

Historic Paulus Hook Association (HPHA)
192 Washington Street
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302547

June 16, 2021

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Office of Proceedings
June 17, 2021
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Public Record

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

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:

Below are comments in response to this agency's call for comments on National Historic Preservation Act, Section 110(k) (54 U.S.C. 306113) issues set forth in its decision in the above referenced proceedings dated May 19, 2021.

The Historic Paulus Hook Association (HPHA) calls on this agency to find that Consolidated Rail Corporation (Conrail) and its parents (CSX and NS) violated Section 110(k) by intentionally evading abandonment licensing requirements until they had demolished potentially historic structures and sold off additional historic structures to put them beyond the reach of Section 106 analysis, preservation efforts and remedies generally.

HPHA is a 501(c)(3) non-profit neighborhood organization. Since its founding in 1974, the HPHA's goals have been to promote the common good of area residents while improving quality of life and advocating for open space, historic preservation, and responsible development in the Paulus Hook neighborhood of downtown Jersey City.

Our organization has long supported efforts to preserve the Harsimus Embankment, listed on the State Register of Historic Places and eligible for the National Register (objection by Conrail, the owner). The proposed historically appropriate reuses of the Harsimus Branch (rail, trail, open space) proposed by the City and Embankment Coalition and supported by Rails to Trails Conservancy are very welcome by our neighborhood because they address public needs for not only our neighborhood but the entire Downtown. Our neighborhood will be served by plans to bring the East Coast Greenway (already in existence on the Hudson River Waterfront Walkway that borders our neighborhood) to Thomas Gangemi Drive and then west (off-road) over the Harsimus Branch and Embankment. The transportation corridor would be saved for sustainable transportation.

The Harsimus Branch was the former mainline for the Pennsylvania Railroad. We understand that as a matter of rail law, ***once a rail line, always a rail line***, until licensed for abandonment. Conrail and its parent companies were, at best, willfully blind to the law and facts. They knew it was eligible for the National Register of Historic Places well before they sold it off to a developer, despite efforts by Jersey City to preserve it. It is hard to imagine a clearer violation of the anticipatory demolition statute than the evasion of STB licensing requirements until the railroad had sold off or destroyed historic features of this former main line as shown in this proceeding. An abandonment license must be denied, at least until Conrail fully and completely erases the violation by re-acquiring the property and making it available to the City of Jersey City or, by otherwise arranging its transfer to the City.

On a personal note, I testified as an expert witness (B.S. in Architecture from University of Nebraska; Master of Science in Historic Preservation from Columbia University, 35+ years of professional practice as a preservation architect) on the Harsimus Branch in what I understand was one of the longest Zoning Board cases in Jersey City history.ⁱ The LLCs to whom Conrail purported to sell a part of the Harsimus Branch were appealing Historic Preservation Commission denials of demolition permits; Conrail co-signed the applications for permits. Regarding intentionality required to find a Section 110(k) violation, I need no further proof of Conrail's intentions to destroy the historic asset before it secured an abandonment license. While the Zoning Board denied the appeal, I have little doubt that the LLCs will be back again to

request those permits if your Board grants an abandonment license without reversing the unlawful sale.

The Zoning Board hearings, burdensome to local residents, City government, and courts, could have been avoided had the STB considered 110{k) when it was first raised by City et al. and agreed with knowledgeable people on the ground here in Jersey City that Conrail had participated in anticipatory demolition. It is not too late to set this situation right: please reverse the sale, facilitate its preservation, or deny the abandonment license.

NOTE: I consent to eservice in these proceedings.

Sincerely,

Diane Kaese, President
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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.

A handwritten signature in black ink, appearing to read "Diane S. Kaese". The signature is written in a cursive, flowing style.

Diane Kaese R.A. AIA
16 June 2021

¹ Appeal of the denial by the Historic Preservation Commission of certificates of appropriateness for the demolition of the Sixth Street Embankment AKA the Pennsylvania Railroad Harsimus Stem Embankment, and the denial also of certificates of economic hardship based on the provisions of the Land Development Ordinance REMANDED FROM SUPERIOR COURT FOR FULL HEARING. These hearings spanned months in 2010-11.