



THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, N.Y. 10007-2601

MICHAEL A. CARDOZO
Corporation Counsel



December 17, 2002

206 870

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

ENTERED
Office of Proceedings
DEC 17 2002
Part of
Public Record

Re: Docket No. AB 167 (Sub-No. 1094)A; *Chelsea Property Owners – Abandonment – Portion of the Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY*

Dear Sir:

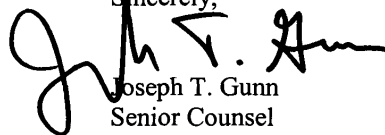
I am enclosing for filing the original and 10 copies of the Reply of The City of New York to Motion by Chelsea Property Owners that a Certain Settlement Agreement Satisfies the Surety Condition in the ICC's September 16, 1992 Order in this Proceeding (the "Reply"). The Reply contains an application for a Certificate of Interim Trail Use.

In accordance with the Board's regulations I am also enclosing a diskette that includes the text of this document.

I have also enclosed one additional copy, that I ask you to date stamp and return to our messenger.

Thank you.

Sincerely,


Joseph T. Gunn
Senior Counsel

www.nyc.gov

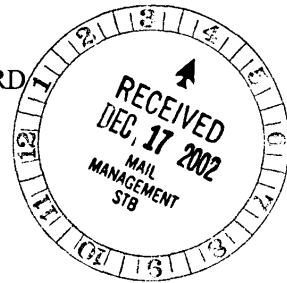
BEFORE THE SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings

DEC 17 2002

Part of
Public Record

Docket No. AB 167 (Sub-No. 1094)A



CHELSEA PROPERTY OWNERS -- ABANDONMENT -- PORTION OF THE
CONSOLIDATED RAIL CORPORATION'S WEST 30TH STREET SECONDARY TRACK IN
NEW YORK, NEW YORK

REPLY OF THE CITY OF NEW YORK TO MOTION BY CHELSEA PROPERTY OWNERS
THAT A CERTAIN SETTLEMENT AGREEMENT SATISFIES THE SURETY CONDITION
IN THE ICC'S SEPTEMBER 16, 1992 ORDER IN THIS PROCEEDING

The City of New York (the "City") replies to the motion of the Chelsea Property Owners ("CPO") That A Certain Settlement Agreement Satisfies the Surety Condition in the ICC's September 16, 1992 Order in this Proceeding. The City does not dispute that the form of Settlement Agreement, if executed and delivered, and the closing contemplated thereunder brought to fruition in accordance with the terms of the Settlement Agreement, would satisfy the 1992 ICC surety condition. However, CPO's Motion is premature – the Settlement Agreement is not final and it is not clear that all of the pieces of the complicated puzzle that must be assembled have in fact been brought together in a way that would permit the STB or the interested parties to conclude that the puzzle is, in fact, complete. In addition, the City seeks a Certificate of Interim Trail Use for the Highline viaduct.

A. The Settlement Agreement is Not Final

1. There is no final, fully executed and delivered Settlement Agreement at this time, and there is serious doubt whether or not a Settlement Agreement will ever become a final, valid and binding agreement among the parties thereto. The reasons, in summary, are as follows: (i) the Settlement Agreement has not been executed by all the property owners whose properties are encumbered by the High Line, (ii) since the City signed the Settlement Agreement nearly one (1) year ago, both the railroad parties and the City have requested changes to the terms of the Settlement Agreement which, to the City's knowledge, have not been accepted by any of the other property owner-parties to the Settlement Agreement; therefore the final terms of the Settlement Agreement are unsettled; (iii) the Settlement Agreement is by its terms subject to certain approvals, which approvals are by no means assured; and (iv) there is no appropriation in the City's capital budget for certain City monies CPO is depending upon which for funding demolition, and it is doubtful that such monies will be appropriated.

2. The City signed the Settlement Agreement in December 2001, during the last days of Mayor Giuliani's final term of office. The Settlement Agreement was delivered to counsel to the railroad with the understanding that fully executed originals would be returned to the City within four weeks¹ of the City's execution of same (See Exhibit A).

3. Under contract law, when a party signs a written agreement and delivers it to the other party or parties thereto, the first party has made an offer. That offer must be accepted by signing the agreement (as-is) and returning a fully executed original to the offeror within the period of time specified by the offeror, and if none is specified, within a reasonable period of

¹ The four week period stated in counsel to the City's letter for full execution and delivery of the Settlement Agreement was arrived at in consultation and agreement with counsel to CPO.

time. See 22 NYJur2d, Contracts Sec. 41. In this case, it was the City's understanding that fully executed originals would be returned to the City within four (4) weeks of execution by the City. As of today, nearly one year later, the City understands that there is at least one owner - - the Metropolitan Transportation Authority - - that has not signed the Settlement Agreement. As a result, it is not a final, binding document.

4. By letter dated March 6, 2002, counsel to CSX Corporation ("CSX") informed counsel to CPO that certain changes would be required to the Settlement Agreement before the railroad parties would sign. CPO apparently embarked upon a public relations campaign in response to The Friends of the High Line, Inc.'s ("FOHL") mobilizing public support for converting the Highline to public trail use. The railroad parties have evidently taken offense at CPO's characterization of the Highline's condition, and in response seek the right to terminate the Settlement Agreement in the event of further disparagement of the Highline by any party. The railroad parties further seek an indemnification from CPO and related entities for any damages resulting from such disparagement. To the City's knowledge neither CPO nor any of the other property owner-parties have agreed to the terms required by the railroad parties. Accordingly, there is not finality on terms of the Settlement Agreement submitted to the Board as Exhibit 1 to CPO's motion.

5. It is a fundamental principle of contract law that a request for a change to a contract by the offeree (i.e., the railroad parties) prior to acceptance constitutes a rejection of the offer which cannot thereafter be accepted to form a contract (Keryakos Textiles, Inc. v. CRA Development, Inc. (1990, 3d Dept.) 167 AppDiv2d 738, 563 NYS2d 308; 22 NYJur2d Sec. 43).

6. In August 2002² counsel to the City informed CSX's counsel that the City had some concerns with the proposed language, and requested certain modifications in response. In addition, counsel to the City has advised counsel to CSX and counsel to CPO that the City wants to add a provision to the Settlement Agreement giving the City the express right thereunder to support an application for a Certificate of Interim Trail Use ("CITU"), without being in breach of the Settlement Agreement (Exhibit B). A conversation between the City's counsel and counsel to CPO on the City's proposal was inconclusive. By correspondence dated December 6, 2002, counsel to the City reiterated to CPO the City's position that the Settlement Agreement be modified to provide the City with the express right to support or file a CITU without being in breach of the Settlement Agreement. (Exhibit C). The City has not yet received a definitive response from CPO.

7. The status of the Settlement Agreement is that an offer was made a year ago by the City to enter into the Settlement Agreement. That offer was never fully accepted, either within the time frame fixed by the City (four weeks) or since. Subsequently, the railroad parties effectively rejected the offer and made a counter-offer. Subsequent to that, the City effectively rejected the railroad parties' counteroffer, withdrew the original offer and made its own counter offer. None of these offers and counteroffers have been definitively accepted by any of the

² The City's counsel had been sent a copy by FAX on CSX's counsel's March 6 letter; however, the letter was faxed to a line at 100 Church Street, which at the time was vacated by the City's Law Department due to its proximity to the World Trade Center. The City's Law Department moved back to 100 Church Street in the middle of April. The March 6 letter surfaced some weeks later.

parties to the Settlement Agreement. Accordingly, the Settlement Agreement is not in final form nor is it binding on the parties thereto.³

8. The Settlement Agreement, by its terms, is subject to the approval of New York City Economic Development Corporation's⁴ ("EDC") Board of Directors, or a duly constituted committee thereof (i.e., the Executive Committee)(Settlement Agreement, Section 9.18(a)(Exhibit D)). The Settlement Agreement is further subject to the execution by EDC and CPO of a "Funding Agreement"⁵, and approval of the Funding Agreement (and other agreements) by EDC's Executive Committee.

9. Since EDC signed the Settlement Agreement in December 2001, EDC has a new President, its management has been restructured and it has added new senior staff, generally as a result in the change in the City's Mayor. EDC staff is aware of FOHL's efforts and the City's willingness to pursue a CITU. In the event that the Settlement Agreement is presented to EDC's Executive Committee for approval, EDC staff will, of course, disclose to the Executive Committee FOHL's initiative, and the City's interest in securing a CITU. Given the change in

³ Further, it is the City's position that neither the City nor EDC are presently bound to remain parties to the Settlement Agreement and are permitted under law to withdraw from same.

⁴ EDC is a not-for-profit local development corporation that serves as the City's instrumentality for economic development pursuant to two (2) annual contracts entered into between the City and EDC (one contract for maritime matters, and one contract for all other matters). The Mayor directly or indirectly appoints all of the directors of EDC.

⁵ EDC is a party to the Settlement Agreement for purposes of disbursing the \$7 million contribution for demolition by the railroads, as well as a City contribution to demolition costs. Because EDC is a not-for-profit corporation exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code, the \$7,000,000 contribution by the railroad parties will be tax deductible, an important factor in the railroad parties' willingness to enter into the Settlement Agreement.

circumstances since the Settlement Agreement was signed in December 2001, approval of the Settlement Agreement by EDC is by no means assured. See Verified Statement of Robert Balder ("VS Balder"), Exhibit E at pars. 10 and 12.

10. EDC's new administration has not undertaken at this time any serious review of the draft Funding Agreement between EDC and CPO or the agreements ancillary to the Funding Agreement which are referred to in Settlement Agreement Section 9.18(a). There is no assurance that once EDC's staff undertakes its review of the Funding Agreement and ancillary agreements, they will be acceptable to EDC's current administration. Furthermore, there is no assurance that EDC's Executive Committee, which will take cognizance of the direction taken by the new Mayoral administration, will approve the draft Funding Agreement. See VS Balder at pars. 10 and 12.

11. A further complication to EDC's executing the Funding Agreement and the Executive Committee's approving the Settlement Agreement is one of the lack of available capital funding for the City's share of demolition costs. The prior Mayoral administration informally decided that the City would seek to contribute \$381,000 (the "City Contribution") to the demolition of the Highline. Although \$381,000 may not seem significant in the scheme of a \$7,000,000 demolition project (plus several million dollars in soft costs), the City's contribution is, in fact, critical. CPO had originally presented the City with the offer to demolish the Highline at no cost to the City, if the City would cooperate with CPO in the endeavor. Later, CPO informed the City that it needed a contribution from the City of approximately \$270,000 as "seed money"; that is, to induce other property owners to contribute to bridge the gap between total demolition costs and the \$7,000,000 railroad contribution. Subsequently, due primarily to increased insurance costs, the City was asked to increase its contribution to \$381,000; again, to

induce other parties to increase their contributions to demolition costs. Under regular City financing practices, the City Contribution would be allocated by the City, from the City's capital budget, to EDC for disbursement for demolition under the Funding Agreement (along with the railroad parties' \$7 million contribution). In order for the City to allocate such funding from its capital budget, an appropriation is needed. The City budget process is, basically and in pertinent part, for the Mayor to prepare a preliminary budget in January and submit same to the City Council (New York City Charter Section 236 (Exhibit F)). Thereafter in April, the Mayor submits an executive budget to the City Council (New York City Charter Section 249 (Exhibit F)) for adoption by the City Council, which generally occurs in June (New York City Charter Sections 253, 254 (Exhibit F)). At the present time, no capital appropriation has been made for Highline demolition. It is highly unlikely that at this time the City Council will appropriate capital budget funds to demolish the Highline. As discussed below, the City Council has sued the office of the Mayor to stop the demolition of the Highline. Furthermore, City funding for Highline demolition is less likely to be forthcoming in view of the City's well publicized serious fiscal problems. It is EDC's general policy and practice not to enter into a funding agreement unless and until capital budget funds are available from the City for disbursement, nor to seek Executive Committee approval for same without available City funding. See VS Balder at par. 13.

B. Litigation Over City Land Use Issues Raises Further Questions About the Finality and Ultimate Viability of the Settlement Agreement

1. The New York City Council, the City's Manhattan Borough President and others have brought an action against the office of the Mayor, claiming that the City's accepting a surrender of the easements for the Highline from the railroads is an "acquisition" for purposes of the Uniform Land Use Review Procedure pursuant to Section 197-c of the New York City

Charter ("ULURP"). The plaintiff's also allege that extinguishing the easements requires a mapping action⁶ by the City, which, if correct, would be subject to ULURP. See Exhibit G.

2. ULURP involves filing a completed application with the Department of City Planning, which is then reviewed, within time frames set forth in the City Charter, by the local community board, the applicable Borough President, and the City Planning Commission. The application is then filed with the City Council pursuant to New York City Charter Section 197-d (Exhibit G). Under certain circumstances, the application is automatically reviewed by the City Council; in other circumstances, the City Council must vote to consider the application. The ULURP process generally takes from eight months to a year to complete, though it could take much longer, especially with respect to mapping actions⁷.

3. The City's Law Department maintains that no ULURP is required for the City to participate in the Settlement Agreement. However, plaintiffs have obtained a ruling from the New York Supreme Court adverse to the City's position. See Exhibit H. That ruling has been appealed to the New York Appellate Division. As of today, no decision has issued from the appeal. However the Appellate Division rules, it is fairly certain that the losing party will seek relief from the New York Court of Appeals. There is no way to predict how long it will take for

⁶ A "mapping action" is an action which requires a change in the City map. Generally, a change in the City map is required for actions which remove publicly used property from public use or add non-publicly used property for public use. Examples would be the opening of streets, parks or rights-of-way. Plaintiff's cause of action in the above-described action hinges primarily on peculiar language set forth in the New York State legislation authorizing governmental action for the development of the Highline.

⁷ Mapping actions are often the most cumbersome of ULURP actions because of the number of City agencies often involved, depending upon the nature of the mapping action (e.g., Department of City Planning, Department of Transportation, Department of Parks and Recreation, Department of Environmental Conservation, applicable Borough President), as well as public utility companies.

all appeals to be exhausted, much less to predict the outcome. However, even if the position of the Law Department taken on behalf of the Mayor is vindicated, that vindication may well be a year away; maybe less, possibly more. Therefore, it is probable that the one year period from the issuance of a final order of abandonment in which the railroad parties must file a Notice of Consummation will expire before such notice can be filed, solely on account of the subject litigation.

4. If ULURP is required in order for the City to advance with the Settlement Agreement, that is, if the City Council has review and approval rights over the Settlement Agreement, then, for the present time, the Settlement Agreement will for all intents and purposes be a nullity.

C. The City Is Seeking A Certificate of Interim Trail Use

1. Pursuant to 49 C.F.R. §1152.29, the City hereby advises that it is interested in using the track that is the subject of this proceeding for interim trail use and rail banking pursuant to 16 U.S.C. §1247(d).

2. Good cause exists for accepting this statement of the City's intent at this time. CPO's initial petition for adverse abandonment of this line was presented at a time when the development and resurgence of the area of the City through which the Highline runs had not reached the level it enjoys today. The City respectfully refers the Board to pages 28 to 36 of The Friends of the High Line, Inc.'s Petition to Reopen the 1992 Abandonment Decision, which are attached hereto as Exhibit I.

3. Moreover, there has been not just one but three changes in the City's leadership since the proceeding was commenced in 1989.

4. In view of the numerous changes in circumstances since this proceeding was commenced in 1989 and the procedural schedule was established, good cause (as required by 49 C.F.R. §1152.29(b)(3)) exists for accepting this late-filed statement of intent.

5. In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29, the City is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by NYCLLC and operated by CSX Transportation, Inc. The property, known as the 30th Street Secondary Track, or the Highline, extends from 75-95 Gansevoort Street through 547-55 West 34th Street and the West 34th Street streetbed, identified as Line Code 4225 in the records of the United States Railway Association, a distance of approximately 1.45 miles, in the City and County of New York in the State of New York. The right-of-way is part of a line of railroad proposed for abandonment in Docket No. STB AB-167 (Sub-No. 1094A).

6. A map of the property depicting the right-of-way is attached as Exhibit J.

7. The City acknowledges that use of the right-of-way is subject to its continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on the railroad(s) on the same date it is being served on the Board.

8. The City has also advised Stephen Crosby, President of CSX Real Property, Inc., of its intent to file this request, as well as counsel to CSX (Exhibit K). While the railroad parties have stated that they have consistently worked to comply with the Board in this proceeding regarding the ICC surety condition, the railroad parties in the Settlement Agreement (Section

2.3) also contemplate the possibility of a "prefiled or late-filed trail use statement for procurement" of a CITU.⁸ In the past, in the course of general discussions on the Settlement Agreement and on the future of the Highline, CSX has indicated certain general conditions required for a CITU agreement. The City believes it can satisfy those conditions and hopes to have the negotiation of the terms and conditions for the CITU completed by no later than March 31, 2002. The City's execution and delivery of a CITU agreement with the railroad parties will be subject to the City's compliance with applicable environmental review procedures under State and City statutes and regulations.

9. The obstacles that CPO has raised to potential use of the Highline are hypothetical and cannot serve as a basis for this Board to conclude that a CITU is not permitted or possible.

10. It is premature to argue that any use of the Highline for a public trail would sever the line south of 30th Street from the interstate rail network. To the City's knowledge, no final development plans for the MTA Yard at 30th Street or for any other facilities on the line have been adopted or approved by the MTA, or by the City.

11. There is no doubt that there has been much speculation about possible use of some or all of the Highline right-of-way for a new stadium, for facilities related to the City's bid to host the 2012 Olympics or for other commercial, public or residential development. If any of those developments occur, then the City and any other parties to the project will need to bear in mind the legal obligations that attend the City's acceptance of the obligations recited in paragraphs 5 and 7 above. Neither CPO nor anyone else can argue credibly that the City is not

⁸ The City maintains, however, that the protections afforded the railroad parties under Settlement Agreement Section 2.3 are unnecessary, in that there is no final executed and binding Settlement Agreement.

mindful of those obligations. Nor can anyone allege with any validity at all that any plans have been approved that would cause the City or any other party to violate any such obligations.

12. Moreover, the City has received a copy of a study of the engineering feasibility of preserving a connection between the line south of 30th Street and the interstate rail network in the event that any proposed use of the MTA Yard at 30th Street were to involve use or reconfiguration of some portion of the existing Highline right-of-way.

13. The study was performed by Parsons Brinckerhoff Quade and Douglas, Inc. to examine the "engineering feasibility of an easement to connect the High Line (sic) to the LIRR Hudson Yards in the event that the existing connection is severed to facilitate the construction of a stadium or other development north of 30th Street." A copy of the letter describing three possible options is attached as Exhibit L.

14. This study is useful to demonstrate that retaining the connection to the interstate network is operationally feasible according to one engineering expert.⁹ This analysis is preliminary and neither the City nor Parsons Brinckerhoff pretends that this is an exhaustive presentation of the options that may be available. No such exhaustive presentation can be made at this time, of course, because there is no final plan or proposal extant for which issues have been identified that require a solution.

15. In addition, this study recognizes that there has been no analysis of whether any of these options is cost-effective. This study is preliminary because there has been no

⁹ The City cautions against engaging in extensive debate about whether circumstances will arise requiring implementation of any of these three particular options or any other possible solutions, and what constraints or opportunities may underlie such circumstances.

determination made that any development will occur that would in fact sever the existing connection.

16. However, the study is introduced to underscore the invalidity of two essential points that CPO has attempted to make in its aborted effort to seek a declaration of legal rights and obligations from this Board in Finance Docket No. 34359, *Chelsea Property Owners – Petition for Declaratory Order – Highline*.¹⁰ First, the City and other parties understand the issues, rights and obligations that are implicated by any decision to consider development of any of the property through or over which the Highline currently runs. Second, the City and other parties are taking those issues, rights and obligations into account as they consider the plethora of proposals, ideas, and projects that are involved in the many concepts for improving the quality of life of the residents and businesses in the City.

17. In the event that demolition of any portion of the Highline to accommodate MTA rail yard development is required, the City will, prior to undertaking any demolition, secure any rights of easement or other property interests as may be required in order to maintain the Highline's connection with the interstate rail network and pendant Board jurisdiction.

D. Conclusion

1. In view of all of the foregoing, the City submits that any finding by this Board that the Settlement Agreement satisfies the Surety Condition of the 1992 decision in this proceeding would be premature.

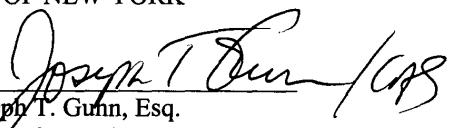
¹⁰ In the Decision served on November 27, 2002, in that proceeding, this Board has correctly denied the request for a Declaratory Order because the issues are not ripe - - - no declaratory order can issue where there is no dispute.

2. The City respectfully submits as well that a Certificate of Interim Trail Use is appropriate in this proceeding and commits to negotiation of an agreement to that effect with the railroads.

Respectfully submitted,

THE CITY OF NEW YORK

By: _____


Joseph T. Gunn, Esq.
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Email. Cspitulnik@mwmlaw.com

Dated: December 17, 2002

Certificate of Service

I, Joseph Gunn, certify that on the 17th day of December, 2002, I caused a copy of the foregoing
REPLY OF THE CITY OF NEW YORK TO MOTION BY CHELSEA PROPERTY OWNERS
THAT A CERTAIN SETTLEMENT AGREEMENT SATISFIES THE SURETY CONDITION
IN THE ICC'S SEPTEMBER 16, 1992 ORDER IN THIS PROCEEDING to be served by first
class mail on the parties listed below.

Counsel

Represents

Elizabeth Bradford
655 West 34th Street
New York, New York 10001-1188

(NYCCDC)

John F. Guinan
New York Department of Transportation
Albany, NY 12232

(NYDOT)

Robert M. Jenkins
Mayer Brown Rowe & Maw
1909 K Street NW
Washington, D.C. 20006-1101

(Conrail)

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Arnold & Porter
555 Twelfth Street NW, Suite 940
Washington, DC 20004-1206

(CSX and CSXT)

Anthony P. Semancik
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1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

(Friends of the
High Line)

John Broadley, Esq.
Chelsea Property Owners
1054 31st Street, N.W. - Suite 200
Washington, D.C. 20007

(CPO)

Dated:

December 17, 2002

A handwritten signature in black ink, appearing to read "Joseph T. Gunn", is written over a horizontal line.

A

NEW YORK CITY LAW DEPARTMENT
59 Maiden Lane
New York, New York 10038

December 20, 2001

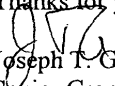
Maureen Crough, Esq.
Sidley Austin Brown & Wood

Re: Highline

Dear Maureen,

Enclosed please find 16 executed signature pages and one copy of the Voluntary Abandonment Agreement and Charitable Contribution Agreement, executed on behalf of The City of New York and New York City Economic Development Corporation, in connection with the captioned matter. The enclosed agreement needs to have some ministerial items added (telephone numbers, addresses, etc.). Also, some exhibits were omitted in order to keep the size of the agreement manageable for distribution. The enclosed are submitted on the understanding that within the next four (4) weeks any missing exhibits or other information will be provided (and examined by this office to confirm conformity with our understandings) and all other signatures (other than the railroads) will be obtained and a copy furnished to this office. Also, I would appreciate it if you or David Richards would send me a copy of the enclosed agreement (signed as is) at your earliest convenience.

Thanks for your assistance.


Joseph T. Gunn
Senior Counsel

B



MICHAEL A. CARDOZO
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007
August 15, 2002

BY FAX (212) 626-6535

Michael G. Lefkowitz
HWI Structures Inc, LLC
1120 Avenue of the Americas
New York, New York 10036

BY FAX (212) 351-4035

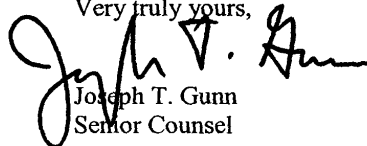
David Furman, Esq.
Gibson, Dunn & Crutcher LLP
200 Park Avenue – 47th Floor
New York, New York 10166-0193

Re: Voluntary Abandonment Agreement ("VAA")

Gentlemen,

I am transmitting herewith for your information some comments to the VAA, which I sent to David Richards, which the City will require, at this time, in order to go forward with the VAA. The comment expressly allowing the City to support an application for interim trail use before the Surface Transportation Board is entirely consistent with the discussions which the City, Chelsea Property Owners ("CPO"), and others have had over the past several months, and is logically necessitated as a result of the study being conducted by Friends of the Highline in coordination with the Department of City Planning and CPO. The language basically puts the City in the same position as the railroads parties to the VAA with respect to such application.

Very truly yours,


Joseph T. Gunn
Senior Counsel

cc: Neil Smith (FAX (212) 312-3916)
Laura Blatchford (FAX (212) 788-0074)

C



MICHAEL A. CARDOZO
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, N.Y. 10007-2601

December 6, 2002

BY FAX AND BY HAND DELIVERY

David Furman, Esq.
Gibson, Dunn & Crutcher LLP
200 Park Avenue – 47th Floor
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Michael G. Lefkowitz, Esq.
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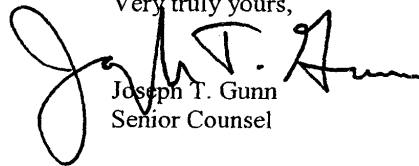
Re: Agreement for Voluntary Abandonment and Charitable
Contribution ("VAA") - Highline Viaduct

Gentlemen,

This is in follow-up to my correspondence to you last August regarding modification to the (not yet fully executed nor delivered) VAA. Previously, I had communicated to you that the City will require a provision in the VAA expressly allowing the City to support an application for a Certificate of Interim Trail Use (CITU) before the Surface Transportation Board (some other modifications were also communicated in response to certain changes to the VAA required by CSX). Since some time has passed since my last conversation on the matter with Mr. Lefkowitz (which was inconclusive on the subject), the City wishes to advise you that the City's position is essentially unchanged, except with the technical modification that the City will require the express right under the VAA to support or file an application for a CITU before the STB in order to proceed with the VAA.

For your convenience I have marked up the salient provisions of the VAA and transmit them herewith. You or your client may wish to discuss the foregoing with the other property owners or their respective counsels. Please call me if you wish to discuss any of the above.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joseph T. Gunn". The signature is fluid and cursive, with a large initial "J" and a stylized "G".

Joseph T. Gunn
Senior Counsel

cc: David Alan Richards, Esq. (FAX (212) 609-6921)

controlling any Signatory Owner (a "Signatory Owner Affiliate"). The Signatory Owners and other parties hereto agree that NYCLLC's agreement to negotiate with a proposed private entity railbanker or public entity railbanker for part or all of the statutory period under the Railbank Legislation following the filing of the STB petition, and/or NYCLLC's thereafter reaching agreement with such railbanker on the terms and conditions of the disposition of the Highline thereto in connection with its receipt of a CITU, shall not be deemed a breach of this Agreement by NYCLLC or any of the other Railroad Signatories, or be deemed a failure by NYCLLC to pursue the abandonment of the Highline before the STB in good faith. NYCLLC may, nevertheless, in its judgment determine to undertake an appeal of any order, decision or act of the STB or any other administrative or governmental agency or authority bearing upon the abandonment of the Northern Portion, but NYCLLC shall not be obligated to do so. Neither NYCLLC nor any other Railroad Signatory shall oppose any such appeal as may be undertaken by any Signatory Owner. NYCLLC agrees that it shall provide to Chelsea, MTA, NYCCDC, the City, and EDC the text of its STB Petition prior to filing with the STB for review and comment (which shall be limited to ascertaining consistency of the STB Petition with the terms of the last sentence of Section 2.1 hereof), and further that it shall periodically inform Chelsea, MTA, NYCCDC and EDC (and, upon written request therefrom, any other party hereto) of the status of its efforts to obtain the authorized abandonment of the Northern Portion.

2.4. Cost of Abandonment Proceedings. Neither Chelsea nor any Signatory Owner nor any Signatory Owner Affiliate nor EDC shall be liable to NYCLLC or to the remaining Railroad Signatories or any of them for, or otherwise obligated to contribute to the costs or expenses of the undertakings of any of the Railroad Signatories described in Sections 2.1 and 2.2 (and, if NYCLLC elects to undertake an appeal, Section 2.3) above; provided, however, that any Signatory Owner which participates in support of or otherwise in response to the STB Petition shall be responsible for bearing its own expenses in connection therewith.

2.5. Chelsea and Signatory Owners' Support of STB Petition. Chelsea and All Owners covenant and agree to provide support of the STB Petition and any and all ancillary filings and other efforts undertaken by NYCLLC in pursuit of abandonment or any element thereof as NYCLLC may reasonably request consistent with the terms of this Agreement, including but not limited to providing further explication for the STB of the scope and/or enforceability of and/or authority to deliver any document explicitly or implicitly required for Closing hereunder from any party hereto other than the Railroad Signatories. Such support, whether before the STB or any New York City or New York State agency, department or board having or claiming jurisdiction of the Northern Portion may include by way of example and not limitation, testimony or sworn statements of Chelsea, CD, and/or one or more Signatory Owners, attendance at administrative or judicial hearings or community meetings, and the provision of non-confidential information as is necessary or appropriate to the abandonment process or proceedings. Chelsea and each of the Signatory Owners agrees that it shall not oppose or hinder in any way the efforts of NYCLLC to pursue abandonment under terms in accordance with and otherwise consistent with this Agreement, nor shall any Signatory Owner permit any Signatory Owner Affiliate to do the same.

2.6. "Actual Abandonment" Defined. The term "Actual Abandonment" shall mean that all of the following shall have occurred:

Insert
10

Insert 10

Anything to the contrary in this Agreement notwithstanding (including without limitation Section 2.5 hereof), the City and EDC may participate in any CITU-related negotiations and support an application and award of ~~same~~ without being in breach of this Agreement.

~ CITU

may
file and/or

Insert to Voluntary Abandonment Agreement on (a) cancellation for disparagement and (b) title subject to building violations:

Rider to Section 2.5 (add at end):

By way of example and not by way of limitation of the foregoing sentence, it is understood and agreed that public disparagement of the viaduct's physical safety will be deemed by the Railroad Signatories to be hindrance of the abandonment process and its occurrence shall permit NYCLLC to terminate this Agreement by delivery of written notice to such effect to all of the parties hereto.

Rider 7.1 (add at end):

(provided that the foregoing provision regarding disparagement shall not apply to actions or statements by the city in its governmental capacity)

Notwithstanding the foregoing, each Signatory Owner shall be obligated at Closing to accept title to the Highline viaduct segment on its respective Servient Property subject to any and all notes or notices or violations of law or governmental ordinances, orders or requirements which were noted or issued prior to or after the date of this Agreement by any governmental department, agency or bureau having jurisdiction, and to any fines accrued with respect to such violations (collectively, "Building Violations"), and the existence of any such Building Violations at the Closing Date on any part of the Highline shall not be an objection to Closing hereunder by any party hereto.

3/01/02

7.3. ~~Closing~~/Closing of title for the conveyances of the Easements (as previously defined, the "Closing") shall be held at any time within thirty (30) calendar days following Actual Abandonment (as defined in Section 2.6 hereof), but no earlier than one Record hundred twenty-one (121) days following the later of (i) publication in the City Register of New York City of the announcement of the City's execution and delivery of this Agreement and (ii) the date of final and complete execution and delivery of this Agreement by all signatory parties hereto (hereinafter, such day being the "121 Date") at such time on a business day as NYCLLC and CD and the City shall mutually agree (the "Closing Date") in the offices of NYCLLC's counsel McCarter & English LLP, 300 Park Avenue, New York, New York 10022. Provided that NYCLLC is ready, willing and able to close in accordance with the terms of this Agreement, if NYCLLC and CD and the City do not agree upon a date for Closing, NYCLLC shall designate the Closing Date as the thirtieth day (or the first business day thereafter if said thirtieth day is not a business day) following the date of Actual Abandonment, provided such Closing Date is no earlier than the 121 Date. The time and date for Closing may be extended only by NYCLLC, which shall be done in writing, time expressly being of the essence in this Agreement with respect to all parties' performance on the Closing Date. The failure of All Owners to close title in accordance with the terms hereof on or before the Closing Date (or any NYCLLC-extended Closing Date) shall mean that, at NYCLLC's option and as the sole remedy of NYCLLC and the other Railroad Signatories, this Agreement shall be and be deemed to be null and void and of no further force and effect; provided further, however, that in the event that performance of any party hereto in conveying or acquiring the Easements, and/or the Highline as the case may be, becomes subject to lawsuit for an injunction or other judicial order or ruling against one or more of the parties hereto and such injunction or other order or ruling is threatened or pending under a filed lawsuit or in effect on the 121 Date or any later Closing Date, then and in any such event, at any time following the eighteenth (18th) month anniversary of the date hereof unless NYCLLC, CD and the City shall agree otherwise, the Closing Date shall be postponed pending the final determination of such lawsuits(s), and if the Closing shall not occur by the eighteenth (18th) month anniversary of the date hereof, then at NYCLLC's or CD's or the City's option exercised by notice to all other parties, this Agreement shall be and be deemed to be null and void and of no further force and effect, and the STB Action will be restored to the status of the July Ruling.

7.4. Transfer or Reassessment Taxes. Each Signatory Owner with respect to its Servient Property, unless by law exempt therefrom, shall pay all transfer taxes however styled or designated, all documentary stamps, recording costs or fees or any similar expense in connection with this Agreement, the conveyance of the Easements or the recording of the Assignments and Assumptions. Each Signatory Owner with respect to its Servient Property shall be solely responsible for and shall pay any reassessments or taxes generated by reclassification of the Servient Property in question resulting from the conveyance of the Easements. If any state or local governmental authority requires, presently or in future, the payment of any sales, use or similar tax upon the sale, acquisition, use or disposition of any of the Easements, whether such sale, acquisition, use or disposition is at or after Closing hereunder, with respect to any particular Servient Property (whether under statute, regulation or rule), it is understood and agreed that each Owner, with respect to its particular Servient Property, assumes all responsibility for and shall pay the same, directly to said authority, and shall hold NYCLLC harmless from such tax(es) and any interest or penalty thereon. NYCLLC shall cooperate (at no expense to

D

**AGREEMENT FOR VOLUNTARY ABANDONMENT
AND FOR CHARITABLE CONTRIBUTION**

Regarding the Highline,
75-95 Gansevoort Street through 547-55 West 34th Street
New York City, New York

by and among

New York Central Lines, LLC
Conrail, Inc.
Consolidated Rail Corp.
CSX Corporation
CSX Transportation, Inc.
Chelsea Property Owners Inc.
Chelsea Demolition, Inc.
Edison Mini-Storage Corporation
Abi Kalimian
GHC NY Corp.

Romanoff Equities, Inc.
Gottlieb Realty Corp.
Freedman Realty Company
450 West 14th Street Corp.
Cotard Realty Associates
Tenth Avenue Realty Associates LP
204 Lafayette Street Properties
Liron Realty Inc.
22-23 Corp.

David V. Duchini and David Duchini, John I. Lipkowitz and
The Bank of New York as Trustees u/w/o Adolph Duchini f/b/o Concetta Duchini

15th Street Mini Storage, Inc.
CFG/AGSCB 9th Avenue LLC
511 West 23rd Street Associates LLC
NTJ Associates
26-10 Corp.
509-511 West 27th St. LP
Midtown Realty Inc.
The City of New York

New York City Economic Development Corporation
New York Convention Center Development Corporation
Metropolitan Transportation Authority
Triborough Bridge and Tunnel Authority

December __, 2001

the parties hereto in respect of the subject matter hereof, and are merged in this Agreement and the documents constituting the Exhibits annexed hereto and to be delivered hereafter at the Closing, which documents alone fully and completely express their agreement.

9.12. No Amendment. Neither this Agreement nor any provision hereof may be changed, modified, amended, supplemented, waived, discharged, or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, modification, amendment, supplement, waiver, discharge, or termination is sought.

9.13. Separability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid and unenforceable, the remainder of this Agreement, or the application of such term or provisions to persons or circumstances to which it is valid or enforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the extent permitted by law.

9.14. No Waivers. The failure of any party hereto to seek redress for violations or to insist upon the strict performance of any covenant, agreement, provision or condition of this Agreement shall not constitute a waiver thereof, and each party hereto, as the case may be, shall have all remedies provided herein and under applicable law with respect to any act which constitutes a violation or default hereunder.

9.15. Survival. Wherever so stated herein or in the respective Closing Documents, the obligations, undertakings, duties, and covenants of the parties hereto shall survive Actual Abandonment and the delivery of the Assignment and Assumptions and other Closing Documents at the Closing.

9.16. Counterparts. This Agreement shall be executed in multiple copies, each of which may be treated as an original, but all of which shall together constitute one and the same instrument.

9.17. Trial By Jury. Each of the parties hereto agrees not to elect a trial by jury of any issue triable of right by jury, and to waive any right to trial by jury fully to the extent that any such right shall now or hereafter exist with regard to this Agreement or to any document or instrument executed and delivered in connection herewith, or any claim, counterclaim or other action arising in connection therewith. This waiver of right to trial by jury is given knowingly and voluntarily by each party and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. Each party hereto is hereby authorized to file a copy of this paragraph in any proceeding as conclusive evidence of this waiver by any other party hereto.

9.18. Conditions to City Obligations and NYCCDC Obligations and MTA Obligations. (a) Except where specifically set forth to the contrary in writing, the City is executing and delivering this Agreement in its proprietary, and not its governmental, capacity. Any specific reference in this document to similar effect shall in no way waive, impair, diminish or otherwise affect the provisions of this Section 9.18. Furthermore, notwithstanding anything to the contrary set forth in this Agreement, the City's and EDC's obligations under this Agreement

are conditional upon execution and delivery at or prior to Closing of one or more agreements among the City and EDC and the non-City Signatory Owners, containing provisions reasonably satisfactory to the City and EDC to assure that the demolition of the Highline shall be accomplished by the non-City Signatory Owners as contemplated in this Agreement and that the public purposes of eliminating a blighting influence will thereby be served, including without limitation provisions addressing the following: (i) the entity to hold the Demolition Contribution and to administer the Demolition Contract and manage the Highline demolition, and contracts relating to such administration and management thereof, (ii) the conditions to disbursement of the Demolition Contribution and other amounts available to pay for the Highline demolition, (iii) the manner in which the Highline demolition will proceed, (iv) progress reporting, (v) mechanisms (including without limitation provisions for enforcement by and remedies of the City and EDC) to address cost overruns, contractor default, and other adverse and unforeseen circumstances, (vi) rights of enforcement under payment and performance bonds, commercial general liability and excess and umbrella insurance coverage, and cash proceeds available to cover the deductibles (or the functional equivalent thereof) with respect to any of same, (vii) indemnification provisions by the Contractor and the parties holding and/or administering the Demolition Contract and/or managing the Highline demolition, and (viii) payment of the City's contribution to the design and other soft costs of the Highline demolition. Furthermore, EDC's obligations under this Agreement are conditional upon approval of this Agreement, the Funding Agreement, the Master Agreement, and one or more agreements with Chelsea, CD, and other necessary parties to same regarding the matters set forth in clauses (i) through (viii) above, by the EDC's Board of Directors or a duly authorized committee of said Board.

(b) Notwithstanding anything to the contrary set forth in this Agreement, the NYCCDC's obligations under this Agreement are conditional upon (a) execution and delivery at or prior to Closing of one or more agreements among the NYCCDC and the non-NYCCDC Signatory Owners, containing provisions reasonably satisfactory to NYCCDC to assure that the demolition of the Highline shall be accomplished as contemplated in this Agreement including without limitation, provisions addressing the following: (i) the entity to hold the Demolition Contribution and to administer the Demolition Contract and manage the Highline demolition, and contracts relating to such administration and management thereof, (ii) the conditions to disbursement of the Demolition Contribution and other amounts available to pay for the Highline demolition, (iii) the manner in which the Highline demolition will proceed, (iv) progress reporting, (v) mechanisms (including without limitation provisions for enforcement by and remedies of NYCCDC) to address cost overruns, contractor default, and other adverse and unforeseen circumstances, (vi) rights of enforcement under payment and performance bonds, and commercial general liability insurance coverage, and cash proceeds available to cover the deductibles (or the functional equivalent thereof) with respect to any of same, (vii) indemnification provisions by the demolition contractor and the parties holding and/or administering the demolition contract and/or managing the Highline demolition, (viii) the amount of NYCCDC's contribution to the costs of the Highline demolition; and (b) the ratification by the NYCCDC Board of this Agreement. Furthermore, NYCCDC's obligations under this Agreement are conditional upon approval of this Agreement, the Funding Agreement, the Master Agreement, and one or more agreements with Chelsea, CD, and other necessary parties to same regarding the matters set forth in clauses (i) through (viii) above, by the NYCCDC's Board of Directors or a duly authorized committee of said Board

E

BEFORE THE SURFACE TRANSPORTATION BOARD

Docket No. AB-167 (Sub-No. 1094)A

CHELSEA PROPERTY OWNERS -- MOTION FOR AN ORDER AUTHORIZING
ABANDONMENT -- HIGHLINE

VERIFIED STATEMENT OF ROBERT BALDER

1. I am Robert W. Balder, Executive Vice President of New York City Economic Development Corporation ("EDC").
2. I am submitting this statement in support of the City's Reply (the "Reply") to Chelsea Property Owners' ("CPO") Motion for an Order Authorizing Abandonment (the "Motion"). The Motion alleges that an Agreement for Voluntary Abandonment and Charitable Contribution ("VAA") among CPO, CSX Corporation ("CSX") and other railroad parties, certain property owners on whose properties the Highline rail viaduct is situated, the City of New York (the "City") and EDC satisfies the condition for abandonment imposed by the Interstate Commerce Commission in 1992 that a surety bond or other security be obtained by CPO before a final order of abandonment be issued with respect to the Highline.
3. EDC is a not-for-profit local development corporation that serves as the City's instrumentality for economic development pursuant to two (2) annual contracts entered into between the City and EDC (one contract for maritime matters, and one contract for all other matters). The Mayor of the City of New York directly or indirectly appoints all of the directors of EDC.

4. EDC is a party to the VAA for purposes of (i) accepting a contribution from CSX of \$7 million, which CSX believes will qualify for a charitable contribution for federal tax purposes, and (ii) disbursing the CSX \$7 million contribution for demolition work, along with approximately \$381,000 in City funding.

5. EDC signed the VAA in December 2001, the same time the City signed the VAA.

6. I am informed that The Friends of the High Line, Inc. ("FOHL") have proposed to the City a plan to convert the Highline to public trail use under federal "Rails-to-Trails" statutes and applicable regulations.

7. The VAA was signed by the City and EDC in the last days of Mayor Giuliani's final term of office. I am informed that Mayor Giuliani's administration did not give serious consideration to the proposal by FOHL to convert the Highline to public trail use. I am informed that Mayor Bloomberg's administration has given careful and serious consideration to both the FOHL's proposal for trail use of the Highline and CPO's proposal to demolish the Highline as contemplated in the VAA. It is my further understanding that the City intends to apply for a Certificate of Interim Trail Use ("CITU") for the Highline from the Board.

8. As an instrumentality of the City, EDC staff takes cognizance of the serious consideration that the office of the Mayor is giving to FOHL's trail use proposal, and its decision to pursue a CITU.

9. Since the VAA was signed in December 2001, EDC has undergone changes in its staff. EDC has a new president and new senior staff. Its management structure has been

reorganized. These changes have occurred generally as a result in the change of the City's Mayoral administration.

10. The VAA is expressly subject to the approval of EDC's Board of Directors or a duly constituted committee thereof (VAA Section 9.18(a))(in practice the VAA would be approved by EDC's Board's Executive Committee). Given the office of the Mayor's serious consideration of FOHL's proposal and its decision to pursue a CITU before the Board, and for the reasons set forth in paragraph 13 below, approval of the VAA by EDC's Executive Committee is unlikely at this present time.

11. The VAA is also subject to the execution and delivery of a funding agreement between EDC and CPO (VAA Section 9.18(a)), which would set forth the conditions under which CSX and City funds would be disbursed for demolition (the "Funding Agreement"). A Funding Agreement was drafted and was the subject of negotiation by the City's Law Department (subject to EDC's approval) and CPO. The Funding Agreement has not been signed or delivered by either EDC or CPO, and I am advised that under the VAA, the Funding Agreement itself, as well as other agreements, are subject to the approval by EDC's Executive Committee. (VAA Section 9.18).

12. The Funding Agreement and its terms are subject to the review and approval by current EDC staff. To my knowledge, EDC staff have not been requested by any of the parties to the VAA to review, approve and have executed the present draft Funding Agreement or to seek approval of same by EDC's Executive Committee. EDC has not ascertained whether or not the present proposed terms of the Funding Agreement are acceptable to current EDC staff. Furthermore, given, once again, the office of the Mayor's serious consideration of FOHL's

proposal and its decision to pursue a CITU before the Board, and for the reasons described in paragraph 13 below, approval of the Funding Agreement by EDC's Executive Committee is, at the present time, uncertain.

13. Under the Funding Agreement, if same was to be finalized, executed and delivered, EDC would disburse \$381,000 of City funds towards the cost of demolition. No City capital budget monies have been allocated by the City to EDC for the demolition of the Highline under the VAA. It is EDC's general policy and practice to neither execute a funding agreement unless funds are available to EDC for disbursement thereunder, nor to present a funding agreement to the Executive Committee for approval unless staff can inform the Executive Committee that funds are available for disbursement thereunder.

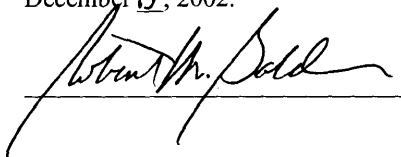
14. Consistent with its general practices and policies, EDC does not plan at this time to present the VAA or the Funding Agreement to the Executive Committee for approval, and if EDC did present such matter to the Executive Committee, under the present circumstances, obtaining such approval would be unlikely.

DECLARATION UNDER 49 C.F.R. Sec. 1104.5(b)

I, Robert Balder, declare under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this Verified Statement. Executed on

December 13, 2002.

A handwritten signature in cursive script, appearing to read "Robert M. Balder", is written over a horizontal line.

F

mayor or his representative shall review the final design to determine its conformance with the approved scope of project pursuant to this chapter.

§ 224. Works of art. a. As used in this section the term "works of art" includes all forms of the visual and performing arts conceived in any medium, material or combination thereof.

b. Works of art shall be provided for each capital project which involves the construction or the substantial reconstruction of a city-owned public building or structure the intended use of which requires that it be accessible to the public generally or to members of the public participating in, requiring or receiving programs, services or benefits provided thereat. For the purposes of this section a police precinct house and a firehouse shall be deemed to be such buildings.

c. An amount not less than one per cent of the first twenty million dollars and one-half of one per cent of any amount in excess of twenty million dollars of capital funds appropriated by the city for each such capital project, other than funds appropriated for the acquisition of real property, shall be allocated for works of art; provided, however, that this section shall in no case require the expenditure of more than four hundred thousand dollars for works of art for any capital project; nor more than the sum of one and one-half million dollars for works of art in any fiscal year. The mayor may exempt a capital project from the provisions of this section if in his sole judgment the inclusion of works of art as provided hereby would be inappropriate.

d. Reasonable advance notification of the intention to include works of art in a project shall be provided to the appropriate council member, borough president and chairperson of the community board of the community district in which the project is located. All such works of art shall be subject to the approval of the art commission pursuant to section eight hundred fifty-four of this charter.

e. The mayor shall adopt rules and regulations to implement the provisions of this section.

CHAPTER 10 BUDGET PROCESS

§ 225. Budgetary responsibilities of the mayor, the director of management and budget and the comptroller. a. The mayor shall each year, in accordance with the provisions of this chapter, prepare and submit to the council a preliminary budget and an executive budget each of which shall present a complete financial plan for the city and its agencies for the ensuing fiscal year, setting forth proposed operating and capital expenditures, proposed interfund transfers, anticipated revenues and any other anticipated sources and uses of funds. Each such budget shall consist of three parts: the expense budget, which shall set forth proposed appropriations for the operating expenses of the city including debt service; the capital budget and program, which shall set forth proposed appropriations for capital projects for the ensuing fiscal year and the three succeeding fiscal years; and the revenue budget, which shall set forth the estimated revenues and receipts of the city.

b. There shall be an office of management and budget in the executive office of the mayor, the head of which shall be director of management and budget who shall be appointed by the mayor. It shall be the duty of the director to perform all such duties in regard to the budget and related matters as the mayor may direct. The director of management and

budget shall have the power, personally or through representatives, to survey each agency for the purpose of ascertaining its budgetary requirements. The director may require any agency, or any officer or employee, to furnish data and information and to answer inquiries pertinent to the exercise of any of the director's duties in regard to the budget and related matters.

c. The comptroller shall produce timely analyses of the preliminary and executive budgets including evaluations of the recommendations of the borough presidents, as well as those of the mayor, and of the assumptions and methodologies used by the mayor in making the revenue estimates contained in such budgets.

§ 226. Fiscal year. The fiscal year of the city shall commence on the first day of July in each year and shall terminate at midnight on the ensuing thirtieth day of June.

§ 227. Spending pursuant to appropriations. a. No money, except for grants or gifts from private entities, shall be paid from any fund under the management of the city, or any fund under the management of any agency or officer of the city, or any other entity the majority of the members of whose board are city officials or are appointed directly or indirectly by city officials, except in pursuance of an appropriation by the council or other specific legal authorization; provided, however, that

(1) if at any time the council shall fail to make an appropriation for the payment of debt service on any debts of the city as they fall due, or for the payments to the several sinking funds, the commissioner of finance shall set apart, from the first revenues thereafter received applicable to the general fund of the city, a sum sufficient to pay such amounts and shall so apply such sum; and

(2) money, the ownership and equitable title of which belongs to an individual, corporation, organization or government other than the city and which is being held by any agency or officer of the city pending transfer of such money to such individual, corporation, organization or government in accordance with the terms and conditions pursuant to which it was placed in the custody of such agency or officer, may be transferred to such individual, corporation, organization or government by such agency or officer without an appropriation by law, provided such transfers are made in accordance with such terms and conditions; and

(3) money or other financial resources may only be transferred from one fund to another without specific statutory authorization for such a transfer if that money or those other financial resources are being loaned temporarily to such other fund and an accurate accounting and reporting of the balance of financial resources in each fund and of the amount due by each fund to each other fund is made at the end of each month; and

(4) grants or gifts from private entities exempt from the requirements of this section, and expenditures of such funds, shall be subject to disclosure, at least annually, by the responsible agency, officer or entity in a form and containing such information as the mayor shall prescribe for this purpose by rule.

b. The head of each agency of the city, and each entity the majority of the members of whose board are city officials or individuals appointed directly or indirectly by city officials, shall, on or before the fifteenth day of October in each year, submit to the mayor and the council, in such form as the mayor shall prescribe, a statement of the sources, amounts and disposition of all money received by such agency or

entity, or by a unit or officer of such agency during the preceding fiscal year, other than (i) money appropriated for the use of such agency or entity by the council, or (ii) money paid by such agency or entity into the city treasury and reported in the annual report of the comptroller for such fiscal year. The mayor shall ensure that copies of such statements are available for public inspection, and shall designate a city officer to maintain copies of such statements for such purpose.

§ 228. Draft ten-year capital strategy. Not later than the first day of November in each even-numbered year, the director of management and budget and the director of city planning shall jointly submit to the mayor, the council, the borough presidents and the city planning commission a draft ten-year capital strategy prepared in accordance with the provisions of section two hundred fifteen.

§ 229. Revenue reports of the comptroller and mayor. a. Not later than the first day of November, the comptroller shall certify to the mayor the actual revenues for the previous fiscal year.

b. Not later than the fifteenth day of November, the mayor shall issue a report comparing actual revenues to estimated revenues in the budget as adopted for the previous fiscal year, accompanied by a detailed listing and an explanation of any variances between actual revenues and estimated revenues. This report shall be published in the City Record.

§ 230. Community board budget priorities. a. Not later than thirty days prior to the date set by the mayor in accordance with section two hundred thirty-one for the submission of departmental estimates, each community board shall submit to the mayor and the appropriate borough president a statement of its expense budget priorities and a statement of its capital budget priorities for the ensuing fiscal year, in such form and containing such information as the mayor shall prescribe. The form prescribed by the mayor shall include (i) a method by which continuing support may be expressed by a community board for existing programs and capital projects and (ii) reasonable limitations on the total number of expense and capital budget priorities which a community board may propose. The mayor shall provide each community board with reasonable notice of the date set for the submission of such priorities. The mayor shall ensure that representatives of each agency that delivers local services, or is responsible for capital projects, within any community district shall be available for consultation with the community board for such community district in the preparation of its statement of budget priorities.

b. Each community board in the preparation of its statement of budget priorities, shall, upon adequate public notice, hold a public hearing at which residents of the community district and other interested individuals may express their opinions as to the service and capital needs of the district.

c. Copies of each statement of budget priorities shall be provided expeditiously by the mayor to the city planning commission and the head of each agency affected.

§ 231. Departmental estimates. a. Not later than such date as the mayor may direct, the head of each agency shall submit to the mayor, in such form and containing such information as the mayor shall require, a detailed estimate of the expense budget requirements of such agency for the ensuing fiscal year and capital budget and program requirements for the ensuing fiscal year and three succeeding fiscal years, prepared in

accordance with the provisions of section one hundred and section two hundred twelve, respectively, and a detailed estimate of all receipts, from sources other than taxes, which the agency anticipates collecting during the ensuing fiscal year. Such estimates shall be known collectively as departmental estimates and shall be known respectively as expense budget departmental estimates, capital budget and program departmental estimates and revenue budget departmental estimates. Copies of such departmental estimates shall be provided expeditiously by the mayor to each borough president.

b. In the preparation of such departmental estimates, the head of each agency that delivers local services, or is responsible for capital projects, within any community district shall (1) consult with the community board for such community district through appropriate officers and employees of the agency, and (2) consider the community board statements of expense and capital budget priorities submitted in accordance with section two hundred thirty of this chapter.

§ 232. Report of the comptroller on capital debt and obligations. Not later than the first day of December, the comptroller shall submit to the mayor, the council and the city planning commission a report, which shall be published forthwith in the City Record, setting forth the amount and nature of all obligations authorized on account of each pending capital project and the liabilities incurred for each such project outstanding on the first day of July and setting forth and commenting in detail upon the city's financial condition and advising as to the maximum amount and nature of debt and reserves which in the comptroller's opinion the city may soundly incur for capital projects during each of the four succeeding fiscal years, and containing such other information relevant to this subject as may be required by local law, by the mayor by executive order, or which the comptroller deems necessary and relevant.

§ 233. Report of the comptroller on the state of the city's finances. Not later than the fifteenth day of December, the comptroller shall report to the council, at a stated meeting of the council, on the state of the city's economy and finances, including evaluations of the city's financial plan, as most recently updated by the mayor in accordance with section two hundred twenty-eight, and the assumptions on which the revenue and expenditure forecasts contained therein are based.

§ 234. City planning commission hearing and statement on the draft ten-year capital strategy. Not later than the sixteenth day of January in each odd numbered year, the city planning commission shall submit to the mayor, the borough presidents and the council a report containing its comments on the draft ten-year capital strategy submitted in accordance with section two hundred twenty-eight of this chapter, including such recommendations as it deems appropriate. The city planning commission, in the preparation of such report, shall, upon adequate public notice, hold a public hearing at which interested organizations and individuals may express their opinions regarding the draft ten-year capital strategy.

§ 235. Preliminary certificate of the mayor on capital debt and obligations. No later than the sixteenth day of January, the mayor shall submit to the council, the comptroller, the borough presidents and the city planning commission and publish a preliminary certificate setting forth the maximum amount of debt and reserves which, in the mayor's

opinion, the city may soundly incur for capital projects during the ensuing fiscal year and during each of the following three fiscal years, and the maximum amount of appropriations and expenditures for capital projects which the city, given such maximum amount of debt and reserves, may soundly make during each such fiscal year. At any time up to the submission of the executive capital budget to the council, the mayor may amend such preliminary certificate. Any such amendments shall be submitted to the council, the comptroller, the borough presidents and the city planning commission, and published forthwith in the City Record.

§ 236. Submission of the preliminary budget. Not later than the sixteenth day of January, the mayor shall submit to the council and publish a preliminary budget for the ensuing fiscal year. Copies of such budget shall be provided to the council, borough presidents, each community board and borough board, the city planning commission, and the department of city planning. Beginning in calendar year 1999 and every calendar year thereafter, a copy of such preliminary budget shall also be provided to the council not later than the sixteenth day of January on floppy disks having dimensions of three and one-half inches or on CD Roms. Such floppy disks or CD Roms shall be in a readable ascii format or readable Lotus or Excel spread sheet format or any other format mutually agreed upon between the mayor and the council.

§ 237. Report of independent budget office on revenues and expenditures. On or before the first day of February, the director of the independent budget office shall publish a report, for the ensuing fiscal year, with respect to expected levels of revenues and expenditures, taking into account projected economic factors and the proposals contained in the preliminary budget submitted by the mayor for such fiscal year. Such report shall also include a discussion of city budget priorities, including alternative ways of allocating the total amount of appropriations, expenditures and commitments for such fiscal year among major programs or functional categories taking into account how such alternative allocations will meet major city needs and effect balanced growth and development in the city.

§ 238. Community board review of preliminary budget. Not later than the fifteenth day of February, each community board shall submit to the mayor, the council, director of management and budget, the appropriate borough president and each member of the borough board of the borough in which the community board is located, a statement containing the community board's assessment of the responsiveness of the preliminary budget to its statement of budget priorities submitted pursuant to section two hundred thirty and any other comments or recommendations which it wishes to make in regard to the preliminary budget.

§ 239. Estimate of assessed valuation, and statement of taxes due and uncollected by the commissioner of finance. Not later than the fifteenth day of February, the commissioner of finance shall submit to the mayor and to the council:

a. a tentative estimate of the assessed valuation of real property subject to taxation for the ensuing fiscal year, which shall be published forthwith in the City Record; and

b. a certified statement showing as of a specified date the amount of all real property taxes due, the amount expected to be received and the amount actually uncollected by such categories and classifications as will facilitate understanding of such information.

§ 240. Tax Benefit Report. Not later than the fifteenth day of February the mayor shall submit to the council a tax benefit report which shall include: a. a listing of all exclusions, exemptions, abatements, credits or other benefits allowed against city tax liability, against the base or the rate of, or the amount due pursuant to, each city tax, provided however that such listing need not include any benefits which are applicable without any city action to such city tax because they are available in regard to a federal or state tax on which such city tax is based; and

b. a description of each tax benefit included in such listing, providing the following information:

1. the legal authority for such tax benefit;

2. the objectives of, and eligibility requirements for, such tax benefit;

3. such data and supporting documentation as are available and meaningful regarding the number and kind of taxpayers using benefits pursuant to such tax benefit and the total amount of benefits used pursuant to such tax benefit, by taxable and/or fiscal year;

4. for each tax benefit pursuant to which a taxpayer is allowed to claim benefits in one year and carry them over for use in one or more later years, the number and kind of taxpayers carrying forward benefits pursuant to such tax benefit and the total amount of benefits carried forward, by taxable and/or fiscal year;

5. for nineteen hundred ninety and each year thereafter for which the information required by paragraphs three and four are not available, the reasons therefor, the steps being taken to provide such information as soon as possible, and the first year for which such information will be available;

6. such data and supporting documentation as are available and meaningful regarding the economic and social impact and other consequences of such tax benefit; and 7. a listing and summary of all evaluations and audits of such tax benefit issued during the previous two years.

§ 241. Borough board preliminary budget hearings. Not later than the twenty-fifth day of February each borough board shall submit a comprehensive statement on the budget priorities of the borough to the mayor, council, and director of management and budget. Each borough board, in the preparation of this statement, shall, upon adequate public notice, hold one or more public hearings on the preliminary budget, to obtain the views and recommendations of the community boards within the borough, residents of the borough and others with substantial interests in the borough, on the proposals contained in the preliminary budget and on the capital and service needs of the borough. Officers of agencies, when requested by the borough board, shall appear and be heard.

§ 242. Statement of debt service by the comptroller. Not later than the first day of March, the comptroller shall submit to the mayor and to the council a certified statement which shall be published forthwith in the City Record and which shall contain a schedule of the appropriations required during the ensuing fiscal year for debt service, including appropriations to the several sinking funds as required by law, and such other information as may be required by law.

§ 243. The operating budget of the council. Not later than the tenth day of March, the council shall approve and submit to the mayor detailed itemized estimates of the financial needs of the council for the ensuing fiscal year. Such estimates shall be comprised of at least one personal

service unit of appropriation and at least one other than personal service unit of appropriation for each standing committee of the council and for each organizational unit established pursuant to section forty-five of this charter. The mayor shall include such estimates in the executive budget without revision, but with such recommendations as the mayor may deem proper.

§ 244. Preparation of the executive budget. In preparing the executive budget to be submitted in accordance with section two hundred forty-nine, the mayor shall consult with the borough presidents.

§ 245. Borough president recommendations to the mayor. a. Not later than the tenth day of March, each borough president shall submit to the mayor and council, in such form and containing such information as the mayor shall prescribe, any proposed modifications of the preliminary budget which the borough president recommends in accordance with the provisions of subdivision b of this section.

b. Each borough president shall propose such modifications to the preliminary budget as the borough president deems to be in the best interest of the borough, taking into consideration community and borough board priorities and testimony received at public hearings held pursuant to section two hundred forty-one. The net effects of any such modifications recommended by the borough president may not result in an increase in the total amount of appropriations proposed in the preliminary budget. If increases in appropriations within the borough are recommended, offsetting reductions in other appropriations within the borough must also be recommended. Each proposed increase or reduction must be stated separately and distinctly and refer each to a single object or purpose.

§ 246. Report of independent budget office on preliminary budget. On or before the fifteenth day of March, the director of the independent budget office shall publish a report analyzing the preliminary budget for the ensuing fiscal year.

§ 247. Council preliminary budget hearings and recommendations. a. Not later than the twenty-fifth day of March, the council, through its committees, shall hold hearings on the program objectives and fiscal implications of the preliminary budget, the statements of budget priorities of the community boards and borough boards, the draft ten-year capital strategy and the report of the city planning commission on such strategy, the borough presidents recommendations submitted pursuant to section two hundred forty-five to the extent that such recommendations are available at the time of these hearings, and the status of capital projects and expense appropriations previously authorized. The public and representatives of community boards and borough boards may attend and be heard in regard to all such matters. Representatives of the director of management and budget and the director of city planning may attend the hearings and ask questions. Officials of agencies, when requested by the committees of the council, shall appear and be heard.

b. Findings and recommendations of the council, or its committees, including recommendations for any changes in the unit of appropriation structure which the council deems appropriate, shall be submitted to the mayor and published not later than the twenty-fifth day of March. The net effect of the changes recommended by the council in the preliminary capital budget shall not result in a capital budget which exceeds the maximum amount set forth in the preliminary certificate issued pursuant

to section two hundred thirty-five of this chapter.

§ 248. **Ten-year capital strategy.** Not later than the twenty-sixth day of April in each odd-numbered year, the mayor shall issue and publish a ten-year capital strategy, prepared in accordance with the provisions of section two hundred fifteen of this charter.

§ 249. **Submission of the executive budget.** a. Not later than the twenty-sixth day of April, the mayor shall submit to the council (1) a proposed executive budget for the ensuing fiscal year, and (2) a budget message, both of which, along with any accompanying reports and schedules, shall be printed forthwith. Beginning in calendar year 1998 and every calendar year thereafter, copies of such proposed executive budget, budget message and any accompanying reports and schedules shall also be provided to the council not later than the twenty-sixth day of April on floppy disks having dimensions of three and one-half inches or on CD Roms. Such floppy disks or CD Roms shall be in a readable ascii format or readable Lotus or Excel spread sheet format or any other format mutually agreed upon between the mayor and the council.

b. As soon after the submission of the executive budget as is practicable, the mayor shall submit to the council copies of all proposed local laws and all proposed home rule requests necessary to implement the recommendations made in the executive budget.

c. **Adjustment of expense budget borough allocation.** If the executive expense budget submitted by the mayor in accordance with this section includes an expense budget borough allocation which is greater or less than the expense budget borough allocation certified by the mayor to the borough presidents in accordance with subdivision d of section one hundred two, the mayor shall, concomitantly with the submission of the executive expense budget, notify each borough president of the difference between such amounts and of the portion of such difference allocable to each borough pursuant to the provisions of section one hundred two. Within seven days of receiving such notification, each borough president shall submit to the mayor and the council, in such form as the mayor shall prescribe, proposed additional appropriations or proposed reductions in appropriations equaling such portion of such difference.

d. **Adjustments of capital budget borough allocations.** If the executive capital budget submitted by the mayor in accordance with this section includes a capital budget borough allocation which is greater or less than the capital budget borough allocation certified by the mayor to the borough presidents in accordance with subdivision c of section two hundred eleven the mayor shall, concomitantly with the submission of such executive capital budget, notify each borough president of the difference between such amounts and of the portion of such difference allocable to each borough pursuant to the provisions of subdivision a of section two hundred eleven. Within seven days of receiving such notification, each borough president shall submit to the mayor and the council, in such form as the mayor shall prescribe, proposed additional appropriations or proposed reductions in appropriations equaling such portion of such difference.

§ 250. **The budget message.** The budget message, which shall not be deemed a part of the budget, shall include:

1. An explanation, in summary terms, of the major programs, projects, emphases and objectives of the budget, the general fiscal and economic condition of the city, the tax and fiscal base of the city, and inter-governmental fiscal relations.

2. Itemized information and supporting schedules of positions, salaries and other than personal service expenses, anticipated for the ensuing fiscal year.

3. Recommendations for any changes in the revenue sources and fiscal operations of the city, including intergovernmental revenue and fiscal arrangements.

4. An itemized statement of the actual revenues and receipts and accruals of the general fund and of all other revenue sources, including state and federal aid and revenues for specified purposes, for each of the four preceding fiscal years, and for the first eight months of the current fiscal year, and the estimated amount of such items for the balance of the current fiscal year, and for the ensuing fiscal year. In preparing such information the mayor shall consult with the comptroller.

5. A listing of the sources and amounts of all revenues and other monies of a nonrecurring nature that are being proposed to be utilized during the ensuing fiscal year and that are not expected to be available or used in subsequent fiscal years.

6. A four-year financial plan, containing, (a) for each agency, for all existing programs, forecasts of expenditures for the ensuing fiscal year and the succeeding three fiscal years at existing levels of service; (b) forecasts of revenue by source from existing sources of revenue for the ensuing fiscal year and the succeeding three fiscal years; and (c) for each new or expanded program, an indication of when such program is projected to be fully implemented and a forecast of the annual recurring costs for such program or program expansion after it is fully implemented.

7. For each agency, a comparison of the proposed appropriations for the ensuing fiscal year with (i) the amounts appropriated in the current expense budget as originally adopted and as modified through the first eight months of the current fiscal year, (ii) the amounts actually expended in the previous fiscal year and (iii) the amounts actually expended through the first eight months of the current fiscal year and the estimated expenditures for the balance of the current fiscal year.

8. For each agency that has local service districts within community districts and boroughs, a statement of proposed direct expenditures in each service district for each unit of appropriation and a statement of the basis for the allocation of direct expenditures to local service districts of each such agency.

9. An explanation of principal changes in performance goals and indicators from the date of submission of the preliminary management report to the submission of the proposed executive budget.

10. An itemized statement, covering the city's entire capital plant, except for those portions of the capital plant which have been committed to the care and control of the board of education or officers or employees thereof, by agency and project type and, within project type, by personal services and other than personal services, of the amounts appropriated for maintenance of such capital plant in the previous and current fiscal years as originally adopted and as modified through the first eight months of the current fiscal year, and of the amounts actually expended for such maintenance in the previous fiscal year and through the first eight months of the current fiscal year and the amounts estimated to be expended for such purpose during the balance of the current fiscal year; and, for each agency, an explanation of the substantive differences, if any, between the amounts actually expended for such maintenance in the previous fiscal year or projected to be expended for such purpose in the current fiscal year and the amounts originally appropriated for such purpose for such years.

11. A presentation of the maintenance activities proposed by the mayor to be completed during the ensuing fiscal year for all major portions of the capital plant, as such terms are defined in subdivision a of section eleven hundred ten-a, categorized by agency and project type; an explanation of the differences, if any, between such proposed activities and the activities scheduled to be undertaken during such fiscal year pursuant to subdivision c of such section; an explanation of the differences, if any, between the proposed appropriations for such activities and the estimates of the amounts submitted, pursuant to subdivision f of such section, as necessary to maintain such portions of the capital plant; and a presentation and explanation of the differences, if any, between the maintenance activities for all major portions of the capital plant proposed by the mayor, in the budget message for the previous fiscal year, to be completed during such fiscal year and the activities actually completed during such fiscal year.

12. A statement of the extent to which the executive budget incorporates the revisions to the preliminary budget suggested by the borough presidents, in accordance with subdivision a of section two hundred forty-five and the reasons why any other suggested revisions were not incorporated in the executive budget.

13. A statement of the modifications, if any, which the mayor recommends that the council make in the appropriations submitted by the borough presidents pursuant to sections one hundred two and two hundred eleven.

14. A statement of any substantive changes in the methodology and assumptions used to determine the revenue estimates presented pursuant to subdivisions four, five and six of this section from the methodology and assumptions presented in the preliminary budget.

15. A statement of the implications for the orderly development of the city, its community districts and boroughs of the capital projects included in or contemplated by the capital budget and program.

16. A certificate setting forth the maximum amount of debt and reserves which, in the mayor's opinion, the city may soundly incur for capital projects during the ensuing fiscal year and during each of the following three fiscal years, and the maximum amount of appropriations and expenditures for capital projects which the city, given such maximum amount of debt and reserves, may soundly make during each such fiscal year.

§ 251. Borough president recommendations on the executive budget. Not later than the sixth day of May, each borough president shall submit to the mayor and the council a response to the mayor's executive budget. Such response shall indicate which of the recommended appropriations submitted by the borough president pursuant to section two hundred forty-five, which were not included by the mayor in the executive budget, should be considered by the council for inclusion in the budget. Any appropriations recommended in this manner for inclusion in the budget shall be accompanied by recommendations for offsetting reductions in other appropriations within the borough. Any such increases or reductions must be stated separately and distinctly and refer each to a single object or purpose.

§ 252. Report of independent budget office on executive budget. On or before the fifteenth day of May, the director of the independent budget office shall publish a report analyzing the executive budget for the ensuing fiscal year.

§ 253. Executive budget hearings. Between the sixth day of May and the twenty-fifth day of May, the council shall hold public hearings on the budget as presented by the mayor. The council may hold such hearings either as a body or by its finance committee or other committees. Officers of agencies and representatives of community boards and borough boards shall have the right, and it shall be their duty when requested by the council, to appear and be heard in regard to the executive budget and to the capital and service needs of the communities, boroughs and the city.

§ 254. Amendment and adoption of the executive budget. a. The council may not alter the budget as submitted by the mayor pursuant to section two hundred forty-nine except to increase, decrease, add or omit any unit of appropriation for personal service or other than personal service or any appropriation for any capital project or add, omit or change any terms or conditions related to any or all such appropriations; provided, however, that each increase or addition must be stated separately and distinctly from any items of the budget and refer each to a single object or purpose; and, provided, further, that the aggregate amount appropriated for capital projects shall not exceed the maximum amount of appropriations contained in the mayor's certificate issued pursuant to subdivision sixteen of section two hundred fifty.

b. The council shall consider, and act upon, all recommendations made by the borough presidents pursuant to section two hundred fifty-one of this chapter and all recommendations made by the mayor pursuant to paragraph thirteen of section two hundred fifty of this chapter.

c. The budget when adopted by the council shall become effective immediately without further action by the mayor, except that appropriations for the council or appropriations added to the mayor's executive budget by the council or any changes in terms and conditions, shall be subject to the veto of the mayor.

d. If an expense budget has not been adopted by the fifth day of June pursuant to subdivisions a and b of this section, the expense budget and tax rate adopted as modified for the current fiscal year shall be deemed to have been extended for the new fiscal year until such time as a new expense budget has been adopted.

e. If a capital budget and a capital program have not been adopted by the fifth day of June pursuant to subdivisions a and b of this section, the unutilized portion of all prior capital appropriations shall be deemed reappropriated.

§ 255. Veto of the mayor. a. The mayor, not later than the fifth day after the council has acted upon the budget or capital program submitted with the executive budget, may disapprove any increase or addition to the budget, any unit of appropriation, or any change in any term or condition of the budget. The mayor, by such date, may also disapprove any item or term or condition included in such budget pursuant to the provisions of section two hundred forty-three of this chapter. The mayor shall return the budget by that date to the council, setting forth objections in writing.

b. The council, by a two-thirds vote of all the council members, may override any disapproval by the mayor pursuant to subdivision a of this section; provided, however, that if no such action by the council is taken within ten days of such disapproval, the expense budget to which such disapprovals relate shall be deemed adopted as modified by the disapprovals by the mayor.

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subdivisions c and d of this section.

c. All plans proposed pursuant to this section shall be referred to the department of city planning for circulation by the department to all affected community boards, all affected borough boards and all affected borough presidents for review and written recommendation, except that any such plan need not be circulated to the agency or official that proposed such plan. All affected community boards and borough boards to which such a plan is referred shall hold a public hearing on any such plan, except that in the case of a plan that includes an entire borough or land in more than one borough, only one public hearing need be held in each affected borough. The city planning commission shall establish by rule the procedures and schedule for review of such plans, consistent with the provisions of this section. A community board or borough board may review a plan which does not involve land so located as to require its review if in its judgment the plan significantly affects the welfare of the district or borough served by such board. In such a case, the plan and any written recommendations relative thereto shall be made available to such board on request. Such board may hold its own public hearing on such plan if it desires and may submit its own written recommendations in regard thereto to the city planning commission.

d. Within a reasonable time period following review and recommendation of a plan pursuant to subdivision c of this section, the city planning commission shall (1) review such plan, (2) hold a public hearing on such plan, and (3) by resolution approve, approve with modifications or disapprove such plan. If the commission has approved a plan or approved a plan with modifications, such plan shall be subject to review and action by the council pursuant to section one hundred ninety-seven-d. The council may by a two-thirds vote approve a plan which the city planning commission disapproved or on which the commission has failed to act if the mayor so requests. Upon the filing by the mayor of such a request with the commission and the council, the commission shall within five days file with the council a copy of its decision together with a copy of the plan. Copies of approved plans shall be filed with the city clerk, the department of city planning, the affected borough presidents, the affected borough boards and the affected community boards.

§ 197-b. Notification of plans and proposals. a. Advance notice of all preliminary and final plans of public agencies and public benefit corporations or of private agencies, entities or developers filed with the city that relate to the use, development or improvement of land subject to city regulation shall be given to the affected community board or boards and the office of the affected borough president, provided that exceptions may be made in matters of no appreciable public concern by agency rule.

b. Copies of (1) all requests for proposals and other solicitations of proposals issued by or on behalf of the city, whether or not issued by an agency, a local development corporation or other entity, and (2) all letters of intent executed by or on behalf of the city, whether or not executed by an agency, a local development corporation or other entity, that relate to the private use or the disposition of city-owned land, shall be conveyed to the community boards where such land is located and the office of the borough president where such land is located promptly after issuance or execution.

§ 197-c. Uniform land use review procedure. a. Except as otherwise provided in this charter, applications by any person or agency for changes, approvals, contracts, consents, permits or authorization there-

of, respecting the use, development or improvement of real property subject to city regulation shall be reviewed pursuant to a uniform review procedure in the following categories:

- (1) Changes in the city map pursuant to section one hundred ninety-eight and section one hundred ninety-nine;
- (2) Maps of subdivisions or platting of land into streets, avenues or public places pursuant to section two hundred two;
- (3) Designations of zoning districts under the zoning resolution, including conversion from one land use to another land use, pursuant to sections two hundred and two hundred one;
- (4) Special permits within the jurisdiction of the city planning commission under the zoning resolution, pursuant to sections two hundred and two hundred one;
- (5) Site selection for capital projects pursuant to section two hundred eighteen;
- (6) Revocable consents pursuant to section three hundred sixty-four, requests for proposals and other solicitations for franchises pursuant to section three hundred sixty-three, and major concessions as defined pursuant to section three hundred seventy-four;
- (7) Improvements in real property the costs of which are payable other than by the city pursuant to section two hundred twenty;
- (8) Housing and urban renewal plans and projects pursuant to city, state and federal housing laws;
- (9) Sanitary or waterfront land-fills pursuant to applicable charter provisions or other provisions of law;
- (10) Sale, lease (other than the lease of office space), exchange, or other disposition of the real property of the city, including the sale or lease of land under water pursuant to section sixteen hundred two, chapter fifteen, and other applicable provisions of law;
- (11) Acquisition by the city of real property (other than the acquisition of office space for office use or a building for office use), including acquisition by purchase, condemnation, exchange or lease and including the acquisition of land under water pursuant to section sixteen hundred two, chapter fifteen, and other applicable provisions of law; and
- (12) Such other matters involving the use, development or improvement of property as are proposed by the city planning commission and enacted by the council pursuant to local law.

b. The following documents shall be filed with the department of city planning: (1) applications under this section, (2) any amendments thereto that are made prior to approval of such applications pursuant to this chapter, (3) any written information submitted by an applicant for purposes of determining whether an environmental impact statement will be required by law, and (4) documents or records intended to define or substantially redefine the overall scope of issues to be addressed in any draft environmental impact statement required by law. The department of city planning shall forward a copy of any materials it receives pursuant to this subdivision (whether or not such materials have been certified as complete) within five days to each affected borough president, community board or borough board.

c. The department of city planning shall be responsible for certifying that applications pursuant to subdivision a of this section are complete and ready to proceed through the uniform land use review procedure provided for in this section. Upon certification of an application, the department shall give notice of such certification to the council. If an application under this section has not been certified within six months after filing, both the applicant and, if the land use proposed in

an application is consistent with the land use policy or strategic policy statement of the affected borough president, the affected borough president shall have the right at any time thereafter to appeal to the city planning commission for certification. The commission shall promptly, but in any event within sixty days of the filing of such an appeal, either certify the application or state in writing what further information is necessary to complete the application. If such an appeal is brought by an affected borough president, the affirmative vote of five members of the commission shall be sufficient to certify the application.

d. If a meeting involving a city agency and an applicant is convened to define or substantially redefine the overall scope of issues to be addressed in any draft environmental impact statement required by law for an application subject to review under this section, each affected community board and each affected borough president shall receive advance notice of such meeting, and each shall have the right to send one representative to the meeting.

e. Each affected community board shall, not later than sixty days after receipt of an application that has been certified pursuant to subdivision c of this section,

(1) notify the public of the application in a manner specified by the city planning commission pursuant to subdivision i of this section, and

(2) either (a) conduct a public hearing thereon and prepare and submit a written recommendation directly to the city planning commission and to the affected borough president or (b) where authorized by this charter, submit a written waiver of the right to conduct a public hearing and to submit such written recommendations to the commission and the affected borough president.

f. A copy of a recommendation or waiver by a community board pursuant to subdivision e of this section that involves land located within two or more community districts in a borough shall also be filed with the affected borough board within the same time period as specified in subdivision e. Not later than thirty days after the filing of a recommendation or waiver with the borough board by all affected community boards, or, if any affected community board shall fail to act, thirty days after the expiration of the time allowed for such community board to act, the borough board may hold a public hearing on the application and any such recommendations and submit a written recommendation or waiver thereof to the city planning commission.

g. Not later than thirty days after the filing of a recommendation or waiver with the borough president by all affected community boards, or, if any affected community board shall fail to act, thirty days after the expiration of the time allowed for such community board to act, the borough president shall submit a written recommendation or waiver thereof to the city planning commission.

h. Not later than sixty days after expiration of time allowed for the filing of a recommendation or waiver with the city planning commission by a borough president, the commission shall approve, approve with modifications, or disapprove the application. Any such approval or approval with modifications of the commission shall require the affirmative vote of at least seven of the members, except that the affirmative vote of nine members shall be required to approve or approve with modifications an application pursuant to paragraph five, ten or eleven of subdivision a of this section relating to a new city facility if the affected borough president recommends against approval of such application pursuant to subdivision g of this section and has proposed an alternative location in the same borough for such new city facility

pursuant to subdivision f or g of section two hundred four. The commission shall conduct a public hearing on all applications that are subject to review and approval by the commission pursuant to this section. Prior to taking any action pursuant to this subdivision on a matter involving the siting of a capital project, the sale, lease, exchange or other disposition or acquisition of real property, a request for a proposal or other solicitation for a franchise or a revocable consent, the city planning commission may obtain a report from the office of management and budget or the department of citywide administrative services, as appropriate. Any action of the city planning commission which modifies or disapproves a written recommendation of the community board, borough president or borough board shall be accompanied by a written explanation of its reason for such action.

i. The city planning commission shall establish rules providing (1) guidelines, minimum standards, and procedural requirements for community boards, borough presidents, borough boards and the commission in the exercise of their duties and responsibilities pursuant to this section, (2) minimum standards for certification of applications pursuant to subdivision c of this section, and (3) specific time periods for review of applications pursuant to this section prior to certification.

j. If a community board, borough president or borough board fails or waives its right to act within the time limits for review pursuant to subdivisions e, f and g of this section, the application shall be referred to the next level of review. If the city planning commission fails to act on an application within the time limit specified in subdivision h of this section, the application shall be deemed to have been denied unless the application (i) is pursuant to paragraph three or four of subdivision a of this section, in which case the application may be forwarded to the council for review pursuant to the provisions of subdivision b of section two hundred, if applicable, or (ii) is pursuant to paragraph eight of subdivision a of this section, in which case the application shall be referred to the council for review and action as provided by state law.

k. Notice of any hearing on an application by the city planning commission shall be published in the City Record at least ten days immediately prior to the date of the hearing, and a copy of the notice shall be mailed to all community boards or borough boards affected by the application.

l. The commission shall establish by rule procedures for advance posting of notices of commission hearings on applications. Such notices shall be posted at the location of the land involved in such manner and with respect to such types of applications as the commission deems appropriate. Failure to post any such notice shall not affect or impair the validity of any decision of the city planning commission, the council or other agency or official pursuant to this chapter.

m. A community or borough board may review an application which is subject to the uniform land use review procedure pursuant to this section but does not involve land so located as to require reference to such board for review, if in the board's judgment the application might significantly affect the welfare of the community district or borough served by such board. In such a case the application and the related materials submitted to the affected board or boards by the city planning department shall be submitted also to such board upon the request of such board, and such board may hold its own public hearing thereon if it so desires and may submit its own written recommendations in regard thereto to the city planning commission for consideration at any time before the city planning commission takes action thereon.

§ 197-d. Council Review. a. The city planning commission shall file with the council and with the affected borough president a copy of its decisions to approve or approve with modifications (1) all matters described in subdivision a of section one hundred ninety-seven-c, (2) plans pursuant to section one hundred ninety-seven-a, and (3) changes in the text of the zoning resolution pursuant to sections two hundred and two hundred one. Any such filing of a decision pursuant to section one hundred ninety-seven-c shall be completed prior to the expiration of the sixty-day period for action by the commission. Any such filing with the council shall include copies of all written recommendations of community boards, borough boards and borough presidents with respect to the decision being filed.

b. The following decisions filed with the council pursuant to subdivision a of this section, shall be subject to review and action by the council:

(1) any decision of the city planning commission to approve or approve with modifications a matter described in paragraph three or eight of subdivision a of section one hundred ninety-seven-c, a disposition of residential real property (as defined in this paragraph) pursuant to paragraph ten of subdivision a of section one hundred ninety-seven-c (except for dispositions to companies that have been organized exclusively to develop housing projects for persons of low income), a plan pursuant to section one hundred ninety-seven-a, or a change in the text of the zoning resolution pursuant to sections two hundred or two hundred one. For purposes of this section, residential real property shall mean real property improved by structures, whether or not occupied, built for or converted to a use which is primarily residential, but shall not include property subsequently converted to non-residential use; (2) any other decision of the city planning commission to approve or approve with modifications a matter described in subdivision a of section one hundred ninety-seven-c, if (i) both an affected community board (after holding a public hearing) and the affected borough president, within the time periods allotted for their reviews pursuant to section one hundred ninety-seven-c, have recommended in writing against approval and (ii) the affected borough president, within five days of receiving a copy of the decision of the commission, files with the commission and the council a written objection to the decision; and

(3) any other decision of the city planning commission to approve or approve with modifications a matter described in subdivision a of section one hundred ninety-seven-c, if within twenty days of the filing of such decision pursuant to subdivision a of this section, the council resolves by the majority vote of all the council members to review the decision of the commission.

c. Within fifty days of the filing with the council pursuant to subdivision a of this section of any decision of the city planning commission which pursuant to subdivision b of this section is subject to review by the council, the council shall hold a public hearing, after giving public notice not less than five days in advance of such hearing, and the council, within such fifty days, shall take final action on the decision. The affirmative vote of a majority of all the council members shall be required to approve, approve with modifications or disapprove such a decision. If, within the time period provided for in this subdivision and, if applicable, in subdivision d of this section, the council fails to act or fails to act by the required vote on a decision of the city planning commission subject to council review pursuant to subdivision b of this section, the council shall be deemed to have approved the decision of the commission.

d. The council shall not approve with modifications a commission decision if the commission has determined pursuant to this subdivision that additional review of the modifications is required. Prior to approving a decision of the commission with modifications, the council shall file the text of any such proposed modifications with the commission. Within fifteen days of such filing, the commission shall file with the council a written statement indicating whether such proposed modifications are of such significance that additional review of environmental issues or additional review pursuant to section one hundred ninety-seven-c is required. If no additional review is required, the commission may include in such statement its advisory recommendation concerning the proposed modifications, together with any proposed amendments to the proposed modifications. The council may thereafter approve such proposed modifications, with or without the amendments proposed by the commission. The time period for council action shall be tolled during such fifteen-day period; provided, however, that proposed modifications may be referred to the commission pursuant to this subdivision only once with respect to each application or group of related applications under review by the council.

e. All actions of the council pursuant to this section shall be filed by the council with the mayor prior to the expiration of the time period for council action under subdivisions c and, if applicable, d of this section. Actions of the council pursuant to this section shall be final unless the mayor within five days of receiving a filing with respect to such an action of the council files with the council a written disapproval of the action. Any mayoral disapproval under this subdivision shall be subject to override by a two-thirds vote of all the council members within ten days of such filing by the mayor.

f. The mayor shall have the right to file a written disapproval of any approval deemed to have occurred pursuant to subdivision c of this section as a result of a failure of the council to act or to act by the required vote. Any such written disapproval must be filed within five days of the expiration of the time period for action by the council under subdivisions c and, if applicable, d of this section. Any mayoral disapproval under this subdivision shall be subject to override by a two-thirds vote of all the council members within ten days of such filing by the mayor.

g. If a decision of the commission approving an application is not subject to council review pursuant to paragraph one of subdivision b of this section or is not made subject to council review pursuant to paragraphs two or three of subdivision b of this section, the mayor may nonetheless file with the council a written objection to such decision of the commission within five days of the expiration of time for the council to act under paragraph three of subdivision b of this section. Any mayoral objection under this subdivision shall be subject to override by a two-thirds vote of all the council members within ten days of such filing by the mayor.

§ 198. City Map. a. The city map is hereby continued.

b. The director of city planning shall be the custodian of the city map, and it shall be his or her duty to complete and maintain the same and to register thereon all changes resulting from action authorized by law.

c. The city map shall be on file in the office of the department of city planning, and certified copies thereof and of all changes thereto shall be filed in the offices of the corporation counsel, of the city clerk and of the borough president of the borough in which the land

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

THE NEW YORK CITY COUNSEL, C. VIRGINIA
FIELDS, in her official capacity as Manhattan Borough
President, FRIENDS OF THE HIGHLINE, SPEARS
BUILDING CONDOMINIUM, ZAZEL LOVEN,
PAULA COOPER, ROWANN GILMAN, SARA
FITZMAURICE, and ROD DURSO,

Petitioners,

For a Judgment Under Article 78 of the CPLR

- against -

CITY OF NEW YORK, RUDOLPH GIULIANI, in his
official capacity as the Mayor of the City of New York,
NEW YORK CITY DEPARTMENT OF BUILDINGS,

Respondents,

CHELSEA PROPERTY OWNERS ASSOCIATION
and EDISON MINI-STORAGE CORPORATION,

Intervenors-respondents.

ATLAS PART 8 OF THE
SUPREME COURT OF THE STATE OF NEW
YORK, HELD IN AND FOR THE COUNTY OF
NEW YORK, AT THE COUNTY COURT
HOUSE THEREOF, ON APRIL 10 2002

JUDGMENT AND ORDER

Index No. 122270/01

I.A.S. Part 8

Present: Hon.
Justice D. Lebedeff

NEW YORK
COUNTY CLERK'S OFFICE

APR 30 2002

NOT COMPARED
WITH COPY FILED

Petitioners herein having commenced a special proceeding, pursuant to CPLR Article 78,
by order to show cause seeking (i) a temporary restraining order and preliminary injunction to
prevent execution by respondents of an agreement in which the City of New York was to agree
with private parties to the removal of the Highline, an abandoned elevated freight rail line that
runs along Manhattan's West Side, (ii) an order directing and compelling respondent the
Department of Buildings to revoke certain permits for work to be performed at or in connection
with sites occupied by or under the Highline, (iii) an injunction to bar respondents from applying
for or approving any permits that would allow for removal or alteration of any part of the
Highline, and (iv) a judgment pursuant to CPLR Article 78 and CPLR 7803, and for a

declaratory judgment pursuant to CPLR 3001, compelling respondents to submit any decision to remove the Highline to the full process set forth under the Uniform Land Use Review Procedure ("ULURP"), N.Y. City Charter §§ 197(c) and 197(d); and respondents having opposed the relief sought by petitioners in their Verified Article 78 Petition; and Chelsea Property Owners and Edison Mini-Storage Corporation having intervened by stipulation of the parties and by order of this Court; and intervenors-respondents having joined respondents in opposing the relief sought in the Verified Article 78 Petition; and this Court having temporarily restrained respondents from executing the agreement; and the Appellate Division, First Department, having vacated the temporary restraining order issued by this Court; and the agreement having been executed; and this Court having issued its decision on March 12, 2002; and

Upon reading and considering petitioners' Verified Article 78 Petition, Order to Show Cause with Temporary Restraining Order, and Memorandum of Law in Support of Petition, Preliminary Injunction and Motion for Declaratory Judgment, filed November 29, 2001 with exhibits, and the sworn affidavits (with attachments) of Zazel Loven, sworn to October 24, 2001, Ron Durso, sworn to October 24, 2001, Sara Fitzmaurice, sworn to October 24, 2001, D. Mark Kingsley, sworn to October 24, 2001, Paula Cooper, sworn to October 22, 2001, and Rowann Gilman, sworn to October 24, 2001, submitted therewith; respondents' Amended Memorandum of Law in Opposition to Petitioners' Request for a Preliminary Injunction, filed December 14, 2001 with exhibits and appendices, and the sworn affidavits (with attachments) of Robert Gochfeld, sworn to December 14, 2001, and Joseph Gunn, sworn to December 14, 2001, submitted therewith; intervenors-respondents' corrected Memorandum of Law in Opposition to Petitioners' Motion for Preliminary Injunction, filed December 14, 2001 with exhibits, and the sworn affidavits of Randy Mastro, sworn to December 14, 2001, Scott Stone, sworn to December

10, 2001, Robert Michel, sworn to December 14, 2001, Darrell Alvarez, sworn to December 13, 2001, Fruma Narov, sworn to December 13, 2001, Jack Salerno, sworn to December 13, 2001, and Douglas Sarini (with attachments), sworn to December 14, 2001, submitted therewith; petitioners' Reply Memorandum of Law in Support of Article 78 Petition, filed December 18, 2001; respondents' Verified Answer, filed January 7, 2002 with exhibits; intervenors-respondents Verified Answer, filed January 7, 2002; respondents' Memorandum of Law in Answer to the Petition, filed January 7, 2002 with exhibits, and the sworn affidavit of Robert Gochfeld, sworn to January 7, 2001, submitted therewith; intervenors-respondents' Memorandum of Law in Opposition to Petition for Article 78 Relief, filed January 7, 2002; petitioners' Memorandum of Law in Further Support of Article 78 Petition, filed January 29, 2002, and the sworn affidavits of Gifford Miller, sworn to January 29, 2002, Anthony Gulotta, sworn to January 29, 2002, and Ilann Maazel (with attachments), sworn to January 28, 2002, submitted therewith; arguments of counsel on November 30, December 19, and December 20, 2001; and all prior proceedings and pleadings had herein; and

The application having been submitted on January 29, 2002; and upon the decision of this Court dated March 12, 2002,

IT IS HEREBY ORDERED AND ADJUDGED THAT

1. Petitioners' first ("ULURP/City Map") and second ("ULURP/Acquisition of Property") causes of action are granted to the extent that ULURP review is directed to proceed.
2. Petitioners' third cause of action – "ULURP/Costs Action" – is denied, severed and dismissed;

3. City action permitting or authorizing actual demolition of the Highline, and any action by any other party to actually demolish the Highline, shall be stayed pending completion of the ULURP process;

4. Petitioners' application is denied to the extent it seeks:

(i) to restrict the City's ability to take action or otherwise address any specific emergency condition endangering life, health and safety; and

(ii) to preclude respondents from the contemporaneous pursuit of other legally permitted steps, such as application to a non-City agency regarding railroad abandonment and related issues.

~~CONFIDENTIAL~~

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J.S.C.

3. City action permitting or authorizing actual demolition of the Highline, and any action by any other party to actually demolish the Highline, shall be stayed pending completion of the ULURP process;

4. Petitioners' application is denied to the extent it seeks:

(i) to restrict the City's ability to take action or otherwise address any specific emergency condition endangering life, health and safety; and

(ii) to preclude respondents from the contemporaneous pursuit of other legally permitted steps, such as application to a non-City agency regarding railroad abandonment and related issues.

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COUNTY CLERK'S OFFICE
NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: I.A.S. PART 8

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THE NEW YORK CITY COUNCIL, C. VIRGINIA
FIELDS, in her official capacity as Manhattan Borough
President, FRIENDS OF THE HIGHLINE, SPEARS
BUILDING CONDOMINIUM, ZAZEL LOVEN, PAULA
COOPER, ROWANN GILMAN, SARA FITZMAURICE,
and ROD DURSO,

Petitioners,

For a Judgment Under Article 78 of the CPLR

-against-

Index No. 122270/01
Mot. Seq. No. 001

CITY OF NEW YORK, RUDOLPH GIULIANI, in his
official capacity as the Mayor of the City of New York,
NEW YORK CITY DEPARTMENT OF BUILDINGS,

Respondents.

CHELSEA PROPERTY OWNERS ASSOCIATION and
EDISON MINI-STORAGE CORPORATION,

Intervenor-Respondents.

-----X

DIANE A. LEBEDEFF, J.:

This Article 78 proceeding brought against the City of New York (the "City") seeks an order declaring the City's Uniform Land Use Review Procedure ("ULURP"), a community review process defined in New York City Charter ("Charter") § 197-c, is applicable to any proposal to demolish or alter the Highline, an unutilized elevated railway which extends down the west side of Manhattan from 34th Street to Gansevoort Street.

As ancillary items of relief, pending completion of the ULURP process, petitioners ask that respondents be enjoined from applying for, or approving, any permits to demolish or otherwise alter any portion of the Highline, as well as that the Department of Buildings be

ordered to revoke any previously issued demolition permit, and to refrain from issuing any new demolition permit.

Petitioners are the New York City Council,¹ Manhattan Borough President C. Virginia Fields, Friends of the Highline, Spears Building Condominium, and five individual property owners or residents who live or work within sight of the Highline. Petitioners primarily support community involvement in the examination of all alternate treatments of the Highline, including possible preservation and conversion of the area into a public space under the Rails-to-Trails Act, if applicable (see, 16 USC § 1247[d]).

Respondents are the City, former Mayor Giuliani, in his then official capacity, and the New York City Department of Buildings. The intervenor-respondent Chelsea Property Owners Association ("CPO") is a consortium of property owners whose property underlies, surrounds or is adjacent to the Highline, including Edison Mini-Storage Corporation; they contend that the Highline is a dilapidated, dangerous nuisance that can be demolished with absolute safety and they label proposed alternative uses of the Highline as "pipe dreams." They favor demolition of the elevated structure and subsequent private development of their property.

The City of New York recently reached an Agreement² under which all property owners of servient estates, including the City of New York,³ would receive from New

1

Respondents contend that petitioner City Council lacks the capacity to bring this proceeding, because it did not vote to authorize the litigation. However, the Speaker of the City Council has the power to authorize the commencement of a lawsuit in the name of the City Council (*Council of the City of New York v. Giuliani*, 183 Misc.2d 799 [Sup. Ct. Queens Co. 1999]). The current Speaker of the City Council, Gifford Miller, avers that in December, 2001, then-Speaker Peter Vallone authorized the commencement of this proceeding, and that Mr. Miller has authorized the continued litigation of this proceeding.

2

The Agreement so referenced is a contract entitled Agreement for Voluntary Abandonment and for Charitable Contribution (the "Agreement"). It was entered into on December 20, 2001, and was delivered to an attorney for New York Central, which has remained the title-holder of the Highline. The parties to the Agreement are the City (and several agencies), New York Central Lines, LLC ("New York Central"), which is the owner of the Highline, and Conrail Inc. ("Conrail"), Consolidated Rail Corp., CSX

York Central, the current owner of the Highline, a surrender of the easement encumbering their property, and the segment of the Highline that is over, or runs through, their property. The Highline could then be demolished, and the City streets and the other servient properties beneath the Highline restored. The Agreement requires the parties thereto to share the cost of any demolition, with New York Central to contribute \$7 million.

In order that there be a public examination and resolution of the future treatment of the Highline, Petitioners seek invocation of the ULURP review process. Petitioners maintain that the City was required to submit the Agreement to the ULURP procedures because the Agreement has three features which require ULURP treatment: (1) the Agreement entails "[c]hanges in the city map" as specified in Charter § 197-c (1) (first cause of action); (2) the Agreement provides for the "[a]cquisition by the city of real property" covered by Charter § 197-c (11) (second cause of action); and (3) the Agreement provides for "[i]mprovements in real property the costs of which are payable other than by the city pursuant to section two hundred twenty" under Charter § 197-c (7) (third cause of action).

ULURP requires that, with regard to twelve specified categories of action, any "applications by any person or agency for changes, approvals, contracts, consents, permits or authorization thereof, respecting the use, development or improvement of real property subject to city regulation shall be reviewed pursuant to a uniform review procedure" involving the Department of City Planning, affected community boards, affected borough presidents, the City Planning Commission, and the City Council (Charter § 197-c [a], and see subdivisions [b] through [m]). "[T]he purpose of such review is to identify, at the earliest possible stage, those activities that will have a significant impact on the community. A ULURP review allows the community to measure the impact of the

Corporation ("CSX") and a subsidiary thereof, CSO, and 22 private owners of property over, or through which, the Highline runs pursuant to easement in favor of the railroad companies.

3

In addition to the public streets and sidewalks traversed by the Highline, the City owns two properties, one on Gansevoort Street, and a second on Little West 12th Street, that are under the Highline.

proposed land use and, where possible, identify alternatives" (*Ferrer v. Dinkins*, 218 A.D.2d 89, 93 [1st Dept. 1996], citations omitted; see, generally, State Charter Revision Commission for New York City, "Planning for Land Use Recommendations" [March 26, 1975], and *Starburst Realty v. City of New York*, 125 A.D.2d 148, 157 [1st Dept. 1987], and *Orth-O-Vision, Inc. v. City of New York*, 101 Misc.2d 987, 1005 [Sup. Ct. N.Y. Co. 1979]).

The resolution of competing contentions concerning the applicability of ULURP is governed by well-settled principles of statutory interpretation. The court must "begin with the plain meaning of the words used in the statute (see, *Giuliani v. Hevesi*, 90 N.Y.2d 27, 39 [1997]). Then, in giving effect to these words, 'the spirit and purpose of the act and the objects to be accomplished must be considered. The legislative intent is the great and controlling principle. Literal meanings of words are not to be adhered to or suffered to 'defeat the general purpose and manifest policy intended to be promoted'" (*Council of City of New York v. Giuliani*, 93 N.Y.2d 60, 68-69 [1999], quoting *People v. Ryan*, 274 N.Y. 149, 152 [1937]).

Background

The Highline starts at West 34th Street between 11th and 12th Avenues, proceeds down 12th Avenue to 30th Street, runs due East along 30th Street to 10th Avenue, carves a straight line down 10th Avenue through Clinton (formerly known as Hell's Kitchen) and Chelsea, and thereafter bends to follow the inward curve of the waterfront from 18th Street until it terminates at Gansevoort Street in the Meat Market District of Greenwich Village. Along its entire length, it is two blocks or less away from the newly redeveloped and still evolving Hudson River riverbank. The Highline is 1.45 miles long and 30 to 60 feet wide.

The Highline has its historical roots in a railroad grade crossing elimination process necessitated by the development of the automobile, which was explained in *Transit Commission v. Long Island R. Co.*, 253 N.Y. 345 (1930), as follows:

"The public policy of the state of New York, as expressed in the Constitution and in statutes, is to abolish the grade crossings of steam railroads. The enormous increase in the amount of traffic upon the

highways, due to the advent of the automobile, calls for some action in behalf of the public Welfare to reduce the peril and the danger occasioned by the meeting of the tracks and the street. While realizing the necessity for a change, the people of this state also recognize that it would be impossible and impracticable for the railroads to reconstruct these crossings so as to run over or underneath the highways at their own expense. The people have evidenced a willingness to share the burden, by adopting in 1925, amended in 1927, an amendment to the state Constitution [authorizing \$300 million in state debt for such eliminating street level railroad crossings]." (253 N.Y. at 348.)

Subsequently, New York City's railroad crossings, and the procedure for their elimination, specifically was addressed by the legislature between 1926 and 1929:

"Following this constitutional amendment, the Legislature passed chapter 510 of the Laws of 1926, superseded by chapter 677 of the Laws of 1928, amended by chapters 431 and 681 of the Laws of 1929, to be known as 'New York City Grade Crossing Elimination Act.' All the crossings are not to be eliminated at once, but the work is to proceed gradually by the selection of certain crossings, which may be changed during the calendar year, on application of the board of estimate of the city. Notice of the proposed action of the Transit Commission in ordering these changes is to be given under the terms of the act to the railroads affected and also to any person or persons deemed by the commission to be interested in the proceeding. The Transit Commission shall direct how the elimination shall be made, and shall approve of the contracts for, as well as supervise the construction of, the work." (253 N.Y. at 349.)

Pursuant to these provisions, in 1934, as a result of New York Central's West Side Improvement Project, Manhattan's West Side Line became a 13-mile long elevated rail line at a cost of \$110 million, a portion of which was paid with City and New York State funds (see, Petitioners' Exhibit B, and the New York City Grade Crossing Elimination Act, L. 1928, Ch. 677). The elevated track ran to and through buildings and warehouses, without disrupting street traffic, and reduced danger to pedestrians and motorists. The project eliminated 105 street crossings and added 32 acres to Riverside Park.

By the mid-1970s, the elevated track was no longer regularly used for freight service, and, in 1982, Conrail, the then-owner of the line, eliminated all the stations and facilities on the line. In 1989, the Chelsea Property Owners Association ("CPO") commenced an adverse abandonment proceeding before the Interstate Commerce Commission ("ICC"; see *Chelsea Property Owners - Abandonment - Consolidated Rail Corp.*, 7 I.C.C.2d 991).

[1991]). Generally, in such a proceeding, property owners with a reversionary interest in a rail line seek the issuance of an abandonment certificate, over the objections of the railroad, so as to allow local or state condemnation proceedings, after which the encumbrance on the property can be removed.

The ICC found that the Highline was no longer used as a commercial rail line, noted that no one had proposed any other alternative public use, and ordered Conrail to abandon the line on the condition that the line not be demolished until the CPO posted a surety bond to ensure the payment of any demolition costs that exceeded \$7 million. The ICC's decision was affirmed on appeal in 1994 (*Consolidated Rail Corp. v. Interstate Commerce Commn.*, 29 F.3d 706 [D.C. Cir. 1994]). To date, CPO has not posted the required security bond, and, accordingly, the Surface Transportation Board, an independent regulatory agency and successor to the ICC's powers on railroad abandonment issues, has not issued a certificate of abandonment.

In 1997, CSX and Norfolk Southern Corporation acquired Conrail, and, in 1999, CSX acquired the operating rights to the Highline. In April of 1999, the City sued Conrail and other railroad entities to compel repair to the Highline (*The City of New York v. Conrail, Inc.*, 99 Civ. 2982 [MBM]); in the same month, several of the property owners sued the same entities for the same purpose (*Edison Mini-Storage Corporation v. Conrail, Inc.*, Sup. Ct. N.Y. Co., Index No. 10817/99), which matter was removed to federal court.

In 1999, the City and the New York City Economic Development Corporation started negotiations on a plan for "abandonment and demolition" of the Highline, which concluded with the agreement which is the subject of this litigation (Affidavit of Joseph T. Gunn, Assistant Corporation Counsel, para. 1). In late 2001, the City and over 20 private and public landowners reached an agreement under which all property owners of servient estates would receive from New York Central the segment of the Highline structure above or within their property and the easement encumbering their property (see Answer, Exhibit

A, Exhibit G-2 to the Agreement). The Agreement cannot close for at least 121 days after it has been signed and delivered, and several conditions must occur before closing.

Petitioners, along with other community groups and public officials, have urged that the Highline should become a public space. The possible public use of the Highline as a pedestrian promenade with gardens, walking paths and bike paths, similar to the Promenade Planté in Paris, a former elevated rail viaduct near the Bastille opera house (see, Petitioners' Exhibit X), was endorsed by a Resolution of the City Council passed on July 26, 2001, and supported by Representative Jerrold Nadler and State Senator Thomas K. Duane (Petition, Exhibits G, H and K). Indeed, every one of the seven Democratic and Republican candidates in the recent mayoral primaries and election, have opposed demolition of the Highline (see, Petition, Exhibits D, F, and H-R). For example, Mayor Michael R. Bloomberg, when a candidate, stated that the Highline offered "opportunities ... as a catalyst for urban planning of the highest calibre" and that "option[s] must not be removed from consideration prematurely" (Petition, Exhibit F). The Petitioners also urge that the demolition proposed by Respondents would endanger the structural integrity of nearby buildings (see, Petition, Exhibit C).

No one doubts that if the Highline were to be eliminated, the adjacent buildings and areas would experience renovation and new construction, and -- most significantly -- entirely new uses and occupancies would become possible. Respondents wish to engage in such development free of ULURP review, while Petitioners, who are not attempting to maintain the *status quo*, seek to invoke the urban planning process with its opportunity for community input in order to reach a fully considered and publicly acceptable treatment of the Highline. Either alternative -- private development or planned development based upon the results of a public review process -- will produce an outcome charting a new course for land use and development of a large area of Manhattan.

"Real Property" and ULURP

Because ULURP review is mandatory only when an issue involves "the use, development or improvement of *real property* subject to city regulation" (Charter § 197-c [a]; emphasis added), and because one type of project which calls into play ULURP review is a proposal involving the "[a]cquisition by the city of *real property*" (Charter § 197-c [a][11]; emphasis added), the first step in approaching the arguments raised is to focus upon the City Charter's definition of the term "real property." The parties disagree as to whether "real property" is involved in the transfer to the City of (1) the legal acquisition and then extinguishment of New York Central's easement over such properties and public space, and (2) the possessory rights to the physical Highline itself above two City-owned properties and over City-owned streets and sidewalks.

The general definition section of the City Charter defines "real property" simply as a term which "includes real estate, lands, tenements and hereditaments, corporeal or incorporeal" (Charter § 1150 [12]). In relation to capital budget projects, the Charter repeats and expands upon this definition of "real property" as follows:

"all lands and improvements, ... all easements and hereditaments, corporeal or incorporeal, and every estate, interest and right, legal or equitable, in lands or water, and right, interest, privilege, easement and franchise relating to the same, including terms for years and liens by way of judgment, mortgage or otherwise." (Charter § 210 [8]; emphasis added.)

A plain language interpretation of these statutes leads to the conclusion that the easements are, as a matter of law, "real property" within the statutory definitions.

As to the easements, they are clearly "real property" within the Charter definition. The term "incorporeal hereditament" embraces an "intangible right in land, such as an easement" (Black's Law Dictionary, p. 730 [7th Ed. 1999]). Other relevant City Charter language, as quoted above, is consistent with such an interpretation. Because the ULURP review is triggered by an "acquisition" without limitation on the disposition of such property, it does not matter that, following such acquisition, the easement is extinguished by merger of the dominant and servient interests (see, as to merger generally, *Alfassa v. Herskowitz*, 239 A.D.2d 307 [2d Dept. 1997]). Respondents' desire to ignore that an

easement must be acquired before it is merged, while an understandable litigation posture, is contradicted by the Agreement's recital that the easements will be "conveyed to all owners of the servient properties" and that the New York Central and Conrail will "convey at the closing of title ... the easements and the Highline" (p. 4 and p. 5, most capitalizations removed).

Nor is the lease termination analogy posed by Respondents sufficiently comparable to defeat the conclusion reached here. Respondents posit that, if ULURP review were required here, ULURP procedures would have to be followed every time a leasehold ends with surrender. Respondents's contention fails to recognize the typical pattern that, in the ULURP review of a lease and its essential terms (Charter § 197-c [a][10]; *Matter of Dodgertown Homeowners Assoc., Inc. v. Batts*, 235 A.D.2d 538 [2d Dept. 1997]), such terms generally include termination provisions and address the disposition of improvements. Here, by contrast, no aspect of the proposed transaction has never been approved pursuant to ULURP and this court does not find it necessary to opine on the result which might be reached by another court faced with a case involving a lease surrender where the lease had not received ULURP review.

As to the elevated railway, because the law as to easements is so explicit, the court does not find it necessary to consider the more abstract question of whether the Highline, without regard to easements, is "real property." If the Highline becomes a capital budget project, work on the Highline clearly would appear to fit within the capital budget definition of "real property," which includes "all lands and improvements" (Charter § 210 [8]; emphasis added).

For the purposes of this cause of action, the existence of the easement is sufficient. That the Highline exists and would be demolished merely adds a compelling feature to the issues posed herein regarding ULURP review (see, *Council of the City of New York v. Giuliani*, *supra*, 183 Misc.2d at 799, surrender of facility to City, for purpose of demolition, subject to ULURP). Again, that a proposal would call for demolition of such

real property is not determinative, because "acquisition of real property" triggers ULURP review, regardless of the use to which the transferred real property will be put. Further, the practical importance of combining consideration of the easements and the Highline is underscored by the Agreement's recital that the property owners "believe the value of their respective Servient Properties (other than the public streetbeds constituting a portion of the City Servient Properties) would be substantially enhanced ... [if] the easements are conveyed ... and the Highline is thereafter demolished or removed" (p. 4).

Based on the foregoing, the Court concludes that the Agreement provides for the City's acquisition of real property, as that term is defined by applicable law, and, accordingly, that the Agreement is subject to the provisions of ULURP.

The City Map and ULURP

Petitioners also assert that the Agreement and possible Highline demolition involve a project necessitating "[c]hanges in the city map," which is another category for which ULURP review is mandated by the City Charter (Charter § 197-c [a][1]; see also Charter § 199, providing, in subdivision a, a "project affecting the city map and no addition to or change in the city map" or, in subdivision b, "a proposed addition to or change in the city map" is subject to review under the ULURP provision). The parties debate whether the Highline is an actual feature of the City Map, such that demolition of the Highline necessarily would involve a change in the City Map.

On this point, it is necessary to emphasize that there is no single City Map continuously updated by a diligent governmental map maker. Rather, the City Map is a compilation of thousands of maps filed in the offices of the Borough Presidents, the City Department of Transportation, the City Planning Department, and other governmental offices.

As relevant here, since at least 1901, the governing laws have permitted the private submission of maps for inclusion in the City Map, but such submissions generally cannot be incorporated officially into the City Map until approved by the relevant lead agency, the

identity of which has changed over the years, as explained in *DiBlasi v. City of New York*, 19 A.D.2d 323, 327 (2d Dept. 1963), which is the leading decision comprehensively detailing the City Map process and its history. The construction of the Highline was done pursuant to chapter 677 of the Laws of 1928, which contained a special provision, section 5 (5), mandating the filing of a map of the Highline without such City approval by the then lead map agency, the Board of Estimate and Apportionment:

"[u]pon entry of any order by the [transit] commission approving the [the final elevated crossings], *any change in the location of the railroad shown upon the enlarged plan, and any change in the lines or grades or both of any street, avenue ... or place shown upon the enlarged plan, shall be deemed to be duly authorized and the map or plan of the city shall be deemed to have been changed accordingly* without any further action on the part of the city or such railroad corporation. The original of such enlarged plan shall remain on the files of the commission and copies thereof certified by the secretary of the commission shall be filed with the board of estimate and apportionment of the city" (Emphasis added.)

That the filing was done is demonstrated by a set of documents entitled "Plans and Profiles Prepared Pursuant to Chapter 677 of the Laws of 1928, as Amended, for the Alteration of the Highway-Railroad Grade Crossings of the New York Central Railroad Company" ("the Plan"), bearing proof of filing with appropriate agencies, portions of which appear at petitioners' Exhibit U. As this recital makes clear, there was a pre-existing City Map and the legislature directed the filing of the Plan to be a part of the City Map, while dispensing with the need for local officials to subject the Plan to their approval. The Plan remained on file in 1977 with the city map documents⁴ and there is no assertion that it is not on file today.

4

Anthony Gulotta, a licensed professional engineer, who worked for and with the City for 32 years, including serving as Consulting Engineer to the Manhattan Borough President and Chief Engineer to the City Department of Transportation, avers that, when he worked for the Manhattan Borough President, he reviewed every change made to the Map for Manhattan since 1811, and inventoried every individual map that comprised the Map for Manhattan, including the maps referenced here, which plainly show the Highline.

Respondents urge that the Plan is merely "informational." This contention ignores both that the Plan was filed pursuant to a specific legislative direction and that the 1989 Charter provides that the "city map is hereby continued" (Charter § 198 [a]).

Absent some indisputable legal authority supporting removal the Plan from inclusion in the City Map, the Plan remains a part of the Map (see, McKinney's Statutes § 381 [1991], "Repeals of earlier statutes by implication are not favored and a statute is not deemed repealed by a later one unless the two are in such conflict that both cannot be given effect"). No matter how worthy of general respect might be the views of Robert Gochfeld, a supervisor in the Technical Review Division of the City Department of Planning, who takes the position that the Highline is not a proper feature for inclusion in the City Map, his lay views are not a legal basis for disregard of the underlying legislative directive.

In closing on this point, it must be noted that in stating the features which are mandated to be on the City Map, Administrative Code of the City of New York § 25-102, in relevant part, requires New York City to keep a city map which includes "all parks, playgrounds, streets, courtyards abutting streets, bridges, tunnels and approaches to bridges and tunnels," as well as streets. There is legal support for the argument that the Highline is one of those physical structures which is required to be portrayed on the City Map, i.e., a bridge. The Court of Appeals has determined that an elevated railway, used only for railroad traffic and passing over a street, is properly classified as a "bridge" (*People ex rel. Lehigh Valley Ry. Co. v. Woodworth*, 296 N.Y. 288, 290, 292 [1947]). This authority gives some support to a view that the passage of the current Charter provision using the term "bridge" might well embrace an elevated railway, because of the general principle of statutory construction that "[r]ules of the common law are to be no further abrogated than the clear import of the language used in the statute absolutely requires" (*Transit Commissioners v. Long Island R. Co.*, 253 N.Y. 345, 355 [1930]).

Given the foregoing, the court determines that the provisions of ULURP are applicable to the proposal to demolish the Highline and the determination to forego ULURP review was undertaken without "lawful procedure" and was an "error of law."

Projects Paid by Other Than New York City

The third cause of action rests upon the requirement that ULURP processes must be applied to "[i]mprovements in real property the costs of which are payable other than by the city pursuant to section two hundred twenty" (Charter § 197-c [7]). However, Charter § 220 pertains only if an owner makes application for City Council authorization of a proposed improvement and the "work [that] shall be done for the account of or at the sole cost and expense" of persons other than the City (Charter § 220 [2]).

Here, no owner has made such application and the Agreement provides that the City will bear a portion of the cost of demolishing the Highline. Accordingly, this ULURP provision is found to be inapplicable and this third cause of action is severed and dismissed.

Conclusion

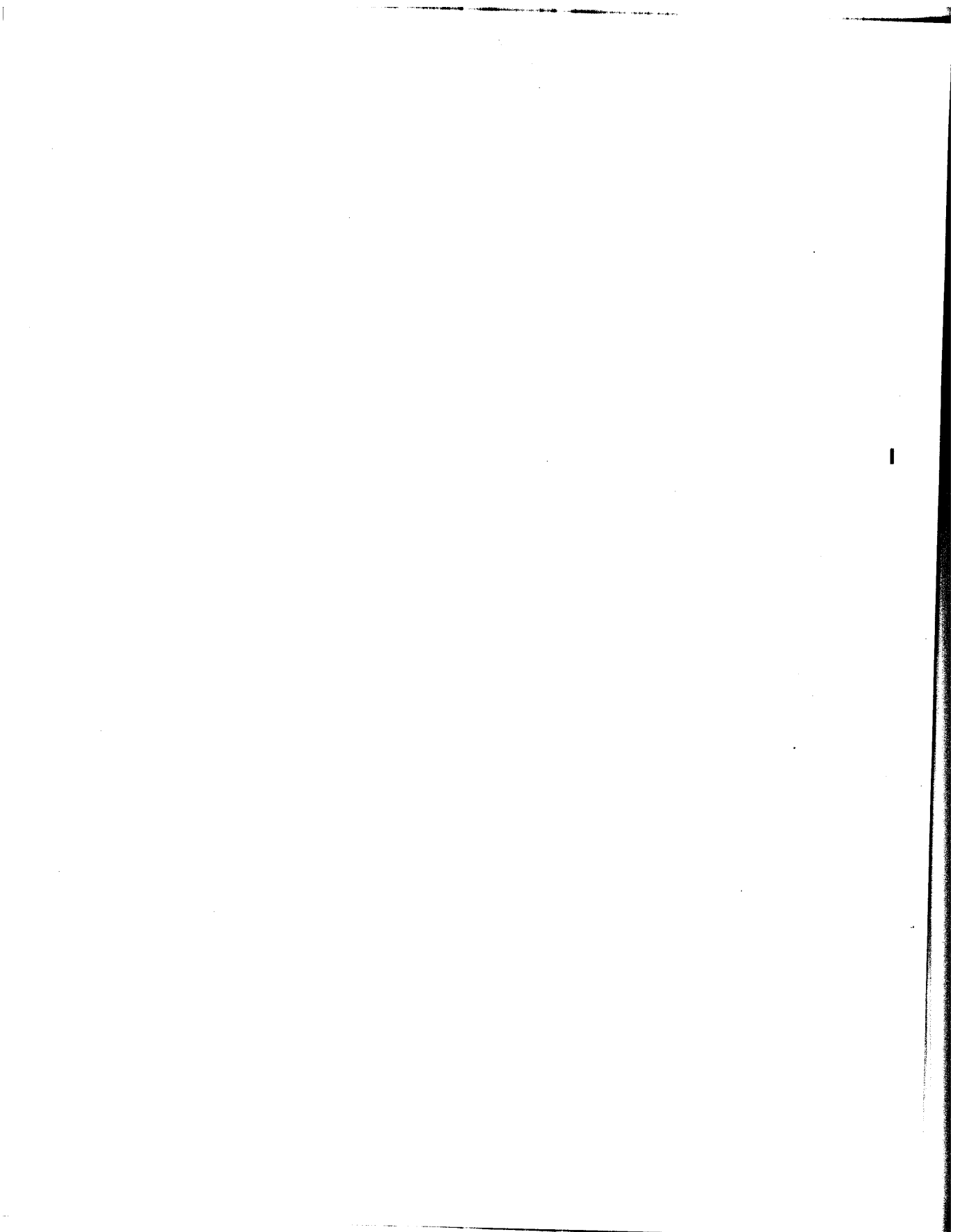
For the reasons given above, the petition will be granted to the extent that ULURP review is directed to proceed under the first and second causes of action. It is the determination of this court that the decision to forego ULURP review was undertaken in violation of lawful procedure and was an error of law. Surely, there are few recent Manhattan projects which so appropriately fit within the broad purpose of ULURP to provide for public review of land use projects that will have a "significant impact on the community" (*Ferrer v. Dinkins, supra*, 218 A.D.2d at 94) and ULURP review for this project is required under the terms of the City Charter.

As ancillary items of relief, petitioners also have requested an order (1) directing the Department of Buildings to revoke any demolition permit that it has already issued, (2) directing the Department of Buildings to refrain from issuing any further permits for

demolition of the Highline, and (3) to enjoin Respondents from applying for, or approving any permits to demolish or otherwise alter any portion of the Highline absent ULURP review. While City action permitting or authorizing actual demolition should be stayed pending the completion of the ULURP process, the court denies the application to the extent it seeks (1) a restriction upon the City's ability to take action or otherwise address any specific emergency condition endangering life, health and safety, and (2) that Respondents be precluded from the contemporaneous pursuit of other legally permitted steps, such as application to a non-City agency regarding railroad abandonment and related issues.

Settle order and judgment on ten days' notice.
Dated: March , 2002

J.S.C.



BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB 167 (Sub-No. 1094)

CHELSEA PROPERTY OWNERS -- ABANDONMENT -- PORTION OF THE
CONSOLIDATED RAIL CORPORATION'S WEST 30TH STREET SECONDARY TRACK
IN NEW YORK, NY

THE FRIENDS OF THE HIGH LINE, INC.'S PETITION TO
REOPEN THE 1992 ABANDONMENT DECISION

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August 16, 2002

Contains Color Images

Not only is the Commission's 1992 Abandonment Decision out of date, but it is also disproved by subsequent history. The Commission's 1992 decision rested on three propositions, all of which are now invalid. The Commission concluded that demolishing the High Line would facilitate economic development, that public opinion supported demolition, and that demolition would not adversely affect the community. We now know that the High Line neighborhoods blossomed without demolition and that retaining the High Line will promote new growth. We now know that the High Line enjoys widespread popularity. And we now know that demolition would pollute a vibrant community and deprive it of a precious resource and valuable opportunity. We also know, as the Commission could not have foreseen, that demolition would be partial, leaving broken, useless segments of the High Line in place.

A. The High Line Neighborhoods Have Experienced an Economic and Cultural Renaissance Since 1989

Contrary to the ICC's expectations, the High Line has not stifled development. The High Line runs through three neighborhoods in Manhattan -- Chelsea, the Meat Packing district (including the Gansevoort Market), and Clinton/Hell's Kitchen -- that have experienced remarkable economic and cultural transformations since 1989. One of the neighborhoods, Chelsea, is now one of the great art centers of the world. We discuss the changes in each of these neighborhoods.

Chelsea. Until a few years ago, west Chelsea was considered an unpleasant eyesore.⁷⁸ Since the early 1990s, though, Chelsea has attracted new residents, homes,

⁷⁸ See John Holusha, Commercial Property: Bites and Bytes at an Old Cookie Factory, N.Y. Times, Dec. 5, 1999, Sec. 11, at 1 ("Bites and Bytes"): "Five years ago a lot of vision was needed. When Mr. Cohn purchased [Chelsea Market], whose official address is 75 Ninth Avenue, in 1995, the neighborhood was considered distant and unpleasant and the structure itself in bad condition."

restaurants, shops, businesses, art galleries, and sports venues. Today it is a dynamic part of New York's cultural and artistic scene. Indeed, it is the "hot" neighborhood in New York, a mecca for artists from around the world.

The New York City media proclaim this renaissance. According to New York Magazine, "The Lower West Side [Chelsea] . . . is suddenly the most dynamic corridor of the city, a rejuvenated commercial district ablaze with art galleries, hot restaurants, photography studios, and fashion boutiques."⁷⁹ According to the New York Daily News, "West Chelsea -- the warehouse district bounded by 10th and 11th Aves., from 29th to 18th Sts. -- has developed into perhaps the hottest pocket of the city: a mix of contemporary galleries, hip clubs, and low-key restaurants"⁸⁰

Chelsea ranks among the major centers of the contemporary art world and has been described as "New York's newest art destination."⁸¹ As the New York Times reported, "More than 100 art galleries have sprouted in west Chelsea, a part of the neighborhood that was industrial until only a few years ago."⁸² The Times also noted that the "commercial center of gravity of the New York City art world has shifted from SoHo to Chelsea."⁸³ David Rose, a

⁷⁹ See Alex Williams, Lower West Side Story, N.Y. Magazine, Oct. 4, 1999.

⁸⁰ Michele Ingrassia, Soho in Chelsea: An Unlikely Neighborhood Is Suddenly The Epicenter of the Art & Club Scene, N.Y. Daily News, July 1, 2001.

⁸¹ Roberta Smith, As Chelsea Expands, A Host of Visions Rush In, N.Y. Times, June 1, 2001, Sec. E, part 2 at 29.

⁸² Peter Malbin, If You're Thinking of Living In/Chelsea; Strikingly Changed But Still Diverse, N.Y. Times, Apr. 16, 2000, Sec. 11 at 7 ("Living in Chelsea").

⁸³ Holland Cotter, A Tour Through Chelsea, The New Center of Gravity, N.Y. Times, May 15, 1998, Sec. E, part 2 at 29: "Doubts may have lingered even a year ago, but there's no question that the commercial center of gravity of the New York City art world has shifted from SoHo to Chelsea."

partner in The Space, a photography studio in the Chelsea Market, said that in 1994, "some clients were somewhat uneasy about coming to the area," but now "[i]t's a hub."⁸⁴ Today Chelsea hosts over 170 art galleries. Some residents worry that destroying the High Line would threaten the artistic community.⁸⁵

Chelsea's boom is commercial as well as cultural. Over the past decade, many new restaurants, shops, and media enterprises have opened. The Villager described the boom:

Chelsea, as real estate developers will tell you, has become one of the city's 'in' neighborhoods, with the cachet of a trendy arts scene and amenities like Ladies Mile shopping, upscale restaurants, gyms, good transportation and the Hudson River Park, to be completed in just a few years.⁸⁶

The impressive Chelsea Piers Sports and Entertainment Complex opened in 1995. This \$120 million complex includes a golf club, ice and roller rinks, and bowling lanes and has revitalized the once neglected Chelsea piers.⁸⁷

In 1997, Chelsea Market opened in the old National Biscuit Company building, drawing shoppers to its "fishmongers, butchers, bakers and greengrocers."⁸⁸ The Chelsea Market building is also a media center and has included as tenants such businesses as Oxygen

⁸⁴ See Bites and Bytes at 1.

⁸⁵ See Editorial, Put the Brakes On Rush To Raze the High Line, The Villager, Apr. 11, 2001 ("Put the Brakes On") ("Influential pioneering artists and gallery owners who have colonized West Chelsea and made it into the center of the world's art scene are backing the plan [to reuse the High Line as a pedestrian promenade] - it would help preserve their galleries, they say, from development pressure, and also provide an interesting loop though the art district below.").

⁸⁶ See Lincoln Anderson, Building is Booming in Chelsea - But Will Area Lose Its Character? The Villager, Apr. 11, 2001 ("Building is Booming").

⁸⁷ See Douglas Martin, Chelsea Piers, Where Grown-Ups Play, Too, N.Y. Times, Aug. 4, 2000, Sec. E, part 2 at 31.

⁸⁸ Living in Chelsea at 7.

Media, New York 1 News, and Major League Baseball's recording studios.⁸⁹ Publicly available tax assessment information shows that the assessment on the Chelsea Market buildings rose 185 percent from 1993 to 2002 (using the 2002 tax rate and after adjusting for inflation), from \$11.25 million to \$32.05 million.⁹⁰ Several blocks away, another building by Taconic Investment Partners has attracted media firms. Since Taconic acquired its Chelsea property, "media firms and telecommunications companies have flocked there. In some circles, Taconic is credited with initiating the rebirth of Chelsea. Many construed their boldness as error back in 1998. People thought we were nuts"⁹¹

Chelsea has also experienced a remarkable boom in residential construction. Twenty new apartment building projects were started in 2000, making Chelsea one the most active neighborhoods for construction in New York City.⁹² This latest building boom is expected to bring 10,000 to 20,000 new residents to Chelsea.⁹³ Housing prices have soared.⁹⁴

The ICC justified its decision to authorize demolition based in part on the belief that the High Line would impede growth: "The line's abandonment and the viaduct's demolition

⁸⁹ See Bites and Bytes at 1.

⁹⁰ See, e.g., New York City Real Estate Tax Assessment Roll available at www.nycserv.nyc.gov/nycproperty/nynav/jsp/selectbbl/jsp, visited Aug. 15, 2002.

⁹¹ See Parke Chapman, Midtown West: The Final Frontier?, Real Estate Wkly., Nov. 8, 2000 ("Midtown West").

⁹² See Building Is Booming, Apr. 11, 2001.

⁹³ Id.

⁹⁴ See Living in Chelsea at 7 ("In the last four years, housing prices in Chelsea have appreciated significantly.").

would eliminate an obstacle to local development”⁹⁵ That prediction was wrong. Chelsea is booming while the High Line stands.

B. The Meat Packing District and Clinton/Hell’s Kitchen.

The Meat Packing district and Clinton/Hell’s Kitchen have experienced economic rebirths similar to Chelsea’s. The Meat Packing district is now one of New York City’s trendiest and most eclectic neighborhoods. Jennifer Jensen of The Villager describes the changes:

The [Meat Packing district], a wholesale meat market located along the Hudson River in the northwest part of Greenwich Village, has become one of the city’s hottest neighborhoods, attracting an eclectic blend of velvet-rope nightclubs, trendy restaurants, wine bars, expensive boutiques and art galleries mixed in with the meat packers, prostitutes and underground clubs that have been among the area’s few mainstays.⁹⁶

Indeed, undersigned counsel and friends were denied entry to one of its night-clubs, perhaps due to lack of stylishness.

Real estate developers have targeted Clinton/Hell’s Kitchen as an area with great potential for continued development.⁹⁷ A website for Luxuryloft.com advertises loft space and describes real estate in the Meat Packing district: “A recent revolution has converted this once strictly industrial meat-packing area into the hottest neighborhood, south of 14th Street and West of Eighth Avenue. . . . At one time, this area was sought out for bargains: Those days are

⁹⁵ Abandonment Decision, 8 I.C.C.2d at 783.

⁹⁶ See Jennifer Jensen, As Pressures Mount, Market Is Changing, The Villager, May 2, 2001; see also Group Wants To Preserve Meatpacking District, Associated Press, June 4, 2001: “Known for years as the underbelly of Greenwich Village, the meatpacking district is seeing a growing number of trendy restaurants and boutiques.” See also Jerry Shriver, Meatpackers Sink Hooks Into Curious Edgy Part of Manhattan -- Includes Bistros, Bars and Pork Warehouses, USA Today, Feb. 23, 2001 at 50: “Nearly two dozen restaurants, bars, dance clubs, art galleries and boutiques have opened here recently amid the gritty industrial spaces that have housed the city’s meatpackers since the mid-1900s.”

⁹⁷ See Midtown West, Nov. 8, 2000.

over!”⁹⁸ Another website with a very similar name -- www.luxurylofts.com -- reports that a loft in the Meat Packing District sold in 1999 for \$ 900,000 and recently re-sold “just shy of \$2 million.”⁹⁹ Benjamin Fox for the Real Estate Weekly succinctly exclaims: “[T]he Meatpacking District [is] hot as a pistol.”¹⁰⁰

As the Boston Globe pronounced: “Hell’s Kitchen is the place to be.”¹⁰¹ The Alvin Ailey Dance Theater will build an eight-story building there to serve as its permanent home.¹⁰² This \$47.5 million structure would not have been economically feasible when the conditional abandonment was authorized in the early 1990s, but now it will boost development in Clinton/Hell’s Kitchen.¹⁰³

Development of the High Line is championed as an impetus to growth. The Neighborhood Open Space Coalition pointed out that preserving the High Line “will increase the value of properties under it and next to it . . . [and] will complement whatever new use is selected for the 30th Street rail yards. It will maintain the neighborhood’s unique character while spurring innovative new development of the highest caliber.”¹⁰⁴ The Fifteenth Street Block

⁹⁸ See www.luxuryloft.com/neighborhoods.htm, visited Aug. 10, 2002.

⁹⁹ See www.luxurylofts.com/gossip/htm, visited Aug. 10, 2002.

¹⁰⁰ Benjamin Fox, Random Notes for Retail Junkies Offered, Real Estate Wkly., Nov. 17, 1999.

¹⁰¹ Alison Arnett, The City That Always Eats Fine Dining On The Lower East Side, A Flashy New York Olives and All Risotto All the Time, Boston Globe at C1, Mar. 21, 2001.

¹⁰² See New Home for Ailey, N.Y. Post, May 1, 2001.

¹⁰³ Cf. Midtown West, Nov. 8, 2000 (real-estate brokers have started referring to Hell’s Kitchen/Clinton by the more marketable name of Midtown West).

¹⁰⁴ Letter from Toby J. Brandt, Program Co-ordinator, Neighborhood Open Space Coalition to Rudolph W. Giuliani, Mayor, City of New York, Apr. 3, 2001 (Exhibit E).

Association stated that "hasty demolition would certainly be a terrible permanent loss to property values and residents and business throughout western Chelsea and the north Village."¹⁰⁵

C. The High Line Offers Rare Open Space on the West Side of Manhattan

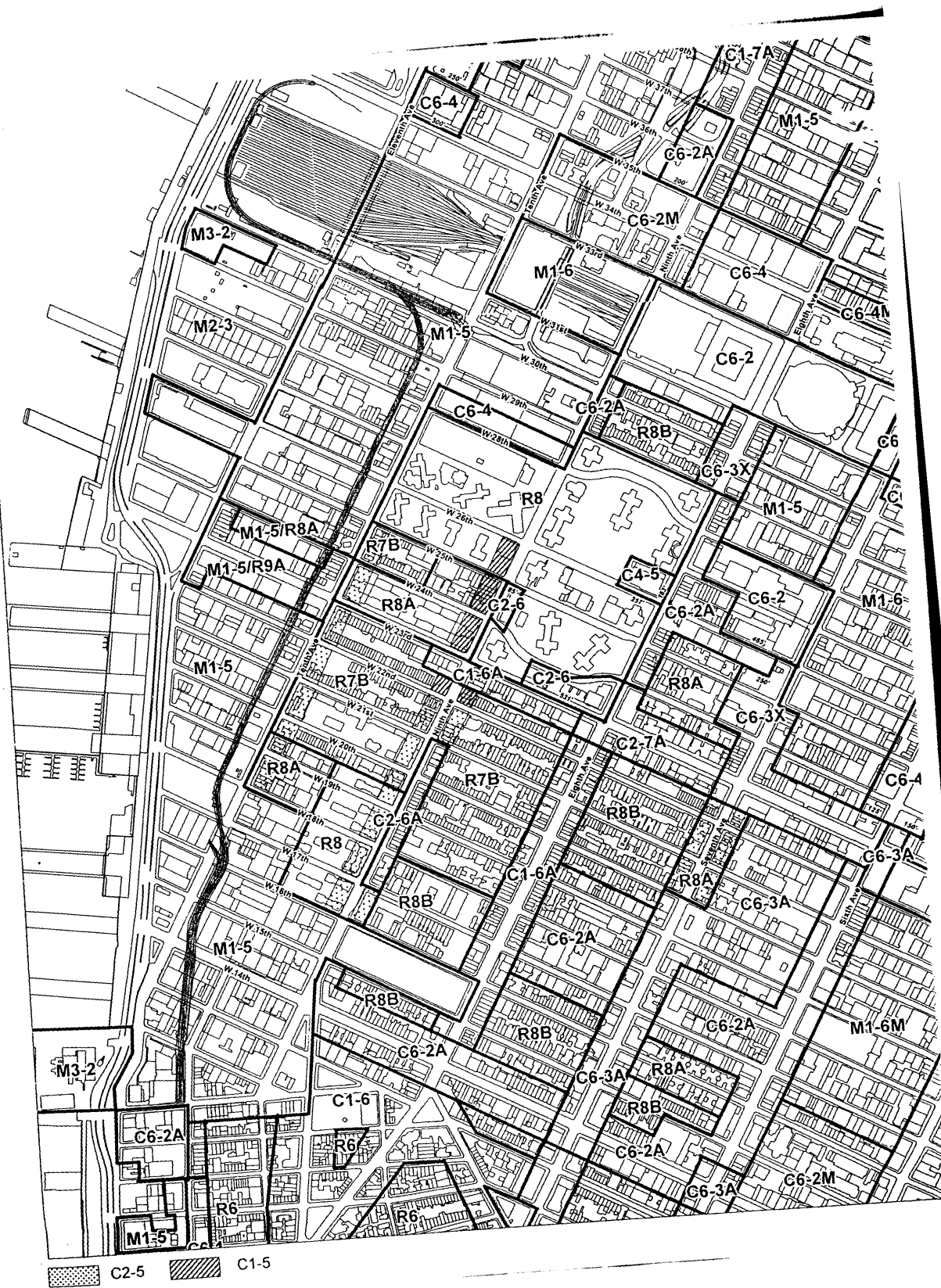
The ICC never considered that destruction of the High Line would deprive the West Side of Manhattan of much-needed open space and a transportation right-of-way. The New York Parks & Conservation Association stated, however, that "[t]his is a once-in-a-lifetime opportunity for visionary open space planning in the City. If the High Line is demolished, the 1.45 miles of, essentially, elevated open space is gone forever."¹⁰⁶ According to the East Coast Greenway Alliance, an organization dedicated to creating multi-use trails linking cities from Maine to Florida, a preserved High Line would create urban space "equal in size to two Bryant Parks."¹⁰⁷ The Parks Council warns that the communities bordering the elevated rail line need park and open space: "The High Line slithers through Community Districts Two and Four in Manhattan. According to the Department of City Planning, these two districts contain the least amount of open space per capita in the city, with less than .2 acres of open space per 1000

¹⁰⁵ Letter from Stanley Bulbach, Fifteenth Street Block Association to Peter A. Vallone, City Council Speaker, Mar. 28, 2001 (Exhibit E).

¹⁰⁶ Letter from Robert Kabin, Chairman, New York Parks and Conservation Association to George E. Pataki, Governor of the State of New York, Apr. 6, 2001 (Exhibit E).

¹⁰⁷ Letter from Karen M. Votava, Executive Director, East-Coast Greenway Alliance to George E. Pataki, Governor of the State of New York, Rudolph W. Giuliani, Mayor of the City of New York, and Peter F. Vallone, Speaker of the New York City Council (Exhibit E).

J



K



THE CITY OF NEW YORK
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MICHAEL A. CARDOZO
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December 11, 2002

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New York, New York 10022

Re: STB Docket No. AB-167 (Sub-No. 1094A) -
Chelsea Property Owners - - Abandonment - - Portion of
Consolidated Rail Corporation's West 30th Street
Secondary Track in New York, New York

Dear David,

This is in furtherance of a telephone conversation between Deputy Mayor Daniel Doctoroff and Steven Crosby of CSX. The City of New York plans to file an application for a Certificate of Interim Trail Use (CITU) with the federal Surface Transportation Board (STB) for the captioned rail facility. In accordance with applicable federal regulations, the City is willing to assume full responsibility for the maintenance of the Highline and its improvement and operation for trail use purposes, and is willing to indemnify CSX and other railroad owners/operators against liability in connection with same. The City hopes that we will enjoy the cooperation and support of CSX for our application for a CITU. Accordingly, we are hoping that CSX is ready and willing to negotiate a trail-use agreement for the Highline with the City.

Kindly consider with your client the above proposal. If CSX believes it would be necessary or helpful, the City is willing to meet or conference call on an expedited basis with appropriate representatives of CSX. Please note that the City plans to include its application for a CITU with its reply to Chelsea Property Owner's motion in the Highline adverse abandonment proceeding at the STB on December 17, 2002.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Joseph T. Gunn".
Joseph T. Gunn
Senior Counsel

www.nyc.gov

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