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STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
ALBANY, N.Y. 12232
www.dot.ny.gov

JOAN MCDONALD
COMMISSIONER

ANDREW M. CUOMO
GOVERNOR

August 30, 2012

The Honorable Robert A. Rybak
Acting Chief Administrative Law Judge
Office of Proceedings
New York State Department of Transportation
50 Wolf Road
Albany, New York 12232

Re: Cases 36030 Kenmore Avenue & 36047 Woodward Avenue

Dear Judge Rybak:

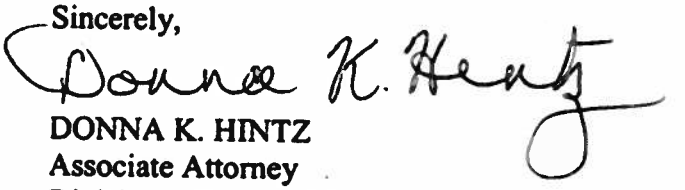
An order was issued on March 1, 2006 for the above cases. This project was originally developed by Erie County and the original scope included reconstruction of the entire intersection including widening to provide left turn lanes on all legs, relocation of the at-grade crossing alignment to allow right turns from northbound Sheridan Drive to eastbound Kenmore Avenue while the crossing was in use and reconstruction and widening of the eastern leg of Kenmore Avenue.

Eventually, the project was turned over to the New York State Department of Transportation to complete. A draft design report was revised with new traffic and accident data. The revised accident data and current traffic volumes allow for left turn lanes to be added on Sheridan Drive at the intersection of Kenmore Avenue, without the need to widen or reconstruct the existing pavement section. The remaining portion of Sheridan Drive will retain its existing four lane section. A review of the accident data also showed that there was no record of any car-train accidents and the relocation of the at-grade crossing alignment could not be justified.

The current proposed project will resurface the pavement section and provide turning lanes to enhance safety and reduce congestion at the intersection. The highway signal system will be replaced, new curbs, sidewalks and ADA features will be installed and Sheridan Drive will be restriped as a three lane roadway.

Due to these changes, the Department hereby requests that the order be vacated in its entirety. Thank you for your consideration.

Sincerely,



DONNA K. HINTZ
Associate Attorney
Division of Legal Affairs

DKH1030

cc: Robert Rohauer
Manager, Community Affairs and Safety
CSX Transportation
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95 Franklin Street, 14th Floor
Buffalo, New York 14202

Michael Siragusa, Esquire
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95 Franklin Street, Room 1634
Buffalo, New York 14202

STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION

ORIGINAL

At the Office of the Department
of Transportation in the County
of Albany on March 1, 2006

PRESENT:

DENNISON P. COTTRELL, Director
Passenger & Freight Safety Division

CASE 36030 - Application of the County of Erie, pursuant to Sections 89 and 91 of the Railroad Law, as to the manner in which the intersection of Kenmore Avenue (County Route 189) and Sheridan Drive (State Route 325) shall cross the tracks of the Wonalancet Running Track of CSX Transportation, Inc. in the Town of Tonawanda, Erie County, at Mile Post 2.61 (USDOT No. 519-566 L).

CASE 36047 - Petition of the County of Erie for a determination, pursuant to Sections 89 and 90 of the Railroad Law, as to the manner in which a proposed new Woodward Avenue shall cross over the realigned tracks of the Wonalancet Running Track of CSX Transportation, Inc. in the Town of Tonawanda, Erie County, in the vicinity of Mile Post 2.52.

* * *

Pursuant to a letter/petition dated March 6, 2003, filed pursuant to Sections 89, 90 and 91 of the Railroad Law, the County of Erie requested that this Department issue orders directing the manner in which the intersection of Kenmore Avenue and Sheridan Drive shall cross a realigned Wonalancet Running Track of CSX Transportation, Inc. in the Town of Tonawanda, Erie County at Mile Post 2.61, and the manner in which a proposed new Woodward Avenue shall cross over the realigned tracks of the Wonalancet Running Track of CSX Transportation, Inc. in the Town of Tonawanda, Erie County in the vicinity of Mile Post 2.52; and a public hearing after due notice having been held on the said petition; and the record having remained open for additional submissions; and said record now being closed; and based upon the record, it having been determined that the tracks of the Wonalancet Running Traffic of CSX Transportation, Inc. shall cross the intersection of Kenmore Avenue and Sheridan Drive, at grade, substantially as depicted in Exhibit 1 in evidence in this proceeding; and it having been determined that said Woodward Avenue shall cross over the tracks of the Wonalancet Running Track, at grade, substantially as depicted in Exhibit 1 in evidence in this proceeding; and it having been determined that the at-grade crossing of the intersection of Sheridan Drive and Kenmore Avenue should utilize a traffic signal system to serve as the primary traffic control for both highway and rail movements through the intersection and other devices, signage and pavement markings, as appropriate; and the delineation of the right hand turn lane for said intersection should include use of a raised island; and it having further been determined that the Woodward Avenue crossing should be equipped with flashers and gates, it is

Cases 36030 and 36047

ORDERED:

1. That the existing grade crossings of Kenmore Avenue and Sheridan Drive be eliminated and consolidated as a single crossing of the intersection of Sheridan Drive and Kenmore Avenue over a realigned Wonalancet Running Track, at grade, substantially in the location as depicted in Exhibit 1 in evidence in this proceeding.

2. That at the said Kenmore/Sheridan intersection at-grade crossing the traffic signal system shall serve as the primary traffic control for rail movements as well as vehicular traffic through the intersection and other devices, signage and pavement markings be installed, as appropriate.

3. That the improvements to the Kenmore Avenue/Sheridan Drive intersection include appropriate pavement delineation, including use of a raised island, to ensure that traffic makes a proper right hand turning movement east from Sheridan south/eastbound onto Kenmore to mitigate any confusion by users of the intersection.

4. That a proposed new Woodward Avenue shall cross a realigned Wonalancet Running Track, at grade, substantially in a location as depicted in Exhibit 1 in evidence in this proceeding.

5. That the said at-grade crossing of Woodward Avenue be equipped with warning devices, including flashers and gates, appropriate signage and pavement markings.

6. That signage and pavement markings comply with The New York State Manual of Uniform Traffic Control Devices (MUTCD), as well as with all other applicable federal and railroad industry standards.

7. That all designs and plans relative to the proposed crossings be submitted to this Department's Grade Crossing Section for final approval.

By the Passenger & Freight Safety Division

Davison P. Cottrell

DSM:pm

ORIGINAL

STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION

ADOPTED MARCH 1, 2006

CASE 36030 - Application of the County of Erie, pursuant to Sections 89 and 91 of the Railroad Law, as to the manner in which the intersection of Kenmore Avenue (County Route 189) and Sheridan Drive (State Route 325) shall cross the tracks of the Wonalancet Running Track of CSX Transportation, Inc. in the Town of Tonawanda, Erie County, at Mile Post 2.61 (USDOT No. 519-566 L).

CASE 36047 - Petition of the County of Erie for a determination, pursuant to Sections 89 and 90 of the Railroad Law, as to the manner in which a proposed new Woodward Avenue shall cross over the realigned tracks of the Wonalancet Running Track of CSX Transportation, Inc. in the Town of Tonawanda, Erie County, in the vicinity of Mile Post 2.52.

PETITIONER'S ADDRESS:

County Office Building, 95 Franklin Street, Buffalo, NY 14202

APPEARANCES:

Peter S. Loomis, Esq., Acting Chief Counsel to the Commissioner, New York State Department of Transportation, 1220 Washington Avenue, Albany, NY 12232, attorney for the Department.

Craig Sollenberger, Project Engineer, Design and Construction, CSX Transportation, Inc., 1836 Broadway, Buffalo, NY 14212, appearing on behalf of CSX Transportation, Inc.

DAVID S. NEALON, Administrative Law Judge:

Pursuant to a letter/petition dated March 6, 2003, filed pursuant to Sections 89, 90 and 91 of the Railroad Law, the County of Erie has requested that this Department issue orders directing the manner in which the intersection of Kenmore Avenue and Sheridan Drive shall cross a realigned Wonalancet Running Track of CSX Transportation, Inc. in the Town of Tonawanda, Erie County, and the manner in which a proposed new Woodward Avenue shall cross over the realigned tracks of the Wonalancet Running Track of CSX Transportation, Inc. in the Town of Tonawanda, Erie County. This letter was signed by Maria C. Lehman, P.E., FASCE, Commissioner of the Erie County Department of Public Works. Pursuant to that request, these proceedings were instituted and hearings on the matters were held on a consolidated record in the Donovan State Office Building, Fourth Floor, Room 456, 125 Main Street, Buffalo, New York on July 18, 2003.

Notice of the consolidated hearings was published in the Buffalo News, Div. of Berkshire Hathaway, Inc., publisher of the Buffalo News, a daily newspaper published in the City of Buffalo, County of Erie and State of New York on June 30, 2003. An affidavit of publication from that newspaper, dated July 1, 2003, is in the record. In addition, notice of the hearing was also served by first class mail upon a number of local officials, railroad officials and property owners.

At the hearing, three exhibits were admitted into evidence and sworn testimony was received from three witnesses, those being: Edward F. Stachura, Transportation Projects Manager, employed by URS Corporation, consultants to Erie County; Craig Sollenberger, Project Engineer, Design and Construction, CSX Transportation, Inc.; and Dennis McKenna, an Intermodal Transportation Specialist employed in this agency's Main Office in Albany.

There are also various pieces of correspondence in the record, including a letter dated March 6, 2003 from Maria C. Lehman, on behalf of the County of Erie, as well as a resolution adopted by the Erie County legislature dated April 10, 2003 and a resolution adopted by the town board of the Town of Tonawanda dated April 22, 2003, both in reference to this proceeding. The Department and CSX Transportation, Inc. made post hearing submissions with respect to technical issues relating to the signalization of the intersection of Kenmore Avenue and Sheridan Drive which have been incorporated into the record.

It should be noted that this report and proposed order were written in 2003 but withheld pending resolution of the technical issues raised with respect to the signal system for the Kenmore Avenue and Sheridan Drive intersection. The project involves significant highway work and said post hearing submissions were received with respect to the proposed traffic signalization at said intersection as it affected rail operations.

As indicated, the project includes highway improvements for the intersection on Sheridan Drive (State Route 325) and Kenmore Avenue (County Route 189) in the Town of Tonawanda, Erie County, and involves the reconstruction of the intersection; reconstruction and realignment of the Wonalancet Running Track; realignment of Woodward Avenue; and creation of a new at-grade rail crossing over the realigned Wonalancet Running Track at Woodward Avenue.

Currently the Wonalancet Running Track runs through Kenmore Avenue and as it crosses through Kenmore Avenue it is at an approximately 75 degrees skew angle. (Transcript, Pg. 11) It is described as a long crossing through Kenmore Avenue and when it crosses through Sheridan Drive it is at a perpendicular angle. As a result, whenever there is a train rail operation within the Kenmore Avenue/Sheridan Drive area on the Wonalancet running track, all motor vehicle traffic is stopped and trucks are not permitted to proceed south/eastbound on Kenmore Avenue off ramp and as a consequence the traffic may become backed up on the main line of I-190 (NYS Thruway). The proposed improvements will permit continuous right hand movements for motor vehicle traffic coming off eastbound Sheridan Drive and then proceeding southbound on Kenmore Avenue from

northbound on I-190 existing at the Kenmore Avenue exit. Analysis showed that approximately 600 trucks make the movement off the Kenmore Avenue ramp daily. The proposed project was selected as the best fit alternative because it takes an existing long rail crossing through a 75 degree skew angle across Kenmore Avenue and puts it running parallel to Kenmore Avenue such that it would now cross a new Woodward Avenue at a preferred 90 degree angle. The rail line will then cross through the center of the intersection of Kenmore Avenue and Sheridan Drive thereby facilitating right-hand motor vehicle movements generally south/eastbound on Kenmore Avenue and allowing for continuous direct moves to the various industrial complexes in this area.

The project also addresses the problem of Woodward Avenue which is currently only about 130 feet from Sheridan Drive. The highway project moves Woodward Avenue approximately 300 feet to the west and ties it in with a new intersection of Kenmore Avenue thereby eliminating the existing Woodward Avenue but creating a new at-grade crossing over the realigned Wonalancet Running Track. The cul-de-sac or dead-ending of Woodward Avenue to avoid the creation of a new at-grade crossing wasn't feasible because closure of Woodward Avenue would result in truck traffic being rerouted from the industrial area into a residential area. The Town of Tonawanda, in a letter dated June 19, 2003, identified as Exhibit 3 in evidence in this proceeding, raised concerns with respect to increased response time to deliver municipal services to the residential area and the increased traffic resulting from an elimination of access to Woodward Avenue. The proposed relocation of Woodward Avenue with the at-grade crossing over the realigned Wonalancet Running Track would avoid the need for truck traffic going into a residential area to reach their destinations and address the town's concerns with respect to the timely delivery of municipal services to the residential area.

The realigned Wonalancet Running Track would pass through the Sheridan Drive/Kenmore Avenue intersection at-grade and would be equipped with traffic signals. Warning devices, signage and pavement markings would also be installed in conformance to the provisions of the New York State Manual of Uniform Traffic Control Devices (MUTCD). The proposed crossing surface through the intersection of Kenmore Avenue and Sheridan Drive would be full-depth rubber and the maintenance would be the responsibility of CSX Transportation, Inc. (Transcript, Pg. 34)

The Woodward Avenue crossing over the realigned Wonalancet Running Track would be equipped with active warning devices consisting of flashers and gates. Warning signage and pavement markings would also be installed in conformance to the provisions of MUTCD and the crossing would have a full-depth rubber crossing surface maintained by the railroad.

Craig Sollenberger, an employee of CSX Transportation, Inc. at its Buffalo office, testified that he is familiar with the proposal to realign the Wonalancet Running Track which currently has six train movements per day and a ten mile per hour speed limit for train movements over the track. Coal trains operating over the track consist of approximately fifty cars while other freight trains consist of approximately twenty cars. Currently train movements operate under a stop and proceed procedure. The improvements at the Sheridan Drive and Kenmore intersection with the relocation

of the Wonalancet Running Track would allow the railroad to discontinue the necessity of the stopping and flagging procedure. (Transcript, Pg. 44)[1] The realignment of the running track would also eliminate a roughly 200 foot crossing of Kenmore Avenue which, according to Mr. Sollenberger, is difficult to maintain. In addition, while there are two existing rail crossings, "The two crossings we end up with are shorter and I think from a safety standpoint from the railroad and from traveling public, I think this will be a better system." (Transcript, Pg. 45)

Testifying on behalf of this Department, Dennis McKenna noted that "the current situation has been under investigation by our office for a number of years to try to improve the existing warning devices." (Transcript, Pg. 47) The Kenmore Avenue angle of skew has been a cause of particular concern. At the hearing, Mr. McKenna recommended that improvements to the crossing of Kenmore Drive and Sheridan Avenue include bridge or cantilever installed traffic signals, railroad flashers, bells and appropriate pavement delineation to ensure not only that traffic makes a proper movement but that users, being the railroad and the highway users, are not confused when a train is in the crossing. (Transcript, Pg. 51)

With respect to the proposed Woodward Avenue, Mr. McKenna recommended that the at-grade crossing be equipped with flashers and gates. (Transcript, Pg. 49)

POST HEARING SUBMISSIONS

On September 7, 2004, the Department notified CSX Transportation, Inc. (Carl A. Roe, Jr., Principal Engineer-Public Improvements) that it had made a re-evaluation with respect to the technical recommendations made at hearing on July 17, 2003. This re-evaluation determined that "the use of traffic signals as the sole form of warning was allowable under the existing operating conditions" per the MUTCD.[2] The Department recommended the use of two-headed signals along the railroad right-of-way and any other advance notification deemed appropriate for use by the train crew to confirm the traffic signal aspect. In addition, to prevent vehicles turning right onto Kenmore Avenue from proceeding straight, the Department proposed a raised island. McKenna's recommendation at hearing was thus modified to eliminate the installation of railroad flashers and bells because the multiple lanes of the roadway would have necessitated the installation of signal bridge containing both the railroad flashers and highway signals.

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[1] Dennis McKenna testified that the stop and flag procedure takes a train longer to move through the intersection making backups on each of the four quadrants more likely. (Transcript, Pg. 53)

[2] Manual of Uniform Traffic Control Devices.

On August 30, 2005, Department counsel wrote to the undersigned to formally request that the record in this case be re-opened for post-hearing submissions to address "several technical issues"; apparently as a result of the Department's September 7, 2004 correspondence to CSX Transportation, Inc.

On August 31, 2005, the undersigned advised the parties of record that "the entire matter would be held in abeyance and remain open for an additional period of time so as to enable the Department to address several technical issues with the railroad regarding this crossing that require clarification.

On September 30, 2005, Department counsel requested an additional extension of time for the record to remain open for post-hearing submissions.

On October 3, 2005, the undersigned advised that the Department's request for an extension of time was granted and that the record would remain open for post-hearing submissions.

On October 12, 2005, the Department by Dennis McKenna wrote to CSX Transportation, Inc. (Carl A. Roe, Jr., Principal Engineer-Public Improvements) that upon further review the Department had again revised its recommendations with respect to the use of traffic signals as the sole form of warning. The Department proposed "that an active crossbuck be installed on each of the four highway signal mast arms". In addition, because there will be no gates at this location, the Department recommended that a two headed signal (or equal device) be installed for a "prepared to stop". Said recommendations were transmitted to the undersigned by Department counsel on October 13, 2005.

On November 11, 2005, CSX Transportation, Inc. by letter from Carl A. Roe, Jr., P.E., Principal Engineer-Public Projects, submitted its response to the Department's recommendations with respect to the traffic control device configuration proposed for use at the new rail alignment in the area of the Kenmore/Sheridan intersection. Mr. Roe noted that the use of a device that does not conform to the MUTCD might be viewed to be non-standard and that no information, diagrams or sketches that would provide additional details with respect to use of an "active crossbuck" was supplied.

Roe stated that: "If it is determined by NYSDOT acting in its regulatory capacity that active traffic control devices not involving gates are required in addition to the proposed traffic signal system at the Kenmore/Sheridan intersection and crossing, conventional flashing light signals mounted in some location that will be conspicuous to motorists could provide more consistent and clearly understood notification to motorists. Alternatively, and if it is determined that conventional flashing light signals are not appropriate, the use of an "active crossbuck" or other form of non-standard device must be very carefully considered".

Roe further stated that use of a separate signal to alert train crews as to the function of the traffic signals could prove to be in conflict with that afforded by or the train crews anticipate in connection

with the operation of flashing light signals. He indicated that the installation of a flashing light with a fail-safe backup would afford motorists warning in advance of the approach of a train and that if crossbucks are installed, a railroad indication as to the phasing of the traffic signal system would be appropriate. Roe also stated that "owing to the unique circumstances at the intersection, consideration should possibly be given to requiring battery backup for the traffic signal system and/or perhaps incorporating a symbolic active crossbuck indication into that system rather than using the suggested non-standard active crossbuck signage".

On January 24, 2006, the undersigned acknowledged receipt of the Department's post hearing submission dated October 12, 2005 and CSX Transportation, Inc.'s response thereto dated November 11, 2005. The parties to the proceeding were advised that the record would remain opened until February 28, 2006 for receipt of additional technical submissions and responses thereto.

On February 23, 2006, the Department by Dennis M. McKenna wrote to CSX Transportation, Inc. (Carl A. Roe, Jr., Principal Engineer-Public Improvements) in response to Mr. Roe's concerns and recommendations. McKenna proposed that the traffic signal system should serve as the primary traffic control for both highway and rail movements through the intersection. McKenna stated that "a two-headed signal for the railroad train crew, to confirm that the highway signal aspect is appropriate, will be provided. The railroad circuitry shall be designed so that the train crew has the ability to stop the train if they do not receive a clear signal." Mr. McKenna also advised that the NYS MUTCD will be revised "so as to allow a through move at a grade crossing location where the sole form of warning is a traffic signal." He noted that this revision would be consistent with the Federal MUTCD.

On February 27, 2006, CSX Transportation, Inc. by letter from Carl A. Roe, Jr., P.E., Principal Engineer-Public Projects, submitted its response to the Department's proposal of February 23, 2006. Mr. Roe stated that in his view if conventional active automatic flashing light signals are not installed then the use of auxiliary active traffic signage to alert motorists of an approaching train should be considered. He recommended the placement of additional signage that would only activate if a train were approaching to warn motorists turning right while thru traffic is stopped. In addition, Mr. Roe recommended that a dwarf signal not be used at the crossing but that placement of a signal for train movements should be considered in lieu of any dwarf signals. He reiterated his belief that traffic signal systems do not generally employ backup power and are subject to failure during a power outage and that a fail-safe backup should be required.

On February 28, 2006, the Department by Dennis M. McKenna replied to comments made by Carl A. Roe, Jr., Principal Engineer-Public Improvements for CSXT on February 27, 2006. McKenna acknowledged the substantive nature of the comments and indicated that they "can be addressed as part of the design process".

Discussion and Recommendation

By its petition filed pursuant to Sections 89, 90 and 91 of the Railroad Law, the County of Erie has sought the orders directing the manner in which the intersection of Kenmore Avenue and Sheridan Drive shall cross a realigned Wonalancet Running Track of CSX Transportation, Inc. in the Town of Tonawanda, Erie County at Mile Post 2.61, and the manner in which a proposed new Woodward Avenue shall cross over the realigned tracks of the Wonalancet Running Track of CSX Transportation, Inc. in the Town of Tonawanda, Erie County in the vicinity of Mile Post 2.52.

A consolidated hearing was held on the matters on July 18, 2003, at which time testimony was taken from a number of individuals and exhibits received and subsequent to the hearing there were various submissions made by this Department and CSX Transportation, Inc. with respect to technical issues relating to the signalization of the intersection of Kenmore Avenue and Sheridan Drive were received.

The project involves highway improvements to the intersection of Sheridan Drive and Kenmore Avenue, the reconstruction and realignment of the Wonalancet Running Track and the creation of a new at-grade crossing at a realigned Woodward Avenue as more fully described in the draft design report of February 2003 identified as Exhibit 2 in evidence in this proceeding.

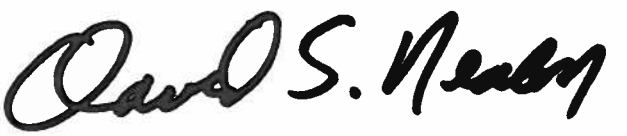
Currently, two rail crossings exist, one for Sheridan Drive and one for Kenmore Avenue. While upon completion of the project two crossings would continue to exist significant improvements in the movement of motor vehicles and trains would be achieved through the consolidation of the Sheridan Drive and Kenmore Avenue crossings into one crossing through that intersection. This reconfiguration would eliminate existing backups onto the Kenmore Avenue ramp off I-190 allowing traffic to make continuous right hand turns from a new turning lane from Sheridan Drive onto Kenmore Avenue south/eastbound. With respect to train movements, the stop and flagging procedure could be eliminated along with about 200 feet of existing crossing surface thereby allowing more efficient train movements through the Kenmore Avenue/Sheridan Drive area further eliminating traffic delays.

It is determined that the reconfiguration of the Kenmore Avenue/Sheridan Drive intersection is the only feasible solution to improve the existing traffic situation and to eliminate the Kenmore Avenue crossing angle of skew. Such improvements also dictate the realignment of Woodward Avenue and the creation of a new at-grade crossing at Woodward Avenue. Accordingly, the issue must be whether construction of at-grade crossings at the proposed sites can be accomplished consistent with the public interest and safety requirements. As has been discussed herein, there will be no change in the actual number of at-grade crossings since the existing Sheridan Drive and Kenmore Avenue crossings would be consolidated into one crossing through the Kenmore/Sheridan intersection, allowing for a reconfiguration to establish a designated right hand turn lane proceeding east from Sheridan Drive onto south/eastbound Kenmore Avenue. Additionally, the new crossing of

Woodward Avenue will allow for the realignment of Woodward Avenue away from the intersection of Kenmore/Sheridan intersection allowing for a new grade crossing which is perpendicular to the tracks and which can be equipped with flashers and gates. Currently neither existing crossing is equipped with gates.

Department staff has concluded that (1) with respect to reconfiguration of the Kenmore/Sheridan intersection the intersection should be equipped with a traffic signal system to serve as the primary traffic control for both highway and rail movements through the intersection and other devices, signage and pavement markings, as appropriate, and (2) with respect to the proposed new crossing at the realigned Woodward Avenue the crossing should be equipped with flashers and gates, appropriate signage and pavement markings. One caveat requires that the appropriate delineation of the right hand turn lane proposed for the Kenmore/Sheridan intersection ensure not only that traffic makes a proper movement but that users of the intersection are not confused when a train is also within the intersection. Such delineation should include use of a raised island to mitigate any such confusion.

Given all the foregoing, it is recommended, pursuant to Sections 89 and 91 of the Railroad Law, that the tracks of the Wonalancet Running Track of CSX Transportation, Inc. is the Town of Tonawanda, Erie County, traverse the intersection of Kenmore Avenue/Sheridan Drive at grade, at a location substantially as depicted in Exhibit 1 in evidence in this proceeding. It is further recommended, pursuant to Sections 89 and 90 of the Railroad Law, that the tracks of the Wonalancet Running Track in the Town of Tonawanda, Erie County, be crossed by a realigned Woodward Avenue in the vicinity of Mile Post 2.52 at grade, at a location substantially as depicted in Exhibit 1 in evidence in this proceeding.



March 1, 2006
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STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION

NOTICE TO VACATE ORDER

CASE 36030 - Application of the County of Erie, pursuant to Sections 89 and 91 of the Railroad Law, as to the manner in which the intersection of Kenmore Avenue (County Route 189) and Sheridan Drive (State Route 325) shall cross the tracks of the Wonalancet Running Track of CSX Transportation, Inc. in the Town of Tonawanda, Erie County, at Mile Post 2.61 (USDOT No. 519-566 L).

CASE 36047 - Petition of the County of Erie for a determination, pursuant to Sections 89 and 90 of the Railroad Law, as to the manner in which a proposed new Woodward Avenue shall cross over the realigned tracks of the Wonalancet Running Track of CSX Transportation, Inc. in the Town of Tonawanda, Erie County, in the vicinity of Mile Post 2.52.

INTERESTED PARTIES:

Donna K. Hintz, Associate Attorney, New York State Department of Transportation, 50 Wolf Road, Albany, NY 12232.

Craig Sollenberger, Project Engineer, Design and Construction, CSX Transportation, Inc., 1836 Broadway, Buffalo, NY 14212.

Robert Rohauer, CSX Transportation, Inc., One Bell Crossing Road, Selkirk, NY 12158

John Loffredo, Commissioner, Erie County Department of Public Works, 95 Franklin Street, 14th Floor, Buffalo, NY 14202.

Michael Siragusa, Esq., Erie County Law Department, 95 Franklin Street, Room 1634, Buffalo, NY 14202.

The Honorable Anthony F. Caruana, Tonawanda Town Supervisor, 2919 Delaware Ave., Room 1, Kenmore, NY 14217

The Honorable William E. Swanson, Tonawanda Superintendent of Highways, 450 Woodward Ave., Kenmore, NY 14217

The Honorable Mark C. Poloncarz, Erie County Executive, 95 Franklin Street, Buffalo, NY 14202

Clerk, Erie County Legislature, 92 Franklin Street, 4th Floor, Buffalo, NY 14202.

Richard J. Hody, Transportation Engineer, URS Corporation, 640 Ellicott Street, Buffalo, NY 14203.

New York State Thruway, Buffalo Division, 455 Cayuga Road, Suite 800, Cheektowaga, NY 14225-0121

* * *

NOTICE is hereby given that the New York State Department of Transportation, by a letter dated August 30, 2012, has requested that its order dated March 1, 2006 be vacated in its entirety. A copy of the Department's August 30th request, the Department's March 1st order and a report dated March 1, 2006 are attached hereto.

Parties may request that a public hearing be held or submit written comments as to why this request should not be granted to the Honorable Robert A. Rybak, Chief Administrative Law Judge, Office of Proceedings, NYSDOT, 50 Wolf Road, Albany, New York 12232 on or before September 21, 2012.

September 5, 2012
RAR:ll

ROBERT A. RYBAK
Chief Administrative Law Judge
Office of Proceedings