unnecessary proceedings.

From filings made by Mr. Moreno on behalf of Sahd Salvage, we understand that you are concerned that the corridor is contaminated. Currently the OFA proceeding is being stayed by STB for 45 days for Sahd Salvage to conduct environmental testing and to allow you determine what to do in connection with possible contamination of the corridor and moreover, whether to proceed with the purchase of the corridor from M&H/1411 Corporation. Unfortunately, further delay is not in the interest of long established local and regional land use plans, nor in the public interest, and presents a burden to the local community as well as to M&H/1411 Corporation. We believe we have an attractive solution for you if, in fact, you wish to accommodate trail use, and if you, in fact, are concerned with environmental contamination.

Proposal

The Borough has carefully evaluated the situation and has a proposal which we think amply addresses all interests which you have articulated to the STB, as well as to us, and which minimizes your risks and costs. Our proposal is as follows:

would not be responsible for rehabilitation-related expenses). Finally, to provide at least a minimum of protection to taxpayers against having to bear unnecessary costs to accommodate rail on a corridor where there is no rail use, the operating agreement would provide that if funding is not secured by the operator to rehabilitate the line for rail use and if such work is not undertaken to the point of reasonable completion within two years, or if at any subsequent time, traffic on the line falls below a specified minimum of carloadings per year, then the operator would take the necessary steps to terminate the agreement.

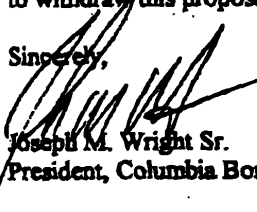
We understand that an arrangement along these lines was successfully implemented on a former Burlington Northern right-of-way in the Ballard District of Seattle in STB filings a couple years ago. Obviously a number of details would have to be worked out. We are hardpressed to be more specific since there is no information on any current rail need, or prospective use currently available to us, or through any source. However, because use of subpart C requires the line be publicly owned and authorized for abandonment, this discussion cannot wait until Sahd Salvage acquires the line, because at that point the line would be ineligible for subpart C.

It is our understanding that both Shawnee Run Greenway, Inc. and M&H/1411 will support this proposal, and are prepared to work out the contractual arrangements necessary on their parts for it to be implemented.

The Borough has attempted to devise a serious proposal with major advantages to Sahd Salvage. We request that you evaluate it with equal seriousness. If it is to be implemented, it must be done prior to any OFA acquisition. We accordingly expect to file a motion with the STB to stay the entire proceeding in order to permit discussions to proceed.

Reservation of rights. Nothing in this proposal should be construed as an admission against interest of any sort, nor as a concession by the Borough that there is a bona fide current rail need for the property, nor that use of OFA procedures serves a public purpose as opposed to a private purpose with respect to this property. In short, the Borough reserves all its rights to seek further relief in the event this proposal does not result in a satisfactory accommodation of interests. The Borough also reserves the right to withdraw this proposal after ten days.

Sincerely,


Joseph M. Wright Sr.
President, Columbia Borough Council

cc. Jeffery O. Moreno, Esq. (for Sahd Salvage)
Robert L. Pfannebecker, Esq. (Columbia Borough Solicitor)
Charles H. Montange, Esq. (for Shawnee Run Greenway, Inc.)
Andrew Goldstein, Esq. (for M&H/1411)

EXHIBIT C

Mailed 1-25-02

Borough of Columbia

Incorporated 1814

LEO S. LUTZ, Mayor
JOSEPH M. WRIGHT, SR., President
R. L. PFANNEBECKER, Solicitor
EDWARD J. ARNOLD, Borough Manager

Reincorporated 1886

Dear Mr. Sahd:

On behalf of the Mayor and Columbia Borough Council, I am writing to you about the proposed Shawnee Run Greenway and the legal proceedings now before the Surface Transportation Board. First, I would like to begin by saying that the borough appreciates the investment your business has made in the community. Sahd Salvage Center, Inc., is a valued employer.

Borough Council hopes to partner with businesses to stimulate our economy, create jobs, attract new business enterprises, and most importantly, help business and industry remain competitive in Columbia. To that end, I have appointed a Special Task Force on Business and Economic Development of which Sahd Salvage will be invited to participate. I hope you will accept the Borough's invitation.

As you know, organizations have expressed an interest in developing a greenway on the inactive railroad corridor adjoining your property. The Borough, accordingly, wishes to proceed with plans to develop a greenway as a vital aspect of community redevelopment. With \$500,000 in commitments and Brownfields funds available, the borough believes the greenway is in the community's best interest and must proceed without further delay. Council respectfully requests your participation in the project.

Background

The existing property owner, 1411 Corporation, and its rail operator, M&H Railroad, have sought authority from the Surface Transportation Board (STB) to abandon rail service on the line. The line has not been employed for rail purposes for approximately ten (10) years. The switch connecting the line to the mainline has been removed.

It is the Borough's understanding, that M&H Railroad/1411 Corporation entered into an agreement with Frank Sahd Salvage Center, Inc. ("Sahd Salvage") to sell the property to Sahd Salvage in the early-90's. However, Sahd Salvage did not pursue the acquisition.

1411 Corporation indicated that absent a purchaser for the entire corridor, it would seek abandonment authority and subsequently sell the corridor piecemeal. At this point, Mr. Michael Stark entered into an agreement to acquire the property for public purposes as a greenway and trail, paid a substantial deposit, and assigned his rights to Shawnee Run Greenway, Inc. ("Shawnee"). When M&H Railroad/1411 Corporation sought

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P.18/13

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February 1, 2002

Mr. Joseph M. Wright, Sr.
President, Columbia Borough Council
Office of the Secretary
P.O. Box 509
Columbia, PA 17512

Dear Mr. Wright,

This will acknowledge receipt of your recent letter, undated, concerning the 2.4 mile linear Middletown & Hummelstown Railroad in Columbia Borough and West Hempfield Township. I regret that I will be unable to answer each and every question you pose in your capacity as Borough Council President/Shawnee Run Greenway Committee Member, since several issues related to this matter remain pending before the Surface Transportation Board (STB) for resolution. Any attempt by me to answer your questions would clearly be both premature and inappropriate at this time.

When Frank Sald Salvage Center, Inc. becomes the owner of this rail line corridor, I would be most happy to sit down with you for further discussion.

Thank you.

Sincerely,

Ronald G. Sald
President

Copies: Leo S. Lutz, Mayor
R. L. Pfannebecker, Borough Solicitor
Edward J. Arnold, Borough Manager
Columbia Borough Council Members

- 17 -

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E

ncbia*Reincorporated 1886*

February 8, 2002

Ron Sahd
Frank Sahd Salvage Center, Inc.
1045 Lancaster Avenue
Columbia PA 17512

*2/11/02
bc*

Dear Mr. Sahd:

This responds to your letter of February 1 declining to provide any information or to engage in any discussions with the Borough concerning the inactive M & H Railroad right of way. You contended that such an exchange would be "premature and inappropriate" due to the pendency of proceedings before the Surface Transportation Board (STB).

It is my understanding that the STB in general encourages parties to work out their differences, and certainly does not wish its processes employed to obstruct or to defeat the legitimate processes of federal, state or local law. Thus, the pendency of an STB proceeding should encourage the exchange of information on questions relating to this inactive rail line, not prevent it.

I am concerned that your letter of February 1 suggests that my inquiry to Sahd Salvage Company for information was in my "capacity" as a "Shawnee Run Greenway Committee Member." Please be assured that the letter was on behalf of the Columbia Borough Council, which was unanimous in sending it. We wish to do what is best for the citizens of Columbia, and we certainly wish all views to be heard and responsibly taken into account.

I have requested the Borough's Solicitor to seek an additional thirty (30) days from the Surface Transportation Board in order to give you another opportunity to speak with us on the issues in a meaningful and productive fashion. We encourage you to be responsive and to work with us.

Sincerely,

[Signature]
Joseph M. Wright, Sr.
Council President

JMW:bc

C: Solicitor
Mayor and Council Members
Borough Manager

308 Locust Street, P.O.Box 509, Columbia, PA 17512 717-684-2467 Fax 717-684-7764



FEB 19 2002

1045 Lancaster Avenue
Columbia, PA 17512
(717) 684-8808

February 15, 2002

Mr. Joseph M. Wright, Sr.
President, Columbia Borough Council
Office of the Secretary
P.O. Box 509
Columbia, Pa 17512

Dear Mr. Wright:

Although your undated letter to me, which I received in late January, and to which I responded by dated letter February 1, 2002, purports to seek a negotiated compromise for use of the M&H Rail line for both rails and trails, it offers no compromise at all. Rather, it contains a litany of demands for information and a thinly veiled threat to file an adverse abandonment application with the Surface Transportation Board.

Your demands are no different than those that were made by the Shawnee Run Greenway, Inc. when it asked the Board to dismiss my Offer of Financial Assistance. At that time, I asked my attorney to approach the Greenway to discuss a negotiated solution. I even asked the Board to defer its decision to give us time to conduct negotiations. After several conversations and exchange of correspondence, both sides agreed that we were too far apart to reach a negotiated solution. The very same points that you now make in your letter then were made by the Greenway to the Board. The Board ultimately resolved the matter when it denied the Greenway's Motion to Dismiss my OFA.

I find it troubling that you have come back to me with exactly the same position and arguments as the Greenway after the Board has already resolved those disputes. If I were a cynic, I could only conclude that your letter was the opening salvo in an attempt to use the Borough to relitigate the very same issues. After all, there is substantial overlap between the leadership of the Borough Council and the Greenway.

I have stated from the beginning that I would like to see a joint rail-with-trail project and I continue to hold that view. Once we have completed our acquisition of the rail line, then we can get to work to accomplish that objective. I will not, however, engage in a sham designed to reargue issues already decided by the STB and to preserve the Greenway's original master plan, which would not accommodate rail use. True negotiation requires a willingness to accept compromise. Your strict adherence to the original Greenway position does not reflect this willingness.

Sincerely,

Ronald G. SaHD
President

C: Mayor, Borough Solicitor, Borough Manager, Borough Council Members

EXHIBIT D

May 01 02 06:54a

Nora G. Stark

717-684-8048

P.2

CHARLES H. MONTAGE

ATTORNEY AT LAW
428 NW 182ND STREET
SEATTLE, WASHINGTON 98177
1208; 246-1836
FAX: 1208; 246-3730

6 Dec. 2001*

Mr. Wendell Dillinger
1411 Corporation
136 Brown Street
Middletown, PA 17057 fax: 717-944-7758

Andrew P. Goldstein, Esq. (for 1411 Corporation)
McCarthy, Sweeney & Harkaway P.C.
2175 K Street, N.W., Suite 600
Washington, D.C. 20037 fax: 202-393-5721

Mr. Philip Seris
Colonial Metals Co.
217 Linden St., P.O. 311
Columbia, PA 17512-0311 fax: 717-684-9555

Timothy Deekert, Esq. (for Colonial Metals)
McNees Wallace & Nurick
100 Pine Street St., P.O. 1166
Harrisburg, PA 17108-1166 fax: 717-237-5300

Mr. Michael Stark
Shawnee Run Greenway
P.O. Box 207
Columbia, PA 17512 0207 fax: 717-684-8048

Re: Contract bearing date of 16 September 2001
between 1411 Corporation, Shawnee Run
Greenway, and Colonial Metals, Inc. for
acquisition of MP 39.7 to MP 37.2 in Columbia
to West Hempfield Township;
letter amendment

Gentlemen:

As you know, S&hd Salvage Company (S&hd) has invoked the
"offer of financial assistance" (OFA) provisions of the ICTIA
such that the parties will be unable to close the above-
referenced contract by December 31, 2001, the target date
anticipated by the contract in §12, subject to satisfaction of
conditions precedent. By decision served October 18, 2001, STB
established terms and conditions for S&hd to acquire the
property which is the subject of the referenced contract. S&hd
accepted those terms and conditions on October 19. However, on

November 29, 2001. Sand sought to reopen the proceeding to modify the terms and conditions previously established by STB. By decision served December 4, 2001, STB indefinitely stayed closing to permit further legal proceedings on Sand's belated request for revised terms and conditions. It is clear that the OFA proceeding will not conclude by the December 31, 2001 target date established in the above-referenced contract. In order to ensure that the 16 September 2001 contract does not lapse, and in order to facilitate expeditious closing upon that contract should STB permit the transaction thereunder as envisioned by the parties, it is prudent to amend the 16 September 2001 contract to (a) revise the closing date, and (b) to indicate the fulfillment of conditions precedent so that a deed may promptly be issued and payment may promptly be made as soon as STB permits, if STB does so permit.

1. Closing. Notwithstanding any other terms in the aforementioned contract, the date for closing shall be continued to sixty (60) days from the date of an effective STB order authorizing application of 16 U.S.C. § 1247(d) (federal railbanking) to the premises.

2. Fulfillment of conditions precedent. (a) Purchaser advises that by the time of entry into the contract, it completed all environmental reviews which it intended to implement prior to closing, and that it further intends to accept the entire property as provided in the contract. The contract shall be deemed modified to the extent of these representations, and 1411 Corporation shall prepare the deed accordingly should STB Board authorize a transaction between 1411 Corporation and Purchaser as anticipated in the 16 September 2001 contract.

(b) Purchaser is further satisfied with the condition of title, provided title is conveyed pursuant to an effective STB order authorizing the transaction pursuant to the federal railbanking statute (16 U.S.C. § 1247(d)) to ensure preservation of this corridor. The contract shall be deemed modified to the extent of this representation. Purchaser continues to expect 1411 Corporation represent that it continues to hold title sufficient to operate a railroad and interim trail on the premises at time of title transfer.

Purchaser is and remains ready, willing and able to acquire this property, subject to STB issuance of an effective Notice of Interim Trail Use, which is the only unfulfilled condition precedent for full performance under the referenced contract. Purchaser continues to regard interim trail use and railbanking as the best approach for the local community and region to ensure preservation of this corridor for future rail use as well as utility for alternative transportation in the interim.

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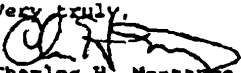
Nora G. Stark

717-684-8048

P. 4

This letter amendment shall become effective when executed by representatives of the parties in the spaces provided below, and such assent has been communicated by fax transmission to Mr. Goldstein (202-393-5721) on behalf of 1411 Corporation. The parties through their representatives may execute this letter amendment in separate counterparts.

Very truly,


Charles H. Montange
for Shawnee Run Greenway

Accepted: Michael L. Stet - President Date: 12-12-01
for Shawnee Run Greenway, Inc.

Accepted: [Signature] Date: 12-12-01
for Colonial Metals, Inc.

Accepted: [Signature] Date: 12/12/01
for 1411 Corporation

CERTIFICATE OF SERVICE

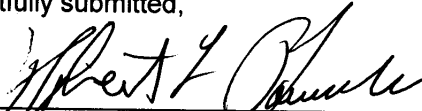
I hereby certify service of the foregoing by US Mail, postage prepared, first class, on May 1, 2002, upon the following counsel:

Andrew Goldstein, Esquire
McCarthy, Sweeney & Harkaway, P.C.
2175 K Street, N.W., Suite 600
Washington, D.C. 20037 (for M&H/1411)

Jeffery O. Moreno, Esquire
Thomson Hine & Flory
1920 N Street N.W.
Washington D.C. 20037 (for Sahd Salvage Company)

Charles H. Montange
426 N.W. 162nd Street
Seattle, WA 98177 (for Shawnee Run Greenway)

Respectfully submitted,

BY: 

Robert L. Pfannebecker, Esquire
Zimmerman, Pfannebecker, Nuffort &
Albert, LLP
I.D. No. 06987
Attorney for Borough of Columbia

22 South Duke Street
Lancaster, PA 17602
Phone: (717) 299-0711