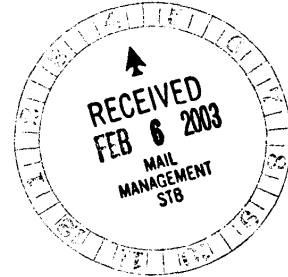


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BEFORE THE
SURFACE TRANSPORTATION BOARD



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

COMMENTS OF THE FRIENDS OF THE HIGH LINE, INC.
IN RESPONSE TO RECENT SUBMISSIONS

Friends of the High Line, Inc. ("Friends") requests leave to file the following comments in response to the recent submissions made by the Metropolitan Transit Authority ("MTA"), the New York Convention Center Development Corporation ("the Javits Center"), and Chelsea Property Owners ("CPO").¹ Among other things, these filings address Friends' August 16, 2002 Petition to Reopen and comment on the City of New York's December 17, 2002 request for a Certificate of Interim Trail Use ("CITU"). Friends believes the comments below will help the Board evaluate certain points made in the recent filings, and will not delay the proceedings or prejudice any party.

1. The Javits Center and CPO assert that Friends is improperly attempting to delay this proceeding. See Javits Filing ¶ 6; CPO Jan. 23, 2003 Filing at 1. Their attacks are entirely inappropriate. Friends has been candid from the start that reuse of the High Line is one of its long-term goals. See, e.g., Petition to Reopen at 34-39.

¹ The MTA and Javits Center submissions were dated January 24, 2003, but Friends did not receive them until January 28, 2003.

This goal (which is shared by almost all elected officials in the area and by members of the neighboring public) is certainly not nefarious in any respect. Indeed, Congress established that it is in the public interest to preserve railroad rights-of-way when it passed the Trails Act.² Congress also established that it is in the public interest to preserve historic structures and to protect the human environment when it passed the National Historic Preservation Act³ and the National Environmental Policy Act.⁴ The desires of the Javits Center, CPO, and others for quick resolutions of their own concerns cannot trump the legitimate environmental, historic preservation, and transportation policy issues raised by Friends.

2. None of the recent filings provide a basis for dismissing Friends' Petition to Reopen. The filings of MTA and Javits Center are over five months late. See 49 C.F.R. § 1104.13(a) (providing 20 days to respond to any motion or petition). Unlike the City of New York, which requested additional time to respond to both the petition to reopen and to CPO's August 14, 2002 motion, MTA and the Javits Center have been silent throughout many rounds of filings and never informed the Board that they intended to either supplement the existing evidentiary record or file comments regarding any of the pending issues.

Moreover, MTA and the Javits Center have not countered Friends' showing that demolishing the High Line raises serious questions that require study by the

² 16 U.S.C. § 1247.

³ 16 U.S.C. § 470.

⁴ 42 U.S.C. §§ 4321-4347.

Board; indeed, they do not even attempt to address the merits of Friends' arguments.⁵

CPO's recent filing also does not offer any valid grounds for dismissing Friends' petition.

In fact, CPO's filing underscores that there are significant environmental issues associated with demolishing the High Line. CPO argues that leaving the High Line standing could pose environmental issues. See CPO Jan. 23 Filing at 2. Under CPO's own demolition proposal, however, portions of the line would remain standing. See Friends' Oct. 4, 2002 Filing at 2. There can be no question that the Board must re-examine the application of the federal environmental and historic preservation laws prior to any final decision about the High Line.

3. The MTA filing reinforces the conclusion that CPO's request for a ruling on the surety condition is premature. The MTA admits that it has neither signed the Settlement Agreement nor obtained the necessary approvals to do so. MTA Filing ¶

4. The Javits Center's statement that the Settlement Agreement has been agreed to in principle is simply incorrect. See Javits Center Filing ¶¶ 4-5. The City has stated that it asked for changes to the agreement, including addition of a clause giving the City the right to support or file a CITU, and that the requested change has not been made. City's Dec. 17 Reply at 4. In addition, the City explained that the railroad interests "have evidently taken offense at CPO's characterizations of the Highline's condition, and in

⁵ MTA misunderstands Friends' petition to reopen. Friends does not seek to reopen the entire abandonment proceeding, but only the portion of the 1992 decision that authorizes demolition of the High Line. See, e.g., Petition to Reopen at 1-2, 27.

response seek the right to terminate the Settlement Agreement in the event of further disparagement of the Highline by any party.” Id. at 3.⁶

These facts show that the parties to the Settlement Agreement do not yet agree on its terms. If the parties cannot resolve their differences, any decision the Board makes now will be for naught. Moreover, it is hard to understand how an agreement that is not fully executed and that may never be effective could satisfy the surety condition.

4. Neither MTA nor the Javits Center nor CPO has provided any basis for rejecting Friends’ suggestion that the City may lawfully proceed to negotiate for trail use of the High Line. The Board may grant a late-filed request for a CITU because the abandonment has not yet been consummated. See Rail Abandonments – Use of Rights of Way as Trails – Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 158 (1987) (“If the railroad has not consummated abandonment and is willing to negotiate, we will reopen the proceeding, vacate the abandonment certificate, exemption decision, or notice of exemption, and issue a CITU or NITU, as appropriate.”).⁷ As the City has explained, the Board has the power to authorize trail use in an adverse abandonment situation. See City’s Jan. 24 Filing at 8-9. The public interest in preserving rights-of-way for rail use exists to the same extent in any sort of abandonment.⁸

⁶ CPO’s original petition for a final abandonment order failed to disclose any of these important details.

⁷ It is not uncommon for the Board to grant late-filed requests for trail use. See, e.g., STB Docket No. AB-839 (Sub-No. 1X), Kiowa, Hardtner & Pacific Railroad Co. – Abandonment Exemption – In Barber County, KS, Decision served Dec. 30, 2002; STB Docket No. AB-55 (Sub-No. 602X), CSX Transp., Inc. – Abandonment Exemption – In Limestone County, AL, Decision served Dec. 10, 2002.

⁸ The City is correct that there is no evidence that the railroads are attempting to avoid any legitimate governmental process here.

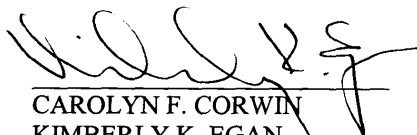
In addition, MTA, the Javits Center, and CPO have no basis for seeking to interfere with trail use negotiations. The Javits Center and CPO waived the right to object to such negotiations when they agreed to language in the Settlement Agreement permitting the railroads to enter into a railbanking agreement for the High Line. See Exh. 1 to CPO's Aug. 14 Motion, ¶ 2.3. The fear of the MTA, the Javits Center, and CPO that railbanking might conflict with their development interests is not pertinent because Congress has already established that preserving rights-of-way for rail use is in the public interest. While the City appears prepared to work with the State agencies and others to attempt to resolve their concerns, it is the railroads and the City (as the potential railbanking sponsor) that must take the lead in the negotiations.

As Friends pointed out in its January 16, 2003 letter to the Board, a trail use agreement can be negotiated while an abandonment proceeding is underway. There is no need to wait for a final abandonment order and a CITU. The parties may proceed now to work out how to preserve the High Line for future rail use and to reuse it in the interim as a trail. See, e.g., STB Docket No. AB-33(Sub-No. 70), Union Pacific R.R. – Abandonment – Wallace Branch, ID, Decision served Nov. 15, 1996, at 4.

CONCLUSION

The recent filings do not provide any basis for dismissing Friends' petition to reopen. Nor do they suggest that negotiations regarding trail use may not proceed. In its 1999 order denying CPO's request for a final abandonment order, the Board encouraged the parties to make efforts to resolve outstanding issues through negotiation. It should follow the same course now.⁹

Respectfully submitted,



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February 6, 2003

⁹ As we noted in our January 16 letter to the Board, negotiations may allow the relevant parties to reach a reasonable compromise of their differences and may avoid the need for the Board to decide a number of the matters now before it. See STB 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, Decision served July 14, 1999, at 5.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing are being served this 6th day of February, 2003, by first-class mail, postage prepaid, or hand-delivery, upon the following persons:

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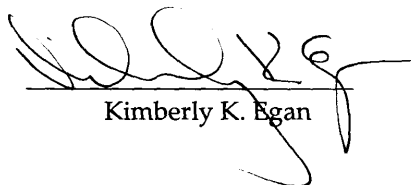
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