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State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION COMMUNITY INVESTMENT AND ECONOMIC REVITALIZATION HISTORIC PRESERVATION OFFICE

HPO-D2024-085
PROJECT #08-0811

PHILIP D. MURPHY
Governor

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SHAWN M. LATOURETTE
Commissioner

TAHESHA L. WAY
Lt. Governor

April 12, 2024

Alan Tabachnick
Federal Preservation Officer
Surface Transportation Board
Office of Environmental Analysis
395 E St SW
Washington, DC 20423

Dear Mr. Tabachnick:

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 777698-77739) and as amended on July 6, 2004 (69 FR 40544-40555), I am providing comments for the following proposed project:

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

These comments are in response to the receipt of the final Memorandum of Agreement (MOA) received on March 13, 2024.

The HPO appreciates the changes that were made to the documentation provisions in the MOA in response to our comments. However, despite years of consultation and the exemplary work ethic shown by Office of Environmental Analysis (OEA) employees, I cannot in good faith sign the MOA as it has been finalized. The MOA does not adequately reflect the complexity of the current situation. In addition, the HPO has concerns about the Surface Transportation Board's (STB) timing of the completion of Section 106 consultation vis-à-vis the Board's final decision on the abandonment. Consulting parties have repeatedly asked for mitigation which extends beyond OEA's legal ability to impose documentation alone. However, OEA has at times said that the Board may or would have the ability to impose additional conditions. It seems premature to conclude consultation with an MOA before the agency's powers are exhausted.

Employees of the STB's Office of Environmental Analysis (OEA) are given the responsibility to complete Section 106 consultation in advance of the Surface Transportation Board's final decision on Conrail's abandonment application. It is my understanding, however, that the Board retains authorities not shared by the OEA. Thus, as part of the agency's final action on the matter, there may be conditions that, while not originating from preservation regulations,

could have a measurable preservation impact and be materially relevant to the historic resource. The HPO previously requested that the Memorandum of Agreement include a means of incorporating any such conditions after the final Board decision. STB OEA has declined to incorporate this contingency into the MOA. Therefore, in accordance with 36 CFR 800.7(a), I am terminating consultation.

If you have any questions, please feel free to contact Andrea Tingey of my staff at (609) 940-5149 or Andrea.Tingey@dep.nj.gov.

Sincerely,

Katherine J. Marcopul

Katherine J. Marcopul
Deputy State Historic
Preservation Officer

