



SURFACE TRANSPORTATION BOARD
Washington, DC 20423
Office of Environmental Analysis

EO-2915

May 15, 2017

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Re: Docket No. AB 167 (Sub-No. 1189X), Consolidated Rail Corporation—Abandonment—
In Hudson County, NJ; Outcome of discussions regarding approach to Section 106
between OEA, ACHP, and NJ SHPO

Dear Mses. Vaughn, Stokely, Marcopul, and Tingey:

Thank you for taking time to work with me and my staff to guide and assist us with our historic review compliance responsibilities in the Harsimus Branch abandonment case. You should have already received a hard copy of the recently issued Cultural Resources Identification Report, which has been made available to the consulting parties, other potentially interested parties, and the public. The Cultural Resources Identification Report, which was prepared as part of step two of the four-step Section 106 process under the National Historic Preservation Act (NHPA), identifies historic properties within the Area of Potential Effect (APE) of the proposed abandonment and evaluates the historical significance of those properties.

The purpose of this letter is to document the outcome of recent discussions with the New Jersey Historic Preservation Office (NJ SHPO) and the Advisory Council on Historic Preservation (ACHP) regarding the Section 106 approach reflected in the Cultural Resources Identification Report. If you have any questions or concerns regarding the information in this letter, please contact either me or Josh Wayland, the project manager for the Section 106 review in this case, at your earliest convenience. Our contact information is set forth below.

The background of this case has been well documented in Board decisions and correspondence. As relevant here, ACHP has recommended that the Board's Office of Environmental Analysis (OEA) document recent communications between OEA, ACHP, and NJ SHPO leading up to the issuance of the Cultural Resources Identification Report. It is our hope that this and future letters will help us move forward with a Section 106 process that complies with the requirements of the NHPA.

Section 106 consultation to date

Section 106 consultation in this case began in 2008, when Conrail filed its request for abandonment authority with the Board. In 2008 and 2009, OEA defined the APE for the proposed abandonment in consultation with NJ SHPO and ACHP, based on available information regarding potential future uses of the Harsimus Branch if the abandonment were to be approved. The development of the final APE marked the completion of step one of the four-step Section 106 process.

Before the historic review could proceed to step two, the abandonment case was held in abeyance for several years while court litigation unrelated to the historic review proceeded in the courts. OEA reinitiated Section 106 consultation in July 2015, after the abeyance ended. In consultation with NJ SHPO and ACHP, OEA and OEA's third-party contractor, RGA, Inc. (RGA), then began an investigation to identify historic properties within the APE. OEA and RGA presented the methods for identifying historic properties and the preliminary results at meetings with ACHP, NJ SHPO, and the consulting parties in Washington, D.C. in March 2016 and in Jersey City in May 2016. ACHP and NJ SHPO staff attended both meetings. In completing the investigation of historic properties, OEA and RGA took into account the issues and concerns raised during those meetings. For example, in response to comments from several consulting parties, OEA undertook a thorough investigation of the importance of immigrant communities to the historical development of Jersey City in general and of the project area in particular.

After completing the investigation, OEA and RGA prepared a report summarizing their findings. Before issuing that document to the consulting parties, OEA provided a courtesy copy of the report to NJ SHPO and ACHP to ensure that OEA's issuance of the report proceeded in a way that was agreeable to ACHP and NJ SHPO. During phone calls between OEA and NJ SHPO on March 10, 2017, March 31, 2017, and April 20, 2017, NJ SHPO raised a number of issues. In response, OEA and RGA made changes to the Section 106 approach, which are reflected in the Cultural Resources Identification Report. Other issues raised by NJ SHPO were addressed without the need to make changes to the report.

Changes to the Section 106 approach

- OEA had originally intended to proceed with the identification of historic properties within the APE and the assessment of effects to historical properties (step two and step three of the four-step Section 106 process) concurrently, pursuant to 36 C.F.R. 800.3(g). At the recommendation of NJ SHPO, OEA now intends to separate step two and step three into two distinct and consecutive phases, each involving a report and comment period.
- At the request of NJ SHPO, OEA is now giving NJ SHPO time to provide final comments on the Cultural Resources Identification Report after the due date for consulting parties to comment. This will allow NJ SHPO to consider the comments of the consulting parties and the public. We are providing a 45-day comment period (running from the date the Cultural Resources Identification Report was released) for consulting parties; NJ SHPO will have 60 days from the issuance of the report to provide comments.
- At the request of NJ SHPO for more detailed maps, OEA and RGA produced additional maps for each of the survey forms appended to the Cultural Resources Identification Report displaying the locations of the identified historic properties in greater detail.
- In response to NJ SHPO's comments, OEA expanded the discussion of the streetscape boundaries in the Cultural Resources Identification Report and included a series of tables that identify every

structure located within each streetscape by reference to street address and tax block and lot number.

- NJ SHPO expressed concern that the methods used to identify sites and structures that are 50 years old or older should be clearly explained. In response, OEA and RGA have included additional language in the Cultural Resources Identification Report specifying the methods by which historic sites were identified in greater detail.
- At the request of NJ SHPO, OEA confirmed that every structure within the APE has been identified and that all structures 50 years old or older have been evaluated individually or as part of a streetscape. To make this clearer in the Cultural Resources Identification Report, OEA and RGA included a series of tables in the report identifying each structure within the APE, referencing street address and tax block and lot number, and providing estimates of construction dates based on a review tax records and historical aerial photography.

Issues NJ SHPO raised that did not require changes to OEA's approach to Section 106

- NJ SHPO expressed concern that the evaluation of historic properties as streetscapes might not be appropriate because a streetscape is not a recognized property type under NJ SHPO's official guidance. OEA advised NJ SHPO that the streetscape approach was developed in the early stages of the historic review in consultations between OEA, RGA, and NJ SHPO. NJ SHPO has acknowledged that NJ SHPO and the consulting parties were informed of this approach during initial consultation efforts and agrees that the approach will be acceptable in this case, provided that sufficient detail is provided regarding each streetscape to allow NJ SHPO to undertake a thorough review.
- NJ SHPO expressed concern regarding OEA and RGA's conclusion that no historic or prehistoric period archeological resources are likely to exist within the footprint of the Embankment due to (1) the unfavorable surrounding geography for the preservation of artifacts, and (2) the disturbance of any artifacts that would have occurred when the Embankment was constructed. Upon discussion with NJ SHPO's archeological staff, NJ SHPO concurred that the conclusion was reasonable.
- NJ SHPO noted the Great Atlantic & Pacific Tea Company Warehouse at 150 Bay Street is a National Historic Landmark that is located within the APE and that the National Park Service (NPS) should be consulted if adverse effects to a National Historic Landmark would occur. In response, OEA confirmed that NPS was invited to participate in the Section 106 process in 2008 and again in 2015. OEA has also informed NPS of the availability of the Cultural Resources Identification Report and will continue to consult with NPS as the Section 106 process moves forward.
- NJ SHPO asked what efforts OEA and RGA had made to identify and contact federally recognized tribes with historical knowledge of or connections to the project area. As discussed in the Environmental Assessment that OEA issued in 2009, OEA conducted searches of federal tribal consultation databases during step one of the Section 106 process and did not identify any federally recognized tribes with potential historical connection to the project area. In response to NJ SHPO's comments, OEA repeated these searches in April 2017 and again did not identify any federally recognized tribes that may have an interest in the abandonment project.

NJ SHPO also noted that several of the historic sites identified in the initial draft report have similar names and requested that each historic site be given a unique identifier in the Cultural Resources Identification Report to enhance readability of the report. However, RGA informed OEA that revising the naming convention of historic properties would require significant revisions to the report and the appendices that could not be made under RGA's current funding levels for work on this project. OEA was not able to undertake these revisions in a timely manner due to staffing limitations. OEA and RGA further believe that, while the recommended changes could have potentially increased the readability of the Cultural Resource Identification Report, unique identifiers for each historic site are not necessary to adequately convey the information about the identification of historic properties in the report.

Section 110(k) process

A final issue that has been discussed with ACHP and NJ SHPO are the concerns raised by several parties to the Board's abandonment proceeding regarding Section 110(k) of the National Historic Preservation Act. Those parties have alleged that the removal of tracks and ties from the Harsimus Branch before Conrail received abandonment authority constituted a violation of Section 110(k). As discussed in OEA's September 21, 2016 letter to ACHP, the Board will fully consider the Section 110(k) question in making its final determination on whether to authorize the abandonment of the Harsimus Branch and, if so, what conditions to impose to avoid, minimize, or mitigate adverse effects. Based on that letter and informal conversations, ACHP has concurred with OEA that, given the circumstances presented here, it is appropriate for OEA to proceed with the Section 106 process (and the environmental review process under the National Environmental Policy Act) before the Board makes a determination with respect to Section 110(k).

Continuing consultation

As noted above, the Cultural Resources Identification Report has been made available to the consulting parties and the public for review and comment. We have requested that comments on the identification of historic properties be submitted to OEA within a 45-day comment period, which will end on June 19, 2017. We are requesting that NJ SHPO provide any comments by July 5, 2017. As noted above, this 60-day comment period will allow NJ SHPO to consider the comments of the consulting parties and the public before deciding whether to concur with OEA's findings regarding the identification of historic properties.

Upon receiving, considering, and addressing the comments received on the Cultural Resources Identification Report, OEA intends to commence step three of the four-step Section 106 process, which is the assessment of effects to historic properties. As part of that phase, OEA will issue a report that will assess the potential effects to the historic properties identified in the report or by consulting parties or NJ SHPO in their comments. Step four of the process will involve continued consultation with the consulting parties, NJ SHPO, and ACHP to develop a plan to resolve any adverse effects that may occur as a foreseeable result of the proposed abandonment.

As always, please do not hesitate to reach out to me at Vicki.Rutson@stb.gov or (202) 245-0295, or Josh Wayland at (202) 245-0330 or Joshua.Wayland@stb.gov if you have any questions or concerns

regarding the Board's approach to Section 106 review in this case. I appreciate your time and effort in assisting us meet our agency's Section 106 responsibilities and look forward to continue working with you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Victoria Rutson". The signature is fluid and cursive, with a large initial "V" and "R".

Victoria Rutson
Director
Office of Environmental Analysis