



KAPLAN KIRSCH ROCKWELL

January 16, 2009

E-Filing

Hon. Anne Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

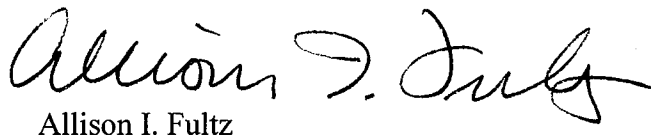
Re: *Norfolk Southern Railway Company – Abandonment – in Atlanta, Fulton County, Georgia – Notice of Exemption*; Docket No. AB-290 (Sub-No. 210X)

Dear Ms. Quinlan:

I am enclosing a copy of the Reply of The Atlanta Development Authority and Atlanta BeltLine, Inc. to National Railroad Passenger Corporation's Petition to Intervene in Support of Stay in the above-referenced proceeding.

Thank you for your attention to this matter.

Sincerely,



Allison I. Fultz

Enclosures

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**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, DC**

Docket No. AB-290 (Sub-No. 210X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT –
IN ATLANTA, FULTON COUNTY, GEORGIA
– NOTICE OF EXEMPTION –**

**REPLY OF THE ATLANTA DEVELOPMENT AUTHORITY AND
ATLANTA BELTLINE, INC. TO
NATIONAL RAILROAD PASSENGER CORPORATION'S
PETITION TO INTERVENE IN SUPPORT OF STAY**

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should be addressed to:

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Counsel for The Atlanta Development Authority
and Atlanta BeltLine, Inc.

Dated: January 16, 2009

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Pursuant to 49 C.F.R. §1152.25(e)(7)(3), The Atlanta Development Authority (the “**Authority**”) and Atlanta BeltLine, Inc. (“**ABI**”) submit this Reply to the Petition to Intervene in Support of Stay filed in this proceeding by the National Railroad Passenger Corporation (“**Amtrak**”) on January 15, 2009 (“**Amtrak Petition**”).¹ The Board should reject Amtrak’s arguments and deny both Amtrak’s Motion to Intervene and the stay requested by the Georgia Department of Transportation (“**GDOT**”) in its Petition filed on January 2, 2009.

As previously explained in this proceeding, the Authority is a public body corporate and politic of the State of Georgia and instrumentality of the City of Atlanta (the “**City**”), and is the current record owner of the property that is the subject of the abandonment in this proceeding (the “**Subject Line**” or the “**Property**”). The Authority acquired the Subject Line from NE Corridor Partners, LLC (“**NE Corridor**”). NE Corridor and its transferee the Authority acquired

¹ The Authority and ABI previously filed a Petition for Leave to Intervene in this proceeding. This Reply is tendered to the Board in anticipation of a favorable ruling on that Petition.

the Subject Line subject to the reserved limited freight easement that Norfolk Southern Railway Company (“NSR”) seeks to abandon in this proceeding.

There is no basis for issuing a stay of this proceeding. The City, by and through the Authority, has made an investment in and a commitment to the development of the BeltLine project, and this line segment is a key element of that project. Furthermore, a comprehensive regional transportation plan, under which Amtrak would provide service to the Atlanta metropolitan area along a corridor to the west of the subject right-of-way, has been adopted by the majority of the transportation and land use planning authorities in the Atlanta Region as the result of extensive technical and policy analysis. Amtrak’s speculative hypothesizing that it might someday need or want to use this corridor provides no basis to undermine the public uses already proposed, funded and agreed upon for the corridor. Accordingly, the Amtrak Petition should be denied.

ARGUMENT

I. Amtrak will not be harmed by the abandonment of the Subject Line.

Amtrak will not be harmed by the pending abandonment. Amtrak currently provides its Crescent service through the Atlanta region. Amtrak has provided no plans, maps, timetables or other documentation to support its assertion and that the Subject Line is a “critical link in the rail route that *would* be used by Amtrak trains.” Amtrak Petition at 2, emphasis added. Indeed, Amtrak gives no indication that it proposes to relocate the Crescent route. Additionally, current comprehensive transportation plans adopted by the City of Atlanta and relevant regional and state transportation planning authorities do not anticipate that Amtrak will operate through downtown Atlanta. As set forth in the Reply submitted by the Authority and ABI on January 7, 2009 (“**Authority/ABI Reply**”), the abandonment will not prevent Amtrak, GDOT or any other interested party from negotiating with the holder of the freight easement and owner of the fee

interest (should those interests be vested in different entities) for any access Amtrak or GDOT might seek. In short, the abandonment of the authority to provide freight rail service over a given corridor will have no effect on Amtrak's ability to negotiate to operate passenger service on that corridor.

Amtrak asserts, in the Amtrak Petition at 4, that it could use its eminent domain authority under 49 U.S.C. § 24311(c) to force NSR to transfer its interest in this property to Amtrak. This, to Amtrak, justifies the Board delaying implementation of the proposed abandonment while it works its way through the extensive planning and negotiation that would have to precede any proceeding under § 24311(c). However, as noted below, neither Amtrak nor this Board can assume that Amtrak would be able to make the statutory "necessity" finding. In the face of real, practical alternatives to the use of its corridor, Amtrak could not show that use of this corridor is "necessary" for its intercity rail operations.

A. Amtrak's plans are speculative and not consistent with approved land use and transportation plans.

Amtrak has provided no concrete proposals to support its assertions that the Subject Line is necessary for its operations. In contrast, a number of local and regional transportation and land use plans, which provide for and fully incorporate Amtrak's operations, have been adopted recently. These plans represent the culmination of years of coordinated effort by a wide range of jurisdictions and regional bodies. They are the result of extensive detailed technical and policy analysis. As a result, the plans constitute the blueprint for the development of surface transportation of all kinds in the greater Atlanta region.

The Connect Atlanta Plan, the City of Atlanta's comprehensive transportation plan adopted in December, 2008, anticipates that Amtrak will operate through improved existing facilities to the north of downtown Atlanta.

In addition, Concept Plan 3, a region-wide comprehensive transportation plan, also provides for Amtrak to access the proposed Multimodal Passenger Terminal from the north, and not via the Subject Line. Concept Plan 3 was ratified by the Transit Planning Board, a regional body consisting of the Mayor of Atlanta, the chairmen of the Atlanta-area County Commissions, Metropolitan Atlanta Rapid Transit Authority, GDOT, and the Georgia Regional Transportation Authority, and appointees of the Governor of Georgia. Accordingly, Concept Plan 3 represents the consensus position of all of the affected stakeholders, including GDOT. Concept Plan 3 was subsequently adopted by the Atlanta Regional Commission (“ARC”), the regional body responsible for coordinating all transportation and land use planning in the greater Atlanta Area. Attached at **Exhibit A** hereto are the minutes of the November 7, 2008, meeting of the Transportation Coordinating Committee of ARC, at which GDOT’s representative participated in a unanimous vote to adopt Concept Plan 3.

Finally, the City’s adopted land use and transportation plans incorporate the BeltLine’s light-rail concept into the master plans and related local planning frameworks proposed for the areas adjacent to the Subject Line. The introduction of heavy rail operations into these areas would be inconsistent with, and detrimental to, the planning and development goals of the City and would likely face strong opposition from surrounding communities.

Amtrak cannot show that it has no alternative to this corridor for the preservation of its intercity passenger operations. Accordingly, Amtrak cannot show harm now or in the future from the removal of this corridor from the network of lines over which it might assert eminent domain rights.

B. Amtrak's latitude to negotiate with the owner or owners of rights in the Subject Line will not be affected by the abandonment.

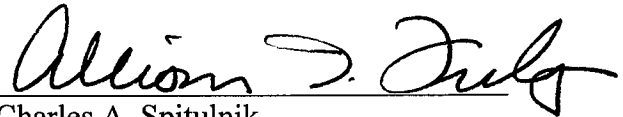
As set forth in detail in the Authority/ABI Reply, no right to negotiate with the easement holder or the fee owner of the Subject Line, whoever those parties might be, will be foreclosed by the abandonment of freight rail authority NSR seeks here. ABI and the Authority will not burden the record by repeating those arguments here.

CONCLUSION

WHEREFORE, in light of the foregoing, the Authority and ABI respectfully request that the Board deny the Amtrak Petition.

Dated: January 16, 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Allison I. Fultz", written over a horizontal line.

Charles A. Spitulnik
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Kaplan, Kirsch & Rockwell, LLP
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Suite 800
Washington, DC 20036
Phone: (202) 955-5600

Counsel for The Atlanta Development
Authority and Atlanta BeltLine, Inc.

Exhibit A

**Minutes of November 7, 2008 Meeting of
Atlanta Regional Commission's Transportation Coordinating Committee**

[attached hereto]



ATLANTA REGIONAL COMMISSION

PLANNING • LEADERSHIP • RESULTS

ARC COMMITTEE MEETING FOLLOW-UP

TRANSPORTATION COORDINATING COMMITTEE

November 7, 2008 Meeting Notes

TCC Members or Alternates Present:

<i>ARC</i>	John Orr for Jane Hayse
<i>Atlanta</i>	---
<i>Barrow</i>	Terry Darragh
<i>Bartow</i>	---
<i>Cherokee</i>	Geoff Morton
<i>Clayton</i>	Bill Andrews
<i>Cobb</i>	David Montanye
<i>Coweta</i>	Tavores Edwards
<i>DeKalb</i>	---
<i>Douglas</i>	---
<i>EPD</i>	Jon Morton
<i>Fayette</i>	Phil Mallon

<i>Forsyth</i>	Tim Allen
<i>Fulton</i>	Roussan Francois
<i>GDOT</i>	Ulysses Mitchell
<i>GRTA</i>	Darby Mori
<i>Gwinnett</i>	---
<i>Henry</i>	Cheri Hobson-Matthews
<i>MARTA</i>	Johnny Dunning
<i>Newton</i>	Kevin Walter
<i>Paulding</i>	---
<i>Rockdale</i>	Miguel Valentin
<i>Spalding</i>	Chuck Taylor for Anthony Dukes
<i>Walton</i>	---

Advisors (Non-voting):

<i>GDOT/Modal</i>	Karen Quarles
<i>GHMPO</i>	---

<i>FHWA</i>	Andy Edwards
<i>FTA</i>	---

Other Attendees

Angela Redding, City of Forest Park
 Carol Satcher, SRTA
 Cedric Clark, Sandy Springs
 Chip Burger, URS
 Chris Chovan, URS
 Cindy Jenkins, City of Johns Creek
 David Cassell, GRTA
 David Hong, ECCD
 Harry McGinnis, Croy Engineering
 Henry Green, GDOT
 Jim Summerbell, City of Roswell/JJG
 John Crocker, TPB

Kyethea Kirk, City of Marietta
 Larry Stokes, Cobb County
 Ligia Florim, Bron Cleveland
 Michael Cullen, City of Marietta
 Michelle Wright, City of Douglasville
 Peter Armstrul, PCIDs
 Ron Roberts, Cobb DOT
 Sally Flocks, PEDS
 Samuel Jones, Fulton County
 Tom Queen, GDOT
 Tony Peters, PCIDs
 Tracy Hambrick, BCA

GENERAL

1. Welcome and approval of 10/17/08 TCC Work Session Meeting Summary

John Orr, ARC, welcomed TCC members and asked if there were any comments on the October 17th TCC work session meeting notes. The notes were approved as presented.

2. Public Comment Period

Sally Flocks, PEDS, encouraged ARC to develop an accessible sidewalks program similar to the LCI program, to help assure ADA compliance throughout the region. She commented that whenever construction work or repaving is done on a roadway the intersections are required to be made ADA compliant. Ms. Flocks warned that cities and counties in other states have been sued for lack of a sidewalk plan. She recommended that ARC help encourage ADA compliance with money for assistance.

3. TIP Amendment Schedule Update

John Orr reported that there is no new information on the schedule to pass along to the committee.

4. Transit Planning Board Concept 3

David Emory, ARC, presented to the committee a draft resolution to adopt TPB Concept 3. Emory pointed out minor changes to the resolution since the first read in October. Those changes included language clarifying that Concept 3 will be added to the Regional Strategic Transportation System (RSTS) during the next Unified Growth Policy Map (UGPM) update in 2009. The changes also direct ARC staff to make changes to Concept 3 as needed and appropriate.

Johnny Dunning, MARTA, commended TPB on its success in creating a transit vision for the region and cautioned that it should only be a first step and to capitalize on the momentum created during the outreach process. That said, Mr. Dunning motioned to approve the resolution which received multiple seconds and was unanimously approved.

5. Draft 2009 Unified Planning Work Program

The UPWP was approved unanimously with no discussion. The motion to approve came from Tavares Edwards, Coweta County and was seconded by Johnny Dunning, MARTA.

6. Functional Classification Changes in Cobb and Forsyth Counties

A typo on the draft resolution for Cobb County was noted by David Montanye. With this correction, the functional class changes were approved unanimously with further discussion.

7. Freight & Logistics Task Force Report

An overview was provided on the final report of the Freight and Logistics Task Force of the Commission for a New Georgia. Bob Fauls, Task Force Chair and President/Owner of Southern Freight and Page Siplon, Task Force consultant and Executive Director, Logistics Innovation Center, presented. The task force was charged with understanding the dynamics of freight movement in Georgia by trucks, trains, boats and planes in order to better define how the state

can be a better partner for the freight and logistics industry. The task force gathered industry insight to make recommendations that are data driven, fact based and actionable.

Upon completion of the presentation, John Orr commented on a trend of suburban distribution centers and questioned whether that is likely to continue. Siplon replied that due to issues of urban congestion, and regulatory time constraints on truck drivers, it seems distribution centers will continue to be pushed away from urban centers.

Orr also asked about oil prices and whether the Atlanta Metro area will be affected disproportionately compared to other freight locations such as Dallas and Chicago. Fauls replied that as long as the gas pipeline from the gulf coast is not disrupted as in the recent hurricane season, Atlanta should not be adversely affected by fuel supply. Atlanta will more likely be affected by regulatory mandates and congestion.

Montanye inquired how Savannah was able to beat out the competition to win a growing share of east coast port activity. Siplon replied that Savannah has an advantage on efficiency, reliability, a better working environment with labor unions and more room to grow.

8. Quarterly TDM Update – postponed

ANNOUNCEMENTS

- Reagan Hammond, ARC, announced that requested for fourth quarter administrative modifications to the TIP are due to ARC by November 21st.
- Talya Trudell, ARC, reminded TCC members that requested information is due on their projects for inclusion in the upcoming for ARC *Breaking Ground* Report.
- David Haynes, ARC, announced that ARC is still in the process of evaluating applications for JARC and New Freedom funding and hopes to be finished by December 1st.

There being no further business, the meeting was adjourned.

Handouts:

- TCC Agenda, 11/7/08, and TCC Summary, 10/17/08
- Presentations
 - Overview of adoption of TPB Concept 3
 - Task Force on Freight and Logistics
- Issue Summaries and Draft Resolutions, adopting
 - Recommendations of TPB Concept 3
 - 2009 Unified Planning Work Program
 - Functional classification changes in Cobb and Forsyth Counties
- Major Studies Monthly Update
- TPB draft resolution establishing interim governance structure for public transportation in the Atlanta region
- 2008 – 2013 TIP Administrative Modification Schedule 4th Quarter 2008

Certificate of Service

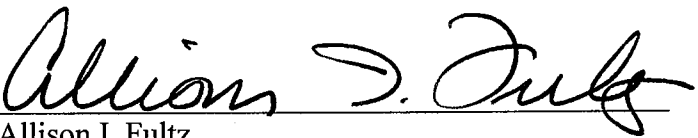
I hereby certify that on this 16th day of January, 2009, I caused to be served a copy of the foregoing REPLY OF THE ATLANTA DEVELOPMENT AUTHORITY AND ATLANTA BELTLINE, INC., TO NATIONAL RAILROAD PASSENGER CORPORATION'S PETITION TO INTERVENE IN SUPPORT OF STAY to be served via overnight delivery, upon:

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