

From: [Marcopul, Kate](#)
To: [Rutson, Vicki](#); [Tabachnick, Alan](#)
Cc: [Jaime Loichinger](#); [Sarah Stokely <sstokely@achp.gov>](#); [Tingey, Andrea](#); [Baratta, Meghan](#); [Wayland, Joshua](#)
Subject: NJ HPO Comments on Harsimus MOA (HPO Project #08-0811) (HPO-K2020-113-PROD)
Date: Thursday, December 3, 2020 3:52:44 PM

Victoria Rutson, Director
Office of Environmental Analysis
Surface Transportation Board
Attn: Alan Tabachnick
395 E Street SW
Washington DC 20472

Dear Ms. Rutson:

As Deputy State Historic Preservation Officer for New Jersey, in accordance with 36 CFR 800: Protection of Historic Properties, as published in the Federal Register on December 12, 2000 (65 FR 777698-777739) and as amended on July 6, 2004 (69 FR 40544-40555), I am providing Continuing Consultation Comments for the following proposed project:

Hudson County, Jersey City
Harsimus Branch Abandonment
Surface Transportation Board (STB) Office of Environmental Analysis (OEA)
STB Docket Nos. AB 167 (Sub-No. 1189X), AB 55 (Sub-No. 686X) and AB 290 (Sub-No. 306X)

Thank you for providing the Historic Preservation Office (HPO) with the opportunity for review and comment on the above referenced undertaking. The comments that follow are in response to the draft Memorandum of Agreement (MOA) dated 10/14/2020.

800.6 Resolution of Adverse Effects

I appreciate the time and effort that your staff spent drafting the reviewed document.

I have reviewed the Advisory Council on Historic Preservation (ACHP)'s comments dated 11/5/2020, and concur with them. However there are two additional issues that have come to mind during HPO review.

The first is regarding the settlement agreement between the Conrail/the LLCs/their agent and Jersey City/the Harsimus Embankment Coalition/Rails to Trails/et al. In prior discussions, it was agreed that although the settlement agreement lies outside the Section 106 process, it has within its scope many items germane to understanding the reasonable and foreseeable effects of abandonment. Therefore, if executed in advance of the MOA, it could be usefully referenced in the MOA. It is our understanding that the most recent impediment to the

finalization of the settlement agreement was the issue of prevailing wage, but that this has been substantively resolved. The HPO recommends that the Surface Transportation Board's Office of Environmental Analysis (OEA) reach out to involved parties to determine the current status of the settlement agreement prior to finalizing a draft MOA.

The second is regarding Section 110(K). I concur with the ACHP that resolution of the applicability of Section 110(K) after the conclusion of Section 106 consultation is essentially moot. I further concur that there should be an indication that OEA believes that the Board should support a determination that 110(K) is not applicable in this case and provide reasons. However, I would recommend going one step further, and provide some guidance about what would happen if the Board determines that 110(K) does apply in this case. What would be the status of prior Section 106 consultation? Is the MOA still valid? Would there be a need to consult on additional mitigation measures?

Additional Comments

Thank you again for providing the opportunity to review and comment on the assessment of effects on historic properties. Please reference the HPO project number **08-0811** in any future calls, emails, submission or written correspondence to help expedite your review and response. If you have any questions, please feel free to contact Andrea Tingey of my staff at (609) 984-0539 or Andrea.Tingey@dep.nj.gov.

Sincerely,

Katherine J. Marcopul, Ph.D., CPM
Administrator and
Deputy State Historic Preservation Officer
Historic Preservation Office
NJ Department of Environmental Protection
501 East State Street, Trenton, NJ 08625
kate.marcopul@dep.nj.gov
T (609) 984-0176 | F (609) 984-0578

NJDEP





NOTE: This E-mail is protected by the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510-2521. This E-Mail and its contents, may be Privileged & Confidential due to the Attorney-Client Privilege, Attorney Work Product, and Deliberative Process or under the New Jersey Open Public Records Act. If you are not the intended recipient of this e-mail, please notify the sender, delete it and do not read, act upon, print, disclose, copy, retain or redistribute it.

cc: Interested Parties list