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June 17, 2021

Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

ENTERED
Office of Proceedings
June 17, 2021
Part of
Public Record

Re: Docket No. AB 167 (Sub.no. 1189X), Conrail – Abandonment Exemption – in Hudson County, NJ and related CSX and NS dockets AB 290 (Sub-no. 686X) and AB 290 (Sub-no. 306X)

Dear Ms. Brown:

The Van Vorst Park Association (VVPA) is a volunteer organization dedicated to improving the quality of life of our neighborhood of Downtown Jersey City. Our membership is open to any resident of the neighborhood. Because much of our neighborhood is in the Van Vorst National Historic District, on the National Register of Historic Places, we review development plans and issues related to protecting the historic character of our area and the surrounding historic fabric.

We have supported, specifically and over two decades now, preservation of the Harsimus Branch and its State-Register-listed Embankment that delineate the Harsimus Cove and Hamilton Park National Historic Districts immediately to our north. The Branch, which in the recent Opinion of the State Historic Preservation Office (SHPO) is a Historic District eligible for the National Register, also runs through our adjacent Village area, which SHPO opined was eligible for the National Register as the immigrant Italian Village. The Harsimus Branch was the freightway into New York Harbor of the Pennsylvania Railroad. The integrity of all these still existing resources is critical to the overall integrity of the entire historic Downtown.

We are confident that the City of Jersey City, Rails to Trails Conservancy, and Embankment Preservation Coalition (City et al.) will present the facts and law for your agency's current consideration of Section 110(k) of the National Historic Preservation Act (NHPA). In our opinion, City et al. has already done this in STB filings previously served on us.

If anything said below conflicts with City et al. in these proceedings, we defer to City et al., but we wish to emphasize several points that we think are essential in the Board's consideration of the cases above.

1. We ask that the Board take public participation seriously. It is central to our national historic preservation policy. The very purpose of the 1949 Congressional Act that set up the National Trust for Historic Preservation (NTHP), which maintains the National Register, was "to facilitate public participation in the preservation of sites, buildings, and objects of national significance or interest..."¹

It is the City of Jersey City and nonprofits working in the public interest that brought Conrail violations to your attention. The general public has also raised its voices, but we question if these have been heard. Hundreds of individuals and dozens of nonprofit organizations have urged your agency over the years to meaningfully fulfill your environmental and historic preservation responsibilities. We understand that environmental comments lodged at STB in Harsimus Branch dockets may be more than your agency has ever received, and that these overwhelmingly support thorough environmental review and historic preservation. Yet, we believe these comments may not have been read by the Board at all as they were not "Formal Filings" as the agency defines them. (Your processes are unclear to the public.) Efforts to bring 110(k), which should have been addressed before Section 106, to your agency's attention were also unavailing until now, even though in Formal Filings.

2. We ask the Board to carry out its consideration of Section 110(k) in the broad context of the background and intentions of Congress in the NHPA:

(b) The Congress finds and declares that--(1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage; (2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people; (3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency; (4) the preservation of this

¹ October 26, 1949[H. R. 5170] [Public Law 408]

irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, esthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans; (5) in the face of ever increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to ensure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation; (6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development; and (7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.²

3. We ask the Board to consider the broad potential adverse effects, direct and indirect, of the proposed undertaking (an abandonment license) to historic resources implicated in the Harsimus Branch cases:

§ 306108. Effect of undertaking on historic property

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, shall take into account the effect of the undertaking on any historic property. The head of the Federal agency shall afford the Council a reasonable opportunity to comment with regard to the undertaking.

The Section 106 process undertaken by STB – now in abeyance – had identified many historic districts and sites that would potentially suffer adverse effects from the abandonment undertaking. But the agency seemed headed toward prescribing

² <https://www.gsa.gov/cdnstatic/NHPA.pdf>

documentation and signage as the “mitigation” for exposure of all these historic resources to the degradation and destruction that can reasonably be expected from such a license.

If the STB grants an abandonment license to the Harsimus Branch without stringent remedies for Conrail’s unlawful actions, the STB will be increasing the vulnerability of the Harsimus Branch and dozens of historic districts, sites, and buildings along its route to degradation and destruction.

4. When the Board considers the evidence regarding 110(k) as applicable to the Harsimus Branch, and as set before you by City et al., we believe that the Board will have to hold Conrail and its parent companies accountable for anticipatory demolition and deny an abandonment license. Although license denial does not rectify the situation Conrail created, it at least keeps the resource intact.

110...

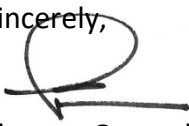
(k) Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant.

5. If the Board, in consultation with ACHP, puts in place strong remedies that preserve the Harsimus Branch and facilitates its transfer to the City of Jersey City, then an abandonment license may be justifiable. Such measures, if implemented, should be commensurate with the burden Conrail’s unlawful actions placed on the public.

We ask that Conrail and its parent companies be held accountable not only because STB responsibility under NHPA requires it but also to protect the authority of your own agency over rail line abandonments, which in this instance was ignored until the public made the violations

evident. If the Board does not assign accountability, it will be encouraging similar anticipatory demolitions around the nation and the general undermining of the rule of law.

Sincerely,



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NOTE: Van Vorst Park Association is a Party of Record currently represented on the Service List for AB_167_1189_X by Dan Weber. The mailing address is still correct. VVPA also consents to electronic service sent to vvpanews@gmail.com in these proceedings.

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I certify that I have this day served or caused to serve a copy on all Parties of Record in this proceeding by eservice or first-class mail.



Signature

6/17/2021

Date