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Cc: [Gosselin, Danielle](#); [Betsy Merritt](#)
Subject: Re: Hold the Date – Section 106 of the National Historic Preservation Act Consulting Parties Webinar/Meeting on June 8, 2023 re: Conrail's proposed abandonment of the Harsimus Branch in Jersey City, NJ, Docket No. AB-167 (Sub-No. 1189X).
Date: Monday, May 8, 2023 4:04:49 PM

Mr. Tabachnick: As long time counsel for Jersey City, Embankment Preservation Coalition and RTC, I wish among other things to provide a brief update germane to Section 106.

1. Consolidated Rail Corporation withdrew without explanation from participation in settlement negotiations at about the time they appeared about to result in preservation of the Harsimus Branch corridor about two years ago. Although the assign of Conrail's chosen developer (the eight Hyman LLCs) has continued negotiations as to a portion of the corridor at issue in this proceeding, evidently in order to obtain development permission from Jersey City, those negotiations have not resulted in a settlement agreement as to any portion of the Harsimus Branch. Thus although the Harsimus Branch (including the Harsimus Embankment) has been determined eligible for protection under Section 106 of the National Historic Preservation Act, neither Conrail nor its chosen developer nor the assign of the chosen developer has agreed to measures that will preserve any portion of it or to protect it from demolition. Conrail's chosen developer and Conrail sought demolition permits for the Embankment and initiated demolition of stanchion, stopped only by my clients seeking relief at STB because of Conrail's unlawful sale of the property to its chosen developer prior to any STB abandonment authorization and prior to required initiation let alone completion of the Section 106m process. This is highly prejudicial and amounts to subversion of the process. Moreover, then and to this day, the entire Embankment has remained under threat of demolition. Once STB concludes its processes, the Branch and Embankment will be unprotected from destruction by demolition and otherwise. This result was exactly what was anticipated by Conrail when it sold and transferred the eight blocks containing the Embankment to the eight Hyman LLCs in 2005 without first applying for, much less obtaining, abandonment authorization from STB as required by law.

To the extent Conrail, STB, and the developer or its assigns claim STB as a result of the unlawful sale/transfer can not afford any relief that results in actual preservation of the Harsimus Branch or the Embankment, they not only are admitting but also insisting that a foreclosure of meaningful comment under Section 106 has already occurred.

There should have been **no** sale or transfer of this property before completion of the Section 106 process. The foreclosure of comment that has been admitted is and was contrary to the interest of any agency or party supporting historic preservation, and is not in the public interest of the State, Hudson County, or my clients. It is simply not

consistent with a meaningful Section 106 process. My clients reserve all rights.

2. My clients oppose any MOA that purports to conclude the Section 106 process without actual preservation of the Harsimus Branch/Embankment. Any such MOA simply embodies a foreclosure of comment.

3. My clients would welcome an opportunity to review the current draft of the MOA which STB's Office of Environmental Analysis has presumably developed prior to any meeting, whether that meeting be virtual, on-line, or in person. We request OEA to supply its current draft.

4. An on-line or virtual meeting is no substitute for an actual in-person meeting in Jersey City so that individual citizens have an opportunity to participate in the Section 106 process as is required by law. Again, my clients reserve all rights.

I will be outside the United States from June 1 (evening) through June 25, and thus unable to participate in a June 8 virtual meeting. I request re-scheduling, or even better and consistent with number 3 above, that OEA substitute an actual meeting in Jersey City for the proposed virtual meeting at a point in either the last week of May or after June 26. If OEA goes ahead with its proposed virtual meeting, I request a recording or equivalent be prepared and made accessible, and reiterate my clients' position that it is not a substitute for an actual meeting, and in addition that it does not without much more address the foreclosure of comment that seems already admitted. In short, any meeting at this point appears meaningless as comment that is meaningful is foreclosed.

Charles Montange

for Jersey City, Embankment Preservation Coalition, and RTC

On Friday, May 5, 2023 at 08:18:04 AM PDT, Tabachnick, Alan <alan.tabachnick@stb.gov> wrote:

The Surface Transportation Board's Office of Environmental Analysis is hosting an online Section 106 Consulting Parties meeting on June 8, 2023 in the pending rail-line abandonment proceeding referenced above. The meeting will be held virtually and will start at 2:00pm EST and conclude at 4:00pm EST.

The purpose of this meeting is to update the Consulting Parties on the case and the status of the Section 106 process, to present the draft Memorandum of Agreement which has been revised after receiving Consulting Party comments, and to provide an opportunity for the Consulting Parties to comment on the updates.

Meeting details, including the agenda, log-in information, and other logistics will be circulated to the Consulting Parties at least two weeks prior to the June 8th meeting. We encourage your participation at the meeting and request that you focus your comments on the updated information presented.

We look forward to meeting with you, providing you with an update on the status of the case and the Section 106 process, and hearing your comments.

Alan Tabachnick

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