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ENTERED
Office of Proceedings
March 6, 2015
Part of
Public Record

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DANIEL E. HORGAN
MEMBER OF N.J., N.Y. & D.C. BARS

March 4, 2015

BY OVERNIGHT DELIVERY

Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423



**RE: 212 MARIN BLVD. LLC et al; PETITION FOR
DECLARATORY RULING; DOCKET FD-35825
Motion to Supplement the Record**

Dear Ms. Brown,

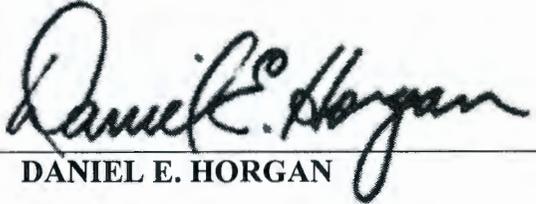
We are enclosing an original and ten copies of our motion for filing in the above matter which is now pending reconsideration of the Board's earlier decision. Attempts to file these electronically yesterday and today have been unsuccessful, so therefore we are providing you with hard copies. Since we mailed service copies yesterday, we will advise all parties by follow up mail service.

Also, the document served by mail yesterday has been modified slightly to address a technical issue, but an issue that could be very material to the Board's review of this matter. That issue is the quality of the Parcel Map provided to us by Counsel for Jersey City in AB-167-1189-X. When that map appears on the Board's website, it is different in color rendering and less contrast and detail appears than we have on the hard copy. Therefore, we will formally request that Counsel for Jersey City file fully color-accurate copies with the Board and serve the same on all parties. Our Errata sheet to all persons and entities will include this letter as a form of notice of that issue and request.

Thank you for your attention to this matter.

Very truly yours,

WATERS, McPHERSON, McNEILL, P.C.

BY: 
DANIEL E. HORGAN

Enclosed: Original + 10 Motion

CC: All parties on service list

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

Docket Number FD-35825

**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**

PETITIONERS:

**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.

**MOTION TO SUPPLEMENT THE RECORD
AND SUPPLEMENT MOTION FOR RECONSIDERATION**

**DANIEL E. HORGAN, DC BAR # 239772
ERIC D. McCULLOUGH, NJ BAR # 02417-2001
JORGE R. de ARMAS, NJ BAR # 03718-2003
WATERS, McPHERSON, McNEILL, P.C.
300 Lighting Way
Secaucus, New Jersey 07096
Telephone: 201-863-4400
Fax: 201-863-2866**

Counsel for Petitioners

DATED: March 3, 2015



FILING CONTAINS COLOR EXHIBITS

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

Docket Number FD-35825

**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**

**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 the State of New Jersey,**

As PETITIONERS:

**MOTION TO SUPPLEMENT THE RECORD
AND SUPPLEMENT MOTION FOR RECONSIDERATION**

While replies to replies are not permitted, for the sake of a complete record and for the reasons stated herein, Petitioners 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, 446 Newark Avenue LLC and NZ Funding LLC (hereinafter collectively referred to as "LLCs" or "Petitioners"), pursuant to 5 U.S.C. § 554, 49 C.F.R. § 1117.1, and 49 C.F.R. 1115.3(a), hereby petition and move the Board for leave to (1) supplement the LLCs' Motion for Reconsideration of the Board's denial of the LLCs' Petition for a Declaratory Order of Exemption to include the arguments raised herein, and (2) to supplement the record in this action to include the City's Parcel Map filed on January 20, 2015 as an Exhibit to its Motion for Leave to File a Reply in the Conrail Abandonment Proceeding (AB-167-1189-X), (attached as

Exhibits 1 hereto), in the above-captioned matter. The Petitioners incorporate their May 8, 2014 Petition for Declaratory Order of Exemption Pursuant to 5 U.S.C. 554, 49 C.F.R. 1117.1 and 49 U.S.C. 10502, and the exhibits thereto ("Petition") and their Motion for Reconsideration of August 29, 2014, pursuant to 49 C.F.R. 1115.3(a) and the exhibits thereto, ("Motion for Reconsideration") as if fully set out herein, including the Authority and Statement of Claim set out therein.

SUMMARY

In this proceeding the Board has rejected Petitioners' factual proofs that both the Harsimus Branch and the River Line merged at a switch ("Switch") and ran together on the same track in the same place for approximately 750 feet to a well-established point known as CP Waldo. That rejection was based on arguments by counsel for Jersey City, et al who argued two alternative theories: either the River Line and the Harsimus Branch never merged before they reached the CP Waldo, or CP Waldo was at the point where they did merge. Neither theory fit the physical facts as presented by Petitioners and both theories have now been contradicted and abandoned by the City in order that it may pursue an offer of financial assistance in Conrail's abandonment action, STB Docket: AB-167-1189-X. In that proceeding the City has filed a map showing that the River Line and the Harsimus Branch merged at the Switch located approximately 750 feet to the east of CP Waldo and that, contrary to the Board's finding in this matter, the two lines did in fact run together on the same track between the Switch and CP Waldo.¹ This confirms Petitioners' factual submissions in this matter that the River Line

¹ The paper copy of this Parcel Map served upon counsel for Petitioners (LLC Intevornors in the Conrail exempt abandonment action) is significantly different in appearance from the electronic copy on the STB website. The service copy has a color rendering that makes it easier to discern the various lines. Therefore Petitioners request that counsel for the City provide the original document to the Board and fully accurate color copies to all parties.

abandonment in 2002 severed the Harsimus Branch from its connection to the national rail network at CP Waldo.

The Board cannot reject Petitioners' factual basis for its Petition in this matter, namely that a single track connected both the River Line and the Harsimus Branch at the Switch and then ran together for approximately 750 feet to CP Waldo, and then reverse itself by accepting that same set of facts in order to allow the City to advance arguments in favor of its OFA. The Board does not have the jurisdiction to make inconsistent findings on the location of lines of rail conveyed to Conrail by order of the Special Court in 1976, but that is exactly what the City has presented as its argument why the Board should continue in its rejection of Petitioners' petition for a declaratory order in this proceeding (FD 35825), and accept the City's OFA in Conrail's pending abandonment of the Harsimus Branch (AB-167-1189-X).

ARGUMENT

-The Board Can No Longer Rely Upon Any of The City's Prior Arguments-

The Board rejected Petitioners' arguments on the severance of the Harsimus Branch from the national rail network by the unsupported net factual conclusion that the Petitioners were mistaken when they alleged that a single track connected the River Line and the Harsimus Branch to CP Waldo. The Board found that since the River Line was abandoned to CP Waldo, it could not have included any portion of the Harsimus Branch. Decision, STB FD-35828, slip op. at 4 (Served August 11, 2014). It was pointed out that the River Line abandonment proceedings never mentioned the Harsimus Branch at all. From that, the Board has concluded that Petitioners' single-track argument must somehow be wrong. The fact that the argument was supported by aerial photography taken in 1976 and 1979 that showed only one tract between the Switch and

CP Waldo² was simply disregarded on the basis that there was no discussion of the Harsimus Branch in the abandonment of the River Line. Petitioners' tangible proofs were rejected out of hand by the Board on the arbitrary and capricious basis that there was no support for Petitioners' position in another decision of the Board, rendered 12 years earlier, that did not even discuss the issue in any way.

Leading up to the Board's 2014 decision against Petitioners were arguments from the City that the River Line connected to the Harsimus Branch at CP Waldo, inferring from those arguments of counsel that the two lines never merged before reaching CP Waldo. Despite numerous references to "maps" and "track charts", none of which were specifically cited or produced, the City's confusing rhetoric and inconsistent arguments offered no facts on this issue.

The only facts offered were those submitted by the Petitioners. They established that only one track existed connecting the Switch to CP Waldo at the time Conrail acquired both the River Line and the Harsimus Branch. This is demonstrated by the 1976 and 1979 aerials included in Exhibit O-4 of the Petition, upon which Exhibit U to the Petition is based, and again attached hereto as Exhibits 3 and 4 respectively. Together with Exhibit U (Exhibit 2 hereto) it is clear that this single track, abandoned in the 2002 River Line abandonment, was the only means of access to Harrison/Kearny from the Switch through CP Waldo for both the Harsimus Branch and the River Line. The City for its part has never provided any proof of the existence of two tracks connecting to CP Waldo. Indeed Exhibits 3 and 4 demonstrate that in addition to no such second track actually existing, such a second track would have required an additional trestle to carry such second track from the Embankment to the abutment from which the trestles from both the River Line and the Embankment began, a second trestle that simply did not exist. (See Exhibits 2, 3

² Exhibit O to Petition - Declaration of David B. Dixon, ¶19; Exhibit O-4 to Petition - Exhibit D to Declaration of David B. Dixon.

and 4). These tresles were required in order to connect both the Embankment and the River Line to the Switch, as given the elevation differences in the topography of the area, the adjacent National Docks line ran approximately 30' below and adjacent to the Switch.³

Those earlier factual arguments against Petitioners by the City are entirely inconsistent with the City's present factual submission to the Board in the Conrail abandonment. On January 17, 2015, counsel for the City filed a motion for leave to reply, and attached to that a "Parcel Map" as its first exhibit. (Attached hereto as Exhibit 1). That Parcel Map clearly shows a crosshatched corridor (yellow) which the City's motion describes (at page 10 of the City's January 17, 2015 brief in support of its Motion for Leave to File a Reply in the Conrail Abandonment Proceeding), as follows: "City desires the 1152.27 information for a 60 foot corridor from the end of the LLCs' illegal acquisition (purple) to Waldo (estimated area is 50,155.77 SF of fee and aerial easement per County Planning)". This Parcel Map also shows the abandoned River Line as a solid yellow line running down the center of the aforesaid corridor and intersecting it in the vicinity of the National Docks Line, which is also shown. It shows one track between the Switch and CP Waldo, which coincidentally is located at the point where Waldo Avenue crosses the rail line. The Parcel Map shows property, over which a portion of the Harsimus Branch ran, which the City now wishes to acquire as part of its OFA. If the Harsimus Branch and the River Line were not co-located in fact, they would not be co-located on the City's Parcel Map. If CP Waldo were located at the point where the River Line and the Harsimus Branch come together at the Switch, as the City earlier argued to the Board, (a point near where they cross the National Docs Line) then there would be no need for the Parcel Map to show the

³ The City's alternate argument that the Harsimus Branch was not severed from the national rail network because the Harsimus Branch intersected the Natoinal Docks Line, not only ignores the 30' difference in elevation between the two, but also the fact that no connection between the two existed.

"Corridor" that the City wishes to acquire continuing past that point toward what the City now also agrees was Waldo. No amount of rhetoric can explain away these facts.

The Parcel Map reflects property that the City is asking to acquire in Conrail's abandonment through a proposed OFA. It shows the line of rail that the City proposes to operate for rail freight service running between CP Waldo and the Switch. It shows it as the same single track for both the Harsimus Branch and the River Line from the Switch to the national rail network at CP Waldo. If the Board entertains the City's submission in the Conrail Abandonment Proceeding, it will, through the OFA process be granting the City property that was abandoned 12 years ago, as part of the River Line abandonment, the 750' track segment between the Switch and CP Waldo. Alternatively, if CP Waldo is not located at Waldo Avenue, but at the Switch where the River Line and the Harsimus Branch merged together into one track, then none of the properties sought by the City through an OFA lying between the Switch and Waldo Avenue are even part of the Conrail abandonment, which runs from "CP Waldo" to the vicinity of Washington Boulevard, far to the east. Of course, that is not what the City is asking for from Conrail. The City is asking to acquire a portion of what it claims as the Harsimus Branch, in an abandonment proceeding by Conrail for the Harsimus Branch. It shows the particular section of the Harsimus Branch that it wishes to acquire between the Switch where the Harsimus Branch merged with the River Line and CP Waldo, which is a significant distance from the Switch. Therefore, CP Waldo is certainly not co-located with the switch, nor is there any possibility of there being two tracks involved.

The fact that the City is proceeding in two separate matters before the Board on entirely inconsistent factual arguments requires the Board to address this issue in both matters before it. To do otherwise would be clearly arbitrary and capricious. With respect to the present Finance

Docket proceedings, the City has been shown to be relying upon a state of facts reflected in the Parcel Map from the Conrail abandonment that is inconsistent with its arguments to the Board in the present Finance Docket proceeding. The City's recently filed Parcel Map to the Board serves as an admission by the City that its prior arguments were factually incorrect, and supports the only set of facts presented to the Board in the present proceeding, with which the Board's prior decision is completely at odds.

-The Record Should Be Supplemented-

The Board must consider the City's actual position. The City's change in position has the clear ability of materially affecting the Board's decision on reconsideration in this matter. See 49.C.F.R. 1115.3; see also Pioneer Indus. Ry.-Alternative Rail Serv.-Cent. Ill. R.R., FD 34917, slip op. at 8 (STB served Jan. 12, 2007)(reopening granted after the only shipper on a rail line changed position and opposed the discontinuance of rail service, which could materially affect the Board's analysis). The City has essentially abandoned its position in this matter by filing the Parcel Map with the Board that clearly corroborates the LLCs' position on the issue of the connection between the River Line and the Harsimus Branch and the abandonment thereof.

The City's Parcel Map establishes that the Switch cannot be CP Waldo and that the only means of access to the national rail network for the Harsimus Branch was through what the City now itself terms it the "River Line (Abandoned)". The City's filing serves to highlight that there are no facts at hand contradicting the LLCs' position on this issue. Conrail has not opposed the LLCs' descriptions of the connection of the Harsimus Branch to the River Line, and the only relevant facts actually provided by the City, its Parcel Map, directly contradict the City's own position.

The Board must consider the City's filings in the Conrail Abandonment Proceeding in determining whether to grant reconsideration. Consideration of the City's change in position is necessary for the Board to reach a decision on a complete record; the material is certainly relevant and could not have been introduced at an earlier time. Rio Grande Industries, Inc.—Trackage Rights Burlington Northern Railroad Co., I.C.C. Finance Docket No. 31730, 1991 WL 62169, at *1, n. 2 (Mar. 8, 1991)(Denying motion to strike supplemental filing). The Board's consideration of the City's admission certainly will not prejudice the City as the Board's consideration of a position it has purposely taken in another matter will certainly provide a more complete understanding of a complicated situation and is necessary to the understanding of the issues. Allegheny Valley R.R. Co.--Petition for Declaratory Order, FD 35239 slip op. at 4 (June 11, 2010)(accepting supplemental evidence into the record).

The location and nature of the intersection of the Harsimus Branch and the River Line to the National Rail network is of material importance to the Board's consideration of the LLCs' Petition and pending Motion for Reconsideration. The City itself recognizes the materiality of this issue. In opposing the LLCs' Motion for Reconsideration the City incorrectly (but nevertheless) asserts that:

“The only claim of the LLCs over which the agency had jurisdiction [in this action] is the de facto abandonment by severance claim [City's September 18m 2014 Reply to the Motion for Reconsideration, p. 9.]

The problem with the City's argument is that there has simply never been two CP Waldos nor two tracks connecting Conrail's Harsimus Branch or River Line to CP Waldo, as the City itself acknowledges in support of its OFA and the LLCs have argued here, all along. The Board authorized the abandonment of the River Line upon which the Harsimus Branch connected to the national rail network at CP Waldo in 2002. The Harsimus Branch has thus been severed.

The City's admission that the Board granted abandonment approval of the track 750 feet beyond the Switch to CP Waldo in the 2002 River Line abandonment is not a mistake or an oversight on the City's part, but a calculated admission. The City recognizes that if the Switch was indeed the "CP Waldo" as it argued in this action, it would have not be able to acquire the corridor it seeks to acquire by OFA in the Conrail Abandonment Proceeding, because Conrail's' Abandonment Exemption Petition runs only to CP Waldo, and not west of it. Moreover, the City is aware that if the Switch were CP Waldo, it would be required to construct a new trestle connecting the transload facility to the national rail network, given the 30' difference in elevation between Newark Avenue and the Switch, (as demonstrated in Exhibit 5), something it cannot afford to build, both financially and politically. Simply, the circumstances have forced the City to admit what the LLCs have been arguing all along. The City now correctly recognizes that if CP Waldo actually refers to the Switch, it will be unable to gain control of the 750 foot portion of the abandoned River Line between CP Waldo and the Switch that the City needs in order for its sham OFA trans-load concept to work.

Here the only party being prejudiced by the City's refusal to take a consistent position are the LLCs. For the Board to deny the LLCs' present motion to supplement the record and the Motion for Reconsideration, the Board would be permitting the City improperly maintain two diametrically opposed positions at the same time. Either CP Waldo was the Switch, in which case the City's OFA must fail, or CP Waldo was where it has always been understood to be, in which case the LLCs' Motion for Reconsideration must be granted.

The Board is constrained to make determinations based on the facts before it. It cannot base its conclusions on unsupported suppositions raised by parties in opposition to a petition for relief, as such a conclusion would be arbitrary. The time for a party to have complained about

such a severance was in 2002, not now. The Board cannot now ignore the City's change in position in order to undo what has been done.

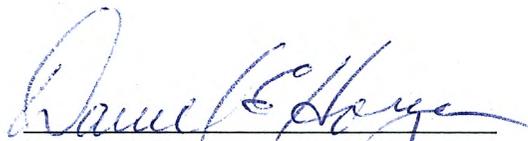
Conclusion

For the foregoing reasons, the LLCs respectfully request that their motion to (1) supplement the LLCs' Motion for Reconsideration of the Board's denial of the LLCs' Petition for a Declaratory Order of Exemption to include the arguments raised herein, and (2) to supplement the record in this action to include the City's Parcel Map filed on January 20, 2015 as an Exhibit to its Motion for Leave to File a Reply in the Conrail Abandonment Proceeding (AB-167-1189-X), (attached as Exhibits 1 hereto), in the above-captioned matter be granted.

Respectfully submitted,

WATERS, McPHERSON, McNEILL, P.C.

By:



Daniel E. Horgan, DC Bar #239772
Waters, McPherson, McNeill, P.C.
300 Lighting Way
Secaucus, NJ 07094
Phone: 201-330-7453
Counsel for Petitioners
Dated: March 4, 2015

VERIFICATION OF MOTION

Daniel E. Horgan, Esq., hereby verifies as follows:

1. I am an attorney-at-law admitted to practice before the United States District Court for the District of Columbia and the State of New Jersey and that I am lead counsel for the nine Limited Liability Company Petitioners in this matter. I make this verification in support of the Petitioners' Motion appended hereto based on my knowledge and as the attorney for the Petitioners.

2. The facts and representations set forth in the aforementioned Petition are true and correct to the best of my knowledge, information and belief.

3. I am qualified and authorized to file this motion.

I verify under penalty of perjury that the foregoing is true and correct.

By:



Daniel E. Horgan, DC Bar #239772
Waters, McPherson, McNeill, P.C.
300 Lighting Way
Secaucus, NJ 07094
Phone: 201-330-7453
Counsel for Petitioners
Dated: March 4, 2015

CERTIFICATE OF SERVICE

I, Daniel E. Horgan, hereby certify that I caused an original and ten copies of the foregoing to be served by UPS overnight mail on:

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

and by UPS overnight mail upon:

Counsel for Jersey City, Coalition, RTC:
Charles H. Montange
426 NW 162nd Street
Seattle, WA 98177

and:

Counsel for Conrail:
Robert M. Jenkins, III, Esq.
Mayer Brown LLP
1999 K Street, NW
Washington, D.C. 20006-1101;

and by first class mail upon those others on the attached Service List by depositing same with the U.S. Postal Service on March 4, 2015.

By:



Daniel E. Horgan, DC Bar #239772
Waters, McPherson, McNeill, P.C.
300 Lighting Way
Secaucus, NJ 07094
Phone: 201-330-7453
Counsel for Petitioners
Dated: March 4, 2015

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U.S. Fish and Wildlife Service
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Building D
Pleasantville, NJ 08232-1451

EXHIBIT 1

Exhibit 1 to Petitioners' Motion to Supplement

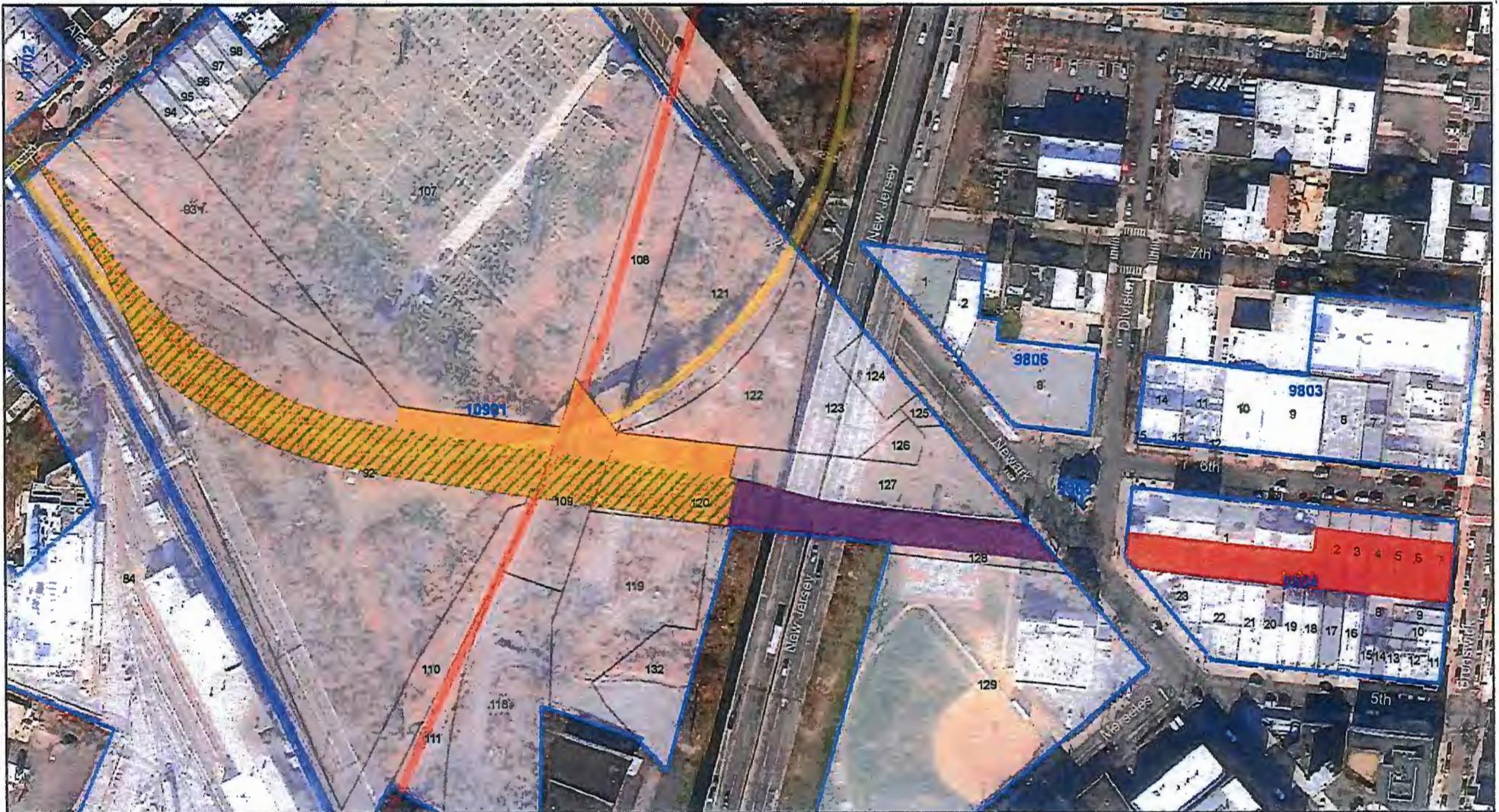
Nature of Exhibit:

Copy of City of Jersey City et al.'s exhibit, "Parcel Map," to the City's "Reply on Behalf of the City of Jersey City" filed with the City's January 17, 2015 "Motion for Leave to File a Reply" dated and filed January 20, 2015, in the matter In Re Conrail Abandonment Exemption – in Hudson County, N.J., STB Docket No. AB-167-1189-X, and related proceedings.

NOTE: See FN 1, above at page 3. The color rendering of the following exhibit does not fully or accurately represent the Parcel Map as served upon the parties.

Exhibit

Parcel Map



 Corridor - Alternate A

 446 Newark Avenue LLC

 415 Brunswick Street LLC

 Block

 National Docks (active)

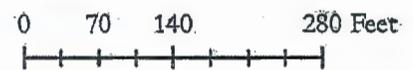
 Corridor

 Lot

 River Line (abandoned)

 PATH rail lines

Lot	Corridor (sf)	Corridor - Alternate A (sf)	Difference
92	36,170.14	41,970.32	5,800.18
110	96.60	96.6	0.00
120	9,733.69	15,394.69	5,661.00
109	4,155.34	8,690.15	4,534.81
Total	50,155.77	66,151.76	15,995.99



Prepared by
Hudson County
Division of Planning



EXHIBIT 2

Exhibit 2 to Petitioners' Motion to Supplement

Nature of Exhibit:

Copy of Exhibit U In Support of Petitioners' May 8, 2014 Petition for a Declaratory Order:

Aerial Photo, base image Robinson 1979, as copied from Dixon, Attachment D, and annotated to show River Line (green), switch in River Line connecting Harsimus Branch to waterfront (white), and old Pennsylvania R.R. main line (yellow). The Highlighting also shows the River Line (green) running with the Harsimus Branch (red) on a single track between C.P. Waldo and the Switch (both circled in white).

EXHIBIT U

Exhibit U

In support of Petitioners' Petition for a Declaratory Order

Nature of Exhibit:

Aerial Photo, base image Robinson 1979, as copied from Dixon, Attachment D, and annotated to show River Line (green), switch in River Line connecting Harsimus Branch to waterfront (white), and old Pennsylvania R.R. main line (yellow). The highlighting also shows the River Line (green) running with the Harsimus Branch (red) on a single track between C.P. Waldo and the Switch (both circled in white).

EXHIBIT 3

Exhibit 3 to Petitioners' Motion to Supplement

Nature of Exhibit:

Copy of Exhibit O-4 In Support of Petitioners' May 8, 2014 Petition for a Declaratory Order:

Attachment D to the Dixon Declaration (with only layer "Image-Aerial 1976 Robinson" displayed)

Exhibit 11

Attachment D (thereto)

In support of Intervenor-Defendants' opposition to Plaintiffs' Motion for Summary Judgment

Nature of Exhibit: River Line and Harsimus Branch at CP Waldo - 1979

In the matter:

City of Jersey City et al. v. Consolidated Rail Corporation, et al.
C.A. No. 09-1900 (CKK)

Daniel E. Horgan, Esq.
Bar No. 239772
Waters, McPherson, McNeill, P.C.
300 Lighting Way
P.O. Box 1560
Secaucus, NJ 07096
(201) 863-4400

Counsel for Intervenor-Defendants - 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

Dated: September 6, 2012

NOTE: TO VIEW EXHIBIT –

>go to next page

>select layers icon on left if not visible

**>use checkboxes in layers panel to view individual
or multiple layers of exhibit**

EXHIBIT 4

(4A)

Exhibit 4(a) to Petitioners' Motion to Supplement

Nature of Exhibit:

Copy of Exhibit O-4 In Support of Petitioners' May 8, 2014 Petition for a Declaratory Order:

Attachment D to the Dixon Declaration (with only layer "Image-Aerial 1979 Keystone" displayed in color)

Exhibit 11

Attachment D (thereto)

In support of Intervenor-Defendants' opposition to Plaintiffs' Motion for Summary Judgment

Nature of Exhibit: River Line and Harsimus Branch at CP Waldo - 1979

In the matter:

City of Jersey City et al. v. Consolidated Rail Corporation, et al.
C.A. No. 09-1900 (CKK)

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Avenue, LLC; 354 Coles Street, LLC; 389
Monmouth Street, LLC; 415 Brunswick
Street, LLC; and 446 Newark Avenue, LLC

Dated: September 6, 2012

NOTE: TO VIEW EXHIBIT –

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**>use checkboxes in layers panel to view individual
or multiple layers of exhibit**

EXHIBIT 4

(4B)

Exhibit 4(b) to Petitioners' Motion to Supplement

Nature of Exhibit:

Copy of Exhibit O-4 In Support of Petitioners' May 8, 2014 Petition for a Declaratory Order:

Attachment D to the Dixon Declaration (with only layer "Image-Aerial 1979 Keystone" displayed in black and white)

Exhibit 11

Attachment D (thereto)

In support of Intervenor-Defendants' opposition to Plaintiffs' Motion for Summary Judgment

Nature of Exhibit: River Line and Harsimus Branch at CP Waldo - 1979

In the matter:

City of Jersey City et al. v. Consolidated Rail Corporation, et al.
C.A. No. 09-1900 (CKK)

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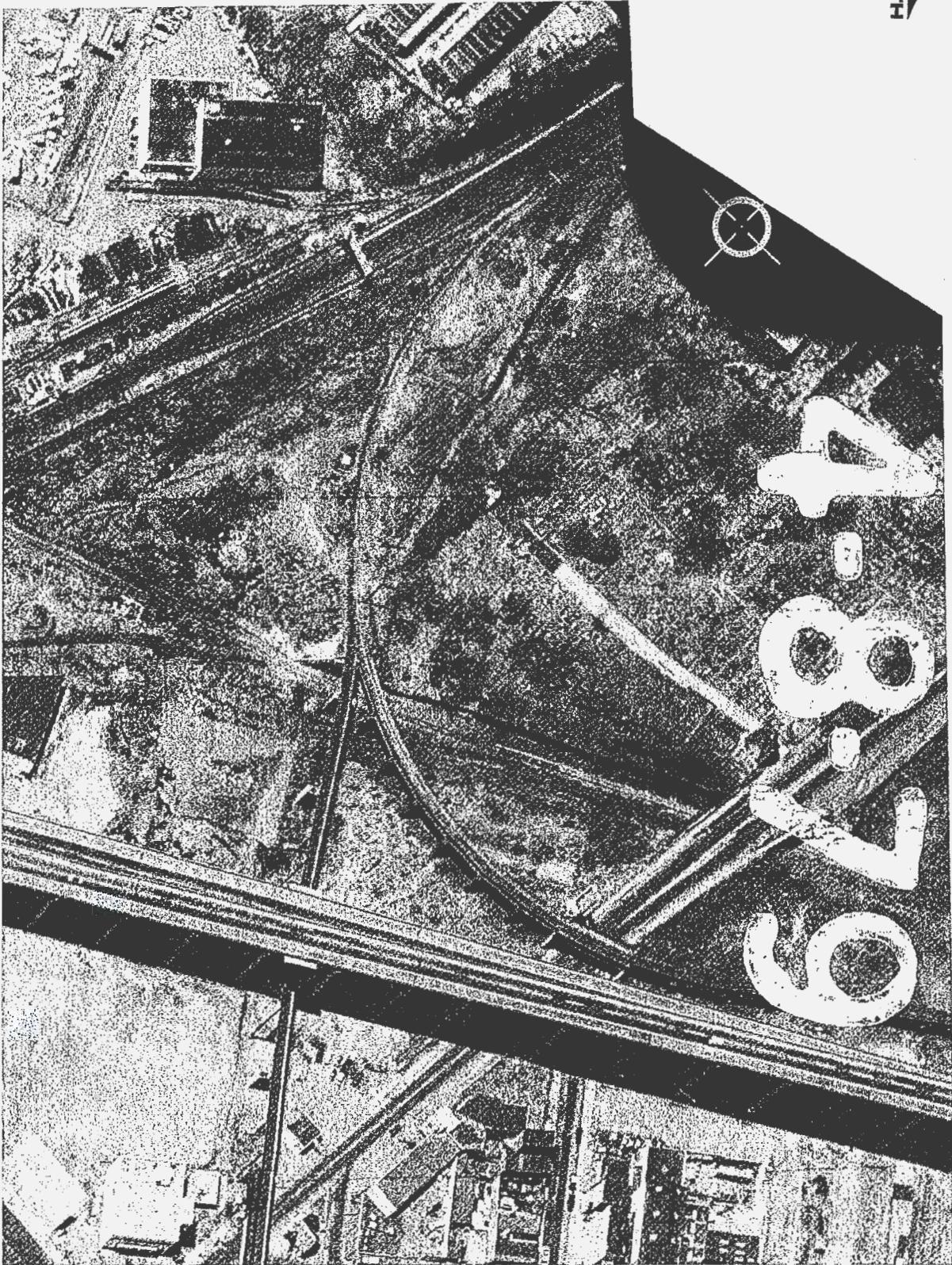
Dated: September 6, 2012

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Case 108-cv-0100-A81 Document 87-4 Filed 09/02/12 Page 2 of 3

<p>1</p>	<p>EXHIBITS FOR HYMAN PROPERTY Attachment D</p> <p>River Line and Harbormas Branch at CP Waldo - 1970</p> <p>JERSEY CITY, HUDSON COUNTY, NEW JERSEY</p>	<p>OMLAND ENGINEERING ASSOCIATES, INC.</p> <p>44 Prospect Street Camden, New Jersey 08102 Phone: 856-326-4100 Fax: 856-326-4110 E-mail: omland@omland.com Attn: Director of Human Resources Tel: 856-326-4100</p>	<p>DATE: 8/9/02 PROJECT: 100115 SCALE: 1"=50'</p> <p>THIS DRAWING IS THE PROPERTY OF OMLAND ENGINEERING ASSOCIATES, INC. AND IS TO BE USED ONLY FOR THE PROJECT AND LOCATION SPECIFICALLY IDENTIFIED HEREON. ANY REUSE OR MODIFICATION OF THIS DRAWING WITHOUT THE WRITTEN CONSENT OF OMLAND ENGINEERING ASSOCIATES, INC. IS STRICTLY PROHIBITED.</p>	<p>CHVD</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p>		
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EXHIBIT 5

Exhibit 5 to Petitioners' Motion to Supplement

Nature of Exhibit:

Copy of Exhibit H In Support of Petitioners' May 8, 2014 Petition for a Declaratory Order:

Attachment A to the Declaration of Daniel E. Horgan filed on September 6, 2012 in the matter captioned City of Jersey City et al. v. Conrail et al., U.S. District Court, District of Columbia, docket number 09-1900(ABJ):

Photograph of area immediately to the east of the National Docks Line where the River Line is carried on a steel bridge supported by a steel pier, and a stone and concrete pier of the Harsimus Branch is short distance away to the South, looking to the South along the national Docks Line.

Exhibit 8

Attachment A (thereto)

In support of Intervenor-Defendants' opposition to Plaintiffs' Motion for Summary Judgment

Nature of Exhibit: August 2012 photograph of area immediately to the east of the National Docks Line where the River Line is carried on a steel bridge supported by a steel pier, and a stone and concrete pier of the Harsimus Branch is a short distance away to the South, looking to the South along the National Docks Line.

In the matter:

City of Jersey City et al. v. Consolidated Rail Corporation, et al.
C.A. No. 09-1900 (CKK)

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Dated: September 6, 2012

