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THE FRIENDS OF LIBERTY STATE PARK

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April 2, 2008

The Hon. Anne Quinlan, Secretary
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

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Office of Proceedings

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Re: Consolidated Rail Corp. – Abandonment Exemption - Jersey
City, NJ, AB 167 (Sub-no. 1189X) and related proceedings

Dear Ms. Quinlan:

This letter is on behalf of The Friends of Liberty State Park. The Friends of Liberty State Park (The Friends of LSP) is a nonprofit organization that works to preserve, protect, conserve, and promote Liberty State Park, an urban state park on the Jersey City waterfront that looks out on the Statue of Liberty, Ellis Island, the New York harbor and the skyline of New York City. The Friends is an all-volunteer Officially Recognized Friends Organization of the NJ Department of Environmental Protection's Division of Parks and Forestry. We have over 900 members, mostly from Hudson County. We also support the creation of open space parks in Jersey City and Hudson County, as critical quality of life public resources which are seen as sister parks to Liberty State Park.

Liberty State Park's 600 above-ground and 600 under-water acres make it the largest park in Hudson County, the most densely populated county in New Jersey, the most densely populated state in our nation. Hudson County is severely deficient in park space.

To quote New Jersey's Senator Robert Menendez, speaking as a State Senator in the early 1990's in his advocacy against building a private golf course within Liberty State Park, "A sad and unfortunate fact of living in Hudson County is that our residents cannot afford the luxury of uses that are limited to a few participants, especially when they are so strapped to find even a spot of grass to throw a picnic blanket on."

LSP has 5 million visitors a year and is the second most visited state park in our nation, next to Niagara Falls State Park. At this time, there unfortunately isn't one bus that goes to LSP, and even pedestrian and bicycle access is limited, so people from around Hudson County without cars find it difficult to use the park. The northern border of the park is approximately 15 blocks from the Harsimus Branch Embankment. The Friends of LSP are interested in the Embankment's capacity for increasing public access to LSP in two ways: (1) We would like to see an improved pedestrian-bicyclist entrance to LSP at Jersey Avenue, the major north-south avenue from

Hoboken through Downtown Jersey City, which would link a string of small parks and a new Embankment park and greenway to LSP (2) The east-west Embankment segment of the East Coast Greenway would connect to the Hudson River Waterfront Walkway on the east. This walkway in turn runs 18 miles along the Hudson River from the George Washington Bridge to Bayonne, and passes along the northern and eastern land border of LSP and is the longest stretch of completed walkway in the riverfront walkway vision.

Further, the Friends of LSP contribute to the preservation of a historic, restored rail terminal, the Central Railroad of NJ Terminal, the “cornerstone” of LSP, which is one of the few remaining monuments, along with the Embankment, to the dominant role railroads played in this area. The historic landmark 1889 CRRNJ Terminal is part of the “Historic Trilogy” of the Terminal (from which most Ellis Island immigrants traveled to their new homes), Ellis Island and Lady Liberty.

We believe a preserved Embankment, along with the spectacular Hoboken Erie-Lackawanna terminal further north on the Hudson waterfront, and still in use for rail purposes, would form the basis for railroad-oriented eco-historic tourism in this area. Such a program would encourage the hundreds of thousands of tourists who travel to our well-known national monuments, Ellis Island and the Statue of Liberty by ferry from a dock in front of the restored Terminal, to more fully appreciate this region's history while contributing to its current economy.

It is our understanding that Consolidated Rail Corporation (Conrail) intends to file, on or about April 7, a “notice of exemption” under this Board’s fast track “class exemption” procedures (49 C.F.R. 1152.50) to obtain abandonment authorization for a portion of the Harsimus Branch and for the Hudson Street Industrial Track, both located in Jersey City. These comments, objections, and protests are directed at Conrail’s proposed licensing action by this Board in respect to the Harsimus Branch, which we believe should be severed from a consideration of the Hudson Industrial Track. Please include us as a party to this proceeding so that we may receive timely service of all pleadings and decisions. Please regard these as initial comments objecting to a “class exemption” proceeding, as comments on Conrail’s abbreviated and insufficient Environmental Report and Historic Report, and as a statement supporting a full Environmental Impact Statement and other relief before any decision is issued allowing Conrail to abandon the Harsimus Branch.

Until compelled to acknowledge this Board’s jurisdiction, owing to the petition for declaratory judgment proceeding (Finance Docket 34818) filed by City of Jersey City, the Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition, Rails to Trails Conservancy, and Assemblyman Louis Manzo, Conrail had engaged in an illegal de facto abandonment of the Harsimus Branch. Conrail tore out the bridges and track from the Harsimus Embankment without this Board’s authorization and sold the whole Embankment, without retention of any railroad operating rights, to a real estate developer (Steven Hyman). The sale was expressly striking since it was in the face of interest in the property expressed by the City. Mr. Hyman has sued Jersey City and some of its officials personally to force them to grant his companies permits

to complete demolition of the Embankment and to construct townhouses in its place. Recently, he proposed an alternative: huge new residential towers on top of the Embankment after hollowing it out for parking. Conrail has indicated it intends to cooperate with Mr. Hyman to this end. It is our understanding that Conrail and Mr. Hyman are planning to develop additional rail property owned by Conrail together.

Conrail's illegal actions in respect to the Embankment should not be countenanced. The Embankment is eligible for listing on the National Register of Historic Places and is also designated as historic under local and state law. In addition, the Embankment is surrounded on both the north and south sides by National Historic Districts. Destruction of the Embankment not only irreparably adversely impacts the Embankment, but also the adjoining historic districts. In addition, the Harsimus Branch referenced here may be National Register-eligible in its entirety. Conrail's actions and proposed actions significantly adversely affect the environment. Rather than demolishing the Embankment as proposed by Conrail and its developer agent, the Embankment should be preserved as a park and trail, or for an ecologically sensitive rail alternative to relieve Jersey City's growing surface transportation congestion. As a park and trail facility, the Embankment not only would serve local and regional residents but also would link the East Coast Greenway to Manhattan from Philadelphia. Because of the Embankment's width, both a rail transportation system and trail use could occur simultaneously.

Conrail's sale of the property to Mr. Hyman's companies in 2006 was unlawful in that Conrail did not have abandonment authority and sold the property without retaining any ability to operate a railroad - without STB authority as well. Conrail's unlawful actions should not be rewarded with the kind of de facto fast track retroactive authorization from this agency that Conrail seeks here for its unlawful sale of the Embankment to Mr. Hyman's companies. By rushing through with its proposed "exemption," Conrail hopes to insulate its unlawful actions from the remedies that it knows would otherwise be applicable under federal and state laws.

We briefly summarize below some of our salient points and objections.

Compliance with Historic Preservation Act is necessary. Authorizing an abandonment in the circumstances here will significantly adversely impact not only the Embankment but also the two National Historic Districts, especially in light of the anticipatory demolition (removal of bridges, sale to Hyman interest, litigation by Hyman interests with assistance from Conrail to compel the City to permit demolition and townhouse conversion) already under way. The Board may not take such action without first complying with section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and without compliance with the additional requirements established by section 110 (in particular, 16 U.S.C. 470h-2(k)) for situations involving anticipatory demolitions. Section 470h-2(k) is particularly relevant here. That statute bars STB from authorizing any abandonment here because Conrail has intentionally significantly adversely affected an historic property in avoidance of the requirements of 470f of the National Historic Preservation Act. In such cases, STB may not authorize abandonment unless it first consults the Advisory Council on Historic Preservation and only thereafter determines that the circumstances justify the

abandonment authorization despite the adverse effect created or permitted by Conrail. We request consulting party status under Section 106.

Dismiss Conrail notice of exemption. Conrail's use of the fast track notice of exemption procedures is inappropriate in the controversial circumstances here. This Board has previously indicated that use of "class" exemption procedures is intended for instances that are "non-controversial and unopposed." The Board has dismissed notices of exemption in situations involving controversy, e.g., Greenville County Economic Development Corporation – Discontinuance of Service Exemption – in Greenville County, SC, STB AB 490X, served Jan. 29, 2004. In light of the controversial nature of Conrail's cavalier disregard of this Board's jurisdiction, willful imposition of a maximal adverse impact on the Embankment, and unlawful, unauthorized transfer of the historic property to the Hyman interests in disregard of the City's interest, Conrail's proposed exempt abandonment action here is nothing if not controversial and opposed. This Board should dismiss Conrail's notice, and order the railroad instead to proceed by petition for exemption or by application.

Order reconveyance of property by Hyman interests. One of the most objectionable features of Conrail's tactics is its attempt to ensure the destruction of the Embankment through its insistence on conveying that property to the Hyman interests for demolition and non-rail uses. In past cases involving sales of lines to non-rail users without prior authorization, this Board has ordered reconveyance of the properties. The Land Conservancy of Seattle and King County – Acquisition Exemption – in King County, WA, STB Finance Docket 33389, served Sept. 26, 1997. To protect the integrity of its own processes, this Board should assert jurisdiction over the Hyman interests, and order immediate reconveyance of all real estate and fixtures that Conrail deeded to the Hyman interests before further processing of any abandonment application by or on behalf of Conrail. No abandonment should be considered or allowed to become effective until the property is first reconveyed to Conrail. This Board would otherwise be permitting its processes to be circumvented and abused.

Alternatively, if the Hyman interests continue to hold the property, then they must be regarded as holding it themselves as common carriers, subject to a common carrier obligation. They must be barred from further actions aiming at destruction of the Embankment until they themselves receive abandonment authorization from this Board.

Full EIS. We acknowledge that under this Board's environmental regulations, the Board "normally" prepares only an "environmental assessment" (EA) to inform itself concerning the impact of a proposed abandonment. 49 C.F.R. 1105.6(b)(3)&(7). That EA is issued after the Board publishes a notice authorizing abandonment. This kind of foreshortened review is clearly not appropriate or lawful here. This Board's regulations provide that a full environmental impact statement (EIS) may be required in an individual proceeding. 49 C.F.R. 1105.6(d). Indeed, a full EIS is ordinarily required where an action may "significantly" impact the environment. Here the action proposed by Conrail will significantly impact the environment. The term "significantly" is defined in 40 C.F.R. 1508.27. Under section 1508.27(b)(8), a key variable in determining

significance of impact is whether the action may adversely affect historic districts and structures listed in or eligible for the National Register. Here the proposed action will result in demolition of the Embankment, and severely adversely affects two adjoining National Historic Districts, and quite likely others as well. A clearer showing of significance of impact is hard to imagine. In The Baltimore and Ohio Railroad Co. – Abandonment and Discontinuance of Service – in Montgomery County, Md. and the District of Columbia, AB 19 (Sub-no. 112), served May 21, 1986, this Board's predecessor determined that a proposed abandonment had "significant" impacts within the meaning of the 40 C.F.R. 1508.27(b), and ordered an EIS. The impacts here are at least as significant, and in a similar major metropolitan setting. We have already underscored the serious adverse impacts on historic properties and districts, and the further adverse impact of precluding public use of the historic assets in fashion that would maintain the assets. But Conrail's proposed action will adversely affect public health and safety in the event of demolition as envisioned by the applicant, and is extremely controversial. As in the Baltimore and Ohio case, Conrail's proposal will significantly impact the environment, and an EIS is necessary pursuant to 40 C.F.R. 1508.27(b)(1),(2),(3),(4) and (8) Preparation of a full EIS is also appropriate in light of the statutory requirement for consultation with the Advisory Council on Historic Preservation pursuant to 16 U.S.C. 470h-2(k).

We reserve the right to provide further and more detailed environmental comments in response to Conrail's brief, totally inadequate, misleading, and precipitously prepared "environmental report" (ER) and "historic report" (HR) which the railroad has evidently recently filed with this agency. That ER/HR fails to discuss Conrail's anticipatory demolition and relevant adverse environmental and historic impacts.

Public use conditions. Conrail has publicly refused to negotiate public use of the Embankment. However, in light of the suitability of the Embankment for public use (e.g., as a trail, park and greenway, or as light rail and trail), if this Board despite the comments above authorizes an abandonment, the abandonment should be conditioned upon Conrail retaining ownership in the Embankment and taking no action to sell, to transfer or to disturb the Embankment for 180 days from the effective date of any abandonment authorization to permit public agencies to exercise eminent domain authority. 49 U.S.C. 10905; 49 C.F.R. 1152.28.

By the signature below, I certify service by U.S. Mail, postage prepaid, first class on Mr. John K. Enright, Associate General Counsel, Conrail, 1000 Howard Boulevard, 4th Floor, Mt. Laurel, NJ 08054.



Sam Pesin, President

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