302749

CHARLES H. MONTANGE
ATTORNEY AT LAW
426 NW 162ND STREET
SEATTLE, WASHINGTON 98177

(206) 546-1936
FAX: (206) 546-3739

ENTERED
Office of Proceedings
July 19, 2021
Part of
Public Record

19 July 2021

For E-Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Consolidated Rail Corporation – Abandonment Exemption – in Hudson County, NJ, AB 167 (Sub-no. 1189X) and related cases AB 55 (Sub-no. 686X) (CSX discontinuance exemption) and AB 290 (Sub-no. 306X) (NS discontinuance exemption)

Dear Ms. Brown:

On behalf of City of Jersey City ("City"), Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition ("Coalition") and Rails to Trails Conservancy ("RTC") (collectively, "City et al."), I am submitting herewith City et al.'s rebuttal memorandum, responding to guidance this agency received from the Advisory Council on Historic Preservation ("ACHP") on application of Section 110(k) of the National Historic Preservation Act ("NHPA"), 54 U.S.C. 306113, in this proceeding, and responding to claims made by (a) Consolidated Rail Corporation ("Conrail"), CSX Transportation, Inc. ("CSX"), and Norfolk Southern Railway Company ("NS") and (b) 212 Marin Boulevard, LLC, et al. ("LLCs" or "developer") relating to application of Section 110(k). In the absence of effective relief against the unlawful de facto abandonment and anticipatory demolition of the Harsimus Branch and Embankment manifest in this case, the Board must apply Section 110(k) to deny an abandonment licensing in this proceeding. The rebuttal memorandum includes, inter alia, motions to strike or requests to disregard certain materials for the reasons stated therein. City et al.'s filing also encompasses a series of appendices (exhibits), labeled A through X, with Appendices C through X in a separate volume.

Certificate of service. By my signature below, I certify service on 19 July 2021 by email attachment, or by USPS, postage pre-paid, first class (or equivalent), of City et al.'s rebuttal memorandum and all associated appendices, with the email or USPS posting to all individuals described as "parties" on the agency's docket appearing on the agency's website as of 18 July 2021, at their emails or addresses of record.

Thank you for your assistance in this matter.

Respectfully submitted,



Charles Montange
for City of Jersey City,
Rails to Trails Conservancy, and
Pennsylvania Railroad Harsimus Stem
Embankment Preservation Coalition

Att: memorandum, Appendices

cc (all with attachments): (a) clients -- City (P. Baker & T. Slattery for City and Mayor Fulop), RTC (Andrea Ferster, Esq.), and Coalition (M. Crowley and S. Gucciardos);
(b) all other parties per STB service list -- M. Rosenthal (for Conrail), M. Donato & P. Pfohl (for LLCs), E. Little (HCA), V. Luccio, P. Zirnis, R. Holloway (VNA), K. Williams, C. Perez (JCLC), P. Mahaysonand (JCPC), E. Strohmeyer (CNJ), C. Klein (HPNA), S. Marks, S. Pesin, R. Crown, D. Weber (VVPA), T. Ogorzalek (VVPA), D. Kaese (HPHA), J. Aviles (HJCH Cemetery), G. Remaud (Baykeeper), J. Edelman, T. Biasi, R. Kushner, D. Behrend (NJTPA), B. Stack (NJ Leg.), S. Pesin (FLSP), G. Scheiman, D. Saunders, R. Cornejo (BAPC)

BEFORE THE SURFACE TRANSPORTATION BOARD

Consolidated Rail Corporation –	)
Abandonment Exemption –	) AB 167 (Sub-no. 1189X)
In Hudson County, NJ	)
CSX Transportation, Inc. –	)
Disc. Ex. –	) AB 55 (Sub-no. 686X)
In Hudson County, NJ	)
Norfolk Southern Railway Co. --	)
Disc. Ex. --	) AB 290 (Sub-no. 306X)
In Hudson County, NJ	)

City of Jersey City, Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition, and Rails to Trails Conservancy Response to ACHP Guidance, Motions to Strike, and Rebuttals to Consolidated Rail Corporation, CSX Transportation, Inc., and Norfolk Southern Railway Co. and 212 Marin Boulevard, LLC, et al.

Charles H. Montange
Law Offices of Charles H. Montange
426 NW 162nd St.
Seattle, WA 98177
(206) 546-1936
Fax: -3739
c.montange@frontier.com
for City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition

Andrea Ferster
General Counsel
Rails to Trails Conservancy
The Duke Ellington Bldg.
2121 Ward Court, NW, Fifth Floor
Washington, D.C. 20037
(202)669-6311
fax: (202)223-9257
aferster@railstotrails.org
for Rails to Trails Conservancy

For filing: July 19, 2021

Table of Contents

Introduction	1
I. Response to ACHP June 15 Letter Providing Guidance to STB	3
A. Timeline	6
B. Intentional Adverse Effects	20
C. Significance of Adverse Effects	23
D. Intent to Evade Section 106	30
II. Motions to Strike	32
1. Paragraph in 2009 EA	32
2. Ryan's V.S. is not competent	34
3. Unpublished insurance litigation decision	37
III. Summary Rebuttal to Conrail and Developer	38
IV. Burden of Proof	43
V. Mitigation	49
Conclusion	57

Attached:

Appendix A [response to specific Conrail arguments]	[1]
Appendix B [response to specific developer arguments]	~1~

Rebuttal Appendices (Reb. App.)

	Appendix	Page
Rebuttal Appendix A [Conrail]	A	[above]
Rebuttal Appendix B [LLCs]	B	[above]
The following Appendices C to X are in a separate Volume:		
Kratz et al. Joint Verified Statement, July 2021 [expert op. on significant adverse effects and "blight"]	C	1
Wrieden/ONeill Joint Verified Statement, April 2019 [expert op. on loss of federal jurisdiction as adverse effect]	D	17
Wrieden/ONeill Joint Verified Statement, July 2021 [expert op. on significant adverse effects]	E	27
Curley V.S. dated Jan. 6, 2006, filed in F.D. 34818, with copies of the eight deeds executed by Mr. Ryan for Conrail to the LLCs	F	32
City of Jersey City et al – Pet. Dec. Order, FD 34818 served August 9, 2007; id. served Dec. 19, 2007	G	152
Misc. Conrail documents, including (a) Memo, Folk (Conrail) to Hasselman (Conrail), Jan. 28, 1985 and Exhibit 1 "Hudson Street Track"; (b) Dietz (Conrail) to Betak (Conrail), Jan. 15, 1988; (c) Anonymous, "Spur Determinations Made by Law Department"	H	172
Misc, City or City to Conrail documents, including	I	181

(a) Allen-Munley (City) to Conway (Conrail),
Feb. 19, 1992
(safety and debris issues including derailments)
(additional material and police reports also included)
(b) Day (Conrail) to Allen-Munley (City), May 11, 1992
(acknowledges problem, will correct)
(c) File Memo from John Mucha (City), March 29, 1994
(Conrail has advised it will abandon "viaduct" per ICC rules and then take out structures)
(d) File Memo from John Mucha (City), June 13, 1994
(Conrail has advised that it put Embankment bridge removal out for bid, bids to be received on June 24, 1994, at which point Conrail will file an IFE? [sic] to retire the track, no plans to remove Embankment, may sell as it]

Summary of National Bulk Carriers bridge demo contract	J	192
Letters from public officials to Conrail seeking/supporting City acquisition of Embankment (March 2003)	K	194
City Ordinance 03-010 (Jan. 2003) (landmark status for Embankment)	L	223
Letter, M. Donato (LLCs) to D. Wrieden (City), May 1, 2008 seeking reinstatement of proceedings for demolition permits	M	228
Letter, D. Saunders (NJ SHPO) to A. Quinlan (STB), dated Jan. 26, 2009 (Section 110(k) is relevant)	N	246
Joint Stipulation, July 7, 2010, in USDC for DC 09-1900	O	251
Letter, D. Horgan (LLCs) to J. Irwin (STB OEA) , Dec. 7, 2015	P	255
Letter, Mayor Fulop (City) to V. Rutson (STB OEA), Dec. 14, 2014	Q	261

Letter, D. Saunders (NJ SHPO) to A. Quinlan (STB), dated May 7, 2009 (loss of federal jurisdiction equals loss of historic resource under process STB has set up)	R	264
ACHP "policy statement on anticipatory demolition," June 22, 1987	S	268
Table of some of the LLCs' litigation against City	T	270
Conrail Response and Objections to City et al. discovery in F.D. 34818	U	273
Conrail 2002 bid package describing the eight blocks in question as a portion of a line of railroad (penultimate page)	V	280
Memo, Crowley to Munley, June 12, 2002	W	294
Letter, P. McAuley (counsel for Conrail) to C. Langston (Planning Board Chair) et al., June 29, 2021	X	296

BEFORE THE SURFACE TRANSPORTATION BOARD

Consolidated Rail Corporation –	)
Abandonment Exemption –	) AB 167 (Sub-no. 1189X)
In Hudson County, NJ	)
CSX Transportation, Inc. –	)
Disc. Ex. –	) AB 55 (Sub-no. 686X)
In Hudson County, NJ	)
Norfolk Southern Railway Co. --	)
Disc. Ex. --	) AB 290 (Sub-no. 306X)
In Hudson County, NJ	)

City of Jersey City, Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition, and Rails to Trails Conservancy Response to ACHP Guidance, Motions to Strike, and Rebuttals to Consolidated Rail Corporation, CSX Transportation, Inc., and Norfolk Southern Railway Co. and 212 Marin Boulevard, LLC, et al.

Introduction

City of Jersey City ("City"), Rails to Trails Conservancy ("RTC"), and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition ("Coalition") (collectively "City et al.") make this Rebuttal in the above-referenced proceeding addressing the anticipatory demolition by Consolidated Rail Corporation ("Conrail") in violation of Section 110(k) of the National Historic

Preservation Act ("NHPA"), 54 U.S.C. 306113. City et al. make this Rebuttal consistent with the guidance provided by the Advisory Council on Historic Preservation ("ACHP") in its letter dated June 15 (see Part I, infra).[1] City et al also respond herein to the June 21 filing of Consolidated Rail Corporation ("Conrail"), CSX Transportation, Inc. ("CSX") and Norfolk Southern Corporation ("NS") (collectively Conrail unless the context explicitly indicates otherwise), and in addition provide more detailed response in Rebuttal Appendix ("Reb. App.") A.[2] City et al. likewise respond herein to arguments filed on the same date by Conrail's chosen developer (eight commonly owned and managed LLCs referred to herein as "the developer," "212 Marin Blvd LLC, et al.", or "LLCs"),[3] and in addition in

[1] The ACHP guidance appears on the STB website as an environmental comment rather than a filing in this proceeding.

[2] This Board's May 19, 2021, decision in this proceeding made initial submissions on the Section 110(k) issue due on June 18, and rebuttal submissions due on July 19. However, on the evening before June 18, that date was declared a federal holiday. Thus, many filings submitted June 18 (including that of City et al..) were not recorded as filed until June 21. Under the circumstances, City et al. assume that all will be treated as timely.

[3] The eight LLCs failed to pay their taxes and many years ago suffered tax sale certificates to be issued on all the properties in question, which were acquired by NV Funding, LLC. NV Funding, LLC is understood to be owned and controlled by the same person or persons who own and control 212 Marin Blvd LLC, et al. City et al. are concerned that NV Funding's role in this situation may be yet another attempt by the developer to evade state and federal law. City et al. reserve all rights as to NV Funding, LLC. The developer actually represents that it has contracted with another entity ("Albanese Development Corporation") to develop the property.

Reb. App. B. The Response includes three motions to strike (Part II, infra), a summary refutation of Conrail and the LLCs (Part III), and information on burden of proof (Part IV) and mitigation (Part V).

I. Response to ACHP June 15 Letter Providing Guidance to STB

In its June 15 letter, ACHP states that in determining the applicability of Section 110(k), STB "should carefully review the timeline" of Conrail's actions. STB should then "consider whether: (1) an intentional significant adverse effect to a historic property occurred as a result of [Conrail's] actions, and (2) in carrying out that action, whether "there is evidence of [Conrail's] intent to avoid Section 106 review." Should STB follow ACHP's guidance, then the agency must hold that Section 110(k) applies.

A timeline is useful, but must be read in the context of what Conrail knew or should have known, and especially what it knew or should have known if it had complied with federal rail abandonment law. As the D.C. Circuit recognized, the City hesitated in acquiring the Embankment properties because abandonment authority is necessary before rail lines may be acquired for not-rail purposes, and none had been granted for the Harsimus Branch. Conrail therefore sold the property to the LLCs in 2005 because they evidently were willing to assume the risk of unlawful acquisition See City of Jersey City v. Consolidated Rail Corporation, 668 F.3d 741, 743-44 (D.C. Cir. 2012). As it turns out, the City was

right: the Branch was clearly a line of railroad requiring abandonment authorization.

This case tests whether a party seeking to act lawfully (the City) must nonetheless be penalized at the expense of loss of historic assets it seeks to preserve for public purposes, whereas parties (Conrail and the LLCs) who knew or should have known they were proceeding unlawfully nonetheless reap the benefits of their unlawful conduct, by being permitted to dismember and to destroy historic assets without any meaningful consideration of any mitigation. If the answer to this test favors Conrail and the LLCs, then the integrity of STB's abandonment processes is crippled, subversion of Section 106 will be the norm and Section 110(k) is a dead letter.

Had Conrail complied with federal rail abandonment law, Conrail would have sought an abandonment authorization and completed Section 106 compliance in 1994 prior to initial trestle removal in that year, or at the very latest, 2005, when the City requested abandonment authorization or proof that none was required during Conrail's marketing of the Embankment parcels to developers. During the Section 106 process, all the following historic assets would have been identified as adversely affected by the abandonment:

Pennsylvania Railroad Harsimus Branch Embankment

Pennsylvania Railroad Harsimus Branch Right-of-Way Historic District

Pennsylvania Railroad (New York to Philadelphia) Historic District

New Jersey Railroad Bergen Cut Historic District

Hamilton Park Historic District and Extension

Harsimus Cove Historic District

Italian Village Historic District

St. Anthony's Polish Roman Catholic Church, School Complex and Convent

St. Anthony's Padua Roman Catholic Church

Albaniel Dye & Chemical Co.

Holy Rosary Roman Catholic Church Complex

Immigrant Roman Catholic Church Historic District[4]

The parties potentially could have worked out a means to ameliorate adverse impacts, and the City would have had the opportunity to protect the key assets (Harsimus Branch and Embankment) using a combination of the federal preferential purchase right embodied in 49 U.S.C. 10905 (then codified as Revised Interstate Commerce Act 49 U.S.C. 10906) and/or state law preferential purchase rights.

Instead of timely compliance with federal law, Conrail proceeded unlawfully to sell off historic assets without complying with federal abandonment licensing

[4] STB OEA, Cultural Resources Effects Assessment Report (CREAR) Addendum, served Nov. 12, 2019, at 40 (list of adversely impacted historic assets for both Scenarios 2 and 3, last five for Scenario 2 only).

requirements including Section 106. The timeline of what happened thus diverges sharply from what should have happened (namely an abandonment application and Section 106 compliance) commencing no later than 1994 and certainly before the 2005 sale by Conrail of eight blocks of the Branch inclusive of the Embankment to the developer.

A. Timeline

A detailed timeline of Conrail's unlawful de facto abandonment, and corrective of misstatements by Conrail and/or the developer, is as follows:

Pre-Conrail. The Harsimus Branch (Pennsylvania Railroad line code 1420) was a mainline for freight into/out of Harsimus Cove in Jersey City.

1973. Faced with bankruptcies of northeastern railroads (including the Penn Central, which was a successor to the Pennsylvania Railroad), Congress adopts the Regional Rail Reorganization Act of 1973, Pub. L. No. 93-236, 87 Stat. 985 (1974) ("3R Act"), out of which eventually arises Conrail.

1975. USRA, Final System Plan at 272 (July 21, 1975) designates Harsimus Branch (line code 1420) to Conrail as a "line." In addition, it designates the Hudson Street Branch (line code 1440) to Conrail as a "line." Traffic over line code 1440 had to operate over line code 1420.

1976. Fairfax Leary (bankruptcy trustee) deed on March 31 conveyed to Conrail the Harsimus Branch (former Pennsylvania Railroad mainline for freight) as a "line of railroad."[5] Conrail commenced operations on April 1, 1976.

1976 to approximately 1994. The Branch is in active operations at acquisition and remains in operation for railroad purposes. Indeed, the line is the only access for shippers on another line (Hudson Street Track) to the interstate rail network. The line had over 3000 carloadings per year into the mid-1980s.[6] Conrail evaluates it for Interstate Commerce Commission (ICC) abandonment but finds it too profitable.[7] Traffic drops off in the latter 1980s, at which point a Conrail memo discusses possible "expedited abandonment."[8] The Harsimus Branch contains a massive six-block long Embankment grade-separated from underlying City streets. The six segments were originally linked by bridges, descending to street level after crossing Marin Boulevard (formerly Henderson Street). On the east side of the Embankment tracks were elevated on trestles resting on stone and masonry stanchions all the way to the Palisades. City expresses concern over

---

[5] See Appendix XVI to City et al.'s Opening Statement in City of Jersey City et al., Pet. for Dec. Order, F.D. 34818 (referenced in Decision in F.D. 34818, served Aug.9, 2007. See also App 016 (Day Exhibit 1).

[6] Memo, Folk (Conrail) to Hasselman (Conrail), Jan. 28, 1985 and Exhibit 1 "Hudson Street Track" in Reb. App. H at 173-75.

[7] Id.

[8] Dietz (Conrail) to Betak (Conrail), Jan. 15, 1988, App. at 019 (Day Exhibit 2) and in Reb. App. H at 176.

falling debris and derailments and requests repairs in 1992.[9] Conrail ultimately responds that it intends to abandon and demolish the line when its Marion Junction project is completed and it has satisfied "ICC rules."[10]

1994. Although the Harsimus Branch is similar to the "Highline" in Manhattan (except the Branch has more use), Conrail does not treat it as a line. Instead, Conrail internally (and unlawfully) reclassifies the line as a "spur" [11] and begins an unlawful de facto abandonment of the Harsimus Branch by removal of bridges and trestles. In particular, in 1994 Conrail authorizes a redeveloper (National Bulk Carriers) to demolish the bridge over Marin Boulevard at the east end of the Embankment.[12] National Bulk Carriers contracts with Burns and Fiorina to perform the work (July 1994).[13]

1996. Conrail demolishes the remaining trestles.[14]

1999. Over the express protest of Conrail's president (Mr. O'Toole), who claimed the railroad had degraded the Embankment to the point it was no longer

---

[9] Allen-Munley et al (City) to Conway et al (Conrail), Feb. 19, 1992, in Reb. App. I, at 182-83 (related memos and police reports at 184-87. Conrail indicates it will repair at 188-89.

[10] E.g., File Memo from John Mucha, March 29, 1994, in Reb. App. I at 190.

[11] See "Spur Determinations Made by Law Department" in Reb. App. H at 179-80.

[12] File Memo from John Mucha, June 13, 1994, stating that Conrail called to advise the demo project was out for bid. Reb. App. I at 191.

[13] See summary contract attached as Reb. App. J at 193.

[14] App. I at 027-28 (Day Exhibit 3) (O'Toole Letter)

historic,[15] Embankment is listed on the New Jersey State Register of Historic Places[16] and deemed eligible (owner objection) for the National Register of Historic Places.[17]

2003. In January at Council hearings[18] and in March by letters from Mayor Cunningham, members of Congress, state officials, neighborhood associations and others,[19] City expressly sought Conrail cooperation to preserve the Embankment. City designates the Embankment a City Historic Landmark over Conrail objection.[20]

2004. City authorizes eminent domain against Embankment.[21]

---

[15] Id.

[16] Letter, D. Guzzo to Conrail, Jan. 25, 2000 (congratulating Conrail on the entry of the Embankment onto the New Jersey Register of Historic places on Dec. 29, 1999) (first submitted in Exhibit I to City et al. Opening Statement in F.D. 34818).

[17] Certification of Eligibility Feb. 17, 1999, in Exhibit I in Opening Statement, supra.

[18] E.g., 037 et seq. (Day Ex. 5, Jan. 22, 2003 transcript of J.C. Council).

[19] Reb. App. K, at 195 -222.

[20] City Ordinance 03-010, Jan. 2003 (Reb. App. L at 224-27); Conrail opposition is set forth in the transcript attached as Exhibit 5 to the Day V.S., App 043 and passim ("we [Conrail] are opposed to this particular landmark designation because we think it overreaches and takes too much property away from potential uses for the public. … Many of our properties have been turned into – have been developed and are now producing tax revenues … [W]e have been working … with developers who also work with the City to try to turn this property back to productive use").

[21] Ord. 04-096, referenced at App. 239 (part of one of the Curley V.S.'s exhibits).

2005. Faced inter alia with a written request from the City for proof of lawful abandonment,[22] Conrail on July 13 sells the six Embankment parcels plus two at-grade parcels of the NHPA-protected Harsimus Branch to the LLCs pursuant to deeds stating they were part of a "line of railroad."[23]

2005. The LLCs promptly (on or about August 18, 2005) files plan to demolish the Embankment and redevelop the property for retail housing.[24] The LLCs engage in a property swap severing the first at-grade parcel west of the Embankment in the NHPA-protected Harsimus Branch.[25]

2006. City et al. bring a declaratory proceeding (F.D. 34818) at STB on January 6. Shortly after City et al. file and serve, the LLCs tear out a stanchion on the first at-grade block (on or about January 16).[26] City promptly moves for a stay.[27]

---

[22] App. 150 (Curley V.S. Ex. I).

[23] App. 151 (Curley V.S. Ex. H). The deeds are set forth in Appendix I to the additional Curley V.S. in Reb. App. F.

[24] Reb. App. F (Curley V.S., at paras 3-4, and Appendix II to V.S.). The "line of railroad" language appears at Reb. App. F. 042, 051, 060, 069, 078, 087, 096 & 106.

[25] See Reb. App. F (Curley V.S. App. II, Claudia Jastrzebski certifications of June 30 and May 25 at 146-47); the preparation for application for the first at-grade block appears to have been made to City Planning by the developer and Jastrzebski approximately six weeks before Conrail deeded its property to the developer.

[26] App. 197-98 (Curley V.S. discussing stanchion removal).

[27] F.D. 34818, City et al. pleading filed Jan. 23, 2023.

2007. STB finds the Harsimus Branch is a line of railroad on August 9.[28] On October 12, Conrail enters into another contract with the LLCs under which Conrail is required to effectuate/confirm the sale to developer whatever STB does.[29] STB denies reconsideration of the line determination on December 19.[30] The LLCs and Conrail file multiple petitions for review in D.C. Circuit in 2007 and 2008.[31]

2008. The LLCs file for various certificates to demolish the Embankment.[32] Conrail formally joins in the developer's demolition permit requests on December 13. [33]

2009. Conrail in 2008 circulated some environmental materials in preparation of filing for abandonment. In response, citing the large number of historic assets involved, the demolition of bridges and trestles, and the sale of historic properties prior to seeking abandonment authority, City et al.[34] and NJ

---

[28] F.D. 34818, decision served Aug. 9, 2007, Reb. App. G, at 153.
[29] App. 075-76.
[30] F.D. 34818, decision served Dec. 19, 2007, Reb. App. G, at 164.
[31] The first appeal, by the LLCs, was on October 2, 2007.
[32] Reb. App. M at 229-45 (Letter from Michele Donato (developer) to D. Wrieden, City HPO, dated May 1, 2008 and examples of two out of six essentially identical applications to demolish the Embankment. Ms. Donato notes that Conrail is a joint applicant for demolition. Ms. Donato states that Conrail "will soon be filing its application for exempt abandonment approval with STB." Donato Letter at p.2.
[33] App. 077-78.
[34] Letter and Exhibits on behalf of City et al. filed January 21, 2009, in AB 167-1189X.

SHPO[35] called on STB to evaluate the applicability of Section 110(k) on January 21 and January 26, 2009, respectively. Conrail filed a "Notice of Exemption" ("NOE") for abandonment authority on February 28. STB commenced AB 167-1189X and related cases by a decision on March 18.[36] Five days later (March 23), STB OEA issued its 2009 Environmental Assessment ("EA") on which Conrail and the developer rely in this proceeding. For irrelevant reasons, the EA at p. 14 purports to find Section 110(k) inapplicable.[37] After a brief flurry of activity, the case goes into hiatus after the D.C. Circuit issued a decision on June 26, 2009, on the Conrail/developer appeal from F.D. 34818. The D.C. Circuit ruling was purely procedural, but it vacated STB's line determinations, holding that only the 3-R Act Special Court may determine whether a line was conveyed as a line subject to STB jurisdiction, or a spur. City et al. promptly filed a declaratory proceeding in 3-R Act Special Court (now the U.S.D.C. for D.C.) to determine that the Harsimus

---

[35] Letter, Saunders (NJ SHPO) to Quinlan (STB), Jan. 26, 2009, filed in AB 167-1189X, Reb. App. N at 248.

[36] AB 167-1189X and related cases, served March 18, 2009.

[37] The EA claimed that Conrail's conduct was excused because the City had encouraged redevelopment of the Jersey City downtown in the 1980s and removal of trestles in the 1990s. These assertions are irrelevant or amount to the extraordinary claim that because the industrial landscape was changing, Conrail automatically can abandon lines without seeking STB authority. In any event, STB OEA and STB have subsequently represented that Section 110(k) matters are not to be considered by OEA but are reserved to the Board. City et al. are moving for relief against the paragraph concerning 110(k) at p. 14 of the 2009 of the EA later in this submission. It unreasonably distorts the record.

Branch was conveyed to Conrail as a line. The STB proceeding then went into hiatus for four years. During this interval, Conrail and the LLCs contested the "standing" of City et al. to seek relief in Special Court. City et al. prevailed in the D.C. Circuit.[38] On return to Special Court, the LLCs conceded that the Harsimus Branch is a line, so stipulated,[39] and charged that Conrail engaged in fraudulent misrepresentations to the contrary.[40] Special Court granted summary judgment to City et al., in 2013,[41] the LLCs appealed, and the D.C. Circuit granted summary affirmance on February 19, 2014.[42]

2014. STB lifted its abeyance order in the case in a decision served August 14, 2014. (The decision implies that Conrail engaged in other unlawful abandonments and sales throughout downtown Jersey City to other developers and "Jersey City Development Agency [sic]."[43] The implication that shippers had left

---

[38] City of Jersey City v. Conrail, 668 F.3d 741 (D.C. Cir. 2012).
[39] Reb. App. O at 252 (filed July 7, 2010 in U.S.D.C. for D.C. 09-1900).
[40] App. 108 et seq. (filed Oct. 4, 2010, in U.S.D.C. for D.C. 09-1900).
[41] City of Jersey City v. Conrail, 968 F.Supp. 2d 301 (D.D.C. Sept. 13, 2013),
[42] City of Jersey City v. Conrail, 2014 U.S.App. Lexis 3067, filed Feb. 19, 2014.
[43] STB in its Decision served August 11, 2014 says Conrail had sold "much of the trackage in the area to developers or the Jersey City Development Agency." There is no Jersey City Development Agency; there is a Jersey City Redevelopment Agency, which usually works with developers to acquire and redevelop property for commercial purposes. Slip. at 3.

STB in its August 11 Decision also asserts the "Agency" negotiated to acquire the Embankment "in 1984." Slip at 3. City et al. have found nothing to support that claim. Conrail used the Embankment until 1994. It was presumably not for sale or demolition until Conrail purported to reclassify it as a spur in that year. STB in its August 11 Decision claims Conrail in 1994 at the request of the City

is misleading; there were still numerous shippers including a major transload in the area into the mid-1980's with thousands of carloadings per year.[44]) As a follow up to the Decision served August 14, 2014, STB OEA engages in after-the-fact Section-106-like process to identify historic resources and informs the parties it is no longer responsible for Section 110(k).

"permitted the City and a private developer to remove bridges on the Embankment." Slip at 3. This claim is inaccurate and misleading (and may be based on the faulty paragraph in the 2009 EA). As indicated in the timeline, City in 1992 asked Conrail to maintain its bridges and Conrail informed the City it intended to remove them once it completed required ICC procedures and construction at Marion Junction. See Reb. App. H & I. Conrail gave permission to a redeveloper to remove one bridge (over Marin) in 1994, presumably after it arbitrarily internally reclassified the line as a spur. (The City granted a demolition permit at the redeveloper's -- and presumably Conrail's -- request because the bridge crossed a City street.) So far as City et al. are aware, Conrail took out the remaining bridges and trestles in 1996. Conrail acknowledged responsibility for the bridge removal in its 1999 sworn letter to NJ SHPO, arguing (unsuccessfully) that it (Conrail) had so degraded the Embankment that it was no longer eligible for the State Register.

The narrative in the August 11 Decision is correct insofar as STB suggests that the Jersey City Redevelopment Agency (JCRA) was no longer interested in acquiring the Embankment for redevelopers after the Embankment was listed on the State Register in 1999. Once the property was listed on the State Register, certain restrictions on City participation in commercial redevelopment applied such that JCRA participation was no longer viewed as utilitarian for developers (this was anticipated by Conrail in O'Toole's 1999 letter objecting to the State listing). The City, however, continued to consider acquisition for public purposes, rather than redevelopment purposes. See Reb. App. K (letters seeking Conrail cooperation for City acquisition). The actual record does not support Conrail's spin.

[44] See Reb. App H at 173-78 (profitable through at least 1988).

2015. In response to inquiries from OEA, the LLCs' counsel explains in essence that development of the Harsimus Branch (and Embankment) is economically inevitable in the event of unconditioned abandonment authorization, and that once it passed into private hands the City could no longer afford to acquire it for public purposes.[45] Mayor Fulop states that the City wishes to keep the property intact for uses consistent with the City's historic preservation ordinance, including rail, open space and historic preservation purposes, and, if allowed to acquire pursuant to OFA or other remedies, would agree to comply with the Department of Interior's Standards for Treatment of Historic Properties in connection with the City's use of the property.[46]

2018. By 2018, STB OEA and NJ SHPO identify many additional historic sites and districts in addition to the Embankment in the Area of Potential Effect (APE) that would potentially suffer adverse effects by abandonment. These included the Harsimus Branch at issue in this proceeding itself.[47]

[45] Letter, D. Horgan (for 212 Marin Boulevard LLC, et al.) to J. Irwin, STB OEA, dated Dec. 7, 2015, at p. 2 (EI-21241 in environmental comments), Reb. App. P at 257.

[46] Letter, Mayor Fulop (Jersey City) to V. Rutson, STB OEA, Dec. 14, 2015, EI 21253, Reb. App. Q at 262-63.

[47] Cultural Resources Identification Addendum at e.g., pp. 1-11 to 12 and 4-1 (STB OEA, served October 16, 2018 in AB 167-1189X and related cases).

2019. STB OEA issues a Cultural Resources Effects Assessment Report (CREAR) dated March 2019. After taking comments, STB OEA issues a CREAR Addendum in November 2019. The CREAR Addendum at page 40 states that

> "OEA has determined that the Board's approval of the proposed abandonment (the Action alternative) could adversely affect historic properties listed in or eligible for listing in the National Register because the abandonment [authorization] would permit reasonably foreseeable redevelopment of all or part of the Harsimus Branch right-of-way."

In particular, OEA found that total development along the lines sought by the developer (Scenario 2) would have adverse effects on all historic assets, and partial development along the lines of a settlement (Scenario 3) would have adverse effects on at least some of the historic assets. However, the OEA found that preservation of the Harsimus Branch and conversion into a trail and park (Scenario 1) would have no adverse effect or no effect on any identified historic assets. See CREAR Addendum at p. 37-38 (table). In contrast, the OEA found that the "No Action Alternative" (defined as denial of Conrail's abandonment request) would have "No Effect on historic properties." The "No Action Alternative" amounts to application of Section 110(k) to the proceeding. The agency has thus conceded that the No Action Alternative in a sense best preserves all Section 106 assets involved.

The CREAR Addendum acknowledges potential serious adverse impacts (under all development scenarios) on the following NHPA-protected assets in the event abandonment is authorized:

Pennsylvania Railroad Harsimus Branch Embankment

Pennsylvania Railroad Harsimus Branch Right-of-Way Historic District

Pennsylvania Railroad (New York to Philadelphia) Historic District

New Jersey Railroad Bergen Cut Historic District

Hamilton Park Historic District and Extension

Harsimus Cove Historic District

Italian Village Historic District[48]

The CREAR Addendum found that full demolition and redevelopment of the entire eight blocks (STB "Scenario 2") could also adversely impact:

St. Anthony's Polish Roman Catholic Church, School Complex and Convent

St. Anthony's Padua Roman Catholic Church

Albaniel Dye & Chemical Co.

Holy Rosary Roman Catholic Church Complex

Immigrant Roman Catholic Church Historic District

[48] CREAR Addendum at 40 (list of adversely impacted historic assets for both Scenarios 2 and 3).

Both the CREAR and the CREAR Addendum maintained that the Board could not consider meaningful mitigation, and that its powers under Section 106 were limited to imposing only documentation requirements.[49] City et al. have many times explained that this claimed lack of power is not only incorrect in the unlawful de facto abandonment context, but also pernicious. It is wrong for a variety of reasons. For one thing, STB has broad power under 49 U.S.C. 10903(e) to condition abandonments for the public convenience and necessity. See Consolidated Rail Corp. v. ICC, 29 F.3d 706, 714 (D.C. Cir. 1994) (imposing conditions on developers as a condition of abandonment authorization). For another, STB has power to protect the integrity of its jurisdiction when railroads engage in sales of their property in evasion of Board authority. Here Conrail evaded STB authority by selling the Embankment before seeking, much less obtaining, the required STB license. If the Board were to void the deeds to the developer, the eight blocks of the Harsimus Branch, inclusive of the Embankment, would be restored to Conrail's ownership. Then, if the Board imposed a public use condition pursuant to 49 U.S.C. 10905, the City would have 180 days to use either NJSA 48:121-125.1 or eminent domain to secure at least that portion of the property from Conrail for preservation. The Board should not countenance Conrail's action in depriving the City of its preferential purchase rights under

[49] CREAR at 5-2; CREAR Addendum at 51-52.

Section 10904. Third, because the OEA, which prepared the CREAR and CREAR Addendum, does not have, or was deprived of, authority to deal with Section 110(k), the OEA altogether failed to consider the Board's power to deny abandonment authority because of anticipatory demolition.

OEA's claim that the agency can do nothing in the face of unlawful de facto abandonments other than rubberstamp is pernicious, in that it encourages railroads to engage in unlawful de facto abandonments, and otherwise to ignore STB abandonment jurisdiction. This subverts the integrity of STB abandonment jurisdiction, rewarding unlawful conduct and penalizing lawful conduct as happened in this proceeding. An agency that says it can do nothing to enforce a particular rule in practice turns the rule into a dead letter that the regulated industry may (and over time will increasingly) disregard. That leads to a break down in Rule of Law.

STB in the CREAR says it has no power over non-railroad entities (but see Consolidated Rail Corp. v. ICC, supra), although it "can adopt voluntary mitigation that a non-railroad entity commits to undertake." CREAR at 5-2. The CREAR Addendum also implies that the agency lacks power over private parties to whom the railroad has deeded property. But this is not the case in an unlawful de facto abandonment involving anticipatory demolition. The agency can void deeds out. The agency can employ Section 110(k).

In any event, City et al. have a number of suggestions for enforcement (mitigation of the adverse effects arising due to the unlawful de facto abandonment that occurred here) which we will address in Part V, infra.

2019-2020. Encouraged to negotiate by STB[50], the parties sign a term sheet and endeavor to reach a settlement, encumbered, of course, by Covid limitations. In December 2019, Conrail withdraws from negotiations without explanation. The developer states that STB intends to conclude its after-the-fact 106 process within months and then authorize an unconditional abandonment authorization. Negotiations cease.

City et al. will now turn to intentional adverse effects, whether they are significant, and whether they are a manifestation of intent to evade Section 106.

B. Intentional Adverse Effects

An effect is intentional if it is a known consequence of an action that may have been undertaken for other purposes.[51] Thus, throwing trash on the street is intentional even if undertaken only to clean a house. In the context of this case,

---

[50] E.g., Email, V. Rutson (STB OEA) to M. Donato, et al., Nov. 16, 2018.

[51] An action or effect is intentional if an actor acts with the purpose of producing the consequence or if the actor knows the consequence is substantially certain to result. In addition, willful blindness (sometimes called ignorance of law or contrived ignorance) is equivalent to knowledge. Moreover, a corporation is subject to the collective knowledge doctrine. The issue is not what a particular person thinks; the issue is what all of the employees and agents of the corporation knew or should have known. See City et al. opening submission at 6-7 and sources cited.

creation of an adverse effect is intentional if it is a known consequence of minimizing losses and/or maximizing profit by means of not maintaining, demolishing, and/or sale of some or all of an inactive line of railroad. Conrail is charged with knowledge by 1994 of all historic assets on the line because it knew or should have known (a) the line required an ICC/STB abandonment authorization, (b) Section 106 compliance in the abandonment authorization process would identify historic assets potentially impacted by the process, and (c) avoidance of the abandonment process amounted to creating a condition of willful blindness (equivalent to positive knowledge) of the presence of all NHPA-protected assets later determined to be impacted by Conrail's actions.[52] The following factors demonstrate the intentional nature of the adverse effects resulting from Conrail's actions:

In the period prior to 1994, pieces of the Embankment trestles were falling on streets below and creating safety hazards in Jersey City and liability risks for Conrail. Failure to maintain an historic asset constitutes deterioration by neglect (adverse effect per 49 C.F.R. 800.5(a)(2)(v)).

In the period 1994-96, Conrail allowed a developer to remove a bridge (as explained in the Timeline), and then itself in 1996 removed the remaining trestles,

[52] The adversely effected historic assets are listed in the CREAR Addendum at 40.

rather than repair them. Such physical destruction or damage to all or a part of an historic property is an adverse effect per 49 C.F.R. 800.5(a)(2)(i).

In 1999, the Embankment was placed on the State Register and was clearly eligible for the National Register by 2000. At that point, Conrail is charged with positive knowledge, not just willful blindness, that any action it took concerning the Embankment would affect an historic asset.

In 2005, Conrail sold the Embankment to the LLCs. The LLCs, joined by Conrail, then sought development and demolition on the entire set of parcels. Conrail, the developer and OEA all claim this places the property outside of Federal control, and this purported transfer was clearly without any conditions or limitations on destruction of the Section 106-protected assets in question.[53]

In addition, Conrail suffered the developer to swap property in the first at-grade block, further severing the NHPA-protected Branch, and further suffered the developer to "improve" that block (from a developer's if not a historic preservation perspective) by removing a stanchion. This reaffirms that the transfer and sale was obviously "without adequate and legally enforceable restrictions or conditions to

[53] The eight Conrail deeds purport to convey "forever …all right, title and interest" of Conrail in each of the eight parcels, with a retention (at the bottom of p. 3 of each deed) only of certain rights with respect to existing billboards. See Reb. App. F at 038, 047, 056, 065, 074, 083, 092 and 102. Conrail never proposed to reserve a rail easement. See Reb. App. V at 283 with signboard reservation at 285 (2002 bid package).

ensure long-term preservation of the property's historic significance." 49 C.F.R. 800.5(a)(2)(vii).

Transfer of a property out of Federal jurisdiction without conditions for long-term preservation is a clear adverse effect per 49 C.F.R. 800.5(a)(2)(vii).

In sum, Conrail took a series of actions affecting the Embankment which were adverse, including demolition by neglect, demolition, and sale outside of STB jurisdiction. All of these adverse effects also adversely impacted the historic districts of which the Embankment was a part (e.g., Harsimus Branch, Pennsylvania Railroad) as well as adjoining historic districts (Harsimus Cove, Hamilton Park, Italian Village) for the same reasons the Embankment was adversely impacted.

Conrail is remorseless in this regard, as most recently evidenced by its arbitrary withdrawal from settlement negotiations (even after signing a term sheet) in December 2020.

C. Significance of Adverse Effects

ACHP draws a distinction between "adverse effects" and "significant adverse effects." ACHP, however, notes that this does not mean that the property has to be "completely demolished or destroyed" in order to constitute a significant adverse effect. The actions of Conrail clearly meet the significant adverse effect standard.

The key adverse impact that must be mitigated is loss of federal control without "adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance." 36 C.F.R. 800.5(a)(2)(vii). The CREAR did not discuss loss of federal control as an adverse effect. City et al. filed comments, including expert testimony, that this was the most obvious adverse impact. City historic preservation staff indicated that "the loss of federal jurisdiction is equivalent to destruction of the [Harsimus] Branch and the Embankment, and would cause an adverse impact on all the Section 106-protected properties."[54] Destruction is unquestionably significant, as implied in ACHP's guidance letter to STB. Thus, loss of federal control here constitutes a significant adverse effect.

City et al. supply herewith two additional Joint Verified Statements. The first statement, by independent historic preservation consultants Mr. Kratz, Ms. Zakalak and Ms. Kaese conclude in their expert opinion that

> "the facts of this case demonstrate a clear significant adverse effect flowing from Conrail's pre-abandonment actions on at least the Embankment and the Harsimus Branch, as well as on adjoining historic properties and inclusive of other historic districts of which the Branch or Embankment are a part.
>
> "In particular, we highlight that the developer and Conrail transferred eight blocks of the Branch inclusive of the Embankment in 2005 without any

[54] Joint Verified Statement of Daniel Wrieden and Margaret O'Neill, City Historic Preservation Officer and Historic Preservation Specialist respectively, dated 4/13/2019, at p. 2, Reb. App. D at 019.

conservation restrictions. The developer then purported to swap (sever) portions of one of the at-grade parcels with another owner, resulting in a severance. Loss of federal control (which an abandonment authorization represents) will allow the developer to pursue development of the entire Harsimus Branch.

"Development is more than conjectural; under current and foreseeable real estate market conditions, development, i.e., destruction, of the Embankment and Branch are inevitable. In 2015, the developer, via his attorney's letter, informed this agency by letter that economic conditions are such that development (destruction) of the Embankment and Branch is inevitable.

"Real estate development in the areas of Jersey City adjacent to and near to the Embankment validates the developer's 2015 prediction of development pressure on the Embankment and Branch. Even the pandemic-period slowdown in the commercial-office market has not stopped commercial development in downtown Jersey City and, close to the western end of the Branch, at Journal Square.

"Conrail's actions (at least the 2005 sale) amounted to significant adverse impacts by reason of loss of federal control without long-term preservation conditions (36 CFR 800.5(a)(2)(vii)). The loss of jurisdiction by the developer's own concessions during this agency's after-the-fact 106 process necessitate that conclusion that the loss of federal control will result in the property being developed. This amounts to demolition/destruction of the Embankment and the Branch, which must be deemed an adverse effect that is not simply significant but catastrophic."

Kratz et al V.S. at 5-6 (Reb. App. C at 006-007). The experts supply further detail to back up their conclusions at V.S. pp. 7-9 (Reb. App. at 008-010).

Daniel Wrieden (Jersey City's Historic Preservation Officer) and Margaret O'Neill (Senior Historic Preservation Specialist in Jersey City's Division of Planning) concur with the finding of significant adverse effects. In their Joint Verified Statement at p. 2 (Reb. App E at 029), they state that "we find that loss of

federal control, without preservation conditions in place, would be a significant adverse effect on the historic resource." Mr. Wrieden and Ms. O'Neill note that the CREAR Addendum indicates that all development scenarios will pose adverse effects on historic resources, whereas denial of abandonment authority will pose no effect. Due to development pressures which they identified in their 2019 Verified Statement (Reb. App. D at 019) in connection with OEA's March 2019 CREAR, "the loss of federal control must be viewed as itself a significant adverse effect." See Reb. App. E at p. 030.

Conrail and the developer conceded that the railroad has engaged in actions that significantly adversely affect relevant historic assets. For example, Conrail argued in its1999 letter (O'Toole to Guzzo) that the railroad had so degraded the Embankment by removal of trestles as to render it ineligible for historic designation.[55] This alone is an admission of significant adverse impact, but it of course follows that the subsequent unrestricted sale to the developer is even more significant. Indeed, during the course of STB OEA's after-the-fact Section 106 process, Conrail and the developer argued -- and STB OEA opined[56] -- that Conrail's 2005 sale took the Harsimus Branch outside of STB jurisdiction so that the agency no longer had power to consider or to impose adequate and legally

[55] App. 021-22 (Day V.S. Exhibit 3).
[56] See STB CREAR at 5-2 (no jurisdiction over non-railroads).

enforceable restrictions or conditions to ensure long-term preservation. If STB agrees with its OEA that the agency lacks any authority to unwind or otherwise remediate Conrail's unlawful abandonment, then the adverse effect to the Embankment and Branch is as serious and irreparable as complete demolition of the property.

In 2015, STB OEA queried the LLCs concerning the fate of the Harsimus Branch post-abandonment. The LLCs attorney (then Mr. Horgan) asserted that upon abandonment authorization,

> "the property will be developed primarily or exclusively for residential real estate purposes, with multifamily, luxury housing. It will not be developed as a passive open space, an active park, or some other public use. Nor will it be developed as a corridor for passenger rail, or light rail services."

Letter, D. Horgan (for 212 Marin Boulevard LLC, et al.) to J. Irwin, STB OEA, dated Dec. 7, 2015, at p. 2 (EI-21241 in environmental comments), Reb. App. P at 257.[57] After claiming (falsely) that the City is "not at all interested" in

[57] City et al. dispute many of the insinuations and interpretations in Reb. App. P and reserve all rights concerning it. However, it does constitute an admission against interest by Conrail's chosen developer. As the letter intimates, the developer is adamantly opposed to City's invocation of the OFA remedy. If the City acquires the property by OFA, the City will pay $3 million (price paid by the developer) or zero (price for a rail easement which the developer now claims is on the property) and the developer will be divested of title. If the City acquires under NJSA 48:12-125.1, the developer's title is voided under state law, and the price is also that paid by the developer. The developer basically seeks to obtain enormous profits for participation in an unlawful de facto abandonment by excluding the

preservation uses either, the LLCs suggested the land was worth $100 million, and the City in any event could not afford to acquire it. The developer claimed the City was pursuing federal remedies because it could not afford to pay just compensation if none were afforded. The developer said

> "we are compelled to repeat that historic preservation must give way to constitutional rights of property owners to just compensation for the taking of their properties for use as parks, open space, or preservation without any viable use to the property owner." Id. at 4, Reb. App. P at 258.

The developer also indicated that he had warned against a taking (evidently by STB) if it imposed conditions that would amount to a taking, or engaged in

---

public from the remedies it would have enjoyed had Conrail (and the developer) proceeded lawfully.

City et al. note the deep irony in Conrail's (and the LLCs') position. When the City's lawyers advised the City that an abandonment authorization was needed to acquire Conrail's Harsimus Branch, Conrail responded by selling the Embankment portion to a developer who did not insist on compliance with federal abandonment jurisdiction. See City of Jersey City v. Consolidated Rail Corp., 668 F.3d 741, 743-44 (D.C. Cir. 2012). Now Conrail seems to be indorsing the City's position (abandonment authorization necessary for acquisition, see Reb. App. X at 299), yet it and its chosen developer (the LLCs) still seek to destroy the historic assets whose regulatory status they now concede the City was correct about. Unless the Board devises a meaningful preservation remedy or applies Section 110(k), the City (and the public it represents) in effect will have been punished for acting lawfully, and Conrail and its chosen developer will have been rewarded for acting unlawfully. That is fundamentally unfair and hardly consistent with 49 U.S.C. 10101(9).

excessive delays amounting to a temporary taking. Id. at 4, citing Letter from Daniel Horgan (for LLCs) to Craig Keats, STB General Counsel, March 3, 2015.[58]

This is in essence an admission by Conrail's chosen developer that the sale in 2005 had an intentional adverse impact on the Embankment and Branch by putting them in the hands of a developer, with the intentional purpose of redevelopment without any historic preservation. It is also an indirect admission by the LLCs that continued federal jurisdiction preserves the Embankment and Branch, contrary to the intent of Conrail and the LLCs. Loss of Federal jurisdiction thus has to be viewed as a significant adverse impact in the circumstances. This significant adverse impact was obviously caused by Conrail's actions in 2005. Thus, Section 110(k) is applicable.

Conrail's anticipatory demolition by sale of the property prior to abandonment licensing deprives the City of the federal preferential purchase remedy embodied in 49 U.S.C. 10905, which would bar sales of rail property for 180 days post-abandonment other than for public purposes. This provision is intended to provide that the City would have a first opportunity lawfully to acquire the property from Conrail, or to exercise eminent domain-type remedies. Conrail's anticipatory

[58] The referenced Horgan to Keats letter to City et al.'s knowledge does not appear to be in the public record. STB should consider posting it as an environmental comment.

demolition also amounted to an effort to deprive City of its state law preferential sales opportunity under NJSA 48:12-125.1.

The NJ SHPO (then Mr. Saunders) summed up the impact of loss of federal jurisdiction in the circumstances here very succinctly in his Letter to the Board dated May 7, 2009 (Reb. App. R). Noting that the after-the-fact Section 106 process in which STB was engaging "foreclosed" any meaningful relief to preserve the Embankment. "The process proposed by STB does not lead to a full consideration of alternatives; instead, it leads to loss of the historic property at the consummation of abandonment." Reb. App. R at p. 266. The adverse impact from loss of federal jurisdiction must accordingly be viewed as highly significant.

D. Intent to Evade Section 106

Section 106 is part of the STB abandonment licensing process. Although Conrail knew or should have known that line was subject to ICC (and later STB) abandonment jurisdiction, and although federal abandonment jurisdiction includes the requirement that the licensee comply with Section 106 before the license is issued, Conrail engaged in a de facto abandonment which it knew or should have known was unlawful. At best for Conrail, the railroad acted with willful blindness, which is the equivalent of acting with knowledge and therefore intent. By thus evading STB abandonment licensing, Conrail unequivocally acted with intention to

evade Section 106. Had Conrail lawfully sought an abandonment license before it demolished structures and sold off portions of the right of way, then all the historic assets that Conrail's abandonment is impacting would have been identified in advance, and a means to preserve at least the Embankment implemented before sale to the LLCs. At the very least, the public could have obtained a meaningful public use condition and an exclusive period to negotiate and to acquire the Embankment and at-grade parcels under either or both of NJSA 48:12-125.1 or eminent domain.

Certainly by 1999, Conrail knew the Embankment was historic; the Conrail president in a sworn statement protested its listing on the State Register. The State and Federal nomination papers (quoted in part in the Kratz et al. Verified Statement annexed as Reb. App. C at 012-13) make clear that the Harsimus Embankment and Branch were part of a highly significant Pennsylvania Railroad freight rail line. In 2005, Conrail nonetheless sold eight blocks of the line including the NHPA-protected Embankment in the face of the City's request for proof of STB abandonment or that no authority was required. Conrail engaged in an intentional unlawful de facto abandonment, inclusive of evasion of Section 106 procedures. Accord, Letter, Sanders (NJ SHPO) to Quinlan, Reb. App. R at 266.

Section 110(k) applies under the guidance provided by ACHP on June 15.

II. Motions to Strike

Before addressing specific points in the Conrail and 211 Marin Blvd LLC, et al. initial submissions, City et al. make three motions to strike.

1. Paragraph in 2009 EA. Both Conrail and 212 Marin Blvd LLC, et al. rely on a paragraph at page 14 of the Office of Environmental Analysis's ("OEA's") 2009 Environmental Assessment ("2009 EA"), claiming that the 2009 EA resolves the Section 110(k) issue. The agency, however, has indicated that OEA has no power to consider Section 110(k), and OEA staff has indicated that it was disempowered on the issue and lacked resources as well. Under these circumstances, OEA's comments in the 2009 EA were beyond its authority or competence (by its subsequent admission) and must be stricken or disclaimed so the record is not distorted. The EA comments are also irrelevant, as shown below and in connection with the information bearing on this motion to strike contained in Reb. App. A. Moreover, OEA – apparently because it lacks authority -- repeatedly has failed to entertain reconsideration of its errors. The agency as a whole cannot rely on statements it has determined OEA not competent to make that OEA then refuses to reconsider

In any event, the paragraph relies on irrelevant claims, ignores evidence, and is otherwise arbitrary and capricious. The 2009 EA states that the City wanted its

waterfront redeveloped, and asked for removal of the bridges and trestles. Even if true, it is legally irrelevant. The City does not regulate Conrail abandonments. The City does not grant exemptions either from federal agency rail abandonment law or from Section 106. By the same token, corporations do not get to do whatever illegal action they choose whenever someone "asks" them to do it and such action corresponds to their interests. Indeed, seen in this light, the statement in the 2009 EA is not only arbitrary and capricious and contrary to law, but totally outside of law. In addition, the paragraph ignores the fact that the City initially asked for repair of the structures because they were causing safety hazards including derailments over streets. Conrail volunteered that it instead intended to abandon the line and then would remove them, and the City's documents indicate that Conrail represented it would first comply with "ICC rules."[59]

Because OEA is not authorized to consider or reconsider Section 110(k) issues, because OEA's ultra vires comments relied on legally irrelevant and misleading information, and because OEA ignored relevant information, the offending paragraph at p. 14 of the 2009 EA must be stricken or otherwise disavowed so it no longer distorts the record.

[59] See p. 8 infra, citing documents in the Rebuttal Appendix.

2. Ryan's V.S. is not competent. Conrail's Opening Submission also relies (directly and indirectly) on a Verified Statement (V.S.) by Robert Ryan. This V.S. must be stricken. Conrail originally supplied the Ryan Verified Statement in F.D. 34818 in 2006 to support the debunked position that the Harsimus Branch was a spur. But the Harsimus Branch has been dispositively determined to be a line (by this Board twice in 2007 and by the Special Court in 2013, affirmed on appeal by the D.C. Circuit). Conrail stipulated it would not offer evidence or argument contesting line status. Conrail is estopped from submitting evidence or argument that the Branch is a spur in light of the stipulation and also in light of law of the case.

In any event, line status determinations are legal in nature, as Conrail has conceded. Reb. App. U at 276. Ryan is not a lawyer; he is not competent to make them or to offer expert opinion about them. Conrail in fact appears to have relied not on Ryan but on a line status determination made by someone in the

Conrail law department in 1994.[60] But Conrail never supplied any basis for that person's assessment, let alone a contemporaneous basis.[61]

Moreover, Ryan's factual claims are unreliable. His Verified Statement, prepared more than ten years after Conrail's law department reclassified the Harsimus Branch as a spur, makes an absurd claim. As STB pointed out in its decisions in F.D. 34818, Ryan claimed that Line Code 1420 Harsimus Branch was a property abandoned and sold 12 years before Conrail was deeded Line Code 1420 Harsimus Branch as a line of railroad.[62] At the time of the deed to Conrail, the Harsimus Branch was and had been the only operational freight railroad serving the remaining rail facilities and rail-dependent industries in downtown Jersey City.[63] In addition, he directly contradicted any claim that the line was a

---

[60] This determination is attachment 3 to the McFarland V.S., supplied with City et al.'s Opening Submission, see App. p. 070. See also Reb. App. H at 179-80. On or about March 29, 1994, Conrail's Bova evidently told the City's Engineering Department that compliance with ICC requirements had been referred to the Conrail Law Department. Reb. App. I at 190.

[61] See McFarland V.S. attached to City et al. Opening submission, App 062-066 (discussing lack of analysis by Conrail to support spur assertions at the times relevant in this proceeding). During discovery, Conrail in fact withheld as privileged the one contemporaneous memorandum that might have addressed the basis (if any) for the 1994 spur classification. See Reb. App. U at 279.

[62] E.g., Jersey City et al. – Pet. Dec. Order, F.D. 34818, at 6-7 & 9, served Aug. 9, 2007 (Reb. App. G, at 157-8 &161). Although this decision was vacated for jurisdictional reasons, City et al. rely on the factual description contained therein relating to the history of the lines in question.

[63] Id.

"spur" when he prepared[64] and executed[65] in 2005 eight deeds in which he declared that each parcel was a "portion of a line of railroad known as the Penn Central Harsimus Branch and identified as Line Code 1420."[66] Ryan inconsistently claims one thing to the LLCs and the opposite to this agency. Like the thirteenth chime of a clock, everything the clock says or has said can no longer be relied upon, and as City et al. has indicated elsewhere, the developer ultimately concluded that Conrail (and Ryan) had engaged in fraudulent and negligent misrepresentations to the LLCs, the City, this Board and the Courts. See LLCs' Amended Answer… [and] Cross Claims in USDC for DC 09-1900, and especially para 128 at App. 111 (Conrail made fraudulent spur misrepresentations to LLCs and City); para 133 at App. 112 (Conrail made additional fraudulent spur representations to City and Embankment Preservation Coalition); para 138 at App. 114 (Conrail sought to cover up other unlawful de facto abandonments); para 139 at App. 114 (Conrail's/Ryan's claims about Line Code 1420 were plainly erroneous) & para 140 at App. 115 (Conrail's misrepresentations to LLCs, STB

---

64 Each deed indicates it was prepared by Ryan. See Reb. App. F, at 038, 047, 056, 065, 074, 083, 092, 102.

65 Ryan's execution of each deed for Conrail is found at Reb App. F at 046, 055, 064, 073, 082, 091, and 101.

66 Reb. App. F at 042, 051, 060, 069, 078, 087, 096, 106. He also put developers on notice that the property was "a portion of a line of railroad known as the Penn Central Harsimus Branch and identified as Line Code 1420" in the 2002 Conrail bid package in Reb. App. V at 292.

and the courts were "for its own pecuniary gain and to avoid examination of its own wrongful conduct beginning in the 1980's").

In any event, Ryan's views are irrelevant. The issue is what Conrail knew or should have known at the various relevant times. We have demonstrated that at all times relevant herein (1976, 1985, 1988, 1992, 1994, 1996, 1999, 2003, 2004, 2005, 2006 and passim), Conrail knew or should have known that the Harsimus Branch at issue in this proceeding was a line of railroad, not a spur, and that Conrail must comply with Section 106 concerning it before abandonment, not after. The irrelevant, unreliable, incompetent, and estopped Ryan V.S. (which the LLCs elsewhere have averred propagated fraudulent misrepresentations and was part of a scheme to cover up Conrail's unlawful conduct) must be stricken. If left in the record, it must be disregarded and given no weight.

3. Unpublished insurance litigation decision. Conrail and the LLCs rely on an unpublished state court decision insofar as it encompasses an effort by the LLCs' title insurer to recover some portion of its pay-out to the LLCs relating to litigation expenses arising from the unlawful de facto abandonment. The insurer (Chicago Title) evidently claimed against Conrail for misrepresentations concerning spur status. The unpublished decision is 212 Marin Blvd. LLC v. Chicago Title Insurance Co., NJ Superior Court No. HUD-L-5801-09, Aug. 31, 2017. But in New Jersey, "[n]o unpublished opinion shall constitute precedent or be binding

upon any court." N.J. Court Rule 1:36-3. Therefore, the findings and conclusions of the decision are neither binding nor precedential here. Moreover, they did not include the relevant parties (neither City et al. nor STB were parties) and are thus neither law of the case nor otherwise applicable to the matters before this agency. Furthermore, they ignored federal rail law. See McFarland V.S., App. 065 ("Jersey City, et al were not parties to that case. The result surely would have been different if it had been explained to the Court that it is judicially settled that Conrail acquired the Embankment as a rail line, and that under settled ICC-STB precedent, the Embankment remained a railroad line requiring STB authority for its abandonment when it was sold to the LLCs without the requisite abandonment authority"). See also Day V.S., App. 009-012 (Mr. Day, on review of the evidence, suggests that the evidence was so strongly against Conrail that he "would have made a recommendation for referral for criminal prosecution.") In other words, the court issuing the insurance decision on which Conrail and the LLCs now rely did not know (or elected to ignore) the governing federal legal principles and apparently therefore relied on irrelevant material. The decision should be stricken as unreliable, irrelevant, and not competent on the issues that are relevant in this proceeding. If left in the record, it must be disregarded and certainly given no weight.

III. Summary Rebuttal to Conrail and Developer

Conrail and the developer miss the point in their opening submissions. The issue in this case is whether Section 110(k) applies. That turns on what a corporate entity (Conrail) knew or should have known (a) at the time it destroyed or was complicit in the destruction of bridges and trestles (circa 1994 and 1996), and/or (b) by the time it sold eight blocks containing the historic Embankment to the developer (2005). City et al. have shown that Conrail knew or should have known the Harsimus Branch was a line of railroad requiring abandonment authorization (including completion of the Section 106 process) at all relevant times: in 1976 at acquisition, in the 1980s when the line supported thousands of carloadings, in 1992 when trains were derailing on the Embankment and debris was falling into the streets underneath, in 1994 and 1996 at the time of bridge removal, and in 2005. Had Conrail proceeded lawfully by applying for abandonment authority before engaging in an unlawful de facto abandonment, a timely Section 106 process would have occurred, thus identifying the historic assets adversely impacted.

Conrail therefore should have known, but was willfully blind, to the historic resources it adversely impacted in the 1990s. In any event, City et al. has shown Conrail unquestionably knew the Embankment was protected under Section 106 by 1999-2000 at the time the Embankment was listed on the State Register and determined eligible (owner objection) for the National Register. The City reaffirmed the historic nature of the six-block-long Embankment in the 2003

period by making it a City Historic Landmark prior to its sale to 212 Marin Blvd. et al. A timely Section 106 process would have also demonstrated that the entire Harsimus Branch at issue in this case was NHPA-protected, as STB's Office of Environmental Analysis and the New Jersey State Historic Preservation Officer ("NJ SHPO") determined in 2018.

The adverse impact was significant. City has submitted multiple Joint Verified Statements by independent historic preservation consultants as well as the City's own historic preservation experts so determining. E.g., Kaese et al. V.S., App 173 and 179 (upon loss of federal jurisdiction, "development pressures will lead to demolition and redevelopment of the Branch," and removal or alteration of inter alia the bridges and trestles to date "have foreclosed a reasonable opportunity to offer expert advice on how to prevent … adverse effects" and "those removals and sale of the corridor without first seeking ICC or STB abandonment authorization manifest a knowing evasion of section 106 processes"); Kratz et al. V.S., Reb. App. C at 5 (loss of federal jurisdiction is a "clear significant adverse effect"); 2019 Wrieden/O'Neill V.S., Reb. App D at 019 ("most extreme adverse effect"), and 2021 Wrieden/O'Neill V.S., Reb. App. E at 030 (loss of federal jurisdiction is "a significant adverse effect").

STB OEA has repeatedly stated that the sale removes the property from federal jurisdiction such that the agency can do nothing to safeguard the historic assets

upon abandonment. The developer upon acquisition and with Conrail complicity and active support, sought to demolish the entire Embankment and did sever the Branch. Thus, the sale of the six Embankment parcels and the two at-grade parcels to the developer in 2005, in the face of City's wish to comply with federal abandonment law[67] as well as City's active interest in acquiring the line by eminent domain,[68] was unquestionably an intentional and significant adverse effect not only of the Embankment itself but also of the Harsimus Branch and numerous other historic districts and assets, with significant adverse impacts from loss of Federal jurisdiction on all. The severity of the adverse impact is underscored by STB OEA's repeated claims that the agency has no power to mitigate it. It is further attested by the developer's concession in 2015 that conversion of the property to high-end residential development upon cessation of federal regulatory jurisdiction is economically inevitable. It is hard to imagine a clearer case of anticipatory demolition by a major corporation in the face of STB abandonment jurisdiction.

Conrail and the developer expend much of their effort implying that the Harsimus Branch was not really a rail line, or that the Embankment is not really

---

[67] See City of Jersey City v. Consolidated Rail Corp., supra, 668 F.3d at 743-44. The City, per the New Jersey Title Practice Manual, sought to honor STB jurisdiction. See letters at App. 146-52 (City seeks abandonment status and Conrail instead sells to the developer). The developer was (at best) willfully blind to STB jurisdiction and Conrail therefore sold the property to the developer.

[68] See letters in App. pp. 139-150.

historic. These issues are all foreclosed by estoppel (including their stipulation) and law of the case (the Special Court's decision). The Harsimus Branch is a line, so determined by summary judgment upheld on appeal, and the parties are foreclosed from arguing otherwise. The Embankment and Branch are historic assets, as are all the other historic assets adversely impacted by loss of Federal jurisdiction per STB OEA's list of historic assets and determination set forth in the CREAR Addendum at p. 40. The LLCs' repeated claim[69] that the Embankment is a "blight" or "blights" adjoining neighborhoods is foreclosed by the CREAR Addendum and specifically refuted by the opinions of three independent historic preservation experts in the Kratz, et al. Verified Statement, Reb. App. C at p. 011 ("In our expert opinion, the Embankment is not a blight or contributor to blight. It is not falling apart. It contributes to surrounding historic districts. It is instead, as described on the Embankment Coalition's website (https://embankment.org/index.html), 'a sturdy vestige of a rail economy and landscape that once dominated Jersey City' that retains remarkable physical integrity"). They explain that, to the contrary of the LLCs, failure to preserve the Embankment and Branch would be a blight. They attest that

[69] LLCs' opening argument at 4 and passim.

> "loss of the Embankment, and loss of federal control over the Embankment (at least without legally enforceable conditions or restrictions for its preservation) is not removal of a blight but instead a significant adverse effect on a very significant historic asset."

Id. Reb. App. C at 013.

Additional response to Conrail's claims is found in Reb. App. A, and additional response to the LLCs is found in Reb. App. B. Moreover, City et al. have moved to strike key aspects of the evidence or authorities on which Conrail and the developer rely.

IV. Burden of Proof

The 2009 EA on which Conrail (and the developer) relies incorrectly suggested (at p. 14), without any support, that the burden was somehow on City et al. to show that Conrail had violated Section 110(k). Although City et al. have clearly borne any applicable burden of proof,[70] the burden should not be on whistleblowers to secure compliance with Section 106 and to prevent anticipatory demolitions in violation of Section 110(k). The burden should be on this Board and on the industry it regulates to comply – and to show compliance -- with Section 106

[70] Indeed, as Mr., Day indicates, the evidence City et al. has supplied merits a criminal referral. Day V.S., App at 012.

before the Board licenses an abandonment. 54 U.S.C. 306308 (agency "shall take into account" prior to licensing an action). Section 106 calls for compliance before a licensable action is taken.

STB's attempt at after-the-fact compliance with Section 106 cannot cure the irreparable adverse effects of Conrail's unlawful actions unless STB takes action to return the property to it pre-unlawful abandonment status by voiding the unlawful sale. Indeed, as independent experts have pointed out, Conrail's unlawful actions have foreclosed reasonable opportunity for comment under Section 106. See Kaese et al. V.S., App. p. 179. After-the-fact compliance is not compliance, especially when the licensee's unlawful demolitions and sales foreclose reasonable opportunity for comment.

In order to implement Section 106, the Board must adopt a regulatory mechanism that ensures that the regulated industry (here, freight railroads) do not engage in manipulation or avoidance of the Board's processes that has the effect of evading Section 106 by creating conditions when the Board must engage in an after-the-fact proceeding. After-the-fact compliance amounts to rewarding railroads and their chosen developers for ignoring or being willfully blind to STB jurisdiction, and punishing those who seek to comply with it. See note 57 (second para of n.57 on p.28) supra. It follows that the Board also has the burden of

actually enforcing Section 110(k) in the event of evasion of Section 106. Indeed, that is what Section 110(k) is all about.[71]

As this Board implicitly recognized in Consummation of Rail Line Abandonments That Are Subject to Historic Preservation and Other Environmental Conditions, EP 678, April 23, 2008, slip at 4, the STB lacks investigative staff and relies on whistleblowers (who may wish to preserve for public use all or portions of a line) or title companies (who sometimes – but not here -- insist on regulatory compliance as a condition of insuring a property transfer) to flag unlawful de facto abandonments. But even if whistleblowers manage to initiate a proceeding before this agency, the Board's regulations and case law on discovery in general make it

[71] The Advisory Council on Historic Preservation adopted a "policy statement on anticipatory demolition" on June 22, 1987. The policy statement ultimately resulted in the adoption of Section 110(k) and thus is germane to the provision's interpretation. In the policy statement, ACHP noted that it had learned that potential applicants for federal permits "have sometimes demolished historic properties before, or in the early stages of applying for … permits, apparently in an effort to avoid review under Section 106…." ACHP indicated that this "is inconsistent with the basic purpose of the National Historic Preservation Act." ACHP called on

> "all Federal agencies that … permit actions … to adhere to the following principles:
> I. Anticipatory demolition is inconsistent with the intent and spirt of the [NHPA], and should be discouraged by all Federal agencies.
> II. Federal agencies should … do everything feasible to discourage [anticipatory demolition] with respect to projects in which Federal … permits may be directly or indirectly involved."

A copy of this policy statement is attached as Reb. App. S at 269.

very difficult to impossible to obtain information from the railroads relevant to the pursuit of these cases, and whistleblowers obviously lack the powers of agency investigative staff. That problem was manifest here when whistleblowers sought information from the Board, NJ SHPO, and elsewhere in the early 2000s in an effort to determine if Conrail was engaged in an unlawful de facto abandonment, and the Board did not investigate, or lacked resources to investigate. STB proceedings have now been going on since early 2006, yet discovery against Conrail and the developer has been difficult to impossible to obtain.[72]

City et al. (and NJ SHPO) have argued since the inception of this proceeding that Section 110(k) applied. Yet the Board has only recently adopted a procedure (in the form of giving 30 days' notice to submit arguments, and 30 days for rebuttal) to consider Section 110(k). It is unlikely that most whistleblowers would have the resources to attempt to hold railroads who engage in unlawful de facto abandonments and attendant anticipatory demolitions accountable when it takes so many years to have so limited an opportunity to be heard. Indeed, in most cases, neighborhood associations, public interest groups and municipalities cannot afford such burdensome procedures, especially of the duration involved in this case.

[72] Conrail's response to discovery is basically confined to what it supplied in F.D. 34818, which is summarized in Reb. Ex. U, at 274-79. The Board largely protected Conrail from further discovery through its narrow orders issued earlier in this abandonment proceeding.

Fortunately, the law and facts in this case are clear: a violation of Section 110(k) has occurred.

Railroads are charged with knowledge that they must seek abandonment authority before demolishing a line or transferring it out, and if they nonetheless do so to the detriment of historic assets, Section 110(k) should be presumptively applicable. The real issue in such situations should be whether there is some form of appropriate mitigation for the railroad's unlawful actions to the extent they resulted in dismemberment or demolition of historic assets. If none, then Section 110(k) should be applied to preserve agency jurisdiction over the assets, thus affording them at least that form of protection. Given the agency's lack of investigative resources, this approach is also the most efficient, effective, and fair way to implement federal rail policy calling for STB to encourage honest and efficient management of railroads (49 U.S.C. 10101(9)) in unlawful de facto abandonment situations.

Admonitions to the regulated industry to act lawfully are not working, as demonstrated in this case.[73] The Board has elsewhere threatened to do what it

[73] The Board has already admonished Conrail. See Consolidated Rail Corporation's Sales and Discontinuances, EP 695, served May 17, 2010. Nothing appears to have happened in response.

takes to comply with the law in unlawful de facto abandonments,[74] but an after-the-fact Section 106 analysis dealing with historic assets that have already been destroyed or significantly degraded, or sold off, is not compliance with Section 106. It amounts to claiming one is somehow saving the horses by letting them out of the barn, when the barn has already burned down and the horses are all dead. The agency needs to do something to stop the barns from being burned, at least with livestock inside, before the required barn burning permit is issued. Otherwise the agency is encouraging unpermitted barn burning. See note 57 (2d para at p.28) supra.

In May 2009, the New Jersey State Historic Preservation Officer (NJ SHPO) specifically objected to STB's apparent approach of purporting to do a Section 106 analysis only after the assets were lost. "This [approach] is inconsistent with the letter and intent of Section 106…." NJ SHPO noted that meaningful Section 106 consultation involving various preservation alternatives is "foreclosed." NJ SHPO called on STB to "retain full regulatory jurisdiction over the railroad right of way, and questions how the letter and intent of the Section 106 process can be

[74] Consummation of Rail Line Abandonments That Are Subject to Historic Preservation and Other Environmental Conditions, EP 678, April 23, 2008, slip op. at 4 (recognizes that in such situations STB's ability to comply inter alia with NEPA and NHPA may be "adversely affected" and Board "will take whatever steps necessary to enforce compliance with them").

completed while property is held by a third party." In other words, a legitimate Section 106 process cannot take place until Conrail reclaims the historic property it sold, or STB voids the deeds out.[75] The Kaese et al. Verified Statement makes a similar point. See App. at 175 & 179 (property should be restored to Conrail and actions of Conrail to date foreclose meaningful comment). In the meantime, Section 110(k) should be applied to bar any abandonment license.

V. Mitigation

The LLCs have consistently advocated that this Board should grant unconditioned abandonment authority as soon as possible. Yet the developer has admitted that this will lead to destruction of the Harsimus Embankment and Branch. In particular, in 2015, the developer not only told STB that development of the Branch (certainly the Embankment) for high-end residential use was economically inevitable upon loss of Federal control, but also threatened to sue STB if STB did not expeditiously authorize unconditioned abandonment so it could get on with demolition activities.

The LLCs' opening submission on Section 110(k) filed June 21 uses softer gloves, suggesting that -- although the LLCs repeatedly refer to the Embankment as a "blight" and as blighting the adjoining neighborhoods -- they might be

[75] Letter, NJ SHPO to STB, May 7, 2009, filed in AB 167-1189X and related dockets as an environmental comment (EI-17650), Reb. App. R at 266.

prepared to voluntarily mitigate per some drawings it submits for massive development on the Marin block of the Embankment (somewhat similar to STB OEA CREAR Addendum Scenario 3). Even if one were to assume that the LLCs' representations were legally enforceable or binding (which they are not), the development they propose is well in excess of prior "settlements" which historic preservation experts cite as posing significant adverse effects on historic resources.[76] But the LLCs' overtures are something of a stalking horse. The only "improvements" for which the developer has so far filed are for demolition of the entire Embankment and its conversion (along with the two at-grade parcels) into residential uses (similar to STB OEA CREAR Addendum Scenario 2, full demolition).[77] And the LLCs have a suit pending (stayed during this federal litigation) for damages against the City for delay. In other words, the LLCs' rhetoric about limiting significant adverse effects is not legally binding, contrary to their view of the Embankment as a blight, and in fact contrary to land use approvals the LLCs have sought in Jersey City agencies and to force Jersey City to grant in lawsuits, or still have pending before New Jersey courts (breakup of the Branch, demolition for housing on all eight blocks, and damages against the City

[76] E.g., Kaese et al. V.S., App. at p. 172 (discussing development of two towers up to 35 and 45 stories respectively with 400 dwelling units and 200 hotel rooms).
[77] See examples attached in Reb. App. M at 231-245.

for delay[78]). In all events, the drawings will still result in adverse impacts per STB OEA, and certainly in and of themselves do not cure the lack of "adequate and legally enforceable restrictions or conditions to ensure long term preservation of the property's historic significance" per 36 C.F.R. 800.5(a)(2)(vii).

The LLCs have not offered any legally binding commitment to do anything to preserve the Embankment or Branch to this Board, and have not taken any land use action that amounts to seeking or agreeing to any such restrictions or conditions in Jersey City. The LLCs' representations about their drawings for all these reasons are therefore inadequate. Accord, 36 C.F.R. 800.5(b) (mitigation requires binding consistency with the Secretary's Standards for Treatment of Historic Properties (36 CFR Part 68)). The developer's "evidence" in this regard is thus both irrelevant and distracting, and potentially very misleading. And, equally important, the LLCs do not address the portion of the Harsimus Branch that they swapped with another landowner, nor the portion that Conrail retained but for which Conrail still seeks unconditioned abandonment authority.

[78] We set out in Reb. App. T at 271-2 a table of some of the litigation brought by the LLCs against the City. Their actions contesting the historic landmark designation for the Embankment, for demolition permits against the Embankment, and for money damages are currently being held in abeyance pending a result in this abandonment proceeding. Fortunately, the LLCs' effort to deprive the City of OFA authority or to limit the City's use of bond proceeds to prevent its use for OFA have been resolved in favor of the City.

STB OEA has opined that, given the fact that Conrail alienated eight blocks of the property to the developer prior to seeking an abandonment authorization, the Board lacks power to impose any legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance. This is wrong for many reasons. First, it is well-established that private parties by contracting sales of property cannot defeat STB jurisdiction. "Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them." Norman v. Baltimore & O. R.R. Co., 294 U.S. 240, 307-08, quoted in Connolly v. Pension Benefit Guar. Corp., 475 U.S. 211, 223-24 (1986), quoted in Borough of Columbia v. STB, 342 F.3d 222, 235 (3d Cir. 2003).

Second, under section 10903(e)(1)(B), the Board has ample power to impose conditions on abandonment consistent with the public convenience and necessity. Consolidated Rail Corp. v. ICC, 29 F.3d 706, 714 (D.C. Cir. 1994) (ICC/STB has broad power to impose conditions on abandonment that are consistent with public convenience and necessity pursuant to language now codified at 49 U.S.C. 10903(e)(1)(B)). Remedies necessary to address adverse impacts to historic assets arising from unlawful de facto abandonments are surely consistent with public convenience and necessity for purposes of section 10903(e)(1)(B). The remedy specified in ACHP's regulations for circumstances involving alienation of assets, which surely is appropriate to apply in the unlawful de facto abandonment context,

is imposition of "adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance." 36 C.F.R. 800.5(a)(2)(vii).

In any event, it has long been established that "public convenience and necessity" as used in rail law administered by ICC and STB encompasses conditioning abandonment on according preferential purchase rights favoring preservation of rail corridors. In Reed v. Meserve, 487 F.2d 646 (1st Cir. 1973), confirming this interpretation, the Court said:

> "To assemble a right of way in our increasingly populous nation is no longer simple. A scarcity of fuel and the adverse consequences of too many motor vehicles suggest that society may someday have need either for railroads or for the rights of way over which they have been built. A federal agency charged with designing part of our transportation policy does not overstep its authority when it prudently undertakes to minimize the destruction of available transportation corridors painstakingly created over several generations. The ICC has in other instances imposed right of way preservation conditions even though the right of way was to be used eventually for a highway rather than a railroad. Norfolk & Western Ry. Abandonment, 193 I.C.C. 363, 368-69 (1933); St. Louis -- S.F. Ry. Abandonment, 158 I.C.C. 602, 613 (1930); Washington & Old Dominion R. Abandonment -- Virginia, 311 I.C.C. 587 (1968)."

The Court upheld imposition of a preferential purchase right for preservation. Since City is prepared to pay Conrail the same price that it received from the developer and preserve the entire Harsimus Branch for both rail and trail purposes, the agency obviously has power to impose a reasonable preferential purchase remedy.

City et al. has already indicated that the Board is empowered to protect the integrity of its jurisdiction, including abandonment and Section106 jurisdiction, and that this can be done by voiding deeds issued in unlawful de facto abandonments. At that point, the Board shall have restored property ownership to its condition before the unlawful sales, and at the very least could accord the City the preferential purchase right the law intends per 49 U.S.C. 10905 which is supposed to be available in all lawful abandonment proceedings. Without this action by STB, it is inescapable that Conrail's intentional evasion of Section 106 through its unlawful conveyance of the property will have a significant, irreparable adverse effect on the historic Embankment.

The LLCs claim that a Section 10905 condition is meaningless.[79] This is incorrect as a general matter; during that 180-day interval, the City would have a preferential purchase right and could proceed against Conrail to acquire the eight blocks purportedly sold to 212 Marin Boulevard LLC et al. in 2005 for the same price paid by the developer as provided in N.J.S.A. 48:12-125.1, or otherwise exercise its eminent domain powers. City would not be dealing with the LLCs at

[79] LLCs' Opening Memo at 38. The LLCs take this position because STB says it cannot compel a sale during the pendency of the condition. But STB can prevent sales to anyone other than for public use, which gives public (and public service) entities a 180-day preferential purchase period. See generally Note, Public Rights of First Refusal, 129 Yale L.J. 812 (2020) (discussing benefits of preferential rights for public purposes).

all, and the public would enjoy a substantially less litigious and more economic acquisition process.

However, the 10905 remedy is useless unless the deeds are voided. 49 U.S.C. 10905 is designed to provide local and state governments, and public utilities, a 180-day period to acquire property from the railroad by voluntary negotiation or some form of condemnation before a rail corridor is broken up and sold off to developers. If the unlawful sale is voided, the City is prepared to commit that upon acquisition it would comply with the Secretary's Standards for Treatment of Historic Properties (36 CFR Part 68) in pursuing its light rail, trail, open space, and park uses on the property. See 36 C.F.R. 800.5(b) (no adverse effect from such an acquisition). Jersey City Mayor Fulop so committed the City by Letter to STB OEA dated December 14, 2015, a copy of which is attached as Reb. App. Q. Moreover, because the Embankment is listed on the State Register and is a City Historic Landmark, numerous state and municipal statutes would apply to protect its integrity. For example, Jersey City Code of Ordinances 345-30(A) prohibits construction, alteration or demolition of a landmark regardless whether a construction permit is required prior to filing a review application with the City's Historic Preservation Commission and the issuance of a Certificate of Appropriateness or a Certificate of No Effect.

In the case of the Highline (another Conrail elevated line in New York City), the ICC required developers supporting abandonment to post financial undertakings to ensure their performance of commitments they claimed to be prepared to make as a condition on authorizing an adverse abandonment against Conrail. Consolidated Rail Corp. v. ICC, supra, 29 F.3d 706. The developers in that situation declined to post the undertakings so the abandonment never became effective. City is prepared to commit to pay Conrail $3,000,000 (the price paid by the developer) for the eight blocks (six Embankment blocks and two at-grade blocks) should the deeds be invalidated, and to acquire same on the same terms and conditions as did the developer within 180 days of the effectiveness of this Board's order authorizing the abandonment in a fashion allowing lawful acquisition subject to the public use condition.

The developer's opening submission includes an argument that any remedy that amounts to voiding its deeds from Conrail is an unconstitutional taking.[80] But the developer knowingly acquired rail property,[81] thus assuming the risk of STB abandonment regulation.[82] The developer has no reasonable investment-backed

---

[80] LLCs' Opening Memo at 37.

[81] Among other things, the eight deeds the developer accepted all indicate that the parcels in question were part of a line of railroad.

[82] The developer was told that there was no abandonment authorization for the property and elected to rely on Conrail's representation that none was required. Reliance on Conrail representations amounts to, at best, assumption of risk (for

expectation of evasion of that regulation. In the circumstances, overturning the developer's transaction with Conrail by voiding the deeds (or use of similar remedies) is not a taking. Accord, Borough of Columbia v. STB, 342 F.3d 222, 235 (3d Cir. 2004).

The City has proposed meaningful mitigation and is prepared to enter into commitments to ensure performance. If STB is disabled from providing mitigation relief along one of the lines City et al. have suggested, then clearly an anticipatory demolition has occurred and in the absence of meaningful remedy, abandonment authority must be denied under Section 110(k). STB has said that it will take "whatever steps steps [are] necessary to enforce compliance with [NEPA and NHPA]." Consummation of Rail Line Abandonments, supra, slip. at 4. In the absence of any mitigation, application of Section 110(k) is a necessary step for enforcement.

Conclusion

Section 110(k) applies to this proceeding. At all relevant times, Conrail knew or should have known the Harsimus Branch required an abandonment license from ICC or STB and that this required Section 106 compliance, but Conrail acted without such authority, thus intentionally violating Section 106. This action of

---

which developer evidently aspires to great profit), and at worst willful ignorance (failure to obtain proof that no authority was required).

knowing or willfully blind misconduct resulted in foreseeable, severe, and significant adverse impacts on at least the NHPA-protected Embankment, the NHPA-protected Branch, and the other NHPA-protected assets identified at p.40 of the November 2019 CREAR Addendum issued by OEA. This Board accordingly may not authorize abandonment in this proceeding.

The Board has not yet asked for comment on whether circumstances may justify granting abandonment authority notwithstanding the violation of Section 110(k). The Board must comply with 36 C.F.R. 800.9(c)(2) in that event, and City et al. cannot imagine any justification for granting abandonment authority that is not conditioned on meaningful mitigation of the significant adverse impacts on historic resources that would otherwise result.

Respectfully submitted,

s/ *Charles H. Montange*

Charles H. Montange
Law Offices of Charles H. Montange
426 NW 162nd St.
Seattle, WA 98177
(206) 546-1936
Fax: -3739
c.montange@frontier.com
for City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Preservation Coalition

s/ *Andrea Ferster*

Andrea Ferster
General Counsel
Rails to Trails Conservancy
The Duke Ellington Bldg.
2121 Ward Court, NW, Fifth Floor
Washington, D.C. 20037
(202)669-6311
aferster@railstotrails.org
for Rails to Trails Conservancy

For filing: July 19, 2021

Certificate of Service

By my signature below, I attest service of this entire Submission by electronic transmission or by posting with USPS for first class or equivalent delivery as appropriate on all parties on the Board's service list for this proceeding on or by the filing date above.

Charles H. Montange

Att: Appendix A (Further Response to Conrail arguments)
Appendix B (Further Response to Developer arguments)

Rebuttal Appendix A

Response to Conrail Arguments

I. Conrail's Argument Is Contrary to Law and Irrelevant …….. [1]

II. Conrail's Narrative Is Inaccurate and Misleading……... [4]

First Motion to Strike or Disregard (2009 EA p. 14) ……. [7]

Second Motion to Strike (Ryan V.S.) …… [14]

III. What Conrail Knew or Should Have Known …… [17]

Intentional violation…… [17]

Third motion to strike (Chicago Title state court decision) ….. [22]

Rebuttal Appendix A

Response to Conrail Arguments

I. Conrail's Argument Is Contrary to Law and Irrelevant

The crux of Conrail's argument is that it was motivated by a wish simply to do what the City wanted, which it claims this Board has already decided. Assuming arguendo Conrail's argument (and any alleged Board concurrence in Conrail's motivation to be true), Conrail's argument amounts to saying it has a license to violate federal statutes if some local government entity so requests. That claim violates the Supremacy Clause of the U.S. Constitution as well as 49 U.S.C. 10501(b) providing for federal preemption of state and local law for railroad lines under STB jurisdiction.

In any event, the City does not regulate railroad abandonments. STB does. Conrail must get an abandonment license from STB for all of its lines of railroad. 49 U.S.C. 10903. Before an abandonment license is granted, STB must complete the Section 106 process. 54 U.S.C. 306108. That process is intended to put all parties on timely notice of historic assets that may be adversely impacted by abandonment before abandonment occurs so measures can be taken to mitigate the adverse impact on the assets. Section 106 specifically provides as follows:

> "The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license

> any undertaking, **prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license**, shall take into account the effect of the undertaking on any historic property. The head of the Federal agency shall afford the Council a reasonable opportunity to comment with regard to the undertaking." (Emphasis added.)

Under the statute, the effects of a license on any historic property must be taken into account "prior to" licensing. No city or local government has the power to exempt Conrail from Section 106 compliance, any more than they have to exempt Conrail from STB abandonment licensing authority. If Conrail engages in a licensable activity (removal of infrastructure and sale of land in a rail line) before seeking the required pre-authorization, it has subverted the statutory requirement that the Board "take into account" the effect of the licensable activity "prior to" authorizing it. That is the very thing that Section 110(k) is supposed to prevent, by requiring denial of the license.

If a licensee like Conrail, having knowledge or imputed knowledge that it must obtain an STB abandonment license requiring compliance with Section 106 nonetheless evades the Section 106 process by destroying historic assets prior to identifying them in the Section 106 process, that amounts to acting in willful blindness of the existence of potential historic assets. If the railroad knew or should have known it needed a license, then any evasion of Section 106 is intentional, and the adverse impacts are intentional, and there has been a violation of Section 110(k).

The issue, therefore, is not what the City said, or whether the City understood that the Embankment was historic, in 1990, or in 1994, or at any other time. The issue is what Conrail knew or should have known at all relevant points in this proceeding.

Moreover, Conrail is a corporation. A corporation's knowledge or intentions are not based on what one or two of its employees or outside agents or attorneys claim or say, much less third parties. Intentionality in a corporation is determined on the basis of what its officers and agents collectively knew or should have known at any given time.[1] And corporations are generally charged with knowledge of the law, and are not relieved of this responsibility by claiming they only wanted to make money, or by self-serving excuses, when they should know that they are violating laws in their efforts to attain that objective. In addition, under the willful blindness doctrine, corporations cannot hide behind claims of ignorance on the part of themselves or their agents if the corporation through its agents failed to make adequate inquiry into information the corporation knew or should have known so it could comply with rather than violate the law.

City, et al. have conclusively demonstrated that Conrail knew or should have

[1] See, e.g., Day V.S. and cited at App. 013. The basic principles are set forth at pp. 6-12 of City et al.'s opening submission filed June 21 in this proceeding..

known[2] at all relevant points that (a) the Harsimus Branch was a line requiring abandonment authorization prior to removal and dismemberment, and (b) that the abandonment process required prior compliance with Section 106. The Section 106 process has now conclusively demonstrated that the Embankment has been significantly adversely impacted (alienated to a developer) by Conrail, and that other historic assets have also been adversely impacted. See STB OEA CREAR Addendum p. 40 and related tables (Nov. 2019). Conrail is thus charged with knowledge (or its equivalent, willful blindness) in intentionally adversely impacting those assets, especially by its 2005 sale to the developer purportedly putting them out of the reach of federal authority prior to seeking an abandonment authorization. See 36 C.F.R. 800.5(a)(2)(vii) (alienation without legally enforceable historic preservation restrictions is an adverse effect).

II. Conrail's Narrative Is Inaccurate and Misleading

[2] Conrail at all points after 1999 (and perforce in all subsequent years) knew that the Embankment was protected under Section 106 (see Conrail president O'Toole's letter objecting to the State Register listing under oath at App. 021-022). Thus, Conrail by 1999 knew that any further demolition or sale of the Embankment to a developer or for development would destroy the asset; indeed, Conrail president O'Toole essentially acknowledged that this was Conrail's objective throughout the period in his 1999 letter objecting to State Register listing. Conrail should have known of the historic nature of the Embankment (and other assets in 1994) because it should have sought an abandonment authorization during the process for which the historic nature of the assets would have been revealed through a timely Section 106 process.

Conrail relies on mis-statements of fact in a paragraph at p. 14 of STB OEA's 2009 Environmental Assessment[3] for the position that the agency has already found that Conrail acted only to please Jersey City when it demolished bridges and trestles and sold off the Embankment.[4] Based on the EA, Conrail contends that Section 110(k) therefore cannot apply and that it is exculpated. Conrail Opening Submission ("Con. Sub.") at 2.

Before addressing the factual claims behind p. 14 of OEA's 2009 EA, there is preliminary matter relating to due process. As this Board acknowledges, STB, not OEA, is responsible for addressing Section 110(k). Although EA's are generally available for comment and reconsideration, OEA once it issued its p. 14 statement has acknowledged itself disempowered from addressing 110(k) issues. It evidently feels that any statements it makes or actions it takes concerning 110(k) are ultra vires. Yet it has not removed the offending paragraph on p. 14. This is a denial of due process since it has declined to reconsider it, ignoring City et al.'s evidence to the contrary, or perhaps more accurately, denying a forum for receipt and consideration of such evidence. The offending paragraph in essence is ultra vires and cannot be relied upon by STB here. It would be a denial of due process for an ultra vires paragraph which should have been, but was not, removed or

[3] The EA in AB 167-1189X was served March 23, 2009.

[4] The language that must be struck is the entire second full paragraph of the EA on page 14.

reconsidered because of OEA's disempowerment to nonetheless now be precedential or binding.[5] Conrail's reliance on the 2009 document and claim of exculpation is a nonstarter.

The EA rejects the view of City et al. and the New Jersey State Historic Preservation Officer (NJ SHPO) that Section 110(k) applies on the basis of the same verified statement submitted by Robert Ryan in 2006 in F.D. 34818 (see EA at 5 n.5) that Conrail relies on for its Opening Submission. The EA adopts Ryan's claim that the City commencing in 1984 asked Conrail to make underutilized railroad properties available for redevelopment and urged Conrail to remove the Embankment. Following Ryan, it says the City permitted National Bulk Carriers (a redeveloper) to remove a trestle (over Marin Boulevard at the end of the abandonment at issue here) in 1994, and urged Conrail to remove remaining bridges. On this basis, the EA purports to exculpate Conrail, and Conrail on this same basis argues for exculpation here.

[5] Moreover, City et al. understand that the Board wants to determine Section 110(k) issues based on the record made in actual filings with the agency, and is not considering "environmental comments." The agency's EA is based on environmental comments, which in general are ex parte, as well as on ex parte communications between OEA and other entities including parties. In addition, OEA relies on a consultant hired by Conrail to prepare its historical report and the same consultant is now paid by Conrail to advise the Board on historic preservation issues. This is a conflict of interest or gives rise to the appearance of a conflict of interest.

First Motion to Strike or Disregard (2009 EA p. 14). As indicated in City et al.'s Response, City et al. move to strike the language on page 14 of the 2009 EA on which Conrail improperly places such heavy reliance. In the alternative, the paragraph at p. 14 of the 2009 EA on which Conrail relies must be either repudiated or renounced by the Board, so that it does not remain in the record. OEA has conceded it is not authorized to consider Section 110(k) issues, so its ultra vires remarks must be effectively cancelled. It is erroneous and misleading anyway for the reasons stated below.

P. 14 of the EA appears to rely largely on a verified statement by Conrail's employee Robert Ryan originally submitted in 2006 in F.D. 34818. The claims by Ryan, and therefore STB OEA at p. 14 of its old EA, are inaccurate and misleading. Conrail/Ryan argue that Conrail simply responded to the City's wishes. Even if that were true, it is irrelevant; the focus is on what the railroad knew or should have known concerning its legal responsibilities under what was then the Revised Interstate Commerce Act. Under that Act (which insofar as germane here is the same as ICCTA), Conrail acted unlawfully. It knew or should have known it was engaged in an unlawful de facto abandonment which inherently involved evasion of Section 106 and at the very least willfully blind destruction of any historic assets that a timely Section 106 process would have disclosed.

City et al. have elsewhere discussed the errors in the Conrail narrative adopted in the EA. The EA alludes to the fact that the downtown economy was changing, but this did not give Conrail a free pass to ignore ICC or STB abandonment jurisdiction. The EA says that demolition of bridges was to accommodate the City, but the City noting derailments and falling debris posed a safety hazard and liability issue which Conrail cannot ignore." Reb. App. I at p. 182. The City accordingly asked Conrail to repair the bridges and trestles. Reb. App. I at 182-83. Conrail stated it would do, but ultimately indicated it would demolish once trackage at Marion Junction was completed and ICC rules had been satisfied. In all events, the City did not take out bridges or trestles, a redeveloper (National Bulk Carriers) and Conrail did.[6]

Again, the question of intent does not lie in the City's purported wishes (which Ryan/Conrail and the 2009 EA all misrepresent), or the changing economic face of downtown Jersey City. The question lies in Conrail's awareness of, or willful blindness to, its unlawful de facto abandonment of the Harsimus Branch. The 2009 EA at p. 14 misses all of that. It seems to say that the economy of downtown Jersey City was becoming less rail dependent in the 1980's, that Conrail was selling surplus rail properties for redevelopment, and that the bridge removal

---

[6] E.g., File Memo from John Mucha (City), March 29, 1994 (Conrail will follow ICC rules), Reb. App. I at 190; Same, File Memo from John Mucha, June 13, 1994, both in Reb. App. I at 191 (reference to "IFE?").

facilitated this change and that some combination of this excuses Conrail.[7] Conrail is a corporation and ultimately almost certainly acted out of its self-interest to avoid liability for property damage, injury and death from debris falling off bridges and trestles it no longer wished to maintain.

The issue ultimately is not what motivated Conrail but whether regardless of motivation, Conrail knew or should have known it was proceeding unlawfully. The record provided in this proceeding makes clear that the railroad knew or should have known it was proceeding unlawfully. Accord, Day V.S. App. 01 et seq., McFarland V.S. App. 058 et seq. In other words, eagerness for real estate revenue from redevelopers, or elimination of bridge maintenance costs, does not excuse Conrail from complying with either abandonment law or Section 106. Nor does compliance with a local municipality's wishes or those of a developer. ICC and STB rail abandonment regulation preempts state and local law, not the reverse. Local government does not give free passes to violate federal law.

In the mid-1980's, Conrail still had thousands of car loads of traffic on the line and multiple customers. But Conrail evidently nonetheless anticipated a rapid

[7] Evidently Conrail was engaging in unlawful de facto abandonments and failing to seek ICC abandonment authorizations in its haste to convert surplus properties to cash for real estate. See Consolidated Rail Corporation Sales and Discontinuances, EP 695, served May 17, 2010. See also note 23 infra (LLCs' allegations of Conrail effort to cover up other unlawful de facto abandonments).

decline in demand.[8] Because Conrail by the mid-1980s foresaw its customer base dwindling, Conrail did not engage rehabilitation of the trestlework associated with the Harsimus Branch. Instead, Conrail sent the City Engineering Department a letter in 1989 stating that it anticipated abandoning the Harsimus Branch in 1992 upon completion of a new connection at Marion Junction, at which point Conrail would sell and dismantle the Branch.[9] Not surprisingly, given lack of rehabilitation, Conrail trains were derailing over City streets, and pieces of the Harsimus Branch trestles were falling on same by 1992. These safety hazards made the newspapers and resulted in police reports.[10] City did not ask that the trestles be demolished for redevelopment. The City's engineering department instead initially asked for the trestles to be repaired to protect citizens passing underneath, noting to Conrail this posed a liability issue it "could not ignore."[11] Conrail stated it would take care of needed repairs.[12] Conrail apparently concluded

---

[8] See Reb. App. H at 173-74 (Conrail memo of Jan. 28, 1985, Folk to Hasselman). The City shared Conrail's expectation that freight rail service was on the way out due to changing land use downtown. Con. Submission Exhibit C (McCann letter of Dec. 18, 1984).

[9] Con. Sub. Exhibit D.

[10] See Memo, Byrne to Nissen, Feb. 13, 1992, and related documents and police reports, in Reb. App. I at pp. 184-87 (1992 period) (originally submitted by City et al. in 2006 in F.D. 34818).

[11] Letter, Allen-Munley and Nissen (City Division of Engineering) to Conway and Willbrant, Feb. 19, 1992 (contained in Reb. App. I at 182-83) (originally submitted by City et al. in 2006 in F.D. 34818).

[12] Letter, F.D. Day (Conrail) to Regan (City), May 11, 1992 (Reb. App. I at 188-189).

it would be cheaper to remove than to repair given the dwindling rail needs. On or about March 29, 1994, Conrail reaffirmed to the City that "it will seek to abandon service on the 6th St. Viaduct according to ICC Rules" once the Marion Junction connection occurred, which Conrail projected for March 30, 1994.[13] Conrail also advised that it did not need approval if the trackage was a "spur" or "branch line" and that the issue was pending with the Conrail law department.[14] On June 13, 1994, Conrail advised the City that it was seeking bids for demolition of the bridges, and that it would "file an IFE? [sic] to retire the track."[15] This record indicates that the City sought repairs; Conrail responded that it intended instead to demolish in accordance with federal rail law. The 2009 EA at p. 14, the Ryan V.S. on which the EA is based, and Conrail, are misleading the agency in suggesting otherwise.

Unbeknownst to the City, the Conrail Law Department unilaterally (and without any known analysis) "re-classified" the line as a "spur" in 1994.[16] This

---

[13] File Memo from John Mucha (City), March 29, 1994, Reb. App. I at 190.

[14] Id.

[15] Memo to File by John Mucha, June 13, 1994 (Reb. App. I at 191).

[16] Con. Sub. Exhibit E. Conrail has no contemporaneous explanation for this arbitrary reclassification. In F.D. 34818, City et al. sought all documents relating to the spur determination. The only document supplied in response by Conrail was a version of what Conrail presents as Exhibit E (City et al.'s version is at Reb. App. 179-80.) When the issue of spur vs. line was litigated in F.D. 34818, Conrail stated that "The determination whether particular trackage is a 'spur' or other type of trackage that is not a 'line of railroad' is a legal determination." Reb. App. U at

evidently became the basis for Conrail's later claims to have complied with federal abandonment licensing requirements. So far as City et al. can now tell, the reclassification was stimulated by a redeveloper (National Bulk Carriers), which owned property to the east of the Embankment, and as part of its redevelopment wanted to take out the Conrail bridge from the Embankment across Marin Boulevard onto its property. With Conrail's permission, the developer did so. The 2009 EA notes that the City permitted the removal. The City certainly granted permits to demolish the bridge, for it crossed a City street, but that is irrelevant. National Bulk Carriers and its contractor took out the bridge, not the City, and the key "permission" came from the bridge's owner, which was Conrail.[17] Conrail in its brief notes that National Bulk Carriers said its lawyer thought the line was a spur, but that too is irrelevant. National Bulk Carriers was economically eager to take out the Conrail trestle over Marin Avenue to facilitate its redevelopment of property east of Marin.[18] Conrail gives no contemporaneous basis for any legal

---

276. Conrail claimed privilege for all documents relating to its 1994 spur determination other than the table at Reb. App. H at 179-80. Conrail provided a privilege log indicating only one privileged document: JJ. Paylor to J.R. Beard, April 14, 1994, Reb. App. U at 279. Conrail evidently has no contemporaneous explanation for classifying the Harsimus Branch as a spur that it is willing to share, and has certainly produced none despite discovery request in this or any other proceeding. See Conrail's Response and Objections, attached as Reb. App. U.

[17] See Reb. App. J at 193(Bulk Carriers demolition contract).

[18] Any suggestion that the City took out a bridge or trestle is not supported in the record. City apparently did issue demolition permits at the request of other parties

opinion that the Branch was a spur, and all the non-contemporaneous opinions by lawyers and layman that Conrail has ventured have been rejected. In any event, the bridge removal was only after Conrail had informed John Mucha (for the City) that it was complying with ICC requirements.

As Conrail president O'Toole stated, Conrail took the remaining trestles out in 1996. He took the position with NJ SHPO that this so degraded the Embankment as to render it ineligible for the State Register of Historic Places and objected to listing on the State Register because it would interfere with profits from land sales.[19] NJ SHPO nonetheless listed the Embankment because it retained sufficient historic integrity.

In short, the record is clear that the City had legitimate safety concerns about Conrail's bridges and trestles, initially sought their repair, and was subsequently advised by Conrail that it would lawfully abandon the line and then remove the trestles rather than repair them. Conrail told the City it would comply with ICC abandonment law, and the record shows that the City assumed that Conrail had done so based on Conrail's representations. Had the railroad proceeded lawfully

---

and Conrail, but only after Conrail's representation that it would proceed in accordance with ICC jurisdiction.

[19] Mr. O'Toole's sworn letter to SHPO is attached as Exhibit 3 to the Day V.S. in City et al.'s Opening Memo App. at 021-22.

(filed an abandonment proceeding), then the bridges and trestles would not have been removed prior to completion of Section 106.

Second motion to strike (Ryan V.S.). The next issue is the reliability of the Ryan Verified Statement itself. Conrail in its Opening Submission relies almost entirely on the claims made by its employee Robert Ryan in the form of this Verified Statement originally filed in the Declaratory Proceeding (F.D. 34818) concerning whether the Harsimus Branch was a "line" subject to STB abandonment jurisdiction or a spur.

Conrail has previously stated that whether the Harsimus Branch is a line or a spur is a "legal" determination.[20] Mr. Ryan is not an attorney, and thus by Conrail's admission not competent to express an opinion on line versus spur matters. What his "beliefs" are on the subject are therefore irrelevant, and simply not something on which Conrail can claim exculpates the corporation from complying with federal abandonment law. Reliance on Ryan amounts to an admission of acting with willful blindness, the equivalent of knowledge and intent to act unlawfully.

Conrail submits no contemporaneous legal analysis from any source showing the basis for the railroad's "spur" determination; the only document on that subject Conrail has ever produced is an internal chart of spur determinations, one line of

[20] Reb. App. U at 276.

which indicates that someone in the Law Department (thought to be Mr. Paylor) reclassified the line to spur status in 1994. There is no showing Ryan ever spoke to Paylor concerning the Harsimus Branch.

City et al. are under no obligation to re-argue whether the Harsimus Branch is a line or a spur because this issue has been conclusively resolved against Conrail. This Board considered Ryan's Verified Statement in F.D. 34818 and found all his arguments unpersuasive, twice, based on information available to Conrail at the time.[21] By the time the issue was eventually addressed by the 3-R Act "Special Court"[22] on the merits, the LLCs had concluded that the Harsimus Branch was clearly a line of railroad subject to STB abandonment jurisdiction, and sought damages from Conrail for fraudulently or negligently misrepresenting to the courts, STB, the developer and the City that the line was a spur. [23] The developer

---

[21] City et al. -- Petition for a Declaratory Order, F.D. 34818, served Aug. 9, 2007, recon denied, id. served Dec. 19, 2007 (Reb. App. G). Because Conrail has placed Ryan's arguments of record, City et al. are attaching both of the STB's decisions (Reb. App. G), and adopt STB's arguments insofar as they respond to Ryan's claims that STB lacks jurisdiction. The agency carefully explained how Ryan was wrong in his spur claims. E.g., Reb. App. G at 160-61.

[22] The Special Court was long ago abolished and its functions transferred to the U.S.District Court for the District of Columbia.

[23] The developer's counsel (then Mr. Horgan) explained that, on examination, the spur claim advanced by Ryan and Conrail had to be wrong because the line Ryan claimed was the Harsimus Branch had been abandoned and dismantled by 1964 (12 years before Conrail was formed in 1976) and was never deeded to Conrail. App. at 103 para. 20. Mr. Horgan said the records showed Conrail was actively running freight trains over the Harsimus Branch in 1976, and the Harsimus Branch

stipulated that the Harsimus Branch was conveyed to Conrail as a line, and Conrail stipulated that it would "not raise any facts or arguments in opposition to the foregoing stipulation…." Stipulation, p. 1, attached as Reb. App. O at 252. Since the legal principle is once a line, always a line, the Special Court then granted summary judgment to City et al. that the Harsimus Branch was in fact a line of railroad governed by STB abandonment jurisdiction. [24] Ryan's claimed conclusion that the line was a spur has been rejected by the STB twice, by the developer via a stipulation, a Declaration by the developer's counsel, and through a Cross-Claim in U.S.D.C. 19-1900 showing that it was a fraudulent misrepresentation and part of a cover-up of other unlawful abandonments. Moreover, Conrail ultimately stipulated it would no longer make the argument or adduce evidence for it (which seems to preclude what it is doing now), and ultimately the issue was resolved against Conrail by summary judgment in the U.S. District Court. It is too late for Conrail

---

was the only connection to the interstate rail network for another line, referred to as Line Code 1440, Hudson Street. App. at 103, para 19. The developer stated that Ryan's claims on which Conrail relies are part of a fraudulent misrepresentation. App. 114, para 138. The developer stated that Conrail also had engaged in a de facto abandonment of Line Code 1440 without STB authorization and was trying to cover it up. App. 114 para 139.

[24] The LLCs in fact sought to amend their pleadings to file a cross-claim against Conrail alleging that Conrail made fraudulent or negligent misrepresentations in claiming that the Harsimus Branch was a spur. The Special Court denied leave to amend to the LLCs because that would have dramatically expanded the proceeding brought by City et al. and instead granted summary judgment to City et al. City of Jersey City v. Conrail, 968 F.Supp. 2d 302 (U.S.D.C. D.C. 2013).

to intimate (based on Ryan's old V.S. or on anyone else) that the Harsimus Branch is -- or ever was -- anything other than a line of railroad subject to this Board's abandonment authorization. Re-litigation of this issue is barred by collateral estoppel/res judicata and/or law of the case as set forth in City of Jersey City v. Conrail, 968 F.Supp. 2d 302 (U.S.D.C. 2013).

In the end, it is irrelevant what Ryan thought in 2006 when he executed the V.S. on which Conrail relies. Conrail lost that claim. The Special Court, this agency, the LLCs, and certainly City et al. have all concluded that Ryan was wrong. The issue is what Conrail should have known, not what Ryan thought or why. For the reasons stated above, Ryan's statement is incompetent and irrelevant, and Conrail is estopped from relying on it or otherwise attempting to relitigate whether the Harsimus Branch was conveyed as a line. Conrail has stipulated it will not introduce evidence or argument contrary to that fact. The Ryan V.S. must be stricken.

III. What Conrail Knew or Should Have Known

Intentional violation. Conrail contends that it did not intentionally violate Section 110(k) on two lines of argument: first, that its land agent (Mr. Ryan) believed that the Harsimus Branch was a "spur" that did not require abandonment authorization, and second that a state court decision (212 Marin Blvd. LLC v. Chicago Title Insurance Co., NJ Superior Court No. HUD-L-5801-09, Aug. 31,

2017) concluded that assertions by Conrail's outside attorney Fiorilla that the line was a spur were reasonable.

Conrail's arguments all miss the point. If the "beliefs" of a particular employee could exculpate a corporation, a corporation could do whatever it wanted by compartmentalizing or avoiding knowledge and operating through ignorant or self-serving employees. Federal rail policy requires this Board, inter alia, to "encourage honest and efficient management of railroads." 49 U.S.C. 10101(9). Reliance on willful ignorance and self-serving "beliefs" is hardly encouragement of honesty and efficiency. It instead encourages deceit, prevarication, and unaccountability especially in corporate actors.

Mr. Ryan's alleged beliefs (or for that matter Conrail outside attorney Fiorilla's beliefs, or the beliefs of anyone else at Conrail holding similar views) are not decisive. Ryan, Fiorilla, or other agents of Conrail may choose to ignore the facts (or engage in a willfully blind failure to inquire). Conrail as an institution may be set up in a compartmentalized fashion so that its agents are encouraged to rely on what they are told without inquiry, or to devise after-the-fact explanations if caught out. That is why corporations are charged under the collective knowledge doctrine with the sum total of all knowledge that their employees collectively knew or should have known.

In all events, Mr. Ryan, Mr. Fiorilla, and Conrail the corporation ignored or were willfully blind to the following indisputable facts, all available to Ryan, Fiorilla and Conrail well before Conrail tore out trestles and sold off the Embankment:

1. The Harsimus Branch (Pennsylvania Railroad Line Code 1420) was conveyed to Conrail as a line of railroad by the Fairfax Leary deed recorded in 1978.[25]

2. The Harsimus Branch was the former Pennsylvania Railroad/Penn Central mainline for freight into Jersey City.[26]

3. Conrail did not obtain the Harsimus Branch as unused or surplus trackage, but because it was "used or useful for transportation."[27]

---

[25] Day V.S. exhibit 1, App. 016-017.

[26] See excerpts from National Register nomination quoted at Reb. App. C at 012-013.

[27] Day V.S. exhibit 5, transcript of Council Hearing January 8, 2003, at 124 [App at p. 048], statement by Conrail outside counsel Fiorilla (all in the presence of Conrail's Robert Ryan) to the Jersey City Council.

The following exchange is noteworthy:
Council Member Healy: "when did [the Harsimus Branch] stop being used?
Council Member Maldonado: "Fully operational"
Council Member Healy: "As a real branch."
Conrail Attorney Fiorilla: "Conrail got it in 1976; that's when Conrail started. Conrail inherited 1976. It was in service at that time."

Id. Fiorilla also testified that Conrail used the line until about 1992. "And that's when we [Conrail] abandoned it, about 1992, in that area." Transcript at 123 [App. at 048].

4. Conrail's analysis of the line for abandonment purposes dated January 17, 1985 showed 3204 carloadings for seven customers on the line for the fiscal year ending 9/84.[28] An accompanying memo dated January 28, 1985 shows the line profitable even after rehabilitation expenses and even excluding traffic from two shippers that Conrail expected to move.[29]

5. Conrail's "line screening analysis" dated January 15, 1988, concluded that the line still had 637 carloads per year. It stated that "an expedited abandonment may be possible if the remaining active customer(s) discontinue rail service or relocate."[30] The line apparently continued in active rail use through 1992.[31]

6. As City et al. has already indicated, lines of railroad require abandonment authority, inclusive of compliance with Section 106 of the National Historic Preservation Act. See City et al. Opening Memo at 4-5 and passim.

In short, in January 2003, Conrail's attorney in the presence of Ryan confirmed to the Jersey City Council that the Harsimus Branch was acquired by Conrail in 1976 as a "real branch" in response to a question from Council Member Healy, that it had substantial use, and that the line impliedly was lawfully abandoned in or around 1992. Healy subsequently became Mayor of Jersey City.

[28] See document labeled Hudson Street Track, Rebuttal Appendix K (documents from Conrail discovery in FD 34818), Reb. App. H at 175.

[29] See document from Folk to Hasselman, Reb. App. H at 173-74 (document from Conrail discovery in FD 34818).

[30] Day V.S. exhibit 2 [City et al. Opening Memo at p. 019]. See also Line Screening Analysis in Reb. App. H at 176-77.

[31] See note 27 supra (testimony by Conrail's attorney in the presence of Ryan); see also Reb. App. I at 182-87 (safety concerns due to derailments and falling debris from the Harsimus Branch in 1992, including police reports).

7. For abandonment purposes, once a line, always a line. City et al. Opening Memo Exhibit 2, McFarland V.S. at 4 [Appendices p. 062].

8. On top of all this, Conrail issued eight deeds to 212 Marin Blvd. LLC, et al. for the eight blocks of the Harsimus Branch that contain the Harsimus Embankment and other remaining support structures (stanchions) in 2005.

Each deed states it was prepared by Mr. Ryan[32] and is signed by Mr. Ryan and by Conrail's then Associate General Counsel Broder.[33] In each deed, Mr. Ryan and Mr. Broder (the Associate General Counsel of Conrail) state that the "piece or parcel of land" was "a portion of the **line of railroad** known as the Penn Central Harsimus Branch and identified as Line Code 1420, situate in the City of Jersey City."[34]

In short, the line was conveyed as a line, was used as a line, was profitable as a line, and when it became inactive, was still marketed and sold as part of a line of railroad. Once a line, always a line, and any self-serving "reclassification" by

---

[32] See Reb. App. F at 038, 047, 056, 065, 074, 083, 092, 102.

[33] See Reb. App. F at 046, 055, 064, 073, 082, 091, and 101.

[34] See Reb. App. F at Reb. App. 042,051, 060, 069, 078, 087, 096, 106. Mr. Ryan also put developers on notice that the property was "a portion of a line of railroad known as the Penn Central Harsimus Branch and identified as Line Code 1420" in the 2002 Conrail bid package in Reb. App. V at 292. Thus all developers (including of course 212 Marin Blvd. LLC et al.) were on notice that they were dealing with a line of railroad. And they knew or should have known that they should seek proof of an abandonment authorization or proof that none was required. See App. 086 & 092 (NJ title standards). Conrail's chosen developer (212 Marin Blvd. LLC, et al.) instead acted with willful blindness.

Conrail in 1994 was simply an evasion to avoid federal rail abandonment jurisdiction and the application of Section 106.

Mr. Ryan also knew that abandonment authorization was required prior to demolition of a line. Maureen Crowley (then President of the Embankment Preservation Coalition) called Mr. Ryan on March 5, 2002, asking inter alia "whether the property had gone through abandonment procedures, because we had found no record of that in the NJ SHPO's office.[35] Mr. Ryan told Ms. Crowley that "the property had been abandoned; Conrail needed to do that to remove the trestles."[36] This is not simply an acknowledgment that a lawful abandonment had to precede trestle removal. It also amounts to a misleading suggestion by Ryan that Conrail had obtained lawful abandonment authority (and completed the Section 106 process) prior to removing trestles circa 1996. These kinds of misrepresentations explain why whistleblowers were contacting STB and looking for evidence of abandonment, especially in the 2002-2005 period.

Third motion to strike (Chicago Title state court decision). Conrail claims that its spur claim was found reasonable in 212 Marin Blvd. LLC v. Chicago Title Insurance Co., NJ Superior Court No. HUD-L-5801-09 (2017), which it attaches as

---

[35] Had Conrail applied for an abandonment license, NJ SHPO would have had a record of consultation with Conrail in the Section 106 process. Accord, 49 C.F.R. 1105.8. Ms. Crowley had sought evidence of lawful abandonment by searching SHPO records for evidence of consultation prior to abandonment authorization.

[36] Memo, Crowley to Munley, June 12, 2002, Reb. App. W at 295.

Exhibit Q to its Opening Statement. City et al have moved to strike this decision in our main brief. In any event, a federal agency is not bound by state court judgments on federal questions. See U.S. Const., Art. VI, Clause 2. In addition, the New Jersey state court lacked jurisdiction to determine if the Harsimus Branch was a spur or a line. The D.C. Circuit ruled in Conrail v. STB, 571 F.3d 13 (D.C. Cir. 2009), that this issue was exclusively a matter for Special Court. The Special Court (abolished, and now U.S.D.C. for D.C.) subsequently granted summary judgment that the Harsimus was conveyed as a line. City of Jersey City v. Conrail, 968 F.Supp. 2d 302 (2013). In general, STB otherwise has exclusive jurisdiction to determine the status of a line. See Day V.S. at 6-7 (citing authorities), Appendices 007-8.

Moreover, the New Jersey state court decision on which Conrail relies is unpublished. In New Jersey, "[n]o unpublished opinion shall constitute precedent or be binding upon any court." N.J. Court Rule 1:36-3. Also, Conrail cannot claim that "law of the case" doctrine applies to the Chicago Title litigation because the doctrine is restricted to preventing re-litigation of the same issue in the same suit. Warren Township v. Suffness, 225 N.J.Super. 399, 408 (App.Div.), certif. denied, 113 N.J. 640 (1988). It is also important to note that neither STB nor City et al. were parties to that action. Conrail therefore cannot argue some sort of estoppel.

The action in question was brought by Chicago Title against third-party Conrail seeking contribution and indemnification that the insurer had paid to the developer LLCs under a title insurance policy. The insurer alleged that the policy was issued to the LLCs after Conrail made false representations about the nature of the Embankment. The state court found that Chicago Title had not met its burden of showing by clear and convincing evidence that Conrail had engaged in fraud against the insurance company based on the evidence adduced by Chicago Title. The state court appears to have relied on statements by Robert Ryan (see opinion at p.4) that are markedly different from the actual facts as shown in City's opening brief (and herein), and markedly different even from what he says in his Verified Statement from F.D. 34818 on which Conrail relies. Many of the representations that the State Court quotes attributed to Ryan are contrary to the record and either false or misleading.[37]

While the state court apparently realized that the Harsimus Branch was conveyed to Conrail as a line of railroad, as conclusively found in Jersey City v. Conrail, 968 F.Supp. 2d 302 (U.S.D.C. D.C. 2013, sitting as Special Court), the state court dismissed binding findings by the Special Court (upheld on appeal to the D.C. Circuit) and evidently did not examine STB's earlier rejection of Ryan's

[37] E.g., almost everything on p. 5 of the opinion is wrong or misleading, or simply the witness's uninvestigated conclusions.

claims as well. Furthermore, the court was apparently totally unaware of the fundamental principle of rail law that once a railroad is acquired as a line (as happened here), it remains a line until STB authorizes abandonment. Conrail, however, is charged with knowledge of this principle. In all events, the record made by City et al. in its initial submission in this proceeding (filed June 21) provides much greater context and detail regarding what Conrail knew or should have known, and about its actions regarding the Embankment itself. The record here is not limited merely to Conrail's interactions with Chicago Title when the developer procured title insurance from Chicago Title's agent. The state court decision, which cannot be relied on as precedent for any purpose anyway under New Jersey law, thus has no bearing in this proceeding.[38] It should be stricken or ignored.

City et al. already addressed Conrail's claims of exoneration on the basis of this state court decision when previously made by Conrail some years ago. City et

[38] In its haste to insure the title, Chicago Title evidently elected to rely on representations by Conrail's outside counsel that the Harsimus Branch was a "spur," and thus did not seek out proof that it in fact was a spur, either in the form of a legal opinion from outside counsel (or its own attorneys) or by conducting a factual investigation into use of the line, or by requesting any documentation from Conrail, or apparently reading the Fairfax Leary deed, which conveys the property as a "line of railroad" App. 017. This arguably violated New Jersey title standards (App. 086 & 092) requiring title examiners to obtain proof that no abandonment authority was needed in cases where abandonment had not been authorized. Chicago Title's own actions and inactions thus influenced the decision against it.

al. furnished an expert affidavit by Thomas McFarland (Appendices pp. 059-67). Mr. McFarland properly notes that City et al. were not parties to that litigation (nor was STB). He continues:

> "The result surely would have been different if it had been explained to the Court that it is judicially settled that Conrail acquired the Embankment as a rail line, and that under settled ICC-STB precedent, the Embankment remained a railroad line requiring STB authority for its abandonment when it was sold to the LLCs without the requisite abandonment authority."

Appendices at 065. He repeats this position at 066, and states that

> "I strongly believe that when Conrail conveyed the Embankment to the LLCs in 2005, Conrail knew or had good reason to believe that the Embankment was every bit as much a railroad as its Highline was determined to be only a short time earlier."

For all these reasons, the state court decision on which Conrail relies should be stricken from the record, or otherwise ignored and given no weight.

Other points are covered in the main brief. Failure to address any other point raised by Conrail is not a concession of that point, but instead a conclusion that it is irrelevant or wrong for reasons elsewhere expressed.

Rebuttal Appendix B

Response to Developer Arguments

1. The developer's reliance on Conrail's "showings" is misplaced and the LLCs have themselves railed against Conrail's showings elsewhere ……. ~1~

2. The LLCs themselves engaged in anticipatory demolition ……. ~8~

3. STB's Section 106 process is after-the-fact and violates the letter and spirit of the statute ……... ~11~

4. Developer claims a visionary plan but the LLCs' only land use filings call for 100% demolition……... ~12~

5. Blight …… ~18~

6. Recent City initiation of sua sponte investigation of area …… ~20~

7. City's opposition to State Register listing of the Embankment in 1999 ……. ~23~

8. Developer's claims about historic significance of the Harsimus Branch itself……. ~25~

9. Developer's claim that structures are not protected under Section 110(k) until they are listed on the State Register ……. ~26~

10. Developer's concern about delay …… ~29~

11. Developer's claim that an STB abandonment permit or license is not a 110(k) permit or license ……. ~31~

12. Developer's claim that City et al. previously conceded that removal of trestles was lawful ……. ~33~

13. Conrail/developer implied easement claim ……. ~35~

14. The developer's attack on the City's proposed remedies as self-serving ……. ~39~

15. Developer's other claims ……. ~44~

Rebuttal Appendix B

Response to Developer Arguments

City et al. will briefly deal with some specific claims by the LLCs, focusing initially on the points they emphasize in their summary.

1. The developer's reliance on Conrail's "showings" is misplaced and the LLCs have themselves railed against Conrail's showings elsewhere. The LLCs assert that Conrail previously showed it had not engaged in anticipatory demolition. See Opening Argument and Evidence of the LLC's [hereinafter "LLCs' Opening Memo"] filed June 21, 2021 in AB 167-1189X and related cases, at p. 2. The developer goes on to argue that Conrail (relying on its filings in F.D. 34818) has shown it did not violate Section 110(k).[1]

The LLCs current position is contradicted by their prior statements, that these prior statements are admissions against interest and thus undercut their current claims, and that in all events no showings that exculpate it from having engaged in an anticipatory demolition in conjunction with an unlawful de facto abandonment.

Conrail's argument relies primarily on a statement by its employee Ryan to the effect that he thought the Harsimus Branch was a spur. The LLCs have previously renounced Ryan's claims as part of a scheme of fraudulent misrepresentation by

[1] LLCs Opening Memo at 25.

Mr. Ryan and Conrail. The LLCs' counsel (then Mr. Horgan) explained in a Declaration under penalties for perjury that on examination the spur claim advanced by Ryan and Conrail had to be wrong because the line Ryan claimed was the Harsimus Branch had been abandoned and dismantled by 1964 (12 years before Conrail was formed in 1976) and was never deeded to Conrail. App. at 103 para. 20. Mr. Horgan said the records showed Conrail was actively running freight trains over the Harsimus Branch in 1976, and the Harsimus Branch was the only connection to the interstate rail network for the Hudson Street Industrial Track [elsewhere referred to as Line Code 1440]. App. at 103, para 19. The LLCs in fact stated in Cross Claims against Conrail filed in U.S.D.C. for D.C. in No. 09-1900 that Ryan's key claims on which Conrail relies are part of a fraudulent misrepresentation. App. 114, para 138. The LLCs charged that Conrail also had engaged in a de facto abandonment of Line Code 1440 without STB authorization and was trying to cover it up. App. 114 para 139. Indeed, STB also has rejected Conrail's/Ryan's evidence as totally unsupported by the facts. Reb. App. G at 160-161. Ryan himself called the property in question a "line of railroad" in the 2002 solicitation package he circulated (Reb. App. V at 292: "a portion of a line of railroad known as the Penn Central Harsimus Branch and identified as Line Code 1420") and in all eight deeds he later prepared to convey the property to the LLCs (Reb. App. F. at 042, 051, 060, 069, 078, 087, 096 & 106.)

Ryan's thoughts are also irrelevant. Conrail has previously indicated that status determinations (line vs. spur) are legal matters. See Reb. App. U at p. 276 (para 5). But Ryan is not an attorney and thus not competent to make a legal determination for Conrail. Moreover, the issue is not what Ryan thought, but what Conrail knew or should have known, and City et al. has shown that Conrail knew or should have known that the Harsimus Branch all along was a line of railroad. E.g., Day V.S. App. 001-048 and McFarland V.S. App. 58-73. In any event, the Harsimus Branch was conclusively determined to be a "line of railroad" subject to STB abandonment jurisdiction not only by STB (in two decisions[2] vacated not on the merits but on jurisdictional grounds by the D.C. Circuit), but also on summary judgment in City of Jersey City v. Conrail, 968 F.Supp. 2d 302 (U.S.D.C. D.C. 2013). The developer indeed stipulated to that fact. Reb. App. O at p. 252.

The LLCs current support of Conrail is not credible, since they previously explained how fraudulent and negligent Conrail's representations and evidence was, and they adduce no evidence for a change of position (and are estopped by their own stipulation in Reb. App. O as well as law of the case from doing so). Furthermore, Conrail at the very least acted with willful blindness (willful ignorance) for it should have known the line was a line from its inception (as the LLCs stipulated per Reb. App. O), and that abandonment authority and section 106

[2] Reb. App. G at pp. 153-63 & 164-71.

compliance was therefore necessary in advance of dismantlement and dismemberment of the Branch. In the circumstances, Conrail is also chargeable with intentionally causing (or the equivalent, acting with willful blindness to cause) significant adverse impacts on all the historic properties a timely 106 process would have revealed. These assets include at least all those listed at p. 40 of the Cultural Resources Effects Assessment Report Addendum ("CREAR Addendum", filed by this agency as a "Decision" in this proceeding on Nov. 12, 2019). In short, even if Conrail claims not to have known, it should have known, and would have known if it had conducted a responsible inquiry.

The developer in fact has elsewhere stated exactly that. In particular, the developer told (admitted to[3]) the United States District Court for the District of Columbia (sitting as the "Special Court") that Conrail had engaged in fraudulent misrepresentations before, during, and after the F.D. 34818 proceeding insofar as

[3] The word "admitted" is used because the developer and the railroad were co-conspirators. They both knew or should have known at all relevant times that the Harsimus Branch was a line of railroad. The Fairfax Leary deed conveyed it to Conrail as a line, and all eight parcels deeded to the developer specifically disclosed that they were part of a line of railroad. See deeds in Reb. App. F. Developer and its attorneys were obligated to seek proof of abandonment authority or that none was required per New Jersey title standards (see App. 086 & 092), but the developer and its attorneys failed to do so, choosing to accept quitclaim deeds describing the property as part of a line of railroad. The LLCs were complicit or acting in willful blindness as part of an unlawful de facto abandonment involving what they have alleged were fraudulent misrepresentations to the Board and to the City concerning the status of this line.

Conrail claimed the Harsimus Branch was a spur. The developer explained that Conrail's claims filed in F.D. 34818 were part of a series of fraudulent misrepresentations. "Conrail has misrepresented the Embankment's actual status to the LLCs, the STB and this Court for its own pecuniary gain and to avoid examination of its own wrongful conduct beginning in the 1980's."[4] The developer repeatedly reiterated Conrail's fraud: "Conrail, with fraudulent intent and at numerous times, misrepresented to the LLCs that the Embankment was a spur or other, non-regulated railroad improvement" not requiring prior abandonment authority from STB.[5] The developer explained that Conrail made "fraudulent and misleading statements" in response to City and Coalition inquiries as well, when Conrail claimed to the City and Coalition that it did not need ICC or STB authority to abandon.[6] Troublingly, the LLCs claimed Conrail's misrepresentations concerning the Harsimus Branch were the tip of a proverbial iceberg of unlawful conduct by Conrail. The developer stated that Conrail in making its fraudulent claims the Harsimus Branch was a spur was acting to "avoid scrutiny of" (i.e., to cover-up) "its own illegal, de facto abandonment of lines of

---

[4] LLCs' Cross Claims in City of Jersey City v. Conrail, USDC DC 09-cv-1900, filed 10/04/2012, para. 140 (see App. VII at 53). The developer specifically indicated that the legal theories espoused in the Ryan Verified Statement on which Conrail relies were false and misrepresentations. Id. at para. 138 & 139, App. at 52.

[5] Id. para. 128, App. at 111.

[6] Id. para 133, App. at 112-13.

rail in Jersey City east of Marin Boulevard and the de facto abandonment of rail service across the Embankment, accomplished through demolition of the cross-bridges and removal of track."[7] In short, the developer accused Conrail of illegal de facto abandonment of additional lines (in particular Line Code 1440) between the Hudson River and Marin Boulevard which are not directly at issue in this proceeding.

The developer succinctly states that "[a] reasonable business enterprise, engaged in the business of railroad ownership and operation should have been aware that the Embankment would be considered subject to federal regulations and STB abandonment regulation."[8] The developer thus in essence specifically agrees that the doctrines of collective knowledge and willful blindness are applicable to Conrail's conduct here, and that the railroad conned the developer into purchasing the line without an abandonment authorization. The developer is thus estopped from asserting that Conrail was excusably ignorant that the Harsimus Branch required an abandonment authorization. The developer instead stated that

> "143. … Conrail failed to perform customary due diligence necessary and expected of a regulated railroad to assess the true and correct status of assets the railroad intends to sell to third parties. [Conrail] failed to properly inform and/or supervise its agents and attorneys with respect to communications with the LLCs and with the City and others in respect to the true status of the properties sold to the LLCs.

[7] Id. para 136, App. at 113-14.
[8] Id. para 146, App. at 116.

> "144. Conrail negligently maintained its internal records so as to allow the Embankment lots to be reclassified as spur tracks, when in fact the Embankment was part of a line subject to STB abandonment jurisdiction." [9]

The developer in fact stipulated that Conrail received the Harsimus Branch as a line of railroad.[10] The fundamental legal principle is, as the developer has in essence acknowledged above, "once a line, always a line." The developer therefore argued that Conrail had committed a knowing and intentional unlawful de facto abandonment and fraudulently misrepresented the facts, for pecuniary gain and to hide further unlawful conduct east of the line at issue in this proceeding.

After all of this, the developer is estopped from maintaining that Conrail did anything other than knowingly and intentionally evade STB abandonment authority and thus required Section 106 review. At the very least, the developer's statements in the 212 Marin Boulevard LLC, et al. claims against Conrail are admissions against interest that wholly undercut any claims by it now that Conrail has demonstrated it did not know what it was doing when it unlawfully de facto abandoned and dismembered the Harsimus Branch and Embankment. Indeed, the developer's own statements about Conrail's statements (misrepresentations) compel a finding that Section 110(k) is applicable.

---

[9] Id. paras 143, 144, App. at 116.
[10] Reb. App. O at 252.

2. The LLCs themselves engaged in anticipatory demolition. As City et al have previously argued, the LLCs at all times relevant herein knew or should have known that the Harsimus Branch was a line of railroad for which Conrail should have obtained, but did not obtain, an abandonment authorization prior to sale. The LLCs were (from their perspective) at best willfully blind on the subject. The LLCs amounted to co-conspirators in Conrail's effort to suborn STB regulation (including Section 106) for pecuniary gain and to cover up other wrongdoing (which the developer alleged) by Conrail. Thus, the developer itself is part and parcel of the anticipatory demolition as Conrail's chosen developer.

The developer seeks to avoid culpability by arguing that it has not actually managed to demolish any historic asset yet.[11] The developer does not have hands so clean. First, the developer clearly acquired the Embankment parcels to demolish them. The LLCs filed land use applications almost immediately upon acquisition for that purpose.[12] The LLCs even aggressively obtained an injunction from a state court that remarkably barred City attorneys and agents from raising, and the City Planning Board from considering, evidence or information "regarding

[11] See LLCs' Opening Memo at p. 2 and passim.

[12] See Curley V.S. executed Jan. 21, 2006, at pp. 2-3 [City et al. App. 197-98]. See also Curley V.S. executed Jan. 6, 2006, Exhibit C, App. II, commencing at Reb. App. F at 112 (series of "Development Applications" for the LLCs' various parcels dated August 24, 2005). Notably some of documents involving the property swap of the first at-grade parcel are dated in May and June 2005, before the LLCs even acquired related Conrail property. Reb. App. F at 146-47.

the issues of railroad abandonment, the validity of title, ownership [of the rail line Conrail transferred to the LLCs] and the possible condemnation of the [LLCs'] property."[13] Since the Embankment by then was a City landmark, the LLCs could not immediately lawfully bulldoze it under local law,[14] but the LLCs did start to demolish historic assets on the at-grade parcels. First, the LLCs almost immediately engaged in a land swap with the landowner along Sixth Street on the Brunswick to Newark block, severing the corridor (which is itself a Section 106 asset).[15] Then after City et al. filed the initial declaratory proceeding (F.D. 34818) in January 2006, the developer bulldozed an historic stanchion on his portion of the Brunswick to Newark block and appeared to be threatening the remaining stanchions. See Curley V.S. at pp. 2-3 [City et al. App. 197-98].[16] The LLCs

[13] See Reb. App. F at 150.

[14] Reb. App. M at 228-45 contains undated examples of the LLCs applications to demolish Embankment parcels, which Ms. Donato evidently refiled by Letter dated May 1, 2008.

[15] That party evidently prepared filings to support the swap in advance of the LLCs' application from Conrail in anticipation of re-subdividing the parcel for residential uses. See Reb. App. F (Curley V.S. of Jan. 6, 2006) at pp. 146-47 (exhibits to Curley V.S.).

[16] The unpublished state court decision on which Conrail and the developer relies refers to this as "the LLCs began to improve the property." Conrail Exhibit Q at p. 8.

stopped only after City et al. sought a restraining order against them from this Board.[17]

The developer along with Conrail subsequently applied to demolish the Embankment.[18] The developer, sometimes joined by Conrail, launched a torrent of litigation against the City -- and even against the Coalition and RTC and their attorneys (SLAPP suits) -- to deter City et al. from pursuing federal remedies against the unlawful de facto abandonment.[19] The developer subsequently offered to give the Embankment away for fill.[20] By the LLCs' own admission, the only reason they have not leveled the Embankment yet is this agency's continued jurisdiction. See Reb. App. P at 256-60 (Letter, Horgan for LLCs to Irwin for STB OEA), Dec. 7, 2015 indicating development is inevitable if this Board relinquishes jurisdiction. The LLCs have a suit pending against the City for compensation for

---

[17] After City et al. sought an STB injunction to preserve the line, the LLCs agreed not to engage in further demolition pending the outcome of STB proceedings.

[18] Compare Reb. App. M (LLCs' attorney Donato requesting rehearing by Letter dated May 1, 2008, along with examples of LLCs' demolition requests) with App. at 77-83 (collects Conrail joinders dated April 25, 2008, in six developer demo permit requests).

[19] That litigation includes but is not necessarily limited to the 17 cases set forth in Reb. App. T in table format. See also App. at 121-22 (quoting developer's policy to use lawsuits to bankrupt opponents).

[20] App. 201-08.

regulatory delay, but then they have had an express strategy of "Strategic Lawsuit Against Public Participation" ("SLAPP")[21] litigation to bankrupt their opponents.[22]

3. STB's Section 106 process is after-the-fact and violates the letter and spirit of the statute. The LLCs claim that the parties participating in the Section 106 process have "cooperatively engaged in what is the most comprehensive, thorough, and protracted Section 106 process ever undertaken by the STB … in full compliance with NHPA and the Board's rules."[23] The LLCs' claim is both irrelevant and wrong. Assuming arguendo the agency's Section 106 process has been protracted, no amount of "comprehensiveness" or "thoroughness" can remedy the fundamental problem that the agency's process to date violates the letter and spirit of Section 106. The Section 106 process is supposed to take place before de facto abandonment, not afterward.[24]

Although Section 106 envisions analysis of historic property before it is demolished and/or sold off, that did not happen here. Instead, as a result of Conrail's unlawful actions and STB's failure to date to remediate the unlawful 2005 sale, the consultations mandated by Section 106 are foreclosed. What

---

[21] SLAPP suits are used developers and others to intimidate and to silence criticism in public forums by threatening expensive litigation, often on environmental issues. See Black's Law Dictionary at 1393 (7th ed. 1999).

[22] App. at 121-22 (use litigation "to bankrupt you all personally").

[23] LLCs' Opening Memo at 3.

[24] Accord, Letter, NJ SHPO to STB, May 7, 2009, filed in AB 167-1189X and related dockets as an environmental comment (EI-17650), Reb. App. R at 266.

happened here is akin to documenting that horses died when the barn burned down (or will shortly be dead because of the fire). There is to date no examination of whether the horses should have been saved before setting fire to the barn with the horses locked inside, or doing something for those still remaining alive, when the whole point was to save the horses before burning the barn.

4. Developer claims a visionary plan but the LLCs' only land use filings call for 100% demolition. The developer claims that it has been working with a contract purchaser ("Albanese") on a "visionary mitigation plan" that "far exceeds the usual conditions for Section 106 NHPA mitigation and what is achievable under the Board's limited jurisdiction."[25] This cannot be true as a matter of law.

36 C.F.R. 800.5(a)(2)(vii) indicates that mitigation involving transfer of property requires imposition of legally binding conditions and restrictions to preserve the property. Developer's visionary plan calls for enormous development on one block of the Embankment (and thus the Branch), does not mention additional development on the first at-grade parcel resulting from developer's prior land swap, and ignores the Conrail properties. Thus, the vision covers only pieces of the historic assets. Even more problematic, it does not set forth any legally binding conditions or restrictions to preserve anything it intimates it is preserving.

[25] LLCs' Opening Memo at 3. The developer has trotted out "visionary plans" before, but never applied for land use approvals for same.

Developer in essence seems to be suggesting (as it has before) that City et al. should accept whatever is the developer's current "vision" (the "vision" in general has called for more and more development over the past 16 years), and should do so without legally binding preservation conditions or restrictions.[26] The developer's "vision" does not meet the requirements of 36 C.F.R. 800.5(a)(2)(vii) either in addressing the historic assets involved in AB 167 (Sub-no. 1189X) or in providing enforceable preservation conditions or restrictions for a single one of them. The only thing the vision assures is massive development on the Marin

[26] The City has a variety of remedies that are alternatives to overwhelming development on parts of the Harsimus Branch, but consistent with the City's goal to preserve the Branch for light rail, open space and historic preservation purposes. In addition to seeking STB invalidation of the deeds, City timely filed a notice of intent to OFA the line pursuant to 49 U.S.C. 10904. The City desires the line for a light rail connection between Journal Square and downtown, and the Secaucus hub. This is an acceptable use of OFA, and City can do it compatibly with freight uses. Under STB OFA precedent, City can acquire the eight blocks which Conrail sold the developer for the same price paid by the developer ($3 million) or for zero, if, as the developer now appears to claim, Conrail retained some sort of implied rail easement (rail easements are valued at zero in OFA proceedings). Conrail of course retained no rail easement of any sort. See deeds attached in Reb. App. F.

City can also rely on N.J.S.A. 48:12-125.1 to acquire the eight parcels Conrail deeded the developer at the price the developer paid.

City et al. expects intense litigation from Conrail and/or the developer if it pursues either remedy and would prefer after 15 years of litigation at STB and federal courts to pursue deed voidance and acquisition of the corridor under 49 U.S.C. 10905 and state remedies. None of these three remedies (deed voidance, OFA or NJSA 48:12-125.1) would require the City to sustain two huge towers on the Marin block, and other adverse impacts from the current iteration of the developer's vision, now that the "vision" for the Marin block is encumbered by Conrail's withdrawal from settlement talks.

block. More troublingly, the only land use applications the LLCs currently have in the system are for demolition and redevelopment of the entire eight blocks they purported to acquire from Conrail. That suggests that the LLCs' current vision may expand dramatically to embrace massive redevelopment on all eight blocks were this Board to grant the unconditioned abandonment authorization which they seek.

The developer basically argues that City et al. should take whatever the LLCs are willing to give (even if the "give" is unenforceable) for the City has no choice (remedy). The LLCs (and STB's OEA to the extent it has taken that view in its Section 106 process) is simply wrong in intimating that STB lacks any powers to impose remedy that mitigates an unlawful de facto abandonment that significantly harms historic assets. The LLCs would like this to be the case, because it is maximally consistent with their desire to maximize profit from Conrail's unlawful de facto abandonment. But the de facto abandonment in which Conrail engaged was unlawful. This Board has declared transfers of rail property null and void, or ordered reconveyance, when it perceived the transfer to be contrary to the integrity of the Board's regulations. E.g., The Land Conservancy of King County – Acq. and Op. Ex. – BNSF, F.D. 33388, served Sept. 26, 1997 (orders reconveyance). Accord, Jefferson Terminal RR Co. – Acq. and Op. Ex. – Crown Enterprises, Inc., F.D. 33950, served March 15, 2001 (revokes authority to acquire to protect

integrity of processes). See also ICC v. American Trucking Ass'n, 467 U.S. 354, 364-65 (1984) (agency has inherent authority to protect its statutory processes from abuse); Permian Basin Area Rate Cases, 390 U.S. 747, 780 (agency can take action that is imperative for achievement of the statute's ultimate purpose).

Again, Conrail unlawfully sold eight blocks including the Embankment prior to seeking a license authorizing such action, and directly in the face of City's inquiries for abandonment authority or proof none was required. This directly undercuts the integrity of STB's regulations, and eviscerates meaningful compliance with NHPA Section 106 and deprives the City of a meaningful remedy under 49 U.S.C. 1095. In the circumstances, the agency has ample power to invalidate the deeds in order to protect the integrity of its processes. STB is required to protect the public interest in abandonment proceedings, including specifically community development (49 U.S.C. 10903(d)) and not simply the interests of railroads, or remaining shippers, or rail labor. The Harsimus Branch is vital to community development, as City et al. have been averring since the inception of this abandonment proceeding. E.g., Letter, Healy to Conrail's Enright, dated March 4, 2008 City et al. App. at 210-14. Imposing remedies to compel railroads to stop evading Section 106 are essential to protect the integrity of the agency's jurisdiction in unlawful de facto abandonments. City et al. have discussed additional remedies (e.g., conditions on the abandonment per 49 U.S.C.

10903(e)(1)(B)) to remedy the unlawful de facto abandonment and loss of federal jurisdiction over historic assets elsewhere.

On the other hand, if OEA and the developer are correct that the Board has no power to remedy an unlawful de facto abandonment or its adverse impacts on historic resources, then the Board should and must implement Section 110(k) by denying the abandonment outright, since under those circumstances the significant adverse effects flowing from authorizing abandonment are inevitable and meaningful comment under Section 106 has been foreclosed. In these circumstances, denial of abandonment is the only available means to preserve the Embankment and to protect other historic resources (including the Branch) from adverse effects from Conrail's unlawful actions.

The claimed settlement package (in which Conrail has no involvement and which the LLCs are not bound to implement) is irrelevant to whether there has been a Section 110(k) violation. The issue before STB is not whether the developer's drawings look nice, but whether Section 110(k) applies. If Section 110(k) applies, and the STB takes appropriate action to enforce its provisions, there then may be an opportunity for all the parties to discuss the developer's visions and ideas so as to implement a mitigation plan that includes legally enforceable preservation conditions that meet the criteria in 36 C.F.R. 800.5(a)(2)(vii). That plan would presumably include conditions or restrictions

that will actually ensure preservation of the Embankment and Branch in a meaningful way consistent with the referenced regulation and applicable state and local historic preservation laws. However, so long as the LLCs and Conrail understand from OEA that the end result will be a memorandum of agreement (MOA) with no meaningful mitigation coupled with an unconditioned abandonment order, they have no incentive whatsoever either to comply with the prior non-binding term sheet, or the "vision" presented by the LLCs in their memorandum.

The developer's claims about the proffered settlement package ("vision") amount to conjectures. The developer has not filed any land use applications to achieve them. The only land applications to date made by the developer (or by its contract purchaser Albanese) have been to sever the Harsimus Branch mid-way between Brunswick St. and Newark Avenue, by way of a property swap between the developer and an abutting landowner, and to seek to subdivide and to demolish the remainder of the Embankment. More specifically, neither Albanese nor the developer has ever applied for anything of the sort the developer shows in the "Pelli Clark Pelli" architectural drawings provided in its Attachment 1.

In any event, the "Pelli Clark Pelli" solution (and drawings) all envisioned participation by Conrail. The proposed "settlement" the developer presents involved preservation of a rail and trail corridor on the Marin block, but it came at

the expense (to historic preservation and other public interests) of two very large towers. The adverse impact of the towers on the Embankment and on the historic Harsimus Branch were to be balanced by restoration of the Brunswick to Newark portion of the Branch, and by preservation of the Branch (for rail and trail uses) all the way to the end of the abandonment at CP Waldo (a point between Waldo and Chestnut Avenues). Additional property was also to be provided for trail purposes interconnecting with the Branch, and grade-separated from any roads or operating railroads.

However, in December 2020 Conrail without explanation pulled out of settlement negotiations, despite a previously signed term sheet outlining a settlement. Conrail's actions were evidently taken with the expectation that STB would shortly conclude the Section 106 process without applying Section 110(k) or providing for meaningful mitigation, and instead rubberstamp the unlawful de facto abandonment. As City et al. have indicated, Conrail and the LLCs have no incentive to mitigate any of the adverse impacts to historic assets flowing from their unlawful adverse abandonment absent meaningful enforcement of Section 110(k).

5. Blight. The developer claims that the area suffers from "urban blight."[27] The Embankment is largely surrounded by historic districts and does not appear

[27] LLCs' Opening Memo at 4.

blighted by appearance or vitality. The Embankment is currently unused, but it is not deteriorating, and stands as a monument to Jersey City's past. Accord, Kratz et al. V.S, Reb. App. C, at pp. 10-12. Mr. Kratz, Ms. Zakalak, and Ms. Kaese, three experts in historic preservation, state that

> "[i]In our expert opinion, the Embankment is not a blight or contributor to blight. It is not falling apart. It contributes to surrounding historic districts. It is instead, as described on the Embankment Coalition's website (https://embankment.org/index.html), 'a sturdy vestige of a rail economy and landscape that once dominated Jersey City' that retains remarkable physical integrity. The Embankment is comprised of earthen fill encased in huge stone slabs; it is designed for stability and to absorb noise and vibrations from industrial traffic moving through Jersey City.
>
> "In our expert opinion, failure to protect (preserve) the Embankment would constitute a blight, not just in terms of destroying a remarkable historic resource, but also in terms of a loss to Jersey City, the adjacent historic neighborhoods and to the future, for the Embankment – among other things -- constitutes a potential transportation asset that would meet the needs of future generations without adverse effects."

In any event, OEA's CREAR Addendum at pp. 40-41 forecloses the LLCs' claims that the Embankment is a blight. The Addendum indicated that the No Action alternative (denying abandonment and leaving the Harsimus Branch and Embankment in place) would have no effect on the historic assets, including the adjoining historic districts. The City has legal mechanisms to deal with it should it become hazardous.[28] Nonetheless, City et al. certainly would prefer to see the

[28] See Wrieden/O'Neill Joint V.S. at para 3, Reb. App. D, p. 20.

Embankment and Harsimus Branch generally acquired by the City for a light rail corridor, park, trail, open space and historic preservation generally.

The developer claims a 1999 study found that the Embankment was deteriorating and a blight to the surrounding area, and also cites the OEA 2015 CRI report (believed to have been prepared by consultants chosen by Conrail) for the proposition that it is in poor shape.[29] To cut to the chase, historic preservation experts have concluded the Embankment is not deteriorating, and is not a blight.[30] Again, the December 2019 CREAR Addendum at p. 40 essentially indorses the conclusion that the Embankment is not sustaining demolition by neglect and is instead a valuable asset by concluding that denial of abandonment authority will have no effect on historic properties but that granting an abandonment authorization would have adverse effects under all development scenarios STB OEA analyzed. The material on which the developer relies evidently subscribed to a value system that does not consider uses consistent with historic preservation as reputable. In all events, the material on which the LLCs rely is out-of-date, and is simply no longer relevant given the CREAR Addendum conclusions.

6. Recent City initiation of sua sponte investigation of area

---

[29] LLCs' Opening Memo at 11-12.

[30] Kaese et al. V.S. at pp. 20-22, App 173-75; Kratz et al. V.S., Reb. App. C at pp. 10-12. See also Wrieden/O'Neill V.S., Reb. App. E, at 030 (loss of federal control would result in loss of historic assets, which would be an "unsustainable and inappropriate solution").

The developer says that the City is conducting an investigation of "the area" for purposes of "recommendations pursuant to N.J.S.A. 40A:12A-1 for redeveloping the Harsimus Branch." LLC Opening Memo at 12. It appears that the LLCs mean to suggest that the City agrees the Embankment is a blight. This is simply false. As we have indicated, Conrail withdrew from settlement negotiations in December 2020 and subsequently evidently advised the developer that it expected an abandonment authorization within a few months. The City determined in partial response to initiate an "area in need of redevelopment" ("AIN") study, which is a local land use step prior to preparing a redevelopment plan to enhance opportunities to preserve the Embankment and Branch for public purposes. The AIN study is consistent with the settlement previously under negotiation and would facilitate settlement if Conrail returns to negotiations. If Conrail chooses not to do so, the actions are consistent with protecting the City's interest in "smart growth," which would include preserving corridors for light rail, trail, and open space purposes. Nothing in the City's use of local land use tools is an admission that the Embankment is a blight; it is a recognition that it qualifies for a redevelopment plan consistent with green growth objectives manifest in the statutes governing land use in Jersey City.

Conrail recently sent the City's Zoning Board a letter objecting to the AIN study.[31] In the letter, Conrail appears to take the position that City regulation of its property, whether that property has been authorized for abandonment or not, is preempted by STB regulation. Conrail broadly claims that STB jurisdiction covers all Conrail property, and preempts "any attempt by the City to exercise redevelopment power" even if the parcels are not part of an operating rail line.[32] Suffice it to say that nothing in the AIN study is intended to interfere, or will interfere, with any Conrail rail use. However, given Conrail's practice of selling off rail property in evasion of federal or state preferential purchase remedies, the City properly wishes to explore putting land use regulations in place so any further

[31] Letter, P. McAuley (counsel for Conrail) to C. Langston (Planning Board Chair) et al., June 29, 2021, Reb. App. X at p. 299.

[32] Id. at 3. As to the Harsimus Branch, Conrail states that until STB authorizes abandonment, "the STB has exclusive jurisdiction … and the doctrine of federal pre-emption also would be applicable."

City et al. note the deep irony in Conrail's position. When the City's lawyers advised the City that an abandonment authorization was needed to acquire Conrail's Harsimus Branch, Conrail responded by selling the Embankment portion to a developer who did not insist on compliance with federal abandonment jurisdiction. See City of Jersey City v. Consolidated Rail Corp., 668 F.3d 741, 743-44 (D.C. Cir. 2012). Now Conrail seems to be endorsing the City's position (abandonment authorization necessary for acquisition), yet it and its chosen developer (the LLCs) still seek to destroy the historic assets whose regulatory status they now concede the City was correct about. Unless the Board devises a meaningful preservation remedy or applies Section 110(k), the City in effect will have been punished for acting lawfully, and Conrail and its chosen developer will have been rewarded for acting unlawfully. That is fundamentally unfair and hardly consistent with federal rail policy set forth at 49 U.S.C. 10101(9).

development in the areas in question is consistent with the City's "smart growth" objectives.

City et al.'s main point in presenting the Conrail letter is to observe that Conrail itself appreciates STB preemptive jurisdiction over its properties, even when authorized for abandonment. City et al. join with Conrail in appreciating the benefits of STB preemptive jurisdiction, and thus seek its continuance through application of Section 110(k) to this proceeding. That seems to be consistent with the Conrail letter attached as Reb. App. X, and it certainly would preserve the historic assets that Conrail otherwise sought to dismember. As the LLCs indicate in Reb. App. P, demolition of those assets is inevitable if this agency authorizes an unconditioned abandonment given the intentional unlawful de facto abandonment and violation of Section 106 that occurred. That significantly adversely impacts historic assets that City et al. seeks to preserve for their own sakes, but also for the City's transportation uses (e.g., light rail) and open space. Section 110(k) should be applied, unless adequate remedies are imposed to ensure the preservation of key historic assets. See 36 C.F.R. 800.5(a)(2)(vii) (mitigation of loss of federal jurisdiction is supplied by legally enforceable preservation conditions or restrictions).

7. City's opposition to State Register listing of the Embankment in 1999. The developer argues that the City initially opposed listing of the Embankment on the

State Register pursuant to its nomination in 1999.[33] So did Conrail. But this is all irrelevant. NJ SHPO determines State Register listings, and found the Embankment was historic all along. If Conrail had sought abandonment authority in 1994 before commencing destruction of bridges and trestles, the NJ SHPO would have determined it historic during the Section 106 process at that time. The Embankment did not become historic when the NJ SHPO listed it on the State Register over City and Conrail opposition in 1999; it was historic by its intrinsic attributes whether Conrail and the City opposed historic designation or not. The episode does not exculpate Conrail or somehow incapacitate City et al. from seeking application of Section 110(k).

In any event, NJ SHPO's listing, which Conrail opposed on economic grounds, resulted in the City re-examining its own position on the Embankment, leading the City to designate the Embankment as a City Historic Landmark in January 2003 (reaffirmed in 2005). [34]It also resulted in the City supporting public acquisition for public use rather than redevelopment in 2003.[35] The developer was aware that (a) the City's position had changed when in January 2003 the City designated the

---

[33] LLCs' Opening Memo at 10.

[34] City Ordinance 03-010, Jan. 2003 (Reb. App. L at 224-227); City Ordinance 05-176, Dec. 2005. According to the Reb. App. T at 271-72 (litigation table), the developer has challenged the historic landmark designations, but the suits are stayed pending the outcome of federal litigation

[35] See letters attached as Reb. App. K (Mayoral letters at 195 and 216).

Embankment a City Historic Landmark and (b) when the City subsequently authorized eminent domain and was inquiring into abandonment status prior to the LLCs' actual acquisition. To the extent the LLCs intend to insinuate that they were deceived by the City's position in 1999, they were undeceived by January 2003. They knew the City's position favored preservation, not demolition and redevelopment, as of January 2003, well before the actual sale in 2005.

8. Developer's claims about historic significance of the Harsimus Branch itself. The LLCs focus on some preliminary and limited findings in OEA's 2017 CRI to intimate that the Harsimus Branch was not historic, at least in respect to contributing to certain other historic assets and districts.[36] This is irrelevant and misleading. Subsequent to the 2017 CRI, OEA and NJ SHPO have concurred that the portion of the Harsimus Branch at issue in this proceeding (Marin Boulevard to CP Waldo) is eligible for listing on the National Register of Historic Places. See 2018 CRI Addendum at vi and 2-28 to 29 (the CRI Addendum addressed criticism of some of the findings in the CRI). See also CREAR Addendum at 40. In short, the LLCs' argument is superseded by revised findings. 2018 CRI Addendum and the 2019 CREAR Addendum both support the conclusion that the unlawful abandonment (and especially the 2005 sale of eight blocks of the historic Harsimus Branch containing the Embankment) amounted to anticipatory demolition of at

[36] LLC's Opening Memo at 10.

least two key Section 106 assets: the Embankment and the Harsimus Branch Historic District. Of course, the November 2019 CREAR Addendum at p. 40 identified many more NHPA-protected assets also harmed by the loss of Federal control when Conrail sold the eight blocks.

9. Developer's claim that structures are not protected under Section 110(k) until they are listed on the State Register. The developer claims, without support, that structures like the Embankment are not protected under Section 110(k) until they are listed on the State Register, and if they are not listed, then they are presumptively non-historic and can be removed or destroyed in advance of seeking a federal license.[37] This argument is irrelevant as to the Embankment, which was listed in the State Register and deemed eligible for the National Register in 1999-2000, but more generally it is wrong as a matter of law.

The Section 106 process identifies historic assets that are eligible for NHPA protection. This generally includes anything eligible for listing on the State or National Registers. Historic assets do not need to be listed on the State Register to merit protection under the National Historic Preservation Act, they only need to be eligible. The Section 106 process is a means to identify historic assets that are eligible for the State or National Register, just as listings on the State Register identify assets eligible for the National Register. Assets identified by OEA and NJ

[37] E.g., LLCs' Opening Memo at 26-27 and passim.

SHPO as eligible pursuant to the Section 106 process are entitled to the same protection as those officially listed. That is why evasion of the Section 106 process is such a problem; it not only deprives historic assets that are formally listed on the State or National Register of protection, but also all other historic assets that are eligible for listing. Section 110(k) is supposed to protect the Section 106 process and thus all historic assets eligible for the State and National Registers whether actually listed or not.

The developer's construction would encourage anticipatory demolition to destroy assets not only listed on the State Register, but also those that have not yet been identified. If a federal licensee (e.g., Conrail) knows (or should know) it has to obtain a federal license, then it knows (or should know) it must complete a 106 analysis before tearing up old properties that are either declared eligible or are potentially eligible before applying for a license to demolish them. Any other construction of the law invites corporations and their employees to be willfully ignorant. Conrail has essentially admitted that it wished to maximize real estate value from the Embankment and actively resisted historic designation. The developer's argument amounts to a claim that federal licensees are entitled to be willfully ignorant of historic assets, and thus destroy them with impunity before applying for their federal licenses.

The developer says the trestles were removed at the City's urging and concludes that the trestles therefore are not historic.[38] Again, what the City urged in the 1990's as to the trestles is irrelevant to whether they were historic, and the NJ SHPO has already found the removal of the trestles does not render the Embankment or Branch unworthy of eligibility for the State and National Registers. But the City also wishes again to stress that the claim that it urged removal of the trestles is wrong. The City in 1992 urged repair of the trestles for safety purposes, to which Conrail responded that it anticipated that it would not be using the trestles, and at the point they were no longer needed, it would (lawfully) abandon the line, and then demolish the structures. The decision to demolish (or in the case of the Marin bridge, to allow a developer to demolish) any bridge or trestle was always Conrail's. Unfortunately, the railroad -- upon cessation of rail use of the bridges and trestles in 1994 – failed to seek ICC abandonment approval but engaged in an unlawful de facto abandonment by "reclassification." On that basis it authorized National Bulk Carriers (a developer) to remove a bridge, and the railroad subsequently removed the remaining bridges and trestles in 1996,

[38] LLCs' Opening Memo at 11 and circa 27. The developer relies on the 2009 OEA EA at p. 14 for the proposition that if the City urged demolition of trestles, then Conrail may demolish them with impunity. We have addressed the 2009 OEA EA elsewhere, and have moved to strike the offending paragraph on which the developer relies.

according to its then President (Mr. O'Toole). Moreover, Conrail in 1999 in effect admitted the trestles were historic when it argued their removal degraded the Embankment so it was no longer historic. In all events, except as to what constitutes a City Historic Landmark, the City does not determine what is historic; NJ SHPO and the Keeper of the National Register have that job, and they are not bound at all by what position the City takes any more than they are bound by what position Conrail (or the developer) takes.

The developer claims no one determined the trestles eligible for the National Register and thus entitled to NHPA protection.[39] This is irrelevant for the reasons previously stated.

10. Developer's concern about delay. The developer, urging that 110(k) is not applicable, claims that "protracted administrative delay is contrary to the public interest."[40] The developer has the situation backwards. The issue is protection of historic assets against which Conrail has perpetrated an unlawful de facto abandonment, not maximization of the profits of Conrail's chosen developer in an unlawful de facto abandonment scheme. STB OEA has concluded in its CREAR Addendum at p. 40-41 that the No Action alternative (which OEA defines to mean denial of abandonment authority) will have no effect on any historic assets. In

[39] LLCs' Opening Memo at 27.
[40] LLCs' Opening Memo at 20.

contrast, the CREAR admits that development of all (Scenario 2) or a portion (Scenario 3) of the Branch will result in adverse impacts to NHPA-protected assets listed in the CREAR Addendum at p. 40. The developer in its 2015 letter explained that it was impossible for the City to secure the property for purposes of preservation (OEA's "Scenario 1"), and that complete demolition and development (OEA's Scenario 2) was inevitable.[41] In short, application of Section 110(k) to secure a denial of abandonment authority is the only solution consistent with the public interest under the developer's own admissions. This is the real "delay" the developer seeks to avoid by blustering this abandonment procedure to a close.

As an alternative to this sort of delay, City et al. have repeatedly advocated that this Board void the eight deeds out to the LLCs from 2005 and impose a public use condition upon 49 U.S.C. 10905 granting the City 180 days to acquire the property (presumably by instituting proceedings under NJSA 48:12-125.1 to acquire at the price paid by the developer). City et al. have suggested other remedies, including allowing the City to secure the property by OFA (again, this would allow the City to acquire at the price paid by the developer).

More fundamentally, any "delay" is chargeable to Conrail's unlawful de facto abandonment and anticipatory demolition through sale of historic assets without

[41] Reb. App. P.

first completing a bona fide Section 106 process and without first according the City its statutory remedies.

11. Developer's claim that an STB abandonment permit or license is not a 110(k) permit or license. The developer also makes the unsupported legal argument that Section 110(k) does not apply to STB abandonment authorizations which must comply with Section 106 because the "reach" of Section 110(k) is "narrower" than Section 106.[42] The developer concedes that STB abandonment authorizations may be "undertakings" for purposes of Section 106, but argues they are somehow not permits or licenses for purposes of Section 110(k). The plain language of Section 110(k) covers all situations involving "grant of a permit, license or other assistance" to an applicant, which renders the LLCs' claim dead on arrival.

The LLCs' argument is not supported by the texts of the statutes or applicable regulations. 36 C.F.R. 800.16(y) defines "undertakings" for purposes of Section 106 compliance to mean (a) projects or programs funded in whole or in part under the jurisdiction of a Federal agency, (b) those carried out with Federal financial assistance, or (c) "those requiring a Federal permit, license or approval." Section 110(k) on its face applies to the grant of a "permit, license or other assistance."

[42] LLCs' Opening at 22.

The only difference between the regulation defining "undertaking" to include "Federal permit, license or approval" and the triggering event for 110(k) ("permit, license or other assistance") is that the Section 106 uses the word "approval" where Section 110(k) uses the word "assistance." Both Section 106 and Section 110(k) thus apply to permits and licenses, which is what an STB abandonment authorization is: it permits termination of the federal common carrier obligation. Since the word "assistance" (a term used in 110(k)) is broader term than "approval" (a term in the regulatory definition of "undertaking"), Section 110(k) has if anything a broader reach than Section 106. The use of the term "assistance" in 110(k) certainly does not narrow the meaning of "license" or "permit" in the statute. Since an abandonment authorization is clearly a Federal "permit, license or approval" for Section 106 purposes, then a fortiori it must be a "permit, license or other assistance" under the broader language used in Section 110(k). The LLCs' argument thus violates the letter and spirit of Section 110(k) (because any action by STB authorizing abandonment is in fact a grant of permission to abandon which is a permit or license to which 110(k) applies). ACHP does not make any suggestion along the lines of the LLCs in its June 15 guidance letter.

The main difference that City et al. perceive in Section 106 and Section 110(k) is that Section 110(k) generally only applies in situations where there has <u>not</u> been compliance with Section 106 prior to destruction or loss of Federal jurisdiction

over the asset. In other words, Section 110(k) in general applies when there has been an unlawful de facto abandonment involving destruction of historic assets.

Section 110(k) is an enforcement statute for the Section 106 process, and provides a remedy for licensing agencies when their licensees ignore the licensing process, as happened in the case of the Harsimus Branch in Jersey City. STB should employ Section 110(k) in such circumstances to deny abandonment authority and thus advance federal rail policy "to encourage honest and efficient management of railroads" (49 U.S.C. 10101(9)).

12. Developer's claim that City et al. previously conceded that removal of trestles was lawful. The LLCs claim City et al. previously conceded removal of trestles was lawful. City et al. nowhere said it was lawful. It was part of an unlawful de facto abandonment. City et al. cannot call for the trestles to be restored for they have already been irreparably destroyed.[43] But the Embankment and Branch remain under STB jurisdiction and as such are not yet obliterated. STB either should adopt remedies to facilitate preservation, or deny abandonment authority per 110(k).

[43] Usually old bridges and trestles on railroad rights of way are analyzed under Section 106 during the abandonment process to determine if they are historic assets. Because the bridges and trestles in question were removed, STB OEA made no attempt to consider them in conducting its after-the-fact Section 106-like analysis in this case.

The demolition of the bridges -- as the LLCs indicate in their own allegations against Conrail in U.S.D.C. for D.C. (Special Court) -- is an action that should not have been taken until STB authorized abandonment; the Conrail action followed from negligent or fraudulent reclassification of the Harsimus Branch from line status to spur status in 1994. All subsequent removal of structures and Conrail's sale to the LLCs prior to abandonment authorization constitutes unlawful de facto abandonment. If it significantly adversely impacts the Embankment, then Section 110(k) applies and the process outlined in the Advisory Council's regulations must be followed. Conrail president O'Toole, in a sworn statement in 1999, claimed that Conrail's 1996 demolition so substantially adversely impacted the Embankment as to disqualify the Embankment from listing on the State Register. Given the subsequent allegations of the LLCs in Special Court and other information that has been developed in the related United States District Court litigation, City et al. now view the demolition of bridges not just as part of the unlawful de facto abandonment but also as part of the overall anticipatory demolition in which Conrail engaged. While the trestles are irreparably destroyed, the Embankment and Branch remain under STB jurisdiction, and City et al. seek relief aimed at keeping them intact. This can be done by restoring the ownership integrity of the eight parcels at issue here by voiding the deeds from Conrail to the developer, or alternatively by preserving STB jurisdiction over the Embankment

and the eight blocks of the NHPA-protected Harsimus Branch by denying abandonment authority so they will be preserved rather than redeveloped. Keeping the Embankment and Branch intact will eliminate adverse impacts on the historic assets identified in CREAR Addendum at p. 40.

13. Conrail/developer implied easement claim. The LLCs cite case law that they claim holds that a railroad can sell property if it retains a railroad easement over the property. Assuming arguendo that such sales are federally lawful, Conrail did not retain a rail easement in the case of its sale of the eight parcels in the Harsimus Branch to the developer. The eight Conrail deeds purport to convey "forever …all right, title and interest" of Conrail in each of the eight parcels, with a retention (at the bottom of p. 3 of each deed) only of certain rights with respect to existing billboards. See Reb. App. F at 038, 047, 056, 065, 074, 083, 092 and 102 (p. 1 of each deed). See also Reb App F. at 041, 050, 059, 068, 077, 086, 095 and 105 (p. 4 of each deed). Moreover, Conrail never proposed to reserve a rail easement. See Reb. App. V at 283 with signboard reservation at 285 (2002 bid package).

Conrail has suggested, and the developer now claims, that Conrail sold the eight parcels subject to a "constructive regulatory easement" over the property thus rendering the sale to the developer lawful.[44] The LLCs reason that since Conrail

[44] LLCs' Opening Memo at 33.

retained a constructive regulatory easement, the transaction was lawful. This argument is nonsensical.

Conrail acquired the Harsimus Branch as a line of railroad subject ICC (and now STB) jurisdiction. Thus, when the Fairfax Leary deed conveyed Conrail its property interest, Conrail acquired that property subject to a federal common carrier obligation. Conrail could not terminate the federal common carrier obligation by selling the property away, not could a buyer interfere with discharge of the common carrier obligation. When Conrail unlawfully sold the property to the LLCs, it did not thereby create some new interest in property. It simply failed to obtain an abandonment license for its federal common carrier obligation, which still applies over the property. That is how STB retains jurisdiction here.

But the fact that there is a federal common carrier regulatory obligation over the property does not mean that a new property interest is created that somehow renders an unlawful action by Conrail lawful. It merely means that Conrail has acted unlawfully. Otherwise, railroads could destroy their lines with impunity and if caught by a whistleblower, could say it is all lawful because they have a constructive railroad easement that they never told anyone about, let alone recorded in any title record.

Unlawful abandonments occur when a railroad engages in conduct that amounts to consummation of an ICC or STB abandonment authorization but without the

ICC or STB abandonment authorization. Upon consummation of a lawful abandonment authorization, ICC/STB lose jurisdiction over a line. This is a significant regulatory event. STB has amended its regulations that reformulates a former requirement, for a time dropped, that requires railroads to supply a consummation letter before their abandonment authorization can be deemed consummated, and has provided they in general must do so within one year of authorization on pain of expiration of the authorization. See 49 C.F.R. 1152.29(e)(2). However, before that regulatory change, there was substantial litigation over what constituted consummation of a rail abandonment authorization. In Black v. ICC, 762 F.2d 106, 113 (D.C. Cir. 1985), D.C. Circuit quoted with favor the Eighth Circuit decision in ICC v. C&NW, 533 F.2d 1025, 1028 (1976), for the proposition that "'[a]bandonment' is characterized by an intention of the carrier to cease permanently or indefinitely all transportation services on a relevant line" (emphasis added by D.C. Circuit). It is crystal clear that Conrail intended to cease permanently or indefinitely all transportation services on the Harsimus Branch east of CP Waldo by 1994. First all rail use of the line terminated by 1994, and the railroad authorized removal of the Marin bridge by National Bulk Carriers in that year. Then (as its then-president O'Toole stated) Conrail took out all remaining bridges and trestles in 1996. This rendered the line unusable from the Cemetery eastward. All track was removed. Then the railroad in 2002 offered

eight blocks of the line (Marin to a point east of the Cemetery) for sale to developers. The bid package did not reserve a rail easement. Conrail represented to the City, the LLCs, and to the Embankment Coalition along the way that the line had been abandoned. Then in 2005, Conrail deeded out all of its interests in the line east of National Docks Secondary to the LLCs, reserving nothing other than a sign board easement. Conrail clearly intended an abandonment, and had engaged in a myriad of de facto abandonment actions (removal of structure, removal of rail, alienation of property) from 1994 onward. This was clearly an intentional de facto abandonment rendered unlawful by Conrail's complete failure to seek or to obtain an abandonment authorization for what was clearly conveyed as a line of railroad.

As City et al. has already noted, the LLCs have previously explained that Conrail had engaged in fraudulent misrepresentations as to the status of the line. In doing so, the developer emphasized that Conrail conveyed <u>all</u> its interests to the LLCs and that Conrail thus wrongfully failed to disclose that it had not lawfully abandoned its federal common carrier obligation:

> "Conrail purported to transfer all its 'right, title and interest' in the Embankment lots to the LLCs in July 2005. Conrail could not convey its interest as a common carrier to the LLCs, but no notice of that was given to the LLCs as Conrail did not reserve any residual rights by way of easement to resume rail operations along the Embankment."[45]

[45] LLCs' cross claim para 132, App. 112.

14. The developer's attack on the City's proposed remedies as self-serving. The developer claims that the relief the City et al. seeks is self-serving.[46] This amounts to name-calling. The LLCs seem to be suggesting that City et al.'s goal to preserve the Embankment and Branch for rail, trail, open space and historic preservation purposes, and efforts to attain that in, are somehow immoral, unfair, or unjustified in comparison to the efforts by Conrail and the LLCs to redevelop the property for residential and commercial (pecuniary) purposes. City et al.'s goal and efforts are not immoral, unfair, or unjustified.[47]

Conrail with the developer's cooperation engaged in an unlawful de facto abandonment that purported to take NHPA-protected property out of Federal jurisdiction without any preservation safeguards for the purpose of demolition and conversion to luxury housing at maximum profit. City et al. basically seek a restoration to the status quo before the unlawful sale in 2005, or, in the alternative,

---

[46] LLC Opening Memo at 35.

[47] The D.C. Circuit addressed this matter in City of Jersey City v. Conrail, supra, 668 F.3d at 742. After describing the Embankment, Judge Tatel succinctly explained that "[a] place like that is bound to draw attention. The Embankment presents an opportunity for developers who see new and more profitable uses for the land – in this case, the developers (LLCs) to whom Conrail sold the property. At the same time, the Embankment attracts those who see its rustic qualities and historic value as irreplaceable – here the City of Jersey City, Rails to Trails Conservancy and the Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition."

to retain federal jurisdiction over the rail properties through denial of Conrail's request for abandonment authorization pursuant to Section 110(k).

The developer objects that returning the property to its status quo prior to the unlawful de facto abandonment would now amount to an unconstitutional taking of the property it unlawfully acquired. For the reasons stated elsewhere, City et al. do not agree that the LLCs lawfully acquired the property. Instead, they purchased it with (at best for them) willful blindness of STB regulatory jurisdiction. In particular, while the City endeavored to act consistently with STB jurisdiction by seeking evidence of an abandonment authorization or proof none was required, the LLCs simply assumed the risk of participating in an unlawful de facto abandonment. They now seek to punish the City for acting lawfully, and reap benefit for themselves for participation in an unlawful scheme.

Even were the scheme lawful, the developer nevertheless acquired property subject to STB abandonment jurisdiction. The developer is therefore subject to burdens that flow from that. The developer basically contends his contract with Conrail defeats STB authority. It does not. The Supreme Court has said that

> "[c]ontracts, however express, cannot fetter the constitutional authority of the Congress. Contracts may create rights of property, but, when contracts deal with a subject-matter which lies within the control of the Congress, they have a congenital infirmity. Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them."

Norman v. Baltimore & O. R.R. Co., 294 U.S. 240, 307-08, quoted in Connolly v. Pension Benefit Guar. Corp., 475 U.S. 211, 223-24 (1986), quoted in Borough of Columbia v. STB, 342 F.3d 222, 235 (3d Cir. 2003).

There are many cases holding that until a carrier receives authority to abandon or discontinue a line over which it has previously served shippers, its public service obligation remains notwithstanding operational changes, contractual obligations, or carrier reclassification of the line. E.g., New Haven Inclusion Cases, 399 U.S. 392, 461 (1970), Smith v. Hoboken R. Warehouse & S.S. Connecting Co., 328 U.S. 123, 130 (1946), Thompson v. Texas Mexican R. Co., 328 U.S. 135, 144-45 (1946), Gibbons v. United States, 660 F.2d 225, 229 (7th Cir. 1981) & 660 F.2d 1227, 1232-35 (7th Cir. 1981).

There is especially no "taking" when the purchaser knew or should have known (a) that it was dealing with rail property (as the LLCs clearly did since their deeds all said the parcels were part of a line of railroad), (b) that there was no abandonment authorization (Conrail told them), and (c) since they voluntarily assumed the risk of relying on Conrail's representation that no authorization was required (a representation they subsequently determined to be fraudulent or at least negligent). Two private parties cannot contract to defeat STB jurisdiction whether by fraud, by negligence, by willful ignorance, or even by good faith.

If the City exercises its OFA remedy,[48] the City will acquire Conrail's interest either for zero (if Conrail retained an easement, which the LLCs now advocate), or for the price the developer paid ($ 3,000,000). Because City et al. do not view Conrail as retaining an easement (Conrail simply engaged in an unlawful de facto abandonment), City et al. understand City will be acquiring the full fee in the eight parcels sold by Conrail. In the course of City's OFA acquisition, the developer's deeds will be voided and the LLCs will likely seek a refund from Conrail of the amount they paid. City et al.'s acquisition will not be a taking. See Borough of Columbia, supra. The agency can void the deeds on the same basis simply because the unlawful de facto abandonment was also an attack on the integrity of its processes ab initio, and deprived the City and the public of, inter alia, an effective preferential purchase remedy under 49 U.S.C. 10905. In that event, the developer appears already to have made arrangements with Conrail to receive its money back in the event of transfer for public use.[49] Again, there is no taking.

---

[48] The City filed a timely notice of intent to OFA in this proceeding on March 27, 2009. CNJ Railroad also filed a timely notice of intent to OFA on the same date.

[49] The LLCs signed a contract with Conrail which appears to obligate Conrail to sell the property to them again should STB invalidate the deeds. See App. 075 (para. 1). (That is one of the reasons that City et al. seek a public use condition under 49 U.S.C. 10905 barring such a sale for 180 days post-abandonment effectiveness so the City has time to institute proceedings under N.J.S.A. 48:12-125.1 and/or eminent domain.) In addition, the contract appears to call for the LLCs to defend any condemnation proceedings against Conrail and to receive the proceeds. App. 075 at para. 2. It would appear that the LLCs have fully protected

The remedy for the LLCs is not immunity from remedies for unlawful transactions, but instead is, if anything, against Conrail for an unlawful sale.

In any event, the developer and Conrail have ignored the elephant in the room. Under New Jersey law, as soon as this Board authorizes an effective abandonment, the deeds are void or voidable under NJSA 48:12-125.1. In addition to voiding the deeds, NJSA 48:12-125.1 provides a preferential purchase right to the City for Conrail abandonments within its jurisdiction. If the railroad purported to sell the property in contravention of the statute, then the City may acquire it from the railroad for the same price for which the railroad contracted.

Both Conrail and the LLCs have been on notice of 48:12-125.1 at all relevant times: the New Jersey Title Manual since at least 2000 has called for proof of compliance with the 90-day notice provisions of N.J.S.A. 48:12-125.1 prior to insuring a conveyance from Conrail.[50] The City long ago indicated to Conrail that it intended to exercise its rights of acquisition by purchase or condemnation under the statute.[51] This is neither an unconstitutional taking (it is the same rule as

---

any legitimate economic interest they can claim for participation with Conrail in an unlawful de facto abandonment.

[50] See App. 086 (Second Edition (2000); section 9806(5)) and App. 092 (Third edition, revised Sept. 2005); section 9806(5)).

[51] Letter, Healy to Enright, March 4, 2008, at App 210.

applied in OFA's), nor it is preempted by federal law because the New Jersey statute applies only after STB abandonment is authorized.[52]

15. Developer's other claims. The developer makes other arguments (e.g., reliance on the Chicago Title litigation) that echo or are similar to those made by Conrail. Rather than reiterate our response to Conrail to the developer's take on the subject, we simply adopt our prior responses here. Other developer claims (on intentionality and so forth) are rebutted in our opening submission. Failure otherwise to respond to a particular assertion, claim, or argument by Conrail or the developer should not be viewed as a concession, but as a determination that the assertion, claim, or argument is even more irrelevant, immaterial, outdated, or plainly erroneous and contrary to law than those that City et al have specifically called out and commented upon herein.

[52] See Hayfield N.R. Co. v. Chicago & N.W. Transp. Co., 467 U.S. 622 (1984) (post-abandonment state remedies to acquire railroad lines not preempted by ICC jurisdiction).

BEFORE THE SURFACE TRANSPORTATION BOARD

Consolidated Rail Corporation – Abandonment Exemption – In Hudson County, NJ	) AB 167 (Sub-no. 1189X)
CSX Transportation, Inc. – Disc. Ex. – In Hudson County, NJ	) AB 55 (Sub-no. 686X)
Norfolk Southern Railway Co. -- Disc. Ex. -- In Hudson County, NJ	) AB 290 (Sub-no. 306X)

City of Jersey City, Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition, and Rails to Trails Conservancy Response to ACHP Guidance, Motions to Strike, and Rebuttals to Consolidated Rail Corporation, CSX Transportation, Inc., and Norfolk Southern Railway Co. and 212 Marin Boulevard, LLC, et al.

Rebuttal Appendices C to X

Charles H. Montange
Law Offices of Charles H. Montange
426 NW 162nd St.
Seattle, WA 98177
(206) 546-1936
Fax: -3739
c.montange@frontier.com
for City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition

Andrea Ferster
General Counsel
Rails to Trails Conservancy
The Duke Ellington Bldg.
2121 Ward Court, NW, Fifth Floor
Washington, D.C. 20037
(202)669-6311
aferster@railstotrails.org
for Rails to Trails Conservancy

For filing: July 19, 2021

C. Kratz et al. Joint Verified Statement, July 2021 [expert op. on significant adverse effects and "blight"] 1

D. Wrieden/ONeill Joint Verified Statement, April 2019 [expert op. on loss of federal jurisdiction as adverse effect] 17

E. Wrieden/ONeill Joint Verified Statement, July 2021 [expert op. on significant adverse effects] 27

F. Curley V.S. dated Jan. 6, 2006, filed in F.D. 34818, with copies of the eight deeds executed by Mr. Ryan for Conrail to the LLCs 32

G. City of Jersey City et al – Pet. Dec. Order, FD 34818 served August 9, 2007; id. served Dec. 19, 2007 152

H. Misc. Conrail documents, including 172
(a) Memo, Folk (Conrail) to Hasselman (Conrail), Jan. 28, 1985 and Exhibit 1 "Hudson Street Track";
(b) Dietz (Conrail) to Betak (Conrail), Jan. 15, 1988;
(c) Anonymous, "Spur Determinations Made by Law Department"

I. Misc, City or City to Conrail documents, including 181
(a) Allen-Munley (City) to Conway (Conrail), Feb. 19, 1992
(safety and debris issues including derailments)
(additional material and police reports also included)
(b) Day (Conrail) to Allen-Munley (City), May 11, 1992
(acknowledges problem, will correct)
(c) File Memo from John Mucha (City), March 29, 1994
(Conrail has advised it will abandon "viaduct" per ICC rules and then take out structures)
(d) File Memo from John Mucha (City), June 13, 1994
(Conrail has advised that it put Embankment bridge removal out for bid, bids to be received on June 24, 1994, at which point Conrail will file an IFE? [sic] to retire the track, no plans to remove Embankment,

may sell as is)

J. Summary of National Bulk Carriers bridge demo contract 192

K. Letters from public officials to Conrail seeking/supporting City acquisition of Embankment (March 2003) 194

L. City Ordinance 03-010 (Jan. 2003) (landmark status for Embankment) 223

M. Letter, M. Donato (LLCs) to D. Wrieden (City), May 1, 2008 seeking reinstatement of proceedings for demolition permits (and application examples) 228

N. Letter, D. Saunders (NJ SHPO) to A. Quinlan (STB), dated Jan. 26, 2009 (Section 110(k) is relevant) 246

O. Joint Stipulation, July 7, 2010, in USDC for DC 09-1900 251

P. Letter, D. Horgan (LLCs) to J. Irwin (STB OEA), Dec. 7, 2015 (redevelopment inevitability) 255

Q. Letter, Mayor Fulop (City) to V. Rutson (STB OEA), Dec. 14, 2014 261

R. Letter, D. Saunders (NJ SHPO) to A. Quinlan (STB), dated May 7, 2009 (loss of federal jurisdiction equals loss of historic resource under process STB has set up) 264

S. ACHP "policy statement on anticipatory demolition," June 22, 1987 268

T. Table of some of the LLCs' litigation against City 270

U. Conrail Response and Objections to City et al. discovery in F.D. 34818 (line v. spur is "legal" in nature) 273

V. Conrail 2002 bid package describing the eight blocks in question as a portion of a line of railroad 280

W. Memo, Crowley to Munley, June 12, 2002 294

X. Letter, P. McAuley (counsel for Conrail) to C. Langston (Planning Board Chair) et al., June 29, 2021 296

Appendix C

Kratz et al. Joint Verified Statement, July 2021

[expert op. on significant adverse effects and "blight"]

BEFORE THE SURFACE TRANSPORTATION BOARD

Consolidated Rail Corporation –	)
Abandonment Exemption –	) AB 167 (Sub-no 1189X)
in Hudson County, NJ	)

JOINT VERIFIED STATEMENT OF ALLEN KRATZ,
ULANA ZAKALAK, and DIANE KAESE

(Independent Historic Preservation Consultants)

I, Allen Kratz, state that I am an independent consultant and principal of Allen W. Kratz Historic Preservation Consulting, LLC. I have two decades of experience in economic development, property management, project management, and historic preservation, including work for the Real Estate and Economic Development Division of NJ Transit. I am a gubernatorial appointee to the New Jersey Historic Trust, served as a mayoral appointee to the Hoboken Historic Preservation Commission, oversaw the historic rehabilitation of the Hoboken Public Library owned by the City of Hoboken and have experience in the drafting of historic preservation ordinances and two National Register nominations. As a result of my training and experience, I have expertise in the application of the criteria for determining adverse effects on properties eligible for the protections of section 106 of the National Historic Preservation Act and comparable state and city statutes and ordinances. My resume is attached to the Joint Verified Statement,

concerning the March 2019 CREAR, which is Appendix XI to City of Jersey City et al.'s opening submission on applicability of Section 110(k) filed June 21, 2021, in this proceeding. An updated copy is attached hereto.

I, Ulana Zakalak state that I am the owner of Zakalak Associates (historic preservation consulting in the Greater New York City area) and Zakalak Restoration Arts (historic preservation-related construction), that I hold a Master of Science degree from Columbia University in Historic Preservation, that I have expertise in historic preservation including assessment of adverse effects on section 106 assets, and that my resume is attached to the Joint Verified Statement concerning the 2019 CREAR referenced above and thus already on file with this agency.

I, Diane Kaese, state that I am owner of Kaese Architecture PLLC (architecture and preservation in Greater New York City area), that I hold a Master of Science degree from Columbia University in Historic Preservation, that I have expertise in historic preservation, including assessment of adverse effects on section 106 assets, and that my resume is also previously supplied as part of the Joint Verified Statement concerning the 2019 CREAR.

We collectively make this verified statement at the request of Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition as part of its

response, along with Rails-to-Trails Conservancy and City of Jersey City, to address issues raised by the Advisory Council on Historic Preservation (ACHP) in its Letter dated June 15, 2021, and filed as an environmental comment in this proceeding. We previously supplied a Joint Verified Statement on STB OEA's Cultural Resources Effects Assessment Report (CREAR) issued on or about March 29, 2019. In our initial Joint Verified Statement, we discussed various adverse impacts flowing from loss of federal jurisdiction. In response to the evidence presented by ourselves and others, OEA subsequently modified some of the conclusions in the CREAR in an Addendum dated November 2019. Noting that ACHP has drawn a distinction between adverse effects and significant adverse effects, in this Joint Verified Statement we will address whether previously identified adverse effects are, or should be considered, significant. We will also address the developer's recent contention that the Harsimus Embankment is a blight, or blights surrounding neighborhoods.

Introduction

The Cultural Resources Effects Assessment Report (CREAR) that the Surface Transportation Board (STB) issued in March 2019 concludes that Conrail's proposed actions in the above-referenced matter would result in adverse effects to historic properties listed in or eligible for listing in the National Register. The November 2019 Addendum expands the conclusion. We concur with the

revised findings concerning adverse effects. Adverse effects are virtually assured for the properties listed in the CREAR Addendum once this agency removes federal jurisdiction from the rail corridor by granting an unconditioned abandonment license to Conrail. Conrail did not place any historic preservation restrictions on the portions of the Harsimus Branch it sold to a developer without prior abandonment authority. Should STB issue an abandonment authorization without legally enforceable historic preservation conditions, then Conrail's action and the agency's action will permit developers to acquire and/or to develop the property for non-rail uses, a process that has unfortunately already commenced owing to Conrail's sale of key portions of the property to a developer before complying with section 106 of the National Historic Preservation Act. "The transfer, lease, or sale of property out of Federal ... control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance" is an adverse effect. 36 C.F.R. 800.5(a)(2)(vii). We also concur in the CREAR conclusion that redevelopment of the Branch, or a settlement involving partial redevelopment of the Branch, will have adverse impacts, and that preservation will not have adverse impacts.

Opinion of Significant Adverse Effect

ACHP has indicated that for Section 110(k) of the National Historic Preservation Act (anticipatory demolition) to be applicable to this matter, the

adverse effect caused by the license applicant in advance of licensing must be "significant." In particular, ACHP draws a distinction between "adverse effects" and "significant adverse effects." ACHP says that the Surface Transportation Board must find that significant adverse effects happened to the property, not just adverse effects. ACHP notes, however, that "significant" does not mean that the property has to be "completely demolished or destroyed." In our expert opinion, the facts of this case demonstrate a clear significant adverse effect flowing from Conrail's pre-abandonment actions on at least the Embankment and the Harsimus Branch, as well as on adjoining historic properties and inclusive of other historic districts of which the Branch or Embankment are a part.

In particular, we highlight that the developer and Conrail transferred eight blocks of the Branch inclusive of the Embankment in 2005 without any conservation restrictions. The developer then purported to swap (sever) portions of one of the at-grade parcels with another owner, resulting in a severance. Loss of federal control (which an abandonment authorization represents) will allow the developer to pursue development of the entire Harsimus Branch.

Development is more than conjectural; under current and foreseeable real estate market conditions, development, i.e., destruction, of the Embankment and Branch are inevitable. In 2015, the developer, via his attorney's letter, informed

this agency by letter that economic conditions are such that development (destruction) of the Embankment and Branch is inevitable.

Real estate development in the areas of Jersey City adjacent to and near to the Embankment validates the developer's 2015 prediction of development pressure on the Embankment and Branch. Even the pandemic-period slowdown in the commercial-office market has not stopped commercial development in downtown Jersey City and, close to the western end of the Branch, at Journal Square.

Conrail's actions (at least the 2005 sale) amounted to significant adverse impacts by reason of loss of federal control without long-term preservation conditions (36 CFR 800.5(a)(2)(vii)). The loss of jurisdiction by the developer's own concessions during this agency's after-the-fact 106 process necessitate that conclusion that the loss of federal control will result in the property being developed. This amounts to demolition/destruction of the Embankment and the Branch, which must be deemed an adverse effect that is not simply significant but catastrophic.

Analysis

In our expert opinion, the Harsimus Branch is, and increasingly will become, the object of intense developer interest because it is a scarce resource in Downtown Jersey City: an underutilized transportation corridor and undeveloped open space.

In the event of loss of Federal control by authorizing abandonment, the Harsimus Branch would be destroyed by development. Three factors very likely will continue to attract developer interest in developing the Harsimus Branch:

(a) proximity to Jersey City's "Gold Coast."

The eastern end of the Harsimus Branch is contiguous to the high-density, high-rise, high-market-value commercial and residential properties along the Hudson River, a waterfront area colloquially known in development circles as the "Gold Coast." We further understand that at one point the Hyman limited liability corporations (developer to whom Conrail sold eight blocks of the Branch in 2005) proposed to Jersey City's governing body, the City Council, that the Hyman interests construct high-rise buildings along the entire embankment structure within the Harsimus Branch. In addition, we note that Conrail proposed constructing 10,000 residential units on property that it owns adjacent to the western portion of the Harsimus Branch, near the "Palisades" portion of the Harsimus Branch.

(b) adjacency to low-rise, architecturally appealing, well-maintained historic neighborhoods.

The above-grade portion of the Harsimus Branch is contiguous to and, according to a SHPO Opinion, a contributing element to two historic neighborhoods – Hamilton Park and Harsimus Cove, both of which are historic districts designated by Jersey

City and listed on the New Jersey Register of Historic Places and the National Register of Historic Places. In both neighborhoods, the multiple blocks of largely intact 19th-century single-family residences have historic architectural charm that has created cohesive neighborhoods with high market appeal, owner investment, and ever-increasing property values. The historic districts are comprised of low-rise, single-family residences, and this itself offers a further bonus to prospective developers of the Embankment and Branch: new, higher buildings on the Embankment and Branch will have unobstructed views above the second and third stories. In short, in our expert opinion, well-preserved historic residential neighborhoods invite real-estate interests to invest nearby in hopes of capturing the value of the existing neighborhood's economic stability

(c) development plan approvals for the easternmost block of the Embankment.

In an earlier unsuccessful effort to settle the long running dispute underlying this proceeding, the City of Jersey City in 2015 approved its latest update of the City's Luis Munoz Marin Boulevard Redevelopment Plan, which includes the easternmost portion of the Harsimus Branch (the block from Luis Munoz Marin Boulevard west to Manila Avenue). Contingent upon settlement of the legal dispute between the City, Embankment Preservation Coalition, and Rails-to-Trails Conservancy on one side and Conrail and LLCs on the other, and contingent upon

other terms and conditions, the redevelopment plan permits as of right on the Block One portion of the Harsimus Branch, in relevant part: two residential high-rise towers containing a maximum of 400 dwelling units and 200 hotel rooms, the west tower being no higher than 35 stories and the east tower being no higher than 45 stories, both constructed on a parking base that must include at least one restaurant or café that is open to the public and that is directly accessible from a public walkway that spans the length of the block. The walkway is at least 30 feet wide, accessible by a "grand stairway" from Luis Marin Boulevard and extends west across Manila Avenue by means of a bridge to be constructed as part of the development.[1] The developer evidently rejected this as an inadequate amount of development.

In summary, in our expert opinion, development pressures will lead to demolition and redevelopment of the Branch inclusive of the Embankment. Demolition of any magnitude – partial or complete -- will constitute a significant adverse effect upon the Embankment and Branch.

[1] See Division of Planning, City of Jersey City, New Jersey, Marin Boulevard (Henderson Street) Redevelopment Plan, Amended May 13, 2015, pages 6-7. Among the other conditions: Seven segments of the Historic Pennsylvania Railroad Harsimus Branch Embankment must be transferred in fee simple ownership to the City of Jersey City for use as a public park and trail/light rail corridor and site plan approval by the City's Planning Board is required for implementation of any improvements on the land. See Jersey City, City Ordinance 120047 "Ordinance of the Municipal Council of the City of Jersey City Adopting Amendments to the Luis Munoz Marin Boulevard Redevelopment Plan," adopted by City Council April 11, 2012.

Therefore, we have determined that it is our expert opinion that loss of federal control would result in significant adverse effects to the Embankment and Branch and all historic districts of which they are a part or to which they contribute. Continuation of federal control is necessary to prevent significant adverse effects to the Embankment and Branch. The only alternative is the imposition of a remedy that places legally enforceable restrictions or conditions on the property to ensure historic preservation.

Rejection of Claims by the Developer that the Embankment Constitutes or Causes "Blight"

The Developer's "Opening Argument" filed June 21 in this proceeding at pp. 4, 6, 11, 13 and 20 repeatedly claims the Embankment is a "blight" or contributes to blight or otherwise blights adjoining neighborhoods. In our expert opinion, the Embankment is not a blight or contributor to blight. It is not falling apart. It contributes to surrounding historic districts. It is instead, as described on the Embankment Coalition's website (https://embankment.org/index.html), "a sturdy vestige of a rail economy and landscape that once dominated Jersey City" that retains remarkable physical integrity. The Embankment is comprised of earthen fill encased in huge stone slabs; it is designed for stability and to absorb noise and vibrations from industrial traffic moving through Jersey City.

In our expert opinion, failure to protect (preserve) the Embankment would constitute a blight, not just in terms of destroying a remarkable historic resource, but also in terms of a loss to Jersey City, the adjacent historic neighborhoods and to the future, for the Embankment – among other things -- constitutes a potential transportation asset that would meet the needs of future generations without adverse effects.

The historic importance of the Embankment is underscored in its State and Federal nomination papers:

> "The Pennsylvania Railroad Harsimus Branch Embankment is significant in American transportation history; it enabled a major trunk rail line to establish a large freight yard on the Hudson River, contributing greatly to the growth of the Port of New York and New Jersey. The embankment ... facilitated the dedication of most of the Jersey City Hudson waterfront to rail and rail-related uses, significantly inflecting the social and political history of the City, as well as its physical outline. The driving of a busy freight line through an already established, largely middle/artisanal class residential neighborhood, coupled with the concomitant physical separation of the neighborhood from its original Hudson shoreline, makes both the advent of the original elevated freightway (c. 1867) and its expansion into the seven-track embankment (c. 1901) key moments in the

social, political, and community planning history of Jersey City, New Jersey."

Excerpted from R. James, The Pennsylvania Railroad Harsimus Embankment State and National Registers of Historic Places Nomination 1999, reproduced at https://jclandmarks.org/resources/national-registry-nominations/the-pennsylvania-railroad-harsimus-branch-embankment-jersey-city-nj/

In sum, loss of the Embankment, and loss of federal control over the Embankment (at least without legally enforceable conditions or restrictions for its preservation) is not removal of a blight but instead a significant adverse effect on a very significant historic asset.

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Allen Kratz

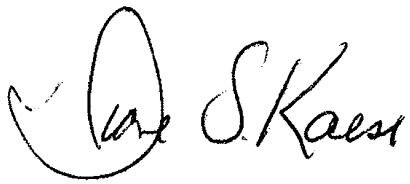
Dated: July 14, 2021

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Ulana Zakalak

Dated: 7/14/2021

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Diane Kaese

Dated: 15 July 2021

ALLEN W. KRATZ, M.L.S, J.D.

PRINCIPAL, ALLEN W. KRATZ HISTORIC PRESERVATION CONSULTING, LLC
PRINCIPAL, RESILIENCE WORKS, LLC

1245 Bloomfield Street
Hoboken, NJ 07030

201-214-7476 allenwkratz@gmail.com

COMMUNITY ORGANIZING

- Led a grassroots effort that defeated variances for an overbuild and partial demolition of the landmark Church of the Holy Innocents in Hoboken, 2007.
- Helped Jersey City's Embankment Preservation Coalition defeat zoning variances to demolish historic former railroad right of way, 2010-2011.

LEGAL EXPERTISE

- Redrafted Hoboken's preservation ordinance; adopted 2012.
- Cross-examined developer's planner and preservationist to defeat demolition of Hoboken's historic Neumann Leathers factory (work space for artists, small entrepreneurs) for residential condo development, 2008.
- Represented NJ Transit before N.J. Historic Sites Council, 2009, 2011.

MANAGEMENT

- President of Hoboken Public Library's trustees, 2013-2017, oversaw $3.2M historic preservation and flood-resilience project; secured $2M federal, state, county and municipal funding; obtained Hoboken's first waivers under New Jersey's rehab subcode for historic structures as part of project.

NATIONAL REGISTER LISTING

- Documented history of two properties for listing on National and New Jersey Registers of Historic Places: 1891 First Baptist Church, Hoboken 2005; 1897 Hoboken Free Public Library & Manual Training School, 2013.

HERITAGE TOURISM

- Scripted and led four unique walking tours for Hoboken Historical Museum to all 17 National Register sites in Hoboken, 2005-06.
- Produced a "then and now" tour of Hoboken Terminal for national conference of transportation professionals comparing form and function issues faced by Lackawanna Railroad in 1907 and NJ Transit in 2007.

TEACHING

- Led sessions on historic preservation laws for N.J. Institute for Legal Education, 2010, 2011.

CONSENSUS BUILDING

- Worked with NJ Transit, its advertising contractor and N.J. Historic Sites Council to add advertising in the main waiting room of 1935 Newark Penn Station while respecting character-defining Art Deco architecture, 2009.

PROBLEM SOLVING

- Arranged nearby property owner to provide sabbath parking for parishioners of historic church, inducing congregation to use its church instead of decamping to suburbs and selling building to developer, 2005.

CIVIC SERVICE

- Gubernatorial appointee, New Jersey Historic Trust, 2004-2009; 2021- .
- Mayoral appointee, Hoboken Historic Preservation Commission, 2018-20.
- Mayoral appointee, advisory group for flood-resilience project, 2018- .
- Select Board appointee, Brooksville (Maine) Comprehensive Plan Committee, 2017 -.; Sea Level Rise & Climate Change Committee, 2021- .

EDUCATION

- B.A., Earlham College; M.L.S., Drexel University; J.D., American University; historic preservation certificate, Drew University.

CLIENTS

- Governor's Office of Policy Innovation and the Future, Augusta, Maine, assisting the Maine Climate Council; University of Maine.

Rebuttal Appendix D

Wrieden/O'Neill Joint Verified Statement, April 2019

[expert op. on loss of federal jurisdiction as adverse effect]

BEFORE THE SURFACE TRANSPORTATION BOARD

Consolidated Rail Corporation -	)
Abandonment Exemption -	) AB 167 (Sub-no 1189X)
in Hudson County, NJ	)

JOINT VERIFIED STATEMENT OF DANIEL M. WRIEDEN
AND MARGARET A. O'NEILL,
DIVISION OF PLANNING, CITY of JERSEY CITY

I, Daniel M. Wrieden, state that I am the Historic Preservation Officer, in the Division of Planning for the City of Jersey City. I, Margaret A. O'Neill, state that I am the Historic Preservation Specialist in the Division of Planning for the City of Jersey City. We make this verified statement as part of the City of Jersey City's response to the Cultural Resources effects Assessment Report (CREAR) issued in the above captioned proceeding on or about March 29, 2019. As a result of our training and experience in our positions within the Division of Planning, we have expertise in the application of the criteria for determining adverse effects on properties eligible for the protections of section 106 of the National Historic Preservation Act, and comparable state and city statutes and ordinances. Our resumes are attached. The Office of Environmental Analysis has provided only a 30-day comment period



and informed counsel for the City of Jersey City that extensions of time are unlikely. Our evaluation is constrained by what we are able to provide within the time period the agency is affording.

1. We find that the CREAR does not discuss the most obvious of adverse effects, the loss of federal control of the Harsimus Branch. All other adverse effects stated in the report can be eliminated with the retention of federal control. As one of the most desirable areas for development in Jersey City, there is little doubt in HPC Staff's mind that there will be proposals for development in direct proximity to and on the branch itself. These developments, only possible through the loss of federal control of the branch, would cause the most extreme adverse effect to the property itself and the properties immediately surrounding it. The loss of federal jurisdiction is equivalent to destruction of the Branch and the Embankment and would cause an adverse impact on all the relevant section 106-protected properties.

2. The proposed adverse effect of "demolition by neglect" via a "no-action" outcome is a stretch at best, especially when

considering that this has been, to HPC Staff's knowledge, the current state of the branch for the entirety of its recent ownership. The City has a number of actions it can mandate owners of neglected properties to undertake to unsure proper maintenance and public safety.

3. We find that a possible abandonment, which, again, would cause the most extreme adverse effect, without conditions placed on the branch, to be an unsustainable and inappropriate solution.

Pursuant to 28 U.S.C. 1746, we each separately declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Daniel M. Wrieden, Historic Preservation Officer

Dated: 4/23/2019

Margaret A. O'Neill, Historic Preservation Specialist

Dated: 4/23/2019

DANIEL M. WRIEDEN
97 Wayne Street
Jersey City, New Jersey 07302
201.332.8914
email: danwrieden@comcast.net

EDUCATION

New Jersey City University, Jersey City, NJ
Major: American History

Bachelor of Arts Magna Cum Laude: May, 2001
Minor: African-African American Studies

RELATED WORK EXPERIENCE

JERSEY CITY DIVISION OF PLANNING
Supervising Historic Preservation Specialist

October 2013-Present
40 hours per week

Continues to serve as the city's professional preservation staff under the Direction of the Director of City Planning, supervising the programs and staff of the Jersey City Historic Preservation Commission, coordinating and supervising all components of municipal project reviews, surveys, preservation planning, Municipal, State and National Register nominations, preservation, education and technical preservation services on behalf of the Jersey City Historic Preservation Commission.

Supervises the review and analysis of development projects on behalf of the Commission, identifying cultural resources within project impact areas, determining the project effects on resources, and recommending mitigation according to state, federal and municipal laws and regulations in accordance with accepted industry practice and the *Secretary of the Interior's Standards and Guidelines for the Treatment of Historic Properties*. Reviews and comments on municipal, state and federal legislation and regulations, participating in policy development for zoning and redevelopment law. Supervises preservation education on behalf of the Commission addressing local community groups, preservation and civic associations on historic preservation, historic site and other cultural programs. Plans, organizes and speaks at conferences, meetings, workshops and public hearings. Prepares reports regarding development, applications for development and preservation issues containing findings, conclusion and recommendations. Plans, organizes, and assigns work to Historic Preservation Commission Staff within the Division of City Planning and evaluates employee performance and conduct, enabling the effective recommendation of the hiring, firing, promoting, and disciplining of employees as necessary.

JERSEY CITY DIVISION OF PLANNING
Historic Preservation Specialist

July 2002-October 2013
37.5 hours per week

Responsible for oversight and management of four municipal Historic Districts and locally designated individual landmarks. Reviews all applications for Certificates of No Effect and Certificates of Appropriateness. Determine disposition of applications for development. Review architectural specifications and preservation plans. Conduct site visits of all on-going work and provide written historic structures research reports summarizing findings, conclusions and recommendations. Provide information and assistance to the public concerning the Historic Preservation Commission, application procedures, and appropriate preservation methods. Explain requirements of the Jersey City Zoning ordinance and Historic Preservation Guidelines and the *Secretary of the Interior's Standards* to applicants and community organizations. Responsible for preparation of State/National Register Nomination Reports. Provide administrative and technical support to the Jersey City Historic Preservation Commission. Makes recommendations to the Commission as to the appropriateness of applications at monthly meetings. Addresses Planing Board and Zoning Board on Matters of Historic Preservation in regards to applications, ordinances and redevelopment plans. Supervise the maintenance and creation of files for all historic properties and districts. Provide assignments and instructions to administrative and professional staff as well as seasonal interns as necessary. Supervise staff correspondence and interaction with the public regarding historic preservation reviews, procedure and application filing.

NEW YORK CITY LANDMARKS PRESERVATION COMMISSION **November 2000-August 2001**
Paid Internship: Historic Preservation Grant Program 30 hours per week

Provided administrative and professional support to the Director of the Grant Program. Prepared correspondence, memoranda and reports and maintained all program and ancillary files including negative and slide library. Prepared and maintained all documents for grants including bid scopes and contracts. Responded to public inquiries regarding eligibility for CDGB Grants. Sent appropriate information to prospective clients. Reviewed completed grant applications. Researched property histories and conducted site visits. Provided written reports containing findings, conclusions and recommendations. Acted as liaison between Grant Program staff and Board of Directors, property owners and contractors. Attended public hearings. Received Asa S. Knowles award for Excellence in Cooperative Education.

DAVISON INTERMEDIA, INC., Jersey City, NJ **September 1997-December 1999**
Director of Client Development and Customer Service 30 hours per week

Directed significant expansion of office and client base. Oversaw implementation of new customer services procedures. Established scheduling and staff utilization plans.

DIVISION OF NEIGHBORHOOD IMPROVEMENT, Jersey City, NJ **June 1996-August 1997**
Manager: 1996. Acting Director: March-September 1997 37.5 hours per week

Encouraged community groups and residents in neighborhood beautification and revitalization projects and offered access to city services. Attended community meetings and gave presentations on the work of the division and responsibilities of city residents with regard to municipal codes. Implemented city workfare program in the NID Division. Supervised full time staff of 65 and 128 part time student workers to facilitate prompt delivery of public services to city residents.

KAMINSKI REALTORS, Brooklyn, NY **January 1994-May 1996**
Administrative Assistant 25 hours per week

Directed office of active real estate broker/ property manager. Researched and provided reports on historic properties. Reviewed restoration/rehabilitation plans for appropriateness. Acted as general contractor for renovations and restoration of properties. Managed office files and records.

JERSEY CITY PUBLIC LIBRARY, Jersey City, NJ **March 1994-March 1995**
Special Project Staff, New Jersey Room 20 hours per week

Prepared historic 18th and 19th century maps of Jersey City for conservation treatment and provided preliminary bibliographical notation. Cleaned, organized, repaired, and indexed selections from the manuscript and scrapbook collections for conservation treatment. Researched collections and related materials to place them in proper historic context. Provided written reports on collections.

RELATED EXPERIENCE:

FRIENDLY NEIGHBORS, Jersey City, NJ **1995-2002**
Acted as point person on historic preservation for neighborhood organization serving downtown historic districts. Conducted research and gave reports and lectures to membership on historic preservation. Provided detailed information to property owners on history of their buildings including recommendations for preservation/restoration projects. Maintained preservation themed private library and database to assist members. Helped homeowners prepare applications for Certificates of No Effect and Appropriateness.

BARROW MANSION DEVELOPMENT CORPORATION, Jersey City, NJ **1997-1998**
Served as board member. Helped manage the restoration of the Barrow Mansion. Participated in cleanups. Participated in project decisions based on review of historic structures reports. Aided in grant application process and fundraising. Planned special historically themed events for the public.

BAY RIDGE HISTORICAL SOCIETY, Brooklyn, NY **1982-1992**
Initiated and oversaw restoration of two local historic cemeteries and researched and documented their histories. Aided Society and property owners in application for New York City landmark process. Provided programs, lectures and tours of local historic sites.

Margaret A. O'Neill | Curriculum Vitae

Margaretoneill10@gmail.com | (201) 919-4569

EDUCATION

Savannah College of Art and Design (SCAD); Savannah, Georgia
BFA in Historic Preservation, Architectural History, Magna Cum Laude

RELEVANT PROFESSIONAL EXPERIENCE

Historic Preservation Specialist, City of Jersey City Division of City Planning; Jersey City, NJ – Present
- Reviewed building permit applications for compliance with Historic Zoning Standards and Guidelines in historic districts or landmarked sites, such as change of use, repair, alteration, rehabilitation, restoration, new construction, and demolition
- Reviews local, county, state and federally funded, sponsored or licensed projects to determine effect of the project on cultural resources, and if appropriate recommends mitigation or avoidance measures in accordance with state and federal law, particularly Section 106
- Prepares clear sound accurate and informative reports on historic preservation and cultural management containing findings, conclusions, and recommendations for projects effecting historic sites and properties
- Developing, reviewing, and editing scopes of work in historic districts or sites, such as repair, alteration, rehabilitation, restoration, new construction, and demolition
- Executed official business, including preparation of draft ordinances, preliminary reviews, staff reports, site visits and inspections, and attending meetings
- Knowledge of Federal, State, and Local laws, regulations, and ordinances pertaining to historic preservation and land use
- High experience and capacity for communicating with various parties i.e. City departments/division, government officials, organizations, including the public through day to day office tasks, project meetings and public programs offered
In addition, working with customers such as property owners, architects, business people, and contractors to provide adequate information and to ensure projects conform to technical preservation guidelines
- Knowledge of preservation/conservation technology; ability to read architectural drawings, and have the ability to offer technical assistance to applicants, owners, developers, and planners

Chair, Borough of Montvale Historic Preservation Commission, Montvale, NJ - Present
- Hear testimony on all applications for site plan approval, variance requests, site use permits, etc.
- Create and set all agendas for meetings, including distribution to members of the Commission, public, Borough Officials, etc.
- Hear applications for Certificates of Appropriateness of all Borough Landmarks
- Report to Planning and Zoning Board on Commission activity

Alternate, Borough of Montvale Planning and Zoning Board, Montvale, NJ - Present
- Hear testimony on all applications for site plan approval, variance requests, site use permits, etc.
- Make, adopt, and amend the Borough of Montvale Master Plan
- Participate in the preparation and review of programs and plans required by the state or federal law
- Grant or deny conditional uses in accordance with the provisions of the Borough Zoning Ordinance and Municipal Land Use Law
- Provide informal review of concept plans for development on an as-requested basis
- Advise the Planning and Zoning Board on preservation planning and historic sites as needed
- Planning and Zoning Board representative on the Pascack Valley Regional Planning Advisory Committee

Historic Preservation Specialist, City of Paterson Division of Historic Preservation; Paterson, NJ – December 2016-March 2018
- Reviewed building permit applications to assess the impact on development for most types of proposed exterior work in historic districts or sites, such as change of use, repair, alteration, rehabilitation, restoration, new construction, and demolition
- Developing, reviewing, and editing scopes of work in historic districts or sites, such as repair, alteration, rehabilitation, restoration, new construction, and demolition

- Preparing, executing, and managing Preservation grants, Hazardous Discharge Site Remediation Fund Grants, design guidelines, building reports, recommendations, etc.
- Works closely with Department of Economic Development's staff on individual projects and more comprehensive plans. In addition, maintains project deadlines, reviews, and data relating to structures and sites
- Executed official business, including preparation of draft ordinances, preliminary reviews, staff reports, site visits and inspections, and attending meetings
- Knowledge of Federal, State, and Local laws, regulations, and ordinances pertaining to historic preservation and land use
- High experience and capacity for communicating with various parties i.e. City departments/division, government officials, organizations, including the public through day to day office tasks, project meetings and public programs offered
In addition, working with customers such as property owners, architects, business people, and contractors to provide adequate information and to ensure projects conform to preservation design and technical guidelines
- Knowledge of preservation/conservation technology; ability to read architectural drawings, and have the ability to offer technical assistance to applicants, owners, developers, and planners
-Social Media account manager for the Division of Historic Preservation
-Graphic Designer for print and digital media, including but not limited to briefs, event flyers and programs, official reports, etc.

Board Secretary, City of Paterson Historic Preservation Commission, Paterson, NJ – December 2016 – July 2018
- Make a record of all public proceedings and other official actions before the Commission at meetings, and from these records develop abbreviated minutes which reflect application details, persons in attendance, applicant and witness names and contact information, significant comments, Commission actions and comments, and other relevant information for use as the official record of Commission proceedings and activities at its meetings
- Staff member for Public Art and Murals Taskforce
- Responsible for the preparation of the Commission's accounting records, such as requests and forms as required for orders, purchases, billing, reimbursements or other such activities
- Responsible for and assists with executing logistical aspects of Commission meetings, such as physical set up and break down of furniture and other related equipment, coordination of catering or purchase of refreshments, and other duties as required

Training Developer, National Center for Preservation Technology and Training, National Park Service; Natchitoches, LA – June 2015 – October 2016
- Contracted position to build and implement a historic preservation maintenance eLearning program, in partnership with the Olmstead Center for Landscape Preservation, in Boston, Massachusetts
- Program was distributed (in a beta version) nation-wide to public and private historic sites, to train staff in historic preservation concepts that apply to maintenance
- Event space manager for NCPTT's in-house auditorium
- Graphic designer for print and digital media; including briefs, conference programs, and symposium proceedings
- Assisted in the planning and implementation of A Century of Design in the Parks, part of the National Park Service Centennial Symposium Series
- Produced and transcribed podcasts and education-based videos
- Worked with and instructed on Adobe Creative Suite, Articulate Storyline, Final Cut Pro, Audacity, Moodle, and other LMS software

President, SCAD Student Preservation Association; Savannah, Georgia, September 2013-May 2015
- Managed email database of 1000+ students, alumni, and industry professionals and was responsible for all communications
- Created and distributed all digital and print media via mailings and online sources
- Managed and created content for all social media platforms, including Facebook, Instagram, Twitter, Tumblr, and SCAD blog
- Planned, publicized, and coordinated all meetings, events, workshops, guest speakers, fundraisers, and trips
- Liaison between SCAD Administrators, Historic Preservation Department, Faculty advisor, and outside groups

Survey and Research Intern, Chatham County Metropolitan Planning Commission; Savannah, Georgia, March-June 2015
- Assisted with an update to Savannah's Victorian District, both local and National Register designated Historic Landmark District; update included eligibility assessments on rear structures and carriage houses
- Completed full chain of title research on 25 properties in the Eastern Victorian District
- Surveyed and documented 25 properties in the Eastern Victorian District, filed digitally into a searchable database (SAGIS)

Historical Interpreter, Coastal Heritage Society; Savannah, GA - February 2014 – June 2015
- Interpreter at Georgia State Railroad Museum, the largest collection of pre-civil war railroad buildings in the country. Site interpretation included history of steam power in America, historic train travel, locomotive history, and site history.
- Student Learning Group Interpreter; worked to coordinate school groups of up to 500 children through the site
- Retail experience in gift shop and ticket booth, providing information about the site and selling admission, merchandise, and memberships

Design Intern, Acheson Doyle Partners Architects, P.C.; New York, New York - June – September 2014
- Assisted associates and partners on projects ranging from feasibility studies to design development on a multitude of historically landmarked properties within Manhattan and Brooklyn
- Surveyed and digitally documented commercial and residential sites

Museum Collections Intern, Passaic County Historical Society at Lambert's Castle; Paterson, NJ - June – August 2012
- Digitized and reassessed collection; entered collection into PastPerfect
- Implemented organizational systems for collections totaling over 100,000 pieces
- Photographed objects
- Conducted accession research

SOFTWARE:
Microsoft Office Suite, AutoDesk AutoCAD, Revit Architecture, Adobe Creative Suite, Past Perfect, Moodle, Articulate Storyline, 123D Catch, Final Cut Pro, Audacity , Multiple Social Media Platforms, Eventbrite, Constant Contact/Mail Chimp, Edmunds Finance, Edmunds MCSJ, KVS Financial Systems

RECOGNITION AND LEADERSHIP:
SCAD, Dean's List (2011-2015); SCAD Sigma Pi Kappa Honor Society Member (2014, 2015); SCAD Tau Sigma Delta Honor Society Member (2013-2015), SCAD School of the Building Arts Award for Outstanding Achievement in Historic Preservation, 2015; SCAD Student Preservation Association President (2014-2015), Public Relations Chair (2012-2014); SCAD Art History Society Treasurer (2012-2015); Board Member and Web Designer, Natchitoches Humane Society (2016-Present); Girl Scout for 13+ years - Bronze and Silver Awards, 1000+ hours of Community Service

PROFESSIONAL MEMBERSHIP:
- National Trust for Historic Preservation, New Jersey Planning Officials

PUBLISHED WORK:
- National Center for Preservation Technology and Training, Podcast 74: "Job Hunting Tips for Historic Preservation"
  - Producer and Author
- National Center for Preservation Technology and Training, Podcast 72: "The Diverse Stories at the Cultural Heritage Society"
  - Producer and Author
- National Trust for Historic Preservation Forum Journal, Fall 2015, Volume 30, No. 1
  - Contributor, *Thinking Ahead: Forum Members Share Vision for Preservation's Future*, by Elizabeth Byrd Wood
- National Center for Preservation Technology and Training, Podcast 66: "Why Historic Preservation?", by Jason Church
  - Contributor
- National Center for Preservation Technology and Training, Podcast 69: "Moving Cultural Landscapes into the 21st Century"
  - Producer and Author
- National Center for Preservation Technology and Training, "Preservation in Your Community 2015"
  - Presenter, "eLearning for Historic Preservation Maintenance"
- Red River Radio: Preservation in Your Community 2015, 9:30 am, July 28, 2015; Gary Joiner, Ph.D.
  - Contributor

Rebuttal Appendix E

Wrieden/O'Neill Joint Verified Statement, July 2021

[expert op. on significant adverse effects]

BEFORE THE SURFACE TRANSPORTATION BOARD

Consolidated Rail Corporation –	)
Abandonment Exemption –	) AB 167 (Sub-no 1189X)
in Hudson County, NJ	)

JOINT VERIFIED STATEMENT OF DANIEL M. WRIEDEN
AND MARGARET A. O'NEILL,
DIVISION OF PLANNING, CITY of JERSEY CITY

I, Daniel M. Wrieden, state that I am the Historic Preservation Officer, in the Division of Planning for the City of Jersey City. I, Margaret A. O'Neill, state that I am the Senior Historic Preservation Specialist in the Division of Planning for the City of Jersey City. (We will sometimes refer to ourselves collectively herein as HPC Staff.) We make this verified statement as part of the City of Jersey City's response to (1) the Advisory Council on Historic Preservation's ("ACHP's") guidance to the Surface Transportation Board, (2) Consolidated Rail Corporation ("Conrail") and (3) 212 Marin Boulevard, LLC et al. ("LLCs") involving application of Section 110(k) in the above captioned proceeding and in related proceedings. As a result of our training and experience in our positions within the Division of Planning, we have expertise in the application of the criteria for determining adverse effects

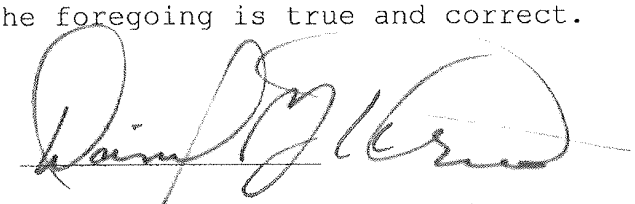
on properties eligible for the protections of section 106 of the National Historic Preservation Act, and comparable state and city statutes and ordinances. We have previously provided documentation of our professional backgrounds and expertise.

1. HPC Staff reiterates our Joint Verified Statement from April 23, 2019. We note one typographical error which we hereby correct: the word "unsure" in the last line in the second numbered paragraph should read "ensure".
2. Since submission of our Joint Verified Statement of April 23, 2019, the Office of Environmental Analysis has published a CREAR Addendum. Upon review of the CREAR Addendum and the record, we find that loss of federal control, without preservation conditions put in place, would be a significant adverse effect on the historic resource. The CREAR Addendum does not address significance of adverse effects, but implies that granting abandonment authority will have adverse effects on all or some of the historic assets under any development scenario, whereas retaining federal authority will have no effect on historic assets. The development scenarios will only transpire in the event of loss of federal control, and flow from lack of any legally enforceable conditions or restrictions to

preserve any historic asset on or adjacent to the property. Due to the development pressures which we indicated in our prior Verified Statement, this loss of federal control must be viewed as itself a significant adverse effect. In the circumstances, the loss of federal jurisdiction facilitates, causes and is equivalent to destruction of the Branch and the Embankment and would cause an adverse impact on all the relevant section 106-protected properties. Of course, destruction of all or portions of the Branch and Embankment flowing from the development pressures we have identified, and that attorneys for the LLCs have elsewhere attested, are themselves also significant adverse effects.

3. It is our professional opinion that a possible abandonment without legally enforceable conditions to preserve the historic assets would facilitate and cause the most significant adverse effects upon the historic assets, and would be an unsustainable and inappropriate solution. It is important to note that any preservation conditions for the branch, which HPC Staff is firmly in support of, should hold both the current and future owners to a similar high standard for future maintenance and/or development of the site.

Pursuant to 28 U.S.C. 1746, we each separately declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Daniel M. Wrieden, Historic Preservation Officer

Dated: 07/13/2021



Margaret A. O'Neill, Senior Historic Preservation Specialist

Dated: 07/13/2021

Rebuttal Appendix F

Curley V.S. dated Jan. 6, 2006, filed in F.D. 34818,

with copies of the eight deeds executed by
Mr. Ryan for Conrail to the LLCs

BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket No. 34818

Rails to Trails Conservancy,
Jersey City, and
Pennsylvania Railroad Harsimus Stem
Embankment Coalition, petitioners --
Petition for a Declaratory Order

VERIFIED STATEMENT OF
JOHN J. CURLEY

I, John J. Curley, make this Verified Statement in support of the Petition for a Declaratory Order filed by petitioners the City of Jersey City, et al. in the above-captioned proceeding.

1. I am special counsel for the City of Jersey City, Jersey City Historic Preservation Commission and Joanne Monahan (Assistant City Counsel) in litigation brought by eight limited liability companies controlled by developer Steven Hyman who claims to hold property interests acquired from Conrail to the portion of the Harsimus Branch containing the Sixth Street Embankment.

2. Steven Hyman, a developer, on or about July 11, 2005, acquired the Harsimus Embankment in the Harsimus Branch of the old Pennsylvania Railroad from Conrail by Quit Claim deeds in the name of several limited liability companies in which Mr. Hyman holds 100% interest. Copies of the Quit Claim deeds are attached in Appendix I to this Verified Statement.

3. Mr. Hyman proposes to develop the Embankment property for

residential purposes through the construction of one and two family homes, which is in accordance with the zoning of the area. Copies of his development plans for five of the eight parcels are attached in Appendix II to this Verified Statement. His development plans for the remaining three parcels are expected to be similar.

4. On their face, Mr. Hyman's development plans are inconsistent with any rail use of the Embankment. A railroad cannot be fit in the property once it is subdivided and utilized for residential housing as proposed by Mr. Hyman. Additionally, the construction of the residential units proposed by Mr. Hyman necessitates the demolition of the remaining railroad structures and the embankment as the homes are to be constructed at grade.

5. The City has no record of receiving any notice that the Interstate Commerce Commission or the Surface Transportation Board ever authorized abandonment of the Harsimus Branch containing the embankment in which Mr. Hyman claims a property interest. The City after inquiry does not believe that Conrail ever obtained an abandonment authorization for the portion of the Harsimus Branch in Jersey City. The City believes that the Harsimus Branch is a line of railroad subject to the plenary and exclusive jurisdiction of the Surface Transportation Board until the Surface Transportation Board has authorized an abandonment, which it has not.

6. The railroad embankment is of particular concern to the City of Jersey City. Constructed in the early 1900's and designed

by a 'celebrated local engineer, it has great historical significance in the development of Jersey City's downtown area which was dominated by rail freight transportation and is listed on the New Jersey Register of Historic Places. It is also eligible to be listed on the National Register of Historic Places. Jersey City is contemplating using the existing embankment for expansion of its growing light rail system or as open space as the embankment is located between two densely populated historic residential districts.

7. The Planning Board of the City of Jersey City, acting after hearing arguments (among others) insofar as is germane here that the Harsimus Branch had never been authorized for abandonment and therefore remains under the Surface Transportation Board's jurisdiction, declined to authorize the residential development proposed by Mr. Hyman for the railroad property. Mr. Hyman has sued the City and related parties over this refusal, and has received an order from the Superior Court of New Jersey directing the Planning Board to proceed without further regard to whether the Surface Transportation Board continues to have jurisdiction over the property. A copy of this Order is attached as Appendix III.

8. In light of this litigation, it is urgent that the City obtain as quickly as possible a declaratory judgment that the Surface Transportation Board has jurisdiction over the railroad property at issue in this proceeding. The Planning Board is

powerless to defeat or defer the pending applications on the grounds that the Surface Transportation Board has jurisdiction over the property and has now granted one such application under protest. Once the applications are granted, the railroad structures may be demolished and the land devoted to non-rail use, thereby possibly defeating the Surface Transportation Board's jurisdiction and rendering this Petition moot. The proposed development of one and two family homes on the land may not require any additional variances and therefore no additional Planning Board review before non-rail use of the property is established.

Pursuant to 28 U.S.C. § 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on Jan. 6, 2006.

John J. Curley

Exhibit C: Appendix I

Consideration : $333335.00 Exempt Code: S

County	State	N.P.N.R.F	Total
333.83	833.42	275.25	1976.30
General	Public	Extra	1% Tax
0.00	166.75	367.05	0.00

QUITCLAIM DEED

Case 72931-A

07/18/2005 09:53A
BARBARA A. DONNELLY
HUDSON COUNTY
REGISTER OF DEEDS
Filed & Recorded
000011008
RECEIVED

A COPY OF THIS DEED HAS BEEN SENT TO ASSESSOR'S OFFICE

THIS DEED, made the 12th day of July, in the year of our Lord Two Thousand Five (2005),

BETWEEN CONSOLIDATED RAIL CORPORATION, a Corporation of the Commonwealth of Pennsylvania, having an office at Two Commerce Square, 2001 Market Street, 8TH Floor, Philadelphia, Pennsylvania, 19103, hereinafter referred to as the Grantor, and **212 MARIN BOULEVARD, L.L.C.**, a Limited Liability Company, having a mailing address in care of Carmine R. Alampi, Esq., One University Plaza, Suite 404, Hackensack, NJ 07601 , hereinafter referred to as the Grantee.

WITNESSETH, that the said Grantor, for and in consideration of the sum of THREE HUNDRED THIRTY THREE THOUSAND THREE HUNDRED THIRTY FIVE DOLLARS ($333,335) lawful money of the United States of America, unto it well and truly paid by the said Grantee, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, Grantor does by these presents, remise, release and forever quitclaim unto the said Grantee, the heirs or successors and assigns of the said Grantee, all right, title and interest of the said Grantor of, in and to the Premises as more particularly described on Exhibit 'A', pages 1 of 3 through 3 of 3, appended hereto and made a part hereof.

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, permanent, perpetual, exclusive, assignable and unrestricted easements and rights for any and all existing sewer, gas and water lines, poles, pipes, wires, cables, power, signal and communication lines, fiber optic lines, telecommunication lines and all their appurtenances, hereinafter referred to as "facilities", located in, on, under, over, above, beneath the surface, across or through the Premises; and together with the right to use, maintain, repair, replace, renew, rehabilitate and remove said facilities and their appurtenances.

UNDER and SUBJECT, however, to (1) whatever rights the public may have to the use of any roads, alleys, bridges or streets crossing the Premises, (2) any streams, rivers, creeks and water ways passing under, across or through the Premises, and (3) any easements or agreements of record or otherwise affecting the Premises, and to the state of facts which a personal inspection or accurate survey would disclose, and to any pipes, wires, poles, cables, culverts, drainage courses or systems and their appurtenances now existing and remaining in, on, under, over, across and through the Premises, together with the right to maintain, repair, renew, replace, use and remove same.

THIS INSTRUMENT is executed and delivered by Grantor, and is accepted by Grantee, subject to the covenants set forth below, which shall be deemed part of the consideration of this conveyance and which shall run with the land and be binding upon, and inure to the benefit of, the respective heirs, legal representatives, successors and assigns of Grantor and Grantee. Grantee hereby knowingly, willingly, and voluntarily waives the benefit of any rule, law, custom, or statute of the State of New Jersey now or hereafter in force with respect to the covenants set forth below:

Robert W. Ryan

TAX REFERENCE:
Block 212 Lot M

THIS INSTRUMENT PREPARED BY:
Robert W. Ryan
Consolidated Rail Corporation
2001 Market Street – 8th Floor
Philadelphia, PA 19103

BK=07616 PG=00001

(1.) Grantor shall neither be liable or obligated to construct or maintain any fence or similar structure between the Premises and adjoining land of Grantor nor shall Grantor be liable or obligated to pay for any part of the cost or expense of constructing or maintaining any fence or similar structure, and Grantee hereby forever releases Grantor from any loss or damage, direct or consequential, that may be caused by or arise from the lack or failure to maintain any such fence or similar structure.

(2.) Grantee hereby forever releases Grantor from all liability for any loss or damage, direct or consequential, to the Premises and to any buildings or improvements now or hereafter erected thereon and to the contents thereof, which may be caused by or arise from the normal operation, maintenance, repair, or renewal of Grantor's railroad, or which may be caused by or arise from vibration resulting from the normal operation, maintenance, repair or renewal thereof.

(3.) A. Allocation of Specific Obligations to Remediate.
The parties shall, as between themselves, allocate obligations pertaining to any Remediation with respect to the Premises in accordance with this Section, without regard to considerations of fault, failure or negligence.

(i) Grantee shall be responsible after the date of this Deed for any Remediation arising from the existence or presence of any contamination in, on or about the Premises, including without limitation, any Hazardous Substances, except as specifically provided otherwise in Subsection A(ii) below.

(ii) Grantor shall be responsible for Remediation of Hazardous Substances in, on or about the Premises, provided that such Hazardous Substances: (1) resulted from a condition created by Grantor during the time the Premises was owned by Grantor; and (2) are a violation of applicable environmental laws or regulations in effect and as interpreted on the date of this Deed. Notwithstanding the aforesaid, Grantor shall not be liable for any Remediation resulting from any condition: (a) that Grantee had knowledge of or reasonable basis to suspect as of the date of this Deed; or (b) that Grantee could have discovered its presence upon the Premises by a duly diligent examination of the Premises or public records related thereto; or (c) which Grantee has failed to immediately notify Grantor of as provided for below. Grantor's liability for any Remediation for which it is otherwise responsible hereunder shall be no greater than that resulting from the condition of the Premises existing as of the date of this Deed regardless of any increase in Remediation costs or liability created by or resulting from events occurring after the date of this Deed, including the passage of time.

(iii) If at any time after the date of this Deed, any Hazardous Substances are discovered which are or may be the responsibility of Grantor to Remediate pursuant to Subsection A(ii) above, then Grantee shall immediately notify Grantor of such Hazardous Substances, and Grantor shall have the opportunity and right to investigate, determine its responsibility therefor, determine in connection with appropriate governmental or regulatory bodies the appropriate response or remedy for such Hazardous Substances and Remediate, with its own forces or contractors and at its own expense, such Hazardous Substances to the satisfaction of appropriate regulatory bodies or to the additional extent deemed appropriate by Grantor. Grantor shall only be obligated to Remediate such Hazardous Substances to the extent that would be required for the now existing or most recent use of the Premises by Grantor, regardless of the current or proposed use of the Premises by Grantee. Grantee shall grant such rights of entry or other rights to Grantor, upon reasonable terms and without compensation, as may be necessary to allow Grantor to perform the inspections, remediation or other actions necessary to comply with this Subsection. In the event of a dispute concerning Grantor's responsibility for any Remediation hereunder, the parties shall cooperate to resolve such dispute as quickly as possible, and Grantee, unless required by valid judicial or regulatory order to take immediate action to Remediate a specific condition, shall, during the resolution of such dispute, take no actions inconsistent with Grantor's right to seek a determination from the appropriate regulatory or judicial body of the remedy required by law and to Remediate the Hazardous Substances with its own forces or contractors. Grantor shall not be liable to Grantee for any damages, costs or expenses incurred as a result of such Remediation, except that if Grantee is required by valid judicial or administrative order as provided above to take immediate action to Remediate any Hazardous Substances which are later determined

to be the responsibility of Grantor pursuant to this Subsection, Grantee shall be able to recover its actual and reasonable costs from Grantor.

B. Definition of "Hazardous Substance(s)". "Hazardous Substance(s)", as used in this Deed, shall mean any material or substance that is defined or classified as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601(14)) or Section 311 of the Federal Water Pollution Control Act (33 U.S.C. §1321); a "hazardous waste" pursuant to Section 1004 or 3001 of the Resource Conservation and Recovery Act (42 U.S.C. §§6903, 6921); a toxic pollutant under Section 307(a)(1) of the Federal Water Pollution Control Act (33 U.S.C. §1317(a)(1)); a "hazardous air pollutant" under Section 112 of the Clean Air Act (42 U.S.C. §7412); or a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. App. §1802(4)).

C. Definition of "Remediate" and "Remediation". "Remediate" or "Remediation", as used in this Deed, shall mean, any reasonable investigation and the formulation and implementation of any remedial action, containment, cleanup, response, treatment, removal, mitigation, abatement, elimination or control of any contamination.

D. Indemnity. The party made responsible by this Section for any Remediation shall: (1) satisfy said obligations; and (2) indemnify, defend and hold the other party (and its directors, officers, employees and agents) harmless from and against any claims, liabilities, judgments, settlements, costs and expenses (including without limitation, reasonable attorneys' fees) arising out of or in connection with said Remediation.

E. Release. As a material part of the consideration to Grantor for the conveyance of the Premises, Grantee hereby expressly and irrevocably releases and forever discharges, and by these presents does, for its successors and assigns, release and forever discharge Grantor (including, without limitation, its directors, officers, employees, and agents) from any and all actions, suits, controversies, damages (compensatory, punitive or consequential), judgments, claims and demands whatsoever, in law, or in equity, which Grantee ever had, now has, or which it or its successors and assigns hereafter can, shall or may have against Grantor, arising out of or in connection with the presence of any contamination on the Premises, including without limitation, any Hazardous Substances, except to the extent Grantor fails to comply with its obligations set forth in Subsection A(ii) above, or Grantee is entitled to recover the cost of any Remediation pursuant to Subsection A(ii). Grantee shall indemnify, defend and hold Grantor harmless from and against any and all claims, liabilities, judgments, settlements, costs and expenses (including without limitation, reasonable attorneys' fees) arising out of or in connection with Grantee's prosecution of any of its legal remedies against any third party who might have concurring or joint liability for matters for which Grantee has released Grantor pursuant to this Subsection. Each party expressly waives, to the extent it lawfully may do so: (i) the benefits of any statute that would relieve it of any obligations that it has assumed under this Section, and (ii) any defense predicated on alleged misrepresentations of fact or the nondisclosure of any fact.

(4.) Should a claim adverse to the title hereby quitclaimed be asserted and/or proved, no recourse shall be had against the Grantor herein.

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, permanent, perpetual, exclusive, unrestricted and assignable easements and rights for any and all existing signboards and their appurtenances located on the Premises; together with the necessary; easements and rights for any necessary electric service lines and their appurtenances needed for illuminating said signboards; and together with rights and easements to construct, use, maintain, modify, enlarge, repair, renew, replace, rehabilitate and remove said signboards; and together with the right of immediate and unimpeded ingress and egress on, over, across, and through the Premises for the purposes aforesaid; and further together with the exclusive right to sell and assign such rights and to retain any and all revenues, income, charges, considerations and fees derived therefrom.

pc 03

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of it, the said Grantor as well at law as in equity or otherwise howsoever of, in and to the same and every part thereof, UNDER and SUBJECT and EXCEPTING AND RESERVING as aforesaid.

TO HAVE AND TO HOLD, all and singular the said Premises, together with the appurtenances, unto the Grantee, the heirs or successors and assigns of the Grantee, forever, UNDER and SUBJECT and provided as aforesaid.

THE words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees", respectively, whenever the sense of this instrument so requires and whether singular or plural, such words shall be deemed to include at all times and in all cases the heirs, legal representatives or successors and assigns of the Grantor and Grantee.

IN WITNESS WHEREOF, the Grantor has caused this Indenture to be signed in its name and behalf

BK=07616 PG=00004

EXHIBIT A

CASE NO. 72931-A

ALL THAT CERTAIN piece or parcel of land of the Grantor, together with all of the improvements thereon, being a portion of the line of railroad known as the Penn Central Harsimus Branch and identified as Line Code 1420, situate in the City of Jersey City, County of Hudson and State of New Jersey, said parcel being identified as Block 212, Lot M, which is bounded and described in accordance with a Plat of Survey, identified as Project No. 0303332, dated December 29, 2004 and revised through February 23, 2005, prepared by Glen J. Lloyd, Professional Land Surveyor, New Jersey License No. GS37598, attached hereto and made a part hereof, as follows.

A COPY OF THIS DEED
HAS BEEN SENT TO ASSESSOR'S OFFICE

BEING a part or portion of the same premises which Fairfax Leary, as Trustee of the Property of the United New Jersey Railroad and Canal Company, Debtor, by Conveyance Document No. UNJ-CRC-RP-4, dated March 31, 1976 and recorded on October 10, 1979 in the Recorder's Office of Hudson County, New Jersey, in Liber 3286 at page 757&c.; and also Filed and Recorded in the Recorder's Office of the Secretary of State for the State of New Jersey on October 12, 1978, granted and conveyed unto Consolidated Rail Corporation.

BK=07616 PG=00005

SCHOOR DEPALMA
Engineers and Consultants

February 23, 2005

Project No. 030333202

A COPY OF THIS DEED HAS BEEN SENT TO ASSESSOR'S OFFICE

LEGAL DESCRIPTION
LOT M, BLOCK 212
CITY OF JERSEY CITY
HUDSON COUNTY, NEW JERSEY

A parcel of land described herein, known and designated as Lot M, Block 212, City of Jersey City, Hudson County, New Jersey, as shown on a certain map entitled, "Boundary Survey, Lot M - Block 212, Lot 50A - Block 247, Lot 50A - Block 280, Lot 50A - Block 317.5, Lot 50A - Block 354.1, Lot 50 - Block 389.1, Lot 50 - Block 415 & Lot 18A - Block 446," prepared by Schoor DePalma, dated December 29, 2004 and revised to February 23, 2005, and being more particularly described as follows:

Beginning at the point of intersection of the westerly sideline of Marin Boulevard (60 foot wide right-of-way) and the southerly sideline of Sixth Street (60 foot wide right-of-way) and running; thence,

1. Along said westerly sideline of Marin Boulevard, south 06 degrees 22 minutes 03 seconds west, 135.12 feet; thence,

2. Along the northerly line of lands known and designated as Tax Map Lot 1, Block 212, north 77 degrees 29 minutes 57 seconds west, 322.57 feet; thence,

3. Still along said northerly line of Lot 1, north 83 degrees 44 minutes 57 seconds west, 81.33 feet to the easterly sideline of Manila Avenue (60 foot wide right-of-way); thence,

4. Along said easterly sideline of Manila Avenue, north 06 degrees 22 minutes 03 seconds east, 100.00 feet to its intersection with the aforementioned southerly sideline of Sixth Street; thence,

5. Along said southerly sideline of Sixth Street, south 83 degrees 44 minutes 57 seconds east, 402.05 feet to the point or place of beginning.

Containing 45,837 square feet more or less / 1.052 acres of land more or less as described herein.

Subject to all existing easements, rights-of-way and reservations of record.

Glen J. Lloyd, P.L.S.
N.J. Professional Land Surveyor
New Jersey License No. GS37598

n:\project\2003\0303332\02\m&bs\lot m, block 212.doc

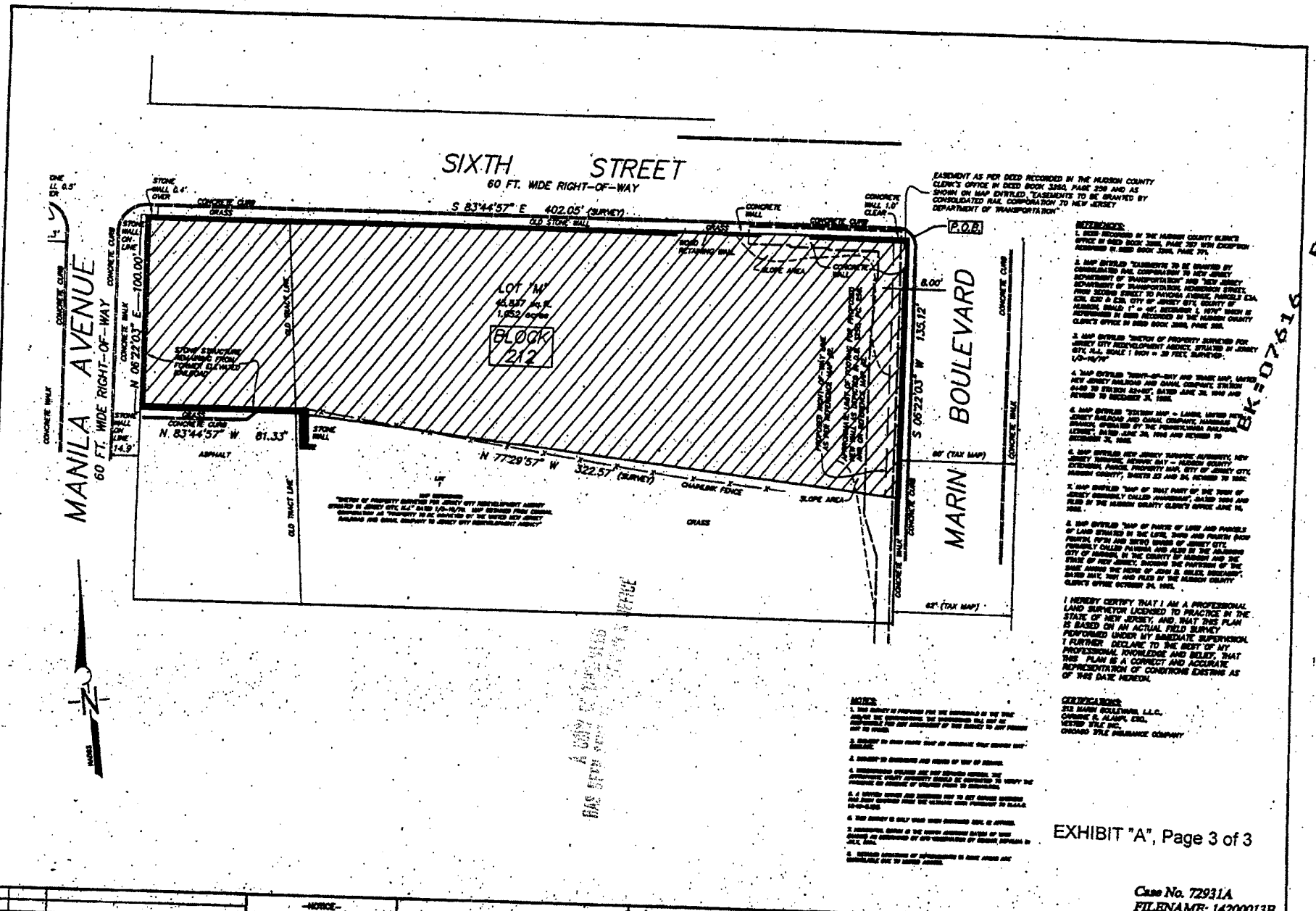


EXHIBIT "A", Page 3 of 3

Case No. 72931A
FILENAME: 14200013B

-NOTICE-

GLEN J. LLOYD
PROFESSIONAL LAND SURVEYOR, N.J. LIC. No. 05377566

SCHOOR DEPALMA
Engineers and Consultants
Cert. Of Authorization 24GA27928200
30 WATERVIEW BOULEVARD
P.O. BOX 5340 PARSIPPANY, NJ 07054
TEL. (973)299-7970 FAX (973)334-6668

BOUNDARY SURVEY
LOT M - BLOCK 212
PROPERTY OF CONRAIL CORPORATION
JERSEY CITY HUDSON COUNTY, NEW JERSEY

PROJECT NO. 03033332
SCALE 1"=30'
DATE 12/29/04
DRAWN BY GJL
SHEET NO. 1 of 1

044

GIT/REP-3
(11-04)

State of New Jersey

Seller's Residency Certification/Exemption

(C.55, P.L. 2004)

(Please Print or Type)

SELLER(S) INFORMATION (See Instructions, page 2):
Name(s) **Consolidated Rail Corporation**

Current Resident Address **405 Division Street, Suite 215**

City, Town, Post Office **Elizabeth** State **NJ** Zip Code **07201**

PROPERTY INFORMATION (Brief Property Description):
Block(s) **212** Lot(s) **50 A (Lot M)** Qualifier

Street Address **Marin Boulevard and Sixth Street**

City, Town, Post Office **Jersey City** State **NJ** Zip Code **07302**

Seller's Percentage of Ownership **100%** Consideration **$333,335.00** Closing Date **7/13/05**

SELLER ASSURANCES (Check the Appropriate Box):

1. ☐ I am a resident taxpayer of the State of New Jersey pursuant to N.J.S.A. 54A:1-1 et seq. and will file a resident gross income tax return and pay any applicable taxes on any gain or income from the disposition of this property.
2. ☐ The real property being sold or transferred is used exclusively as my principal residence within the meaning of section 121 of the Federal Internal Revenue Code of 1986, 26 U.S.C. s. 121.
3. ☐ I am a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration.
4. ☐ Seller, transferor or transferee is an agency or authority of the United States of America, an agency or authority of the State of New Jersey, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.
5. ☒ Seller is not individual, estate or trust and as such not required to make an estimated payment pursuant to N.J.S.A.54A:1-1 et seq.
6. ☐ The total consideration for the property is $1,000 or less and as such, the seller is not required to make an estimated payment pursuant to N.J.S.A. 54A:5-1-1 et seq.
7. ☐ The gain from the sale will not be recognized for Federal income tax purposes under I.R.C. Section 721, 1031, 1033 or is a cemetery plot. (CIRCLE THE APPLICABLE SECTION.) If such section does not ultimately apply to this transaction, the seller acknowledges the obligation to file a New Jersey income tax return for the year of the sale.

SELLER(S) DECLARATION:
The undersigned understands that this declaration and its contents may be disclosed or provided to the New Jersey Division of Taxation and that any false statement contained herein could be punished by fine, imprisonment, or both. I furthermore declare that I have examined this declaration and, to the best of my knowledge and belief, it is true, correct and complete.

July 13, 2005
Date

Signature **Robert W. Ryan, Director Real Estate**
(Seller) Please indicate if Power of Attorney or Attorney in Fact

BK*07616 PG:00008

July 13, 2005
Date

Signature **Consolidated Rail Corporation**
(Seller) Please indicate if Power of Attorney or Attorney in Fact

Powered by HotDocs®

Printed by ALL-STATE LEGAL®
A Division of ALL-STATE International, Inc.
www.aslegal.com 800.222.0510

by its Director-Real Estate duly authorized thereunto and has caused its corporate seal to be hereunto affixed and attested by its Corporate Secretary, the day and year first above written.

SEALED and DELIVERED in the presence of us:

Carol A. Putiri
CAROL A. PUTIRI

CONSOLIDATED RAIL CORPORATION
By:

Robert W. Ryan
Director-Real Estate

ATTEST:

Carol A. Putiri
CAROL A. PUTIRI

Jonathan M. Broder
Corporate Secretary

COMMONWEALTH OF PENNSYLVANIA)
: SS
COUNTY OF Philadelphia)

BE IT REMEMBERED, that on this 12th day of July in the year Two Thousand Five (2005), before me, the subscriber, a Notary Public for the Commonwealth and County aforesaid, personally appeared Robert W. Ryan, Director-Real Estate of CONSOLIDATED RAIL CORPORATION, the corporate Grantor named in the within Instrument, who I am satisfied is the person who has signed the within Instrument on behalf of said Corporation; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as such officer aforesaid; that the foregoing Instrument is the voluntary act and deed of said Corporation, made by virtue of authority from its Board of Directors; and that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by the within Instrument as such consideration is THREE HUNDRED THIRTY THREE THOUSAND THREE HUNDRED THIRTY FIVE Dollars ($333,335).

Jennifer A. Burtulato
Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
JENNIFER A. BURTULATO, Notary Public
City of Philadelphia, Phila. County
My Commission Expires October 11, 2008

RECORD & RETURN TO:
ALAMPI & DEMARRAIS
ONE UNIVERSITY PLAZA
HACKENSACK NJ 07601

BK:07616 PG:00009

Consideration = $333333.00 Exempt Code: 5

County	State	N.P.N.R.F	Total
333.83	833.42	275.25	1976.30
General	Public	Extra	1% Tax
0.00	166.75	367.05	0.00

fee3 Date: 07/18/2005

QUITCLAIM DEED

Case 72931-B

07/18/2005 09:52A
BARBARA A. DONNELLY
HUDSON COUNTY
REGISTER OF DEEDS
Receipt No. 2660

0000111007
RECEIVED
AND
RECORDED
OF

THIS DEED, made the 12th day of July, in the year of our Lord Two Thousand Five (2005),

BETWEEN CONSOLIDATED RAIL CORPORATION, a Corporation of the Commonwealth of Pennsylvania, having an office at Two Commerce Square, 2001 Market Street, 8TH Floor, Philadelphia, Pennsylvania, 19103, hereinafter referred to as the Grantor, and **247 MANILA AVENUE, L.L.C.**, a Limited Liability Company, having a mailing address in care of Carmine R. Alampi, Esq., One University Plaza, Suite 404, Hackensack, NJ 07601 , hereinafter referred to as the Grantee.

WITNESSETH, that the said Grantor, for and in consideration of the sum of THREE HUNDRED THIRTY THREE THOUSAND THREE HUNDRED THIRTY THREE DOLLARS ($333,333) lawful money of the United States of America, unto it well and truly paid by the said Grantee, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, Grantor does by these presents, remise, release and forever quitclaim unto the said Grantee, the heirs or successors and assigns of the said Grantee, all right, title and interest of the said Grantor of, in and to the Premises as more particularly described on Exhibit 'A', pages 1 of 3 through 3 of 3, appended hereto and made a part hereof.

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, permanent, perpetual, exclusive, assignable and unrestricted easements and rights for any and all existing sewer, gas and water lines, poles, pipes, wires, cables, power, signal and communication lines, fiber optic lines, telecommunication lines and all their appurtenances, hereinafter referred to as "facilities", located in, on, under, over, above, beneath the surface, across or through the Premises; and together with the right to use, maintain, repair, replace, renew, rehabilitate and remove said facilities and their appurtenances.

UNDER and SUBJECT, however, to (1) whatever rights the public may have to the use of any roads, alleys, bridges or streets crossing the Premises, (2) any streams, rivers, creeks and water ways passing under, across or through the Premises, and (3) any easements or agreements of record or otherwise affecting the Premises, and to the state of facts which a personal inspection or accurate survey would disclose, and to any pipes, wires, poles, cables, culverts, drainage courses or systems and their appurtenances now existing and remaining in, on, under, over, across and through the Premises, together with the right to maintain, repair, renew, replace, use and remove same.

THIS INSTRUMENT is executed and delivered by Grantor, and is accepted by Grantee, subject to the covenants set forth below, which shall be deemed part of the consideration of this conveyance and which shall run with the land and be binding upon, and inure to the benefit of, the respective heirs, legal representatives, successors and assigns of Grantor and Grantee. Grantee hereby knowingly, willingly, and voluntarily waives the benefit of any rule, law, custom, or statute of the State of New Jersey now or hereafter in force with respect to the covenants set forth below:

Robert W Ryan

TAX REFERENCE:
Block 247, Lot 50A

THIS INSTRUMENT PREPARED BY:
Robert W. Ryan
Consolidated Rail Corporation
2001 Market Street – 8th Floor
Philadelphia, PA 19103

A COPY OF THIS DEED IS NOT REQUIRED BY THE ASSESSOR'S OFFICE

1 BK=07615 PG=00334

(1.) Grantor shall neither be liable or obligated to construct or maintain any fence or similar structure between the Premises and adjoining land of Grantor nor shall Grantor be liable or obligated to pay for any part of the cost or expense of constructing or maintaining any fence or similar structure, and Grantee hereby forever releases Grantor from any loss or damage, direct or consequential, that may be caused by or arise from the lack or failure to maintain any such fence or similar structure.

(2.) Grantee hereby forever releases Grantor from all liability for any loss or damage, direct or consequential, to the Premises and to any buildings or improvements now or hereafter erected thereon and to the contents thereof, which may be caused by or arise from the normal operation, maintenance, repair, or renewal of Grantor's railroad, or which may be caused by or arise from vibration resulting from the normal operation, maintenance, repair or renewal thereof.

(3.) A. Allocation of Specific Obligations to Remediate.
The parties shall, as between themselves, allocate obligations pertaining to any Remediation with respect to the Premises in accordance with this Section, without regard to considerations of fault, failure or negligence.

(i) Grantee shall be responsible after the date of this Deed for any Remediation arising from the existence or presence of any contamination in, on or about the Premises, including without limitation, any Hazardous Substances, except as specifically provided otherwise in Subsection A(ii) below.

(ii) Grantor shall be responsible for Remediation of Hazardous Substances in, on or about the Premises, provided that such Hazardous Substances: (1) resulted from a condition created by Grantor during the time the Premises was owned by Grantor; and (2) are a violation of applicable environmental laws or regulations in effect and as interpreted on the date of this Deed. Notwithstanding the aforesaid, Grantor shall not be liable for any Remediation resulting from any condition: (a) that Grantee had knowledge of or reasonable basis to suspect as of the date of this Deed; or (b) that Grantee could have discovered its presence upon the Premises by a duly diligent examination of the Premises or public records related thereto; or (c) which Grantee has failed to immediately notify Grantor of as provided for below. Grantor's liability for any Remediation for which it is otherwise responsible hereunder shall be no greater than that resulting from the condition of the Premises existing as of the date of this Deed regardless of any increase in Remediation costs or liability created by or resulting from events occurring after the date of this Deed, including the passage of time.

(iii) If at any time after the date of this Deed, any Hazardous Substances are discovered which are or may be the responsibility of Grantor to Remediate pursuant to Subsection A(ii) above, then Grantee shall immediately notify Grantor of such Hazardous Substances, and Grantor shall have the opportunity and right to investigate, determine its responsibility therefor, determine in connection with appropriate governmental or regulatory bodies the appropriate response or remedy for such Hazardous Substances and Remediate, with its own forces or contractors and at its own expense, such Hazardous Substances to the satisfaction of appropriate regulatory bodies or to the additional extent deemed appropriate by Grantor. Grantor shall only be obligated to Remediate such Hazardous Substances to the extent that would be required for the now existing or most recent use of the Premises by Grantor, regardless of the current or proposed use of the Premises by Grantee. Grantee shall grant such rights of entry or other rights to Grantor, upon reasonable terms and without compensation, as may be necessary to allow Grantor to perform the inspections, remediation or other actions necessary to comply with this Subsection. In the event of a dispute concerning Grantor's responsibility for any Remediation hereunder, the parties shall cooperate to resolve such dispute as quickly as possible, and Grantee, unless required by valid judicial or regulatory order to take immediate action to Remediate a specific condition, shall, during the resolution of such dispute, take no actions inconsistent with Grantor's right to seek a determination from the appropriate regulatory or judicial body of the remedy required by law and to Remediate the Hazardous Substances with its own forces or contractors. Grantor shall not be liable to Grantee for any damages, costs or expenses incurred as a result of such Remediation, except that if Grantee is required by valid judicial or administrative order as provided above to take immediate action to Remediate any Hazardous Substances which are later determined

BK=07615 PG=00335

to be the responsibility of Grantor pursuant to this Subsection, Grantee shall be able to recover its actual and reasonable costs from Grantor.

B. Definition of "Hazardous Substance(s)". "Hazardous Substance(s)", as used in this Deed, shall mean any material or substance that is defined or classified as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601(14)) or Section 311 of the Federal Water Pollution Control Act (33 U.S.C. §1321); a "hazardous waste" pursuant to Section 1004 or 3001 of the Resource Conservation and Recovery Act (42 U.S.C. §§6903, 6921); a toxic pollutant under Section 307(a)(1) of the Federal Water Pollution Control Act (33 U.S.C. §1317(a)(1)); a "hazardous air pollutant" under Section 112 of the Clean Air Act (42 U.S.C. §7412); or a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. App. §1802(4)).

C. Definition of "Remediate" and "Remediation". "Remediate" or "Remediation", as used in this Deed, shall mean, any reasonable investigation and the formulation and implementation of any remedial action, containment, cleanup, response, treatment, removal, mitigation, abatement, elimination or control of any contamination.

D. Indemnity. The party made responsible by this Section for any Remediation shall: (1) satisfy said obligations; and (2) indemnify, defend and hold the other party (and its directors, officers, employees and agents) harmless from and against any claims, liabilities, judgments, settlements, costs and expenses (including without limitation, reasonable attorneys' fees) arising out of or in connection with said Remediation.

E. Release. As a material part of the consideration to Grantor for the conveyance of the Premises, Grantee hereby expressly and irrevocably releases and forever discharges, and by these presents does, for its successors and assigns, release and forever discharge Grantor (including, without limitation, its directors, officers, employees, and agents) from any and all actions, suits, controversies, damages (compensatory, punitive or consequential), judgments, claims and demands whatsoever, in law, or in equity, which Grantee ever had, now has, or which it or its successors and assigns hereafter can, shall or may have against Grantor, arising out of or in connection with the presence of any contamination on the Premises, including without limitation, any Hazardous Substances, except to the extent Grantor fails to comply with its obligations set forth in Subsection A(ii) above, or Grantee is entitled to recover the cost of any Remediation pursuant to Subsection A(ii). Grantee shall indemnify, defend and hold Grantor harmless from and against any and all claims, liabilities, judgments, settlements, costs and expenses (including without limitation, reasonable attorneys' fees) arising out of or in connection with Grantee's prosecution of any of its legal remedies against any third party who might have concurring or joint liability for matters for which Grantee has released Grantor pursuant to this Subsection. Each party expressly waives, to the extent it lawfully may do so: (i) the benefits of any statute that would relieve it of any obligations that it has assumed under this Section, and (ii) any defense predicated on alleged misrepresentations of fact or the nondisclosure of any fact.

(4.) Should a claim adverse to the title hereby quitclaimed be asserted and/or proved, no recourse shall be had against the Grantor herein.

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, permanent, perpetual, exclusive, unrestricted and assignable easements and rights for any and all existing signboards and their appurtenances located on the Premises; together with the necessary; easements and rights for any necessary electric service lines and their appurtenances needed for illuminating said signboards; and together with rights and easements to construct, use, maintain, modify, enlarge, repair, renew, replace, rehabilitate and remove said signboards; and together with the right of immediate and unimpeded ingress and egress on, over, across, and through the Premises for the purposes aforesaid; and further together with the exclusive right to sell and assign such rights and to retain any and all revenues, income, charges, considerations and fees derived therefrom.

BK=07615 PG=00336

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of it, the said Grantor as well at law as in equity or otherwise howsoever of, in and to the same and every part thereof, UNDER and SUBJECT and EXCEPTING AND RESERVING as aforesaid.

TO HAVE AND TO HOLD, all and singular the said Premises, together with the appurtenances, unto the Grantee, the heirs or successors and assigns of the Grantee, forever, UNDER and SUBJECT and provided as aforesaid.

THE words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees", respectively, whenever the sense of this instrument so requires and whether singular or plural, such words shall be deemed to include at all times and in all cases the heirs, legal representatives or successors and assigns of the Grantor and Grantee.

IN WITNESS WHEREOF, the Grantor has caused this Indenture to be signed in its name and behalf

EXHIBIT A

CASE NO. 72931-B

ALL THAT CERTAIN piece or parcel of land of the Grantor, together with all of the improvements thereon, being a portion of the line of railroad known as the Penn Central Harsimus Branch and identified as Line Code 1420, situate in the City of Jersey City, County of Hudson and State of New Jersey, said parcel being identified as Block 247, Lot 50A, and which is bounded and described in accordance with a Plat of Survey, identified as Project No. 0303332, dated December 29, 2004 and revised through February 23, 2005, prepared by Glen J. Lloyd, Professional Land Surveyor, New Jersey License No. GS37598, attached hereto and made a part hereof, as follows.

BEING a part or portion of the same premises which Fairfax Leary, as Trustee of the Property of the United New Jersey Railroad and Canal Company, Debtor, by Conveyance Document No. UNJ-CRC-RP-4, dated March 31, 1976 and recorded on October 10, 1979 in the Recorder's Office of Hudson County, New Jersey, in Liber 3286 at page 757&c.; and also Filed and Recorded in the Recorder's Office of the Secretary of State for the State of New Jersey on October 12, 1978, granted and conveyed unto Consolidated Rail Corporation.

A COPY OF THIS DEED
HAS BEEN SENT TO ASSESSOR'S OFFICE

BK=07615 PG=00338

SCHOOR DEPALMA
Engineers and Consultants

February 23, 2005

Project No. 030333202

LEGAL DESCRIPTION
LOT 50A, BLOCK 247
CITY OF JERSEY CITY
HUDSON COUNTY, NEW JERSEY

A COPY OF THIS DEED HAS BEEN SENT TO ASSESSOR'S OFFICE

A parcel of land described herein, known and designated as Lot 50A, Block 247, City of Jersey City, Hudson County, New Jersey, as shown on a certain map entitled, "Boundary Survey, Lot M - Block 212, Lot 50A - Block 247, Lot 50A - Block 280, Lot 50A - Block 317.5, Lot 50A - Block 354.1, Lot 50 - Block 389.1, Lot 50 - Block 415 & Lot 18A - Block 446," prepared by Schoor DePalma, dated December 29, 2004 and revised to February 23, 2005, and being more particularly described as follows:

Beginning at the point of intersection of the westerly sideline of Manila Avenue (60 foot wide right-of-way) and the southerly sideline of Sixth Street (60 foot wide right-of-way) and running; thence,

1. Along said westerly sideline of Manila Avenue, south 06 degrees 22 minutes 03 seconds west, 100.00 feet; thence,

2. North 83 degrees 44 minutes 57 seconds west, 401.11 feet to the easterly sideline of Erie Street (60 foot wide right-of-way); thence,

3. Along said easterly sideline of Erie Street, north 06 degrees 22 minutes 03 seconds east, 100.00 feet a point of intersection with the aforementioned southerly sideline of Sixth Street; thence,

4. Along said southerly sideline of Sixth Street, south 83 degrees 44 minutes 57 seconds east, 401.11 feet to the point or place of beginning.

Containing 40,111 square feet more or less / 0.921 acres of land more or less as described herein.

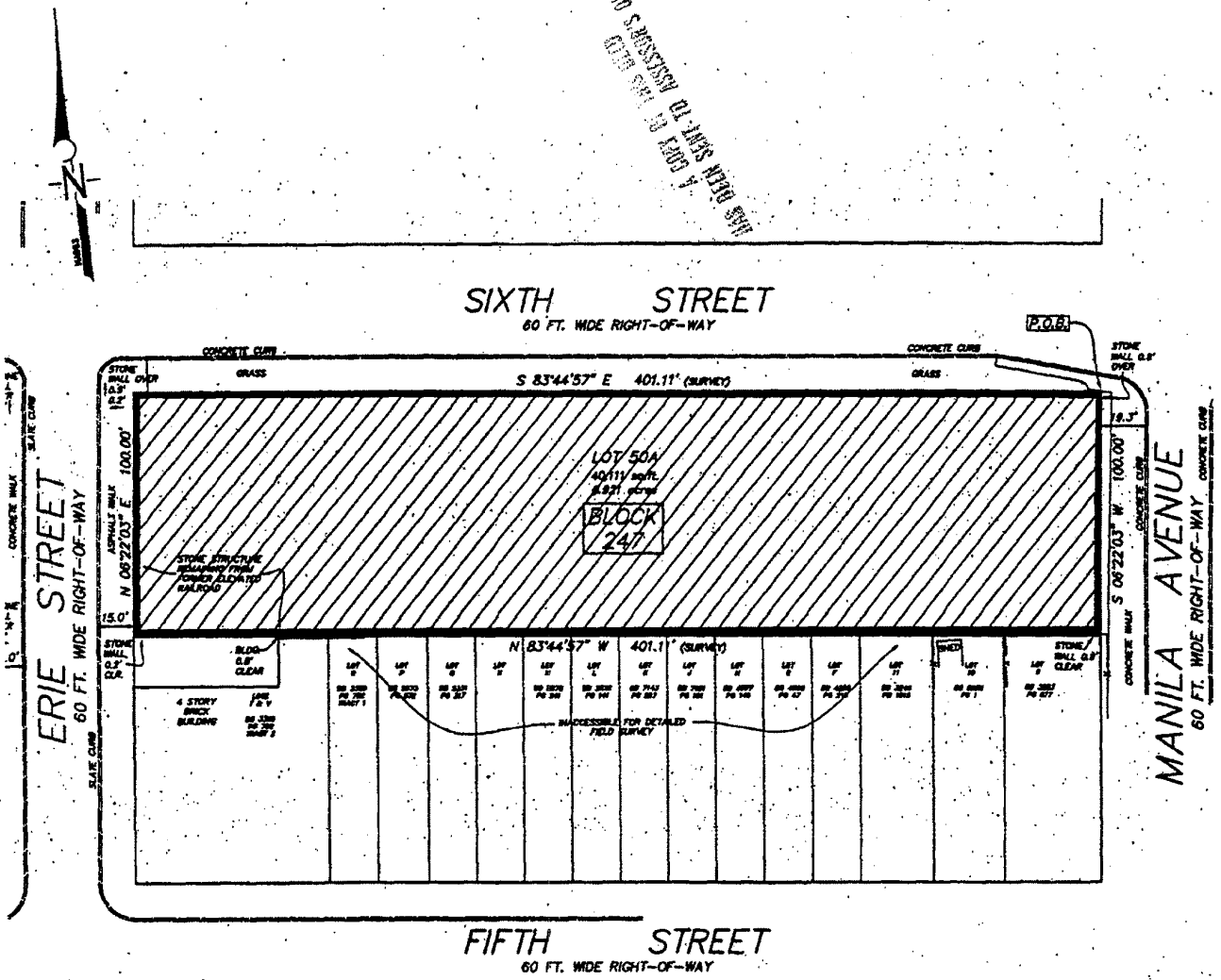
Subject to all existing easements, rights-of-way and reservations of record.

Glen J. Lloyd, P.L.S.
N.J. Professional Land Surveyor
New Jersey License No. GS37598

n:\project\2003\0303332\02\m&bs\lot 50a, block 247.doc

BK=07615 PG=00339

BK=07915 PG=00340



REFERENCES:

1. DEED RECORDED IN THE HUDSON COUNTY CLERK'S OFFICE IN DEED BOOK 3269, PAGE 327 WITH EXCEPTION REFERRED TO IN DEED BOOK 3660, PAGE 171.

2. MAP ENTITLED "RAINBOW TO BE CRATED BY CONSOLIDATED RAIL CORPORATION TO NEW JERSEY DEPARTMENT OF TRANSPORTATION AND "NEW JERSEY DEPARTMENT OF TRANSPORTATION, HENDRICK STREET, FROM SECOND STREET TO PAVONIA AVENUE, PARCELS 52A, 52B, 52C & 52D, CITY OF JERSEY CITY, COUNTY OF HUDSON, SCALE 1" = 40', DECEMBER 1, 1994" WHICH IS REFERENCED IN DEED RECORDED IN THE HUDSON COUNTY CLERK'S OFFICE IN DEED BOOK 3269, PAGE 344.

3. MAP ENTITLED "SKETCH OF PROPERTY SURVEYED FOR JERSEY CITY REDEVELOPMENT AGENCY, SITUATED IN JERSEY CITY, N.J., SCALE 1 INCH = 30 FEET, SURVEYED 1/0-10/97"

4. MAP ENTITLED "RIGHT-OF-WAY AND TRACK MAP, UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, STATIONS 84+00 TO STATION 624+00", DATED JUNE 30, 1910 AND REVISED TO DECEMBER 31, 1935.

5. MAP ENTITLED "STATION MAP – LANDS, UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, HARSIMUS BRANCH, OPERATED BY THE PENNSYLVANIA RAILROAD, LESSEE", DATED JUNE 30, 1910 AND REVISED TO DECEMBER 31, 1935.

6. MAP ENTITLED NEW JERSEY TURNPIKE AUTHORITY, NEW JERSEY TURNPIKE, NEWARK BAY – HUDSON COUNTY EXTENSION, PARCEL PROPERTY MAP, CITY OF JERSEY CITY, HUDSON COUNTY", SHEETS 53 AND 54, REVISED TO 1966.

7. MAP ENTITLED "MAP OF THAT PART OF THE TOWN OF JERSEY COMMONLY CALLED HARSIMUS", DATED 1804 AND FILED IN THE HUDSON COUNTY CLERK'S OFFICE JUNE 16, 1905.

8. MAP ENTITLED "MAP OF PARTS OF LOTS AND PARCELS OF LAND SITUATED IN THE 12TH, 13RD AND FOURTH (NOW FOURTH, FIFTH AND SIXTH) WARDS OF JERSEY CITY, FORMERLY CALLED PAVONIA AND ALSO IN THE ANCIENT CITY OF BERGEN, IN THE COUNTY OF HUDSON AND IN THE STATE OF NEW JERSEY, SHOWING THE DIVISION OF THE SAME AMONG THE HEIRS OF JOHN R. GOELET, DECEASED", DATED MAY, 1907 AND FILED IN THE HUDSON COUNTY CLERK'S OFFICE OCTOBER 24, 1907.

NOTES:

1. THIS SURVEY IS PREPARED FOR THE EXCLUSIVE USE OF THE ENTITIES NAMED HEREON. THE CERTIFICATION DOES NOT EXTEND TO ANY OTHER PARTY WITHOUT THE EXPRESS WRITTEN CONSENT OF THE UNDERSIGNED.

2. SUBJECT TO ANY FACTS THAT AN ACCURATE TITLE SEARCH MAY DISCLOSE.

3. SUBJECT TO ORDINANCES AND CHANGE OF GRADE OF STREETS.

4. UNDERGROUND UTILITIES ARE NOT NECESSARILY SHOWN. TO DETERMINE THE EXACT LOCATION OF UTILITIES PLEASE CONTACT THE APPROPRIATE UTILITY COMPANIES.

5. A 6 MONTH WARRANTY IS EXTENDED TO ANY CERTIFICATIONS SHOWN HEREON. THE CERTIFICATIONS ARE NOT TRANSFERABLE.

6. THIS SURVEY IS ONLY VALID WHEN ORIGINAL SEAL IS AFFIXED.

7. HORIZONTAL DATUM IS THE NORTH AMERICAN DATUM OF 1983 (NAD83) AS ESTABLISHED BY THE NATIONAL GEODETIC SURVEY (NGS).

8. DEFINED LOCATIONS OF IMPROVEMENTS OR LAND AREAS ARE APPROXIMATE DUE TO LARGE SCALE.

I HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR LICENSED TO PRACTICE IN THE STATE OF NEW JERSEY, AND THAT THIS PLAN IS BASED ON AN ACTUAL FIELD SURVEY PERFORMED UNDER MY IMMEDIATE SUPERVISION. I FURTHER DECLARE TO THE BEST OF MY PROFESSIONAL KNOWLEDGE AND BELIEF, THAT THIS PLAN IS A CORRECT AND ACCURATE REPRESENTATION OF CONDITIONS EXISTING AS OF THIS DATE HEREON.

CERTIFICATIONS:
247 MANILA AVENUE, L.L.C.
CHRISTINE R. ALAIMO, ESQ.
VESTED TITLE INC.
CHICAGO TITLE INSURANCE COMPANY

EXHIBIT "A", Page 3 of 3

Case No. 72931B
FILENAME: 14200013B

-NOTICE- THIS DRAWING AND ALL INFORMATION APPEARING THEREON IS PROPRIETARY AND THE PROPERTY OF THE ENTITY FOR WHOM IT WAS PREPARED AND SHALL NOT BE USED IN WHOLE OR IN PART BY ANY OTHER ENTITY WITHOUT THE EXPRESS WRITTEN CONSENT OF SCHOOR DEPALMA INC. THIS DRAWING MAY NOT BE COPIED, REVISED, ENHANCED, DISTRIBUTED OR RELIED UPON FOR ANY PURPOSE WITHOUT THE EXPRESS WRITTEN CONSENT OF SCHOOR DEPALMA INC.	GLEN J. LLOYD – PROFESSIONAL LAND SURVEYOR, N.J. LIC. No. 24GS04037600	SCHOOR DEPALMA Engineers and Consultants Cert. Of Authorization 24GA27928300 30 WATERVIEW BOULEVARD P.O. BOX 5240 PARSIPPANY, NJ 07054 TEL (973)299-7979 FAX (973)334-6699 MANALAPAN • WHITE PLAINS • SEA HARBOR • SARAH • CLIFTON • EDISON • HALEDALE PARSIPPANY • PHILADELPHIA • PHILLIPSBURG • STAFFORD • VINELAND

BOUNDARY SURVEY
LOT 50-A - BLOCK 247
PROPERTY OF CONRAIL CORPORATION
JERSEY CITY HUDSON COUNTY, NEW JERSEY

PROJECT NO.	03033332
SCALE	1"=30'
DATE	12/29/04
DRAWN BY	G.E.
SHEET NO.	1 of 1

GIT/REP-3
(11-04)

State of New Jersey

Seller's Residency Certification/Exemption

(C.55, P.L. 2004)

(Please Print or Type)

SELLER(S) INFORMATION (See Instructions, page 2):
Name(s) **Consolidated Rail Corporation**

Current Resident Address **405 Division Street, Suite 215**

City, Town, Post Office **Elizabeth** State **NJ** Zip Code **07201**

PROPERTY INFORMATION (Brief Property Description):
Block(s) **247** Lot(s) **50 A** Qualifier

Street Address **Manila Avenue and Sixth Street**

City, Town, Post Office **Jersey City** State **NJ** Zip Code **07302**

Seller's Percentage of Ownership **100%** Consideration **$333,333.00** Closing Date **7/13/05**

SELLER ASSURANCES (Check the Appropriate Box):

1. ☐ I am a resident taxpayer of the State of New Jersey pursuant to N.J.S.A. 54A:1-1 et seq. and will file a resident gross income tax return and pay any applicable taxes on any gain or income from the disposition of this property.
2. ☐ The real property being sold or transferred is used exclusively as my principal residence within the meaning of section 121 of the Federal Internal Revenue Code of 1986, 26 U.S.C. s. 121.
3. ☐ I am a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration.
4. ☐ Seller, transferor or transferee is an agency or authority of the United States of America, an agency or authority of the State of New Jersey, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.
5. ☒ Seller is not individual, estate or trust and as such not required to make an estimated payment pursuant to N.J.S.A.54A:1-1 et seq.
6. ☐ The total consideration for the property is $1,000 or less and as such, the seller is not required to make an estimated payment pursuant to N.J.S.A. 54A:5-1-1 et seq.
7. ☐ The gain from the sale will not be recognized for Federal income tax purposes under I.R.C. Section 721, 1031, 1033 or is a cemetery plot. (CIRCLE THE APPLICABLE SECTION.) If such section does not ultimately apply to this transaction, the seller acknowledges the obligation to file a New Jersey income tax return for the year of the sale.

SELLER(S) DECLARATION:
The undersigned understands that this declaration and its contents may be disclosed or provided to the New Jersey Division of Taxation and that any false statement contained herein could be punished by fine, imprisonment, or both. I furthermore declare that I have examined this declaration and, to the best of my knowledge and belief, it is true, correct and complete.

July 13, 2005
Date

Signature **Robert W. Ryan, Director Real Estate**
(Seller) Please indicate if Power of Attorney or Attorney in Fact

July 13, 2005
Date

Signature **Consolidated Rail Corporation**
(Seller) Please indicate if Power of Attorney or Attorney in Fact

Powered by HotDocs®

BK=07615 PG=00341

by its Director-Real Estate duly authorized thereunto and has caused its corporate seal to be hereunto affixed and attested by its Corporate Secretary, the day and year first above written.

SEALED and DELIVERED in the presence of us:

Carol A. Putiri
CAROL A. PUTIRI

CONSOLIDATED RAIL CORPORATION
By:

Robert W. Ryan
Director-Real Estate

ATTEST:

Carol A. Putiri
CAROL A. PUTIRI

Jonathan M. Broder
Corporate Secretary

COMMONWEALTH OF PENNSYLVANIA)
: SS
COUNTY OF Philadelphia)

BE IT REMEMBERED, that on this 12th day of July in the year Two Thousand Five (2005), before me, the subscriber, a Notary Public for the Commonwealth and County aforesaid, personally appeared Robert W. Ryan, Director-Real Estate of CONSOLIDATED RAIL CORPORATION, the corporate Grantor named in the within Instrument, who I am satisfied is the person who has signed the within Instrument on behalf of said Corporation; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as such officer aforesaid; that the foregoing Instrument is the voluntary act and deed of said Corporation, made by virtue of authority from its Board of Directors; and that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by the within Instrument as such consideration is THREE HUNDRED THIRTY THREE THOUSAND THREE HUNDRED THIRTY THREE Dollars ($333,333).

Jennifer A. Burtulato
Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
JENNIFER A. BURTULATO, Notary Public
City of Philadelphia, Phila. County
My Commission Expires October 11, 2008

RECORD & RETURN TO:
ALAMPI & DEMARRAIS
ONE UNIVERSITY PLAZA
HACKENSACK NJ 07601

BK:07615 PG:00342

END OF LIBRE

Consideration : $333333.00 Exempt Code: S

County	State	N.P.N.R.F	Total
333.83	833.42	275.25	1976.30
General	Public	Extra	1% Tax
0.00	166.75	367.05	0.00

Date: 07/18/2005

QUITCLAIM DEED (NJ)

Case 72931-C

07/18/2005 09:52A
BARBARA A. DONNELLY
HUDSON COUNTY
REGISTER OF DEEDS
Receipt No. 2

0000011006
RECEIVED
AND
RECORDED
AT

THIS DEED, made the 12th day of July, in the year of our Lord Two Thousand Five (2005),

BETWEEN CONSOLIDATED RAIL CORPORATION, a Corporation of the Commonwealth of Pennsylvania, having an office at Two Commerce Square, 2001 Market Street, 8TH Floor, Philadelphia, Pennsylvania, 19103, hereinafter referred to as the Grantor, and **280 ERIE STREET, L.L.C.**, a Limited Liability Company of the State of New Jersey, having a mailing address in care of Carmine R. Alampi, Esq., One University Plaza, Suite 404, Hackensack, NJ 07601 , hereinafter referred to as the Grantee.

WITNESSETH, that the said Grantor, for and in consideration of the sum of THREE HUNDRED THIRTY THREE THOUSAND THREE HUNDRED THIRTY THREE DOLLARS ($333,333) lawful money of the United States of America, unto it well and truly paid by the said Grantee, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, Grantor does by these presents, remise, release and forever quitclaim unto the said Grantee, the heirs or successors and assigns of the said Grantee, all right, title and interest of the said Grantor of, in and to the Premises as more particularly described on Exhibit 'A', pages 1 of 3 through 3 of 3, appended hereto and made a part hereof.

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, permanent, perpetual, exclusive, assignable and unrestricted easements and rights for any and all existing sewer, gas and water lines, poles, pipes, wires, cables, power, signal and communication lines, fiber optic lines, telecommunication lines and all their appurtenances, hereinafter referred to as "facilities", located in, on, under, over, above, beneath the surface, across or through the Premises; and together with the right to use, maintain, repair, replace, renew, rehabilitate and remove said facilities and their appurtenances.

UNDER and SUBJECT, however, to (1) whatever rights the public may have to the use of any roads, alleys, bridges or streets crossing the Premises, (2) any streams, rivers, creeks and water ways passing under, across or through the Premises, and (3) any easements or agreements of record or otherwise affecting the Premises, and to the state of facts which a personal inspection or accurate survey would disclose, and to any pipes, wires, poles, cables, culverts, drainage courses or systems and their appurtenances now existing and remaining in, on, under, over, across and through the Premises, together with the right to maintain, repair, renew, replace, use and remove same.

THIS INSTRUMENT is executed and delivered by Grantor, and is accepted by Grantee, subject to the covenants set forth below, which shall be deemed part of the consideration of this conveyance and which shall run with the land and be binding upon, and inure to the benefit of, the respective heirs, legal representatives, successors and assigns of Grantor and Grantee. Grantee hereby knowingly, willingly, and voluntarily waives the benefit of any rule, law, custom, or statute of the State of New Jersey now or hereafter in force with respect to the covenants set forth below:

Robert W. Ryan

TAX REFERENCE:
Block 280 Lot 50A and Lot B-1

THIS INSTRUMENT PREPARED BY:
Robert W. Ryan
Consolidated Rail Corporation
2001 Market Street – 8th Floor
Philadelphia, PA 19103

A COPY OF THIS DEED 3
HAS BEEN SENT TO ASSESSOR'S OFFICE

BK=07615 PG=00325

1

(1.) Grantor shall neither be liable or obligated to construct or maintain any fence or similar structure between the Premises and adjoining land of Grantor nor shall Grantor be liable or obligated to pay for any part of the cost or expense of constructing or maintaining any fence or similar structure, and Grantee hereby forever releases Grantor from any loss or damage, direct or consequential, that may be caused by or arise from the lack or failure to maintain any such fence or similar structure.

(2.) Grantee hereby forever releases Grantor from all liability for any loss or damage, direct or consequential, to the Premises and to any buildings or improvements now or hereafter erected thereon and to the contents thereof, which may be caused by or arise from the normal operation, maintenance, repair, or renewal of Grantor's railroad, or which may be caused by or arise from vibration resulting from the normal operation, maintenance, repair or renewal thereof.

(3.) A. Allocation of Specific Obligations to Remediate.
The parties shall, as between themselves, allocate obligations pertaining to any Remediation with respect to the Premises in accordance with this Section, without regard to considerations of fault, failure or negligence.

(i) Grantee shall be responsible after the date of this Deed for any Remediation arising from the existence or presence of any contamination in, on or about the Premises, including without limitation, any Hazardous Substances, except as specifically provided otherwise in Subsection A(ii) below.

(ii) Grantor shall be responsible for Remediation of Hazardous Substances in, on or about the Premises, provided that such Hazardous Substances: (1) resulted from a condition created by Grantor during the time the Premises was owned by Grantor; and (2) are a violation of applicable environmental laws or regulations in effect and as interpreted on the date of this Deed. Notwithstanding the aforesaid, Grantor shall not be liable for any Remediation resulting from any condition: (a) that Grantee had knowledge of or reasonable basis to suspect as of the date of this Deed; or (b) that Grantee could have discovered its presence upon the Premises by a duly diligent examination of the Premises or public records related thereto; or (c) which Grantee has failed to immediately notify Grantor of as provided for below. Grantor's liability for any Remediation for which it is otherwise responsible hereunder shall be no greater than that resulting from the condition of the Premises existing as of the date of this Deed regardless of any increase in Remediation costs or liability created by or resulting from events occurring after the date of this Deed, including the passage of time.

(iii) If at any time after the date of this Deed, any Hazardous Substances are discovered which are or may be the responsibility of Grantor to Remediate pursuant to Subsection A(ii) above, then Grantee shall immediately notify Grantor of such Hazardous Substances, and Grantor shall have the opportunity and right to investigate, determine its responsibility therefor, determine in connection with appropriate governmental or regulatory bodies the appropriate response or remedy for such Hazardous Substances and Remediate, with its own forces or contractors and at its own expense, such Hazardous Substances to the satisfaction of appropriate regulatory bodies or to the additional extent deemed appropriate by Grantor. Grantor shall only be obligated to Remediate such Hazardous Substances to the extent that would be required for the now existing or most recent use of the Premises by Grantor, regardless of the current or proposed use of the Premises by Grantee. Grantee shall grant such rights of entry or other rights to Grantor, upon reasonable terms and without compensation, as may be necessary to allow Grantor to perform the inspections, remediation or other actions necessary to comply with this Subsection. In the event of a dispute concerning Grantor's responsibility for any Remediation hereunder, the parties shall cooperate to resolve such dispute as quickly as possible, and Grantee, unless required by valid judicial or regulatory order to take immediate action to Remediate a specific condition, shall, during the resolution of such dispute, take no actions inconsistent with Grantor's right to seek a determination from the appropriate regulatory or judicial body of the remedy required by law and to Remediate the Hazardous Substances with its own forces or contractors. Grantor shall not be liable to Grantee for any damages, costs or expenses incurred as a result of such Remediation, except that if Grantee is required by valid judicial or administrative order as provided above to take immediate action to Remediate any Hazardous Substances which are later determined

to be the responsibility of Grantor pursuant to this Subsection, Grantee shall be able to recover its actual and reasonable costs from Grantor.

B. Definition of "Hazardous Substance(s)". "Hazardous Substance(s)", as used in this Deed, shall mean any material or substance that is defined or classified as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601(14)) or Section 311 of the Federal Water Pollution Control Act (33 U.S.C. §1321); a "hazardous waste" pursuant to Section 1004 or 3001 of the Resource Conservation and Recovery Act (42 U.S.C. §§6903, 6921); a toxic pollutant under Section 307(a)(1) of the Federal Water Pollution Control Act (33 U.S.C. §1317(a)(1)); a "hazardous air pollutant" under Section 112 of the Clean Air Act (42 U.S.C. §7412); or a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. App. §1802(4)).

C. Definition of "Remediate" and "Remediation". "Remediate" or "Remediation", as used in this Deed, shall mean, any reasonable investigation and the formulation and implementation of any remedial action, containment, cleanup, response, treatment, removal, mitigation, abatement, elimination or control of any contamination.

D. Indemnity. The party made responsible by this Section for any Remediation shall: (1) satisfy said obligations; and (2) indemnify, defend and hold the other party (and its directors, officers, employees and agents) harmless from and against any claims, liabilities, judgments, settlements, costs and expenses (including without limitation, reasonable attorneys' fees) arising out of or in connection with said Remediation.

E. Release. As a material part of the consideration to Grantor for the conveyance of the Premises, Grantee hereby expressly and irrevocably releases and forever discharges, and by these presents does, for its successors and assigns, release and forever discharge Grantor (including, without limitation, its directors, officers, employees, and agents) from any and all actions, suits, controversies, damages (compensatory, punitive or consequential), judgments, claims and demands whatsoever, in law, or in equity, which Grantee ever had, now has, or which it or its successors and assigns hereafter can, shall or may have against Grantor, arising out of or in connection with the presence of any contamination on the Premises, including without limitation, any Hazardous Substances, except to the extent Grantor fails to comply with its obligations set forth in Subsection A(ii) above, or Grantee is entitled to recover the cost of any Remediation pursuant to Subsection A(ii). Grantee shall indemnify, defend and hold Grantor harmless from and against any and all claims, liabilities, judgments, settlements, costs and expenses (including without limitation, reasonable attorneys' fees) arising out of or in connection with Grantee's prosecution of any of its legal remedies against any third party who might have concurring or joint liability for matters for which Grantee has released Grantor pursuant to this Subsection. Each party expressly waives, to the extent it lawfully may do so: (i) the benefits of any statute that would relieve it of any obligations that it has assumed under this Section, and (ii) any defense predicated on alleged misrepresentations of fact or the nondisclosure of any fact.

(4.) Should a claim adverse to the title hereby quitclaimed be asserted and/or proved, no recourse shall be had against the Grantor herein.

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, permanent, perpetual, exclusive, unrestricted and assignable easements and rights for any and all existing signboards and their appurtenances located on the Premises; together with the necessary; easements and rights for any necessary electric service lines and their appurtenances needed for illuminating said signboards; and together with rights and easements to construct, use, maintain, modify, enlarge, repair, renew, replace, rehabilitate and remove said signboards; and together with the right of immediate and unimpeded ingress and egress on, over, across, and through the Premises for the purposes aforesaid; and further together with the exclusive right to sell and assign such rights and to retain any and all revenues, income, charges, considerations and fees derived therefrom.

BK=07615 PG=00327

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of it, the said Grantor as well at law as in equity or otherwise howsoever of, in and to the same and every part thereof, UNDER and SUBJECT and EXCEPTING AND RESERVING as aforesaid.

TO HAVE AND TO HOLD, all and singular the said Premises, together with the appurtenances, unto the Grantee, the heirs or successors and assigns of the Grantee, forever, UNDER and SUBJECT and provided as aforesaid.

THE words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees", respectively, whenever the sense of this instrument so requires and whether singular or plural, such words shall be deemed to include at all times and in all cases the heirs, legal representatives or successors and assigns of the Grantor and Grantee.

IN WITNESS WHEREOF, the Grantor has caused this Indenture to be signed in its name and behalf

EXHIBIT A

CASE NO. 72931-C

A COPY OF THIS DEED WAS SENT TO ASSESSOR'S OFFICE

ALL THAT CERTAIN piece or parcel of land of the Grantor, together with all of the improvements thereon, being a portion of the line of railroad known as the Penn Central Harsimus Branch and identified as Line Code 1420, situate in the City of Jersey City, County of Hudson and State of New Jersey, said parcel being identified as Block 280, Lot 50A and Lot B-1, and which is bounded and described in accordance with a Plat of Survey, identified as Project No. 0303332, dated December 29, 2004 and revised through February 23, 2005, prepared by Glen J. Lloyd, Professional Land Surveyor, New Jersey License No. GS37598, attached hereto and made a part hereof, as follows.

BEING a part or portion of the same premises which Fairfax Leary, as Trustee of the Property of the United New Jersey Railroad and Canal Company, Debtor, by Conveyance Document No. UNJ-CRC-RP-4, dated March 31, 1976 and recorded on October 10, 1979 in the Recorder's Office of Hudson County, New Jersey, in Liber 3286 at page 757&c.; and also Filed and Recorded in the Recorder's Office of the Secretary of State for the State of New Jersey on October 12, 1978, granted and conveyed unto Consolidated Rail Corporation.

BK:07615 PG:00329

SCHOOR DEPALMA
Engineers and Consultants

February 23, 2005
Revised July 11, 2005

Project No. 030333202

A COPY OF THIS DEED HAS BEEN SENT TO ASSESSOR'S OFFICE

LEGAL DESCRIPTION
LOT 50A AND LOT B-1, BLOCK 280
CITY OF JERSEY CITY
HUDSON COUNTY, NEW JERSEY

A parcel of land described herein, known and designated as Lot 50A and Lot B-1, Block 280, City of Jersey City, Hudson County, New Jersey, as shown on a certain map entitled, "Boundary Survey, Lot M - Block 212, Lot 50A - Block 247, Lot 50A - Block 280, Lot 50A - Block 317.5, Lot 50A - Block 354.1, Lot 50 - Block 389.1, Lot 50 - Block 415 & Lot 18A - Block 446," prepared by Schoor DePalma, dated December 29, 2004 and revised to February 23, 2005, and being more particularly described as follows:

Beginning at the point of intersection of the westerly sideline of Erie Street (60 foot wide right-of-way) and the southerly sideline of Sixth Street (60 foot wide right-of-way) and running; thence,

1. Along said westerly sideline of Erie Street, south 06 degrees 22 minutes 03 seconds west, 100.00 feet; thence,

2. North 83 degrees 44 minutes 57 seconds west, 320.22 feet; thence,

3. South 06 degrees 22 minutes 03 seconds west, 16.67 feet; thence,

4. North 83 degrees 44 minutes 57 seconds west, 80.00 feet to the easterly sideline of Jersey Avenue (80 ft. wide right-of-way); thence,

5. Along said easterly sideline of Jersey Avenue, north 06 degrees 22 minutes 03 seconds east, 116.67 feet to a point of intersection with the aforementioned southerly sideline of Sixth Street; thence,

6. Along said southerly sideline of Sixth Street, south 83 degrees 44 minutes 57 seconds east, 400.22 feet to the point or place of beginning.

Containing 41,356 square feet more or less / 0.949 acres of land more or less as described herein.

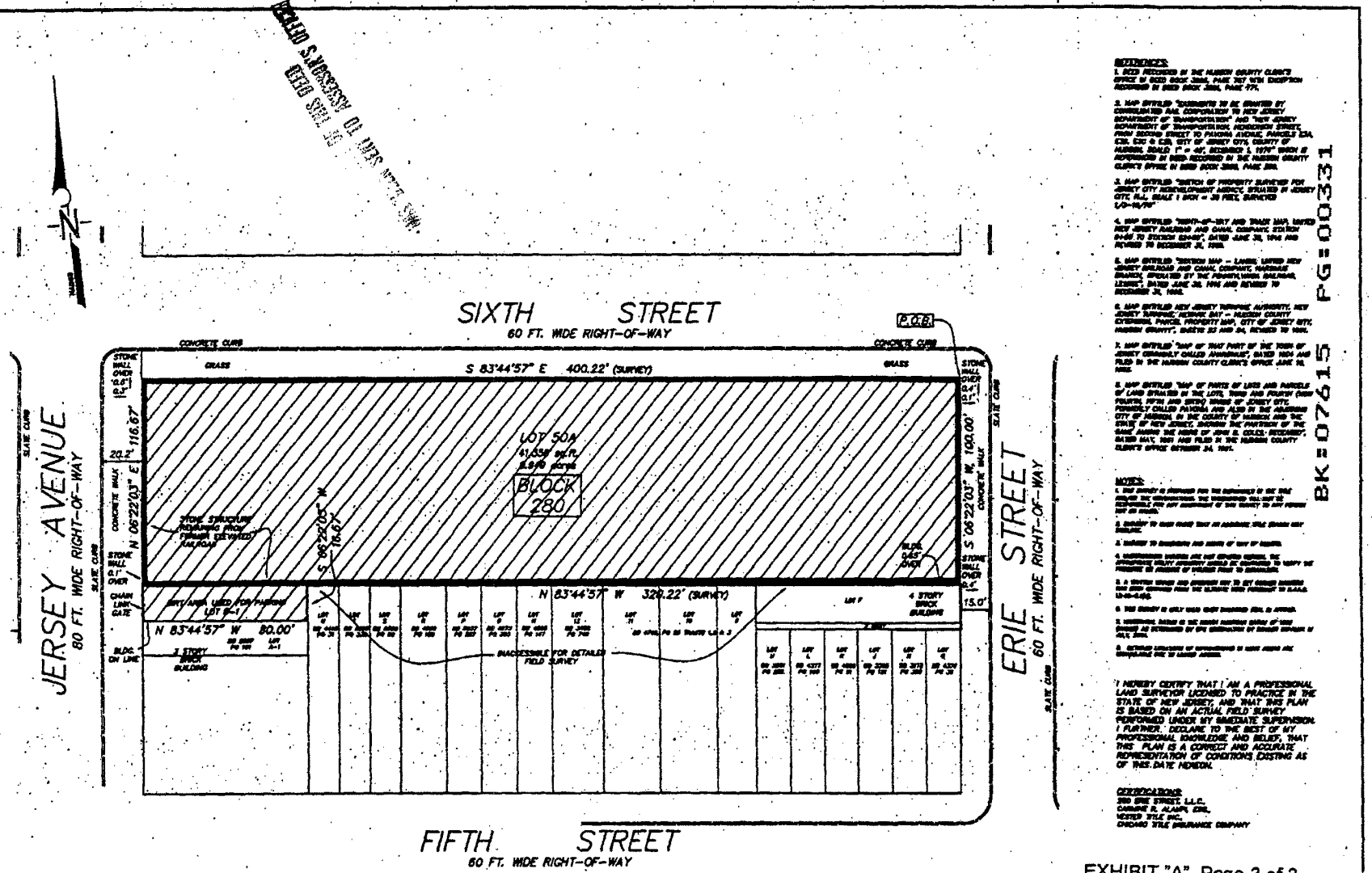
Subject to all existing easements, rights-of-way and reservations of record.

Glen J. Lloyd, P.L.S.
N.J. Professional Land Surveyor
New Jersey License No. GS37598

n:\project\2003\0303332\02\m&bs\lot 50a, block 280.doc

Your bottom line results partner.
20 Waterview Boulevard, PO Box 5245, Parsippany, NJ 07054-6245 Tel: 973.299.7970 Fax: 973.334.5588
Manalapan ■ Brick ■ Clinton ■ Egg Harbor ■ Eden ■ Falls ■ Kulpsville ■ Parsippany
Philadelphia ■ Stafford ■ Voorhees ■ White Plains
www.schoordepalma.com

BK:10415 PG:00330



REFERENCES:

1. DEED RECORDED IN THE HUDSON COUNTY CLERK'S OFFICE IN DEED BOOK 3846, PAGE 197 WITH EXCEPTION RECORDED IN DEED BOOK 3886, PAGE 171.

2. MAP ENTITLED "EASEMENTS TO BE GRANTED BY CONSOLIDATED RAIL CORPORATION TO NEW JERSEY DEPARTMENT OF TRANSPORTATION AND NEW JERSEY DEPARTMENT OF TRANSPORTATION, WASHINGTON STREET, FROM SECOND STREET TO PAVONIA AVENUE, PARCELS 52A, 53A, 53C & 53D, CITY OF JERSEY CITY, COUNTY OF HUDSON, SCALE 1" = 40', RECORDED 1, 1979" WHICH IS SUPERSEDED BY DEED RECORDED IN THE HUDSON COUNTY CLERK'S OFFICE IN DEED BOOK 3886, PAGE 200.

3. MAP ENTITLED "SECTION OF PROPERTY SURVEYED FOR JERSEY CITY REDEVELOPMENT AGENCY, SITUATED IN JERSEY CITY, N.J., SCALE 1 INCH = 30 FEET, SURVEYED 1-/0-19/70"

4. MAP ENTITLED "RIGHT-OF-WAY AND TRACK MAP, UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, STATION 0+00 TO STATION 224+67, DATED JUNE 30, 1916 AND REVISED TO DECEMBER 31, 1956.

5. MAP ENTITLED "STATION MAP - LANDS, UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, HARSIMUS BRANCH, OPERATED BY THE PENNSYLVANIA RAILROAD, LESSEE", DATED JUNE 30, 1916 AND REVISED TO DECEMBER 31, 1956.

6. MAP ENTITLED NEW JERSEY TURNPIKE AUTHORITY, NEW JERSEY TURNPIKE, NEWARK BAY - HUDSON COUNTY EXTENSION, PARCEL PROPERTY MAP, CITY OF JERSEY CITY, HUDSON COUNTY", SHEETS 33 AND 34, REVISED TO 1956.

7. MAP ENTITLED "MAP OF THAT PART OF THE TOWN OF JERSEY COMMONLY CALLED AHASIMUS", DATED 1804 AND FILED IN THE HUDSON COUNTY CLERK'S OFFICE JUNE 14, 1882.

8. MAP ENTITLED "MAP OF PARTS OF LOTS AND PARCELS OF LAND SITUATED IN THE 13TH, 14TH AND FIFTEEN (THIRTEENTH, FIFTH AND SIXTH) WARDS OF JERSEY CITY, FORMERLY CALLED PAVONIA, AND ALSO IN THE VILLAGE CITY OF HARRISON, IN THE COUNTY OF HUDSON AND THE STATE OF NEW JERSEY, SHOWING THE PARTITION OF THE SAME AMONG THE OWNERS THEREOF, SURVEYED BY GEO. E. COLES, RECORDED", DATED MAY, 1871 AND FILED IN THE HUDSON COUNTY CLERK'S OFFICE SEPTEMBER 24, 1921.

NOTES:

1. THIS SURVEY IS INTENDED FOR THE EXCLUSIVE USE OF THE ENTITIES TO WHOM IT IS CERTIFIED AND SHALL NOT BE RESPONSIBLE FOR ANY UNAUTHORIZED USE OF THIS SURVEY IN ANY FORMAT OR ON ANY MEDIUM.

2. REFER TO YOUR DEED AND TITLE POLICY FOR ADDITIONAL TITLE ISSUES THAT MAY EXIST.

3. REFERS TO BEARINGS AND DISTANCES OF DEED OF RECORD.

4. IMPROVEMENTS SHOWN ARE NOT VERIFIED HEREIN. THE APPROPRIATE UTILITY COMPANY SHOULD BE CONTACTED TO VERIFY THE PRESENCE OR ABSENCE OF UTILITIES PRIOR TO EXCAVATION.

5. A STATION NUMBER AND ELEVATION KEY TO BE USED WHENEVER THIS SURVEY IS REFERENCED FROM THE ULTIMATE USER PURSUANT TO N.J.A.C. 13:40-5.4(d).

6. THIS SURVEY IS ONLY VALID WHEN EMBOSSED SEAL IS AFFIXED.

7. MONUMENTS FOUND OR SET WERE SUFFICIENT DEPTH OF WERE ENOUGH AS DETERMINED BY THE CIRCUMSTANCES OF SURVEY CONDITIONS AT THE TIME.

8. ALL BOUND DISTANCES OR IMPROVEMENTS OR WERE ABOVE ARE COMPLIANCE WITH THE CURRENT STANDARDS.

I HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR LICENSED TO PRACTICE IN THE STATE OF NEW JERSEY, AND THAT THIS PLAN IS BASED ON AN ACTUAL FIELD SURVEY PERFORMED UNDER MY IMMEDIATE SUPERVISION. I FURTHER DECLARE TO THE BEST OF MY PROFESSIONAL KNOWLEDGE AND BELIEF, THAT THIS PLAN IS A CORRECT AND ACCURATE REPRESENTATION OF CONDITIONS EXISTING AS OF THIS DATE HEREON.

CERTIFICATIONS:
200 ERIE STREET, L.L.C.
CARMINE R. ALAIMO, ESQ.
VESTED TITLE INC.
CHICAGO TITLE INSURANCE COMPANY

BK=07615 PG=00331

EXHIBIT "A", Page 3 of 3

Case No. 72931C
FILENAME: 14200013B

~NOTICE~
THIS DRAWING AND ALL INFORMATION CONTAINED HEREIN IS APPROPRIATE FOR USE ONLY BY THE PERSON FOR WHOM THE SURVEY WAS PREPARED OR BY THOSE HE CERTIFIES.
THIS DRAWING MAY NOT BE COPIED, ALTERED, OR REVISED IN ANY WAY BY ANY PERSON OTHER THAN THE SURVEYOR WHO PREPARED IT WITHOUT THE WRITTEN CONSENT OF SCHOOR DEPALMA INC.
COPYRIGHT 2004 SCHOOR DEPALMA INC.
ALL RIGHTS RESERVED

GLEN J. LLOYD
PROFESSIONAL LAND SURVEYOR, N.J. LIC. No. GS37598

SCHOOR DEPALMA
Engineers and Consultants
Cert. Of Authorization 24GA27926200
30 WATERVIEW BOULEVARD
P.O. BOX 5548 PARSIPPANY, NJ 07054
TEL. (973)334-7770 FAX (973)334-8899
MANALAPAN • WHITE PLAINS • BOG HARBOR • BRICK • CLINTON • EDISON • HILLSDALE
PARSIPPANY • PHILADELPHIA • PHILIPSBURG • STANFORD • WOODBRIDGE

BOUNDARY SURVEY
LOTS 50-A & B-1 - BLOCK 280
PROPERTY OF CONRAIL CORPORATION
JERSEY CITY HUDSON COUNTY, NEW JERSEY

PROJECT NO. 0303332
SCALE 1"=30'
DATE 12/29/04
DRAWN BY G.S.
SHEET NO. 1 of 1

GIT/REP-3
(11-04)

State of New Jersey

Seller's Residency Certification/Exemption

(C.55, P.L. 2004)

(Please Print or Type)

SELLER(S) INFORMATION (See Instructions, page 2):
Name(s) **Consolidated Rail Corporation**

Current Resident Address **405 Division Street, Suite 215**

City, Town, Post Office **Elizabeth** State **NJ** Zip Code **07201**

PROPERTY INFORMATION (Brief Property Description):
Block(s) **280** Lot(s) **B.1 and 50 A** Qualifier

Street Address **Erie Street and Sixth Street**

City, Town, Post Office **Jersey City** State **NJ** Zip Code **07302**

Seller's Percentage of Ownership **100%** Consideration **$333,333.00** Closing Date **7/13/05**

SELLER ASSURANCES (Check the Appropriate Box):

1. ☐ I am a resident taxpayer of the State of New Jersey pursuant to N.J.S.A. 54A:1-1 et seq. and will file a resident gross income tax return and pay any applicable taxes on any gain or income from the disposition of this property.
2. ☐ The real property being sold or transferred is used exclusively as my principal residence within the meaning of section 121 of the Federal Internal Revenue Code of 1986, 26 U.S.C. s. 121.
3. ☐ I am a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration.
4. ☐ Seller, transferor or transferee is an agency or authority of the United States of America, an agency or authority of the State of New Jersey, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.
5. ☒ Seller is not individual, estate or trust and as such not required to make an estimated payment pursuant to N.J.S.A.54A:1-1 et seq.
6. ☐ The total consideration for the property is $1,000 or less and as such, the seller is not required to make an estimated payment pursuant to N.J.S.A. 54A:5-1-1 et seq.
7. ☐ The gain from the sale will not be recognized for Federal income tax purposes under I.R.C. Section 721, 1031, 1033 or is a cemetery plot. (CIRCLE THE APPLICABLE SECTION.) If such section does not ultimately apply to this transaction, the seller acknowledges the obligation to file a New Jersey income tax return for the year of the sale.

SELLER(S) DECLARATION:
The undersigned understands that this declaration and its contents may be disclosed or provided to the New Jersey Division of Taxation and that any false statement contained herein could be punished by fine, imprisonment, or both. I furthermore declare that I have examined this declaration and, to the best of my knowledge and belief, it is true, correct and complete.

July 13, 2005
Date

Signature **Robert W. Ryan, Director Real Estate**
(Seller) Please indicate if Power of Attorney or Attorney in Fact

July 13, 2005
Date

Signature **Consolidated Rail Corporation**
(Seller) Please indicate if Power of Attorney or Attorney in Fact

Powered by HotDocs®
Printed by ALL-STATE LEGAL®
A Division of ALL-STATE International, Inc.
www.aslegal.com 800.222.0510

BK=07615 PG=00332

by its Director-Real Estate duly authorized thereunto and has caused its corporate seal to be hereunto affixed and attested by its Corporate Secretary, the day and year first above written.

SEALED and DELIVERED in the presence of us:

Carol A. Putiri
CAROL A. PUTIRI

CONSOLIDATED RAIL CORPORATION
By:

Robert W. Ryan
Director-Real Estate

ATTEST:

Carol A. Putiri
CAROL A. PUTIRI

Jonathan M. Broder
Corporate Secretary

COMMONWEALTH OF PENNSYLVANIA)
: SS
COUNTY OF Philadelphia)

BE IT REMEMBERED, that on this 12th day of July in the year Two Thousand Five (2005), before me, the subscriber, a Notary Public for the Commonwealth and County aforesaid, personally appeared Robert W. Ryan, Director-Real Estate of CONSOLIDATED RAIL CORPORATION, the corporate Grantor named in the within Instrument, who I am satisfied is the person who has signed the within Instrument on behalf of said Corporation; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as such officer aforesaid; that the foregoing Instrument is the voluntary act and deed of said Corporation, made by virtue of authority from its Board of Directors; and that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by the within Instrument as such consideration is THREE HUNDRED THIRTY THREE THOUSAND THREE HUNDRED THIRTY THREE Dollars ($333,333).

Jennifer A. Burtulato
Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
JENNIFER A. BURTULATO, Notary Public
City of Philadelphia, Phila. County
My Commission Expires October 11, 2008

RECORD & RETURN TO:
ALAMPI & DEMARAIS
ONE UNIVERSITY PLAZA
HACKENSACK NJ 07601

BK=07615 PG=00333

Consideration : $333333.00 Exempt Code: S

County	State	N.P.N.R.F	Total
333.83	833.42	275.25	1976.30
General	Public	Extra	1% Tax
0.00	166.75	367.05	0.00

[redacted]

Case 72931-D

07/18/2005 09:52A
BARBARA A. DONNELLY
HUDSON COUNTY
REGISTER OF DEEDS
Receipt No. 2

0000011005
RECEIVED
AND
RECORDED
DEE

THIS DEED, made the 12th day of July, in the year of our Lord Two Thousand Five (2005),

BETWEEN CONSOLIDATED RAIL CORPORATION, a Corporation of the Commonwealth of Pennsylvania, having an office at Two Commerce Square, 2001 Market Street, 8TH Floor, Philadelphia, Pennsylvania, 19103, hereinafter referred to as the Grantor, and **317 JERSEY AVENUE, L.L.C.**, a Limited Liability Company of the State of New Jersey, having a mailing address in care of Carmine R. Alampi, Esq., One University Plaza, Suite 404, Hackensack, NJ 07601 , hereinafter referred to as the Grantee.

WITNESSETH, that the said Grantor, for and in consideration of the sum of THREE HUNDRED THIRTY THREE THOUSAND THREE HUNDRED THIRTY THREE DOLLARS ($333,333) lawful money of the United States of America, unto it well and truly paid by the said Grantee, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, Grantor does by these presents, remise, release and forever quitclaim unto the said Grantee, the heirs or successors and assigns of the said Grantee, all right, title and interest of the said Grantor of, in and to the Premises as more particularly described on Exhibit 'A', pages 1 of 3 through 3 of 3, appended hereto and made a part hereof.

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, permanent, perpetual, exclusive, assignable and unrestricted easements and rights for any and all existing sewer, gas and water lines, poles, pipes, wires, cables, power, signal and communication lines, fiber optic lines, telecommunication lines and all their appurtenances, hereinafter referred to as "facilities", located in, on, under, over, above, beneath the surface, across or through the Premises; and together with the right to use, maintain, repair, replace, renew, rehabilitate and remove said facilities and their appurtenances.

UNDER and SUBJECT, however, to (1) whatever rights the public may have to the use of any roads, alleys, bridges or streets crossing the Premises, (2) any streams, rivers, creeks and water ways passing under, across or through the Premises, and (3) any easements or agreements of record or otherwise affecting the Premises, and to the state of facts which a personal inspection or accurate survey would disclose, and to any pipes, wires, poles, cables, culverts, drainage courses or systems and their appurtenances now existing and remaining in, on, under, over, across and through the Premises, together with the right to maintain, repair, renew, replace, use and remove same.

THIS INSTRUMENT is executed and delivered by Grantor, and is accepted by Grantee, subject to the covenants set forth below, which shall be deemed part of the consideration of this conveyance and which shall run with the land and be binding upon, and inure to the benefit of, the respective heirs, legal representatives, successors and assigns of Grantor and Grantee. Grantee hereby knowingly, willingly, and voluntarily waives the benefit of any rule, law, custom, or statute of the State of New Jersey now or hereafter in force with respect to the covenants set forth below:

A COPY OF THIS DEED HAS BEEN SENT TO ASSESSOR'S OFFICE

TAX REFERENCE:
Block 317.5, Lot 50-A

Robert W Ryan

THIS INSTRUMENT PREPARED BY:
Robert W. Ryan
Consolidated Rail Corporation
2001 Market Street – 8th Floor
Philadelphia, PA 19103

BK:07615 PG:00316

(1.) Grantor shall neither be liable or obligated to construct or maintain any fence or similar structure between the Premises and adjoining land of Grantor nor shall Grantor be liable or obligated to pay for any part of the cost or expense of constructing or maintaining any fence or similar structure, and Grantee hereby forever releases Grantor from any loss or damage, direct or consequential, that may be caused by or arise from the lack or failure to maintain any such fence or similar structure.

(2.) Grantee hereby forever releases Grantor from all liability for any loss or damage, direct or consequential, to the Premises and to any buildings or improvements now or hereafter erected thereon and to the contents thereof, which may be caused by or arise from the normal operation, maintenance, repair, or renewal of Grantor's railroad, or which may be caused by or arise from vibration resulting from the normal operation, maintenance, repair or renewal thereof.

(3.) A. Allocation of Specific Obligations to Remediate.
The parties shall, as between themselves, allocate obligations pertaining to any Remediation with respect to the Premises in accordance with this Section, without regard to considerations of fault, failure or negligence.

(i) Grantee shall be responsible after the date of this Deed for any Remediation arising from the existence or presence of any contamination in, on or about the Premises, including without limitation, any Hazardous Substances, except as specifically provided otherwise in Subsection A(ii) below.

(ii) Grantor shall be responsible for Remediation of Hazardous Substances in, on or about the Premises, provided that such Hazardous Substances: (1) resulted from a condition created by Grantor during the time the Premises was owned by Grantor; and (2) are a violation of applicable environmental laws or regulations in effect and as interpreted on the date of this Deed. Notwithstanding the aforesaid, Grantor shall not be liable for any Remediation resulting from any condition: (a) that Grantee had knowledge of or reasonable basis to suspect as of the date of this Deed; or (b) that Grantee could have discovered its presence upon the Premises by a duly diligent examination of the Premises or public records related thereto; or (c) which Grantee has failed to immediately notify Grantor of as provided for below. Grantor's liability for any Remediation for which it is otherwise responsible hereunder shall be no greater than that resulting from the condition of the Premises existing as of the date of this Deed regardless of any increase in Remediation costs or liability created by or resulting from events occurring after the date of this Deed, including the passage of time.

(iii) If at any time after the date of this Deed, any Hazardous Substances are discovered which are or may be the responsibility of Grantor to Remediate pursuant to Subsection A(ii) above, then Grantee shall immediately notify Grantor of such Hazardous Substances, and Grantor shall have the opportunity and right to investigate, determine its responsibility therefor, determine in connection with appropriate governmental or regulatory bodies the appropriate response or remedy for such Hazardous Substances and Remediate, with its own forces or contractors and at its own expense, such Hazardous Substances to the satisfaction of appropriate regulatory bodies or to the additional extent deemed appropriate by Grantor. Grantor shall only be obligated to Remediate such Hazardous Substances to the extent that would be required for the now existing or most recent use of the Premises by Grantor, regardless of the current or proposed use of the Premises by Grantee. Grantee shall grant such rights of entry or other rights to Grantor, upon reasonable terms and without compensation, as may be necessary to allow Grantor to perform the inspections, remediation or other actions necessary to comply with this Subsection. In the event of a dispute concerning Grantor's responsibility for any Remediation hereunder, the parties shall cooperate to resolve such dispute as quickly as possible, and Grantee, unless required by valid judicial or regulatory order to take immediate action to Remediate a specific condition, shall, during the resolution of such dispute, take no actions inconsistent with Grantor's right to seek a determination from the appropriate regulatory or judicial body of the remedy required by law and to Remediate the Hazardous Substances with its own forces or contractors. Grantor shall not be liable to Grantee for any damages, costs or expenses incurred as a result of such Remediation, except that if Grantee is required by valid judicial or administrative order as provided

above to take immediate action to Remediate any Hazardous Substances which are later determined to be the responsibility of Grantor pursuant to this Subsection, Grantee shall be able to recover its actual and reasonable costs from Grantor.

B. Definition of "Hazardous Substance(s)". "Hazardous Substance(s)", as used in this Deed, shall mean any material or substance that is defined or classified as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601(14)) or Section 311 of the Federal Water Pollution Control Act (33 U.S.C. §1321); a "hazardous waste" pursuant to Section 1004 or 3001 of the Resource Conservation and Recovery Act (42 U.S.C. §§6903, 6921); a toxic pollutant under Section 307(a)(1) of the Federal Water Pollution Control Act (33 U.S.C. §1317(a)(1)); a "hazardous air pollutant" under Section 112 of the Clean Air Act (42 U.S.C. §7412); or a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. App. §1802(4)).

C. Definition of "Remediate" and "Remediation". "Remediate" or "Remediation", as used in this Deed, shall mean, any reasonable investigation and the formulation and implementation of any remedial action, containment, cleanup, response, treatment, removal, mitigation, abatement, elimination or control of any contamination.

D. Indemnity. The party made responsible by this Section for any Remediation shall: (1) satisfy said obligations; and (2) indemnify, defend and hold the other party (and its directors, officers, employees and agents) harmless from and against any claims, liabilities, judgments, settlements, costs and expenses (including without limitation, reasonable attorneys' fees) arising out of or in connection with said Remediation.

E. Release. As a material part of the consideration to Grantor for the conveyance of the Premises, Grantee hereby expressly and irrevocably releases and forever discharges, and by these presents does, for its successors and assigns, release and forever discharge Grantor (including, without limitation, its directors, officers, employees, and agents) from any and all actions, suits, controversies, damages (compensatory, punitive or consequential), judgments, claims and demands whatsoever, in law, or in equity, which Grantee ever had, now has, or which it or its successors and assigns hereafter can, shall or may have against Grantor, arising out of or in connection with the presence of any contamination on the Premises, including without limitation, any Hazardous Substances, except to the extent Grantor fails to comply with its obligations set forth in Subsection A(ii) above, or Grantee is entitled to recover the cost of any Remediation pursuant to Subsection A(ii). Grantee shall indemnify, defend and hold Grantor harmless from and against any and all claims, liabilities, judgments, settlements, costs and expenses (including without limitation, reasonable attorneys' fees) arising out of or in connection with Grantee's prosecution of any of its legal remedies against any third party who might have concurring or joint liability for matters for which Grantee has released Grantor pursuant to this Subsection. Each party expressly waives, to the extent it lawfully may do so: (i) the benefits of any statute that would relieve it of any obligations that it has assumed under this Section, and (ii) any defense predicated on alleged misrepresentations of fact or the nondisclosure of any fact.

(4.) Should a claim adverse to the title hereby quitclaimed be asserted and/or proved, no recourse shall be had against the Grantor herein.

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, permanent, perpetual, exclusive, unrestricted and assignable easements and rights for any and all existing signboards and their appurtenances located on the Premises; together with the necessary; easements and rights for any necessary electric service lines and their appurtenances needed for illuminating said signboards; and together with rights and easements to construct, use, maintain, modify, enlarge, repair, renew, replace, rehabilitate and remove said signboards; and together with the right of immediate and unimpeded ingress and egress on, over, across, and through the Premises for

the purposes aforesaid; and further together with the exclusive right to sell and assign such rights and to retain any and all revenues, income, charges, considerations and fees derived therefrom.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of it, the said Grantor as well at law as in equity or otherwise howsoever of, in and to the same and every part thereof, UNDER and SUBJECT and EXCEPTING AND RESERVING as aforesaid.

TO HAVE AND TO HOLD, all and singular the said Premises, together with the appurtenances, unto the Grantee, the heirs or successors and assigns of the Grantee, forever, UNDER and SUBJECT and provided as aforesaid.

THE words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees", respectively, whenever the sense of this instrument so requires and whether singular or plural, such words shall be deemed to include at all times and in all cases the heirs, legal representatives or successors and assigns of the Grantor and Grantee.

IN WITNESS WHEREOF, the Grantor has caused this Indenture to be signed in its name and behalf

BK:07615 PG:00319

EXHIBIT A

CASE NO. 72931-D

ALL THAT CERTAIN piece or parcel of land of the Grantor, together with all of the improvements thereon, being a portion of the line of railroad known as the Penn Central Harsimus Branch and identified as Line Code 1420, situate in the City of Jersey City, County of Hudson and State of New Jersey, said parcel being identified as Block 317.5, Lot 50A, and which is bounded and described in accordance with a Plat of Survey, identified as Project No. 0303332, dated December 29, 2004 and revised through February 23, 2005, prepared by Glen J. Lloyd, Professional Land Surveyor, New Jersey License No. GS37598, attached hereto and made a part hereof, as follows.

BEING a part or portion of the same premises which Fairfax Leary, as Trustee of the Property of the United New Jersey Railroad and Canal Company, Debtor, by Conveyance Document No. UNJ-CRC-RP-4, dated March 31, 1976 and recorded on October 10, 1979 in the Recorder's Office of Hudson County, New Jersey, in Liber 3286 at page 757&c.; and also Filed and Recorded in the Recorder's Office of the Secretary of State for the State of New Jersey on October 12, 1978, granted and conveyed unto Consolidated Rail Corporation.

A COPY OF THIS DEED HAS BEEN FILED IN ASSESSOR'S OFFICE

BK=07615 PG=00320

SCHOOR DEPALMA
Engineers and Consultants

February 23, 2005 Project No. 030333202

LEGAL DESCRIPTION
LOT 50A, BLOCK 317.5
CITY OF JERSEY CITY
HUDSON COUNTY, NEW JERSEY

A COPY OF THIS DEED HAS BEEN SENT TO ASSESSOR'S OFFICE

A parcel of land described herein, known and designated as Lot 50, Block 317.5, City of Jersey City, Hudson County, New Jersey, as shown on a certain map entitled, "Boundary Survey, Lot M - Block 212, Lot 50A - Block 247, Lot 50A - Block 280, Lot 50A - Block 317.5, Lot 50A - Block 354.1, Lot 50 - Block 389.1, Lot 50 - Block 415 & Lot 18A - Block 446," prepared by Schoor DePalma, dated December 29, 2004 and revised to February 23, 2005, and being more particularly described as follows:

Beginning at the point of intersection of the westerly sideline of Jersey Avenue (80 foot wide right-of-way) and the southerly sideline of Sixth Street (60 foot wide right-of-way) and running; thence,

1. Along said westerly sideline of Jersey Avenue, south 06 degrees 22 minutes 03 seconds west, 100.00 feet to the centerline of a 10 foot wide alley; thence,

2. Along said centerline, north 83 degrees 44 minutes 57 seconds west, 401.30 feet to the easterly sideline of Coles Street (60 foot wide right-of-way); thence,

3. Along said easterly sideline of Coles Street, north 06 degrees 22 minutes 03 seconds east, 100.00 feet to a point of intersection with the aforementioned southerly sideline of Sixth Street; thence,

4. Along said southerly sideline of Sixth Street, south 83 degrees 44 minutes 57 seconds east, 401.30 feet to the point or place of beginning.

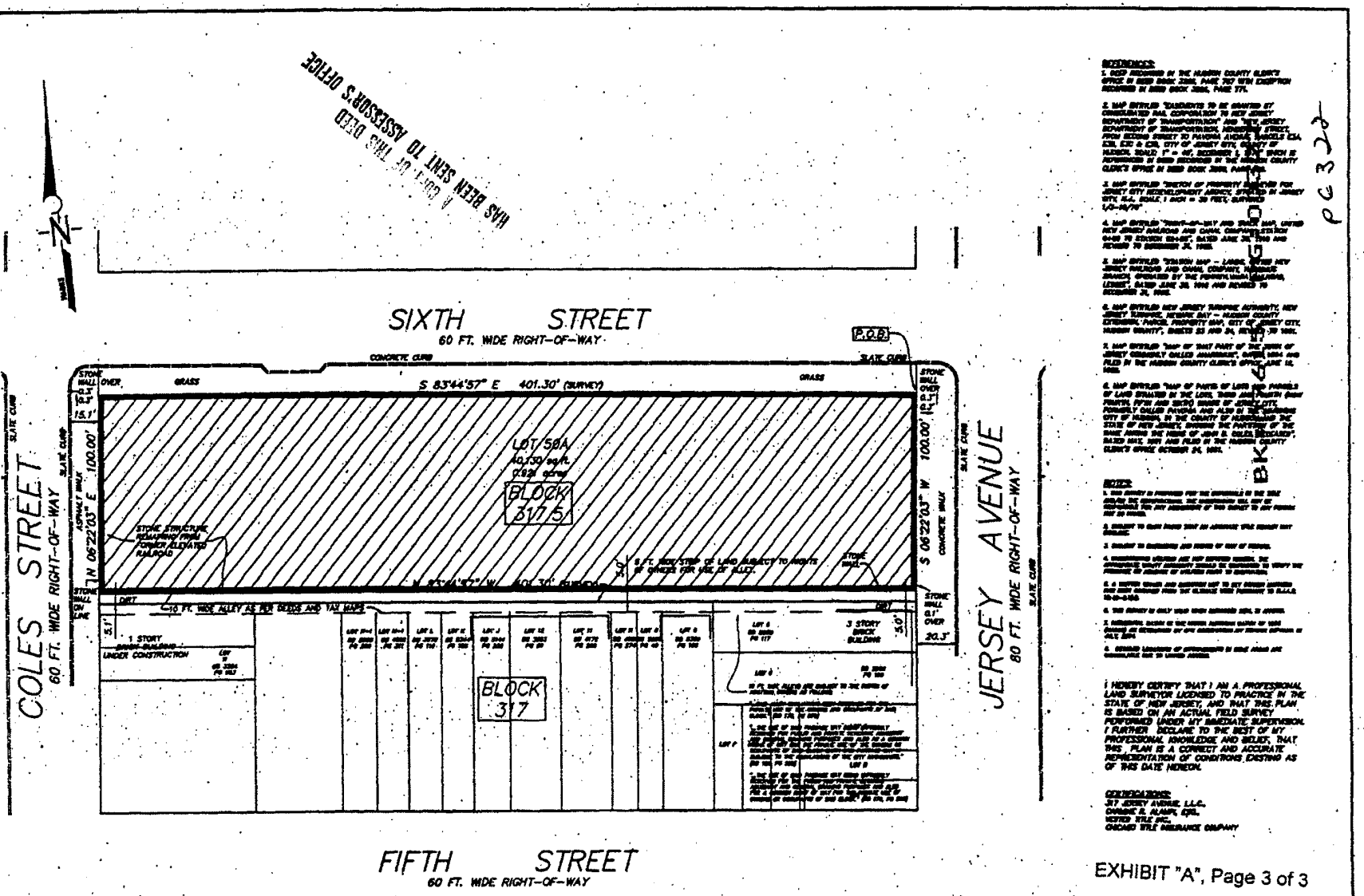
Containing 40,130 square feet more or less / 0.921 acres of land more or less as described herein.

Subject to all existing easements, rights-of-way and reservations of record.

Glen J. Lloyd, P.L.S.
N.J. Professional Land Surveyor
New Jersey License No. GS37598

n:\project\2003\0303332\02\m&bs\lot 50a, block 317.5.doc

BK:07615 PG:00321



HAS BEEN SENT TO ASSESSOR'S OFFICE
A COPY OF THIS DEED

PG 3 OF 3

BK 4200 PG 13

071

REFERENCES:

1. DEED RECORDED IN THE HUDSON COUNTY CLERK'S OFFICE IN DEED BOOK 2265, PAGE 207 WITH EXCEPTION RECORDED IN DEED BOOK 2666, PAGE 171.

2. MAP ENTITLED "EASEMENTS TO BE GRANTED BY CONSOLIDATED RAIL CORPORATION TO NEW JERSEY DEPARTMENT OF TRANSPORTATION AND NEW JERSEY DEPARTMENT OF TRANSPORTATION, ADJOINING STREET, FIFTH EXISTING STREET TO PAVONIA AVENUE, HAROLD E.H. COIL ETC. & COIL CITY OF JERSEY CITY, COUNTY OF HUDSON, SCALE: 1" = 40', DECEMBER 5, 1974" WHICH IS REFERENCED BY DEED RECORDED IN THE HUDSON COUNTY CLERK'S OFFICE IN DEED BOOK 2666, PAGE 171.

3. MAP ENTITLED "SKETCH OF PROPERTY ACQUIRED FOR JERSEY CITY REDEVELOPMENT AGENCY, SITUATED IN JERSEY CITY, N.J., SCALE: 1 INCH = 30 FEET, SURVEYED 1/0-16/79"

4. MAP ENTITLED "PART-OF-WAY AND TRACK MAP, UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, STATION 0+00 TO STATION 124+67, DATED JUNE 30, 1906 AND REVISED TO DECEMBER 31, 1935.

5. MAP ENTITLED "DIVISION MAP — LANDS, OF THE NEW JERSEY RAILROAD AND CANAL COMPANY, MORRIS BRANCH, OPERATED BY THE PENNSYLVANIA RAILROAD, LOCATED DATED JUNE 30, 1906 AND REVISED TO DECEMBER 31, 1935.

6. MAP ENTITLED NEW JERSEY TURNPIKE AUTHORITY, NEW JERSEY TURNPIKE, NEWARK BAY — HUDSON COUNTY EXTENSION, PARCEL PROPERTY MAP, CITY OF JERSEY CITY, HUDSON COUNTY", SHEETS 23 AND 24, REVISED TO 1955.

7. MAP ENTITLED "MAP OF THAT PART OF THE TOWN OF JERSEY GENERALLY CALLED AHASIMUS", DATED, 1804 AND FILED IN THE HUDSON COUNTY CLERK'S OFFICE JUNE 16, 1888.

8. MAP ENTITLED "MAP OF PARTS OF LOTS AND PARCELS OF LAND SITUATED IN THE LOTS, THIRD AND FOURTH (FROM FRONT), FIFTH AND SIXTH SHORE OF JERSEY CITY, FORMERLY CALLED PAVONIA, AND ALSO IN THE TOWNSHIP CITY OF BERGEN, IN THE COUNTY OF HUDSON AND THE STATE OF NEW JERSEY, SHOWING THE PARTITION OF THE SAME AMONG THE HEIRS OF JOHN E. CALLS, DECEASED", DATED MAY, 1891 AND FILED IN THE HUDSON COUNTY CLERK'S OFFICE OCTOBER 24, 1891.

NOTES:

I HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR LICENSED TO PRACTICE IN THE STATE OF NEW JERSEY, AND THAT THIS PLAN IS BASED ON AN ACTUAL FIELD SURVEY PERFORMED UNDER MY IMMEDIATE SUPERVISION. I FURTHER DECLARE TO THE BEST OF MY PROFESSIONAL KNOWLEDGE AND BELIEF, THAT THIS PLAN IS A CORRECT AND ACCURATE REPRESENTATION OF CONDITIONS EXISTING AS OF THIS DATE HEREON.

CERTIFICATIONS:
317 JERSEY AVENUE, L.L.C.
CHARLES R. ALAIMO, ESQ.
VESTED TITLE INC.
CHICAGO TITLE INSURANCE COMPANY

EXHIBIT "A", Page 3 of 3

Case No. 72931D
FILENAME: 14200013B

REV. NO.	DATE	REVISION

-NOTICE-
THIS DRAWING AND ALL INFORMATION CONTAINED HEREIN IS PROPRIETARY AND THE SOLE PROPERTY OF SCHOOR DEPALMA INC. ANY UNAUTHORIZED USE OF THIS DRAWING IN WHOLE OR IN PART IS PROHIBITED.
THIS DRAWING MAY NOT BE COPIED, REVISED, ENCLOSED, WITHDRAWN OR USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF SCHOOR DEPALMA INC.
COPYRIGHT 2005 SCHOOR DEPALMA INC.
ALL RIGHTS RESERVED

GLEN J. LLOYD
PROFESSIONAL LAND SURVEYOR, N.J. LIC. No. 0537566

SCHOOR DEPALMA
Engineers and Consultants
Cert. Of Authorization 24GA27928200
30 WATERVIEW BOULEVARD
P.O. BOX 8240 PARSIPPANY, NJ 07054
TEL (973)299-7979 FAX (973)334-6586
MANALAPAN • WHITE PLAINS • BRICK • GLENDON • EATON • MILLSTONE
PARSIPPANY • PHILADELPHIA • PHILLIPSBURG • STAFFORD • YONKERS

BOUNDARY SURVEY
LOT 50-A - BLOCK 317.5
PROPERTY OF CONRAIL CORPORATION
JERSEY CITY HUDSON COUNTY, NEW JERSEY

PROJECT NO.	03033332
SCALE	1"=30'
DATE	12/29/04
DRAWN BY	G.S.
SHEET NO.	1 of 1

GIT/REP-3
(11-04)

State of New Jersey

Seller's Residency Certification/Exemption

(C.55, P.L. 2004)

(Please Print or Type)

SELLER(S) INFORMATION (See Instructions, page 2):

Name(s) **Consolidated Rail Corporation**

Current Resident Address **405 Division Street, Suite 215**

City, Town, Post Office **Elizabeth** State **NJ** Zip Code **07201**

PROPERTY INFORMATION (Brief Property Description):

Block(s) **317.5** Lot(s) **50 A** Qualifier

Street Address **Jersey Avenue and Sixth Street**

City, Town, Post Office **Jersey City** State **NJ** Zip Code **07302**

Seller's Percentage of Ownership **100%** Consideration **$333,333.00** Closing Date **7/13/05**

SELLER ASSURANCES (Check the Appropriate Box):

1. ☐ I am a resident taxpayer of the State of New Jersey pursuant to N.J.S.A. 54A:1-1 et seq. and will file a resident gross income tax return and pay any applicable taxes on any gain or income from the disposition of this property.
2. ☐ The real property being sold or transferred is used exclusively as my principal residence within the meaning of section 121 of the Federal Internal Revenue Code of 1986, 26 U.S.C. s. 121.
3. ☐ I am a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration.
4. ☐ Seller, transferor or transferee is an agency or authority of the United States of America, an agency or authority of the State of New Jersey, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.
5. ☒ Seller is not individual, estate or trust and as such not required to make an estimated payment pursuant to N.J.S.A.54A:1-1 et seq.
6. ☐ The total consideration for the property is $1,000 or less and as such, the seller is not required to make an estimated payment pursuant to N.J.S.A. 54A:5-1-1 et seq.
7. ☐ The gain from the sale will not be recognized for Federal income tax purposes under I.R.C. Section 721, 1031, 1033 or is a cemetery plot. (CIRCLE THE APPLICABLE SECTION.) If such section does not ultimately apply to this transaction, the seller acknowledges the obligation to file a New Jersey income tax return for the year of the sale.

SELLER(S) DECLARATION:

The undersigned understands that this declaration and its contents may be disclosed or provided to the New Jersey Division of Taxation and that any false statement contained herein could be punished by fine, imprisonment, or both. I furthermore declare that I have examined this declaration and, to the best of my knowledge and belief, it is true, correct and complete.

July 13, 2005
Date

Signature **Robert W. Ryan, Director Real Estate**
(Seller) Please indicate if Power of Attorney or Attorney in Fact

July 13, 2005
Date

Signature **Consolidated Rail Corporation**
(Seller) Please indicate if Power of Attorney or Attorney in Fact

Powered by HotDocs

Printed by ALL-STATE LEGAL®
A Division of ALL-STATE International, Inc.
www.aslegal.com 800.222.0510

BK = 07615 PG = 0323

pc323

by its Director-Real Estate duly authorized thereunto and has caused its corporate seal to be hereunto affixed and attested by its Corporate Secretary, the day and year first above written.

SEALED and DELIVERED in the presence of us:

Carol A. Putiri
CAROL A. PUTIRI

CONSOLIDATED RAIL CORPORATION
By:

Robert W. Ryan
Director-Real Estate

ATTEST:

Carol A. Putiri
CAROL A. PUTIRI

Jonathan M. Broder
Corporate Secretary

COMMONWEALTH OF PENNSYLVANIA)
: SS
COUNTY OF Philadelphia)

BE IT REMEMBERED, that on this 26th day of July in the year Two Thousand Five (2005), before me, the subscriber, a Notary Public for the Commonwealth and County aforesaid, personally appeared Robert W. Ryan, Director-Real Estate of CONSOLIDATED RAIL CORPORATION, the corporate Grantor named in the within Instrument, who I am satisfied is the person who has signed the within Instrument on behalf of said Corporation; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as such officer aforesaid; that the foregoing Instrument is the voluntary act and deed of said Corporation, made by virtue of authority from its Board of Directors; and that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by the within Instrument as such consideration is THREE HUNDRED THIRTY THREE THOUSAND THREE HUNDRED THIRTY THREE Dollars ($333,333).

Jennifer A. Burtulato
Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
JENNIFER A. BURTULATO, Notary Public
City of Philadelphia, Phila. County
My Commission Expires October 11, 2008

RECORD & RETURN TO
ALAIMO & DEMARRAIS
ONE UNIVERSITY PLAZA
HACKENSACK NJ 07601

BK=07615 PG=00324

Consideration : $333333.00 Exempt Code: S

County	State	N.P.N.R.F	Total
333.83	833.42	275.25	1976.30
General	Public	Extra	1% Tax
0.00	166.75	367.05	0.00

QUITCLAIM DEED

Case 72931-E

07/18/2005 09:51A
BARBARA A. DONNELLY
HUDSON COUNTY
REGISTER OF DEEDS
Receipt No. 26

0000011004
RECEIVED
RECORDED

THIS DEED, made the 12th day of July, in the year of our Lord Two Thousand Five (2005),

BETWEEN CONSOLIDATED RAIL CORPORATION, a Corporation of the Commonwealth of Pennsylvania, having an office at Two Commerce Square, 2001 Market Street, 8TH Floor, Philadelphia, Pennsylvania, 19103, hereinafter referred to as the Grantor, and **354 COLE STREET, L.L.C.**, a Limited Liability Company of the State of New Jersey, having a mailing address in care of Carmine R. Alampi, Esq., One University Plaza, Suite 404, Hackensack, NJ 07601 , hereinafter referred to as the Grantee.

WITNESSETH, that the said Grantor, for and in consideration of the sum of THREE HUNDRED THIRTY THREE THOUSAND THREE HUNDRED THIRTY THREE DOLLARS ($333,333) lawful money of the United States of America, unto it well and truly paid by the said Grantee, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, Grantor does by these presents, remise, release and forever quitclaim unto the said Grantee, the heirs or successors and assigns of the said Grantee, all right, title and interest of the said Grantor of, in and to the Premises as more particularly described on Exhibit 'A', pages 1 of 3 through 3 of 3, appended hereto and made a part hereof.

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, permanent, perpetual, exclusive, assignable and unrestricted easements and rights for any and all existing sewer, gas and water lines, poles, pipes, wires, cables, power, signal and communication lines, fiber optic lines, telecommunication lines and all their appurtenances, hereinafter referred to as "facilities", located in, on, under, over, above, beneath the surface, across or through the Premises; and together with the right to use, maintain, repair, replace, renew, rehabilitate and remove said facilities and their appurtenances.

UNDER and SUBJECT, however, to (1) whatever rights the public may have to the use of any roads, alleys, bridges or streets crossing the Premises, (2) any streams, rivers, creeks and water ways passing under, across or through the Premises, and (3) any easements or agreements of record or otherwise affecting the Premises, and to the state of facts which a personal inspection or accurate survey would disclose, and to any pipes, wires, poles, cables, culverts, drainage courses or systems and their appurtenances now existing and remaining in, on, under, over, across and through the Premises, together with the right to maintain, repair, renew, replace, use and remove same.

THIS INSTRUMENT is executed and delivered by Grantor, and is accepted by Grantee, subject to the covenants set forth below, which shall be deemed part of the consideration of this conveyance and which shall run with the land and be binding upon, and inure to the benefit of, the respective heirs, legal representatives, successors and assigns of Grantor and Grantee. Grantee hereby knowingly, willingly, and voluntarily waives the benefit of any rule, law, custom, or statute of the State of New Jersey now or hereafter in force with respect to the covenants set forth below:

Robert W Ryan

TAX REFERENCE:
Block 354.1, Lot 50-A

THIS INSTRUMENT PREPARED BY:
Robert W. Ryan
Consolidated Rail Corporation
2001 Market Street – 8th Floor
Philadelphia, PA 19103

3

A COPY OF THIS DEED HAS BEEN SENT TO ASSESSOR'S OFFICE

BK=07615 PG=00307

(1.) Grantor shall neither be liable or obligated to construct or maintain any fence or similar structure between the Premises and adjoining land of Grantor nor shall Grantor be liable or obligated to pay for any part of the cost or expense of constructing or maintaining any fence or similar structure, and Grantee hereby forever releases Grantor from any loss or damage, direct or consequential, that may be caused by or arise from the lack or failure to maintain any such fence or similar structure.

(2.) Grantee hereby forever releases Grantor from all liability for any loss or damage, direct or consequential, to the Premises and to any buildings or improvements now or hereafter erected thereon and to the contents thereof, which may be caused by or arise from the normal operation, maintenance, repair, or renewal of Grantor's railroad, or which may be caused by or arise from vibration resulting from the normal operation, maintenance, repair or renewal thereof.

(3.) A. Allocation of Specific Obligations to Remediate.
The parties shall, as between themselves, allocate obligations pertaining to any Remediation with respect to the Premises in accordance with this Section, without regard to considerations of fault, failure or negligence.

(i) Grantee shall be responsible after the date of this Deed for any Remediation arising from the existence or presence of any contamination in, on or about the Premises, including without limitation, any Hazardous Substances, except as specifically provided otherwise in Subsection A(ii) below.

(ii) Grantor shall be responsible for Remediation of Hazardous Substances in, on or about the Premises, provided that such Hazardous Substances: (1) resulted from a condition created by Grantor during the time the Premises was owned by Grantor; and (2) are a violation of applicable environmental laws or regulations in effect and as interpreted on the date of this Deed. Notwithstanding the aforesaid, Grantor shall not be liable for any Remediation resulting from any condition: (a) that Grantee had knowledge of or reasonable basis to suspect as of the date of this Deed; or (b) that Grantee could have discovered its presence upon the Premises by a duly diligent examination of the Premises or public records related thereto; or (c) which Grantee has failed to immediately notify Grantor of as provided for below. Grantor's liability for any Remediation for which it is otherwise responsible hereunder shall be no greater than that resulting from the condition of the Premises existing as of the date of this Deed regardless of any increase in Remediation costs or liability created by or resulting from events occurring after the date of this Deed, including the passage of time.

(iii) If at any time after the date of this Deed, any Hazardous Substances are discovered which are or may be the responsibility of Grantor to Remediate pursuant to Subsection A(ii) above, then Grantee shall immediately notify Grantor of such Hazardous Substances, and Grantor shall have the opportunity and right to investigate, determine its responsibility therefor, determine in connection with appropriate governmental or regulatory bodies the appropriate response or remedy for such Hazardous Substances and Remediate, with its own forces or contractors and at its own expense, such Hazardous Substances to the satisfaction of appropriate regulatory bodies or to the additional extent deemed appropriate by Grantor. Grantor shall only be obligated to Remediate such Hazardous Substances to the extent that would be required for the now existing or most recent use of the Premises by Grantor, regardless of the current or proposed use of the Premises by Grantee. Grantee shall grant such rights of entry or other rights to Grantor, upon reasonable terms and without compensation, as may be necessary to allow Grantor to perform the inspections, remediation or other actions necessary to comply with this Subsection. In the event of a dispute concerning Grantor's responsibility for any Remediation hereunder, the parties shall cooperate to resolve such dispute as quickly as possible, and Grantee, unless required by valid judicial or regulatory order to take immediate action to Remediate a specific condition, shall, during the resolution of such dispute, take no actions inconsistent with Grantor's right to seek a determination from the appropriate regulatory or judicial body of the remedy required by law and to Remediate the Hazardous Substances with its own forces or contractors. Grantor shall not be liable to Grantee for any damages, costs or expenses incurred as a result of such Remediation, except that if Grantee is required by valid judicial or administrative order as provided above to take immediate action to Remediate any Hazardous Substances which are obtained

pg 308

to be the responsibility of Grantor pursuant to this Subsection, Grantee shall be able to recover its actual and reasonable costs from Grantor.

B. Definition of "Hazardous Substance(s)". "Hazardous Substance(s)", as used in this Deed, shall mean any material or substance that is defined or classified as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601(14)) or Section 311 of the Federal Water Pollution Control Act (33 U.S.C. §1321); a "hazardous waste" pursuant to Section 1004 or 3001 of the Resource Conservation and Recovery Act (42 U.S.C. §§6903, 6921); a toxic pollutant under Section 307(a)(1) of the Federal Water Pollution Control Act (33 U.S.C. §1317(a)(1)); a "hazardous air pollutant" under Section 112 of the Clean Air Act (42 U.S.C. §7412); or a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. App. §1802(4)).

C. Definition of "Remediate" and "Remediation". "Remediate" or "Remediation", as used in this Deed, shall mean, any reasonable investigation and the formulation and implementation of any remedial action, containment, cleanup, response, treatment, removal, mitigation, abatement, elimination or control of any contamination.

D. Indemnity. The party made responsible by this Section for any Remediation shall: (1) satisfy said obligations; and (2) indemnify, defend and hold the other party (and its directors, officers, employees and agents) harmless from and against any claims, liabilities, judgments, settlements, costs and expenses (including without limitation, reasonable attorneys' fees) arising out of or in connection with said Remediation.

E. Release. As a material part of the consideration to Grantor for the conveyance of the Premises, Grantee hereby expressly and irrevocably releases and forever discharges, and by these presents does, for its successors and assigns, release and forever discharge Grantor (including, without limitation, its directors, officers, employees, and agents) from any and all actions, suits, controversies, damages (compensatory, punitive or consequential), judgments, claims and demands whatsoever, in law, or in equity, which Grantee ever had, now has, or which it or its successors and assigns hereafter can, shall or may have against Grantor, arising out of or in connection with the presence of any contamination on the Premises, including without limitation, any Hazardous Substances, except to the extent Grantor fails to comply with its obligations set forth in Subsection A(ii) above, or Grantee is entitled to recover the cost of any Remediation pursuant to Subsection A(ii). Grantee shall indemnify, defend and hold Grantor harmless from and against any and all claims, liabilities, judgments, settlements, costs and expenses (including without limitation, reasonable attorneys' fees) arising out of or in connection with Grantee's prosecution of any of its legal remedies against any third party who might have concurring or joint liability for matters for which Grantee has released Grantor pursuant to this Subsection. Each party expressly waives, to the extent it lawfully may do so: (i) the benefits of any statute that would relieve it of any obligations that it has assumed under this Section, and (ii) any defense predicated on alleged misrepresentations of fact or the nondisclosure of any fact.

(4.) Should a claim adverse to the title hereby quitclaimed be asserted and/or proved, no recourse shall be had against the Grantor herein.

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, permanent, perpetual, exclusive, unrestricted and assignable easements and rights for any and all existing signboards and their appurtenances located on the Premises; together with the necessary; easements and rights for any necessary electric service lines and their appurtenances needed for illuminating said signboards; and together with rights and easements to construct, use, maintain, modify, enlarge, repair, renew, replace, rehabilitate and remove said signboards; and together with the right of immediate and unimpeded ingress and egress on, over, across, and through the Premises for the purposes aforesaid; and further together with the exclusive right to sell and assign such rights and to retain any and all revenues, income, charges, considerations and fees derived therefrom.

BK-97615 PG-0309

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of it, the said Grantor as well at law as in equity or otherwise howsoever of, in and to the same and every part thereof, UNDER and SUBJECT and EXCEPTING AND RESERVING as aforesaid.

TO HAVE AND TO HOLD, all and singular the said Premises, together with the appurtenances, unto the Grantee, the heirs or successors and assigns of the Grantee, forever, UNDER and SUBJECT and provided as aforesaid.

THE words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees", respectively, whenever the sense of this instrument so requires and whether singular or plural, such words shall be deemed to include at all times and in all cases the heirs, legal representatives or successors and assigns of the Grantor and Grantee.

IN WITNESS WHEREOF, the Grantor has caused this Indenture to be signed in its name and behalf

EXHIBIT A

CASE NO. 72931-E

A COPY OF THIS DEED
HAS BEEN SENT TO ASSESSOR'S OFFICE

ALL THAT CERTAIN piece or parcel of land of the Grantor, together with all of the improvements thereon, being a portion of the line of railroad known as the Penn Central Harsimus Branch and identified as Line Code 1420, situate in the City of Jersey City, County of Hudson and State of New Jersey, said parcel being identified as Block 354.1, Lot 50A, and which is bounded and described in accordance with a Plat of Survey, identified as Project No. 0303332, dated December 29, 2004 and revised through February 23, 2005, prepared by Glen J. Lloyd, Professional Land Surveyor, New Jersey License No. GS37598, attached hereto and made a part hereof, as follows.

BEING a part or portion of the same premises which Fairfax Leary, as Trustee of the Property of the United New Jersey Railroad and Canal Company, Debtor, by Conveyance Document No. UNJ-CRC-RP-4, dated March 31, 1976 and recorded on October 10, 1979 in the Recorder's Office of Hudson County, New Jersey, in Liber 3286 at page 757&c.; and also Filed and Recorded in the Recorder's Office of the Secretary of State for the State of New Jersey on October 12, 1978, granted and conveyed unto Consolidated Rail Corporation.

BK=07615 PG=00311

SCHOOR DEPALMA
Engineers and Consultants

February 23, 2005

Project No. 030333202

LEGAL DESCRIPTION
LOT 50A, BLOCK 354.1
CITY OF JERSEY CITY
HUDSON COUNTY, NEW JERSEY

A COPY OF THIS DEED
HAS BEEN SENT TO ASSESSOR'S OFFICE

A parcel of land described herein, known and designated as Lot 50A, Block 354.1, City of Jersey City, Hudson County, New Jersey, as shown on a certain map entitled, "Boundary Survey, Lot M - Block 212, Lot 50A - Block 247, Lot 50A - Block 280, Lot 50A - Block 317.5, Lot 50A - Block 354.1, Lot 50 - Block 389.1, Lot 50 - Block 415 & Lot 18A - Block 446," prepared by Schoor DePalma, dated December 29, 2004 and revised to February 23, 2005, and being more particularly described as follows:

Beginning at the point of intersection of the westerly sideline of Coles Street (60 foot wide right-of-way) and the southerly sideline of Sixth Street (60 foot wide right-of-way) and running; thence,

1. Along said westerly sideline of Coles Street, south 06 degrees 22 minutes 03 seconds west, 100.00 feet to the centerline of a 10 foot wide alley; thence,

2. Along said centerline, north 83 degrees 44 minutes 57 seconds west, 400.61 feet to the easterly sideline of Monmouth Street (60 foot wide right-of-way); thence,

3. Along said easterly sideline of Monmouth Street, north 06 degrees 22 minutes 03 seconds east, 100.00 feet to a point of intersection with the aforementioned southerly sideline of Sixth Street; thence,

4. Along said southerly sideline of Sixth Street, south 83 degrees 44 minutes 57 seconds east, 400.61 feet to the point or place of beginning.

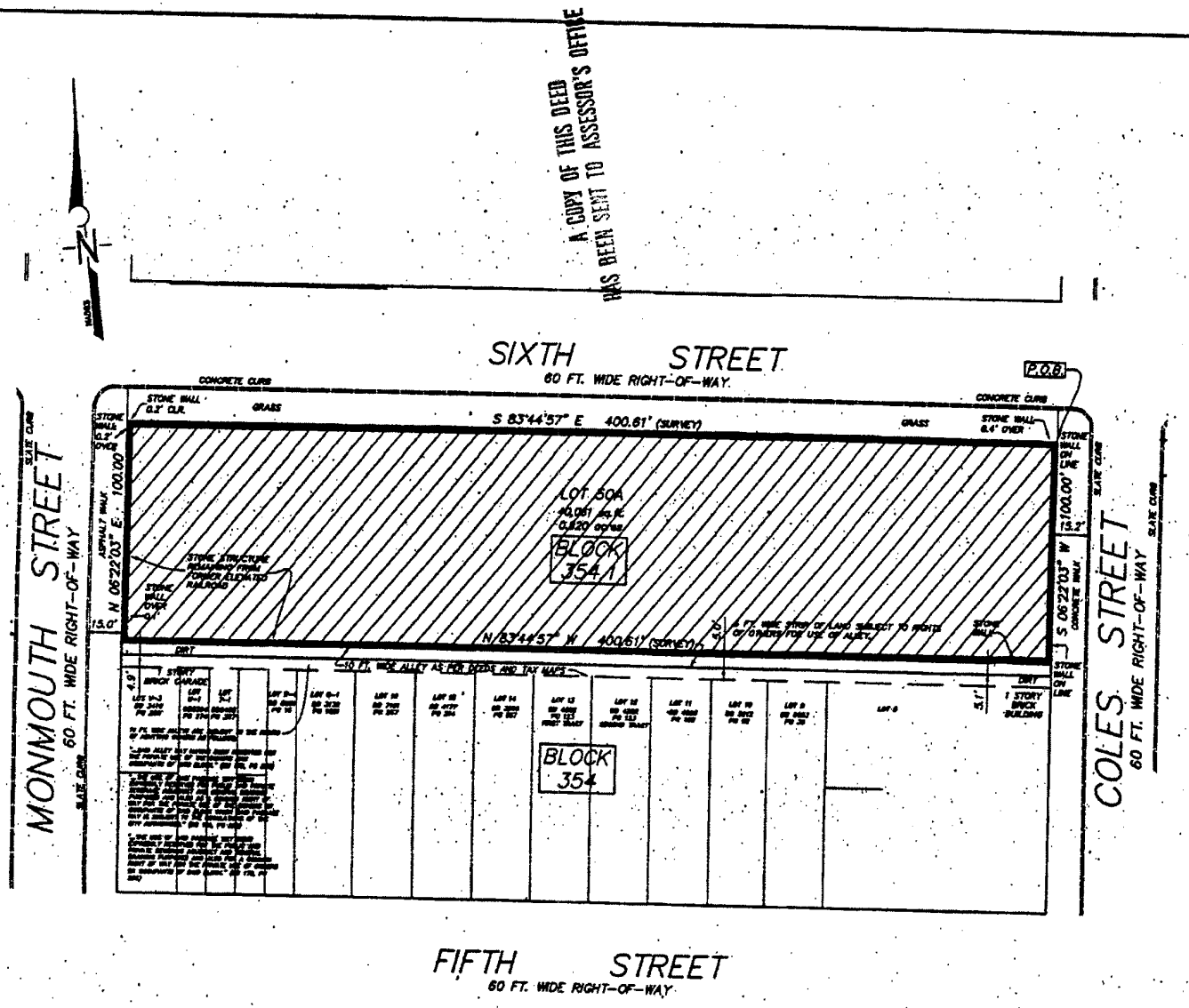
Containing 40,061 square feet more or less / 0.920 acres of land more or less as described herein.

Subject to all existing easements, rights-of-way and reservations of record.

Glen J. Lloyd, P.L.S.
N.J. Professional Land Surveyor
New Jersey License No. GS37598

n:\project\2003\0303332\02\m&bs\lot 50a, block 354.1.doc

A COPY OF THIS DEED HAS BEEN SENT TO ASSESSOR'S OFFICE



REFERENCES:

1. DEED RECORDED IN THE HUDSON COUNTY CLERK'S OFFICE IN DEED BOOK 3886, PAGE 767 WITH EXCEPTION RECORDED IN DEED BOOK 3886, PAGE 771.

2. MAP ENTITLED "EASEMENTS TO BE GRANTED BY CONSOLIDATED RAIL CORPORATION TO NEW JERSEY DEPARTMENT OF TRANSPORTATION" AND "NEW JERSEY DEPARTMENT OF TRANSPORTATION, HOBOKEN STREET, FROM SECOND STREET TO PAVONIA AVENUE, PARCELS 224 CSX, 220 & CSX, CITY OF JERSEY CITY, COUNTY OF HUDSON, SCALE 1" = 40', DECEMBER 5, 1979" WHICH IS REFERENCED IN DEED RECORDED IN THE HUDSON COUNTY CLERK'S OFFICE IN DEED BOOK 3886, PAGE 388.

3. MAP ENTITLED "SKETCH OF PROPERTY SURVEYED FOR JERSEY CITY, REDEVELOPMENT AGENCY, SITUATED IN JERSEY CITY, N.J., SCALE 1 INCH = 30 FEET, SURVEYED 1/2-16/79"

4. MAP ENTITLED "RIGHT-OF-WAY AND TRACK MAP, UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, STATION 24+00.70 STATION 59+47", DATED JUNE 30, 1916 AND REVISED TO DECEMBER 31, 1926.

5. MAP ENTITLED "STATION MAP – LANDS, UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, HARRISON GRANTEE, OPERATED BY THE PENNSYLVANIA RAILROAD, LESSEE", DATED JUNE 30, 1916 AND REVISED TO DECEMBER 31, 1926.

6. MAP ENTITLED "NEW JERSEY TURNPIKE AUTHORITY, NEW JERSEY TURNPIKE, NEWARK BAY – HUDSON COUNTY EXTENSION, PARCEL PROPERTY MAP, CITY OF JERSEY CITY, HUDSON COUNTY", SHEETS 23 AND 24, REVISED TO 1956.

7. MAP ENTITLED "MAP OF THAT PART OF THE TOWN OF JERSEY COMMONLY CALLED GRANDVIEW", DATED 1804 AND FILED IN THE HUDSON COUNTY CLERK'S OFFICE JUNE 16, 1865.

8. MAP ENTITLED "MAP OF PARTS OF LOTS AND PARCELS OF LAND SITUATED IN THE LOTS, THIRD AND FOURTH (OR FOURTH, FIFTH AND SIXTH) WARDS OF JERSEY CITY, FORMERLY CALLED PAVONIA, AND ALSO IN THE ADJACENT CITY OF HUDSON, IN THE COUNTY OF HUDSON AND THE STATE OF NEW JERSEY, SHOWING THE PARTITION OF THE SAME AMONG THE HEIRS OF JOHN G. COLES, DECEASED", DATED MAY, 1869 AND FILED IN THE HUDSON COUNTY CLERK'S OFFICE OCTOBER 24, 1881.

NOTES:

1. THIS SURVEY IS PREPARED FOR THE CONVENIENCE OF THE TITLE INSURER THAT ORDERED IT. THE CORPORATION WILL NOT BE RESPONSIBLE FOR ANY AMENDMENTS OF THIS SURVEY TO ANY PERSON NOT SO ORDERED.

2. SUBJECT TO EASEMENTS AND RIGHTS OF WAY OF RECORD.

3. UNDERGROUND UTILITIES ARE NOT SHOWN HEREON. THE APPROPRIATE UTILITY COMPANIES SHOULD BE CONTACTED TO VERIFY THE PRESENCE OR ABSENCE OF UTILITY LINES IN CONNECTION.

4. ALL MONITOR WELLS AND PIEZOMETERS NOT TO BE DISTURBED UNTIL WELL ABANDONMENT PERMIT HAS BEEN OBTAINED FROM THE N.J.D.E.P. 10-17-01/02.

5. THIS SURVEY IS ONLY VALID WITH ORIGINAL SEAL IN OPTION.

6. DIMENSIONAL DATUM IS THE NORTH AMERICAN DATUM OF 1983 (NAD83) AS DETERMINED BY GPS OBSERVATIONS BY SCHOOR DEPALMA IN JULY 2004.

7. DETAILED LOCATIONS OF IMPROVEMENTS TO THOSE AREAS ARE CONSIDERABLE DUE TO LARGE AREAS.

I HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR LICENSED TO PRACTICE IN THE STATE OF NEW JERSEY, AND THAT THIS PLAN IS BASED ON AN ACTUAL FIELD SURVEY PERFORMED UNDER MY IMMEDIATE SUPERVISION. I FURTHER DECLARE TO THE BEST OF MY PROFESSIONAL KNOWLEDGE AND BELIEF, THAT THIS PLAN IS A CORRECT AND ACCURATE REPRESENTATION OF CONDITIONS EXISTING AS OF THIS DATE HEREON.

CERTIFICATIONS:
354 COLE STREET, L.L.C.
CHARLENE R. ALAMO, ESQ.
VESTED TITLE INC.
CHICAGO TITLE INSURANCE COMPANY

EXHIBIT "A", Page 3 of 3

Case No. 729318
FILENAME: 14200013B

-NOTICE-
THIS DRAWING AND SURVEY AS INSTRUMENTS OF SERVICE IS AVAILABLE FOR THE USE OF THE PARTY FOR WHOM THE SAME WAS ORIGINALLY OR TO WHOM IT IS CERTIFIED.
THIS DRAWING MAY NOT BE COPIED, REVISED, ALTERED, REPRODUCED OR USED UPON FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF SCHOOR DEPALMA INC.
COPYRIGHT 2004 SCHOOR DEPALMA INC. ALL RIGHTS RESERVED

GLEN J. LLOYD
PROFESSIONAL LAND SURVEYOR, N.J. LIC. No. 24GS37888

SCHOOR DEPALMA
Engineers and Consultants
Cert. Of Authorization 24GA27826200
80 WATERVIEW BOULEVARD
P.O. BOX 8246 PARSIPPANY, NJ 07054
TEL. (973)299-7970 FAX (973)334-6886
MANALAPAN • WHITE PLAINS • BOX HARBOR • GRANT • CLINTON • DOVER • HULMEVILLE
PARSIPPANY • PHILADELPHIA • PHILLIPSBURG • STAFFORD • WOODBRIDGE

BOUNDARY SURVEY
LOT 50-A - BLOCK 354.1
PROPERTY OF CONRAIL CORPORATION
JERSEY CITY HUDSON COUNTY, NEW JERSEY

PROJECT NO. 0303332
SCALE 1"=30'
DATE 12/29/04
DRAWN BY G.E.
SHEET NO. 1 of 1

GIT/REP-3
(11-04)

State of New Jersey

Seller's Residency Certification/Exemption

(C.55, P.L. 2004)

(Please Print or Type)

SELLER(S) INFORMATION (See Instructions, page 2):

Name(s) Consolidated Rail Corporation

Current Resident Address 405 Division Street, Suite 215

City, Town, Post Office Elizabeth State NJ Zip Code 07201

PROPERTY INFORMATION (Brief Property Description):

Block(s) 354.1 Lot(s) 50 A Qualifier

Street Address Cole Street and Sixth Street

City, Town, Post Office Jersey City State NJ Zip Code 07302

Seller's Percentage of Ownership 100% Consideration $333,333.00 Closing Date 7/13/05

SELLER ASSURANCES (Check the Appropriate Box):

1. ☐ I am a resident taxpayer of the State of New Jersey pursuant to N.J.S.A. 54A:1-1 et seq. and will file a resident gross income tax return and pay any applicable taxes on any gain or income from the disposition of this property.
2. ☐ The real property being sold or transferred is used exclusively as my principal residence within the meaning of section 121 of the Federal Internal Revenue Code of 1986, 26 U.S.C. s. 121.
3. ☐ I am a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration.
4. ☐ Seller, transferor or transferee is an agency or authority of the United States of America, an agency or authority of the State of New Jersey, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.
5. ☒ Seller is not individual, estate or trust and as such not required to make an estimated payment pursuant to N.J.S.A.54A:1-1 et seq.
6. ☐ The total consideration for the property is $1,000 or less and as such, the seller is not required to make an estimated payment pursuant to N.J.S.A. 54A:5-1-1 et seq.
7. ☐ The gain from the sale will not be recognized for Federal income tax purposes under I.R.C. Section 721, 1031, 1033 or is a cemetery plot. (CIRCLE THE APPLICABLE SECTION.) If such section does not ultimately apply to this transaction, the seller acknowledges the obligation to file a New Jersey income tax return for the year of the sale.

SELLER(S) DECLARATION:

The undersigned understands that this declaration and its contents may be disclosed or provided to the New Jersey Division of Taxation and that any false statement contained herein could be punished by fine, imprisonment, or both. I furthermore declare that I have examined this declaration and, to the best of my knowledge and belief, it is true, correct and complete.

July 13, 2005
Date

Signature Robert W. Ryan, Director Real Estate
(Seller) Please indicate if Power of Attorney or Attorney in Fact

July 13, 2005
Date

Signature Consolidated Rail Corporation
(Seller) Please indicate if Power of Attorney or Attorney in Fact

Powered by HotDocs

BK = 07613 PG = 00314

by its Director-Real Estate duly authorized thereunto and has caused its corporate seal to be hereunto affixed and attested by its Corporate Secretary, the day and year first above written.

SEALED and
DELIVERED in the
presence of us:

Carol A. Putiri
CAROL A. PUTIRI

CONSOLIDATED RAIL CORPORATION
By:

Robert W. Ryan
Director-Real Estate

ATTEST:

Carol A. Putiri
CAROL A. PUTIRI

Jonathan M. Broder
Corporate Secretary

COMMONWEALTH OF PENNSYLVANIA)
: SS
COUNTY OF Philadelphia)

BE IT REMEMBERED, that on this 12th day of July in the year Two Thousand Five (2005), before me, the subscriber, a Notary Public for the Commonwealth and County aforesaid, personally appeared Robert W. Ryan, Director-Real Estate of CONSOLIDATED RAIL CORPORATION, the corporate Grantor named in the within Instrument, who I am satisfied is the person who has signed the within Instrument on behalf of said Corporation; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as such officer aforesaid; that the foregoing Instrument is the voluntary act and deed of said Corporation, made by virtue of authority from its Board of Directors; and that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by the within Instrument as such consideration is THREE HUNDRED THIRTY THREE THOUSAND THREE HUNDRED THIRTY THREE Dollars ($333,333).

Jennifer A. Burtulato
Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
JENNIFER A. BURTULATO, Notary Public
City of Philadelphia, Phila. County
My Commission Expires October 11, 2008

RECORD & RETURN TO:
ALAMPI & DEMARAIS
ONE UNIVERSITY PLAZA
HACKENSACK NJ 07601

BK=07615 PG=00315

000011003 07/18/2005 09:51A
RECEIVED BARBARA A. DONNELLY
AND HUDSON COUNTY
RECORDED REGISTER OF DEEDS
Receipt No. 266082

QUITCLAIM DEED (NJ)

Case 72931-F

Consideration : $333333.00 Exempt Code: S
State 833.42 N.P.N.R.F 275.25 Total 1976.30
County 333.83 Extra 3.00 1% Tax 3330.00
General 0.00 Public 66.75
07/18/2005

THIS DEED, made the 12th day of July, in the year of our Lord Two Thousand Five (2005),

BETWEEN CONSOLIDATED RAIL CORPORATION, a Corporation of the Commonwealth of Pennsylvania, having an office at Two Commerce Square, 2001 Market Street, 8H Floor, Philadelphia, Pennsylvania, 19103, hereinafter referred to as the Grantor, and **389 MONMOUTH STREET, L.L.C.**, a Limited Liability Company of the State of New Jersey, having a mailing address in care of Carmine R. Alampi, Esq., One University Plaza, Suite 404, Hackensack, NJ 07601 , hereinafter referred to as the Grantee.

WITNESSETH, that the said Grantor, for and in consideration of the sum of THREE HUNDRED THIRTY THREE THOUSAND THREE HUNDRED THIRTY THREE DOLLARS ($333,333) lawful money of the United States of America, unto it well and truly paid by the said Grantee, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, Grantor does by these presents, remise, release and forever quitclaim unto the said Grantee, the heirs or successors and assigns of the said Grantee, all right, title and interest of the said Grantor of, in and to the Premises as more particularly described on Exhibit 'A', pages 1 of 3 through 3 of 3, appended hereto and made a part hereof.

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, permanent, perpetual, exclusive, assignable and unrestricted easements and rights for any and all existing sewer, gas and water lines, poles, pipes, wires, cables, power, signal and communication lines, fiber optic lines, telecommunication lines and all their appurtenances, hereinafter referred to as "facilities", located in, on, under, over, above, beneath the surface, across or through the Premises; and together with the right to use, maintain, repair, replace, renew, rehabilitate and remove said facilities and their appurtenances.

UNDER and SUBJECT, however, to (1) whatever rights the public may have to the use of any roads, alleys, bridges or streets crossing the Premises, (2) any streams, rivers, creeks and water ways passing under, across or through the Premises, and (3) any easements or agreements of record or otherwise affecting the Premises, and to the state of facts which a personal inspection or accurate survey would disclose, and to any pipes, wires, poles, cables, culverts, drainage courses or systems and their appurtenances now existing and remaining in, on, under, over, across and through the Premises, together with the right to maintain, repair, renew, replace, use and remove same.

THIS INSTRUMENT is executed and delivered by Grantor, and is accepted by Grantee, subject to the covenants set forth below, which shall be deemed part of the consideration of this conveyance and which shall run with the land and be binding upon, and inure to the benefit of, the respective heirs, legal representatives, successors and assigns of Grantor and Grantee. Grantee hereby knowingly, willingly, and voluntarily waives the benefit of any rule, law, custom, or statute of the State of New Jersey now or hereafter in force with respect to the covenants set forth below:

Robert W. Ryan

TAX REFERENCE:
Block 389.1 Lot 50

THIS INSTRUMENT PREPARED BY:
Robert W. Ryan
Consolidated Rail Corporation
2001 Market Street – 8th Floor
Philadelphia, PA 19103

3

A COPY OF THIS DEED HAS BEEN SENT TO ASSESSOR'S OFFICE

BK:07615 PG:00298

(1.) Grantor shall neither be liable or obligated to construct or maintain any fence or similar structure between the Premises and adjoining land of Grantor nor shall Grantor be liable or obligated to pay for any part of the cost or expense of constructing or maintaining any fence or similar structure, and Grantee hereby forever releases Grantor from any loss or damage, direct or consequential, that may be caused by or arise from the lack or failure to maintain any such fence or similar structure.

(2.) Grantee hereby forever releases Grantor from all liability for any loss or damage, direct or consequential, to the Premises and to any buildings or improvements now or hereafter erected thereon and to the contents thereof, which may be caused by or arise from the normal operation, maintenance, repair, or renewal of Grantor's railroad, or which may be caused by or arise from vibration resulting from the normal operation, maintenance, repair or renewal thereof.

(3.) A. Allocation of Specific Obligations to Remediate.
The parties shall, as between themselves, allocate obligations pertaining to any Remediation with respect to the Premises in accordance with this Section, without regard to considerations of fault, failure or negligence.

(i) Grantee shall be responsible after the date of this Deed for any Remediation arising from the existence or presence of any contamination in, on or about the Premises, including without limitation, any Hazardous Substances, except as specifically provided otherwise in Subsection A(ii) below.

(ii) Grantor shall be responsible for Remediation of Hazardous Substances in, on or about the Premises, provided that such Hazardous Substances: (1) resulted from a condition created by Grantor during the time the Premises was owned by Grantor; and (2) are a violation of applicable environmental laws or regulations in effect and as interpreted on the date of this Deed. Notwithstanding the aforesaid, Grantor shall not be liable for any Remediation resulting from any condition: (a) that Grantee had knowledge of or reasonable basis to suspect as of the date of this Deed; or (b) that Grantee could have discovered its presence upon the Premises by a duly diligent examination of the Premises or public records related thereto; or (c) which Grantee has failed to immediately notify Grantor of as provided for below. Grantor's liability for any Remediation for which it is otherwise responsible hereunder shall be no greater than that resulting from the condition of the Premises existing as of the date of this Deed regardless of any increase in Remediation costs or liability created by or resulting from events occurring after the date of this Deed, including the passage of time.

(iii) If at any time after the date of this Deed, any Hazardous Substances are discovered which are or may be the responsibility of Grantor to Remediate pursuant to Subsection A(ii) above, then Grantee shall immediately notify Grantor of such Hazardous Substances, and Grantor shall have the opportunity and right to investigate, determine its responsibility therefor, determine in connection with appropriate governmental or regulatory bodies the appropriate response or remedy for such Hazardous Substances and Remediate, with its own forces or contractors and at its own expense, such Hazardous Substances to the satisfaction of appropriate regulatory bodies or to the additional extent deemed appropriate by Grantor. Grantor shall only be obligated to Remediate such Hazardous Substances to the extent that would be required for the now existing or most recent use of the Premises by Grantor, regardless of the current or proposed use of the Premises by Grantee. Grantee shall grant such rights of entry or other rights to Grantor, upon reasonable terms and without compensation, as may be necessary to allow Grantor to perform the inspections, remediation or other actions necessary to comply with this Subsection. In the event of a dispute concerning Grantor's responsibility for any Remediation hereunder, the parties shall cooperate to resolve such dispute as quickly as possible, and Grantee, unless required by valid judicial or regulatory order to take immediate action to Remediate a specific condition, shall, during the resolution of such dispute, take no actions inconsistent with Grantor's right to seek a determination from the appropriate regulatory or judicial body of the remedy required by law and to Remediate the Hazardous Substances with its own forces or contractors. Grantor shall not be liable to Grantee for any damages, costs or expenses incurred as a result of such Remediation, except that if Grantee is required by valid judicial or administrative order as provided

above to take immediate action to Remediate any Hazardous Substances which are later determined to be the responsibility of Grantor pursuant to this Subsection, Grantee shall be able to recover its actual and reasonable costs from Grantor.

B. Definition of "Hazardous Substance(s)". "Hazardous Substance(s)", as used in this Deed, shall mean any material or substance that is defined or classified as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601(14)) or Section 311 of the Federal Water Pollution Control Act (33 U.S.C. §1321); a "hazardous waste" pursuant to Section 1004 or 3001 of the Resource Conservation and Recovery Act (42 U.S.C. §§6903, 6921); a toxic pollutant under Section 307(a)(1) of the Federal Water Pollution Control Act (33 U.S.C. §1317(a)(1)); a "hazardous air pollutant" under Section 112 of the Clean Air Act (42 U.S.C. §7412); or a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. App. §1802(4)).

C. Definition of "Remediate" and "Remediation". "Remediate" or "Remediation", as used in this Deed, shall mean, any reasonable investigation and the formulation and implementation of any remedial action, containment, cleanup, response, treatment, removal, mitigation, abatement, elimination or control of any contamination.

D. Indemnity. The party made responsible by this Section for any Remediation shall: (1) satisfy said obligations; and (2) indemnify, defend and hold the other party (and its directors, officers, employees and agents) harmless from and against any claims, liabilities, judgments, settlements, costs and expenses (including without limitation, reasonable attorneys' fees) arising out of or in connection with said Remediation.

E. Release. As a material part of the consideration to Grantor for the conveyance of the Premises, Grantee hereby expressly and irrevocably releases and forever discharges, and by these presents does, for its successors and assigns, release and forever discharge Grantor (including, without limitation, its directors, officers, employees, and agents) from any and all actions, suits, controversies, damages (compensatory, punitive or consequential), judgments, claims and demands whatsoever, in law, or in equity, which Grantee ever had, now has, or which it or its successors and assigns hereafter can, shall or may have against Grantor, arising out of or in connection with the presence of any contamination on the Premises, including without limitation, any Hazardous Substances, except to the extent Grantor fails to comply with its obligations set forth in Subsection A(ii) above, or Grantee is entitled to recover the cost of any Remediation pursuant to Subsection A(ii). Grantee shall indemnify, defend and hold Grantor harmless from and against any and all claims, liabilities, judgments, settlements, costs and expenses (including without limitation, reasonable attorneys' fees) arising out of or in connection with Grantee's prosecution of any of its legal remedies against any third party who might have concurring or joint liability for matters for which Grantee has released Grantor pursuant to this Subsection. Each party expressly waives, to the extent it lawfully may do so: (i) the benefits of any statute that would relieve it of any obligations that it has assumed under this Section, and (ii) any defense predicated on alleged misrepresentations of fact or the nondisclosure of any fact.

(4.) Should a claim adverse to the title hereby quitclaimed be asserted and/or proved, no recourse shall be had against the Grantor herein.

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, permanent, perpetual, exclusive, unrestricted and assignable easements and rights for any and all existing signboards and their appurtenances located on the Premises; together with the necessary; easements and rights for any necessary electric service lines and their appurtenances needed for illuminating said signboards; and together with rights and easements to construct, use, maintain, modify, enlarge, repair, renew, replace, rehabilitate and remove said signboards; and together with the right of immediate and unimpeded ingress and egress on, over, across, and through the Premises for

the purposes aforesaid; and further together with the exclusive right to sell and assign such rights and to retain any and all revenues, income, charges, considerations and fees derived therefrom.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of it, the said Grantor as well at law as in equity or otherwise howsoever of, in and to the same and every part thereof, UNDER and SUBJECT and EXCEPTING AND RESERVING as aforesaid.

TO HAVE AND TO HOLD, all and singular the said Premises, together with the appurtenances, unto the Grantee, the heirs or successors and assigns of the Grantee, forever, UNDER and SUBJECT and provided as aforesaid.

THE words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees", respectively, whenever the sense of this instrument so requires and whether singular or plural, such words shall be deemed to include at all times and in all cases the heirs, legal representatives or successors and assigns of the Grantor and Grantee.

IN WITNESS WHEREOF, the Grantor has caused this Indenture to be signed in its name and behalf

BK:07615 PG:00301

EXHIBIT A

CASE NO. 72931-F

ALL THAT CERTAIN piece or parcel of land of the Grantor, together with all of the improvements thereon, being a portion of the line of railroad known as the Penn Central Harsimus Branch and identified as Line Code 1420, situate in the City of Jersey City, County of Hudson and State of New Jersey, said parcel being identified as Block 389.1, Lot 50, and which is bounded and described in accordance with a Plat of Survey, identified as Project No. 0303332, dated December 29, 2004 and revised through February 23, 2005, prepared by Glen J. Lloyd, Professional Land Surveyor, New Jersey License No. GS37598, attached hereto and made a part hereof, as follows.

BEING a part or portion of the same premises which Fairfax Leary, as Trustee of the Property of the United New Jersey Railroad and Canal Company, Debtor, by Conveyance Document No. UNJ-CRC-RP-4, dated March 31, 1976 and recorded on October 10, 1979 in the Recorder's Office of Hudson County, New Jersey, in Liber 3286 at page 757&c.; and also Filed and Recorded in the Recorder's Office of the Secretary of State for the State of New Jersey on October 12, 1978, granted and conveyed unto Consolidated Rail Corporation.

A COPY OF THIS DEED
HAS BEEN SENT TO ASSESSOR'S OFFICE

BK=07615 PG=00302

SCHOOR DEPALMA
Engineers and Consultants

February 23, 2005

Project No. 030333202

LEGAL DESCRIPTION
LOT 50, BLOCK 389.1
CITY OF JERSEY CITY
HUDSON COUNTY, NEW JERSEY

A COPY OF THIS DEED
HAS BEEN SENT TO ASSESSOR'S OFFICE

A parcel of land described herein, known and designated as Lot 50, Block 389.1, City of Jersey City, Hudson County, New Jersey, as shown on a certain map entitled, "Boundary Survey, Lot M - Block 212, Lot 50A - Block 247, Lot 50A - Block 280, Lot 50A - Block 317.5, Lot 50A - Block 354.1, Lot 50 - Block 389.1, Lot 50 - Block 415 & Lot 18A - Block 446," prepared by Schoor DePalma, dated December 29, 2004 and revised to February 23, 2005, and being more particularly described as follows:

Beginning at the point of intersection of the westerly sideline of Monmouth Street (60 foot wide right-of-way) and the southerly sideline of Sixth Street (60 foot wide right-of-way) and running; thence,

1. Along said westerly sideline of Monmouth Street, south 06 degrees 22 minutes 03 seconds west, 100.00 feet to the centerline of a 10 foot wide alley; thence,

2. Along said centerline, north 83 degrees 44 minutes 57 seconds west, 400.81 feet to the easterly sideline of Brunswick Street (60 foot wide right-of-way); thence,

3. Along said easterly sideline, north 06 degrees 22 minutes 03 seconds east, 100.00 feet to a point of intersection with the aforementioned southerly sideline of Sixth Street; thence,

4. Along said southerly sideline of Sixth Street, south 83 degrees 44 minutes 57 seconds east, 400.81 feet to the point or place of beginning.

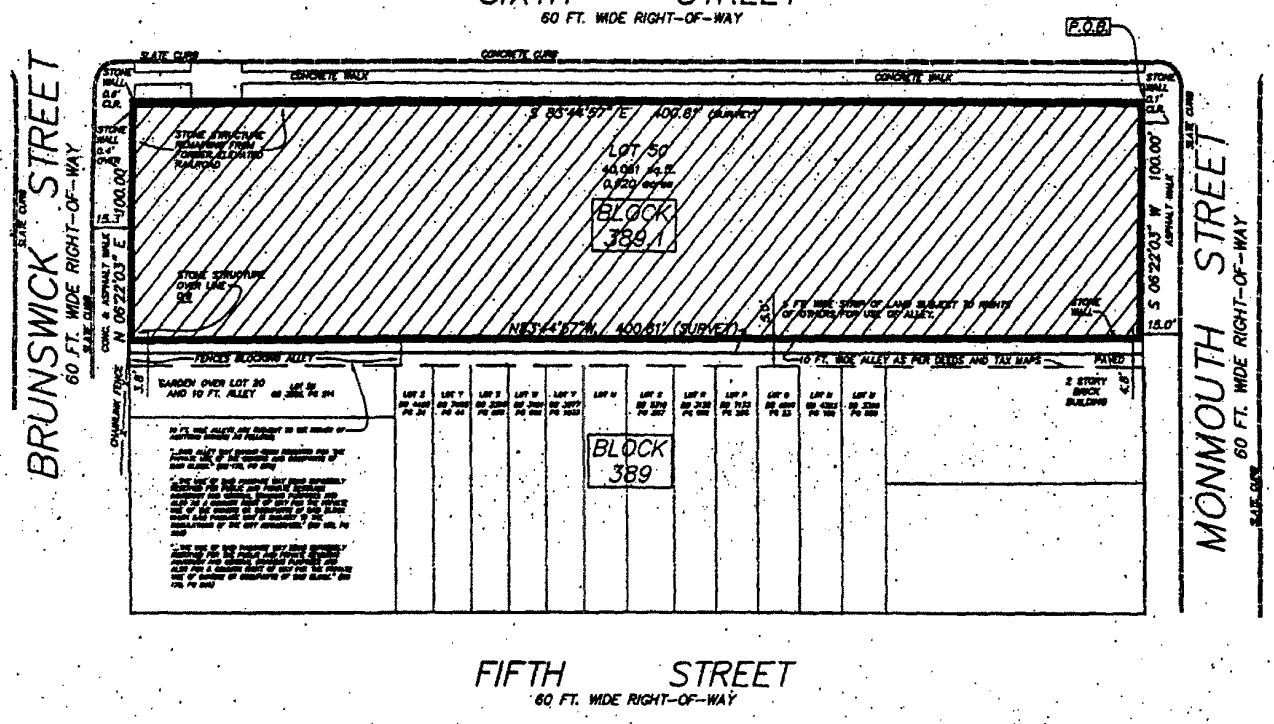
Containing 40,081 square feet more or less / 0.920 acres of land more or less as described herein.

Subject to all existing easements, rights-of-way and reservations of record.

Glen J. Lloyd, P.L.S.
N.J. Professional Land Surveyor
New Jersey License No. GS37598

n:\project\2003\0303332\02\m&bs\lot 50, block 389.1.doc

A COPY HAS BEEN SENT TO ASSESSOR'S OFFICE



REFERENCES:

1. DEED RECORDED IN THE HUDSON COUNTY CLERK'S OFFICE IN DEED BOOK 3000, PAGE 707 WITH EXCEPTION RECORDED IN DEED BOOK 3000, PAGE 771.

2. MAP ENTITLED "ELEMENTS TO BE CHANGED BY CONSOLIDATED RAIL CORPORATION TO NEW JERSEY DEPARTMENT OF TRANSPORTATION" AND "NEW JERSEY DEPARTMENT OF TRANSPORTATION, HENDRICKS STREET, FROM SECOND STREET TO PAVONIA AVENUE, PARCELS C3A, C3B, C3C & C3D, CITY OF JERSEY CITY, COUNTY OF HUDSON, SCALE 1" = 40', DECEMBER 5, 1974" WHICH IS REFERENCED IN DEED RECORDED IN THE HUDSON COUNTY CLERK'S OFFICE IN DEED BOOK 3000, PAGE 200.

3. MAP ENTITLED "SKETCH OF PROPERTY SURVEYED FOR JERSEY CITY REDEVELOPMENT AGENCY, SITUATED IN JERSEY CITY, N.J., SCALE 1 INCH = 30 FEET, SURVEYED 1/3-10/29"

4. MAP ENTITLED "SHEET-OF-SILT AND TRADE MAP, UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, STATION 0+00 TO STATION 22+97, DATED JUNE 30, 1910 AND REVISED TO DECEMBER 31, 1926."

5. MAP ENTITLED "STATION MAP - LANDS, UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, HARSIMUS BRANCH, OPERATED BY THE PENNSYLVANIA RAILROAD LESSEE", DATED JUNE 30, 1910 AND REVISED TO DECEMBER 31, 1926.

6. MAP ENTITLED NEW JERSEY TURNPIKE AUTHORITY, NEW JERSEY TURNPIKE, NEWARK BAY - HUDSON COUNTY EXTENSION, PARCEL PROPERTY MAP, CITY OF JERSEY CITY, HUDSON COUNTY", SHEETS 22 AND 24, REVISED TO 1970.

7. MAP ENTITLED "MAP OF THAT PART OF THE TOWN OF BERGEN, FORMERLY CALLED APPANOUSE", DATED 1804 AND FILED IN THE HUDSON COUNTY CLERK'S OFFICE JUNE 10, 1804.

8. MAP ENTITLED "MAP OF PARTS OF LOTS AND PARCELS OF LAND SITUATED IN THE LOTS, THIRD AND FOURTH SHAD FRONTS, CITY AND TOWN OF BERGEN IN JERSEY CITY, FORMERLY CALLED APPANOUSE AND ON THE MEADOWS IN THE CITY OF HUDSON, IN THE COUNTY OF HUDSON AND THE STATE OF NEW JERSEY, SHOWN THE PROPERTIES OF THE SAME OWNER, THE HEIRS OF JOHN S. CALES, DECEASED", DATED 1911, 1920 AND FILED IN THE HUDSON COUNTY CLERK'S OFFICE OCTOBER 24, 1921.

NOTES:

1. THIS SURVEY IS INTENDED FOR THE CONVEYANCE OF THE TITLE AND/OR THE IMPROVEMENTS AS DESCRIBED AND MAY BE INVALID FOR ANY CONVEYANCE OF ANY SUBJECT TO ANY CHANGE IN BOUNDARY.

2. SUBJECT TO THOSE FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.

3. SUBJECT TO EASEMENTS AND RIGHTS OF WAY OF RECORD.

4. UNDERGROUND UTILITIES AND THE IMPROVEMENTS THEREON, NOT SHOWN ON SURVEY MAY EXIST OR BE CONSTRUCTED TO SERVE THE PREMISES OR PREMISES ADJACENT THERETO.

5. A WATER COURSE AND WATERWAY MAY TO ANY EXTENT AFFECTED AND BEEN CHANGED FROM THE NATURAL FLOW PURSUANT TO N.J.S.A. 12:3-1 ET SEQ.

6. THIS SURVEY IS ONLY VALID WHEN ORIGINAL SEAL IS AFFIXED.

7. HORIZONTAL DATUM IS THE LOCAL ASSUMED DATUM OF THIS SURVEY AS DETERMINED BY SITE MEASUREMENTS OF GRADES REFERENCED IN JULY, 2004.

8. REVISED LOCATIONS OF IMPROVEMENTS IN SOME AREAS ARE EXAGGERATED DUE TO LARGE SCALE.

I HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR LICENSED TO PRACTICE IN THE STATE OF NEW JERSEY, AND THAT THIS PLAN IS BASED ON AN ACTUAL FIELD SURVEY PERFORMED UNDER MY IMMEDIATE SUPERVISION. I FURTHER DECLARE TO THE BEST OF MY PROFESSIONAL KNOWLEDGE AND BELIEF, THAT THIS PLAN IS A CORRECT AND ACCURATE REPRESENTATION OF CONDITIONS EXISTING AS OF THIS DATE HEREON.

CERTIFICATIONS:
300 MONMOUTH STREET, L.L.C.
CHARLES A. ALAIMO, ESQ.
HUDSON TITLE INC.
CHICAGO TITLE INSURANCE COMPANY

BK=07615 PG=00304

EXHIBIT "A", Page 3 of 3

Case No. 72931F
FILENAME: 14200013B

-NOTICE-
THIS DRAWING AND ALL INFORMATION CONTAINED HEREIN IS APPROVED FOR USE ONLY BY THE PARTY FOR WHOM THE WORK WAS COMMISSIONED OR TO WHOM IT IS ADDRESSED.
THIS DRAWING AND ANY OR COPIES THEREOF, AND ALL INFORMATION CONTAINED HEREIN, REMAINS THE PROPERTY OF SCHOOR DEPALMA INC. AND MAY NOT BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF SCHOOR DEPALMA INC.
COPYRIGHT 2005 SCHOOR DEPALMA INC. ALL RIGHTS RESERVED

GLEN J. LLOYD
PROFESSIONAL LAND SURVEYOR, N.J. LIC. No. 0037586

SCHOOR DEPALMA
Engineers and Consultants
Cert. Of Authorization 24GA27854200
30 WATERVIEW BOULEVARD
P.O. BOX 5246 PARSIPPANY, NJ 07054
TEL. (973)334-7870 FAX (973)334-6888
MANALAPAN • WHITE PLAINS • OLD BRIDGE • BRICK • GLOUCESTER • EATON • HOLMDEL
PARSIPPANY • PHILADELPHIA • PHILLIPSBURG • STAMFORD • WOODBRIDGE

BOUNDARY SURVEY
LOT 50 - BLOCK 389.1
PROPERTY OF CONRAIL CORPORATION
JERSEY CITY HUDSON COUNTY, NEW JERSEY

PROJECT NO. 0303332
SCALE 1"=30'
DATE 12/29/04
DRAWN BY G.J.L.
SHEET NO. 1 of 1

089

GIT/REP-3
(11-04)

State of New Jersey

Seller's Residency Certification/Exemption

(C.55, P.L. 2004)

(Please Print or Type)

SELLER(S) INFORMATION (See Instructions, page 2):

Name(s) Consolidated Rail Corporation

Current Resident Address 405 Division Street, Suite 215

City, Town, Post Office Elizabeth State NJ Zip Code 07201

PROPERTY INFORMATION (Brief Property Description):

Block(s) 389.1 Lot(s) 50 & 51 Qualifier

Street Address Monmouth Street and Sixth Street

City, Town, Post Office Jersey City State NJ Zip Code 07302

Seller's Percentage of Ownership 100% Consideration $333,333.00 Closing Date 7/13/05

SELLER ASSURANCES (Check the Appropriate Box):

1. ☐ I am a resident taxpayer of the State of New Jersey pursuant to N.J.S.A. 54A:1-1 et seq. and will file a resident gross income tax return and pay any applicable taxes on any gain or income from the disposition of this property.
2. ☐ The real property being sold or transferred is used exclusively as my principal residence within the meaning of section 121 of the Federal Internal Revenue Code of 1986, 26 U.S.C. s. 121.
3. ☐ I am a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration.
4. ☐ Seller, transferor or transferee is an agency or authority of the United States of America, an agency or authority of the State of New Jersey, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.
5. ☒ Seller is not individual, estate or trust and as such not required to make an estimated payment pursuant to N.J.S.A.54A:1-1 et seq.
6. ☐ The total consideration for the property is $1,000 or less and as such, the seller is not required to make an estimated payment pursuant to N.J.S.A. 54A:5-1-1 et seq.
7. ☐ The gain from the sale will not be recognized for Federal income tax purposes under I.R.C. Section 721, 1031, 1033 or is a cemetery plot. (CIRCLE THE APPLICABLE SECTION.) If such section does not ultimately apply to this transaction, the seller acknowledges the obligation to file a New Jersey income tax return for the year of the sale.

SELLER(S) DECLARATION:

The undersigned understands that this declaration and its contents may be disclosed or provided to the New Jersey Division of Taxation and that any false statement contained herein could be punished by fine, imprisonment, or both. I furthermore declare that I have examined this declaration and, to the best of my knowledge and belief, it is true, correct and complete.

July 13, 2005
Date

Signature Robert W. Ryan, Director Real Estate
(Seller) Please indicate if Power of Attorney or Attorney in Fact

July 13, 2005
Date

Signature Consolidated Rail Corporation
(Seller) Please indicate if Power of Attorney or Attorney in Fact

Powered by HotDocs®
Printed by ALL-STATE LEGAL®
A Division of ALL-STATE International, Inc.
www.aslegal.com 800.222.0510

by its Director-Real Estate duly authorized thereunto and has caused its corporate seal to be hereunto affixed and attested by its Corporate Secretary, the day and year first above written.

SEALED and
DELIVERED in the
presence of us:

Carol A. Putiri
CAROL A. PUTIRI

CONSOLIDATED RAIL CORPORATION
By:

Robert W. Ryan
Director-Real Estate

ATTEST:

Carol A. Putiri
CAROL A. PUTIRI

Jonathan M. Broder
Corporate Secretary

COMMONWEALTH OF PENNSYLVANIA)
: SS
COUNTY OF Philadelphia)

BE IT REMEMBERED, that on this 12th day of July in the year Two Thousand Five (2005), before me, the subscriber, a Notary Public for the Commonwealth and County aforesaid, personally appeared Robert W. Ryan, Director-Real Estate of CONSOLIDATED RAIL CORPORATION, the corporate Grantor named in the within Instrument, who I am satisfied is the person who has signed the within Instrument on behalf of said Corporation; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as such officer aforesaid; that the foregoing Instrument is the voluntary act and deed of said Corporation, made by virtue of authority from its Board of Directors; and that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by the within Instrument as such consideration is THREE HUNDRED THIRTY THREE THOUSAND THREE HUNDRED THIRTY THREE Dollars ($333,333).

Jennifer A. Burtulato
Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
JENNIFER A. BURTULATO, Notary Public
City of Philadelphia, Phila. County
My Commission Expires October 11, 2008

RECORD & RETURN TO:
ALAMI & DEMARRAS
ONE UNIVERSITY PLAZA
HACKENSACK NJ 07601

BK:07615 PG:00306

Consideration : $500000.00 Exempt Code: S

County	State	N.P.N.R.F	Total
500.50	1249.50	525.00	4175.00
General	Public	Extra	1% Tax
900.00	250.00	750.00	0.00

QUITCLAIM DEED (NJ)

Case 72931-G

07/18/2005 09:50A
BARBARA A. DONNELLY
HUDSON COUNTY
REGISTER OF DEEDS
Receipt No. 28

0000111002
RECEIVED
AND
RECORDED
DEE

THIS DEED, made the 12th day of July, in the year of our Lord Two Thousand Five (2005),

BETWEEN CONSOLIDATED RAIL CORPORATION, a Corporation of the Commonwealth of Pennsylvania, having an office at Two Commerce Square, 2001 Market Street, 8TH Floor, Philadelphia, Pennsylvania, 19103, hereinafter referred to as the Grantor, and **415 BRUNSWICK STREET, L.L.C.**, a Limited Liability Company of the State of New Jersey, having a mailing address in care of Carmine R. Alampi, Esq., One University Plaza, Suite 404, Hackensack, NJ 07601 , hereinafter referred to as the Grantee.

WITNESSETH, that the said Grantor, for and in consideration of the sum of FIVE HUNDRED THOUSAND DOLLARS ($500,000) lawful money of the United States of America, unto it well and truly paid by the said Grantee, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, Grantor does by these presents, remise, release and forever quitclaim unto the said Grantee, the heirs or successors and assigns of the said Grantee, all right, title and interest of the said Grantor of, in and to the Premises as more particularly described on Exhibit 'A', pages 1 of 4 through 4 of 4, appended hereto and made a part hereof.

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, permanent, perpetual, exclusive, assignable and unrestricted easements and rights for any and all existing sewer, gas and water lines, poles, pipes, wires, cables, power, signal and communication lines, fiber optic lines, telecommunication lines and all their appurtenances, hereinafter referred to as "facilities", located in, on, under, over, above, beneath the surface, across or through the Premises; and together with the right to use, maintain, repair, replace, renew, rehabilitate and remove said facilities and their appurtenances.

UNDER and SUBJECT, however, to (1) whatever rights the public may have to the use of any roads, alleys, bridges or streets crossing the Premises, (2) any streams, rivers, creeks and water ways passing under, across or through the Premises, and (3) any easements or agreements of record or otherwise affecting the Premises, and to the state of facts which a personal inspection or accurate survey would disclose, and to any pipes, wires, poles, cables, culverts, drainage courses or systems and their appurtenances now existing and remaining in, on, under, over, across and through the Premises, together with the right to maintain, repair, renew, replace, use and remove same.

THIS INSTRUMENT is executed and delivered by Grantor, and is accepted by Grantee, subject to the covenants set forth below, which shall be deemed part of the consideration of this conveyance and which shall run with the land and be binding upon, and inure to the benefit of, the respective heirs, legal representatives, successors and assigns of Grantor and Grantee. Grantee hereby knowingly, willingly, and voluntarily waives the benefit of any rule, law, custom, or statute of the State of New Jersey now or hereafter in force with respect to the covenants set forth below:

Robert W. Ryan

TAX REFERENCE:
Block 415, Lot 50

THIS INSTRUMENT PREPARED BY:
Robert W. Ryan
Consolidated Rail Corporation
2001 Market Street – 8th Floor
Philadelphia, PA 19103

A COPY OF THIS DEED HAS BEEN SENT TO ASSESSOR'S OFFICE

BK:07615 PG:00289

(1.) Grantor shall neither be liable or obligated to construct or maintain any fence or similar structure between the Premises and adjoining land of Grantor nor shall Grantor be liable or obligated to pay for any part of the cost or expense of constructing or maintaining any fence or similar structure, and Grantee hereby forever releases Grantor from any loss or damage, direct or consequential, that may be caused by or arise from the lack or failure to maintain any such fence or similar structure.

(2.) Grantee hereby forever releases Grantor from all liability for any loss or damage, direct or consequential, to the Premises and to any buildings or improvements now or hereafter erected thereon and to the contents thereof, which may be caused by or arise from the normal operation, maintenance, repair, or renewal of Grantor's railroad, or which may be caused by or arise from vibration resulting from the normal operation, maintenance, repair or renewal thereof.

(3.) A. Allocation of Specific Obligations to Remediate.
The parties shall, as between themselves, allocate obligations pertaining to any Remediation with respect to the Premises in accordance with this Section, without regard to considerations of fault, failure or negligence.

(i) Grantee shall be responsible after the date of this Deed for any Remediation arising from the existence or presence of any contamination in, on or about the Premises, including without limitation, any Hazardous Substances, except as specifically provided otherwise in Subsection A(ii) below.

(ii) Grantor shall be responsible for Remediation of Hazardous Substances in, on or about the Premises, provided that such Hazardous Substances: (1) resulted from a condition created by Grantor during the time the Premises was owned by Grantor; and (2) are a violation of applicable environmental laws or regulations in effect and as interpreted on the date of this Deed. Notwithstanding the aforesaid, Grantor shall not be liable for any Remediation resulting from any condition: (a) that Grantee had knowledge of or reasonable basis to suspect as of the date of this Deed; or (b) that Grantee could have discovered its presence upon the Premises by a duly diligent examination of the Premises or public records related thereto; or (c) which Grantee has failed to immediately notify Grantor of as provided for below. Grantor's liability for any Remediation for which it is otherwise responsible hereunder shall be no greater than that resulting from the condition of the Premises existing as of the date of this Deed regardless of any increase in Remediation costs or liability created by or resulting from events occurring after the date of this Deed, including the passage of time.

(iii) If at any time after the date of this Deed, any Hazardous Substances are discovered which are or may be the responsibility of Grantor to Remediate pursuant to Subsection A(ii) above, then Grantee shall immediately notify Grantor of such Hazardous Substances, and Grantor shall have the opportunity and right to investigate, determine its responsibility therefor, determine in connection with appropriate governmental or regulatory bodies the appropriate response or remedy for such Hazardous Substances and Remediate, with its own forces or contractors and at its own expense, such Hazardous Substances to the satisfaction of appropriate regulatory bodies or to the additional extent deemed appropriate by Grantor. Grantor shall only be obligated to Remediate such Hazardous Substances to the extent that would be required for the now existing or most recent use of the Premises by Grantor, regardless of the current or proposed use of the Premises by Grantee. Grantee shall grant such rights of entry or other rights to Grantor, upon reasonable terms and without compensation, as may be necessary to allow Grantor to perform the inspections, remediation or other actions necessary to comply with this Subsection. In the event of a dispute concerning Grantor's responsibility for any Remediation hereunder, the parties shall cooperate to resolve such dispute as quickly as possible, and Grantee, unless required by valid judicial or regulatory order to take immediate action to Remediate a specific condition, shall, during the resolution of such dispute, take no actions inconsistent with Grantor's right to seek a determination from the appropriate regulatory or judicial body of the remedy required by law and to Remediate the Hazardous Substances with its own forces or contractors. Grantor shall not be liable to Grantee for any damages, costs or expenses incurred as a result of such Remediation, except that if Grantee is required by valid judicial or administrative order as provided above to take immediate action to Remediate any Hazardous Substances which are later determined

BK=07615 PG=00290

to be the responsibility of Grantor pursuant to this Subsection, Grantee shall be able to recover its actual and reasonable costs from Grantor.

B. Definition of "Hazardous Substance(s)". "Hazardous Substance(s)", as used in this Deed, shall mean any material or substance that is defined or classified as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601(14)) or Section 311 of the Federal Water Pollution Control Act (33 U.S.C. §1321); a "hazardous waste" pursuant to Section 1004 or 3001 of the Resource Conservation and Recovery Act (42 U.S.C. §§6903, 6921); a toxic pollutant under Section 307(a)(1) of the Federal Water Pollution Control Act (33 U.S.C. §1317(a)(1)); a "hazardous air pollutant" under Section 112 of the Clean Air Act (42 U.S.C. §7412); or a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. App. §1802(4)).

C. Definition of "Remediate" and "Remediation". "Remediate" or "Remediation", as used in this Deed, shall mean, any reasonable investigation and the formulation and implementation of any remedial action, containment, cleanup, response, treatment, removal, mitigation, abatement, elimination or control of any contamination.

D. Indemnity. The party made responsible by this Section for any Remediation shall: (1) satisfy said obligations; and (2) indemnify, defend and hold the other party (and its directors, officers, employees and agents) harmless from and against any claims, liabilities, judgments, settlements, costs and expenses (including without limitation, reasonable attorneys' fees) arising out of or in connection with said Remediation.

E. Release. As a material part of the consideration to Grantor for the conveyance of the Premises, Grantee hereby expressly and irrevocably releases and forever discharges, and by these presents does, for its successors and assigns, release and forever discharge Grantor (including, without limitation, its directors, officers, employees, and agents) from any and all actions, suits, controversies, damages (compensatory, punitive or consequential), judgments, claims and demands whatsoever, in law, or in equity, which Grantee ever had, now has, or which it or its successors and assigns hereafter can, shall or may have against Grantor, arising out of or in connection with the presence of any contamination on the Premises, including without limitation, any Hazardous Substances, except to the extent Grantor fails to comply with its obligations set forth in Subsection A(ii) above, or Grantee is entitled to recover the cost of any Remediation pursuant to Subsection A(ii). Grantee shall indemnify, defend and hold Grantor harmless from and against any and all claims, liabilities, judgments, settlements, costs and expenses (including without limitation, reasonable attorneys' fees) arising out of or in connection with Grantee's prosecution of any of its legal remedies against any third party who might have concurring or joint liability for matters for which Grantee has released Grantor pursuant to this Subsection. Each party expressly waives, to the extent it lawfully may do so: (i) the benefits of any statute that would relieve it of any obligations that it has assumed under this Section, and (ii) any defense predicated on alleged misrepresentations of fact or the nondisclosure of any fact.

(4.) Should a claim adverse to the title hereby quitclaimed be asserted and/or proved, no recourse shall be had against the Grantor herein.

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, permanent, perpetual, exclusive, unrestricted and assignable easements and rights for any and all existing signboards and their appurtenances located on the Premises; together with the necessary; easements and rights for any necessary electric service lines and their appurtenances needed for illuminating said signboards; and together with rights and easements to construct, use, maintain, modify, enlarge, repair, renew, replace, rehabilitate and remove said signboards; and together with the right of immediate and unimpeded ingress and egress on, over, across, and through the Premises for the purposes aforesaid; and further together with the exclusive right to sell and assign such rights and to retain any and all revenues, income, charges, considerations and fees derived therefrom.

BK-07815 PG-00291

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of it, the said Grantor as well at law as in equity or otherwise howsoever of, in and to the same and every part thereof, UNDER and SUBJECT and EXCEPTING AND RESERVING as aforesaid.

TO HAVE AND TO HOLD, all and singular the said Premises, together with the appurtenances, unto the Grantee, the heirs or successors and assigns of the Grantee, forever, UNDER and SUBJECT and provided as aforesaid.

THE words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees", respectively, whenever the sense of this instrument so requires and whether singular or plural, such words shall be deemed to include at all times and in all cases the heirs, legal representatives or successors and assigns of the Grantor and Grantee.

IN WITNESS WHEREOF, the Grantor has caused this Indenture to be signed in its name and behalf

BK:07615 PG:00292

'EXHIBIT A

CASE NO. 72931-G

A COPY OF THIS DEED HAS BEEN SENT TO ASSESSOR'S OFFICE

ALL THAT CERTAIN piece or parcel of land of the Grantor, together with all of the improvements thereon, being a portion of the line of railroad known as the Penn Central Harsimus Branch and identified as Line Code 1420, situate in the City of Jersey City, County of Hudson and State of New Jersey, said parcel being identified as Block 415, Lot 50, and which is bounded and described in accordance with a Plat of Survey, identified as Project No. 0303332, dated December 29, 2004 and revised through February 23, 2005, prepared by Glen J. Lloyd, Professional Land Surveyor, New Jersey License No. GS37598, attached hereto and made a part hereof, as follows.

BEING a part or portion of the same premises which Fairfax Leary, as Trustee of the Property of the United New Jersey Railroad and Canal Company, Debtor, by Conveyance Document No. UNJ-CRC-RP-4, dated March 31, 1976 and recorded on October 10, 1979 in the Recorder's Office of Hudson County, New Jersey, in Liber 3286 at page 757&c.; and also Filed and Recorded in the Recorder's Office of the Secretary of State for the State of New Jersey on October 12, 1978, granted and conveyed unto Consolidated Rail Corporation.

BK=07615 PG=00293

SCHOOR DEPALMA
Engineers and Consultants

February 23, 2005

Project No. 030333202

A COPY OF THIS DEED HAS BEEN SENT TO ASSESSOR'S OFFICE

LEGAL DESCRIPTION
LOT 50, BLOCK 415
CITY OF JERSEY CITY
HUDSON COUNTY, NEW JERSEY

A parcel of land described herein, known and designated as Lot 50, Block 415, City of Jersey City, Hudson County, New Jersey, as shown on a certain map entitled, "Boundary Survey, Lot M - Block 212, Lot 50A - Block 247, Lot 50A - Block 280, Lot 50A - Block 317.5, Lot 50A - Block 354.1, Lot 50 - Block 389.1, Lot 50 - Block 415 & Lot 18A - Block 446," prepared by Schoor DePalma, dated December 29, 2004 and revised to February 23, 2005, and being more particularly described as follows:

Beginning at a point in the westerly sideline of Brunswick Street (60 foot wide right-of-way), distant south 06 degrees 22 minutes 03 seconds west, 26.00 feet along said sideline from its intersection with the southerly sideline of Sixth Street (60 foot wide right-of-way) and running; thence,

1. Along said westerly sideline of Brunswick Street, south 06 degrees 22 minutes 03 seconds west, 74.00 feet; thence,

2. North 83 degrees 44 minutes 57 seconds west, 386.55 feet to a point in the northeasterly sideline of Newark Avenue (66 foot wide right-of-way); thence,

3. Along said northeasterly sideline, north 39 degrees 51 minutes 08 seconds west, 18.62 feet to a point of intersection with the easterly sideline of Division Street (60 foot wide right-of-way); thence,

4. Along said easterly sideline, north 06 degrees 22 minutes 03 seconds east, 30.59 feet; thence,

Along a description of land recorded in the Hudson County Clerk's Office in Deed Book 3471, Page 423, known and designated as Tax Map Lot 51, Block 415 the following three courses;

5. South 83 degrees 44 minutes 57 seconds east, 229.00 feet; thence,

6. North 06 degrees 22 minutes 03 seconds east, 30.50 feet; thence,

7. South 83 degrees 44 minutes 57 seconds east, 171.00 feet to the point or place of beginning.

BK=07615 PG=00294

Containing 22,529 square feet more or less / 0.517 acres of land more or less as described herein.

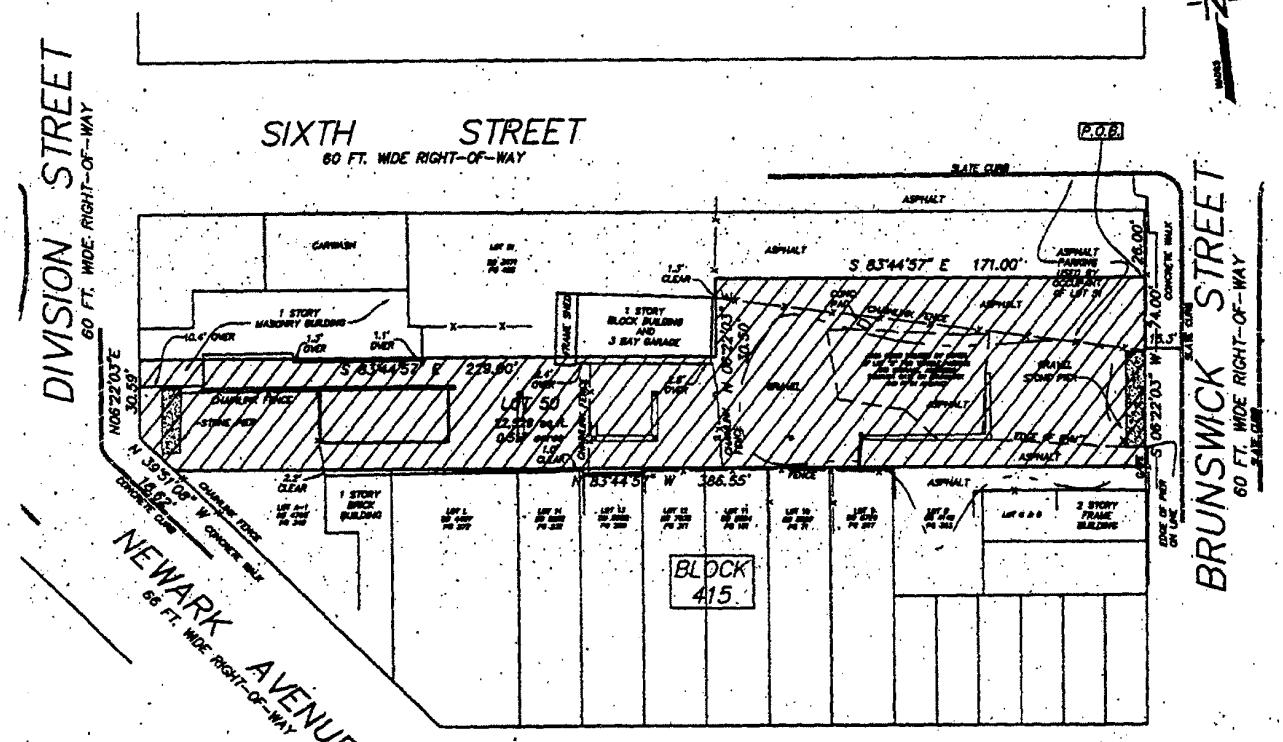
Subject to all existing easements, rights-of-way and reservations of record.

Glen J. Lloyd, P.L.S.
N.J. Professional Land Surveyor
New Jersey License No. GS37598

n:\project\2003\0303332\02\m&bs\lot 50, block 415.doc

BK=07615 PG=00295

A COPY OF THIS FILE
WAS SENT TO ASSESSOR'S OFFICE



REFERENCES:

1. DEED RECORDED IN THE HUDSON COUNTY CLERK'S OFFICE IN DEED BOOK 3886, PAGE 707 5TH EXCEPTION RECORDED IN DEED BOOK 3886, PAGE 771.

2. MAP ENTITLED "EASEMENTS TO BE GRANTED BY CONSOLIDATED RAIL CORPORATION TO NEW JERSEY DEPARTMENT OF TRANSPORTATION" AND "NEW JERSEY DEPARTMENT OF TRANSPORTATION, BERGENLINE STREET, MAIN SECOND DIRECT TO PAVONIA AVENUE, PARCELS C3A, C3B, D3 & C3A, CITY OF JERSEY CITY, COUNTY OF HUDSON, SCALE 1" = 40', DECEMBER 1, 1977" WHICH IS REFERENCED IN DEED RECORDED IN THE HUDSON COUNTY CLERK'S OFFICE IN DEED BOOK 3886, PAGE 284.

3. MAP ENTITLED "SURVEY OF PROPERTY SURVEYED FOR JERSEY CITY REDEVELOPMENT AGENCY, SITUATED IN JERSEY CITY, N.J., SCALE 1 INCH = 20 FEET, SURVEYED 1/01-11/01"

4. MAP ENTITLED "RIGHT-OF-WAY AND TRACK MAP, UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, STATION 0+00 TO STATION 20+00.7, DATED JUNE 30, 1916 AND REVISED TO DECEMBER 31, 1935.

5. MAP ENTITLED "STATION MAP — LANDS, UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, HUDSONLINE (MAIN), OPERATED BY THE PENNSYLVANIA RAILROAD COMPANY, DATED JUNE 30, 1916 AND REVISED TO DECEMBER 31, 1935.

6. MAP ENTITLED NEW JERSEY TRANSPORT AUTHORITY, NEW JERSEY TRANSIT, NEWARK BAY — HUDSON COUNTY EXTENSION, PARCEL PROPERTY MAP, CITY OF JERSEY CITY, HUDSON COUNTY", SHEETS 23 AND 24, REVISED TO 1995.

7. MAP ENTITLED "MAP OF THAT PART OF THE TOWN OF JERSEY HEREINAFTER CALLED JERSEY CITY, DATED 1804 AND FILED IN THE HUDSON COUNTY CLERK'S OFFICE JUNE 16, 1828.

8. MAP ENTITLED "MAP OF PARTS OF LOTS AND PARCELS OF LAND SITUATED IN THE (3RD, THIRD AND FOURTH (NOW FOURTH, FIFTH AND SIXTH) WARDS OF JERSEY CITY, FORMERLY CALLED PAVONIA AND FILED IN THE HUDSON CITY OF JERSEY CITY, IN THE COUNTY OF HUDSON, IN THE STATE OF NEW JERSEY, SHOWING THE PARTITION OF THE SAME AMONG THE HEIRS OF JOHN R. BOLES, DECEASED", DATED MAY, 1859 AND FILED IN THE HUDSON COUNTY CLERK'S OFFICE OCTOBER 24, 1861.

NOTES:

1. THIS SURVEY IS PREPARED FOR THE EXCLUSIVE USE OF THE TITLE HEREON AND UNDERSIGNED. THE UNDERSIGNED WILL NOT BE RESPONSIBLE FOR ANY ASSIGNMENT OF THIS SURVEY TO ANY PERSON NOT SO NAMED.

2. SUBJECT TO TRUE FACTS THAT AN ACCURATE TITLE SEARCH MAY DISCLOSE.

3. SUBJECT TO ORDINANCES AND RULES OF CITY OF HOBOKEN.

4. UNDERGROUND UTILITIES AND PIPE SYSTEMS SHOWN, THE UNDERSIGNED MAKES NO GUARANTEE THAT UNDERGROUND UTILITIES OR STRUCTURES ARE SHOWN IN THEIR ENTIRETY OR EXACT LOCATION THEREOF.

5. ALL MONUMENTS FOUND AND IMPROVEMENTS NOT TO SET GRANITE MONUMENTS AND BRASS MARKERS UNLESS NOTED OTHERWISE.

6. THIS SURVEY IS ONLY VALID WHEN EMBOSSED SEAL IS AFFIXED.

7. ENVIRONMENTAL HAZARDS IN THE GROUND INCLUDING BURIAL OF WASTE MATERIALS AS DETERMINED BY ANY ENVIRONMENTAL OR GROUND SURVEYS IS NOT SHOWN.

8. INCREASED CONGESTION OF IMPROVEMENTS IN THESE AREAS ARE ACKNOWLEDGED TO EXIST HEREON.

I HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR LICENSED TO PRACTICE IN THE STATE OF NEW JERSEY, AND THAT THIS PLAN IS BASED ON AN ACTUAL FIELD SURVEY PERFORMED UNDER MY IMMEDIATE SUPERVISION. I FURTHER DECLARE TO THE BEST OF MY PROFESSIONAL KNOWLEDGE AND BELIEF, THAT THIS PLAN IS A CORRECT AND ACCURATE REPRESENTATION OF CONDITIONS EXISTING AS OF THIS DATE HEREON.

CERTIFICATIONS:
415 BRUNSWICK STREET, L.L.C.
DARIENE R. ALAMO, ESQ.
NORTH TITLE INC.
CHICAGO TITLE INSURANCE COMPANY

BK=07615 PG=00296

EXHIBIT "A", Page 4 of 4

Case No. 72931G
FILENAME: 14200013B

—NOTICE—
THIS DRAWING AND ALL INFORMATION CONTAINED HEREON IS AVAILABLE FOR THE USE ONLY OF THE PARTY FOR WHOM THE SURVEY WAS PREPARED OR TO WHOM IT IS CERTIFIED.
THIS DRAWING MAY NOT BE COPIED, REVISED, ALTERED, INTERPRETED OR REPRODUCED BY ANY MEANS, FOR ANY OTHER PURPOSE, WITHOUT THE WRITTEN CONSENT OF SCHOOR DEPALMA INC.
COPYRIGHT 2004 SCHOOR DEPALMA INC. ALL RIGHTS RESERVED

GLEN J. LLOYD
PROFESSIONAL LAND SURVEYOR, N.J. LIC. No. 05375

SCHOOR DEPALMA
Engineers and Consultants
Cert. Of Authorization 24GA27928200
30 WATERVIEW BOULEVARD
P.O. BOX 5248 PARSIPPANY, NJ 07054
TEL. (973)299-7170 FAX (973)334-6899
MANALAPAN • WHITE PLAINS • ENG. HARBOR • ERMA • CLIFTON • ORAN • WILLIAMSVILLE
PARSIPPANY • PHILADELPHIA • PHILLIPSBURG • STAFFORD • VOORHEES

BOUNDARY SURVEY
LOT 50 - BLOCK 415
PROPERTY OF CONRAIL CORPORATION
JERSEY CITY HUDSON COUNTY, NEW JERSEY

JOB NO. 0303332
SCALE 1"=30'
DATE 12/29/04
DRAWN BY G.S.
SHEET NO. 1 of 1

GIT/REP-3
(11-04)

State of New Jersey

Seller's Residency Certification/Exemption

(C.55, P.L. 2004)

(Please Print or Type)

SELLER(S) INFORMATION (See Instructions, page 2):

Name(s) **Consolidated Rail Corporation**

Current Resident Address **405 Division Street, Suite 215**

City, Town, Post Office **Elizabeth** State **NJ** Zip Code **07201**

PROPERTY INFORMATION (Brief Property Description):

Block(s) **415** Lot(s) **50** Qualifier

Street Address **Brunswick Street and Sixth Street**

City, Town, Post Office **Jersey City** State **NJ** Zip Code **07302**

Seller's Percentage of Ownership **100%** Consideration **$500,000.00** Closing Date **7/13/05**

SELLER ASSURANCES (Check the Appropriate Box):

1. ☐ I am a resident taxpayer of the State of New Jersey pursuant to N.J.S.A. 54A:1-1 et seq. and will file a resident gross income tax return and pay any applicable taxes on any gain or income from the disposition of this property.
2. ☐ The real property being sold or transferred is used exclusively as my principal residence within the meaning of section 121 of the Federal Internal Revenue Code of 1986, 26 U.S.C. s. 121.
3. ☐ I am a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration.
4. ☐ Seller, transferor or transferee is an agency or authority of the United States of America, an agency or authority of the State of New Jersey, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.
5. ☒ Seller is not individual, estate or trust and as such not required to make an estimated payment pursuant to N.J.S.A.54A:1-1 et seq.
6. ☐ The total consideration for the property is $1,000 or less and as such, the seller is not required to make an estimated payment pursuant to N.J.S.A. 54A:5-1-1 et seq.
7. ☐ The gain from the sale will not be recognized for Federal income tax purposes under I.R.C. Section 721, 1031, 1033 or is a cemetery plot. (CIRCLE THE APPLICABLE SECTION.) If such section does not ultimately apply to this transaction, the seller acknowledges the obligation to file a New Jersey income tax return for the year of the sale.

SELLER(S) DECLARATION:

The undersigned understands that this declaration and its contents may be disclosed or provided to the New Jersey Division of Taxation and that any false statement contained herein could be punished by fine, imprisonment, or both. I furthermore declare that I have examined this declaration and, to the best of my knowledge and belief, it is true, correct and complete.

July 13, 2005
Date

Signature **Robert W. Ryan, Director Real Estate**
(Seller) Please indicate if Power of Attorney or Attorney in Fact

July 13, 2005
Date

Signature **Consolidated Rail Corporation**
(Seller) Please indicate if Power of Attorney or Attorney in Fact

Powered by HotDocs®

by its Director-Real Estate duly authorized thereunto and has caused its corporate seal to be hereunto affixed and attested by its Corporate Secretary, the day and year first above written.

SEALED and DELIVERED in the presence of us:

Carol A. Putiri
CAROL A. PUTIRI

CONSOLIDATED RAIL CORPORATION
By:

Robert W. Ryan
Director-Real Estate

ATTEST:

Carol A. Putiri
CAROL A. PUTIRI

Jonathan M. Broder
Corporate Secretary

COMMONWEALTH OF PENNSYLVANIA)
: SS
COUNTY OF Philadelphia)

BE IT REMEMBERED, that on this 10th day of July in the year Two Thousand Five (2005), before me, the subscriber, a Notary Public for the Commonwealth and County aforesaid, personally appeared Robert W. Ryan, Director-Real Estate of CONSOLIDATED RAIL CORPORATION, the corporate Grantor named in the within Instrument, who I am satisfied is the person who has signed the within Instrument on behalf of said Corporation; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as such officer aforesaid; that the foregoing Instrument is the voluntary act and deed of said Corporation, made by virtue of authority from its Board of Directors; and that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by the within Instrument as such consideration is FIVE HUNDRED THOUSAND Dollars ($500,000).

Jennifer A. Burtulato
Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
JENNIFER A. BURTULATO, Notary Public
City of Philadelphia, Phila. County
My Commission Expires October 11, 2008

RECORD & RETURN TO:
ALAMPI & DEMARAIS
ONE UNIVERSITY PLAZA
HACKENSACK NJ. 07601

BK=07615 PG=00297 - 01

A COPY OF THIS DEED HAS BEEN [illegible] OFFICE

Consideration : $500000.00 Exempt Code: S

County	State	N.P.N.R.F	Total
500.50	1249.50	525.00	4175.00
General	Public	Extra	1% Tax
900.00	250.00	750.00	0.00

QUITCLAIM DEED

Case 72931-H

07/18/2005 09:44A
BARBARA A. DONNELLY
HUDSON COUNTY
REGISTER OF DEEDS
Receipt No. 26

THIS DEED, made the 12th day of July, in the year of our Lord Two Thousand Five (2005),

BETWEEN CONSOLIDATED RAIL CORPORATION, a Corporation of the Commonwealth of Pennsylvania, having an office at Two Commerce Square, 2001 Market Street, 8TH Floor, Philadelphia, Pennsylvania, 19103, hereinafter referred to as the Grantor, and **446 NEWARK AVENUE, L.L.C.**, a Limited Liability Company of the State of New Jersey, having a mailing address in care of Carmine R. Alampi, Esq., One University Plaza, Suite 404, Hackensack, NJ 07601 , hereinafter referred to as the Grantee.

0000011001
RECEIVED
AND
RECORDED
DEE

WITNESSETH, that the said Grantor, for and in consideration of the sum of FIVE HUNDRED THOUSAND DOLLARS ($500,000) lawful money of the United States of America, unto it well and truly paid by the said Grantee, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, Grantor does by these presents, remise, release and forever quitclaim unto the said Grantee, the heirs or successors and assigns of the said Grantee, all right, title and interest of the said Grantor of, in and to the Premises as more particularly described on Exhibit 'A', pages 1 of 3 through 3 of 3, appended hereto and made a part hereof.

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, permanent, perpetual, exclusive, assignable and unrestricted easements and rights for any and all existing sewer, gas and water lines, poles, pipes, wires, cables, power, signal and communication lines, fiber optic lines, telecommunication lines and all their appurtenances, hereinafter referred to as "facilities", located in, on, under, over, above, beneath the surface, across or through the Premises; and together with the right to use, maintain, repair, replace, renew, rehabilitate and remove said facilities and their appurtenances; and further together with the right of unimpeded ingress and egress in, on, over, across and through the Premises for the aforesaid purposes, as well as for access to Grantor's remaining property west of Block 446, Lot 18A from Newark Avenue.

UNDER and SUBJECT, however, to (1) whatever rights the public may have to the use of any roads, alleys, bridges or streets crossing the Premises, (2) any streams, rivers, creeks and water ways passing under, across or through the Premises, and (3) any easements or agreements of record or otherwise affecting the Premises, and to the state of facts which a personal inspection or accurate survey would disclose, and to any pipes, wires, poles, cables, culverts, drainage courses or systems and their appurtenances now existing and remaining in, on, under, over, across and through the Premises, together with the right to maintain, repair, renew, replace, use and remove same.

THIS INSTRUMENT is executed and delivered by Grantor, and is accepted by Grantee, subject to the covenants set forth below, which shall be deemed part of the consideration of this conveyance and which shall run with the land and be binding upon, and inure to the benefit of, the respective heirs, legal representatives, successors and assigns of Grantor and Grantee. Grantee hereby knowingly, willingly, and voluntarily waives the benefit of any rule, law, custom, or statute of the State of New Jersey now or hereafter in force with respect to the covenants set forth below:

TAX REFERENCE:
Block 446, Lot 18A

THIS INSTRUMENT PREPARED BY:
Robert W. Ryan
Consolidated Rail Corporation
2001 Market Street – 8th Floor
Philadelphia, PA 19103

BK:07615 PG:00280

(1.) Grantor shall neither be liable or obligated to construct or maintain any fence or similar structure between the Premises and adjoining land of Grantor nor shall Grantor be liable or obligated to pay for any part of the cost or expense of constructing or maintaining any fence or similar structure, and Grantee hereby forever releases Grantor from any loss or damage, direct or consequential, that may be caused by or arise from the lack or failure to maintain any such fence or similar structure.

(2.) Grantee hereby forever releases Grantor from all liability for any loss or damage, direct or consequential, to the Premises and to any buildings or improvements now or hereafter erected thereon and to the contents thereof, which may be caused by or arise from the normal operation, maintenance, repair, or renewal of Grantor's railroad, or which may be caused by or arise from vibration resulting from the normal operation, maintenance, repair or renewal thereof.

(3.) A. Allocation of Specific Obligations to Remediate.
The parties shall, as between themselves, allocate obligations pertaining to any Remediation with respect to the Premises in accordance with this Section, without regard to considerations of fault, failure or negligence.

(i) Grantee shall be responsible after the date of this Deed for any Remediation arising from the existence or presence of any contamination in, on or about the Premises, including without limitation, any Hazardous Substances, except as specifically provided otherwise in Subsection A(ii) below.

(ii) Grantor shall be responsible for Remediation of Hazardous Substances in, on or about the Premises, provided that such Hazardous Substances: (1) resulted from a condition created by Grantor during the time the Premises was owned by Grantor; and (2) are a violation of applicable environmental laws or regulations in effect and as interpreted on the date of this Deed. Notwithstanding the aforesaid, Grantor shall not be liable for any Remediation resulting from any condition: (a) that Grantee had knowledge of or reasonable basis to suspect as of the date of this Deed; or (b) that Grantee could have discovered its presence upon the Premises by a duly diligent examination of the Premises or public records related thereto; or (c) which Grantee has failed to immediately notify Grantor of as provided for below. Grantor's liability for any Remediation for which it is otherwise responsible hereunder shall be no greater than that resulting from the condition of the Premises existing as of the date of this Deed regardless of any increase in Remediation costs or liability created by or resulting from events occurring after the date of this Deed, including the passage of time.

(iii) If at any time after the date of this Deed, any Hazardous Substances are discovered which are or may be the responsibility of Grantor to Remediate pursuant to Subsection A(ii) above, then Grantee shall immediately notify Grantor of such Hazardous Substances, and Grantor shall have the opportunity and right to investigate, determine its responsibility therefor, determine in connection with appropriate governmental or regulatory bodies the appropriate response or remedy for such Hazardous Substances and Remediate, with its own forces or contractors and at its own expense, such Hazardous Substances to the satisfaction of appropriate regulatory bodies or to the additional extent deemed appropriate by Grantor. Grantor shall only be obligated to Remediate such Hazardous Substances to the extent that would be required for the now existing or most recent use of the Premises by Grantor, regardless of the current or proposed use of the Premises by Grantee. Grantee shall grant such rights of entry or other rights to Grantor, upon reasonable terms and without compensation, as may be necessary to allow Grantor to perform the inspections, remediation or other actions necessary to comply with this Subsection. In the event of a dispute concerning Grantor's responsibility for any Remediation hereunder, the parties shall cooperate to resolve such dispute as quickly as possible, and Grantee, unless required by valid judicial or regulatory order to take immediate action to Remediate a specific condition, shall, during the resolution of such dispute, take no actions inconsistent with Grantor's right to seek a determination from the appropriate regulatory or judicial body of the remedy required by law and to Remediate the Hazardous Substances with its own forces or contractors. Grantor shall not be liable to Grantee for any damages, costs or expenses incurred as a result of such Remediation, except that if Grantee is required by valid judicial or administrative order as provided

above to take immediate action to Remediate any Hazardous Substances which are later determined to be the responsibility of Grantor pursuant to this Subsection, Grantee shall be able to recover its actual and reasonable costs from Grantor.

B. Definition of "Hazardous Substance(s)". "Hazardous Substance(s)", as used in this Deed, shall mean any material or substance that is defined or classified as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601(14)) or Section 311 of the Federal Water Pollution Control Act (33 U.S.C. §1321); a "hazardous waste" pursuant to Section 1004 or 3001 of the Resource Conservation and Recovery Act (42 U.S.C. §§6903, 6921); a toxic pollutant under Section 307(a)(1) of the Federal Water Pollution Control Act (33 U.S.C. §1317(a)(1)); a "hazardous air pollutant" under Section 112 of the Clean Air Act (42 U.S.C. §7412); or a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. App. §1802(4)).

C. Definition of "Remediate" and "Remediation". "Remediate" or "Remediation", as used in this Deed, shall mean, any reasonable investigation and the formulation and implementation of any remedial action, containment, cleanup, response, treatment, removal, mitigation, abatement, elimination or control of any contamination.

D. Indemnity. The party made responsible by this Section for any Remediation shall: (1) satisfy said obligations; and (2) indemnify, defend and hold the other party (and its directors, officers, employees and agents) harmless from and against any claims, liabilities, judgments, settlements, costs and expenses (including without limitation, reasonable attorneys' fees) arising out of or in connection with said Remediation.

E. Release. As a material part of the consideration to Grantor for the conveyance of the Premises, Grantee hereby expressly and irrevocably releases and forever discharges, and by these presents does, for its successors and assigns, release and forever discharge Grantor (including, without limitation, its directors, officers, employees, and agents) from any and all actions, suits, controversies, damages (compensatory, punitive or consequential), judgments, claims and demands whatsoever, in law, or in equity, which Grantee ever had, now has, or which it or its successors and assigns hereafter can, shall or may have against Grantor, arising out of or in connection with the presence of any contamination on the Premises, including without limitation, any Hazardous Substances, except to the extent Grantor fails to comply with its obligations set forth in Subsection A(ii) above, or Grantee is entitled to recover the cost of any Remediation pursuant to Subsection A(ii). Grantee shall indemnify, defend and hold Grantor harmless from and against any and all claims, liabilities, judgments, settlements, costs and expenses (including without limitation, reasonable attorneys' fees) arising out of or in connection with Grantee's prosecution of any of its legal remedies against any third party who might have concurring or joint liability for matters for which Grantee has released Grantor pursuant to this Subsection. Each party expressly waives, to the extent it lawfully may do so: (i) the benefits of any statute that would relieve it of any obligations that it has assumed under this Section, and (ii) any defense predicated on alleged misrepresentations of fact or the nondisclosure of any fact.

(4.) Should a claim adverse to the title hereby quitclaimed be asserted and/or proved, no recourse shall be had against the Grantor herein.

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, permanent, perpetual, exclusive, unrestricted and assignable easements and rights for any and all existing signboards and their appurtenances located on the Premises; together with the necessary; easements and rights for any necessary electric service lines and their appurtenances needed for illuminating said signboards; and together with rights and easements to construct, use, maintain, modify, enlarge, repair, renew, replace, rehabilitate and remove said signboards; and together with the right of immediate and unimpeded ingress and egress on, over, across, and through the Premises for

BK:07615 PG:00282

the purposes aforesaid; and further together with the exclusive right to sell and assign such rights and to retain any and all revenues, income, charges, considerations and fees derived therefrom.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of it, the said Grantor as well at law as in equity or otherwise howsoever of, in and to the same and every part thereof, UNDER and SUBJECT and EXCEPTING AND RESERVING as aforesaid.

TO HAVE AND TO HOLD, all and singular the said Premises, together with the appurtenances, unto the Grantee, the heirs or successors and assigns of the Grantee, forever, UNDER and SUBJECT and provided as aforesaid.

THE words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees", respectively, whenever the sense of this instrument so requires and whether singular or plural, such words shall be deemed to include at all times and in all cases the heirs, legal representatives or successors and assigns of the Grantor and Grantee.

IN WITNESS WHEREOF, the Grantor has caused this Indenture to be signed in its name and behalf

BK:07615 PG:00283

EXHIBIT A

CASE NO. 72931-H

A COPY OF THIS DEED
HAS BEEN SENT TO ASSESSOR'S OFFICE

ALL THAT CERTAIN piece or parcel of land of the Grantor, together with all of the improvements thereon, being a portion of the line of railroad known as the Penn Central Harsimus Branch and identified as Line Code 1420, situate in the City of Jersey City, County of Hudson and State of New Jersey, said parcel being identified as Block 446, Lot 18A, which is bounded and described in accordance with a Plat of Survey, identified as Project No. 0303332, dated December 29, 2004 and revised through February 23, 2005, prepared by Glen J. Lloyd, Professional Land Surveyor, New Jersey License No. GS37598, attached hereto and made a part hereof, as follows.

BEING a part or portion of the same premises which Fairfax Leary, as Trustee of the Property of the United New Jersey Railroad and Canal Company, Debtor, by Conveyance Document No. UNJ-CRC-RP-4, dated March 31, 1976 and recorded on October 10, 1979 in the Recorder's Office of Hudson County, New Jersey, in Liber 3286 at page 757&c.; and also Filed and Recorded in the Recorder's Office of the Secretary of State for the State of New Jersey on October 12, 1978, granted and conveyed unto Consolidated Rail Corporation.

BK=07615 PG=00284

SCHOOR DEPALMA
Engineers and Consultants

February 23, 2005

Project No. 030333202

LEGAL DESCRIPTION
LOT 18A, BLOCK 446
CITY OF JERSEY CITY
HUDSON COUNTY, NEW JERSEY

HAS BEEN SENT TO ASSESSOR'S OFFICE

A parcel of land described herein, known and designated as Lot 18A, Block 446, City of Jersey City, Hudson County, New Jersey, as shown on a certain map entitled, "Boundary Survey, Lot M - Block 212, Lot 50A - Block 247, Lot 50A - Block 280, Lot 50A - Block 317.5, Lot 50A - Block 354.1, Lot 50 - Block 389.1, Lot 50 - Block 415 & Lot 18A - Block 446," prepared by Schoor DePalma, dated December 29, 2004 and revised to February 23, 2005, and being more particularly described as follows:

Beginning at a point in the southwesterly sideline of Newark Avenue (66 foot wide right-of-way), said point being the most southeasterly corner of a description of land recorded in the Hudson County Clerk's Office in Deed Book 7052, Page 106, said land being known and designated as Tax Map Lot 18B, and running; thence,

1. Along the southwesterly sideline of Newark Avenue, south 39 degrees 51 minutes 08 seconds east, 67.80 feet; thence,

2. North 83 degrees 44 minutes 57 seconds west, 418.37 feet; thence,

3. North 06 degrees 12 minutes 18 seconds east, 58.25 feet to a point of non-tangent curvature in the most southerly line of the aforementioned Lot 18B; thence,

4. Along said Lot 18B and along a non-tangent curve to the left having a radius of 2782.42 feet, a central angle of 07 degrees 37 minutes 09 seconds, an arc length of 370.00 feet and a chord bearing and distance of south 82 degrees 00 minutes 27 seconds east, 369.73 feet to the point or place of beginning.

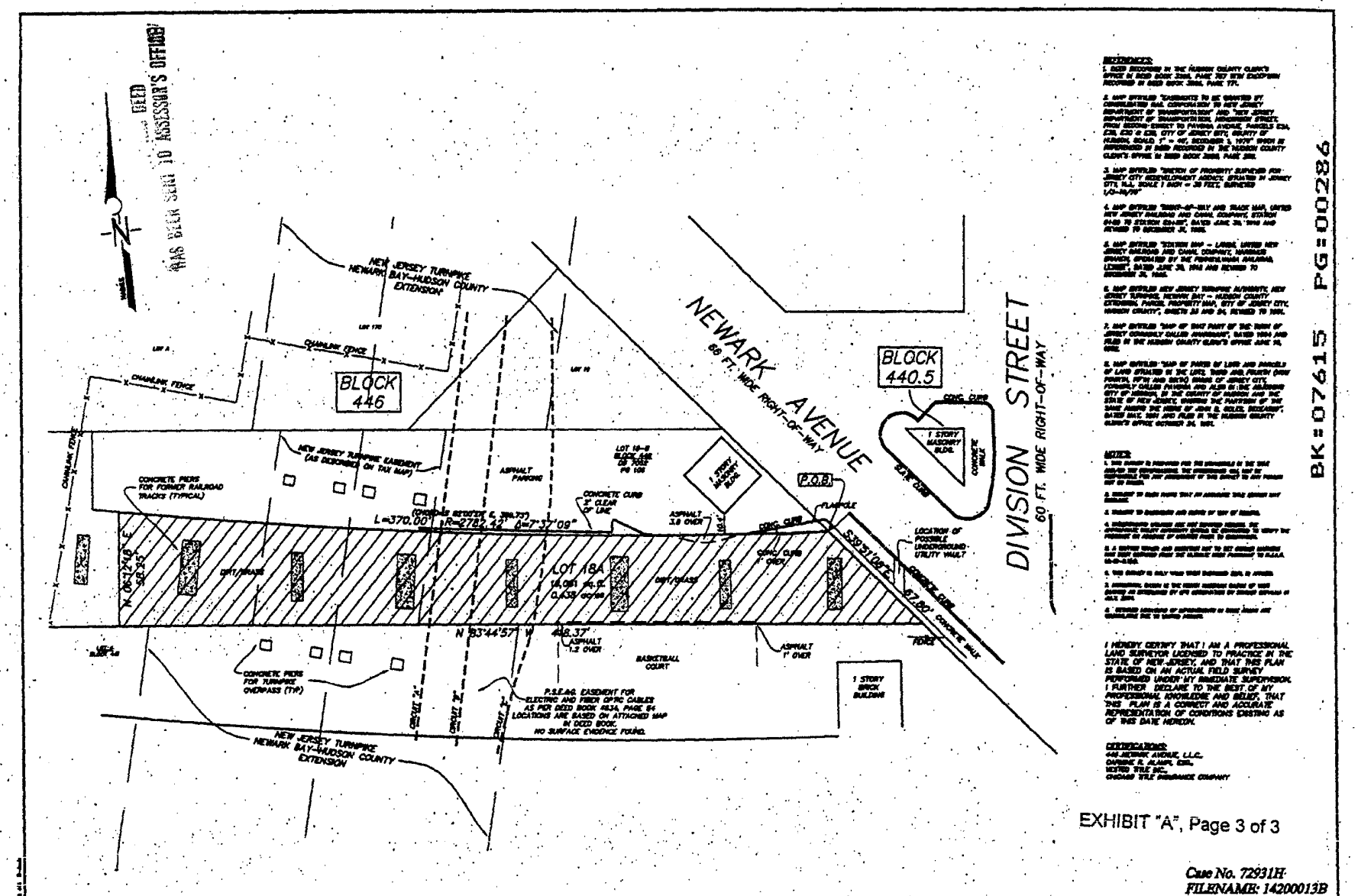
Containing 19,081 square feet more or less / 0.438 acres of land more or less as described herein.

Subject to all existing easements, rights-of-way and reservations of record.

Glen J. Lloyd, P.L.S.
N.J. Professional Land Surveyor
New Jersey License No. GS37598

n:\project\2003\0303332\02\m&bs\lot 18a.doc

BK=07615 PG=00285



BK=07615 PG=00284

EXHIBIT "A", Page 3 of 3

Case No. 72931H
FILENAME: 14200013B

—NOTICE—

GLEN J. LLOYD
PROFESSIONAL LAND SURVEYOR, N.J. LIC. No. 0837566

SCHOOR DEPALMA
Engineers and Consultants
Cert. Of Authorization 24GA27858200
30 WATERMEN BOULEVARD
P.O. BOX 5548 PARSIPPANY, NJ 07054
TEL (973)299-7970 FAX (973)334-6699
MANALAPAN • WHITE PLAINS • BAY HARBOR • BRIDGE • GLOUCESTER • JERSEY • MULLSVILLE
PARSIPPANY • PHILADELPHIA • PHILIPSBURG • STAMFORD • WOODBRIDGE

BOUNDARY SURVEY
LOT 18-A - BLOCK 446
PROPERTY OF CONRAIL CORPORATION
JERSEY CITY HUDSON COUNTY, NEW JERSEY

PROJECT NO. 0303332
SCALE 1"=30'
DATE 12/29/04
DRAWN BY G.E.
SHEET NO. 1 of 1

GIT/REP-3
(11-04)

State of New Jersey

Seller's Residency Certification/Exemption

(C.55, P.L. 2004)

(Please Print or Type)

SELLER(S) INFORMATION (See Instructions, page 2):
Name(s) **Consolidated Rail Corporation**

Current Resident Address **405 Division Street, Suite 215**

City, Town, Post Office **Elizabeth** State **NJ** Zip Code **07201**

PROPERTY INFORMATION (Brief Property Description):
Block(s) **446** Lot(s) **18 A** Qualifier

Street Address **Newark Avenue and Sixth Street**

City, Town, Post Office **Jersey City** State **NJ** Zip Code **07302**

Seller's Percentage of Ownership **100%** Consideration **$500,000.00** Closing Date **7/13/05**

SELLER ASSURANCES (Check the Appropriate Box):

1. ☐ I am a resident taxpayer of the State of New Jersey pursuant to N.J.S.A. 54A:1-1 et seq. and will file a resident gross income tax return and pay any applicable taxes on any gain or income from the disposition of this property.
2. ☐ The real property being sold or transferred is used exclusively as my principal residence within the meaning of section 121 of the Federal Internal Revenue Code of 1986, 26 U.S.C. s. 121.
3. ☐ I am a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration.
4. ☐ Seller, transferor or transferee is an agency or authority of the United States of America, an agency or authority of the State of New Jersey, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.
5. ☒ Seller is not individual, estate or trust and as such not required to make an estimated payment pursuant to N.J.S.A.54A:1-1 et seq.
6. ☐ The total consideration for the property is $1,000 or less and as such, the seller is not required to make an estimated payment pursuant to N.J.S.A. 54A:5-1-1 et seq.
7. ☐ The gain from the sale will not be recognized for Federal income tax purposes under I.R.C. Section 721, 1031, 1033 or is a cemetery plot. (CIRCLE THE APPLICABLE SECTION.) If such section does not ultimately apply to this transaction, the seller acknowledges the obligation to file a New Jersey income tax return for the year of the sale.

SELLER(S) DECLARATION:
The undersigned understands that this declaration and its contents may be disclosed or provided to the New Jersey Division of Taxation and that any false statement contained herein could be punished by fine, imprisonment, or both. I furthermore declare that I have examined this declaration and, to the best of my knowledge and belief, it is true, correct and complete.

July 13, 2005
Date

Signature **Robert W. Ryan, Director Real Estate**
(Seller) Please indicate if Power of Attorney or Attorney in Fact

July 13, 2005
Date

Signature **Consolidated Rail Corporation**
(Seller) Please indicate if Power of Attorney or Attorney in Fact

1647 – Seller's Residency Certification/Exemption
GIT/REP-3
Rev. 11/04 P1/05

Powered by HotDocs®

Printed by ALL-STATE LEGAL®
A Division of ALL-STATE International, Inc.
www.aslegal.com 800.222.0510

BK=07615 PG=00287

by its Director-Real Estate duly authorized thereunto and has caused its corporate seal to be hereunto affixed and attested by its Corporate Secretary, the day and year first above written.

SEALED and
DELIVERED in the
presence of us:

Carol A. Putiri
CAROL A. PUTIRI

CONSOLIDATED RAIL CORPORATION
By:

Robert W. Ryan
Director-Real Estate

ATTEST:

Carol A. Putiri
CAROL A. PUTIRI

Jonathan M. Broder
Corporate Secretary

COMMONWEALTH OF PENNSYLVANIA)
: SS
COUNTY OF Philadelphia)

BE IT REMEMBERED, that on this 14th day of July in the year Two Thousand Five (2005), before me, the subscriber, a Notary Public for the Commonwealth and County aforesaid, personally appeared Robert W. Ryan, Director-Real Estate of CONSOLIDATED RAIL CORPORATION, the corporate Grantor named in the within Instrument, who I am satisfied is the person who has signed the within Instrument on behalf of said Corporation; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as such officer aforesaid; that the foregoing Instrument is the voluntary act and deed of said Corporation, made by virtue of authority from its Board of Directors; and that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by the within Instrument as such consideration is FIVE HUNDRED THOUSAND Dollars ($500,000).

Jennifer A. Burtulato
Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
JENNIFER A. BURTULATO, Notary Public
City of Philadelphia, Phila. County
My Commission Expires October 11, 2008

RECORD & RETURN TO
ALAMPI & DEMARRAIS
ONE UNIVERSITY PLAZA
HACKENSACK NJ 07601

BK:07615 PG:00288

Exhibit C: Appendix II

RECEIVED
P05-116
AUG 24 2005
CITY PLANNING

CITY OF JERSEY CITY

GENERAL DEVELOPMENT APPLICATION

(Page 1 of 4)

THE FOLLOWING SHALL BE COMPLETED BY CITY STAFF ONLY

Date Filed: 8/24/05 Application No: P05-116

GENERAL INSTRUCTIONS: To the extent possible, Applicant shall complete every question. When completed, this application shall be submitted to the Division of City Planning Secretary. The proper application and escrow fees must accompany the application. **Do not advertise for a public hearing until you are advised to do so by the Division of City Planning.**

Indicate to which Board application is being made:

☒ Planning Board ☐ Zoning Board of Adjustment

Indicate all approvals being sought (check box(es) below):

☐ Conceptual Plan Review/Informal Review	☒ Prelim. Major Site Plan	☐ "A" Appeal
☐ "c" Variance(s)	☐ Final Major Site Plan	☐ Interpretation ("B" Appeal)
☐ "d" Variance: use, density, etc.	☒ Prelim. Major Subdivision	☐ Waiver of Site Plan Requirements
☐ Conditional Use Variance	☒ Final Major Subdivision	☐ Other (fill in)
☐ Minor Site Plan	☐ Minor Subdivision	

Sections of the Land Development Ordinance from which relief is requested (List Variances): **None**

Applicant's reasons for the Division of City Planning to grant relief:

1.

Name **280 Erie Street LLC c/o Carmine A. Alampi, Attorney for the Applicant**			Address **One University Plaza Suite404**	
City **Hackensack**	State **NJ**	Zip **07601**	Fax 201-343-4607	Tel 201-343-4600

2. **PROPERTY OWNER** (if other than applicant)

Name **280 Erie Street LLC c/o Carmine A. Alampi, Attorney for the Applicant**			Address **One University Plaza Suite404**	
City **Hackensack**	State **NJ**	Zip **07601**	Fax201-343-4607	Tel 201-343-4600

3. **APPLICANT'S ATTORNEY** (if applicable)

Name **Carmine A. Alampi**			Address **One University Plaza**	
City **Hackensack**	State **NJ**	Zip **07601**	Fax201-343-4607	Tel 201-343-4600

Email **calampi@alampi-law.com**

1507223-01

CITY OF JERSEY CITY
General Development Application
(Page 2 of 4)

4. NAMES OF PLAN PREPARERS

Engineer's Name **Philip A. Smith, P.E.**		**Address Schoor DePalma Engineers and Consultants 20 Waterview Boulevard**	
City **Parsippany**	State **NJ**	Zip **07054**	License **NJ PE No. GE26997**
Telephone **973-299-7970**		Fax **973-334-5588**	Email **psmith@schoordepalma.com**
Surveyor's Name **Glen J. Lloyd, PLS**		**Address Schoor DePalma Engineers and Consultants 20 Waterview Boulevard**	
City **Parsippany**	State **NJ**	Zip **07054**	License # **NJ PLS No. GS37598**
Telephone **973-2997970**		Fax **973-334-5588**	Email **glloyd@schoordepalma.com**
Architect's Name and/or Landscape Architect **Dean Marchetto, AIA**		Address **Dean Marchetto Architects P.C. 1225 Willow Avenue**	
City **Hoboken**	State **NJ**	Zip **07030**	License # **NJ RA No. C07945**
Telephone **201-795-1505**		Fax **201-795-0171**	Email **dmarchetto@dmarchitect.com**

5. SUBJECT PROPERTY (Provide a color photo of the site)

Street Address **6th Street between Erie Street and Jersey Avenue**		Block(s) and Lot(s) Numbers **Block 280, Lot 50A**
Site Acreage (including Square Footage and Dimensions) **41,356 sq.ft. or 0.949 acres, and approx. 400 ft. by 100 ft.**		Zone District(s): **R-1**
Present Use	☒ Vacant ☐ Non-conforming	Redevelopment Area: **No** Historic District: **No**

Proposed Development Name and Nature of Use
Subdivision of 16 Proposed Lots with attached 2-Family Housing

Is the application for a new building on an undeveloped tract?	Is the application for a new tenant and/or occupant of an existing tract?	Is the application for a new use of an existing building?	Is the application for the use of a portion of a building?
Yes	**No**	**No**	**No**

RECEIVED
AUG 2 4 2005
P05-116
CITY PLANNING

1507223-01

City of Jersey
General Development Application
(Page 3 of 4)

Number of New Buildings: Height of each building: **16 attached 2-Family Houses** **35 ft. Height**	Sq. Ft of New Building(s) by use: Residential _____ Rental Office _____ Industrial _____ Total _____	Number of Dwelling Units (if applicable) Studio _____ 1 Bedroom_____ 2 Bedroom 14 3 Bedroom 18 4 Bedroom_____ Total _____
% of Lot to be Covered by Pavement **18% max.**	Number of Parking Spaces and Dimensions **2 Garage + 30 spaces 9ft. x 18ft.**	Number and Dimensions of Loading Area(s) **N/A**
Number of Lots Before Subdivision and square Footage **1 Lot, 40,022 sq.ft.**	Number of Lots After Subdivision and square Footage **16 Lots, 2,500 sq.ft.**	Are Any New Streets or Utility Extensions Proposed? **No**
Are existing streets being widened? **No**		Are Utilities Underground? **Yes**
Public water being extended to the tract? **No**		Existing Sewage treatment available to tact? **Yes** / Sewage Treatment to be extended to the tract? **No**
% of Lot to be Covered by Buildings **60% max.**		Gross Floor Area: **3,800 s.f.max.** / Floor Area Ratio: **1.52 max.**
Number of Proposed Signs and Dimensions **N/A**		Are any structures to be removed? **Yes**
Is the Site in a Flood Plain **Yes – FEMA Zone A5 (EL.10)**		Is the application for additional buildings and/or improvements to a tract having existing buildings and/or improvements? **No**
Is Soil Removal or Fill Proposed? Specify Total in Cubic Yards? **Yes, approx. 29,000 cu.yds.**		Is the Property Within 200 ft. of an Adjacent Municipality? If so, which? **No**
Is the Property located with the Morris Canal Redevelopment Area? **No**		Is the Property on a County Road? **No**
Are there deed restrictions, covenants and/or easements Affecting the tract? If yes, attach 2 copies.		Are there any performance guarantees and/or maintenance agreements with the city council? If yes, attach 2 copies.

RECEIVED
AUG 24 2005
605-116
CITY PLANNING

1507223-01

CITY OF JERSEY CITY
General Development Application
(Page 4 of 4)

6. **HISTORY OF PAST APPROVALS** ☒ Check here if none. If there are previous approvals, attach 2

	APPROVED	DENIED	DATE
Subdivision			
Site Plan			
Variance(s)			
Building Permit			

7. **FEES (see attached Fee Schedule)** **STAFF CALCULATIONS ONLY**

Submitted Fee: $	Submitted Escrow Deposit: $ Site Plan Escrow=$
Site Plan/Subdiv. Application Fees: $ Site Plan=$800.00, Prelim.Sub.=$2,100.00, Final Sub.=$1,050.00	Variance Fees: $
Total Fees: $	Balance Due: FEE $ ESCROW $

RECEIVED
AUG 24 2005
P05-116
CITY PLANNING

8. **ATTACHMENTS:**
Please ATTACH the required additional forms and information, if applicable (see attached FORMS and CHECKLISTS)

9. **CERTIFICATION**

I certify that the foregoing statements and the attached materials submitted are true. I further certify that I am the individual applicant or that I am an Officer of the Corporate applicant and that I am authorized to sign the application for the corporation or that I am a general partner of the partnership applicant. I hereby permit authorized City officials to inspect my property in conjunction with this application.

Sworn to and subscribed before me this 18th day of August 2005.

Bridget McLaughlin-Scarvaglione
Notary Public of New Jersey
My Commission Expires June 24, 2009

By: _____
Carmine R. Alampi, Authorized Representative

By: _____
Property Owner Authorizing Application if other than Applicant

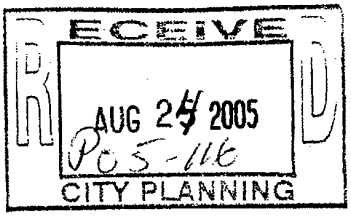
_____
Notary Public

1507223-01

Block 280, Lot 50A
Jersey City, NJ
May 31 2005
Rev.: August 22, 2005
030333205

PROJECT SUMMARY

The Subdivision as proposed includes existing Lot 50A in Block 280. The existing Lot 50A contains 40,022 sq. ft. or 0.919 acres. The existing lot is proposed to be subdivided to create sixteen (16) new Lots as follows:
Proposed Lot 50.01 which will contain 2,500 sq. ft. or 0.057 acres,
Proposed Lot 50.02 which will contain 2,500 sq. ft. or 0.057 acres,
Proposed Lot 50.03 which will contain 2,500 sq. ft. or 0.057 acres,
Proposed Lot 50.04 which will contain 2,500 sq. ft. or 0.057 acres,
Proposed Lot 50.05 which will contain 2,500 sq. ft. or 0.057 acres,
Proposed Lot 50.06 which will contain 2,500 sq. ft. or 0.057 acres,
Proposed Lot 50.07 which will contain 2,500 sq. ft. or 0.057 acres,
Proposed Lot 50.08 which will contain 2,500 sq. ft. or 0.057 acres,
Proposed Lot 50.09 which will contain 2,500 sq. ft. or 0.057 acres,
Proposed Lot 50.10 which will contain 2,500 sq. ft. or 0.057 acres,
Proposed Lot 50.11 which will contain 2,500 sq. ft. or 0.057 acres,
Proposed Lot 50.12 which will contain 2,500 sq. ft. or 0.057 acres,
Proposed Lot 50.13 which will contain 2,500 sq. ft. or 0.057 acres,
Proposed Lot 50.14 which will contain 2,500 sq. ft. or 0.057 acres,
Proposed Lot 50.15 which will contain 2,500 sq. ft. or 0.057 acres,
And Proposed Lot 50.16 which will contain 2,522 sq. ft. or 0.058 acres.



AFFIDAVIT OF OWNERSHIP

STATE OF NEW JERSEY

SS :

COUNTY OF BERGEN

I, Carmine R. Alampi, of full age, being duly sworn according to law depose and say, the following:

1. I am the authorized representative of 280 Erie Street, LLC, the owner of all that certain lot, piece or parcel of land situated, lying and being in the City of Jersey City aforesaid, and known and designated as Block 280, Lot 50A.

2. I hereby authorize the filing of the annexed application on behalf of 280 Erie Street, LLC.

The foregoing statements made by me are true.

Carmine R. Alampi
Authorized Representative

Sworn to before me this
18th day of August, 2005.

Notary Public of New Jersey
Bridget McLaughlin-Scarvaglione
My Commission Expires June 24, 2009

RECEIVED
AUG 25 2005
P05-116
CITY PLANNING

APPLICANT DISCLOSURE STATEMENT

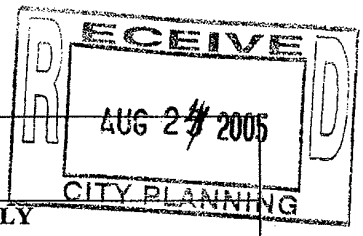
280 ERIE STREET, LLC

**Pursuant to N.J.S. 40:55D-48.1, the names and addresses(and % of interest owned!) of all persons owning 10 % or more of the stock in a corporation or a 10 % interest in any partnership must be disclosed by the applicant. In accordance with N.J.S. 40:55D-48.2 that disclosure requirement applies to any corporation or partnership which owns more than 10 % interest.

Persons or Corporations/Partnerships owning 10% interest or more:

**	Steven L. Hyman	c/o Carmine R. Alampi One University Plaza, Ste 404 Hackensack, NJ 07601 201-343-4600	Sole Shareholder (100 %)

RECEIVED
AUG 24 2005
P05-116
CITY PLANNING



CITY OF JERSEY CITY

GENERAL DEVELOPMENT APPLICATION

(Page 1 of 4)

THE FOLLOWING SHALL BE COMPLETED BY CITY STAFF ONLY

Date Filed: 8/24/05 Application No: P05-115

GENERAL INSTRUCTIONS: To the extent possible, Applicant shall complete every question. When completed, this application shall be submitted to the Division of City Planning Secretary. The proper application and escrow fees must accompany the application. **Do not advertise for a public hearing until you are advised to do so by the Division of City Planning.**

Indicate to which Board application is being made:

☒ Planning Board ☐ Zoning Board of Adjustment

Indicate all approvals being sought (check box(es) below):

☐ Conceptual Plan Review/Informal Review	☒ Prelim. Major Site Plan	☐ "A" Appeal
☐ "c" Variance(s)	☐ Final Major Site Plan	☐ Interpretation ("B" Appeal)
☐ "d" Variance: use, density, etc.	☒ Prelim. Major Subdivision	☐ Waiver of Site Plan Requirements
☐ Conditional Use Variance	☒ Final Major Subdivision	☐ Other (fill in)
☐ Minor Site Plan	☐ Minor Subdivision	

Sections of the Land Development Ordinance from which relief is requested (List Variances): **None**

Applicant's reasons for the Division of City Planning to grant relief:

1.

Name **317 Jersey Ave LLC c/o Carmine A. Alampi, Attorney for the Applicant**			Address **One University Plaza Suite404**	
City **Hackensack**	State **NJ**	Zip **07601**	Fax 201-343-4607	T 201-343-4600

2. **PROPERTY OWNER** (if other than applicant)

Name **317 Jersey Ave LLC c/o Carmine A. Alampi, Attorney for the Applicant**			Address **One University Plaza Suite404**	
City **Hackensack**	State **NJ**	Zip **07601**	Fax201-343-4607	Tel 201-343-4600

3. **APPLICANT'S ATTORNEY** (if applicable)

Name **Carmine A. Alampi**			Address **One University Plaza**	
City **Hackensack**	State **NJ**	Zip **07601**	Fax201-343-4607	Tel 201-343-4600
Email **calampi@alampi-law.com**				

1507223-01

CITY OF JERSEY CITY
General Development Application
(Page 2 of 4)

RECEIVED
AUG 2 4 2015
CITY PLAN

4. NAMES OF PLAN PREPARERS

Engineer's Name **Philip A. Smith, P.E.**		**Address Schoor DePalma Engineers and Consultants 20 Waterview Boulevard**	
City **Parsippany**	State **NJ**	Zip **07054**	License **NJ PE No. GE26997**
Telephone **973-299-7970**		Fax **973-334-5588**	Email **psmith@schoordepalma.com**
Surveyor's Name **Glen J. Lloyd, PLS**		**Address Schoor DePalma Engineers and Consultants 20 Waterview Boulevard**	
City **Parsippany**	State **NJ**	Zip **07054**	License # **NJ PLS No. GS37598**
Telephone **973-2997970**		Fax **973-334-5588**	Email **glloyd@schoordepalma.com**
Architect's Name and/or Landscape Architect **Dean Marchetto, AIA**		Address **Dean Marchetto Architects P.C. 1225 Willow Avenue**	
City **Hoboken**	State **NJ**	Zip **07030**	License # **NJ RA No. C07945**
Telephone **201-795-1505**		Fax **201-795-0171**	Email **dmarchetto@dmarchitect.com**

5. SUBJECT PROPERTY (Provide a color photo of the site)

Street Address **6th Street between Jersey Ave and Coles Street**		Block(s) and Lot(s) Numbers **Block 317.5, Lot 50A**
Site Acreage (including Square Footage and Dimensions) **40,130 sq.ft. or 0.921 acres, and approx. 400 ft. by 100 ft.**		Zone District(s): **R-1**
Present Use	☒ Vacant ☐ Non-conforming	Redevelopment Area: **No** Historic District: **No**

Proposed Development Name and Nature of Use
Subdivision of 16 Proposed Lots with attached 2-Family Housing

Is the application for a new building on an undeveloped tract?	Is the application for a new tenant and/or occupant of an existing tract?	Is the application for a new use of an existing building?	Is the application for the use of a portion of a building?
Yes	**No**	**No**	**No**

1507223-01

City of Jersey
General Development Application
(Page 3 of 4)

Number of New Buildings: Height of each building: **16 attached 2-Family Houses** **35 ft. Height**	Sq. Ft of New Building(s) by use: Residential _____ Rental Office _____ Industrial _____ Total _____	Number of Dwelling Units (if applicable) Studio _____ 1 Bedroom _____ 2 Bedroom 14 3 Bedroom 18 4 Bedroom _____ Total _____	
% of Lot to be Covered by Pavement **25% Max**	Number of Parking Spaces and Dimensions **1 Garage space per unit**	Number and Dimensions of Loading Area(s) **N/A**	
Number of Lots Before Subdivision and square Footage **1 Lot, 40,130 sq.ft.**	Number of Lots After Subdivision and square Footage **16 Lots, 2,500 sq.ft.**	Are Any New Streets or Utility Extensions Proposed? **No**	
Are existing streets being widened? **No**		Are Utilities Underground? **Yes**	
Public water being extended to the tract? **No**		Existing Sewage treatment available to tact? **Yes**	Sewage Treatment to be extended to the tract? No
% of Lot to be Covered by Buildings **60% Max**		Gross Floor Area: **4,500s.f. max.**	Floor Area Ratio: **1.8 max.**
Number of Proposed Signs and Dimensions **N/A**		Are any structures to be removed? **Yes**	
Is the Site in a Flood Plain **Yes – FEMA Zone A5 (EL.10)**		Is the application for additional buildings and/or improvements to a tract having existing buildings and/or improvements? **No**	
Is Soil Removal or Fill Proposed? Specify Total in Cubic Yards? **Yes, approx. 29,000 cu.yds.**		Is the Property Within 200 ft. of an Adjacent Municipality? If so, which? **No**	
Is the Property located with the Morris Canal Redevelopment Area? **No**		Is the Property on a County Road? **No**	
Are there deed restrictions, covenants and/or easements Affecting the tract? If yes, attach 2 copies.		Are there any performance guarantees and/or maintenance agreements with the city council? If yes, attach 2 copies.	

RECEIVED
AUG 24 2005
CITY PLANNING

1507223-01

CITY OF JERSEY CITY
General Development Application
(Page 4 of 4)

6. **HISTORY OF PAST APPROVALS** ☒ Check here if none. If there are previous approvals, attach 2

	APPROVED	DENIED	DATE
Subdivision			
Site Plan			
Variance(s)			
Building Permit			

RECEIVED
AUG 24 2005
CITY PLANNING

7. **FEES (see attached Fee Schedule)** **STAFF CALCULATIONS ONLY**

Submitted Fee: $	Submitted Escrow Deposit: $ Site Plan Escrow=
Site Plan/Subdiv. Application Fees: $ Site Plan=$800.00, Prelim.Sub.=$2,100.00, Final Sub.=$1,050.00	Variance Fees: $
Total Fees: $	Balance Due: FEE $ ESCROW $

8. **ATTACHMENTS:**
Please ATTACH the required additional forms and information, if applicable (see attached FORMS and CHECKLISTS)

9. **CERTIFICATION**

I certify that the foregoing statements and the attached materials submitted are true. I further certify that I am the individual applicant or that I am an Officer of the Corporate applicant and that I am authorized to sign the application for the corporation or that I am a general partner of the partnership applicant. I hereby permit authorized City officials to inspect my property in conjunction with this application.

Sworn to and subscribed before me this 18th day of August 2005.

317 Jersey Avenue, LLC

By: _____
Carmine R. Alampi, Esq.
Authorized Representative

Bridget McLaughlin-Scarvaglione
Notary Public of New Jersey
My Commission Expires June 24, 2009

By: _____
Property Owner Authorizing Application if other than Applicant

Notary Public

1507223-01

AFFIDAVIT OF OWNERSHIP

STATE OF NEW JERSEY

SS :

COUNTY OF BERGEN

I, Carmine R. Alampi, of full age, being duly sworn according to law depose and say, the following:

1. I am the authorized representative of 317 Jersey Avenue, LLC, the owner of all that certain lot, piece or parcel of land situated, lying and being in the City of Jersey City aforesaid, and known and designated as Block 317.5, Lot 50 A;

2. I hereby authorize the filing of the annexed application on behalf of 317 Jersey Avenue, LLC.

The foregoing statements made by me are true.

Carmine R. Alampi, Esq.
Authorized Representative

Sworn to before me this
18th day of August, 2005.

Notary Public of New Jersey
Bridget McLaughlin-Scarvaglione
My Commission Expires June 24, 2009

RECEIVED
AUG 24 2005
CITY PLANNING

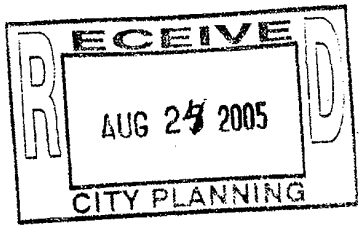
APPLICANT DISCLOSURE STATEMENT

317 JERSEY AVENUE, LLC

**"Pursuant to N.J.S. 40:55D-48.1, the names and addresses(and % of interest owned!) of all persons owning 10 % or more of the stock in a corporation or a 10 % interest in any partnership must be disclosed by the applicant. In accordance with N.J.S. 40:55D-48.2 that disclosure requirement applies to any corporation or partnership which owns more than 10 % interest.

Persons or Corporations/Partnerships owning 10% interest or more:

**	Steven L. Hyman	c/o Carmine R. Alampi One University Plaza, Ste 404 Hackensack, NJ 07601 201-343-4600	Sole Shareholder (100 %)



AFFIDAVIT OF PERFORMANCE

I, Philip A. Smith, P.E.
(~~Property Owner/Architect~~/Engineer)

hereby certify that the Site Plan submitted to the Planning Board/Zoning

Board of Adjustment [cross out inapplicable Board] for property at

Sixth Street – between Monmouth Street & Coles Street;

Block(s) 317.5, Lot(s) 50A.

,

is a full and complete representation of the Site Plan and that it shall be completed as submitted.

(~~Property Owner/Architect~~/Engineer)
Philip A. Smith, N.J.P.E. #26997

Sworn before me this

22nd day of August, 2005

Maria Sperone
Notary Public

MARIA SPERONE
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 10/6/2006

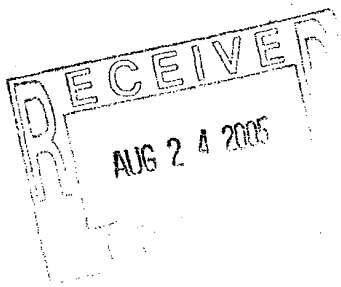
RECEIVED
AUG 24 2005
CITY PLANNING

1507223-01

Block 317.5, Lot 50A
Jersey City, NJ
June 10, 2005
030333205

PROJECT SUMMARY

The Subdivision as proposed includes existing Lot 50A in Block 317.5. The existing Lot 50A contains 40,130 sq. ft. or 0.921 acres. The existing lot is proposed to be subdivided to create sixteen (16) new Lots as follows,
Proposed Lot 50.01 which will contain 2,500 sq. ft. or 0.057 acres,
Proposed Lot 50.02 which will contain 2,500 sq. ft. or 0.057 acres,
Proposed Lot 50.03 which will contain 2,500 sq. ft. or 0.057 acres,
Proposed Lot 50.04 which will contain 2,500 sq. ft. or 0.057 acres,
Proposed Lot 50.05 which will contain 2,500 sq. ft. or 0.057 acres,
Proposed Lot 50.06 which will contain 2,500 sq. ft. or 0.057 acres,
Proposed Lot 50.07 which will contain 2,500 sq. ft. or 0.057 acres,
Proposed Lot 50.08 which will contain 2,500 sq. ft. or 0.057 acres,
Proposed Lot 50.09 which will contain 2,500 sq. ft. or 0.057 acres,
Proposed Lot 50.10 which will contain 2,500 sq. ft. or 0.057 acres,
Proposed Lot 50.11 which will contain 2,500 sq. ft. or 0.057 acres,
Proposed Lot 50.12 which will contain 2,500 sq. ft. or 0.057 acres,
Proposed Lot 50.13 which will contain 2,500 sq. ft. or 0.057 acres,
Proposed Lot 50.14 which will contain 2,500 sq. ft. or 0.057 acres,
Proposed Lot 50.15 which will contain 2,500 sq. ft. or 0.057 acres,
and Proposed Lot 50.16 which will contain 2,630sq. ft. or 0.060 acres.



RECEIVED
AUG 25 2005
CITY PLANNING

CITY OF JERSEY CITY

GENERAL DEVELOPMENT APPLICATION

(Page 1 of 4)

THE FOLLOWING SHALL BE COMPLETED BY CITY STAFF ONLY

Date Filed: 8/24/05 Application No: P05-112 SP P05-113-Sub

GENERAL INSTRUCTIONS: To the extent possible, Applicant shall complete every question. When completed, this application shall be submitted to the Division of City Planning Secretary. The proper application and escrow fees must accompany the application. **Do not advertise for a public hearing until you are advised to do so by the Division of City Planning.**

Indicate to which Board application is being made:

☒ Planning Board ☐ Zoning Board of Adjustment

Indicate all approvals being sought (check box(es) below):

☐ Conceptual Plan Review/Informal Review	☒ Prelim. Major Site Plan	☐ "A" Appeal
☐ "c" Variance(s)	☐ Final Major Site Plan	☐ Interpretation ("B" Appeal)
☐ "d" Variance: use, density, etc.	☒ Prelim. Major Subdivision	☐ Waiver of Site Plan Requirements
☐ Conditional Use Variance	☒ Final Major Subdivision	☐ Other (fill in)
☐ Minor Site Plan	☐ Minor Subdivision	

Sections of the Land Development Ordinance from which relief is requested (List Variances): **None**

Applicant's reasons for the Division of City Planning to grant relief:

1.

Name **389 Monmouth Street LLC c/o Carmine A. Alampi, Attorney for the Applicant**			Address **One University Plaza Suite404**	
City **Hackensack**	State **NJ**	Zip **07601**	Fax 201-343-4607	T 201-343-4600

2. **PROPERTY OWNER** (if other than applicant)

Name **389 Monmouth Street LLC c/o Carmine A. Alampi, Attorney for the Applicant**			Address **One University Plaza Suite404**	
City **Hackensack**	State **NJ**	Zip **07601**	Fax201-343-4607	Tel 201-343-4600

3. **APPLICANT'S ATTORNEY** (if applicable)

Name **Carmine A. Alampi**			Address **One University Plaza**	
City **Hackensack**	State **NJ**	Zip **07601**	Fax201-343-4607	Tel 201-343-4600
Email **calampi@alampi-law.com**				

1507223-01

CITY OF JERSEY CITY
General Development Application
(Page 2 of 4)

4. NAMES OF PLAN PREPARERS

Engineer's Name **Philip A. Smith, P.E.**		**Address Schoor DePalma Engineers and Consultants 20 Waterview Boulevard**	
City **Parsippany**	State **NJ**	Zip **07054**	License **NJ PE No. GE26997**
Telephone **973-299-7970**		Fax **973-334-5588**	Email **psmith@schoordepalma.com**
Surveyor's Name **Glen J. Lloyd, PLS**		**Address Schoor DePalma Engineers and Consultants 20 Waterview Boulevard**	
City **Parsippany**	State **NJ**	Zip **07054**	License # **NJ PLS No. GS37598**
Telephone **973-2997970**		Fax **973-334-5588**	Email **glloyd@schoordepalma.com**
Architect's Name and/or Landscape Architect **Dean Marchetto, AIA**		Address **Dean Marchetto Architects P.C. 1225 Willow Avenue**	
City **Hoboken**	State **NJ**	Zip **07030**	License # **NJ RA No. C07945**
Telephone **201-795-1505**		Fax **201-795-0171**	Email **dmarchetto@dmarchitect.com**

5. SUBJECT PROPERTY (Provide a color photo of the site)

Street Address **6th Street between Monmouth Street and Brunswick Street**	Block(s) and Lot(s) Numbers **Block 389.1, Lot 50**
Site Acreage (including Square Footage and Dimensions) **40,081 sq.ft. or 0.920 acres, and approx. 400 ft. by 100 ft.**	Zone District(s): **R-1**
Present Use ☒ Vacant ☐ Non-conforming	Redevelopment Area: **No**
	Historic District: **No**
Proposed Development Name and Nature of Use **Subdivision of 16 Proposed Lots with attached 2-Family Housing**	

Is the application for a new building on an undeveloped tract?	Is the application for a new tenant and/or occupant of an existing tract?	Is the application for a new use of an existing building?	Is the application for the use of a portion of a building?
Yes	**No**	**No**	**No**

RECEIVED
AUG 24 2005
CITY PLANNING

1507223-01

City of Jersey
General Development Application
(Page 3 of 4)

Number of New Buildings: Height of each building: **16 attached 2-Family Houses** **35 ft. Height**	Sq. Ft of New Building(s) by use: Residential _____ Rental Office _____ Industrial _____ Total _____	Number of Dwelling Units (if applicable) Studio _____ 1 Bedroom _____ 2 Bedroom 4 3 Bedroom 8 4 Bedroom _____ Total _____
% of Lot to be Covered by Pavement **25% Max**	Number of Parking Spaces and Dimensions **1 Garage space per unit**	Number and Dimensions of Loading Area(s) **N/A**
Number of Lots Before Subdivision and square Footage **1 Lot, 40,081sq.ft.**	Number of Lots After Subdivision and square Footage **16 Lots, 2,500 sq.ft.**	Are Any New Streets or Utility Extensions Proposed? **No**
Are existing streets being widened? **No**		Are Utilities Underground? **Yes**
Public water being extended to the tract? **No**		Existing Sewage treatment available to tact? **Yes** Sewage Treatment to be extended to the tract? **No**
% of Lot to be Covered by Buildings **60% Max**		Gross Floor Area: **4,500s.f. max.** Floor Area Ratio: **1.8 max.**
Number of Proposed Signs and Dimensions **N/A**		Are any structures to be removed? **Yes**
Is the Site in a Flood Plain **Yes – FEMA Zone A5 (EL.10)**		Is the application for additional buildings and/or improvements to a tract having existing buildings and/or improvements? **No**
Is Soil Removal or Fill Proposed? Specify Total in Cubic Yards? **Yes, approx. 29,000 cu.yds.**		Is the Property Within 200 ft. of an Adjacent Municipality? If so, which? **No**
Is the Property located with the Morris Canal Redevelopment Area? **No**		Is the Property on a County Road? **No**
Are there deed restrictions, covenants and/or easements Affecting the tract? If yes, attach 2 copies.		Are there any performance guarantees and/or maintenance agreements with the city council? If yes, attach 2 copies.

RECEIVED
AUG 24 2005
CITY PLANNING

1507223-01

CITY OF JERSEY CITY
General Development Application
(Page 4 of 4)

6. **HISTORY OF PAST APPROVALS** ☒ Check here if none. If there are previous approvals, attach 2

	APPROVED	DENIED	DATE
Subdivision			
Site Plan			
Variance(s)			
Building Permit			

7. **FEES (see attached Fee Schedule)** **STAFF CALCULATIONS ONLY**

Submitted Fee: $	Submitted Escrow Deposit: $ Site Plan Escrow=$.
Site Plan/Subdiv. Application Fees: $ Site Plan=$800.00, Prelim.Sub.=$2,100.00, Final Sub.=$1,050.00	Variance Fees: $
Total Fees: $	Balance Due: FEE $ ESCROW $

8. **ATTACHMENTS:**
Please ATTACH the required additional forms and information, if applicable (see attached FORMS and CHECKLISTS)

9. **CERTIFICATION**

I certify that the foregoing statements and the attached materials submitted are true. I further certify that I am the individual applicant or that I am an Officer of the Corporate applicant and that I am authorized to sign the application for the corporation or that I am a general partner of the partnership applicant. I hereby permit authorized City officials to inspect my property in conjunction with this application.

Sworn to and subscribed before me this 18th day of August 2005.

389 Monmouth Street, LLC

By: _____
Carmine R. Alampi, Esq.
Authorized Representative

Bridget McLaughlin-Scarvaglione
Notary Public of New Jersey
My Commission Expires June 24, 2009

By: _____
Property Owner Authorizing Application if other than Applicant

_____
Notary Public

1507223-01

AFFIDAVIT OF OWNERSHIP

STATE OF NEW JERSEY

SS :

COUNTY OF BERGEN

I, Carmine R. Alampi, of full age, being duly sworn according to law depose and say, the following:

1. I am the authorized representative of 389 Monmouth Street, LLC, the owner of all that certain lot, piece or parcel of land situated, lying and being in the City of Jersey City aforesaid, and known and designated as Block 389.1, Lot 50;

2. I hereby authorize the filing of the annexed application on behalf of 389 Monmouth Street, LLC.

The foregoing statements made by me are true.

Carmine R. Alampi, Esq.
Authorized Representative

Sworn to before me this
18th day of August, 2005.

Notary Public of New Jersey
Bridget McLaughlin-Scarvaglione
My Commission Expires June 24, 2009

RECEIVED
AUG 24 2005
CITY PLANNING

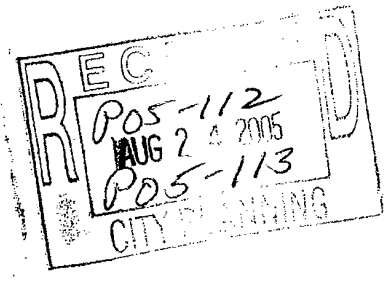
APPLICANT DISCLOSURE STATEMENT

389 MONMOUTH STREET, LLC

**Pursuant to N.J.S. 40:55D-48.1, the names and addresses(and % of interest owned!) of all persons owning 10 % or more of the stock in a corporation or a 10 % interest in any partnership must be disclosed by the applicant. In accordance with N.J.S. 40:55D-48.2 that disclosure requirement applies to any corporation or partnership which owns more than 10 % interest.

Persons or Corporations/Partnerships owning 10% interest or more:

**	Steven L. Hyman	c/o Carmine R. Alampi One University Plaza, Ste 404 Hackensack, NJ 07601 201-343-4600	Sole Shareholder (100 %)



RECEIVED
P05-119
AUG 24 2005
CITY PLANNING

CITY OF JERSEY CITY

GENERAL DEVELOPMENT APPLICATION

(Page 1 of 4)

THE FOLLOWING SHALL BE COMPLETED BY CITY STAFF ONLY

Date Filed: 8/24/05 Application No: P05-119 SP P05-118 Sub

GENERAL INSTRUCTIONS: To the extent possible, Applicant shall complete every question. When completed, this application shall be submitted to the Division of City Planning Secretary. The proper application and escrow fees must accompany the application. **Do not advertise for a public hearing until you are advised to do so by the Division of City Planning.**

Indicate to which Board application is being made:

☒ Planning Board ☐ Zoning Board of Adjustment

Indicate all approvals being sought (check box(es) below):

☐ Conceptual Plan Review/Informal Review	☒ Prelim. Major Site Plan	☐ "A" Appeal
☐ "c" Variance(s)	☐ Final Major Site Plan	☐ Interpretation ("B" Appeal)
☐ "d" Variance: use, density, etc.	☒ Prelim. Major Subdivision	☐ Waiver of Site Plan Requirements
☐ Conditional Use Variance	☒ Final Major Subdivision	☐ Other (fill in)
☐ Minor Site Plan	☐ Minor Subdivision	

Sections of the Land Development Ordinance from which relief is requested (List Variances): **None**

Applicant's reasons for the Division of City Planning to grant relief:

1.

Name **354 Cole Street LLC c/o Carmine A. Alampi, Attorney for the Applicant**			Address **One University Plaza Suite404**	
City **Hackensack**	State **NJ**	Zip **07601**	Fax 201-343-4607	T 201-343-4600

2. **PROPERTY OWNER** (if other than applicant)

Name **354 Cole Street LLC c/o Carmine A. Alampi, Attorney for the Applicant**			Address **One University Plaza Suite404**	
City **Hackensack**	State **NJ**	Zip **07601**	Fax201-343-4607	Tel 201-343-4600

3. **APPLICANT'S ATTORNEY** (if applicable)

Name **Carmine A. Alampi**			Address **One University Plaza**	
City **Hackensack**	State **NJ**	Zip **07601**	Fax201-343-4607	Tel 201-343-4600
Email **calampi@alampi-law.com**				

1507223-01

CITY OF JERSEY CITY
General Development Application
(Page 2 of 4)

4. **NAMES OF PLAN PREPARERS**

Engineer's Name **Philip A. Smith, P.E.**		**Address Schoor DePalma Engineers and Consultants 20 Waterview Boulevard**	
City **Parsippany**	State **NJ**	Zip **07054**	License **NJ PE No. GE26997**
Telephone **973-299-7970**		Fax **973-334-5588**	Email **psmith@schoordepalma.com**
Surveyor's Name **Glen J. Lloyd, PLS**		**Address Schoor DePalma Engineers and Consultants 20 Waterview Boulevard**	
City **Parsippany**	State **NJ**	Zip **07054**	License # **NJ PLS No. GS37598**
Telephone **973-2997970**		Fax **973-334-5588**	Email **glloyd@schoordepalma.com**
Architect's Name and/or Landscape Architect **Dean Marchetto, AIA**		Address **Dean Marchetto Architects P.C. 1225 Willow Avenue**	
City **Hoboken**	State **NJ**	Zip **07030**	License # **NJ RA No. C07945**
Telephone **201-795-1505**		Fax **201-795-0171**	Email **dmarchetto@dmarchitect.com**

5. **SUBJECT PROPERTY (Provide a color photo of the site)**

Street Address **6th Street between Coles and Monmouth Streets**	Block(s) and Lot(s) Numbers **Block 354.1, Lot 50A**
Site Acreage (including Square Footage and Dimensions) **40,061 sq.ft. or 0.920 acres, and approx. 400 ft. by 100 ft.**	Zone District(s): **R-1**
Present Use ☒ Vacant ☐ Non-conforming	Redevelopment Area: **No**
	Historic District: **No**
Proposed Development Name and Nature of Use **Subdivision of 16 Proposed Lots with attached 2-Family Housing**	

Is the application for a new building on an undeveloped tract? **Yes**	Is the application for a new tenant and/or occupant of an existing tract? **No**	Is the application for a new use of an existing building? **No**	Is the application for the use of a portion of a building? **No**

RECEIVED
AUG 24 2005
005-119
CITY PLANNING

1507223-01

City of Jersey
General Development Application
(Page 3 of 4)

Number of New Buildings: Height of each building: **16 attached 2-Family Houses** **35 ft. Height**	Sq. Ft of New Building(s) by use: Residential _____ Rental Office _____ Industrial _____ Total _____	Number of Dwelling Units (if applicable) Studio _____ 1 Bedroom _____ 2 Bedroom 14 3 Bedroom 18 4 Bedroom _____ Total _____	
% of Lot to be Covered by Pavement **25% Max**	Number of Parking Spaces and Dimensions **1 Garage space per unit**	Number and Dimensions of Loading Area(s) **N/A**	
Number of Lots Before Subdivision and square Footage **1 Lot, 40,061 sq.ft.**	Number of Lots After Subdivision and square Footage **16 Lots, 2,500 sq.ft.**	Are Any New Streets or Utility Extensions Proposed? **No**	
Are existing streets being widened? **No**		Are Utilities Underground? **Yes**	
Public water being extended to the tract? **No**		Existing Sewage treatment available to tact? **Yes**	Sewage Treatment to be extended to the tract? **No**
% of Lot to be Covered by Buildings **60% Max**		Gross Floor Area: **4,500s.f. max.**	Floor Area Ratio: **1.8 max.**
Number of Proposed Signs and Dimensions **N/A**		Are any structures to be removed? Yes	
Is the Site in a Flood Plain **Yes – FEMA Zone A5 (EL.10)**		Is the application for additional buildings and/or improvements to a tract having existing buildings and/or improvements? **No**	
Is Soil Removal or Fill Proposed? Specify Total in Cubic Yards? **Yes, approx. 38,000 cu.yds.**		Is the Property Within 200 ft. of an Adjacent Municipality? If so, which? **No**	
Is the Property located with the Morris Canal Redevelopment Area? **No**		Is the Property on a County Road? **No**	
Are there deed restrictions, covenants and/or easements Affecting the tract? If yes, attach 2 copies.		Are there any performance guarantees and/or maintenance agreements with the city council? If yes, attach 2 copies.	

RECEIVED
AUG 24 2005
05-119
CITY PLANNING

1507223-01

CITY OF JERSEY CITY
General Development Application
(Page 4 of 4)

6. **HISTORY OF PAST APPROVALS** ☒ Check here if none. If there are previous approvals, attach 2

	APPROVED	DENIED	DATE
Subdivision			
Site Plan			
Variance(s)			
Building Permit			

7. **FEES (see attached Fee Schedule)** **STAFF CALCULATIONS ONLY**

Submitted Fee: $	Submitted Escrow Deposit: $ Site Plan Escrow=
Site Plan/Subdiv. Application Fees: $ Site Plan=$800.00, Prelim.Sub.=$2,100.00, Final Sub.=$1,050.00	Variance Fees: $
Total Fees: $	Balance Due: FEE $ ESCROW $

RECEIVED
AUG 24 2005
P05-119
CITY PLANNING

8. **ATTACHMENTS:**
Please ATTACH the required additional forms and information, if applicable (see attached FORMS and CHECKLISTS)

9. **CERTIFICATION**

I certify that the foregoing statements and the attached materials submitted are true. I further certify that I am the individual applicant or that I am an Officer of the Corporate applicant and that I am authorized to sign the application for the corporation or that I am a general partner of the partnership applicant. I hereby permit authorized City officials to inspect my property in conjunction with this application.

Sworn to and subscribed before me this 18th day of August 2005.

354 Cole Street, LLC

By: _____
Carmine R. Alampi, Esq.
Authorized Representative

Bridget McLaughlin-Scarvaglione
Notary Public of New Jersey
My Commission Expires June 24, 2009

By: _____
Property Owner Authorizing Application if other than Applicant

_____
Notary Public

1507223-01

AFFIDAVIT OF OWNERSHIP

STATE OF NEW JERSEY

SS :

COUNTY OF BERGEN

I, Carmine R. Alampi, of full age, being duly sworn according to law depose and say, the following:

1. I am the authorized representative of 354 Cole Street, LLC, the owner of all that certain lot, piece or parcel of land situated, lying and being in the City of Jersey City aforesaid, and known and designated as Block 354.1, Lot 50 A;

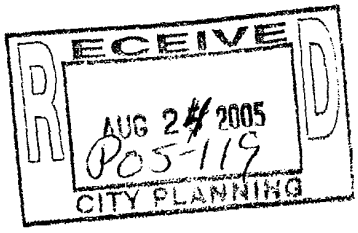
2. I hereby authorize the filing of the annexed application on behalf of 354 Cole Street, LLC.

The foregoing statements made by me are true.

Carmine R. Alampi, Esq.
Authorized Representative

Sworn to before me this
18th day of August, 2005.

Notary Public of New Jersey
Bridget McLaughlin-Scarvaglione
My Commission Expires June 24, 2009



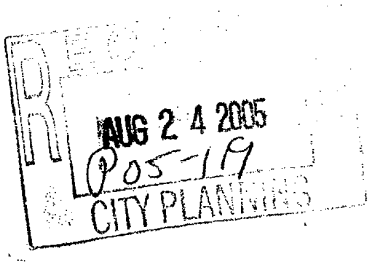
APPLICANT DISCLOSURE STATEMENT

354 COLE STREET, LLC

**Pursuant to N.J.S. 40:55D-48.1, the names and addresses(and % of interest owned!) of all persons owning 10 % or more of the stock in a corporation or a 10 % interest in any partnership must be disclosed by the applicant. In accordance with N.J.S. 40:55D-48.2 that disclosure requirement applies to any corporation or partnership which owns more than 10 % interest.

Persons or Corporations/Partnerships owning 10% interest or more:

**	Steven L. Hyman	c/o Carmine R. Alampi One University Plaza, Ste 404 Hackensack, NJ 07601 201-343-4600	Sole Shareholder (100 %)



Revised

RECEIVE
AUG 8
105-059
CITY PL

CITY OF JERSEY CITY

GENERAL DEVELOPMENT APPLICATION

(Page 1 of 4)

THE FOLLOWING SHALL BE COMPLETED BY CITY STAFF ONLY

Date Filed: 5/25/05 Application No: 105-059

GENERAL INSTRUCTIONS: To the extent possible, Applicant shall complete every question. When completed, this application shall be submitted to the Division of City Planning Secretary. The proper application and escrow fees must accompany the application. **Do not advertise for a public hearing until you are advised to do so by the Division of City Planning.**

Indicate to which Board application is being made:

☒ Planning Board ☐ Zoning Board of Adjustment

Indicate all approvals being sought (check box(es) below):

☐ Conceptual Plan Review/Informal Review	☐ Prelim. Major Site Plan	☐ "A" Appeal
☐ "c" Variance(s)	☐ Final Major Site Plan	☐ Interpretation ("B" Appeal)
☐ "d" Variance: use, density, etc.	☒ Prelim. Major Subdivision	☐ Waiver of Site Plan Requirements
☐ Conditional Use Variance	☒ Final Major Subdivision	☐ Other (fill in)
☐ Minor Site Plan	☐ Minor Subdivision	

Sections of the Land Development Ordinance from which relief is requested (List Variances):

Applicant's reasons for the Division of City Planning to grant relief:

1. APPLICANT

Name: SLH Holding Corporation c/o Carmine R. Alampi, Attorney for the Applicant *Co-Applicant: Claudia Jastrzebski, (as to Subdivision Application)			Address One University Plaza Suite 404, Hackensack, NJ 07601 234 Beacon Ave, Jersey City NJ 07306	
City	State	Zip	Fax	Telephone

2. PROPERTY OWNER (if other than applicant)*Claudia Jastrzebski: owner of parcel B 415 L 51

Name 415 Brunswick Street, L.L.C.			Address One University Plaza, Ste 404	
City Hackensack	State NJ	Zip 07601	Fax 201-343-4607	Telephone 201-343-4600

3. APPLICANT'S ATTORNEY (if applicable)

Name Carmine R. Alampi			Address One University Plaza	
City Hackensack	State NJ	Zip 07601	Fax 201.343.4607	Telephone 201.343.4600
Email calampi@alampi-law.com				

CITY OF JERSEY CITY
General Development Application
(Page 2 of 4)

4. NAMES OF PLAN PREPARERS

Engineer's Name Philip A. Smith, PE		**Address** Schoor DePalma Engineers 20 Waterview Boulevard	
City Parsippany	State NJ	Zip 07054	License # NJ PE No. GE 26997
Telephone 973-299-7970		Fax 973-334-5588	Email psmith@schoordepalma.com
Surveyor's Name Glen J. Lloyd		Address Schoor DePalma 20 Waterview Blvd	
City Parsippany	State NJ	Zip 07054	License # NJ PLS No. GS37598
Telephone 973-299-7970		Fax 973-334-5588	Email glloyd@schoordepalma.com
Architect's Name and/or Landscape Architect Stephen L. Borghi		Address Schoor DePalma 20 Waterview Blvd	
City Parsippany	State NJ	Zip 07054	License # NJCLA No.00130
Telephone 973-299-7970		Fax 973-334-5588	Email sborghi@schoordepalma.com

5. SUBJECT PROPERTY (Provide a color photo of the site)

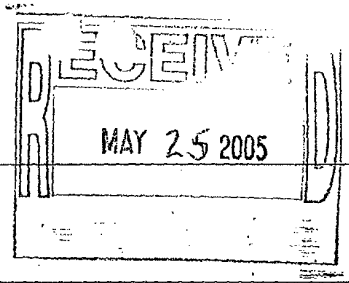
Street Address		Block(s) and Lot(s) Numbers Block 415 Lots 50 & 51
Site Acreage (including Square Footage and Dimensions) Lot 50=0.517 AC = 22,529s.f.=74' x 400' Exist. Lot 51=0.399 AC = 17,385s.f.=57' x 400'		Zone District(s): R-1
Present Use Parking Lot	☐ Vacant ☐ Non-conforming	Redevelopment Area: No Historic District: No

Proposed Development Name and Nature of Use
Two family detached

Is the application for a new building on an undeveloped tract?	Is the application for a new tenant and/or occupant of an existing tract?	Is the application for a new use of an existing building?	Is the application for the use of a portion of a building?
No	No	No	No

RECEIVED
MAY 25 2005
P05-059

1507223-01



City of Jersey
General Development Application
(Page 3 of 4)

Number of New Buildings: Height of each building: 6 buildings 35 ft. height	Sq. Ft of New Building(s) by use: 20'x60'x 2 ½ story Residential 3,000 sf./bldg Rental Office _____ Industrial _____ Total _____	Number of Dwelling Units (if applicable) Studio _____ 1 Bedroom_____ 2 Bedroom _____ 3 Bedroom -12 units 4 Bedroom _____ Total 36 bedrooms
% of Lot to be Covered by Pavement N/A	Number of Parking Spaces and Dimensions N/A	Number and Dimensions of Loading Area(s) N/A
Number of Lots Before Subdivision and square Footage 2 lots 39,913 s.f.	Number of Lots After Subdivision and square Footage 7 lots 39,913 s.f.	Are Any New Streets or Utility Extensions Proposed? No
Are existing streets being widened? No		Are Utilities Underground? Yes
Public water being extended to the tract? No		Existing Sewage treatment available to tact? Yes Sewage Treatment to be extended to the tract? No
% of Lot to be Covered by Buildings 48 %		Gross Floor Area: Floor Area Ratio:
Number of Proposed Signs and Dimensions N/A		Are any structures to be removed? No
Is the Site in a Flood Plain Yes – per FEMA Zone A5(EL.10)		Is the application for additional buildings and/or improvements to a tract having existing buildings and/or improvements? No
Is Soil Removal or Fill Proposed? Specify Total in Cubic Yards? No		Is the Property Within 200 ft. of an Adjacent Municipality? If so, which? No
Is the Property located with the Morris Canal Redevelopment Area? No		Is the Property on a County Road? No
Are there deed restrictions, covenants and/or easements Affecting the tract? If yes, attach 2 copies.		Are there any performance guarantees and/or maintenance agreements with the city council? If yes, attach 2 copies.

1507223-01

Amended August 4, 2005

RECEIVED
P05-059
AUG 8 2005
CITY PLANNING

CITY OF JERSEY CITY
General Development Application
(Page 4 of 4)

6. **HISTORY OF PAST APPROVALS** [X] Check here if none. If there are previous approvals, attach 2

	APPROVED	DENIED	DATE
Subdivision			
Site Plan			
Variance(s)			
Building Permit			

7. **FEES** (see attached Fee Schedule) **STAFF CALCULATIONS ONLY**

Submitted Fee: $	Submitted Escrow Deposit: $
Site Plan/Subdiv. Application Fees: $	Variance Fees: $
Total Fees: $	Balance Due: FEE $ ESCROW $

8. **ATTACHMENTS:**
Please ATTACH the required additional forms and information, if applicable (see attached FORMS and CHECKLISTS)

9. **CERTIFICATION**

I certify that the foregoing statements and the attached materials submitted are true. I further certify that I am the individual applicant or that I am an Officer of the Corporate applicant and that I am authorized to sign the application for the corporation or that I am a general partner of the partnership applicant. I hereby permit authorized City officials to inspect my property in conjunction with this application.

Sworn to and subscribed before me this: 4th day of August, 2005

SLH Holding Corporation

By: Carmine R. Alampi
Carmine R. Alampi, Attorney for Applicant

415 Brunswick Street, L.L.C.

By: Carmine R. Alampi
Carmine R. Alampi, Authorized Representative

Property Owner Authorizing Application if other than Applicant

Owner of parcel B 415 Lot 50 a/k/a Lot 50.PL

Bridget McLaughlin-Scarvaglione
Notary Public of New Jersey
My Commission Expires
June 24, 2009

1507223-01

CITY OF JERSEY CITY
General Development Application
(Page 4 of 4)

6. **HISTORY OF PAST APPROVALS** [X] Check here if none. If there are previous approvals, attach 2

	APPROVED	DENIED	DATE
Subdivision			
Site Plan			
Variance(s)			
Building Permit			

7. **FEES (see attached Fee Schedule)** **STAFF CALCULATIONS ONLY**

Submitted Fee: $	Submitted Escrow Deposit: $
Site Plan/Subdiv. Application Fees: $	Variance Fees: $
Total Fees: $	Balance Due: FEE $ ESCROW $

8. **ATTACHMENTS:**
Please ATTACH the required additional forms and information, if applicable (see attached FORMS and CHECKLISTS)

9. **CERTIFICATION**

I certify that the foregoing statements and the attached materials submitted are true. I further certify that I am the individual applicant or that I am an Officer of the Corporate applicant and that I am authorized to sign the application for the corporation or that I am a general partner of the partnership applicant. I hereby permit authorized City officials to inspect my property in conjunction with this application.

Sworn to and subscribed before me this 24 day of May, 2005.

By: _____
JOHN K FIORILLA - AN ATTORNEY AT LAW OF NJ
Consolidated Rail Corporation

By: _____
ROBERT W LYNCH
Property Owner Authorizing Application if other than Applicant
Owner of parcel B 415 Lot 50 a/k/a Lot 50.PL

1507223-01

RECEIVED
MAY 25 2005
P05-059

AFFIDAVIT OF OWNERSHIP

STATE OF NEW JERSEY

SS :

COUNTY OF BERGEN

I, Carmine R. Alampi, of full age, being duly sworn according to law depose and say, the following:

1. I am the authorized representative of 415 Brunswick Street, LLC, the owner of all that certain lot, piece or parcel of land situated, lying and being in the City of Jersey City aforesaid, and known and designated as Block 415, Lot 50 (a/k/a Lot 50.PL);

2. I hereby authorize the applicant, SLH Holding Corporation, to make the annexed application on its behalf.

The foregoing statements made by me are true.

Carmine R. Alampi

Sworn to before me this
4th day of August, 2005.

Notary Public of New Jersey

Bridget McLaughlin-Scarvaglione
My Commission Expires June 24, 2009

RECEIVED
AUG 8 2005
P05-059
PLANNING

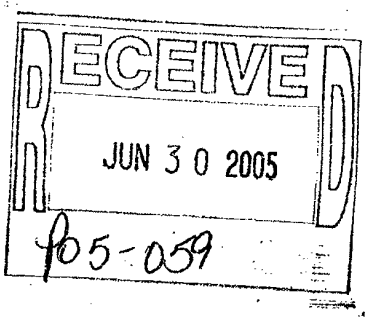
APPLICANT DISCLOSURE STATEMENT

SLH HOLDING CORPORATION

**Pursuant to N.J.S. 40:55D-48.1, the names and addresses(and % of interest owned!) of all persons owning 10 % or more of the stock in a corporation or a 10 % interest in any partnership must be disclosed by the applicant. In accordance with N.J.S. 40:55D-48.2 that disclosure requirement applies to any corporation or partnership which owns more than 10 % interest.

Persons or Corporations/Partnerships owning 10% interest or more:

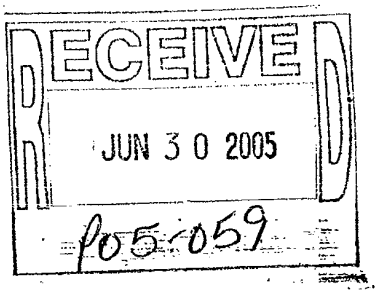
**	Steven L. Hyman	c/o Carmine R. Alampi One University Plaza, Ste 404 Hackensack, NJ 07601 201-343-4600	Sole Shareholder (100 %)



OWNERSHIP DISCLOSURE STATEMENT

CLAUDIA JASTRZEBSKI

Claudia Jastrzebski, is the sole owner of all that certain lot, piece or parcel of land situated, lying and being in the City of Jersey City aforesaid, and known and designated as Block 415, Lot 51;



AFFIDAVIT OF OWNERSHIP

STATE OF NEW JERSEY

COUNTY OF HUDSON **SS :**

I, Claudia Jastrzebski, of full age, being duly sworn according to law depose and say, the following:

1. I am the owner of all that certain lot, piece or parcel of land situated, lying and being in the City of Jersey City aforesaid, and known and designated as Block 415, Lot 51;

2. I hereby authorize the applicant, SLH Holding Corporation, to make the annexed application on its behalf.

The foregoing statements made by me are true.

CLAUDIA JASTRZEBSKI

Sworn to before me this
day of May, 2005.

Notary Public of New Jersey

18day of May 2005

[illegible] Commission expires
[illegible]y 5, 2008

RECEIVED
MAY 25 2005
P05-059

Exhibit C: Appendix III

COPY

FILED

NOV 28 2005

MAURICE J. GALLIPOLI, A.J.S.C.

Michele R. Donato, Esq.
106 Grand Central Avenue
P.O. Box 145
Lavallette, NJ 08735-0145
(732) 830-0777
Attorney for Plaintiffs

212 MARIN BOULEVARD, LLC,
247 MANILA AVENUE, LLC,
280 ERIE STREET, LLC,
317 JERSEY AVENUE, LLC,
354 COLE STREET, LLC,
389 MONMOUTH STREET, LLC,
415 BRUNSWICK STREET, LLC,
446 NEWARK AVENUE, LLC and
CLAUDIA JASTRZEBSKI,

Plaintiffs,

v.

CITY OF JERSEY CITY, JOANNE MONAHAN, ASSISTANT CORPORATION COUNSEL AND THE PLANNING BOARD OF THE CITY OF JERSEY CITY,

Defendants.

SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY
LAW DIVISION
DOCKET NO. L-4908-05

Civil Action

ORDER REMANDING APPLICATION TO THE PLANNING BOARD AND IMPOSING RESTRAINTS

THIS MATTER having been heard by the Court on Order to Show Cause why preliminary injunctive relief should not be granted remanding the application to the Jersey City Planning Board and for other relief; and

Michele R. Donato, Esq., Edward McKirdy, Esq. and Carmine Alampi, Esq. appearing on behalf of Plaintiffs' Vincent

LaPaglia, appearing on behalf of Defendant Planning Board of Jersey City; and John J. Curley, Esq., appearing on behalf of the City of Jersey City and Corporation Counsel; and

The Court having reviewed the record below and having considered the submissions of counsel for the parties and having heard oral argument:

IT IS on this 28th day of November 2005 ORDERED as follows:

1. The application of 415 BRUNSWICK STREET, LLC and CLAUDIA JASTRZEBSKI for property known as Block 415, Lot 50 and 51 in the City of Jersey City is remanded to the Jersey City Planning Board for a decision on the merits of the application in accordance with the Municipal Land Use Law.

2. The City of Jersey City, Corporation Counsel, and the City's agents, attorneys and consultants are enjoined from raising and presenting any issues before the Planning Board regarding the issues of railroad abandonment, the validity of title, ownership of Plaintiffs' property and the possible condemnation of Plaintiffs' property.

3. The Jersey City Planning Board is enjoined from considering any evidence or information regarding the issues of railroad abandonment, the validity of the title, ownership of Plaintiffs' property and the possible condemnation of Plaintiffs' property.

4. The Planning Board shall render a final decision on the application no later than December 31, 2005. The Planning Board's decision shall not be based on abandonment, validity of title and ownership of Plaintiffs' property and the possible condemnation of Plaintiffs' property, but shall be based on legitimate land use considerations as set forth in the Zoning Ordinance of the City of Jersey City.

5. In the event that the Planning Board does not render a decision by December 31, 2005, Plaintiffs shall be entitled to a default approval of the application pursuant to N.J.S.A. 40:55D-10.4.

Maurice J. Gallipoli, A.J.S.C.

Reasons on the record.

Rebuttal Appendix G

City of Jersey City et al – Pet. Dec. Order, FD 34818
served August 9, 2007;

id. served Dec. 19, 2007

36955
EB

SERVICE DATE – AUGUST 9, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34818

CITY OF JERSEY CITY, RAILS TO TRAILS CONSERVANCY, PENNSYLVANIA RAILROAD HARSIMUS STEM EMBANKMENT PRESERVATION COALITION, AND NEW JERSEY STATE ASSEMBLYMAN LOUIS M. MANZO– PETITION FOR DECLARATORY ORDER

Decided: August 8, 2007

On January 12, 2006, the City of Jersey City, NJ (City), the Rails to Trails Conservancy, the Pennsylvania Railroad Harsimus Stem Embankment Coalition (Coalition), and State Assemblyman Louis M. Manzo (collectively, petitioners) filed a petition for declaratory order under 5 U.S.C. 554(e). Petitioners ask the Board to determine whether Consolidated Rail Corporation (Conrail) needs prior agency authorization to abandon trackage known as the Sixth Street Embankment (Embankment), extending between milepost 1.3 near Luis Munoz Marin Boulevard (formerly Henderson Avenue) and milepost 2.54 near Waldo Avenue, in Jersey City, NJ. Petitioners contend that the Embankment was transferred to Conrail as a line of railroad under "Line Code 1420," and therefore is subject to the Board's abandonment regulation, but that Conrail recently sold the Embankment to SLH Properties (SLH)[1] for development as residential housing without obtaining abandonment authority from the Board.[2]

---

[1] SLH consists of 212 Marin Boulevard, L.L.C.; 247 Manila Avenue, L.L.C.; 280 Erie Street, L.L.C.; 317 Jersey Avenue, L.L.C.; 354 Coles Street, L.L.C.; 389 Monmouth Street, L.L.C.; 415 Brunswick Street, L.L.C.; and 446 Newark Avenue, L.L.C. By decision served January 24, 2006, SLH was granted leave to intervene in this proceeding.

[2] The petition is supported by United States Senators Robert Menendez and Frank R. Lautenberg, United States Representatives Frank Pallone, Steven R. Rothman, Robert E. Andrews, Donald M. Payne and Bill Pascrell, Jr., and Governor Jon S. Corzine. Letters supporting the petition were also received from the County of Hudson Department of Public Resources, Hamilton Park Neighborhood Association, Preservation New Jersey, East Coast Greenway Alliance, NY/NJ Baykeeper, Harsimus Cove Association, Metropolitan Waterfront Alliance, Historic Paulus Hook Association, Inc., the Jersey City Landmarks Conservancy, Inc., the North Jersey Transportation Planning Authority, Inc., and Bernard F. Kenny, Jr., Senate Majority Leader, State of New Jersey.

In separate replies filed on February 1, 2006, Conrail and SLH (jointly, respondents) agree that the Embankment was conveyed to Conrail in 1976 pursuant to the United States Railway Association's (USRA) Final System Plan (FSP). They claim, however, that the Embankment was not the line of railroad conveyed under Line Code 1420, but was merely ancillary industrial yard and spur track that is exempt from the Board's entry and exit regulation under 49 U.S.C. 10906 (formerly 49 U.S.C. 10907(b)). They state that therefore Conrail did not need authority to abandon the Embankment. Respondents note that Conrail previously sold track adjoining the Embankment for redevelopment with encouragement from the City without first seeking authority from the Interstate Commerce Commission (ICC) or the Board and that Conrail also has removed tracks, ties and bridges on the Embankment at the City's urging.

The Board instituted a declaratory order proceeding by a decision served on February 8, 2006. Pursuant to that decision, petitioners filed opening statements on March 10, 2006, and Conrail and SLH filed reply statements on April 24, 2006. Petitioners filed a rebuttal on May 9, 2006.

On May 23, 2006, SLH filed a petition for leave to file a reply along with a reply. On May 24, 2006, petitioners filed a motion for leave to file supplemental evidence, including a missing "Track Chart" (a schematic diagram of track). On May 26, 2006, and May 30, 2006, respectively, SLH and Conrail replied, asking that the Board strike a portion of petitioners' submission as redundant but not objecting to the filing of the Track Chart. Petitioners filed a pleading on June 1, 2006, responding to the SLH and Conrail filings. We will accept these supplemental filings to ensure a complete record.

BACKGROUND

The Embankment is part of a line historically known as the Harsimus Branch, which was constructed by the United New Jersey Railroad and Canal Company (UNJRCC) and leased in 1871 to the Pennsylvania Railroad Company (PRR), together with other UNJRCC-owned lines, for 999 years. What Conrail describes as the "UNJRCC main line" apparently ran between Newark, NJ, and Exchange Place in Jersey City, near the Hudson River. The Harsimus Branch connected with the UNJRCC main line at Waldo Avenue and continued over the Embankment into the Harsimus Cove Yard on the Hudson River. The PRR used the Harsimus Branch as part of that carrier's main freight route between the Midwest and Harsimus Cove Yard. Freight traffic moved over UNJRCC's main line from Newark and then over the Harsimus Branch into Harsimus Cove Yard. The Harsimus Cove Yard contained coal piers, warehouses, grain elevators, stockyards, and other facilities that were used to handle rail-marine traffic. The yard also had piers and float bridges to serve lighters and car floats to transfer cargo to vessels in the harbor and to piers and yards in Manhattan and Brooklyn and for through movement to other Northeast destinations. In addition, local shippers were served from trackage in Harsimus Cove Yard.

Constructed between 1901 and 1905 along Sixth Street in Jersey City, the Embankment consisted of 6 segments, each approximately 400 feet long and 100 feet wide, joined by plate girder bridges that spanned north-south streets. The 5 western segments were constructed on masonry walls and earthen fill. The easternmost segment, closest to Harsimus Cove Yard, was built largely as an earthen slope embankment. The embankment rose from a height of approximately 12 feet at the eastern end to approximately 35 feet at its western end.[3]

During the 1950's and 1960's, rail traffic at Harsimus Cove Yard began to decline. PRR merged into the Penn Central Transportation Company (Penn Central) on February 1, 1968.[4] Penn Central relocated much of the rail-marine traffic from Harsimus Cove Yard to Penn Central's Greenville facility located several miles to the south.[5] Traffic at the Harsimus Cove Yard continued to decrease, and, by the 1970's, parts of the yard were no longer used for rail service.

Penn Central declared bankruptcy in 1970, along with seven other railroads in the Northeast.[6] In response, Congress enacted the Regional Rail Reorganization Act of 1973, Pub. L. No. 93-236, 87 Stat. 985 (1974) (3R Act). The 3R Act established USRA to prepare a plan for restructuring the railroads in reorganization into a financially viable, self-sustaining rail system that ultimately became Conrail.

USRA issued its FSP on July 26, 1975, describing "rail properties" of the railroads in reorganization that would be conveyed to Conrail.[7] Page 272 of the FSP listed UNJRCC properties to be transferred to Conrail. Included on the list was "Line Code 1420," described as the Harsimus Branch, running between milepost 1.0 in Jersey City and milepost 7.0 at Harrison,

---

[3] See Exhibits E and I to petitioners' Petition for Declaratory Order.

[4] See Pennsylvania R. Co.–Merger–New York Central R. Co., 327 I.C.C. 475 (1966) (Penn Central Merger).

[5] The operating plan submitted in the Penn Central Merger proceeding proposed to retire a major portion of the Harsimus Cove Yard. Penn Central Merger, 327 I.C.C. at 1023.

[6] The other bankrupt railroads were: The Reading Co., The Erie Lackawanna Railroad Company, the Lehigh Valley Railroad Company, the Boston & Maine Corp., Ann Arbor Railroad Co., Lehigh & Hudson River Railroad Company, and the Central of New Jersey Railroad Company. The Penn Central bankruptcy included the UNJRCC, as a lessor of Penn Central lines.

[7] The term "rail properties" in the 3R Act and the FSP referred to both lines of railroad and ancillary track and facilities that were deemed used or useful for railroad purposes. See 45 U.S.C. 742.

NJ. The FSP indicated that yards, spur tracks, and other ancillary facilities associated with the rail lines designated to be acquired by Conrail would be conveyed automatically unless the FSP provided otherwise. Page 262 of the FSP indicated that portions of the Harsimus Cove Yard were transferred to Conrail.[8]

The property constituting Line Code 1420 was conveyed to Conrail by deed from Fairfax Leary, Trustee of the property of the UNJRCC, dated March 31, 1976.[9] Exhibit A to the deed described the relevant property that was conveyed as follows:

> Situate in the County of Hudson, State of New Jersey, and being The United New Jersey Railroad and Canal Company's line of railroad known as the Penn Central Harsimus Branch and being all the real estate property in the County lying in, under, above, along, contiguous to, adjacent to or connecting to such line.
>
> Such line originates in the County at Harsimus Cove, passes through Journal Square, and terminates in the County near the junction with the Penn Central New York-Philadelphia Main Line, west of the New Jersey Turnpike Overhead Bridge.
>
> The line of railroad described herein is identified as Line Code 1420 in the records of the United States Railway Association.

On April 1, 1976, Conrail began operating the rail system established in the FSP. It provided service to several shippers located on Hudson Street using the line identified as Line Code 1420, including the Embankment.

A Conrail memorandum submitted by petitioners dated January 17, 1985, indicates that, for the 12 months ending September 1984, Conrail handled 3,204 carloads for these shippers. According to that memorandum, the largest shipper was Colgate Palmolive Company, which received 1,068 carloads during this period. Five other shippers accounted for the remaining freight traffic. A Conrail memorandum dated January 15, 1988, indicates that traffic had declined to 637 cars in 1986. Conrail's last customer served by the line of railroad constituting Line Code 1420 was gone by 1992.

Even before Conrail began operating in the Jersey City area, the City had begun redevelopment efforts intended to replace the few remaining industrial operations in the area with office buildings, real estate complexes and other high-end commercial developments. The

---

[8] The rest of the yard remained with the Penn Central trustees for disposition because it was not deemed used or useful for railroad purposes. See relevant pages of the FSP submitted as Exhibit C to Conrail's Reply Statement.

[9] The deed was submitted in Appendix XVI to petitioners' Opening Statement.

City adopted detailed redevelopment plans for the Harsimus Cove Yard, and the Jersey City Development Agency (Agency) condemned some property that was not in active rail use. By the mid-1980's, most of the Harsimus Cove Yard trackage had been sold to developers or the Agency.

In 1984 and afterwards, the City asked Conrail to make available for redevelopment the underutilized railroad property and trackage. The City also urged Conrail to remove the Embankment. Apparently, Conrail agreed to dismantle the Embankment and sell the property after it completed a new track connection at Marion, NJ, to replace use of the Embankment for turnaround space. After completing the new connection in 1994, Conrail permitted the City and National Bulk Carriers, Inc., a private developer, to remove bridges on the Embankment.[10]

After the rail infrastructure was removed, Conrail allegedly offered to sell the Embankment to the City and entered into negotiations with the Agency. No public entity came forward to acquire the Embankment. In October 2002, Conrail put the parcels up for bid. The only bidder for the property was SLH.

In 2003, Conrail discussed a possible acquisition of the Embankment by the Coalition and the City, but the negotiations were unsuccessful. Conrail closed the sale of the parcels to SLH in July 2005.

The record includes 8 valuation maps for Line Code 1420 from the early part of the last century.[11] Six maps, identified as maps V-2.1, ST-1 though ST-6, depict trackage running west from the Hudson River to a main line connection. Also included are two maps, identified as maps V-1.01, ST-1 and ST-2, depicting the Embankment and the Harsimus Cove Yard. The maps detail the trackage that had been owned by UNJRCC and operated by PRR between Newark and Jersey City, including the UNJRCC line, the Harsimus Branch and Harsimus Cove Yard. The maps also describe track segments that had previously been sold and were not

---

[10] See Statement of Conrail Witness Robert W. Ryan.

[11] The ICC had been required by the Valuation Act of 1913, Pub. L. No. 62-400, 37 Stat. 701, to establish the value of all property owned or used by railroads subject to its jurisdiction. The statute required each rail carrier to prepare maps to assist the ICC in valuing its property. See former 49 U.S.C. 10781 et seq. (1995). The valuation maps submitted in this proceeding were prepared after detailed surveys during 1915-1920 and were part of the ICC's valuation of the PRR, including UNJRCC, that was published in Pennsylvania R. Co., 22 Val. Rep. 1 (1929). The valuation of UNJRCC-owned lines is also available online at http://broadway.pennsyrr.com/rail/prr/Corphist/urrnj.html (last visited July 17, 2007).

included in the rail property transferred to Conrail by the FSP in 1976.[12] For example, map V-1.01, ST-2 depicting the extensive trackage located in Harsimus Cove Yard indicates that nearly all of that trackage had been "sold." And map V-2.1, ST-1 describes the trackage between Grove Street and Exchange Place at the Hudson River as "sold."

Also included in the record are a PRR Track Chart dated December 31, 1965, a Penn Central Track Chart dated January 1, 1975, and Conrail Track Charts dated January 1, 1976, January 1, 1977, and January 1, 1980, all of which depict Line Code 1420, which is identified as the Harsimus Branch, as running between milepost 1.3 at Jersey City and milepost 7 at Kearny.[13] Conrail also submitted a Track Chart, dated January 1982, showing the "Passaic and Harsimus Branch" that ran from milepost 0 at Waldo to milepost 9 near Kearny and included some trackage designated as Line Code 1421.[14] This Track Chart does not include the Embankment or the Harsimus Cove Yard trackage.[15]

UNJRCC's main line between Newark and Jersey City–a portion of which respondents claim constituted the line of railroad transferred under Line Code 1420–was abandoned and dismantled prior to the creation of Conrail. Before that it was used by PRR and the former Hudson & Manhattan Railroad Company (H&M) for rail passenger commuter service. H&M's line ran underground beginning near Grove Street in Jersey City and continued through the Hudson Rapid Tubes tunnel to the former World Trade Center in New York City.[16] PRR's rail

---

[12] SLH Witness Victor Hand confirms that valuation maps were marked to show what was excluded from the conveyance to Conrail.

[13] The 1975 Penn Central Track Chart was submitted with petitioners' filing on May 24, 2006. Petitioners submitted the 1965 PRR Track Chart and the 1976, 1977 and 1980 Conrail Track Charts as Exhibit IX to their opening statement. Conrail witness Ryan indicates that mileposts were based on a convention followed originally by PRR that designated Pennsylvania Station in New York City as milepost 0.

[14] Line Code 1421 was identified in the FSP as the 4.4-mile Passaic Branch, which connected with Line Code 1420 and extended to Kearny, NJ.

[15] See Exhibit F to Conrail's reply statement.

[16] See Hudson & M. R. Co. Trustee Abandonment, 312 I.C.C. 487 (1961), and 312 I.C.C. 701 (1961). The Port Authority Trans-Hudson Corporation (PATH), a wholly owned subsidiary of The Port of New York Authority, subsequently took over the rail commuter service. Port Authority Trans-Hudson Corp. Acquisition and Op., 317 I.C.C. 357 (1962), and Pennsylvania R. Co.–Lease, 330 I.C.C. 503 (1966). PATH continues to operate commuter service between Newark and the former World Trade Center, along-side Conrail's line between Waldo Avenue and Newark that Conrail operates as part of the New Jersey Shared Assets Area.

passenger commuter service between Newark and Exchange Place duplicated the service provided by H&M. Passengers using PRR's commuter service could transfer to H&M at Exchange Place and continue on H&M's line into New York City. The ICC authorized UNJRCC to abandon its line between Brunswick Street and Exchange Place and authorized PRR to discontinue its rail commuter service. United New Jersey R. & Canal Co. Abandonment, 312 I.C.C. 529 (1961) (UNJRCC Abandonment). PRR thus terminated its commuter service in 1961, razed its terminal at Exchange Place in 1963, and removed the UNJRCC main line between Grove Street and Exchange Place by the late 1960's, well before the creation of Conrail. The City subsequently acquired the elevated structure on this line and dismantled it.[17]

POSITIONS OF THE PARTIES

Petitioners. Petitioners assert that the Embankment is a line of railroad transferred to Conrail in the FSP under Line Code 1420. They point out that the deed transferring Line Code 1420 to Conrail specifically includes the Embankment property, describing it as a "line of railroad," and that the status of the Embankment as part of Line Code 1420 is reflected in Conrail's Track Charts from 1976, 1977 and 1980. They acknowledge that Conrail viewed the Embankment as ancillary spur track after acquiring the property, believing that therefore it need not obtain abandonment authority from the ICC or the Board, but contend, based on ICC and Board precedent, that Board or ICC abandonment authority nevertheless is required for the Embankment.[18] Petitioners assert, however, that Conrail's contention that it intended to operate the Embankment as ancillary track is not relevant in determining whether abandonment authority was required for this trackage. They further point out that, as late as 1983, over 3,000 carloads per year for multiple customers moved over the Embankment. They thus claim that Conrail used the Embankment as a line of railroad, not merely as ancillary spur track.

Finally, petitioners explain that they do not intend to reactivate rail service over the Embankment. Rather, if abandonment is authorized, they would seek to acquire the Embankment for public use under 49 U.S.C. 10905, or under a similar New Jersey statute, N.J.S.A. 48:12-125.1, or eminent domain. Petitioners point out that, while the City initially viewed the Embankment as an eyesore and focused on private development opportunities or

---

[17] See New Jersey City University, Jersey City Past and Present, Exchange Place, http://www.njcu.edu/programs/jchistory/Pages/E_pages/Exchange_Place.htm (last visited July 17, 2007); New York City Subway Resources, Path/Hudson & Manhattan RR, http://www.nycsubway.org/nyc/path (last visited July 17, 2007).

[18] According to petitioners, even though the City encouraged Conrail to remove the unused and unmaintained bridges on the line as a safety measure, this did not affect the requirement that Conrail seek abandonment authority.

possible use as a freeway, it is now recognized that the Embankment has historic significance[19] and that the property should be preserved or used as open space or as a trail.[20]

Respondents. Respondents assert that "Line Code 1420" in the FSP and the deed conveying that property to Conrail do not refer to the line that includes the Embankment. Rather, respondents argue that USRA in the FSP and the deed conveying the property intended that Line Code 1420 constitute the old main line of the UNJRCC, which ran from the bulkheads on the Hudson River (milepost 1) to Harrison (milepost 7).

Respondents emphasize that Conrail treated the Embankment as ancillary spur track after the Embankment was transferred along with the UNJRCC main line described above. Respondents also note that the City had originally encouraged Conrail to make the Embankment available for redevelopment, and they argue that the Board should not permit its processes to be used to unwind the transaction Conrail has entered into with a developer. Respondents point out that there is no potential here to use the Embankment as an active rail line. They view the City's claim that Board abandonment authority is required as a way to obtain leverage in a possible future condemnation action.

DISCUSSION AND CONCLUSIONS

The issue before us here is whether the Embankment was transferred to Conrail as a line of railroad included under Line Code 1420, in which case Board abandonment authority would be required, or whether the Embankment was only ancillary spur and yard track that can be abandoned under 49 U.S.C. 10906 without regulatory approval. Based on the record, as well as other publicly available information, we conclude that the Embankment was transferred to Conrail in the FSP as a line of railroad under Line Code 1420.

The record shows that a deed conveys a line of railroad identified as Line Code 1420. The description of Line Code 1420 in the FSP and the depiction of Line Code 1420 on Track Charts from 1975, 1976, 1977 and 1980 show Line Code 1420 as running from milepost 1 at the Hudson River to milepost 7 near Harrison. The only rail property existing in 1976 when Conrail was created that conformed to the descriptions in the deed, FSP, and the Track Charts is the trackage that includes the Embankment—the same trackage used by PRR and Penn Central and

---

[19] See Verified Statement of Ron Emrich, petitioners' Rebuttal Statement. The Embankment is listed on the New Jersey Register of Historic Places. See Exhibits E and I to the Petition for Declaratory Order.

[20] According to petitioners, the Embankment would be ideal for use as part of the East Coast Greenway, a proposed system of trails running from Maine to Florida. Petitioners state that they do not plan to seek a trail use condition under the National Trails System Act, 16 U.S.C. 1247(d), because Conrail would not agree to such a condition.

later by Conrail for carrying freight to shippers located on Hudson Street. Thus, the Embankment was transferred to Conrail as a line of railroad under Line Code 1420.

Respondents incorrectly claim that Line Code 1420 was intended instead to convey the UNJRCC main line that had run from the Hudson River to Newark. As previously noted, the UNJRCC main line had also been used for passenger service, and a portion of the passenger line between Grove Street and Exchange Place was abandoned by PRR in 1961 pursuant to authority granted by the ICC in UNJRCC Abandonment. Following the abandonment, the City acquired the elevated structure on the line and dismantled it. Thus, the portion of the UNJRCC main line that respondents claim is Line Code 1420 did not exist in 1976 when Conrail was created. Accordingly, Line Code 1420 in the FSP cannot refer to the UNJRCC main line. Moreover, the valuation maps dated 1975 show that the portion of the UNJRCC main line that ran along Railroad Avenue from Brunswick Street to Exchange Place was marked "sold," indicating that that trackage segment was excluded from the rail property conveyed to Conrail in the FSP in 1976.

The 3R Act provides that, after the rail lines acquired by Conrail had been operated for 2 years, Conrail must seek abandonment authority from the ICC and subsequently the Board.[21] The 3R Act obligates Conrail to obtain abandonment authority for the Embankment because the Embankment was conveyed to Conrail as a line of railroad under Line Code 1420.

Since 1976, Conrail has filed more than 1,100 abandonment proposals.[22] Some of those proceedings have involved short segments of track that, like the Embankment, were no longer used for rail operations when abandonment authority was sought.[23] In none of those proceedings

---

[21] See 45 U.S.C. 744(g), as amended by sections 205 and 327(3)(G) of the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA). Section 205 of ICCTA appears as a note to 49 U.S.C. 701, which established the Board.

[22] Many of Conrail's applications were handled under streamlined procedures prescribed in the Northeast Rail Service Act of 1981, 45 U.S.C. 748 (NERSA), which applied until 1985. Now there are no special procedures for the abandonment of Conrail's lines other than for the few lines that remain subject to the NERSA procedures due to Conrail's having filed a Notice of Insufficient Revenues under NERSA for those lines.

[23] See, e.g., Consolidated Rail Corporation–Abandonment Exemption–in Philadelphia, PA, STB Docket No. AB-167 (Sub-No. 1183X) (STB served May 22, 1998) (0.42-mile industrial track); Consolidated Rail Corporation–Abandonment Exemption–in Erie County, NY, STB Docket No. AB-167 (Sub-No. 1178X) (STB served May 21, 1997) (0.59-mile industrial track); Consolidated Rail Corporation–Abandonment Exemption–in Madison County, IN, STB Docket No. 167 (Sub-No. 1173X) (STB served Dec. 5, 1996) (0.45-mile secondary track); Consolidated Rail Corporation–Abandonment Exemption–in Middlesex County, NJ, STB

(continued . . .)

has Conrail claimed that ICC or STB abandonment authority is not required because Conrail has treated what historically was part of a line of railroad as ancillary spur track.

This case is similar to a proceeding involving another Conrail line, the 1.45-mile West 30th Street Secondary Track known as the "Highline," located in Manhattan. In that proceeding, the ICC determined that the Highline, which had been conveyed to Conrail under the FSP as Line Code 4235,[24] was subject to the agency's abandonment regulation even though the track had many characteristics of a spur and had not been used by Conrail for many years. Chelsea Property Owners–Aban.–The Consol. R. Corp., 8 I.C.C.2d 773, 790-91 (1992), aff'd sub nom. Consolidated Rail Corp. v. ICC, 29 F.3d 706 (D.C. Cir. 1994).

Moreover, Conrail's position that the Embankment is merely ancillary track ignores the fact that the Embankment was operated for over 100 years as part of PRR's major freight route connecting with the piers at Harsimus Cove Yard. As the record here shows, Penn Central continued to operate over the Embankment after the marine operations at Harsimus Cove Yard relocated. After acquiring the line, Conrail operated over the Embankment to move substantial amounts of traffic to serve shippers located on Hudson Street. Thus, this track was not used as ancillary track. In any event, even though Conrail may have viewed the Embankment as only ancillary yard or spur track, Conrail's actions alone could not remove the need for it to obtain appropriate Federal abandonment authority for this property. See The Atchison, Topeka and Santa Fe Railway Company–Abandonment Exemption–In Lyon County, KS, Docket No. AB-52 (Sub-No. 71X), slip op. at 5 (ICC served June 17, 1991) ("Because this track was clearly part of a rail line at one time, we find that it cannot be converted into an exempt spur . . . solely through the railroad's unilateral decision to change its use of the track segment over time.").

In sum, we conclude that Conrail acquired the Embankment as a line of railroad under Line Code 1420 of the FSP. Thus, the Embankment is a line of railroad subject to Federal

---

(. . . continued)
Docket No. AB-167 (Sub-No. 1172X) (STB served Dec. 19, 1996) (1.08-mile industrial track); Consolidated Rail Corporation–Abandonment Exemption–in Marion County, IN, STB Docket No. AB-167 (Sub-No. 1167X) (STB served Sept.17, 1996) (1.55-mile industrial track); Consolidated Rail Corporation–Abandonment Exemption–Between Chesterbrook and Cedar Hollow, in Chester County, PA, Docket No. AB-167 (Sub-No. 1118X) (ICC served Aug. 10, 1993 (0.85-mile line); Consolidated Rail Corporation–Abandonment Exemption–in Elizabeth, Union County, NJ, Docket No. AB-167 (Sub-No. 1113X) (ICC served Dec. 8, 1993 (0.18-mile industrial track); Consolidated Rail Corporation–Abandonment Exemption–in Baltimore City, MD, Docket No. AB-167 (Sub-No. 1108X) (ICC served Dec. 3, 1992 (1.24-mile branch line); and Consolidated Rail Corporation–Abandonment Exemption–in Union County, NJ, Docket No. AB-167 (Sub-No. 1096X) (ICC served Nov. 20, 1989) (0.21-mile line).

[24] See Exhibit A to SLH's reply.

abandonment regulation. Accordingly, the Embankment property sold to SLH remains part of the national rail system subject to the Board's exclusive jurisdiction until appropriate abandonment authority is obtained.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Petitioners' motion for leave to file a Penn Central Track Chart is granted, and the supplemental filings are accepted into the record as set forth in this decision.

2. The petition for declaratory order is granted; this proceeding is discontinued.

3. This decision is effective on September 8, 2007.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary

38359
EB

SERVICE DATE – DECEMBER 19, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34818

CITY OF JERSEY CITY, RAILS TO TRAILS CONSERVANCY, PENNSYLVANIA RAILROAD HARSIMUS STEM EMBANKMENT PRESERVATION COALITION, AND NEW JERSEY STATE ASSEMBLYMAN LOUIS M. MANZO– PETITION FOR DECLARATORY ORDER

Decided: December 17, 2007

In this decision, we are denying a petition for reconsideration of our decision in this declaratory order proceeding that was served on August 9, 2007 (the August 2007 Decision).[1]

BACKGROUND

In this proceeding, the City of Jersey City, NJ (City), the Rails to Trails Conservancy, the Pennsylvania Railroad Harsimus Stem Embankment Coalition, and State Assemblyman Louis M. Manzo (collectively, petitioners) asked us to determine whether Consolidated Rail Corporation (Conrail) needed prior Board authorization to abandon trackage known as the Sixth Street Embankment (Embankment), extending between milepost 1.3 near Luis Munoz Marin Boulevard (formerly Henderson Avenue) and milepost 2.54 near Waldo Avenue, in Jersey City, NJ. Conrail had recently sold the Embankment to a group of limited liability companies referred to collectively by petitioners (in their filings) and the Board (in the August 2007 Decision) as SLH Properties (SLH)[2] for development as residential housing without obtaining abandonment authority from the Board.

The Embankment is part of a rail line known as the Harsimus Branch, which was constructed by the United New Jersey Railroad and Canal Company (UNJRCC) and leased to the former Pennsylvania Railroad Company (PRR) together with other UNJRCC-owned lines. The

---

[1] Petitions for judicial review of the August 2007 Decision have been filed in 212 Marin, LLC et al. v. STB, No. 07-1397 (D.C. Cir. filed Oct. 2, 2007) and Conrail v. STB, No. 07-1401 (D.C. Cir. filed Oct. 4, 2007).

[2] SLH consists of 212 Marin Boulevard, L.L.C.; 247 Manila Avenue, L.L.C.; 280 Erie Street, L.L.C.; 317 Jersey Avenue, L.L.C.; 354 Coles Street, L.L.C.; 389 Monmouth Street, L.L.C.; 415 Brunswick Street, L.L.C.; and 446 Newark Avenue, L.L.C. By decision served January 24, 2006, SLH was granted leave to intervene in this proceeding.

UNJRCC main line ran between Newark, NJ, and Exchange Place, in Jersey City near the Hudson River. The Harsimus Branch connected with the UNJRCC main line at Waldo Avenue and continued over the Embankment into Harsimus Cove Yard on the Hudson River. PRR used the Harsimus Branch as part of that carrier's main freight route between the Midwest and Harsimus Cove Yard.

As we noted in our August 2007 Decision, the Harsimus Cove Yard contained coal piers, warehouses, grain elevators, stockyards, and other facilities that were used to handle rail-marine traffic. The yard also had piers and float bridges to serve lighters and car floats to transfer cargo to vessels in the harbor and to piers and yards in Manhattan and Brooklyn and for through movement to other Northeast destinations. In addition, local shippers were served from trackage in Harsimus Cove Yard.

During the 1950's and 1960's rail service at Harsimus Cove Yard began to decline. PRR was subsequently merged into the Penn Central Transportation Company (Penn Central) on February 1, 1968.[3] Penn Central relocated much of the rail-marine traffic from Harsimus Cove Yard to Penn Central's Greenville facility located several miles to the south, and by the 1970's, parts of the yard were no longer used for rail service.

Penn Central declared bankruptcy in 1970, along with seven other railroads in the Northeast.[4] In response, Congress enacted the Regional Rail Reorganization Act of 1973, Pub. L. No. 93-236, 87 Stat. 985 (1974) (3R Act). The 3R Act established the United States Railway Association (USRA) to prepare a plan for restructuring the railroads in reorganization into a financially viable, self-sustaining rail system that ultimately became Conrail.

USRA issued its Final System Plan (FSP) on July 26, 1975, describing "rail properties" of the railroads in reorganization that would be conveyed to Conrail. Page 272 of the FSP listed UNJRCC properties to be transferred to Conrail. Included on the list was "Line Code 1420," described as the Harsimus Branch, running between milepost 1.0 in Jersey City and milepost 7.0 at Harrison, NJ. The FSP indicated that yards, spur tracks, and other ancillary facilities associated with the rail lines designated to be acquired by Conrail would be conveyed automatically unless the FSP provided otherwise. Page 262 of the FSP indicated that portions of the Harsimus Cove Yard were also transferred to Conrail.

---

[3] See Pennsylvania R. Co.–Merger–New York Central R. Co., 327 I.C.C. 475 (1966) (Penn Central Merger).

[4] The other bankrupt railroads were: The Reading Co., The Erie Lackawanna Railroad Company, Lehigh Valley Railroad Company, Boston & Maine Corp., Ann Arbor Railroad Co., Lehigh & Hudson River Railroad Company, and Central of New Jersey Railroad Company. The Penn Central bankruptcy included the UNJRCC, as a lessor of Penn Central lines.

The property constituting Line Code 1420 was conveyed to Conrail by deed from Fairfax Leary, Trustee of the property of the UNJRCC, dated March 31, 1976.[5] Exhibit A to the deed described the relevant property that was conveyed as follows:

> Situate in the County of Hudson, State of New Jersey, and being The United New Jersey Railroad and Canal Company's line of railroad known as the Penn Central Harsimus Branch and being all the real estate property in the County lying in, under, above, along, contiguous to, adjacent to or connecting to such line.
>
> Such line originates in the County at Harsimus Cove, passes through Journal Square, and terminates in the County near the junction with the Penn Central New York-Philadelphia Main Line, west of the New Jersey Turnpike Overhead Bridge.
>
> The line of railroad described herein is identified as Line Code 1420 in the records of the United States Railway Association.

On April 1, 1976, Conrail began operating the rail system established in the FSP. It provided service to several shippers located on Hudson Street using the line identified as Line Code 1420, including the Embankment. According to the record, Conrail handled 3,204 cars for shippers on Hudson Street over a 1-year period ending in September 1984. Traffic declined to 637 cars in 1986. Conrail's last customer served by the line of railroad constituting Line Code 1420 was gone by 1992.

In our August 2007 Decision, we determined that Conrail had acquired the Embankment as a line of railroad under Line Code 1420 of the FSP, and that, as such, the Embankment remained subject to Federal abandonment regulation. We also determined that the Embankment property sold to SLH remains part of the national rail system subject to the Board's exclusive jurisdiction until appropriate abandonment authority is obtained.

On August 29, 2007, SLH filed a petition for reconsideration, asserting that the August 2007 Decision contains material error. Petitioners filed a joint reply on September 18, 2007.

---

[5] The deed was submitted in Appendix XVI to petitioners' Opening Statement.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 722(c) and 49 CFR 1115.3(b), a petition for reconsideration will be granted only upon a showing that the prior action: (1) will be affected materially because of new evidence or changed circumstances or (2) involves material error. Here, SLH's petition asserts that our August 2007 Decision contains material error. However, SLH has not shown material error.

Evidence issues. SLH asserts that the Board improperly relied in part on materials outside the record (ICC decisions and Internet sources) in deciding that the Embankment was a line of railroad. However, as explained in the August 2007 Decision, at 8-9, although Conrail and SLH had claimed that Line Code 1420 referred to the "UNJRCC main line" and that the Harsimus Branch was ancillary track that was transferred along with the UNJRCC main line, neither Conrail nor SLH had presented evidence demonstrating where the "UNJRCC main line" was located. Therefore, we properly considered the valuation maps[6]–which are a matter of public record maintained by the Board–and the Track Charts submitted by the parties in determining that the portion of the UNJRCC line that ran on "Railroad Avenue" between Brunswick Street and Exchange Place had been marked as being "sold," prior to the enactment of the 3R Act, meaning that it was excluded from property conveyed to Conrail. We also took official notice of facts contained in relevant ICC decisions that confirm that what petitioners refer to as the UNJRCC main line could not have been the line of railroad transferred to Conrail in 1976 under Line Code 1420, because it had previously been abandoned pursuant to authority granted by the ICC and apparently was used by PRR only for passenger commuter service. See, e.g., United New Jersey R. & Canal Co. Abandonment, 312 I.C.C. 529 (1961) (UNJRCC Abandonment).

SLH argues that we should have provided a true copy of the relevant portions of the ICC's published decision in UNJRCC Abandonment under 49 CFR 1114.5 and 49 CFR 1114.6. But those regulations apply to the use of official records and materials from other Board or ICC proceedings, not to Board or ICC decisions themselves. We may take official notice of this agency's decisions and the facts contained in those decisions.

We cited the Internet sources in our August 2007 Decision to confirm that the line authorized for abandonment in UNJRCC Abandonment was indeed abandoned before it could have been transferred to Conrail. Those sources merely contain historical accounts showing that

---

[6] The ICC had been required by the Valuation Act of 1913, Pub. L. No. 62-400, 37 Stat. 701, to establish the value of all property owned or used by railroads subject to its jurisdiction. The statute required each rail carrier to prepare maps to assist the ICC in valuing its property. See former 49 U.S.C. 10781 et seq. (1995). The valuation maps submitted in this proceeding were prepared after detailed surveys during 1915-1920 and were part of the ICC's valuation of the PRR, including UNJRCC, that was published in Pennsylvania R. Co., 22 Val. Rep. 1 (1929).

in the late 1960's the City acquired the elevated structure that carried the UNJRCC line that ran between Brunswick Street and Exchange Place and dismantled it. One source is published by New Jersey City University as part of its Jersey City: Past and Present website.[7] The other source, which is part of a website containing historical and operating information about the New York City subway system, details the history of the passenger commuter service in Jersey City that had been provided by PRR and the Hudson and Manhattan Railroad Company, and now by the Port Authority Trans-Hudson Corp. (PATH).[8] And it corroborates the information contained in the New Jersey City University website.

In its petition for reconsideration, SLH does not dispute the accuracy of the materials we cited. That information is sufficiently reliable and probative for us to have considered these sources as part of our analysis of the status of the Embankment. These sources are easily obtainable, and their factual content regarding dismantling the line on which SLH relies as being the UNJRCC main line is readily verifiable.

SLH also questions our decision to include the internet citation for a portion of the valuation of UNJRCC-owned lines that was part of the ICC's valuation of the PRR. However, because the ICC's valuation reports, which were issued primarily in the 1920's, are not widely available to the public, we cited to the internet version of the part of the ICC's valuation report pertaining to UNJRCC simply as a convenience to the parties and the public. SLH has failed to demonstrate how that assistance constituted material error.

SLH also has raised competency objections to the Board's reliance on a Verified Statement by Richard James and historic preservation materials that were submitted as Exhibits E and I to the Petition for Declaratory Order. But SLH did not object to these exhibits in its response to the Petition for Declaratory Order or any other filing it submitted to the Board prior to the issuance of the August 2007 Decision. And the information provided in these materials satisfies our admissibility requirements at 49 CFR 1114.1 and has enabled the Board, and subsequently the public, to better understand the physical description and history of the Embankment. Again, SLH has failed to demonstrate material error in our consideration of that evidence.

Location of Line Code 1420. Next, SLH asserts that the August 2007 Decision does not identify where Line Code 1420 is located, citing conflicting milepost numbers for the subject track. In support of its position that the Embankment was part of ancillary track that is excepted

---

[7] New Jersey City University, Jersey City Past and Present, Exchange Place, http://www.njcu.edu/programs/jchistory/Pages/E_pages/Exchange_Place.htm (last visited Nov. 20, 2007).

[8] New York City Subway Resources, Path/Hudson & Manhattan RR, http://www.nycsubway.org/nyc/path (last visited Nov. 20, 2007).

from entry and exit regulation under 49 U.S.C. 10906 (formerly 49 U.S.C. 10907(b)), SLH points out that there is no record of any abandonment proceeding involving the portion of Line Code 1420 that extends from milepost 1.0 at the Hudson River to milepost 1.3 near Luis Munoz Marin Boulevard and submits aerial maps showing that the segment between milepost 1.0 and milepost 1.3 has been developed with commercial buildings.[9]

However, our August 2007 Decision properly identified where Line Code 1420 is located: from milepost 1 at the Hudson River to milepost 7 near Harrison.[10] Thus, SLH has not shown that we materially erred in our determination that Line Code 1420 includes the Embankment trackage as a line of railroad.

Severance. SLH asserts that we did not consider whether the Embankment may have been lawfully severed from the national rail system by the abandonment of Conrail's River Line in Conrail Abandonment of the Weehawken Branch—in Hudson County, NJ, STB Docket No. AB-167 (Sub-No. 766N), et al. (STB served Jan. 17, 2002) (Conrail Abandonment). In their response, petitioners note that Conrail's River Line connected to the Harsimus Branch at Waldo, but did not include any portion of the Harsimus Branch. Petitioners further point out that there is another active line of freight railroad that intersects with the Embankment portion of the line.

While not specifically addressed in our August 2007 Decision, we find that SLH has failed to show that the Embankment trackage has been lawfully severed from the national rail system. The Conrail Abandonment decision describes the River Line as extending from "the connection to the Passaic and Harsimus Branch at Controller Point (CP) 'Waldo' in Jersey City (approximately MP 0.00) to the south side of Clifton Road in Weehawken (approximately MP 4.7), including the River Yard." While the River Line connected with what Conrail now calls the Passaic and Harsimus Branch at Waldo, the abandonment of the River Line would not have severed the Passaic and Harsimus Branch from other lines connecting to the national rail system,[11] and, based on all of the valuation maps and Track Charts submitted, would not appear

---

[9] The aerial photographs–obtained from Google.com–purportedly show the current area around the Embankment. Petitioners object to these photographs, contending that they are cumulative of a photo that they submitted as Exhibit B to their Petition for Declaratory Order. We will accept the photographs submitted by SLH in the interest of a more complete record.

[10] Regarding the segment between milepost 1.0 and milepost 1.3, petitioners point out that neither they nor anyone else have asked the Board to determine the status of that segment, and we have had no occasion to do so.

[11] As we noted in the August 2007 Decision, a Conrail Track Chart dated January 1982 showed the "Passaic and Harsimus Branch" as running west from milepost 0 at Waldo to milepost 9 near Kearny.

to have severed the Embankment trackage either, regardless of whether the trackage is considered part of the Passaic and Harsimus Branch.[12]

City's position. SLH asserts that the City's position that STB abandonment authority is required here is inconsistent with its active support for redeveloping the Harsimus Cove area for residential and commercial uses. But the issue of whether there is any inconsistency in the City's positions is immaterial to whether the Embankment is a line of railroad subject to federal abandonment regulation. In any event, as petitioners point out in their response, local governments and planning agencies frequently ask railroads to participate in redevelopment or joint use projects with the understanding that the railroad will obtain appropriate authorization from the Board, if necessary. The Board has authorized a number of abandonment proposals that were submitted by rail carriers to facilitate redevelopment projects.[13] Support by a local government does not excuse the railroad from seeking abandonment authority prior to removal of a rail line from the national rail transportation system.

No legitimate purpose. SLH next argues that the Board should have refrained from declaring the Embankment to be a line of railroad when the property currently is not used for rail transportation purposes. However, as we noted in our August 2007 Decision, since 1976 Conrail has filed more than 1,100 abandonment proposals. Some of those proceedings have involved short segments of track that, like the Embankment, were no longer used for rail operations when abandonment authority was sought. Moreover, a line of railroad does not cease to be a line of railroad simply as a result of non-use. See The Atchison, Topeka and Santa Fe Railway Company–Abandonment Exemption–In Lyon County, KS, Docket No. AB-52 (Sub-No. 71X) (ICC served June 17, 1991). In short, as we explained in our prior decision, Conrail acquired the Embankment as a line of railroad under Line Code 1420 of the FSP. Thus, the Embankment is subject to federal abandonment regulation, and the Embankment property sold to SLH remains

---

[12] We note that SLH, in its reply filed April 24, 2006, at 4, primarily relied on the sale of the Waldo Avenue Yard to PATH in questioning whether the Embankment could effectively connect to the national rail system. Waldo Avenue Yard, however, is located south of the Harsimus Branch and its sale would not have severed the Embankment from the national rail system.

[13] See, e.g., The Kansas City Southern Railway Company–Abandonment Exemption in Jackson County, MO, STB Docket No. AB-103 (Sub-No. 17X) (STB served July 27, 2004); Union Pacific Railroad Company–Abandonment Exemption–in Merced County, CA, STB Docket No. AB-33 (Sub-No. 179X) (STB served Sept. 7, 2001); Fox Valley & Western LTD–Abandonment Exemption–in Fond Du Lac and Washington Counties, WI, STB Docket No. AB-402 (Sub-No. 7X) (STB served Jan. 31, 2000); and Norfolk and Western Railway Company–Abandonment Exemption–in Cincinnati, Hamilton County, OH, STB Docket No. AB--290 (Sub-No. 184X) (STB served May 13, 1998).

part of the national rail system subject to the Board's jurisdiction until abandonment authority is obtained and exercised.

Jurisdiction. Finally, SLH questions our jurisdiction to determine the status of Line Code 1420. It contends that the 3R Act authorized the Special Court, and later the United States District Court for the District of Columbia, to interpret orders conveying properties of bankrupt carriers to Conrail, citing 45 U.S.C. 719(e)(2).

Petitioners have asked the Board to determine whether Conrail is obligated to obtain Board authority to abandon the Embankment trackage. That determination falls within the Board's authority to administer Part A of Subtitle IV of Title 49 U.S.Code, including our exclusive authority over railroad abandonments in 49 U.S.C. 10903. In addition, the 3R Act expressly grants the Board authority over Conrail abandonments. 45 U.S.C. 744(g). And we have authority to issue declaratory orders to eliminate controversy or remove uncertainty. 5 U.S.C. 554(e); 49 U.S.C. 721. Thus, our determination to issue our August 2007 Decision regarding the status of the Embankment is an appropriate exercise of the Board's authority.

In sum, SLH has not shown that our August 2007 Decision contained material error. Nor has SLH presented any other justification to warrant reconsideration of our prior decision. Accordingly, we will deny SLH's petition for reconsideration.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Petitioners' request to strike aerial photographs submitted by SLH is denied.

2. SLH's petition for reconsideration is denied.

3. This decision is effective on its service date.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary

Rebuttal Appendix H

Misc. Conrail documents, including
(a) Memo, Folk (Conrail) to Hasselman (Conrail), Jan. 28, 1985 and Exhibit 1 "Hudson Street Track";

(b) Dietz (Conrail) to Betak (Conrail), Jan. 15, 1988;

(c) Anonymous, "Spur Determinations Made by Law Department"

Copies to C. A. Bassani
S. E. Nadler
P. D. Cohen
from
G. M. Williams, Jr.
1-29-85

0 53

C-4 RS 1-80

MEMORANDUM

CONRAIL

DATE January 28, 1985

TO R. B. Hasselman — FROM J. F. Folk

Room 1740 — Room 950

SUBJECT Passaic & Harsimus Branch / Hudson Street Track, Jersey City, NJ — PHONE

FILE

As you requested, we have analyzed the Passaic & Harsimus Branch and Hudson Street Track, which are used to serve Colgate Palmolive Corporation. There are six other customers on the line, however, the Sales Department advises that Jersey City has initiated condemnation procedures towards the property of Chicago Shippers and Elk Warehouse.* Chicago Shippers and Elk Warehouse expect to receive official condemnation notices within the next month. For the 12-month period ended September, 1984, these two customers accounted for 1,767 carloads, $2 million in revenue and $400,000 in contribution. The Sales Department advises that these two customers hope to relocate on Conrail in the same general area.

Our analysis excludes all traffic for Chicago Shippers and Elk Warehouse. Following are the economics of the remaining traffic for the 12-month period ended September, 1984:

(Dollars in Thousands)

Carloads	1,437
Conrail Revenue	$3,128
Operating Costs	$2,112
Rehab Requirements:	
Total	$ 581
Annual	$ 169
Contribution:	
Pre-Rehab	$1,016
Post-Rehab	$ 847
Rev/Cost Ratio:	
Pre-Rehab	1.48
Post-Rehab	1.37

* Refer to Exhibit 1 for customers, traffic levels and revenues for the 12 months ending September, 1984.

0 54

As indicated in the table, the traffic generates $1 million in annual pre-rehab contribution and a revenue/cost ratio of 1.48. On a post-rehab basis, the traffic generates $847,000 in annual contribution with a 1.37 revenue/cost ratio. Total rehab is estimated to be $581,000.

Colgate Palmolive, with 1,068 carloads, is the major customer on the line. Currently, Colgate produces cleansing powders at this plant. Regional Market Development informs us that Colgate has announced they will cease all operations at this Jersey City plant within three years. This closing, together with the planned relocation of Chicago Shippers, will leave four remaining customers on the line, accounting for 369 annual carloads, $447,000 in Conrail revenue, and $12,000 in pre-rehab contribution (see Exhibit 1 attached customer list).

Given Colgate's planned closing, building a connection from the Edgewater Branch to the Hudson Street Track would not seem to be a viable option for alternative service. In July 1982, the Division Engineer estimated the cost of constructing a connection and rehab on the Edgewater Branch to be $500,000. This estimate excluded any cost for required land puchase. The Marketing Department has examined the potential of serving Colgate via Conrail's flexi-flo operation. Results of Marketing's initial review indicate approximately 65 percent (700 carloads) of Colgate's traffic could be converted to flexi-flo and continue to produce a positive contribution. The remaining traffic (368 carloads) would probably divert to truck.

Please advise if you require additional information.

TJMc/mk

Attachment

cc: J. A. Hagen
C. N. Marshall
R. J. Conway
G. M. Williams
J. R. Stanek

Exhibit 1

0 55

Hudson Street Track

(Dollars in Thousands)

Customer	12 Months Ended 9/84 Carloads	Conrail Revenue
Colgate Palmolive	1,068	$2,681
* W. J. Morris	186	155
* Refined Onyx	107	183
* "B" Line Trucking	41	75
* Manischewitz	35	34
	1,437	$3,128
Customers Which Will Relocate		
Chicago Shippers	1,403	$1,753
Elk Warehouse	364	287
	1,767	$2,040
Total	3,204	$5,168

* Customers remaining on this line.

TJMc/Costing
1/17/85

JPB — Yes — MRF is pulling together info. which we will review w/ WAM.
SH 1-20-88
cc WAM, JPB, MRF

CONRAIL

MEMORANDUM
8-4C Rev 12-82

0 5087

DATE: January 15, 1988

TO: J. F. Betak LOCATION: L-1012

FROM: J. W. Dietz LOCATION: P-920

SUBJECT: Line Screening Summaries - New Jersey

Attached are the line screening summaries for the State of New Jersey. In regard to this report, we have the following comments:

1-18-88
WAM/ Do you concur?
SH

* Passaic & Harsimus Branch / Hudson St. Industrial
  This line generated 637 carloads in 1986, but Colgate-Palmolive, which plans to close this plant in 1988, generated 82 percent (523 carloads) of the total volume. A review of 1987 data indicates that only 6 non-Colgate-Palmolive carloads were handled. This suggests that an expedited abandonment may be possible if the remaining active customer(s) discontinue rail service or relocate.

* Elizabeth Secondary (M.P. 11.1 - M.P. 15.0)
  An expedited abandonment of this line is possible. One carload was reported for Roselle Paper in 1986. There are no other active customers.

* Sayreville Running Track (M.P. 12.0 - M.P. 12.3)
  This line was eliminated from the monitoring list because an expedited abandonment is currently being prepared.

* Manufacturer's Extension Ind.Trk.(M.P. 0.0 - M.P. 0.9)
  Poor economics of this line are the result of high volume, but low revenue, scrap paper from Woodbridge, NJ. Average revenue for 413 carloads of this traffic amounted to $378 per carload but COSAC LTV costs average $610 per carload.

Please contact me if your have any questions regarding this report.

LEO/dmw

Attachments

STATE: NEW JERSEY

0 51 01-14-1988
PAGE 2

CONRAIL LINE SCREENING SUMMARIES

(ALL DOLLARS IN THOUSANDS)

14 - 1420 NJ PASSAIC & HARSIMUS/HUDSON ST CLUSTER:
STATION FROM: C. P. WALDO MP: 0.0
STATION TO: JERSEY CITY MP: 0.0 LENGTH: 2.5 MILES

COMMENT: COLGATE PALMOLIVE TO CLOSE IN 1988 1987 REHAB: $ 0.0

YEAR	CARS	CUSTMR	REVENUE	CONTRIB	REV/COST	REV/MILE	REHAB	CODE
1983	2,356	2 / 6	$ 4,146.8	$1,552.3	1.60	$1658.7	$ 0.0	
1984	1,350	1 / 6	2,867.7	973.1	1.51	1147.1	0.0	
1985	1,205	1 / 4	2,592.6	1,071.3	1.70	1037.0	0.0	
1986	637	1 / 4	1,454.2	559.9	1.63	581.7	0.0	

****

14 - 0215 NJ SOUTHERN SEC./TOMS RIVER I.T. CLUSTER:
STATION FROM: SOUTH LAKEWOOD MP: 0.0
STATION TO: TOMS RIVER MP: 0.0 LENGTH: 7.9 MILES

COMMENT: KEY CUSTOMER IS CIBA-GEIGY 1987 REHAB: $ 158.6 I

YEAR	CARS	CUSTMR	REVENUE	CONTRIB	REV/COST	REV/MILE	REHAB	CODE
1983	552	1 / 4	$ 1,363.2	$ 572.4	1.72	$ 172.6	$ 0.0	
1984	454	1 / 4	1,132.6	527.0	1.87	143.4	0.0	
1985	307	1 / 4	589.0	249.3	1.73	74.6	158.5	I
1986	304	1 / 4	590.1	235.9	1.67	74.7	179.8	I

****

TOTAL FOR THE STATE OF NEW JERSEY: ROUTE MILES: 16.3

0 52

STATE: NEW JERSEY

01-14-1988
PAGE 1

CONRAIL LINE SCREENING SUMMARIES

(ALL DOLLARS IN THOUSANDS)

11 - 9909 NJ CLAYVILLE I. T. CLUSTER:
STATION FROM: MP: 0.0
STATION TO: CLAYVILLE MP: 1.1 LENGTH: 1.1 MILES

COMMENT: KEY CUSTOMER IS JESSIE MORIE 1987 REHAB: $ 0.0

YEAR	CARS	CUSTMR	REVENUE	CONTRIB	REV/COST	REV/MILE	REHAB	CODE
1983	238	1 / 2	$ 279.0	$ 79.4	1.40	$ 253.6	$ 0.0	
1984	140	1 / 2	184.3	45.2	1.32	167.5	0.0	
1985	141	1 / 2	198.0	77.3	1.64	180.0	0.0	
1986	77	1 / 2	108.2	38.5	1.55	98.4	0.0	

****

14 - 0201 NJ ELIZABETH SEC. CLUSTER:
STATION FROM: ELIZABETH MP: 11.1
STATION TO: ALDENE MP: 15.0 LENGTH: 3.9 MILES

COMMENT: 1987 REHAB: $ 0.0

YEAR	CARS	CUSTMR	REVENUE	CONTRIB	REV/COST	REV/MILE	REHAB	CODE
1983	38	2 / 4	$ 30.4	$ 2.3	1.08	$ 7.8	$ 0.0	
1984	9	1 / 2	6.6	0.9	1.16	1.7	0.0	
1985	0	0 / 0	0.0	0.0	0.00	0.0	0.0	
1986	1	1 / 1	2.1	0.9	1.75	0.5	0.0	

****

14 - 0233 NJ MANUFACTURER'S EXT. I. T. CLUSTER:
STATION FROM: MP: 0.0
STATION TO: NEWARK MP: 0.9 LENGTH: 0.9 MILES

COMMENT: KEY CUSTOMER IS RECYCLED FIBERS 1987 REHAB: $ 594.0 F

YEAR	CARS	CUSTMR	REVENUE	CONTRIB	REV/COST	REV/MILE	REHAB	CODE
1983	228	0 / 7	$ 296.7	$ 44.8	1.18	$ 329.7	$ 0.0	
1984	117	3 / 6	166.3	18.6	1.13	184.8	0.0	
1985	470	1 / 6	324.8	-27.9	0.92	360.9	0.0	
1986	505	1 / 6	287.9	-64.1	0.82	319.9	0.0	

****

Spur Decisions Made by Law Department
(DO NOT REQUIRE ICC/STB FILING)

0 48

Line Name	Type	LC	MP 1	MP 2	Rt. Mi.	Att'y	Decision Date	Requested by
Arlington Ave. I.T. (Indianapolis, IN)	Line	60-8342	-0.90	0.70	1.60	JJP	5/1/95	F. R. Stapleton
Athol Br. (Athold, MA)	Spur	unknown				JJP	6/24/93	R. C. Krafty
Avonmore I.T. (Avonmore, PA)	Spur				1.90	JJP	11/15/95	F.B.Gossic
Axle Works I.T. (Homestead, PA)	Spur				0.60	JJP	11/1/89	M. A. Hutchinson
Beaver I. T. (Lovett, PA)	Spur	20-2144				JJP	6/1/93	J. W. Fallon
Bens Creek (Portage Dump Trk)	Spur	20-2149	0.00	0.68	0.68	JJP	4/26/93	J. W. Fallon (04/12/93)
Bloodgood Br. (Union County, NJ)	Spur	10-0532	19.91	20.05	0.14	JJP	5/6/94	Z. Drzewiecki
Bloomfield / Belleville, NJ	Spur	unknown				JJP	5/12/93	Z. J. Drzewiecki
C-A-P Br. (Scranton, PA)	Spur				0.00	JJP	11/7/95	G. Smith
Claremont R.T. (Baltimore, MD)	Spur	20-			1.10	JKE	11/7/95	G. Comstock
Dad's Dog Food Lead (Meadville, PA)	Line	40-6501			0.50	JJP	5/10/96	F. B. Gossic
Dillsburg Br.	Spur				0.50	JJP	6/15/95	J. Ahonen
Edgemoor I. T. (Edgemoor, DE)	Spur	10-1252	0.00	1.00	1.00	JJP	8/2/93	M. C. Rosamilia
Engleside I. T. (Phila, PA)	Spur	10-1183	0.00	0.30	0.30	JJP	6/4/93	Richard Cross
Enola Branch (Marysville, PA)	Jt. Project	xx-1326	74.00	74.40	0.40	JJP	6/6/96	A. T. Bankson
Exon Lead (Sharonville Yard Lead)	Spur	60-8211	0.00	0.67	0.67	JJP	1/4/96	F. R. Stapleton
Former Beech Creek	Spur	unknown				JJP	5/12/93	J. W. Fallon
Fort Wayne, Ind. Lead	Spur	unknown				JJP	6/24/93	R. D. Threlkeld (land sale)
Frankford St. I. T. (Trenton Ave. Ln)	Spur	10-1174				JJP	8/24/95	N. J. Prosperi (track lease)
Franklin I. T. (Franklin, OH)	Spur	60-8258	3.60	4.20	0.60	JJP	5/7/93	M.S. Scime
Gettysburg I. T. (Carlisle, PA)	Spur	20-0315	0.00	0.80	0.80	JJP	11/4/93	J. W. Fallon
Grand Jct. (East Boston I. T.)	Spur	30-4132	7.67	9.50	1.83	JJP	10/9/95	J. H. Ahonen
Greencastle I. T.	Spur	unknown				JJP	6/3/93	J. W. Fallon
Harsimus Br. (Jersey City, NJ)	Spur	10-1420	0.00	1.36	1.36	JJP	4/14/94	J. R. Beard (02/16/94)
Hastings Branch (Hastings Jct.,PA)	Spur	20-xxxx	0.00	2.60	2.60	JJP	8/2/93	J. W. Fallon
Herkimer Spur (Herkimer, NY)	Spur				0.00	JKE	10/26/95	J. Hindman
Hudson Sec. (Maybrook, NY)	Spur	30-0101	0.00	2.10	2.10	unknown	no letter on file	
Hudson St. I. T. (Jersey City, NJ)	Spur	10-1440	0.00	1.30	1.30	JJP	4/29/93	T. P. Dwyer
Hurley Lumber Ld (Perth Amboy)	Spur	unknown				JJP	1/20/93	Z. J. Drzewiecki (12/15/92)
Indian Run Ind. Track (Kensignton, PA)	Spur	40-2288	1.10	1.30	0.20	JJP	11/9/94	F. B. Gossic
Johnstown I.T. Johnstown, PA)	Line		1.10	1.60	0.50	JKE	11/10/95	G. R. Comstock
Kalamazoo Br. (Grand Rapids, MI)	Spur	50-5341	94.00	94.45	0.45	JJP	5/15/96	J. Kelly
Kennedy Valve Spur (Elmira, NY)	Spur	30-6304	246.90	249.10	2.20	JJP	6/12/96 - JJP	
Lancaster Mills I. T.	Spur	30-4182	0.60	1.50	0.90	JJP	5/14/93	M. G. Peterson
Langhorne Team Track / Ind. Lead	Spur	unknown				JJP	12/16/93	M. C. Rosamilia (land sale)
Mardella I. T. (Salisbury, MD)	Spur	10-1239	39.40	40.80	1.40	unknown	no letter on file	
Marginal Branch	Spur	40-22JJ			0.49	JJP	6/27/97	Brian Harrison
Middle Canal/Lumber (Williamsport, PA)	Spur	20-2316	217.90	218.10	0.20	JJP	11/22/94	A. K. Robbins / G. L. Smith
Millbrook Siding (Elmira, NY)	Spur	unknown				JJP	8/2/93	M. B. Phillips (land sale)
Muncy Br. (Muncy, PA)	Spur	unknown	0.00	0.60	0.60	JJP	2/23/95	C. A. Archer (Fallon, 02/02/94)

Spur Decisions Made by Law Department

0 49

Line Name	Type	LC	MP 1	MP 2	Rt. Mi.	Att'y	Decision Date	Requested by
Niles IT (South Bend, IN)	Spur	50-5346	9.90	10.60	0.70	JJP	7/30/97	R. Dietz (Asset Opt. Dept.)
Oberlin Ind. Lead (Harrisburg, PA)	Spur	unknown	0.00	1.04	1.04	JJP	3/19/96	K. Robbins (Harrisburg Div.)
Pappas Lead (Washington, DC)	Spur	unknown				RSN	1/27/95	Donald Shappel
Perth Amboy Br.	Spur	10-0510	17.00	18.00	1.00	JJP	4/26/93	Z. J. Drzewiecki (04/13/93)
Red Key I.T. (Sweetser,IN)	Line	xx-3107	162.05	163.20	1.15	JJP	5/14/92	W. Schoelwer
S. Canton Br. (Canton, OH)	Spur	40-2402			0.00	JJP	10/5/95	F. Gossic
S. Chester Tk. (Marcus Hook, PA)	Exempt	unknown	Market St.	Green St.		JJP	4/26/94	P. Killani
Speedway I.T. (Indianapolis, IN)	Spur	60-8564	4.18	4.70	0.52	JJP	5/31/94	
Thoroughfare Track (Phila, PA)	Spur	unknown				JJP	7/2/93	P. H. Killani
Toms River I. T. (Toms River, NJ)	Spur	10-0219	4.62	5.00	0.38	JJP	6/24/93	M. C. Rosamilia
Union Belt (Marion, OH)	Spur	unknown				JJP	11/4/93	W. A. Schoelwer (request to remove track)
Weirton Secondary (Collier, WV)	Line		35.70	38.40	2.70	JKE	2/28/96	F. B. Gossic
Westland Br. (Houston, PA)	Spur	40-	0.00	0.97	0.97	JJP	11/9/94	F. Gossic

Rebuttal Appendix I

Misc, City or City to Conrail documents, including

(a) Allen-Munley (City) to Conway (Conrail),
Feb. 19, 1992
(safety and debris issues including derailments
(additional material and police reports also included)

(b) Day (Conrail) to Allen-Munley (City), May 11, 1992
(acknowledges problem, will correct)

(c) File Memo from John Mucha (City), March 29, 1994
(Conrail has advised it will abandon "viaduct" per
ICC rules and then take out structures)

(d) File Memo from John Mucha (City), June 13, 1994
(Conrail has advised that it put Embankment bridge
removal out for bid, bids to be received on June 24,
1994, at which point Conrail will file an IFE? to
retire the track, no plans to remove
Embankment, may sell as it]

CITY OF
JERSEY CITY
DIVISION OF ENGINEERING

GERALD J. NISSEN, P.E., P.P.
DIRECTOR OF ENGINEERING

280 GROVE STREET
JERSEY CITY, NJ 07302
(201) 547-4412

February 19, 1992

Mr. Ronald Conway
Division General Manager
CONRAIL
Mount Laurel Corporate Center
100 Howard Blvd.
Mt. Laurel, NJ 08054-2355

Mr. Bruce G. Willbrant
System Engineer, Maintenance of Way
CONRAIL
1646 Pennsylvania Center.
Philadelphia, PA 19102

Re: Harsimus Branch Line

Gentlemen:

In the past week, two emergencies took place on the Sixth Street portion of the Harsimus Branch Line which traverses downtown Jersey City. For you information, please see the attached police reports. While repairing track after the derailment, Conrail's construction crew dislodged heavy debris which fell to the street below. Fortunately, aside from damage to an automobile, no one was hurt. Nevertheless, the community is deeply troubled.

Today, two engineers on my staff walked the entire length of track from Henderson Street to Monmouth Street. These photos and field report, copies attached, describe dangerous conditions such as loose timbers, severely corroded structural members, failing retaining walls and numerous large and unprotected openings. These hazards may cause severe injury to pedestrians and motorists and/or property damage. This is also a liability issue which Conrail cannot ignore.

At the request of our City Council, I must inform you that this endangerment of our citizens cannot continue. At a minimum the following actions should be undertaken:

1. Of the seven original tracks, only one remains in operation. In the interest of public safety, remove or stabilize all superfluous structure. Remove all excess debris from bridge trestles.

2. Conduct an immediate inspection of all bridges crossing public rights-of-way by a licensed engineer. Forward copies of these inspections directly to the Municipal Engineer. Notify him immediately of any hazardous condition is identified. The New Jersey Bridge

Inspection Program requires biannual bridge inspection by licensed engineers. Please supply these reports for all railroad bridges located within Jersey City.

3. Obtain building permits from the Jersey City Construction Official for all new construction and reconstruction work. Notify Jersey City prior to maintenance of any superstructure crossing city rights-of-way. As required by local ordinance, the Municipal Engineer will determine the necessity of Conrail obtaining a street closing permit.

Very truly yours,

Cheryl Allen-Munley, P.E.
Asst. Municipal Engineer

Gerald J. Nissen, P.E.
Municipal Engineer
Division of Engineering

CC: Mayor Roman
Councilman Vasquez
Fred Tomkins, Business Administrator
Mark Munley, Director, HED
Joanne Monahan, Corporation Counsel
Mike Regan, Construction Official
Tom Golodik

CITY OF JERSEY CITY
OFFICE OF THE CITY CLERK
Interdepartmental Memorandum

DATE: February 13, 1992

TO: Gerald Nissen, Municipal Engineer

FROM: Robert Byrne, City Clerk

SUBJECT: Elevated Rail line parallel to Sixth Street

At the Municipal Council meeting of February 11th, there was a discussion as to the dangerous condition of the elevated Conrail line that runs along Sixth Street.

Of particular concern is the condition of the structure over Jersey Avenue where a railroad tie fell to the sidewalk beneath on Monday.

Please have the structure inspected and report to the Council your findings.

Thank you.

RB:ja
cc: President and Members of the Municipal Council
Frederick Tomkins, Business Administrator

RECEIVED
FEB 14 AM 10:3
CITY OF JERSEY CITY
ENGINEERING

Department of Administration
INTEROFFICE MEMORANDUM

DATE: **14 February 1992**

TO: **Councilman Jaime Vazquez**

FROM: **Tom Golodik, Department of Administration**

SUBJECT: **Conrail Sixth Street line**

I have investigated the use of the rail lines running adjacent to Sixth Street by Conrail. Although there are four tracks along this right-of-way, Conrail uses only one of them. This line is not abandoned now, although the railroad does plan to abandon the line with the completion of the Marion Junction. Conrail uses the line to service one customer, American President Lines, a container shipping company in Kearny. If you review the atached map, you can see that the Sixth Street line (in pink) provides the railroad with the ability to make a "K" turn. This is necessary because the track indicated by the yellow marker does not now exist, but will be constructed as part of the Marion Junction work. This is expected to be completed within one year. Once that section of track is complete, the Sixth Street line will be abandoned.

As a result of your request at the 11 February council meeting, I have discussed the situation with the Engineering Division and Law Department. As a result of that meeting, city engineer's office will put Conrail on notice of our extreme concern regarding the safety of pedestrians and motorists following these two incidents. (Police reports attached.) We have asked for an immediate survey by Conrail of the various overpasses that this line utilizes. This should be done in conjunction with the Engineering Division. I will forward you a copy of the letter from the Engineer as soon as I receive it.

I have also asked engineering to determine, if possible, the normal length of the trains serving APL to determine if the use of the Sixth Street Line through Downtown is required.

cc: **Cheryl Allen-Munley, Assistant Municipal Engineer**

Jersey City Police Dept. | District: Three | Case: 0906 | 547-5408 | 5349-92

Train Derailment

City of Jersey City

DATE AND TIME: Occ. 2/7/92 0800 | At 2/8/92 0900

Crime/Incident Location: Monmouth St. bet. 5th and 6th Sts.

Municipality: Jersey City | County: Hudson | Code: 0906

Type of Premises: N/A

Victim's Address (City, State, Zip): 280 Grove St. Jersey City, N.J.

Employer/Address: —

Person Reporting Crime/Incident: P.O.'s Quirk & White | Date and Time: 2/8/92 0900

Address: 8 Erie St. J.C., N.J. | Phone and Ext. No.: 547-5408

Names Deceased/Hospitalized/Committed: see below.

Vehicle	Year	Make	Body Type	Color	Registration Number and State	Serial Number or Identification
—	—	—	—	—	—	—

Value Stolen Property	Currency	Jewelry	Furs	Clothing	Autos	Miscellaneous
	N/A	N/A	N/A	N/A	N/A	N/A

Total Value Stolen	Total Value Recovered	Teletype Alarm	Technical Services	Technician and Agency
N/A	N/A			

Weather: clear/cold

Evidence: YES / NO / None — NJSBI: Retained: Returned: Destroyed:

Disposition: YES / NO — Arrest Pending: Teletype Pending: Evidence Pending:

Chem. Lab. No. | Ballistics Lab. No. | MV System

List Arrested/Summoned—List and identify additional victims—Describe perpetrators or subjects—Date action taken including findings and observations of investigators—Physical evidence found—Where, by whom—Disposition and technical services performed—Interview of Victims—Witnesses—Persons contacted—Suspects—Attach statements—Court Action—All NCIC Entry/Inquiries—Prisoner Disposition. Use continuation page if additional space is needed. Attach to this report.

No. Arrested	Adult	Juvenile	Status Crime	Status Code		
N/A	—	—	N/A	active		

Name | ADDRESS OF ARRESTED/SUMMONED | Age | Sex | Race | D.O.B.

Narrative:

At the above time and date U/S was travelling north on Monmouth St. when we observed a train derailment on overpass (Monmouth bet. 5th & 6th) belonging to Conrail, wooden debris and a set of rail car wheels lay ~~XX~~ across Monmouth bel overpass. It was determined later that it was a thirty(30) car derailment and from Conrail P.D.(Gillen, Hannigan & Schmidt) there was no hazardous material o board. ~~X~~/E Sgt. Taylor notified and on the scene. Also present at the scene we:

Trainmaster Bernie Connally — Conrail Crew ~~XX~~-65
Wreckmaster Hilton — Train# TV-203K(150 cars)
Capt. Paulich(Conrail P.D.)
Capt. Keenan(J.C.P.D.)

B.C.I. also responded for photos.

No Injuries(M.C. Clyde Lewis also on scene.)

Name/Rank (Type): P.O. Richard Quirk #1295 / P.O. Jay White #2346 — Signature: Quirk

Badge No: 301 | Page: 1 of 1 Pages | Date of Report: 2/8/92 | Reviewed By: Sgt. White

DISTRICT COPY

SENT BY:JERSEY CITY EAST 02-14-92 12:10PM 2015475075+ 2015475442 1

Jersey City Police Dept. | District: EAST | Code: 0906 | 475408 | 6035-92

Classification: PROPERTY DAMAGE MOTOR COLLISION | N.J. Statute: NA NA | Victim (Firm, Middle, Last): CABLE TV of JERSEY CITY

Social Security Number: NA | D.O.B.: NA | Sex: NA | Race: NA

DATE AND TIME: Between: O | Hour: 1500 | Day: 03 | Mo.: 02 | Date: 11 | Yr.: 92

Victim's Address (City, State, Zip): 43 PROSPECT ST. E.ORANGE,NJ 07017 | Phone and Ext. No.: 201-915-0500

Crime/Incident Location: JERSEY AVE. btwn. 5th and 6th Sts.

Employer/Address: NA | Phone and Ext. No.: NA

Municipality: Jersey City | County: Hudson | Code: 0906

Person Reporting Crime/Incident: CONRAIL | Date and Time: 2-11-92/1500hrs.

Type of Premises: STREET | Code: 01 | Weapons - Tools: NA | Code: | Address: | Phone and Ext. No.:

Modus Operandi/How Committed: SEE NARRATIVE.....

Vehicle: | Year: 91 | Make: CHEVY | Body Type: VAN | Color: WHT. | Registration Number and State: XY26AE---NJ | Serial Number or Identification: 1GCDM15Z1ME141446

VALUE STOLEN PROPERTY: Currency: NA | Jewelry: NA | Furs: NA | Clothing: NA | Auto: NA | Miscellaneous: NA

Total Value Stolen: NA | Total Value Recovered: NA | Teletype Alarm: | Technical Services: | Technician and Agency:

Weather: CLEAR/COOL | Evidence: YES NO — Recd: Retained: Returned: Destroyed: | Disposition: YES NO — Arrest Pending: Teletype Pending: Evidence Pending:

Crim. Lab. No.: | Ballistics Lab. No.: | MV Summ.:

List Arrested/Summoned–List and identify additional victims–Describe perpetrators or subjects–Date action taken including findings and observations of investigators–Physical evidence found–Where, by whom–Disposition and technical services performed–Interview of Victims–Witnesses–Persons contacted–Suspects–Attach statements–Court Action–All NCIC Entry/Inquiries–Prisoner Disposition. Use continuation page if additional space is needed. Attach to this report.

No. Arrested: -0- | Adult: -0- | Juvenile: -0- | Status Crime: CLOSED | Status Code: CLOSED

Name	Address of Arrested/Summoned	Age	Sex	Race	D.O.B.
NA	NA	NA	NA	NA	NA

Narrative:

On the above date at the above time Jim Faulkner of 96 Bidwell Ave. JC,NJ Tele#201-991-5030 stated that he was driving the above mentioned vehicle south o Jersey Ave. between 6th and 5th sts. when large pieces of wood fell from the tre trestel above. The vehicle sustained damage to the hood, grill, left fender, roo and light beacon. John Laky, assistant supervisor for Conrail, responded to the scene. Also at the scene were M/E Sgt. O'Neil, Emergency squad and city Captain Killen. The debris was removed by Conrail and Mr. Laky declared the bridge safe at 1605hrs. Roadway was re-opened to traffic.

Name/Name (Type): P.O.WALTER J. MITCHELL | Badge No.: 1839 | Page: 1 of 1 Pages | Date of Report: 2-11-92

Signature: P.O. W. Mitchell 1839 | Post: 8 | Approved By: Lt. M. Chin

DISTRICT COPY

CONRAIL

RECEIVED
92 MAY 14 AM 10:33
CITY OF JERSEY CITY
ENGINEERING

92-008

May 11, 1992

Mr. Michael J. Regan
Construction Official
Department of Housing and
Economic Development
26 Journal Square - 4th Floor
Jersey City, NJ 07306

RE: Harsimus Branch Bridges

Dear Mr. Regan:

This is to confirm the inspection made on May 7, 1992, of the bridges carrying Conrail's Harsimus Branch over several streets in Jersey City.

In attendance were the following:

Ed Ciolko	-- Building Inspector, Jersey City
J. S. Richter,P.E.	-- Engineer-System Structures Inspection,Conrail
W. D. Linaberry	-- Assistant Division Engineer-Structures, Conrail

The following bridges were given a cursory inspection:

Undergrade Bridge	0.88	- Marin Boulevard
" "	0.80	- Manila Street
" "	0.71	- Erie Street
" "	0.62	- Jersey Avenue
" "	0.53	- Coles Street
" "	0.44	- Monmouth Street
" "	0.36	- Brunswick Avenue

These bridges were built for multiple tracks, but now carry one active track. The bridges are structurally sound and are adequate for the railroad traffic carried.

92-004

RECEIVED
92 MAY 14 AM 8:33
CITY OF JERSEY CITY
ENGINEERING

The deteriorated timber decking, steel lateral bracing, and debris that is loose and can fall from the bridges will be stabilized or removed.

The condition of the bridges and retaining walls will be monitored by inspection every 6 months.

Sincerely yours,

F. D. Day, P.E.-N.J.
System Engineer-
Structures Maintenance

1634 Six Penn Center Plaza
Philadelphia, PA 19103

cc: Mr. Gerald J. Nissen, P.E.
Municipal Engineer
Division of Engineering
280 Grove Street
Jersey City, NJ 07302

CITY OF JERSEY CITY
Division of Engineering

Job No. 92-008 Sheet No. 1 of 1
Date
By JM Job
Ch'd By Subject

DATE: MARCH 29, 1994
TO: JERRY NISSEN, P.E & ABDUS SATTI, P.E.
FROM: JOHN MUCIA
SUBJECT: REMOVAL OF CONRAIL 6TH ST. VIADUCT
Project No. 92-008

As per a field conversation on March 25, 1994, PAUL HOGAN, CONTI CONSTRUCTION CO. field ENGINEER ADVISED ME THAT MARION JUNCTION RAIL TIE IN will occur on WEDNESDAY MARCH 30, 1994.

As per a phone conversation on March 29, 1994, JIM MCLAUGHLIN of CONRAIL ADVISED ME THAT ONCE the connection is made, CONRAIL will seek to ABANDON SERVICE ON the 6TH ST. VIADUCT ACCORDING to ICC RULES. IF it is A MAIN LINE ABANDONMENT, it must be REVIEWED AND APPROVED by the ICC. IF it is A STUB OR BRANCH LINE ABANDONMENT, it DOESN'T NEED APPROVAL. Right now CONRAIL is ASSUMING it is A BRANCH LINE ABANDONMENT AND ARE expecting A RULING by their LAW Dept shortly. IF it is A BRANCH LINE, then it will be ABANDONED IMMEDIATELY, RETIRED AND SOLD.

CONRAIL DOESN'T own the property EAST OF HENDERSON but just has an EASEMENT. EITHER NBC CAN pick up the TRACK AND put it ASIDE out of their WAY OR CONRAIL CAN pick it up IF they(CR) NEED it right away.

The REST of the VIADUCT AND BRIDGES ARE CURRENTLY out to BID NOW. BIDS would be probably RECEIVED WITHIN A MONTH with DEMOLITION of all the BRIDGES AND REMOVAL of all RAIL by the SUMMER. AFTER THAT, CONRAIL will sell the FILL AND STONE. The SOIL would be TESTED but NO CONTAMINATION is expected because the LINE WAS just RECEIVING AND RUNNING TRACKS with FREIGHT BOUND FOR NYC VIA the PIERS. AFTER THAT it would be PLAT LAND AND CONRAIL REAL ESTATE Dept IN Philly would TAKE over AND sell it. CONRAIL would APPRECIATE Jersey City's help with STREET CLOSINGS AND CODS. JIM MCLAUGHLIN will RETIRE THURS AND REPLACED by JOE BOVA

DATE: JUNE 13, 1994

TO: FILE

FROM: John Mucha JM.

SUBJECT: Removal of CONRAIL 6TH ST. VIADUCT (Hackensack Cove Branch)
Project No. 92-008

JOE BOVA of CONRAIL called today to advise that the demolition project for the 6TH ST. BRIDGES is currently out to BID with those BIDS to be recieved on FRIDAY JUNE 24, 1994. At that time, CONRAIL will file AN IFE? to retire the TRACK, get MONEY authorized for the project and AWARD the contract. (3 wks) Construction could start around AUGUST 1, 1994 maybe even mid July if the process is put on a FAST Track schedule.

National Salvage is continuing to remove all RAILS & TIES by RAIL and should be finished before BRIDGE demolition begins. The Henderson BRIDGE will be demolished FIRST. After all the BRIDGES are removed, CONRAIL has no further plans to remove the embankments. CONRAIL may sell the property AS IS. It all depends on what Jersey City's intentions are. Jersey City should make their intentions known what they would like to see done with the property.

cc: Jerry Nissen, PE

Rebuttal Appendix J

National Bulk Carriers bridge demo contract

FILE: 92-008.

07/10/1994 20:05 9088880172 FIORINA PAGE 01

Burns & Fiorina, Inc.
DEMOLITION CONTRACTOR

330 BAYVIEW AVENUE • UNION BEACH, N.J. 07735
(908) 888-1076

FAX (908) 888-0172

JULY 11,1

HUDSON EXCHANGE

NATIONAL BULK CARRIERS, INC.

ATTEN: G. UTLICH
P. PATEL,

REMOVAL OF CONRAIL BRIDGES
LUIS MUNOZ MARTIN BLVD& 6TH ST.

CONTRACTOR WILL DEMOLISH BRIDGES AND REMOVE ALL SCRAP STEEL.

CONTRACTOR WILL REMOVE ALL CONCRETE AND DIRT FROM BRIDGES AND PLACE ON NATIONAL BULK PROPERTY.

CONTRACTOR WILL HAVE TWO MILLION INSURANCE POLICY ISSUED TO OWNERS. WORKMENS COMPENSATION AT NO EXTRA CHARGE.
ALL ADDITION INSURERS WILL COST $ 175.00 PER INSURER.

CONTRACT PRICE. $ 5000

EXTRA WORK.

CONCRETE AND DIRT MATERIAL TRUCK OFF SITE. $2000.00

ABUTMENT WALL. DEMOLITION AND REMOVAL PER WALL. $ 8000.00

Rebuttal Appendix K

Letters from public officials to Conrail seeking/supporting
City acquisition of Embankment (March 2003)

CITY OF JERSEY CITY

GLENN D. CUNNINGHAM
MAYOR

CITY HALL
JERSEY CITY, NJ 07302
TEL: (201) 547-5200
FAX: (201) 547-4288

March 10, 2003

Mr. Robert Ryan
Real Estate Director of Conrail
510 Thornall Street
Edison, New Jersey 08818

Re: Pennsylvania Railroad Harsimus Embankment, Sixth Street, Jersey City

Dear Mr. Ryan:

I recently met with members of the Harsimus Embankment Preservation Coalition with regards to the abandoned Conrail Property located on 6th Street in Jersey City. I support the Coalition's efforts to preserve the embankment's historic structure and look forward to working with all parties concerned to achieve a wonderful mixed-use open space for our residents to enjoy.

I have asked Mark Munley, director, Housing Economic Development and Commerce (HEDC) to reach out to your office to go over some of the possibilities and future plans Conrail may have for this site. Mr. Munley can be reached at 201-547-5070.

I look forward to working with both Conrail and the Embankment Preservation Coalition for a better Jersey City. I have designated Deputy Mayor Anthony Cruz as my contact person he may be reached at 201-547-5575.

Sincerely,

Glenn D. Cunningham
Mayor

CITY OF
JERSEY CITY

L.HARVEY SMITH
Council President

CITY HALL
280 GROVE STREET, RM.202
JERSEY CITY, NJ 07302
(201) 547-5204

March 12, 2003

Mr. Robert Ryan
Real Estate Director
Conrail
510 Thornall Street
Edison, N.J. 08837

Re: Pennsylvania Railroad Harsimus Stem Embankment, Sixth Street, Jersey City, NJ

Dear Mr. Ryan:

The Jersey City Municipal Council supports the Embankment Preservation Coalition's effort to have a public entity acquire the Sixth Street Embankment. This public entity could be the City of Jersey City, if appropriate financing for acquisition and development can be assembled.

The Coalition is working to assemble these funds, meeting with elected representatives and officials at every level of government, and has kept us informed of their progress.

The Embankment preservation and reuse project pursued by the Embankment Preservation Coalition is consistent with Governor Jim McGreevey's "smart growth" program, which calls for more resources to be devoted to urban greenspace. The project aligns with the general goals of the 2002 Master Plan, Hudson County New Jersey, as well as its land use, circulation, economic, housing, social services, conservation, and historic preservation goals. Site acquisition would fill a need in Jersey City, which has a severe deficit in open space. The major associations representing the Downtown Historic Districts as well as citywide, regional, and national organizations support the Coalition project.

CITY OF JERSEY CITY

E. JUNIOR MALDONADO
Councilman Ward E

CITY HALL
280 GROVE STREET, RM. 202
JERSEY CITY, NJ 07302
(201) 547-5204

October 17, 2002

James Snyder
Director, Local Aid
Department of Transportation
P.O Box 600
1035 Parkway Avenue
Trenton, NJ 08625

Dear Mr. Snyder:

I support the application of the Jersey City Planning Department for a New Jersey Department of Transportation Livable Communities Pilot Program grant for 6th Street/Thomas Gangemi Drive. This grant will provide enhanced pedestrian access from 6th Street, a major east-west thoroughfare in the Downtown, to the Hudson River Waterfront Walkway.

This street currently has no sidewalk on its south side for much of its length. The street passes major commercial development, including the Newport Mall, Doubletree Hotel, and other businesses. It joins the National Historic Districts of Harsimus Cove and Hamilton Park, and runs the length of the Pennsylvania Railroad Harsimus Stem Embankment, which is on the New Jersey State Register of Historic Places.

Sincerely,

E. Junior Maldonado

E. Junior Maldonado
Ward E Councilman

CITY OF
JERSEY CITY

MARIANO VEGA, JR.
Councilman At Large
E Mail-marianovega@msn.com



CITY HALL
280 GROVE STREET, RM.202
JERSEY CITY, NJ 07302
(201) 547-5134
FAX (201) 547-4676

March 4, 2003

To Whom It May Concern

Re: Pennsylvania Railroad Harsimus Stem Embankment, Sixth Street, Jersey City

I am writing in support of Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition efforts toward site acquisition by a public entity, and the preservation and improvement of the street scape along Sixth Street. The Embankment has historically served as a railroad linkage tto the waterfront, and will continue to provide access to the Hudson Waterfront Walkway and a network of greenways, including the East Coast Greenway.

As the Councilman-At-Large, representing the citizens of Jersey City, and formerly Councilman for Ward E, I have found strong support among my constituents, especially among those in the area that encompasses the Harsimus Stem Embankment and its adjoining National Historic Districts. The Embankment has historically served as railroad linkage to the waterfront.

The East Coast Greenway Alliance, which is creating a 2,600 mile trail from Florida to Maine - 50 percent complete in New Jersey - views the Embankment-Bergen Arches corridor in Jersey City as a key link in its main East Coast Greenway route through Hudson Count. If this route is implemented, residents of densely populated Jersey City and Hudson County will be able to travel short distances from their homes for physical exercise, open park space, and local points of interest. Jersey City and Hudson County will in turn be opened up to regional outdoors enthusiasts and historic site tourists. In addition, local business establishments will benefit from this client base

I will be working with the Coalition and others to explore acquisition alternatives and financing for the development of a new park in Jersey City. I can offer the following support to the Coalition, or the acquirer of this property, during the acquisition and development of the project phase with grants, planning and design work

Please cooperate with the Coalition as acquisition efforts continue.

Mariano Vega, Jr.
Jersey City Councilman

CC. to
JOANNE GUCCIARDO
201-420-9361

FRANK R. LAUTENBERG
NEW JERSEY

SUITE SH-825A

United States Senate
WASHINGTON, DC 20510

March 4, 2003

Robert Ryan, Real Estate Director
CONRAIL
510 Thornall Street
Edison, NJ 08837

RE: Pennsylvania Railroad Harsimus Stem Embankment, Sixth Street, Jersey City

Dear Mr. Ryan:

I am writing to express my support for the Embankment Preservation Coalition's efforts to have the Harsimus Stem Embankment acquired by a public entity or land trust, improve the streetscape along Sixth Street, and develop the top as habitat and passive open-space. The site would link to a network of bicycle greenways, including the Hudson Waterfront Walkway and the East Coast Greenway.

Currently my staff is working with the Embankment Preservation Coalition in identifying the funds needed for this important project.

Sincerely,

Frank R. Lautenberg
U.S. Senator

JON S. CORZINE
NEW JERSEY

COMMITTEES:
BANKING, HOUSING, AND URBAN AFFAIRS
ENVIRONMENT AND PUBLIC WORKS
JOINT ECONOMIC

United States Senate
WASHINGTON, DC 20510-3004

502 SENATE HART OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-4744

ONE GATEWAY CENTER
11TH FLOOR
NEWARK, NJ 07102
(973) 645-3030

208 WHITE HORSE PIKE
SUITE 18-19
BARRINGTON, NJ 08007
(856) 757-5353

March 7, 2003

Robert Ryan
Real Estate Director of Conrail
510 Thornall St.
Edison, NJ 08818

Re: Pennsylvania Railroad Harsimus Stem Embankment, Sixth Street, Jersey City

Dear Mr. Ryan:

The Embankment Preservation Coalition is interested in acquiring the Harsimus Stem Embankment, a historic site in Jersey City, for public use and enjoyment. I strongly support this preservation initiative.

Historic and cultural sites are vanishing precious resources in our state. Preservation of all-too-rare entities such as this as open space for the public trust is critical to quality of life enhancement in New Jersey. The alternative, letting this historic area be given over to commercial development, would be a missed opportunity I am convinced we would come to sorely regret.

The Embankment preservation and reuse project pursued by the Embankment Preservation Coalition is consistent with federal historic preservation and conservation goals. The Coalition is committed to developing this area as a network of pedestrian and bicycle pathways, including the Hudson Waterfront Walkway and the East Coast Greenway.

I hope you will agree with me that protecting this historic, cultural and environmental resource is a top priority, and I look forward to your favorable determination.

Sincerely,

Jon Corzine
U.S. Senator

STEVEN R. ROTHMAN
9TH DISTRICT, NEW JERSEY

1607 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-5061
FAX (202) 225-6851

DISTRICT OFFICES:
25 MAIN STREET
COURT PLAZA
HACKENSACK, NJ 07601-7068
(201) 646-0809
FAX (201) 646-1944

100 CENTRAL AVENUE
JERSEY CITY, NJ 07306-2118
(201) 798-1366
FAX (201) 798-1725

Congress of the United States
House of Representatives
Washington, DC 20515

COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON
FOREIGN OPERATIONS, EXPORT
FINANCING AND RELATED PROGRAMS
SUBCOMMITTEE ON TREASURY,
POSTAL SERVICE AND
GENERAL GOVERNMENT

E-MAIL:
steven.rothman@mail.house.gov

WEB SITE:
http://www.house.gov/rothman

Mr. Robert Ryan, Real Estate Director
Conrail
510 Thornall Street
Edison, NJ 08837

Re: Pennsylvania Railroad Harsimus Stem Embankment, 6th Street, Jersey City (Case 72931)

Dear Mr. Ryan,

I am writing to express support for the Embankment Preservation Coalition's efforts to have the Harsimus Stem Embankment acquired by a public entity or land trust. I am also supportive of their efforts to improve the street scape along Sixth Street, and develop the top as a habitat and passive open space. The site would link to a network of pedestrian and bicycle green ways, including the Hudson Waterfront Walkway and East Coast Green way.

The Embankment preservation and reuse project pursued by the Embankment Preservation Coalition is consistent with federal historic preservation and conservation goals. The goal to link the Embankment site to the Hackensack Meadowlands via the Bergen arches aligns with one of my top priorities, which has been to protect and preserve the last parcels of open space left in the Meadowlands for eventual use as an environmental park.

It is my sincere hope that the Embankment Preservation Coalition's goals are realized. Should you need my assistance, please feel free to contact my Staff Assistant, Mr. Mauro Raguseo, at my Hackensack office.

Thank you for your consideration.

Sincerely,

STEVEN R. ROTHMAN
Member of Congress

SRR:mdr

PRINTED ON RECYCLED PAPER

NEW JERSEY SENATE

EDWARD T. O'CONNOR, JR.
SENATOR-31ST DISTRICT
1738 KENNEDY BOULEVARD
OFFICE # 2
JERSEY CITY, NEW JERSEY 07305
201-451-6120

January 19, 2001

Mr. Robert D. Goslin, Director
Division of Local Government Services
and Economic Development
NJ Department of Transportation
1035 Parkway Avenue
P.O. Box 600
Trenton, New Jersey 08625

Dear Mr. Goslin:

I am writing to express my support for the Embankment Preservation Coalition's application for TEA-21 funds, which would be used to enhance the public right-of-way along the base of the Pennsylvania Railroad Harsimus Stem Embankment of 6th Street in Jersey City.

As a legislator representing Jersey City, I can unequivocally say that this project will have a significant impact on the people and cultural preservation in Jersey City. Essentially, the project will improve a street that joins the Historic Districts of Harsimus Cove and Hamilton Park, and connects the interior of the Downtown with PATH and light rail stations at Newport Center. In addition, the project would promote better pedestrian access to the Hudson River Waterfront Walkway at Avalon Cove.

Again, please accept this letter as my strongest support for the Embankment Preservation Coalition's' application for TEA-21 funds.

Very truly yours,

Edward T. O'Connor, Jr.

ETOC:jm

ROBERT MENENDEZ
13TH DISTRICT, NEW JERSEY
VICE CHAIR OF THE DEMOCRATIC CAUCUS

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEES:
AVIATION
WATER RESOURCES AND ENVIRONMENT

COMMITTEE ON INTERNATIONAL RELATIONS
SUBCOMMITTEES:
WESTERN HEMISPHERE, RANKING MEMBER
INTERNATIONAL OPERATIONS AND HUMAN RIGHTS

Congress of the United States
House of Representatives
Washington, DC 20515-3013

REPLY TO
2228 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3013
(202) 225-7919

DISTRICT OFFICES:
911 BERGEN AVENUE
JERSEY CITY, NJ 07306
(201) 222-0828

654 AVENUE C
BAYONNE, NJ 07002
(201) 823-2900

600 HOBART STREET
PERTH AMBOY, NJ 08861
(732) 324-9212

3109 BERGENLINE AVENUE
2ND FLOOR
UNION CITY, NJ 07087
(201) 558-0800

E-mail: menendez@mail.house.gov
Web site: http://menendez.house.gov

March 12, 2003

Mr. Robert Ryan
Director, Real Estate
CONRAIL
2001 Market Street
16th Floor
Philadelphia, PA 19103

RE: Pennsylvania Railroad Harsimus Stem Embankment, Sixth Street, Jersey City

Dear Mr. Ryan,

I am writing to express my support of the Embankment Preservation Coalition's preservation and reuse project for the Pennsylvania Railroad Harsimus Stem Embankment on Sixth Street in Jersey City, New Jersey (Sixth Street Embankment.)

The Embankment Preservation Coalition seeks to identify the appropriate public entity to acquire the Sixth Street Embankment, as well as improve the streetscape along Sixth Street and develop the top portion as a habitat and passive open space. The site would also link to a network of pedestrian and bicycle greenways, including the Hudson River Waterfront Walkway, the Liberty Watergap Trail, and the East Coast Greenway, providing easy access for a growing population to the natural resources in the area.

Furthermore, the Sixth Street Embankment preservation and reuse project submitted by the Embankment Preservation Coalition is consistent with federal, state, county, and municipal level historic preservation, transportation, and conservation goals. My office has met with members of the coalition to discuss federal funding options and opportunities and will continue to be available for guidance and assistance throughout the process.

Open space is a rare commodity in urban areas such as Jersey City. The preservation of the Sixth Street Embankment would conserve an extraordinary open space in one of the most densely populated cities in our nation, and would provide an oasis where our residents can play and spend time with their friends and family. Also, as the Embankment is listed on the State Register of Historic Places, preserving the site as open space would allow further commemoration to this fact.

Sixth Street Embankment, Page 2

Again, I support the Embankment Preservation Coalition's preservation and reuse project for the Pennsylvania Railroad Harsimus Stem Embankment on Sixth Street in Jersey City, New Jersey. I respectfully request that you grant full consideration to their project proposal.

Thank you for your consideration. Please do not hesitate to contact my District Director, Nicholas Chiaravalloti, at 201-222-2828 if we can be of further assistance.

Sincerely,

Robert Menendez
Member of Congress

RM:dr
cc: Maureen Crowley, Embankment Preservation Coalition

NEW JERSEY SENATE

BERNARD F. KENNY, JR.
DEMOCRATIC MAJORITY LEADER
SENATOR 33RD DISTRICT
HUDSON COUNTY
836 HUDSON STREET
HOBOKEN, NJ 07030
TEL. 201-653-1486
FAX. 201-714-9640

SENATE COMMITTEES
BUDGET AND APPROPRIATIONS
JOINT BUDGET OVERSIGHT
JOINT COMMITTEE ON ETHICAL STANDARDS
INTERGOVERNMENTAL RELATIONS COMMISSION
LEGISLATIVE SERVICES COMMISSION

February 27, 2003

To Whom it May Concern:

RE: Pennsylvania Railroad Harsimus Stem Embankment
Sixth Street
Jersey City, NJ

I am writing to endorse the efforts of the Embankment Preservation Coalition to find an appropriate owner and acquisition financing for the Harsimus Stem Embankment. The purpose of the Embankment Preservation Coalition is to provide: site preservation; improvement of the streetscape along Sixth Street; reuse of the top as habitat and passive green space; and links to other pedestrian and biking greenways.

The majority of the development that has occurred along the Hudson River Waterfront in Jersey City has taken place in ways that typically preclude public access to the waterfront and has provided very little public open space. The coalition's project will provide a rare nature sanctuary and passive open space in a linear form extending through the interior of Jersey City's residential downtown, with links to the Hudson Waterfront walkway and a larger network of greenways, including the East Coast Green way.

Again, I strongly support the Enbankment Preservation Coalition and their endeavors.

Sincerely,

Bernard F. Kenny, Jr.
Senator, 33rd District

BFK/so

COUNTY OF HUDSON
OFFICE OF STRATEGIC REVITALIZATION
BRENNAN COURT HOUSE
583 NEWARK AVENUE
JERSEY CITY, NEW JERSEY 07306

THOMAS A. De GISE
COUNTY EXECUTIVE

ABRAHAM ANTUN
COUNTY ADMINISTRATOR

STEPHEN D. MARKS, PP, AICP
DIRECTOR

(201) 217-5137
Fax (201) 795-1903

February 28, 2003

Re: Pennsylvania Railroad Harsimus Stem Embankment, Sixth Street, Jersey City

To whom it may concern:

Please accept this letter of support for the Embankment Preservation Coalition's efforts to have the Harsimus Stem Embankment acquired by a public entity or land trust, improve the streetscape along Sixth Street, and develop the top as habitat and passive open-space. The site would link to a network of pedestrian and bicycle greenways, including the Hudson River Waterfront Walkway, Liberty Watergap Trail, and the East Coast Greenway.

The preservation and reuse of the Embankment pursued by the Preservation Coalition is consistent with the goals and objectives of Hudson County's 2002 Master Plan; the Strategic Revitalization Plan for the Hudson County "Urban Complex"; the New Jersey Development and Redevelopment Plan; and the North Jersey Transportation Planning Authority's Regional Transportation Plan. In addition, the East Coast Greenway Alliance views the Embankment as a key link in its main Hudson County route from the Waterfront Walkway through the Bergen Arches to the Meadowlands. The East Coast Greenway route is 50 percent complete in New Jersey, and if implemented in Hudson County, would promote alternative means of transportation, physical exercise, and recreation for residents along this corridor, and would open up Jersey City and Hudson County to outdoors enthusiasts and historic site tourists from the region.

My office can offer the planning and technical expertise to the Embankment Preservation Coalition, or the acquirer of this property, during the acquisition, development and maintenance phases of this project. In addition, as a historic feature, the embankment should be eligible for funding if Hudson County's Open Space and Historic Trust is approved by voters through a ballot referendum occurring later this year. If you have any questions, please feel free to call any time.

Sincerely,

Stephen D. Marks, PP, AICP
Director

An equal opportunity employer

NEW JERSEY GENERAL ASSEMBLY

JOAN M. QUIGLEY
ASSEMBLYWOMAN, 32nd DISTRICT
THE HAMILTON PARK FOUNDRY
242 10TH STREET, SUITE 101
JERSEY CITY, NJ 07302
(201) 217-4814

CHAIR OF HOMELAND SECURITY & STATE PREPAREDNESS COMMITTEE
MEMBER OF HEALTH & HUMAN SERVICES COMMITTEE
JUDICIARY COMMITTEE

March 12, 2003

Re: Pennsylvania Railroad Harsimus Stem Embankment
Sixth Street, Jersey City

To Whom It May Concern:

I am writing to express support for the efforts of the Embankment Preservation Coalition to have the Harsimus Stem Embankment acquired by a public entity or land trust, improve the streetscape along Sixth Street and develop the top of the embankment as habitat and passive open space. The site linkage to a network of pedestrian and bicycle greenways, including the Hudson Waterfront Walkway and the East Coast Greenway will promote physical exercise and recreation in the area.

The Embankment Preservation Coalition has advised that this preservation and reuse project is consistent with federal, state, county, and municipal historic preservation and conservation goals.

I endorse the efforts of the Coalition to pursue acquisition options with the owner, Conrail/CSX/ Norfolk Southern.

Sincerely,

Joan M. Quigley

Joan M. Quigley
Assemblywoman

JMQ:jk

Printed on Recycled Paper

RAILS -to- TRAILS CONSERVANCY

Northeast Regional Field Office

February 25, 2003

Robert W. Ryan
Director, Real Estate
Conrail
510 Thornall St., Suite 390
Edison NJ 08837

Re: **Pennsylvania Railroad Harsimus Stem Embankment, Sixth Street, Jersey City**

To Whom It May Concern:

Rails-to-Trails Conservancy (RTC) is a nonprofit organization with headquarters in Washington, D.C., six field offices, and more than 100,000 members and supporters. Our mission is to build a nationwide network of public trails from former rail lines and connecting corridors.

We endorse the Embankment Preservation Coalition's efforts to secure the Harsimus Stem Embankment, preserve the historic structure, reuse the top as a nature sanctuary and passive green space, and link the site to a network of greenways, including the Hudson Waterfront Walkway and the East Coast Greenway and the Liberty to Delaware Water Gap Trail.

A year ago we walked the Embankment site with Coalition members and viewed firsthand its linkage to the Waterfront Walkway views of the Manhattan skyline. We see the potential of this site to be a major Jersey City and Hudson County asset, especially if the greenway is continued through the Bergen Arches and the Hackensack Meadowlands. Recreation, alternative means of transportation, community revitalization, and habitat conservation are all Coalition goals that we support.

Rails-to-Trails staff have contributed consultative services to the Coalition and will continue to do so. When an appropriate owner is identified and project implementation begins, RTC can provide expertise and low-cost services in all aspects of trail building from initial consultation to laying the groundwork for trails through trail development and beyond.

Sincerely,

Tom Sexton
Regional Director

Northeast Regional Field Office
105 Locust Street
Harrisburg, PA 17101
717-238-1717
FAX: 717-238-7560

National Office
1100 Seventeenth Street, NW
10th Floor
Washington, DC 20036
202-331-9696
FAX: 202-331-9680

100% Recycled Paper



NY/NJ
BAYKEEPER®
Raritan Bay • Upper New York Bay • Lower New York Bay • Jamaica Bay • Newark Bay
Sandy Hook Bay • Gravesend Bay • Sheepshead Bay
Building 18, Sandy Hook • Highlands, New Jersey 07732 • Tel: (732) 291-0176 • Fax (732) 291-7727
www.nynjbaykeeper.org • email: nynjbay@keeper.org

February 24, 2003
Re: Pennsylvania Railroad Harsimus Stem Embankment, Sixth Street, Jersey City

To Whom It May Concern:

NY/NJ Baykeeper is prepared to grant $250,000 from its share of non-profit funds from the Garden State Preservation Trust (earmarked in the New Jersey Senate for our use and currently awaiting NJ Assembly release) for acquisition of the Harsimus Stem Embankment. The purpose of this grant would be to jump-start a joint funding effort to complete the acquisition. Our grant will be contingent on the following: NJDEP Green Acres approval, matching funds, and a process that moves forth in timely fashion.

NY/NJ Baykeeper, founded in 1990 as an affiliate of the American Littoral Society, works to protect, preserve and restore the ecological integrity and productivity of the Hudson/Raritan Estuary. Baykeeper pursues opportunities for direct land preservation and habitat restoration and helps advance the Estuary's habitat preservation as well as land that is a valued as a recreational and cultural resource. We have worked with many municipalities and counties to preserve and restore open space for public benefit.

Baykeeper supports the Embankment Preservation Coalition as it works to secure the Conrail/CSX/Norfolk Southern property on Sixth Street for green uses. The Harsimus Stem Embankment is a unique open space asset that will greatly benefit Jersey City and Hudson County. Its top is returning to nature and presents a rare opportunity to preserve habitat near the otherwise developed Downtown waterfront. The Coalition's goal of improved public access to the Hudson River Waterfront, with links to a network of greenways, including an East Coast Greenway route from the Meadowlands through the Bergen Arches to the Waterfront via the Embankment site, aligns with our goals.

We also request that Conrail/CSX/Norfolk Southern support this acquisition effort. Thank you for your consideration, we look forward to working together on this innovative and very worthwhile project

Sincerely,

Greg Remaud

Gregory A. Remaud
Preservation Director

THE TRUST FOR PUBLIC LAND

Conserving Land for People

March 10, 2003

Mr. Robert Ryan
Real Estate Director
Conrail
510 Thornall Street
Edison, NJ 08837

Re: Pennsylvania Railroad Harsimus Stem Embankment, Sixth Street, Jersey City

Dear Mr. Ryan:

The Trust for Public Land has consulted with the Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition for several years. We support Coalition goals to preserve the historic Harsimus Stem Embankment, improve the streetscape along its base, reuse the top as nature sanctuary and passive green space, and link the site to a network of parks and greenways, including the Hudson River Waterfront Walkway, Liberty Watergap Trail, and the proposed main Hudson County route of the East Coast Greenway.

Land conservation is central to TPL's mission. Founded in 1972, the Trust for Public Land works to protect land for human enjoyment and well-being. TPL helps conserve land for recreation and to improve the health and quality of life of American communities. We are happy to offer our advisory support as this project is pursued.

Sincerely,

Terrence Nolan

Terrence Nolan
Project Manager
The Trust for Public Land

The Trust for Public Land
New Jersey Field Office
20 Community Place, 2nd Floor
Morristown, NJ 07960

(973) 292-1100
Fax (973) 292-6272
www.tpl.org

HARSIMUS COVE ASSOCIATION

229 Bay Street
Jersey City, NJ 07302

October 16, 2002

James Snyder
Director, Local Aid
Department of Transportation
P.O Box 600
1035 Parkway Avenue
Trenton, NJ 08625

Dear Mr. Snyder:

The Harsimus Cove Association unanimously supports the application of the Jersey City Planning Department for a New Jersey Department of Transportation Livable Communities Pilot Program grant for 6th Street/Thomas Gangemi Drive. Harsimus Cove is the National Historic District that abuts the Pennsylvania Railroad Harsimus Stem Embankment to the south.

This grant will provide enhanced pedestrian access from 6th Street, a major east-west thoroughfare in Downtown Jersey City, to the Hudson River Waterfront Walkway. Many residents of Harsimus Cove would use it to get to the commercial development and waterfront to our east.

This street currently has no sidewalk on its south side for much of its length. The street passes major commercial development, including the Newport Mall, Doubletree Hotel, and other businesses. It joins our neighborhood with the National Historic District of Hamilton Park to our north, and runs the length of the railroad embankment, which is on the New Jersey State Register of Historic Places.

The enhanced pedestrian access would be a tremendous addition to our walkable Downtown; it would encourage people to walk rather than drive cars and would make a major contribution to pedestrian safety.

We look forward to seeing and commenting on the plans that this grant will make possible.

Thank you for affording us the opportunity to support the application.

Sincerely,

Annie Kessler

Annie Kessler, President
Harsimus Cove Association
Phone/fax: 201-333-8777

ANNIE KESSLER, President | ANDREW FIEDL, Vice President | MARK ROTELLA, Vice President | DANIEL LEVIN, Treasurer | JULIETTE OKAHAM-HAYES, Secretary | SANTIAGO L. MUZONES, JR. | LYCEL VILLANUEVA

Historic Paulus Hook Association, Inc.

192 Washington Street • Jersey City, NJ 07302 • 201-435-3538 • FAX 201-435-4270

VIA email and Facsimile

March 11, 2003

To Whom It May Concern:

Re: Pennsylvania Railroad Harsimus Stem Embankment,
Sixth Street
JerseyCity, New Jersey

Jersey City residents have long been without the parks and open space that most New Jersey residents take for granted. Development pressures associated with our proximity to New York City make downtown Jersey City residents very aware of the unique opportunities and responsibilities that we have to acquire park land and open space. As such, the Historic Paulus Hook Association (HPHA) supports the Embankment Preservation Coalition's efforts to preserve the historic structure known as the Harsimus Stem Embankment. We also support their efforts to improve the streetscape along Sixth Street, adaptively reuse the top of the embankment primarily as passive green space, and link the embankment to the Hudson Waterfront Walkway and if possible, to a network of greenways including the East Coast Greenway.

We support acquisition of this historic site by an appropriate public entity or land trust and endorse efforts to secure the site through donation, grants and/or low-cost loans and fund-raising. We also suggest that it is a prime candidate for Green Acres funding (see the attached news release from the New Jersey Department of Environmental Protection, dated 2/27/03).

After site acquisition the HPHA will contribute to site development and maintenance by supporting grant applications taking part in volunteer efforts and sponsor and/or support activities related to the embankment.

Please support the Coalition in its efforts to adaptively reuse this important piece of our waterfront history.

Respectfully,

Diane S. Kaese
President, Historic Paulus Hook Association

DOWNTOWN COALITION OF NEIGHBORHOOD ASSOCIATIONS

HAMILTON PARK NEIGHBORHOOD ASSOCIATION • HARSIMUS COVE ASSOCIATION • HISTORIC PAULUS HOOK ASSOCIATION
VAN VORST PARK ASSOCIATION • THE WATERFRONT ASSOCIATION

February 23, 2003

Re: Pennsylvania Railroad Harsimus Stem Embankment, Sixth Street, Jersey City

The Downtown Coalition of Neighborhood Associations (DCNA) addresses issues of common concern to the neighborhood associations of Downtown Jersey City, including historic preservation, open space, pedestrian safety, and public access to the Hudson River Waterfront

We have long supported the Embankment Preservation Coalition's efforts to preserve the Embankment historic structure, improve the streetscape along Sixth Street, reuse the top as passive green space, and link the site to the Hudson Waterfront Walkway and a network of greenways, including the East Coast Greenway. The Embankment project, when implemented, will give the Downtown a much needed green space, and a unifying element for the community.

Members of our organization have lent a variety of skills to the Embankment Preservation Coalition, participated in public events, educational talks, contributed to site cleanups and tree plantings, and supported the Coalition in other ways.

We now support acquisition of this historic site by an appropriate public entity or land trust and endorse efforts to secure the site through donation, grants and/or low-cost loans and fund-raising.

Once the site is acquired, the DCNA will continue to contribute to the development and maintenance of the site. We'll be making a donation from our organization, and will assist in fund-raising efforts; we have volunteers eager to contribute time and energy on a regular basis, and we'll sponsor and/or support site activities that align with the goals of our organization and the Coalition.

Please do everything in your power to support the Coalition in its efforts.

Sincerely,

Laura Fraschilla /ab

Laura Fraschilla
President, Downtown Coalition of Neighborhood Assns

HAMILTON PARK NEIGHBORHOOD ASSOCIATION

February 27, 2003

Re: Pennsylvania Railroad Harsimus Stem Embankment, Sixth Street, Jersey City

To Whom It May Concern:

Hamilton Park Neighborhood Association is the major organization representing the residents of the National Historic District of Hamilton Park in Downtown Jersey City. The Harsimus Stem Embankment is our southern border, and it is considered integral to the Historic District.

Our association, as its name suggests, is organized around a much-used park and appreciates the considerable and growing needs for open space in this area. Harsimus Cove, our neighboring Historic District, is currently without a park. The fragile historic fabric of both Districts is best served by site preservation and reuse as a passive park. We therefore support acquisition of this historic site by an appropriate public entity or land trust and endorse efforts to secure the site through donation, grants and/or low-cost loans and fund-raising.

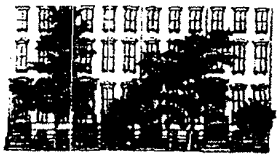
Members of our organization have previously participated in site cleanups, donated to tree plantings, and contributed to site preservation in many ways. Once the site is axquired, our organization will contribute to site development and maintenance in the following ways:

- support fund-raising efforts
- support grant applications
- organize volunteer efforts
- sponsor and/or support site activities that align with the goals of our organization and the Coalition

Please do everything in your power to support the Coalition in its efforts.

Sincerely,

Janice Monson
President, HPNA



VAN VORST PARK ASSOCIATION
The Barrow Mansion • **201-435-8808**
83 Wayne Street
Jersey City, NJ 07302

February 23, 2003

Re: Pennsylvania Railroad Harsimus Stem Embankment, Sixth Street, Jersey City

The Van Vorst Park Association has supported the Embankment Preservation Coalition's efforts to preserve the Harsimus Stem Embankment historic structure, improve the streetscape along Sixth Street, adaptively reuse the top as passive green space, and link the site to the Hudson Waterfront Walkway and a network of greenways, including the East Coast Greenway.

We support acquisition of this historic site by an appropriate public entity or land trust and endorse efforts to secure the site through donation, grants and/or low-cost loans and fund-raising.

Once the site is acquired, our organization will contribute to site development and maintenance in the following ways:

- support fund-raising efforts, including a donation from our organization
- support grant applications
- organize volunteer efforts
- sponsor and/or support site activities that align with the goals of our organization and the Coalition

Please do everything in your power to support the Coalition in its efforts.

Sincerely,

Laura Fraschilla /ab

Laura Fraschilla,
President, Van Vorst Park Association

CITY OF
JERSEY CITY

GLENN D. CUNNINGHAM
MAYOR

CITY HALL
JERSEY CITY, NJ 07302
TEL: (201) 547-5200
FAX: (201) 547-4288

October 27, 2003

Robert Ryan, Real Estate Director
Conrail
510 Thornall Street, Suite 390
Edison, New Jersey 08837

Re: Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition, Sixth Street Jersey City

Dear Mr. Ryan:

I am writing in response to your communication of March 13, 2003 regarding the Pennsylvania Railroad Harsimus Stem Embankment, Sixth Street Jersey City.

At this time, I would like to open up a dialogue with Conrail as well as the Embankment Preservation Coalition regarding the maintenance of the integrity of the remaining embankment. Perhaps a way to keep the property intact would be to look at public or private funding or grants. I would appreciate if you would be kind enough to contact my office to schedule an appointment to discuss the matter.

Very truly yours,

MAYOR GLENN D. CUNNINGHAM

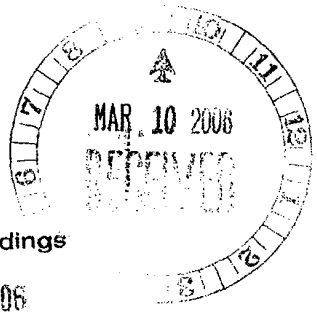
bcc: Maureen Crowley, President
Embankment Preservation Coalition

Appendix IV

CHARLES H. MONTANGE
ATTORNEY AT LAW
426 NW 162ND STREET
SEATTLE, WASHINGTON 98177

(206) 546-1936
FAX: (206) 546-3739

215969



9 March 2006
BY EXPRESS SERVICE

ENTERED
Office of Proceedings
MAR 10 2006
Part of
Public Record

Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: City of Jersey City, et al. --
Petition for a Declaratory Order,
F.D. 34818

Filing of Opening Statement, due 10 March

Dear Mr. Williams:

Enclosed for filing please find the original and ten (10) copies of an Opening Statement, tendered for filing on behalf of City of Jersey City, Rails to Trails Conservancy, the PRR Harsimus Stem Embankment Preservation Coalition, and New Jersey State Assemblyman Manzo. The filing consists of the Opening Statement itself and two (2) volumes of appendixes (I-XIV in volume one, XV-XVI in volume two).

I am also enclosing the original of the Stephen Marks Verified Statement, a fax of which was used in preparing the appendices due to time constraints.

A certificate of service is attached to the Opening Statement.

Thank you for your assistance in this filing.

Very truly,

Charles H. Montange
for petitioners
City of Jersey City,
Rails to Trails Conservancy,
Embankment Preservation Coalition,
and NJ State Assemblyman Manzo

Encls. (3 docs: 1 orig and 10 copies each; plus one original of Marks V.S.)

cc. Robert Jenkins, Esq. for Conrail (w/encls.)
Carmine Alampi, Esq. for SLH Properties (w/encls.)
Fritz Kahn, Esq. for SLH Properties (w/o encls.)

City of Jersey City (Mr. Curley, Ms. Monahan)
Rails to Trails Conservancy (Ms. Ferster)
Preservation Coalition (Ms. Crowley)
Assemblyman Manzo (all w/encls.)

215969

ENTERED
Office of Proceedings
MAR 10 2006
Part of
Public Record

MAR 10 2006
RECEIVED

BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket No. 34818

City of Jersey City,
Rails to Trails Conservancy,
Pennsylvania Railroad Harsimus Stem
Embankment Preservation Coalition,
and NJ State Assemblyman Louis M. Manzo, petitioners --
Petition for a Declaratory Order

ENTERED
Office of Proceedings
Part of
Public Record

VERIFIED STATEMENT OF
STEPHEN MARKS

I, STEPHEN MARKS, make this Verified Statement in support of the Petition for a Declaratory Order filed by petitioners City of Jersey City, et al., in the above-captioned proceeding.

1. I, Stephen Marks, am the Division Chief of the Hudson County Division of Planning. I am a certified planner and member of the American Institute of Certified Planners (AICP). I am also licensed as a "Professional Planner" by the State of New Jersey.

2. The Hudson County Board of Chosen Freeholders, as the governing body of the County of Hudson, duly adopted the Hudson County Open Space, Recreation and Historic Preservation Plan by way of resolution no. 118-3-2005, on March 24, 2005.

3. The Embankment property is identified in the Hudson County

Open Space, Recreation and Historic Preservation Plan as one of 16 acquisition priorities for the County. Its acquisition by the City of Jersey City and development as a linear park and greenway with light rail potential is wholly consistent with Hudson County's goals.

4. The Hudson County Board of Chosen Freeholders, as the governing body of the County of Hudson, endorsed the East Coast Greenway Northern New Jersey Route Location Study by way of resolution no. 257-6-2004 on June 2004.

5. The East Coast Greenway Northern New Jersey Route Location Study identified the Embankment as part of the proposed route through Hudson County. The East Coast Greenway is a national initiative, recognized by Congress, to create an urban trail from Maine to Florida, through 24 U.S. cities.

Pursuant to 28 U.S.C. § 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 3/7/06.

Stephen D. Marks

Rebuttal Appendix L

City Ordinance 03-010 (Jan. 2003) (landmark status for Embankment)

City Clerk File No. Ord. 03-010
Agenda No. 3.J 1st Reading
Agenda No. 2nd Reading & Final Passage

ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE
offered and moved adoption of the following ordinance:

CITY ORDINANCE 03-010

TITLE: **ORDINANCE OF THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY ADOPTING AMENDMENTS TO THE CITY CODE CHAPTER 345, LAND DEVELOPMENT ORDINANCE, ARTICLE 30, HISTORIC PRESERVATION (EMBANKMENT)**

WHEREAS, the "Pennsylvania Railroad Harsimus Branch Embankment" was built in 1901-1905 on the site of an earlier 19th century freight way to facilitate the Pennsylvania Railroad in establishing a major freight yard on the Hudson River which contributed greatly to the growth of the Port of New York and New Jersey; and

WHEREAS, the embankment, as part of the largest transportation system in the country, facilitated the dedication of most of the Jersey City Waterfront to rail and rail related uses; and

WHEREAS, the monumental stone and earth structures comprising the embankment, although lacking their connecting iron plate bridges, are rare survivors of the age of railroad transport and are especially deserving of protection; and

WHEREAS, the "Pennsylvania Railroad Harsimus Branch Embankment" deserves recognition as a series of historically significant structures which played an important part in the social and economic development of downtown Jersey City; and

WHEREAS, the designation of the "Pennsylvania Railroad Harsimus Branch Embankment" as a historic landmark would protect and preserve the structure from demolition or alteration without review by the Jersey City Historic Preservation Commission; and

WHEREAS, the subject property is currently located at the following blocks and lots:

Block:	Lot:
212	A
247	50.A
280	50.A
317.5	50.A
354.1	50.A
389.1	A

and

WHEREAS, the subject property is currently owned by the Consolidated Rail Corporation otherwise known as Conrail; and

WHEREAS, Chapter 345, Article 30, Section F, "Procedure for Nominating Sites, Landmarks and Districts for Local Designation" provides that "Any interested party may nominate a site, landmark or district for local designation. The nomination may originate at either the Historic preservation Commission, the Planning Board or City Council; however in any case, it shall be reviewed by all these bodies;" and

WHEREAS, a petition for local landmark designation for the "Pennsylvania Railroad Harsimus Branch Embankment" was submitted to the Historic Preservation Commission on July 8th 2002; and

WHEREAS, at the July 8th 2002 regular meeting of the Jersey City Historic Preservation Commission, the Commission did review the petition and recommend its approval; and

WHEREAS, at the December 16, 2002 regular meeting of the Jersey City Planning Board, the Planning Board did review the recommendation of the Historic Preservation Commission dated August 6th 2002 and the State and National Registers of Historic Places Nomination and recommended submission to the City Council for approval;

Continuation of City Ordinance 03-010, page 2

ORDINANCE OF THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY ADOPTING AMENDMENTS TO THE CITY CODE CHAPTER 345, LAND DEVELOPMENT ORDINANCE, ARTICLE 30, HISTORIC PRESERVATION (EMBANKMENT)

NOW, THEREFORE, BE IT ORDAINED, by the Municipal Council of the City of Jersey City that City Code Chapter 345 Land Development Ordinance §345-30 "Historic Preservation Review and Procedures" be amended as follows: (Material indicated by bold italic ***thusly*** is new material that is intended to be enacted.)

Section 345-30 Historic Preservation Review and Procedures

C. Historic Districts/Landmarks

Pursuant to this section, the following historic districts and landmark buildings, objects, sites, structures or landscape features are designated and recognized as "historic" and shall enjoy the protection of law as herein provided.

Landmarks:	**Date**
Pennsylvania Railroad Harsimus Branch Embankment	***[Date of City Council Adoption]***
Apple Tree House	**5-24-2000**
Ellis Island	**6-22-1994**
Dickinson High School	**5-27-1980**
Historic Districts:	
Harsimus Cove	**7-21-1983**
Hamilton Park	**2-1-1977**
Van Vorst Park	**2-1-1977**
Paulus Hook	**2-1-1977**

BE IT FURTHER ORDAINED THAT:

A. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
B. This ordinance shall be a part of the Jersey City Code as though codified and set forth fully herein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.
C. This ordinance shall take effect at the time and in the manner as provided by law.
D. The City Clerk and the Corporation Council be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible repealers of existing provisions.

Robert D. Cotter, PP, AICP
Director, Division of City Planning

APPROVED: _____ APPROVED AS TO LEGAL FORM

APPROVED: _____ _____
Business Administrator Corporation Counsel

Certification Required _____
Not Required X

SUMMARY

ORDINANCE OF THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY ADOPTING AN AMENDMENT TO THE CITY CODE CHAPTER 345, LAND DEVELOPMENT ORDINANCE, ARTICLE 30, HISTORIC PRESERVATION (ALL LANDMARKS)

This ordinance would officially adopt an amendment to the City's Land Development Ordinance to list Municipal Historic Landmarks and Municipal Historic Districts (Chapter 345, Article 30, Section G.) that will provide an essential and accurate record of Landmarks and Historic Districts and ensure protection for Historic Landmarks and Districts.

Date Submitted to B.A._____

ORDINANCE FACT SHEET

1. **Full Title of Ordinance:**
ORDINANCE OF THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY ADOPTING AMENDMENTS TO THE CITY CODE CHAPTER 345, LAND DEVELOPMENT ORDINANCE, ARTICLE 30, HISTORIC PRESERVATION

2. **Name and Title of Person Initiating the Ordinance:**
Mark Munley, Director, HEDC

3. **Concise Description of the Program, Project or Plan Proposed in the Ordinance:**
This ordinance adopts an amendment to the City's Land Development Ordinance recognizing the "Pennsylvania Rail Road Harsimus Branch Embankment" as a locally designated Historic Landmark.

4. **Reasons (Need) for the Proposed Program, Project, etc.:**
The "Pennsylvania Rail Road Harsimus Branch Embankment" is a series of structures spanning six blocks along Sixth Street, which once carried freight through downtown Jersey City to the railroad's Harsimus Yards. The structures, once joined by plate girder bridges, are mainly constructed of massive masonry retaining walls and earthen fill and measure approximately 400 feet long by 100 feet wide.

In 1997, local preservationists began the process of achieving landmark status in order to preserve these historically significant structures. The State Historic Preservation Office has listed the structures on the State Register of Historic Places. The Jersey City Historic Preservation Commission and the Jersey City Planning Board have formally recommended Municipal Landmark Designation.

5. **Anticipated Benefits to the Community:**
The proposed amendments will protect the structures from demolition or significant alteration without review by the Jersey City Historic Preservation Commission and the City's Historic Preservation Specialist. The structures, which are a significant reminder of the role of railroads in the history of downtown Jersey City, are important to complete the interpretation of the adjoining historic districts of Harsimus Cove and Hamilton Park.

6. **Cost of Proposed Project (Requirement):**
$0.00 There are no new costs to the City.

7. **Date Proposed Requirement will commence:**
Immediately upon adoption

8. **Anticipated Completion Date:**
Immediately upon adoption

9. **Person Responsible for Coordinating Proposed Program, Project, etc.:**
Robert D. Cotter, Director of City Planning 547-5050

10. **Additional Comments:**
None

I Certify that all the Facts Presented Herein are Accurate.

Robert D Cotter
Division Director Signature

12/3/02
Date

(Acting) _____
Department Director Signature

12/10/02
Date

Rebuttal Appendix M

Letter, M. Donato (LLCs) to D. Wrieden (City), May 1, 2008
seeking reinstatement of proceedings for
demolition permits (plus examples of permit applications)

Fax – Carmine Scarpa

Michele R. Donato
A Professional Corporation
Attorney at Law

P. O. Box 145
106 Grand Central Avenue
Lavallette, NJ 08735

Phone: (732) 830-0777
Telefax: (732) 830-0778
Email: mdonato@MicheleDonatoEsq.com

May 1, 2008

BY EMAIL TRANSMISSION AND REGULAR MAIL

Daniel Wrieden
Historic Preservation Officer
Division of City Planning
City of Jersey City
30 Montgomery Street, Suite 1400, 14th Floor
Jersey City, NJ 07302

Re: Applications for Certificates of No Effect and Appropriateness and for Certificates of Economic Hardship:
247 Manila Avenue, LLC
212 Marin Boulevard, LLC
354 Cole Street, LLC
280 Erie Street, LLC
317 Jersey Avenue, LLC
389 Monmouth Street, LLC

Dear Mr. Wrieden:

As you are likely aware, the Court has ruled that the limited liability companies ("LLC's) are entitled to pursue applications for development and certificates of appropriateness before Jersey City agencies. The Judge has reinstated the prohibition against municipal agencies refusing to hear these applications because of the Surface Transportation Board ("STB") abandonment proceedings and any potential title issues. I am enclosing a copy of that Order dated March 28, 2008 for your convenience.

Based on the Court's ruling, we therefore request that you reinstate the applications for certificates of appropriateness and hardship exemptions that were scheduled for hearing before the Historic Preservation Commission ("HPC") in December 2007 and that the HPC dismissed on jurisdictional grounds.

I called your office to relay this information but you have apparently been unable to return my call. I would appreciate your response and ask that you convey this information to the Historic Preservation Commission forthwith.

Consolidated Rail Corporation ("Conrail") is a joint applicant in these proceedings before the HPC. Conrail will soon be filing its application for exempt abandonment approval before the STB.

Very truly yours,

Michele Donato

Michele R. Donato

MRD:dp
cc: Mr. Steven L. Hyman
(by email transmission only)
Mr. Robert Whyte
(by email transmission only)
Carmine Alampi, Esq.
(by email transmission and regular mail)
Jeffrey Lewis, Esq.
(by email transmission only)
Arthur D'Italia, Esq.
(by email transmission only)
John K. Fiorilla, Esq.
(by email transmission only)
Joseph H. Burgis, PP, AICP
(by email transmission only)
Steven J. Kurtz
(by email transmission only)
Dean Marchetto, AIA
(by facsimile transmission only 201-795-0171)
Terry Karschner, Acting Director,
State Historic Preservation Office, New Jersey Department of Environmental Protection
Embankment Coalition (other stake holders)

F:\WPDOCS\Sh Holding\2008 Correspondence\Wieden.doc

HD
Address
Application No. H07-

JERSEY CITY
HISTORIC PRESERVATION COMMISSION

30 MONTGOMERY ST., SUITE 1400
JERSEY CITY, N.J. 07302-3821
(201) 547-5010
FAX: (201) 547-4323

Application Form

Certificate of No Effect
or
Certificate of Appropriateness

Approval valid for1 year (pursuant to §345-30.B.2 of the Jersey City Municipal Code)

******AREA BELOW FOR STAFF USE ONLY******

Certificate of No Effect | Certificate of Appropriateness

Director Division of City Planning | Secretary, Historic Preservation Commission

Historic Preservation Officer | Commissioner, Historic Preservation Commission

Date | Date

Condition(s) of Approval:

REVISED 7/27/06

SHADED AREA BELOW FOR STAFF USE ONLY

Application #:

Date Received:

Fee Collected?

Certificate of No Effect

Certificate of Appropriateness

Public Hearing Required

Property Address : Corner of Sixth Street and Marin Blvd. **Block:** 212 **Lot(s):** M

Historic District: Pennsylvania Railroad Harsimus Stem Embankment Site

Redevelopment Plan Area (If Applicable): Sixth Street Redevelopment Area

Applicant Information

Print Name: 212 Marin Boulevard, LLC

Mailing Address: c/o Carmine R. Alampi
One University Plaza, Suite 404
Hackensack, NJ 07601

Relationship to Owner: same

Daytime Phone #: 201-343-4600

Fax #: 201-343-4607

Email: calampi@alampi-law.com

I am the applicant proposing the work referenced herein. The information herein is correct and complete to the best of my knowledge.

Signature: Carmine R. Alampi

Landowner Information

Print Name: 212 Marin Boulevard, LLC

Mailing Address: c/o Carmine R. Alampi
One University Plaza, Suite 404
Hackensack, NJ 07601

Daytime Phone #: 201-343-4600

Fax #: 201-343-4607

Email: calampi@alampi-law.com

I, the owner of the application property, being familiar with the work proposed, I give my permission for same. The information entered is correct and complete to the best of my knowledge.

Signature: Carmine R. Alampi

***Existing Use* (circle one)**

-Residential- -Commercial- -Mixed- -other-

Number of Dwelling Units: None

Detailed Description of Use: Abandoned railroad embankment

Proposed Use (circle one)

-Residential- -Commercial- -Mixed- -other-

Number of Dwelling Units: 32

Detailed Description of Proposed Use: 16 two family structures

Historic Preservation Investment Tax Credits

n/a

If you plan to take advantage of the Federal Income Tax Credit Program, please contact the Historic Preservation Office of New Jersey at (609) 984-0140 before you begin any work. You may contact them for more information.

Please indicate if an application for grant funding or other government sponsored financing is proposed/approved for this project:

Agency/Source: _____ **Approved**_____ **Pending**_____

Work to be covered by grant or other government financing:

Work Description

1. **Circle all items that describe the work you are proposing**

Exterior: -cleaning- -repointing- -repair facade- -painting- -replace missing architectural elements- - replace door- -repair/replace sidewalk- -replace windows- -repair windows- -rebuild to original profile- -front yard- -replace fencing/railing- -electrical- -repair/replace roof- -building addition- -deck- -fire-escape- -rooftop appurtenances- -awnings-

Interior: -carpentry- -plumbing- -heating- -electrical- -kit/bath renovations- -entranceway change-

2. **Write a detailed description of all proposed work below (attach more sheets if necessary) Please Print:**

Demolition of embankment

Statement in Support of Application

212 Marin Boulevard, LLC is the owner of property known as Block 212, Lot M. The property contains an abandoned stone wall known as the Pennsylvania Railroad Harsimus Stem Embankment ("the Embankment").

Applicant will demonstrate that the criteria for demolition contained in the Jersey City Historic Preservation Ordinance justify the grant of a Certificate of Appropriateness to allow demolition of this block of the Embankment. In the event that the Historic Preservation Commission ("HPC") disagrees, then Applicant will seek a hardship exemption pursuant to Section 345-30D of the Jersey City Land Development Ordinance.

The property is currently a commercial use. Applicant will demonstrate that it is not feasible to develop the parcel in accordance with the existing zoning with the Embankment in place. The Embankment does not allow Applicant to realize a reasonable return, i.e., "a net annual return of twelve percent (12%) of the current valuation of an improvement parcel," as defined in Section 345-6 of the Jersey City Land Development Ordinance.

Applicant will present the testimony of Joseph Burgis, a licensed professional planner, who will address the criteria for a Certificate of Appropriateness for demolition. He will also

address the inability to develop the property for its zoned use with the Embankment in place.

Steven Kurtz, a real estate appraiser, will present evidence as to why the owner cannot realize a reasonable return with the Embankment in place. Consequently, Applicant will establish that it is entitled to a hardship exemption.

HD LAFAYETTE
Address 242 MONTGOMERY
Application No. H07-

JERSEY CITY
HISTORIC PRESERVATION COMMISSION

30 MONTGOMERY ST., SUITE 1400
JERSEY CITY, N.J. 07302-3821
(201) 547-5010
FAX: (201) 547-4323

Application Form

Certificate of Economic Hardship

Approval valid for1 year (pursuant to §345-30.B.2 of the Jersey City Municipal Code)

******AREA BELOW FOR STAFF USE ONLY******

Certificate of Economic Hardship

Chairman, Historic Preservation Commission

Commissioner, Historic Preservation Commission

Date

Condition(s) of Approval:

REVISED 1/26/07

SHADED AREA BELOW FOR STAFF USE ONLY

Application #107-__ Certificate of Economic Hardship

Date Received: MAY 2007

Fee Collected: $ ____ D(a) or Z(b) Approvals Required? ____

Property Address: C. Corner of Sixth Street and Marin Blvd. **Block:** 212 **Lot(s):** M

Historic District: Pennsylvania Railroad Harsimus Stem Embankment Site

Redevelopment Plan Area (If Applicable): Sixth Street Redevelopment Area

Applicant Information

Print Name: 212 Marin Boulevard, LLC

Mailing Address: c/o Carmine R. Alampi
One University Plaza, Suite 404
Hackensack, NJ 07601

Relationship to Owner: same

Daytime Phone #: 201-343-4600

Fax #: 201-343-4607

Email: calampi@alampi-law.com

I am the applicant proposing the work referenced herein. The information herein is correct and complete to the best of my knowledge.

Signature: Carmine R Alampi

Landowner Information

Print Name: 212 Marin Boulevard, LLC

Mailing Address: c/o Carmine R. Alampi
One University Plaza, Suite 404
Hackensack, NJ 07601

Daytime Phone #: 201-343-4600

Fax #: 201-343-4607

Email: calampi@alampi-law.com

I, the owner of the application property, being familiar with the work proposed, I give my permission for same. The information entered is correct and complete to the best of my knowledge.

Signature: Carmine R Alampi

***Existing Use* (circle one)**

-Residential- -Commercial- -Mixed- -other-

Number of Dwelling Units: None

Detailed Description of Use: Abandoned railroad embankment

Proposed Use (circle one)

-Residential- -Commercial- -Mixed- -other-

Number of Dwelling Units: 32

Detailed Description of Proposed Use: 16 two family structures

Certificate of Economic Hardship

Application for a Certificate of Economic Hardship shall be made on this form prepared by the Division of City Planning. This application may be made in connection with or following the filing of any application for a Certificate of Appropriateness. The Commission shall schedule a public hearing concerning the application and provide notice in the same manner as stated in the Jersey City Municipal Code §345-30; D. If approved at a public hearing a Certificate of Economic Hardship shall be signed by the Chairperson or acting chairperson and one other Commissioner present at the hearing.

The HPC shall review all of the evidence and information required of an applicant for a Certificate of Economic Hardship (see criteria at back page) and make a determination within forty-five (45) days of receipt of a completed application whether the denial of a Certificate of Appropriateness has deprived or, will deprive, the owner of the property of reasonable use of the property. If the HPC approves a Certificate of Economic Hardship, the Certificate of Appropriateness previously denied will be approved.

Work Description

1. Circle all items that describe the work you are proposing

Exterior: -cleaning- -repointing- -repair facade- -painting- -replace missing architectural elements- - replace door- -repair/replace sidewalk- -replace windows- -repair windows- -rebuild to original profile- -front yard- -replace fencing/railing- -electrical- -repair/replace roof- -building addition- -deck- -fire-escape- -rooftop appurtenances- -awnings- -entranceway change-

Interior: -carpentry- -plumbing- -heating- -electrical- -kit/bath renovations-

2. Write a detailed description of all proposed work below (attach more sheets if necessary) Please Print:

Demolition of embankment.

Statement in Support of Application

212 Marin Boulevard, LLC is the owner of property known as Block 212, Lot M. The property contains an abandoned stone wall known as the Pennsylvania Railroad Harsimus Stem Embankment ("the Embankment").

Applicant will demonstrate that the criteria for demolition contained in the Jersey City Historic Preservation Ordinance justify the grant of a Certificate of Appropriateness to allow demolition of this block of the Embankment. In the event that the Historic Preservation Commission ("HPC") disagrees, then Applicant will seek a hardship exemption pursuant to Section 345-30D of the Jersey City Land Development Ordinance.

The property is currently a commercial use. Applicant will demonstrate that it is not feasible to develop the parcel in accordance with the existing zoning with the Embankment in place. The Embankment does not allow Applicant to realize a reasonable return, i.e., "a net annual return of twelve percent (12%) of the current valuation of an improvement parcel," as defined in Section 345-6 of the Jersey City Land Development Ordinance.

Applicant will present the testimony of Joseph Burgis, a licensed professional planner, who will address the criteria for a Certificate of Appropriateness for demolition. He will also

address the inability to develop the property for its zoned use with the Embankment in place.

Steven Kurtz, a real estate appraiser, will present evidence as to why the owner cannot realize a reasonable return with the Embankment in place. Consequently, Applicant will establish that it is entitled to a hardship exemption.

HD PENN RR - HARSIMUS CHURCH
Address 247 MAPLE
Application No. H07 - 167

JERSEY CITY
HISTORIC PRESERVATION COMMISSION

30 MONTGOMERY ST., SUITE 1400
JERSEY CITY, N.J. 07302-3821
(201) 547-5010
FAX: (201) 547-4323

Application Form

Certificate of No Effect
or
Certificate of Appropriateness

Approval valid for1 year (pursuant to §345-30.B.2 of the Jersey City Municipal Code)

******AREA BELOW FOR STAFF USE ONLY******

Certificate of No Effect	Certificate of Appropriateness
Director, Division of City Planning	Chairman, Historic Preservation Commission
Historic Preservation Officer	Secretary, Historic Preservation Commission
Date	Date

Condition(s) of Approval:

REVISED 7/27/06

SHADED AREA BELOW FOR STAFF USE ONLY

Application #: _____ Certificate of No Effect: _____

Date Received: _____ COA: _____ Certificate of Appropriateness: _____

Fee Collected: _____ Other HPC Approvals Required: _____

Property Address : Corner of Sixth Street and Manila Avenue **Block:** 247 **Lot(s):** 50A

Historic District: Pennsylvania Railroad Harsimus Stem Embankment Site

Redevelopment Plan Area (If Applicable): Sixth Street Redevelopment Area

Applicant Information

Print Name: 247 Manila Avenue, LLC

Mailing Address: c/o Carmine R. Alampi
One University Plaza, Suite 404
Hackensack, NJ 07601

Relationship to Owner: same

Daytime Phone #: 201-343-4600

Fax #: 201-343-4607

Email: calampi@alampi-law.com

I am the applicant proposing the work referenced herein. The information herein is correct and complete to the best of my knowledge.

Signature: Carmine R Alampi

Landowner Information

Print Name: 247 Manila Avenue, LLC

Mailing Address: c/o Carmine R. Alampi
One University Plaza, Suite 404
Hackensack, NJ 07601

Daytime Phone #: 201-343-4600

Fax #: 201-343-4607

Email: calampi@alampi-law.com

I, the owner of the application property, being familiar with the work proposed, I give my permission for same. The information entered is correct and complete to the best of my knowledge.

Signature: Carmine R Alampi

***Existing Use* (circle one)**

-Residential- -Commercial- -Mixed- -other-

Number of Dwelling Units: None

Detailed Description of Use: Abandoned railroad embankment

Proposed Use (circle one)

-Residential- -Commercial- -Mixed- -other-

Number of Dwelling Units: 32

Detailed Description of Proposed Use: 16 two family structures

Historic Preservation Investment Tax Credits

n/a

If you plan to take advantage of the Federal Income Tax Credit Program, please contact the Historic Preservation Office of New Jersey at (609) 984-0140 before you begin any work. You may contact them for more information.

Please indicate if an application for grant funding or other government sponsored financing is proposed/approved for this project:

Agency/Source: _____ **Approved** _____ **Pending** _____

Work to be covered by grant or other government financing:

Work Description

1. Circle all items that describe the work you are proposing

Exterior: -cleaning- -repointing- -repair facade- -painting- -replace missing architectural elements- - replace door- -repair/replace sidewalk- -replace windows- -repair windows- -rebuild to original profile- -front yard- -replace fencing/railing- -electrical- -repair/replace roof- -building addition- -deck- -fire-escape- -rooftop appurtenances- -awnings- -entranceway change-

Interior: -carpentry- -plumbing- -heating- -electrical- -kit/bath renovations-

2. Write a detailed description of all proposed work below (attach more sheets if necessary) Please Print:

Demolition of embankment

Statement in Support of Application

247 Manila Avenue, LLC is the owner of property known as Block 247, Lot 50 A. The property contains an abandoned stone wall known as the Pennsylvania Railroad Harsimus Stem Embankment ("the Embankment").

Applicant will demonstrate that the criteria for demolition contained in the Jersey City Historic Preservation Ordinance justify the grant of a Certificate of Appropriateness to allow demolition of this block of the Embankment. In the event that the Historic Preservation Commission ("HPC") disagrees, then Applicant will seek a hardship exemption pursuant to Section 345-30D of the Jersey City Land Development Ordinance.

The property is currently a commercial use. Applicant will demonstrate that it is not feasible to develop the parcel in accordance with the existing zoning with the Embankment in place. The Embankment does not allow Applicant to realize a reasonable return, i.e., "a net annual return of twelve percent (12%) of the current valuation of an improvement parcel," as defined in Section 345-6 of the Jersey City Land Development Ordinance.

Applicant will present the testimony of Joseph Burgis, a licensed professional planner, who will address the criteria for a Certificate of Appropriateness for demolition. He will also

address the inability to develop the property for its zoned use with the Embankment in place.

Steven Kurtz, a real estate appraiser, will present evidence as to why the owner cannot realize a reasonable return with the Embankment in place. Consequently, Applicant will establish that it is entitled to a hardship exemption.

Rebuttal Appendix N

Letter, D. Saunders (NJ SHPO) to A. Quinlan (STB),
dated Jan. 26, 2009 (Section 110(k) is relevant)

HPO-L2008-053
Log # 08-0811-5

State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
NATURAL & HISTORIC RESOURCES, HISTORIC PRESERVATION OFFICE
PO Box 404 Trenton, NJ 08625
TEL. (609) 984-0176 FAX (609) 984-0578
www.state.nj.us/dep/hpo

JON S CORZINE
Governor

MARK N MAURIELLO
Acting Commissioner

224414

January 26, 2009



Honorable Ann Quinlan
Acting Secretary
Surface Transportation Board
Patriots Plaza
395 E Street SW
Washington, DC 20423

Dear Madam Secretary:

As Deputy State Historic Preservation Officer for New Jersey, in accordance with 36 CFR Part 800: Protection of Historic Properties, as published in the ***Federal Register*** on December 12, 2000 (65 FR 77725-77739) and amended on July 6, 2004 (69 FR 40544-40555), I am providing **Continuing Consultation Comments** for the following proposed undertaking:

Conrail (former Pennsylvania Railroad) Harsimus Branch and Embankment
City of Jersey City, Hudson County, New Jersey
Application for Abandonment Docket Number AB-167-1189-X
Surface Transportation Board (STB).

I write to express my deep concern about the Notice of Exemption for Abandonment proposed by Conrail. The timeframe established by the Notice of Exemption for Abandonment proposed by Conrail (despite the proposed stay of the effective date) would prevent the full completion of the letter/intent of the National Historic Preservation Act. Steps taken to date by Conrail show a failure to adequately plan for public involvement/participation in the Section 106 process This letter is in response to the Historic Preservation Office's receipt of:

Conrail Rail Corporation – Abandonment Exemption STB Docket No AB 167 (Sub-No 1189X), Motion to Stay Effective Date of Verified Notice of Exemption and to Waive Pre-Filing Notification Requirements, letter dated January 6, 2009, submitted by Mr. John K Enright (Conrail) and Mr. Robert M. Jenkins III (Mayer-Brown LLP);

Re: Consolidated Rail Corporation – Abandonment Exemption in Hudson County, NJ AB-167 (Sub-no 1189X) and Related Proceedings to Prevent Abandonment on that Date, letter dated January 14, 2009, submitted by Charles H Montange, for the City of Jersey

HPO- A2009-166
Log # 08-0811-1, 2, 3 & 4

City, Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition, and Rails to Trails Conservancy; and

Re: Consolidated Rail Corporation – Abandonment Exemption in Hudson County, NJ AB-167 (Sub-no 1189X) and Related Proceedings. Action Requested on or Before January 26, 2009 to Prevent Ex-Parte Abandonment, letter dated January 20. 2009, submitted by Charles H. Montange, for the City of Jersey City, Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition, and Rails to Trails Conservancy.

As of today, the consultation process pursuant to Section 106 of the National Historic Preservation Act has barely begun Although we are aware of a large number of historic properties in the project area, including the Harsimus Branch, the Identification of Historic Properties has not yet been completed There has, therefore, been no assessment of effects If Conrail continues to pursue sale and demolition, the project will result in an adverse effect on the historic Embankment. The Advisory Council on Historic Preservation must be notified of an adverse effect finding, and invited to participate in consultation pursuant to 36 CFR Part 00.6(a)(1). To my knowledge, the Advisory Council on Historic Preservation has not been notified of the potential for adverse effects. Furthermore, given the complexity of the project circumstances described below, and the number of parties that have asked to be involved in the Section 106 review process, it is unreasonable to think 106 can be completed on the timetable that would be established if Conrail's notice of Exemption were accepted.

Since cessation of active use of the Harsimus Branch, bridges that carried the Embankment over local roadways have been removed Conrail has sold portions of the Embankment, and joined with the developer in applications for demolition permits A number of parties, including the City of Jersey City, who propose to preserve the Embankment have asked to be interested parties. The City, the Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition and Rails to Trails Conservancy have argued that Conrail's actions represent a violation of Section 110k of the National Historic Preservation Act. Because the Harsimus Embankment (a segment of the Harsimus Branch) has received a Determination of Eligibility (DOE) from the Keeper of the National Register of Historic Places (NRHP) and is within or abuts at least 14 other (previously identified) historic properties, evaluating the applicability of Section 110(k) to the current Notice of Exemption abandonment proceedings is relevant not only to the Harsimus Embankment but also to the other previously identified historic properties located within the Area of Potential Effects (APE) established by Conrail, the Surface Transportation Board, and the HPO for the cultural resource evaluation of Docket Number AB-167-1189-X.

The Historic Preservation Office (HPO) agrees with the comments submitted by the City of Jersey City, Pennsylvania Railroad Harsimus Stem Embankment Coalition, and Rails to Trails that the Conrail application to abandon the Harsimus Branch using the Notice of Exemption procedures should not be granted because there would not be sufficient time to fully complete the Section 106 process, and because the applicability Section 110 (k) of the National Historic Preservation Act regarding anticipatory demolition should be thoroughly evaluated in accordance with the Surface Transportation Board's policy statement of April 23, 2008 (*Consummation of Line Abandonments that Are Subject to Historic Preservation and Other Environmental Conditions STB Ex Parte No 678*).

HPO- A2009-166
Log # 08-0811-1, 2, 3 & 4

The HPO appreciates having the opportunity to offer comments at this early stage of the proceedings and looks forward to actively participating in subsequent consultation in accordance with Protection of Historic Properties, 36 CFR Parts 800.4, 5, and, as needed, 6 Should you need any further assistance or if you have any questions regarding these comments, please contact Charles Scott at (609) 633-2396 or Charles.Scott@dep state.nj us.

Sincerely,

Daniel D. Saunders
Deputy State Historic
Preservation Officer

C Jerramiah Healy, Mayor, City of Jersey City
Thomas DeGise, County Executive, Hudson County
John Enright, Conrail
Advisory Council on Historic Preservation
Stephen Gucciardo, Jersey City Historic Preservation Commission
Michael Selender, Jersey City Landmarks Conservancy
William LaRosa, Hudson County Office of Cultural and Heritage Affairs
Alan Buchan, Pennsylvania Railroad Technical and Historical Society
John Kilbride, Camden and Amboy Railroad Historical Group
Maureen Crowley, Harsimus Embankment Coalition
Lynn Rakos, Roebling Chapter, Society for Industrial Archaeology
Martin Judd, NJ Transit
Robert Miller. Assistant Commissioner, NJDOT
Ken Koschek, NJDEP
Historic Sites Council
Jill Edelman, Powerhouse Arts District Neighborhood Association
Ron Emrich, Preservation, New Jersey
Eric Fleming, Harsimus Cove Association
Daniel Frohwirth, Jersey City Economic Development Corporation
Robert M. Jenkins III. Mayer-Brown LLP
Charles H Montange, Esq., Harsimus Embankment Coalition
Dolores P. Newman, NJ Committee for the East Coast Greenway
Sam Pesin. Friends of Liberty State Park
Gretchen Scheiman, Historic Paulus Hook Association
Robert Viven, Newport Neighborhood Association
Dan Weber, Van Vorst Park Association
Greg Remaud, NY-NJ Baykeeper
Andrea Fester, Rails to Trails Conservancy
Jennifer Greely, Hamilton Park Neighborhood Association
William Bolger, National Park Service, North-East Regional Office

HPO- A2009-166
Log # 08-0811-1, 2, 3 & 4

CS C/STBConrailHarsimusImtofConsult

Rebuttal Appendix O

Joint Stipulation, July 7, 2010, in USDC for DC 09-1900

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITY OF JERSEY CITY, *et al.* Plaintiffs v. CONSOLIDATED RAIL CORPORATION, Defendant, and 212 MARIN BOULEVARD, LLC, *et al.*, Defendant-Intervenors.	C.A. No. 09-01900-CKK

JOINT STIPULATION

Pursuant to this Court's Scheduling and Procedures Order filed June 25, 2012, ECF #77, the parties in this case make the following stipulations:

- Plaintiffs and Intervenor-Defendants LLCs stipulate that the Harsimus Branch from CP Waldo to Henderson Street (now Marin Boulevard) in Jersey City was conveyed to Defendant Consolidated Rail Corporation ("Conrail") in 1976 as part of a line of railroad subject to the jurisdiction (including the abandonment jurisdiction) of the Interstate Commerce Commission, now the Surface Transportation Board.
- Conrail and Intervenor Attorney General of New Jersey stipulate that in connection with Plaintiffs' renewed motion for summary judgment, Conrail and the Attorney General will not raise any facts or arguments in opposition to the foregoing stipulation of Plaintiffs and Intervenor-Defendants LLCs.

The parties have not reached settlement of the claims and disputes among them and make no further stipulations, at this time.

Respectfully submitted,

/s/ Robert M. Jenkins III
Robert M. Jenkins III (#217513)
Adam C. Sloane (#443272)
Mayer Brown LLP
1999 K Street, NW
Washington, DC 20005
Tel: (202) 263-3000
Fax: (202) 263-3300

Attorneys for
Defendant Consolidated Rail Corporation

/s/ Cornish F. Hitchcock
Cornish F. Hitchcock (# 238824)
Hitchcock Law Firm PLLC
5505 Connecticut Ave., NW
No. 304
Washington, DC 20015
Tel: (202) 684-6610
Fax: (202) 315-3552

Charles H. Montange
Law Offices of Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
Tel: (206) 546-1936
Fax: (206) 546-3739

Attorneys for
Plaintiffs City of Jersey City, et al.

Jeffrey S. Chiesa
Attorney General of New Jersey

By: /s/ Kenneth M. Worton
Deputy Attorney General
Kenneth Michael Worton
N.J. DEPARTMENT OF LAW & PUBLIC SAFETY
Division of Law
c/o NJ Transit Corporation
One Penn Plaza
Newark, NJ 07105
(973)491-7034
(973) 491-7044 (fax)
kworton@njtransit.com

/s/ Daniel E. Horgan
Daniel E. Horgan (239772)
Waters, McPherson, McNeill, P.C.
300 Lighting Way
P.O. Box 1560
Secaucus, New Jersey 07096
Tel: (201) 863-4400
Fax: (201)863-7153

Attorneys for Intervenor-Defendants 212 Marin Boulevard, LLC, 247 Manila Avenue, LLC, 280 Erie Street, LLC, 317 Jersey Avenue, LLC, 354 Coles Street, LLC, 389 Monmouth Street, LLC, 415 Brunswick Street, LLC and 446 Newark Avenue, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10nd day of July, 2012, I caused a true and correct copy of the foregoing to be filed with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following counsel who have registered for receipt of documents filed in this manner.

Cornish F. Hitchcock, Esq.
Hitchcock Law Firm PLLC
5505 Connecticut Ave., NW
No. 304
Washington, DC 20015

Charles H. Montange, Esq.
Law Offices of Charles H. Montange
426 NW 162d St.
Seattle, WA 98177

Robert M. Jenkins III, Esq.
Adam C. Sloane, Esq.
Mayer Brown LLP
1999 K Street, NW
Washington, DC 20005

Kenneth M. Worton, Esq.
Deputy Attorney General
Division of Law, 4th Floor
One Penn Plaza East
Newark, NJ 07105

/s/ Daniel E. Horgan
Daniel E. Horgan (#239772)

709063.1

Rebuttal Appendix P

Letter, D. Horgan (LLCs) to J. Irwin (STB OEA),
Dec. 7, 2015 (fate of Embankment on loss of federal control)

WATERS, MCPHERSON, MCNEILL
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
300 LIGHTING WAY
P.O. Box 1560
SECAUCUS, NEW JERSEY 07096

DANIEL E. HORGAN
MEMBER OF N.J., N.Y. & D.C. BARS

OFFICE DIRECT DIAL: 201-330-7453
CELL and VOICE MAIL:: 201-926-4402
E-MAIL dehorgan@lawwmm.com

VIA UPS OVERNIGHT AND ELECTRONIC MAIL

Jeffrey Irwin
Environmental Protection Specialist and Archaeologist
Office of Environmental Analysis
Service Transportation Board
395 E St. SW
Washington, DC 20423
IrwinJ@stb.dot.gov

December 7, 2015

LLC Interverners' Response to Director of Environmental Analysis Victoria Rutson's Correspondence and Request of September 17, 2015

STB DOCKET: AB-167-1189-X and related matters
CONRAIL ABANDONMENT IN HUDSON COUINTY, N.J.

Dear Mr. Irwin:

We are writing to you following a letter from Victoria Rutson, Director of the Office of Environmental Analysis, dated September 17, 2015. That letter indicated that your office is undertaking limited consideration of reasonably foreseeable land use in your analysis of the proposed abandonment of the Harsimus Branch in Jersey City to determine the potential direct and indirect effects of abandonment to historic properties in and adjacent to the Harsimus Branch right of way. As a consulting party in these proceedings, we are providing you with the information available to us that is relevant in these proceedings.

This matter is not about providing rail service to any former, present, or potential future freight customer. It is a real estate dispute between, our clients and the City of Jersey City over who will develop the approximately six-plus acres of property that our client Limited Liability Companies ("LLCs") purchased from Conrail in 2005. Nor is the dispute about historic preservation of six of the eight blocks that contain stone embankments, built long ago by the Pennsylvania Railroad. We have given this matter substantial and careful consideration in an effort to provide a well-documented and honest answer to the question raised in the September letter.

The answer to the question is that the property will be developed primarily, or exclusively for residential real estate purposes with multifamily, luxury housing. It will not be developed as a passive open space, an active park, or some other public use. Nor will it be developed as a corridor for passenger rail, or light rail services. None of those uses are practical, nor is the City of Jersey City at all interested in pursuing any of them, despite repeated assertion to the STB to the contrary.

Our development analysis for the property is based upon overwhelming trends in the downtown Jersey City area and very strong market demand for luxury residential housing. Also virtually all other suitable parcels in this area have been, or are being, developed for such use. The area is home to most of the tallest and most densely occupied residential buildings in New Jersey.[1,2] Your most recent visit to the area with the consultant contracted for the purposes of assessing historic sites should have confirmed this. Most currently, the property to the immediate east, also along the Harsimus Branch, is under development at a residential density of at least 200 units per acre of land. The first and easternmost block of the Embankment property along Marin Boulevard has been rezoned by Jersey City for 400 residential units and 200 hotel units, a total of 600 on a site approximately 1 acre in size, thereby establishing the physical capacity of the land, and the neighborhood, to absorb high density residential development.

The economics of such development would command a property value approximating $100 million for the 6+ acres owned by the LLCs. Six acres, at a density of 200 dwelling units per acre, produce a development potential of 1,200 dwelling units. Land sales for luxury residential development have exceeded $120,000 per unit in a number of cases, which would produce a potential land value of $144 million. Substantially discounting that number for obstacles and delays caused by improper actions by Jersey City, objections by neighbors, and other extraordinary costs, by one-third still produces an approximate value of $96 million for the entire property.

As noted, repeatedly throughout these STB proceedings that have gone on for over 10 years now, nothing is likely to happen on the property immediately after abandonment of the line by Conrail until the continued litigation between the LLCs and the City is concluded. However, the ultimate value of the land, the demand for luxury housing, and the economics of the situation dictate the end

[1] Indeed the City was willing in 2012 to rezone the easternmost block of the Embankment for high density development. See **Exhibit A**, Transcript of September 8, 2014, Jersey City City Council Closed Caucus, P.39-L.21 to P.40-L.4.

[2] See also **Exhibit B,** Council on Tall Building and Urban Habitat Research Paper "Jersey City on the Rise", by Robert Cotter, Planning Directory, Jersey City and Jeff Wegener, Principle Planner, Jersey City, 2015.

constitutionally mandated, the City also acknowledges the reality that high-end residential multifamily development will take place, unless the STB provides the City and its litigation allies with their "federal remedies." The latest iteration of this plea is the City's December 1, 2015 letter in which the City abandons its prior OFA arguments, attached as **Exhibit D**.

Lest there be any doubt that the City's argument is that luxury residential development on a stone railroad embankment would be an adverse impact on an adjacent historic district, the City has permitted exactly that kind of development only four blocks away on what is commonly referred to as the Tenth Street Embankment. You may have observed this with your consultants on the recent visit. Current pictures of that mid-rise (six story) residential building, taken in the vicinity of 10th St., between jersey Avenue and Coles Street, are attached as **Exhibit E**.

As your office is well aware, the National Historic Preservation Act requires consideration of direct regulatory impacts upon historic structures and districts. If any adverse impacts would arise from abandonment of the LLCs' properties because they will thereafter be developed with luxury, multi-family residential apartments, such impacts would now be manifest in the surrounding area. No such impacts exist, and none can be found. The contrary is more likely the case with the owners of older residences in the historic districts benefitting substantially from better neighborhoods, increased property values allowing for the funding of historic restoration and maintenance, better mass transit, more restaurants and other services for local residents, and on and on in a long litany of benefits, not burdens.

Further, the argument that some particular individual owner may not benefit, or feel that they don't benefit for whatever subjective reason, is of no moment. The subject of historic preservation is history, not the wants or desires of the present owners or residents, and therefore, the current subjective opinions or preferences of some residents as to the character of "their neighborhood" have no historical significance, as such.

Finally, we are compelled to repeat that historic preservation must give way to the constitutional rights of property owners to just compensation for the taking of their properties for use as parks, open space, or preservation without any viable use to the property owner. The City has acknowledged its inability to pay such just compensation, and we have previously advised General Counsel of the STB that the agency should be careful to avoid the imposition of conditions that would amount to a taking, or excessive delays that would result in a partial or temporary taking.[3] However, the sensitive treatment of the Harsimus Embankment in the context of future development rights is not a matter for the

[3] Letter from Daniel E. Horgan, Esq. to Craig M. Keats, General Counsel of the Surface Transportation Board, dated March 3, 2015.

result will be multifamily residential development. This is already underway immediately to the east of Marin Boulevard on an area that is within the area of the Conrail abandonment.

The City of Jersey City has acknowledged this reality-albeit not publicly-but in a secret and improper closed session of the City Council at which these abandonment proceedings were discussed. The LLCs were able to obtain, through court action, a copy of the transcript of those proceedings, ultimately with only limited redactions. These proceedings, conducted in secret, show the following statements by City Officials:

- The LLCs' properties are worth between $50 and $100 million, presumably in their present condition and circumstances. (Exhibit A, P.41-L.23-24).
- The City lacks the money to acquire the LLCs' properties or to develop them in any way. (Exhibit A, P.41-L16 to P.41-L.18).
- The City has no plans or intention to use the LLCs' properties for rail freight service. (Exhibit A, P.38-L.25 to P.39-L.4; P.40-L.16 to 20; P.41-L.7; P.48-L.1 to P.49-L.5).
- The City may sell some of the property for development in order to recoup its costs and otherwise raise funds. This establishes the suitability of the properties for residential development and their substantial value as such. (Exhibit A, P.40-L21 to P.41-L.7).

A copy of the transcript cited is attached as Exhibit A to this letter in the form that was ultimately released, by order of the Superior Court, Law Division, Hudson County having concluded that only the matter still shown as redacted was properly within the scope of attorney-client privilege between the City's STB counsel, its Corporation Counsel, the Mayor, City Council members, and staff. This secret City Council session was held to discuss Jersey City's OFA plans outside of, and shielded from, public view.

The Court has struck down City Ordinance 14.103 for exactly those reasons. See attached Order, **Exhibit C**.

By planning in secret to seize the LLCs' properties ostensibly for railway uses that it has no intention of pursuing, while acknowledging the development potential and value of those properties, the City also acknowledges that all of its public statements, STB filings, and protestations that it seeks to preserve history by keeping the Embankment undeveloped deserve no credibility whatsoever. The Embankment will be developed as neighboring properties of similar commercial value have been, and are being, developed.

Having acknowledged the value of the property, and its inability (or unwillingness) to acquire it by paying the LLCs just compensation as

STB, but for the City. And the City is the only obstacle to any rational compromise that would accommodate the interests of both the LLCs and historic preservation. Present (and prior) City officials are the ones that have taken the improper position that no compromise with the present owners of the LLCs should be considered, particularly with respect to the City's position before the STB.[4] Substantial deference to the history of the Embankment is possible, and is only precluded by the personal motives of City officials for improper reasons.

In sum, we believe that abandonment authorization in this matter will have no adverse impact upon historic resources, assuming that the property will be developed for luxury residential multi-family use at an overall density of one thousand or more units on over six total acres. Arguments to the contrary are without merit and contradicted by the un-redacted statements of City officials and their counsel, made in a context related to these proceedings.

We stand ready to respond to any questions or issues raised by this submission and welcome any inquiries by your office. Thank you for your attention to this matter and we hope that this submission will advance a deliberate and timely resolution of the pending abandonment proceedings.

Very truly yours,
WATERS, McPHERSON, McNEILL, P.C.

BY: _____
DANIEL E. HORGAN

CC: Charles H. Montange, Esq.
Andrea Ferster, Esq.
Robert M. Jenkins, III, Esq.
Adam Sloane, Esq.

[4] See Exhibit A. P. 38 P.38-L.6 to 12: "MR. FULOP: I would just say that if that's the logic, that we can't take care of something, so to take that - - because you believe that we can't take care of something we should just give a gift to Steve Hyman, [manager of the LLCs] well we are gifting a $3 million property he has acquired with a value of [$]50 [million] to - -"

Rebuttal Appendix Q

Letter, Mayor Fulop (City) to V. Rutson (STB OEA),
Dec. 14, 2014

CITY OF JERSEY CITY
OFFICE OF THE MAYOR
CITY HALL | 280 GROVE STREET | JERSEY CITY, NJ 07302
P: 201 547 5500 | F: 201 547 5442

STEVEN M. FULOP
MAYOR OF JERSEY CITY

STEVEN M. FULOP
MAYOR OF JERSEY CITY

December 14, 2015

Ms. Victoria Rutson
Director
Office of Environmental Analysis
Surface Transportation Board
395 E St. SW
Washington, D.C. 20423

Attn: Mr. Jeff Irwin

Re: Harsimus Branch, STB Dkt. No. AB 167 (Sub-no. 1189X); Letter, Mr. Irwin to Mayor Fulop dated Sept. 17, 2015

Dear Ms. Rutson:

This letter responds to your communication dated September 17, 2015, concerning consultation with the City of Jersey City in accordance with Section 106 of the National Historic Preservation Act.

The City has sought to retain the Harsimus Branch (inclusive of the Embankment) intact for a variety of public purposes compatible with historic preservation since at least 2005, as documented in our communications in various proceedings before this agency. More recently, and as indicated in my previous letter dated November 24, 2014, the City views an offer of financial assistance (OFA) as an efficient means not only to address the needs of local shippers, but also to keep the historic Harsimus Branch and Embankment properties intact for uses that are consistent with the City's historic preservation ordinance and relevant federal and state statutes. In that regard, the City has recently amended its acquisition bond ordinance to ensure that bond proceeds are available for OFA purposes as well as for compatible open space and historic preservation.

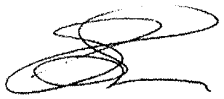
The City understands that acquisition by OFA is consistent with all applicable environmental laws, and I have requested our rail counsel to discuss this and related matters in a separate letter to you.

If the City is able to acquire the Harsimus Branch by OFA or otherwise, it expects that it will be bound by operation of state and local law to comply with, among other things, applicable portions of the Department of Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings in connection with any actions that have an impact upon historic structures. Your agency thus can be assured that City's planned acquisition will maximize preservation of historic assets in the Branch.

In addition to obtaining information from the City, we urge STB to seek information on "reasonably foreseeable land use" from other interested parties, including local neighborhood associations such as the Van Vorst Park and Hamilton Park Associations, the PRR Harsimus Stem Embankment Preservation Coalition, and the Rails to Trails Conservancy, who have sought to participate in the Section 106 process. These community organizations enthusiastically support preservation. By contrast, the attempted illegal abandonment of the rail line and the unauthorized sale of historic assets to a developer for demolition would foreclose meaningful comment on historic preservation issues if permitted to stand.

Thank you for your inquiry.

Sincerely,



Steven M. Fulop
Mayor

Rebuttal Appendix R

Letter, D. Saunders (NJ SHPO) to A. Quinlan (STB),
dated May 7, 2009 (loss of federal jurisdiction
equals loss of historic resource under process STB
has set up)

EI-17650 KB

HPO-E2009-049
Log #08-0811-6

State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NATURAL & HISTORIC RESOURCES, HISTORIC PRESERVATION OFFICE
PO Box 404, Trenton, NJ 08625
TEL: (609) 984-0176 FAX: (609) 984-0578
www.state.nj.us/dep/hpo

JON S. CORZINE
Governor

MARK N. MAURIELLO
Acting Commissioner

May 7, 2009

Honorable Ann K. Quinlan
Acting Secretary
Surface Transportation Board
Patriots Plaza
395 E Street SW
Washington, DC 20423

Re: Hudson County, City of Jersey City
Proposed Abandonment of Harsimus Branch

Environmental Assessment, STB Docket No. AB-167 (Sub-No. 1189X), Consolidated Rail Corporation – Abandonment Exemption – in Hudson County, NJ; STB Docket No. AB-55 (Sub-No. 686X), CSX Transportation, Inc. - Discontinuance Exemption – in Hudson County, NJ; STB Docket No. AB-290 (Sub-No. 306X), Norfolk Southern Railway Company – Discontinuance Exemption – in Hudson County, NJ.

Dear Acting Secretary Quinlan:

The New Jersey Historic Preservation Office (HPO) has reviewed the Environmental Assessment (EA) and has substantial concerns regarding the prescribed process for completing Section 106 consultation. Section 106 of the National Historic Preservation Act is a consultative process that seeks to accommodate historic preservation concerns with the needs of Federal undertakings. The Section 106 process must be completed "prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license" (36 CFR §800.1), and requires the head of any Federal agency to take into account the effect of the undertaking on historic properties.

Under normal circumstances, the Section 106 consultation process for the abandonment would have begun prior to the sale of the Harsimus Branch alignment to a private developer. The identification of historic properties could have been completed, identifying the Harsimus Branch as a resource that has been previously determined to be individually eligible for listing on the National Register of Historic Places by the Keeper

of the National Register. A historic preservation easement for the Harsimus Branch could have been developed by Surface Transportation Board (STB), in consultation with consulting parties. The historic preservation easement could have been executed, establishing a measure of protection of the Harsimus Branch, the STB could then have authorized the sale of the Harsimus Branch with the historic preservation easement in place, resulting in a determination of no adverse effect under Section 106.

The situation in the current case is extraordinary. The STB has not yet approved the proposed abandonment, yet Conrail has already sold the historic property to a developer. The developer is actively pursuing demolition of the historic property. This all occurred before the initiation of the Section 106 review process, let alone any discussion of ways to avoid, reduce or mitigate the clearly foreseeable adverse effects. STB now seeks to redress that lack of timely Section 106 consultation by establishing a Section 106-like review process whose certain outcome is an adverse effect including the probable demolition of the historic property.

The Section 106 consultation process is separate and distinct from the Environmental Assessment that was developed by the STB. However, through the Environmental Assessment, the STB is attempting to unilaterally dictate that Section 106 consultation be completed by parties with no ownership of the Harsimus Branch and with minimal oversight from the STB. Furthermore, that Section 106 consultation would be completed by Conrail as a condition of any decision granting abandonment authority suggests that STB has, in effect, already granted *de facto* approval of the abandonment. Finally, the "owner" of the Harsimus Branch Embankment continues to pursue demolition locally, and operates as if unconstrained by the Section 106 review process.

This is inconsistent with the letter and intent of Section 106 of the National Historic Preservation Act and 36 CFR §800.1(c) which require the completion of the Section 106 consultation process "...prior to the expenditure of any Federal funds on the undertaking or prior to the issuance of any license." The proposed process limits the potential for meaningful Section 106 consultation because it limits the ability of the Federal agency to complete a full consideration of alternatives to the undertaking, pursuant to 36 CFR§800.1(c), and 36 CFR §800.6(a). The EA asks to accept as a Section 106 equivalent, a process in which any sale of the property with an easement has been foreclosed. The process proposed by STB does not lead to a full consideration of alternatives; instead, it leads to loss of the historic property at the consummation of abandonment.

The HPO understands that Section 106 consultation for this project was initiated prior to the completion of the EA and the HPO has previously been involved in the early stages of Section 106 consultation. However, at that time, the STB did not make it known that it would be giving *de facto* approval of the abandonment. The State Historic Preservation Office requests that the STB retain full regulatory jurisdiction over the railroad right of way, and questions how the letter and intent of the Section 106 process can be completed while the property is held by a third party.

Thank you for your consideration in this matter. Please do not hesitate to contact me at (609) 984-0176 with any questions.

Sincerely,

Daniel D. Saunders
Deputy State Historic
Preservation Officer

Cc: Charlene Dwin Vaughn – Advisory Council on Historic Preservation
Najah Duvall-Gabriel – Advisory Council on Historic Preservation
Kenneth Blodgett – Surface Transportation Board
Jerramiah Healy, Mayor, City of Jersey City
John Enright, Conrail
Stephen Gucciardo, Jersey City Historic Preservation Commission
Maureen Crowley, Harsimus Embankment Coalition
Rom Emrich, Preservation New Jersey
Charles H. Montange, Esq., Harsimus Embankment Coalition

Rebuttal Appendix S

ACHP "policy statement on anticipatory demolition,"
June 22, 1987

Advisory
Council On
Historic
Preservation

The Old Post Office Building
1100 Pennsylvania Avenue, NW. #809
Washington, DC 20004

POLICY STATEMENT ON ANTICIPATORY DEMOLITION

ADOPTED BY THE ADVISORY COUNCIL ON HISTORIC PRESERVATION JUNE 22, 1987

The Council has learned that potential applicants for Federal assistance or permits have sometimes demolished historic properties before, or in the early stages of, applying for such assistance or permits, apparently in an effort to avoid review under Section 106 of the National Historic Preservation Act. This practice, referred to as "anticipatory demolition," frustrates the purposes of Section 106 and the Council's implementing regulations (36 CFR Part 800), and is inconsistent with the basic purposes of the National Historic Preservation Act.

Accordingly, the Council calls upon all Federal agencies that carry out, assist, or permit actions subject to review under Section 106 to adhere to the following principles:

I. Anticipatory demolition is inconsistent with the intent and spirit of the National Historic Preservation Act, and should be discouraged by all Federal agencies.

II. Federal agencies should ensure that anticipatory demolition does not occur in connection with projects they undertake, and do everything feasible to discourage it with respect to projects in which Federal assistance or permits may be directly or indirectly involved.

The Council will review the matter of anticipatory demolition further over the next year, and may offer recommendations to the President and Congress concerning legislative or administrative action. Agencies, State Historic Preservation Officers, and other interested parties are encouraged to provide the Council with comments on the above principles, as well as with comments on how best to address and control anticipatory demolition.

The Executive Director will adhere to the above principles in the review of Federal undertakings under Section 106.

Rebuttal Appendix T

Table of some of the LLCs' litigation against City

Status of State Court Cases

Docket No.	Claim/Result	Status
HUD-L-4683-05	Challenge to historic designation; LLCs summary judgment motion denied on 2/7/06 on basis that challenge to ordinance is untimely.	Stayed pending federal litigation
HUD-L-4908-05	LLCs seek relief from denial of subdivision for two "at grade" parcels and damages. City seeks by counterclaim and third party complaint to set aside Conrail deeds to LLCs. Subdivision granted on remand to Planning Board. Amended complaint asserting damage claims under 42 USC 1983 and other tort theories.	Stayed pending federal litigation
HUD-L-800-06	Challenge to MLUL checklist ordinance (Ord. 05-70) and curative historic designation ordinance (Ord. 05-176). MLUL check list ordinance declared void by order entered 8/7/06. Action on curative historic designation ordinance deferred.	Pending with no activity.
HUD-L-804-06	LLCs appeal from denial of subdivision and site plan approval for four embankment parcels. Preliminary site plan approved and preliminary/final subdivision approval granted by court order subject to HPC's issuance of demolition permit.	Completed. Final Judgment entered 10/16/06.
HUD-L-1554-06	City's action to set aside approvals for two at grade parcels. Dismissed with costs awarded against the City on basis that City lacked standing.	Completed. Final Judgment entered 8/7/06.
HUD-L-4883-06	LLCs challenge decision of zoning officer and ZBA as to interpretation of zoning ordinance for two easterly most embankment parcels. Decision rendered in favor of LLCs by order entered 7/2/09. Judgment upheld on appeal.	App. Div. appeal under A-6226-08T3 completed. Final Judgment upheld by Appellate Division on 12/2/10.
HUD-L-2451-08	LLCs' appeal from HPC and ZBA denial of demolition permit for six embankment parcels.	Case was remanded to ZBA for de novo hearing which has been completed. LLCs' have appealed ZBA determination. Stayed.
HUD-L-5897-10	LLCs challenge the amendments to the historic preservation provisions of the LDO by Ordinance No. 10-106 which amends the standards for the issuance of a certificate of economic hardship/demolition permit.	Dismissal upon repeal of challenged ordinance provisions.

Docket No.	Claim/Result	Status
HUD-L-2196-11	LLCs challenge the City's retention of C. Montange as being a conflict of interest, gift of public funds and in violation of the Local Public Contracts Law.	Case was dismissed by order entered 7/18/11. City's frivolous lawsuit fee application denied. Appeals and cross-appeals in Appellate Division upheld judgment in Law Division
HUD-C-12-13	City challenged purchase of tax sale Certificates by affiliates of the LLCs Order for cancellation of tax sale was entered 11/22/13. Order was reversed on appeal.	Appellate Division appeal under A-2207-13T1 completed. Trial court judgment was reversed on August 28, 2015.
HUD-L-4619-15	LLCs challenged Ordinance 15.125 dealing with modification of a prior bond ordinance to authorize an OFA in STB proceedings. Complaint filed 7/12/15. Judgment in favor of City was entered on 5/5/16. LLCs filed appeal to Appellate Division.	Appellate Division appeal under A-4421-15 T2 upheld judgment in favor of City.
HUD-L-4954-14	LLCs challenged Ordinance 14.103 authorizing OFA in STB proceedings. Complaint was filed 11/7/14. Final judgment voiding the Ordinance for OPMA violation was entered on 11/20/15.	Completed. Final judgment entered on 11/20/15.
HUD-L-843-16	LLCs challenged Ordinance 15.186 authorizing OFA in STB proceedings. Complaint was filed 2/25/16.	Completed. Judgment in favor of City was upheld by Appellate Division A-195-16.
HUD-L-6131-11	OPRA case relating to Embankment Preservation Coalition.	Final judgment entered on 10/12/15.
HUD-L-4619-15	LLC's challenge Bond Ordinance.	Final judgment in City's favor 5/5/16. Appeal under A-4421-15 T2 to upheld judgment in favor of City.
HUD-L-4954-14	OPMA case relating to 6th St. Embankment.	Judgment entered 5/27/15
HUD-L-5122-15	OPRA case filed by LLC's.	Attorney fee claim in favor of LLCs.

Rebuttal Appendix U

Conrail Response and Objections to City et al. discovery
in F.D. 34818

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34818

CITY OF JERSEY CITY, RAILS TO TRAILS CONSERVANCY, PENNSYLVANIA RAILROAD HARSIMUS STEM EMBANKMENT PRESERVATION COALITION, AND NEW JERSEY STATE ASSEMBLYMAN LOUIS M. MANZO—PETITION FOR DECLARATORY ORDER

CONSOLIDATED RAIL CORPORATION'S RESPONSE AND OBJECTIONS TO REQUESTS FOR PRODUCTION, REQUESTS FOR ADMISSION, AND INTERROGATORY ON BEHALF OF CITY OF JERSEY CITY, ET AL.

Subject to the objections stated below, Consolidated Rail Corporation ("Conrail") hereby responds to the requests for production, requests for admission, and interrogatory served by Jersey City, et al., on February 13, 2006, in the above-captioned matter.

General Objections

1. Conrail objects to requests for documents from Conrail's "predecessors," as defined by Jersey City, et al., as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Conrail is not a successor to any other railroad, and Conrail does not maintain files for railroads that had assets that were transferred to Conrail upon its formation. Notwithstanding the foregoing, where Jersey City, et al. has asked for maps "for Conrail or any predecessor to Conrail" (Document Request Nos. 1 and 3), and Conrail has relevant maps that were originally created by another railroad, Conrail is producing those maps.

2. Conrail objects to requests for production of documents that are protected by the attorney-client privilege, the attorney work product privilege, or the joint defense privilege.

Conrail will provide a privilege log for materials protected by the attorney-client and work product privileges that pre-date Conrail's learning in November 2005 that Jersey City had taken steps to initiate litigation against Conrail. As to documents created after that time, Conrail objects to providing a log of documents protected by the attorney-client, work product, or joint defense privileges, because such a log could reveal privileged information about Conrail's litigation strategy.

3. Conrail objects to Jersey City, et al.'s use of the term "Harsimus Branch." Jersey City defines "Harsimus Branch" as "CP Waldo to Luis Munoz Boulevard (formerly Henderson Street)." Document Request Nos. 5, 6, 8, and 9. Conrail's responses assume that definition, but Conrail does not agree with that definition.

4. By producing these documents, Conrail does not concede that the documents are properly discoverable or admissible. Conrail reserves the right the object to further discovery regarding the same subject matter as Jersey City, et al.'s requests, and to object to the introduction into evidence of documents produced in response thereto.

Responses and Objections to Specific Requests for Production

1-3. Conrail is producing numerous valuation maps, ZTS maps, and vicinity maps, and track charts materials for 1977, 1982, 1987, and 1999. Conrail has not been able to locate track chart materials for 1980, but Conrail does not at this time intend to contest the authenticity of the 1980 track chart materials that Jersey City, et al. attached to its Requests for Admission. Conrail's track chart materials are updated periodically, and Conrail has track chart materials for some other years after 1977 at its offices in Mt. Laurel, New Jersey, but Conrail objects to having to duplicate or transport to the offices of Jersey City, et al.'s counsel those additional track chart materials on the basis of burden and relevance. Conrail believes that the track chart

materials it is providing for 1977, 1982, 1987, and 1999 are more than adequate for any purpose Jersey City, et al. may have in requesting such materials. If counsel for Jersey City, et al. are not satisfied with those track chart materials, they may contact counsel for Conrail to make arrangements to review materials for other years, insofar as they exist, in Conrail's Mt. Laurel offices. Finally, Conrail is not producing materials from the Final System Plan, because it is apparent that Jersey City, et al. already has access to those materials, which are in the public domain.

4. Conrail has found no documents in its possession or control in which the enumerated entities expressly "took the position" that the property at issue was not a "line of railroad"; however, as noted in Conrail's Reply to the Petition for Declaratory Order of Jersey City, Et Al., filed February 1, 2006, the City and others have taken numerous actions that are inconsistent with its current position.

5. The determination whether particular trackage is a "spur" or other type of trackage that is not a "line of railroad" is a legal determination. Insofar as this document request seeks the opinions or work product of counsel for Conrail, Conrail objects to producing documents containing such opinion or work product on the grounds of attorney-client privilege and the work product doctrine. Further, there is no need for a line to be "classified" as a spur to be a spur. Conrail has one non-privileged spreadsheet—showing dates of determinations that certain lines, including the trackage at issue here, were or were not spurs—which Conrail is producing in response to this document request.

6. Conrail has some documents showing the number of cars shipped over the trackage at issue in the early to mid-1980's, which Conrail is producing. (There was no traffic on this trackage after the mid-1980s.) The only other material Conrail has that could contain

traffic information, after Conrail began operations in 1976, are old computer tapes that Conrail believes are in storage, that operated on a system that Conrail has not used for many years, and that could not be read without a special study using specialized software, hardware, and information technology expertise that Conrail does not maintain and will not pay for. Even if the tapes could be found and could be read, Conrail can make no representation regarding what years would be available or whether the traffic information could be segregated to display the information sought by Jersey City, et al. Accordingly, Conrail objects to providing these tapes, assuming they still exist, on grounds of undue burden and relevance.

7. Conrail is producing the requested deed and attached maps, although these are also available in the public domain.

8. The only contracts between Conrail and the intervenor LLC's in this proceeding are the quitclaim deeds that Jersey City, et al. attached to its Petition for a Declaratory Order, filed January 11, 2006. Since Jersey City, et al. already has these documents, Conrail is not producing them.

9. Conrail is producing responsive communications between counsel for Conrail and counsel for the intervenor LLC's that predate Conrail's learning in November 2005 that Jersey City had taken steps to initiate litigation against Conrail. After that, communications between representatives of the intervenor LLC's and representatives of Conrail concerned their shared interest in defending against both the imminent and actual litigation—not only at the STB but also before the Superior Court of New Jersey—and those communications are protected by the joint defense privilege. Accordingly, Conrail objects to producing them.

10. There are no such documents, either before or after Conrail's learning in November 2005 that Jersey City had taken steps to initiate litigation against Conrail. If there

were any such documents after that point, Conrail would object to producing them under the joint defense privilege.

11. The document identified in Conrail's response to Jersey City, et al.'s interrogatory is attached to Jersey City, et al.'s discovery as Appendix III.

Responses and Objections to Particular Requests for Admission

1. Conrail has been unable to locate the 1980 track chart materials attached as Appendix I. Nevertheless, Conrail at this time does not intend to challenge the authenticity of those materials.

2. Conrail does not admit this.

Responses and Objections to Particular Interrogatory

1. The track chart attached as Appendix III to Jersey City, et al.'s discovery contains a number of rail lines, spurs, yards, and other types of trackage, not a single "line" as stated in Jersey City, et al.'s Request for Admissions No. 2.

Respectfully submitted,

Jonathan M. Broder
CONSOLIDATED RAIL CORPORATION
2 Commerce Square
2001 Market Street
Philadelphia, PA 19101
(215) 209-5020

Robert M. Jenkins III
MAYER, BROWN, ROWE & MAW LLP
1909 K Street, NW
Washington, DC 20006
(202) 263-3261

Attorneys for Consolidated Rail Corporation

February 27, 2006

DOCKET NO. 34818

JERSEY CITY, ET AL. – PETITION FOR DECLARATORY ORDER

PRIVILEGE LOG

FROM	TO	DATE
J.J. Paylor	J.R. Beard	April 14, 1994

Rebuttal Appendix V

Conrail 2002 bid package describing the eight blocks
in question as a portion of a line of railroad
(penultimate page)

SEALED BID INSTRUCTIONS FOR MAKING AN OFFER TO PURCHASE CONRAIL PROPERTY

Case # 72931 Conrail Right of Way along 6th Street just west of Newark Avenue to Luis Munoz Marin Boulevard Jersey City, Hudson County, NJ (The "Property")

MATERIAL ENCLOSED WITH THE COVER LETTER

INSTRUCTIONS	(What you are reading right now)
SEALED BID/AGREEMENT OF SALE DOCUMENTS	(Make your own additional copies)
VICINITY MAP(S)	(Describes the property, shows approximately where the property is located)
RETURN ENVELOPE	(For returning your bid to Conrail)

WHAT IS FOR SALE?	The land described on Exhibit A
WHERE IS IT LOCATED?	Please see the Vicinity Map
HOW MUCH DOES IT COST?	The minimum bid price acceptable to Conrail is $3,000,000.00

IMPORTANT NOTES and BID PROCEDURES:

1. The Property will be sold only as described on Exhibit A. Individual parcels CANNOT BE DIVIDED.

2. The successful bid will be accepted based on the highest and best offer in Conrail's sole judgment, AT or ABOVE the stated MINIMUM BID. Bids below the stated minimum WILL BE REJECTED.

3. Time is of the essence in complying with the terms, covenants and conditions herein.

4. The Vicinity Map and Exhibit A show the general location and description of the parcel(s) to be sold . These maps are provided for your convenience only and are not surveys. Their accuracy is not guaranteed.

5. YOU MUST DO YOUR OWN TITLE RESEARCH. It is your responsibility as the Buyer to conduct your own inspections and to rely on information you may be able to obtain from sources like the local townships, cities, boroughs, and county seats. It is YOUR responsibility to determine and verify the quality of the title and the value of ownership of this property.

6. Make a copy of all completed documents for your personal records.

7. Please carefully review the enclosed Agreement of Sale document package in its entirety for specific terms and conditions.

8. All information included herein is obtained from what we have determined to be reliable sources, but it is NOT warranted.

9. **Mail** the correctly **completed Agreement of Sale document package, plus** your full **deposit** by **certified check, cashier's check or money order ONLY,** made **payable to Consolidated Rail Corporation** in the enclosed self-addressed envelope (if you Express Mail overnight, put the enclosed envelope inside the carrier's package). **NO PERSONAL CHECKS OR CASH ACCEPTED.**

10. All original **offers** must be mailed in the enclosed return envelope and **must be received not later than the close of business on January 21, 2003.** All bids will be opened on or after January 22, 2003 by Conrail; the bid opening will not be open to the public. Conrail will confirm receipt of each bid and notify each bidder whether its bid is successful or not, and will do so not later than January 30, 2003.

11. Successful bidder may not assign its rights hereunder without the prior written consent of Seller, which will not be unreasonably withheld..

12. INDEMNIFICATION: BIDDER ACKNOWLEDGES that he/she is fully acquainted with and understands the terms and conditions of the bid package materials and the Property described therein. Bidder agrees that Seller, its agents, employees and representatives, shall have no liability whatsoever as to any claim or losses which Bidder or its successors or assigns may incur which may now or hereafter exist with respect to said Property and Bidder shall indemnify, defend, and hold harmless the Seller from any and all claims whatsoever therefor.

If you have any questions, please call 732-906-3015, fax your questions to 732-549-7926, or write to the address indicated on the cover letter.

Thank you for your participation.

CONRAIL QUITCLAIM DEED (NJ)

Exhibit 'B', Case 72931

THIS DEED, made the _____ day of _____ , in the year of our Lord Two Thousand Two (2002),

BETWEEN CONSOLIDATED RAIL CORPORATION, a Corporation of the Commonwealth of Pennsylvania, having an office at Two Commerce Square, 2001 Market Street, 16TH Floor, Philadelphia, Pennsylvania, 19103, hereinafter referred to as the Grantor, and _____ , New Jersey, having a mailing address of _____ , hereinafter referred to as the Grantee.

WITNESSETH, that the said Grantor, for and in consideration of the sum of _____ DOLLARS ($_____) lawful money of the United States of America, unto it well and truly paid by the said Grantee, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, Grantor does by these presents, remise, release and forever quitclaim unto the said Grantee, the heirs or successors and assigns of the said Grantee, all right, title and interest of the said Grantor of, in and to the Premises as more particularly described on Exhibit 'A' appended hereto and made a part hereof.

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, permanent, perpetual, exclusive, assignable and unrestricted easements and rights for any and all existing sewer, gas and water lines, poles, pipes, wires, cables, power, signal and communication lines, fiber optic lines, telecommunication lines and all their appurtenances, hereinafter referred to as "facilities", located in, on, under, over, above, beneath the surface, across or through the Premises; and together with the right to use, maintain, repair, replace, renew, rehabilitate and remove said facilities and their appurtenances; and further together with the right of unimpeded ingress and egress in, on, over, across and through the Premises for the aforesaid purposes.

UNDER and SUBJECT, however, to (1) whatever rights the public may have to the use of any roads, alleys, bridges or streets crossing the Premises, (2) any streams, rivers, creeks and water ways passing under, across or through the Premises, and (3) any easements or agreements of record or otherwise affecting the Premises, and to the state of facts which a personal inspection or accurate survey would disclose, and to any pipes, wires, poles, cables, culverts, drainage courses or systems and their appurtenances now existing and remaining in, on, under, over, across and through the Premises, together with the right to maintain, repair, renew, replace, use and remove same.

THIS INSTRUMENT is executed and delivered by Grantor, and is accepted by Grantee, subject to the covenants set forth below, which shall be deemed part of the consideration of this conveyance and which shall run with the land and be binding upon, and inure to the benefit of, the respective heirs, legal representatives, successors and assigns of Grantor and Grantee. Grantee hereby knowingly, willingly, and voluntarily waives the benefit of any rule, law, custom, or statute of the State of New Jersey now or hereafter in force with respect to the covenants set forth below:

TAX REFERENCE:

(TO BE INSERTED)

THIS INSTRUMENT PREPARED BY:
Robert W. Ryan
Consolidated Rail Corporation
16-A, Two Commerce Square
2001 Market Street
Philadelphia, PA 19103

(1.) Grantor shall neither be liable or obligated to construct or maintain any fence or similar structure between the Premises and adjoining land of Grantor nor shall Grantor be liable or obligated to pay for any part of the cost or expense of constructing or maintaining any fence or similar structure, and Grantee hereby forever releases Grantor from any loss or damage, direct or consequential, that may be caused by or arise from the lack or failure to maintain any such fence or similar structure.

(2.) Grantee hereby forever releases Grantor from all liability for any loss or damage, direct or consequential, to the Premises and to any buildings or improvements now or hereafter erected thereon and to the contents thereof, which may be caused by or arise from the normal operation, maintenance, repair, or renewal of Grantor's railroad, or which may be caused by or arise from vibration resulting from the normal operation, maintenance, repair or renewal thereof.

(3.) A. Allocation of Specific Obligations to Remediate.
The parties shall, as between themselves, allocate obligations pertaining to any Remediation with respect to the Premises in accordance with this Section, without regard to considerations of fault, failure or negligence.

(i) Grantee shall be responsible after the date of this Deed for any Remediation arising from the existence or presence of any contamination in, on or about the Premises, including without limitation, any Hazardous Substances, except as specifically provided otherwise in Subsection A(ii) below.

(ii) Grantor shall be responsible for Remediation of Hazardous Substances in, on or about the Premises, provided that such Hazardous Substances: (1) resulted from a condition created by Grantor during the time the Premises was owned by Grantor; and (2) are a violation of applicable environmental laws or regulations in effect and as interpreted on the date of this Deed. Notwithstanding the aforesaid, Grantor shall not be liable for any Remediation resulting from any condition: (a) that Grantee had knowledge of or reasonable basis to suspect as of the date of this Deed; or (b) that Grantee could have discovered its presence upon the Premises by a duly diligent examination of the Premises or public records related thereto; or (c) which Grantee has failed to immediately notify Grantor of as provided for below. Grantor's liability for any Remediation for which it is otherwise responsible hereunder shall be no greater than that resulting from the condition of the Premises existing as of the date of this Deed regardless of any increase in Remediation costs or liability created by or resulting from events occurring after the date of this Deed, including the passage of time.

(iii) If at any time after the date of this Deed, any Hazardous Substances are discovered which are or may be the responsibility of Grantor to Remediate pursuant to Subsection A(ii) above, then Grantee shall immediately notify Grantor of such Hazardous Substances, and Grantor shall have the opportunity and right to investigate, determine its responsibility therefor, determine in connection with appropriate governmental or regulatory bodies the appropriate response or remedy for such Hazardous Substances and Remediate, with its own forces or contractors and at its own expense, such Hazardous Substances to the satisfaction of appropriate regulatory bodies or to the additional extent deemed appropriate by Grantor. Grantor shall only be obligated to Remediate such Hazardous Substances to the extent that would be required for the now existing or most recent use of the Premises by Grantor, regardless of the current or proposed use of the Premises by Grantee. Grantee shall grant such rights of entry or other rights to Grantor, upon reasonable terms and without compensation, as may be necessary to allow Grantor to perform the inspections, remediation or other actions necessary to comply with this Subsection. In the event of a dispute concerning Grantor's responsibility for any Remediation hereunder, the parties shall cooperate to resolve such dispute as quickly as possible, and Grantee, unless required by valid judicial or regulatory order to take immediate action to Remediate a specific condition, shall, during the resolution of such dispute, take no actions inconsistent with Grantor's right to seek a determination from the appropriate regulatory or judicial body of the remedy required by law and to Remediate the Hazardous Substances with its own forces or contractors. Grantor shall not be liable to Grantee for any damages, costs or expenses incurred as a result of such Remediation, except that if Grantee is required by valid judicial or administrative order as provided

above to take immediate action to Remediate any Hazardous Substances which are later determined to be the responsibility of Grantor pursuant to this Subsection, Grantee shall be able to recover its actual and reasonable costs from Grantor.

B. Definition of "Hazardous Substance(s)". "Hazardous Substance(s)", as used in this Deed, shall mean any material or substance that is defined or classified as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601(14)) or Section 311 of the Federal Water Pollution Control Act (33 U.S.C. §1321); a "hazardous waste" pursuant to Section 1004 or 3001 of the Resource Conservation and Recovery Act (42 U.S.C. §§6903, 6921); a toxic pollutant under Section 307(a)(1) of the Federal Water Pollution Control Act (33 U.S.C. §1317(a)(1)); a "hazardous air pollutant" under Section 112 of the Clean Air Act (42 U.S.C. §7412); or a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. App. §1802(4)).

C. Definition of "Remediate" and "Remediation". "Remediate" or "Remediation", as used in this Deed, shall mean, any reasonable investigation and the formulation and implementation of any remedial action, containment, cleanup, response, treatment, removal, mitigation, abatement, elimination or control of any contamination.

D. Indemnity. The party made responsible by this Section for any Remediation shall: (1) satisfy said obligations; and (2) indemnify, defend and hold the other party (and its directors, officers, employees and agents) harmless from and against any claims, liabilities, judgments, settlements, costs and expenses (including without limitation, reasonable attorneys' fees) arising out of or in connection with said Remediation.

E. Release. As a material part of the consideration to Grantor for the conveyance of the Premises, Grantee hereby expressly and irrevocably releases and forever discharges, and by these presents does, for its successors and assigns, release and forever discharge Grantor (including, without limitation, its directors, officers, employees, and agents) from any and all actions, suits, controversies, damages (compensatory, punitive or consequential), judgments, claims and demands whatsoever, in law, or in equity, which Grantee ever had, now has, or which it or its successors and assigns hereafter can, shall or may have against Grantor, arising out of or in connection with the presence of any contamination on the Premises, including without limitation, any Hazardous Substances, except to the extent Grantor fails to comply with its obligations set forth in Subsection A(ii) above, or Grantee is entitled to recover the cost of any Remediation pursuant to Subsection A(ii). Grantee shall indemnify, defend and hold Grantor harmless from and against any and all claims, liabilities, judgments, settlements, costs and expenses (including without limitation, reasonable attorneys' fees) arising out of or in connection with Grantee's prosecution of any of its legal remedies against any third party who might have concurring or joint liability for matters for which Grantee has released Grantor pursuant to this Subsection. Each party expressly waives, to the extent it lawfully may do so: (i) the benefits of any statute that would relieve it of any obligations that it has assumed under this Section, and (ii) any defense predicated on alleged misrepresentations of fact or the nondisclosure of any fact.

(4.) Should a claim adverse to the title hereby quitclaimed be asserted and/or proved, no recourse shall be had against the Grantor herein.

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, permanent, perpetual, exclusive, unrestricted and assignable easements and rights for any and all existing signboards and their appurtenances located on the Premises; together with the necessary; easements and rights for any necessary electric service lines and their appurtenances needed for illuminating said signboards; and together with rights and easements to construct, use, maintain, modify, enlarge, repair, renew, replace, rehabilitate and remove said signboards; and together with the right of immediate and unimpeded ingress and egress on, over, across, and through the Premises for

the purposes aforesaid; and further together with the exclusive right to sell and assign such rights and to retain any and all revenues, income, charges, considerations and fees derived therefrom.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of it, the said Grantor as well at law as in equity or otherwise howsoever of, in and to the same and every part thereof, UNDER and SUBJECT and EXCEPTING AND RESERVING as aforesaid.

TO HAVE AND TO HOLD, all and singular the said Premises, together with the appurtenances, unto the Grantee, the heirs or successors and assigns of the Grantee, forever, UNDER and SUBJECT and provided as aforesaid.

THE words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees", respectively, whenever the sense of this instrument so requires and whether singular or plural, such words shall be deemed to include at all times and in all cases the heirs, legal representatives or successors and assigns of the Grantor and Grantee.

IN WITNESS WHEREOF, the Grantor has caused this Indenture to be signed in its name and behalf

by its Director-Real Estate duly authorized thereunto and has caused its corporate seal to be hereunto affixed and attested by its Vice President and Corporate Secretary, the day and year first above written.

SEALED and
DELIVERED in the
presence of us:

CONSOLIDATED RAIL CORPORATION
By:

_____

_____
Robert W. Ryan
Director-Real Estate

ATTEST:

_____

_____
James D. McGeehan
Vice President and Corporate Secretary

COMMONWEALTH OF PENNSYLVANIA)
: SS
COUNTY OF _____)

BE IT REMEMBERED, that on this _____ day of _____ in the year Two Thousand Two (2002), before me, the subscriber, a Notary Public for the Commonwealth and County aforesaid, personally appeared Robert W. Ryan, Director-Real Estate of CONSOLIDATED RAIL CORPORATION, the corporate Grantor named in the within Instrument, who I am satisfied is the person who has signed the within Instrument on behalf of said Corporation; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as such officer aforesaid; that the foregoing Instrument is the voluntary act and deed of said Corporation, made by virtue of authority from its Board of Directors; and that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by the within Instrument as such consideration is defined in P.L. 1968, C. 49, Sec. I(c), is _____ Dollars ($_____).

_____
Notary Public

CONRAIL

AGREEMENT OF SALE

Case # 72931

THIS AGREEMENT, made as of this _____day of _____, 2002, between **CONSOLIDATED RAIL CORPORATION**, a Pennsylvania corporation, with its principal offices at Two Commerce Square, 2001 Market Street, 16th Floor, Philadelphia, PA 19103 ("Conrail"), and _____ having a mailing address at _____ ("Purchaser"), for all of Conrail's right, title and interest in and to all those certain pieces or parcels of land containing 6.2 acres, more or less, and any improvement thereon, situate in the City of Jersey City, County of Hudson, State of New Jersey, as described and shown on Exhibit A attached hereto and made a part hereof (the "Property").

Broker for Conrail: None.

Broker for the Purchaser: _____.

1. PURCHASE PRICE

(a) The purchase price for the Property shall be: dollars ($_____) which shall be paid to Conrail by Purchaser as follows:

(i) Certified check, cashier's check, or money order to be paid upon Purchaser's signing of this Agreement in amount of 5% of Purchase Price ($_____) (the "Deposit");

(ii) Certified check, cashier's check, or money order to be paid within five (5) days of notification by Conrail that Conrail has countersigned this Agreement in amount of 5% of Purchase Price ($_____)(the "Additional Deposit")

(iii) Certified check, cashier's check, money order, or wire transfer to be paid at time of Closing in amount of 90% of Purchase Price (Balance of Consideration).

(b) Execution hereof by Conrail to be on or before January 30, 2003.

(c) Execution on behalf of Conrail shall not be binding until this matter is approved by Conrail's Board of Directors; said approval must be obtained not later than March 31, 2003. If Conrail's Board of Directors approval is not obtained by such date, Purchaser may elect to terminate this Agreement, in which case the Deposit and Additional Deposit will be returned, without interest, within fifteen (15) business days of Purchaser's written request therefor, which shall be Purchaser's sole remedy and whereupon neither party shall have any further liability hereunder.

2. CLOSING

The conveyance of title to the Property (the "Closing") shall take place at 510 Thornall Street, Suite 390, Edison, NJ 08837, on or before June 30, 2003, or at such other time and place as shall be mutually agreed upon.

3. TITLE

Conrail will deliver and Purchaser will accept a quitclaim deed without any covenants or warranties of title, express or implied, to the Property, in the form attached hereto as Exhibit B (the "Deed"). At the request of Purchaser, prior to Closing, Conrail shall provide to Purchaser's title insurance company at Closing a letter of indemnity which shall indemnify and save harmless said title company against recorded liens and judgments recorded against Conrail arising after April 1, 1976 up to an amount not to exceed the Purchase Price. Conrail's indemnity hereunder shall be effective as of the Closing and shall be in the form of the attached Exhibit "C". If an encumbrance which materially changes title to the Property as set forth in the Title Report is recorded against the Property between the date of this Agreement and Closing which is not shown on the Title Report, then Conrail, at its option, may elect to cure such encumbrance at its cost and expense and Closing shall be set off for a period not to exceed sixty (60) days. In the event that either Conrail does not elect to cure such encumbrance or said sixty (60) day period expires, then this Agreement shall terminate, and Conrail shall return the Deposit and Additional Deposit to Purchaser, without interest thereon, whereupon neither party shall have any further liability hereunder.

4. CLOSING APPORTIONMENT AND PAYMENTS

(a) Rentals or License Fees. Rentals or payments for lease or license agreements will be divided as follows. The Purchaser shall be entitled to collect all rentals or license fees which, by the terms of the leases or license agreements, are billed *after* Closing. Conrail shall be entitled to retain all rentals and license fees billed *prior* to Closing in accordance with the terms of such leases or license agreements. The Purchaser shall assume all duties and obligations of Conrail contained in any such leases or license agreements arising from and after the date of Closing. Conrail shall provide Purchaser within ninety (90) days after Closing all original copies of any leases and license agreements assigned to Purchaser which are in Conrail's possession. Security deposits for any lease or license agreement, if any, shall be turned over to the Purchaser within ninety (90) days after Closing provided that the lease or license agreement has no outstanding arrearages (in which case, Conrail will be entitled to apply such security deposits to any arrearages).

(b) Real Estate Transfer Taxes. Payment of all transfer taxes will be borne by the Purchaser, irrespective of any local custom to the contrary.

(c) Brokers Commissions. Conrail shall only be responsible to pay Conrail's Broker's commission. Purchaser shall be responsible for any commissions claimed by other brokers with respect to this transaction.

(d) Taxes. Real estate taxes, water & sewer rents and other lienable charges (if any) shall be apportioned between Conrail and Purchaser as of Closing.

5. CONDITION OF PROPERTY

Purchaser agrees to accept the Property and any improvements **"AS IS" "WHERE IS"**, with any and all faults. Purchaser has thoroughly inspected, or chosen not to inspect, the Property and any improvements thereon, and, in either event, is satisfied with their condition. Purchaser shall take title to the same in their condition as of the date of Closing, including any violations of law or ordinances, whether or not such violations are officially recorded.

6. DEFAULT

(a) Purchaser's Default. Unless otherwise provided for in this Agreement, if Purchaser fails to comply with the terms and conditions hereof, Conrail may: (i) terminate this Agreement, in which event the Deposit and the Additional Deposit shall be due and payable to Conrail as its sole liquidated damages.

(b) Seller Defaults. If Conrail fails to comply with the terms and conditions hereof, Purchaser shall have the right to receive from Conrail the return of Purchaser's Deposit and Additional Deposit, without interest, which shall be Purchaser's sole remedy and whereupon neither party shall have any further liability hereunder. Purchaser acknowledges that under no circumstances, shall Conrail be liable for Purchaser's damages, consequential, actual, punitive, speculative or otherwise. Purchaser agrees that it will not, and waives all right to, file a lis pendens or other attachment at law or in equity for any reason so as to affect the title to the Property.

7. PUBLIC NOTICES

In the event any notice respecting the performance and the completion of work proposed and affecting the Property, or the installations of sewers, water or lighting facilities is received by Conrail or Purchaser, or notice of confirmed special assessment is issued to Conrail or Purchaser in connection therewith after the date first set forth above, Purchaser agrees to be responsible for compliance with such notice or notices, and Purchaser shall pay for work required or the assessment levied therefor.

8. ASSIGNMENT

Each and every term, covenant, condition, agreement, provision and stipulation of this Agreement shall be binding upon, and inure to the benefit of, the respective heirs, personal representatives, successors and assigns of Conrail and Purchaser; provided that Purchaser shall not assign this Agreement without the prior consent of Conrail, which consent Conrail may withhold for any reason.

9. CASUALTY LOSS

No loss or casualty with respect to the Property shall, in any way, affect the terms of this Agreement.

10. CONDEMNATION

If the Property, or any substantial portion thereof, or any interest therein, shall be affected by an exercise of the power of eminent domain, Conrail shall have the option to either: (a) terminate this Agreement, whereupon Conrail shall return to Purchaser the Deposit and Additional Deposit, or (b) enforce this Agreement and assign any award or agreed upon compensation to Purchaser.

11. NOTICES

Whenever in this Agreement notice or consent is requested, desired or required to be given, same shall be given in writing and sent by prepaid overnight courier or registered or certified United States mail, return receipt requested, to the parties whose names and addresses are set forth in the heading of this Agreement. Notice shall be effective when deposited.

12. NO REPRESENTATION

All understandings and agreements heretofore between Conrail and Purchaser are merged into this Agreement which alone fully and completely expresses their intent. Purchaser acknowledges that Conrail, its officers, employees, representatives and any of their agents under Agreement involved in the sale of the Property have made **no** representations or warranties to Purchaser concerning the Property, including any representation or warranty as to the condition of the Property or the quality of Conrail's title to the Property. Any information provided to Purchaser was provided strictly as an accommodation to Purchaser, and no express or implied warranty or representation as to the accuracy or correctness of such information shall be deemed to have been made by Conrail, its officers, employees or agents or any third party. Purchaser acknowledges that this purchase is based upon Purchaser's own knowledge and information and that Purchaser shall accept the Deed at Closing and shall be deemed to have waived any and all objections to Conrail's title to the Property.

13. VIOLATION OF LAW

In the event the conveyance of the Property on the terms set forth in this Agreement would be contrary to any law, regulation or order of governmental authority, then the Deposit and Additional Deposit shall be refunded with any accrued interest to Purchaser, and Purchaser hereby agrees to accept same, whereupon this Agreement shall terminate and neither party hereto shall have any further liability hereunder.

14. ACKNOWLEDGMENT

Purchaser acknowledges the receipt of the following: **NONE.**

- ☐ Title report.
- ☐ Phase I Site Assessment.
- ☐ Survey.

15. MISCELLANEOUS

(a) The headings and subheadings in this Agreement are for convenience only and shall not be construed as having any legal or factual intent.

(b) It is understood and agreed that time shall be of the essence in this Agreement.

(c) Formal tender of purchase money and executed Deed is hereby waived.

(d) It shall be the Purchaser's responsibility to verify the zoning classification and any land use restrictions; Conrail makes no representations in this regard.

(e) The terms of this Agreement shall survive Closing.

(f) Neither this Agreement nor any type of memorandum thereof shall be recorded with the office of the Register of Deeds or with any other governmental agency, and any purported recordation or filing hereof by Purchaser shall constitute a default on the part of Purchaser.

(g) No omission or delay by any party in enforcing any right or remedy or in requiring performance of any of the terms of this Agreement shall constitute or be deemed to constitute a waiver of any such right or remedy, nor shall it in any way affect the right of either party to enforce such provisions thereafter unless such right or remedy is specifically waived in writing. No single or partial exercise of any right or remedy hereunder shall preclude any other or further exercise of any right or remedy.

(h) The law of the state in which the Property is located shall govern the terms of this Agreement.

(i) All appendices and exhibits referred in or attached to this Agreement are intended to be, and are hereby, specifically made a part of this Agreement.

(j) This Agreement shall not be strictly interpreted against either party hereto under any rule of construction.

(k) SEE ATTACHED 1031 "LIKE-KIND" EXCHANGE LANGUAGE CONTINGENCY ADDENDUM, Exhibit "D".

(l) SEE ATTACHED SURVEY/SUBDIVISION ADDENDUM, Exhibit "E".

(m) The Deposit and any Additional Deposit will be held by Conrail, and **WILL NOT** accrue interest, nor shall Purchaser be entitled to any interest on the Deposit and any Additional Deposit.

(n) Conrail shall not be under any obligation to provide to Purchaser, to its title insurance company or to any party whatsoever, an affidavit of title or any similar type of document that may be customarily used at closing on a sale of real property.

(o) At Closing, Purchaser shall, upon Conrail's delivery of original executed Deed to Purchaser hereunder, sign a copy of the face sheet of said Deed acknowledging receipt and acceptance thereof. The Purchaser shall, at its sole cost and expense and within ten (10) days of Closing, properly record the executed original Deed in the Recorders Office of the County in which the Property is located. Conrail shall have the right, but not the obligation, to record an original executed Deed identical to the Deed delivered to Purchaser at Closing if Purchaser has not complied with the aforesaid obligation to record such Deed. Purchaser shall be obligated to pay for all recording fees, transfer taxes and any reasonable legal expenses related thereto and in the recovery of such fees and taxes from Purchaser.

(p) To the best of Conrail's knowledge the Property is not subject to the provisions of the Industrial Site Recovery Act "ISRA", N. J. Stat. ANN:, 13:K-6 et. seq. To the best of Conrail's knowledge, the Property is classified under Standard Industrial Classification Major Group 40, which is excluded from ISRA's coverage and formerly from the Environmental Cleanup Responsibility Act's (ECRA's) coverage. Purchaser agrees that it shall not require Conrail to obtain or deliver to it or to any person or entity, including title insurance companies a letter of non-applicability, an exemption under ISRA, an affidavit with respect to present or future use of the Property or any other writing pursuant to ISRA. Purchaser further agrees that it will not raise a lack of compliance with any provisions of ISRA or any rules or regulations pursuant thereto as an objection to title or as a precondition or requirement to closing title under this Agreement.

(q) This Agreement is subject to the prior release of regulatory interest of the State of New Jersey Department of Transportation.

(r) If any clause or provision of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction as against any person or under any circumstances, the remainder of this Agreement and the applicability of any such clause or provision to other persons or circumstances shall not be affected thereby. All other clauses or provisions of this Agreement not found invalid or unenforceable shall be and remain valid and enforceable.

(s) Purchaser hereby acknowledges and understands that all or portions of the Property intended to be sold were entered onto the New Jersey Register of Historic Places on December 29, 1999. Any impact or effect upon Purchaser's intended use or ownership of the Property as a result of such designation shall be Purchaser's sole responsibility to determine. Purchaser shall have no claim against Conrail in this regard and hereby agrees to indemnify, defend and hold Conrail harmless therefor. This provision shall survive Closing.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Agreement the day and year first set forth.

WITNESS

By: _____

WITNESS (ATTEST IF CORP.)

By: _____

CONSOLIDATED RAIL CORPORATION

By: _____
Title:

PURCHASER _____

By: _____
Title:

EXHIBIT A

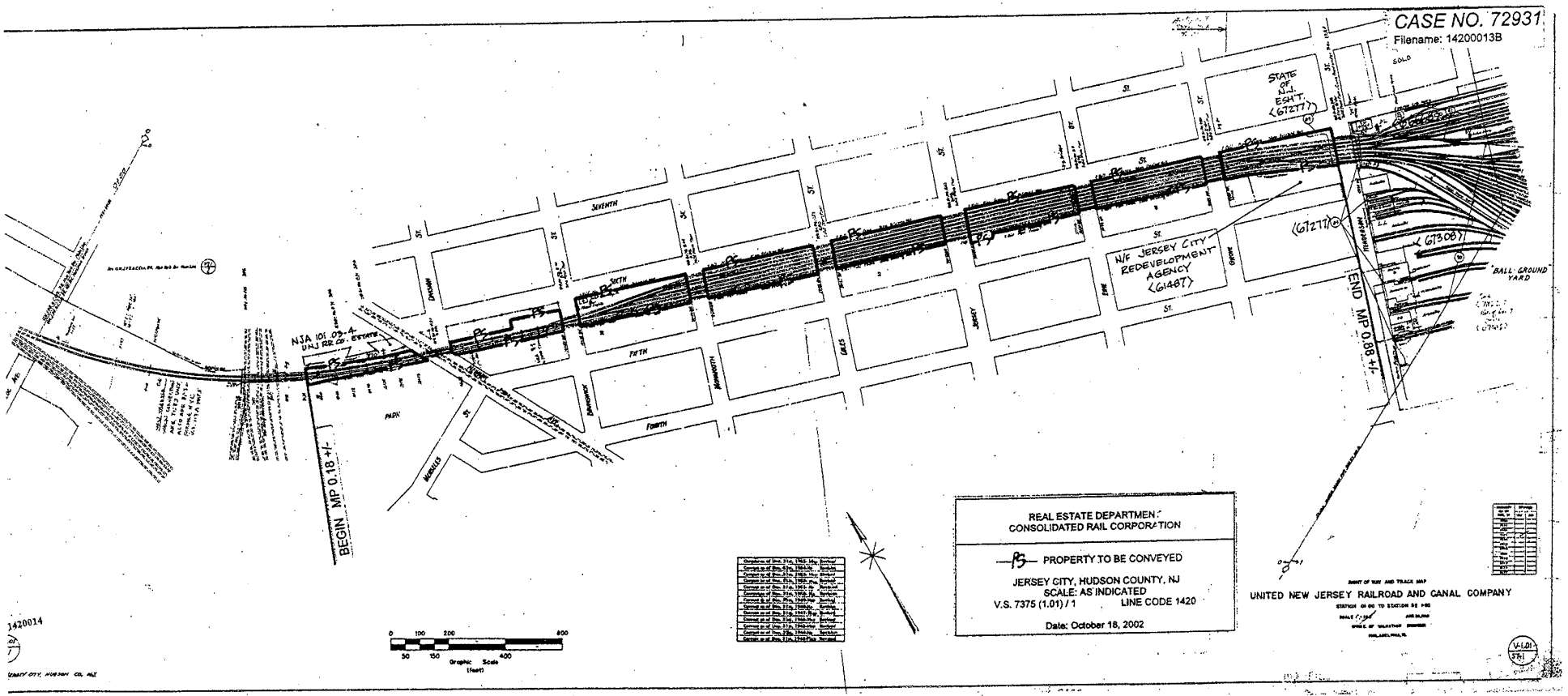
CASE NO. 72931

ALL THAT CERTAIN property of the Grantor, together with all of the improvements thereon, being a portion of the line of railroad known as the Penn Central Harsimus Branch and identified as Line Code 1420 in the Recorder's Office of Hudson County, New Jersey in Liber 3286 at page 762, situate in the City of Jersey City, County of Hudson and State of New Jersey, all as indicated by "PS" on Grantor's Case Plan No. 72931, dated October 18, 2002, which is attached hereto and made a part hereof, being further described as follows:

BEGINNING at approximate railroad Mile Post 0.18, being the extension of the westerly line of Parcel No. NJA 10i 03-4 as described in Liber 3286 at Page 781 in said Recorder's Office, also being a point 370 feet west of the west line of Newark Avenue (as measured along the northerly line of Grantor's property), thence extending in a general southeasterly direction to the westerly line of Henderson Street, (a.k.a. Luis Munoz Marin Boulevard) at approximate railroad Mile Post 0.88, the place of Ending. Said property being located generally between Fifth and Sixth Streets and the northwesterly projection thereof, in the City of Jersey City, and being comprised of eight parcels of land separated by city streets.

BEING a part or portion of the same premises which Fairfax Leary, as Trustee of the Property of the United New Jersey Railroad and Canal Company, Debtor, by Conveyance Document No. UNJ-CRC-RP-4, dated March 31, 1976 and recorded on October 10, 1979 in the Recorder's Office of Hudson County, New Jersey, in Liber 3286 at page 757&c.; and also Filed and Recorded in the Recorder's Office of the Secretary of State for the State of New Jersey on October 12, 1978, granted and conveyed unto Consolidated Rail Corporation.

Exhibit "A" - Page 2 of 2



Rebuttal Appendix W

Memo, Crowley to Munley, June 12, 2002

To: Mark Munley
From: Maureen Crowley
PRR Harsimus Stem Embankment Preservation Coalition
201-963-0232

June 12, 2002

Re: 6th Street Embankment

Attached is correspondence between Bob Ryan of Conrail; Terrence Nolan, our contact at Trust for Public Land; and me.

I also had a telephone conversation with Mr. Ryan on March 5, 2002. I asked him about the status of the sale package and the rumors we had heard that Conrail had sold the property or was in negotiations. He said there was much interest in the parcel but that it was not true that they had sold it or were in negotiations. He reaffirmed that we were on the list for distribution of the sale package when it was ready.

I also asked whether the property had gone through abandonment procedures, because we had found no record of that in the NJ SHPO's office. He said the property had been abandoned; Conrail needed to do that to remove the trestles.

Rebuttal Appendix X

Letter, P. McAuley (counsel for Conrail)
to C. Langston (Planning Board Chair) et al.,
June 29, 2021

CONNELL FOLEY
A TRADITION OF LEGAL EXCELLENCE SINCE 1938

Connell Foley LLP
56 Livingston Avenue
Roseland, NJ 07068
P 973.535.0500 F 973.535.9217

Patrick J. McAuley
Partner

June 29, 2021

Via Federal Express
Christopher Langston,
Planning Board Chairman &
Members of Planning Board
City of Jersey City
1 Jackson Sq.
Jersey City, NJ 07305

Re: Report Concerning the Determination of the Sixth Street Embankment Study 2021 as an Area in Need of Redevelopment, dated May 19, 2021 (the "AINR Report")
Planning Board Meeting/Hearing: June 8, 2021/Continued to July 6, 2021

Property: The Study Area includes forty-three (43) Parcels located on 11 blocks on the Jersey City Tax Maps, including twenty-nine (29) lots owned by Consolidated Rail Corporation ("Conrail") located within Tax Block 10901 (Lots 92, 93, 108, 109, 111, 118, 120, 121, 122, 123); Tax Block 8401 (Lots 2, 3, 8, 9, 10, 11, 13, 14, and 15) Tax Block 6902 (Lots 1 through 5, 8, 35); and Tax Block 9801 (Lots 1, 19) (such Conrail owned lots being the "Conrail Parcels").

Dear Chairman Langston & Members of the Planning Board:

As noted during the Planning Board hearing concerning the above-mentioned AINR Report on June 8, 2021, our firm represents Consolidated Rail Corporation ("Conrail"). We are submitting this letter for the Board's consideration prior to the Board's vote regarding the Board's recommendations to be made to the City Council following the hearing on the AINR Report which has been continued to July 6, 2021.

On behalf of Conrail, we hereby object to the recommendation of the AINR Report as related to the twenty-nine (29) Conrail Parcels identified above. Conrail objects to any recommendation being made by the Planning Board that indicates the Conrail Parcels should be included as part of an area in need of redevelopment ("AINR"). We make this objection for reasons noted hereinafter notwithstanding the fact that all of the Conrail Parcels are proposed to be in a "Non-Condemnation Redevelopment Area" and, as such, the Conrail Parcels are not proposed to be subject to the exercise of eminent domain. In contrast, Conrail takes no position as to the designation as an AINR of the tax lots contained within the seven Tax Blocks adjacent to Sixth Street that constitute the properties lying between Marin Boulevard on the east and Division Street on the west known as the "Sixth Street Embankment", namely, Tax Blocks 11602,

11304, 11204, 11211, 11210, 99006 and 9804[1]. The designation of all of these properties, with the exception of the lots constituting Tax Block 9804, as a Non-Condemnation Redevelopment Area, is the recommendation suggested by the City's Planner, Mr. Krehel, at page 57 in the AINR Report.

It is Conrail's understanding that, of all the parcels included in the Study Area by the Council's referral Resolution #21-124, only the parcels constituting Tax Block 9804 ("Block 9804") were referred to the Board for consideration as a Condemnation Redevelopment Area, subject to potential acquisition by the City's power of eminent domain. Conrail takes no position as to the City Planner's recommendation that said Block 9804 be designated a Condemnation Redevelopment Area, the recommendation reached in the AINR report at page 57[2].

Conrail does object to a resolution by the Planning Board that recommends that any of the parcels in the Study Area located west of Block 9804 (all of which are owned by Conrail) be included in the Non-Condemnation Redevelopment Area. Conrail objects to any such inclusion of the Conrail Parcels for several reasons. First, all of the Conrail Parcels have been acquired, owned, maintained or operated for railroad purposes and are likely in the future to continue to be owned, maintained or operated for railroad purposes. Conrail presently has no desire to redevelop the Conrail Parcels for other than railroad purposes and the City's efforts to change the uses through a re-zoning effected through adoption of a redevelopment plan following their designation as an AINR would not be warranted but rather would be a waste of time, money and resources. Given the doctrine of federal pre-emption and the exclusive jurisdiction of the Surface Transportation Board ("STB") noted more particularly below, such efforts by the City would be premature and ineffective.

Secondly, while alluding in his summaries on pages 55-56 to the Conrail Parcels having "access issues", the Planner nevertheless makes only passing reference to the fact that an active rail line (the National Docks Secondary), runs practically right through the center of the subject Conrail Parcels. At page 25 of the AINR Report, it is simply noted that an active line runs through parts of lots 108, 109, 111 and 118 in Block 10901. At page 27, it also notes the active rail line continues through lot 3 in Block 8401. On Map A (page 2 of the AINR Report), these five lots with the National Docks Secondary line running through them appear as narrow lots running north/south at the very center of the Conrail Parcels and almost all of the other Conrail Parcels are immediately adjacent thereto or are adjacent to one of the lots immediately adjacent to these five active rail line right-of-way lots.

---

[1] Although Conrail does not object to the AINR designation for the seven Tax Blocks noted in the text of the letter, we note Conrail's Harsimus Branch right-of-way traverses the Sixth Street Embankment, and, therefore, until and unless Conrail obtains and exercises authority from the Surface Transportation Board to abandon rail operations on the Sixth Street Embankment, redevelopment that would conflict with rail use could not proceed. *See, e.g., Norfolk S. Ry. Co. & Ala. Great S. R.R. Co. Petition for Declaratory Order*, STB Finance Docket No. 35196, 2010 WL 691256 (STB Mar. 1, 2010).

[2] Because Conrail's Harsimus Branch right-of-way traverses Block 9804, the City could not acquire the property through eminent domain until and unless Conrail abandons operations over Block 9804. *See id.*

In Conrail's view, for purposes of the Interstate Commerce Commission Termination Act, 49 U.S.C. Section 10101 et seq., not only the Conrail Parcels through which the National Docks Secondary right-of-way runs, but also the Conrail Parcels within the vicinity of the aforementioned five right-of-way parcels, are all subject to the exclusive jurisdiction of the Surface Transportation Board and the doctrine of federal pre-emption would apply to prevent any attempt by the City to exercise the redevelopment power as to the Conrail Parcels to promote other uses. See New York Susquehanna & W. Ry. Corp. v Jackson, 500 F.3d 238 (3rd Circuit 2007).

Conrail notes the Conrail Parcels also encompass a part of Conrail's inactive Harsimus Branch, the right of way of which is located within a part of Tax Block 10901 lots 120, 109 and 92. Conrail has pending before the STB a petition seeking authorization for abandonment of said rail line. Until and unless such an abandonment is consummated, however, pursuant to an STB order authorizing abandonment, the STB has exclusive jurisdiction over such abandonment of that portion of the Harsimus Branch and the doctrine of federal pre-emption also would be applicable.

Thirdly, the AINR Report indicates the primary basis, if not the sole basis,[3] underlying a recommendation to include the Conrail Parcels as part of an AINR is an assertion that the conditions of the Conrail Parcels meet criteria "c" of Section 5 of the Local Redevelopment and Housing Law, NJSA 40A:12A-1, et seq. (the "LRHL"). Subsection 5.c. provides:

> Land that is owned by the municipality, the county, a local housing authority, redevelopment agency or redevelopment entity, or unimproved vacant land that has remained so for a period of ten years prior to adoption of the resolution, and that by reason of its location, remoteness, lack of means of access to developed sections or portions of the municipality, or

[3] Only criteria "c" is identified in the summaries of the conditions of the Conrail Properties set forth at pages 55 and 56 of the report. Without identifying specific conditions of the Conrail-owned properties other than as described at pages 55 and 56, the Planner, nonetheless, includes a notation to a chart on page 52 of the report indicating that both Subsection 5.h (smart growth area) and the definition of a "redevelopment area" or "area in need of redevelopment in Section 3 of the LRHL are applicable to the entirety of the Study Area. Clearly, the mere presence of the Study Area in "downtown Jersey City, within proximity of two light rail lines and a robust network of bike lanes" (as noted by the Planner in support of his assertion Subsection 5.h is applicable to the whole Study Area) cannot justify a conclusion that the entirety of the Study Area evidences the type of conditions constituting blighted property which the Legislature intended to be addressed through the Section 5 criteria for designation of an area in need of redevelopment. See Gallenthin Realty Development, Inc. v. Borough of Paulsboro, 191 N.J. 344 (2007). Similarly, the Report also provides no support for a conclusion that the Conrail-owned parcels meet the condition in the definition of an AINR that permits the inclusion in an AINR of properties "which of themselves are not detrimental to the public health, safety or welfare, but the inclusion of which is found necessary for the effective redevelopment of the area of which they are a part". A municipal governing body must analyze "the statutory criteria as applied to each of the properties in the designated" redevelopment area, and whether each property contributes to the overall areas' blight or is otherwise necessarily included therein for the effective redevelopment of the relevant study area. ERETC, L.L.C. v. City of Perth Amboy, 381 N.J. Super. 268, 279-80 (App. Div. 2005). There is no rational basis for an argument that the Embankment parcels which lie between Marin Boulevard and Division Street could not effectively be redeveloped without including the properties west of Tax Block 9804 in the redevelopment plan. In fact, the Planner's discussion of the applicability of Section 3 at pages 56 to 57 of the Report clearly appears limited to the Embankment parcels and not the parcels west of Block 9804.

topography, or nature of the soil, is not likely to be developed through the instrumentality of private capital. [Emphasis added.]

The criteria relied upon for the AINR recommendation as to the Conrail Parcels (Blocks 10901, 9801, 8401 and 6902) are identified in the summary set forth for each Block at pages 55 and 56 of the report. Criteria "c" of the LRHL is identified as the basis for each such Block meeting conditions that are necessary for such property to be considered an area in need of redevelopment. The manner in which subsection "c" is paraphrased at pages 55 to 56 in the AINR Report is, at best, misleading. In describing the four Blocks, the City's Planner fails to note that all of the tax lots constituting these four Blocks are owned by Conrail and he gives no basis for the implicit conclusion that none of these properties is likely to be developed through the instrumentality of private capital. Although he refers to the possibility of soil or water contamination at these properties, he gives no basis for that assertion. He refers to a "lack of access" to these properties, notwithstanding the nearby active train line. Finally, he appears to refer generally as to all the lots in each of the four Blocks, without specificity, as having "topography issues from proximity to the Palisades". Nowhere does he assert in his summaries at pages 55 to 56 that these properties are not used for railroad purposes or that they are more likely to be developed through the investment of private capital if they are designated an AINR.

The Planner essentially seeks to characterize the entirety of these four Tax Blocks[4] as unimproved vacant land "that... is not likely to be developed through the instrumentality of private capital" but he provides no support for the quoted clause. In fact, the quoted clause in the preceding sentence is not mentioned in the Planner's paraphrased summary of criteria "c" when describing the conditions applicable to the Conrail properties at pages 55 to 56, but that clause clearly qualifies the terms "unimproved vacant land" in the text of criteria "c".

In sum, given the foregoing, the Planning Board should not recommend to the City Council that the properties in the part of the Study Area located west of Tax Block 9804 should be included in a Non-Condemnation Redevelopment Area.

Very truly yours,

Patrick J. McAuley

Patrick J. McAuley

PJM/dmb
cc: Cameron Black, Planning Board Secretary via e-mail to cblack@jcnj.org (with 12 copies for distribution via Federal Express)
Vincent J. La Paglia, Esq. – via e-mail to via vjl@vlapaglialaw.com

[4] As shown on "Map A" on page 2 of the AINR Report, the Conrail Parcels constitute the entirety of the shaded Study Area west of the Sixth Street Embankment.

5963736-8