



Surface Transportation Board
Washington, D.C. 20423-0001

ED-2861

Office of Environmental Analysis

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September 21, 2016

Charlene Dwin Vaughn
Assistant Director
Office of Federal Agency Programs
Advisory Council on Historic Preservation
401 F Street NW
Washington DC 20001-2637

*Re: STB Docket No. AB-167 (Sub-No. 1189X), Consolidated Rail Corporation -
Abandonment Exemption - in Hudson County, NJ*

Dear Ms. Vaughn,

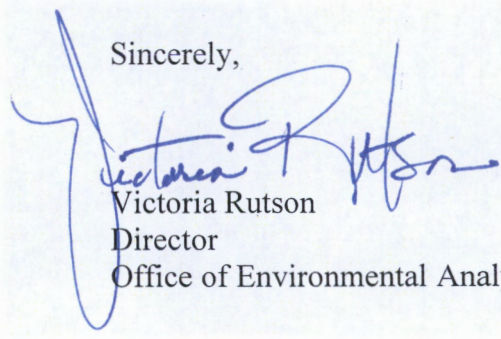
The Surface Transportation Board's (Board) Office of Environmental Analysis (OEA) appreciates your August 4, 2016, letter regarding the National Historic Preservation Act (NHPA) Section 106 process for the Harsimus Branch rail abandonment proceeding and the need to address the question of whether a Section 110(k) violation may have occurred. As OEA has previously indicated, the Board will fully consider the Section 110(k) question in making its final determination on whether or not to authorize the abandonment of the Harsimus Branch and, if so, what conditions to impose to avoid, minimize, or mitigate adverse effects. For the reasons discussed below, OEA agrees with ACHP that it is appropriate to proceed with the Section 106 process (and the environmental review process under the National Environmental Policy Act (NEPA)) while investigating but before making a determination with respect to Section 110(k).

As you know, OEA formally re-initiated the Section 106 consultation process in this case approximately a year ago. Since then, OEA has made significant progress and the assessment of adverse effects of the undertaking on historic properties is well underway. Attempting to conclude the Section 110(k) inquiry prior to proceeding with OEA's Section 106 review would be counterproductive and would result in unnecessary delay. Discovery is currently ongoing, and the Board has expressly held that the parties may seek discovery of information and documents that are relevant to the question of whether a Section 110(k) violation occurred under the circumstances at issue here. Following the close of discovery, the parties will present arguments to the Board addressing, among other matters, whether, in their view, a Section 110(k) violation took place. The discovery and subsequent pleading process before the Board in this proceeding is unlikely to conclude for some time. Until it does, the Board will not have before it a full record on the Section 110(k) issue.

As a result, the most expeditious and efficient way to proceed is for OEA to continue with the Section 106 (and NEPA) process at the same time discovery and the filing of pleadings to the Board based on that discovery is taking place. After discovery ends, the parties' final pleadings are filed, and OEA completes its environmental and historic review, and makes final conclusions and recommendations to the Board (following ample opportunity for input from the Advisory Council on Historic Preservation (ACHP), the State Historic Preservation Officer, consulting parties, and the public), the Board will have the information it needs to rule on the proposed abandonment and address the environmental and historic preservation issues, including those involving Section 110(k). Allowing OEA to continue moving forward with the Section 106 review while the Board is conducting its Section 110(k) inquiry will, I believe, encourage a more efficient and effective review of this proceeding.

We are pleased that ACHP has decided that it will participate in the Section 106 review here and look forward to continuing to work closely with you, as well as all interested parties, as the Board continues to meet its NHPA obligations in this proceeding.

Sincerely,



Victoria Rutson
Director
Office of Environmental Analysis