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THE COUNCIL

REPORT OF THE LEGAL AND GOVERNMENTAL AFFAIRS DIVISION
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COMMITTEE ON STATE AND FEDERAL LEGISLATION

July 26, 2001

RES. NO. 1747: By Council Members Miller, Quinn, Berman, Carrion, Freed, Moskowitz, Nelson, O'Donovan, Rodriguez and the Public Advocate (Mr. Green).

TITLE: Resolution calling upon the Governor of the State of New York, the Mayor of the City of New York and the Metropolitan Transportation Authority (“MTA”) to take all necessary steps to obtain a Certificate of Interim Trail Use from the United States Surface Transportation Board (“STB”) in connection with “railbanking” the elevated railroad viaduct running from 75-95 Gansevoort Street through 547-55 West 34th Street, Manhattan (commonly referred to as the “High Line”).

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BACKGROUND:

Today the Committee on State and Federal Legislation will consider Res. No. 1747, which calls upon the Governor, the Mayor and the Metropolitan Transportation Authority (the “MTA”) to take all necessary steps to achieve the “railbanking” of the elevated railroad running from Gansevoort Street to West 34th Street in Manhattan under the federal “rails to trails” program. This elevated railroad viaduct (the “High Line”) is no longer in use, and is the subject of a conditional demolition order issued by the United States Surface Transportation Board (“STB”). The Resolution essentially calls upon the State, the Mayor and the MTA to prevent the demolition of the High Line, and instead preserve the railroad right-of-way and allow for its interim use as a park, recreation and/or historic trail under the federal program. According to the Resolution’s sponsors as well as proponents of the preservation of the High Line, using this structure to provide outdoor, recreational space in an area in which such space is rare, is an option which should be seriously considered before the structure is demolished and the opportunity is lost. An initial hearing on the resolution was held on April 18, 2001, at which extensive testimony was heard from interested parties including representatives of the High Line’s owner, property owners in the area, community groups, residents, public interest groups and elected officials.

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HISTORY OF THE HIGH LINE:

From the mid-1890s until the 1930s, freight trains rode up and down the streets of the West side of Manhattan preceded by boys or men on horseback (called cowboys) to warn traffic of the approaching trains.^[1] Much of the staples necessary to the citizens of New York such as milk and meat, were carried over this line, causing it to become known as the “Life Line of New York.” In 1929 the City of New York, the State of New York, and the New York Central Railroad entered into an agreement which resulted in the West Side Improvement Project, a

project designed to remove dangerous railroad activity from street level, replace steam operated trains in the City with electrically operated trains, re-arrange railroad facilities, and give New Yorkers additional parkland by covering tracks north of 72nd Street thereby expanding Riverside Park.^[2] After the project's completion in 1934, it spanned thirteen miles, from Spuyton Duyvil (Manhattan's northern tip) to Spring Street. The project, which was approved by the federal Interstate Commerce Commission, eliminated one hundred and five railroad crossings at streets in Manhattan and added thirty-two acres to Riverside Park.

A key portion of the West Side Improvement was the creation of the elevated viaduct or High Line, which would carry the freight trains above street level from the 30th Street Rail Yards to what was then a new freight station called Saint John's Park between Clarkson and Charlton Streets just north of the entrance to the Holland Tunnel. The High Line ran through and alongside warehouses on Manhattan's West Side. At 30th Street the viaduct loops around the 30th Street Rail Yard, where it then connected, by means of a cut or subway, to tracks leading from 35th Street uptown.^[3] The High Line was owned by New York Central Railroad, which (according to New York Central Railroad's current successor, CSX) originally owned the property over and through which, the High Line ran. During the latter decades of the 1900s, the land was sold off. CSX now holds easements from the State, the City, the Convention Center Development Corporation, the MTA and all of the private property owners who now own the property under and through which the elevated tracks run.^[4]

The improvement in New York's infrastructure and the increase use of trucking to deliver goods led to the decline of the High Line. In the 1960s, the southernmost portion of the Highline, from the freight terminal (at Clarkson Street) to Bank Street, was demolished. In 1980, freight train operations on the High Line ceased and use of the structure ceased. In the early 1990s,

Conrail, the successor to New York Central Railroad, sold the portion of the High Line from Bank Street to Gansevoort Street to a development company which demolished that strip.^[5]

CURRENT STATUS OF THE HIGH LINE

In 1992, twelve years after the last train traveled across the train tracks of the High Line, the Interstate Commerce Commission (the “ICC”, predecessor to the STB for purposes of jurisdiction over railroad lines and specifically for purposes of abandonment under applicable federal laws),^[6] issued an order granting a conditional certificate of demolition for the High Line. The order was sought by property owners who own property through, and under which, the High Line runs. Conrail opposed the order claiming that it was pursuing plans to use the High Line to carry waste. The City of New York, the MTA, the State Department of Transportation and the New York Convention Center Development Corporation supported the property owners’ application, and were prepared to use state condemnation proceedings to condemn the structure.

^[7] The ICC’s role in such proceedings is to preserve and promote continued rail service where the carrier has expressed desire to continue operations and has taken reasonable steps to do so. However, the ICC found Conrail’s plans for hauling trash impracticable and believed that its primary motivation for opposing the abandonment application was its unwillingness to bear the costs of demolition at a time when it was having financial difficulties. Thus, the ICC ruled in favor of the property owners by finding that there was virtually no possibility of service being restored on the High Line. Because Conrail believed the costs of demolition to be significantly greater than the property owners’ estimate, the ICC conditioned the issuance of a certificate of abandonment on the property owners’ posting of security to cover any costs of demolition in excess of \$7 million as well as their obtaining a demolition offer or negotiating other terms with

Conrail.^[8] However, it does not appear that the property owners ever posted the security.^[9] In 1999, the MTA and Convention Center Development Corporation and Conrail filed summary judgment motions in a pending State Court case. The State authorities/property owners attempted to secure an order declaring Conrail's easements over their property abandoned and forcing Conrail to demolish the High Line. The court found that because the security conditions of the 1992 ICC order had not been met and no final certificate of abandonment had been issued, that the ICC still retained jurisdiction and the court could not declare the easements abandoned or order demolition.^[10] According to Conrail's successor, CSX^[11], subsequent to the decision, it agreed to enter into negotiations with the property owners on a Voluntary Abandonment Agreement, in which every property owner (including the City, State, MTA and Convention Center Development Corporation) would have to agree to terms of indemnification. A draft of such an agreement is in the process of being negotiated but has not been finalized.

According to a *New York Times* report, CSX has portrayed its main interest in concluding the negotiations with the property owners as enabling the company to stop paying taxes on, and spending money to maintain, unused property, which CSX estimates costs it approximately \$400,000 per year. According to the *New York Times* report, many property owners pushing for demolition, cite vandalism, safety and other blighting effects of the High Line on their property as the reason for their desire to demolish the structure. According to that report, the group of organized property owners, the Chelsea Property Owners Alliance, has already signed a demolition contract for \$6.6 million for the demolition of the structure. However, that report also states that CSX is also speaking to those who wish to see the High Line preserved and used as public space. While CSX appears to want the issue resolved in order to relieve its shareholders of the current financial burdens, the company does not appear to have an agenda it is determined to

follow in order to achieve its aims. [\[12\]](#)

PRESERVING THE HIGHLINE:

In 1999 upon inheriting the High Line, CSX commissioned a study by the Regional Plan Association (RPA) to evaluate alternative transportation uses for the High Line. That study recommended that the option of using the High Line as a greenway – a public corridor with space for pedestrians, bicycles and even possibly a light rail system – “should continue to receive strong consideration.” [\[13\]](#) RPA’s recommendation involved two land use concepts for developing the High Line into a greenway. The first concept, envisions development as a continuation of activities taking place in establishments on 10th Avenue. Thus, for example, a restaurant on the Avenue could open a café on the High Line above, or a gallery could develop a sculpture garden. The second concept, “a street in the air,” envisions a corridor lined with cafes, shops, galleries, etc. According to the study, development could proceed in one or both manners.

[\[14\]](#)

At about the time that RPA was concluding that a preserving the High Line for use as a greenway should be seriously considered, a not-for profit group called Friends of the High Line ("FHL") was being organized. According to FHL, the organization was formed two years ago by two community residents after media reports indicated that the demolition of the High Line was imminent. The organization's goal is to transform the High Line into a unique recreational facility that can be used by all residents and visitors of the City. FHL is seeking a Certificate of Interim Trail Use from the STB, which could result in the preservation and use of the High Line as a public trail pursuant to federal law.

The National Trails System Act ("Act"), passed by Congress in 1983, is intended to preserve

outdoor areas and trails for the ever-increasing outdoor recreation needs of an expanding population.^[15] The Act designates various trails as National Scenic and National Historic Trails, encourages the establishment of these trails and provides a mechanism in which Federal, State and local agencies, as well as private interests, can seek to designate new trails.^[16] In adopting the Act, Congress specifically stated that its goal was to encourage the creation and maintenance of outdoor trails in settings which include metropolitan and urban areas.

According to the Act, a State, political subdivision, or qualified private organization can convert unused rails to scenic trails, while preserving the right-of-way for a conversion back to rail use. A transfer of the rail line pursuant to this Act to a state or local government or qualified private organization would bar any abandonment or discontinuance which is inconsistent with the interim use (*i.e.* demolition).^[17] "Railbanking" has been used to produce more than 10,000 miles of rail-trails across the country. One urban area in which rail lines have been "railbanked" under the program and turned into trails for recreational use is Pittsburgh. In that city, rail lines formerly used in connection with the steel industry have been turned into recreational public trails. One such line, located in Pittsburgh's downtown area has been credited with aiding the downtown revitalization. In addition, another trail over an abandoned railroad bridge has been turned into a trail for bicyclists, joggers and skaters.^[18]

According to the *New York Times* report, FHL's plans at present are lacking in specifics because they believe any ultimate design would have to be shaped by community input. If turned into a trail, the High Line would be a second-story promenade which FHL believes would cost about \$40 million to construct and take about a decade.^[19] FHL believes that this would preserve open space in Chelsea, help foster appropriate development of the area, and provide a pedestrian link from the Village to whatever development takes place at the site of the 30th Street

Rail Yard. FHL points to the Promenade Plantee in Paris as its paradigm.^[20] This elevated railway in Paris has been turned into a greenway at a cost of \$187 million, which cost was shared between the City of Paris (50%), a private development company (25%) and the French National Railroad Company (25%). According to a recent *Daily News* column, this project has revitalized a working class neighborhood, spurring the development of housing, office space and retail markets including a multitude of arts and crafts businesses.^[21] According to FHL, the \$187 million figure includes the cost of housing that was constructed as part of the promenade, and that the cost of the greenway itself was a fraction of the total cost. FHL has recently received a fellowship from the Design Trust for Public Space, a non-profit that provides opportunities for design professionals to work with the public sector on planning and design projects in New York City. The fellowship will allow the Design Trust to work with FHL on a design for a High Line promenade.^[22]

Property owners led by the Chelsea Property Owners alliance believe that the FHL is seriously underestimating the cost of such an undertaking. The director of the developer of the Chelsea Market at 10th Avenue and 15th Street believes that \$100 million would not even be enough, and that on top of the development costs, security costs for such a greenway would be more than \$10 million per year.^[23] In addition, the *New York Times* report quotes the City's City Planning Commissioner as raising concerns that the obstacles to achieving FHL's vision are "profound", and expressing doubts as to the City's ability or willingness to finance such a project with the Hudson River Park project underway in the vicinity.^[24]

RES. NO. 1747:

Resolution 1747 calls upon the Governor, the Mayor and the MTA to take all necessary steps to obtain a certificate of Interim Trail Use from the STB so that the High Line can be “railbanked” pursuant to the federal “rails to trails” program. The Resolution cites portions of the federal program’s intent that it was created to “provide for the ever-increasing outdoor recreation needs of an expanding population and... to promote the preservation of, public access to... outdoor areas... primarily near the urban areas of the Nation.” The Resolution also notes that even if the property owners and CSX were to agree, and the STB were to grant a final demolition order, State and Local environmental and land use reviews would have to be undertaken which could result in an inability to demolish the High Line. Finally, the Resolution states that since 1992 when the STB issued the conditional order of demolition, the west Chelsea neighborhood in which the High Line is located has undergone significant changes with respect to zoning, development, transportation, traffic and open space/recreation needs, making the preservation and use of the High Line as public space a more desirable option.

[1] New York Central Lines West Side Improvement, Initial Stage Dedicated, June 28, 1934, and “Which Track for the High Line,” *The New York Times*, December 31, 2000.

[2] *Ibid.*

[3] New York Central Lines West Side Improvement, Initial Stage Dedicated, June 28, 1934, and “Which Track for the High Line,” *The New York Times*, December 31, 2000.

[4] Draft Agreement For Voluntary Abandonment and for Charitable Contribution, dated January 25, 2001.

[5] “Which Track for the High Line,” *The New York Times*, December 31, 2000.

[6] The ICC was abolished pursuant to the ICC Termination Act and its functions turned over to the STB , 49 USC §§701-2; the STB’s general jurisdiction is set out in 49 USC §10501 and the procedure for application to abandon or discontinue is contained in 49 USC §10903.

[7] From the decision, it appears that the City’s position in support of the application to allow abandonment of the High Line was based upon its belief that the line could not be used to haul freight again given the development of the area, and its lack of support for Conrail’s proposal to haul waste over the line. The MTA argued that the presence of the High Line impeded its ability to expand commuter service, the State argued that the High Line was inconsistent with the areas future public transit service and posed a safety hazard because of its dilapidated condition. Finally, the

Convention Center Development Corp. argued that the High Line was the single most important factor impeding the redevelopment of the Convention Center area because it runs over an entire block of Convention Center Property and prevents its use for parking. Interstate Commerce Commission, *Chelsea Property Owners – Abandonment – Portion of the Consolidated Rail Corporation’s West 30th Street Secondary Track in New York, NY*, 8 I.C.C.2d 773, (1992).

[8] *Ibid.*

[9] *Consolidated Rail Corp. v. Midtown Development Limited Partnership et al.*, Index No. 25678 (S.Ct. NY Cnty. 1992)

[10] *Ibid.*

[11] CSX and Norfolk Southern Railroad took over Conrail in the late 1990s, inheriting both the High Line (which was allocated to CSX) as well as the conditional demolition order. “Which Track for the High Line,” *The New York Times*, December 31, 2000.

[12] “Which Track for the High Line,” *The New York Times*, December 31, 2000.

[13] “What to do with the High Line?,” Final Draft Report of the Regional Plan Association, June 21, 1999; and “Which Track for the High Line,” *The New York Times*, December 31, 2000.

[14] “What to do with the High Line?,” Final Draft Report of the Regional Plan Association, June 21, 1999.

[15] National Trails System Act, 16 U.S.C. §1241.

[16] 16 U.S.C. §§1244, 1247(b)(c).

[17] 16 U.S.C. §1247(d).

[18] “Rails to Trails; A Boon to City Life,” *The Post-Gazette.com*, June 20, 1999; “Signs of Changing Times; Riverfront Trail Markers Point the Way to Greener Future,” *Pittsburgh Post-Gazette*, June 22, 1999.

[19] According to FHL, it estimates the cost at between \$40 to \$60 million, excluding the cost of any light rail option.

[20] “Which Track for the High Line,” *The New York Times*, December 31, 2000.

[21] “Sky’s the limit for West Side,” *Daily News*, February 18, 2001.

[22] Letter from Counsel to FHL to Charles A. Gargano, Chairman, Empire State Development Corp., February 16, 2001, and “Which Track for the High Line,” *The New York Times*, December 31, 2000.

[23] “Which Track for the High Line,” *The New York Times*, December 31, 2000.

[24] *Ibid.*