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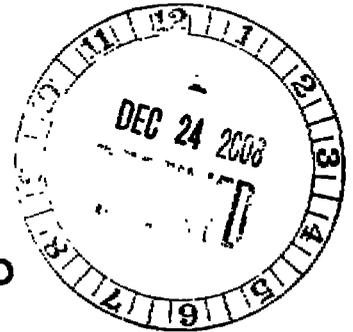
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**Also Admitted in Florida*

December 23, 2008

Re: Delray Connecting Railroad Company
--Trackage Rights Exemption
--Consolidated Rail Corporation
STB Finance Docket No. 35180
Our File 3877-32

FILED
DEC 24 2008
SURFACE
TRANSPORTATION BOARD



Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Suite 1260
Washington, DC 20423-0001

FEDERAL EXPRESS

FEE RECEIVED
DEC 24 2008
TRANSPORTATION BOARD

Dear Secretary Quinlan:

We enclose for filing in the above docketed proceeding, the signed original (unbound) and ten (10) bound copies of the Verified Notice of Exemption from the application of 49 U.S.C. §11323(a)(6) pursuant to 49 U.S.C. §10502(a) and the regulations at 49 C.F.R. §§1180.2(d)(7) and 1180.4(g) in connection with certain trackage rights granted to Delray Connecting Railroad Company by Consolidated Rail Corporation as more fully described in the Notice.

In accordance with the telephone authority received from your office, we are enclosing separately five (5) copies of each of the maps which are attached as Appendix 1 to the Notice, rather than the twenty copies required by 49 C.F.R. §1180.6(a)(6).

We enclose check in the sum of \$1,200 made payable to the "Surface Transportation Board" to cover the filing fee pursuant to 49 C.F.R. §1002.2(f)(40)(iv).

ENTERED
Office of Proceedings

DEC 24 2008

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Public Record

Honorable Anne K. Quinlan

Page Two

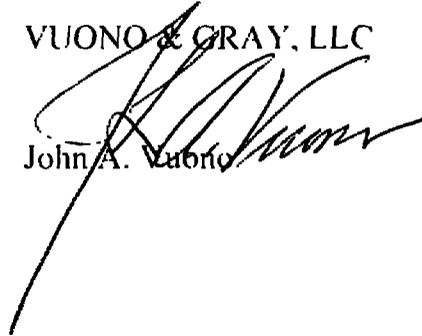
December 23, 2008

Please acknowledge receipt and filing of the enclosed on the duplicate copy of this letter of transmittal and return it to the undersigned in the self-addressed, stamped envelope provided.

Sincerely yours,

VUONO & GRAY, LLC

John A. Vuono

A handwritten signature in black ink, appearing to read 'John A. Vuono', is written over the printed name. The signature is fluid and cursive, with a long, sweeping underline that extends to the left.

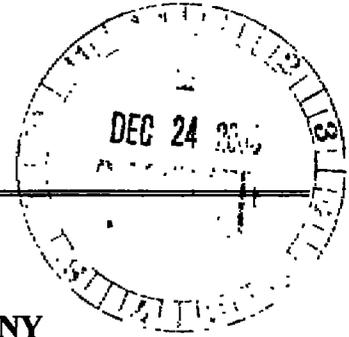
CW 65571

Enclosure

cc: Robert N. Gentile, Esq.
Delray Connecting Railroad Company
Consolidated Rail Corporation

ORIGINAL

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



STB FINANCE DOCKET NO. 35180

DELRAY CONNECTING RAILROAD COMPANY

-- TRACKAGE RIGHTS EXEMPTION --

CONSOLIDATED RAIL CORPORATION

224262

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Office of Proceedings:

DEC 24 2008

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Public Record

VERIFIED NOTICE OF EXEMPTION

FILED

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TRANSPORTATION BOARD

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DEC 24 2008

**SURFACE
TRANSPORTATION BOARD**

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Delray Connecting Railroad Company**

Date: December 23, 2008

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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35180
DELRAY CONNECTING RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
CONSOLIDATED RAIL CORPORATION

VERIFIED NOTICE OF EXEMPTION

Delray Connecting Railroad Company ("DCRR") files this Verified Notice of Exemption from the application of 49 U.S.C. §11323(a)(6) pursuant to 49 U.S.C. §10502(a) and the regulations at 49 C.F.R. §§1180.2(d)(7) and 1180.4(g) in connection with certain trackage rights granted to DCRR by Consolidated Rail Corporation ("Conrail") over the Conrail rail line as more fully described herein.

I. BACKGROUND AND PRIOR STB PROCEEDINGS

United States Steel Corporation ("USS"), which is a non-carrier, owns all of the issued and outstanding stock of Transtar, Inc. ("Transtar"), which is a non-carrier holding company. Transtar owns all of the issued and outstanding stock of seven common carrier

railroads subject to the jurisdiction of the STB¹, including DCRR (collectively, “the Transtar Railroads”). The common control of the Transtar Railroads by USS (formerly USX Corporation) is the subject of a number of prior STB exemption proceedings.²

The initial control by USS of DCRR and the subsequent continuance in control of DCRR by Transtar are the subject of STB decisions in the following exemption proceedings: *United States Steel Corporation--Acquisition of Control Exemption--Delray Connecting Railroad Company*, STB Finance Docket No. 34311, served February 19, 2003; and *Transtar, Inc.-Continuance in Control Exemption-Delray Connecting Railroad Company*, STB Finance Docket No. 34767, served November 1, 2005.

II. PRESENT TRANSACTION

DCRR is a Class III rail common carrier which operates in the Detroit, MI area. It is a switching and terminal railroad which operates 15.46 miles of track, all of which are located in the Down River District of Detroit. DCRR’s largest customer is the Great Lakes Facility of USS, formerly owned by National Steel Corporation.

Conrail is the owner and operator of certain railroad tracks within the so-called Detroit Shared Assets Area which connect with both Tecumseh Yard and track owned by Canadian National Railway Company (“CN”). On June 1, 2006, DCRR and Conrail

¹ Elgin, Joliet and Eastern Railway Company; Birmingham Southern Railroad Company; Delray Connecting Railroad Company; The Lake Terminal Railroad Company; McKeesport Connecting Railroad Company; Texas & Northern Railway Company; and Union Railroad Company.

² *Transtar Holdings, L.P--Corporate Family Exemption--Transtar, Inc.* STB Finance Docket No. 32411, served December 29, 1993; *USX Corporation--Control Exemption--Transtar, Inc.* STB Finance Docket No. 33942, served November 30, 2000; *United States Steel Corporation--Acquisition of Control Exemption--Texas & Northern Railway Company*, STB Finance Docket No. 35027, served May 25, 2007; and *Transtar, Inc--Control Exemption--Texas & Northern Railway Company*, STB Finance Docket No. 35070, served August 8, 2007.

entered into an Operating and Premises Use Agreement (“the Agreement”) pursuant to which Conrail granted certain trackage rights to DCRR over Conrail’s rail line as more fully described herein.

Subsequent to the execution of the Agreement, USS’ outside transportation counsel brought to the attention of USS management the fact that, although captioned “Operating and Premises Use Agreement,” the document could be interpreted as a grant of trackage rights which would require STB approval or exemption authority. As a result, and out of an abundance of caution, DCRR has taken prompt action to authorize legal counsel to file this Verified Notice of Exemption and the parties respectfully request that it be processed on a *nunc pro tunc* basis.

III. GOVERNING LAW AND REGULATIONS

This transaction involves the acquisition by a rail carrier (“DCRR”) of trackage rights over a railroad line owned and operated by another carrier (“Conrail”). In the absence of an exemption, the transaction would require STB approval pursuant to 49 U.S.C. §11323(a)(6).

However, pursuant to 49 U.S.C. §10502(a), the STB must exempt a transaction whenever it finds that the application of its jurisdiction:

“(1) is not necessary to carry out the transportation policy of section 10101 of this title; and

“(2) either --

“(A) the transaction or service is of limited scope; or

“(B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.”

Pursuant to these statutory provisions, the Board has promulgated detailed regulations concerning certain railroad related transactions. Specifically, transactions proposed under 49 U.S.C. §11323 involving more than one common carrier railroad are classified into one of four categories, namely “*Major, significant, minor, and exempt.*” 49 C.F.R. §1180.2.

The regulations provide that a transaction is “exempt” if it falls within one of eight described categories. 49 C.F.R. §1180.2(d). It is the position of the parties that the facts relating to the involved transaction clearly meet the requirements for exemption pursuant to the so-called trackage rights exemption at 49 C.F.R. §1180.2(d)(7), viz.:

(7) Acquisition of trackage rights and renewal of trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers that are: (i) based on written agreements, and (ii) not filed or sought in responsive applications and rail consolidation proceedings.

With respect to transactions which fall within any one of the exempt categories, the regulations provide that the STB has found that those transactions meet the *per se* exemption requirements of 49 U.S.C. §10502(a), specifically that the STB’s prior review and approval of the transactions are not necessary to carry out the rail transportation policy of 49 U.S.C. §10101 and is of limited scope or unnecessary to protect shippers from market abuse. 49 C.F.R. §1180.2(d).

IV. REQUIRED INFORMATION

The following is the information required by 49 C.F.R. §1180.4(g) to qualify for an exemption under 49 C.F.R. §1180.2(d)(7) (designated by reference to appropriate Code of Federal Regulations citations) and certain other essential information:

1. Description of Proposed Transaction (49 C.F.R. §1180.6(a)(1)).

Subject to the provisions of the Agreement, Conrail has granted to DCRR the right to operate its trains, locomotives, cars and equipment over the following segments of Conrail's rail lines shown on the Track Plan, consisting of two pages attached as Appendix 1, which rail lines are described in the Agreement as follows:

From Tecumseh Yard Lead to No. 1 and No. 2 Hill Tracks and Marion Track 1 (a/k/a the Marsh Industrial Track), Marion Track 2 and Marion Track 3 to their connections with CN's line to Zug Island.

2. Names of Parties, Legal Counsel and Contact Information (49 C.F.R. §1180.6(a)(1)(i)).

2.1 Parties.

Delray Connecting Railroad Company
1200 Penn Avenue
Suite 300
Pittsburgh, PA 15222
Telephone: (412) 433-4640

Consolidated Rail Corporation
1000 Howard Boulevard
Mt. Laurel, NJ 08054
Telephone: (856) 231-2010

2.2 Legal Counsel to Whom Questions May be Addressed.

John A. Vuono, Esq.
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Telephone: 412-433-2955
Facsimile: 412-433-2811
EMAIL: rngentile@uss.com

3. Proposed Time Schedule (49 C.F.R. §1180.6(a)(1)(ii)).

For the reasons set forth in Section II above, the parties are filing this Verified Notice of Exemption out of an abundance of caution and respectfully request that it be processed on a *nunc pro tunc* basis.

4. Purpose of the Transaction (49 C.F.R. §1180.6(a)(1)(iii)).

As set forth in Section 2(a) of the Agreement, the trackage rights are granted for the sole purpose (except for emergencies as provided in Section 5(b)) of permitting DCRR to move trains consisting of empty "bottle cars" between Tecumseh Yard and CN's line to U. S. Steel's facility on Zug Island. This operation is an essential component of USS' steelmaking operations at the Great Lakes Facility. The availability of the trackage rights to DCRR will assure an uninterrupted and continuous flow of bottle

cars which are essential to the viability of the production process at the Great Lakes Facility.

5. **List of States in which the involved Property is Located (49 C.F.R. §1180.6(a)(5)).**

The entire line of railroad involved herein is located in the State of Michigan.

6. **Map (49 C.F.R. §1180.6(a)(6)).**

There is attached as Appendix 1 a Track Plan consisting of two pages showing the railroad line between Tecumseh Yard and Zug Island involved herein.

7. **Agreement (49 C.F.R. §1180.6(a)(7)(ii)).**

There is attached as Appendix 2 a fully executed copy of the Agreement between DCRR and Conrail dated June 1, 2006.

8. **Level of Labor Protection (49 C.F.R. §1180.4(g)(1)(i)).**

*Norfolk & Western*³ labor protective conditions are applicable to the trackage rights which are the subject of this exemption notice.

9. **Caption Summary (49 C.F.R. §1180.4(g)(2)(i)).**

There is attached as Appendix 3 a proposed caption summary prepared in accordance with the Board's requirements.

10. **Description of Appendices.**

- 10.1 **Appendix 1:** Track Plan
- 10.2 **Appendix 2:** Operating and Premises Use Agreement
- 10.3 **Appendix 3:** Caption Summary

³ See *Norfolk & W Ry - Trackage Rights - Burlington N. Inc.*, 354 I.C.C. 605 (1978), modified sub nom. *Mendocino Coast Ry. - Lease & Oper - Calif W. R.R.*, 360 I.C.C. 653 (1980).

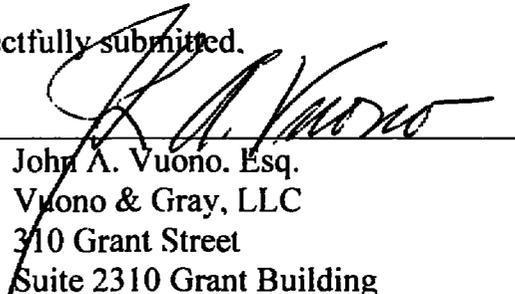
**V. THE TRANSACTION MEETS THE REQUIREMENTS
FOR EXEMPTION**

The STB's regulations are unequivocal that any transaction that falls within any one of the exempt categories is subject to the STB's blanket finding that its prior review and approval of the transaction is not necessary to carry out the national railroad transportation policy or is of limited scope or is unnecessary to protect shippers from market abuse. 49 C.F.R. §1180.2(d).

Accordingly, it is respectfully submitted that the trackage rights proposal described herein clearly meets the exemption requirements of the regulations, specifically 49 C.F.R. §1180.2(d)(7), and, as such, meets the statutory requirements for exemption.

Respectfully submitted,

By: _____


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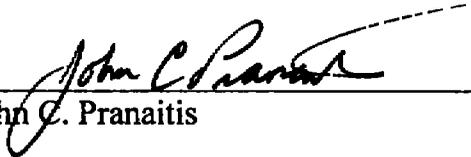
Date: December 23, 2008

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VERIFICATION

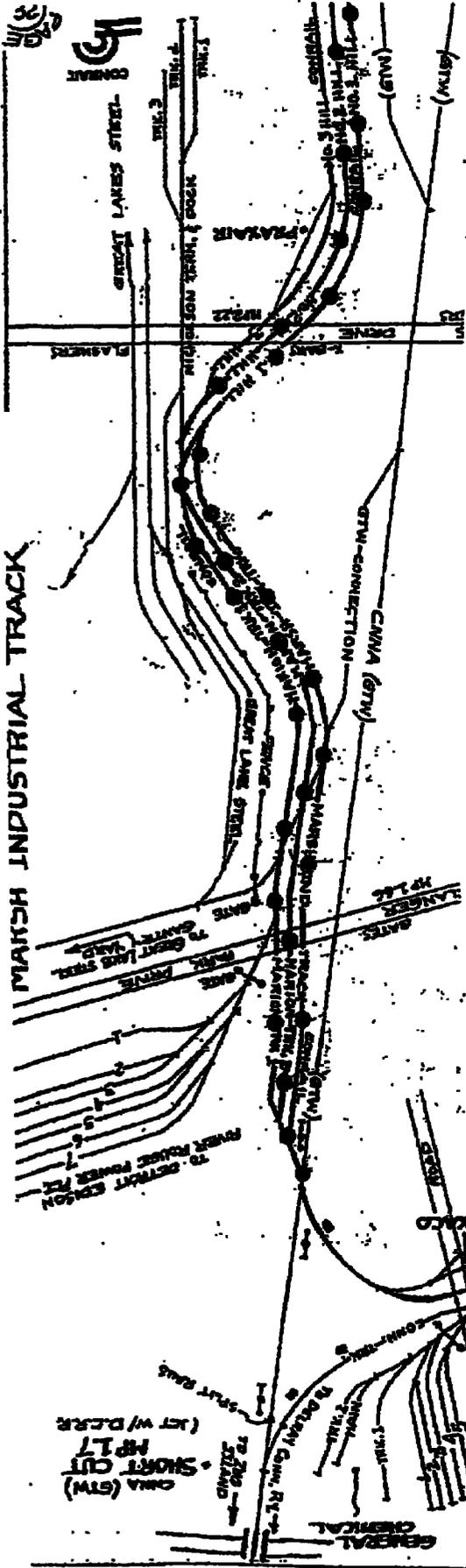
I, John C. Pranaitis, the President of Transtar, Inc. and Delray Connecting Railroad Company, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am authorized to file this Verification to the Notice of Exemption on behalf of United States Steel Corporation, Transtar, Inc. and Delray Connecting Railroad Company.

Signed this 23rd day of December, 2008.



John C. Pranaitis

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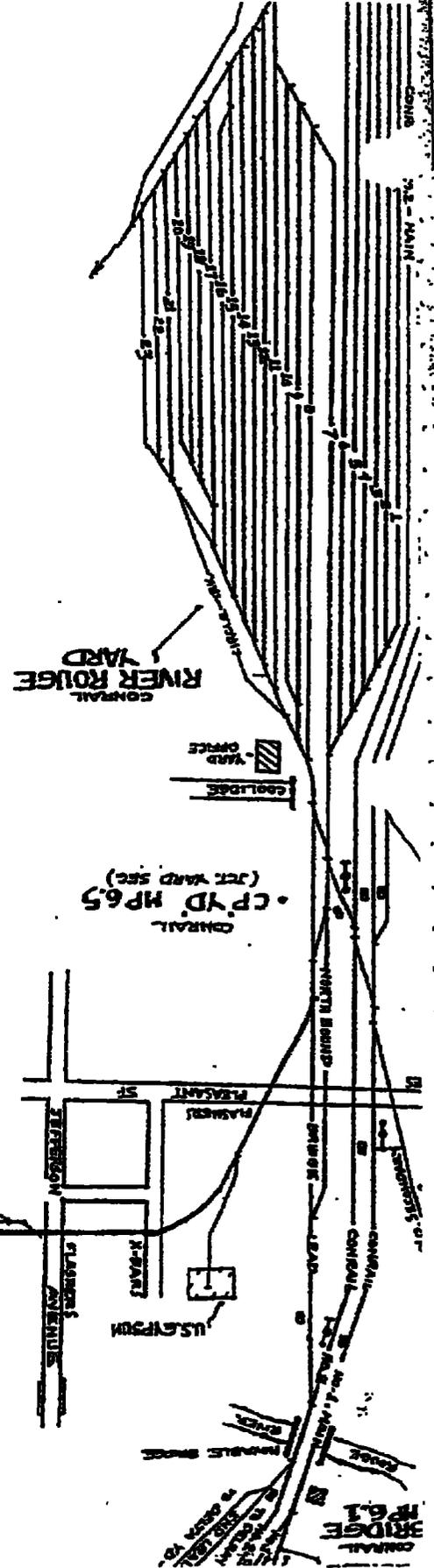


Operating & Premises Use Agreement-Delray Connecting Railroad

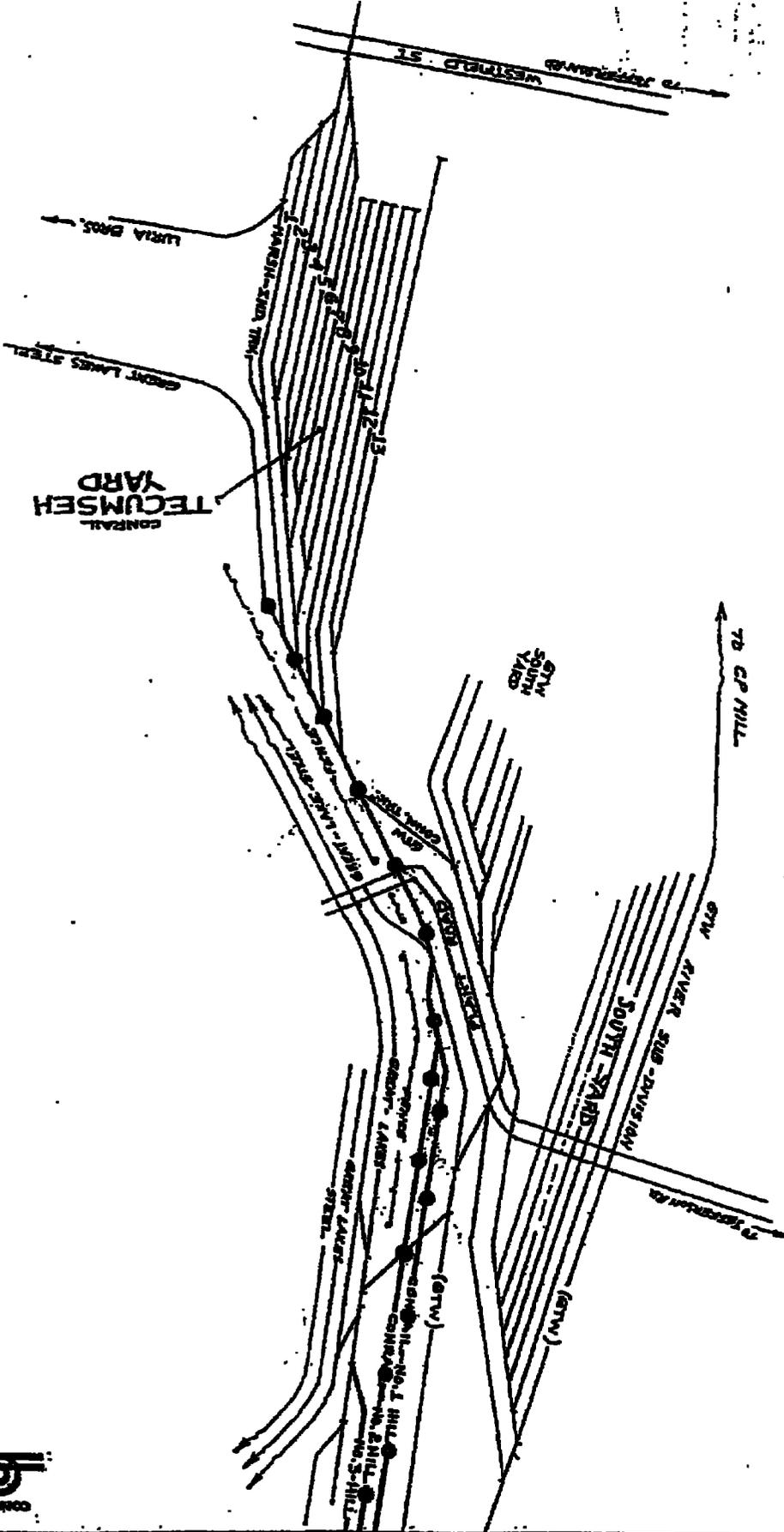
Exhibit A
Page 1
Subject Trackage



Prepared February 5, 2007



MARKH INDUSTRIAL TRACK



Operating & Premises Use Agreement-Delray Connecting Railroad

Exhibit A

Page 2

Subject Trackage

Prepared February 5, 2007

2

OPERATING AND PREMISES USE AGREEMENT

THIS AGREEMENT, entered into as of this 1st day of June, 2006 (the "Effective Date"), by and between **CONSOLIDATED RAIL CORPORATION** ("CRC" or "Owner") and **DELRAY CONNECTING RAILROAD CO.** ("DCRR" or "User").

WHEREAS, CSX Corporation ("CSX"), parent to CSX Transportation, Inc. ("CSXT"), and Norfolk Southern Corporation ("NSC"), parent to Norfolk Southern Railway ("NSR"), entered into a Transaction Agreement (the "Transaction Agreement") among themselves; CSXT; NSR; Conrail, Inc., ("CRR"); CRC (a wholly-owned subsidiary of CRR); and CRR Holdings LLC; and

WHEREAS, CSX and NSC have indirectly acquired all the outstanding capital stock of CRR; and

WHEREAS, The Surface Transportation Board in a Decision served July 23, 1998, in Finance Docket No. 33388 approved with certain conditions the acquisition and control of CRR by CSX and NSC through two newly formed subsidiaries, and, on June 1, 1999, CSXT and NSR began operating the assets of CRC through those subsidiaries under terms of the Operating Agreements; and

WHEREAS, the certain operating assets of CRC which had been allocated between the two newly formed subsidiaries have since been merged into CSXT and NSR and have since been operated by CSXT and NSR respectively under terms of the Operating Agreements, and

WHEREAS, the Shared Assets Area Operating Agreement For Detroit dated June 1, 1999, between CSXT, NSR and CRC (the "June 1, 1999 Agreement"), provides terms to govern the desire of the parties that the Shared Assets (as defined in the June 1, 1999 Agreement) shall be owned, operated and maintained by CRC and used for the exclusive benefit of CSXT and NSR; and

WHEREAS, pursuant to the June 1, 1999 Agreement, CRC performs various services as agent for CSXT and NSR, which also have the right to operate over the lines within the Detroit Shared Assets Area, with traffic remaining in the account of CSXT or NSR; and

WHEREAS, CRC is the owner and operator of certain railroad tracks (hereinafter "CRC Lines") within the Detroit Shared Assets area which connect with both Tecumseh Yard and track owned by Canadian National (hereinafter "CN"); and

WHEREAS, the parties hereto desire to enter into an agreement to assist in the movement of certain DCRR trains between Tecumseh Yard and the CN tracks over which DCRR has operating rights in accordance with the terms and conditions set forth herein,

NOW THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

SECTION 1. GRANT OF OPERATING RIGHTS

Subject to the terms and conditions herein provided, CRC hereby grants to DCRR the right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter "Operating Rights") over the following segments of CRC's Lines shown on the plan attached hereto and made a part hereof and marked Exhibit "A" (hereinafter the "Subject Trackage"):

From Tecumseh Yard Lead to No. 1 and No. 2 Hill Tracks and Marion Track 1 (a/k/a the Marsh Industrial Track), Marion Track 2 and Marion Track 3 to their connections with CN's line to Zug Island.

SECTION 2. USE OF SUBJECT TRACKAGE

(a) The Operating Rights herein granted are granted for the sole purpose of permitting DCRR to move trains consisting of empty "bottle cars" between Tecumseh Yard and CN's line to Zug Island. DCRR shall not stage or park rail cars or locomotives on the Subject Trackage. Nor shall DCRR perform any local freight service whatsoever at any point located on the Subject Trackage.

(b) DCRR may not operate or otherwise transport steam powered locomotives or any type of passenger car over the Subject Trackage.

SECTION 3. COMPENSATION

DCRR shall compensate CRC for the Operating Rights granted in this agreement as follows:

(a) DCRR shall pay to Conrail a charge of \$66.15 for each one way train movement for the Operating Rights and Maintenance granted herein commencing with the Effective Date of this Agreement (hereinafter "Operating Rights Fee"). DCRR shall report to CRC the number of DCRR train movements over the Subject Trackage within fifteen (15) days following the completion of each calendar quarter based on records maintained by the Shortcut Bridge Operator. CRC shall invoice DCRR quarterly based on the number of train movements reported by DCRR. DCRR shall pay CRC the Operating Rights Fee in accordance with Section 9 of this Agreement.

amj
6/25/08

(b) The Operating Rights Fee shall be revised upward or downward each calendar year, beginning in 2008, to compensate for the increase in the cost of labor and materials, excluding fuel, as reflected in the annual Indexes of Charge-Out Prices and Wage Rates (1997=100) included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads ("AAR"). In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East District shall be used. The Operating Rights Fee shall be revised by calculating the percent increase or decrease in the index for the latest calendar year as related to the Index for the previous calendar year and applying that percentage to the Operating Rights Fee. In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates shall be changed from the year 1997, appropriate revisions shall be made. If the AAR or any successor organization discontinues publication of the Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties.

(c) DCRR shall report the quarterly train movement counts to Conrail at the following address:

Consolidated Rail Corporation
405 Division Street, Suite 215
Elizabeth, NJ 07201-2084
Attn: Manager-Joint Facilities & Real Estate

SECTION 4. MAINTENANCE OF SUBJECT TRACKAGE

CRC shall maintain, repair and renew the Subject Trackage with its own supervision and labor. CRC shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but CRC does not guarantee the condition of the Subject Trackage or that operation thereover will not be interrupted.

SECTION 5. MANAGEMENT AND OPERATION

(a) User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars and equipment are being operated over the Subject Trackage. Any remote control locomotives shall be operated in accordance with the minimum guidelines established by the Federal Railroad Administration and any formal regulations which may be enacted in the future. User shall indemnify, protect, defend, and hold harmless Owner and its directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon Owner or its directors, officers, agents, or employees under such laws, rules, regulations and guidelines by any public authority or court having jurisdiction in the premises, when attributable to the failure of User to comply with its obligations in this regard.

(b) Owner's rail operations shall take priority over User's use of the Subject Trackage, and User, in its use of the Subject Trackage, will comply in all respects with the operating rules and regulations of Owner, and the movement of User's trains, locomotives, cars and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall consist of only empty "bottle cars" and shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner. User shall indemnify, protect, defend, and hold harmless Owner and its directors, officers, agents and employees from and against all liabilities when attributable to the failure of User to comply with the provisions of this subsection. In the event of an emergency, DCRR may request limited temporary use of the Subject

Trackage for movement of other than empty bottle cars, which request shall be accommodated by Owner to the extent reasonably practicable.

(c) User shall make such arrangements with Owner as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Subject Trackage qualified for operation thereover, and User shall pay to Owner, promptly upon receipt of bills therefor, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.

(d) Owner may conduct an investigation at its option if a User's employee working on Owner's property is alleged to have violated Owner's rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. To exercise its option, Owner will schedule the investigation and notify User's Local Transportation Officer in the territory thereof, who will, in turn, arrange to issue proper notice to the User's employee(s) of the investigation. Owner's scheduling of the investigation must comply with the time limits provided in the applicable agreement on User's railroad. Owner will provide its regulations, supplements, and safety rules to User at no cost.

(e) If Owner conducts an investigation, Owner shall have the right to exclude from the Subject Trackage any employee of User, except officers, determined by Owner as the result of Owner's investigation or hearing described below, to be in violation of Owner's rules, regulations, orders, practices or instructions.

(f) In a major offense such as violation of Rule G, dishonesty, insubordination, or a serious violation of operating rules, wherein Owner desires to bar User's employee from service on Owner's territory pending an investigation by Owner, immediate verbal notification will be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.

(g) If Owner conducts an investigation, its officer will conduct the investigation, but an officer of User may be present to assure compliance with the User's labor agreement and practices with respect to investigation procedures. After the investigation is concluded, Owner will promptly furnish User with two copies of the transcript and a recommendation as to the discipline to be assessed. User's Transportation Officer will arrange to assess discipline, subject to receipt of Owner's recommended discipline, within the applicable

time limits. If Owner recommends dismissal, User reserves the right to change the recommendation to the extent of barring the individual from operating over Owner's territory.

(h) It is understood that Owner shall reimburse User for all payments that User might be required to make as a result of a successful challenge being made by the employee or his representative as to the discipline recommended by Owner and assessed by User. User agrees to notify Owner before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, Owner will be given an opportunity to review User's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which User may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.

(i) If by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled or unable to proceed under its own power, or fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance as may be necessary to haul, help, or push such trains, locomotives, or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.

(j) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars to move them off the Subject Trackage, Owner shall have the option to perform such work, and User shall reimburse Owner for the cost thereof, or to require User to do so at User's expense.

(k) In the event Owner and User agree that Owner should provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such additional employees, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the additional employees not been provided.

SECTION 6. CLEARING OF WRECKS

Whenever User's use of Subject Trackage requires re-railing, wrecking service, or wrecking train service, Owner shall perform such work, including the repairing and restoring of roadbed, track and structures. The cost and expense thereof, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be apportioned in accordance with the provisions of Section 7 hereof. All locomotives, cars and equipment and salvage from same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck shall be promptly delivered to User.

SECTION 7. LIABILITY

(a) As between the parties hereto, User shall be solely responsible for any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, and shall assume all liability therefor and bear all cost and expense in connection therewith, and shall forever protect, defend, indemnify, and hold harmless Owner and its directors, officers, agents, and employees from and against any such liability, cost, and expense attributable to User's use of the Subject Trackage, except to the extent caused by the gross negligence or willful misconduct of Owner or its directors, officers, agents or employees.

(b) In every case of death or injury suffered by an employee of either Owner or User, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either party under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

SECTION 8. INVESTIGATION

(a) Except as provided in Subsection (b) hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

(b) Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. § 11706 and 49 C.F.R. § 1005 (or any revised or substitute regulations adopted to modify, supplement or supersede the regulations herein provided), or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709.

(c) In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.

(d) All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time employees, including claim agents, attorneys, and other employees of either party engaged directly or indirectly in such work shall be borne by such party.

(e) Excluding freight loss and damage claims filed in accordance with 49 U.S.C. § 11706 or 49 C.F.R. § 1005 or similar regulation, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds Twenty-Five Thousand Dollars (\$25,000).

(f) Nothing in this section shall modify or waive the conditions, obligations, assumptions, or apportionments provided in Section 7 hereof.

SECTION 9. PAYMENT OF BILLS

(a) All payments called for under this Agreement shall be made within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as

to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party.

(b) Bills rendered pursuant to the provisions of this Agreement shall include direct labor and material costs, together with the surcharges, overhead percentages, and equipment rentals in effect at the time any work is performed.

SECTION 10. EMPLOYEE PROTECTION

Each party shall assume and hold the other harmless from each of their respective employee claims predicated on loss of, or adverse impact on, compensation, benefits, or working conditions arising from this Agreement or the activities of the parties thereunder, whether such claims are based on conditions imposed by the Surface Transportation Board or are predicated on the Railway Labor Act or collective bargaining agreements; provided, however, that Owner shall assume and hold User harmless from all employee claims referred to in this section when such employee claims result from instances where Owner requires User's employees to perform service(s) which results in the violation of collective bargaining agreement(s) and consequent penalty payments by User.

SECTION 11. INSURANCE

(a) During the term, and any continued term of this Agreement, DCRR, at its own expense, shall procure and maintain in effect a policy of public liability insurance, with limits of not less than \$5 million single limit, bodily injury and/or property damage, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to, or destruction of property, including the loss of use thereof, in any one occurrence, subject to a self insured retention limit not to exceed Twenty Five Thousand Dollars (\$25,000), including contractual liability insurance, which names CRC as an additional insured and provides for a minimum of thirty (30) days' advance written notice to CRC prior to any material changes or cancellation.

(b) This insurance coverage shall be effected under standard form policies issued by insurers of financial responsibility, which are rated "A" or better by either Best's Insurance Reports, Standard & Poor's Insurance Rating Service or Moody's Investors Service. Conrail reserves the right to reject as inadequate, coverage provided by an insurance company rated less than "A" by the aforementioned rating services.

(c) If the insurance provided under this section takes the form of a "Claims Made Policy," DCRR shall purchase whatever supplemental coverage may be necessary to provide continuous coverage of its potential liability under this Agreement, with annual occurrence and annual aggregate limits no less than those required hereunder, for a period of time at least five (5) years following the termination of this Agreement. DCRR shall immediately give CRC written notice of any claim, or notice of incident, or notice of potential claim, that relates to the Subject Trackage and is required to be reported to DCRR's liability insurance company.

(d) Notwithstanding the foregoing requirements of this Section, DCRR may satisfy its insurance obligations hereunder by procuring the insurance coverage required by this Section, through a program of self insurance, or by a combination of insurance and a self insurance program; provided, however, that any program of self insurance, alone ^{or} ~~or~~ in ^{7/18/08} combination with the procurement of insurance coverage, must be sufficient to replicate the insurance coverage required by this Section.

(e) DCRR's failure to satisfy the requirements of this Section shall constitute a breach of this Agreement. DCRR shall provide evidence of coverage and/or self-insurance, written notice of any claim and any other correspondence dealing with insurance and insurance matters to:

Chief Financial Officer & Corporate Treasurer
Consolidated Rail Corporation
1000 Howard Blvd.
Mt. Laurel, NJ 08056

SECTION 12. REGULATORY APPROVAL

Should implementation of this Agreement require the approval of the Surface Transportation Board (the "STB"), either expressly or by way of a Notice of Exemption, User shall, at its sole cost and expense, diligently pursue whatever steps are necessary to secure that approval. In the event express approval is required by the STB, this Agreement shall take effect

on the service date of the STB decision granting such approval. In the event this Agreement is approved by way of a Notice of Exemption, this Agreement shall take effect on the day said Notice of Exemption becomes effective. Owner will provide reasonable assistance to User in securing any necessary STB approval of this Agreement.

SECTION 13. ABANDONMENT OF SUBJECT TRACKAGE

Notwithstanding any other provision of this Agreement, CRC may abandon or discontinue service over the Subject Trackage or any portion(s) thereof during the term of this Agreement, or any renewals thereof, upon giving DCRR any notice required by any applicable laws and regulations governing the intended abandonment or discontinuation. In the event regulatory authority is required to effect such abandonment or discontinuation, DCRR will neither oppose nor interfere with CRC's actions to seek and to exercise such authority. Upon the date established by CRC for the abandonment of, or discontinuation of service over, the Subject Trackage or portions thereof by its aforesaid notice to DCRR or upon the above-specified date of exercise of the regulatory authority to abandon and/or discontinue operations, whichever is later, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination.

SECTION 14. TERM

This Agreement shall take effect as of the date first above written and shall continue in force and effect until terminated by either party upon thirty (30) days' written notice to the other party. Termination of this Agreement shall not relieve, release or excuse either party from any liability which either party may have incurred or any obligation which may have accrued under any provisions of this Agreement prior to the effective date of termination.

SECTION 15. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided, however, that ~~DCRR~~ shall not transfer or assign this

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Agreement, or any of its rights, interests, or obligations hereunder, by merger or otherwise, to any person, firm, or corporation without obtaining CRC's prior written consent.

SECTION 16. NO THIRD-PARTY BENEFICIARIES

This Agreement is for the exclusive benefit of the parties and not for the benefit of any other person or entity not a party to this Agreement other than any assignees or transferees of CRC. Nothing contained in this Agreement shall be construed as conferring upon any other party the right of a third party beneficiary or any right of such party to recover by way of damages or otherwise against CRC or DCRR.

SECTION 17. NOTICE

Except as otherwise provided in Section 3 and Section 11 of this Agreement, any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may mutually agree, and shall be addressed as follows:

- (a) If to CRC:

President & Chief Operating Officer
Consolidated Rail Corporation
1000 Howard Blvd.
Mount Laurel, NJ 08054

- (b) If to DCRR:

President
Delray Connecting Railroad Company
600 Grant Street, Room 1887
Pittsburgh, PA 15219

- (c) Either party may provide changes in the above addresses to the other party

by personal service or certified mail.

SECTION 18. ENTIRE AGREEMENT

This Agreement embodies the entire agreement and understanding between the CRC and DCRR with regard to the grant and use of the Operating Rights set forth herein and supersedes any prior written or oral understanding, agreements or representations of any kind between the parties with respect thereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

WITNESS

Karen Rosella

CONSOLIDATED RAIL CORPORATION

BY: [Signature] / 2013 4/23/08
Ronald L. Batory
President & Chief Operating Officer

WITNESS:

[Signature]

DELRAY CONNECTING RAILROAD CO.

BY: [Signature]
John C. Pransitis
President

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APPENDIX 3

SURFACE TRANSPORTATION BOARD

Notice of Exemption

Finance Docket No. 35180

DELRAY CONNECTING RAILROAD COMPANY

-- TRACKAGE RIGHTS EXEMPTION --

CONSOLIDATED RAIL CORPORATION

Consolidated Rail Corporation ("Conrail") has agreed to grant local trackage rights to Delray Connecting Railroad Company ("DCRR") from Tecumseh Yard Lead to No. 1 and No. 2 Hill Tracks and Marion Track 1 (a/k/a the Marsh Industrial Track), Marion Track 2 and Marion Track 3 to their connections with Canadian National Railway Company's line to Zug Island, all in the State of Michigan. The trackage rights agreement has been consummated and this Notice of Exemption is filed on a *nunc pro tunc* basis.

The notice is filed under 49 C.F.R. §1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. §10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Board.

Anne K. Quinlan,
Acting Secretary