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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED

September 22, 2004



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

ENTERED
Office of Proceedings

SEP 23 2004

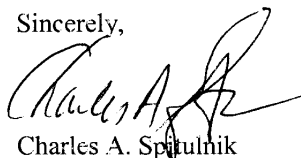
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Public Record

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 an original and ten (10) copies of the Joint Supplemental Statement of the City of New York, New York, the New York State Urban Development Corporation d/b/a The Empire State Development Corporation, Consolidated Rail Corporation, CSX Corporation and CSX Transportation, Inc. With Respect to the Request for a Certificate of Interim Trail use for filing in the above-referenced proceeding. An additional copy is enclosed for date stamp and return to our messenger. Please note that a 3.5" diskette is enclosed with this document.

Sincerely,


Charles A. Spitulnik

cc: All Parties of Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
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SEP 23 2004
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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**

JOINT SUPPLEMENTAL STATEMENT OF
THE CITY OF NEW YORK, NY, THE NEW YORK STATE URBAN DEVELOPMENT
CORPORATION d/b/a THE EMPIRE STATE
DEVELOPMENT CORPORATION,
CONSOLIDATED RAIL CORPORATION, CSX CORPORATION
AND CSX TRANSPORTATION, INC.
WITH RESPECT TO
THE REQUEST FOR A CERTIFICATE OF INTERIM TRAIL USE

The City of New York, NY ("the City"), the New York State Urban Development Corporation d/b/a the Empire State Development Corporation ("ESDC"), Consolidated Rail Corporation ("Conrail") and CSX Corporation and CSX Transportation, Inc. (collectively "CSX") (CSX and Conrail are collectively referred to as "Railroads") hereby submit this supplemental statement with respect to the issues that remain unresolved in this proceeding. Specifically, the Railroads hereby advise the Board that they fully support the issuance of a Certificate of Interim Trail Use ("CITU") and are nearing completion of a Trail Use Agreement with the City as required by the applicable regulations. Moreover, ESDC advises the Board that it, too supports issuance of a CITU at this time and, as described further below, intends to become a holder of the CITU and party to the Trail Use Agreement.

BACKGROUND

On December 17, 2002, the City filed a request for a CITU with respect to the rail line that is the subject of this proceeding. *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 ("CITU Request")* at paras. C1 – 5, pp. 9 – 10. In response, Conrail stated that “[i]f the Board determines that the City is lawfully entitled to seek a CITU in this case, Conrail is prepared to negotiate with the City and State of New York ...” *Reply of Consolidated Rail Corporation to the Pleading Filed December 17, 2002 by the City of New York*, filed January 13, 2003 (“*Conrail Reply*”), at 4. Conrail took no position on the issue of whether the City could lawfully seek a CITU in the context of an adverse abandonment proceeding, *id.* at 3-4, an issue raised by Chelsea Property Owners in this proceeding.

Since that time, the Board has held a public hearing in this matter on July 24, 2003, in New York, and the City, the Railroads, and other parties have been working diligently to reach agreement on the myriad of documents required to bring the proposed trail use to fruition. As the City explained in its letter to the Board in this proceeding on July 6, 2004, seeking an additional 3-month continuation of the abeyance period:

The parties include the City, the Railroads (Consolidated Rail Corporation, CSX Transportation, Inc. and New York Central Lines LLC), the underlying property owners (including the City and various State entities), the Empire State Development Corp., and the Friends of the High Line (“FHL”). Lawyers for the various parties presently are at work on over 25 documents, including a term sheet that outlines the various agreements and the approach to the substantive issues in each of them, a Trail Use Agreement, Quitclaim Deeds, access agreements, releases, and indemnification agreements.

Letter to Hon. Vernon A. Williams from Charles A. Spitulnik, dated July 6, 2004, at 2. Among those agreements are a License between the City and the Railroads that will permit the City to have access to and assume responsibility for maintenance of and liability for the Highline

pending completion of other documents and the rezoning action that form essential pieces of the transaction, and a Trail Use Agreement, that will include the terms required by the applicable regulations. 49 C.F.R. §1152.29. In addition, the documents also include transferring to the City and to ESDC¹ the property interests required for the planned use of the High Line while preserving the corridor as required by applicable statute and regulations. The City and the Railroads have reached a point in their negotiations where it is appropriate to advise the Board of the status of the parties' positions.

The City has recently made significant progress in negotiations with the Chelsea Property Owners over the remaining open issues between the parties. In addition, the City has had discussions with individual property owners along the High Line, both in conjunction with the Chelsea Property Owners and, particularly as to the southern end of the High Line below the proposed rezoning, by itself. In those discussions, the City's representatives have explained to the property owners the changes in zoning that are proposed for the property adjacent to and in the vicinity of the High Line and have answered questions about the plans for transformation of the High Line into a trail and public open space. As a result of these discussions and the efforts of the Chelsea Property Owners, many of these property owners have expressed their support for the issuance of a CITU in this proceeding. An increasing number of owners of such property have indicated their support for the issuance of a CITU and the transformation of the High Line as the City and FHL have previously described both in the hearing on July 24, 2003 and in pleadings since that time. The City will secure statements of support from those owners and will provide them to this Board as they are received.

¹ ESDC will receive a deed for the property extending from 11th Avenue just north of 30th Street through 547-55 West 34th Street and the West 34th Street roadbed. The City will receive a deed for the railroad's interest in the property from 75-79 Gansevoort Street, running northerly and westerly to where it crosses 11th Avenue just north of 30th Street.

STATEMENT OF POSITION

The Railroads have determined that a CITU is an appropriate mechanism to use for the purpose of achieving the parties' objectives with respect to the High Line. As a result, the Railroads are by this pleading advising the Board that they support the issuance of a CITU.

Moreover, the discussions between ESDC and the City have also been productive in terms of achieving a better understanding of the implications of the CITU for ESDC. Based on those discussions, ESDC is also advising the Board of its support for issuance of a CITU.² In addition, ESDC is advising this Board that it expects to become a joint and several holder of the CITU with the City.³ Accordingly, ESDC represents that:

- (a) ESDC is willing to assume joint and several 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 on the High Line;
- (b) ESDC acknowledges that use of the right-of-way is subject to ESDC's continuing to meet its responsibilities described above and subject to future reconstruction and reactivation of the right-of-way for rail service; and

Because the Railroads are joint signatories of this Joint Supplemental Statement, they are aware of and will receive a copy of this statement on the same date that it is being served on the Board.

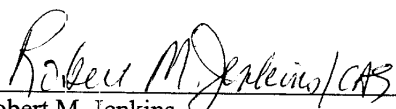
WHEREFORE, and in view of all of the foregoing and of all of the pleadings submitted in this proceeding as of this date, the City and the Railroads hereby:

² ESDC's support for the CITU and other participation as described herein is subject to finalization of certain agreements with the City and final approval by its Board of Directors and the New York State Public Authorities Control Board. However, ESDC staff has authorized the inclusion of this statement in this pleading, subject to such approvals, and will recommend all appropriate approvals by the two Boards at subsequent meetings.

³ See fn. 2, *supra*.

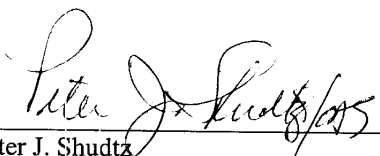
- (1) Advise the Board that the Railroads now support the issuance of a CITU in this proceeding and are actively progressing negotiations for a Trail Use Agreement with the City and ESDC;
- (2) Respectfully request the Board to proceed to issue a decision that a CITU may be issued in an adverse abandonment proceeding;
- (3) Respectfully request the Board to issue a CITU herein.

Respectfully submitted,

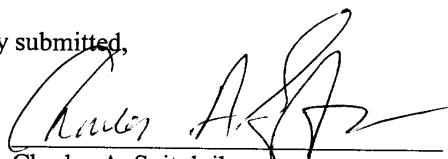

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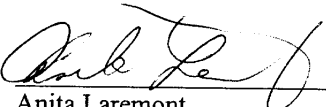

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Dated: September 22, 2004


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Certificate of Service

I certify that on this 22nd day of September 2004, I caused a copy of the foregoing Joint Supplemental Statement of the City of New York, NY, the New York State Urban Development Corporation d/b/a The Empire State Development Corporation, Consolidated Rail Corporation, CSX Corporation and CSX Transportation, Inc. With Respect to the Request for a Certificate of Interim Trail Use, to be served by first class mail (or hand delivery for those parties with counsel in Washington, DC) on the parties listed below.

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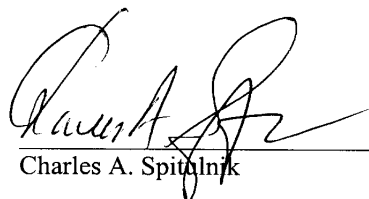
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