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23 October 2014

By Express Service

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Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423 [20024 for express delivery]

ENTERED
Office of Proceedings
October 24, 2014
Part of
Public Record

Re: Conrail - Ab. Ex. - in Hudson County, NJ,
AB 167 (Sub-no. 1189X) and related cases
AB 55 (Sub-no. 686X) & AB 290 (Sub-no. 306X)

Dear Ms. Brown:

These proceedings involve the unlawful de facto abandonment and sale by Consolidated Rail Corporation (Conrail) of the Harsimus Branch to eight commonly owned and controlled LLCs in derogation of this Board's jurisdiction. The unlawful abandonment and sale was in evasion of application of section 106 of the National Historic Preservation Act (NHPA), and, among other things, was part of an anticipatory demolition of the Harsimus Embankment implicating NHPA section 110(k).

The parties to the unlawful abandonment and sale have documents germane to issues raised in this proceeding, or which are likely to lead to discoverable evidence, which they are refusing to make available. City of Jersey City (City), Rails to Trails Conservancy (RTC), and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (Coalition) (collectively City et al) wish to obtain discovery of these documents before filing further motions. In addition, City et al expect the documents, if ever produced, to support City et al's position that section 110(k) precludes this agency from authorizing

abandonment of the Branch under the circumstances presented and to other issues raised in the Board's 2009 environmental/historic report, and which must be addressed in the Board's projected revised report.

Enclosed for filing in the above referenced proceedings on behalf of is the original and ten copies of a motion to compel discovery against eight limited liability companies (212 Marin Boulevard, LLC, et al.) and a related limited liability company that we understand to be under similar ownership and/or control (NZ Funding) (hereinafter referred to collectively as the LLCs). The LLCs and NZ Funding are parties to this proceeding.

The LLCs have refused to make any documents available in response to City et al's document discovery requests. City et al have previously filed a motion to compel applicable to Consolidated Rail Corporation (Conrail). Conrail likewise refused to make any documents available in response to City et al's document requests. The LLCs and Conrail have caused years of delay in resolving the lawful rail regulatory status of the Harsimus Branch and in affording relief to City, RTC and Coalition for the their unlawful actions. They cause yet more delay in refusing to make available relevant documents thus forcing City et al to file motions to compel.

City et al has also filed a document discovery request against CNJ Rail; namely, for all communications with the LLCs. CNJ Rail initially provided a few documents, represented that it had many more, but was devoting its time to fulfilling the discovery requests of the LLCs, and has otherwise failed to respond. The due date for CNJ's response has passed. If City et al does not receive a response from CNJ Rail in the near future, City et al expects to file yet another motion to compel.

Thank you for your assistance in this matter.

Respectfully,



Charles H. Montange
for City et al.

Encls.

cc. Service list, with encl.

Before the Surface Transportation Board

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

and

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

and

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

Motion on behalf of City of Jersey City et al
to Compel 212 Marin Boulevard LLC, et al
to Respond to Discovery (Document) Requests

City of Jersey City, Rails to Trails Conservancy, and
Pennsylvania Railroad Harsimus Stem Embankment Preservation
Coalition (City et al) hereby move, pursuant to 49 C.F.R.
1114.21, 1114.30, and 1114.31, for an order directing 212 Marin
Boulevard LLC, et al (hereinafter "the LLCs") to respond fully
and completely to document requests tendered on behalf of City
et al.

A copy of the document requests (served on September 19,
2014) is set forth in Exhibit A, attached hereto. That request
called for a response by October 16, 2014. The LLCs by email
served a written refusal to supply any document (in the form of

some specific as well as a number of blanket objections) on that date. The refusal is set forth in Exhibit B, attached hereto.

City et al have also filed discovery in the form of document requests upon Consolidated Rail Corporation ("Conrail") in this proceeding. Conrail has refused to make any response as well. City et al have filed a motion to compel Conrail to respond. Conrail has objected to making any response. The LLCs essentially parrot Conrail's refusal to provide discovery. The gravamen of the objections by both Conrail and the LLCs is the same: that City et al seek information that is neither relevant nor necessary for disposition of this proceeding.¹

We will address the LLCs' relevancy and need objections in a general fashion, and then turn to other specific objections.

I. Relevancy and Need Objections

The LLCs' claims that the document discovery sought by City et al relating to Conrail's unlawful sale of the Harsimus Branch to the LLCs is irrelevant or not needed is patently meritless. This Board has explained in no uncertain terms that sale of rail lines for non-rail purposes without prior authorization from this Board, including prior compliance with environmental and

¹For example, the LLCs object to the relevance of essentially all the document requests addressed to them, and Conrail contends that City et al has failed to demonstrate "relevance and need." Compare Exhibit B with Conrail Reply to Motion to Compel at 2.

historic preservation laws, is "unlawful." Consummation of Rail Line Abandonments that Are Subject to Historic Preservation and Other Environmental Conditions, Ex Parte 678, served April 23, 2008, slip op. at 4. "A railroad may not 'abandon' a rail line (i.e. be relieved of its common carrier obligation... and dispose of the property for non-rail use) without the express permission of [STB]." Id., slip op. at 2.

In 2005, Conrail unlawfully sold a portion of a line of railroad known as the Harsimus Branch to eight commonly owned and controlled LLCs (212 Marin Boulevard LLC, et al) without an abandonment authorization. The illegal sale included the historic Sixth Street Embankment, which Conrail knew was eligible for the National Register of Historic Places, and thus protected under section 106 of the National Historic Preservation Act (NHPA, 16 U.S.C. 470f), since 2000. The unlawful sale not only evaded STB licensing jurisdiction, but also meaningful application of section 106 to the property. It is part of an unlawful anticipatory demolition of the Harsimus Branch in violation of NHPA section 110(k), 16 U.S.C. 470h-2(k).

Under 49 U.S.C. 10501(b), STB jurisdiction is exclusive over rail property, and preempts state law remedies. Since the Harsimus Branch was and is obviously a rail line, City et al in 2006 initially challenged Conrail's unlawful sale of the Harsimus Branch to the LLCs by filing a petition for a

declaratory order that the property was a regulated rail line. See F.D. 34818. City et al have sought meaningful relief since that time. While we will not burden this motion with the gory details of litigation since that time, it is important to note that City et al from the inception of this abandonment proceeding have indicated that they intended to seek application of NHPA section 110(k) to Conrail's unlawful sale. Under section 110(k), this agency may not authorize abandonment of the Harsimus Branch if Conrail sought to evade NHPA section 106 requirements by intentionally significantly adversely affecting the Harsimus Embankment (a property protected under section 106). As the LLCs admit in their objections to discovery, if this agency declines to permit abandonment, then the LLCs' plans to destroy the rail line (and the Embankment) will be preempted. Exhibit B at p. 4, item #6.² Section 110(k) is thus clearly relevant in this proceeding, as conceded in the LLCs' own objections.

² The LLCs indicate (Exhibit B, pp. 4-5) that they continue to dispute this Board's jurisdiction, even though the D.C. Circuit has upheld the U.S.D.C. for D.C. summary judgment that this agency has jurisdiction, even though this Board rejected the LLCs subsequent petition contesting this Board's jurisdiction in F.D. 35825, and even though these decisions are now final and beyond any further judicial review.

In the initial environmental assessment issued by this Board's Section of Environmental Analysis (SEA)³ served March 23, 2009, SEA claimed section 110(k) was not applicable because City had not shown that Conrail intended "to harm historic sites or structures." EA, slip op. at 14.⁴

³ SEA is now the Office of Environmental Analysis (OEA). We will use SEA and OEA interchangeably.

⁴ In the initial EA, slip at 14, SEA purported to discuss application of section 110(k), claiming that City et al had not shown that Conrail harbored requisite intent. To the contrary, SEA argued that City had urged Conrail to redevelop the Harsimus Branch commencing in 1984 and implied that this exculpated Conrail. It is not clear to City et al to what SEA refers. The portion of the Branch at issue was not under discussion so far as City is aware in 1984. City years later did express concern that Conrail had failed to maintain bridges and trestles, to the point they constituted hazards. City's redevelopment agency in the late 1990's did begin to work with Conrail on possible redevelopment of the Branch. But assuming arguendo all of this, that still does not support SEA's conclusion that Conrail did not intend to redevelop the Embankment. When the Embankment was listed on the State Register of Historic Places in 1999, Conrail protested in essence that the listing would be contrary to development. This reinforces the conclusion that Conrail harbored an intent inconsistent with preserving the Embankment. Moreover, by 2000, the Embankment had been listed on the State Register and determined eligible for the National Register of Historic Places. At that point, the City's redevelopment agency could no longer facilitate actions inconsistent with preserving the Embankment and withdrew from cooperating with Conrail to redevelop the Harsimus Branch. In other words, City policy changed well before Conrail either contracted to sell the property for development, or sought abandonment authorization. Conrail had knowledge of the historic status of the Embankment parcels commencing in 1999 and certainly by 2000. Notwithstanding knowledge that the Embankment were thus covered by section 106, the railroad in 2005 sold the property to the LLCs without abandonment authority using a property description that acknowledged that the property was part of a line of railroad. At the time of sale, the City was actively seeking to acquire the Harsimus Branch for preservation. The sale was

In sum, this agency's own environmental staff have confirmed the relevance of issues as to Conrail's intentions in the context of this abandonment proceeding. Discovery seeking information on Conrail's intentions, including the intentions of Conrail's chosen developer (the LLCs), is thus appropriate for it is either relevant or designed to lead to relevant information.

As to "need" for such discovery, STB is statutorily charged with making a determination regarding authorization for rail abandonment, and may not simply rubber stamp whatever a railroad wishes to do with its chosen developer in the context of an illegal de facto abandonment. Even in notice of exemption proceedings, this agency must comply with NEPA and NHPA. See Illinois Commerce Commission v. ICC, 848 F.2d 1246, 1261 (D.C. Cir. 1988), cert. denied, 488 U.S. 1004 (1989). Section 110(k) is part of NHPA, and may be neither ignored nor whitewashed. This position is corroborated in this Board's Consummation

unlawful, and amounted to an effort to evade this agency's jurisdiction and section 106. For this and other reasons, the "evidence" cited in the EA at p. 14 supports application of section 110(k) (Conrail intentionally leagued with City commencing in 1984 and onward to remove the Embankment) rather than the opposite as contended in the EA. Conrail's intent to evade was independently again affirmed in 2007 when Conrail and the LLCs entered into a memorandum agreement by which Conrail, in return for not being sued by the LLCs, pledged to secure title to the Embankment in the LLCs notwithstanding this agency's determination that Conrail needed an abandonment authorization.

decision, supra, in which the Board said that in cases of unlawful abandonments, as happened here, the Board "will take whatever steps [are] necessary to enforce compliance with [NEPA and NHPA]." Slip op. at 4.

After the stay in this abandonment proceeding was lifted in August 2014, counsel for City et al inquired of OEA staff as to how they would address section 110(k) issues. OEA staff advised that they lacked resources and/or procedures to address section 110(k) issues, with specific reference to matters of "intent." To date, City et al is aware of no independent investigation or discovery undertaken by OEA or other arms of the Board into section 110(k) issues in this proceeding.⁵ Meaningful examination of section 110(k) so far as City et al is aware thus rests upon information supplied by City et al.

City et al are vigorously contesting SEA's conclusion, as expressed in the March 23, 2009 EA, that Conrail lacked the requisite intent. See, e.g., City et al. filings in this docket

⁵ This Board's predecessor, the ICC, conducted investigations of illegal abandonments, including extensive document discovery and interviews of witnesses. E.g., Verified Statement of David A. Randall, as Special Agent for Office of Compliance and Consumer Assistance, ICC, in Rails to Trails Conservancy, et al - Pet for Dec. Order, F.D. 31392, dated July 29, 1988. The referenced proceeding involved an illegal abandonment in City of Seattle by Burlington Northern, including sales to developers. Mr. Randall reviewed documents and interviewed numerous BNSF and developer witnesses, including on issues of intent. This investigation occurred even before section 110(k) was added to NHPA (see 106 Stat 4761, Oct. 30, 1992).

on September 3, 2014 and September 25, 2014. In the referenced pleadings, City et al have shown that Conrail and the LLCs acted intentionally, or with the equivalent (willful blindness), to evade this agency's jurisdiction (including section 106), despite knowledge that the Harsimus Embankment was protected under section 106. Nonetheless, until and unless STB reverses the EA's March 23, 2009 claim that City et al have failed to show that Conrail intended to harm historic properties, City et al must exhaust their efforts to make such a showing. This constitutes a perfectly adequate showing of "need" for further discovery, both of documents and the identity of potential witnesses at both Conrail and the LLCs.

In further corroboration of this "need," City advises that all state court litigation in which it might otherwise pursue discovery as to Conrail's intentions has been stayed pending an outcome in this proceeding.⁶ In other words, City (much less RTC and Embankment Preservation Coalition) have no way to seek

⁶ Mr. Curley, City of Jersey City's counsel in most of the state court proceedings involving the Harsimus Branch, advises as follows: "In the main case pending before the Superior Court of New Jersey filed under Dkt. No. HUD-L-4908-05, a stay order was entered shortly after Conrail filed its answer to the City's third party complaint. The stay resulted in the LLCs' not having to file claims against Conrail in accordance with the entire controversy rule. In addition, all discovery was stayed. The last pleading filed in that case was the LLCs' first amended complaint. A representative stay order is attached." The referenced attachment is included herewith as Exhibit C.

additional relevant information, or information likely to lead to such information, except through this Board's discovery processes.

City et al of course also seek other relief in this proceeding. For example, City et al intend to move this Board to void the deeds from Conrail to the LLCs, independent of section 110(k).⁷ While City et al take the position that the deeds should be voided as issued in contravention of STB jurisdiction, or alternatively, in the public interest pursuant to 49 U.S.C. 10903(e)(1)(B), and for other reasons, the LLCs appear to take the position that they were somehow good faith purchasers whose title should not be disrupted. While City et al view their faith or lack of it as irrelevant, the LLCs (and Conrail) seem to be contending the contrary. Until this agency voids the deeds, matters of knowledge and intent are thus ripe for discovery, wholly apart from section 110(k).

Ironically, although the LLCs now admit that Conrail made fraudulent misrepresentations to them (and to this agency, the City, and the Courts) that the Harsimus Branch was not a rail

⁷Indeed, under section 110(k), this agency must deny abandonment authority given the anticipatory demolition in which Conrail and the LLCs engaged. The only way to avoid applying section 110(k) to bar abandonment is to void the deeds from Conrail to the LLCs. In that sense, voiding the deeds is an alternative to denying the relief sought by Conrail (that is, an effective abandonment authorization) in this proceeding.

line, and even though this amounts to admitting that Conrail intentionally sought to evade section 106, and even though Conrail has responded that the information on which the LLCs base their claims of fraud was timely known to the LLCs, the LLCs nonetheless assert that their ownership of the parcels in question "is not in dispute" in this proceeding. Exhibit B at p. 3.⁸ If parties so clearly implicate themselves in a fraudulent transfer in derogation of STB jurisdiction, a normal mortal would conclude that ownership of the parcels is very much in dispute. City et al disputes that ownership. The New Jersey State Historic Preservation Office has also questioned how the agency can discharge its obligations under federal law while the LLCs remain in alleged ownership. As noted herein, the LLCs appear to agree, arguing that so long as they "own" the property, its destruction is outside the reach of this Board's authority. See LLCs' objection to Document Request 11. N.J.S.A. 48:12-125.1 also now clearly provides that the LLCs' deeds are void.

II. Specific Objections

⁸The LLCs have also sued the City, including members of its Law Department, and others on the theory that it is a tort and federal civil rights violation to question their title as a result of the unlawful de facto Conrail abandonment and sale to the LLCs. E.g., 212 Marin Boulevard, LLC et al v. City of Jersey City, NJ Superior Court HUD-L-4683-05 (the case referenced in Exhibit C as stayed pending federal results).

1. Document Request ("DR") 1 sought materials referenced in the Oct. 12, 2007, memorandum of understanding between Conrail and the LLCs relating to the Harsimus Branch. The LLCs seem to admit that this request is relevant to City et al's claims that title should be voided or that section 110(k) applies, but then claim that the information is not relevant on the ground that title is not at issue. Since title is at issue, the LLCs' objection is a non-starter. The LLCs seem also to suggest that City et al cannot seek relief because this is an "Expedited Abandonment Proceeding." While City et al have repeatedly contested use of expedited procedures here, the fact that STB has so far allowed Conrail to use them does not mean that the agency can or will ignore NEPA, NHPA, or the public interest in the remedies sought by City et al. See Consummation, supra, at p. 4; Illinois Commerce Commission, supra, 848 F.2d at 1261.

2. DR 2 sought all versions of the October 12, 2007 memo of understanding between Conrail and the LLCs that pledged Conrail to take all measures necessary to convey title in the Harsimus Branch to the LLCs, notwithstanding this Board's determination that the property was a line of railroad rendering the sale of the property to the LLCs unlawful, and any similar agreements. The LLCs had previously stated to the

United States District Court that there were additional such memoranda or oral understandings. In a garbled sentence, the LLCs object on relevancy grounds, but may also be claiming there are no other documents. Their relevancy objection is misplaced for the reasons previously stated. The documents in question evince, or may evince, an intent to evade STB jurisdiction and section 106, and are thus properly discoverable. If the LLCs have no responsive documents, they should simply so state. Any other response impermissibly evades a relevant document request.

3. DR 3 seeks documents sufficient to show ownership of the LLCs and changes to date. The LLCs claim this is irrelevant. Ownership of developers who purchase rail lines for non-rail use without abandonment authorization is an appropriate subject of inquiry. See Verified Statement of David A. Randall, July 28, 21988, in F.D. 31292, supra, at pp. 40-43 (clarifying ownership of rail property).
4. DR 4 sought tolling agreements between the LLCs and attorneys or Conrail (pledges not to assert a statute of limitations defense against the LLCs in return for not being sued pending efforts by the LLCs to evade

STB jurisdiction). The LLCs claim that tolling agreements are irrelevant. To the contrary, the Oct. 12, 2007, agreement between Conrail and the LLCs is in part a tolling agreement, designed to forestall a suit against Conrail by the LLCs (presumably for fraud) so long as Conrail cooperates with them. City et al is informed and believes the LLCs have similar agreements with one or more of Conrail's attorneys. Such agreements are highly germane to section 110(k) issues, Conrail efforts to evade section 106, and other relief sought by City et al.

5. DR 5 sought communications from the NJ Department of Transportation concerning the sale or STB regulation of the Harsimus Branch. Based on statements in one of the Decisions in the LLCs' litigation against Chicago Title, someone at the New Jersey Department of Transportation apparently stated to representatives of the LLCs and/or to Chicago Title's agent involved in issuing title insurance on the property at issue that the Harsimus Branch was subject to STB jurisdiction, prior to the alleged sale.⁹ This is potentially highly germane to section

⁹ 212 Marin Boulevard LLC et al v. Chicago Title Insurance Company, Superior Court of NJ, Dkt. HUD-L-5801-09, filed Dec. 2,

110(k) issues, as well as other relief sought by City et al. The LLCs lodge a relevancy objection, apparently claiming that the Harsimus Branch as a line of railroad has been established since 1976 in federal decisions. If the LLCs mean that they now admit (stipulate) that they knowingly purchased the Harsimus Branch in 2005 in violation of the requirement that they first obtain STB abandonment authorization, they should so state. If they are prepared to so stipulate, then further inquiry into their knowledge of illegal conduct in 2005 may be unnecessary. In the absence of such a stipulation, information concerning what they knew or should have known prior to the unlawful sale remains potentially relevant.

6. DR 6 sought documents relating to sales of land or potential sales of land between CP Waldo and the property sold to the LLCs. From time to time, the LLCs have advocated development rights for Conrail property west of the LLCs' purchase area all the way

2010, slip at 2, indicates that the New Jersey Department of Transportation expressed concern over whether an abandonment authorization had been issued and this was brought to the attention of both the LLCs and their title insurer prior to the LLCs' purchase of the Harsimus Branch from Conrail.

to CP Waldo. City et al are concerned that Conrail and the LLCs have entered into some understanding or contract granting the LLCs an interest in Conrail property between the LLCs' purchase west of Newark Avenue all the way to the mainline at CP Waldo, again in derogation of this Board's jurisdiction. The LLCs misconstrue the request to pertain to what the LLCs already claim to own by reason of the 2005 sale. The LLCs should be directed to supply documents relating to the subject matter of the request, and not hide behind a misconstruction.

7. DR 7 asks for documents sufficient to identify Conrail personnel involved in the illegal sale from 2000 to date. The LLCs seem to admit relevancy, but then inconsistently claim it is "improper." Relevant requests are not "improper." As to overbroad or burdensome, the LLCs are in a unique position of knowing the identity of the Conrail personnel with whom they dealt, and from whom they obtained the fraudulent misrepresentations concerning the status of the Harsimus Branch. This information is highly germane. The LLCs claim that City et al should be directed to Conrail, but then acknowledge that Conrail has refused to supply that information on the

ground that it amounts to harassment and burden to their directors, officers, employees and consultants. The LLCs state they join in Conrail's objection. Seeking the identity of Conrail personnel involved in a transaction is not harassment or burden to any one, especially in a regulated industry in which the personnel of a railroad are supposed to comply with the law rather than (as the LLCs have stated) fraudulently evade it. Accord, Verified Statement of Mr. Randall, supra (ICC investigator examines involved personnel). The fact that Conrail may have been "outed" in its unlawful action may be annoying to Conrail's personnel, but that is not grounds either for the LLCs or Conrail to refuse to respond to discovery.

8. DR 8 asks for documents sufficient to identify representatives of the LLCs involved in the illegal transaction. The LLCs object on the same basis as in number 7, and their objection is misplaced for the reasons previously stated.
9. DR 9 asks for documents reflecting any inquiry by the LLCs into the regulatory status of the Harsimus Branch prior to their 2005 acquisition. The LLCs object on the same grounds that they refused to

supply Department of Transportation documents in response to DR 5. They should supply the documents unless they are prepared to stipulate they knowingly engaged in an unlawful purchase of the section 106-protected Harsimus Branch in 2005.

10. DR 10 asks for documents relating to demolition of the Harsimus Embankment by or on behalf of the LLCs. The LLCs state that they have not demolished the Embankment so no documents exist. They have sought demolition permits, and Conrail has joined in seeking those permits. The LLCs have offered to donate the Embankment to Hoboken for use as fill. Documents relating to their efforts to demolish the Embankment are relevant and should be produced.
11. DR 11 requests documents relating to the LLCs' offer to donate the Embankment to Hoboken for fill. The LLCs object that donation of the Embankment for fill in another City are not relevant. To the contrary, offers to donate the Embankment for fill indicate that an unlawful anticipatory demolition has occurred, in that Conrail knowingly sold a section 106 asset to a developer for demolition prior to seeking an abandonment authorization, in that Conrail and the LLCs contracted in 2006 to take all measures

necessary to accomplish this end in the face of an STB determination that a line of railroad was involved, and in that both Conrail and the LLCs are now claiming that the agency cannot or should not do anything about it because Conrail has somehow removed the property from STB jurisdiction. Indeed, the LLCs now claim in their objection to DR 11 that STB has no continuing jurisdiction over demolition issues. By so arguing, the LLCs admit that they are part of a scheme to evade meaningful application of section 106.

12. DR 12 seeks documents concerning joint development or similar agreements pertaining to the Branch. City et al understand that the LLCs have entered, or attempted to enter, into at least one such agreement. The LLCs claim such agreements are irrelevant because they cannot be implemented until after abandonment. But the agreements indicate the intent of Conrail and the LLCs to demolish the Branch, and are relevant to the relief sought by City et al.
13. DR 13 seeks all documents relating to communications between CNJ Railroad and the LLCs. CNJ has informed City et al that it has long been in communication with the LLCs and indeed that CNJ has sought to make

a deal with the LLCs evidently to operate a line of railroad on the Branch for them. From time to time in the past, Mr. James Riffin, who represents himself as affiliated with CNJ, has advocated positions to rail counsel for the City, which positions favored the LLCs. In addition, CNJ Railroad has also filed a timely notice of intent to OFA in this proceeding. Communications between CNJ and the LLCs are potentially highly relevant to, or may lead to evidence highly relevant to, the knowledge and intent of Conrail and the LLCs concerning the Harsimus Branch. In addition, such communications will assist the City in determining if CNJ is a bona fide potential operator of a rail transload should the City's OFA be successful, or whether CNJ is some kind of Trojan horse for the LLCs and by extension Conrail.

14. DR 14 requests documents reflecting communications between Chicago Title and the LLCs concerning the Harsimus Branch. The LLCs object that this "intrudes upon privileges associated with discussions" in state court litigation. City et al seek any information germane to inquiries by the LLCs or their title insurer into the regulatory status of the Harsimus

Branch prior to the 2005 sale, including representations made to Chicago Title or its local agent concerning that status by Conrail, the LLCs, or any other person or entity. Since New Jersey title practice requires title examiners specifically to inquire into the regulatory status of Conrail lines (see, e.g., Additional Supp. Comments of City et al filed 25 Sept. 2014, App. 1, items a and b - Handbook of NJ Title Practice), Chicago Title or its local agent should have made relevant inquiries.

Documents bearing on such inquiry may be highly relevant, or may lead to highly relevant evidence.

The fact that the LLCs are litigating with Chicago Title elsewhere is not a defense to production of the information in this proceeding. Neither the LLCs nor Conrail may immunize documents from discovery by litigating between themselves or others elsewhere.

15. DR 15 requests documents relating to claims, or reservations of claims, by the LLCs against attorneys, Conrail, or others arising from fraudulent or negligent misrepresentation of the status of the Harsimus Branch to the LLCs. The LLCs explained to the United States District Court that Conrail made

fraudulent or negligent misrepresentations to them.¹⁰ In their objection to DR 15, they claim that Conrail's fraud and negligence concerning application of STB jurisdiction to the rail line are not relevant to this agency's handling of this abandonment proceeding. The LLCs suggest this is an "Exempt Abandonment Proceeding" rendering such matters irrelevant. This is absurd. In Consummation, supra, this agency admonished railroads that it would not tolerate evasion of NEPA and NHPA responsibilities in the event of an unlawful de facto abandonment, such as happened here. Indeed, the Board said it would consider precluding carriers engaged in unlawful abandonments from using expedited procedures. In any event, the Board must comply with NEPA and NHPA in all abandonment proceedings. Illinois Commerce

¹⁰ City et al has filed the LLCs' admissions in United States District Court against Conrail several times already in this proceeding. In addition, the Verified Statement of Daniel Horgan (the LLCs' counsel here) discussing when he finally investigated the evidence concerning whether the Harsimus Branch was conveyed as a line of railroad, and concluded it so clearly was that he further concluded that Conrail made fraudulent misrepresentations in suggesting the contrary is set forth in Additional Supp. Comments, supra, App. 4, item a. Mr. Horgan's Verified Statement thus corroborates the position City et al have taken all along, and further supports the conclusion that Conrail evaded STB regulation, including section 106 regulation, in contravention of section 110(k).

Commission, supra. Use of expedited procedures does not excuse the Board from compliance.

For nine years, Conrail and the LLCs have attempted to thwart this Board's jurisdiction, and the LLCs in their objections seem to continue to deny it. The LLCs have actively sought to deprive this Board of any jurisdiction, not only in challenges in court, but after those were unsuccessful, in the recent petition in F.D. 35825. Parties to an unlawful transaction, who have thwarted this agency's jurisdiction for nine years, are hardly in a position to urge that Conrail's use of a two year out of service exemption somehow requires the agency, on grounds of expedition, to ignore the fraud and negligence the LLCs state Conrail committed, to ignore meaningful application of section 110(k), to facilitate the unlawful actions of the LLCs and Conrail in 2005, or otherwise to foster the demolition of a section 106 protected asset in the face of efforts by City et al to acquire it for rail, open space, trail, and other public purposes consistent with section 106.

In addition to seeking to deprive this Board of jurisdiction, the LLCs themselves have asked STB to

dismiss this expedited abandonment proceeding.¹¹ It is inconsistent for them now to attempt to hide behind the nature of the proceeding as an excuse to avoid supplying any responsive documents.

The LLCs further claim that DR 15 is "overbroad, burdensome, [and] intended to harass the LLCs." It is none of these. City et al's discovery request may be frustrating to the LLCs; it certainly is based in part on their claims and uses their own claims against them. But this does not make it unfair or burdensome in any sense urged by the LLCs. The fraud and negligence that the LLCs have shown on the part of Conrail is highly germane in any abandonment proceeding dealing with the Harsimus Branch, for it readily equates to an intent to evade this agency's jurisdiction, including section 106 jurisdiction. This of course implicates section 110(k) of the NHPA, meaningful application of section 106, and the relief that must be afforded to City et al in this case.

¹¹ LLCs' Letter of July 18, 2014, to this Board (STB item 23623) appears to ask the Board to "ex parte" dismiss this proceeding if the City Council of Jersey City does not conform to the wishes of the LLCs, which the City Council has so far declined to do.

LLCs' various privilege objections. Finally, the LLCs sometimes include objections of privilege. E.g., Exhibit B, items 1, 2, 9, 11. The DR instructions called for identification of privileged documents, not for their disclosure. Exhibit A, p. 3. Unless the LLCs identify privileged documents, there is no means to evaluate the applicability of the asserted privilege. That is why the documents must be identified per the instructions. The Board should order the LLCs to do so.

Conclusion

The sale of the Harsimus Branch to eight LLCs in 2005 was "unlawful." The LLCs appear to join Conrail in urging that this unlawful sale be ignored, or rubberstamped, and that this Board refuse to consider any meaningful relief to City et al, or any meaningful compliance with NEPA and NHPA in light of the unlawful sale. The LLCs on this basis join with Conrail in seeking to avoid any discovery response. To rubberstamp the unlawful action of Conrail and its developer, and to prevent responsible discovery as sought by City et al, would be inconsistent with this Board's duties under NEPA, NHPA, and ICCTA. For the reasons stated herein, City et al requests the Board to issue an order compelling the LLCs and NZ Funding to respond fully and completely to all outstanding discovery

requests, if possible no later than November 21, 2014, in order to avoid further delay in this proceeding.

Respectfully submitted,



Charles H. Montange
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(206) 546-1936
Fax: -3739

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

Of counsel: Andrea Ferster
General Counsel
Rails to Trails Conservancy
The Duke Ellington Building
2121 Ward Court, NW
5th Floor
Washington, D.C. 20037

Exhibit A - Document Requests as emailed on September 21, 2014
Exhibit B - LLCs' objections served October 16, 2014
Exhibit C - State court stay order (includes discovery)

Certificate of Service

The undersigned hereby certifies service by posting the foregoing in the US Mail, postage pre-paid, first class or priority mail, on or before the 23d day of October 2014 addressed to the parties or their representatives per the service list below, unless otherwise indicated.



Service List

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

- with address corrections as of August 2014 -

Robert Jenkins III, Esq.
Mayer Brown LLP
1999 K Street, NW
Washington, D.C. 20006-1101
For Conrail

Daniel Horgan, Esq.
Waters, McPherson, McNeill PC
300 Lighting Way
Secaucus, NJ 07096
For 212 Marin et al [by deposit in express service, next day
delivery, on Oct. 23, 2014]

And the following self-represented individuals or entities:

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

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Hudson County Division of Planning
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Meadowview Complex
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Secaucus, NJ 07094

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Jersey City, NJ 07302

President
Hamilton Park Neighborhood Association
PMB 166
344 Grove Street
Jersey City, NJ 07302

Jill Edelman, President
Powerhouse Arts District Nbd Ass'n
140 Bay Street, Unit 6J
Jersey City, NJ 07302

President
The Village Nbd Ass'n
365 Second Street
Jersey City, NJ 07302

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

President
Historic Paulus Hook Ass'n
192 Washington Street
Jersey City, NJ 07302

Dennis Markatos-Soriano
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East Coast Greenway Alliance
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NY/NJ Baykeeper
52 West Front Street
Keyport, NJ 07735

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Friends of Liberty State Park
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Jersey City, NJ 07302

Aaron Morrill
Civic JC
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Jersey City, NJ 07302

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

Exhibit A

BEFORE THE SURFACE TRANSPORTATION BOARD

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

And related discontinuance proceedings AB 55 (Sub no. 686X) (CSX
Transportation, Inc.) and AB 290 (Sub-no. 306X) (Norfolk
Southern Railway Company)

Request for the Production of Documents
Intervenors City et al to Intervenors 212 Marin Boulevard, LLC,
et al and NJ Funding, LLC

Pursuant to 49 C.F.R. 1114.30 and other applicable
authority, intervenors City of Jersey City, Rails to Trails
Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment
Preservation Coalition hereby request that 212 Marin Boulevard,
LLC, et al (as defined herein, and referred hereinafter as "the
LLCs") and NJ Funding LLC produce the following documents for
inspection at the offices of John J. Curley, Three 2nd Street,
Harborside Financial Center, 1202 Plaza Ten,
Jersey City, NJ 07311 at 9 AM, 16 October 2014, or such other
mutually convenient time and date (no later than 16 October
2014) is arranged between counsel, or deliver copies of the said
documents to counsel for City et al his address below on or
before that date pursuant to reasonable terms for payment for

costs of duplication and delivery agreed to in writing between counsel.

Definitions. For purposes of this Request, document shall mean any writing, notation, or record, regardless of form, and including but limited to both electronic and non-electronic media, including emails, diaries, business records, and all documents maintained, retained, authored, copied on, or received by consultants, officers, employees, negotiators, board members, attorneys otherwise working for or on behalf of the LLCs or any one of them.

Harsimus Branch shall mean any portion of the line of railroad between CP Waldo and Marin Boulevard in Jersey City transferred to Conrail as line code 1420, which line of railroad is the subject of the abandonment proceeding bearing STB docket AB 167 (Sub-no. 1189X).

"The LLCs" shall mean one, more or all of 212 Marin Boulevard, LLC, 247 Manila Avenue, LLC, 280 Erie Street, LLC, 317 Jersey Avenue, LLC, 354 Coles Street, LLC, 389 Monmouth Street, LLC, 415 Brunswick Street, LLC, and 446 Newark Avenue, LLC.

"NZ Funding LLC" or NZ shall mean the entity referred to as Nz Funding LLC in the petition for a declaratory order filed at the Surface Transportation Board docketed as F.D. 35825.

Additional instructions. If the LLCs and/or NZ claim privilege against disclosure of one or more documents, such as an attorney client privilege, then please identify the document by providing its author, the persons to whom it was directed, the persons who received copies of it, its date, its basic subject matter, the document request to which it is responsive, and the basis for the claim of privilege.

If the LLCs and/or NZ have no responsive documents, so state.

Document requests. All the following documents are hereby requested pursuant to the foregoing definitions and conditions:

1. All versions of the following documents as referenced in the Memorandum of Understanding executed by "Conrail," SLH Holding Company, and "the LLCs" signed October 12, 2007 by Jonathan Broder and a person believed to be S. Hyman, which Memorandum of Understanding was filed by the LLCs as document 94-02 (filed 11/08/12) in U.S.D.C. 09-1900:
 - (a) "Agreement of Sale dated June 24, 2003"
 - (b) "letters dated September 22, 2003, May 7, 2004, and September 15, 2004"
 - (c) "Amendment of Agreement of Sale dated October 27, 2004"

- (d) All writings that relate in any way to the foregoing
 - (a), (b), or (c).
 - (e) Any other amendments or modifications to any agreement for the sale of any portion of the Harsimus Branch to any interest owned or controlled, directly or indirectly, by Victoria or Steve Hyman.
2. All versions of the Memorandum of Understanding signed or dated October 12, 2007, by Broder and Hyman as referenced above, and any other agreements or documents reflecting written or oral understandings between one or more of Conrail, the LLCs, or SLH Holding Company "to maintain the benefit of the 2005 sale" of portions of the Harsimus Branch to SLH Holding Company or the LLCs.
3. Documents sufficient to show the ownership of the LLCs and NZ and any changes in ownership from 2003 to date.
4. All documents relating to agreements or understandings purporting to toll any statute of limitations defense that may be asserted by Conrail or an attorney representing any party (including but not limited to Conrail) to the Agreement of Sale dated June 24, 2003, as later amended.

5. All documents relating to any communication to or from the New Jersey Department of Transportation concerning sale or purported sale of the Harsimus Branch or the need for regulatory action by the Surface Transportation Board concerning same, other than pleadings filed on behalf of the New Jersey Department of Transportation or the attorney general of New Jersey in U.S.D.C. 09-1900.

6. All documents relating to sale or potential sale of land or interests in land containing the portion of the Harsimus Branch between CP Waldo and the portion of the Harsimus Branch purportedly sold to SLH Holding Company and/or the LLCs, including but not limited to proposed sales, proposed brokerage agreements, or any other proposal that might result in non-railroad use of that portion of the Harsimus Branch.

7. Documents sufficient to identify (by name, current business address and position during all relevant times at the railroads) all persons advising or taking action for Conrail or recommending action by Conrail in connection

with the sale of any portion of the Harsimus Branch from 2000 to date.

8. Documents sufficient to identify (by name, current business address and position during all relevant times at SLH Holding Company or the LLCs) all persons advising or taking action for SLH Holding Company or the LLCs or NZ in connection with the sale of the Harsimus Branch from 2000 to date.

9. All documents reflecting any inquiry any representative of the LLCs or SLH Holding Company prior to acquisition of any portion of the Harsimus Branch by SLH or the LLCs concerning whether the Harsimus Branch was a line of railroad requiring STB abandonment authorization prior to sale to SLH Holding Company or the LLCs, and all documents responsive thereto.

10. All documents relating to demolition of the Harsimus Embankment by or on behalf of the LLCs.

11. All documents relating to offers to donate the Harsimus Embankment as fill to Hoboken or any other entity or individual.
12. All documents relating to any sale or exchange or joint development agreement or similar transaction, or any proposed sale or exchange or joint development agreement or similar transaction, of any portion of the Harsimus Branch by the LLCs (or NZ) and any entity or individual other than Conrail or the City of Jersey City.
13. All documents embodying or discussing communications, oral or in writing, by the LLCs and/or NZ with CNJ Rail Corporation, or any agent or representative of same, relating to the Harsimus Branch or litigation concerning the Harsimus Branch.
14. All documents embodying or discussions communications, oral or in writing, with Chicago Title Company, or any agent or representative of same, relating to the parcels in the Harsimus Branch purportedly acquired by the LLCs or NZ, or litigation relating to those parcels.
15. All documents embodying claims, or reservation of claims, made by the LLCs or NZ against attorneys, Consolidated Rail Corporation, or other individuals or

entities arising from fraudulent or negligent
misrepresentation of the regulatory status of the Harsimus
Branch to the LLCs.

Respectfully submitted,

s/

Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
206-546-1936
Fax: -3739
Email: c.montange@frontier.com
for Intervenors City et al

Certificate of Service

I hereby certify service of these document requests by
email attachment on 19 September 2014 addressed to Daniel
Horgan, counsel for the LLCs and NZ, Waters, McPherson, McNeill,
P.C., 300 Lighting Way, P.O. Box 1560, Secaucus, NJ 07096 and
by deposit of same for express (next business day) delivery on
19 September 2014 addressed as above.

s/ _____
Charles H. Montange

Exhibit B

BEFORE THE SURFACE TRANSPORTATION BOARD

Washington, D.C.

Docket Numbers:

AB-167-1189-X

And Related Proceedings

AB-55-686-X

AB-290-306-X

Response To Jersey City, et al. Request For Production Of Documents

BY

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

NZ Funding, LLC

Limited Liability Companies of New Jersey

The above limited liability companies respond to the Request for the Production of Documents by Jersey City, et al, dated September 19, 2014 with respect to each of the fifteen document requests as set forth below.

1. This request for numerous documents related to a Memorandum of Understanding between Conrail and SLH Holding Company (October 12, 2007) has no relevance to these expedited abandonment proceedings by Conrail ("Expedited Abandonment Proceeding"). Any conduct by the Intervenor LLCs or NZ Funding, LLC, a non-party, (collectively, the "LLCs") concerning their respective real estate interests, occurring years prior to the filing of the present Exempt Abandonment, has no relevance to this Expedited Abandonment Proceeding, addresses no issue properly before the STB in these proceedings, and is not likely to lead to the production of any relevant material or information.

These proceedings are not about title to the property that is undisputedly held by the eight LLCs under their deeds from Conrail in 2005. With respect to the five subparts of this request:

- a. Under New Jersey law the Agreement of Sale dated June 24, 2003 was merged into the deeds later issued. For the reasons stated above, it has no relevance to these proceedings, nor is it likely to lead to the discovery of relevant information.
- b. The three letters written in connection with the transaction, likewise have no relevance for the reasons aforesaid, nor are they likely to lead to the discovery of relevant information.
- c. The Amendment of Agreement of Sale dated October 27, 2004 has no relevance for the reasons aforesaid, nor is it likely to lead to the discovery of relevant information.
- d. The further request for "any writings that relate in any way to the foregoing..." likewise have no relevance for the reasons aforesaid, nor is it likely to lead to the discovery of relevant information.
- e. Any "other agreement" for sale of property purchased in 2005 would be similarly objectionable, but it is a matter of public record that no other sale has been consummated.

Were any of the foregoing documents deemed to be discoverable, some documents between Conrail and the LLCs would be subject to a privilege as settlement documents, and/or attorney-client privileged. The LLCs reserve their rights to raise such objections.

2. The Memorandum of Understanding, referenced in Request 1, above, has been produced repeatedly in these and other proceedings between the parties. There are no additional agreements or documents reflecting oral or written understandings and production of any other documents concerning the aforesaid Memorandum of Understanding are not relevant in any way to these proceedings for the reasons expressed in response to Request 1, above. Notwithstanding this objection, and to the degree that this request seeks materials that would be subject to the settlement privilege, attorney/client privilege, or other privileges, the LLCs reserve all rights as to those privileges.

3. This request for ownership documents has no relevance whatsoever to the Exempt Abandonment Proceeding, and the ownership of the property by the intervener LLCs is not in dispute. In January 2013 the City initiated suit against the LLCs' affiliate, NZ funding LLC, and additional parties in the Chancery Court, Hudson County, New Jersey. That dispute is now before the appellate courts in New Jersey. To the degree that this request touches upon that litigation, it is completely irrelevant to any matter now pending before the STB in this Exempt Abandonment Proceeding. Further, Conrail's deeds to the LLCs issued in 2005 have been made of record before the STB, and there is no dispute as to the legitimacy of those deeds, with the exception of litigation brought by the City in the courts of New Jersey. See, 212 Marin Blvd., LLC et al. v. City of Jersey City et al., Superior Court of New Jersey, Hudson County, Docket Number HUD-L-4908-05. That litigation has been stayed pending final completion of all federal proceedings, and therefore,

according to the City, issues of ownership cannot or should not be addressed until this Exempt Abandonment Proceeding and all associated federal proceedings are concluded.

4. This request for tolling agreements concerning statutes of limitations for other potential claims or litigation is improper in this Exempt Abandonment Proceeding. Any such agreement, or documents relating to such agreement, is irrelevant to the issues in these proceedings and would not lead to the discovery of relevant information. Claims against third parties that have yet to be adjudicated, or even brought by the LLCs, cannot be adjudicated by the STB and, in any event, the City would not be a proper party in the litigation and adjudication of such claims. It should not use the STB discovery procedures to interlope or interfere with the prosecution or settlement of such claims.
5. This request for New Jersey Department of Transportation documents concerning the 2005 sale of the Harsimus Branch are irrelevant to any issues in these Exempt Abandonment proceedings and not likely to lead to the discovery of relevant information. The status of the rail line in 1976 has been established in federal court proceedings. By virtue of those same proceedings, and further proceedings in STB Finance Docket 35825, any such documents are irrelevant to the limited issues associated with this Exempt Abandonment Proceeding, and are not likely to lead to the discovery of relevant information.
6. This request appears to require the production of all documents concerning the LLCs' plans for their properties post-abandonment. There can be no legitimate issue or concern in this Exempt Abandonment Proceeding with such documents or materials. If the pending abandonment is denied by the STB, presumably those materials would be preempted by continuing federal railroad regulation (although the LLCs dispute the jurisdiction of the STB and

continue in that objection). If abandonment is granted, Conrail would have no further interest in the property by virtue of its 2005 deeds to the LLCs, and the LLCs would be free of federal regulation to pursue their plans. In any event, the STB does not regulate nor adjudicate property interests, and these matters are beyond any issue in this Exempt Abandonment.

7. This request for the identity of all persons providing advice to Conrail, taking action for Conrail, or recommending action by Conrail in connection with any sale of the property is improper and overbroad. For any potentially responsive document within the possession or control of the LLCs it would be necessary for the LLCs to speculate on the actions of third parties not within their control, and the actions and intent of Conrail with respect to the activities of those third parties in order to determine if those bodies were acting for or providing advice to Conrail, and whether Conrail was directing their actions or accepting their advice. This request should be directed to Conrail as Conrail is the only entity capable of providing the information requested. Conrail has properly objected to this request as a fishing expedition designed to harass and burden its directors, officers, employees, and consultants. The LLCs join in that argument against this request.

8. This request for the identity of all persons advising or taking action on behalf of the LLCs in connection with the sale of the Harsimus Branch from 2000 to today is overly burdensome, overly broad, and will not produce any information relevant to any issue in this Exempt Abandonment proceeding. To the degree that this and similar inquiries are designed to produce extensive lists of persons to be deposed by the City, as Conrail has correctly objected, the request appears designed for no purpose other than impose undue burden and expense, and to harass the LLCs. The request is entirely improper in these proceedings and beyond the scope of any issue subject to adjudication by the STB in in the Exempt Abandonment. The request further

seeks information that would be covered by the attorney-client privilege, and the LLCs reserve all rights as to that privilege.

9. This request for documents concerning inquiries on behalf of the LLCs, prior to the 2005 sale by Conrail, concerning the status of the Harsimus Branch is also improper as more fully described in response to request number five, above. The request further seeks information that would be covered by the attorney-client privilege, and the LLCs reserve all rights as to that privilege.
10. No portion of the Harsimus Embankment has been demolished by or on behalf of the LLCs. Therefore no such documents exist.
11. This request for documents concerning donation of the Harsimus Embankment as fill is irrelevant to any issue to be adjudicated in this Exempt Abandonment Proceeding and is unlikely to result in production of relevant information. To the degree that such use of the LLCs' properties would take place, it would occur post-abandonment and be regulated by other jurisdictions under other laws, and the STB would have no continuing jurisdiction over such activities and could not therefore give consideration to such potential activities.
12. This request for agreements concerning post-abandonment development of any of the LLCs' properties is irrelevant to any issue to be adjudicated in these Exempt Abandonment proceedings. To the degree that such use of the LLCs' properties would take place, it would occur post-abandonment and be regulated by other jurisdictions under other laws, and the STB would have no continuing jurisdiction over such activities and could not therefore give consideration to such potential activities.
13. This request for information concerning documents related to all discussions with CNJ Rail is improper and overbroad, going beyond any legitimate issue

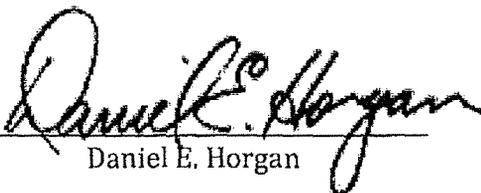
concerning CNJ's Notice of Intention to submit an Offer of Financial Assistance. To the degree that any such discussions have taken place, documents "embodying or discussing" such communications would intrude upon various privileges including attorney-client privilege, attorney work product privilege and conceivably other privileges embodying joint undertakings. Any such material to the degree that it may exist, is well beyond the scope of documents relevant to these proceedings and would concern actions outside of these proceedings. The request may also implicate documents that extend to the settlement privilege.

14. This request for documents "embodying or discussing communications, oral or in writing, with Chicago Title Company" is improper and overbroad, going beyond any legitimate issue to be adjudicated in these Exempt Abandonment proceedings. To the degree that any such discussions concerning litigation by the LLCs against Chicago Title Company involve the claims now pending in the courts of the State of New Jersey, the request improperly intrudes upon the privileges associated with discussions of such proceedings. In any event, Chicago Title Company provides insurance for titles to real estate, a matter beyond and beside the STB's jurisdiction over the operation of railroads.

15. The final request concerning claims against attorneys, Conrail, or others for fraudulent or negligent misrepresentation of the regulatory status of the Harsimus Branch is simply not relevant to these proceedings. Conrail's fraud or misrepresentation to the LLCs or any other party, arguably including even the STB, are not within the scope of this Exempt Abandonment Proceeding. To the degree that the requested documents concern claims outside of these proceedings, the STB has no jurisdiction over such matters, and the City is not a proper party to such proceedings. The request, like many of the others, is entirely overbroad, burdensome, intended to harass the LLCs, and will not produce any relevant material.

CERTIFICATE OF SERVICE

I, Daniel E. Horgan, an attorney-at-law of New Jersey, New York, and the District of Columbia, hereby certify that on October 15, 2014, I caused service of these responses upon Charles H Montagne, Esq. and all individuals and entities listed as Parties in SDB Docket Number AB-167-1189-X by First Class Mail.

By: 
Daniel E. Horgan

DATED: October 15, 2014
827229

SERVICE LIST - PARTIES

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And the following self-represented individuals or entities:

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Historic Paulus Hook Ass'n
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Coast Greenway
ADDRESS UNKNOWN

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Jersey City, NJ 07302

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

Exhibit C

Prepared and filed by the court.

COPY

FILED

JAN 07 2014

PETER E. BARISO, JR., A.J.S.C.
PETER E. BARISO, JR., A.J.S.C.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – HUDSON COUNTY
DOCKET NO. HUD-L-4683-05

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,

Civil Action

Plaintiffs,

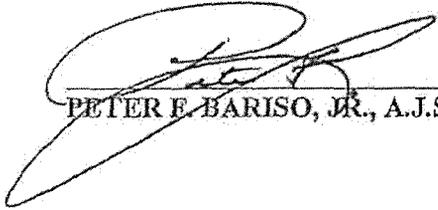
ORDER

v.

CITY OF JERSEY CITY, THE PLANNING
BOARD OF THE CITY OF JERSEY CITY
and JERSEY CITY HISTORIC PRESERVATION
COMMISSION,

Defendants.

On the court's own motion, it is on this 7th day of January, 2014, ORDERED that this matter is stayed until June 30, 2014, pending the final resolution of the Federal Court litigation. Plaintiff's attorney to serve a copy of this Order upon all parties within seven (7) days of the date of this Order.


PETER E. BARISO, JR., A.J.S.C.