

An Evaluation of New York's Full Freight Access Program and Harlem River Intermodal Rail Yard Project

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An Evaluation of New York's Full Freight Access Program and Harlem River Intermodal Rail Yard Project¹

Introduction

New York City and the adjacent region east of the Hudson River have the lowest rate of rail freight use in the country. The region's consequent dependence on trucking has imposed significant penalties: delays due to traffic congestion cost the region's businesses and consumers billions of dollars a year² and increased levels of airborne emissions produce unparalleled rates of asthma and other respiratory ailments in the corridors closest to major highways.

This paper provides an assessment of the most significant effort to improve rail freight access to the region since World War II, the New York State Department of Transportation's Full Freight Access Program. Planning for this program began in 1975, and construction was substantially completed in 1997. It involved the expenditure of over \$300 million dollars in public funds to upgrade rail routes into New York City from the north and west. Now that the Program has been in partial operation for nearly a decade, it is be an appropriate time to take stock of what has been accomplished and of what remains to be done.

Since this is scarcely the first review of the Program's history, there are few surprises in its findings. Prior reports (including audits by the New York State and New York City comptrollers and many newspapers and magazine articles)³ have documented obstacles that have impeded the Full Freight Access Program's full development. At every stage of its implementation, it has run behind schedule and over budget, and it has failed to meet many of the near-term objectives established for it. Nonetheless, the Program finally did succeed in producing infrastructural facilities—most notably the north-south trackage paralleling the east shore of the Hudson River, from Selkirk in the north to the trestle-borne Oak Point Link in the South Bronx—without which rail freight in New York City and Long Island would likely have almost entirely disappeared and without which the future expansion of rail freight use east of the Hudson would be considerably more difficult.

It is not difficult to identify decisions and events throughout the Program's history that have adversely affected its trajectory. Their cumulative effect has been to make the Program's facilities much less used than they might have been, thereby reducing the Program's benefit to New York's economy and environment. The question now is whether we can profit from an understanding of the Program's history to make more productive use of the infrastructural assets it has created or enhanced, and to more successfully implement future public infrastructural projects of this kind. The following analysis of the checkered history of the Full Freight Access Program, then, is intended to provide a preliminary understanding that might be used to frame suggestions for answering the question "Where do we go from here?"

The report that follows is based on a review of primary and secondary sources, interviews with individuals involved with the program, and attendance at meetings where issues related to the program have been discussed. Part I provides an overview of the Program's history, from its origins through its development. Part II describes operations at the Harlem River Yard since inception of the lease with Harlem River Yard Ventures, Inc., as well as operations on the overall

Full Freight Access network. Part III analyzes issues affecting current and future potential demand at the Harlem River Yard, with particular emphasis on possible use by the Hunts Point Market; it includes an account of a failed pilot program intended to deliver produce to the Market in the Summer of 2003. Part IV attempts to outline some of the reasons for the Full Freight Access Program's failure to achieve its original objectives. Part V represents an attempt to formulate some preliminary recommendations to answer the question "Where do we go from here?"

I. Creating the Full Freight Access Program: Its Historical Origins and Development

A. Origins

Only one railroad—the former New York Central—ever had direct rail freight access to the city's Manhattan core. Although remnants of its Manhattan trackage and rail yards still exist, due to the collapse of the Penn Central system and the subsequent removal of tracks and conversion of yards to other uses, there have been no rail freight shipments to Manhattan since 1982.⁴ The old New York Central's two routes to the city from the west crossed the Hudson River via a bridge at Castleton-on-Hudson (opposite the Selkirk Yards, near Albany). One then paralleled the river south through the Bronx, crossed the Harlem River at Spuyten Duyvel and headed directly to 59th Street on Manhattan's West Side. The other line headed farther east, then ran down the extreme eastern border of the state to Putnam Junction, south of Brewster, and from there over the Putnam Division to Highbridge in the Bronx. This secondary line provided a higher clearance for larger cars than the bridges on the Hudson Line tracks allowed. The Central lines joined tracks from the northeast owned and operated by the New Haven Railroad, via a New York and Harlem branch which ran from north of Mott Haven across the Bronx to the East River. The New Haven railroad also entered the city from the north. It had yards at Oak Point and Harlem River in the South Bronx. With the Pennsylvania and Long Island Railroads, it built the New York Connecting Railroad, which crossed the East River at Hell Gate and ran across Queens and Brooklyn to a yard in Bay Ridge. There the three railroads operated a high capacity rail car float system that connected to numerous points along the New Jersey waterfront. The Bay Ridge-to-New Jersey operation saw over a thousand freight cars a day move across the harbor. In its heyday—in the case of the Central's freight line to Manhattan (better known, at its southern extremities as the "High Line"), from its construction in 1934 through World War II, and in the case of the Brooklyn/Queens lines, from the early teens of the last century through 1962—this rail system carried the majority of the freight that entered or left the city and supported a thriving industrial base in the four boroughs through which it passed.

When the corporation into which the Central and the Pennsylvania/New Haven lines had merged went bankrupt in 1970, most of the Penn Central's track was conveyed to its successor corporation, Conrail. East of the Hudson, however, where its passenger services were taken over by public agencies, Penn Central's trackage (with the exception of the High Line) became publicly owned.⁵ Many of the railroad's property holdings, including its freight yards in Manhattan, the Bronx, and Brooklyn, were put up for sale. The Jacob Javits Convention Center was developed on a portion of its former 30th Street Yards, while the remainder was converted to use by the Long Island Railroad for storage of commuter cars. After years of ownership changes and development delays, the Trump Organization was granted the right to develop the entirety of

its former 60th Street Yards—the last piece of undeveloped property in Manhattan suitable for rail freight use—for high-rise residential development.

The Penn Central's collapse reflected, in part, the state of rail freight in the northeast. A variety of factors, including the growth of the trucking industry, the development of the interstate highway system, the expansion of suburban development, and changes in manufacturing, contributed to this general state of affairs. But New York City's particularly severe decline was also due to the fact that public monies were invested by the Port Authority in vehicular bridges and tunnels rather than in rail crossings and that the Port of New York shifted to the New Jersey side of the harbor. In 1962, the Penn Central predecessor New Haven Railroad (which was already in bankruptcy) significantly downgraded its cross-harbor rail freight service by abandoning the 65th Street Yard in Brooklyn as well as the electric-traction system it had used east of the Hudson. The consequence was that industries dependent on regularly scheduled rail freight services were left without predictable deliveries or pickups. This in turn contributed to the failure or displacement of these industries, which caused a further spiral of decline in rail revenues and service.*

Adding to the overall contraction of rail freight service to New York were technological developments affecting rail freight service throughout the rest of the country. The advent of containerization, which in part lay behind the shift in shipping to the New Jersey side of the harbor, also affected the railroad industry. The use of trailers-on-flatcars (TOFC, "toff-see"), in the early years of railroad containerization, seemed likely to become the dominant form of intermodal freight.^{†6} The bridges and other structures over the track east of the Hudson had been built to provide a clearance above the rails of 15' 6", a height sufficient to safely allow passage of standard railroad boxcars. TOFC cars, however, stood at 17'3" above the rails, requiring, with a safety factor to account for dynamic movements, a clearance of 17'6". While railroads elsewhere in the country quickly improved their lines' overhead clearance, modifying the line along the Hudson, which by now provided the only freight access to the city (other than the all-but-abandoned float system), because it ran through relatively densely settled and expensive suburban property, had many bridge crossings and adjacent buildings, and was largely owned by the state, was deemed too dauntingly costly. Continuing clearance obstructions on the line from Selkirk to the South Bronx therefore prevented the type of rail car that was becoming the industry standard (or so it seemed) from entering New York City.

The United States suffered a severe recession during the 1970s which was exacerbated by the OPEC-induced oil shortage of 1973. New York City's fiscal condition was worse than that of the country's as a whole. In 1975, under the threat of municipal bankruptcy, the newly created Emergency Financial Control Board assumed control over New York City's finances. The City and State desperately sought to encourage economic development, particularly of the type that would produce manufacturing jobs for the city's large population of unemployed blue-collar and immigrant workers. The 96-acre Harlem River Yard, because of its uniquely large

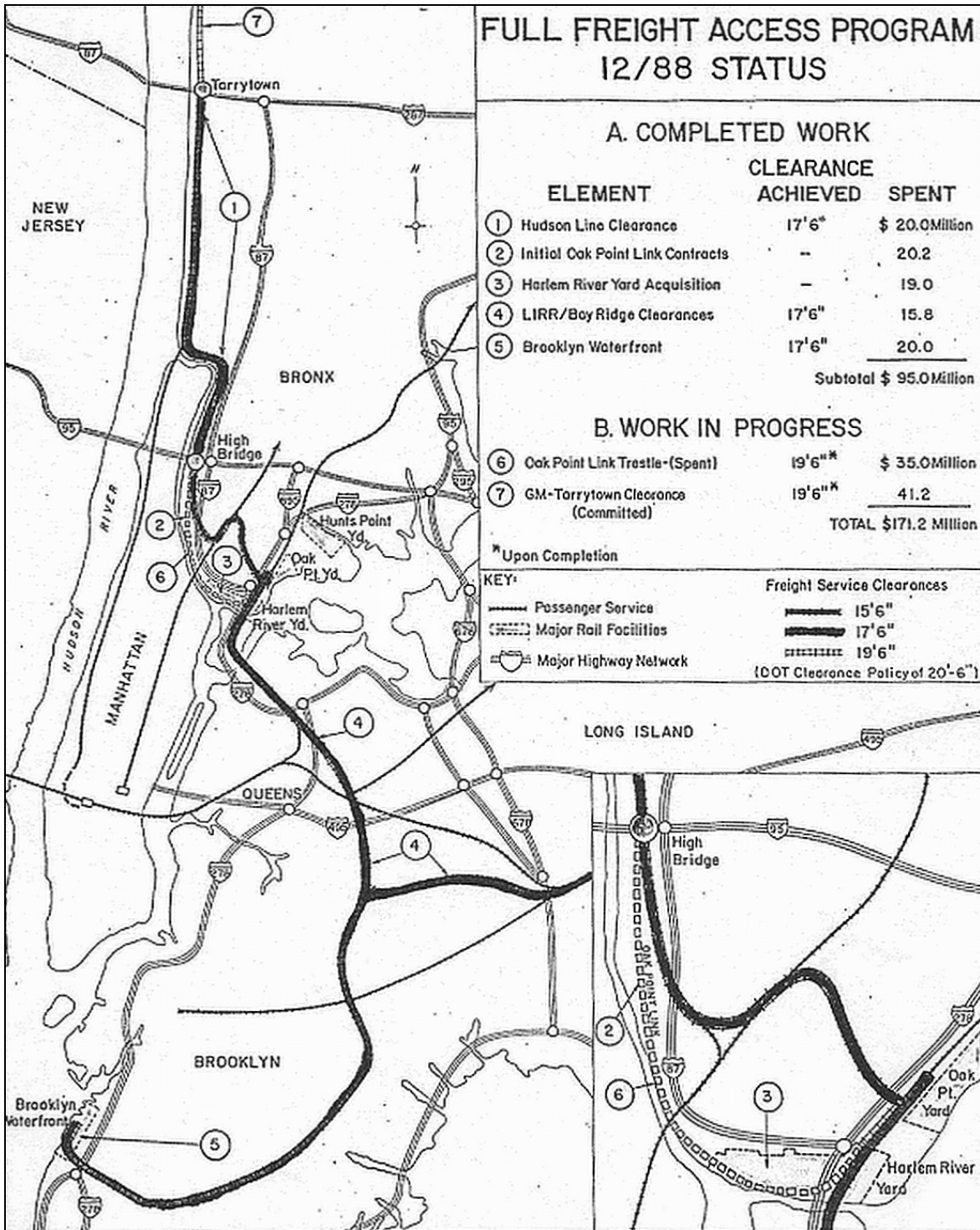
* An additional feature associated with Penn Central's bankruptcy and the collapse of the northeastern rail system was that many of the railroads' urban properties were not included in the new Conrail system and were instead left in the estates of the bankrupt companies. These were put on the market and many were sold for non-rail purposes. One of the few exceptions was the Harlem River Yard, which was condemned by the State of New York.

† Trailers-on-flatcars began to be widely used before containers were.

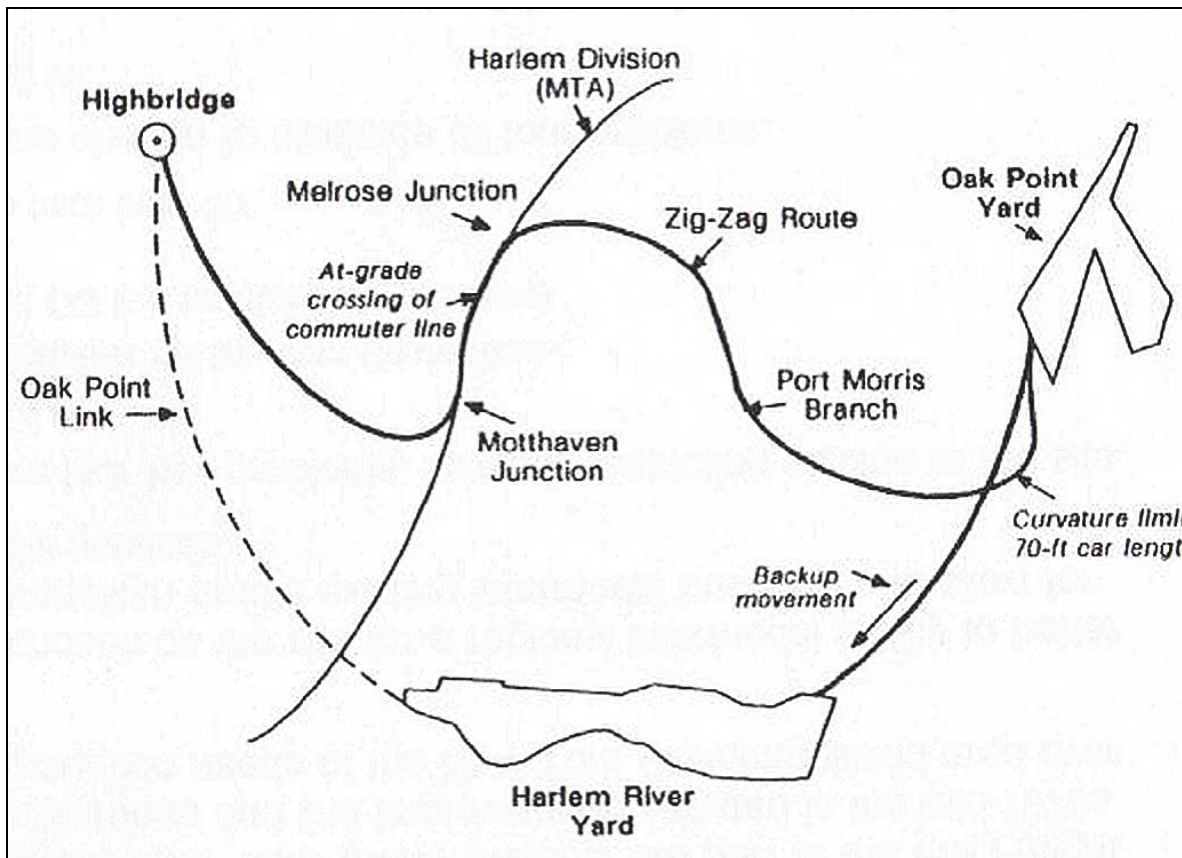
size and central location, appeared to offer great potential for the development of manufacturing industries. As proposals for various types of industrial-park schemes continued to emerge, New York City—in defiance of State planners who argued for renewed rail use of the site—remained committed to a future industrial use for the property.⁷

In its effort to identify and address the causes for the precipitous decline in rail freight use in the downstate region, the New York State Department of Transportation (under the leadership of commissioners Raymond T. Schuler and William Hennessy and railroad administrator Louis Rossi) focused on the inability of the rail system east of the Hudson to allow the use of TOFC equipment. Initially, in view of the significant cost of modifying the region's rail freight infrastructure to accommodate this equipment (and given the State's highly constrained financial circumstances), the State Department of Transportation and City economic development and rail freight officials proposed using specially designed low-slung equipment that could pass beneath the bridges along the line from Selkirk to New York and on geographic Long Island.⁸ Within a matter of months, however, Rossi decided to pursue a more aggressive course. When fully designed, his "Full Freight Access Program" would include six major components. Together, they would allow standard TOFC equipment to be used in New York City.

The first element was removing the clearance restrictions on the line from Selkirk to the Bronx by raising 18 bridges to 17'6"⁹ (this height was later changed to 19'6"—which is 12" too short to provide enough clearance for double-stacked containers.) The second was building a new 1.9 mile section of track—the "Oak Point Link"—on trestles along the shoreline from the Highbridge Yard to the Harlem River Yard. The Oak Point Link would make it possible to avoid the "zig-zag route" that crossed three of the world's busiest passenger tracks,¹⁰ limiting freight movements to a few late-night/early-morning hours and requiring a double-back reverse movement for entering the Harlem River Yard. It also included acquiring the 65th Street Floatbridge Yard in Bay Ridge, removing clearance restrictions at 23 bridges along the Bay Ridge Line through Brooklyn and Queens and upgrading its tracks, removing clearance restrictions in Long Island for the LIRR by lowering track and raising 3 bridges, and developing facilities for handling combined rail-truck ("RoadRailer"¹¹) equipment at the Highbridge Yard. The centerpiece of the program—its primary destination and focus—was the Harlem River Yards, which Rossi's group had identified as operationally superior, for reasons of size and configuration, to the nearby Highbridge or Oak Point Yards. Market analyses by Andrews & Clark (the consultant for the Yard's environmental impact study) projected that Harlem River would need to be able to accommodate 270 flatcars per day in 2000, handling ("lifting") 180,000 trailers per year.¹² The project, its designers calculated, would produce industrial growth due to shippers' savings on the order of \$100 million per year, generating up to 23,175 jobs in the region and up to \$18,026,000 in annual tax revenue for the City of New York.¹³ The total cost of the program was projected at \$135 million.¹⁴ Its projected completion date was 1985.



Status of the Full Freight Access Program in December 1988¹⁵



Map from Highbridge Yard to Harlem River Yard¹⁶

B. Building—and Not Building

With \$60.5 million provided by State transportation bond acts passed in 1974 and 1979, \$38.75 million in Port Authority funding, and \$21.5 from City funds, work on raising bridge heights and lowering track to remove clearance obstructions began in 1980 at the Selkirk end of the Hudson line.¹⁷ By 1983, clearances of 18' 0" had been achieved as far south as the General Motors plant at Tarrytown. In 1984, after approval of a Final Environmental Impact Statement produced by the State Department of Transportation and the U.S. Coast Guard, a contract for building the new Oak Point Link was given to a consortium led by the Schiavone Construction Company.¹⁸ But before work began a subsidiary company was indicted for fraud on public contracts (the indictment involved former Labor Secretary Ray O'Donovan) and—though the charges were later dismissed—the governor's office ruled that the firm was disqualified from performing the work.¹⁹ A new contract was awarded to Morrison Knudsen. Work under this contract began in 1985.²⁰

While construction was getting underway on the Oak Point Link, significant developments were taking place concerning the region's "monopoly" freight railroad, Conrail. In 1981 the Reagan administration received congressional approval to offer the federal government's 85% share of Conrail for sale in 1984.²¹ After evaluating the six proposals received by the bid deadline, Transportation Secretary Elizabeth Dole narrowed the list to three

bidders in September, 1984, and in February, 1985—in a move strongly opposed by the labor unions whose members owned the remaining 15% of Conrail—announced her department’s support for the Norfolk-Southern Corporation’s bid.²² The State then initiated negotiations with Norfolk-Southern to see what financial and service commitments could be obtained from the railroad in return for the State’s support of its Conrail bid. Among the concessions memorialized in their memorandum of agreement was a commitment to operate the Harlem River Yard as an intermodal facility and to spend \$20 million to provide the infrastructure that this would require.²³ With this agreement (signed in July, 1985) came the State’s formal support for the Norfolk-Southern tender.²⁴ New Jersey announced its support for Norfolk-Southern six months later—just before its senior senator, Frank Lautenberg, announced his support for another bidder, a banking consortium. New York City remained neutral, but the Port Authority, expressing concern that the Virginia-based company would have an incentive to draw shipping business away from the Port of New York/New Jersey, opposed the Norfolk-Southern bid.²⁵ Despite Senate approval of the proposed purchase in February, 1986, it soon became clear that—even with an increase in Norfolk-Southern’s bid from \$1.2 billion to \$1.9 billion—the proposal would not receive House approval.²⁶ By early summer it was apparent that the deal would fail, and Norfolk-Southern formally withdrew its bid in August.²⁷

This shifting playing field had repercussions inside the State Department of Transportation. On assuming office, Governor Mario Cuomo had replaced a commissioner who strongly supported rail freight development (William Hennessy) with a somewhat less-enthusiastic commissioner (James Larocca). He then jettisoned Larocca in favor of an anti-railfreight commissioner (Franklin White) as his re-election campaign began. As the gubernatorial campaign approached the final stretch—and the Norfolk-Southern bid was collapsing—a contract for beginning the construction of the Harlem River intermodal terminal was due to be let. In mid-June, an internal anonymous document labeled “Decision Paper: Harlem River Yard,” laid out options for the future of the yard.²⁸ Noting that the yard was scheduled to be completed by the time the Oak Point Link was finished at the end of 1987—“This has been a public commitment of two Governors, three Commissioners, the Port Authority, the City of New York, many legislators and expected by users, members of the Metro-North Freight Users and Freight Users Association of New York and thousands of others”—it outlined three alternatives: letting the contract in July as scheduled, postponing it, or canceling the project. The memorandum recommended continuing to build the yard on schedule. It noted that a three-month delay in contract letting would produce a nine-month delay in the overall project, which would increase total costs by an estimated 8% as well as threaten the project’s tax-exempt bond financing. Keeping the project on schedule, on the other hand, would meet the public commitments made, meet the statewide transportation plan’s goals, produce public benefits for over half the state’s population as soon as possible, and keep the Hunts Point Terminal Market in New York. Delaying the project until an operating agreement was signed with Conrail, while it might produce a “perceived advantage to further negotiate with Conrail” might “result in concessions by the State because it would re-interject New York City agencies (and outside parties) into the process, which we had successfully excluded” while also generating “tenant complaints” and “continued pressure for other uses of property.” Simply canceling the project—not spending the already-approved \$20 million appropriation—would cost the state over \$100 million annually in higher shipping costs and would be “very probably a deciding factor in further business movement to areas where full rail intermodal services are available.”

The memorandum concluded with strong arguments in favor of building the yard. It pointed out that

While we do not feel we are expertly qualified to discuss real property value in the Bronx, our past experience tends to suggest that great pressure will be put upon the Department to give up the property with little or no monetary recovery if the project does not proceed.

It noted that

Given the continuing rapid growth (13.6% Annual Rate this year), of intermodal services and the development of many new services and operators, it is certain that private operators are interested in the Yard. We have had discussions with several existing operators, such as Mi-Jack Corp., about operating the Yard on a lease basis. An important distinction here is that these are operators, not funding or construction firms, and having the physical facilities built or under construction is essential if negotiations are to be successful.

It also pointed out that whether or not the Norfolk-Southern's bid for Conrail succeeded, the company's vote of confidence in the yard, along with that of the State Economic Development Corporation, argued for proceeding to use the authorized funds to construct the yard, as did the potential for developing "LTL (less than truckload) terminals near the Yard as has occurred in New Jersey."

In summary, many options still exist to realize the transportation goal of having successful intermodal operations at Harlem River Yard as a part of the overall regional service. Proceeding with Yard construction is virtually essential to pursuing those options.

That this memo was written suggests that there were conflicting views about the Yard within the Department. It therefore prefigures the major shift in direction that lay ahead. As the memo writers had recommended, the initial contract was indeed let soon thereafter, but—up to the present—this was the last work that the State would perform at the Yard in fulfillment of its promise to develop an intermodal facility there. And although the contract exceeded its budget (\$11m instead of a projected \$6.7m), considerably less was actually accomplished than the original scope specified.²⁹ Immediately after this final preliminary contract was let, the managers who had been directing the rail program were replaced.³⁰

Under new management, a change in direction for the program began immediately. This change, however, was not communicated to the public nor did elected officials or others outside the department become aware that development of the Yard had been put on hold until the announcement, a year and a half later, that construction of the Oak Point Link had been halted. In December, 1987, after \$81 million³¹ had been spent on the link, the contractor reported finding previously unknown subsoil geological conditions that prevented continuation of the project on the basis of the existing design or budget. In view of this impasse, the State

Department of Transportation released Morrison Knudsen from the contract without prejudice.³² Department of Transportation officials estimated that completing the job would cost \$50 million beyond the project's allocated budget. Given the State's fiscal difficulties, it was not clear when, if ever, these additional funds might become available.

Although the Request for Proposals had been issued in June, 1987—before any public announcement of construction difficulties with the Link—it was not until 1988 that the Department of Transportation announced that, in view of the uncertainty as to whether the Oak Point Link would be completed, the lack of available funds for infrastructural improvements needed to make the Harlem River Yard operational as an intermodal facility, and the desire not to leave the 96-acre site unused for an indeterminate time period, it had commissioned a new market study from Temple, Barker & Sloane (TBS). TBS's assignment, given a three-to-five-year planning horizon and the assumption that the Oak Point Link would not be built, was to identify market-driven uses for the Harlem River Yard that would be capable of attracting the private investment needed to make it into an operational facility.³³

Under these and other planning constraints,³⁴ TBS projected market demand for the facility in the first year of operation at 45,000 lifts plus 16,500 carloads. They projected that this would increase to 132,300 lifts in Year 4, its first year of full-capacity operations, even though, without the Oak Point Link, there could be no TOFCs and hence nothing to lift. The study also recommended that the facility be developed as an “intermodal park” (“analogous to a multipurpose industrial park or a port”) under the management control of a public entity such as the Port Authority of New York and New Jersey.³⁵

The Department Transportation issued a Request for Proposals (RFP) for privatizing the Harlem River Yards in June, 1989. The RFP specified that proposers would be “required to develop and propose leasing and fiscal arrangements that provide reasonable return to the State while encouraging maximum transportation use of the entire Harlem River Yard facility.”³⁶ Four bidders responded to the RFP: Conrail; the new operator of the cross-harbor rail float operation, the Cross-Harbor Railroad; Waste Management; and a consortium headed by a warehouse-development company, the Galesi Group, which also included the Hunts Point Terminal Market Cooperative and a national waste-management firm, Browning-Ferris Industries. Although the State was in charge of the procurement, since the City and the Port Authority had also contributed funding to the Full Freight project, City and Authority staff participated in the review of the proposals: five of the voting members on the committee were Department of Transportation staff; the Port Authority and New York City Department of Ports and Trade each had one voting member. The three reviewing agencies had somewhat conflicting views of the proposers. The City ranked the Cross-Harbor Railroad first. The State and the Port Authority chose the Galesi Group, a diversified holding company with real estate roots, which had developed shopping centers, industrial parks, and warehousing and distribution centers in upstate New York, often on former government property.³⁷ Although the City participants in the review process had expressed reservations about the Galesi Group (as they had earlier expressed reservations about issuing an RFP based on the TBS study in the first place),³⁸ they ultimately concurred in the State's selection, but provided specific recommendations about how the contract with the Galesi Group should be structured, e.g., sliding rent schedules to provide economic incentives for maximizing intermodal rail freight usage.³⁹ (These recommendations for

producing leverage to ensure rail use were similar to those provided to the State by TBS's principal in charge of the TBS study.)⁴⁰

Conrail's response proposed a combination of recyclable and solid waste transfer; bulk transfer; cross-dock, short-term warehousing; construction materials transfer; common support facilities; and a possible terminal for RoadRailer cars.⁴¹ It was rejected as unresponsive to the RFP because it did not include an intermodal (i.e., trailer-on-flatcar or container-on-flatcar) component.⁴² The other proposals involved a combination of waste-handling and intermodal transfer. The Galesi Group proposal specified a 28-acre intermodal yard capable of handling 130,000 lifts a year, warehousing, a paper recycling plant, and a waste transfer facility.

During the course of contract negotiations the Galesi Group requested modifications that represented significant changes in direction from the original program. The most important of these was lengthening the lease term from 20 years to 99. This request was justified on the grounds that the Group's Harlem River Yard Ventures subsidiary (HRYV) was committing to invest "in excess of \$100,000,000" on the facility.⁴³ Another requested change from the RFP was for the State to pay for the environmental cleanup of the site (though HRYV would perform the work). Another requested change was the ability to use public funds for improvements. Despite the finding by DOT staff and by consultants hired by DOT to advise them on the negotiations that these and other conditions in the lease drafted by HRYV were overly favorable to the lessee, these terms were incorporated into the lease.⁴⁴

The lease agreement was signed in August, 1991 and approved by the State Comptroller in September.⁴⁵ The lease conditions specified that 28 acres of the facility would be reserved for intermodal use and that the intermodal facility would have two parallel working tracks, each 2,800 feet in length, and a throughput capacity of 100,000 containers or trailers a year. DOT was to receive annual rents equal to 6% of all gross revenues generated at the premises, with a minimum annual rent, starting in Year 6, of \$400,000, with annual increases thereafter.

II. Harlem River Yard Venture Operations Since Lease Inception

A. Implemented and Planned Developments

Although the Department of Transportation completed in early 2005 its first audit of all revenues and expenditures at the Harlem River Yard since the signing of the HRYV agreement, DOT denied a Freedom of Information Act request for this audit and denied an appeal of this denial on the grounds that providing this information would "impair present or imminent contract award."⁴⁶ The DOT provided no indication of what "present or imminent contract award" might be involved that would affect a 99-year lease approved in 1991. Nonetheless it is clear that the City, State, and Port Authority have invested or committed funding since 1991 that goes considerably beyond the commitments made in the lease agreement and that HRYV has invested less than was specified in the lease agreement.

Although complete financial information is not available, this much is known about the developments that have taken place at the yard:

In May, 1992, HRYV submitted, a land use plan for the Yard, which included a waste transfer facility, a paper recycling plant, warehousing, and 28 acres of intermodal operations.

To consider the effects that the new Oak Point Link might have for the Yard in terms of stimulating demand, and “to ensure the success of the project and to assist in the marketing of the Harlem River Yard,” the DOT initiated a new market study in February, 1993. It would update the TBS study that specifically had *not* taken into consideration the effect of the Link. The study’s advisory committee was composed of all of the funding agencies and operating entities most closely involved in the Yard: the Department of Transportation, HRYV, the Port Authority, the New York City Economic Development Commission, Conrail, the Long Island Rail Road, and the Cross Harbor Railroad. The object of the first phase of the study, to be conducted by Transmode, Inc., was to “determine the extent of the market and to make specific marketing recommendations.” The object of the second phase of the marketing plan was implementing “a marketing strategy designed to concentrate on attracting outside shippers by initiating transportation services that will make the Harlem River Yard and the Link attractive to potential freight users.”⁴⁷

In March, 1993, HRYV issued a Draft Environmental Impact Statement (DEIS) on its current plan. The DEIS stated that of the 100,000 units of container capacity specified in the lease, 70,000 would actually be “lifted” at the Yard; the remaining 30,000 containers (about 100 a day) would simply pass through the yard on their way to or from the Hunts Point Terminal Market.⁴⁸ The Transmode study, which was released in October, although underway when the DEIS was issued, was not mentioned in the Draft or in the Final EIS issued in December. Transmode found that the market demand for the HRY was 600,000 containers per year⁴⁹ (470,000 more than projected in the TBS study).

The FEIS was challenged in court by the Bronx Clean Air Coalition in August, 1994. Finding that it had failed to consider the alternative of using the entire Yard for intermodal purposes, the lower court judge voided the lease between DOT and HRYV. This ruling was overturned on appeal to the Appellate Division, which ruled that the initial suit did not meet the statute of limitations’ time limit of four months from the date the lease was approved by the Comptroller, in September, 1991 (even though approval of the land use specified in the lease was contingent upon an examination of environmental impacts that had not yet been reviewed).⁵⁰

In 1995, the Port Authority and the City signed an agreement with HRYV to provide \$7 million for capital improvements such as tracks and switches.⁵¹ Actual construction at the Yard by HRYV began in 1997, with the installation of one intermodal track and concrete pads in the northern part of the yard, and installation of track for the waste-transfer facility, which involved a reconfiguration of track layout that would reduce overall yard capacity.

The paper recycling company that had been part of the original Galesi proposal dropped out at the beginning of 1994. Within a few months the Galesi Group found a new paper partner, the Bronx Community Paper Company (BCPC).⁵² A high-profile partnership between a national environmental organization, the Natural Resources Defense Council, and a local community development group, the Banana Kelly Improvement Association, this consortium reeled in endorsements from the White House on down. But after repeatedly changing its own

development partners, BCPC, citing an inability to obtain adequate financing, announced in July, 2000 that it would not go ahead with its proposed plant. During this period a number of other uses, including the relocation of the city's flower market, were also proposed and then withdrawn. The Daily News entertained the possibility of building a printing plant there, but this project too failed to materialize after New Jersey outbid New York City for the project. (In 1993, New Jersey gave the News \$35 million in cash and "tens of millions of dollars in tax breaks" for moving its plant from lower Manhattan to Jersey City.)⁵³ In 1998, New York State provided \$24.4 million in incentives to the New York Post to build a new printing plant on the Harlem River Yard.⁵⁴

Meanwhile, after the Port Authority had agreed to increase its total authorization for the project by \$55 million (to \$106.25 million) and the City had agreed to double its funding (to \$30 million), construction on the Oak Point Link had recommenced in October, 1992. Scheduled for completion in 1995, it was actually completed in April, 1997.⁵⁵ However, at that point, because of a missing switch and 600 feet of track needed to connect to the Oak Point Yard, the Link, according to Conrail, was still unusable.⁵⁶ After the Department of Transportation installed the switch and track, the Surface Transportation Board cleared it for use in October, 1998.

The Link could not be considered totally completed, however, because one clearance restriction remained—a pedestrian bridge at the American Sugar Refinery in Yonkers. This final clearance restriction was removed in the summer of 2003 for just one of the three freight tracks crossing this property. After the bridge clearance restriction was removed for a second track in May, 2005, a TOFC train could finally traverse the entire Hudson Line without making a time-consuming track switch across commuter lines.

In June, 1999, with the Surface Transportation Board's approval of a buy-out of Conrail by CSX and Norfolk Southern, CSX became the primary rail operator with access to the Yard, although the terms of STB's approval also granted access to the Canadian Pacific Railway (CP). In March, 2000, on the grounds that the Yard could not provide enough intermodal capacity to support both CSX and CP, who together might require capacity for up to 42,000 trailers per year, HRYV, despite its prior commitment to provide space for 70,000 intermodal lifts per year and to pay for the development of the infrastructure necessary for this, sought State funds to provide an additional intermodal track.

As part of a larger NYS DOT/Port Authority \$40 million program,⁵⁷ construction of this \$1.5 million track was scheduled to begin in the summer of 2005.

Other Full Freight Access components of the ongoing New York State/Port Authority funding program include:

- Hudson Line TOFC clearance improvements (\$14.5 million)⁵⁸
- Track and switch upgrades to provide TOFC clearance and to support 286,000 pound cars⁵⁹ at the Oak Point Yard and at the Hunts Point Market (\$5 million)
- Upgrading the Fremont track to handle 286,000 pound cars and upgrading the Bushwick branch and New York & Atlantic yards at Blissville and Maspeth (\$7.8 million)

- Upgrading track on the Bushwick and Bay Ridge lines to handle 286,000 pound cars, to provide TOFC clearance on the Bay Ridge Line and to improve operations at the Fresh Pond Yard (\$7.4 million)
- Rehabilitating a freight track across the Hell Gate bridge to 286,000-pound cars (\$4+ million)

Some of this work (notably the Hell Gate Bridge project) was also scheduled to begin in the summer of 2005.

The Department of Transportation, with recently received Congestion Mitigation/Air Quality (CMAQ) funds for upgrading track to handle 286,000 pound cars, is also planning to spend up to \$15 million a year over the next three years on improvements to the Montauk, Fremont, and Bushwick lines. Governor Pataki’s 2005-2006 executive budget also includes \$100 million to be spent over five years (\$20 million a year beginning in 2005-6) on rail freight projects, which will be divided between upstate and downstate; planning for the first year’s spending program is underway as of June, 2005.⁶⁰

B. Current and Planned Operations on the Full Freight Access Program Network

A total of eleven trains per week (eight CSX, three CP) are sent south down the Hudson River line to New York City; thirteen trains per week (ten CSX, three CP) are sent north. Six of the CSX’s trains both in and out of the region carry merchandise—food for the Hunts Point Market, and lumber, paper, flour, and other materials for Brooklyn, Queens, and Long Island. Four waste trains leave the Harlem River Yard with full containers destined for a landfill in Virginia, two trains per week return with empty containers.⁶¹

Trains Per Week on FFAP Network in the Bronx

	Waste Trains NB	Waste Trains SB	Merchandise Trains NB	Merchandise Trains SB	All Trains NB	All Trains SB
CSX	4	2	6	6	8	10
CP			3	3	3	3
Total	4	2	9	9	11	13

CSX’s Selkirk Yard sends one merchandise train to the Bronx each day except Sunday and two empty waste trains per week. The merchandise trains go over the Harlem River Yard mainline track directly to the Oak Point Yard. From there, an average of seven cars per day are delivered to the New York Post printing plant in the Harlem River Yard and 35-50 cars are delivered each morning to team tracks in the Hunts Point Market.⁶² One train is sent from Oak Point across the Hell Gate Bridge to Fresh Pond Yard in Queens each day and one train is taken from Fresh Pond back to Oak Point.

The CP sends trains to Oak Point and Fresh Pond from its Saratoga Yard and back again three days a week.

The New York & Atlantic (NYA) takes trains from Fresh Pond Yard to and from Bushwick daily, to its Long Island destinations and back six days a week, and to Long Island City, Bay Ridge, and the Pineaire Yard in Long Island five days a week.

The Cross-Harbor Railroad floats cars up to five days a week between Greenville, New Jersey and Bay Ridge for interchange with the NYA.

The New York & Atlantic (NYA), which began operations in May, 1997 at a level of 8,400 cars a year,⁶³ now carries 16,000 cars a year. Some of this increase has been due to new customers for food products (rice and perishables delivered to Queens and the Brooklyn Terminal Market); much of the increase has been the outbound shipment of contaminated soils from a land remediation project in Long Island. The NYA's major commodities are lumber, paper, building materials, plastic, aggregates, food products, and recyclables.

No intermodal cars have yet been handled at Harlem River Yard, nor has the yard been used for any transload operations (operations where freight is transferred between railcars and trucks). The only cars that have ever been handled within the yard are the carloads of municipal solid waste shipped by the Waste Management facility, via the Hudson Line and Selkirk, to Waverly, Virginia, and the cars of paper rolls that are delivered to the New York Post printing plant. Four waste trains, each averaging 64 cars (5,888 tons), leave Harlem River Yard each week.⁶⁴

In early 2005, HRYV was in negotiations with Budweiser and Home Depot to develop warehouse facilities at the Yard. Both would rely primarily on rail deliveries. Home Depot, using the site as its regional lumber distribution center, would receive a projected 1,600 rail carloads a year; Budweiser would receive 1,200 carloads a year from bottling plants in the Midwest⁶⁵ as well as deliveries from its Newark brewery.

C. Current Rent Payment; Financial Audits

Rent payments from Waste Management to HRYV are based on the number of carloads of waste shipped from the facility; HRYV's lease payments to the State are supposed to be 6% of that amount (unless this amount is less than the annual minimum rent). Rent payments from the New York Post to HRYV are on an annual square foot basis; rent is not affected by the number of carloads of material received at their facilities, nor is any handling fee charged by HRYV for these carloads since HRYV provides no services related to their delivery or removal to the sidings for the facility. HRYV receives no payments for any cars that travel over the mainline tracks to or from Oak Point Yard.

Sometime within the past few years HRYV began making rent payments to the State, based on escalating annual minimums. Prior years' rent payments were offset, as agreed in modifications to the lease, by the upfront payments made by HRYV for site assessments for soil remediation. These rent payments, which have never exceeded the specified annual minimums, are currently about \$500,000/year.⁶⁶

III. Analysis of Potential Intermodal Demand at the HRY

According to DMJM Harris, consultants to the Port Authority of New York and New Jersey, there is capacity on the Full Freight Access Program network to more than double current usage. This would allow CSX to increase to four round-trips per day and allow CP to increase from its current three round-trips per week on the Hudson Line to six; CSX could run two round-trips per day from Oak Point to Fresh Pond, while CP could have a daily round-trip on that route rather only three per week.⁶⁷

A. *Issues Affecting Current Potential Demand at HRY—The Example of the 2003 Hunts Point Produce Pilot*

The Hunts Point Market, the world's largest produce and meat distribution center, receives over 100,000 trailer loads of fresh food per year⁶⁸ for distribution to stores and restaurants in the metropolitan area. It represents the single greatest source of freight demand at one location east of the Hudson River. Of the tonnage CSX brings into the region, one fifth is brought east of the Hudson. Of that, four-fifths crosses the George Washington Bridge, and of that, four fifths goes to the Bronx.⁶⁹ The great majority of this volume is destined for the Hunts Point Market. That is, about a tenth of everything that CSX brings into the region ends up at the Hunts Point Market.

Although on an average day the Hunts Point Market receives up to 50 refrigerated and unrefrigerated boxcars of produce, 94% percent⁷⁰ of the food delivered to Hunts Point arrives by truck. Since it opened in 1967, the Hunts Point Market has received a significant share of its deliveries by truck. This share, however, has increased over time because of the unreliability of rail service to the market (this is why Northeastern produce, such as the Maine potatoes that once came almost exclusively by rail, now comes only by truck), because of the impediments in crossing the Hudson, and because of the rail yard capacity that has been built in northern New Jersey in response to these impediments. Though 20,000-25,000⁷¹ TOFC carloads of produce from the West, Midwest, and South are shipped across the country each year for delivery to the Hunts Point Market, all of these loads (which represent 13% of the deliveries to the Food Distribution Center) are grounded at one of two yards in northern New Jersey to be drayed (trucked) across the crowded George Washington Bridge.⁷²

Despite the general trend toward truck delivery at Hunts Point Market over the past four decades, the number of boxcars received has increased appreciably since 2000 due to the Union Pacific/CSX Express Lane service, which brings carrots, potatoes, celery, onions, melons, citrus and other tree fruits from California within eight days.⁷³

Given the amount of produce delivered to the market and the facts that

- much of it originates far-enough away for cost-effective railhaul,
- temperature-control and monitoring technology allows produce to be shipped and delivered intact,

- much of the material trucked to the market is actually hauled on rail (much of it by TOFC) to New Jersey, and
- freight rates, say, from California to New York can be more than \$5,000 less per carload by rail than by truck,⁷⁴

there clearly exists a large *potential* for increased rail shipments to the market.

In an effort to capture some of this potential demand, in the summer of 2003 CSX, in cooperation with the New York State Department of Transportation and HRYV, set up a pilot project to deliver perishables to the Hunts Point Market.⁷⁵ Because customers' decisions between freight modes depend on the ability to predict when shipments will arrive, scheduled, reliable deliveries have long been understood to be one of the most critical elements in the management of freight shipping systems. (The importance of regularly scheduled shipments was first demonstrated in 1818 by the Black Ball Line, the first shipping line in the world to commit to a fixed schedule for its departures; economic historians consider its success one of the three factors—along with the Erie Canal and the triangular cotton-textiles trade between England and the South—that contributed to making New York City the United States' paramount port during the 19th century.) Accordingly, the project was designed to deliver one scheduled TOFC unit train per week from Chicago to Hunts Point: the train would leave Chicago on Thursday night and be received at Hunts Point by Sunday morning.

Other entities cooperated on the project. Metro-North, the owner of the Hudson Line tracks from Poughkeepsie to the city, made arrangements to remove the final clearance restriction—a pedestrian bridge at the American Sugar Refining plant in Yonkers—so that TOFC trains could get all the way from Selkirk to the Harlem River Yard. (As noted above, removing this height restriction made it technically possible to get TOFC from Selkirk to the Yard, but the arrangement was still not ideal, since it involved shifting tracks along the course of the route. Besides significantly slowing train speed, this increased the potential for conflict with commuter trains on that heavily trafficked route.) HRYV, eager to have the first intermodal use of the yard, was an active participant in the venture.⁷⁶ A number of Hunts Point firms (“houses”) were willing to place orders for the service. Martrac, the UPS-owned logistics company that is both the country's and the region's major provider of intermodal rail equipment and shipping logistics services, was also supportive of the project.

Despite this broad support, the pilot project failed: no TOFC loads were ever shipped. The reasons for this failure reflect some of the fundamental issues that currently constrain demand for rail services east of the Hudson.

These are among the issues that appear to have caused the perishables project to fail:

- Railroad economics.

CSX set two initial conditions (contrary to the primary lesson taught by the Black Ball Lines: the schedule must be reliably predictable) that created a very significant hurdle for the project. Rather than simply guaranteeing that trains would leave and arrive at specified times—thus enabling market demand to develop in response—CSX set a minimum number of carloads

for the project: the train would not run unless at least 45 carloads were committed. But without a guarantee that the train would run, it was difficult for customers to commit to using the train—disrupting their current shipping arrangements and relationships for an alternative that might not take place. In the chicken-and-egg relationship of buyer-seller market demand, the seller was in effect requiring the buyer to commit to buy without committing himself to sell. The inherent unpredictability of this arrangement was exacerbated by the second condition: that unless demand had risen to 70 carloads within six weeks, the program would be discontinued. These initial conditions—which were never met—were a major factor in dooming the pilot project. If these conditions reflected a lack of enthusiasm for the project on CSX’s part, this lack of enthusiasm may have been based on CSX’s evaluation of the economics of the project.

In recent decades CSX and its predecessor, Conrail, made significant capital investments in four yard facilities in northern New Jersey. There was therefore an economic incentive to use those yards in order to obtain a maximum return on these fixed costs. Using the Harlem Yard, on the other hand, would have involved incremental costs paid to HRYV. In addition, while the mileage between Selkirk and the New Jersey yards and Selkirk and Harlem River Yard is almost the same (about 132 miles) and average speeds on the west shore River Line and on the east shore Hudson Line are both about 50 mph,⁷⁷ the fact that trains would have to be switched between tracks in order to avoid TOFC clearance restrictions means that the travel time on the eastern line would be greater than on the western line. Moreover, while there are no passenger trains on the River Line, the flow of freight traffic is constrained by the volume of passenger trains on the Hudson Line (162 trains daily).⁷⁸ The delays produced by passenger trains and by the need to switch between tracks at the Yonkers sugar refinery would create additional costs for crews (whose shift durations are limited by federal regulations) and for equipment that is tied up longer—especially because the return trip north would also be slower. The east-side trip is also more costly because, unlike the West Shore which has no double-stack clearance restrictions, it is not possible to take advantage of double-stack’s virtual doubling of efficiency. Nor is there as great a possibility of a backhaul load (other than the removal of empty trailers), which would provide a significant economic advantage. For all these reasons, if the same rate is charged for either route (as was the case in the produce pilot project) the railroad presumably would make less profit per unit hauled on the east side of the river.

The fact that grounding TOFC trailers on the west side of the river would produce a significantly shorter dray to the Hunts Point Market, which *should* produce lower costs for the customer, does not affect the railroad’s economics, since the customer pays the shipping costs and since no competing railroad offers the option of draying from Hunts Point.

Besides setting two prerequisite conditions that were never met, the railroad’s design of the service itself may have been another factor that inhibited the project’s potential for success. By limiting the service to once-a-week delivery, cars shipped from the West on a daily basis would be stockpiled in Chicago to make up the once-a-week train to New York. In addition to holding up perishables that may have arrived on Sunday night until the departure time on Thursday (thus adding four days to the produce’s age, as well as adding four days additional usage to the operating and capital costs for the equipment), this all-eggs-in-one-basket schedule increased the customer’s risk. If for some reason a carload missed its delivery window for one week, it would have to wait for an entire week for its next delivery slot, or if one shipment were

delayed or damaged, the produce customer would be out a week’s worth of inventory. As the 1988 TBS market survey noted, “Most shippers use service frequency to judge an intermodal offering.”⁷⁹ This service frequency clearly could not compete with that at North Jersey yards.

- Trucker economics.

One beneficiary of a shorter dray should be trucking companies, which, by getting additional productivity/turns per shift at less cost per turn, should have greater profitability.

As the pro-forma analysis in the table below suggests, the cost per turn should be two-thirds less for Harlem River Yard than for North Bergen (about \$40 v. \$130) and there should be about twice as many turns per shift (5.9 v. 3.3), so that net benefits of the Bronx over North Bergen should be on the order of 6 to 1. This analysis appears to be conservative, because the 1988 TBS study, based on interviews with local draymen and an analysis of the available data, suggested that the savings for drayage from the Yards to Hunts Point should average on the order of \$120 (based on current rates from New Jersey at \$175-260 and estimated rates from HR Y between \$80 and \$130);⁸⁰ since the cost factors have increased since then, this savings should be greater now.

	Minutes off-peak		Minutes peak	Tolls [a]	Mileage \$ [c]	Total RT cost (excl labor)	RT time/turn w/ loading [d]	Turns/ shift [e]	Cost/ turn [f]	Total benefit
	Miles	[a]								
N. Bergen	19	25	50	\$35.00	\$7.98	\$50.96	2.46	3.3	\$130.96	1
HR Y	3.2	6	12	\$0.00	\$1.34	\$2.69	1.35	5.9	\$42.69	6

[a] calculated by maps.google, from Westside Ave & 43rd St, N.Bergen and E132 St. & St. Ann's Av, Bx
 [b] GWB avg, per NYMTC 9-04, Hunts Point Waterborne Assessment, p. 55.
 [c] \$.042/mi truck fuel/operating cost, ibid.--this is conservative since it does not include fuel cost increases since 1999
 [d] assumes 15 min to hitch full trailer at yd, 15 min to unhitch at Hunts Pt, 15 min to hitch empty to return to yd, 15 min to unhitch empty at yd, and assumes that RT ratio of non-peak to peak congestion conditions is 3-1, based on the delivery times reported in NYMTC ibid.
 [e] assumes 8 hours of active duty/shift
 [f] assumes cost of \$240/shift for labor

Analysis of Trucking Costs

But the trucking companies that would have been involved in the project, which were the same companies that normally drayed the produce from the New Jersey yards, refused to reduce their charges for drays from Harlem River Yards: whether the dray was from New Jersey or the Bronx, they insisted on charging the same amount.

Backhaul economics would not seem to explain this failure to reduce rates for the Harlem River Yards dray to Hunts Point, since there would be a backhaul of an empty trailer from Hunts Point to either yard. If the trucker were based at some location remote from either yard, the driver would have a greater probability of a backhaul to that location from New Jersey, but if the driver made as many trips as possible to Hunts Point during the shift, that backhaul to the home base would have to take place after a federally mandated sleep shift, thus reducing the economic benefit of using a non-local trucker. For a New Jersey-based trucker, there would be the additional cost of returning across the George Washington Bridge; these additional costs could be avoided, however, by using New York-based truckers (e.g., truckers from New York City or Westchester), for whom the Harlem River Yards would be as close or closer than the New Jersey yards.

Two other explanations are possible. One is that the trucking firms with the existing dray contracts may have decided to charge a higher unit rate for the HRY haul (i.e., not to charge a lesser rate for the shorter distance) because of the incremental start-up/administrative costs associated with changing their normal business practices in order to deal with a relatively few truckloads in a non-typical manner. The other is that these firms do not consider that their market is subject to open competition—or do not want it to be. If the firm(s) with the existing dray contract are NJ-based, and NY-based firms might have a relative cost advantage based on a shorter distance from their base to HRY, it would be in their interest to prevent open competition. This may explain the rumor that one of the Hunts Point Produce houses that considered signing up for the project was told by its trucking firm that switching truckers for the project might result in a fire at their building. The trucking firms with the existing dray contracts therefore may have decided to charge as much for an HRY dray as for a longer North Bergen dray simply because they had the power to do so.

- Shipping logistics company economics.

Although at least one shipping company, Martrac, was said to be an enthusiastic partner in the pilot project, Martrac apparently was unwilling to renegotiate its trucking contract to achieve lower rates for an HRY dray or to use alternative truckers for the project. The reported explanation is that it was not desirable to disrupt long-term existing relationships with its dray firms.

Other shipping companies were less willing to commit loads to the pilot project. The explanation in those cases may be that it simply was not worth the trouble to change standard operating practices—to add the costs of special handling and arrangements—for a relatively small number of carloads. If so, the fact that the pilot was not guaranteed to take place or to last for an extended period might well have exacerbated this problem.

- Produce house issues.

Although six of the major Hunts Point houses were reportedly willing to participate in the project, many houses expressed a reluctance to shift from long-established relationships with trucking firms.⁸¹ In part this reluctance may reflect a fear of violent repercussions from switching to a new service provider (as the rumor of an arson threat suggests). But it may also reflect a simple aversion to risk—the risk of exchanging a tried-and-proven, predictably secure delivery system for an untried one that had no guarantee of lasting. If the pilot project were to fail in any way (by providing undependable service, or by ending after a brief time), the house would become dependent on the trucking firm it had spurned—creating the likelihood that it would be put at the bottom of that carrier’s priority list and might as a consequence receive inferior and/or more expensive service than it was presently receiving.

- Other issues.

In addition to these infrastructural and institutional issues, there may have been more intangible factors at work as well. In the railroad industry there is a reported corporate culture,

which has developed over decades, that prefers avoiding work in the Bronx. Part of the explanation for this corporate pattern is the fact that the people running the railroad corporate and operating offices are not New Yorkers; the old guard are from non-New York railroads (many are veterans of the old Pennsylvania Railroad/mainline Philadelphia culture) who share a distrust of New York City operations. A large part of this attitude, in turn, may be based on historical security concerns about New York City railroad operations. For many decades the pilferage problem with NYC's produce operations (and with other freight operations) has been notorious. When the New York Central carried food products into Manhattan down its West Side line, one of the more-unpleasant tasks for the NYPD (since the fowl often disappeared) was guarding carloads of live chickens in the 60th Street yards.⁸² When the produce market first moved to Hunts Point, the New Haven Railroad surprised and angered City and market officials by refusing to serve the market unless the City—not the railroad, as had been the prior custom—provided security services.⁸³ When the New Haven did begin serving the market, railroad workers participated in the pilferage; in one case a renegade locomotive crew routinely shifted cars around the market in order to strip them.⁸⁴ Further adding to the corporate dislike was the perception that Hunts Point merchants are “cheaters”—i.e., that damage claims are often fraudulently overstated. In one extreme instance, charges and counter-charges about overstated damage claims led to a lawsuit in which Hunts Point houses claimed that they were unfairly discriminated against in their rates, while the railroad claimed that it had to raise its rates specific to Hunts Point because of the volume of damage claims it received.⁸⁵

Although it did not appear to be a factor that directly affected the pilot project (which involved TOFC trailers drayed from HRY), the layout of the Hunts Point Market is also a factor that inhibits the use of direct rail delivery (primarily by refrigerator car). Although tracks run along each side of each produce building, since the volume of rail deliveries is far outweighed by the volume of truck deliveries, the trucks that vastly outnumber the rail cars are typically parked across the rail tracks for unloading at the loading docks. The problem is exacerbated by space shortages in the houses, which lead to the use of trucks for additional storage capacity. Many trucks therefore have to be repositioned whenever a railcar is moved along a track. In addition to adding to the time required for rail delivery, the produce house sometimes has to pay to have someone perform this task, a factor that increases the cost of rail delivery. The state Economic Development Corporation and Department of Transportation are conducting a study to develop a plan for solving this problem. Presumably the study will involve some rebuilding and realignment of both truck and rail access routes and marshalling areas. This study is scheduled for completion in late 2005.

B. Issues Affecting Potential Future Demand at Harlem River Yard

Several factors not envisioned by the original planners of New York's Full Freight Access Program have changed the context in which freight transportation in this region will take place in the years ahead. These factors are likely to have an effect on demand for the use of the Harlem River Yard. One is the rapid expansion of containerization. As global trade, particularly from China, surges to unprecedented levels, containerized freight transport is reaching a level scarcely envisioned even a decade ago. U.S. railroads are now deriving more revenues from intermodal freight than from traditional bulk freight such as coal.

Another factor is that, with the sale of Conrail, which formerly was the only freight railroad that had access to the yard, two railroads, CSX and CP, can now use the facility.

A third factor is that rail transport costs have decreased relative to trucking costs. A major reason for this decrease has been the Staggers Deregulation Act of 1980. Even without considering inflation, constant-dollar rail rates in the Eastern U.S. declined 13.2 percent between 1984 and 2000 (Western rates declined 24.7 percent, national rates overall declined 19.7 percent). Adjusting for inflation, national rates declined by 45.3 percent over that period.⁸⁶ Adding to the relative decrease in rail costs are increased truck labor costs due to more restrictive hours-of-service regulations and increased fuel costs.

A fourth factor is the unexpected closure of the Fresh Kills landfill in Staten Island, which had been New York City's only disposal facility for all of the residential and institutional municipal solid waste generated within the city. Although the export of commercial waste from the Harlem River Yard was envisioned in the original proposals responding to the RFP for privatizing the Yard, it was not at that time imagined that all of the city's waste requiring disposal would leave the city. Nor was it known, since the majority of the city's waste is exported to Pennsylvania and Virginia and in future is likely to travel even farther, that the City would have an explicit policy requiring transport of containerized waste by rail, barge, or ship. Although Waste Management, the waste operator at the Yard, has not yet proposed an increase waste throughput there, this nonetheless provides the potential for a significant expansion of the Yard's current waste handling operations.

A fifth factor is the re-emergence of the century-and-a-half-old proposal to build a freight rail tunnel across New York Harbor. A \$22-million Draft Environmental Impact Statement recently concluded that the project is feasible and would have a greater than two-to-one benefit-to-cost ratio due to reductions in costs, congestion, and pollution. The SAFETEA-LU act approved in July, 2005 provides \$100 million for detailed environmental and design studies for the tunnel. The project's planners currently anticipate only a modest demand for tunnel-induced traffic at the Harlem River Yard. However, given the severe shortage of available yard capacity elsewhere in the city—and the local resistance to the proposed use of an expanded Maspeth Yard as the city's sole facility for handling all non-Long Island traffic—it is possible that (along with the potential expanded use of space adjacent to the Oak Point yard and other potential sites) more of this increased volume could also be handled at Harlem River.

A sixth factor is the possibility—which, again, was not envisioned in the mid-1970s—that a major port facility might be developed on the New York side of the harbor. The City has drafted plans to increase the use of the South Brooklyn waterfront for maritime purposes, including the development of a large automobile receiving facility. And two private consortia have proposed developing significant large-scale port projects.⁸⁷ Although it is conceivable that one or more of these proposed projects might be developed in the absence of a cross-harbor rail freight tunnel, the availability of the tunnel would greatly enhance the functionality of a port facility. If both the tunnel and a port project were developed, the increased demand for intermodal rail yard space in the city and the region would increase very dramatically.

IV. What Went Wrong?

At this point in time, the Full Freight Access Program is handling only a very modest proportion of freight traffic envisioned for it, while its centerpiece, the Harlem River Yards, has failed to meet even a fraction of the most conservative volumes projected for it. It has cost more than twice as much and taken decades longer to build than its planners had anticipated. The 65th Street float yard, which NYC acquired in 1981, has never been used for its intended purpose (although portions of the yard have been occupied, primarily as low-cost storage space). The Harlem River Yard has not yet received a single intermodal delivery, while the only outgoing shipments from the Yard have been municipal solid waste, and a portion of the Yard is now covered with a capital-intensive long-term facility, the New York Post printing plant, that has only a minimal relationship to rail freight. (Even the waste shipments do not represent a significant net increase in rail traffic, since waste formerly shipped by rail from an adjacent facility is now prevented by its HRY competitor from using the State's mainline tracks.)⁸⁸ The completion of the more-direct Oak Point Link route has not significantly increased rail deliveries via the Oak Point Yard to the Hunts Point Market, which was to have been one of the largest customers for intermodal deliveries at HRY. The only part of the Full Freight network where usage has increased appreciably since 1997 is on the Long Island Railroad's routes where the New York & Atlantic now operates; nonetheless the current volume is less than a third of the volume in 1975 when the Full Freight Access Program began.⁸⁹

The Full Freight Access Program was designed to make the east side of the Hudson accessible to the kinds of taller railcars that were being used increasingly west of the Hudson. Over the last thirty years the use of high-cube intermodal cars has increased in the rest of the country to levels well beyond even the most fertile 1975 imaginations. Yet the problem the Program was designed to address—getting those high-stack cars over here—remains unsolved.

What went wrong? How can we explain the huge disparity between plans and achievements? The following summary is not meant to be an all-inclusive list of factors, but is meant to identify some of the most significant issues that constrained full realization of the Program's objectives. Hopefully the identification of these factors may be of some use in developing recommendations to guide future efforts to improve on the current situation.

1. Delays. Unanticipated delays affected the project at each step of the way. In retrospect, in the view of at least one central figure in the program, the game was lost when former Labor Secretary Donovan was indicted. The failure of the next contractor to complete the job resulted in nine years of delay and a doubling of the budget. During those lost years, the situation on the ground—the activities of shippers and receivers and railroads—continued to evolve differently than it might have had the program proceeded on schedule. These changes made it far less likely that the program would ever be able to achieve its goals. Additional investments in rail and yard infrastructure were made west of the Hudson. Manufacturers, warehouses, and other shippers and receivers continued to migrate to the other side of the river, or began to rely increasingly on New Jersey-based truckers. In short, rail freight traffic east of the Hudson continued to decrease, even while it increased to its west.

An inevitable consequence of delay for any public project in the U.S. is that the project will be slapped by more turns of the electoral-cycle paddlewheel. The project was set back further as a series of leadership changes at the Department of Transportation removed the project's original champions from the picture. The reasons for these shifts in direction had to do with the larger political context—the failed Conrail takeover bid, which left DOT on the losing side after antagonizing the politically powerful unions and Conrail itself; the state's continuing budget crisis; and an increased emphasis on funding roadway maintenance. With changes in commissioners came changes in staff and in the tasks to which they were assigned.

The combined effect produced by these delays changed the nature of the Harlem River Yard project, the Full Freight Access Program's centerpiece. Instead of a publicly developed, publicly controlled facility available for use by private transportation operators, it became a privatized project to be built with private funds, under private control, to be used for a variety of non-rail purposes, while only a fraction of the facility would be reserved for its originally intended intermodal use. The decision to retain only a portion of the site for intermodal use was based on a short-term projection of potential demand that in turn was based on the assumption that the expensive Oak Point Link would not be completed. Yet even while the Department of Transportation was finalizing a 99-year lease with HRYV for a mixed-use yard, the decision to fund the completion of the Link was also being finalized.⁹⁰

2. A lease that was inordinately favorable to a private developer. If the decision to privatize the Harlem River Yard represented a significant shift in direction, the magnitude of this shift was greatly increased by the form it eventually took. A variety of major changes from the RFP framework, and even from the selected proposal as originally received, heightened the effects of privatization. Although the net impact of all these changes (via a lease drafted, contrary to the usual procedure, by the tenant rather than by the landlord) was to reduce the revenues received by the State while increasing the public sector's costs, the most significant change was in the length of the lease. By changing the initially contemplated short-term lease into a 99-year one, any ability to take advantage of shifting conditions in the transportation market was lost. With a \$150 million printing plant now filling 17 acres of the yard⁹¹ for the remainder of a century, there is little possibility that that space can ever be used for intermodal purposes. Unless the lease ends before its term, it is unlikely that increased intermodal use can be made of any portion of the Yard other than on the 28 acres currently reserved for such use

3. Lack of institutional focus. The fact that responsibilities for portions of the Full Freight Access Program were split between a variety of public-sector agencies (most importantly NYS DOT, the Port Authority, and a number of City agencies) and that the project involved coordination with a number of publicly and privately operated railroads was not helpful to this project. But the difficulties of inter-institutional coordination were probably of less consequence than the fact that after 1986 there was no single unit in NYS DOT for which the management of this project was a primary focus and which had the staff resources to carry out this management responsibility.

4. Railroad competition and disinterest. This history of New York's troubled relationships with railroad corporations, it could be argued, explains much about the physical, social, and economic

development of the metropolitan region. This has been no less true during the past three decades. A primary consequence of the railroads' disinterest in operating on the Access Program's east-of-Hudson network, which has resulted in a flourishing of rail yard and related warehousing infrastructure west of the Hudson, is that the majority of the region's dray operators are now cemented in place on the west side of the river. Bringing warehouse and trucking operations back to this side—as the failed CSX Hunts Point produce pilot demonstrated—is not at this point an easy task.

5. Lack of programmatic operational commitments. In any long-running public-sector program there are likely to be recurrent difficulties with capital funding. These difficulties have been, and continue to be, evident in the Full Freight Access Program. But perhaps even more critical has been the absence of any commitment to ongoing operational programs. A strong argument could be made, with regard to the chicken-and-egg impasse that developing freight rail traffic presents, that a commitment to an ongoing level of predictable service is the necessary starting point and that the chickens will jump on board if and only if that commitment is there first. This commitment, of course, carries an upfront cost and may also require ongoing subsidies. In the case of the Black Ball Line, the private sector assumed this risk. Nineteenth and early twentieth-century railroad corporations assumed similar risks, and were sometimes successful in their gambles. Such private-sector rail freight success, however, has been increasingly rare—anywhere in the world—in recent decades. If there are public benefits to be had from the increased use of rail freight—as indubitably there are in the case of the New York region given the increased freight volumes and consequent roadway congestion for the foreseeable future—public expenditures on rail freight may be as appropriate as public subsidies for transit and intercity rail. To date such public-sector investments have for the most part focused on capitalizing infrastructure. It could be argued, however, that public-sector commitments to ongoing scheduled rail freight operations may be even more important—and that without them, projects such as the Harlem River Yard may never succeed.

V. Recommendations for the Future

It is beyond the scope of the present paper to offer programmatic recommendations on how this region might make rail freight projects such as the Full Freight Access Program more successful in the future or how to foster greater use of the Program's existing in-place infrastructure. But if there is any merit to the above summary conclusions about what went wrong with the FFAP in general and with the Harlem River Yard in particular, some basic areas for future effort suggest themselves.

First, if the region is to have an ability to deal with changing circumstances (such as, in the last decades, the increase of freight shipping in general and of containerized shipping in particular, or, in the coming decades, the possibility of a cross-harbor rail tunnel bringing increased rail freight East of the Hudson), it must have the power to adapt flexibly. Foreclosing the use of critical rail facilities by building on them long-term capital-intensive fixed infrastructure such as a printing plant or paper recycling plant is contrary to this objective. So is losing the ability to manage change by committing to 99-year leases. The public sector may need to take steps to ensure that only short-term uses such as warehouses are placed on the HRY in future. It may also need to consider re-purchasing control over a portion of the yard or

terminating the entire lease should future circumstances warrant. One such potential future circumstance is the cross-harbor rail tunnel. If that facility is built, although a projected yard in Queens is currently planned as the primary NYC freight yard, it may be appropriate to consider using HRY to handle a greater proportion of this volume.

Second—although it is a highly controversial topic and experience elsewhere has been somewhat mixed—there might be some consideration of the possibility of making access to the region’s publicly owned rail freight infrastructure more open, rather than allowing the current balkanization of rail service to continue. Interchanges between multiple rail operators add complexity and cost to all freight movements on geographic Long Island and to some Bronx services as well. If facilities such as the Bay Ridge line and the 65th Street float bridges were available for use by any operator who wanted access to them, it is possible that there would be greater demand for these facilities.⁹² Likewise, allowing monopoly or virtual-monopoly access to publicly funded facilities to certain operators prevents the possibility of third-parties making investment and operational decisions that might increase the use of these infrastructural facilities. For example, if third-party operators (or other railroads) were permitted to operate services such as a scheduled produce train for the Hunts Point Market, it might be possible to attract the commitment and investment necessary to launch such operations.

Third, there might be efforts to strengthen the capacity of the region’s transportation planning entities to provide the ongoing planning and management that is needed for sustained progress toward increased rail freight access East of the Hudson.

Fourth, one sort of project that such an entity could help to manage might be a program designed to attract users through the provision of guaranteed services. Such a program may or may not require some level of public subsidy to ensure that the scheduled service guarantees were met.⁹³ (A separate issue is identifying funding sources if public funds were needed to support such a program; one such source might be new dedicated user fees levied against cross-harbor trucking and/or revenues from enforcement measures designed to ensure that trucks do not exceed the region’s weight limits.) Such an office might help to assist in the marketing of such a program: marketing might even be a primary mission for the office, since it is possible that a near-term incremental increase in shipper demand in itself might be one of the most effective ways to jump start the kind of increased rail-freight services that could snowball further demand. It might also help to coordinate the involvement of different railroad operators, either through encouraging the use of open access systems or by otherwise reducing the costs and logistical difficulties stemming from the current balkanized operating systems. It might also assist with establishing logistical systems—e.g., developing dedicated drayage service to support Harlem River Yard operations, and, if necessary, assisting with the coordination of law enforcement officials to ensure that all parties to the project’s drayage arrangements are adequately protected.

Fifth, rather than focusing exclusively on intermodal capacity and on large-scale yards, the region might encourage the expansion of relatively small-scale transloading yards for non-intermodal commodities (e.g., food products, construction materials, plastic pellets, construction and demolition debris), which could be dispersed to locations nearest clusters of end-users and producers. Such facilities, by taking advantage of relatively small parcels near rail lines, could

help to increase the region's "bank" of rail-related land, sticking fingers in the dike to prevent the further erosion of the facilities needed to support rail freight, while at the same time reducing local impacts due to truck traffic by diffusing rather than centralizing transfer capacity.

Appendix: Timeline for the Full Freight Access Program

- Late 19th/early 20th c: The Harlem River Yard (HRY)/Oak Point complex, built in 1876, is one of the most heavily used freight facilities in the world; a primary node in shipments along the eastern corridor between the Southeast and New England, in 1912 it handled an average of 2,000 cars a day.⁹⁴
- 1972 The Penn Central Railroad stops using the HRY. In the following years a succession of industrial park schemes are proposed for the site by private developers, the City of New York, and the Port Authority of New York/New Jersey (PA).
- 1973 OPEC-induced energy crisis. NYC fiscal crisis developing.
- 1974 To avoid the significant cost of raising bridges and other height restrictions in over 100 locations, NYS and NYC transportation officials propose using custom lower cars to allow trailer-on-flatcar (TOFC) clearance.
- NYS passes the Rail Preservation Bond Act.
- The Poughkeepsie Bridge, built in 1889, the only rail freight access across the Hudson south of Selkirk, is destroyed by a fire of mysterious origins.
- 1975 NYS DOT, PA, and NYC initiate the Full Freight Access Program (FFAP). “The goal of the project is to expand rail freight service by facilitating direct rail freight entry into the region east of the Hudson River.”
- 1976 The Penn Central Railroad declares bankruptcy.
- 1978 NYS DOT chooses the HRY site as the intermodal yard for the FFAP.
- 1979 NYS passes a second bond act, the Energy Conservation Bond Act, to pay for transportation infrastructural improvements.
- 1980, Fall Construction begins for bridge raising on Hudson River line, from 15’6” to 17’6.”
- 1981, 9 Andrews & Clark issue HRY Intermodal Yard Design Report.
- 1982 DOT purchases HRY.
- NYC approves Lincoln West, Trump to pay \$7m to HRY.
- OPL route proposed to eliminate problems with route into HRY.
- Coast Guard and NYSDOT issue FEIS on OPL.

- Construction on OPL begins.
- 1983 A third bond act, the Transportation Bond Issue, is passed and used to support the FFAP.
- 18 bridges between Albany and NYC have been raised to a height of 18'0".
- 1987, 12 After problems are encountered on OPL, the Morrison Knudsen contract is terminated.
- Temple, Barker & Sloane study of market demand, privatizing HRY: limited TOFC demand (130,000 annual lifts).
- 1989 Decision to privatize HRY, RFP issued.
- 1990, 9-6 A Memorandum of Understanding is signed: DOT is to give HRYV credit of \$134,500 or the actual amount paid to TAMS as credit in first due payment for Phase I and II soil assessments.
- 1991, 3-29 HRYV lease signed (finalized by Comptroller 9-18).
- 1992, 10 OPL construction recommenced under a \$51m contract to John P. Picone.
- 1993, 2 Transmode market study started.
- 5 DEIS issued (HRY capacity now down to 70k annual lifts plus 30k loads through to Hunts Point).
- 9-1 Governor Mario Cuomo asks the PA to authorize \$3.5m of its Regional Economic Development Program funds for intermodal rail infrastructure development at HRY; the City agrees to pay \$3.5 million, making \$7m total.
- 10 The Transmode market study is released: it projects a demand for 600,000 container lifts a year.
- 12 The Final EIS for the HRYV land use plan is issued.
- 1995 The funding agreement for the authorized \$7m in PA and NYC funds is signed.
- 1997, 2 Comptroller McCall issues a report critiquing lease arrangements for the HRY.
- 1998, 10 Oak Point Link completed.
- 1999, 11 Waste Management opens a \$40m transfer station in HRY.
- 2000, 1 NYC EDC requests 50% NYS DOT funding for a second intermodal track.

2001, 3	CP leases 65 th Street Yard.
2002, 6	CP 65 th Street Yard starts operations (without using float bridges).
2003, 6	CSX attempts to run a pilot intermodal train with produce for the Hunts Point Market. It is cancelled before the inaugural run due to a lack of customer commitments.
2004	PA study of priority near-term operational/infrastructural needs (for spending \$25m in appropriated funds); HRY operations are included in the study.
5	The DEIS for the proposed cross-harbor rail freight tunnel is released.
8	CP ends its lease for 65 th Street Yard.
2005, 1	EDC issues an RFP for use of the 65 th Street Yard.

Notes

¹ I am indebted to a number of people whose experience and expertise is reflected in this report and who offered me access to papers and other sources of information. William Galligan, executive director, East of Hudson Rail Freight Operations Task Force, provided invaluable guidance in understanding a number of specific issues. John McHugh, Esq., graciously provided access to his extensive archives. James Cartin, Peter Cohen, Constantine Sidamon-Eristoff, Alexander Jordan, Anthony Riccio, Louis Rossi, and Benjamin Zodikoff were among the others who were particularly helpful. All views expressed herein—along with any misinterpretations or factual errors—are my own.

² The latest calculation is \$4.2 billion. Texas Transportation Institute, “2005 Urban Mobility Study: Performance Measure Summary for New York-Newark,” http://mobility.tamu.edu/ums/congestion_data/tables/new_york.pdf, accessed 5-25-05.

³ Carl McCall, NYS Comptroller, “The Viability of the Oak Point Link and Harlem River Yard Projects,” 2-5-1997 (<http://www.osc.state.ny.us/audits/audits/9596/95d43.pdf>); Elizabeth Holtzman, NYC Comptroller, “On the Waterfront: How the City's Planned Modern Rail Freight Center Is Being Converted to a Private Industrial Park with Millions in Public Subsidies,” 3-30-1993.

⁴ Thomas J. Lueck, *NYT*, 7-25-1999, p. 23.

⁵ The Long Island Railroad, formerly a Penn Central property, had been sold to NYS in 1965, while Metro North was created to provide the passenger services formerly performed by Penn Central north of the city; Amtrak was formed to operate passenger services that carried beyond the counties closest to the city. *Ibid.*

⁶ E.g., Michael Wines, *National Journal*, 2-12-1983, Vol. 15., No. 7, p. 316.

⁷ E.g., Michael Stern, *NYT*, 2-9-1975, p. 1:8 (Renzo Zingone industrial park proposal) and 2-16-1975, p.1:7 and 3-16-1975, p.4:1; *NYT*, 6-24-1979, VIII:1:5 (Combustion Equipment Associates incinerator); Abraham D. Beame, mayor, to Arthur D. Lewis, United States Railway Association, 11-6-1975 (Papers of Charles Masterton, New York City Council on the Environment); NYC Deputy Mayor for Management, “Proposal for the South Bronx,” Preliminary Draft, 4-11-1978 (Municipal Reference center).

⁸ Peter Kihss, *NYT*, 2-17-1976, p.58.

⁹ J. B. O'Mahoney, *NYT*, 9-6-1981, Westchester Weekly Desk, XI:23:1; NYS DOT, “Full Freight Access Program, New York City and Long Island”, 3-1984.

¹⁰ Ibid.

¹¹ RoadRailer cars are fitted with steel and rubber wheels so that they can be pulled both on rails and on roads.

¹² Andrews & Clark, Harlem River Intermodal Yard Planning/Design Report, revised 1-1982, p.3. According to the NYS DOT Rail Division, "Transportation and Economic Benefits, South Bronx," 3-1982, these projections were developed by Reebie Associates ("New York Intermodal Study," 5-1997 and the NYS DOT Rail Division, "Rail Freight Traffic Demand, Hudson Division in the Year 2000," TSD #10, revised 6-1981.)

¹³ NYS DOT op. cit. 3-1982, p. 7; NYS DOT, "Full Freight Access Program, New York City and Long Island," 3-1984; McHugh affidavit, 12-22-94, citing NYS DOT, *Technical Report, Transportation and Economic Benefits, South Bronx-Oak Point Link*, March, 1982, p. 9.

¹⁴ \$134.2 million, NYS DOT, 3-1984, op. cit.

¹⁵ NYS DOT.

¹⁶ Temple, Barker & Sloane, Inc., Harlem River Yard, Privatization Study, Final Report, 10-188, p. 1-2.

¹⁷ Edward Schumacher, *NYT*, 7-8-1980, p. B4:1; Oreskes, Michael, *NYT*, 3-18-1984, 34:5.

¹⁸ *Engineering News-Record*, 3-22-1984, p.16.

¹⁹ Michael Moss, *Newsday*, 2-8-1993, p.5. The unexpected indictment of former Labor Secretary Raymond Donovan came about through a very unfortunate coincidence in timing: a mob murder in the Bronx caused an already-closed investigation of possible corruption by a subcontractor tied to Donovan's construction firm to be reopened just as the contracting process was getting underway.

²⁰ Moss, *Newsday*, 2-9-1993, p.5.

²¹ *Industry Week*, 8-24-1981, p. 14.

²² *NYT*, 9-12-1984, D5:1; Reginald Stuart, *NYT*, 2-9-1985, 1:1:6.

²³ Memorandum of Agreement (Appendix B of NYS Legislative Commission on Critical Transportation Choices, *New York State's gains and losses in the public sale of Conrail: Conrail--past, present, and future?*, 3-86)

²⁴ NYS DOT Press Release, PR Newswire, 7-17-1985.

²⁵ Bill Sternberg, *Crain's New York Business*, 1-27-1986, p. 3.

²⁶ Dorothy Collin, *Chicago Tribune*, 2-6-1986, p. 3.; e.g., Michael Kranish, *Boston Globe*, 4-23-1986, p. 23; Laurie McGinley, *Wall Street Journal*, 5-12-1986, p.1.

²⁷ *Los Angeles Times*, 8-22-1986, p. 1.

²⁸ The document was produced by the rail office and reflected the views of its director, Louis Rossi, and of Benjamin Zodikoff, an engineer in the office. (Interviews with Rossi and Zodikoff, April, 2005.)

²⁹ The contract scope, for a total of \$6.7m, called for "Mobilization, clearing site of old foundations, earthwork, drainage, misc.; Fencing; Sewer protection; Track and paving for existing Yard tenants; Oak Point Link; Running Track." ("Decision Paper: Harlem River Yard") Only the running track and some of the linkage track to Oak Point were actually completed.

³⁰ Louis Rossi would become director of planning at the DOT, a position in which, despite its apparently inclusive title, he would play no further role in rail-related projects. Benjamin Zodikoff of his staff would move to DOT's NYC office, where his responsibilities involved primarily bridge and highway work. Although it would be difficult to establish that these transfers were directly due to instructions from the governor's office at the behest of Conrail and its unions, it is clear that Conrail and the unions were not displeased with the change in personnel. (Interviews with Rossi and Zodikoff, April 5 and 8, 2005.)

³¹ Regional Plan Association, Notes for NY Committee Meeting, 5-21-1993.

³² NYS DOT, "South Bronx Oak Point Link Railroad Improvement," (response to US Coast Guard following a 12-23-91 meeting), nd (Author's papers.)

³³ Elizabeth Holtzman, NYC Comptroller, "On the Waterfront," 3-30-1993, p. ES2; Steve Mitra, *City Limits*, 1-1994, pp. 17, 18.

³⁴ John McHugh, memorandum for Congressman Jerrold Nadler, 4-19-1989.

³⁵ Temple, Barker & Sloan, "Intermodal Park," Attachment I to NYS DOT RFP, "Development and Management of Transportation Services at the Harlem River Yard," 6-26-1989, p. VI-4; Temple, Barker & Sloan, "Harlem River Yard Privatization Study, Final Report," 10-1988, pp. VI-14, 19; lift and carload numbers: Exec. Summ., 4-89, p. 7.

³⁶ NYS DOT, "RFP, Development and Management of Transportation Services," 6-26-1989, p1.

³⁷ Galesi's projects were in Albany, Binghamton, Buffalo, Rotterdam, and elsewhere. E.g., Curtis, Carol E., *Forbes*, 8-29-1983, p. 66; Hesch, Joseph, *Capital District Business Review*, 3-18-1985, p. 6.

³⁸ Patricia Zedalis, Deputy Commissioner, NYC Department of Ports and Trade, to Henry L. Peyrebrune, Assistant Commissioner for Public Transportation, NYS DOT, 12-28-1989.

³⁹ Patricia Zedalis, Deputy Commissioner, NYC EDC, to Henry L. Peyrebrune, Assistant Commissioner for Public Transportation, NYS DOT, 4-18-1989.

⁴⁰ William J. Rennie, Principal, Temple, Barker & Sloane, Inc., to Robert Gwin, Intermodal Supervisor, Commercial Transport Division, NYS Department of Transportation, 10-23-1989.

⁴¹ Conrail, "Proposal for Development and Management of Transportation at the Harlem River Yard," 10-6-1989.

⁴² H. L. Peyrebrune, NYS DOT to B. A. Blackie, Commercial Transport Division, "Harlem River Yard-RFP Evaluation Committee Recommendation," 12-18-1989, p. 7.

⁴³ Anthony Riccio, vice president, Harlem River Yard Ventures, to Henry Peyrebrune, assistant commissioner, NYS DOT, 8-24-1990 (McHugh papers). (Riccio, until April of that year—just when the selection of HRYV was taking place, had been the commissioner of the City's Department of Ports and Trade; his deputy [and successor], Patricia Zedalis represented the City as its voting member on the procurement committee.)

⁴⁴ A. Mohr, NYS DOT to P. E. Pastecki, Commercial Transport Division, "Subject: Harlem River Yard Lease," 10-16-1990:

A review of HRYV's "Scenario 2" dated September 20, 1990 indicates a complete restructuring of HRYV's original proposal.

The role of HRYV has changed from developer risk taker to "retailer" or broker of land to subtenants. Another words, HRYV has gone from an active to a relatively passive role in the development of HRY.

Originally, HRYV was going to invest \$90 million to develop and provide industrial space for its tenants. However, it appears now HRYV will only be broker or agent for the State in renting parcels of land out to tenants, with the tenants incurring the financing for developing their own respective facilities. As a result, HRYV will only be investing \$30 million, mostly for infrastructure and rail access, which is a sharp decrease from the \$90 million contained in their original proposal.

HFYV' S reduced role and investment in the development of HRY under "Scenario ~" translates into decreased gross revenues and decreased return to the State.

Under "Scenario 2", gross revenues over the 10 year period are approximately one-third less than in the original proposal. HFYV's gross revenues dropped from \$4.78 square foot. (SF), on a 10 year average, in the original proposal to \$1.56 SF under "Scenario 2". The State's return on a new square foot basis dropped from \$.22 to \$.09, averaged over 10 years.

Although HRYV' s role has changed from developer and investor with a substantial risk in the development of HRY to what could be essentially termed a real estate broker, HPYV has not reduced its share of the return to reflect its reduced role and its reduced financial exposure. Under "Scenario 2", HRYV is still receiving a

75/25 split of the return before taxes, even though their risk in development of HRY is substantially less than under the original proposal.

The revised lease contains a base rent provision to reduce the State risk in this venture; however, the schedule for the base rent needs to be negotiated. HRYV will probably not guarantee the State much more than what they have projected under "Scenario 2." It should be noted the base rent does not become effective until year 6. Until that time, the State's return is exposed to the downside in the Ventures' fortune for the first 6 years.

At that last meeting of the Harlem River Yard Negotiating Team on September 28, 1990, it was suggested that market value rent be applied to those subtenants who will be constructing their own facilities, and 6% of gross revenues where HRYV will be constructing and then renting out the facilities to subtenants,

According to HRYV's "Scenario 2", 4 prospective subtenants will be constructing their own facilities. They, as a group, will be providing over 90% of the rental income. By substituting the market value rent instead of the 6% of gross income, as the rental fee basis, this dramatically increases gross revenues. The attached table shows a range of gross revenues based upon various market or land value rental fees on a square foot basis. The \$3.00 a square foot (SF) represents the price for renting industrial space in Brooklyn and Queens for 1984, the latest figures from the 1985 Trans Brooklyn Freight Movement study. The \$6.25 SF is the appraisal value of Harlem River Yard divided by the square foot equivalent of 90 acres. The \$4.08 SF represents the appraised value of HRY minus the intermodal investments of \$8 million.

Only the \$6.25 SF generates enough revenues to provide almost the same revenue stream as the pro forma contained in HRYV's original proposal. However, this is a considerable more than the \$2 SF that HRYV appears to have offered prospective subtenants, and it's unlikely that any square foot price beyond \$2 will attract subtenants to HRY.

As a side issue, with HRYV providing only the common infrastructure, this means the subtenants will be doing their own development; therefore, we may not have a complete development plan to be attached to the lease. Also, this means development will no longer be totally in the hands of HRYV. Therefore, the development of the HRY site is now one step removed from HRYV's and DOT'S control. Thus, we should be contemplating how to approve and control the development of HRY by the subtenants, since HRYV will no longer be the prime developer.

A second issue involves the completion of the Oak Point Link (OPL) and the construction of the Intermodal Terminal at HRY.

In the original proposal, HRYV would provide intermodal rail service over the zig zag route of around 70,000 units. However, under "Scenario 2", HRYV seems to be backing away from the intermodal objective by stating they will not spend \$5.4 million to construct an intermodal terminal until the Link is completed. HRYV should explain their new position on the Intermodal Terminal. The completion of the Link in the original proposal was not a factor for completing and establishing intermodal service and now it is.

Steven D. Scruggs, Director, Jones Lang Wootton USA, gave similarly detailed comments to Bruce A. Blackie, Deputy Assistant Commissioner, NYS DOT ("Harlem River Yard Project—Lease Draft Comments," 2-26-1991).

⁴⁵ *Journal of Commerce*,

⁴⁶ Barbara O'Neill, Assistant Council, Office of Legal Affairs, NYS DOT, to Benjamin Miller, 6-8-2005.

⁴⁷ Chris Ward, Snr VP, EDC, Comments on FEIS, nd (6-93?), p. 6.

⁴⁸ A flaw in this projection, as pointed out in subsequent court testimony, is that clearance restrictions precluded TOFC traffic between the Yard and Hunts Point. In addition, such traffic on the State-controlled mainline track running along the southern edge of the Yard does not pertain to the Yard's operations. Affidavit, Frank R. Harder, 12-21-1994, South Bronx Clean Air Coalition et al. v. NYS DOT.

⁴⁹ Bronx Clean Air Coalition, press release, 8-17-1994, p. 3.

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- ⁵⁰ Appellate Division of New York, First Department, In the Matter of South Bronx Clean Air Coalition et al. v. NYS DOT, 8-10-1995.
- ⁵¹ Exhibit M, Guarantee (loc. cit). The original HRYV proposal called for investing \$90 million in the property, but the sum committed to the yard had decreased to \$30 million by 1995, of which only \$4 million had actually been spent by then, and only \$7 million, according to self-reported HRYV figures, had been spent by 1998. James Bradley, *NY Observer*, 2-27-1995, p.1.
- ⁵² John Holusha, "Pioneering Bronx Plant to Recycle City's Paper," *NYT*, 5-6-1994, D1:5.
- ⁵³ Bagli, Charles, *NYT*, 11-11-1997, p. B6.
- ⁵⁴ *Wall Street Journal*, 7-20-1998, p. B5; Charles Bagli, *NYT*, 7-21-1998, p. B5:1.
- ⁵⁵ Philip Lentz, "Tiff Derails Bronx Freight Shortcut," *Crain's NY Business*, 11-10-97, p.1.
- ⁵⁶ *Ibid.*
- ⁵⁷ "NYS DOT-Port Authority Rail Freight Capital Improvement Program-Phase I, East of the Hudson Portion of the New York Metropolitan Region."
- ⁵⁸ Current plans call only for clearance increases needed to provide TOFC access. Although double-stack clearance is industry standard west of the Hudson, the cost of retrofitting east of Hudson trackage for double-stack would require more funding than is available in any existing program. The current plan is to increase clearance gradually, as bridges and other obstructions are rebuilt as per their standard replacement cycle. If the cross-harbor rail freight tunnel is constructed, however, there will be a greater need for double-stack clearance east of the Hudson.
- ⁵⁹ Like many other sections of the FFAP network, the bridge currently can accept only 263,000-pound cars. The more-efficient heavier cars have become industry standard west of the Hudson.
- ⁶⁰ Although "passenger rail" is included in the press release, the program is directed at freight improvements; only passenger rail improvements that are ancillary to freight rail improvements are planned. Governor George Pataki, Press Release, January 18, 2005; personal communication, Paul Pastecki, NYS DOT Office of Economic Development, 6-1-2005.
- ⁶¹ DMJM Harris, "Capacity Assessment, Present Service Plan," 12-18-03, presentation to Port Authority of NY & NJ's freight advisory committee; telecon, William Goetz, CSX, 1-17-05.
- ⁶² Interviews with Riccio and with Alexander H. Jordan, President & Chief Operating Officer, NYPort Terminal Development Co. LLC, 1-13-05.
- ⁶³ Bruce Lieberman, New York & Atlantic, "Track to the Future" (NYA newsletter), 7-2000 (a 34% increase to 12,700 since startup).
- ⁶⁴ Jim van Woert, Manager, Waste Management Bronx Rail Transfer Operations, Solid Waste Association of North America, New York State Chapter, Technical Session on Municipal Waste Transportation by Rail, 6-1-2005: containers are 12' high, 4 containers per flatcar, 92 tons/car; 3,900 tons per day.
- ⁶⁵ Riccio interview.
- ⁶⁶ Personal communications, Anthony Riccio, HRYV, 1-17-2005 and Paul Pastecki, NYS DOT, 1-10-2005.
- ⁶⁷ Port Authority, "East of Hudson Rail Freight Infrastructure Needs Assessment" (preliminary .ppt presentation), 12-18-2003.
- ⁶⁸ Riccio.
- ⁶⁹ CSX handout for Hunts Point Perishables project, 2003, based on CSX STB Report, June-August 2002.
- ⁷⁰ Cambridge Systems for NYMTC, "Hunts Point Waterborne Freight Assessment," 9-2004, p. 15.
- ⁷¹ *Ibid.*; Jordan interview.
- ⁷² *Ibid.*, p. 15. The majority of these loads are grounded at North Bergen yard; a few are grounded at Little Ferry. (NYMTC 9-2004).

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- ⁷³ Lawrence Elrond, "Field of Dreams," *Trains*, 12-2004, pp. 32ff.
- ⁷⁴ Bill Martin, "UP/CSX express lane: A little different approach," 4-24-2000, *The Produce News* (<http://theproducenews.com/storydetail.cfm?ID=262>)
- ⁷⁵ (As an incentive to encourage CSX's participation in this project, NYS amended its tax code in 2003 to reduce the rate at which railroad companies' capital plant was assessed, bringing it more in line with the national average.)
- ⁷⁶ The Hunts Point Terminal Market owns 5% of HRYV.
- ⁷⁷ Cross Harbor DEIS, Ch. 8, pp. 8-24, -31.
- ⁷⁸ *Ibid.*, p. 8-28.
- ⁷⁹ TBS, 10-88, p. III-18.
- ⁸⁰ *Ibid.*, p. III-23.
- ⁸¹ Riccio interview.
- ⁸² Interview with William Galligan, February 2, 2005.
- ⁸³ *NYT*, 3-4-1967, p. 29; 4-13-1967, p. 38.
- ⁸⁴ Allan M. Siegal, *NYT*, 5-15-1974.
- ⁸⁵ United States Court of Appeals, Second Circuit, *Mr. Sprout, Inc., et al. v. United States of America, and Interstate Commerce Commission*, 8-1992 (<http://law.touro.edu/2ndCircuit/Pre95/92-4160.html>).
- ⁸⁶ Surface Transportation Board, Office of Economics, Environmental Analysis and Administration, 12-2000, pp. 1-2, <http://www.stb.dot.gov/stb/docs/RI.pdf>, accessed 3-22-2005.
- ⁸⁷ NYPort Terminal Development Company, LLC and a group led by a major shipping line.
- ⁸⁸ SPM Environmental acquired the former Byrd Chemical site in the South Bronx in 1985 and created an enclosed waste transfer facility there. The site had a 100-year-old rail easement through the Harlem River Yard to the state's main rail line. In 1994, that facility was shipping 400 tons a day of MSW from its facility, at 920 East 132nd Street, via the Harlem River Yard. (Vincent L. Promuto, President, SPM Environmental, Inc., to John C. Egan, Commissioner, NYS DOT, 3-28-1994.) Shortly thereafter, HRYV made physical changes in the yard that prevented rail access from the adjacent SPM facility. Since then, waste formerly handled by SPM by rail has been trucked away from its facility.
- ⁸⁹ John McHugh, Esq., "Recommended Text of a Report on the Railway Operations of the MTA, Prepared for Consideration by the Operations Subcommittee of the Citizens' Advisory Committee to the MTA Management Study," nd (1978), p. 78. The annual total for the LIRR alone was 46,000 per year; this did not include the cars floated to the South Brooklyn Railway, which reportedly was the only profitable MTA operation at that time.
- ⁹⁰ E.g., Mohr to Pastecki, 10-16-1990; Ben Friedman, letter to editor, *Crain's New York Business*, 10-21-1991, p. 12.
- ⁹¹ Charles Bagli, "Post Plans a Printing Plant for the Bronx or Jersey City," *NYT*, 11-11-1997, p. B6.
- ⁹² The British rail system's recent experience along these lines is interesting. Since opening its system to any qualified private company, freight rail share, which had been declining, has increased at 5-6% a year. Comprehensive Port Improvement Plan, 3-2005, Draft Plan, http://www.cpionline.org/plan/documents/Draft_CPIP_Vol_1_V38.pdf, accessed 6-6-2005, p. 160.
- ⁹³ Again, the recent British experience is instructive. The UK Company Neutral Revenue Support System pays any railroad delivering a qualifying specific service between specific locations an established "support tariff." These tariff rates vary depending on the distance involved (shorter distances have proportionately higher support tariffs, reflecting the relatively higher costs of short-haul rail.) *Ibid.*, pp. 143-146.
- ⁹⁴ John A. Droege, *Freight Terminals and Trains*, NY: 1912, p. 226.