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September 24, 2004

JOHN H. BROADLEY

Honorable Vernon Williams  
Secretary  
Surface Transportation Board  
1925 K Street NW  
Suite 700  
Washington, D.C. 20432

212073

ENTERED  
Office of Proceedings

SEP 24 2004

Part of  
Public Record

Re: Chelsea Property Owners -- Abandonment -- Portion of Consolidated Rail Corporation's West 30<sup>th</sup> Street Secondary Track in New York, Docket No. AB 167 (Sub-No. 1094)A

Dear Mr. Williams:

Enclosed for filing in the captioned proceeding please find an original and ten copies of the MOTION OF CHELSEA PROPERTY OWNERS FOR LEAVE TO FILE A REPLY TO THE JOINT STATEMENT. I have also enclosed a disk with the document in WordPerfect format.

Also enclosed is an extra copy which I would appreciate your file stamping and returning with our messenger.

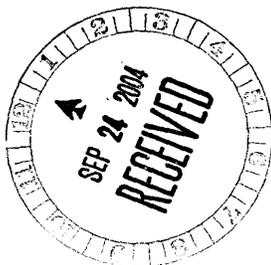
Should you have any questions concerning this matter, please don't hesitate to call me at the above number.

Yours very truly,

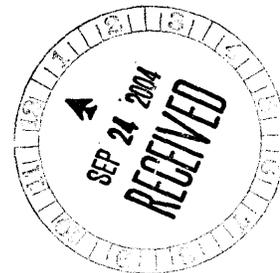
*John Broadley*

John Broadley

Enclosures



BEFORE THE  
SURFACE TRANSPORTATION BOARD  
Washington, D.C.



2/2073

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Chelsea Property Owners -- Abandonment -- )  
Portion of the Consolidated Rail Corporation's )  
West 30<sup>th</sup> Street Secondary Track in )  
New York, NY )  
\_\_\_\_\_)

Docket No. AB 167  
(Sub-No. 1094)A

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**MOTION OF CHELSEA PROPERTY OWNERS  
FOR LEAVE TO FILE A REPLY TO THE JOINT STATEMENT**

On September 22, 2004 the City of New York filed a document entitled "Joint Statement of the City of New York, NY, the New York State Urban Development Corporation d/b/a The Empire State Development Corporation, Consolidated Rail Corporation, CSX Corporation and CSX Transportation, Inc. With Respect To The Request For a Certificate of Interim Trail Use." (The "Joint Statement")

The Joint Statement asks the Board to rule on legal issues pending before the Board and to issue a CITU with respect to the Highline. Implicitly, the parties to the Joint Statement assume that the only issue remaining relating to the issuance of a CITU is Chelsea Property Owners' objection on the grounds that a CITU is not available in an adverse abandonment proceeding such as this. While, as we have argued previously, there is a serious question whether the Trails Act can be interpreted as permitting a railroad to collude with a potential "trail operator" to circumvent the purposes for which the Board permits adverse abandonments, that is not the only issue relating to the requested CITU.

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On its face, the Joint Statement makes clear that the Empire State Development Corporation (“ESDC”) is to be the recipient and trail operator of that portion of the Highline north of 30<sup>th</sup> Street that lies over the MTA’s Hudson Yards and part of the property of the Jacob Javits Convention Center. The Joint Statement admits, however, that ESDC does not yet have the approval of its Board of Directors or the New York State Public Authorities Control Board to undertake the financial commitments that will be involved in participating in a Trails Act agreement for the Highline. ESDC’s support for a CITU also appears to be contingent on its concluding certain agreements with the City which apparently have not yet been reached.

There is no assurance that once the Board of the Empire State Development Corporation and the New York State Public Authorities Control Board consider the financial implications to ESDC of participating in the CITU they will give the necessary approval. Those financial commitments are potentially enormous in light of the City’s plans to develop the Highline in a manner inconsistent with its return to rail use, and the plans of the state agencies to demolish the Highline over the Hudson Yards without providing an alternative right-of-way. The state agencies, thus, intend to sever the Highline from the national rail system, resulting in an abandonment of the entire line and removal of the Highline from the Board’s jurisdiction.

The City applied for a CITU in December 2002, almost two years ago. Since that time there have been many developments affecting the Highline which bear on whether a CITU can be issued. Most notably, the plans of the state agencies for the segment of the Highline over the Hudson Yards have become more firm and more clear. Second, the plans of the City itself to develop the Highline south of 30<sup>th</sup> Street have now become more concrete and demonstrate that the

City's proposed use is inconsistent with the Trails Act as it will render the resumption of rail service on the Highline south of 30<sup>th</sup> Street all but impossible.

The state agencies' plans are now more advanced than was the case in the fall of 2002 and it is clear that those plans contemplate the demolition of the Highline viaduct over the Hudson Yards and severance of the Highline from the national rail system. The state agencies have no plans or intention of providing an alternative right-of-way on which a rail line could be located, instead they plan to replace the Highline structure which currently can carry a rail line with a *promise* to rebuild the structure in the event that rail service is to be resumed.<sup>1</sup> CPO's understanding of the law is that the removal of major structures necessary for the provision of rail service without their replacement in effect causes a severance of the line. Equally, in the case of the Highline, the removal of the viaduct removes the possibility of *any use for trail purposes*. Such a demolition without the provision of an alternative facility that can be used for trail purposes and the future restoration of rail service would be inconsistent with the Trails Act.

The City's own plans for the Highline south of 30<sup>th</sup> Street have advanced to the point where it has had preliminary architectural work done and has selected architectural firms. It is clear from the information that has made its way into the public domain that the City's plans for the Highline south of 30<sup>th</sup> Street are inconsistent with the line ever returning to rail use. An August 12, 2004 article in the New York Times "Gardens in the Air Where the Rail Once Ran," strongly suggests that the City's plans are completely inconsistent with the purposes of the Trails Act. For example, the New York Times article states:

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<sup>1</sup> It is not even clear whether the promise will be that of the City or of the State of New York or of an entity that may not be backed by the full faith and credit of the State of New York.

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Above 23<sup>rd</sup> Street, another section of the deck would “peel up” to create an informal outdoor amphitheater. Just beyond the stage, a section of the deck would be cut away, creating a stunning view of cars streaming by below. The opening is to be framed by a perfectly manicured lawn . . . .

While a “peeled up” deck and a “cut away” deck may create amphitheaters and stunning views, it is difficult to see how they are consistent with the resumption of rail service over the viaduct whose deck has been “peeled up” or “cut away.”.

The article goes on to describe:

Further to the north, a public swimming pool would be embedded into the deck’s concrete surface. . . . A large concrete panel lifts up at one end of the pool to support a faux urban beach. Concrete piers extend out into the water like giant fingers.

Again, one wonders how ballast, ties and rails could be laid over a swimming pool and an urban beach, even if it is “faux.” Whatever the effect of the concrete piers extended into the water may be, they are unlikely to be consistent with the laying of ballast, ties and rail for the resumption of rail service.

In order to address the issues raised by the Joint Statement, including those set forth above, in more detail, CPO respectfully requests that it be afforded 20 days in which to file a response, or until October 12, 2004. Affording CPO this opportunity will not prejudice the parties participating in the Joint Statement as negotiations leading to a Trails Act Agreement are already in progress, and nothing can be done to develop the Highline until those agreements are finalized. In fact, as the Joint Statement notes, the proposed agreements contemplate a zoning change during which the agreements will be held in escrow pending action under the City’s zoning law, a process that may take up to two years.

If, as the evidence suggests, the City and the state agencies plan to use the Highline in a manner inconsistent with the Trails Act, the Board has an obligation under its own regulations (49 CFR 1152.29(b)(1)) to determine whether the Trails Act is applicable. CPO intends to demonstrate that the Trails Act is not applicable to permit issuance of a CITU to the City for the reasons discussed above.

**CONCLUSION**

For the foregoing reasons, Chelsea Property Owners respectfully requests leave to file a reply to the Joint Statement on or before October 12, 2004.

Respectfully submitted,

CHELSEA PROPERTY OWNERS

By: John Broadley  
One of its attorneys

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Dated: September 24, 2004

**CERTIFICATE OF SERVICE**

I hereby certify that on this 24<sup>th</sup> day of September 2004 I served a copy of the foregoing MOTION OF CHELSEA PROPERTY OWNERS FOR LEAVE TO FILE A REPLY TO THE JOINT STATEMENT on all parties to this proceeding by causing copies thereof to be deposited in the United States mails, postage prepaid, addressed to counsel for such parties listed on the attached exhibit.

John Bradley

Dated: September 24, 2004

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