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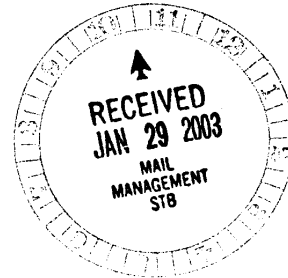
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Robert E. Boyle
Chairman of the Board

Gerald T. McQueen
President and
Chief Executive Officer

OVERNIGHT MAIL

January 24, 2003



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

Re: Docket No. AB 167 (Sub-No. 1094)A; *Chelsea Property Owners
Abandonment – Portion of the Consolidated Rail Corporation's
West 30th Street Secondary Track in New York, NY*

Dear Sir:

I am enclosing for filing the original and 10 copies of the Motion to Accept This Statement on Behalf of the New York Convention Center Development Corporation With Respect to the Pending Applications in This Proceeding.

In accordance with the Board's regulations I am also enclosing a diskette that includes the text of this document.

Sincerely,

A handwritten signature in black ink, appearing to read 'Elizabeth Bradford'.

Elizabeth Bradford
General Counsel

EB:em

ENTERED
Office of Proceedings

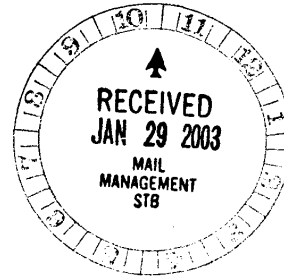
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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB 167 (SUB-NO. 1094)A



CHELSEA PROPERTY OWNERS - ABANDONMENT - PORTION
OF THE CONSOLIDATED RAIL CORPORATION'S
WEST 30TH STREET SECONDARY TRACK IN NEW YORK, NEW YORK

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MOTION TO ACCEPT THIS STATEMENT ON BEHALF OF THE NEW YORK
CONVENTION CENTER DEVELOPMENT CORPORATION WITH RESPECT TO THE
PENDING APPLICATIONS IN THIS PROCEEDING

1. The New York Convention Center Development Corporation ("Javits" or "Javits Center"), a New York State public benefit corporation that owns the property on which the Jacob K. Javits Convention Center and its appurtenant facilities are located, hereby requests the Surface Transportation Board to accept this statement of its position with respect to the pending applications regarding Conrail's West 30th Street Secondary Track (the "Highline") in the borough of Manhattan in New York City. The pending applications include: (a) the Motion by Chelsea Property Owners ("CPO") that a Certain Settlement Agreement Satisfies the Surety Condition in the ICC's September 16, 1992 Order in this Proceeding ("CPO's Motion"), (b) the Petition by the Friends of the Highline, Inc. ("Friends") to Reopen the 1992 Abandonment

Decision (the "Friends' Petition to Reopen"), and (c) the request by the City of New York (the "City") for a Certificate of Interim Trail Use ("CITU") for the Highline (the "City's Request for Interim Trail Use").

2. The northern-most portion of the Highline structure is located on the city block which extends from 33rd to 34th Streets and from 11th to 12th Avenues, immediately to the south of the Javits Center building. The lot is owned by Javits, is presently undeveloped and is used in part as a marshalling yard for the storage of tractor-trailers between the moving in and moving out of exhibitions and other events at Javits, and in part for employee parking. Javits was an active participant in the earlier phases of this abandonment proceeding, and in the separate state court action filed by Conrail seeking a declaration of the respective rights and responsibilities of the property owners with respect to the potential demolition of the Highline. In the state court action Javits noted that the Highline interfered with its current marshalling yard operations and that, far more importantly, the continuing existence of both the line and the easement on its property would present a serious obstacle to anticipated expansion of the Center. Both of those concerns are still present today.

3. Javits has not participated in the latest round of filings in this proceeding, which began with CPO's Motion, not out of a lack of interest but because its execution of the Settlement Agreement that is the subject of CPO's Motion, of which the Board has been made aware by the other parties, speaks for its strong and continuing interest in the demolition of that portion of the Highline encroaching on Javits' property. The filing by the City of its request for interim trail use, however, and the responses of Conrail and CSX to that request making reference to the necessity of involving Javits and the MTA in any CITU negotiations, See Reply

of Consolidated Rail Corporation to the Pleading Filed December 17, 2002 by the City of New York, filed January 13, 2003 ("Conrail Reply") and Reply of CSX Corporation and CSX Transportation, Inc. to the December 17, 2002 Pleading filed by the City of New York, filed January 13, 2003 ("CSX Reply") prompts this request for permission to make a late filing of Javits' position on the pending applications.

CPO's Motion Should be Granted

4. Javits supports CPO's motion to confirm that the proposed Settlement Agreement satisfies the surety condition in the ICC's September 16, 1992 Order. As noted above, Javits has executed the Settlement Agreement and such execution was subsequently ratified by its Board of Directors at a meeting held on March 21, 2002. Javits executed the Settlement Agreement because at the time it presented the most promising prospect for accomplishing Javits' sole objectives with respect to the Highline: timely and cost effective demolition of the portion of the structure located on and abolishment of the easement over Javits' property. Notwithstanding everything that has occurred in the interim, it still is the most promising prospect for accomplishing that result. While the City has apparently changed its position, see Reply of City of New York to CPO Motion, filed December 17, 2002 ("City's Reply and Application for CITU") it executed the Settlement Agreement over a year ago and it is far from clear that its present arguments will succeed in permitting it to avoid the consequences of that earlier decision. Moreover, even if the Board rejects CPO's arguments in response to the City's application, see Chelsea Property Owners' Reply to the Petition of the City of New York To Late File a Request for Issuance of a Certificate of Interim Trail Use, filed January 13, 2003 ("CPO Reply") and both upholds the applicability of the Rails-to-Trails Act to adverse abandonment proceedings and overlooks the untimeliness of the City's application,

the City may be unable or unwilling to meet CSX's conditions for a railbanking as set forth in Exhibit 1 to the Verified Statement of David Alan Richards submitted with Conrail's Reply. The City may also be unable to secure from the MTA the alternative easement apparently necessary to facilitate the demolition of the northern portion of the Highline and the development of the Hudson Railyards and the Javits property, discussed in more detail below.

5. As both CSX and Conrail have pointed out in their responses to the City's application, the Settlement Agreement is the product of extensive negotiations and has been agreed to, at least in principle, by all the necessary parties. See Conrail Reply and CSX Reply. Granting CPO's Motion would not be inconsistent with issuance of a CITU (should the Board find such issuance legally appropriate) since the agreement expressly permits the railroads to engage in railbanking negotiations. Given all the uncertainties surrounding the ultimate success of such negotiations, the Board should grant CPO's motion in order to facilitate prompt implementation of the Settlement Agreement should pursuit of other alternatives prove unproductive.

The Friends' Petition to Reopen and its Request to Hold Such Motion in Abeyance Should be Denied

6. Javits opposes both the petition to reopen and the request to hold such petition in abeyance for the same reasons advanced by CSX and Conrail. See Conrail Reply and CSX Reply. The petition itself is clearly a dilatory tactic originally designed to buy Friends more time to muster the financial and political support necessary to file an application for a CITU. Now that such an application has been made by the City, Friends is attempting to hold this particular weapon in reserve in case it is needed later if and when negotiations between the railroads and the City either fail or do not take place. As argued by CSX, Conrail and CPO, there is simply no reason other than strategic

delay to reopen a decision issued by the Board over ten years ago after full consideration of all the relevant issues.

Javits' Position with Respect to Interim Trail Use

7. Javits opposes the City's request for issuance of a CITU to the extent that such request is inconsistent with the demolition of the portion of the Highline over Javits' property and elimination of the easement, and to the extent that it would permit municipal control over the development of Javits' property. While the City's application pays lip service to the possible need to demolish a portion of the Highline "to accommodate MTA railyard development," it makes no separate reference to Javits property or Javits' development needs. See City's Reply and Application for CITU p. 13, ¶17. Even if the City's statement could be read as a promise to accommodate Javits' development needs, it might be difficult for Javits to enforce such a promise if the CITU were issued and the railbanking of the Highline were approved without the attachment of appropriate conditions to protect Javits' interests. The City has not articulated its vision for "MTA railyard development" and it is entirely possible that the City's plans may conflict with Javits' own expansion desires. Ceding control to the City over Javits' future with respect to a piece of property to which it holds title would be an unconscionable result of the proposed railbanking.

8. Finally, as all the parties have acknowledged, demolition of the northern portion of the Highline and elimination of the easement could not be accomplished under the Rails-to-Trails Act without an alternative easement to maintain the connection with the interstate rail network. At present, the only alternative easement that has been proposed is the one suggested by a preliminary study undertaken for Friends by Parsons Brinkerhoff Quade & Douglas, Inc. that would require establishing a right of way over the MTA's busy West Side Yard. That right of way that cannot be

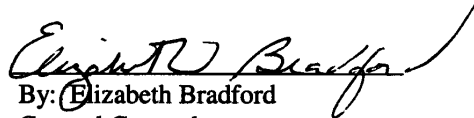
secured without the MTA's consent. See City's Reply and Application, Exhibit L. The MTA has not given or even been approached with respect to such consent. See Conrail's Reply, Verified Statement of David Alan Richards, ¶ 12.

9. Javits takes no position concerning the possible legal impediments raised by CPO to the issuance of a CITU under the circumstances presented by the City's application. Should the Board issue a CITU over CPO's objections, however, for the reasons set forth above the CITU should be conditioned on participation by Javits and the MTA in any ensuing railbanking negotiations. Imposing such a condition would also satisfy the desire expressed by CSX and Conrail for the full participation of and consent by the State authorities with respect to any railbanking proposals. In addition, no Rails-to-Trails Act transfer should ultimately be approved by the Board unless it insures the prompt, safe and orderly demolition of the Highline north of 30th Street on terms acceptable to the state authorities, the elimination of the easement over Javits' property and continuing dominion by Javits and the MTA over their own property and its eventual development.

Dated: New York, NY
January 24, 2003

Respectfully submitted,

NEW YORK CONVENTION CENTER
DEVELOPMENT CORPORATION



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Certificate of Service

I, Elizabeth Bradford, certify that on the 24th day of January, 2003, I caused a copy of the foregoing Motion to Accept This Statement on Behalf of the New York Convention Center Development Corporation With Respect to the Pending Applications in This Proceeding to be served by first class mail on the parties listed below.

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(CPO)

Dated:

January 24, 2003

