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July 14, 2023

VIA Email to alan.tabachnick@stb.gov

Danielle Gosselin
Director, Office of Environmental Analysis
Alan Tabachnick
Preservation Officer
Surface Transportation Board
395 E St. SW
Washington, D.C. 20423

Re: Additional Comments following June 8, 2023 OEA Event in AB 167-1189X
(Conrail/Harsimus Branch) and related proceedings

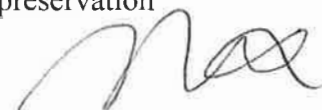
Dear Mr. Tabachnik:

I am the Principal Historic Preservation Specialist in the Department of Housing, Economic Development, and Commerce, Division of City Planning, for the City of Jersey City. I make this statement on behalf of the City of Jersey City to provide additional comments to the Office of Environmental Analysis regarding the proposed Memorandum of Agreement (MOA) regarding the Harsimus Branch Embankment.

As an initial matter, the City endorses and concurs with the comments submitted by Andrea Ferster, Esq., on behalf of Rails to Trails Conservancy, including the recommendation that the purchasers of the Harsimus Embankment include the preservation of key aspects of the Embankment property as a binding commitment in the MOA.

The City has several objections to the MOA in its current form. Firstly, any process which concludes that the illegal sale of the Sixth Street Embankment by Conrail should not be included in the MOA is inherently flawed. Conrail unquestionably engaged in an unlawful sale of a line of railroad and knew, or should have known, that the sale required authority to abandon from the STB. As part of its scheme to arbitrarily reclassify the line as a spur, Conrail also tore structures out and circumvented the historic preservation process, destroying historic property prior to any engagement by the STB, state, or local preservation authorities, or the public.

The proposed MOA does not make mention of any of this activity, and fails to even consider any remedy or mitigation of further destruction. Even more importantly, Conrail has already sold its interests in the property, and therefore will have no reason to participate in any preservation



efforts the moment abandonment is authorized. Taken together, the MOA fails to acknowledge the harm already done, fails to avoid or minimize further harm, and fails to include any method for holding the rail operator or future owners to account for a failure to abide by its terms.

Further, the City disagrees with the OEA's conclusion that meaningful mitigation is no longer possible beyond mere signage and documentation. "The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects, and seek ways to avoid, minimize, or mitigate any adverse effects on historic properties." 36 C.F.R. 800.1(a).

The MOA states that

OEA typically does not consider the effects of potential post-abandonment activities on historic properties as part of the Section 106 process for proposed railroad abandonments but has included some limited consideration of such potential future activities in its Section 106 review for the proposed Harsimus Branch abandonment due to the unique circumstances of this case. 36 CFR 800.1

Despite the admittedly unique nature of the case and the pernicious strategies employed by Conrail, the OEA neglects to exert itself at all in the MOA. Rather than seriously review the direct and indirect impact of the destruction of the historic property, the MOA requires of Conrail merely "Recordation" and "Additional Documentation and Signage." In effect, Conrail must make a report, put up some signs, and prepare a webpage. Of course, Conrail no longer owns the property, so it will not be responsible for placing the signs. The MOA requires the SHPO to house the signage until "agreements [are] made for the erection, display, and future maintenance of the interpretive signage." Who will agree to host the signs, where, and for how long is unclear. What is clear is that Conrail will have no responsibility beyond printing a 2' x 3' sign.¹ The MOA does not even require Conrail to pay to host the website it develops, nor does it impose any minimum standards for the information to be hosted on said website.

Were there any meaningful attempts at mitigation in the MOA, the City might consider the aforementioned complaints regarding signage and documentation minor in nature. But those are the extent of the requirements. The historic properties of the Sixth Street Embankment are well documented in the record. The effect of the destruction of this unique structure and its effect on the surrounding area are matters that require more thorough avoidance and minimization than the draft MOA proposes.

The City continues to object to the failure to consider real mitigation measures, including preservation, which are in fact within the jurisdiction of the STB and are part of the external settlement discussions the City has had with the property's purported owners. The view that STB lacks jurisdiction to "avoid or minimize" damage to the historic property after consummation of

¹ The MOA states that "Conrail agrees that any agreement of sale between Conrail and any immediately subsequent purchaser of the right-of-way underlying the Harsimus Branch shall contain a provision requiring that such purchaser agree to leave the signage Conrail erects (if any, and in compliance with the requirements and stipulations of this MOA) within the right-of-way." How this provision could be enforced when Conrail has already agreed to a sale of the property is unclear. Further, how OEA can claim to require the signage and webpage to be maintained post-abandonment, but still claims it has no control over any other post-abandonment mitigation is puzzling.



abandonment, and therefore should not require any meaningful efforts at avoiding or minimizing the destruction of the Embankment in the MOA, in untenable to the City for myriad reasons, most notably that it creates a circumstance in which the illegal sale of a rail line nullifies the meaningful historic preservation and basic public participation required by law.

As noted in the draft MOA, the STB does have the authority to void the deeds and unwind the unlawful sale via the No-Action Alternative. The City and HPC Staff have long maintained that the granting of an abandonment license and loss of federal control of the Harsimus Branch would have the greatest adverse effect and would be equivalent to destruction of the property. There is an obligation on the part of the STB to consider the reasonable alternatives to the potential destruction of the property. Clearly, if the agency has no legal authority beyond "signage and documentation" then there is little cause for involving the consulting parties or the public in a review of the impact of the illegal sale and abandonment of the line.

In addition, OEA has not yet engaged with the public regarding the MOA and the proposed conclusion of this process as required by 36 CFR 800.2(d) and 800.3(e). In January of 2020, HPC Staff made verbal and written offers to STB Staff to assist in hosting and facilitating this public meeting. The City joins with the SHPO and other interested parties in requesting meaningful public comment prior to the execution of the MOA.

Finally, Jersey City and the surrounding region contain many disused rail lines. Permitting a rail operator to simply sell rail property with no regard for the federal abandonment requirement, while hiding behind federal preemption of state and local land use and historic preservation actions, signals to rail interests and developers alike that they can act with impunity. Under this proposed MOA, rail operators can effectively insulate themselves from historic preservation, public input, and local land use without any penalty.

Thank you for the opportunity to submit comments in connection with the June 8 hearing.

Sincerely,



Margaret A. O'Neill

Principal Historic Preservation Specialist