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237319

23 December 2014

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

ENTERED
Office of Proceedings
December 23, 2014
Part of
Public Record

Re: Conrail - Abandonment Exemption - in Hudson
County, N.J., AB 167 (Sub-no. 1189X)
and related proceedings AB 55-686X
and AB 290-306X

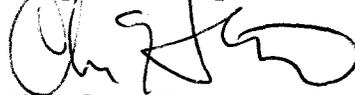
Expeditious Treatment Requested

Dear Ms. Brown:

Enclosed please find for filing a motion to compel Conrail immediately to supply valuation information required pursuant to 49 C.F.R. 1152.27(a) and for other appropriate relief. This motion is filed on behalf of the City of Jersey City. Exhibit D to the motion is being filed separately and under seal pursuant to a protective order already entered in this proceeding. The motion and remaining exhibits tendered herewith are public. A certificate of service is attached.

Thank you for your assistance in this matter, and happy holidays to all at STB.

Respectfully,



Charles H. Montange
for City of Jersey City

cc. per Certificate of Service

BEFORE THE SURFACE TRANSPORTATION BOARD

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

EXPEDITIOUS TREATMENT REQUESTED

MOTION TO COMPEL CONSOLIDATED RAIL CORPORATION
IMMEDIATELY TO SUPPLY VALUATION INFORMATION
REQUIRED PURSUANT TO 49 C.F.R. 1152.27(a)

City of Jersey City ("City") hereby moves for an order compelling Consolidated Rail Corporation ("Conrail") to supply the information required pursuant to 49 C.F.R. 1152.27(a), and also the information specified in 49 C.F.R. 1152.27(d), no later than ten days from the date of this Board's entry of an order to compel.¹

Expeditious treatment requested. City requests expeditious treatment. A shipper seeking service has approached the City

¹ City timely filed a notice of intent to file an offer of financial assistance (OFA) in this proceeding in March 2009. Rails to Trails Conservancy and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition support the City's invocation of the OFA statute (49 U.S.C. 10904) and authorize the City to state that they support this motion to compel Conrail to supply the valuation information so that the City can proceed in making its OFA, and the request to expedite relief.

with an urgent need for service if at all possible by June 2015. In order to secure the Harsimus Branch for purposes of serving this shipper (and others) under this Board's OFA procedures, this Board must order Conrail to supply the information (valuation related) required under 49 C.F.R. 1152.27(a) & (d) as soon as possible, so that City can prepare and make its OFA to purchase the line. Since Conrail has already informed the Board, and recently reiterated to City's counsel, that it intends to oppose any OFA for the Branch, the City anticipates that the City will also request this Board to set terms and conditions for sale of the property, and perhaps to adjudicate some related matters. Because the establishment of terms and conditions, although under strict deadlines, nonetheless takes time, and because (especially in light of the prior illegal removal of all rail structures without Board authority) the City or its operator will need to construct interim facilities, it is vital that this Board take the initial step of compelling Conrail to respond with the 1127(a)&(d) information on which OFAs are supposed to be predicated if there is to be any hope of meeting shipper requirements in a reasonable period of time.

Background. City of Jersey City filed and served a timely notice of intent to file an OFA on 27 March 2009 in this proceeding. The notice sought the information specified in 49 C.F.R. 1152.27(a), and in particular copies of all sales

contracts, appraisals, and documents indicating marketable title, if Conrail claims any as to the property. Because Conrail had contracted to sell (and had purported to sell without prior abandonment authority) all or portions of the Branch, City sought copies of all applicable purchase contracts. See City's Notice filed 27 March 2009 in AB 167-1189X, pp 2-3. Under applicable precedent, such contracts in the circumstances here set the value for OFA purposes of the property to which they are applicable.² Rather than supply the information, Conrail on April 1, 2009, filed a de facto motion to exempt itself from the OFA process. City responded with a timely motion to toll the time period for submitting an OFA until ten days after Conrail supplies the information requested. City also sought all information required under 49 C.F.R. 1152.27(d); namely, all documents on which Conrail relies for its calculation of net liquidation value (including inter alia appraisals and title reports). See City Motion to Toll served April 3, 2009, bearing file date of April 7, 2009, in AB 167-1189X. CNJ Rail Corporation also filed a timely notice of intent and sought tolling.

² E.g., Iowa Terminal RR v. ICC, 853 F.2d 965, 969 D.C.Cir. 1988).

By decision served May 26, 2009, this Board issued an order tolling the period for an OFA until ten days after Conrail supplied the required information.

This Board also provided that any person who intends to file an OFA should address "one or more of the following: whether there is a demonstrable commercial need for rail service, as manifest by support from shippers or receivers on the line or as manifested by other evidence of immediate and significant commercial need; whether there is community support for rail service; and whether rail service is operationally feasible." Decision served May 26, 2009 at pp. 2-3.

Viewing the May 26, 2009 decision as imposing conditions on allowing a government to proceed with an OFA which were unprecedented, City filed an appeal of that decision to the entire Board. Statement and Protective Appeal by the City in AB 167-1189X, filed June 15, 2009. In the subsequent five years, STB took no further action in this proceeding, other than placing it in abeyance, for the reasons stated below.

Conrail filed this abandonment proceeding under protest. Coterminous with this abandonment proceeding, Conrail and the eight LLCs to which Conrail had illegally sold the Harsimus Branch without prior STB authorization appealed this agency's

determination in F.D. 34818³ that the Harsimus Branch was a line of railroad subject to STB abandonment jurisdiction to the United States Court of Appeals for the D.C. Circuit. Oral argument was held in that case on April 20, 2009. Strangely, although the Harsimus Branch was conveyed to Conrail as a line of railroad subject to STB jurisdiction in all the relevant documents and deeds, and although Conrail so described it in deeds issued to the LLCs, Conrail and the LLCs contended that the Harsimus Branch was not conveyed to Conrail as a line of railroad under the so-called "3-R Act," and that only the 3-R Act "Special Court" (now the United States District Court for the District of Columbia) had jurisdiction over that issue. Conrail and the LLCs contended that this Board lacked jurisdiction until there was a ruling from the Special Court. The D.C. Circuit ruled in favor of the Conrail/LLC contention in Conrail v. STB, 571 F.3d 13 (2009).

When Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition ("City et al") filed an action in U.S.D.C. (Special Court) for a determination that the Branch was conveyed as a

³ F.D. 34818 was a declaratory proceeding filed by City et al in January 2006 to establish that the Harsimus Branch was a line of railroad over which STB has abandonment jurisdiction rendering the sale of the property by Conrail to eight commonly owned and controlled limited liability corporations (the LLCs) void or voidable.

line of railroad, this agency placed the abandonment proceeding formally in abeyance (rather than dismissing it for lack of jurisdiction). See Decision in AB 167-1189X, served April 20, 2010.

City et al moved for summary judgment on the merits in U.S.D.C. Conrail and the LLCs moved for summary judgment on the ground that City et al lacked standing to contest the illegal abandonment. Conrail and the LLCs basically argued that STB relief was meaningless or duplicative of state law eminent domain so City et al suffered no injury by reason of the unlawful abandonment. The District Court granted summary judgment that City et al lacked standing, *City of Jersey City v. Conrail*, 741 F.Supp. 2d 131 (2010), but the D.C. Circuit reversed. *Id.*, 668 F.3d 741 (2012).

When the case returned to District Court, the LLCs reversed their position, now contending that the Harsimus Branch was a line of railroad subject to STB jurisdiction. The LLCs stated that Conrail had made fraudulent misrepresentations of the line's regulatory status to the LLCs, the City, the courts and STB. City et al and the LLCs stipulated that the property in question was conveyed to Conrail as a line of railroad subject to STB jurisdiction, including abandonment jurisdiction, and Conrail stipulated it would not further contest this issue. Over continued resistance by the LLCs, the District Court

(sitting as 3-R Act Special Court) granted summary judgment that the Harsimus Branch was conveyed as a line of railroad over which STB now had jurisdiction. City of Jersey City v. Conrail, 968 F.Supp. 2d 302 (Sept. 30, 2013). City et al notified STB and requested that the order holding the abandonment proceeding in abeyance be lifted.⁴ However, the LLCs appealed the U.S.D.C. ruling to the D.C. Circuit. Conrail and the LLCs resisted pending the LLCs' appeal. Conrail claimed that City et al's observations that the Conrail sale of a line to the LLCs without abandonment authority was unlawful, that the LLCs now said the sale was based on fraudulent misrepresentations by Conrail, and that the stay on this proceeding should be lifted were "intemperate."⁵ The D.C. Circuit summarily affirmed the District Court in a decision served Feb. 19, 2014 in D.C. Cir. No. 13-7175. Again, City et al sought reinstatement of the abandonment proceeding.

⁴City et al's initial formal notification and request for the stay to be lifted was filed over a year ago, on 22 November 2013.

⁵It may be vexing for Conrail to be faced with the fact of the illegality of its actions, but Conrail's claim that it is intemperate to hold the railroad responsible for its actions is troubling. It suggests Conrail thinks there is some kind of privilege to ignore this agency's jurisdiction, or otherwise act illegally under federal law in respect to the public interest, at least with respect to, or in, Jersey City.

Shortly after the time for certiorari expired on the D.C. Circuit's summary affirmation of summary judgment that the Harsimus Branch was a line of railroad over which STB now had abandonment jurisdiction, the LLCs filed a declaratory proceeding (F.D. 35825 dated May 8, 2014) for a determination that STB nonetheless lacked abandonment jurisdiction, or alternatively for some kind of exempt abandonment.

In a decision served August 11, 2014, in F.D. 35825, the agency denied the LLCs' petition. By a decision served the same day in AB-167-1189X, the Board lifted the stay of proceedings in this abandonment case. The LLCs filed a petition for reconsideration in F.D. 35825, duly opposed by City et al.

The LLCs then filed discovery requests under STB procedures against CNJ Rail Corporation, and then City et al and Conrail. The LLCs also filed another round of their "OPRA" (public records) requests against the City. Conrail objected; City responded to the OPRA requests; and City et al responded, but also without prejudice to objections, to the LLCs' STB discovery. City et al, like Conrail, challenged the relevancy and burdensomeness of the LLCs' discovery as directed to issues which had already been conclusively resolved against the LLCs.

Shortly after the LLCs invoked STB discovery procedures, City et al also filed discovery requests under STB procedures against Conrail and the LLCs. Both Conrail and the LLCs have

refused to provide any discovery to City et al. Various motions to compel are pending, and numerous environmental comments are also pending. In particular, City et al have reiterated their contention that Conrail intentionally illegally abandoned and alienated to its chosen land developer the Harsimus Branch in order to avoid environmental procedures (in particular, section 106 of the National Historic Preservation Act). That position is now corroborated by the LLCs, who state that Conrail fraudulently misled them, the City, this agency and the courts as to the regulatory status of the Harsimus Branch. Under section 110(k) of the National Historic Preservation Act, 16 U.S.C. 470h-2(k), the agency may not authorize abandonment of the Harsimus Branch unless the deeds to the LLCs are voided, or the agency otherwise conditions abandonment authority upon Conrail re-acquiring the line it purported to convey to the LLCs. There can be no meaningful application of section 106 to the historic Embankment (a key part of the Branch) after Conrail alienated it to a developer seeking to demolish it (in whose demolition permit requests Conrail duly joined).

Exacerbating their attack on the public interest and federal historic preservation laws, for the past ten years, Conrail's chosen developer (the LLCs) have filed a multitude of lawsuits in state court against City and in some cases RTC and the Embankment Preservation Coalition and/or their officers or

attorneys (including the undersigned) in order to so burden City et al that they give up. Conrail has cooperated in the efforts of its chosen developer, facilitating the LLCs' litigation by joining in their demolition permit requests and assuring the LLCs that the railroad will cooperate in securing the Harsimus Embankment in their hands, evidently for destruction, notwithstanding the National Historic Preservation Act and the affront to this agency's jurisdiction.

City et al support retention of the Harsimus Branch in public ownership for rail, open space, and historic preservation purposes, all mutually compatible. City wishes to bring this long saga to a close as efficiently and cost effectively as possible. Neither governments nor their taxpayers should be subjected to the rail law equivalent of a *Jarndyce v. Jarndyce*⁶

⁶ Charles Dickens in the first chapter of his novel *Bleak House* introduces the fictional Jarndyce case as an exercise reduced to futility by machinations of lawyers to tie the matter up until the estate involved is exhausted in legal fees and costs: "Jarndyce and Jarndyce drones on. ... Innumerable children have been born into the cause; innumerable young people have married into it; innumerable old people have died out of it. Scores of persons have deliriously found themselves made parties in Jarndyce and Jarndyce, without knowing how or why; whole families have inherited legendary hatreds with the suit. The little plaintiff or defendant, who was promised a new rocking-horse when Jarndyce and Jarndyce should be settled, has grown up, possessed himself of a real horse, and trotted away into the other world. Fair wards of court have faded into mothers and grandmothers; a long procession of Chancellors has come in and gone out; the legion of bills in the suit have been transformed into mere bills of mortality; there are not three Jarndyces left upon the earth perhaps, since old Tom Jarndyce in despair blew

proceeding by Conrail and its chosen developer simply to protect the additional profit they sought to achieve by engaging in an illegal sale and abandonment of the Harsimus Branch, and/or to punish the City and the Embankment Preservation Coalition for raising historic preservation and public interest concerns⁷ for seeking federal and state relief against the illegal activities of the railroad and the LLCs. The OFA remedy under 49 U.S.C. 10904 provides an avenue to bring this extraordinary abandonment controversy to an end consistent with the public interest, including historic preservation law, so long as City is allowed to proceed.

During this entire period, Conrail has failed to provide any of the information it is obligated to provide under 49 C.F.R. 1152.27(a)&(d). OFA applicants are entitled to

his brains out at a coffee-house in Chancery Lane; but Jarndyce and Jarndyce still drags its dreary length before the Court, perennially hopeless."

⁷ There is no question that Conrail and the LLCs are resentful of designation of the Harsimus Embankment as historic in the State Register of Historic Places and as a Jersey City Historic Landmark. Conrail objected to listing of the Embankment in the National Register of Historic Places, but it of course remains eligible and thus fully protected under sections 106 and 110(k) of the National Historic Preservation Act. Conrail specifically opposed historic designation of the Embankment because of adverse impact to the railroad's profit objective. E.g., Letter, Conrail Pres. O'Toole to Administrator Guzzo, June 4, 1999, already on file as Appendix 3 to Additional Supplemental Comments of City et al in this proceeding.

know the value a railroad places on the property, the evidence on value in the hands of the railroad, and the basis for the railroad's valuation generally before making their offer or requesting terms and conditions. Counsel for Conrail has advised Counsel for the City that Conrail will not willingly allow an OFA to proceed. In order to move the process along, City must now request this agency to order Conrail to produce the valuation information required to be provided to parties filing notices of intent to OFA. Because a shipper has approached the City in urgent need of service, and because City wishes to bring this matter to a cost-effective end within the lifetimes of the lawyers involved, if not some of their clients, City et al request this agency to compel Conrail to provide all of the 1152.27(a)&(d) information to the City within ten days of issuance of the order compelling disclosure. Because the shipper needs service if at all possible by June, City et al request that this agency expeditiously issue the requested order.

OFA showings. As noted, Conrail has advised counsel for Jersey City that the railroad intends to thwart any OFA on various grounds (essentially just as Conrail is opposing any other meaningful relief to City et al in this proceeding). City notes that this Board's decision, served May 26, 2009, requires an OFA applicant to make a showing of one or the other of

shipper support/demand, public support, and feasibility in order to be allowed to OFA. While the City at this point is only seeking the information necessary for it to prepare an OFA, and accordingly need make no showings, it seems likely given Conrail's reflexively uncooperative litigation posture that the railroad will oppose our motion to compel compliance with 1152.27 on the ground that no one should be allowed even to seek the information which a railroad must provide in order for a party to prepare an OFA, or otherwise interfere with the railroad's illegal sale of the Branch to its chosen developer.⁸

⁸ CNJ Rail has advised City that Conrail refused to supply 1152.27 information to CNJ by letter and pleading dated December 31, 2008. The Conrail refusal is embodied in a document that on its face appears to have been served on STB, but City et al cannot find the document under filings on the STB website as a filing in this case, and there is no certificate of service on the copy we received from CNJ indicating anything was provided to the City, or any other party. In the document, Conrail took the position it had no obligation to value the property or to provide valuation information under 49 C.F.R. 1152.27 because the railroad has already sold the bulk of the property. If Conrail means that the value of the Harsimus Branch to it is now therefore zero, then the railroad should simply say so. If the railroad is simply evading section 1152.27, then its excuse is a nonstarter. The sales in question are void or voidable because they are not only based on (according to the purchaser) fraudulent misrepresentations by Conrail of the line's status, but also because they are in derogation of this agency's jurisdiction. STB has repeatedly warned parties that it is a misuse of its processes for railroads to transfer rail lines for non-rail purposes (i.e., abandonment) unless the railroad first obtains an abandonment authorization. E.g., City of Temple, Tex. - Acquisition and Operation Exemption - Georgetown Railroad Company, F.D. 35369, served April 23, 2010, slip op. p. 1 ("acquiring a line of railroad for the purpose of abandoning rather than operating over it constitutes a misuse of [this

Similarly, Conrail's chosen developer is trying to subvert this agency's jurisdiction to entertain this abandonment proceeding, and can be expected to regurgitate some version of its scorched earth arguments. Accordingly, without prejudice to City's appeal of the May 26, 2009 decision, the City is providing herewith showings pursuant to the May 26, 2009 decision, none of which should be necessary in the circumstances. These showings are made under protest that City continues to believe them beyond the scope of the agency's authority and are contrary to applicable precedent. In particular, this is the first time a city (or any shipper) has been required to make showings in order to invoke the OFA remedy in order to protect a developer (much less a developer that illegally acquired the property) as

Board's] procedures"). This agency has voided deeds, or required reconveyance, in such situations. E.g., The Land Conservancy of Seattle & King County - Acquisition & Operation Exemption -- BNSF, F.D. 33389, served Sept. 26, 1997, slip op. at 3. Conrail has elsewhere claimed to this agency that it has an implied rail easement over the property it purported to alienate. If Conrail has an implied easement for rail purposes (notwithstanding its purported quitclaim of all interests to the LLCs), then easements are subject to OFA (at a price effectively of zero, for STB values rail easements at zero). In any event, the Conrail deeds would be void under N.J.S.A. 48:12-125.1, since this is an STB-regulated right of way and Conrail failed to provide City with the right of first refusal provided under the statute. If Conrail fails to supply 1152.27 information, then it should be deemed to have valued its property interests in the Branch as zero for OFA purposes, and otherwise it should be barred from relying on any valuation information not promptly supplied to City in response to this motion to compel, in the event City is permitted to file an OFA and requests this agency to set terms and conditions.

opposed to protecting an alternative public use proposed for the property. In addition, City is obviously hampered by Conrail's failure to make available the valuation information it is required to disclose under 49 C.F.R. 1152.27. City reserves the right to supplement any required showing as more information becomes available.

1. City is prepared to file an OFA, and, if successful, to comply with all requirements of the OFA statute in providing rail service on the Branch. City submits herewith a letter from the Mayor (Exhibit A) stating as much, along with a copy of an Ordinance adopted by the City's Council authorizing an OFA (Exhibit B), and numerous letters of support from other officials (Exhibit C). The City is entitled to invoke the OFA remedy since it commits to comply with the statute in providing rail service on the Branch and has demonstrated public support for the OFA. In addition, City is authorized to represent that CNJ Rail, the other party in this proceeding that has filed a notice of intent to OFA, intends to support and to cooperate with City's OFA.
2. Shipper demand and support is demonstrated by the Verified Statement (Exhibit D) of the shipper identified in Exhibit D (submitted under seal pursuant to the protective order). This shipper alone indicates

prospective demand in excess of the number of carloadings (1437), which Conrail documents (Exhibit E, as filed already in this proceeding), that indicate Conrail found highly profitable (revenue exceeded operating costs) for the year ending September 1984. Other Conrail documents indicate the line was consistently profitable (revenue exceeded operating costs) throughout 1983-86, even at carloadings as low as 687 carloads per year (for the year ending September 1986), the last year covered by Conrail documents available to the City. Supplying a statement of shipper support that projects needs in excess of that on which the line has covered operating costs in the past should certainly be sufficient to show not only adequate shipper support for the OFA, but also demand for service, if that is now some kind of preliminary requirement before a city is allowed to file an OFA. In addition, City has received additional evidence of interest by other shippers (particular of construction materials) at a transload on the Branch.

3. By the same token, a demonstration of demand in excess of that on which the Branch has previously operated at a profit according to Conrail's own documents supports feasibility. City has been informed orally by a rail construction firm that an interim transload facility

suitable for supply of service to the prospective rail customers is feasible, and can be constructed for use pending more detailed engineering studies for restoration of service over the entire Branch. The City has expressed interest in possible commuter rail use of the Branch and if instituted this would also defray portions of infrastructure costs for use of the entire Branch. City believes this is an adequate showing as to feasibility, but in addition City is informed by CNJ Rail that it expects to provide additional feasibility information once City et al file this motion to compel Conrail to supply the information required under 49 C.F.R. 1152.27(a)&(d).

4. Jersey City is in a congested urban area. The City desires to secure jobs and at the same time to address traffic congestion. A transload facility on the Harsimus Branch, as at any location in the City, may increase local truck traffic, but should diminish overall truck congestion within the City, because rail is more efficient than trucks for the kinds of bulk commodities that the shipper identified in Exhibit D, as well as sand and gravel shippers, would transport, if this agency permits an OFA, and location of a transload on the Branch would be efficient for the Exhibit D shipper and for

construction materials coming into Jersey City's downtown area. For the reasons stated, City has made an adequate showing to be entitled to file an OFA, and certainly to obtain from Conrail the information to which City is entitled under 1152.27(a)&(d) to prepare an OFA.

Because the shipper in Exhibit D seeks service in June 2015 if at all possible, and because this OFA is apparently going to be a litigated OFA, City seeks expeditious treatment of this motion to compel. While City does not propose to foreshorten Conrail's opportunity to reply (twenty days) given the intervening Christmas and New Year holidays, we do oppose any additional time for a reply and seek prompt Board action in all events. In particular, we seek an order compelling Conrail to supply all its valuation information and the basis for its valuation within ten days of this Board's order. If Conrail values its remaining interests at zero (chooses not to supply any valuation material), then Conrail should be required to so declare. In the event this Board allows City to file an OFA and City also requests this Board to set terms and conditions, then City further moves that Conrail be barred from relying on any information not supplied to the City pursuant to this motion to compel.

Counsel for the City does request that whatever other schedule the Board establishes takes into account to the extent

Certificate of Service

The undersigned hereby certifies service by posting the foregoing in the US Mail, postage pre-paid, first class or priority mail, on or before the 23d day of December 2014 addressed to the parties or their representatives per the service list below, and by electronic delivery to Andrea Ferster (General Counsel of Rails to Trails Conservancy) and Maureen Crowley (representative of Embankment Preservation Coalition) unless otherwise indicated.



Service List

[AB 167 (Sub-no. 1189X)]

- with address corrections as of August 2014 -

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And the following self-represented individuals or entities:

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Eric S. Strohmeier
Vice President, COO
CNJ Rail Corporation
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Watchung, NJ 07069 (courtesy copy by email and US Mail)

Exhibit A - Mayoral Letter



STEVEN M. FULOP
MAYOR OF JERSEY CITY

CITY OF JERSEY CITY
OFFICE OF THE MAYOR

CITY HALL | 280 GROVE STREET | JERSEY CITY, NJ 07302
P: 201 547 5500 | F: 201 547 5442



STEVEN M. FULOP
MAYOR OF JERSEY CITY

November 24, 2014

Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423
Attn: Chairman Daniel R. Elliott III
and Members of the Board

Re: the Harsimus Embankment

Dear Chairman Elliott and Members of the Board:

I write to express my support for the City of Jersey City's efforts, together with the Embankment Preservation Coalition, to secure the Harsimus Branch from Marin Boulevard to Waldo pursuant to 49 U.S.C. 10904 and other applicable statutes. The Harsimus Embankment is a line of railroad whose abandonment or transfer is regulated by the Surface Transportation Board (STB) and is listed on the State Register of Historic Places since 1999. Furthermore, since the year 2000, it is eligible for listing on the National Register of Historic Places.

Since 2004, the City of Jersey City has sought to acquire the branch for public uses consistent with historic preservation, including freight rail, commuter rail, trail and other public uses. In 2005 the Consolidated Rail Corporation ("Conrail") improperly sold eight blocks of the Branch (from Marin Boulevard to a point west of Newark Avenue) to 212 Marin Boulevard LLC for development. Given that the 2005 sale was an unauthorized sale of a line of railroad and is regulated by the STB, the STB is well within its authority to void those deeds.

Upon this unauthorized sale, 212 Marin Boulevard LLC sought demolition permits for the Embankment and Conrail joined them in their request for demolition permits. Since that time, the City has made attempts to preserve the Harsimus Branch.

Without waiving any of our legal rights, and in order to bring this prolonged litigation to a close, the city has long sought to file an offer of financial assistance (OFA). The City recently adopted Ordinance 14.103 to confirm its intent to file an OFA. If allowed to file OFA and if the OFA is successful, the City's intent is to install, and designate an operator to operate a freight transload facility on the Harsimus Branch fully consistent with the requirements of 49 U.S.C. 10904.

In conclusion, I fully support the City's requests that the STB a) determine that the City has fulfilled all preconditions set forth by the STB's May 26, 2009 decision and b) request that Conrail supply the City the information required under that decision. I thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven M. Fulop". The signature is stylized with overlapping loops and a horizontal line at the end.

Steven M. Fulop
Mayor

cc: the Embankment Preservation Coalition

Exhibit B - Jersey City Ordinance authorizing OFA
(previously filed)

City Clerk File No. Ord. 14.103

Agenda No. 3.A 1st Reading

Agenda No. 4.A. 2nd Reading & Final Passage



ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE

offered and moved adoption of the following ordinance:

CITY ORDINANCE 14.103

TITLE: ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENT FROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:

WHEREAS, Consolidated Rail Corporation [Conrail] was the owner of certain property designated as Block 212, Lot M., Block 247, Lot 50A, Block 280, Lot 50A, Block 317.5, Lot 50A, Block 354.1, Lot 50A, Block 389.1, Lot 50 and Block 415, Lots 50 and 50.PL, Block 446, Lot 18A on the City of Jersey City's Official Tax Assessment Map and more commonly known as the Sixth Street Embankment [Property]; and

WHEREAS, the Property is part of a line of railroad known as the Harsimus Branch, which was the former main line of the Pennsylvania Railroad into Jersey City; and

WHEREAS, lines of railroad may not be abandoned and converted into non-rail use without the prior authorization of the Surface Transportation Board [STB], a federal agency, even if the railroad owning the line has ceased to use it for rail purposes; and

WHEREAS, Conrail ceased using the Property in or around 1996; and

WHEREAS, the Property and its extension to CP Waldo (in the vicinity of Chestnut and Waldo Streets) is the last underutilized transportation corridor available to address passenger and freight transportation needs in congested Downtown Jersey City; and

WHEREAS, the property also is part of the preferred route of the East Coast Greenway and is listed on the State Register of Historic Places; and

WHEREAS, in 2004 and 2005, City of Jersey City by adoption of Ordinances 04-096 and 05-064 authorized acquisition of the Property for its own use as open space and for eventual construction of a public park; and

WHEREAS, notwithstanding the City's expression of interest in acquiring the property in 2005 Conrail sold the Property to a private party [Developer] for \$3 million for non-rail purposes without any prior STB rail abandonment authorization; and

WHEREAS, the City of Jersey City along with Embankment Preservation Coalition [Coalition] and Rails to Trails Conservancy [RTC] filed a petition for a declaratory order at STB for a determination that the Harsimus Branch was a line of railroad such that the 2005 sale was illegal, and otherwise objected to the sale and redevelopment of the Property; and

WHEREAS, Conrail and the Developer sought to evade STB regulation (including historic preservation regulation by STB) by claiming that the Harsimus Branch was not a line of railroad; and

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE (OFA) TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENT FROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

WHEREAS, the STB ruled that the Property was part of a line of railroad, but this ruling was appealed by Conrail and the Developer, resulting in litigation in federal courts that ultimately determined in 2013 that the Harsimus Branch in fact was a line of railroad for which STB abandonment authorization was required; and

WHEREAS, the Developer in some cases joined by Conrail filed multiple litigations against the City of Jersey City and its boards, agencies and employees as well as the Coalition and RTC and attorneys for City, Coalition and/or RTC; and

WHEREAS, the STB in a Decision served August 11, 2014, rejected the Developer's most recent efforts to assert that STB lacked jurisdiction over the Harsimus Branch; and

WHEREAS, in another Decision served August 11, 2014, STB reinstated an abandonment proceeding (AB 167-Sub no. 1189X) for the Harsimus Branch from Marin Boulevard to CP Waldo (vicinity of Chestnut and Waldo Streets) in Jersey City; and

WHEREAS, an important remedy afforded under federal law to communities facing abandonment of lines is the Offer of Financial Assistance [OFA], whereby a community may purchase on terms set by the STB a line or portion thereof interconnecting to the freight rail system for, as construed by STB, continued freight rail and other compatible public purposes; and

WHEREAS, the governing statute (49 U.S.C. 10904) requires that the successful OFA applicant neither transfer nor discontinue service over such line for two years after purchase; and

WHEREAS, the City wishes to use the OFA remedy to secure the corridor for continued freight and passenger rail service in order to relieve congestion and pollution on City streets, especially from trucks, and to employ any surplus property as open space and for other compatible public purposes, all consistent with preservation of the historic Sixth Street Embankment; and

WHEREAS, under STB precedent in OFA proceedings, the presumptive price of fee title to the Property is the price paid by the Developer (\$3 million) and the presumptive price of easement title to the Property is zero; and

WHEREAS, the City under the OFA remedy also will need to acquire additional property to link to the national freight rail network (National Docks Secondary and/or CP Waldo), which will require a corridor of no less than 30 feet width and if otherwise feasible 50 to 60 feet width minimum across property believed owned by Conrail extending as far as the National Docks Secondary and/or by easement over said National Docks Secondary to CP Waldo; and

WHEREAS, the City wishes to comply fully with the requirements of 49 U.S.C. 10904; and

WHEREAS, pursuant to N.J.S.A. 48:12-125.1, City is also authorized to acquire Conrail properties subject to STB abandonment proceedings on terms offered by Conrail to other purchasers; and

WHEREAS, in order to pursue the OFA remedy, City will be required to pay an application fee of \$1,500, and, in order to obtain terms and conditions of purchase from STB, an additional fee of \$23,100; and

WHEREAS, in order to invoke the OFA remedy, City must also be prepared to offer expert evidence on valuation issues and upon other issues pursuant to conditions imposed by STB; and

WHEREAS, STB's terms and conditions ordinarily require conveyance of the property by quitclaim deed, as is where is; and

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENT FROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

WHEREAS, once STB sets terms and conditions, the OFA applicant is ordinarily given no less than ten (10) days to accept or to reject the terms and conditions; and

WHEREAS, if the terms and conditions are accepted, they are binding on the applicant; and

WHEREAS, funds are available for all costs to be incurred pursuant to this ordinance in Account No. 04-215-55-887-990.

NOW, THEREFORE, BE IT ORDAINED by the Municipal Council of the City of Jersey City that:

1. The Corporation Counsel or his duly designated agent and the Business Administrator are authorized to file an Offer of Financial Assistance [OFA] to acquire title to the following property for purposes of continued freight rail and other compatible public purposes including passenger rail, open space, trail and historic preservation: Block 212, Lot M., Block 247, Lot 50A, Block 280, Lot 50A, Block 317.5, Lot 50A, Block 354.1, Lot 50A, Block 389.1, Lot 50, Block 415, Lots 50 and 50.PL, and Block 446, Lot 18A, on the City of Jersey City's Official Tax Assessment Map and more commonly known collectively as the Sixth Street Embankment [Property] for the presumptive sum of \$3 million for fee title to the portion of the Property purportedly sold to the Developer for that price in 2005, and for an additional amount such that the total expenditure does not exceed \$5.7 million for the Property and for all remaining property necessary to achieve a connection to the national freight rail network.
2. The Corporation Counsel of the City of Jersey City or his duly designated agent and the Business Administrator are authorized and directed to undertake any actions and execute any documents necessary or appropriate to acquire any property by purchase from Conrail under an Offer of Financial Assistance as provided in paragraph 1. In the event the STB sets terms and conditions exceeding \$5.7 million under the OFA, the Corporation Counsel shall advise the Council immediately so that the Council may accept or reject such terms and conditions within the time period set by STB.
3. The Corporation Counsel or the Business Administrator are authorized and directed to solicit proposals to engage the services of surveyors, title insurance companies, appraisers and any other professionals whose services are necessary or appropriate to pursue an OFA and otherwise to implement the purposes of this ordinance.
4. The Corporation Counsel or the Business Administrator are authorized and directed to take appropriate measures to meet the City's obligation, in the event of a successful OFA, to seek to provide rail service per 49 U.S.C. 10904, including, but not necessarily limited to, (a) to solicit proposals for construction or operation of interim freight rail transload facilities to serve freight rail customers of the Harsimus Branch on suitable property in the event City acquires all or a portion of the Harsimus Branch at issue in AB 167 Sub 1189X pursuant to an OFA, provided that respondents are encouraged to limit subsidization requests for construction of a switch and trackage or for operation in light of the possible interim nature of said transload operations, pending planning for reconstruction and further operation, and (b), in the event City successfully acquires the Harsimus Branch pursuant to STB's OFA procedures, further to solicit proposals from consultants to prepare plans and recommendations (including for contributions to offset reconstruction costs) for restoration of the Harsimus Branch for rail purposes to the extent practicable consistent with other public purposes.

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE (OFA) TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENT FROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

- 5. In the event STB does not permit City to OFA the Property, or the OFA is unsuccessful, the Corporation Counsel with the cooperation of the Business Administrator are authorized and directed to pursue all other possible remedies that may result in acquisition of the Property, including connections for rail and other public purposes such as trail at the STB and by means of N.J.S.A. 48:12-125.1.
- 6. This Ordinance shall take effect at the time and in the manner as provided by law.
- 7. This Ordinance shall not rescind Ordinance 04-096 or 05-064 which authorized the acquisition of the Embankment solely for open space and a park by purchase or condemnation.
- 8. The City Clerk and the Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this Ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

NOTE: All material is new; therefore, underlining has been omitted. For purposes of advertising only, new matter is indicated by **bold face** and repealed matter by *italic*.

APPROVED AS TO LEGAL FORM

Corporation Counsel

Certification Required
Not Required

APPROVED: _____

APPROVED: _____

Business Administrator

3.A. Ord. 14.103

RESOLUTION FACT SHEET – NON-CONTRACTUAL

This summary sheet is to be attached to the front of any resolution that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the resolution.

Full Title of Ordinance/Resolution

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENT FROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

Initiator

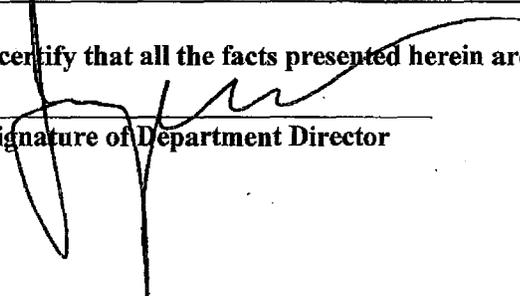
Department/Division	Law	Law
Name/Title	Jeremy Farrell	Corporation Counsel
Phone/email	(201) 547-4667	JFarrell@icnj.org

Note: Initiator must be available by phone during agenda meeting (Wednesday prior to council meeting @ 4:00 p.m.)

Resolution Purpose

(Part I)
This ordinance authorizes the relevant City departments to file for, and to pursue, a federal eminent domain remedy (49 USC 10904, called the "OFA" remedy) as administered by the federal Surface Transportation Board (STB) to acquire an unused portion of a line or railroad called the Harsimus Branch (Marin Blvd. to CP Waldo) which contains the Sixth Street Embankment, a City Historic Landmark. City has sought to acquire at least portions of this property since before Conrail in 2005 illegally sold the Embankment parcels to a developer without the required STB abandonment authorization. Conrail and the developer for years sought to prevent STB from exercising its jurisdiction. Now, an abandonment proceeding is finally pending, in which STB affords an OFA remedy. As a condition for invoking the remedy, the City must continue efforts to provide freight rail service on the line for two years before it may seek discontinuance authority.

I certify that all the facts presented herein are accurate.



Signature of Department Director

Date

RESOLUTION FACT SHEET – NON-CONTRACTUAL

This summary sheet is to be attached to the front of any resolution that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the resolution.

Full Title of Ordinance/Resolution

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENT FROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

Initiator

Department/Division	Law	Law
Name/Title	Jeremy Farrell	Corporation Counsel
Phone/email	(201) 547-4667	JFarrell@jcnj.org

Note: Initiator must be available by phone during agenda meeting (Wednesday prior to council meeting @ 4:00 p.m.)

Resolution Purpose

(Part II)
The OFA remedy affords an efficient means to acquire the last underutilized transportation corridor into downtown for continued transportation (including rail) use, as well as open space uses, all consistent with historic preservation, all the way from Marin to CP Waldo (roughly Waldo or Chestnut Streets). If City is allowed to file for the remedy, STB will set the terms and conditions of sale, including price, based on the price paid by the developer to Conrail for the Embankment parcels (\$3 million), and appraisals for any portions remaining under Conrail ownership. City is expected to have only a brief period (expected to be approximately 10 days) to accept the terms. If the terms are accepted, City ordinarily would be required to close within 60 days. The ordinance also contains provisions to equip the City to make the OFA, and to be in a position to accept terms and to close on a transaction within time periods set by STB.

I certify that all the facts presented herein are accurate.

Signature of Department Director

Date

Ordinance of the City of Jersey City, N.J.



ORDINANCE NO. Ord. 14.103
 TITLE: 3.A SEP 10 2014 4.A SEP 23 2014

Ordinance authorizing the City of Jersey City to file an Offer of Financial Assistance (OFA) to acquire certain property collectively known as the Sixth Street Embankment from Conrail and such other Conrail properties as are necessary to connect with the main line in the vicinity of CP Waldo.

RECORD OF COUNCIL VOTE ON INTRODUCTION											
SEP 10 2014 7-0-2											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
GAJEWSKI	✓			YUN	✓			RIVERA	✓		
RAMCHAL	ABSTAIN			OSBORNE	✓			WATTERMAN	✓		
BOGGIANO	ABSTAIN			COLEMAN	✓			LAVARRO, PRES.	✓		

RECORD OF COUNCIL VOTE TO CLOSE PUBLIC HEARING											
SEP 23 2014 9-0											
Councilperson <u>LAVARRO</u> moved, seconded by Councilperson <u>COLEMAN</u> to close P.H.											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
GAJEWSKI	✓			YUN	✓			RIVERA	✓		
RAMCHAL	✓			OSBORNE	✓			WATTERMAN	✓		
BOGGIANO	✓			COLEMAN	✓			LAVARRO, PRES.	✓		

✓ Indicates Vote

N.V.--Not Voting (Abstain)

ANNIE KESSLER
 STEVEN GUCCIARDO
 ERIC FLEMING
 FELICIA PALMER
 VALERIO LUCCIO
 VINCENT McNAMARA
 MAUREEN CROWLEY
 JENNY MEYER
 JDAN KOEHLER
 PETER DELMAN
 DAN LEVIN

SPEAKERS:
 MARLENE SANDRAMP
 MORY THOMAS
 GERRY BAKIRTJY
 DANIEL HORGAN
 ERIC STROHMEYER
 JAMES RIFFIN

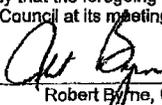
RECORD OF COUNCIL VOTE ON AMENDMENTS, IF ANY											
Councilperson _____ moved to amend* Ordinance, seconded by Councilperson _____ & adopted											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
GAJEWSKI				YUN				RIVERA			
RAMCHAL				OSBORNE				WATTERMAN			
BOGGIANO				COLEMAN				LAVARRO, PRES.			

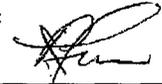
RECORD OF FINAL COUNCIL VOTE											
SEP 23 2014 7-1-1											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
GAJEWSKI	✓			YUN	✓			RIVERA	✓		
RAMCHAL	ABSTAIN			OSBORNE	✓			WATTERMAN	✓		
BOGGIANO		✓		COLEMAN	✓			LAVARRO, PRES.	✓		

✓ Indicates Vote

N.V.--Not Voting (Abstain)

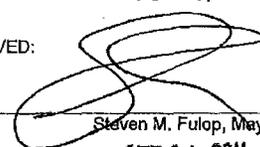
Adopted on first reading of the Council of Jersey City, N.J. on SEP 10 2014
 Adopted on second and final reading after hearing on SEP 23 2014

This is to certify that the foregoing Ordinance was adopted by the Municipal Council at its meeting on SEP 23 2014

 Robert Byrne, City Clerk

APPROVED: 
 Rolando R. Lavarro, Jr., Council President

Date SEP 23 2014

*Amendment(s):

APPROVED: 
 Steven M. Fulop, Mayor

Date SEP 24 2014

Date to Mayor SEP 24 2014

Exhibit C - Additional Letters of Support



NEW JERSEY GENERAL ASSEMBLY

ASSEMBLYMAN RAJ MUKHERJI
33RD LEGISLATIVE DISTRICT (HUDSON COUNTY)

COMMITTEES:
BUDGET
COMMERCE AND
ECONOMIC DEVELOPMENT
LABOR

Mailing:
PO BOX 1, JERSEY CITY, NJ 07303
District Offices (reply to Jersey City):
433 PALISADE AVENUE, JERSEY CITY, NJ 07307
80 RIVER STREET, 2ND FLOOR, HOBOKEN, NJ 07030
TEL: (201) 626-4000
FAX: (201) 626-4001
E-MAIL: ASMMUKHERJI@NJLEG.ORG
[FACEBOOK.COM/MUKHERJI](https://www.facebook.com/mukherji)
[TWITTER.COM/RAJMUKHERJI](https://twitter.com/rajmukherji)

December 2, 2014

Surface Transportation Board
Attn: Chairman Daniel R. Elliott III and Members of the Board
395 E Street S.W.
Washington, DC 20423

Re: Harsimus Branch and Embankment, Jersey City, NJ

Dear Chairman Elliott and Members of the Board:

I have the privilege of representing my hometown of Jersey City in the State Legislature. I write with regard to a matter of grave concern to my constituents and with serious implications for a historic asset that is a municipal landmark, the entire community, and the East Coast Greenway.

I unequivocally support the joint efforts of the City of Jersey City and the Embankment Coalition to secure the Harsimus Branch – in the heart of our historic downtown – from the current owner, pursuant to 49 U.S.C. § 10904 and other applicable statutes. As affirmed in decisions by the U.S. District Court and the U.S. Court of Appeals for the District of Columbia Circuit, the Harsimus Branch is a line of railroad whose abandonment or transfer is subject to your jurisdiction. Moreover, the Harsimus Embankment is an incredibly important historical asset to our city, our state, and our country, as demonstrated by its listing on the State Register of Historic Places (since 1999) and its eligibility for listing on the National Register of Historic Places (since 2000).

For a decade, the City and the Coalition have sought to acquire the branch for public uses consistent with historic preservation, including freight rail, commuter rail, trails, and other public uses. Notwithstanding the foregoing, the Consolidated Rail Corporation (“Conrail”) in 2005 improperly sold eight blocks of the Harsimus Branch (from Marin Boulevard to west of Newark Avenue) to 212 Marin Boulevard LLC for development. As this transaction constituted an unauthorized sale of a line of railroad that is regulated by the STB, the STB is compelled to void those deeds.

To the detriment of my community and all parties of interest, this matter has been the subject of protracted litigation. You have the power – indeed, the responsibility – to bring this matter to its long overdue conclusion. The City has long sought to file an offer of financial assistance (OFA), and its governing body recently adopted Ordinance 14.103 to confirm its intent to file an OFA. If permitted to file and should the OFA be successful, the City's intent is to install, and designate an operator to operate, a freight transload facility on the Harsimus Branch in accordance with the requirements of 49 U.S.C. § 10904, *et seq.*

Most respectfully, I implore the STB to determine that the City has fulfilled all preconditions set forth by the STB's May 26, 2009 decision and request that Conrail supply the City all information required under your aforementioned decision. Thank you for your consideration of these actions that will help the City save the last undeveloped transportation corridor to serve the region and the East Coast Greenway, and thank you all for your invaluable service to the United States.

Respectfully yours,



RAJ MUKHERJI

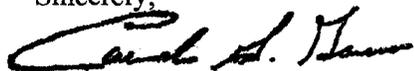
Assemblyman, New Jersey State Legislature

Cc: Valerie B. Jarrett, Esq., Senior Advisor, White House (via electronic mail)
The Honorable Robert Menendez, U.S. Senator (via regular mail)
The Honorable Cory A. Booker, U.S. Senator (via regular mail)
The Honorable Albio Sires, U.S. Congressman (via regular mail)
The Honorable Steven Fulop, Mayor of Jersey City (via electronic mail)
Lucille Marvin, OPAGAC, Surface Transportation Board (via regular mail)
Craig Keats, Esq., General Counsel, Surface Transportation Board (via regular mail)

operator to operate a freight transload facility on the Harsimus Branch fully consistent with the requirements of 49 U.S.C. 10904.

I fully support the City's requests that the STB a) determine that the City has fulfilled all preconditions set forth by the STB's May 26, 2009 decision and b) request that Conrail supply the City the information required under that decision. I thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Carmelo G. Garcia". The signature is fluid and cursive, with a large initial "C" and "G".

Carmelo G. Garcia
Assemblyman, 33rd District

cc: the Embankment Coalition
cc: Mayor Steven Fulop



NEW JERSEY GENERAL ASSEMBLY

DISTRICT OFFICE
ONE HARMON PLAZA, SUITE 205
SECAUCUS, NJ 07094
(201) 770-1303

VINCENT PRIETO
SPEAKER

STATE HOUSE
PO BOX 098
TRENTON, NJ 08625
(609) 847-3560

December 4, 2014

Chairman Daniel R. Elliott and Members of the Board
Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423

Attn: Chairman Daniel R. Elliott III and Members of the Board

Re: the Harsimus Embankment, Jersey City, New Jersey

Dear Chairman Elliott and Members of the Board:

I write to express my support for the City of Jersey City's efforts, together with the Embankment Coalition, to secure the Harsimus Branch from Marin Boulevard to Waldo pursuant to 49 U.S.C. 10904 and other applicable statutes. The Harsimus Embankment is a line of railroad whose abandonment or transfer is regulated by the Surface Transportation Board (STB) and is listed on the State Register of Historic Places since 1999. Furthermore, since the year 2000, it is eligible for listing on the National Register of Historic Places.

Since 2004, the City of Jersey City and the Coalition have sought to acquire the branch for public uses consistent with historic preservation, including freight rail, commuter rail, trail and other public uses. Since that time they have made several attempts to preserve the Harsimus Branch. The city has long sought to file an offer of financial assistance (OFA), and has recently adopted Ordinance 14.103, to confirm its intent to file an OFA. If allowed to file and if the OFA is successful, the City's intent is to install, and designate an operator to operate a freight transload facility on the Harsimus Branch fully consistent with the requirements of 49 U.S.C. 10904.

I fully support the City of Jersey City's requests that the Surface Transportation Board determine that the City has fulfilled all preconditions set forth by the STB's May 26, 2009, decision and also request that Conrail supply the City the information required under that decision. I thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Vincent Prieto".

Vincent Prieto
Speaker of the General Assembly

cc: the Embankment Coalition



NEW JERSEY GENERAL ASSEMBLY

CHARLES MAINOR
ASSEMBLYMAN, 31ST DISTRICT
2324 JOHN F. KENNEDY BOULEVARD
JERSEY CITY, NJ 07304
TEL: (201) 536-7851
FAX: (201) 536-7854

COMMITTEES
CHAIR
LAW AND PUBLIC SAFETY
CONSUMER AFFAIRS
JOINT COMMITTEE ON
HOUSING AFFORDABILITY
TRANSPORTATION, PUBLIC WORKS AND
INDEPENDENT AUTHORITIES

December 1, 2014

Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423

Attn: Chairman Daniel R. Elliott III and Members of the Board

Re: the Harsimus Embankment, Jersey City, New Jersey

Dear Chairman Elliott and Members of the Board:

I write to express my support for the City of Jersey City's efforts, together with the Embankment Coalition, to secure the Harsimus Branch from Marin Boulevard to Waldo pursuant to 49 U.S.C. 10904 and other applicable statutes. The Harsimus Embankment is a line of railroad whose abandonment or transfer is regulated by the Surface Transportation Board (STB) and is listed on the State Register of Historic Places since 1999. Furthermore, since the year 2000, it is eligible for listing on the National Register of Historic Places.

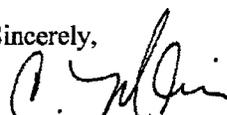
Since 2004, the City of Jersey City and the Coalition have sought to acquire the branch for public uses consistent with historic preservation, including freight rail, commuter rail, trail and other public uses. In 2005 the Consolidated Rail Corporation ("Conrail") improperly sold eight blocks of the Branch (from Marin Boulevard to appoint west of Newark Avenue) to 212 Marin Boulevard LLC for development. Given that the 2005 sale was an unauthorized sale of a line of railroad and is regulated by the STB, the STB is well within its authority to void those deeds.

Upon this unauthorized sale, 212 Marin Boulevard LLC sought demolition permits for the Embankment and Conrail joined them in their request for demolition permits. Since that time, the City has made attempts to preserve the Harsimus Branch.

In order to bring this prolonged litigation to a close, the city has long sought to file an offer of financial assistance (OFA). The City recently adopted Ordinance 14.103 to confirm its intent to file an OFA. If allowed to file OFA and if the OFA is successful, the City's intent is to install, and designate an operator to operate a freight transload facility on the Harsimus Branch fully consistent with the requirements of 49 U.S.C. 10904.

I fully support the City's requests that the STB a) determine that the City has fulfilled all preconditions set forth by the STB's May 26, 2009 decision and b) request that Conrail supply the City the information required under that decision. I thank you in advance for your consideration.

Sincerely,


Assemblyman Charles Mainor

cc: the Embankment Coalition



NEW JERSEY SENATE

SANDRA B. CUNNINGHAM
SENATOR, 31ST DISTRICT
1738 J.F. KENNEDY BOULEVARD
JERSEY CITY, NJ 07305
TEL 201.451.5100
FAX 201.451.0867
E-MAIL: sencunningham@njleg.org

SENATE MAJORITY WHIP
CHAIR
HIGHER EDUCATION COMMITTEE
MEMBER
BUDGET AND APPROPRIATIONS COMMITTEE
LABOR COMMITTEE

November 26, 2014

Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423
Attn: Chairman Daniel R. Elliott III and Members of the Board

Re: the Harsimus Embankment, Jersey City, New Jersey

Dear Chairman Elliott and Members of the Board:

I write to express my support for the City of Jersey City's efforts, together with the Embankment Coalition, to secure the Harsimus Branch from Marin Boulevard to Waldo pursuant to 49 U.S.C. 10904 and other applicable statutes. The Harsimus Embankment is a line of railroad whose abandonment or transfer is regulated by the Surface Transportation Board (STB) and is listed on the State Register of Historic Places since 1999. Furthermore, since the year 2000, it is eligible for listing on the National Register of Historic Places.

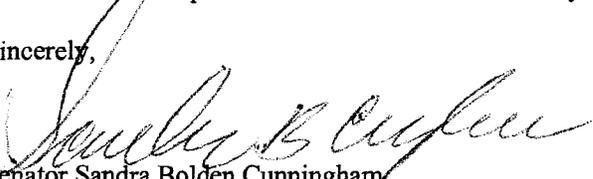
Since 2004, the City of Jersey City and the Coalition have sought to acquire the branch for public uses consistent with historic preservation, including freight rail, commuter rail, trail and other public uses. In 2005 the Consolidated Rail Corporation ("Conrail") improperly sold eight blocks of the Branch (from Marin Boulevard to appoint west of Newark Avenue) to 212 Marin Boulevard LLC for development. Given that the 2005 sale was an unauthorized sale of a line of railroad and is regulated by the STB, the STB is well within its authority to void those deeds.

Upon this unauthorized sale, 212 Marin Boulevard LLC sought demolition permits for the Embankment and Conrail joined them in their request for demolition permits. Since that time, the City has made attempts to preserve the Harsimus Branch.

In order to bring this prolonged litigation to a close, the city has long sought to file an offer of financial assistance (OFA). The City recently adopted Ordinance 14.103 to confirm its intent to file an OFA. If allowed to file OFA and if the OFA is successful, the City's intent is to install, and designate an operator to operate a freight transload facility on the Harsimus Branch fully consistent with the requirements of 49 U.S.C. 10904.

I fully support the City's requests that the STB a) determine that the City has fulfilled all preconditions set forth by the STB's May 26, 2009 decision and b) request that Conrail supply the City the information required under that decision. I thank you in advance for your consideration.

Sincerely,


Senator Sandra Bolden Cunningham
31ST Legislative District

cc: the Embankment Coalition



NEW JERSEY SENATE

NICHOLAS J. SACCO
SENATOR, 32ND DISTRICT
9060 PALISADE AVENUE
NORTH BERGEN, NJ 07047
PHONE: (201) 295-0200
FAX: (201) 295-8294
sensacco@njleg.org

COMMITTEES
CHAIRMAN, SENATE TRANSPORTATION
LAW AND PUBLIC SAFETY

November 26, 2014

Surface Transportation Fund
Attn: Chairman Daniel R. Elliott III
And Members of the Board
395 E Street S. W.
Washington, D.C. 20423

RE: The Harsimus Embankment, Jersey City, New Jersey

Dear Chairman Elliot and Members of the Board,

I write to express my support for the City of Jersey City's efforts, together with the Embankment Coalition, to secure the Harsimus Branch from Marin Boulevard to Waldo pursuant to 49 U.S.C. 10904 and other applicable statutes. The Harsimus Embankment is a line of railroad whose abandonment or transfer is regulated by the Surface Transportation Board (STB) and is listed on the State Register of Historic Places since 1999. Furthermore, since the year 2000, it is eligible for listing on the National Register of Historic Places.

Since 2004, the City of Jersey City and the coalition have sought to acquire the branch for public uses consistent with historic preservation, including freight rail, commuter rail, trail and other public uses. In 2005 the consolidated Rail Corporation (Conrail) improperly sold eight blocks of the Branch (Marin Boulevard to a point west of New Avenue) to 212 Marin Boulevard LLC for development. Given that the 2005 sale was an unauthorized sale of a line of railroad and is regulated by the STB, the STB is well within its authority to void those deeds.

Upon this unauthorized sale, 212 Marin Boulevard LLC sought demolition permits for the Embankment and Conrail joined them in their request. Since that time, Jersey City has made attempts to preserve the Harsimus Branch.

In order to bring this prolonged litigation to a close, Jersey City has long sought to file an offer of financial assistance (OFA). Jersey City recently adopted Ordinance 14.103 to confirm its intent to file an OFA. If allowed to file and if the OFA is successful, the City's intent is to install and operate a freight transload facility on the Harsimus Branch fully consistent with the requirements of 49 U.S.C. 10904.

I wholeheartedly support Jersey City's requests that the STB determine that J.C. has fulfilled all preconditions set forth by the STB's May 26, 2009 decision and request that Conrail supply J.C. the information required under that decision. I thank you in advance for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Nicholas J. Sacco". The signature is written in dark ink and is positioned above the printed name.

Nicholas J. Sacco
Senator, 32nd District



NEW JERSEY SENATE

BRIAN P. STACK
SENATOR, 33RD DISTRICT
411 PALISADE AVENUE
JERSEY CITY, NJ 07307

TEL. (201) 721-5263
FAX (201) 721-5966
SenStack@njleg.org

COMMITTEES:
VICE CHAIR - BUDGET AND APPROPRIATIONS
MEMBER - JUDICIARY
MEMBER - COMMUNITY AND URBAN AFFAIRS

COPY

December 01, 2014

Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423
Attn: Chairman Daniel R. Elliot III
and Members of the Board

Re: the Harsimus Embankment, Jersey City, New Jersey

Dear Chairman Elliott and Members of the Board:

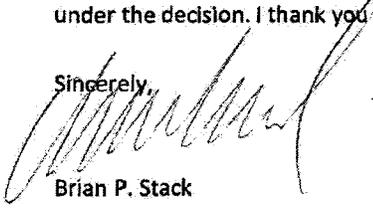
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The City of Jersey City and the Coalition have sought to acquire the branch for public uses consistent with the historic preservation, including freight rail, commuter rail, trail and other public uses. In 2005 the Consolidated Rail Corporation ("Conrail") improperly sold eight blocks of the Branch to 212 Marin Boulevard LLC for development. Since that time the City of Jersey City has made attempts to preserve the Harsimus Branch.

The City of Jersey City has sought to file an offer of financial assistance (OFA). If allowed to do so and if OFA is successful, the City's intent is to install, and designate an operator to operate a freight transload facility on the Harsimus Branch fully consistent with the requirements of 49 U.S.C. 10904.

I fully support the City's requests that the STB a) determine that the City has fulfilled all preconditions set forth by the STB's May 26, 2009 decision and b) request that the Conrail supply the City the information required under the decision. I thank you in advance for your consideration.

Sincerely,


Brian P. Stack
State Senator



NEW JERSEY SENATE

BRIAN P. STACK
SENATOR, 33RD DISTRICT
411 PALISADE AVENUE
JERSEY CITY, NJ 07307

TEL. (201) 721-5263
FAX (201) 721-5986
SenStack@njleg.org

COMMITTEES:
VICE CHAIR - BUDGET AND APPROPRIATIONS
MEMBER - JUDICIARY
MEMBER - COMMUNITY AND URBAN AFFAIRS

COPY

December 01, 2014

Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423
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and Members of the Board

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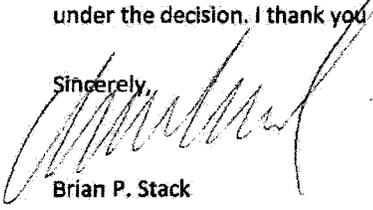
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Sincerely,


Brian P. Stack
State Senator



NEW JERSEY GENERAL ASSEMBLY

ANGELICA M. JIMENEZ
ASSEMBLYWOMAN, 32ND DISTRICT
5600 KENNEDY BOULEVARD, SUITE 104
WEST NEW YORK, NJ 07093
PHONE: (201) 223-4247
FAX: (201) 223-4624
EMAIL: AswJimenez@njleg.org

COMMITTEES
EDUCATION
HEALTH AND SENIOR SERVICES
REGULATED PROFESSIONS • VICE CHAIR

November 26, 2014

Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423
Attn: Chairman Daniel R. Elliott III and Members of the Board

Re: the Harsimus Embankment, Jersey City, New Jersey

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Printed on Recycled Paper



NEW JERSEY GENERAL ASSEMBLY

ANGELICA M. JIMENEZ
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COMMITTEES
EDUCATION
HEALTH AND SENIOR SERVICES
REGULATED PROFESSIONS • VICE CHAIR



NEW JERSEY GENERAL ASSEMBLY

Committees
Financial Institutions & Insurance
Housing & Community Development
Labor

JASON O'DONNELL
ASSEMBLYMAN, 31ST LEGISLATIVE DISTRICT
447 BROADWAY
BAYONNE, NJ 07002

Ph: (201) 436-0961
Fax: (201) 436-0964
Email: AsmODonnell@njleg.org

December 1, 2014

Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423
Attn: Chairman Daniel R. Elliott III
and Members of the Board

Re: the Harsimus Embankment, Jersey City, New Jersey

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I write to express my support for the City of Jersey City's efforts, together with the Embankment Coalition, to secure the Harsimus Branch from Marin Boulevard to Waldo pursuant to 49 U.S.C. 10904 and other applicable statutes. The Harsimus Embankment is a line of railroad whose abandonment or transfer is regulated by the Surface Transportation Board (STB) and is listed on the State Register of Historic Places since 1999. Furthermore, since the year 2000, it is eligible for listing on the National Register of Historic Places.

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Exhibit D - Shipper Verified Statement (filed under seal)

Exhibit E - Conrail Economic Analysis showing line profitable at
647 carloads/year

Copies to C. A. Bassani
 S. E. Nadler
 P. D. Cohen
 from
 G. M. Williams, Jr.
 1-29-85

0 53 ⁷⁴⁶⁷
 G-4 RS 1-80
MEMORANDUM

CONRAIL



File

DATE January 28, 1985

to R. B. Hasselman FROM J. F. Folk *J.F. Folk*

Room 1740 Room 950

SUBJECT Passaic & Harsimus Branch / Hudson Street PHONE

Track, Jersey City, NJ

As you requested, we have analyzed the Passaic & Harsimus Branch and Hudson Street Track, which are used to serve Colgate Palmolive Corporation. There are six other customers on the line, however, the Sales Department advises that Jersey City has initiated condemnation procedures towards the property of Chicago Shippers and Elk Warehouse.* Chicago Shippers and Elk Warehouse expect to receive official condemnation notices within the next month. For the 12-month period ended September, 1984, these two customers accounted for 1,767 carloads, \$2 million in revenue and \$400,000 in contribution. The Sales Department advises that these two customers hope to relocate on Conrail in the same general area.

Our analysis excludes all traffic for Chicago Shippers and Elk Warehouse. Following are the economics of the remaining traffic for the 12-month period ended September, 1984:

(Dollars in Thousands)

Carloads	1,437
Conrail Revenue	\$3,128
Operating Costs	\$2,112
<u>Rehab Requirements:</u>	
Total	\$ 581
Annual	\$ 169
<u>Contribution:</u>	
Pre-Rehab	\$1,016
Post-Rehab	\$ 847
<u>Rev/Cost Ratio:</u>	
Pre-Rehab	1.48
Post-Rehab	1.37

* Refer to Exhibit 1 for customers, traffic levels and revenues for the 12 months ending September, 1984.

CONRAIL



*JPB -
Yes - MRF
is pulling together info,
which we will review w/ WAM.
SN 1-20-88
cc WAM, JPB, MRF*

MEMORANDUM
6-4C Nov 12-82

0 50-27

DATE: January 15, 1988
TO: *EJ* F. Batak **LOCATION:** L-1012
FROM: J. W. Dietz *JWD* **LOCATION:** P-920
SUBJECT: Line Screening Summaries - New Jersey

Attached are the line screening summaries for the State of New Jersey. In regard to this report, we have the following comments:

*1-18-88
WAM / Do you
SEW / concern?*

* Passaic & Harsimus Branch / Hudson St. Industrial

This line generated 637 carloads in 1986, but Colgate-Palmolive, which plans to close this plant in 1988, generated 82 percent (523 carloads) of the total volume. A review of 1987 data indicates that only 6 non-Colgate-Palmolive carloads were handled. This suggests that an expedited abandonment may be possible if the remaining active customer(s) discontinue rail service or relocate.

* Elizabeth Secondary (M.P. 11.1 - M.P. 15.0)

An expedited abandonment of this line is possible. One carload was reported for Roselle Paper in 1986. There are no other active customers.

* Sayreville Running Track (M.P. 12.0 - M.P. 12.3)

This line was eliminated from the monitoring list because an expedited abandonment is currently being prepared.

* Manufacturer's Extension Ind.Trk.(M.P. 0.0 - M.P. 0.9)

Poor economics of this line are the result of high volume, but low revenue, scrap paper from Woodbridge, NJ. Average revenue for 413 carloads of this traffic amounted to \$378 per carload but COSAC LTV costs average \$610 per carload.

Please contact me if your have any questions regarding this report.

LEO/dmw

Attachments

CONRAIL LINE SCREENING SUMMARIES

(ALL DOLLARS IN THOUSANDS)

14 - 1420 NJ PASSAIC & HARSIMUS/HUDSON ST CLUSTER:
 STATION FROM: C. P. WALDO MP: 0.0
 STATION TO: JERSEY CITY MP: 0.0 LENGTH: 2.5 MILES

COMMENT: COLGATE PALMOLIVE TO CLOSE IN 1988 1987 REHAB: \$ 0.0

YEAR	CARS	CUSTMR	REVENUE	CONTRIB	REV/COST	REV/MILE	REHAB	CODE
1983	2,356	2 / 6	\$ 4,146.8	\$1,552.3	1.60	\$1658.7	\$ 0.0	
1984	1,350	1 / 6	2,867.7	973.1	1.51	1147.1	0.0	
1985	1,205	1 / 4	2,592.6	1,071.3	1.70	1037.0	0.0	
1986	637	1 / 4	1,454.2	559.9	1.63	581.7	0.0	

 14 - 0215 NJ SOUTHERN SEC./TOMS RIVER I.T. CLUSTER:
 STATION FROM: SOUTH LAKEWOOD MP: 0.0
 STATION TO: TOMS RIVER MP: 0.0 LENGTH: 7.9 MILES

COMMENT: KEY CUSTOMER IS CIBA-GEIGY 1987 REHAB: \$ 158.6 I

YEAR	CARS	CUSTMR	REVENUE	CONTRIB	REV/COST	REV/MILE	REHAB	CODE
1983	552	1 / 4	\$ 1,363.2	\$ 572.4	1.72	\$ 172.6	\$ 0.0	
1984	454	1 / 4	1,132.6	527.0	1.87	143.4	0.0	
1985	307	1 / 4	589.0	249.3	1.73	74.6	158.5	I
1986	304	1 / 4	590.1	235.9	1.67	74.7	179.8	I

 TOTAL FOR THE STATE OF NEW JERSEY: ROUTE MILES: 16.3

Exhibit E - Conrail Economic Analysis showing line profitable at
647 carloads/year

Copies to C. A. Bassani
S. E. Nadler
P. D. Cohen
from
G. M. Williams, Jr.
1-29-85

0 53
7467
G-4 RS 1-80
MEMORANDUM

CONRAIL



FILE

DATE January 28, 1985

to R. B. Hasselman FROM J. F. Folk

Room 1740 Room 950

SUBJECT Passaic & Harsimus Branch / Hudson Street PHONE

Track, Jersey City, NJ

As you requested, we have analyzed the Passaic & Harsimus Branch and Hudson Street Track, which are used to serve Colgate Palmolive Corporation. There are six other customers on the line, however, the Sales Department advises that Jersey City has initiated condemnation procedures towards the property of Chicago Shippers and Elk Warehouse.* Chicago Shippers and Elk Warehouse expect to receive official condemnation notices within the next month. For the 12-month period ended September, 1984, these two customers accounted for 1,767 carloads, \$2 million in revenue and \$400,000 in contribution. The Sales Department advises that these two customers hope to relocate on Conrail in the same general area.

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* Refer to Exhibit 1 for customers, traffic levels and revenues for the 12 months ending September, 1984.

R. B. Hasselman
Page 2
January 28, 1985

0 54

As indicated in the table, the traffic generates \$1 million in annual pre-rehab contribution and a revenue/cost ratio of 1.48. On a post-rehab basis, the traffic generates \$847,000 in annual contribution with a 1.37 revenue/cost ratio. Total rehab is estimated to be \$581,000.

Colgate Palmolive, with 1,068 carloads, is the major customer on the line. Currently, Colgate produces cleansing powders at this plant. Regional Market Development informs us that Colgate has announced they will cease all operations at this Jersey City plant within three years. This closing, together with the planned relocation of Chicago Shippers, will leave four remaining customers on the line, accounting for 369 annual carloads, \$447,000 in Conrail revenue, and \$12,000 in pre-rehab contribution (see Exhibit 1 attached customer list).

Given Colgate's planned closing, building a connection from the Edgewater Branch to the Hudson Street Track would not seem to be a viable option for alternative service. In July 1982, the Division Engineer estimated the cost of constructing a connection and rehab on the Edgewater Branch to be \$500,000. This estimate excluded any cost for required land purchase. The Marketing Department has examined the potential of serving Colgate via Conrail's flexi-flo operation. Results of Marketing's initial review indicate approximately 65 percent (700 carloads) of Colgate's traffic could be converted to flexi-flo and continue to produce a positive contribution. The remaining traffic (368 carloads) would probably divert to truck.

Please advise if you require additional information.

TJMc/mk

Attachment

cc: J. A. Hagen
C. N. Marshall
R. J. Conway
~~G. M. Williams~~
J. R. Stanek

Hudson Street Track

(Dollars in Thousands)

<u>Customer</u>	<u>12 Months Ended 9/84 Carloads</u>	<u>Conrail Revenue</u>
Colgate Palmolive	1,068	\$2,681
* W. J. Morris	186	155
* Refined Onyx	107	183
* "B" Line Trucking	41	75
* Manischewitz	<u>35</u>	<u>34</u>
	1,437	\$3,128

Customers Which Will Relocate

Chicago Shippers	1,403	\$1,753
Elk Warehouse	<u>364</u>	<u>287</u>
	1,767	\$2,040
Total	<u>3,204</u>	<u>\$5,168</u>

* Customers remaining on this line.

TJMc/Costing
1/17/85

CONRAIL



*JPB -
Yes - MRF
is pulling together info,
which we will review w/ WAM.
ON 1-20-88
cc WAM, JPB, MRF*

MEMORANDUM
6-4C Nov 12-82

0 50-27

DATE: January 15, 1988
TO: *EJ. F. Betak* LOCATION: L-1012
FROM: J. W. Dietz *JWD* LOCATION: P-920
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(ALL DOLLARS IN THOUSANDS)

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