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Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20024

Re: Consolidated Rail Corp. - Ab. Ex. --
in Hudson County, NJ,
AB 167 (Sub-no. 1189X)
And related cases AB 55-686X and
AB 290-306X

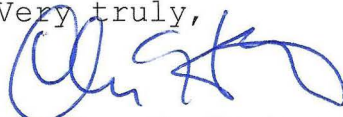
Dear Ms. Brown:

Enclosed please find for e-filing in the above-referenced proceedings the Comments and Statement of Richard James relating to the "Cultural Resources Identification Report" issued by the Office Environmental Analysis on or about May 5, 2017. The Comments and Statement are verified. Mr. James prepared the original nomination papers for the National Register of Historic Places for the Harsimus Embankment, a six-block-long structure encompassed by the rail line Consolidated Rail Corporation unlawfully purported to de facto abandon in 2005 without this Board's authorization. The line in question is the subject of this proceeding. Mr. James is thus familiar with efforts to protect the Harsimus Branch pursuant to section 106 of the National Historic for Preservation Act for the last roughly 20 years. Mr. James feels strongly about the subject matter of his Comments and Statement, and to emphasize his concerns, has requested that his Comments and Statement be submitted and served for him separately as his expert opinion to the Board. City of Jersey City, Rails to Trails Conservancy, and

Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition ("City et al") will rely in part on this submission in their Comments also to be filed on 19 June 2017.

Certificate of service. By my signature below, I certify service by USPS, U.S. Mail, postage pre-paid first class, or equivalent, on or before 19 June 2017 of the enclosed Comments and Statement of Richard James on all parties on the STB service list.

Very truly,



Charles H. Montange
Counsel for City, et al

Encl.

Comments and
Statement of Richard James
for filing in AB 167 (Sub-no. 1189X)
relating to issues raised by
"Cultural Resources Identification Report"

I, Richard James, am the author of the Pennsylvania Railroad Harsimus Stem Embankment nomination to the New Jersey Register of Historic Places. The National Park Service has also determined that the Embankment is eligible for listing on the National Register of Historic Places, though it is not so listed because of the objection of its owner, Conrail. Due to my work on the embankment project, I am familiar with the historic significance of the Harsimus Branch.

Conrail sold the embankment lots and associated lots to private real estate interests, without first filing for legal abandonment, so that no federally initiated review of the sale's impact upon the historic resource (under the National Historic Preservation Act, so-called "Section 106 Review") was conducted prior to sale. At the time of researching and writing the nomination, I was very much aware that federal rail abandonment was considered, under the NHPA, a "federal permit." and that before the sale of part or all of the Harsimus Branch (HB) for non-rail purposes, a full 106 Review would have to be carried out. Indeed, to make certain that such a review prior to sale was carried out was one of my primary reasons for expending considerable effort and time on the nomination. The public participation roles in the identification and protection of historic resources are vital components of the integrated state/federal historic preservation schema, and of our political democracy.

The historic review process is based upon the assumption that, once the historic resource is recognized and listed, the appropriate governmental agencies would insure, as per law and regulation, that serious efforts would be made to secure the preservation of the historic integrity of the Embankment prior to the issuance of any federal abandonment permit and prior to the putative sale of a regulated line of rail for private real estate development. Of course, historic preservation is never an absolute, but it is clear from a review of the Advisory Council on Historic Preservation's (ACHE) regulations (36 CFR Part 800 et. seq.) that the lead agency conducting the 106 Review must "seek" (my emphasis) a wide range of alternatives that avoid or minimize the destruction or pose any adverse effects upon an historic resource.

I've been asked to comment upon a private consultant's report (Cultural Resource Identification Report; CRI) which, among other things, attempts to assess the Areas of Potential Effect (APE) of an abandonment of the HB on historic resources. Much of the study is devoted to an analysis of the impact of its real estate replacement upon the adjacent historic neighborhoods. Some of the analysis of the adjacent neighborhoods is useful, but the CRI Report seems to miss the fundamental point.

The CRI Report does not begin with a search for a set of standards or conditions which will guarantee the continued historic integrity of the resource, but rather assumes the validity of the prior, non-STB authorized sale of the rail line to a set of private developers. Having made that assumption, the Report's presumed APE is thought to be the impact of this private real estate development upon its surrounds. In the words of the Red Queen in *Alice in Wonderland*, "first the verdict, then the trial."

I am quite wary of being involved in a process that, while employing the vocabulary of the federal/state preservation process, seems to negate its intent and spirit. It's rather as if the ACHP's rather complex and elegant flow charts, outlining the 106 process, have been inverted. We seem to be starting with a conclusion, and then are asked, in good faith, to participate in a great act of "reverse engineering."

Many, myself included, have long wondered why the STB, once its regulatory authority over the Harsimus Branch was recognized, did not simply void the unauthorized sale of the rail line and begin the entire abandonment process, including 106 Review, *ab initio*, with no foregone conclusions. The rail line should be offered to buyers after the 106 process, not before. Voiding the deeds would doubtless exacerbate tensions between pre-abandonment buyers and seller, but this is a private dispute, and legal forums certainly exist in which to resolve it. What's really at stake here is the right of the public to an objective, transparent process, uncontaminated and uninflected by any prior sale.

My experience, having lived in Jersey City for about 30 years, and have worked in the Jersey City Planning Office, is that the bulk of projects often changes, often markedly, and generally in the direction of the gargantuan. It is also quite useless to rely upon the basic city zoning, as most large-scale projects are contained in special "redevelopment plans" that are carved out of the zoning map. These plans are often re-negotiated and amended; the current developers' plans for the embankment are probably only the starting

point. All of which underscores the import of the federal/state preservation planning, in which more removed state and federal agencies can function, insulated from local political and real estate pressures.

I really don't see the need for the STB to attempt to "measure" any development proposal other than from the perspective of 106 Review. The STB can mitigate adverse effects of any future transfer by attaching the relevant set of the Secretary of the Interior's Standards for Preservation to any deed following legal abandonment. In short, this is a question of process, not "content." The Secretary of the Interior's Standards are time-proven, flexible and reasonable. The New Jersey SHPO applies them, or their state equivalents, routinely. These Standards are also well understood by the professional design community; to institute them, rather than attempt a case by case analysis by the STB, might actually facilitate good preservation design. Additionally, attaching one set of objective standards would put all potential purchasers of rail property on an equal footing, obviate any later claims of ignorance, and provide for a sane and rational long-term planning process.

In my more sanguine moments, I imagine that there has been a rationale for the STB's not having voided the pre-abandonment sale: the absence of explicit evidence that the sale would result in an adverse effect upon an historic resource. The CRI report lays to rest any such illusions. The consequence of the sale is that the Embankment will be demolished. At this point, bells and whistles should be going off. Total demolition of the resource is the least desired alternative. By leaving the sale in place, the Agency is rendering the 106 process meaningless. Attempts to measure the "APE" of the envisioned new construction are really quite secondary; there is no "bright line" distinction to be made here. It is rather like trying to measure the extent of a field of electro-magnetic force. What ought to be apparent to the STB, given the public response to this entire case, is that the entire Downtown civic community, which increasingly sees itself as one historic entity, considers itself impacted by these deliberations. One might speak of an Area of Potential Bitterness and Cynicism. At the mere mention of total demolition, the STB should recall its role in the 106 process, as per 36 CF 800 et seq., to "seek ways to avoid, minimize or mitigate any adverse effect upon historic properties." Seek. The Agency must seek to avoid any adverse effects, let alone total demolition.

What is needed are non-destructive alternatives for the Harsimus Branch. We shouldn't be constrained in the consultation by any sales made outside the parameters of the abandonment/106 process. To do so is to invert the

language of the federal 106 regulations, which state that "the agency (the lead agency, in this case the STB) shall insure that the Section 106 process is initiated early in the undertaking's planning, so that a broad range of alternatives may be considered during the planning process for the undertaking." (36 CFR 800 et seq.) I can't hope but see the consultants' report as an attempt to justify and minimize, after the fact what is assumed to be a *fait accompli*. The less cynical part of me hopes that it is not.

Presumably, the STB will also have to undertake an analysis of the environmental consequences of the proposed abandonment under the National Environmental Policy Act. (NEPA) Here again, a genuine analysis of "all feasible alternatives" is required. This ought not be limited to the prior real estate horizon.

It is my understanding that The City of Jersey City seeks to submit to the STB a duly approved and funded Offer of Financial Assistance (OFA) for the Harsimus Branch. During a public meeting organized by the STB, in 2016 initiating the 106 Review consultation, held in Jersey City, members of the public asked why this OFA was not part of the discussion. We were told by the STB representative, Mr. Irwin that the STB's analysis of the OFA was an entirely separate matter, being conducted by another section of the STB entirely outside the 106 process. While an analysis of the engineering and financial aspects of the OFA is probably not relevant here, I would argue that its preservation aspects are highly relevant. The City's proposal appears to contemplate the retention of the entire embankment and Harsimus Branch for future rail, trail and recreational use. It would also retain the Harsimus Branch as part of the national rail network. Keeping the OFA and the 106 review on parallel, non-intersecting tracks seems to me inimical to the purpose of 106 review. We need to examine all real options, especially those which promise to retain the historic asset, as early as possible in the process. To spend much of the 106 discussion discussing the putative range of effects of the demolition alternative, while ignoring a proposal that would find a social and economic use for a preserved historic resource strikes me as contrary to reason and a misuse of the planning process.

Of course, were the OFA to be granted, the entire need for this 106 review would presumably be obviated. The Harsimus Branch would remain part of the national rail network, and no abandonment would be necessary. The resource would remain under the purview of the STB, and the NJ SHPO would provide support and enforce any future agreement. Even if part or all of the Embankment should prove superfluous for rail needs, Jersey City would be owner, and subject to the NJ SHPO regulations of a State Register

property. From a purely preservation perspective, the City OFA seems the preferred alternative. That this is not being discussed here is perhaps the most troubling aspect of what I can only describe as a troubling process.

When I began researching the history of the Harsimus Branch Embankment, in 1997, my intent was the identification and protection of an historic resource of particular import to the adjacent, largely residential local, state and federal historic districts. The Embankment comprises approximately 60% of the length of the Harsimus Branch of the Pennsylvania Railroad's (PRR) Harsimus Branch (HB), which connected to the Main Branch of the PRR at Bergen Hill (the local name for the southernmost extension of the New Jersey Palisades.) The Embankment is now listed on the State Register (SR) of Historic Places, and has been declared eligible for the National Register of Historic Places. (NR) Much of the remaining 40% of the Harsimus Branch is located on property owned either by Conrail or to whom it has been sold, is fenced, near active rail lines and is occluded with trees and overgrowth. This creates serious problems of identification. Fortunately, as indicated herein, I was able to visit the most inaccessible portions of the property on June 14th, 2017, to address identification issues.

Subsequent to the New Jersey State Preservation Office's (SHPO) and the State Preservation Officer's finding on the Embankment, the NJ SHPO has found eligible for listing a "PRR Philadelphia to New York Historic District." Given that the HB was a crucial and final link in the PRR's initial thrust to achieve a freight rail-head on the Hudson River, opposite New York, an examination of the place of the Harsimus Branch within this PRR district is clearly in order.

One caveat here: the authors of the CRI report give no indication that they attempted to document (e.g., from old photographs or aerial surveys) the nature of the HB prior to Conrail's tearing it out without prior to abandonment authority from the Surface Transportation Board and without the associated 106 Review. The STB should determine if such information exists, either from Conrail or elsewhere.

In spite of all the HB site restrictions, a combination of observations from public areas (Newark Ave, Mary Benson Park, the Jersey City Cemetery) and available historic and contemporary aerial photos and maps indicate that about 2/3s of the previously un-surveyed HB is clearly delineated by a progression of large, cut masonry and concrete supports that carried the elevated line to the height of the Embankment.

In addition, a careful comparison of a series of aerial photos with historic maps (such as the Earle and Harrison's "Map of Jersey City and Environs" of 1889, or the G.M. Hopkins 1928 *Plat Book of Jersey City, Plate #3*), both courtesy of the Rutgers Special Collections and Archives, strongly suggests that the original HB right-of-way, cut through Palisades diabase at the time of the creation of the HB and the associated elevated freightway (c. 1874-1904) that preceded the Embankment, still exists, though badly overgrown. In short, even without on-site inspection, it appears that we have hard physical evidence tracing virtually the entire HB from its entry/exit at the PRR Main Branch at Bergen Hill to the eastern terminus of the Embankment at Marin Blvd.

The obvious question: do these material HB remains possess sufficient "historic integrity" to qualify the entire HB as part of a "PRR Philadelphia-New York" historic district? Or, for that matter, a "stand alone" HB historic district?

It is my understanding that the intent of federal preservation law is to favor the retention of any possible historic resources until the value of the resource has been determined and the 106 consultative process terminated. In my professional opinion, the STB's treatment of this case as an ordinary rail abandonment application, when instead it is a case in which the railroad seeks approval for an unlawful de facto abandonment in which it has already destroyed many resources and attempted to destroy the remainder, simply encourages what is often referred to as anticipatory demolition. This sends precisely the wrong message to the regulated industry. It suggests that if something is of inconvenient historic value, they should destroy or get rid of it first, thus diminish the case for historic integrity, and then claim "lack of historic integrity" to excuse the demolition. Here, I can't help but reflect upon the oddity of the entire undertaking. The circularity is astounding, and strikes at the very core of the American preservation process.

In order to evaluate the "historic integrity" in the sense employed in the NHPA or by the National Park Service, one must first determine the historic resource's "significance," and then ask if the resource possesses sufficient historic integrity to "convey" this significance. The scale of measurement is determined by the nature and import of the resource.

The authors of the CRI Report appear to recognize the historic significance of the Embankment and the PRR Philadelphia to New York district; for the very same reasons, the Harsimus Branch is significant.

In the case of the PRR and the HB, the significances are multiple: the growth of the Port of New York and the integration of the industrial and agricultural Midwest and West into the national and international economy; the emergence of a large, modern corporation capable of undertaking large-scale civil engineering projects; the growth of a national rail network; the transformation of the Jersey City waterfront into a vast system of piers, warehouses and industries; the influence of the PRR on New Jersey state politics and taxation policies; the impact of the PRR's decline and bankruptcy on New Jersey and Jersey City; the engineering accomplishments of the PRR in traversing the Hudson Meadowlands, the Palisades and the already established Jersey City...specifically the early use of grade separation of rail and street traffic. It also seems likely that James Ferris (a structural engineer and later public official, whose involvement in the construction of the HB Embankment is discussed in the SR nomination), as an engineer specializing in the difficult sub-surface construction in soggy land, would have had a hand in the entire HB. Thus, the HB is significant under NR criteria A, B and C. In my professional and expert opinion, the Harsimus Branch, from Marin Blvd. to CP Waldo is eligible under criteria D for the historic era.

And we must also determine the "period of significance" of the resource. Writing from a Jersey City perspective, this period ought to commence with the advent of the PRR's predecessor lines, in the 1830s. These would become the PRR's lessees. (in checking deeds, one still searches under the name "New Jersey RR" or "United RRs") And the period of significance should extend at least until the demise of the PRR in the late 1960s; the looming bankruptcy and failure to pay local taxes on certain large holdings weighed heavily on local politics, fiscal policy and land use planning. Significant doesn't mean exemplary; it simply means important in our past.

Given the length of the period of significance here, and the protean nature of railroads, constantly replacing, adapting to more traffic and heavier locomotives and freight loads, and to new signaling and switching systems and motive forces, it is unlikely that any major rail system will ever be discovered "frozen in amber," especially in a port as dynamic as that of New York-New Jersey during the period of significance. Still, my fears were that, under the canopy of trees, beyond the evident procession of masonry supports, all trace of the HB had been obliterated.

On June 14, 2017, with the permission of Conrail, I had an opportunity to briefly visit the most occluded and hard-to-reach part of the SB, between the Harsimus Cemetery and the active PATH lines (former PRR Main Branch.) I was armed with a few old maps, and an aerial photo. I am pleased to report that, in spite of young trees and bushes and thorns and far too many insects and poison ivy, it took little time to find the rail bed of the HB, which could be walked from the active freight line on the site west to its terminus at the entry to the former PRR Main Branch, just west of Waldo Ave. Scattered gravel (probably ballast) was sometimes underfoot. Visually, the bed was quite identifiable and easy to follow; it was outlined by the young trees that had taken root on both sides. The feel, while walking, was that of level ground. Adjacent to the line, on both the north and south side, were square concrete footings, from which it was clear that metal poles had been cut off (most likely supports for an electric catenary, from the period when the line was electrified). These footings give us a pretty good idea of the width of the line, at least in the electric era (the line would later use diesel locomotives). Drainage devices on both sides of the bed were also apparent. Perhaps the most spectacular discovery of the morning was the condition of the rock wall forming the northern side of the rail bed, which increases in height as one moves west towards the Main Branch. This cut and blasted rock conforms to the late 19th and early 20th century maps of the HB. Given that most of the work on the traprock (a local term for diabase) was probably done with pick and shovel and black powder, it is a monument to its fabricators "workmanship."

The Harsimus Branch endures, its "line-ness" inscribed in rock and stone and concrete. It retains its integrity of location.

In spite of all the recent change in Jersey City, one is struck by the continuing paradigmatic relationship between the HB and its setting. The Bergen Cut to the south; the largely low-rise residential Hilltop neighborhood to the west; the Harsimus Cemetery to the north, and, beyond that Dickinson High School (NR); a public park to the northeast; Mary Benson (into which was dumped, before its creation, much of the traprock the PRR blasted from Point of Rocks (part of Bergen Hill) in the late 19th century; and, to the south-east, the "Italian Village" (often called the "Italian Colony" in the early 20th century. Jersey City, which evolved from many settlements, is largely a collection of sometimes clashing urban grids. This area, close to many disparate neighborhoods and part of none, is visited by few, but known to all.

It should also be stated that the HB and its surrounds, especially between Newark Ave and the Bergen Cut, simply feel like a classic "railroad

landscape." Lines intersect, the engineering scale is cyclopean, trains rumble in both the Bergen Cut and National Docks RR line. This railscape, and the dead in the adjacent cemetery, give the place a sense of both repose and periodic distant activity. The challenges of topography, shifting elevations and hard rock make this site a sort of monument to the accomplishments of railroad civil engineering in what might be called its heroic age. It should be noted that "feel" and "association" are two aspects of historic integrity.

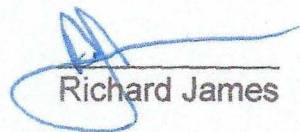
Hence, in spite of all the unauthorized removals, the Harsimus Branch, on its own and as a part of a greater Pennsylvania Railroad Philadelphia to New York Historic District, possesses sufficient integrity of location, design, setting, materials, workmanship (*sic*) feeling and association to express its significances.

The Harsimus Branch is not primarily significant because it is a collection of railroad artifacts...though the surface and sub-surface need to be investigated much more thoroughly than what has apparently been done. The entire Harsimus Branch is significant because it is the material expression of one of the PRR's great achievements. It is linear and continuous, as is the nature of a railroad. The Branch, by itself, might well stand alone as one historic resource. But its significance and interpretation are much augmented as part of an entire PRR cross-state district. The entire state corridor was a precious economic lifeline that deeply inflected the social, political and transportation history of Jersey City, New Jersey and America. The extant cut masonry supports, as well as the wall of cut diabase beneath the cemetery, well describe, in two and three dimensions, the path this line took as it emerged from the rock of the Palisades and connected to the Embankment, by which trains could "fly" over downtown Jersey City on their way to the waterfront and the port of New York. Additionally, the massive supports underscore the import of the Embankment's elevation and grade separation.

To exclude this continuous line of rail from any linear historic rail district would be highly counter-intuitive and slightly absurd. It materially expresses the PRR, as it approached its waterfront destination, and makes much more comprehensible the nature and purpose of the Embankment. A PRR Philadelphia-New York historic district with the HB amputated would cease to be that; at the very least a change of name might be in order.

The Harsimus Branch, upon closer inspection: it is as if a celestial geometer had inscribed our history upon the face of the earth.

Pursuant to 28 USC 1746, I declare and verify under penalties of perjury under the laws of the United States that the foregoing is true and correct.


Richard James

Dated: 16 June 2017