

CONSOLIDATED RAIL CORPORATION)
- ABANDONMENT EXEMPTION -) AB 167 (Sub-no. 1189X)
IN HUDSON COUNTY, NJ)

City of Jersey City ("City"), the Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition ("Coalition"), and Rails to Trails Conservancy (RTC) hereby move to reopen this ex parte 49 C.F.R. 1152.50 proceeding (1) for the reasons and purposes stated in the "Additional Environmental Comments" filed on May 7, 2009, on behalf of City and RTC, with concurrence of Coalition¹; (2) because the process for compliance with section 106 of the National Historic Preservation Act (NHPA) is defective and is tantamount to facilitating rather than correcting an anticipatory demolition in violation of NHPA section 110(k) for the reasons stated in (I) City, et al's Initial Environmental Comments, (ii) Letter, NJ Deputy State Historic Preservation Officer to STB Secretary dated May 7, 2009, and (iii) City, et al's prior pleadings; and (3) because this proceeding is not

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appropriate for the notice of exemption process, for all the reasons previously stated.

This motion is in addition to, and not in lieu of, other relief requested by City, Coalition, and RTC individually or collectively, including but not limited to public use conditions, application of the OFA remedy, challenges to the sufficiency of the environmental notice allegedly provided by Conrail, and requests for a full and complete environmental impact statement before any abandonment becomes effective.

In addition, City, Coalition, and RTC support relief sought by East Coast Greenway (issuance of a Notice of Interim Trail Use) should this proceeding move forward. Conrail has previously indicated it would reject such relief if requested by City, Coalition or RTC. But then Conrail seeks to avoid any meaningful regulation by this agency across the spectrum and otherwise to defeat the public interest in preserving this important rail asset for continued rail and other compatible public purposes. Conrail's approach has consistently been either contrary to law, or designed to obtain for that railroad any benefits it obtained by acting contrary to law. This agency should reopen the proceeding to ensure the public the remedies it would have had if Conrail had not engaged in an unauthorized illegal sale of the property to a developer for non-rail purposes prior even to seeking abandonment authorization.

Respectfully submitted,

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for City of Jersey City, Coalition,
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Certificate of Service

I hereby certify service of the foregoing on 7 May 2009 by deposit for express (next business day) delivery addressed to Robert Jenkins III, Mayer Brown, 1909 K Street, NW, Washington, D.C. 20006.

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