

**BEFORE THE SURFACE TRANSPORTATION BOARD  
Washington, D.C.**

237180

**Docket Number AB 167(SUB-NO. 1189X)  
CONSOLIDATED RAIL CORPORATION  
-ABANDONMENT EXEMPTION IN  
HUDSON COUNTY, NJ**

ENTERED  
Office of Proceedings  
December 8, 2014  
Part of  
Public Record

**MOTION**

**TO CLARIFY RESPONSES TO REQUESTS FOR ADMISSIONS AND TO  
OTHERWISE COMPEL PROPER RESPONSES TO REQUESTS FOR ADMISSIONS  
FROM CONSOLIDATED RAIL CORPORATION, CITY OF JERSEY CITY, RAILS TO  
TRAILS CONSERVANCY, AND PENNSYLVANIA HARSIMUS STEM  
EMBANKMENT PRESERVATION COALITION:**

**By Intervenors:**

**212 Marin Boulevard, LLC  
247 Manila Avenue, LLC  
280 Erie Street, LLC  
317 Jersey Avenue, LLC  
354 Cole Street, LLC  
389 Monmouth Street, LLC  
415 Brunswick Street, LLC  
446 Newark Avenue, LLC**

**Limited liability companies of New Jersey.**

The Intervenor LLCs (“Intevenors” or “LLCs”) hereby move, pursuant to 49 C.F.R. 1114.27, and 1114.31, for an order to clarify responses to requests for admissions and to otherwise compel proper responses to Requests for Admissions tendered by the LLCs from Consolidated Rail Corporation, (“Conrail”), and the City Of Jersey City, Rails To Trails Conservancy, and the Pennsylvania Harsimus Stem Embankment Preservation Coalition (collectively “City”) . A copy of the Requests for Admissions (served on November 12, 2014) is set forth in Exhibit A,<sup>1</sup> attached hereto. That request called for a response by November 28, 2014. Neither the City or Conrail responded in the manner required by 49 C.F.R. 1114.27. A

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<sup>1</sup> Exhibit A is a copy of the Requests for Admission submitted to Conrail. Each of the parties represented by Mr. Montange (“the City”) were served with identical and identically numbered requests for admission.

copy of Conrail's response is attached as Exhibit B. A copy of the City's response is attached as Exhibit C.

### **SUMMARY OF ARGUMENT**

Collectively the eight LLC intervenors, each of whom have a property and financial interest directly affected by these proceedings, respectfully request that the Board order Conrail, Jersey City, Rails to Trails Conservancy, and the Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition to comply with Intervenor's proper requests for admissions. Each of the foregoing was served with 24 identical requests for admissions. Conrail simply refuses to answer, while citing improper objections in order to avoid admission by default, and thereby requires this motion. The other three parties, collectively referred to as the "City" since they are represented by the same counsel and have taken identical positions with respect to the requests, admit to some of the items, provide convoluted answers to others amounting to tacit admissions, and dispute the propriety of the requests, all in an effort to avoid the fundamental issue of jurisdiction in this matter, an issue which may be raised at any time. Intervenor's requests bring to the forefront of these proceedings the fundamental questions of jurisdiction, procedural due process, and the Board's compliance with each of the three prior Court of Appeals decisions concerning the Harsimus Branch.

Intervenor's assert that each of the 24 requests is a true statement or representation with respect to a material legal document or issue in these exempt abandonment proceedings. If these statements proffered by the Intervenor's are true, then Conrail has presented a materially false petition for abandonment to the Board and attempted, for the second time since 2005, to obfuscate its prior disregard of regulatory jurisdiction. Conrail should know whether or not it is telling the truth about the location and identification of lines of rail on the Jersey City waterfront

which it has not abandoned previously, but which were subject to federal regulation; and, it should be required to be forthcoming. Conrail should also know if it has included all of such lines in its present exempt abandonment petition. The City, having previously argued that Conrail's position in a prior proceeding, albeit one voided for lack of jurisdiction, was false, now takes the Janus-faced position that it is important that the issue of jurisdiction over Intervenors' properties is settled because those are the properties it wishes to acquire, but irrelevant whether the Board has jurisdiction over any other properties that would be abandoned *de jure* or *de facto* by these proceedings. The City wants the Board to carefully scrutinize Intervenors' properties for regulatory jurisdiction and the application of NEPA and NHPA to those properties, but other properties somehow become "irrelevant, duplicative, and/or moot, untimely and unduly burdensome in this abandonment proceeding". (City response, page 1).

The United States Court of Appeals has heard and decided the issues raised by Conrail and the City in objection to Intervenors' requests. The first case, Consolidated Rail Corp. v. Surface Transportation Board, 571 F.3d. 13 (D.C. Cir. 2009) ("Harsimus I") instructed the Board that it could not resolve disputes on the location of regulated lines of rail transferred to Conrail by order of the Special Railroad Court. Intervenors' requests speak to the location and status of the lines of rail Conrail seeks to abandon in these proceedings both *de jure* and *de facto*. None of the parties' responses to Intervenors' requests dispute the truth of the proffered statements that identify and locate these lines of rail. Intervenors submit that there is no basis for any such dispute. However, if Conrail agrees that the statements proffered are true, then Conrail's present petition misrepresents the locations and identity of the lines of rail it seeks to abandon in these proceedings because Conrail shows those lines to be in different locations. From that, there is either a present dispute with the Intervenors as to what is being abandoned, or Conrail, and the

City, are seeking *de jure* abandonment of portions of line code 1420, and only some, or simply none, of line code 1440 (also known as the Hudson Street Industrial Track); the rest of the lines to be abandoned *de facto*. This, of course, short circuits the Board's considerations of the need for an any of these other properties for future rail (or trail) use, and exempts them completely from consideration under NEPA, NHPA and Federal Coastal Zone Management Act. In short, both Conrail and the City are demanding that the Board take an arbitrary departure from its jurisdiction and responsibilities, all to the detriment of the Intervenors. The Board has yet to address pertinent issues of jurisdiction, raising the specter that whatever the outcome of this matter, the proceedings will end up being vacated, as were the proceedings in 2006 and 2007.

The second case decided by the Court of Appeals, City of Jersey City v. Consolidated Rail Corp., 668 F.3d 741 (D.C. Cir. 2012) ("Harsimus II") dealt with standing to participate in the abandonment proceedings for the Harsimus Branch. Contrary to Harsimus II, Conrail and the City now wish to construe standing quite narrowly to preclude the Intervenors from raising any Harsimus I jurisdictional issues, or any other issue not to their liking. Among the objections growing out of the standing issue, which was broadly construed by the Court of Appeals in Harsimus II, since it also allowed Rails to Trails and the Embankment Coalition to also participate with the City, is the argument of both Conrail and the City that the Intervenors are precluded from questioning the Board's jurisdiction. In their view, there can be no question over the Board's jurisdiction over any rail lines proposed to be abandoned by Conrail because the Special Court settled a prior dispute as to jurisdiction over only the properties lying to the west of Marin Boulevard in Jersey City. By such arguments, both Conrail and the City seek to preclude any focus upon their highly discriminatory treatment against Intervenors in applying environmental review only to some properties to be abandoned, while excluding from

consideration all issues concerning lines of rail to be abandoned East of Marin Boulevard whether *de facto* or *de jure*. Harsimus II gave standing to the City because it was entitled to a role in the proceedings to advance a legitimate interest under all federal statutes and regulations pertaining to property to be abandoned, property which the City does not own. Intervenors, as direct property owners, have an even greater interest in ensuring a proper and sufficient end to federal railroad jurisdiction. If Harsimus II permits the City to participate as full parties to the proceedings, Harsimus II cannot be read to bar the Intervenors whose interests are far greater and more pressing, since the enjoyment of their property rights have been long frustrated by a persistent failure to address and resolve these same issues before the Board. Nonetheless, the objections of Conrail and the City are at odds with the precepts of Harsimus II, as well as Harsimus I. Intervenors are entitled to ask whether or not this proceeding is being properly undertaken within the Board's jurisdiction.

The third ruling of the US Court of Appeals has already been violated once by the Board's decision in the matter docketed as STB Docket No. FD-35825 ("FD-35825"). That error is the subject of a pending and fully briefed motion by Intervenors for reconsideration, which pending motion both Conrail and the City conveniently ignore. The error is an interpretation by Conrail and the City followed by the Board that the District Court, sitting as the Special Railroad Court, ruled on every issue in these proceedings with finality. That decision, City of Jersey City et al. v. Consolidated Rail Corp. et al., 968 F. Supp.2d 302, 306 (D.C. Dist. 2013) *aff'd* 2014 WL 1378306 (D.C. Cir. Feb. 19, 2014) ("Harsimus III")<sup>2</sup> was strictly limited only to the status of that portion of line code 1420 to the West of Marin Boulevard between CP Waldo and Marin Boulevard in 1976. The Court said nothing about the present regulated status of the remainder

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<sup>2</sup> Circuit Court decision copy attached as Exhibit D

of 1420 or of the status or location of any other portion of line code 1420 (or 1440), the court making it explicitly clear that the ruling was so limited, and that all other issues were to be litigated in the future in some other docket. The US Court of Appeals affirmed and explicitly stated that all other issues, which now include issues that Conrail and the City claim to be irrelevant, burdensome, untimely, moot, etc., were specifically preserved. City of Jersey City v. Consol. Rail Corp., No. 13-7175, 2014 WL 1378306, at \*1 (D.C. Cir. Feb. 19, 2014). Harsimus III offers no support whatsoever to foreclose any of these issues.

Informed by three decisions of the US Court of Appeals arising from these same proceedings, the Board should adhere strictly to the rulings in those proceedings and compel Conrail to provide proper and responsive answers to Intervenors' request for admissions. It should also compel the City to do likewise on those items that the City has improperly attempted to avoid; and, to strike the objections of both the City and Conrail to Intervenors' requests for admissions. The sections below address the response of Conrail and of the City with specificity as to each of the 24 requests, and the City's responses and objections. With specific answers to all questions from all parties it will become quite clear whether the Board has jurisdiction in this matter to proceed as it has been proceeding, or whether some other course is necessary.

At a minimum the Board must insure that a fair, adequate and orderly process is followed in this matter beginning with the scope of the proceedings. This motion to the Board is made necessary because both the City and Conrail's responses are disingenuous. The only parties in this action that have plainly set forth the facts, and have attempted to have them considered by the Board, without obfuscation have been the LLCs.

## ANALYSIS

### The LLCs Have a Right to Seek Discovery

Both the City and Conrail raise objections that are not valid objections to requests for discovery in this matter pursuant to 49 C.F.R. 1114.21. As a party to this action, the LLCs are entitled to discovery of the other parties' positions. The LLCs are parties in this action and are owners of property directly affected by Conrail's abandonment exemption petition and the City's efforts in opposition, including the relief the City claims it will seek in this action. The resolution of issues in this case will have an impact on the rights of the LLCs. Neither Conrail nor the City explain why the LLCs as parties to a Board action are limited in their ability to seek discovery under the Board's rules and proceedings, as both Conrail and the City would have.

The LLCs are entitled to know what Conrail and the City's positions actually are to issues that must be considered by the Board to establish the scope of these proceedings and issue a proper determination. Indeed discovery is available as to any material that may be relevant to the subject matter of a proceeding, or to matters that may lead to the lead to the discovery of admissible information. 49 C.F.R. 1114.21(a)(1). It is not an objection to discovery that the information sought by an adversary may be utilized by the adversary against responding party's interests; that it may be utilized for purposes other than that for which the responder would use it; or, that such information may hypothetically be used in an objectionable manner at some future time. The LLCs should not be denied a full and fair opportunity to protect their interests and have no obligation under the rules of discovery to explain to an adversary why they are seeking discovery or what such discovery may be utilized for. See 49 C.F.R. 1114.21(a)(2). If the City or Conrail have an objection to the LLCs' future use of an admission, such objection can

be raised at such time, but not in response to a request for admissions. Denying discovery to limit issues, and pre-ordain results is the antithesis of procedural due process.

Conrail argues that discovery is precluded in Board abandonment exemption actions, even though no such rule exists. Contrary to Conrail's claims of preclusion, the Board in Ind. Sw. Ry. Co. Abandonment Exemption – In Posey & Venderburgh Counties, STB Docket No. AB 1065X, slip op. at 4. (served February 11, 2011) did not hold that discovery was precluded in abandonment exemption actions, but instead, granting a motion to compel discovery, noted the Board's position as follows:

Although it is true that the Board disfavors discovery in abandonment proceedings **due to the strict time constraints**, it has set a standard for discovery in these situations. Parties seeking discovery in abandonments must demonstrate both relevance and need. Cf. Cent. R.R. of Ind.—Aban. Exemption—in Dearborn, Decatur, Franklin, Ripley, and Shelby Counties, Ind., AB 459 (Sub-No. 2X) (STB served Apr. 1, 1998)(denying a motion to compel discovery because moving parties failed to show a need for the material or to provide sharply focused requests).[Emphasis added.]

Here there is a need for this discovery because Conrail is seeking exempt abandonment for only truncated portions of rail lines, arbitrarily limited in scope. The City argues that Conrail's past efforts to avoid the Board's jurisdiction, but not its present efforts, are highly relevant to the relief the City claims it will seek, namely voiding the LLCs' deeds or otherwise destroying the LLCs' property interests. Neither Conrail or the City want facts considered that will be harmful to their respective arguments or positions – past or present. Under the circumstances, without the information sought, whatever decision this Board makes in this proceeding in granting Conrail or the City the relief they seek would be arbitrary, capricious and a denial of procedural due process. Just like the requestors of discovery in Vanderburgh, the

LLCs clearly have a right to this discovery to assure a proper proceeding, or at the very least, an adequate record for appeal, if necessary.

While the LLCs maintain that the Board no longer has jurisdiction over Lines 1440 or 1420 east of CP Waldo for the reasons explained in STB FD-35825, until the LLCs motion for reconsideration is granted, or denied and finally determined on appeal, the LLCs have no choice but to presently proceed as if the Board in fact retains present jurisdiction over all lines of rail connected to CP Waldo through the LLCs' properties<sup>3</sup>

**The Location and Status of Rail Lines East of Marin Boulevard is a Relevant Issue**

Given the present procedural posture of this matter, the status and location of regulated rail lines east of Marin Boulevard is of clear factual and legal relevance.

**Factual Relevance**

The issues inquired of - the status and location of rail lines east of Marin Boulevard transferred to Conrail in 1976 - is central to a proper determination of this matter. Here the LLCs seek by way of answer to requests for admission, to settle once and for all the location and status of the entirety of the presently regulated rail lines east of CP Waldo (including the remainder east of Marin Boulevard) that Conrail, at the behest of the City, dismantled and sold off in the 1980s and 90s.

The issue of the location and status of both Lines 1440 and 1420 east of Marin Boulevard is particularly relevant based on Conrail's abandonment exemption petition. Conrail in this action is not only seeking the abandonment of Line 1420 west of Marin Boulevard, but also a

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<sup>3</sup> A motion for reconsideration of the Board's decision in FD-35825 was filed on August 29, 2014 which is still pending.

portion of a rail lines east of Marin Boulevard. (January 1, 2009 Notice of Exemption Exhibit A, Document 224298, AB-167-1189-X). The rail line that Conrail seeks now to abandon east of Marin Boulevard, is improperly labelled by Conrail as a segment of Line 1420, when in fact the rail line sought abandoned in this action east of Marin Boulevard is a segment of Line 1440.

The LLCs attempted to establish the status and location of Lines 1420 and 1440 East of Marin Boulevard in the District Court in Harsimus III, but were precluded, due only to procedural reasons, from raising those issues. Yet rather than deciding these issues (or deciding that the Board had the right to proceed with an abandonment petition without consideration of these issues) the Circuit Court instead specifically preserved these issues for future adjudication. City of Jersey City v. Consol. Rail Corp., No. 13-7175, 2014 WL 1378306, at \*1 (D.C. Cir. Feb. 19, 2014). By preserving these issues, the issues have most certainly not been resolved. As Conrail and the City acknowledge the only parties that want to see these issues resolved are the LLCs. Rather than return to the Special Court for a determination as to the status and location of the remainder of these lines, the LLCs seek by way of this discovery to have those issues firmly addressed, and have this matter proceed in a proper fashion. Conrail and the City's objections establish that they cannot deal with the Board or the LLCs on the true and complete facts of this matter.

#### Location and Status of Line 1420

The City in objecting to our discovery request conveniently ignores the fact that up until it suited them, it took the same position as the LLCs – that Conrail has not properly identified Line 1420 east of Marin Boulevard in its abandonment exemption petition. The City in its initial

objection to Conrail's abandonment map (attached to its notice of intent to file the present Petition) argued to the Board as follows on April 25, 2008:

City, RTC and Embankment Coalition are concerned that Conrail has not accurately identified the Harsimus Branch in the maps filed with its ER/HR. Conrail's map purports to show it bending in a southeasterly direction at a point after it reaches Mann Boulevard. The Branch was the former Pennsylvania Railroad mainline to what effectively was a port facility (the Harsimus Cove) and at least one line would extend (in keeping with track charts) at least to water's edge. If and when Conrail seeks abandonment authority, it needs correctly to reflect the historic location of the Branch. This could be germane for connectivity of various rail transportation uses that one or more of the Commenters intend to seek in this proceeding, if Conrail ever formally initiates it. Commenters reserve all their rights to contest gerrymandering by Conrail of the Harsimus Branch. [Document 222196 p. 5 AB-167 (Sub No. 1189X)]

Conrail, when it filed its petition abandonment map in this action, did not amend the description of Line 1420 on in its abandonment map in response to this objection.

The City's objection affirmed the City's position in the action docketed as STB Docket No. FD-34818 ("FD-34818") where the City took the position that "although the end of the line [1420] ran through a yard, the line did not terminate before the yard but at the very edge of the Hudson." (FD-34818 Filing 216674, May 31, 2006 p. viii) . Indeed, the City in FD-34818 made a point of noting that the positions of both Conrail and the LLCs as to the location of 1420 were mistaken, repeatedly noting that Line 1420 ran to the river. In its March 9, 2006 Opening Statement the City described Line 1420 as follows:

The Record for the year ending December 31, 1942, expressly lists the Harsimus Branch in its index of "Branches" at p. 5, and twice describes the Branch. The first description, at p. 17, speaks of it as 1.47 miles long from a junction with the Main Line at Waldo Avenue, terminating on the Hudson River in Harsimus Cove. The second description is at page 88, where electrified mileage is set

forth. The entire Branch was electrified, as well as much side track and yard track associated with it....

The Record for 1954 similarly lists the Harsimus as a named Branch in the index (p.5), and describes it similarly to the 1942 Record. See 1954 Record at p. 17. Again, the entire Branch is electrified. See 1954 Record at 76....

The LLCs expert David B. Dixon, in his Special Court declaration, identified an extant line of rail running to Harsimus Cove in 1976, that possessed electric catenaries. In line with the City's previous position, he identified this line as Line 1420, running all the way to the Hudson River. (Exhibit O ¶13 to the May 8, 2014 Petition for Declaratory Order of Exemption, FD-35825).

The City admits that the remainder of Line 1420 east of Marin Boulevard, is similarly regulated. Yet the City has not explained why it has abandoned its position that Conrail in its petition for exempt abandonment has not properly identified Line 1420 east of Marin Boulevard. It does not explain why David B. Dixon's analysis was incorrect, or why its own position prior to 2009 was wrong. Rather than choose between conflicting past and present factual positions based upon the knowledge in hand, as the Intervenor LLCs properly did in the District (Special) Court, the City improperly refuses to address the facts when called upon to do so. It provides verbiage instead of veracity.<sup>4</sup> Given the presence of a dispute regarding the location of 1420 east of Marin Boulevard, discovery as to this issue is clearly relevant.

#### Location of Line 1440

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<sup>4</sup> Conrail does the same, only just slightly less overtly. For example, unwilling to admit in the District Court in the Harsimus III proceedings that its prior position on the regulated status of Line 1420 was a sham (or even a mistake), it refused to join the LLCs in stipulating as the Court had directed. Instead, it fell back to a position that it would not oppose the City's summary judgment motion that was based on the stipulation it would not join. Conrail prefers no position on the facts – but that is not an option on a request for admission – it's an admission.

The Board needs to be informed by Conrail as to what it is actually seeking abandonment authority for. The Location and status of 1440 is also relevant and in dispute in this action. Here Conrail seeks to abandon a portion of Line 1440. The LLCs seek to establish the proper location of Line 1440. The portion of Line 1440 sought to be abandoned is that segment of line mislabeled by Conrail as a segment of Line 1420 running east from Marin Boulevard and turning to the southeast. Why Conrail is seeking to abandon a portion of Line 1440 that it now maintains' is not a line of rail subject to abandonment, Conrail does not explain.

Both Conrail and the City have attempted to improperly deflect board attention from Line 1440 and line 1420 east of Marin Boulevard. Neither the City nor Conrail want to correctly describe Line 1440. That in itself raises an alarming question: why? Conrail mislabels the segment of Line 1440 it seeks now to abandon as a segment of Line 1420, in order to avoid any scrutiny of Conrail and the City's actions in dismantling and selling the entirety of Line 1440 in the 1980s and 90s without Board approval. Conrail also seeks to avoid this entire issue by claiming that Line 1440, which was transferred to Conrail in the same manner as Line 1420 under the Final System Plan, was somehow not transferred as a line of rail. The City admits that Line 1440 was in fact transferred as a line of rail, but refuses to admit, in contradiction to its position in regards to Line 1420, that it is subject to STB abandonment authority. Like with 1420, it seeks refuge in confusion based on inconsistent factual positions. In furtherance of this scheme, the City and Conrail in this action seek to differentiate the effect of the abandonment of Line 1420 from Line 1440 first by misrepresenting the extent of Line 1440 and second by misrepresenting the nature of its connection to Line 1420.

Conrail incorrectly describes Line 1440 in its notice of intent to file the present petition as being only .72 miles long and as not being connected with Line 1420. (Conrail's March 6,

2008 Notice of Intent to Initiate Case, Document 221808, AB-167-1189-X). Yet the Final System Plan described Line 1440 as being 1.3 miles, not .72 miles long. (Final System Plan p. 272). Conrail intentionally omitted a half-mile (.58 miles) of line 1440 to eliminate line 1440 from these proceedings entirely with no explanation as to how this former line of rail simply disappeared without abandonment authorization. Conrail then uses its intentional omission as a reason for omitting consideration of Line 1440 in this action. The City for its part objected to Conrail's inclusion of Line 1440 in the present petition because the City claimed to Conrail it would "confuse" the issues because the two lines did not "intersect."<sup>5</sup>

Conrail has never validly explained why it considered Line 1440 as a line of rail that required Board abandonment when it filed its notice of intent to file the present abandonment exemption petition in March 2008 but then omitted it, other than by claiming it changed its mind and apparently no one cares. This is not a valid explanation. Certainly Conrail provides no support for its statement in response to the LLCs requests for admission that Line 1440 was "always considered a spur track." For one, Conrail did not hold this position as recently as 2008 when, Conrail, without prompting raised the issue of the need to abandon 1440 in its Notice of Intent to file this action. In such notice it called Line 1440 a "line". Conrail even sent notices out explaining that "to begin the abandonment process [for lines 1420 and 1440] Conrail must file an application with the Surface Transportation Board." (See March 11, 2008 Conrail notice to the U.S. Fish and Wildlife Service in this action).

Yet when Conrail actually filed its petition for abandonment exemption, it omitted any mention of Line 1440. Of course, this omission came after the City had suggested that discussion

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<sup>5</sup> Correspondence of Charles Montange, Esq., to the Surface Transportation Board of March 28, 2008, in the matter In Re Consolidated Rail Corporation Abandonment - in Hudson County, NJ AB-167 (Sub No. 1189x) and related proceedings, p.16.

of Line 1440 would “complicate” issues in this matter. Regardless of its objection, the City never, then or now, disagreed with Conrail’s position that Line 1440 was subject to Board Abandonment authority. While Conrail has never admitted that the City’s objection was the reason it decided to not seek abandonment of Line 1440, it is clear that omission of Line 1440 would serve both the City’s and Conrail’s interest in having the Board improperly ignore and not scrutinize the history of the City and Conrail’s complicity in the dismantling and abandonment of that line without STB approval (as well as the remainder of Line 1420 east of Marin Boulevard).

The City, like Conrail, does not want the Board to focus on the fact that it was actively involved in the dismantling of over 66 percent of the total line mileage east of CP Waldo since 1976, without, as it argues, Board required approval. This issue clearly can affect the City’s rights to burden the LLCs properties unfairly. See e.g. Apache Survival Coalition v. United States, 21 F.3d 895 (9<sup>th</sup> Cir. 1994)(Section 106 enforcement action barred where plaintiffs waited two years after re-location of telescope to bring action after challenges launched had failed, project was 35 percent complete when lawsuit was filed, and plaintiff’s ignored early notification about project) . Here, City’s claims to address past actions comes decades late and after the City had actively pursued a contrary result. The City claims it is entitled to relief based upon the fabrication that the LLCs and Conrail attempted to conspire to thwart the Board’s jurisdiction and should therefore be severely punished. But that is exactly what the City did east of Marin Boulevard, so the facts it seeks to avoid admitting will affect or even deny the relief it claims it will seek. Such facts must, therefore, be highly relevant.

The City does not deny that Line 1440 was transferred to Conrail as part of the Final System Plan. The City itself has admitted that Line 1440 was a freight track. Indeed, the City admits that Line 1440 was in fact transferred as a line of rail to Conrail in 1976. (City’s response

to request for admission #21). The City does not explain why 1440 has lost its regulated status, while Line 1420 over the LLCs property has not. Aware that it has no explanation for the fate of Line 1440, both Conrail and the City now take the position that Line 1440 is irrelevant to issues in this action because, somehow, Line 1440 and Line 1420 never intersected.<sup>6</sup> Conrail and the City's position of non-intersection would require the Board to accept the illogical conclusion that the Final System Plan created a line of rail, Line 1440, that connected to the national rail network only through a non-regulated spur or side track – that it existed as an island of regulated track disconnected from the national rail network. If the City and Conrail are correct, that only means that an as-of-yet unidentified, but regulated, line connecting Line 1420 and 1440 must have existed to connect Lines 1420 and 1440. Of course, this only heightens, not lessens, the need for discovery on this issue. Line 1440 and 1420 must have intersected to carry freight over the Embankment.

Contradicting its present position, the City admitted intersection in FD-34818. In FD-34818 it submitted statements from witnesses that described the Hudson Street Industrial Track as a line of rail “emanate[ing] from the Sixth Street Embankment” and being “an active rail line traversing the area of what we call the Harsimus Yards and running south along the approximate right-of-way of today’s Greene Street and Hudson Street.” (May 7, 2006 Statement of Robert D. Cotter, pp. 1-2, attachment to Document 216520 FD-34818). Mr. Montange, contrary to the City’s present position, then represented to the Board that “the only ingress and egress to Conrail’s Hudson Street tracks [Line 1440] serving Colgate-Palmolive . . . and other [shippers . .

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<sup>6</sup> This is the same kind of unresolved factual issue now before the board for reconsideration in FD-35825

. was over the Embankment.” (City’s May 9, 2006 Rebuttal Statement p. 18 Document 216520 FD-34818).

Conrail’s present position that Line 1440 “was always a spur” even though it considered it to be a line in 2008, is the second time that Conrail is seeking to declare a line abandoned, not by seeking STB approval for abandonment, but by simply determining that a regulated line was never a line in the first place. Conrail’s reliance on the City self-serving failure to object to this misrepresentation of Line 1440 as a spur is certainly not a valid reason to ignore Line 1440.

If the Board finds it difficult to settle this issue in this or any other proceeding, it should treat all lines of rail transferred to Conrail in 1976 as presently regulated lines of rail and place the burden of proof on Conrail to establish that its lines of rail are in fact non-regulated lines for which no abandonment is required. Conrail’s inability to identify or forthrightly acknowledge the regulated status of its lines of rail requires as much, especially since prior *ex parte* Board orders have, obviously, failed to change Conrail’s approach to this issue.

### **Legal Relevance**

#### **Right to a Proper Proceeding**

The LLCs have a right to ensure that if its rights are to be affected by a proceeding, that such proceeding be conducted in a proper manner with regard to its due process rights. The City’s objections to the LLCs’ requests for admissions, establish that the City’s purpose is to see to it that only the rights of the LLCs, but not other similarly situated property owners, are subjected to review.

The City, objecting to its petition, argues that no relief should be accorded to Conrail as Conrail has acted improperly by selling off what it claims are currently regulated properties

without STB approval, in violation of NEPA and the NHPA. For its part the City has stated an intent to utilize these claimed violations to impose conditions on the Petitioner's property but not any other properties sold off by Conrail, including City streets. without STB approval.

While the LLCs don't have a property interest east of Marin Boulevard, the LLCs' property interests will be affected by the manner in which the Board conducts itself and establishes its jurisdiction. Intervenors have had their interests subject to one proceeding that lacked jurisdiction, FD-34818, and almost eight years of subsequent federal proceedings. The LLCs are entitled to be treated fairly and get through this process. The process cannot be purposely skewed to providing either the City or Conrail the benefit they seek without regard to the rights of the LLCs. The LLCs have an interest in not being singled out for disparate treatment, for the sole reason that the City and Conrail have at least tacitly agreed to cover up Conrail and the City's actions in selling and dismantling Lines 1420 and 1440 east of Marin Boulevard prior to the LLCs purchase of their property, under the same exact circumstances the City now claims are illegal and from which it seeks to confiscate the LLCs' properties. Neither the City nor Conrail explain why it is proper for NEPA and NHPA and other obligations and burdens to be imposed only on the LLCs but not any of the other similarly situated property owners in Downtown Jersey City.

There is no doubt that all former Conrail Property east of Marin Boulevard has been sold without Board approval by Conrail. The City and Conrail, for their own interests, continue to misrepresent the status and location of all rail lines east of Marin Boulevard to both the LLCs and the Board. As the City admitted to the District Court, the City (and most likely Conrail's) actual goal in this proceeding is to achieve the *de facto* abandonment of all lines east of Marin Boulevard without any scrutiny by the Board of the effect of such *de facto* abandonment, or the

City and Conrail's role in the dismantling of regulated lines without Board approval. October 22, 2012 Memorandum on Behalf of the City of Jersey City et al. in City of Jersey City et al., v. Consolidated Rail Corp., et al, p.17-18 n. 17C.A. No. 09-1900 (CKK) (D.D.C.) (Excerpted copy attached hereto as Exhibit E). Indeed, the City now would appear to be in the same position it claims the LLCS are in – the City admits that portions of the right of way of Line 1440 run over City streets.<sup>7</sup>

### Improper Segmentation

Conrail seeks to abandon, and the City seeks to burden, only an artificially truncated segment of Lines 1420 and 1440. Under the rules governing abandonment involving segments of an entire line, findings regarding the entire line, and inter-related impacts for each segment, are necessary to the agency's evaluation and must be made. See: Futurex Industries, Inc. v. ICC, 897 F.2d 866 (7th Cir. 1990); Cf. Central Michigan Ry. Co.-Abandonment, 7 I.C.C.2d 498 (1990), 7 I.C.C.2d 557 (1991), 8 I.C.C.2d 166 (1991).

In Futurex Industries, Inc. v. I.C.C., supra, 897 F.2d at 870–73, the Seventh Circuit held that the grant of abandonment authority would be capricious if it resulted in improper segmentation. Cf. California High-Speed Rail Authority—Construction Exemption—In Merced, Madera And Fresno Counties, Cal., STB Docket No. FD-35724 (June 13, 2013) p. 10. The Board's obligation under Futurex as stated by the Seventh Circuit is to apply the following analysis:

When segmentation of transportation lines is involved, we consider whether the segmentation satisfies three conditions: (1) does the proposed segment have logical termini?; (2) does the segment have

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<sup>7</sup> The City unashamedly relies on this as a reason why the Board should not consider Line 1440 in this action. (Letter of Jersey City Mayor Healy of March 4, 2008, attached to Document 221863 in AB-167-1189-X). See also City's response to request for admission #12.

substantially independent utility?; and (3) will abandonment of the disputed segment foreclose alternate treatment of the remaining segments? The satisfaction of these three criteria tends to ensure that carriers will not abuse the out-of-service exemption by carving out one segment of a line in an attempt to make the remainder of the line useless and subject imminently to abandonment. We must, of course, be vigilant to detect and restrain the latter phenomenon should it appear. [*Futurex, supra*, 897 F.2d at 870–73.]

Here this phenomenon has appeared. Conrail, without objection (and with the possible encouragement of the City) has chosen to seek the abandonment of a segment of Lines 1420 and 1440 that don't have logical termini, that would leave substantial portions of rail lines without independent utility, and that will certainly result (as the City hopes) in *de facto* abandonment.<sup>8</sup> Certainly an explanation that relies on an intent to only burden the LLCs, and ignore the history of dismantling of lines on the Jersey City waterfront is not a proper reason for segmentation. There is also no dispute that the grant of Conrail's petition would leave all rail lines east of Marin Boulevard stranded, resulting in an island of regulated rail. This situation would, as admitted by the City to the District Court, result in the imminent abandonment of these lines *de facto*, without any analysis by the Board of the impact of this abandonment under NEPA, the NHPA or otherwise, contrary to the requirements of law.

At a minimum, the issue having been raised, the Board is required to undertake an analysis of whether improper segmentation has occurred; such an analysis of course, would require the Board to be aware of the location and status of rail lines east of Marin Boulevard. Nothing in the Board's rules permits a petitioner to seek abandonment of an artificially truncated segment, or an objector to impose environmental or historic burden upon only such truncated

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<sup>8</sup> For example, the segment of Line 1420 sought abandoned ends in mid-air at Marin Boulevard. No reason has been given as to why the actual remainder of Line 1420 east of Marin Boulevard, as transferred in 1976, is not actually sought to be abandoned, and no proper explanation has been provided why Conrail has chosen to abandon Line 1440 beyond the point it is now seeking abandonment authority (or at all if it is not required to do so).

segment, with knowledge that *de facto* abandonment of the purposely excluded segments of Lines 1420 and 1440 will certainly result. Such an action would be inherently arbitrary and capricious.

The Board cannot intentionally circumvent, or acquiesce in the intentional circumvention, of regulatory requirements of an abandonment exemption, including environmental review, by dividing a federal action into arbitrary components in order to allow some of those components to avoid scrutiny and the overall impact and actual scope of Conrail's action. Yet this is precisely what the City and Conrail expect and demand the Board to do.

**The LLCs Have Standing to Raise Issues of the Status and Location of Lines East of Marin Boulevard in this Proceeding**

Conrail and the City do not explain how the LLCs posture can possibly affect the relevance of the information sought. See 49 C.F.R. 1111.21. Regardless, the LLCs as parties to this action have a right to address the issue of the Board's jurisdiction and the merits of both Conrail and the City's position. Neither the City nor Conrail objected to the LLCs motion to intervene in this action. The LLCs in their motion to intervene noted that the issues presently addressed by the requests for admission would be raised in order to protect the LLCs' property and procedural rights. (LLCs' December 11, 2013 Petition to Intervene, Document 235167STB Docket No. AB 167 (Sub No. 1189X)).

As explained, though the LLCs do not have any property interests east of Marin Boulevard, the way the Board handles this petition and the City's objections thereto, clearly will have an impact on the validity of the proceedings and hence the LLCs property and due process rights. The LLCs clearly have standing to address these issues under City of Jersey City v. Consolidated Rail Corp., 668 F.3d 741 (D.C. Cir. 2012) ("Harsimus II") where the Circuit Court held that injury required to establish Article III standing must be fairly traceable to the

challenged action, and likely to be redressed by a favorable decision. Unlike the City that was held to have standing, the LLCs actually have a property rights and fee ownership of their properties. Clearly the Board must consider the effect of the status of the remainder of Line 1420 east of Marin Boulevard and Line 1440, in arriving at a proper determination in this matter. Again, the Board must consider the true scope of the impact of Conrail's request, and the City's objections and requested relief.

Conrail and the City's refusal to address the requests for admissions, and standing objections, are nothing more than an attempt to deny the LLCs due process – that is, a proper hearing based on the consideration of the facts on a proper jurisdictional footing.

**The Issues of the Status of Lines East of Marin Boulevard is not Moot or Untimely**

Conrail and the City argue that issue of lines east of Marin Boulevard has been raised by the LLCs in an untimely fashion, or that the issue of the appropriateness of such consideration has been previously determined in City of Jersey City et al. v. Consolidated Rail Corp. et al., 968 F. Supp.2d 302, 306 (D.C. Dist. 2013) (“Harsimus III”). Of course this is not the case. Conrail is simply asking the Board to adopt its misrepresentation of Harsimus III.

Contrary to the suggestion of both Conrail and the City, this issue (the status or location of lines East of Marin Boulevard or the effect of same on these proceedings) was not addressed in Harsimus III. In Harsimus III Judge Jackson noted that the Complaint in that action only addressed the status of that “portion of rail track addressed in the complaint” which was circumscribed by the City to be only that portion of 1420 between CP Waldo and Marin Boulevard. Indeed, the LLCs claims and objections were specifically preserved in Harsimus III. Though denying the LLCs motion to amend their answer, Judge Jackson specifically noted that: “a denial of the motion to amend does not prejudice the LLCs because they are free to raise their

claims in separate litigation.” Id. at 307. The Circuit Court in ending finally concluding that action affirmed stated:

the [LLCs] proffered claims presented entirely new legal theories and many new facts, extending beyond the dispute presented by the original complaint. In addition, denial of the motion to amend will not unduly prejudice [the LLCs] because they remain free to press their new claims in independent litigation (subject to any relevant defenses or procedural barriers). [City of Jersey City v. Consol. Rail Corp., No. 13-7175, 2014 WL 1378306, at \*1 (D.C. Cir. Feb. 19, 2014)].

Moreover, neither the City of Conrail explain when the LLCs should have sought discovery on this issue, or otherwise raised it. In December 2013 the LLCs filed a notice of intent to intervene and said that jurisdiction would be an issue while this matter was stayed pending the outcome of Harsimus III. No one objected. Their request for intervention was only granted in August 2014. At the same time the Board ordered the NEPA review to go forwards and noted that a scheduling order would be provided. To date, no such scheduling order has been provided but in advance of that order Intervenors have addressed the issue of jurisdiction which Conrail and the City simply refuse to consider. Neither the City or Conrail acknowledges that the issue raised by the LLCs is fundamental to the Board’s subject matter jurisdiction to grant or deny relief (either by way of misidentification of lines under the Final System Plan Consolidated Rail Corp. v. Surface Transportation Board, 571 F.3d. 13 (D.C. Cir. 2009)(“Harsimus I”) or by improper segmentation). The issue of jurisdiction can be raised at any time, in any event.

**The Discovery Sought is Neither Vexatious or Burdensome**

Conrail claims that the requests for admission are vexatious and burdensome. Conrail and the City continue to misrepresent the status and location of the rail lines. Yet when asked to properly disclose the status and location of these lines, Conrail refuses, by stating:

[Conrail] objects to each and all of the requests for admissions on the grounds that they are improper in this proceeding, untimely irrelevant and vexatious.”

Conrail has an obligation to follow the discovery rules. Enforcement of the rules is made more important in the face of Conrail’s arrogant response to regulation by way of claiming vexatiousness. The need for this discovery is compounded by Conrail’s failure to address jurisdiction. Harsimus I, II and III must be followed by the Board. If there is any “vexatiousness” or “burdensomeness” it is only the LLCs that are so vexed and burdened by a process that has been purposely mishandled. The arguments actually raised by Conrail are nothing more than an admission that Conrail simply does not want to answer the questions posed. The City does not deny that Conrail sold property east of Marin Boulevard, it just does not want to deal with that issue either.

Conrail has never adequately or truthfully addressed this jurisdictional or locational issues with respect to 1420 east of Marin Boulevard or Line 1440. It now takes the same discredited position as to the status of 1440 that it took in 2006 in regards to the status of 1420 – that it is not a line just because it says so. It uses this same misleading position to claim that discovery to test that same misleading position is somehow barred in an action filed two years after Conrail’s position was discredited. Both Conrail and the City have a distinct and demonstrated interest in misrepresenting the status and location of rail lines affected by the Board’s actions in response to this petition. Both lines 1420 and 1440 where transferred to Conrail under the Final System Plan in the same manner. Indeed Mr. Montange in 2006 represented to the board that “the property in question here (by [1985] called the Passaic and Harsimus Branch/Hudson Street Track . . . ) would remain highly profitable . . . was heavily used by multiple shippers for through traffic

moving in interstate commerce for over a decade after it was transferred to Conrail. (City's May 9, 2006 Rebuttal Statement Document 216520 p.19 FD-34818).

Conrail has the ability to answer the question posed without burden or vexatiousness. If, as Conrail suggests by its timeliness objection it was relevant in 2006 then its relevant now. Conrail should be put to its proofs. If, as Conrail suggests it was an extremely simple task for the LLCs to have determined whether or not 1420 was a regulated line of rail in 2004, Conrail is certainly in a much better position to answer those questions, then or now.<sup>9</sup>

Conrail's inability to determine which of its lines require Board abandonment approval, and its sale of lands prior to such a determination, counsels for the imposition of the burden of disproving Board Jurisdiction on Conrail going forward. Conrail does not explain why the admission of facts that it, as the regulated entity should be aware of, or at least in possession of, is in any way "burdensome" or "vexatious". Conrail's willful ignorance of its regulatory obligations is not a result of the LLCs actions. Conrail does not explain its failure to properly identify which lines it needs to abandon, which those it does not, and where those lines may actually be. This is the second time in the past nine years that Conrail admits to having unilaterally decided that it may abandoned a rail line without express Board approval.

If Conrail is unwilling to state whether or not its lines are subject to Board abandonment jurisdiction prior to divesting them, then Conrail should be forced to proceed as if all its lines are subject to such authority unless and until the Board determines that such authority is not needed.

### **SPECIFIC RELIEF REQUESTED**

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<sup>9</sup> Indeed even in FD-34818, Fritz Kahn, Esq., counsel for the LLCs in that action, took a position different than that taken by Conrail as to why the LLCs property was not part of Line 1420. He did not adopt Conrail's position, but presented good faith arguments that perhaps would not have been made had Conrail fully and properly discharged its regulatory obligations.

**Conrail's Refusal To Answer Should be Deemed an Admission of Each Request or be Compelled to Properly Respond**

Pursuant to 49 C.F.R. 114.27(a) a matter is deemed admitted if within the time provided for a denial, unless a denial or objection is timely received; moreover, in denying an admission, the denial must fairly meet the substance of the requested admission. Here Conrail has simply refused to respond to the requests for admissions individually, and issued a perfunctory blanket denial, without meeting the substance of any of the requests for admission. The objections raised by Conrail are not procedurally proper objections to discovery (nor are they otherwise substantively proper objections).

Under these circumstances, the Board should issue an order either deeming all items admitted by Conrail, or enter an order compelling Conrail to admit or deny the requested admissions, in accordance with the requirements of 49 C.F.R. 114.27(a) and in a reasonable period of time, not greater than 30 days.

**The City Should Be Compelled to Properly Respond to the Requested Admissions, or the Requested Admissions should Be Deemed Admitted and Impertinent Responses Stricken**

The City is under a responsibility to respond to discovery. Though the City ostensibly responded to each request for admission with an admission, or objection. Notably the City did not deny any of the requests for admission. Yet the City's admissions are not unequivocal, are unclear, and are otherwise diluted by irrelevant objections and editorialization, in violation of 49 C.F.R. 114.27.

As with Conrail, the City's objections are not procedurally proper objections to discovery (nor are otherwise substantively proper objections). All of the requests for admission deal with the issue of the location and status of Lines 1440 and 1420 east of Marin Boulevard, an

issue presently of relevance to this action. It is not a proper objection to discovery to claim that information otherwise relevant may be used in an irrelevant manner, as the City has effectively done in response to each request. Nor is it a proper objection under 49 C.F.R. 111.27 to claim that the attorney for the party propounding discovery has not provided the responder with the reasons such admission is sought, or explained how such information will be used. Nor is it a proper objection to a request for admission, to claim lack of knowledge, information, or investigation, when no reasonable inquiry has even been attempted as is the case here. *Id.* Nor is it a proper objection to a request to admission to offer editorialization based on supposition and surmise as to possible future, impermissible use of the information to be admitted.

The City's responses, rather than clarify issues (as is the purpose of requests for admissions), serve only to further confuse them. For example, many of the City's responses or objections to the requests for admission are either contradicted by, or are, inconsistent with the City's prior statements and submissions not only in this action, but in FD-34818 as well. That the City has not attempted to respond to the requests for admission in good faith is evidenced by the fact that the City refused to admit to the genuineness of documents (the Final System Plan and Fairfax Leary Deed) that are copies of documents that the City itself submitted to the Board in support of its position in FD-34818, and its failure to conduct a reasonable inquiry of matters sought admitted as required by 49 C.F.R. 1114.27.

Given the City's response, it is necessary to address the requested relief in detail.

Response to Request for Admissions ##1,2, 6, 10, 11, 21.

The City admits the truth of these requests for admissions. The Board should issue an order deeming them admitted, without regard to the City's objections which are improper for the

reasons explained herein, and which are an attempt to improperly dilute or limit the use of such admissions in violation of the rule, or otherwise be limited by City's improper limiting editorialization.

To the extent it is not clear whether or not the City actually admitted this request for admission, an order compelling a response requiring the City to admit or deny the requested admissions in accordance with the requirements of 49 C.F.R. 1114.27(a), should be issued.

The test of the City's intention to obfuscate, while at the same time claiming there is no issue because it gave a full admission, will be the scope of its response to this motion. Anything other than a simple: "yes – admitted" will suggest that the Board should either order the matter admitted or compel the city to admit or deny. The time to editorialize and obfuscate has passed.

### Response to Request for Admission #3

Given the City's incorporation of its response to Request for Admission #1, which was admitted, the LLCs consider this item admitted as well. The Board should issue an order deeming this request for admission admitted, without regard to the City's objections and editorialization which are improper for the reasons explained herein, and which are an attempt to improperly dilute or limit the use of such admission in violation of the rule. To the extent that the City wants to raise objections to the LLCs' future use of its admission, those objections can be raised at the proper time.

To the extent it is not clear whether or not the City actually admitted this request for admission, an order compelling a response requiring the City to admit or deny the requested admissions in accordance with the requirements of 49 C.F.R. 1114.27(a), should be issued.

#### Response to Request for Admissions ##4, and 5

Given the City's incorporation of its response to Request for Admission #1, which was admitted, the LLCs consider this item admitted as well. The Board should issue an order deeming these requests for admissions admitted, without regard to the City's objections and editorialization which are an attempt to improperly dilute or limit the use of such admission in violation of the rule. To the extent that the City wants to raise objections to the LLCs' future use of its admission, those objections can be raised at the proper time.

To the extent it is not clear whether or not the City actually admitted this request for admission, an order compelling a response requiring the City to admit or deny the requested admissions in accordance with the requirements of 49 C.F.R. 1114.27(a), should be issued.

As explained, the issues raised in these requests for admission have not been adjudicated, but were specifically preserved by Circuit Court in Harsimus III. The LLCs are not bound to rely on the City's admissions in prior actions. As a party to this matter, Intervenors have a right to establish admissions for purposes of this proceeding. The City's contradictory positions regarding the matters sought admitted since 2006 highlight the need for the City to respond to the requests for admissions at this time. Indeed, under 49 C.F.R. 1114.27(b) admissions are made only for the purposes of the proceeding in which they are sought .

#### Response to Request for Admission #7

The City provides a qualified admission of the truth of requested admission #7. The Board should issue an order deeming it fully admitted. The City's claim that it does not know where Line 1420 ends is contradicted by the City's position in FD-34818 that Line 1420 ended at the edge of the Hudson River. The City, at a minimum, must explain this difference of position.

Moreover the City's objections which are an attempt to improperly dilute or limit the use of such admission in violation of the rule. To the extent that the City wants to raise objections to the LLCs' future use of its admission, those objections can be raised at the proper time.

The Board should issue an order deeming this request for admission fully admitted, without regard to the City's objections and editorialization which are improper for the reasons explained herein, and which are an attempt to improperly dilute or limit the use of such admission in violation of the rule. To the extent that the City wants to raise objections to the LLCs' future use of its admission, those objections can be raised at the proper time.

If not deemed fully admitted by the Board, an order compelling a proper response should be issued admit or deny the requested admissions, in accordance with the requirements of 49 C.F.R. 1114.27(a), should be issued.

Response to Request for Admissions ##8, 9, 19, and 20

These Board should issue an order deeming these requests for admission admitted because counsel willfully refused to address them. The Board should issue an order deeming this request for admission admitted, without regard to the City's objections and editorialization which are improper for the reasons explained herein, and which are an attempt to improperly dilute or limit the use of such admission in violation of the rule. To the extent that the City wants to raise objections to the LLCs' future use of its admission, those objections can be raised at the proper time.

Under 49 C.F.R. 1114.27(a) a party cannot fail to admit or deny a matter for lack of information unless a reasonable inquiry has been made, and only then if the information is not known or readily available to the party. Here the City has refused to admit or deny these requests

for admission on the basis that they were not in possession of a document referred to in these requests for admission, Exhibit B to the Declaration of David B. Dixon (“Dixon Declaration”). The LLCs requested admissions not as to the genuineness but of the accuracy of the Dixon Declaration.

The Dixon Declaration was at all times available for inspection, copying and otherwise by Mr. Montange. It has been served upon him at least several times in his capacity as counsel for the City. The Dixon Declaration was filed not only as Exhibit O2 to the LLCs’ Petition in FD-35825, (an action where the City is represented by Mr. Montange) but also with the D.C. District Court, in Harsimus III, where the City was a party and Mr. Montange appeared *pro hac vice* on behalf of the City. As such, Mr. Montange consented to the electronic service of papers under the Court’s Rules. Mr. Montange never claimed he did not have access to the Dixon Declaration in that action, nor did he ever request it. It is still available on PACER. It is assumed that Mr. Montange, in keeping with his responsibilities reviewed the Dixon Declaration at that time. At no time after receipt of the requests for admission did Mr. Montange or the City otherwise request a copy of the Dixon Declaration or claim that it was unavailable or otherwise unreadable to him or his clients.<sup>11</sup> If Mr. Montange had requested another copy of the Dixon Declaration, it would have been provided as would any further technical help need by him to address the Dixon Declaration Exhibit.

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<sup>11</sup> As to his claim that he does not have adequate software, that is an absurd statement. The document in his possession is in “pdf” format and can be opened, reviewed, magnified and scrutinized in minute detail utilizing the free software, Adobe Reader. If Mr. Montange cannot properly equip himself as an attorney representing clients in federal practice, he should do so, and before raising meritless technical objections in response to this motion.

If not deemed fully admitted by the Board, an order compelling a proper response should be issued requiring the City to admit or deny the requested admissions, in accordance with the requirements of 49 C.F.R. 1114.27(a).

Response to Request for Admissions ##12 18, 23

The City neither admitted nor denied these requests for admission. As such, the Board should issue an order deeming this request for admission admitted, without regard to the City's objections and editorialization which are improper for the reasons explained herein, and which are an attempt to improperly dilute or limit the use of such admission in violation of the rule. To the extent that the City wants to raise objections to the LLCs' future use of its admission, those objections can be raised at the proper time.

An answering party may not give lack of information or knowledge or investigation as a reason for failure to admit or deny unless it states that it has made reasonable inquiry and that the information known or readily known to it is insufficient to enable it to admit or deny. 49 C.F.R. 1114.27(a). Contradicting the City's representation that it has not studied the situation of line 1440 are its submissions in FD-34818, where the City, at length discussed the nature and use of the Hudson Street Industrial Track, Line 1440. (See e.g. City's May 9, 2006 Rebuttal Statement, Document 216520 FD-34818).

If not deemed fully admitted by the Board, an order compelling a proper response should be issued requiring the City to admit or deny the requested admissions, in accordance with the requirements of 49 C.F.R. 1114.27(a).

Response to Request for Admissions ##13, 14, 15, 16.

The City has not admitted or denied these requests for admission and they should therefore be deemed admitted. The Board should issue an order deeming them admitted, without regard to the City's objections and which are improper for the reasons explained herein, and which are an attempt to improperly dilute or limit the use of such the information sought in violation of the rule, or otherwise be limited by City's improper limiting editorialization.

To the extent the Board is unwilling to enter an order deeming these requests for admission admitted, an order compelling a response requiring the City to admit or deny the requested admissions in accordance with the requirements of 49 C.F.R. 1114.27(a), should be issued.

Response to Request for Admissions ##17, 22

The City has not admitted or denied these requests for admission and they should therefore be deemed admitted. As such the Board should issue an order deeming these requests for admission admitted, without regard to the City's objections and editorialization which are improper for the reasons explained herein, and which are an attempt to improperly dilute or limit the use of such admission in violation of the rule. To the extent that the City wants to raise objections to the LLCs' future use of its admission, those objections can be raised at the proper time.

An answering party may not give lack of information or knowledge or investigation as a reason for failure to admit or deny unless it states that it has made reasonable inquiry and that the information known or readily known to it is insufficient to enable it to admit or deny. 49 C.F.R. 1114.27(a). Contradicting the City's representation that it has not studied the situation of line 1440 are its submissions in FD-34818, where the City, at length discussed the nature and use of

the Hudson Street Industrial Track, Line 1440 as a line of freight. (See e.g. City's May 9, 2006 Rebuttal Statement, Document 216520 FD-34818).

Response to Request for Admissions #24

The City neither admitted or denied this request, as such, the Board should issue an order deeming this request for admission admitted, without regard to the City's objections and editorialization which are improper for the reasons explained herein, and which are an attempt to improperly dilute or limit the use of such admission in violation of the rule. To the extent that the City wants to raise objections to the LLCs' future use of its admission, those objections can be raised at the proper time.

To the extent it is not clear whether or not the City actually admitted this request for admission, an order compelling a response requiring the City to admit or deny the requested admissions in accordance with the requirements of 49 C.F.R. 1114.27(a), should be issued.

An answering party may not give lack of information or knowledge or investigation as a reason for failure to admit or deny unless it states that it has made reasonable inquiry and that the information known or readily known to it is insufficient to enable it to admit or deny. 49 C.F.R. 1114.27(a). Contradicting the City's representation is its position in FD-34818 that Line 1440 emanated from the Embankment. (See e.g. City's May 9, 2006 Rebuttal Statement, Document 216520 FD-34818).

**Conclusion**

For all of the foregoing reasons the motion by the LLCs pursuant to 49 C.F.R. 1114.27, and 1114.31, for an order to clarify responses to requests for admissions and to otherwise compel proper responses to Requests for Admissions tendered to the LLCs from Consolidated

Rail Corporation, City Of Jersey City, Rails To Trails Conservancy, and the Pennsylvania Harsimus Stem Embankment Preservation Coalition, should be granted.

Respectfully submitted,

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BY:   
DANIEL E. HORGAN

Dated: December 8, 2014  
834657.1

**CERTIFICATE OF SERVICE**

I, Daniel E. Horgan, hereby certify that on December 8, 2014, I caused a copy of the foregoing to be served by First Class mail upon those on the below Service List.

WATERS, McPHERSON, McNEILL, P.C.

BY:   
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P.O. Box 68  
Jersey City, NJ 07303

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Vice President, COO  
CNJ Rail Corporation  
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NY/NJ Baykeeper  
52 w. Front Street  
Keyport, NJ 07732

Gretchen Scheiman  
President  
Historic Paulus Hook Ass'n  
121 Grand Street  
Jersey City, NJ 07302

# EXHIBIT A

**BEFORE THE SURFACE TRANSPORTATION BOARD**  
Washington, D.C.

**Docket Number AB 167(SUB-NO. 1189X)**

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

**Intervenors' Requests for Admissions from Party**  
**49 C.F.R. 1114.27 et seq.**

**To:** Consolidated Rail Corporation ("Conrail")

**PLEASE TAKE NOTICE** that the Intervenors, 212 Marin Boulevard, LLC, 247 Manila Avenue, LLC., 280 Erie Street, LLC., 317 Jersey Avenue, LLC, 354 Cole Street, LLC, 389 Monmouth Street, LLC, 415 Brunswick Street, LLC, and 446 Newark Avenue, LLC (Collectively "Intervenors") by and through their attorneys, Waters, McPherson, McNeill, P.C., request admissions and responses by Conrail to the matters set forth in this request, including the genuineness of any documents described herein, for purposes of the pending proceeding only, pursuant to 49 C.F.R. 1114.27 et seq.

Pursuant to 49 C.F.R. 1114.27(a), the matters set forth herein shall be deemed admitted by Conrail, unless within fifteen days after service hereof, Conrail serves its response upon the LLCs to the attention of: Daniel E. Horgan, Esq., Waters, McPherson McNeill, P.C., 300 Lighting Way, P.O. Box 1560, Secaucus NJ 07096, [dehorgan@lawwmm.com](mailto:dehorgan@lawwmm.com).

### Requests for Admissions

1. In 1976, Conrail received a line of railroad identified as Line Code 1420 in the records of the United States Railway Association ("Line Code 1420") by deed from Fairfax Leary, as Trustee of the Property of the United New Jersey Railroad and Canal Company, Debtor ("Fairfax Leary Deed").
2. The excerpted portions of the Fairfax Leary Deed, including its description of Line Code 1420, (on Liber 3286 pg 762) attached as Exhibit 1 to this request, are genuine portions of the Fairfax Leary Deed.
3. According to the Fairfax Leary Deed, Line Code 1420 originates in the County [of Hudson] at Harsimus Cove.
4. In the Final System Plan of the United States Railway Association ("Final System Plan"), at page 272, Line Code 1420 is described as running between Milepost 1.0 to Milepost 7.0.
5. The excerpted portions of the Final System Plan attached as Exhibit 2, listing Line Code 1420 as running between Milepost 1.0 to Milepost 7.0, are genuine portions of the Final System Plan.
6. Line Code 1420 was used in the transport of freight by rail from customers at the time of its transfer to Conrail.
7. The portion of Line Code 1420 lying to the east of Marin Boulevard (formerly Henderson Street) between Marin Boulevard and Milepost 1.0 at Harsimus Cove, was included within the property conveyed to Conrail by the Fairfax Leary Deed.
8. The location of the portion of Line Code 1420 as conveyed to Conrail by the Fairfax Leary Deed and lying to the east of Marin Boulevard (formerly Henderson

Street) between Marin Boulevard and Milepost 1.0 in Harsimus Cove is accurately depicted as a portion of the red colored, dashed line labeled “1420 Line Per LLCs” on Exhibit B to the Declaration of David B. Dixon (“Dixon Declaration”) (visible when the .pdf layer “Line 1420 1976-79 per Analysis” is selected). [ *The Dixon Declaration was filed in the matter of City of Jersey City v. Consolidated Rail Corp., et al., United States District Court for the District of Columbia Docket No. C.A. 09-01900-CKK on 09/06/12 as Document 82. Exhibit B to the Dixon Declaration was docketed in that matter as Document 82-2].*

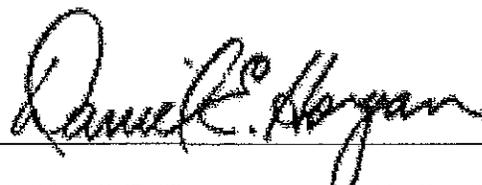
9. The location of the portion of Line Code 1420, described in the Final System Plan and lying to the east of Marin Boulevard (formerly Henderson Street) between Marin Boulevard and Milepost 1.0 in Harsimus Cove is accurately depicted as a portion of the red colored, dashed line labeled “1420 Line Per LLCs” on Exhibit B to the Dixon Declaration.
10. The entirety of Line Code 1420 was a line of rail subject to the regulation of the former Interstate Commerce Commission (“ICC”), now the Surface Transportation Board (“STB”), at the time it was conveyed to Conrail in 1976 by the Fairfax Leary Deed.
11. Conrail had not petitioned the ICC or the STB for express abandonment (or exempt abandonment) authorization, nor received any abandonment authority from the ICC or STB for any portion of Line Code 1420, prior to 2009.
12. In 1976, Conrail received a line of railroad identified as Line Code 1440 in the records of the United States Railway Association (“Line Code 1440”) by deed

from Fairfax Leary, as Trustee of the Property of the United New Jersey Railroad and Canal Company, Debtor (“Line Code 1440”).

13. The excerpted portions of the Fairfax Leary Deed, including its description of Line Code 1440, (on Liber 3286 pg 769) attached as Exhibit 3 to this request, are genuine portions of the Fairfax Leary Deed.
14. According to the Fairfax Leary Deed, Line Code 1440 terminates in the County 1 ½ blocks west of the intersection of Warren and Essex Streets.
15. In the Final System Plan, at page 272, Line Code 1440 is described as running between Milepost 0.0 to Milepost 1.3.
16. The excerpted portions of the Final System Plan, page 272, attached as Exhibit 2, listing Line Code 1440 as running between Milepost 0.0 to Milepost 1.3, are genuine portions of the Final System Plan.
17. Line Code 1440 was used in the transport of freight by rail from customers at the time of its transfer to Conrail.
18. Line Code 1440 was included within the property conveyed to Conrail by the Fairfax Leary Deed.
19. The location of Line Code 1440 as conveyed to Conrail by the Fairfax Leary Deed is accurately depicted as a portion of the blue colored, dashed line labeled “1440 Line Per LLCs” on Exhibit B to the Dixon Declaration (visible when the .pdf layer “Line 1440 1976-79 per Analysis” is selected).
20. The location of Line Code 1440, as identified in the Final System Plan is accurately depicted as a blue colored, dashed line labeled “1440 Line Per LLCs” on Exhibit B to the Dixon Declaration.

21. The entirety of Line Code 1440 was a line of rail subject to the regulation of the former ICC, now the STB, at the time it was conveyed to Conrail in 1976 by the Fairfax Leary Deed.
22. Conrail has never petitioned the ICC or the STB for express abandonment (or exempt abandonment) authorization, nor received any abandonment authority from the ICC or STB, for any portion of Line Code 1440.
23. At the time it was conveyed to Conrail in 1976, Line Code 1440, as described in the Final System Plan, ran from the vicinity of Essex and Warren Streets in Jersey City, and intersected with Line Code 1420 at a distance of 1.3 miles from Essex and Warren Streets.
24. At the time it was conveyed to Conrail in 1976, Line Code 1440, as described in the Final System Plan, intersected with Line Code 1420 at a location which is accurately shown as being in the vicinity of Luis Muñoz Marin Boulevard. (Marin Blvd.), just south of Sixth St., on Exhibit B to the Dixon Declaration.

DATED: November 12, 2014



DANIEL E. HORGAN, DC BAR # 239772  
WATERS, McPHERSON, McNEILL, P.C.  
300 Lighting Way  
Secaucus, New Jersey 07096  
Telephone: 201-863-4400  
Fax: 201-863-2866  
Counsel for Intervenors

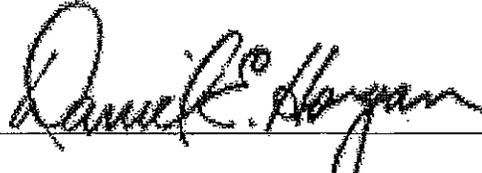
**CERTIFICATION OF SERVICE**

I, Daniel E. Horgan, an attorney-at-law of New Jersey, New York, and the District of Columbia, hereby certify that on November 12, 2014, I caused service of this Requests for Admissions to be made upon:

Robert M. Jenkins, III, Counsel for Conrail

via UPS Overnight Mail at the address for Mr. Jenkins listed on the below Service List, and that I further caused service of a copy of this Requests for Admissions to be made upon those listed on the below Service List at the addresses listed therein by First Class Mail on November 13, 2014.

By:



DANIEL E. HORGAN, DC BAR # 239772  
WATERS, McPHERSON, McNEILL, P.C.  
300 Lighting Way  
Secaucus, New Jersey 07096  
Telephone: 201-863-4400  
Fax: 201-863-2866  
Counsel for Intervenors

Dated: November 12, 2014

**SERVICE LIST**

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Seattle, WA 98177

Counsel for Rails to Trails Conservancy (RTC)  
Andrea Ferster, Esq.  
General Counsel  
2121 Ward Court NW, 5<sup>th</sup> floor

Washington, D.C. 20037

Counsel for Conrail:

Robert M. Jenkins, III, Esq.

Mayer Brown LLP

1999 K Street, NW

Washington, D.C. 20006-1101

Former Counsel for LLCs

Fritz Kahn, Esq.

1919 M Street, NW

7<sup>th</sup> Floor

Washington, D.C. 20036

And the following self-represented individuals or entities:

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Daniel D. Saunders

NJ Department of Environmental Protection

State Historic Preservation Office

P.O. Box 420

Trenton, NJ 08625-0420

Massiel Ferrara, Director

Hudson County Planning Division

595 County Avenue

Bldg. 1, Second Floor

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President

Harsimus Cove Association

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Jennifer Greely – **UNABLE TO FORWARD**  
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Hamilton Park Neighborhood Assoc.  
22 West Hamilton Place  
Jersey City, NJ 07302

Jill Edelman  
President  
Powerhouse Arts District Nbd Ass'n  
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Robert Crown  
Vice President of Communications  
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Dan Webber  
Vice President  
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Gretchen Scheiman  
President  
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Valerio Luccio  
Civic JC  
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Vice President, COO  
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Watchung, NJ 07069

Maureen Crowley  
Embankment Preservation Coalition  
263 Fifth Street  
Jersey City, NJ 07302

Karen Votava - **UNDELIVERABLE**  
East Greenway Alliance  
27 North Road  
Wakefield, RI 02879

# EXHIBIT 1

*Hudson*

Document No.  
UNJ-CRC-RE-4

DEED

FILED AND RECORDED  
OCT 12 1978  
DONALD LAN  
SECRETARY OF STATE

THIS DEED IS MADE BY AND BETWEEN  
FAIRFAX LEARY,

AS TRUSTEE OF THE PROPERTY OF  
THE UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, DEBTOR

("Grantor"), whose address is 1404 Mt. Pleasant Road,  
Villanova, Pennsylvania 19085

AND

CONSOLIDATED RAIL CORPORATION,

a corporation organized and existing under the laws of the  
Commonwealth of Pennsylvania ("Grantee"), whose address is 1818 Market Street,  
Philadelphia, Pennsylvania 19103.

UNLOCATED

WHEREAS, the Debtor is a railroad in reorganization under Section 77 of the Federal Bankruptcy Act, 11 U.S.C. Sec. 206, and is a railroad in reorganization as that term is defined in the Regional Rail Reorganization Act of 1973 (Public Law 93-238, 87 Stat. 886), as amended ("Act"); and

WHEREAS, by orders of the United States District Court for the Eastern District of Pennsylvania entered in Docket No. 70-847-A the above-named individual was duly appointed and is now serving as Trustee of the property of the Debtor; and

WHEREAS, the United States Railway Association, pursuant to Section 206 (c) of the Act, has certified to the Special United States District Court established pursuant to Section 209 (b) of the Act ("Special Court"), that the rail properties of the Debtor hereinafter described (except those hereinafter reserved and excepted) are to be transferred by the Grantor to the Grantee; and

WHEREAS, pursuant to Section 209 (b) (1) of the Act, the Special Court has ordered the Grantor to convey to the Grantee all of the Grantor's right, title and interest in such rail properties, free and clear of any liens or encumbrances as provided in Section 203 (b) of the Act;

NOW, THEREFORE, pursuant to the Order of the Special Court, the Grantor hereby grants and conveys to the Grantee:

A. All of the Grantor's right, title and interest, legal and equitable, in and to the real property located in the

County of Hudson, State of New Jersey

as described in Exhibit A attached to this Deed as a part hereof, together with all of the appurtenances, hereditaments, franchises, ways, waters, minerals, rights, privileges, improvements, fixtures, licenses, leaseholds, reversions, easements, rights under operating, trackage and joint facility agreements, rents, issues, profits and other interests and items belonging to or in any way appertaining to such real property, including but not limited to all real property items that would properly be recorded in Accounts 1 through 46 and 80 of the Property Accounts prescribed by the Interstate Commerce Commission for Railroad Companies in its Uniform System of Accounts, 48 C.F.R. Part 1201, to the extent that such interests and items belong or in any way appertain to such real property, except as those interests and items belong or appertain to the real property hereinafter reserved and excepted.

UNJ 3286 RE 757

LI102

Revised

B. 1. The easements and rights to use, operate, maintain, repair, renew, replace and remove on, under, over and across the real property hereinafter reserved and excepted ("Grantor's Burdened Property"), any and all lines, poles, pipes, appliances, equipment, structures, facilities and appurtenances (each an "Easement Item") existing on and used or useful as of the date of delivery of this Deed as a part of any railroad communication, signal or interlocker system or as a part of any electric, telephone, telegraph, water, gas, steam, sanitary sewer, storm sewer or other utility system, together with the easement of reasonable access over the Grantor's Burdened Property to permit the exercise of the foregoing easements and rights, and the easement for lateral support of the real property conveyed by this Deed.

2. The easements and rights for the specific uses, if any, (each an "Easement Item") particularly described in Exhibit B attached to this Deed as a part hereof and burdening certain real property hereinafter reserved and excepted.

3. The Grantee shall give the Grantor reasonable notice before entering on the Grantor's Burdened Property to exercise the easements and rights conveyed in this Paragraph B, and shall exercise such easements and rights (a) so as not to interfere unreasonably with the use and enjoyment of the Grantor's Burdened Property, (b) in compliance with generally applicable reasonable requirements established from time to time by the Grantor and (c) so as not to increase materially the burden on the Grantor's Burdened Property existing on the date of delivery of this Deed. The Grantee shall indemnify and save the Grantor harmless from any loss, damage or expense arising from the exercise of the foregoing easements and rights, without regard to negligence on the part of the Grantor or the Grantee. Upon request of and at the expense of the Grantor, the Grantee shall execute and deliver to the Grantor a deed or other instrument releasing the Grantee's rights in any part of the Grantor's Burdened Property that is not used or reasonably needed by the Grantee in the exercise of the easements and rights conveyed in this Paragraph B;

4. If the location of any Easement Item would interfere with any proposed use or sale of any part of the Grantor's Burdened Property, the Grantor may, at the Grantor's expense and after obtaining the Grantee's written consent, relocate the interfering Easement Item or cause the same to be relocated. Such consent will be granted unless (a) the Easement Item cannot be relocated as proposed by the Grantor without unreasonable interference to the Grantee's operations or without damage to the integrity of the system of which the Easement Item is a part or (b) the Grantee will not have reasonable access to the relocated Easement Item. If the Grantee has previously released its easements and rights in any real property as provided in Paragraph B. 3, and a relocated Easement Item falls, in whole or in part, within the area that has been so released, the Grantor and the Grantee shall exchange the following instruments promptly after the relocation is completed:

(a) The Grantor shall execute and deliver to the Grantee a supplementary deed of easement which conveys to the Grantee with respect to the relocated Easement Item the easements and rights described in this Paragraph B.

(b) The Grantee shall execute and deliver to the Grantor a deed or other instrument of release as provided in Paragraph B. 3.

5. The Grantor shall bear all expenses and the cost of all transfer and recording taxes, fees and charges in connection with all deeds and other instruments delivered pursuant to this Paragraph B.

RESERVING AND EXCEPTING, HOWEVER, TO THE GRANTOR:

C. All the respective right, title and interest of the Grantor, legal and equitable, in and to the real property described in Exhibit B attached to this Deed as a part hereof, but subject, however, to (a) the limitation of access thereto across the real property conveyed by this Deed as hereinafter provided and (b) the easements and rights conveyed pursuant to Paragraph B above.

D. 1. The easements and rights to use, operate, maintain, repair, renew, replace and remove on, under, over and across the real property conveyed by this Deed ("Grantee's Burdened Property"), any and all lines, poles, pipes, appliances, equipment, structures, facilities and appurtenances (each an "Easement Item") existing on and used or useful as of the date of delivery of this Deed as a part of any railroad communication, signal or interlocker system or as a part of any electric, telephone, telegraph, water, gas, steam, sanitary sewer, storm sewer or other utility system, together with the easement of reasonable access over the Grantee's Burdened Property to permit the exercise of the foregoing easements and rights, and the easement for lateral support of the real property reserved and excepted from this conveyance.

2. The easements and rights for the specific uses, if any, (each an "Easement Item") particularly described in Exhibit B to this Deed and burdening certain real property conveyed by this Deed.

FILED AND RECORDED  
OCT 12 1976  
DONALD LAM  
DEPUTY CLERK

18-3286 758

3. The Grantor shall give the Grantee reasonable notice before entering on the Grantor's Burdened Property to exercise the easements and rights reserved and excepted in this Paragraph D, and shall exercise such easements and rights (a) so as not to interfere unreasonably with the use and enjoyment of the Grantee's Burdened Property, (b) in compliance with generally applicable reasonable requirements established from time to time by the Grantee and (c) so as not to increase materially the burden on the Grantee's Burdened Property existing on the date of delivery of this Deed. The Grantor shall indemnify and save the Grantee harmless from any loss, damage or expense arising from the exercise of the foregoing easements and rights, without regard to negligence on the part of the Grantee or the Grantor. Upon request of and at the expense of the Grantee, the Grantor shall execute and deliver to the Grantee a deed or other instrument releasing the Grantor's rights in any part of the Grantee's Burdened Property that is not used or reasonably needed by the Grantor in the exercise of the easements and rights reserved and excepted in this Paragraph D.

4. If the location of any Easement Item would interfere with any proposed use or sale of any part of the Grantee's Burdened Property, the Grantee may, at the Grantee's expense and after obtaining the Grantor's written consent, relocate the interfering Easement Item or cause the same to be relocated. Such consent will be granted unless (a) the Easement Item cannot be relocated as proposed by the Grantee without unreasonable interference to the Grantor's operations or without damage to the integrity of the system of which the Easement Item is a part or (b) the Grantor will not have reasonable access to the relocated Easement Item. If the Grantor has previously released its easements and rights in any real property as provided in Paragraph D. 3. and a relocated Easement Item falls, in whole or in part, within the area that has been so released, the Grantor and the Grantee shall exchange the following instruments promptly after the relocation is completed:

(a) The Grantee shall execute and deliver to the Grantor a supplementary deed of easement which conveys to the Grantor with respect to the relocated Easement Item the easements and rights described in this Paragraph D.

(b) The Grantor shall execute and deliver to the Grantee a deed or other instrument of release as provided in Paragraph D. 3.

5. The Grantee shall bear all expenses and the cost of all transfer and recording taxes, fees and charges in connection with all deeds and other instruments delivered pursuant to this Paragraph D.

E. All mineral rights owned by the Grantor in any parcel as to which an interest in the surface is not conveyed by this Deed.

TO HAVE AND TO HOLD the real property and the easements and rights hereby conveyed to the Grantee, free and clear of (a) any liens or encumbrances as provided in Section 303 (b) of the Act and (b) any and all easements and rights of access to the real property reserved and excepted from this conveyance across the real property conveyed by this Deed (except as otherwise provided in this Deed), even if such easements and rights would otherwise arise by reason of necessity, implication or other operation of law, statute, ordinance, rule or regulation of any governmental entity, BUT SUBJECT, HOWEVER, to (i) those easements and rights reserved and excepted in Paragraph D above, (ii) all existing licenses, easements, leases (other than those which may have been created to secure payment of a financial obligation), and operating, truckage right and joint facility agreements and (iii) Operating Rights Grants, if any, from the Grantor to a third party conveyed concurrently with this conveyance and identified in Exhibit B to this Deed.

The Grantor hereby covenants that the Grantor will perform, execute, acknowledge and deliver any and all such further acts, deeds, assignments and other instruments as may be reasonably requested by the Grantee to convey, confirm, clarify, identify or more precisely describe the real property and the easements and rights conveyed by this Deed or intended so to be in order to carry out the intent of this Deed in light of the designations contained in the Final System Plan which has been certified to the Special Court by the United States Railway Association pursuant to the Act, and to effect the recordation of, or otherwise perfect, this Deed and all such other deeds, assignments and instruments under any applicable statute, ordinance, rule or regulation.

The Grantee hereby covenants that the Grantee will perform, execute, acknowledge and deliver any and all such further acts, deeds, assignments and other instruments as may be reasonably requested by the Grantor to confirm, clarify, identify or more precisely describe the real property and the easements and rights reserved and excepted from this conveyance or intended so to be in order to carry out the intent of this Deed in light of the designations contained in such Final System Plan, and to effect the recordation of, or otherwise perfect, this Deed and all such other deeds, assignments and instruments under any applicable statute, ordinance, rule or regulation.

FILED AND RECORDED  
OCT 12 1978  
DONALD L. LA...  
REGISTERED

By acceptance of this Deed, the Grantee (a) agrees to perform each of the obligations imposed on the Grantee by the terms of this Deed, and (b) assumes and agrees to perform and observe all obligations and conditions on the part of the Grantor or the Grantor's predecessor in title to be performed or observed that arise or accrue after the date of delivery of this Deed under all licenses, easements, leases (other than those which may have been created in secure payment of a financial obligation) and operating, trackage right and joint facility agreements (subject, however, to the terms thereof which are conveyed by this Deed and under those to which this conveyance is made subject, provided that the Grantee assumes no obligation or liability that arises after the date of delivery of this Deed out of any event, act or failure to act that occurred prior thereto and, where an obligation or liability is related to a period which is both before and after such date, the Grantee assumes only that portion of the obligation or liability which is reasonably allocable to the part of the period after such date. Concurrently with the delivery of this Deed, the Grantee is delivering to the Grantor a separate instrument executed by the Grantee acknowledging receipt and acceptance of this Deed and affirming the provisions of this paragraph.

All of the covenants of the Grantor and the Grantee, respectively, shall be deemed to be real covenants and shall run with the land.

The words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees", respectively, whenever the sense of this Deed so requires and, whether singular or plural, such words shall be deemed to include in all cases the successors and assigns of the respective parties.

This conveyance and the specific covenants of the Grantor are made by the Grantor as Trustee of the property of the Debtor, and not individually, and this conveyance is made without covenants of title or any warranties express or implied.

IN WITNESS WHEREOF, the Grantor has executed this Deed this 31<sup>st</sup> day of March, 1978.

Signed and Acknowledged  
in the Presence of:

Anna B Freund  
Anna Freund  
Robert S Reichert  
Robert S Reichert

FAIRFAX LEARY *Notary Public*  
FAIRFAX LEARY, AS  
TRUSTEE OF THE PROPERTY OF THE  
UNITED NEW JERSEY RAILROAD  
AND CANAL COMPANY, DEBTOR

FILED AND RECORDED  
OCT 12 1978  
DONALD LAN  
SECRETARY OF STATE

DISTRICT OF COLUMBIA, SS:

On this 31<sup>st</sup> day of March, 1978, before me, a Notary Public authorized to take acknowledgements and proofs in the District of Columbia, personally appeared Fairfax Leary, personally known to me to be the person whose name is subscribed to the foregoing Deed, hearing the same date as this certificate of acknowledgement, and acknowledged himself to be the Trustee of the Property of The United New Jersey Railroad and Canal Company, Debtor, and that he executed the foregoing Deed as his free act and deed as such Trustee for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Barbara P. Klein

Prepared By:

United New Jersey Railway Association  
Pursuant to the Act

Leary 31, 1978

DE-3286 760

Document No.

UNY-CRC-RP-4

**EXHIBIT A**

TO THE DEED BY AND BETWEEN

FAIRFAX LEARY,

AS TRUSTEE OF THE PROPERTY OF

THE UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, DEBTOR

AND

CONSOLIDATED RAIL CORPORATION

DESCRIPTION OF REAL PROPERTY

LOCATED IN

County of Hudson, State of New Jersey

FILED AND RECORDED  
OCT 12 1978  
DONALD LAN  
SECRETARY OF STATE

For the purpose of each description contained in this Exhibit A (and solely by way of illustration and not by way of limiting the generality of the term "adjacent"), adjacency shall be deemed to exist without regard to the existence of any public or private street, highway, alley or other way between one part of the Grantor's real property and another.

This Exhibit A consists of the following pages-only: A-1, A-2, A-3, A-4, A-5, A-7, A-8, A-9, A-10, A-11.

3286 761

-5-  
A-1

Document No.

DNJ-CRC-RR-4

Situate in the County of Hudson, State of New Jersey, and being The United New Jersey Railroad and Canal Company's line of railroad known as the Penn Central Harrisburg Branch and being all the real property in the County lying in, under, above, along, contiguous to, adjacent to or connecting to such line,

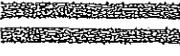
Such line originates in the County at Harrisburg Cove, passes through Journal Square, and terminates in the County near the junction with the Penn Central New York-Philadelphia Main Line, west of the New Jersey Turnpike Overhead Bridge.

The line of railroad described herein is identified as Line Code 1420 in the records of the United States Railway Association.

FILED AND RECORDED  
OCT 12 1978  
DONALD LAN  
SECRETARY OF STATE

3286 762

# EXHIBIT 2

 United States Railway Association

*Final*  
*System Plan*

Volume I

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FOREWORD BY ARTHUR D. LEWIS

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## SECTION A

# Designations to ConRail

The rail properties of railroads in reorganization or of railroads leased, operated or controlled by railroads in reorganization are designated for transfer to ConRail pursuant to section 208(c)(1)(A) in accordance with the *general designations* set forth below, subject to the *exceptions and additions* specified below:

### General Designations

**Rail Lines and Trackage Rights.**—The Rail Lines Table at the end of this section provides the details as to the designations of rail line and trackage right transfers to ConRail by each transferor. Rail line transfers are indicated in the "Interest" column of the table as "line to CRO". Where "line to CRO" designations are made, all of the transferor's right, title and interest are transferred. Trackage right transfers are indicated in the "Interest" column of the table as "TR to CRO". Under such designations only operating rights over the transferor's lines are transferred to ConRail with the balance of the right, title and interest transferred to others. In the other designations in this section, the transfer of some rail properties depends on an association with, or location along transferred rail lines. Such designations apply, except as specifically noted, only to transferred rail lines, and not to transferred trackage rights.

### Yards—

- Transferors' interest in all freight yards associated with rail lines designated to ConRail, except for those yards offered to profitable railroads.
- Leasehold, occupancy and access rights which are necessary to the operation of present Amtrak services in all yards associated with rail lines designated to ConRail.
- An option (described in Chapter 8) to purchase or lease all or less of Transferors' remaining interest in all passenger yards associated with rail lines in which ConRail is designated an interest.

**Facilities** (including ore and coal wharves, intermodal terminals services and maintenance facilities such as shops, shop machinery, enginehouses, fuel stations and roadway buildings)—

- Transferors' interest in all freight facilities associated with rail lines or yards or portions thereof designated to ConRail, except for such facilities offered to profitable railroads.
- Leasehold, occupancy and access rights in all passenger related facilities necessary to the operation of present Amtrak services and associated with rail lines designated to ConRail.
- An option (described in Chapter 8) to purchase or lease all or less of Transferors' remaining interest in all passenger related facilities associated with rail lines in which ConRail is designated an interest.

### Stations and Structures—

- Transferors' interest in freight related structures associated with a yard or portion thereof designated to ConRail from Transferor.
- Leasehold, occupancy and access rights necessary to the operation of present Amtrak services in stations and other passenger related structures and an option (described in Chapter 8) to acquire all or less of Transferors' remaining interest in such structures.
- Transferors' interest in those freight related structures associated with rail lines designated to ConRail which structures are used and useful in rail transportation as that term is defined in Chapter 8.
- A 2-year lease with appropriate access and occupancy rights of Transferors' interest in that portion of any structure transferred to or left with others than ConRail in which rail properties otherwise designated to ConRail are located.

**Freight Cars and Nonpassenger Service Locomotives.**—Transferors' interest in all freight cars and nonpassenger service locomotives except for:

- such equipment under leases not meeting lease designation standards, and
- such equipment designated for offer to the Chesic.

**Passenger Service Locomotives**—An option (described in Chapter 8) to purchase transferors' interests in passenger service locomotives, except:

- such equipment under leases not meeting lease designation standards, and
- such equipment designated for offer to the Chessie.

**Passenger Cars**—An option (described in Chapter 8) to purchase transferors' interests in passenger cars except:

- such equipment under leases not meeting lease designation standards
- such equipment designated for offer to the Chessie.

**Work equipment**—Transferors' interest in work equipment except:

- that offered to Chessie, and
- such equipment under leases not meeting lease designation standards.

**Roadway machinery**—Transferors' interest in roadway machinery except:

- that offered to Chessie, and
- such equipment under leases not meeting lease designation standards.

**Miscellaneous equipment**—Transferors' interest in miscellaneous equipment except:

- such equipment under leases not meeting lease designation standards,
- that equipment offered to Chessie, and
- those vehicles related to continued administration of the transferor.

**Exceptions and Additions**

To the extent indicated, the designations from each of the transferors whose names appear in the part of this section which follows vary from the general designations.

The following are excepted from the rail property transfers of the listed transferors:

**Yards**—Transferors' interest in only portions of the following yards are designated to ConRail, as outlined in the Final System Plan Map Compendium available at the Public Information Office of the Association:

Transferor	Yard
Connetquot Railway Co.....	Gragon Yard, Columbus, Ohio.
Philadelphia, Baltimore & Washington R.R. Co.	"A" and "B" Yard, Columbus, Ohio, 29th Street, Chicago, Ill.
United New Jersey R.R. & Canal Co....	Greenville Yard, Jersey City, N.J.
Central R.R. of New Jersey.....	Herbimus Cove Yard, Jersey City, N.J.
	W-Port Yard, Elizabeth, N.J.

Transferors' interest in all of the following yards are not designated to ConRail:

Transferor	Yard
Canada Southern Railway Co.....	Victoria Yard, Ft. Erie, Ontario.
Penn., Tunnel & Terminal R.R. Co....	New Lots Yard, New York, N.Y.
Philadelphia, Baltimore & Washington R.R. Co.	Bliner Yard, Elino, Ind.
Pittsburgh, Pl. Wayne & Chicago Rail- way Co.	"C" and "D" Yard, Columbus, Ohio.
Pittsburgh, Youngstown & Ashtabula Railway Co.	12th Street Yard, Chicago, Ill.
Pound Company.....	Grand Yard, Grand, Ohio.
Cleveland, Cincinnati, Chicago & St. Louis Railway.	Austenburg Yard, Austonsburg, Ohio.
	Southern Yard, Elmira, N.Y.
	Benton Harbor Yard, Benton Harbor, Mich.

The portion transferred to ConRail of any yard transferred from the Chicago River and Indiana R.R. is limited to that needed to sustain ConRail operations.

The following additional rail properties of the transferors listed are designated for transfer to ConRail.

**Transferor**

- Canada Southern Railroad Co.
- Detroit River Tunnel Co.
- Niagara River Bridge Co.
- Michigan Central R.R. Co.

The rail properties in Canada owned by the Canada Southern Railroad Co., the Detroit River Tunnel Co., and the Niagara River Bridge Co., which are designated in fee to ConRail are subject to the following alternative designation: If it should be determined that the transfer of properties owned and located in Canada designated in the PSP cannot be effected under the Act, then the stock and lease hold interest of PCTC and Michigan Central in the Canada Southern Railroad Co. and Detroit River Tunnel Co., the leasehold interest of the Penn Central and the stock interest of Canada Spullin. (If permitted by law) in Niagara River Bridge Co. are designated for transfer to ConRail.

Both the lease and the alternative designations of these properties will not be deemed effective if within 60 days of the effective date of the PSP, Penn Central, Michigan Central, and Canada Southern, as appropriate, enter into a binding agreement for sale of the Canadian properties which reserves to ConRail trackage rights which, in the judgment of USRA, would provide operating and capital costs for ConRail similar to those under the designation and which are otherwise in accord with the needs of ConRail.

**Mahoning Coal R.R. Co.**

The transferor's interest in the Lake Erie & Western Railroad.

**Michigan Central Railroad**

The transferor's stock interest in the following corporations:

- Detroit Terminal Railroad
- Toledo Terminal Railroad.

**Pearle & Eastern Railway Co.**

The transferor's stock interest in the Pearle & Pekin Union Railway.

**St. Lawrence and Adirondack Railway Co.**

The designation of the rail properties of the St. Lawrence & Adirondack Railway Co. to ConRail is subject to the following alternative designation: If it should be determined that the transfer designated in the PSP, of assets owned and located in Canada, cannot be effected under the Act, then the leasehold and stock interests of the Penn Central in the St. Lawrence and Adirondack Railway Co. are designated for transfer to ConRail.

**Indianapolis Union Railroad**

The transferor's leasehold interest in the Indianapolis Belt Railroad.

**Norwich & Worcester Railroad Co.**

The designation to ConRail of rail properties of the Norwich & Worcester Railroad Co. is subject to the condition that, if within 60 days of the effective date of the PSP, the Norwich & Worcester provides for continuity of operations by entry into an agreement with another railroad for sale or operation of the designated properties, the designation to ConRail will not be effective.

Both the designation to ConRail and the designation to Providence & Worcester of rail properties of the Norwich & Worcester Railroad Co. are subject to the condition that if within 60 days of the effective date of the PSP the Norwich & Worcester has presented to USRA a sound plan to operate the rail lines designated on and after conveyance date, which would maintain the same service coverage as the designations would provide, then these designations will not be effective.

**Manor Real Estate**

The transferor's interests in all rail properties in Brooke's Yard.

**Philadelphia, Baltimore & Washington Railroad Co.**

Transferor's interest in the stock of the following corporations:

- IBRA of Saint Louis
- Pittsburgh, Charlotte & Youngstown

An option (described in Chapter 8) to purchase Transferor's interest in the stock of Washington Terminal Co. An option to purchase Transferor's interest in a truck agreement relating to the Ivy City Yard (also known as the Jolt Copah Yard in Washington, D.C.)

The Transferor's interest in the Wilmington Heavy Repair Shop adjacent to the Bingham Yard.

**Cleveland, Cincinnati, Chicago and St. Louis**

The transferor's leasehold interest in the Central Railroad of Indianapolis.

**Penn Truck Lines**

The transferor's interest in all highway revenue equipment leased from Woodruff Truck Leasing Corp., subject to the lease designation standards described in Chapter 8; all trailers, trailers and other operating authorities, and an option to acquire other Penn Truck Lines interests in other equipment and other rail property with such authorities, and option limited, however, to those used or useful in connection with operations to be conducted by ConRail.

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INTERESTS OBTAINED TO CONRAD						
LINE CODE	FROM ENTITY	TO ENTITY	RF1	RF2	ENTITY NAME	INTERESTS
TRANSFEROR: ST. LAWRENCE & LINDENBACH RY. CO.						
4756	THE BOUNDARY	BUNTINGTON	10.3	17.8	HALLOW SEC	LINE TO CRC
4756	BOUNDARY	LINDENBACH CRT	17.9	36.4	BOUNDARY BR	LINE TO CRC
TRANSFEROR: SHARON VALLEY & POTTSVILLE R. R. CO.						
1347	SUNBURY LAND	SUNBURY & ST	0.0	0.2	SHARONV SEC	LINE TO CRC
1347	PLATINGS	SHARONV	12.0	18.2	SHARONV SEC	LINE TO CRC
1347	POLYON	SAUCH CRT	23.0	24.0	SHARONV SEC	LINE TO CRC
TRANSFEROR: TROY & GREENBUSH R. R. BRD.						
4735	PENNSYLVANIA CP&D	TROY	0.0	5.7	TROY SEC	LINE TO CRC
TRANSFEROR: WITCHER H. H. CO. OF BALTIMORE						
1260	KENDRICK ST	GETTYS	0.0	3.3	UNION RR-DIN OK	LINE TO CRC
TRANSFEROR: UNITED N. J. R. & CANAL CO.						
1120	TRENTON FAIR	TRENTON HO	0.3	1.4	WELLYBEE BR	LINE TO CRC
1120	TRENTON HO	HILFORD	1.4	34.4	WELLYBEE BR	LINE TO CRC
1120	WILFORD	PHILLIPSBURG	30.4	56.7	WELLYBEE BR	LINE TO CRC
1120	PHILLIPSBURG	WELLYBEE	56.7	84.3	WELLYBEE BR	LINE TO CRC
1120	WELLYBEE	WELLYBEE	84.3	85.3	WELLYBEE BR	LINE TO CRC
1125	CARDEN	DELAIR	0.9	5.0	WINDYBUSH SEC	LINE TO CRC
1125	DELAIR	EDWARDSVILLE SEC	5.0	16.0	WINDYBUSH SEC	LINE TO CRC
1125	EDWARDSVILLE SEC	BONNERSVILLE SEC	16.0	26.7	BONNERSVILLE SEC	LINE TO CRC
1125	BONNERSVILLE SEC	WINDSOR	26.7	37.9	BONNERSVILLE SEC	LINE TO CRC
1126	TRENTON	ACADEMIC	0.0	6.0	BONNERSVILLE SEC	LINE TO CRC
1166	FLORENCE	CLIVE STARR	0.0	0.9	FRONTCOURT BR	LINE TO CRC
1167	BONNERSVILLE SEC	PETTY ISLAND	0.0	2.0	PETTY ISLAND BR	LINE TO CRC
1160	FLORENCE	FLORENCE	0.0	1.6	TRENTON BR	LINE TO CRC
1420	NEWARK CITY	NEWARK	1.0	7.0	NEWARK BR	LINE TO CRC
1421	NEWARK	NEWARK	0.0	4.4	PASSAIC BR	LINE TO CRC
1422	NEWARK	NEWARK	0.0	1.9	NEWARK BR	LINE TO CRC
1422	NEWARK	NEWARK	4.2	6.5	NEWARK BR	LINE TO CRC
1422	NEWARK	NEWARK	0.0	0.9	NEWARK BR	LINE TO CRC
1425	NEWARK	NEWARK	0.5	13.6	NEWARK BR	LINE TO CRC
1426	NEWARK	NEWARK	0.0	5.0	NEWARK BR	LINE TO CRC
1426	NEWARK	NEWARK	5.0	5.5	NEWARK BR	LINE TO CRC
1426	NEWARK	NEWARK	0.0	3.0	NEWARK BR	LINE TO CRC
1426	NEWARK	NEWARK	0.0	2.7	NEWARK BR	LINE TO CRC
1431	NEWARK	NEWARK	0.0	1.0	NEWARK BR	LINE TO CRC
1432	NEWARK	NEWARK	0.0	1.4	NEWARK BR	LINE TO CRC
1433	NEWARK	NEWARK	0.1	1.7	NEWARK BR	LINE TO CRC
1434	NEWARK	NEWARK	0.0	0.9	NEWARK BR	LINE TO CRC
1434	NEWARK	NEWARK	0.0	0.9	NEWARK BR	LINE TO CRC
1434	NEWARK	NEWARK	0.0	0.9	NEWARK BR	LINE TO CRC
1434	NEWARK	NEWARK	13.6	21.7	NEWARK BR	LINE TO CRC
1434	NEWARK	NEWARK	0.0	0.9	NEWARK BR	LINE TO CRC
1434	NEWARK	NEWARK	0.0	1.7	NEWARK BR	LINE TO CRC
1440	NEWARK	NEWARK	0.0	1.3	NEWARK BR	LINE TO CRC
1441	NEWARK	NEWARK	0.0	2.0	NEWARK BR	LINE TO CRC
1455	NEWARK	NEWARK	0.0	2.1	NEWARK BR	LINE TO CRC
1456	NEWARK	NEWARK	0.0	4.1	NEWARK BR	LINE TO CRC
1457	NEWARK	NEWARK	0.0	1.0	NEWARK BR	LINE TO CRC
1459	NEWARK	NEWARK	0.0	0.9	NEWARK BR	LINE TO CRC
1460	NEWARK	NEWARK	0.0	0.2	NEWARK BR	LINE TO CRC
TRANSFEROR: CHICAGO, KALAMAZOO & SAGINAW RR. CO.						
5340	BIRCHMOUNT	HOPEL ROAD	47.3	42.7	CYRUS BR	LINE TO CRC
5344	HOPEL ROAD	KALAMAZOO	42.7	43.9	CYRUS BR	LINE TO CRC
5344	KALAMAZOO	SAGINAW CRT	43.9	46.0	CYRUS BR	LINE TO CRC
TRANSFEROR: JOLIET & NORTHWEST ILLINOIS R. R. CO.						
3233	WATSON	WATSON	12.0	15.6	JOLIET BR	LINE TO CRC
3233	WATSON	WATSON	15.6	24.0	JOLIET BR	LINE TO CRC
TRANSFEROR: HANOVER & SHERRARD VALLEY CO.						
2443	BONNERSVILLE SEC	FARRIS EL BR	0.0	5.0	SHARON BR	LINE TO CRC
TRANSFEROR: HANOVER RIVER BRIDGE CO.						
5104	SHERRARD BRIDGE	THE BOUNDARY	0.0	0.2	KAIN LINE	LINE TO CRC
5104	FALLS VIEW	BOUNDARY	0.0	10.0	KAIN LINE	LINE TO CRC
5104	THE BOUNDARY	FALLS VIEW	0.2	2.7	KAIN LINE	LINE TO CRC
TRANSFEROR: PENN CENTRAL TRANSPORTATION CO.						
1121	EDWARDSVILLE SEC	NEWARK	0.0	41.0	TRENTON BR	LINE TO CRC
1121	EDWARDSVILLE SEC	NEWARK	41.0	46.0	TRENTON BR	LINE TO CRC
1122	NEWARK	NEWARK	23.7	34.3	PHILLIPSBURG BR	LINE TO CRC

## Section C Rail Line Tables

		INTERESTS DESIGNATED TO CONRAIL FOR AMTRAK				
LINE CODE	FREQ. STATION	TC STATION	PFE	HPZ	BRANCH NAME	INTEREST
SYSTEM: PENN CENTRAL TRANSPORTATION CO:						
TRANSFEROR: CONROCKING RAILWAY CO.						
1101	FRANKFORD JCT	CON	81.3	87.6	MAIN LINE	LINE TO AMTRAK
TRANSFEROR: NEW YORK CONNECTING R. CO.						
4207	DIYPAST.	R 140TH ST	4.5	5.0	PELL GATE LINE	LINE TO AMTRAK
TRANSFEROR: MORTIMER CENTRAL RY. CO:						
1201	UNION JCT	ODP JCT	95.6	96.0	MAIN LINE	LINE TO AMTRAK
TRANSFEROR: PHILA. TUNNEL & TERMINAL R. CO.						
1401	PENN STATION	NY/NJ ST LINE	0.0	1.6	MAIN LINE	LINE TO AMTRAK
1401	NY/NJ ST LINE	HULSON	1.6	8.6	MAIN LINE	LINE TO AMTRAK
1401	HODSCH	DOCK	7.1	8.0	PAIN LINE	LINE TO AMTRAK
1411	PENN STATION	FACED	0.0	3.7	PELL GATE LINE	LINE TO AMTRAK
1411	MAROLD	DIYPAST	3.7	4.9	PELL GATE LINE	LINE TO AMTRAK
TRANSFEROR: PHILA. PATR. & WASH. R. CO:						
1121	ARSENAL	DADDY	2.1	6.3	MAIN LINE	LINE TO AMTRAK
1201	CADBY	MOOR	6.3	16.0	MAIN LINE	LINE TO AMTRAK
1201	HODK	PI/OL ST LINE	16.0	26.2	MAIN LINE	LINE TO AMTRAK
1201	PI/OL ST LINE	WILK WEST YR	26.2	28.2	MAIN LINE	LINE TO AMTRAK
1201	WILK WEST YR	BERARM, CL	28.2	38.9	MAIN LINE	LINE TO AMTRAK
1201	BERARM, CL	OL/40 ST LINE	38.9	41.4	MAIN LINE	LINE TO AMTRAK
1201	OL/40 ST LINE	HAY	41.4	92.0	MAIN LINE	LINE TO AMTRAK
1201	BER JCT	HC/DC LINE	92.0	131.4	MAIN LINE	LINE TO AMTRAK
1201	HO/DO ST LINE	WASHINGTON	131.4	135.1	MAIN LINE	LINE TO AMTRAK
TRANSFEROR: PHILA. & DEATCH R. CO.						
1101	HOLMESBURG JCT	FRANKFORD JCT	76.0	81.3	MAIN LINE	LINE TO AMTRAK
1401	MORRISVILLE	MCHEIS	50.0	50.6	MAIN LINE	LINE TO AMTRAK
1401	MORRIS	HOLMESBURG JCT	50.6	76.0	MAIN LINE	LINE TO AMTRAK
TRANSFEROR: UNION R. CO. OF BALTIMORE						
1201	BAY	UNION JCT	92.0	95.6	MAIN LINE	LINE TO AMTRAK
TRANSFEROR: UNITED N. J. R. & CANAL CO:						
1401	DOCK	NEWARK	0.0	9.0	MAIN LINE	LINE TO AMTRAK
1401	NEWARK	COUNTY	9.0	32.9	MAIN LINE	LINE TO AMTRAK
1401	COUNTY	TRENTON OFFSH	32.9	56.0	MAIN LINE	LINE TO AMTRAK
1401	TRENTON	TRENTON	56.0	57.0	MAIN LINE	LINE TO AMTRAK
1401	TRENTON	NJ/PA STATE LINE	57.0	57.7	MAIN LINE	LINE TO AMTRAK
1401	NJ/PA STATE LINE	ROCKYVILLE	57.7	58.0	MAIN LINE	LINE TO AMTRAK

# EXHIBIT 3

*Hudson*

Document No.  
UNJ-CRC-RP-4

DEED

FILED AND RECORDED  
OCT 12 1978  
DONALD LAN  
SECRETARY OF STATE

THIS DEED IS MADE BY AND BETWEEN  
FAIRFAX LEARY,

AS TRUSTEE OF THE PROPERTY OF  
THE UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, DEBTOR

("Grantor"), whose address is 1404 Mt. Pleasant Road,  
Villanova, Pennsylvania 19086

AND

CONSOLIDATED RAIL CORPORATION,

a corporation organized and existing under the laws of the  
Commonwealth of Pennsylvania ("Grantee"), whose address is 1818 Market Street,  
Philadelphia, Pennsylvania 19103.

WINDMILL

WHEREAS, the Debtor is a railroad in reorganization under Section 77 of the Federal Bankruptcy Act, 11 U.S.C. Sec. 206, and is a railroad in reorganization as that term is defined in the Regional Rail Reorganization Act of 1973 (Public Law 93-234, 87 Stat. 836), as amended ("Act"); and

WHEREAS, by orders of the United States District Court for the Eastern District of Pennsylvania entered in Docket No. 78-847-A the above-named individual was duly appointed and is now serving as Trustee of the property of the Debtor; and

WHEREAS, the United States Railway Association, pursuant to Section 209 (c) of the Act, has certified to the Special United States District Court established pursuant to Section 209 (b) of the Act ("Special Court"), that the rail properties of the Debtor hereinafter described (except those hereinafter reserved and excepted) are to be transferred by the Grantor to the Grantee; and

WHEREAS, pursuant to Section 303 (b) (1) of the Act, the Special Court has ordered the Grantor to convey to the Grantee all of the Grantor's right, title and interest in such rail properties, free and clear of any liens or encumbrances as provided in Section 303 (b) of the Act;

NOW, THEREFORE, pursuant to the Order of the Special Court, the Grantor hereby grants and conveys to the Grantee:

A. All of the Grantor's right, title and interest, legal and equitable, in and to the real property located in the County of Hudson, State of New Jersey as described in Exhibit A attached to this Deed as a part hereof, together with all of the appurtenances, hereditaments, franchises, ways, waters, minerals, rights, privileges, improvements, fixtures, licenses, leaseholds, reversionary, easements, rights under operating, trackage and joint facility agreements, rents, issues, profits and other interests and items belonging to or in any way appertaining to such real property, including but not limited to all real property items that would properly be recorded in Accounts 1 through 45 and 90 of the Property Accounts prescribed by the Interstate Commerce Commission for Railroad Companies in its Uniform System of Accounts, 49 C.F.R. Part 1201, to the extent that such interests and items belong or in any way appertain to such real property, except as those interests and items belong or appertain to the real property hereinafter reserved and excepted.

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Revised

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B. 1. The easements and rights to use, operate, maintain, repair, renew, replace and remove on, under, over and across the real property hereinafter reserved and excepted ("Grantor's Burdened Property"), any and all lines, poles, pipes, appliances, equipment, structures, facilities and appurtenances (each an "Easement Item") existing on and used or useful as of the date of delivery of this Deed as a part of any railroad communication, signal or interlocker system or as a part of any electric, telephone, telegraph, water, gas, steam, sanitary sewer, storm sewer or other utility system, together with the easement of reasonable access over the Grantor's Burdened Property to permit the exercise of the foregoing easements and rights, and the easement for lateral support of the real property conveyed by this Deed.

2. The easements and rights for the specific uses, if any, (each an "Easement Item") particularly described in Exhibit B attached to this Deed as a part hereof and burdening certain real property hereinafter reserved and excepted.

3. The Grantee shall give the Grantor reasonable notice before entering on the Grantor's Burdened Property to exercise the easements and rights conveyed in this Paragraph B, and shall exercise such easements and rights (a) so as not to interfere unreasonably with the use and enjoyment of the Grantor's Burdened Property, (b) in compliance with generally applicable reasonable requirements established from time to time by the Grantor and (c) so as not to increase materially the burden on the Grantor's Burdened Property existing on the date of delivery of this Deed. The Grantee shall indemnify and save the Grantor harmless from any loss, damage or expense arising from the exercise of the foregoing easements and rights, without regard to negligence on the part of the Grantor or the Grantee. Upon request of and at the expense of the Grantor, the Grantee shall execute and deliver to the Grantor a deed or other instrument releasing the Grantee's rights in any part of the Grantor's Burdened Property that is not used or reasonably needed by the Grantee in the exercise of the easements and rights conveyed in this Paragraph B.

4. If the location of any Easement Item would interfere with any proposed use or sale of any part of the Grantor's Burdened Property, the Grantor may, at the Grantor's expense and after obtaining the Grantee's written consent, relocate the interfering Easement Item or cause the same to be relocated. Such consent will be granted unless (a) the Easement Item cannot be relocated as proposed by the Grantor without unreasonable interference to the Grantee's operations or without damage to the integrity of the system of which the Easement Item is a part or (b) the Grantee will not have reasonable access to the relocated Easement Item. If the Grantee has previously released its easements and rights in any real property as provided in Paragraph B. 3, and a relocated Easement Item falls, in whole or in part, within the area that has been so released, the Grantor and the Grantee shall exchange the following instruments promptly after the relocation is completed:

(a) The Grantor shall execute and deliver to the Grantee a supplementary deed of easement which conveys to the Grantor with respect to the relocated Easement Item the easements and rights described in this Paragraph B.

(b) The Grantee shall execute and deliver to the Grantor a deed or other instrument of release as provided in Paragraph B. 3.

5. The Grantor shall bear all expenses and the cost of all transfer and recording taxes, fees and charges in connection with all deeds and other instruments delivered pursuant to this Paragraph B.

RESERVING AND EXCEPTING, HOWEVER, TO THE GRANTOR:

C. All the respective right, title and interest of the Grantor, legal and equitable, in and to the real property described in Exhibit B attached to this Deed as a part hereof, but subject, however, to (a) the limitation of access thereto across the real property conveyed by this Deed as hereinafter provided and (b) the easements and rights conveyed pursuant to Paragraph B above.

D. 1. The easements and rights to use, operate, maintain, repair, renew, replace and remove on, under, over and across the real property conveyed by this Deed ("Grantee's Burdened Property"), any and all lines, poles, pipes, appliances, equipment, structures, facilities and appurtenances (each an "Easement Item") existing on and used or useful as of the date of delivery of this Deed as a part of any railroad communication, signal or interlocker system or as a part of any electric, telephone, telegraph, water, gas, steam, sanitary sewer, storm sewer or other utility system, together with the easement of reasonable access over the Grantee's Burdened Property to permit the exercise of the foregoing easements and rights, and the easement for lateral support of the real property reserved and excepted from this conveyance.

2. The easements and rights for the specific uses, if any, (each an "Easement Item") particularly described in Exhibit B to this Deed and burdening certain real property conveyed by this Deed.

FILED AND RECORDED  
OCT 12 1978  
DONALD LANE  
REGISTRAR

18-3286 758

3. The Grantor shall give the Grantee reasonable notice before entering on the Grantee's Burdened Property to exercise the easements and rights reserved and excepted in this Paragraph D, and shall exercise such easements and rights (a) so as not to interfere unreasonably with the use and enjoyment of the Grantee's Burdened Property, (b) in compliance with generally applicable reasonable requirements established from time to time by the Grantee and (c) so as not to increase materially the burden on the Grantee's Burdened Property existing on the date of delivery of this Deed. The Grantor shall indemnify and save the Grantee harmless from any loss, damage or expense arising from the exercise of the foregoing easements and rights, without regard to negligence on the part of the Grantee or the Grantor. Upon request of and at the expense of the Grantee, the Grantor shall execute and deliver to the Grantee a deed or other instrument releasing the Grantor's rights in any part of the Grantee's Burdened Property that is not used or reasonably needed by the Grantor in the exercise of the easements and rights reserved and excepted in this Paragraph D.

4. If the location of any Easement Item would interfere with any proposed use or sale of any part of the Grantee's Burdened Property, the Grantee may, at the Grantee's expense and after obtaining the Grantor's written consent, relocate the interfering Easement Item or cause the same to be relocated. Such consent will be granted unless (a) the Easement Item cannot be relocated as proposed by the Grantee without unreasonable interference to the Grantor's operations or without damage to the integrity of the system of which the Easement Item is a part or (b) the Grantor will not have reasonable access to the relocated Easement Item. If the Grantor has previously released its easements and rights in any real property as provided in Paragraph D. 3. and a relocated Easement Item falls, in whole or in part, within the area that has been so released, the Grantor and the Grantee shall exchange the following instruments promptly after the relocation is completed:

(a) The Grantee shall execute and deliver to the Grantor a supplementary deed of easement which conveys to the Grantor with respect to the relocated Easement Item the easements and rights described in this Paragraph D.

(b) The Grantor shall execute and deliver to the Grantee a deed or other instrument of release as provided in Paragraph D. 3.

5. The Grantee shall bear all expenses and the cost of all transfer and recording taxes, fees and charges in connection with all deeds and other instruments delivered pursuant to this Paragraph D.

E. All mineral rights owned by the Grantor in any parcel as to which an interest in the surface is not conveyed by this Deed.

TO HAVE AND TO HOLD the real property and the easements and rights hereby conveyed to the Grantee, free and clear of (a) any liens or encumbrances as provided in Section 303 (b) of the Act and (b) any and all easements and rights of access to the real property reserved and excepted from this conveyance across the real property conveyed by this Deed (except as otherwise provided in this Deed), even if such easements and rights would otherwise arise by reason of necessity, implication or other operation of law, statute, ordinance, rule or regulation of any governmental entity, BUT SAVING, HOWEVER, to (i) those easements and rights reserved and excepted in Paragraph D above, (ii) all existing licenses, easements, leases (other than those which may have been created to secure payment of a financial obligation), and operating, trackage right and joint facility agreements and (iii) Operating Rights Grants, if any, from the Grantor to a third party conveyed concurrently with this conveyance and identified in Exhibit B to this Deed.

The Grantor hereby covenants that the Grantor will perform, execute, acknowledge and deliver any and all such further acts, deeds, assignments and other instruments as may be reasonably requested by the Grantee to convey, confirm, clarify, identify or more precisely describe the real property and the easements and rights conveyed by this Deed or intended so to be in order to carry out the intent of this Deed in light of the designations contained in the Final System Plan which has been certified to the Special Court by the United States Railway Association pursuant to the Act, and to effect the recordation of, or otherwise perfect, this Deed and all such other deeds, assignments and instruments under any applicable statute, ordinance, rule or regulation.

The Grantee hereby covenants that the Grantee will perform, execute, acknowledge and deliver any and all such further acts, deeds, assignments and other instruments as may be reasonably requested by the Grantor to confirm, clarify, identify or more precisely describe the real property and the easements and rights reserved and excepted from this conveyance or intended so to be in order to carry out the intent of this Deed in light of the designations contained in such Final System Plan, and to effect the recordation of, or otherwise perfect, this Deed and all such other deeds, assignments and instruments under any applicable statute, ordinance, rule or regulation.

FILED AND RECORDED  
OCT 12 1976  
DONALD L. LAMBERT  
REGISTERED

By acceptance of this Deed, the Grantee (a) agrees to perform each of the obligations imposed on the Grantee by the terms of this Deed, and (b) assumes and agrees to perform and observe all obligations and conditions on the part of the Grantor or the Grantor's predecessor in title to be performed or observed that arise or accrue after the date of delivery of this Deed under all licenses, easements, leases (other than those which may have been created to secure payment of a financial obligation) and operating, trackage right and joint facility agreements (subject, however, to the terms thereof which are conveyed by this Deed and under those to which this conveyance is made subject, provided that the Grantee assumes no obligation or liability that arises after the date of delivery of this Deed out of any event, act or failure to act that occurred prior thereto and, where an obligation or liability is related to a period which is both before and after such date, the Grantee assumes only that portion of the obligation or liability which is reasonably allocable to the part of the period after such date. Concurrently with the delivery of this Deed, the Grantee is delivering to the Grantor a separate instrument executed by the Grantee acknowledging receipt and acceptance of this Deed and affirming the provisions of this paragraph.

All of the covenants of the Grantor and the Grantee, respectively, shall be deemed to be real covenants and shall run with the land.

The words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees", respectively, whenever the sense of this Deed so requires and, whether singular or plural, such words shall be deemed to include in all cases the successors and assigns of the respective parties.

This conveyance and the specific covenants of the Grantor are made by the Grantor as Trustee of the property of the Debtor, and not individually, and this conveyance is made without covenants of title or any warranties express or implied.

IN WITNESS WHEREOF, the Grantor has executed this Deed this 31<sup>st</sup> day of March, 1976.

Signed and Acknowledged  
in the Presence of:

Anna B. Freund  
Anna Freund  
Robert S. Reichertz

Fairfax Leary <sup>Notary Public</sup>  
FAIRFAX LEARY, AS  
TRUSTEE OF THE PROPERTY OF THE  
UNITED NEW JERSEY RAILROAD  
AND CANAL COMPANY, DEBTOR

FILED AND RECORDED  
OCT 12 1976  
DONALD LAN  
SECRETARY OF STATE

DISTRICT OF COLUMBIA, SS:

On this 31<sup>st</sup> day of March, 1976, before me, a Notary Public authorized to take acknowledgements and proofs in the District of Columbia, personally appeared Fairfax Leary, personally known to me to be the person whose name is subscribed to the foregoing Deed, bearing the same date as this certificate of acknowledgement, and acknowledged himself to be the Trustee of the Property of The United New Jersey Railroad and Canal Company, Debtor, and that he executed the foregoing Deed as his free act and deed as such Trustee for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Barbara P. Kline

This instrument prepared by:  
United New Jersey Railway Association  
Pursuant to the Act

3  
June 14, 1979

100-3286 76 760

Document No.

DNJ-CRC-RE-4

**EXHIBIT A**

TO THE DEED BY AND BETWEEN

**FAIRFAX LEARY,**

AS TRUSTEE OF THE PROPERTY OF

**THE UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, DEBTOR**

AND

**CONSOLIDATED RAIL CORPORATION**

DESCRIPTION OF REAL PROPERTY

LOCATED IN

County of Hudson, State of New Jersey

FILED AND RECORDED  
OCT 12 1978  
DONALD LAN  
SECRETARY OF STATE

For the purpose of each description contained in this Exhibit A (and solely by way of illustration and not by way of limiting the generality of the term "adjacent"), adjacency shall be deemed to exist without regard to the existence of any public or private street, highway, alley or other way between one part of the Grantor's real property and another.

This Exhibit A consists of the following pages only: A-1, A-2, A-3, A-4, A-5, A-7, A-8, A-9, A-10, A-11.

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-5-  
A-1

Document No.  
UNJ-CRC-RP-4

FILED AND RECORDED  
JUL 12 1978  
DONALD E. LAR  
SECRETARY OF STATE

Situata in the County of Hudson, State of New Jersey, and being the United New Jersey Railroad and Canal Company's line of railroad known as The Penn Central Hudson Street Branch and being all the real property in the County lying in, under, above, along, contiguous to, adjacent to or connecting to such line.

Such line originates in the County near Montgomery and Hudson Streets in Jersey City, connecting to another line of railroad known as the Harsimus Cove Yard, passes through Hudson Street, Essex Street, and Warren Street and terminates in the County 1 1/2 blocks west of the intersection of Warren and Essex Streets.

The line of railroad described herein is identified as Line Code 1440 in the records of the United States Railway Association.

UNJ-3286 76 769

- 3 -

A-19

# EXHIBIT B

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB DOCKET NO. AB 167 (SUB-NO. 1189X)**

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

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**OPPOSITION OF CONSOLIDATED RAIL CORPORATION  
TO REQUESTS FOR ADMISSIONS**

Consolidated Rail Corporation (“Conrail”) objects to each and all of the requests for admissions it received from 212 Marin Boulevard, LLC, et al. (“LLCs”) on November 12, 2014, on the grounds that they are improper in this proceeding, untimely, irrelevant, and vexatious.

As a threshold matter, discovery is disfavored in abandonment proceedings. *See Ind. Sw. Ry. Co.—Abandonment Exemption—In Posey & Vanderburgh Counties, IN*, STB Docket No. AB 1065X, slip op. at 4 (served Feb. 11, 2011).

The requests also are extremely untimely. The LLCs’ requests concern the location and regulatory status of the Harsimus Branch and the Hudson Street Industrial Track (“Hudson Street I.T.”). The location and regulatory status of the Harsimus Branch has been the focus of attention at the STB since 2006, when the City of Jersey City, et al. (“City Parties”) initiated the declaratory order proceedings in Docket No. 34818. The City Parties, Conrail, and the LLCs all participated in document discovery in that proceeding that involved information about both the the Harsimus Branch and the Hudson Street I.T. After the STB held that the Harsimus Branch was subject to its regulatory authority, Conrail on March 6, 2008, served all parties with a notice that it intended to file a notice of exemption to abandon both the Harsimus Branch and the Hudson Street I.T. That notice included maps specifying the location of both rights of way.

The City Parties subsequently objected to the inclusion of the Hudson Street I.T. in the abandonment proceeding with the Harsimus Branch, and Conrail decided that seeking abandonment authority for the Hudson Street I.T. was unnecessary. The Hudson Street I.T. had always been considered spur track, no trace of it remained, and no one contended that it required abandonment authority. Accordingly, Conrail advised the parties and the Board that it would not seek abandonment authority for the Hudson Street I.T.,<sup>1</sup> and it did not do so in the notice of exemption that it filed in February 2009 for the Harsimus Branch. *No one* objected.

At the time, the LLCs were represented by experienced STB and ICC counsel who had undertaken independent historical research concerning the jurisdictional status of the trackage and who located and presented evidence from numerous witnesses with personal experience and expertise regarding the matters at issue. Yet, the LLCs did not raise any concerns about the abandonment authority Conrail had requested, much less seek discovery. Thus, even were the issues still relevant, it would be far too late for the LLCs now to seek discovery about the location and regulatory status of the Harsimus Branch and Hudson Street I.T.

In any event, the LLCs' requests are completely irrelevant at this stage in the proceeding. As a result of the LLCs' and the City Parties' stipulation—a stipulation that Conrail did not join, but stated it would not contest—the United States District Court for the District of Columbia, sitting as the Special Court, held in 2013 that the Harsimus Branch was a line of railroad subject to STB abandonment authority. The Special Court rejected the LLCs' efforts to amend its pleadings to make allegations about the Hudson Street I.T. The United States Circuit Court for the District of Columbia Circuit in 2014 summarily dismissed the LLCs' appeal of the Special Court's decision.

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<sup>1</sup> See Comments of Consolidated Rail Corporation on Issues Raised by Pre-filing Correspondence, filed January 8, 2009, at 4 n.4 and 18.

In response to the City Parties' request that the abandonment proceedings in Docket No. AB 167 (Sub-No. 1189X) be reopened, the LLCs asked the STB to institute a declaratory order proceeding, in Docket No. 35825, to determine that the STB did not have abandonment jurisdiction over the Harsimus Branch. As the LLCs had attempted unsuccessfully in the Special Court, the LLCs in their petition for declaratory order attempted to inject questions about the Hudson Street I.T. and its alleged connection with the Harsimus Branch east of Marin Boulevard into the requested declaratory order proceedings.<sup>2</sup> Significantly, however, the LLCs emphasized that "Petitioners [i.e., the LLCs] seek no relief for any properties other than their own." Pet. for Dec. Order at 7. Since the LLCs' properties terminate at Marin Boulevard, and since no other party has raised any question about the location or regulatory status of any properties east of Marin Boulevard, the only property relevant to the current abandonment proceedings—and certainly the only property in which LLCs have a cognizable interest—is the portion of the Harsimus Branch *west* of Marin Boulevard.

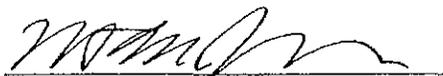
The location and regulatory status of *that* portion of the Harsimus Branch, however, was clearly established by the Special Court's decision (pursuant, it should be noted again, to a stipulation in which the *LLCs* joined). Indeed, as the STB observed in dismissing the LLCs' petition for declaratory order, "the LLCs acknowledge that in the District Court action, they stipulated to the location of the portion of the Harsimus Branch in dispute and that the Harsimus Branch was conveyed to Conrail as a line of railroad under the ICC's (now the Board's) jurisdiction." Decision in Docket No. FD 35825, served August 11, 2014, slip op. at 3-4.

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<sup>2</sup> See Petition for Declaratory Order of Exemption Pursuant to 5 U.S.C.A. § 554, 49 C.F.R. § 1117.1, and 49 U.S.C.A. § 10502, filed May 8, 2014, at 7, 11, 16-19, and 26 and Exhibits G-3, O, O-2, and O-3.

Having failed in their attempts to inject questions about the location and regulatory status of rail properties east of Marin into the Special Court proceedings or into a new STB declaratory order proceeding, and having disclaimed any desire for relief with regard to any property but their own, the LLCs are seeking admissions in the ongoing STB abandonment proceedings concerning the very location and regulatory status issues that the STB has already refused to entertain. Thus, the LLCs' requests are not only improper in an abandonment proceeding, untimely, and irrelevant but also vexatious. It is time to end all discovery sideshows and move forward with the abandonment proceedings as expeditiously as possible.<sup>3</sup>

Respectfully submitted,



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Washington DC 20006  
(202) 263-3261

Attorneys for Consolidated Rail Corporation

November 21, 2014

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<sup>3</sup> As noted above, Conrail's objections apply not only to the requests for admission collectively, but to each and every one of them individually. Therefore, it is unnecessary for Conrail to repeat each request verbatim and set forth its objections individually. Were Conrail to undertake such a pointless exercise in elevating form over substance, Conrail would state as to each request that it objects on the grounds that the request is inappropriate, untimely, irrelevant, and vexatious.

## CERTIFICATE OF SERVICE

Without conceding that service upon all parties to this proceeding is required for a response to requests for admission, but solely because the LLCs undertook such service in propounding the requests, Conrail has, through the undersigned counsel, served its opposition to the LLCs' requests for admissions upon the following parties, by first class U.S. Mail, postage pre-paid:

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Seattle, Washington 98177

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General Counsel, Rails to Trails Conservancy  
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Waters, McPherson, McNeill PC  
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Fritz R. Kahn, P.C.  
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Aaron Morrill  
Civic JC  
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Jersey City, NJ 07302

President  
Van Vorst Park Association  
91 Bright Street  
Jersey City, NJ 07302

Eric Fleming  
President  
Harsimus Cove Association  
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P.O. Box 101  
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President  
Hamilton Park Neighborhood Association  
PMB # 166  
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President  
Historic Paulus Hook Ass'n  
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Jill Edelman  
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Powerhouse Arts District Neighborhood Ass'n  
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Jersey City, NJ 07302

Robert Crow  
President  
The Village Neighborhood Association  
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Robert Crowell  
Monroe County Planning Department  
Room 306 Courthouse  
Bloomington, IN 47404

Joseph A. Simonetta, CAE  
Executive Director  
Preservation New Jersey Incorporated  
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Friends of Liberty State Park  
P.O. Box 3407  
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Secaucus, NJ 07094

Eric S. Strohmeyer  
Vice President COO  
CNJ Rail Corporation  
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Watchung, NJ 07069

Embankment Preservation Coalition  
495 Monmouth Street  
Jersey City, NJ 07302

Justin Frohwirth, President  
Jersey City Landmarks Conservancy  
P.O. Box 68  
Jersey City, NJ 07303-0068

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Conservation Director  
NY/NJ Baykeeper  
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Keyport, NJ 07735

Jersey City Economic Development Corp.  
30 Montgomery Street, Suite 1400  
Jersey City, NJ 07302

Daniel D. Saunders  
Deputy State Historic Preservation Officer  
Mail Code 501-04B  
Department of Environmental Protection  
Historic Preservation Office  
P.O. Box 420  
Trenton, NJ 08625-0420

Maureen Crowley, Coordinator  
Embankment Preservation Coalition  
263 Fifth St  
Jersey City, NJ 07302



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Adam C. Sloane

# EXHIBIT C

BEFORE THE SURFACE TRANSPORTATION BOARD

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

RESPONSE TO REQUESTS FOR ADMISSIONS

City of Jersey City ("City"), Rails to Trails Conservancy ("RTC"), and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition ("Coalition") (collectively "City et al") respond as follows to the "Intervenors' Requests for Admission from Party 49 CFR 1114.27" per certificate of service dated November 12, 2014, signed by Daniel Horgan. As used in this response, "LLCs" shall refer to eight LLCs d/b/a 212 Marin Boulevard LLC, et al., and an additional LLC d/b/a NZ Funding, LLC, all under apparently common control and also collectively referred to as intervenors".

City et al object to all of the Requests for Admission as irrelevant, duplicative and/or moot, untimely and unduly burdensome, in this abandonment proceeding. City et al also object that, based upon inquiry to the LLCs' counsel concerning relevancy, LLCs' counsel indicated that the LLCs sought to use

the requests in order to contest issues that are moot or stare decisis [namely, to continue to contest the jurisdiction of the Surface Transportation Board (STB) to authorize abandonment of the Harsimus Branch]. City et al further object that, based on inquiry to the LLCs' counsel concerning whether the LLCs admitted the truth of that to which they requested other parties to admit, they refused to do so. If the proponent of an admission itself does not confess the admission, it is not proper to request same of others.

1. The first request asked whether the line of railroad identified as Line Code 1420 was conveyed to Conrail in 1976.

RESPONSE: City et al and the LLCs stipulated in U.S. D.C. (Special Court) 09-1900 that the Harsimus Branch (line code 1420) was conveyed to Conrail in 1976 as a line of railroad subject to STB abandonment jurisdiction. The LLCs nonetheless resisted summary judgment that STB had jurisdiction on the ground that certain trackage east of Marin in Jersey City must be located by the Special Court. U.S.D.C. for D.C., sitting as Special Court, rejected the LLCs position and granted summary judgment that STB had jurisdiction in a decision reported at 968 F.Supp. 2d 302 (City et al v. Conrail), Sept. 30, 2013, and summarily affirmed in D.C. Cir. No. 13-7175 (Feb. 19, 2014). STB has

ruled that the referenced judicial proceedings "established that these abandonment and discontinuance proceedings [AB 167-1189X and related cases] are within the jurisdiction of the Board." Decision in this docket, served August 11, 2014, slip op. p. 6. On May 8, 2014, the LLCs, including NZ Funding, LLC, filed a declaratory proceeding (F.D. 35825) to contest STB's jurisdiction in AB 167-1189X. In that petition, the LLCs took the position that the location of line code 1440 (Hudson Street Industrial trackage) and line code 1420 (Harsimus Branch) east of Marin Boulevard was unresolved and should be grounds to invalidate the AB 167-1189X abandonment proceeding. See LLCs' Pet. at p 18 (para 28) and pp. 25-26 (para 36). The petition in F.D. 35825 also asserted numerous other grounds for the position of the LLCs that STB lacks jurisdiction or should grant some sort of exempt abandonment authority to the LLCs. STB denied the petition in a decision served on August 11, 2014. This further estops the LLCs from continued contest of STB jurisdiction. City et al object that the request is therefore irrelevant, moot, estopped, untimely, already decided and unduly burdensome. Without waiver of objections, City et al of course admit that Conrail received the Harsimus Branch as a line of railroad subject to STB abandonment jurisdiction. The LLCs have so admitted as

well. Conrail has stipulated it will not contest this matter. In this light, the request is objectionable as duplicative and purposeless. Counsel for City et al is surprised that the LLCs per their counsel will not even admit what they assert in their first request for admission since they stipulated to it.

2. The second request asked if excerpted portions of the deed conveying the property to Conrail are genuine.

RESPONSE: same as #1. In any event, City et al have never disputed the Line Code 1420 portions of the Leary deed.

3. The third request asks for City et al to consent to the LLCs' characterization of the deed as stating that Line Code 1420 originates in Harsimus Cove.

RESPONSE. Same as #1. In any event, the deed speaks for itself.

4. The fourth request asks for City et al to consent to the LLCs' characterization of the Final System Plan (FSP) as indicating that Line Code 1420 runs from MP 1.0 to 7.0.

RESPONSE: Same as #1. Without waiver of objections, City et al maintained throughout F.D. 34818 that the FSP designated Line Code 1420, Harsimus Branch, MP 1.0 to MP 7.0, to Conrail as a line of railroad. The LLCs and Conrail claimed it did not, but lost. The judicial determination that the Harsimus Branch was conveyed as a

line of railroad subject to STB jurisdiction is now final. The issue is moot and/or governed by principles of res judicata/collateral estoppel. Continued inquiry is duplicative of matters already decided and objectionable as burdensome and redundant. In any event, the relevant statutes expressly made all property conveyed to Conrail subject to ICC/STB jurisdiction. Property left in the bankrupt estates in general was the only pre-Conrail railroad property not subject to ICC/STB jurisdiction.

5. The fifth request asks for an admission of genuineness of a portion of the FSP.

RESPONSE: Same as #1. The FSP has no relevancy to this proceeding in light of the final determination that STB has jurisdiction. City et al have not disputed the FSP at p. 272. The LLCs and Conrail have previously disputed the FSP but that matter is now moot.

6. The sixth request asks for an admission that the Harsimus Branch was used for the transport of freight by rail in 1976.

RESPONSE: Admitted. However, this matter is irrelevant, and otherwise subject to the objections in the response to request number 1 above because the matter is not at issue in, or relevant to, AB 167-1189X, except in corroboration of the fact that Conrail knowingly engaged in an illegal de

facto abandonment when it purported to sell a portion of the Harsimus Branch to the LLCs without prior STB authorization.

7. The seventh request asks for admission that a portion of the Harsimus Branch extended east from Marin Avenue (formerly Henderson Street).

RESPONSE: Admitted with the qualification that City et al does not know where the Harsimus Cove yard commenced east of Marin, but this qualified admission is without waiver of the objection that this matter is irrelevant for all the reasons in the response in 1 above, since, inter alia, no one contests that the Harsimus Branch was conveyed subject to STB jurisdiction. In addition, the LLCs lack standing on the matter since they have no ownership or other legally cognizable interest in the Harsimus Branch east of Marin Avenue.

8. The eighth request asks for admission that the Harsimus Branch east of Marin Boulevard is characterized by a dashed line in an exhibit in the "Dixon Declaration" (not supplied with the requests for admission) prepared by the LLCs for use in U.S.D.C. 09-1900, if one has software to open up a "layer."

RESPONSE: Same as #1. Furthermore, it is unduly burdensome to be "requested" to admit to an unsupplied document which is available only in electronic form that

counsel has never been able to open. In addition, this request is beyond the scope of reasonable inquiry for purposes of making a response. Moreover, the matter was irrelevant in U.S.D.C. #09-1900 and it remains irrelevant. Requests for admission on irrelevant or already decided matters are unduly burdensome.

9. This request seems to be essentially the same as in #8.

RESPONSE. Same as in #8.

10. This request asks for an admission that the "entirety" of the Harsimus Branch was subject to ICC/STB jurisdiction at the time it was conveyed to Conrail in 1976.

RESPONSE: Admitted. City et al have been so contending from the inception. However, this matter is now adjudicated and final. This admission is without waiver of all of the relevancy, burdensomeness, res judicata/collateral estoppel, standing, and other objections stated herein. The only relevancy of this request for admission is that it corroborates City, et al's position that Conrail (and the LLCs) knowingly engaged in an illegal abandonment with the intent of evading STB abandonment regulation when Conrail purported to sell portions of the Harsimus Branch to the LLCs in 2005.

11. This request asks for an admission that Conrail neither sought nor received abandonment authorization for the Harsimus Branch prior to 2009.

RESPONSE: City et al admit that Conrail never sought abandonment authority for the Branch until 2009. City et al add that when Conrail did seek such authority, it did so with the reservation that it would continue to contest STB jurisdiction, in league with the LLCs' efforts to contest STB jurisdiction. City et al deny that Conrail has ever received an effective abandonment authorization, because it has not. This response is without waiver of objections as to relevancy and burdensomeness of this line of discovery, except insofar as it corroborates City, et al's position that Conrail (and the LLCs) knowingly engaged in an illegal abandonment with the intent of evading STB abandonment regulation when Conrail purported to sell portions of the Harsimus Branch to the LLCs in 2005 and have persisted in efforts to profit from their illegal conduct to date. See 16 U.S.C. 470h-2(k).

12. This request asks for admission that Conrail received a line of railroad identified as Line Code 1440 in 1976.

RESPONSE: City et al object that this request is irrelevant to AB 167-1189X, and the inquiry burdensome. See response to #1, incorporated herein. In addition, in their petition

in F.D. 35825 (e.g., pp. 17-18, 26), the LLCs contended that STB must determine the location of the Hudson Street Industrial Track (which City et al understand to be line code 1440). STB denied the petition in F.D. 35825 by decision served August 11, 2014. The request therefore seeks information on a matter that is irrelevant, moot and/or already decided, and over which the LLCs lack any standing to adjudicate. The only possible basis for relevancy to AB 167-1189X of other lines as to which Conrail may have engaged in illegal de facto abandonments is insofar as the additional illegal conduct by Conrail corroborates City, et al's position that Conrail knowingly engaged in a pattern of illegal abandonment with the intent of evading STB abandonment regulation when Conrail purported to sell portions of the Harsimus Branch to the LLCs in 2005. The LLCs have indicated that although they admit and assert that Conrail engaged in fraudulent misrepresentations of regulatory status of the Harsimus Branch, they (inconsistently and without legal basis) nonetheless contend such inquiry is irrelevant in 1189X and only relevant in future damage actions which they threaten against Conrail. In sum, the LLCs have disavowed the only relevancy of their own line of inquiry. Without waiver of City et al's objections to this line of inquiry, City et al believe that

evidence in AB 167-1190X indicates that Conrail engaged in other illegal de facto abandonments. City et al have not examined the situation in connection with Line Code 1440, most of which appears to lie in City streets, but believe that Conrail obtained Line Code 1440 per the same deed by which it obtained Line Code 1420 in 1976. All rail property acquired by Conrail was by statute subject to ICC/STB jurisdiction. City et al are not required to enquire into irrelevant factual matters in response to discovery.

13. This request seeks an admission of genuineness for a portion of the deed to Conrail relating to line code 1440.

RESPONSE: For the same reasons as in responses 1 and 12, City et al object that this request is irrelevant and unduly burdensome. Without waiver of objection, City et al state that the Leary deed speaks for itself.

14. This request seeks admission to a characterization of the deed as to line code 1440.

RESPONSE: Same objection as 13. In addition, the deed speaks for itself.

15. This request seeks admission of a characterization of the FSP as to line code 1440.

RESPONSE: Same objection as 13. In addition, the FSP speaks for itself.

16. This request seeks admission of the genuineness of excerpts from the FSP relating to line code 1440.

RESPONSE: Same objection as 15.

17. This request seeks admission that line code 1440 was used in the transport of freight by rail by Conrail in 1976.

RESPONSE: Same objection as 13. City et al have not researched this matter, other than attempting to obtain discovery on rail traffic from Conrail in F.D. 34818.

(Conrail has refused to supply any information in AB 167-1189X and City et al have filed a motion to compel), and therefore lacks sufficient information to admit or deny of this statement. In F.D. 34818, Conrail stated that the information was available only in archived electronic files, and in essence indicated that City et al would have to retain a data specialist to excavate for it, which City et al lacked resources or time (under STB scheduling orders) to do. Conrail did supply a few pages of documents in F.D. 34818 showing that the Harsimus Branch carried thousands of carloads of traffic in 1976 and subsequent dates. The LLCs have copies of those documents. However, City et al have no basis either to admit or deny this request, despite reasonable inquiry, and otherwise object on the grounds stated in responses 1 and 12. Without waiver of objections, City et al hypothesize that Conrail used

portions of line code 1440 for freight rail in 1976 because it used all of the Harsimus Branch for that purpose.

18. This request appears duplicative of 12.

RESPONSE: Same as 12.

19. This request seeks admission that line code 1440 is portrayed in an invisible dashed line in the "Dixon Declaration."

RESPONSE: Same as the RESPONSE in 12 and 8.

20. This request appears similar to 19, with the possible inference that this is in accordance with the FSP.

RESPONSE: Same as 19.

21. This requests admission that line code 1440 was a line of railroad subject to the regulation of ICC/STB upon conveyance to Conrail in 1976.

RESPONSE: Admitted, subject to objections in 12 and the qualification that all property conveyed to Conrail by statute was subject to ICC/STB regulation. This RESPONSE is without waiver of objections as to relevancy and burdensomeness of this line of discovery, and the LLCs lack of standing with respect to this line of inquiry, except insofar as it corroborates City, et al's position that Conrail knowingly engaged in an illegal abandonment with the intent of evading STB abandonment regulation when Conrail

purported to sell portions of the Harsimus Branch to the LLCs in 2005. See 16 U.S.C. 470h-2(k).

22. This requests admission that Conrail neither sought nor received abandonment authorization for Line Code 1440.

RESPONSE. Subject to the objections in 12, City et al state that they lack information sufficient to confirm or to deny this request, which in any event asks for admission of the non-existence of a regulatory action, a question better addressed to STB itself, and/or Conrail. City et al have no record that Conrail ever sought a license to abandon any rail property associated with the Harsimus Branch. Given what has emerged as a pattern by Conrail of avoiding STB jurisdiction in Jersey City, City et al hypothesize that it is possible that Conrail never sought or received any abandonment authorization for Line Code 1440, but this response is without waiver of objections as to relevancy and burdensomeness of this line of discovery, except insofar as it corroborates City, et al's position that Conrail knowingly engaged in an illegal abandonment with the intent of evading STB abandonment regulation when Conrail purported to sell portions of the Harsimus Branch to the LLCs in 2005. See 16 U.S.C. 470h-2(k).

23. This request seeks admission as to the general location of Line Code 1440.

RESPONSE: Same as 12.

24. This request seeks admission as to the intersection point of Line Code 1440 with Line Code 1420, with reference to the unsupplied "Dixon Declaration."

RESPONSE: Same as 12. Without waiver of this objection, City et al note that the excerpts from the Leary deed to Conrail which the LLCs supplied assert that line code 1440 terminated near or in the Harsimus Cove Yard, and the Harsimus Cove Yard was east of Marin Boulevard, which was terminus for the historic Sixth Street (or Harsimus) Embankment.

All requests for admission not expressly admitted or denied are hereby denied. In all cases in which City et al indicate insufficient information to admit or to deny, City et al have made reasonable inquiry and the information known or readily obtainable by City et al is insufficient to enable City et al to admit or to deny. City et al further note that upon inquiry of counsel, the LLCs refused to admit (corroborate) any of the matters for which they sought admission by City et al.

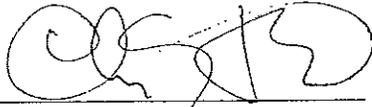
As to all discovery requests, City et al object that they should be directed to Conrail as owner of the rail lines in question (and thus the railroad responsible to comply with STB regulatory jurisdiction), or in some cases to the regulatory

agency (STB) itself. City et al believe that Conrail has extensive records concerning that property, including rail traffic over it and regulatory actions taken concerning it. City et al have so far been unable to obtain reasonable access to Conrail's documents and information. In all events, City, RTC and Coalition are not responsible for federal rail regulation of freight railroad property. City, RTC and Coalition must rely on discovery from or admissions by Conrail for status determinations, or upon decisions of the Surface Transportation Board, or upon the assistance of that agency in conducting investigations, finding files, or in compelling discovery from parties who have the information. These sources of information are at least as available to the LLCs as to City et al. In the circumstances, any discovery request by the LLCs to City et al is objectionable as unduly burdensome as either directed at the wrong entity, or as seeking City et al to do research for the LLCs which the LLCs can better do for themselves, especially on issues such as those tendered that are irrelevant and asserted only to re-litigate matters already decided. In addition, all the discovery requests tendered by the LLCs appear not only untimely given the LLCs' stipulation that the Harsimus Branch is an STB-regulated line of railroad, but also for the improper purpose of continuing to contest STB's jurisdiction, despite manifold confirmations by STB and the

courts in numerous other but related proceedings that STB has jurisdiction.

For: City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition

By: \_\_\_\_\_



Charles H. Montange, their counsel  
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By my signature below, I certify service upon Daniel Horgan at his address of record, by depositing a copy in U.S. Mail, postage pre-paid, first class, this 28<sup>th</sup> day of November 2014, with a courtesy copy by email attachment. A courtesy copy was similarly served upon Robert Jenkins, counsel for Conrail, at his address of record, on the same date.



# EXHIBIT D

2014 WL 1378306

Only the Westlaw citation is currently available.  
United States Court of Appeals,  
District of Columbia Circuit.

CITY OF JERSEY CITY, et al., Appellees

v.

CONSOLIDATED RAIL CORPORATION  
and Paula T. Dow, Acting Attorney General  
of the State of New Jersey, Appellees.  
212 Marin Boulevard, LLC, et al., Appellants.

No. 13-7175. | Feb. 19, 2014.

**Attorneys and Law Firms**

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al. Appellees.

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Corporation, Appellees.

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Jersey, Appellees.

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McPherson McNeill, PC, Secaucus, NJ, for Appellants.

Before TATEL, BROWN, and MILLETT, Circuit Judges.

**ORDER**

PER CURIAM.

\*1 Upon consideration of the motion for summary  
affirmance and the supporting response thereto, appellants'  
opposition, and the replies, it is

**ORDERED** that the motion be granted, and the district  
court's order filed September 30, 2013, be summarily  
affirmed. The merits of the parties' positions are so clear  
as to warrant summary action. *See Taxpayers Watchdog,  
Inc. v. Stanley*, 819 F.2d 294, 297 (D.C. Cir.1987) (per  
curiam). The district court did not abuse its discretion in  
denying appellants' motion for leave to file an amended  
answer, because the amendment was untimely (requested  
three years after the complaint was filed and on the eve of final  
resolution of the case); amendment would substantially alter  
the nature and scope of the litigation by introducing entirely  
new legal theories and disputes; and allowing amendment  
at this late juncture would unduly prejudice the other  
parties by unjustifiably delaying resolution of the action. *See  
Williamsburg Wax Museum, Inc. v. Historic Figures, Inc.*,  
810 F.2d 243, 247-48 (D.C. Cir.1987) (denial of motion to  
amend based on delay, injection of new issues, and prejudice  
to opposing parties was within the district court's discretion).  
As appellants acknowledged in district court, the proffered  
claims presented entirely new legal theories and many new  
facts, extending beyond the dispute presented by the original  
complaint. In addition, denial of the motion to amend will  
not unduly prejudice appellants because they remain free to  
press their new claims in independent litigation (subject to  
any relevant defenses or procedural barriers).

Furthermore, the district court properly granted summary  
judgment for the plaintiffs, based on its ruling that the portion  
of the **Harsimus** Branch at issue (running from the former  
railroad control point of CP Waldo to Marin Boulevard) was  
conveyed to the Consolidated Rail Corporation as part of the  
rail carrier's railroad lines, subject to the jurisdiction of the  
Surface Transportation Board to authorize abandonment of  
that railroad line. No. 09cv1900, 2013 WL 5423964 (D.D.C.  
Sept. 30, 2013); *see* 49 U.S.C. § 10903(a); *Consol. Rail Corp.  
v. STB*, 571 F.3d 13, 18-20 (D.C. Cir. 2009).

Pursuant to D.C. Circuit Rule 36, this disposition will not be  
published. The Clerk is directed to withhold issuance of the  
mandate herein until seven days after resolution of any timely  
petition for rehearing or petition for rehearing en banc. *See*  
Fed. R.App. P. 41(b); D.C. Cir. Rule 41.

# EXHIBIT E

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

CITY OF JERSEY CITY, )  
RAILS TO TRAILS CONSERVANCY, and )  
PENNSYLVANIA RAILROAD HARSIMUS )  
STEM EMBANKMENT PRESERVATION )  
COALITION, )  
Plaintiffs )  
 ) C.A. No. 09-1900 (CKK)  
v. )  
 )  
CONSOLIDATED RAIL CORPORATION, )  
Defendant, )  
and )  
212 MARIN BOULEVARD, LLC, et al., )  
Intervenor-defendants. )

MEMORANDUM  
ON BEHALF OF  
CITY OF JERSEY CITY,  
RAILS TO TRAILS CONSERVANCY, and  
PENNSYLVANIA RAILROAD HARSIMUS STEM  
EMBANKMENT PRESERVATION COALITION  
IN OPPOSITION TO  
LLCs' MOTION FOR LEAVE TO AMEND ANSWER

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

Due: 22 October 2012

\*\*\*\*\*EXCERPTED\*\*\*\*\*

In any event, the question of where lines might exist east of Marin Boulevard is germane only if addressing that question is necessary for STB to deal with the Harsimus Branch that is at issue in this proceeding, all of which is west of Marin Boulevard. But STB has already ruled that it need not determine the status of rail property east of Marin Boulevard in order to determine the status of rail property west of Marin to Waldo. STB Decision in F.D. 34818, Dec. 19, 2007, slip op. at 6 n.10. If the agency says that it need not deal with the matter, then there is no case or controversy under section 719(e)(2) that this Court needs to resolve concerning the location of lines east of Marin Boulevard. The LLCs simply fail to state a claim.

Furthermore, as a general matter, STB does not get involved with determinations of location of lines in abandonment proceedings. It simply grants abandonments between endpoints. If anyone sought abandonment authority east of Marin, it would be to the "end of line" (that is, all the rail property wherever it is). Assuming *arguendo* Conrail seeks an abandonment authorization all the way to end of line, there is no reason to believe anyone's interest will be adversely affected, let alone that anyone with standing will raise an issue as to location. There is no substantive or procedural reason why STB will ever need to interpret the FSP or any conveyancing order as to any trackage east of Marin Boulevard, any more than there is now for the segment west of Marin that had been at issue in this case. This Court should not intrude into a matter that is not in controversy especially when it is extremely unlikely there will ever be one.<sup>17</sup> The LLCs' fail to state a claim, even if they had standing, which they do not. This portion of their first counterclaim is entirely futile.

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<sup>17</sup> The LLCs also err in their allegations that the Plaintiffs are ignoring rail lines east of Marin, let alone improperly ignoring such lines. So far as the City can tell (and has told Conrail), any of the lines referenced by the LLCs east of Marin are in City streets. See Letter, Jersey City Mayor Healy to Conrail Associate General Counsel Enright, March 4, 2008, at p. 2 (appendix 9). Contrary to the LLCs' insinuations that the City has said it does not care about abandonment

2. De facto abandonment. In the other portion of their proposed first counterclaim, the LLCs take the position that because of the prolonged lack of rail use of the Harsimus Branch, including removal of rail structures particularly east of Marin, this Court should "interpret" the FSP or the conveyancing orders to exclude the Harsimus Branch from STB jurisdiction. Having just stipulated that the Harsimus Branch was conveyed as a line of railroad to Conrail per the FSP, the LLCs cannot then ask this Court in effect to reverse the stipulation by "interpreting" the FSP to provide the opposite of their stipulation. In addition, the LLCs' "argument" in this regard amounts to nothing more than a request that this Court usurp STB's role in abandonment regulation. Under the 3-R Act, this Court is not authorized to grant abandonments of property conveyed to Conrail, and has never been authorized to grant such authorizations. Instead, 45 U.S.C. 744(g) provides that Conrail cannot abandon any property so conveyed to it for two years, and then only pursuant to ICC, now STB, regulation, including abandonment regulation. The ICC Termination Act (ICCTA) at 49 U.S.C. 10501(b) confirms STB's exclusive and plenary jurisdiction over abandonment. This Court lacks authority or jurisdiction to repeal portions of the 3-R Act, let alone ICCTA, under the guise of interpreting or amending the FSP or anything else. Accord, Consolidated Rail Corp. v. Delaware & Hudson Rwy Co., 543 F.Supp. 1079, 1083 (3-R Act Ct. 1981) (ICC has jurisdiction). The LLCs evidently hope that this Court will

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status on those lines, the City has told Conrail it supports abandonment of those lines. Id. However, since they are in streets, they already are conserved by the City to the extent the Plaintiffs have an interest in them. Furthermore, once STB is allowed to authorize any portion of the Harsimus Branch that contains Waldo to Marin for abandonment, any trackage east of Marin will be isolated from the interstate rail network. STB will lose jurisdiction over it for that reason per RLTD v. STB, 66 F.3d 808 (6th Cir. 1999). This will resolve all regulatory issues and, candidly, Plaintiffs regard this approach as the most efficient way to do so, consistent with the law. If this path is followed, the entire issue of lines east of Marin becomes moot, and certainly will never need an interpretation of the FSP by any tribunal.

\*\*\*\*\*EXCERPTED\*\*\*\*\*