

Before the Surface Transportation Board

Conrail -- Abandonment)
) AB 167 (Sub-no. 1189X)
--in Hudson County, NJ.)

and

CSX Transp. - Discon. of)
Service - same) AB 55 (Sub-no. 686X)

and

Norfolk Southern -)
Discon. of Service - same) AB 290 (Sub-no. 306X)

Objections of City of Jersey City,
Pennsylvania Railroad Harsimus Stem Embankment Preservation
Coalition, and
Rails to Trails Conservancy
In connection with
the Surface Transportation Board's
November 12, 2019
Cultural Resources Effects Assessment Report
in partial discharge of
the Agency's Obligations under Section 106 of the
National Historic Preservation Act

On November 12, 2019, the Surface Transportation Board
("STB") published a Cultural Resources Effects Assessment Report
Addendum ("Addendum") pertaining to application by Consolidated
Railroad ("Conrail") for an abandonment license (loss of federal
jurisdiction) over the Harsimus Branch, the former mainline of
the Pennsylvania Railroad (and successors) for freight in Jersey
City. According to STB, the Addendum purports to conclude the
assessment of adverse effects flowing from said abandonment.

The Addendum contains a number of errors, some of which

involve failure properly to demarcate the boundaries of historic resources, some of which involve legal errors as well as failure to acknowledge Conrail's knowing and illegal de facto abandonment of the Branch in evasion of, inter alia, its legal responsibilities under section 106, and some of which involve the continued arbitrary and unlawful minimization by the Office of Environmental Analysis (OEA) of its role and responsibilities when faced with evasion of its procedures by a regulated entity such as Conrail.¹

These objections are submitted on behalf of the City of Jersey City ("City"), Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition ("Coalition"), and Rails to Trails Conservancy ("RTC") (collectively "City et al."). City et al. are all "consulting parties" in this review, which is undertaken pursuant to section 106 of the National Historic Preservation Act ("NHPA"), 54 U.S.C. § 306108.

¹ In candor, OEA may have been instructed by STB not to consider unlawful evasion of the section 106 process and other aspects of Conrail's unlawful de facto abandonment. In that case, the fault lies not in OEA but in STB generally. In that event, the agency may be acting as a classic "captive agency," not regulating the industry to protect the public and to secure compliance with public interest law, but instead to protect the industry from otherwise applicable regulation. See Sierra Club v. Morton, 405 U.S. 727, 746-47 (1972) (Douglas, J. quoting Interstate Commerce Commission (ICC) Commissioner Olney about agency capture by industry). It is not STB's job to protect railroads from the consequences of their unlawful conduct in connection with environmental issues and historic preservation concerns.

Under the applicable regulations, the Section 106 process ordinarily proceeds as follows: the agency first establishes an area of potential effects ("APE") from a proposed federal action, then determines what historic resources exist in that APE, and then determines if any of these resources are adversely impacted. If there are adverse impacts, the agency must arrange for consultations concerning mitigation, ultimately looking to achieve a memorandum of agreement, or, as recommended by NJ SHPO and ACHP in their comments, a programmatic agreement, providing for avoidance, or if that is not possible, minimization and mitigation of the adverse impacts flowing from the proposed federal action. See 36 C.F.R. Part 800.

1. Boundary of Harsimus Branch in Palisades. If the boundary of an historic district is left undefined or is given an arbitrary definition, then adverse effects that otherwise will occur may be missed. It is therefore important to define historic districts that may be impacted by a federal action in a clear or at least non-arbitrary fashion. The boundary of the Harsimus Branch is relatively clear in the case of the six Embankment parcels: the boundary is the area surrounded for the most part by the enormous stone walls next to Sixth Street in Jersey City.² However, the boundary is arbitrary or unclear in

² More specifically, the property descriptions, surveys, and block and lot numbers encompassed by the six Embankment parcels

STB OEA's Addendum west of Brunswick. The Addendum appears to assign arbitrary boundaries to the Pennsylvania Railroad Harsimus Branch Right-of-Way Historic District (PRHBROW) from Brunswick to Waldo. In the map on page 14, the Addendum suggests that the PRHBROW west of Brunswick is a continuation westward of the 100-foot-wide PRHBROW at Brunswick Street. In the map on page 55 of the Addendum, the PRHBROW is so shriveled that it appears to abut the Cemetery only at one point on the extreme south of what the map gives as the relevant property line. As the Board knows, City et al. retained historic preservation experts to examine the portion of the Harsimus Branch south of the Cemetery. This portion of the Branch lies on what is sometimes referred to as a "plateau" adjacent to "CP Waldo" (Control Point Waldo), which was encompassed in an area of "common control" over dispatch, in order to avoid accidents where several lines (in this case the River Line and the Harsimus Branch) intersected. The City's in-house experts as well as experts retained by the Coalition found easily distinguishable, visible artifacts of the Branch and joint operations with the River Line throughout the area in question.

may all be found at computer pages 46-99 of <https://dcms-external.s3.amazonaws.com/MPD/78432/85257CA7006C955B852570F50051D380/215553.pdf> . This document was City et al's petition for declaratory order against Conrail's unlawful abandonment of the Harsimus Branch in F.D. 34818, filed Jan. 12, 2006.

In fact, the River Line crossed over the Harsimus Branch immediately above National Docks Secondary at the extreme southeast corner of the Cemetery and then joined the mainline (including passenger and freight), which only joined the Harsimus at or near Waldo Avenue. The boundary of CP Waldo (the common control area) appears to be further west, closer to Chestnut Street as opposed to Waldo Avenue. City et al's historic preservation experts were unable to inspect that area as it was gated off and apparently still in active freight use. In all events, Conrail's predecessors used an access road across National Docks Secondary at grade and through a cut in the Palisades (still visible) to move maintenance vehicles up to the switches and rail equipment of the CP Waldo portion of the Branch south of the Cemetery. The cut is still visible, as are remnants of the crossing over National Docks Secondary.

City retained RL Banks & Associates, which had accompanied the City's historic preservation experts, to provide a brief summary of rail operations in the vicinity of CP Waldo. See Joint Verified Statement of John McLaughlin attached. As indicated in the statement, rail operations between CP Waldo and CP Nave were part of an area under joint operation/control in order to ensure the safety of the River Line and Harsimus Branch in that area. Remnants of the joint operation/control exist throughout the "plateau" area associated with CP Waldo (that is,

Waldo on the west, the Cemetery on the north, River Line/National Docks on the east, and PATH on the south). The entire plateau area should be included in the PRHBROW to capture operations of the Branch at CP Waldo.

Another descriptive approach is based on the tax parcel maps attached to the STB OEA Addendum at p. 65. The PRHBROW historic district would include at least all of tax parcels 92 and 93 on that page, plus perhaps portions of the trestle connecting the River Line to Harsimus as far as Newark Avenue (from which CP NAVE, for Newark Avenue) gets its name. The boundaries would encompass the plateau area referenced by Mr. McLaughlin: on the east the boundary would be parallel to the to the west side of National Docks Secondary, and would include the former service road across National Docks Secondary, at least on the west side of National Docks. The north boundary would be the line of the Cemetery. The west boundary would be Waldo Avenue. The south boundary of the PRHBROW should include at least the northernmost freight track, south of which is the PATH lines, for both the Nave connection and the Waldo connection were into that track.

More specifically, City et al. note that in the past, Conrail appears to have maintained a line of freight rail on the north side of the PATH lines into which the River Line connected and then the Harsimus Branch connected at approximately Waldo

Avenue. City et al. has received some evidence that during the course of AB 167-1189X Conrail has sold parts of this line of freight rail, which City et al. view as part of the Branch at CP Waldo, to PATH without prior STB authorization, including without compliance with section 106 of the National Historic Preservation Act. Conrail has been on warning concerning such sales. See Conrail Sales and Discontinuances, EP 695, served May 17, 2010, and id. served January 31, 2011 (stating Conrail claimed to have made illegal de facto abandonment sales only in AB 167-1190X). City et al. is concerned that Conrail cease selling rail property that is part, or potentially part, of the PRHBROW Historic District prior to completion of the section 106 process³, as well as potentially part of the City's OFA if there is no settlement, and otherwise reserves all rights.

If the PRHBROW is properly demarcated, then the Addendum map on page 14 must be revised to include all the land outlined in red south of the Cemetery and west of the National Docks Secondary, and the map on page 55 would expand the PRHBROW Historic District to incorporate all property north of the red

³ The track into which the Harsimus Branch interconnected at CP Waldo was part of the Harsimus Branch and within CP Waldo, so at the very least some of it has to be part of the PRHBROW Historic District. This being the case, the candidate illegal sale prior to completion of the 106 process includes a part of at least one historic district.

line in the lower left corner all the way up to the red and yellow lines marking the Cemetery Boundary and west of National Docks Secondary. As further corroboration, Jersey City's tax parcel map, which STB OEA incorporates at page 65 of the Addendum, on its face states that the land south of the Cemetery to the vicinity of the PATH lines is all part of

Conrail
(Formerly P.C.T. Company)
Harsimus Br.
Main Stem

or

(Formerly P.C.T. Company)
Harsimus Br.
Conrail
Class II

Indeed, the map at page 55 indicates that an additional part of CP Waldo located to the east of the Cemetery, namely tax parcel 121, was part of the Harsimus Branch:

Conrail
(Formerly
P.C.T. Co.)
Harsimus Br. Class II

and

Conrail
Trenton to J.C. Main Stem
Harsimus Branch

City et al. are seeking to preserve the trestle and right of way in said Tax Parcel 121 not only as part of the historic junction of the River Line and Harsimus Branch, but also as part of the preferred route of the East Coast Greenway from Philadelphia to New York.

For all portions of the Harsimus Branch otherwise east of the National Docks Secondary up to Brunswick (more specifically, for tax parcel 120 on p. 65, and the block from Newark Avenue to Brunswick), the boundaries of the PRHBROW should encompass all the property in tax parcel 120 retained by Conrail as well as all the property in tax parcel 120 unlawfully deeded to 446 Newark Avenue LLC by Conrail in its unlawful sale of that parcel in 2005 without an abandonment authorization. A copy of the relevant property description and deed can be found at pdf page 107 of City et al's Petition filed January 12, 2006 in F.D.

34818

([https://www.stb.gov/Filings/all_2000s.nsf/d6ef3e0bc7fe3c6085256fe1004f61cb/85257ca7006c955b852570f50051d380/\\$FILE/215553.pdf](https://www.stb.gov/Filings/all_2000s.nsf/d6ef3e0bc7fe3c6085256fe1004f61cb/85257ca7006c955b852570f50051d380/$FILE/215553.pdf)).

All relevant portions of the Harsimus Branch are within the tax parcel, including the remaining stanchions. As to the area between Brunswick and Newark, Conrail unlawfully sold that portion of the Harsimus Branch to 415 Brunswick Avenue LLC in 2005. 415 Brunswick Avenue LLC then purported to do a property swap and new subdivision for the block that obliterated the

original property lines. The swap and new subdivision are void and/or voidable under federal and state law inter alia because they were undertaken after the relevant parties were on notice that Conrail had engaged in an unlawful abandonment or may have so engaged. The property remains subject to the Board's Offer of Financial Assistance ("OFA") remedy and to application of N.J.S.A. 48:12-125.1, under either of which the alleged sale by Conrail would be void. Moreover, there has been no development of the block, and although the LLC intentionally destroyed one of the historic stanchions, leaving only its footprint, essentially immediately after being served with City et al's petition for a declaratory order in F.D. 34818,⁴ attacking Conrail's unlawful de facto abandonment, one of the stanchions still remains. In the circumstances, the Harsimus Branch in that block should be defined to incorporate all of the property deeded by Conrail to 415 Brunswick Street LLC. A copy of that property description, map, and deed may be found commencing at computer page 100 at

[https://www.stb.gov/Filings/all_2000s.nsf/d6ef3e0bc7fe3c6085256fe1004f61cb/85257ca7006c955b852570f50051d380/\\$FILE/215553.pdf](https://www.stb.gov/Filings/all_2000s.nsf/d6ef3e0bc7fe3c6085256fe1004f61cb/85257ca7006c955b852570f50051d380/$FILE/215553.pdf).

⁴ The LLCs tore down the stanchion at the same time they moved for an extension of time in F.D. 34818. City et al opposed, seeking a stay. See <https://dcms-external.s3.amazonaws.com/MPD/78432/85257CA7006C955B852570FF005A7478/215620.pdf>.

City et al note that these maps, deeds, and descriptions have been available to STB OEA since approximately January 12, 2006, in STB's e-library, under filings in F.D. 34818.

City et al. request that STB OEA work with the New Jersey State Historic Preservation Office to clarify that the PRHBROW Historic District encompasses Tax Parcel 120, all the property purportedly deeded by Conrail to 446 Newark Avenue LLC and to 415 Brunswick Street LLC, and at least the CP Waldo area south of the Cemetery, east of Waldo, west of National Docks Secondary, and north of the PATH lines.

2. STB OEA scenarios are deficient at CP Waldo. STB OEA's potential adverse effect scenarios focus on possible commercial and residential development of the Embankment parcels but utterly ignore that possibility in the CP Waldo area. Once federal jurisdiction ceases, the CP Waldo area will be subject to residential and commercial development. By ignoring this outcome, STB OEA evaluates scenarios that do not reflect likely outcomes and likely adverse impacts on historic assets in the CP Waldo area if abandonment authority is granted. During the long course of this dispute, Conrail has proposed as many as 10,000 units of development in the Palisades portion of its property,⁵ as well as installation of billboards visible perhaps as far

⁵ Referenced in the Kaese/Zamalek/Krantz Verified Statement p. 17 (attached to City et al CREAR comments dated 25 April 2019).

away as Manhattan.⁶ These presumably would be the outer bounds of what might happen adjacent to the Cemetery if the Harsimus Branch is authorized for abandonment and not preserved in its entirety. Ten thousand units of development would utterly obliterate the Harsimus Branch south of the Cemetery by necessarily filling all of tax parcel 93 (approximately 0.674 acres) and tax parcel 92 (approximately 3.94 acres), and adjoining tax parcels as well, with high-rise structures and gaudy signs. There would be no vestige of the historic district left. This is a clear adverse effect. City et al. filed an expert opinion that development adjacent to the Cemetery would be inevitable and detract from it, constituting an adverse impact. Kaese/Zakalak/Krantz Verified Statement pp. 14-15.

3. Loss of federal jurisdiction as an adverse impact.

This leads directly into another key point. STB OEA otherwise attempts to minimize adverse impacts by claiming these are outside STB control and thus uncertain. This is extremely misleading. Since the Harsimus Branch is and has been adjudicated to be a line of railroad subject to STB jurisdiction, it may not lawfully be sold off for non-rail purposes. Instead, it and remaining structures on it must be preserved intact. If, however, STB authorizes abandonment, then

⁶ The undersigned was present and witnessed the proposal.

the Harsimus Branch may be lawfully sold off to developers for non-rail purposes. The loss of federal control is an overarching adverse impact that effectively destroys the PRHBROW District. See Joint Verified Statement of D. Wrieden and M. O'Neill (City of Jersey City), p. 2, filed with City et al CREAR Comments dated April 25, 2019. The destruction of the PRHBROW District in turn similarly adversely impacts other historic districts of which it is a part. There is no uncertainty about this. Id. Federal jurisdiction must be maintained to ensure the integrity of these important historic resources until and unless some equally powerful alternative that preserves the resources is implemented.

STB OEA also understates the power of the agency to keep the PRHBROW together and under STB jurisdiction. At least two OFAs were timely filed to keep the Harsimus Branch intact. Apparently unique among all abandonment proceedings before STB and its predecessor, the agency has placed OFA proceedings in indefinite abeyance, thus not allowing parties interested in preserving the Harsimus Branch to use the agency remedy codified at 49 U.S.C. 10904. It may be that settlement negotiations between City et al., Conrail, 212 Marin Boulevard LLC et al, (LLCs), and the LLCs' designated developer will moot the need for an OFA, but it is simply not true that the agency lacks a

means to keep the Harsimus Branch intact in this case: the agency could allow the City's OFA to proceed.

STB OEA has understated the agency's ability to address the adverse impacts of loss of jurisdiction in another way. It has not taken into account options to preserve the Harsimus Branch through utilizing the agency's powers under section 110(k) of the National Historic Preservation Act. Section 110(k), originally codified at 16 U.S.C. 470h-2(k) and now codified at 54 U.S.C. 306113, deals with anticipatory demolition by an applicant for a license. In the words of ACHP (36 CFR 800.9(c)), it prohibits STB "from granting a ... permit [or] license to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the [license] would relate, or having legal power to prevent it, has allowed such adverse effect to occur," unless the agency after consultation with ACHP determines that the circumstances justify granting the assistance despite the adverse effect created or permitted by the applicant.

The Harsimus Branch was clearly a line of railroad. Despite treating the property as a line of railroad until at least 1988, Conrail abruptly and inexplicably in or about 1992 unilaterally abandoned it, claiming it a "spur." City has supplied additional evidence, including an expert statement (R.

McFarland), indicating that Conrail knew or must have known of, or was willfully blind, to the unlawfulness of its conduct.

See, e.g., arguments and evidence supplied by letter dated October 6, 2017 (STB OEA "environmental correspondence" in AB 167-1189X:

[https://www.stb.gov/ect1/ecorrespondence.nsf/UNID/3AFDB67B694DA697852581B1007223A4/\\$file/20171006004751.pdf](https://www.stb.gov/ect1/ecorrespondence.nsf/UNID/3AFDB67B694DA697852581B1007223A4/$file/20171006004751.pdf)).

Willful blindness is the equivalent of knowing misconduct. Conrail is no "naif"; it has ample resources for legal and technical advice and therefore must be presumed knowledgeable. What Conrail did was no mere "mistake." It was knowing misconduct or the equivalent by a major rail carrier under this Board's jurisdiction. Moreover, the unlawful actions of Conrail were precipitated when the Embankment was listed as a Jersey City Historic Landmark and determined eligible for the National Register of Historic Places. Conrail, in a willful effort to thwart the historic designations, sold the property without an abandonment authorization to a developer. Conrail subsequently expressly joined in demolition permits to destroy the Embankment. In the circumstances, section 110(k) applies. Historic preservation experts retained by City et al indicated that the Harsimus Branch could be retained (or ordered back to Conrail to retain) for conservation under section 110(k) in order to mitigate that adverse impact of Conrail's unlawful de facto

abandonment. City et al.'s experts provided a 12-step program that, in accord with 49 C.F.R. 800.5, at minimal expense will completely eliminate (thus mitigate) the physical destruction of the historic asset and other adverse impacts. See Kaese/Zakalak/Krantz Verified Statement at pp. 22-23, supra.

Rather than consider how the agency, in consultation with ACHP, (1) might refuse to grant an abandonment authorization, or (2) might grant an abandonment authorization only if Conrail agreed to terms keeping the entire Branch intact, STB OEA says that it will not consider Section 110(k) matters and is leaving them for the Board. This amounts to suggesting that the Board make its decision in an uninformed fashion, which the Section 106 process – and for that matter the National Environmental Policy Act – are specifically designed to prevent. If STB OEA in fact wishes (or has been ordered) to allow the Board to address section 110(k) matters without any historic preservation input, then STB OEA should also stop suggesting that Conrail's conduct in destroying historic resources, knowingly or with willful blindness, was or is somehow excusable. If OEA is refusing to look at evidence, its opinions as to Conrail's actions are uninformed or, to the extent favorable to Conrail, simply repeating Conrail's party line. STB OEA cannot claim that STB lacks power to do anything; all that

STB OEA can claim is that OEA (and thus STB) so far is refusing to look at authorities under which the agency has ample power to do many things to avoid and to mitigate adverse impacts.

City et al object to STB OEA's continued refusal to consider remedies under Section 110(k) to deal with Conrail's anticipatory demolition of the Harsimus Branch subsequent to 1992.

There is no question but that Conrail's de facto abandonment, removal of structures, and sale of the line to developers was unlawful. Consummation of Rail Line Abandonments... ("Policy Statement"), Ex Parte 678, served April 23, 2008, slip at 4: "In some cases railroads have taken actions affecting rail property without first seeking abandonment authority. When this occurs on inactive lines, we generally do not discover these actions until after the fact when the carrier seeks abandonment authority. Such actions are unlawful. Not only is the rail line unlawfully severed from the national transportation system when this occurs, but the Board's ability to carry out its obligations under NEPA and NHPA may then be adversely affected" (emphasis added). The *Policy Statement* indicated that the agency would do whatever necessary to prevent a railroad from prejudicing meaningful 106 review through destruction of 106 assets on a rail line prior to abandonment authorization. That Policy Statement lists a number of actions

STB can take to remedy conduct of a railroad prejudicial to section 106, including monetary penalties on a railroad (presumably to mitigate destruction by endowing restoration or preservation) and taking the railroad to court (presumably to undo harmful actions). STB OEA fails to consider any of these, despite repeated requests by City et al. Again, the STB OEA claims the agency can do nothing, when it refuses to consider OFA or Section 110(k), inconsistently saying those are for the STB to address later. STB OEA cannot on the one hand assert in its reports that the agency can do nothing and on the other hand say, in the same or other reports, that some other part of the agency will consider acting on historic preservation matters, albeit utterly uninformed by STB OEA, which claims it can do nothing and otherwise refuses to consider illegal conduct by Conrail that is itself the trigger for section 110(k). It is unpersuasive to claim that the agency will look at the problems and solutions to destruction of historic assets only after the section 106 proceeding is complete. This proceeding cannot be completed without considering section 110(k). Intentional destruction of historic resources prior to completion of section 106 must be considered in the 106 process, not ignored.

4. Boundaries of the Cemetery Historic District. The STB OEA Addendum includes an Addendum 5, which purports specifically to address the boundary of the Cemetery in the Palisades.

Addendum 5 concludes that the Cemetery does not “cross” any portion of the Harsimus Branch (p. 57) and uses this conclusion to support a finding of no effect or no adverse effect under any scenario. This is an error. First, the agency does not establish that the old maps on which it relies are title documents on which reliance can be placed. The current boundaries of the Cemetery are set by deeds, not old maps. Therefore, it is not at all clear that the Cemetery does not “cross” the Harsimus Branch. Based on research by City et al. to date, the Cemetery’s claim to title arises under deeds dating from the 1830s or perhaps even the 1820s. The property line described in those deeds has not been surveyed, and it remains to be seen if it can be surveyed. Until the line is surveyed, it cannot be claimed that the Branch does not “cross” the Cemetery. What can be claimed is that, in the far southeast corner of the Cemetery, there are several deeds from the Cemetery to Conrail’s predecessors in interest. But the property line described even in those deeds has not been surveyed.⁷

⁷ The trustees of the Cemetery have elsewhere represented that the northern portion of the property incorporates remnants of a War of 1812 bunker and further state that the Cemetery is the site of multiple skirmishes, bearing an association to the Marquis de Lafayette in the Revolutionary War. See <https://web.archive.org/web/20110601014338/http://www.jerseycitycemetery.org/history.html>; <http://www.jerseycitycemetery.org/history.html>;

In any event, the Cemetery will be visually and adversely impacted by potential colossal development (10,000 units) on adjoining Conrail property.

5. City et al. incorporate herein all their evidence and arguments contained in their April 25, 2019, comments on OEA's March 29, 2019 Cultural Resources Effects Assessment Report (CREAR). Failure to make further specific comment on any aspect of the Addendum should not be construed as a waiver of objections, for much of the Addendum wrongfully ignores the evidence and argument presented by City et al with respect to the CREAR.

<https://www.thehistorygirl.com/2012/10/towering-monuments-tombstones-historic.html>.

If these claims were substantiated, then the site may also bear an association to lookouts or artillery emplacements or entrenchments commanding a viewshed that remarkably still largely exists in the direction of Manhattan. The viewshed would then be an important aspect of the Cemetery for historic preservation purposes. In that event, extension of the Cemetery District to include portions of former Cemetery properties (see Addendum map p. 61, showing the Cemetery extending to the intersection of Newark and Division Streets) in the viewshed area looking toward Manhattan should be considered.

Respectfully submitted,

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Att: Verified Statement

For filing: Dec. 4, 2019

cc. City of Jersey City, Rails to Trails Conservancy,
Pennsylvania RR Harsimus Stem Preservation Coalition, NJ SHPO

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket AB 167 (SUB-NO. 1189X)

**CONSOLIDATED RAIL CORPORATION
-ABANDONMENT EXEMPTION-
IN HUDSON COUNTY, NJ**

SECTION 106 PROCESS AT CP WALDO AND “PLATEAU”

VERIFIED STATEMENT OF JOHN MCLAUGHLIN

R.L. Banks & Associates, Inc. (RLBA) was asked to address its understanding and interpretation of the historical operation of the Harsimus Branch in the vicinity of CP Waldo, with the view of better informing the boundaries of the Harsimus Branch in that vicinity for historical review purposes. I, John McLaughlin, am a senior railroad operations expert at RLBA and offer the following Verified Statement.

I joined RLBA in 2007 after eighteen years at Consolidated Rail Corporation (Conrail) and ten years at a less-than-truckload (LTL) motor carrier. My railroad management responsibilities included time and motion studies of train crews, supervision, network service planning and design, cost analysis, 24/7 on-call customer service management, market analysis and pricing. Since joining RLBA, I have provided expert railroad capacity and operations analysis to clients engaged in proceedings before the Surface Transportation Board. I also have provided feasibility analyses of prospective new or expanded freight rail lines and intermodal terminals, due diligence reviews and valuations of prospective rail line acquisitions, funding applications and support of other litigation and arbitration cases. My resume is presented in Appendix A.

As detailed later in this verified statement, I accompanied cultural resource experts for the City of Jersey City and Embankment Preservation Coalition on a tour of the area under Conrail auspices, and am therefore familiar with the terrain features and remaining rail structures in the area. CP Waldo lies at the west end of the Harsimus Branch where, historically it connected with what Conrail now calls its P&H Branch in the vicinity of Waldo Avenue in Jersey City, NJ. The CP Waldo area is sometimes called a “plateau” area in Jersey City, and the boundaries of CP Waldo and the Plateau are closely related.

The Plateau is an elevated, roughly triangular parcel of land bordered by a cemetery on the north, the River Line (sometimes referred to as National Docks Secondary) of CSX Transportation on the east and the PATH line on the south – southwest. At various times in history, the Plateau has been traversed by multiple rail lines: PATH, the Harsimus Branch, the P&H Branch and the Nave Connection. The latter was a single-track connection, built by Penn Central, between CP Waldo (the Harsimus and P&H Branches) on the Plateau and CP Nave (River Line) to the northeast. The Nave Connection was operated by Conrail but operations were discontinued and the track removed after the sale of Conrail to CSXT and Norfolk Southern. The trestle, which carried the Nave Connection from the east edge of the Plateau over the River Line (and over Newark Avenue), remains.

Railroad personnel, over time, have gained access to the Plateau and CP Waldo via a non-public grade crossing of an access road across the River Line (now sometimes called at that location the National Docks Secondary) and then up the eastern side of the Plateau. Railroad maintenance of way and communications and signals employees maintained the track and remote controls of the signals and switches at CP Waldo, and other track on the Plateau.

Cultural resource experts in the employ of the City of Jersey City (“City”), accompanied by myself, inspected the Plateau under the supervision of Conrail on June 14, 2017 and identified elements of railroad infrastructure associated with the Harsimus Branch and CP Waldo. Along the northern edge of the Plateau, between the Plateau and the cemetery, the inspection party noted masonry work in a drainage ditch which appeared to be railroad-built. At some points along this boundary, the inspection party also observed one or two foundations of railroad catenary poles which, at one time, supported the electric catenary over the Harsimus Branch.

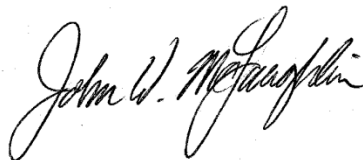
Toward the center of the Plateau, a vandalized relay box was identified. A functional relay box

typically contains wiring, electrical switches called “relays” and other electrical components which enable switches and signals in the field to be remotely controlled by a dispatcher at a distant location. The vandalized relay box on the Plateau, which likely enabled control of CP Waldo, contained a few such remaining components.

The entire Plateau area evidences past rail uses, especially the Nave Connection which linked two important rail lines – the Harsimus Branch at CP Waldo and the River Line at CP Nave. Additional evidence includes the access road over the River Line and up the eastern side of the Plateau, the relay box, the masonry structures in the drainage ditch and the catenary pole foundations.

Verification – John W. McLaughlin

I, John W. McLaughlin, verify under penalty of perjury that I have prepared and read this Verified Statement to be filed on behalf of The City of Jersey City in the aforementioned proceeding before the Surface Transportation Board, that I know the contents thereof, and that the same is true and correct. Further, I certify that I am qualified and authorized to file this statement.

A handwritten signature in black ink, reading "John W. McLaughlin". The signature is written in a cursive, flowing style with a large initial 'J' and 'M'.

Executed on December 3, 2019

John W. McLaughlin

APPENDIX “A”

Resume of John W. McLaughlin

John W. McLaughlin

Director, Market and Network Solutions

Education

BS, Transportation Management, Indiana University, Kelley School of Business, 1979

Years of Transportation Experience

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Qualifications

Freight shippers, freight railroads, passenger rail systems, law firms, public bodies and investors have engaged Mr. McLaughlin for his railroad operations and freight market research expertise, since he joined RLBA in 2007. Mr. McLaughlin's career prior to RLBA includes eighteen years at a Class 1 railroad which included ten years in intermodal customer service and marketing. His railroad career featured analytical, supervisory and service design responsibilities in operations, being the primary 24/7 contact on service issues of major intermodal customers, and development and implementation of price, service and communications plans for market expansions. Mr. McLaughlin's clients have benefitted from his freight volume projections, rate analyses and revenue projections, rail network simulations and capacity determinations, interviews of current and prospective rail customers, freight service designs and calculations of operating and maintenance costs. They have employed Mr. McLaughlin's expertise in: feasibility analyses of prospective new or expanded freight rail lines and intermodal terminals, due diligence reviews and valuations of prospective rail line acquisitions, funding applications, proceedings before the U. S. Surface Transportation Board, other litigation and arbitration cases and strategic planning.

Relevant Railroad Work Experience

Conrail (Consolidated Rail Corporation)

- **Regional Supervisor – Train Movement, Transportation Department, Detroit, MI** Coordinated region-wide train operations, covering five operating divisions, with system headquarters and division supervisors.
- **Operations Improvement Analyst, Transportation Department, Headquarters** Conducted on-site efficiency studies of five terminals as member of a Terminal Improvement Process (TIP) team.
- **Senior Business Development Analyst, Intermodal Service Group, Headquarters** Mr. McLaughlin held a key marketing role in a primary, growth line of business. He managed intermodal penetration of the truckload motor carrier market from zero to a \$50 million line of business in five years. Developed and implemented price, service and communications plans for market expansions that generated \$11 million of new revenue in 1996.
- **Service Manager, Customer Service Department/Intermodal Service Group, Headquarters** He served as Conrail's primary contact on transportation service issues in connection with the U.S. Mail and LTL motor carrier contracts. Led and provided 24 / 7 service management that established Conrail as a leading provider of intermodal service to the LTL motor carrier industry. He drove performance of U.S. Mail account from \$50,000 in weekly fines to \$10,000 in bonuses over two years, as leader of 24 / 7 service management and led an Intermodal Product Design Team that restructured train network to accommodate double stack technology.
- **Senior Operations Improvement Analyst, Transportation Department, Headquarters** Led analytical team on a wide variety of service design, cost analysis and field support projects dealing with terminal dwell, on-time performance, train speeds, and velocity reporting. Collaborated with Automotive and Steel service groups in design and implementation of mini-trains to support just-in-time demands of those

industries. Trained and supported operating staff at 15 major classification yards in connection with a monitoring system, which drove connection performance from mid-80% to mid-90%.

Relevant Project Experience

- ***Confidential Railroad Client*** Provided expert testimony and capacity analysis in an arbitration case regarding the client's 200+kilometer bulk commodity railroad in support of the client's take-or-pay agreement with its customers. Determined the Theoretical Capacity and performance of the client's railroad under multiple mainline track and signal configurations by dispatching over 30 cases in the RTC network simulation model. Rebutted the other side's capacity analysis.
- ***Twin Cities & Western Railroad*** Provided a verified statement as part of client's filing with the Surface Transportation Board regarding his evaluation of the threat of potential traffic diversion that would result from a Class I railroad acquiring a competing regional railroad. Interviewed customers of the client railroad and reported on the likelihood that they would divert traffic from client. Calculated the potential operating margin advantage of the competitor as a metric for the magnitude of the diversion threat, on a lane and commodity-specific basis. Tested the competitor's train counts and capacity calculations on a key main line.
- ***Confidential Railroad Client*** Provided an expert report about railroad intermodal operating and commercial issues in an arbitration regarding a question of diversion of intermodal traffic from the plaintiff (client) railroad by the respondent railroad.
- ***Gulf Coast Rail District*** Project Manager and railroad expert of a multi-disciplinary consulting team which ranked three prospective freight rail bypass options in Fort Bend County between Rosenberg, TX and southwest Houston, TX. The ranking was based upon a benefit-cost analysis (B-CA) to which Mr. McLaughlin contributed, for each option, an analysis of railroad operational impacts and their associated costs to the railroads and assisted in the development of railroad infrastructure construction costs. The B-CA also incorporated Mr. McLaughlin's updated operating and maintenance costs of the related prospective commuter rail operation between Rosenberg and Houston. He also developed 26-year projections of freight train volumes on the affected BNSF, KCS and UP lines which identified the amount of track network capacity which would be required to accommodate those volumes.
- ***Harris County, TX*** Supported Harris County's defense against lawsuits brought by Union Pacific Railroad (UP) related to Harris County's plans to construct two new grade crossings and add a lane at an existing grade crossing across a single track UP line. UP opposed the construction and claimed that it would impact train operations since UP uses the line to stage trains. Mr. McLaughlin reviewed track layouts and train operations and determined that there would be no adverse safety impacts at any of the crossings with those proposed improvements. He also determined that UP's practice of staging trains on the single track segment instead of on a nearby siding actually hampered train operations in the area. The lawsuits were dismissed in favor of Harris County.