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BEFORE THE
SURFACE TRANSPORTATION BOARD



Finance Docket No. 34259

CHELSEA PROPERTY OWNERS -- PETITION FOR DECLARATORY ORDER

THE FRIENDS OF THE HIGH LINE, INC.'S REPLY TO CHELSEA PROPERTY OWNERS'
PETITION FOR A DECLARATORY ORDER

ENTERED
Office of Proceedings

OCT 23 2002

Part of
Public Record

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October 23, 2002

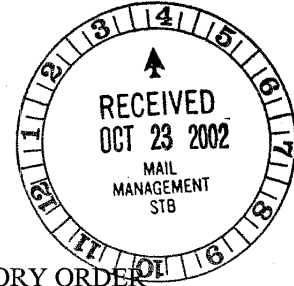
TABLE OF CONTENTS

BACKGROUND	4
ARGUMENT	8
A. The Board Should Deny the Petition Because There Is No Controversy.....	8
B. The Board Should Deny CPO's Request Because It Is Premature.....	10
C. If the Board Concludes That Issuing a Declaratory Order Is Appropriate, It Should State That Constructing an Olympic Stadium on the 30th Street Yards Is Not Incompatible With Railbanking of the High Line.....	15
1. The Board Should Answer CPO's First Question -- If at All -- by Reaffirming the Board's Jurisdiction Over Interstate Rail Transportation.....	16
2. The Board Should Answer CPO's Second Question -- If at All -- by Declaring That Demolishing the High Line Structure Is Not Incompatible With a CITU for the High Line Right-of-Way.....	17
a) The Board's Inquiry Is Limited When It Determines Whether To Issue a CITU. ...	18
b) Demolishing the High Line Does Not Necessarily Disqualify It From Railbanking.....	19
c) CPO's Cases and Evidence Do Not Establish That Demolishing the High Line Structure Disqualifies It From the Railbanking Program.....	22
CONCLUSION.....	24
Exhibit A -- C. Virginia Fields, Manhattan Borough President, <u>2002 Strategic Policy Statement Manhattan: Post 9/11</u> , Sept. 2002.	
Exhibit B -- City Councilmember Quinn, <u>Reports to Community Board 4</u> , July 25, 2002.	
Exhibit C -- Letter from Amanda Burden to Friends of the High Line, Oct. 11, 2002.	

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Chelsea Property Owners has been trying to demolish the High Line for over ten years. It has failed so far because it has never been able to meet the financial obligations imposed by the ICC's conditional abandonment order, issued in 1992. CPO now asks the Board to issue a premature declaratory order based on speculative premises for the apparent purpose of gaining a strategic advantage in the ongoing abandonment proceeding and in negotiations with the City of New York. The Board should reject this request.

CPO wants the Board to issue an order opining that the City may not simultaneously build a proposed Olympic stadium and support railbanking the High Line. But there is no current controversy that requires an answer to this hypothetical question. Among other things, it is uncertain what the final location and design of any stadium would be or whether a stadium will be built at all,¹ no one has yet filed an application to railbank the High Line, and the City has not yet taken a position on whether to support railbanking.

The Board should deny CPO's petition.

¹ As discussed below at page 11, the final decision on which city will be awarded the 2012 Olympics will not be made until 2005.

BACKGROUND

The petition for declaratory order is the latest salvo in a decades-long battle over the High Line, a 1.45 mile long elevated rail line in lower Manhattan. The High Line, now owned by Conrail, was previously used to deliver goods to the meat-packing district, the old NABISCO factory, and other industries on the west side of Manhattan. In this section, we briefly summarize the history of some of the pertinent disputes.

1. In 1989, a group of property owners and developers with economic interests adjacent to the High Line, known as the Chelsea Property Owners (“CPO”), asked the Interstate Commerce Commission to authorize abandonment of the High Line over Conrail’s objections. See Chelsea Property Owners -- Abandonment -- Portion of the Consolidated Rail Corp.’s W. 30th St. Secondary Track in New York, NY (“Abandonment Proceeding”), 7 I.C.C.2d 991 (1991). In 1992, the ICC conditionally authorized abandonment of the High Line, declaring that removal of the elevated structure would promote economic growth. See Abandonment Proceeding, 8 I.C.C.2d 773, 783 (1992). To protect Conrail from undue economic harm, the Commission conditioned the abandonment by requiring CPO to “post an appropriate surety bond or similar security to ensure payment of any demolition costs exceeding \$7 million.” Id. at 792.

2. For years, CPO tried, but failed, to devise financial terms that would allow it to meet the surety condition, consummate the abandonment, and bring down the High Line. In 1999, CPO asked the Board to authorize immediate abandonment, over Conrail’s continuing objections, on the ground that CPO had met the Commission’s surety condition. It tendered a draft indemnity bond and an unsigned contract with an entity willing to demolish the High Line

for less than \$7 million. See Docket No. AB-167 (Sub-No. 1094)A, Abandonment Proceeding, Decision served July 14, 1999, p. 3. The Board denied CPO's request, finding that the tendered documents did not satisfy the condition imposed in 1992. In particular, the unsigned contract excluded indemnification for the costs of removing portions of the High Line that pass over or through buildings and for the expenses of complying with any environmental or other laws. Id., p. 5.

3. On August 14, 2002, CPO presented the Board with a draft agreement that allegedly protects Conrail's financial interests in connection with partial demolition of the High Line. In its motion, CPO asks the Board to find that the draft satisfies the surety condition that the Commission imposed in 1992 and to authorize Conrail, "upon title closing under the Settlement Agreement," to abandon the High Line. See Abandonment Proceeding, Aug. 14, 2002 Motion, p. 9.²

4. On August 16, 2002, Friends of the High Line, Inc. ("Friends") petitioned the Board to reopen the 1992 conditional abandonment decision on the ground that new evidence and changed circumstances show that the Commission's consideration of impacts on historic structures and on the environment, conducted 13 years ago, is outdated and inaccurate. See

² In a separate court proceeding, the City Council of the City of New York, along with Friends of the High Line, Inc., the Manhattan Borough President, and others, sought a declaratory judgment that CPO's latest demolition proposal is subject to New York City's Uniform Land Use Review Procedure ("ULURP") and that, until the proposal undergoes ULURP review, the City's participation in the proposed agreement is unlawful. The New York Supreme Court for New York County agreed. Earlier this year it issued an order holding that the City must complete the ULURP review process before it may issue permits or otherwise authorize demolition. See New York City Council v. City of New York, No. 122270/01, 2002 WL 55192 (N.Y. Sup. Ct. Mar. 12, 2002), attached as Exhibit A to Friends of the High Line, Inc.'s Sept. 6 Opposition to CPO's Motion for an Order Authorizing Abandonment of the High Line, filed in the Abandonment Proceeding. CPO has appealed this ruling.

Abandonment Proceeding, Aug. 16, 2002 Petition to Reopen. In its petition to reopen, Friends explained that the Board must consider evidence showing that the High Line is an historic structure that merits inclusion in the National Register of Historic Places. Id. at 15-27. Friends also described significant developments that cast doubt on the results of the Commission's earlier environmental study, including evidence that development in the neighborhood may be enhanced, rather than impeded, by continued existence of the High Line, and that partial demolition of the line would have environmental impacts that the Commission did not consider in 1992. Id. at 27-40.

5. On September 19, 2002, the City requested an extension of time until December 17 in which to reply to both CPO's August 14 petition for an abandonment order and Friends' August 16 petition to reopen. The City explained that it needed the extension to review a feasibility study it had commissioned from Friends and to finalize its position on whether to support preservation of the High Line. See Abandonment Proceeding, City of New York's Sept. 19, 2002 Motion. The study conducted by Friends, a draft of which was delivered to the City's Deputy Mayor on October 15, concluded that maintaining the High Line for public trail use is consistent with the City's redevelopment plans for the 30th Street yards. This study is not yet a public document.

6. In this new proceeding, instituted on October 1, CPO asks the Board to decide on an expedited basis (i) whether it would retain jurisdiction over the southern portion of the High Line if the High Line north of 30th Street were abandoned, and (ii) whether demolishing the High Line to make way for a hypothetical Olympic stadium would be consistent with the Board's issuance of a Certificate of Interim Trail Use ("CITU") for the High Line. See

CPO Pet. at 6, ¶¶ A-B.³ CPO's memorandum in support of its petition suggests that Board action is needed because the City misunderstands the requirements of the Trails Act. See CPO Mem. at 2-3.

7. On October 9, the City filed a reply in support of its September 19 motion for an extension of time to reply to CPO's August 14 motion and to Friends' August 16 petition. In its reply, the City explained that "[w]hether or not the High Line must be abandoned and dismantled and the easements extinguished in order to undertake proposed development at the west side rail yards is not a matter on which the City has reached any conclusion." Abandonment Proceeding, Oct. 9, 2002 Extension Reply ("Extension Reply"), ¶ 5. To the contrary, if the feasibility study showed that Friends' "proposal for public trail use is meritorious and economically feasible," id., ¶ 2, then the City would embark on further analysis of the numerous issues raised by this proposal:

Complex legal, financial, engineering and community planning issues associated with implementation will have to be considered. This will necessarily involve discussions with officials at the highest levels of State government, the two public benefit corporations which own the west side rail yards through which a portion of the High Line runs (the Convention Center Development Corporation ("CDDC") and the Metropolitan Transit Authority ("MTA")), New York Central Lines LLC/Conrail/CSX, and proposed developers involved with the west side rail yards. Local legislative and community leaders will be consulted.

Id. The City stated that CPO's constituency would be included in those consultations. Id.

³ "CPO Pet." refers to CPO's Petition for a Declaratory Order, filed on October 1, 2002. "CPO Mem." refers to the memorandum in support of that petition.

The City's Extension Reply notes that there are a number of proposals for developing the 30th Street rail yards in addition to those described by CPO, and that the development proposals "are in the beginning stages and remain conceptual in nature." Id. ¶ 5. The City further states that it "does not concede that if the will of all the parties with interests in the west side yards (which does not include CPO) was to maintain a link between the High Line south of 30th Street and the interstate rail network, this could not be accomplished in a manner consistent with the development needs of the interested parties." Id.

ARGUMENT

CPO is not asking the Board to resolve an existing dispute. Rather, it wants the Board to help it enhance its strategic position in its negotiations with the City and in the pending abandonment proceeding by issuing an order based on hypothetical, ill-defined assumptions. In Part A below, we explain that the Board should reject this inappropriate request because there is no actual controversy at this time. In Part B, we show that the request should be rejected because it is premature. In Part C, we explain that if the Board nevertheless chooses to address the abstract questions CPO presents, it should rule that there is no basis for concluding that the City's plans to build an Olympic stadium would be incompatible with railbanking the High Line.

A. The Board Should Deny the Petition Because There Is No Controversy.

The STB may issue a declaratory order "to terminate a controversy or remove uncertainty." 5 U.S.C. § 554 (e). The Board has declined to issue a declaratory order where "there is not now, and may never be, a controversy that needs to be terminated." Finance Docket No. 34020, Fletcher Granite Co., LLC -- Petition for Declaratory Order, Decision served June 29, 2001, p. 2; see also Docket No. 40976, American Express Travel Related Serv., Inc. -- Petition for Declaratory Order -- Certain Rates & Practices of Yellow Freight Sys., Inc., Decision

served June 11, 1993, p. 3 (“[B]ecause the pleadings do not clearly define the matters in controversy, it cannot be determined whether this proceeding involves issues of industry-wide significance;” accordingly, “granting the petition for a declaratory order proceeding would be a disservice to the parties and a drain on Commission resources.”); Ex Parte No. 55 (Sub-No. 76), Delegation of Authority -- Declaratory Order Proceedings, 5 I.C.C.2d 675, 676 (1989) (stating that the Commission has “declined to institute a declaratory order proceeding where it was not shown that such a proceeding was necessary to terminate an active controversy.”).

This case presents no controversy that needs to be terminated. CPO argues that the City does not understand the implications for railbanking of demolishing the northern portion of the High Line to make way for an Olympic stadium. In fact, as discussed below, it is not clear that any stadium will ever be built at this location, much less what its final design will be, and no decision has been made to demolish the High Line. Further, the City has not “taken any official action that would impede the resumption of rail service over” the track in question. Id. Nor has an application for interim trail use of the High Line yet been filed.

At most, CPO’s claim is that it and the City may at some point develop different interpretations of the law relating to railbanking. As things stand now, however, this difference of opinion does not appear to have materialized. In its October 9 Extension Reply, the City stated that, contrary to CPO’s assertions, the City “does not misunderstand the consequences under the Rails-to-Trails Act of severing the High Line below 30th Street from the interstate rail network” and that “[c]learly and contrary to CPO’s argument to this Board, the City is aware of the question of the Board’s continuing jurisdiction” Extension Reply, ¶ 4.

Even if CPO and the City were currently in disagreement about the law governing railbanking, that would not be a reason for the Board to issue a declaratory order. The Board should not expend its limited resources in formulating opinions designed to correct one party's alleged misunderstanding about an abstract question of law. See Docket No. MC-C-35002, Tyco Int'l (US) Inc. -- Petition for Declaratory Order -- Contracting for Motor Carrier Servs., Decision served Apr. 20, 2001, p. 3 (holding that "broad, abstract declarations" that "can only be determined by considering the 'totally of circumstances'" are "inappropriate.").

The Board should deny the petition on the ground that there is no actual dispute at this time.⁴

B. The Board Should Deny CPO's Request Because It Is Premature.

Assuming the Board concludes that it has authority to issue a declaratory order despite the absence of an existing controversy, it should decline to issue an order on the ground that CPO's request is speculative and premature. The Commission has previously concluded that it should refrain from issuing a declaratory order when an alleged dispute is speculative in nature. See Docket No. MC-C-30205, USX Corp., US Steel Group -- Petition for Declaratory Order, Decision served Nov. 9, 1992, p. 2, n.1 ("Speculative harm, because it demonstrates a lack of 'a substantial controversy, between parties having adverse legal interests of sufficient

⁴ CPO suggests that its alleged disagreement with the City "puts at risk the City's bid to be the United States candidate city to host the 2012 Olympics." CPO Pet. ¶ 11. If this were really the case, it is the City, not CPO, that should be seeking clarification. In any event, as discussed below, the "risk" CPO purports to identify is, at best, hypothetical.

immediacy and reality,' is not an appropriate basis for declaratory relief.'").⁵ In Docket No. MC-C-30074, Arvada Transfer Co., Inc. -- Petition for Declaratory Order, Decision served Mar. 14, 1988, the ICC held that a request for declaratory order was premature because:

it is based on petitioner's speculation concerning a possible adverse action by the CPUC. Under these circumstances we are hesitant to commit our resources to resolving a question which may well be determined favorably to petitioner or never ripen into a justiciable dispute.

Id., p. 1.

Here, CPO's petition is premised on the potential for conflict between railbanking the High Line and constructing an Olympic stadium over the 30th Street yards. This premise in turn rests on multiple layers of speculation.

To begin with, it is still uncertain whether the City will ultimately decide to build an Olympic stadium on the 30th Street rail yards at all. The first step is for the United States Olympic Committee to choose between New York City and San Francisco, a decision that is to take place on November 2, 2002. See John Jeanson, 2012: Olympics Countdown, N.Y. Newsday, Oct. 6, 2002. Then the International Olympic Committee will decide whether the Games will be awarded to the U.S. selection or to one of the non-U.S. contestants. That decision will not be made until 2005. Id.; see also Charles V. Bagli, West Side Plans Envision Jets and Olympics, N.Y. Times, May 1, 2002.

In addition, the City must cope with what appears to be substantial community opposition to building a new stadium on the 30th Street yards. The Manhattan Borough

⁵ Citing Super Tire Eng'g Co. v. McCorkle, 416 U.S. 115, 122 (1974); Docket No. 40220, Bessemer & Lake Erie R.R. -- Petition for Declaratory Order -- Interchange Facilities & Trackage Rights, Decision served July 16, 1990.

President, C. Virginia Fields, supports a post-September 11 development plan that calls for “6,000 units of housing, including 20 percent affordable units, on decks built over the Rail Yards.” See C. Virginia Fields, Manhattan Borough President, 2002 Strategic Policy Statement Manhattan: Post 9/11, Sept. 2002, at 36 (excerpts attached at Exhibit A). Her plan would create “commercial office and retail uses, with green open space relating to the Hudson River Park.”

Id. Under the Post 9/11 plan:

The High Line would be preserved as an elevated pedestrian and recreational trail. The plan also calls for expanding the Javits Center to the north; there is no stadium included. Transportation options include extending the Number Seven line, creating [a] light rail system, and the development of parking facilities. Above all, the sale of development rights would generate funding for the project, so that, except for the public transit improvements, the work in the plan can be done without the expenditure of public dollars.

Id. (emphasis added).

In addition, City Councilmember Christine Quinn (Community Board 4) “strongly oppose[s] placing a stadium on the West Side of Manhattan” that could be used for the Olympic Games or for the New York Jets. City Councilmember Christine Quinn, Reports to Community Board 4, July 25, 2002, at 2 (attached as Exhibit B). State Senators Thomas Duane and Liz Kreuger, Assemblymember Richard Gottfried, and City Councilmember Gail Brewer joined City Councilmember Quinn in voicing opposition to any plans for a new stadium at a June 29th press conference. See id. In his September 2002 newsletter, Assemblymember Gottfried explained that:

Mayor Bloomberg has expressed opposition to the City paying for new stadiums for the Yankees and Mets, but his administration is still supporting an Olympic stadium in the West 30s. I wrote the Mayor, in a letter joined by other local elected officials, to reiterate our continued opposition to a West Side stadium.

A stadium would cause congestion and disruption in the Chelsea and Clinton neighborhoods, with ripple effects in the theater district and throughout Manhattan, and would destroy an opportunity to support mixed-use development and affordable housing.

See http://assembly.state.ny.us/member_files/064/20020823a/index.html. And the New York Times reports that Deputy Mayor Doctoroff faces opposition from groups who favor the Olympics but oppose the location of the stadium, because, they argue, it would “worsen traffic congestion . . . destroy a working-class neighborhood . . . , [a]nd siphon off scarce state and city funds from the rebuilding of Lower Manhattan.” Dreaming of Stadiums and Souvenirs, N.Y. Times, Aug. 28, 2002 (Metro). The Times quotes the President of the Clinton Special District Coalition as saying that “The stadium is part of a much larger scam to tear down much of our neighborhood, making it impossible for normal people to live in New York City . . . The impact of the stadium would ripple through much of Manhattan.” Id.

Assuming a stadium is eventually built, we do not know exactly where it will be, what its design will be, or whether it would necessarily require demolition of the High Line. CPO has submitted no blueprints, no construction plans, and no timeline. The only evidence of the current stadium plans that CPO provides is a one-page diagram that allegedly depicts a “configuration that will require the demolition of the Highline between 30th Street and 34th Street.” CPO Mem. at 2.

Moreover, it is unlikely that the City’s preliminary stadium plans would remain unchanged between now and the date of any groundbreaking. As the City explained in its October 9 Extension Reply, it would need to consult with a wide variety of local legislative and community leaders before it could implement any stadium construction, including “officials at the highest levels of State government, the two public benefit corporations which own the west

side rail yards through which a portion of the High Line runs . . . , New York Central Lines LLC/Conrail/CSX, and proposed developers involved with the west side rail yards.” Extension Reply, ¶ 2.

At least one agency with which the City must negotiate over development plans, the New York City Department of Planning, has observed that construction of a multi-use facility, such as a stadium, on the 30th Street yards is only a “possibility.” Amanda Burden, the Director of the Department of City Planning, stated that the Department:

. . . wish[es] to encourage a thoughtful and frank public discussion of the implications of [the stadium] for the new district, the adjacent neighborhoods, the city and the region. It is our goal, however, to plan and to develop the Hudson Yards area into a model of livable, inviting and sustainable urbanism, whether or not the [stadium] becomes a reality.

Letter from Amanda Burden to Friends of the High Line, Oct. 11, 2002 (attached as Exhibit C).

In addition, any stadium the City builds will have to comply with applicable environmental and historic preservation laws, as well as a host of other regulatory and legal requirements. Several proceedings currently underway have the potential to affect the City’s stadium plans. This includes the ULURP lawsuit underway in New York state court and Friends’ petition to reopen the abandonment proceeding, both described in the Background section above.⁶

No doubt the City’s plans for a potential stadium will evolve as these discussions and proceedings progress, and further engineering work could lead to revisions in the current

⁶ Among other things, the Board must consider whether to reopen the 1992 decision conditionally authorizing abandonment in order to consider historic preservation and environmental issues in view of changed circumstances and whether CPO’s newest proposal satisfies the surety condition the ICC imposed in 1992. It is unlikely that a railbanking application would be submitted until after the Board makes determinations on these other issues.

construction plans. As a result, the Board cannot assume that the current plans describe whatever stadium the City may ultimately decide to construct. Assuming the City ultimately builds a stadium over the 30th Street yards, it may find a way to incorporate the High Line into the stadium, e.g., by using the elevated structure as part of a pedestrian approach to the stadium. Several sports stadiums have been built very near rail lines without the need to demolish the lines. For example, a portion of the new Seattle Mariners stadium was built over the Burlington Northern Santa Fe mainline, and the Baltimore Orioles stadium at Camden Yards was built along-side a commuter line, which brings passengers from the greater Baltimore area to events held at the stadium. Thus, the stadium might ultimately be built without the need to demolish any part of the High Line.

Even if the High Line were demolished, Conrail or a successor may well be able to retain an easement that would permit construction of a replacement structure at some point in the future. The existing right-of-way could be preserved and reactivated after the stadium was no longer needed. Alternatively, the right-of-way could be relocated and eventually used for construction of a replacement connection between the High Line and the Amtrak line north of 34th Street.

CPO would undoubtedly argue that many of the contingencies described above will not materialize. But it cannot deny that the future is uncertain in many respects. Because the alleged dispute is so speculative, the Board should deny CPO's petition.

C. If the Board Concludes That Issuing a Declaratory Order Is Appropriate, It Should State That Constructing an Olympic Stadium on the 30th Street Yards Is Not Incompatible With Railbanking of the High Line.

If the Board determines that a declaratory order is appropriate, despite the speculative nature of CPO's request, it should answer both questions posed by stating that

construction of an Olympic stadium on the 30th Street yards will not necessarily strip the Board of jurisdiction to authorize railbanking of the High Line.⁷

1. The Board Should Answer CPO's First Question -- If at All -- by Reaffirming the Board's Jurisdiction Over Interstate Rail Transportation.

CPO's first question is whether the Board would "retain jurisdiction over the Highline south of 30th Street if the portion of the Highline north of 30th Street is abandoned under 49 U.S.C. 10903, and such abandonment deprives the southern part of the line of any connection with the national rail system." CPO Pet. at 6, ¶ A. This question is plainly hypothetical. CPO's adverse abandonment proceeding against the railroads asks the Board to abandon the entire 1.45 miles of the High Line, not just the portion north of 30th Street. Friends is unaware of any application for abandonment, either actual or anticipated, that is confined to the portion of the High Line north of 30th Street. The question thus asks the Board to do little more than declare (in the abstract) that it would lack jurisdiction (in the abstract) over a stretch of railroad if it were not connected to the rail system.

If in fact someone sought abandonment of only the northern portion of the High Line, if Conrail did not oppose that application, if the Board granted authority to abandon that portion of the line, if the abandonment were consummated, and if no other connection with the national rail system remained, the Board might conclude that it had lost jurisdiction of the southern portion of the High Line. See, e.g., RLTD Railway Corp. -- Abandonment Exemption -- In Leelanau County, MI ("Leelanau II"), 2 S.T.B. 685, 693-94 (1997), aff'd sub nom., RLTD

⁷ CPO's petition and the memorandum in support of the petition phrase the questions differently. We quote the first question as phrased in the petition.

Railway Corp. v. STB, 166 F.3d 808 (6th Cir. 1999). At least in the absence of such factual basis (which does not exist here), the Board should decline to provide the opinion CPO seeks.

If the Board chooses to issue an order in response to CPO's first question, the most it should state is that it has jurisdiction over "transportation by rail carrier . . . as part of the interstate rail network," 49 U.S.C. § 10501(a), and that its jurisdiction over lines used for such transportation continues until the line is abandoned, see Abandonment of Railroad Lines & Discontinuance of Service, 365 I.C.C. 249, 261 (1981).

2. The Board Should Answer CPO's Second Question -- If at All -- by Declaring That Demolishing the High Line Structure Is Not Incompatible With a CITU for the High Line Right-of-Way.

CPO's second question is whether, if the Board issued a CITU and the City and Conrail entered into a railbanking agreement, the City could then demolish the High Line structure north of 30th Street and build an Olympic stadium on the High Line right-of-way.⁸ If the Board elects to engage in this speculative exercise, it should declare that, based on the information currently available, there is no reason to believe that constructing an Olympic stadium would be incompatible with railbanking of the High Line.

⁸ As stated in CPO's petition, the second question asks, "Would the demolition of the Highline structure north of 30th Street and the construction on the Highline right-of-way of an 86,000 seat Olympic [stadium] be consistent with a Certificate of Interim Trail Use issued with respect to that portion of the Highline?" CPO Pet. at 6, ¶ B.

As stated in CPO's memorandum, the second question is as follows: "Whether, if the Board issued a certificate of interim trail use ('CITU') to the City of New York ('the City'), and the City entered into an agreement with Conrail pursuant to the Trails Act (16 U.S.C. 1247(d)), the City could, consistent with the CITU and the Trails Act, demolish the Highline elevated structure north of 30th Street and construct on the right-of-way an 86,000 seat Olympic stadium." CPO Mem. at 1.

As explained above, constructing a stadium would not necessarily require the City to demolish the High Line's elevated structure. If the stadium were designed to avoid the High Line right-of-way or to incorporate the High Line structure, there would be no need for demolition and CPO's hypothetical scenario would never arise. Furthermore, as discussed in subsection (a) below, the Board does not consider issues of suitability for trail use when it considers a request for a CITU, and assuming a CITU were issued, even demolishing the High Line structure would not necessarily disqualify the High Line from the railbanking program (discussed in subsection (b) below). Finally, as we explain in subsection (c), CPO's legal and evidentiary citations do not support its suggestion that demolition would necessarily result in ineligibility for railbanking.

a) The Board's Inquiry Is Limited When It Determines Whether To Issue a CITU.

The Board's decision to issue a CITU is largely ministerial. See Citizens Against Rails-to-Trails v. STB, 267 F.3d 1144, 1153 (D.C. Cir. 2001). As long as the applicant meets the requirements of 49 C.F.R. § 1152.29 (including submission of a statement of willingness to assume financial and managerial responsibility), and as long as the railroad is willing to negotiate with the applicant, the Board will issue a CITU and set a negotiation period for the parties to complete a trails agreement. See, e.g., Docket No. AB-567 (Sub-No. 1X), Rutherford R.R. Dev. Corp. -- Abandonment Exemption -- In Rutherford County, N.C., Decision served Feb. 8, 2001, pp. 2-3 (citing Goos v. ICC, 911 F.2d 1283, 1295 (8th Cir. 1990), and Iowa S. R.R. -- Exemption -- Abandonment, 5 I.C.C.2d 496, 503 (1989)).

In deciding whether to issue a CITU, the Board does not require a showing of whether future rail use would be desirable, affordable, or otherwise feasible. See Citizens

Against Rails-to-Trails, 267 F.3d at 1153 (stating that Congress did not impose on the Board the responsibility to make a determination of suitability for trial use); Docket No. AB-406 (Sub-No. 6X), Central Kansas Ry. LLC -- Abandonment Exemption -- In Marion & McPherson Counties, KS, Decision served May 8, 2001, p. 6; Cf. Preseault v. ICC, 494 U.S. 1, 19 (1990) (when Congress passed the Trails Act, it “apparently believed that every line is a potentially valuable national asset that merits preservation, even if no future rail use for it is currently foreseeable”). Indeed, as the Board noted in the Central Kansas case, once the railroad and the trail manager agree to railbanking terms, the Board will not disturb the terms of their agreement unless there is a showing that the resumption of future rail use is not feasible: “[O]nce rail banking/interim trail use has commenced, the burden is on landowners or other interested persons to show that active rail service cannot be restored or that the trail sponsor has failed, or likely will fail, to pay taxes or adequately manage the trail.” Central Kansas Ry., p. 6.⁹

b) Demolishing the High Line Does Not Necessarily Disqualify It From Railbanking.

CPO argues that demolishing the High Line would physically sever the High Line from the national rail system and disqualify it for railbanking. CPO Mem. at 3-5. CPO is wrong for three reasons: First, the Board has jurisdiction to issue a CITU with respect to the High Line

⁹ For this reason, CPO’s request that the Board require Friends to show that a substitute facility north of 30th Street would be feasible (CPO Mem. at 10) is misplaced.

In one recent decision, STB Docket No. AB-33 (Sub-No. 158X), Union Pac. R.R. -- Abandonment Exemption -- in McPherson, Ellsworth & Rice Counties, KS, Decision served Mar. 29, 2002, the Board declined to extend an interim trail use negotiating period because the railroad had consummated abandonment of two segments of line surrounding the segment for which trail use was sought, apparently severing it from the national rail system. The Board did, however, permit the parties to submit evidence explaining why the segment still qualified for a NITU. In this case there has been no consummation of an abandonment that has the effect of severing the line from the national rail system.

unless and until the line is abandoned,¹⁰ and removing rail assets, particularly when the carrier is willing to negotiate a railbanking agreement, does not consummate an abandonment. See, e.g., Docket No. AB-389 (Sub-No. 1X), Georgia Great S. Div., South Carolina Central R.R. -- Abandonment & Discontinuance Exemption -- Between Albany & Dawson, in Terrell, Lee, & Dougherty Counties, GA, Decision served April 16, 1999, p. 6 (“Track removal following the imposition of a trail condition, standing alone, does not constitute consummation of an abandonment.”).¹¹ Indeed, the Board has emphasized that “[w]hether a line is fully abandoned is a question of fact . . . based on the carrier’s intent.” Docket No. AB-457X, RLTD Railway Corp. -- Abandonment Exemption -- in Leelanau County, MI (“Leelanau I”), Decision served Aug. 23, 1996, p. 4.¹² “[T]here is no established set of criteria by which to determine whether and when a carrier has expressed the intent to cease permanently or indefinitely all transportation service on the relevant line.” Id. Moreover, there is no single fact that will determine whether a line has

¹⁰ No request for a trail use condition for the High Line was filed within the period prescribed by the Board’s rules, 49 C.F.R. § 1152.29(b)(1). However, the Board may issue a trail use order after the expiration of that period, “so long as it retains jurisdiction to do so.” Illinois Commerce Comm’n v. ICC, 848 F.2d 1266, 1261 (D.C. Cir. 1988), cert. denied, 488 U.S. 1004 (1989); Rail Abandonments -- Use of Rights-of-Way as Trails -- Supplemental Trail Act Procedures, 4 I.C.C.2d 152, 158 (1987).

¹¹ See also Docket No. AB-381 (Sub-No. 1X), T&P Ry. -- Abandonment Exemption -- in Shawnee, Jefferson & Atchison Counties, KS, Decision served Feb. 20, 1997 (declining to revoke NITU despite removal of ties and ballast); Docket No. AB-39 (Sub-No. 12), St. Louis Southwestern Ry. -- Abandonment -- in Smith & Cherokee Counties, TX, Decision decided Mar. 23, 1992 1992 (salvage of track need not constitute consummation of abandonment, since carriers willingness to enter into Trails Act negotiation was inconsistent with intent to consummate); cf. Finance Docket No. 33508, Missouri Central R.R. -- Acquisition & Operation Exemption -- Lines of Union Pacific R.R., Decision served Apr. 30, 1998 (argument that line was de facto abandoned from long disuse rejected, despite removal of bridges and various rail assets).

¹² Quoting Docket No. AB-102 (Sub-No. 16), Missouri-Kansas-Texas R.R. -- Abandonment -- In Pettis & Henry Counties, MO, Decision served Apr. 18, 1991.

been fully abandoned. "It is [the] intent, rather than any single outward manifestation of it . . . , that determines whether or not a grant of abandonment authority has been consummated." Id., p. 7.

In addition, CPO cannot show that demolishing the High Line structure would necessarily preclude eventual resumption of rail service. The City could relocate the easement in accordance with applicable local law to accommodate any new stadium.¹³ Moreover, so long as a sufficient right-of-way were preserved, the structure could be rebuilt and the line reactivated at some point after the stadium had outlived its usefulness. The Board and the ICC have long recognized that retention of an appropriate easement for future rail operations negates any suggestion that a line has been abandoned. See Georgia Great S. Div., p. 6 ("[I]t is consistent with the common carrier obligation of a railroad for the carrier to sell the underlying assets of rail line while retaining an easement that is sufficient for carrying out rail operations."); Finance Docket No. 32764, State of Maine, Department of Transp. -- Acquisition Exemption -- Certain Assets of Belfast & Moosehead Lake R.R., Decision served Nov. 14, 1995; Maine, DOT -- Acquisition Exemption -- Maine Central R.R., 8 I.C.C.2d 835 (1991).¹⁴

¹³ Such a relocation would not require review by the Board because it would not affect service to shippers, nor would it result in CSX/Conrail expanding into new territory. See City of Detroit v. Canadian Nat'l Ry., 9 I.C.C.2d 1208, 1218-20 (1993), aff'd sub nom. Detroit/Wayne County Port Auth. v. ICC, 59 F.3d 1314 (D.C. Cir. 1995).

¹⁴ Moreover, the draft of the feasibility study commissioned by the City and submitted by Friends suggests that there are several ways the High Line could be reactivated for future rail use even if the Olympic stadium were built on the yards without preservation or relocation of the existing right-of-way. This draft has been provided to the Deputy Mayor, but is not yet public. In addition, it might be possible to establish an intermodal facility connecting the High Line to existing freight lines in New York City by truck or to lines in New Jersey by using existing tunnels under the Hudson River. See Leelanau II, 2 S.T.B. at 693.

Whether demolishing the structure or relocating an easement would extinguish the High Line's right-of-way would not be a matter for decision by the Board. Rather, any underlying property disputes that might arise as a result of the City's stadium plans -- even disputes that might affect the appropriateness of railbanking the High Line -- should be resolved by the New York state courts. See Central Kansas Ry., p. 5.¹⁵ The Board could then take action in light of any state court decision.

c) CPO's Cases and Evidence Do Not Establish That Demolishing the High Line Structure Disqualifies It From the Railbanking Program.

CPO's only legal support for its argument that physical severance of a rail line from the national rail system will remove the line from the Board's jurisdiction and cause it to be ineligible for railbanking is the Leelanau II decision. But physical severance was not the only factor on which the Board relied in the Leelanau proceeding. The Board also cited the facts that the carrier had not used its line for over 18 years, that it had not properly objected to abandonment of an adjacent line that had the effect of severing its line from the interstate rail network, and that there was no other evidence of the carrier's intent to continue to provide rail service on the line. See Leelanau I, pp. 5-6. Moreover, the Board later noted that "the record contains no indication that the property is being, or can in the future be, used to transport goods

¹⁵ In Central Kansas Railway, the property owners sought revocation of a trail condition based on alleged violations of state easement and nuisance law. Recognizing that many of the issues presented were not ripe for decision, the Board dismissed the action without prejudice, stating that "there is nothing irreversible about rail banking/interim trail use. Thus, we remain available to take appropriate action should an action be brought in state court and the state court determines that CKR had transferred property in such a way as might preclude the restoration of service on all or part of the line." Id., p. 7.

moving in interstate intermodal service (i.e. using motor vehicle transportation to reach an interstate rail line).” Leelanau II, 2 S.T.B. at 693.

Here, even if there were a decision to demolish the northern part of the High Line, this would not establish any lack of intent on the part of Conrail or a successor to resume rail service over the line. In earlier stages of CPO’s adverse abandonment proceeding, Conrail opposed abandonment and argued that rail service could be resumed. Assuming Conrail or a successor entered into a trails agreement covering the High Line right-of-way, this in itself would constitute evidence that did not intend to abandon any part of the line. See, e.g., Birt v. STB, 90 F.3d 580, 586-87 (D.C. Cir. 1996); Central Kansas Ry., p. 8.

CPO’s evidence also does not establish the demolishing the High Line would necessarily disqualify it from the railbanking program. CPO uses a verified statement from Terry Gottesman, the Chairman of one of its members, to assert that there is no feasible way to relocate the High Line facility north of 30th Street. CPO Mem. at 8-12. The statement does not, however, establish that the southern portion of the High Line would necessarily be severed from the national rail system if the northern portion were demolished to make way for a stadium, nor does it establish that rail service could not be resumed in the future. Instead, the statement relies in part on a lengthy quote from a 1989 statement of a Metropolitan Transit Authority official in support of CPO’s adverse abandonment petition. See Verified Statement of Terry Gottesman (“Gottesman VS”) ¶ 7. This 13-year old statement describing MTA’s development plan is out of date and does not even refer to a stadium, much less resolve definitively questions about the potential for maintaining a connection between the High Line and the national rail system.

The statement also asserts that the City's Olympics bid presupposes that the High Line is demolished. See *Gottesman V.S.* ¶ 8. But the City, not CPO, has the final word on its own plans. As noted above, there are various alternatives that could preserve the connection of the High Line to the national rail system, and the City is in the process of considering some of them. As the City stated in its Extension Reply, it cannot be assumed that there is no solution that would accommodate both redevelopment interests and preservation of the High Line.

Based on the current record, the Board cannot conclude that the City's development plans are necessarily inconsistent with future rail use of the High Line. If the Board concludes that it should issue a declaratory order, it should state that, based on the information currently available, the City's plans to build a stadium are not incompatible with the requirements for railbanking.

CONCLUSION

The Board should deny CPO's request for an order that the City's proposed Olympic stadium would be inconsistent with railbanking of the High Line. There is no actual controversy at this time, and the request is premature.

If the Board nevertheless determines that a declaratory order should be issued at this time, it should state that, based on information currently available, the City's proposal to build an Olympic stadium on the 30th Street yards is not incompatible with the requirements for railbanking.

Respectfully submitted,



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New York, NY 10112-1468

October 23, 2002

CERTIFICATE OF SERVICE

I, Kimberly K. Egan, certify that on this 6th day of September, 2002, I caused a copy of the Friends of the High Line, Inc.'s Opposition to Chelsea Property Owners' Motion for an Order Authorizing Abandonment of the High Line to be served by first class mail on the parties listed below:

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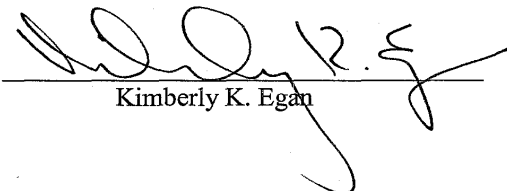
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CSX Transportation, Inc.*

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On behalf of the MTA

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Counsel for Chelsea Property Owners



Kimberly K. Egan

EXHIBIT A

RECEIVED

SEP 13 2002

MANHATTAN BOROUGH PRESIDENT
NO 4

*To Chairs
as noted
orig - dmgr*

2002 STRATEGIC POLICY STATEMENT

MANHATTAN: POST 9/11



C. VIRGINIA FIELDS
MANHATTAN BOROUGH PRESIDENT

SEPTEMBER 2002

neglected and underused area there is now a world renowned and vibrant community space which serves the needs of children, residents, workers, tourists and commerce alike. It serves as a venue for concerts, fashion shows and special events and has become an important model of revitalization for the entire city. With the assistance of the Borough President, along with local and state elected officials, the Village Alliance BID was able to match private contributions to result in a more pedestrian-friendly east-west corridor on 8th Street. By widening sidewalks to better facilitate movement and restricting the width of the street without compromising traffic flow, the district has increased its competitive edge and marketability.

There are many other examples of success stories in the borough made possible through the assistance of the Borough President. Street lighting programs such as those in the Diamond and Lower East Side Business Improvement Districts and tree guard programs in both the Columbus/Amsterdam and Madison Avenue districts have greatly improved safety and aesthetics.

However, there continue to be limits to what the thriving Midtown and Downtown areas can do to create jobs for Manhattan residents. Businesses there face high rents and tax burdens and have little room to expand. Additional opportunities go untapped in Northern Manhattan and elsewhere. Large employers in these areas require a highly skilled workforce and tend to hire non-city residents.

Northern Manhattan and parts of the Lower East Side are in greatest need of public and private investment, and still offer businesses the greatest capacity for growth and affordable space. Both areas are home to lower-cost labor forces and offer public sector business incentives, and some major development is underway. For example, Harlem USA has opened on 125th Street, bringing permanent jobs and retail opportunities to the community. Another development is planned at the site of the abandoned Washburn Wire Factory on the East River at 116th Street. A number of large-scale retail chains are slated to move into the site, including CostCo and Home Depot.

The Borough President will continue to identify and target areas for development such as:

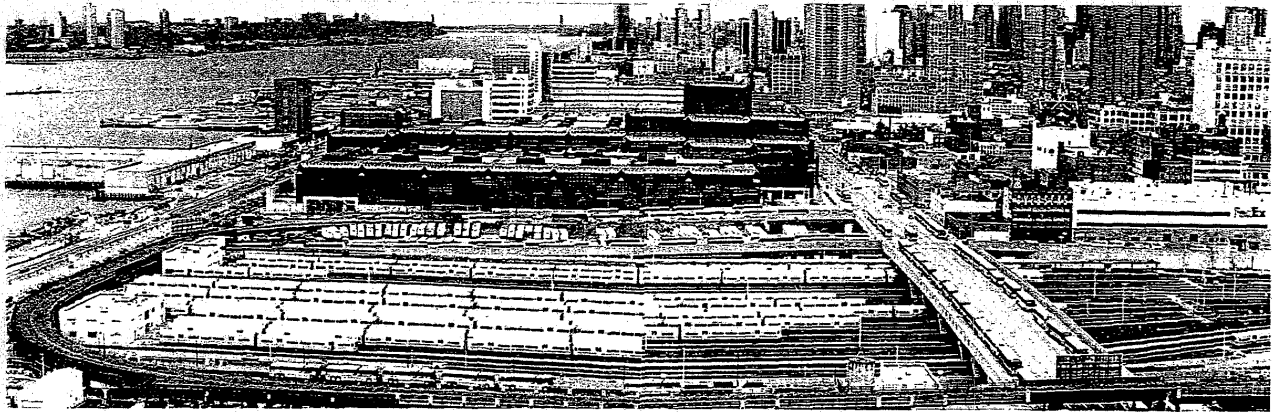
- **West Side Rail Yards.** The West Side Rail Yards area has long been the focal point for proposals for construction, from a sports stadium to the expansion of the Jacob Javits Center to building new commercial space. The Metropolitan Transportation Authority owns the yards, so that the government controls their fate. Because of the competing plans, each prepared without community consultation, last year the Borough President commissioned a study of the 30-acre rail yard area, along with several nearby city blocks. The end goal was to create a viable plan that would encompass opportunities for development, while balancing the needs and wishes of the surrounding community, and the city as a whole.

The Borough President supported a comprehensive plan for the area, drawn up with community participation, and hired consultants familiar with the community to develop such a plan. Prepared with extensive consultation with the community, including two public forums, the final plan recognizes the great need for more housing in Manhattan and calls for the creation of up to 6,000 units of housing, including 20 percent affordable units, on decks built over the Rail Yards. It also would create commercial, office and retail uses, with green open space relating to the Hudson River Park. The High Line would be preserved as an elevated pedestrian and recreational trail. The plan also calls for expanding the Javits Center to the north; there is no stadium included. Transportation options include extending the Number Seven line, creating light rail system, and the development of parking facilities. Above all, the sale of development rights would generate the funding for the project, so that, except for public transit improvements, the work in the plan can be done without the expenditure of public dollars.

Since the release of the plan, the Borough President has met with the Mayor, the Governor and the community to generate support for the plan.

To assure realization of this comprehensive plan, the Borough President will:

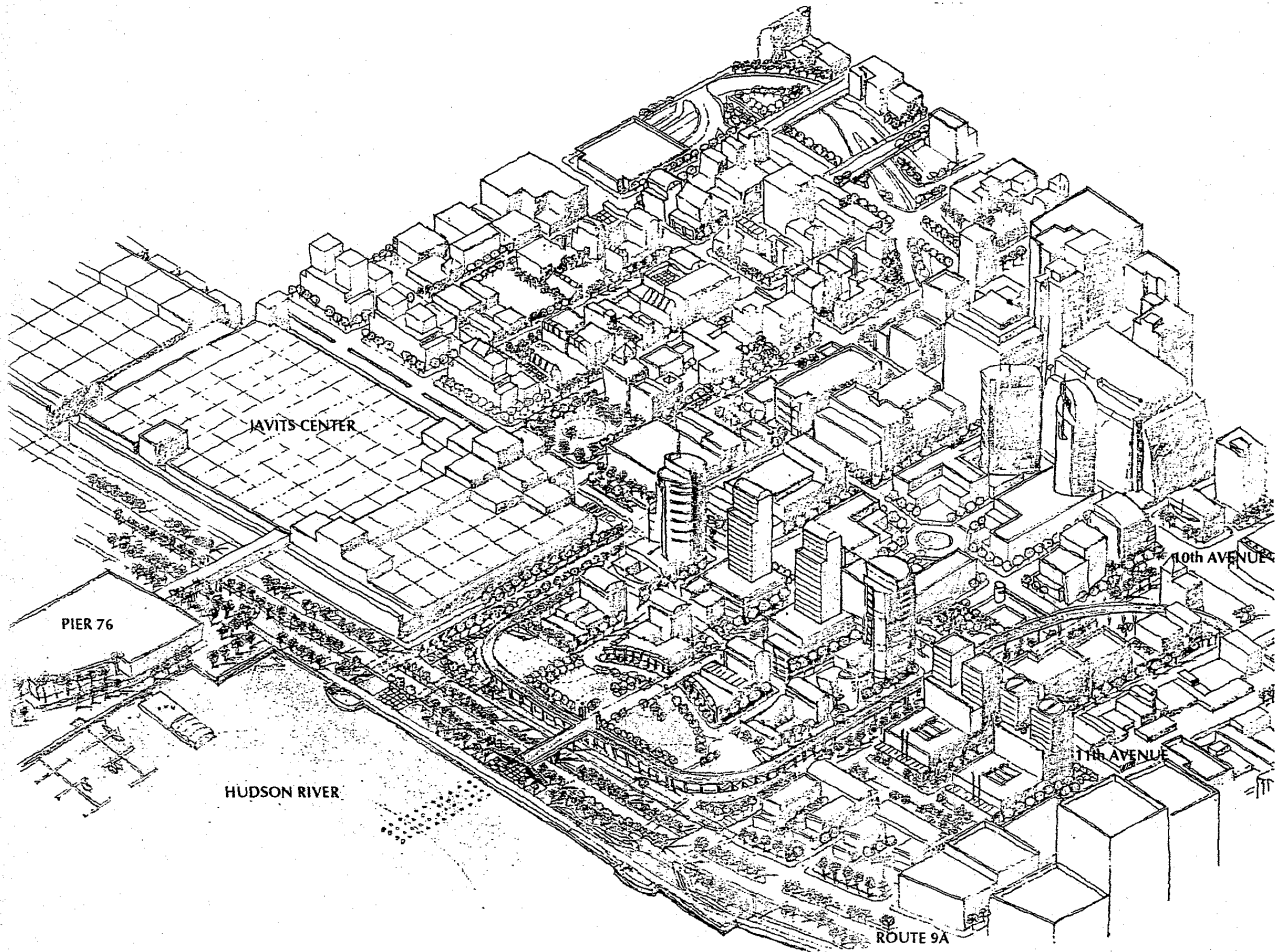
- Continue outreach to garner support for the plan.
- Work with the administration to reach agreement on the over arching plan for the community.
- **Lower Manhattan.** As a member of the General Advisory Council of the Lower Manhattan Development Corporation, the Borough President will continue to work for development of a 24/7 residential/business community that will include commercial and cultural uses as well as open space. The starting point, and the most important component of the rebuilding of the World Trade Center area, must be the memorial. To honor all whose lives were lost, a sensitive, thoughtful and inspirational design must be the ultimate goal -- we can do no less for the survivors, our city and all who love freedom.
- **Frederick Douglass Boulevard.** In 1999, the Borough President's office organized a public/private partnership to develop a planning strategy for this area. The partnership utilized its joint resources to identify 13 acres of vacant land to target for residential and commercial redevelopment along this long-neglected, but vital corridor in Harlem. The planning strategy involved the creation of two baseline plans: a major land use study and analysis, and an action plan that set forth the steps leading to development. The Borough President's efforts, including the leveraging of a \$3 million capital fund allocation, will result in the development of more than 1,300 units of affordable



A VISION FOR THE WEST SIDE RAIL YARDS

Office of the Manhattan Borough President, C. Virginia Fields

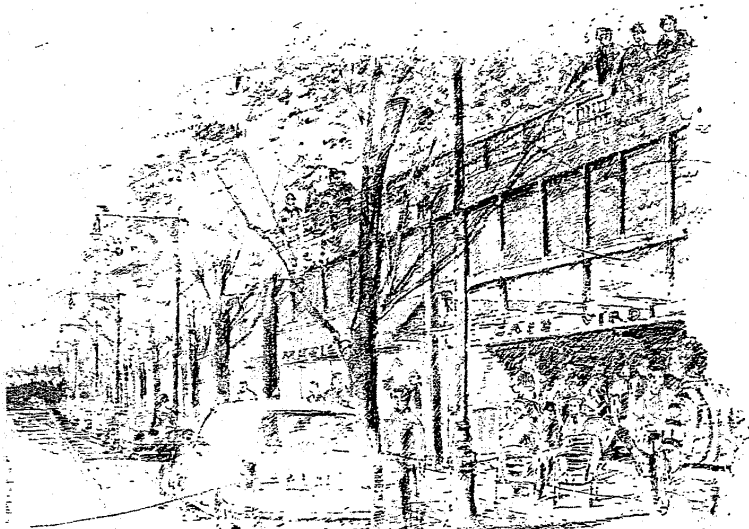
November 2001



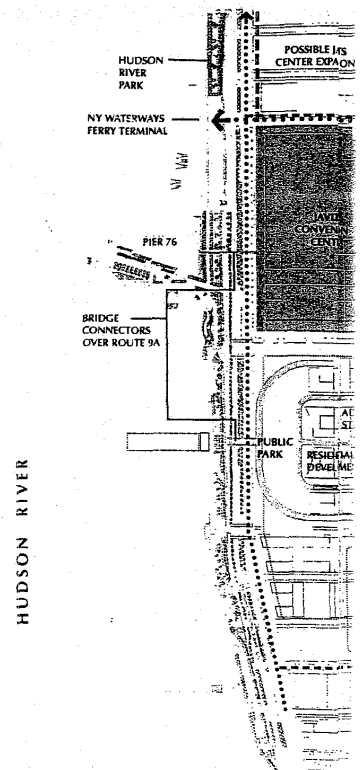
The Vision Plan was prepared on behalf of the Office of the Manhattan Borough President (OMB), C. Virginia Fields, for the West Side Rail Yards in Midtown Manhattan. The study area incorporates the 30-acre rail yards site and several surrounding city blocks. It is defined by 27th Street and 10th Avenue to the south, 39th Street to the north, Route 9A/12th Avenue to the west and 34th Street and 9th Avenue to the east.

Land uses in this area are currently dominated by transportation infrastructure that weaves through the neighborhood. The transportation connections to the Port Authority and Pennsylvania Station, including the Lincoln Tunnel entrances and exits, and the Long Island Railroad Yards, account for 30% of the land within the study area. Other major land uses include the Jacob Javits Convention Center and light industrial and auto-related uses. Residential, commercial, institutional, and open space uses constitute only a small percentage of the overall land area in the neighborhood.

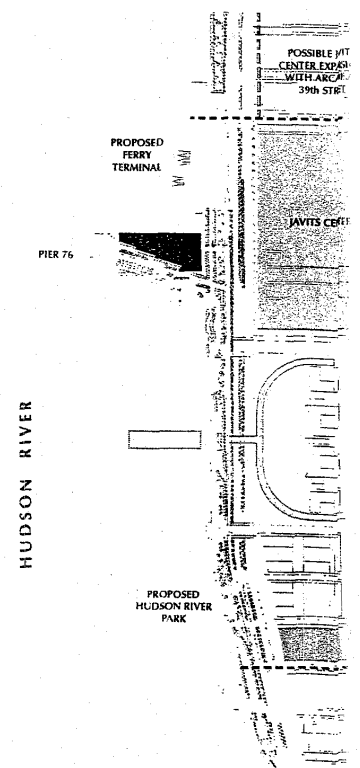
There are approximately 5,000 people living in the West Side Rail Yards area - most in mid-rise walk-ups and converted light industrial buildings, similar to those found in Clinton and Chelsea. The limited amount of high-rise residential uses has been confined to the 34th and 42nd Street corridors. Small-scale commercial developments are located primarily at the eastern border of the study area, concentrated along 9th Avenue and along the 34th Street corridor. In summary, the West Side Rail Yards area provides a large-scale development opportunity - one that can support and strengthen an existing neighborhood with a mix of compatible land uses and public amenities and, at the same time, retain many of the historic elements of the area.



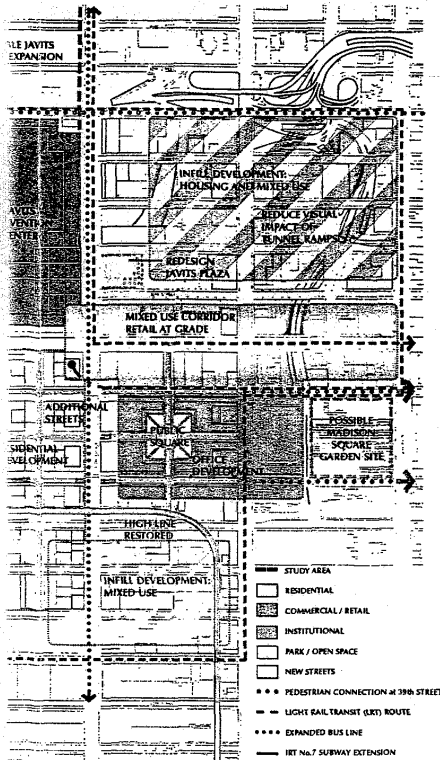
Sketch showing a Renovated High Line with Arcade Below, looking North along 12th Avenue



Planning Framework

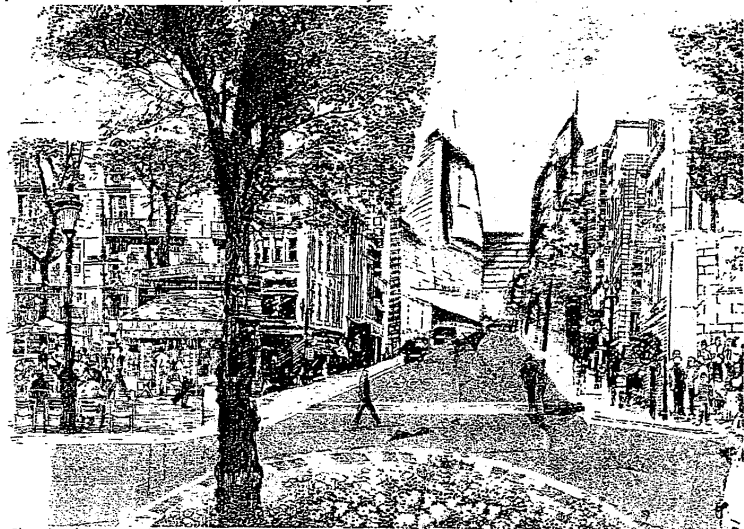
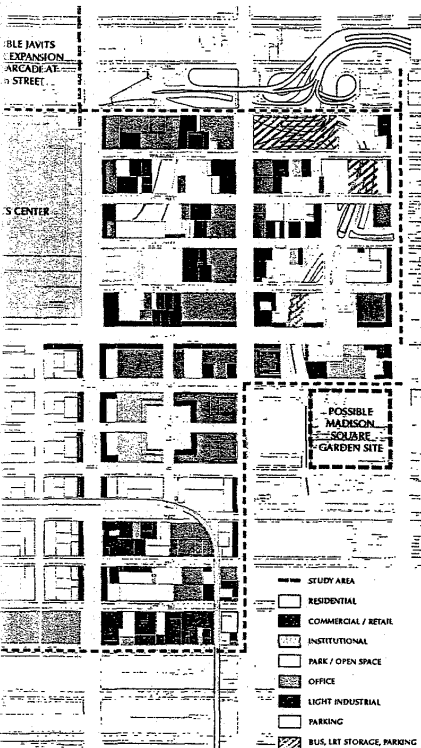


Proposed Major Land Uses

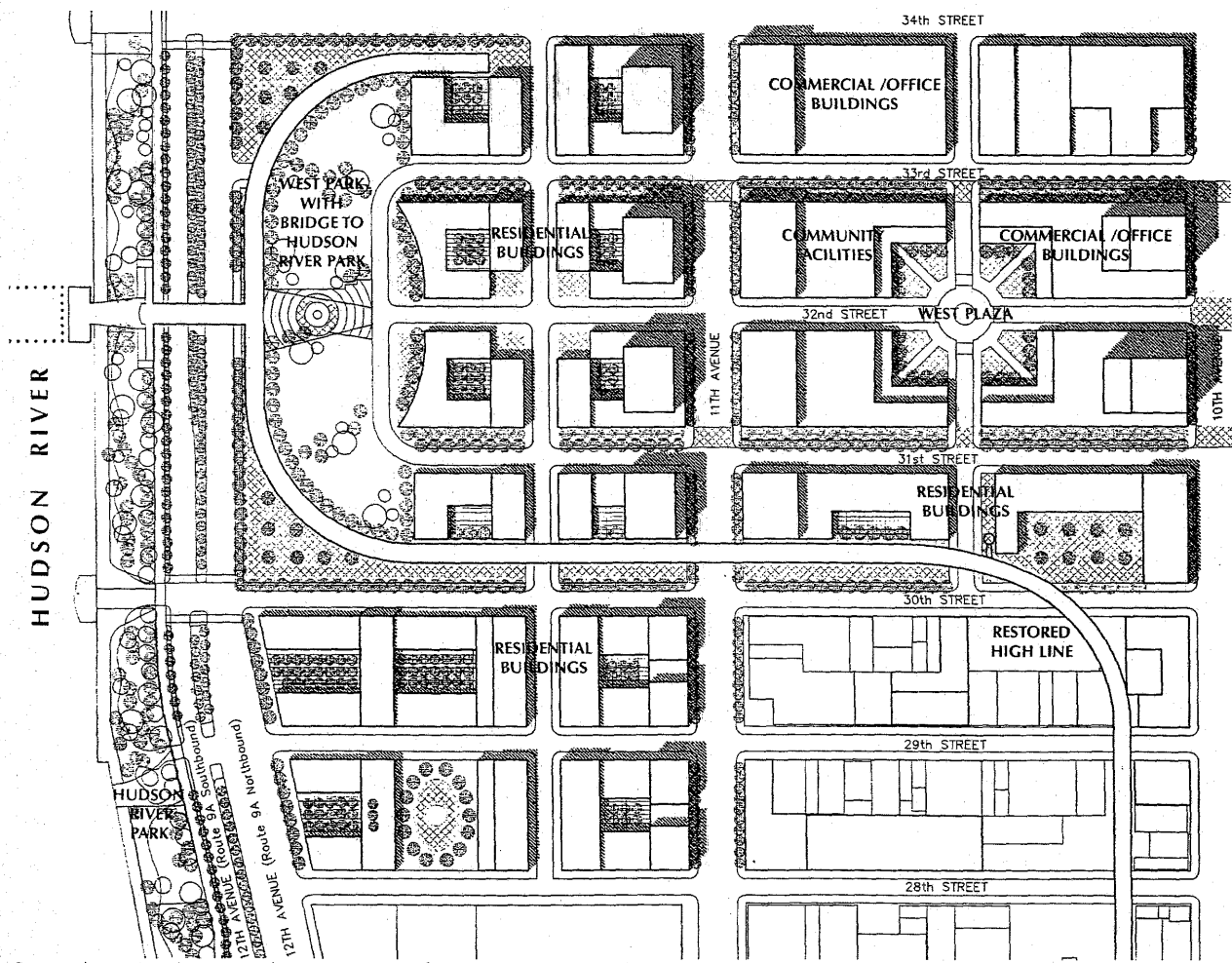


The Vision Plan advocates a mid to high-rise residential neighborhood on the Rail Yards, with community facilities and office space along 10th Avenue. The street grid extends across the rail yards to reduce the block size and to encourage pedestrian traffic. The plan proposes a new public park fronting the Hudson River Park, with a connection across 12th Avenue by a pedestrian bridge linked to a renovated High Line. The main features of the Vision Plan are:

- New housing built on decks over the rail yards, designed to maximize views of the river and the future Hudson River Park. Of the 5000 new units created, at least 20% are set aside for affordable housing.
- Approximately 3 million square feet of new office, commercial and retail uses, located towards 10th Avenue, in close proximity to Penn Station and existing transit facilities.
- Expansion of the Javits Center to the north.
- A major public park overlooking Route 9A and the Hudson River Park, with Javits Plaza redesigned as a green park.
- The High Line preserved as an elevated pedestrian and recreational trail.
- Infill housing and mixed use development concentrated in the 34th Street corridor and the northern and southern portions of the study area, which border on the Clinton and Chelsea neighborhoods. Much of the existing building in these areas is preserved, and infill development is designed as mixed use and at an appropriate scale.
- Improved public transportation services including new bus service for 11th and 12th Avenues, a light rail transit loop, and the No. 7 subway line extension that is under consideration by the MTA.
- The lease of the development rights over the Rail Yards will generate enough revenue to pay for the cost of the decking and amenities in the study area, with the exception of major transit improvements.



Sketch of Proposed West Plaza, looking East towards the West Yards Building



Proposed New Development and New Open Space for the West Side Rail Yards site

EXHIBIT B

Councilmember Christine Quinn Reports to Community Board 4 July 24, 2002

Dear Friends:

The following is a brief summary of my office's activities since the Community Board last met:

Chelsea Recreational Center

I am excited to inform you that I **successfully secured \$2 million** in capital funds for the Chelsea Recreation Center. Many of us know all too well the drawn out saga of completing this much-needed project. Now, after many years of false promises, the Chelsea Recreation Center is closer than it ever has been to completion.

Hells Kitchen Park

As many of you know, one of our community's most neglected parks has been Hells Kitchen Park, located on 10th Avenue between 47th and 48th Streets. I am particularly excited to inform you that I **successfully secured \$1.2 million** in next years capital budget to rehabilitate this park. Securing this money was quite a challenge given the City's budget problems and to be honest, I was not sure if I was going to be successful. I look forward to working with the Community Board and meeting with the Parks Department to determine the timeline for this project and to ensure that the local residents will be involved in redesigning the park.

Pier 64 Shed

I was disappointed to learn that the Hudson River Park's recently proposed Segment 5 design includes maintaining the frame of the Pier 64 shed. For several years the local community, joined by area elected officials, has steadfastly insisted that this shed be torn down. In fact, over 87% of respondents to a recent survey said that they would like to see the shed demolished. This is a position shared by both Community Board 4 and the Hudson River Park Trust Advisory Council. Given the near universal support for demolishing the Pier 64 shed, I am confused as to

why so much time, effort, and engineering ingenuity has been devoted by the architects to preserving a shed that no one wants.

West Side Stadium and Development

Over the next several months a major focus of my efforts is going to be the proposed redevelopment of the Far West Side. This area is mainly from 28th Street to 42nd Street, west of 8th Avenue and includes the former MTA Rail Yards and Jacob Javits Convention Center. There are a variety of different proposals for this area of the city including the Department of City Planning, NYC 2012 Olympic Bid (NYC 2012), and the Hells Kitchen Neighborhood Association. A major component of both the Department of City Planning and NYC 2012 proposals is constructing a large stadium that could be used for the Olympic Games and the New York Jets football team. I strongly oppose placing a stadium on the West Side of Manhattan and was proud to join the Clinton Special District Coalition, other community organizations and many area residents at a June 29th press conference voicing our opposition to the stadium proposal. We were joined by State Senator's Thomas Duane and Liz Krueger, Assemblymember Richard Gottfried, and my colleague on the City Council Gail Brewer. The press conference was covered by the New York Daily News, WNBV TC Channel 4, WINS 1010 AM, WCBS AM radio and even the Houston Chronicle. I look forward to continuing to work with the Clinton Special District Coalition, Community Board 4, the Hells Kitchen Neighborhood Association and other community groups to ensure that a West Side Stadium is not built and that the Far West Side is developed according to community needs, and not the needs of the wealthy interests of this city.

Prostitution

Prostitution is always a concern in our community, particularly for in Hell's Kitchen/Clinton neighborhood. As you know, Hell's Kitchen/Clinton's proximity to the Lincoln Tunnel makes it a haven for "johns," particularly those coming from New Jersey. I have recently been made aware of a program the Brooklyn District Attorney's office is in the process of implementing to deal with prostitution. This initiative is designed to focus on the "johns" rather than the prostitutes. It is modeled after a program in California called "School for Johns." After "johns" are arrested, they are then given the choice of appearing before a judge or going to a session held by the District Attorney's office. If the "john" chooses to go before the judge, then the arrest will appear on their record, as is the current case. If the "john" chooses to "enroll" in the "School for Johns," then they will attend sessions on a variety of subjects including the health risks and legal risks involved in prostitution. An important aspect of this program is the session that involves former prostitutes speaking directly with the "johns" and educating them on what prostitution is like for the prostitutes and the dangers that exist for the men and women who sell their bodies. The "school for johns" program is financed by a fee that is paid by the enrolling offender. Part of this fee helps pay for other City services that focus on the larger societal problem of prostitution. The "School for Johns" program has been overwhelming successful in California, with less than 5% of its participants becoming repeat offenders. I have urged the Manhattan District Attorney's office to implement a "School for Johns" program and I look forward to working with them on this innovative project.

Sidewalk Ads

Since May there have been several instances of corporate vandalism of public space within Community Board 4. Snapple, The History Channel, and the Game Show Network have all launched advertising campaigns that involve placing large stickers on the sidewalk advertising their products. I am outraged by this illegal activity and my office has written letters to the offending companies and their advertising agencies urging them to immediately suspend their campaigns. I have also reached out to Department of Transportation urging them to issue the strongest possible fines. Attached is a copy of the letter that I sent to one of the advertising agencies.

New York City's Budget:

After many weeks of often tumultuous negotiations, the City Council passed the City budget on June 21st. While confronted with some very difficult choices as the City faced close to a \$5 billion deficit, my colleagues and I successfully advocated to restore many of the reductions proposed by Mayor Bloomberg to vital City services, cultural institutions and social services. Many of the Mayor's proposed reductions would have had grave impacts on my district, and I am pleased to report on just some of the vital services that will continue and even expand in my district and throughout the City:

- Mayor Bloomberg proposed a 22.5% or \$25.4 million cut to the **New York Public Library** system, which would have resulted, among other things, in cutting most branch and research libraries' days of operation from six days to four days. The Council was able to restore funding to the library system, ensuring that six-day service will continue.

In my district, I was able to secure \$937,000 in capital funds for the continued rehabilitation of the Columbus Branch Library, and an additional \$250,00 to replace their roof, and \$1.2 million for the creation of the Center for Humanities Map Division at the Main Library.

- As Chair of the Health Committee, I was able to successfully advocate for the continuation of many critical health care initiatives and services throughout New York City and in my district. Among the initiatives and organizations that received funding are:
 - **Infant Mortality Initiative, \$2.5 million**
 - **HIV/AIDS Prevention and Education, \$2.5 million**
 - **Expansion of Administrative Fee Waivers for Prescription Medication, \$3 million**
 - **Family Health Clinic, \$5.5 million**
 - **Cancer Programs, \$906,000**
 - **Community Health Care Network, \$160,000**
 - **Callen Lorde, \$403,00 in expense funds**
 - **Momentum AIDS Project, \$155,000 in expense funds**

- **The American Cancer Society, \$2,000 in expense funds**
 - **The American-Italian Cancer Foundation, \$100,000 in expense; \$250,000 in capital for mobile mammography van**
 - **NARAL/NY, \$150,000 in expense; \$2.5 million in capital for use at Kings County Hospital to upgrade facility to allow doctors to be trained in full range of reproductive health care procedures**
- Mayor Bloomberg proposed massive cuts to the **Board of Education**, which the City Council largely restored. I was also able to help secure funds for **Parent Teacher Associations at P.S 11 and P.S. 41**, and funds for the **Lab School, P.S. 33, and Liberty High School**, and for important extra-curricular programs, such as **Making Opportunities for Upgrading Schools and Education (MOUSE)**, a program that trains students in computer technology.

In addition, I successfully secured capital funding for several schools in the district to do much needed structural repairs and upgrading. These projects include:

- **O'Henry Learning Center-- To refurbish cafeteria and build three new classrooms, \$300,000**
 - **P.S. 33—To refurbish hallway and install new classroom lighting, \$150,000**
 - **P.S. 41—To purchase new computers, \$100,000**
 - **P.S. 11—To install new phone system, \$35,000**
- I was able to help secure funding for numerous organizations that provide services to Lesbian, Gay, Bisexual, and Transgender (LGBT) community, most of which are based in my district, such as:
 - **The HIV Law Project, 4,000**
 - **The New York AIDS Housing Network, \$5,000**
 - **The New York City Gay and Lesbian Anti Violence Project, 93,500**
 - **The Senior Action in a Gay Environment (SAGE), \$110,000**
 - **The Lesbian, Gay, Bisexual, and Transgender Community Center, \$200,000 in expense funds; \$500,00 in capital funds**
 - **God's Love We Deliver, \$504,000 in capital funds**
 - **Gay Men's Health Crisis, \$660,000 in capital and expense funds**
 - I was able to help secure funding for several social service agencies that serve the homeless population, the chemically dependent, and victims of domestic violence, such as the **Hudson Square Partnership for \$5,000, Lower Eastside Harm Reduction for \$4,000, the Urban Justice Center for a total of \$109,000, and Women in Need for \$140,000.**
 - Mayor Bloomberg proposed massive cuts to the Department of the Aging which would have resulted in the closing of numerous senior centers throughout the City, including two highly utilized and much needed senior centers in my district,

Greenwich House and Caring Community. Cuts to the Department would have also resulted in the elimination of the **Weekend Meals Program** for seniors that provides over 13,000 take-home meals to seniors each weekend. Through negotiations with the Department of the Aging, **I was able to prevent the Caring Community from being shut down** outside of the budget process. Through the allocation of \$924,000 in the expense budget, the Council was able to keep several senior centers open, including Greenwich House. With an allocation of \$1,770,000, the Council was able to partially restore the **Weekend Meals Program**, which will allow service levels to continue without any reductions in the number of meals provided to seniors.

In addition, I was able to secure **\$21,000 in expense funds for Caring Community, a total of \$13,500 for JPAC, and \$4,000 for Village Chelsea Visiting Neighbors.**

- The City Council was able to restore funding cut by Mayor Bloomberg to the Department of Parks and Recreation. Mayor Bloomberg's proposed cuts would have, among other things, drastically cut the number of playground associates, who provide supervised recreation in local parks and playgrounds, and maintenance workers, who are responsible for the general upkeep and repair of all park properties and facilities. In addition, I was able to secure capital funding for:
 - **Washington Square Park, \$1.2 million**
 - **Union Square Park, \$900,000**
- I was able to successfully provide funding to many cultural organizations in my district, allowing for the continuation and expansion of numerous exciting cultural and educational programs serving all ages and interests throughout my district. Among the organizations that I was able to help secure funding for are:
 - **The 52nd Street Project, \$7,500**
 - **The Abingdon Theatre Company, \$5,000**
 - **American Craft Museum, \$70,000**
 - **Collision Theory, \$4,000**
 - **Inside Broadway, \$129,000**
 - **Joyce Theater, \$35,000 in expense, \$56,000 in capital**
 - **Manhattan Theatre Club, \$20,500**
 - **Primary Stages, \$2,500**
 - **Roundabout Theater, \$56,000 in expense; \$2.25 million in capital**
 - **Atlantic Theater Company, \$125,000 in capital**
 - **Second Stage Theater, \$37,000 in capital**
 - **Playwrights Horizon, \$1,250,000 in capital**
 - **Library for the Performing Arts, \$1.75 million in capital**
 - **ART/NY, \$2 million**
 - **New 42nd Street, \$2 million**

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- Mayor Bloomberg proposed cuts to vital anti-eviction services and legal services organizations, most of which the Council restored. Specifically, the Council fully **restored funding to Community Consultant groups, continued contracts with the Community Training and Resource Center and the City-Wide Task Force on Housing, and restored funding to the Neighborhood Preservation Consultants.**

The Flower Market:

I recently held a meeting with the Director and members of the Flower Market Association (FMA). For several years, the Flower Market has been feeling the pressure of development in the area. The original size of the Flower Market has diminished in size over the years. In order to thwart the affects of future development, the FMA is in search of relocation sites in Manhattan that would allow them to still maintain the spirit of the Flower Market as well as allow for future growth. The discussion revolved around potential sites for the Flower Market and plans for assisting the Association with their search and future relocation. My hope is to keep the Flower Market in my district, but ultimately I hope to help FMA find a good home. It is important for the economy of New York City that we keep the Flower Market in a location that would sustain the FMA as well as boost City revenue. If you have any ideas of potential sites, I welcome any suggestions that you may have.

Assisting Constituents with Noise Complaints:

My office recently assisted several constituents with noise complaints stemming from noisy commercial air conditioners to garbage pick-up at inappropriate hours to improperly placed steel plates. Each of the situations was solved with the diligent assistance of the Department of Environmental Protection (DEP). I want to thank DEP for their help in improving the quality of life for the constituents of my district.

Rent Guidelines Board Update:

On Wednesday June 26th I testified in front of the Rent Guidelines Board (RGB). This year, I along with many other tenants and housing advocates, called for a **rent roll back**. We all know that this had to be done because of strong and undisputable evidence that landlord costs were going down. Once again, I informed the board that they continued to violate their mandate of protecting tenants from unfair and unreasonable rent hikes and urged them to roll back the rents for all rent stabilized apartments and not to raise the rents of tenants living in SROs. We were successful in making sure that SROs didn't receive rent increases, however we faced strong opposition from the RGB when we called for rent rollback. The RGB ended up voting for 2 and 4% increases for 1 and 2-year leases despite strong testimony from all of us. I will continue working with tenants and the housing advocates to ensure that we level the playing field for tenants throughout the district and the city.

Trying to Keep Cool in the Summer Heat:

I hope that everyone is keeping cool this summer. If you are planning to buy or have already bought a new air conditioner, you may qualify for a \$75 rebate through the New York State Energy Research and Development Authority (NYSERDA) Keep Cool program. To qualify, the new air conditioner should be an EnergyStar® model. If you need more information, please call (877) NY-SMART or visit www.GetEnergySmart.org

Repeat of Important Information for Summer:

For many of the City's children, the only meals that they have during the day are the food that they eat at school. These children would go hungry throughout the summer when school is not in session if it were not for the Summer Food Service Program (SFSP), which is a federally funded program. Free meals are made available to New York City kids who are 18 years of age and younger. ALL CHILDREN ARE ELIGIBLE. There are no forms to fill out. All a child has to do is go to any of the neighborhood locations that are offering this service, and they will receive two meals on weekdays in July and August. Breakfast is served between 8am and 9:15am, and lunch is served between 11am and 1:15pm. To get information on locations that provide this service, please call 800-522-5006 or 212-894-8079 or 718-894-8079. If you know of anyone that may benefit from this service, please pass the information along.

EXHIBIT C



DEPARTMENT OF CITY PLANNING
CITY OF NEW YORK
OFFICE OF THE DIRECTOR

October 11, 2002

Robert Hammond
Friends of the Highline
P.O. Box 1469, Old Chelsea Station
New York, NY 10113

Dear Mr. Hammond:

The New York City Department of City Planning and the Economic Development Corporation (the Agencies) are jointly undertaking a comprehensive planning process for the Hudson Yards area of Midtown West. This letter is to share with you the purpose, scope and schedule of this process and to invite your participation in discussion forums to be held on November 12, 13, and 14. Your organization is invited to send a representative to these forums which will provide you with an opportunity to comment on the development options as they are being formulated. There will be many additional opportunities for public input over the subsequent two years as this plan is shaped into a zoning proposal, an environmental review is undertaken, and the zoning and related actions are formally reviewed under the City's Land Use Review Process (ULURP).

The City faces a unique opportunity in planning for the Hudson Yards area. It is centered among some of New York's most compelling neighborhoods: the Midtown Central Business District; the Theater District; Clinton; Chelsea, and the superb linear environment of the Hudson River Park. In addition, it is home to vital transportation links and municipal services upon which millions of people and the well being of the city, rely. These include the Port Authority Bus Terminal, Pennsylvania Station, the Hudson River tunnel crossings, and public and private distribution and vehicle storage facilities necessary to the operations of the city. It is also home to the Javits Convention Center that draws a large number of visitors each year to its conventions and trade shows. It will fall to the City, with the public's cooperation, to balance all of these interests, meld them into a rational plan, and create a new signature neighborhood in which generations to come will want to live, work, and invest.

It is essential that the City ensure the future growth of its Central Business Districts, the nation's largest concentration of finance and advanced business services employment. At the same time, it needs to ensure that a growing stock of housing is available in and around its Central Business Districts, to give these areas 24-hour vitality and to provide residences for New Yorkers who

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wish to be close to where they work. The Hudson Yards area provides one of the greatest opportunities to achieve these goals. With proper planning and investment, including the extension of the Number 7 subway, the area would become a transit-oriented, pedestrian-friendly urban center accessible to, and integrated with, both Midtown and the Hudson River waterfront. It would have not only new office, hotel, entertainment, convention facilities, and retail uses, but new housing, public parks, and neighborhood open spaces. The purpose of the comprehensive planning process is to create a detailed plan for the orderly development of Hudson Yards in a manner that will create a special place, result in a unique, vibrant 24-hour mixed-use community, and promote the long-term economic, architectural and cultural interests of the citizens of New York City. The area covered by this planning effort is generally located west of Eighth Avenue between West 42nd and West 24th streets.

The extension of the Number 7 subway is considered the keystone for any future development in the area. The City and the MTA have committed jointly to undertake an environmental impact study and preliminary engineering of the subway extension. This study will also analyze the impacts of zoning changes and other public actions that may be proposed. The MTA has retained a consultant team this fall to carry out this joint subway/zoning work with a public scoping session projected in the spring of 2003.

The construction of a multi-use facility within the Hudson Yards study area is a possibility. This facility, which would be placed over the westernmost rail yard, would provide space for sports and entertainment, and provide expanded convention facilities. (The Jets have also expressed interest in utilizing this facility.) The Agencies wish to encourage a thoughtful and frank public discussion of the implications of this, for the new district, the adjacent neighborhoods, the city and the region. It is our goal, however, to plan and to develop the Hudson Yards area into a model of livable, inviting and sustainable urbanism, whether or not the multi-use facility becomes a reality.

To assist in formulating a zoning and urban design plan, the Agencies have engaged the firm of Cooper Robertson & Partners (CR&P) to lead the Comprehensive Planning team. Their work has been divided into four Phases:

In the initial **Analysis Phase** (July and August/September, 2002), the consultant team reviewed background material, and analyzed existing land use, neighborhood characteristics, including built form and density, sustainable design elements, and transportation infrastructure. This effort culminated in a set of draft Design and Development Principles that set out initial concepts and goals for individual sub areas as well as for the area as a whole.

In the **Options Phase** (September - November 2002), the consultant will identify options for elements such as place-making, open space and streetscape, bulk and density, pedestrian circulation and parking, built form, building placement and orientation, waterfront connections, and sustainable design. These options which will be presented in two settings, one with a multi-use facility and one without, will be analyzed and presented through graphic models. The options will be integrated with other contemplated public actions such as the extension of the

Number 7 subway and the possible northern expansion of the Convention Center. During this phase the aforementioned three public discussion forums will take place.

In the **Plan Phase** (December 2002 - January 2003), the preliminary preferred approach to the comprehensive plan for the Hudson Yards area would be defined and detailed. A public meeting would be held in December to present that approach and solicit further comments.

During the **Codification and Review Phase** (February - June 2003), the draft plan would be further refined, and draft zoning text and mapping proposals would be prepared. A report on the planning work would be published.

As noted above, the Agencies will host three discussion forums during the Options Phase to which you are invited to send a representative. Each of these forums will have the same content and format. These forums will provide an opportunity for the Agencies to present work to date and to hear ideas and concerns. We hope to attract the broadest possible range of opinion and expertise. The Agencies will then hold a public meeting to solicit further comments in December midway through the Plan Phase. The dates of subsequent public meetings will be announced at the November forums.

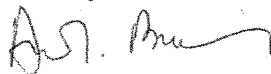
The discussion forums will be held on three separate days, November 12 at 2 PM, November 13 at 6 PM, and November 14 at 2 PM in Spector Hall, Department of City Planning, 22 Reade Street, New York, NY 10007. Please register by calling Aron Kirsch at 720-3676, or email at Akirsch@planning.nyc.gov indicating the name of your representative and the day they prefer to attend. Please note that seating is limited.

The discussion forums and public meetings described above form only the first of a series of opportunities for public participation and comment. The Department currently anticipates that a public scoping session for the Environmental Impact Statement (EIS) will be held for the joint subway/zoning proposal in the Spring of 2003, and that it will certify zoning actions for ULURP a year later, allowing for additional public comment and input. We invite your on-going participation over the next two years.

This Comprehensive Planning process and discussion forums for the Hudson Yards area has been designed to encourage open consideration of the entire agenda of important planning issues. It is also designed to invigorate the planning and zoning process.

We look forward to working with you on this exciting opportunity.

Sincerely,



Amanda M. Burden