



Preserving America's Heritage

EI-25314
CN

AB 167 (1189X)

August 4, 2016

Victoria Rutson
Director
Office of Environmental Analysis
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

Ref: *Harsimus Branch proposed rail line abandonment*
Jersey City, New Jersey

Dear Ms. Rutson:

The Advisory Council on Historic Preservation (ACHP) has been made aware of consulting party concerns regarding the referenced undertaking's adverse effects on historic properties. Based upon background information provided by the Surface Transportation Board (STB), activities undertaken by the Conrail Railroad Company (Applicant) in advance of complying with the requirements of Section 106 of the National Historic Preservation Act (54 U.S.C. Sections 300101 et seq.) (NHPA) and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800), may have resulted in adverse effects to historic properties. As we understand, the Applicant may have abandoned the Harsimus Branch rail line prior to requesting STB's approval of the rail line abandonment. Likewise, this activity occurred before the Section 106 process was initiated by STB. Since numerous local stakeholders are concerned about the applicability of Section 110(k) to this undertaking, we are requesting that STB investigate this matter before it proceeds with the Section 106 consultation.

Section 110(k) of the National Historic Preservation Act (NHPA) prohibits a Federal agency from granting a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid Section 106 of the NHPA, has intentionally significantly adversely affected an historic property to which the grant would relate, or having legal power to prevent it, has allowed such significant adverse effect to occur. In this case, we understand that STB intends to carry out the four-step Section 106 review so that it can decide on whether or not to approve the Harsimus Branch rail line abandonment. Since the Applicant has already sold the land on which the rail line was laid, this complicates STB's review of effects on historic properties and may compromise STB's ability to comply with the requirements of Section 106.

In accordance with Section 110(k), the agency must consult with the ACHP when determining whether mitigating circumstances justify granting the approval of the rail line abandonment. Should STB conclude that the actions of the Applicant were important and critical to the abandonment that triggered Section 110(k), STB must explain why circumstances may justify granting the approval. STB should provide us with documentation specifying the circumstances, including the degree of damage to the integrity of any historic properties affected. Further, it must clarify if the abandoned Harsimus line is National Register

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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eligible, and what effect has resulted from the abandonment. STB also must explain how it will proceed with the Section 106 review, and comply with Sections 800.3 through 800.6 of our regulations.

Should STB determine that a finding of “no historic properties affected” or “no adverse effect” is appropriate, it will need to consult with the State Historic Preservation Officer (SHPO) and other consulting parties and determine whether they objected to this determination. If no timely objection is filed, STB can complete the Section 106 review. However, should STB determine that this undertaking will result in an adverse effect on historic properties; STB will need to consult with other consulting parties to resolve the adverse effects. This includes developing measures to further avoid, minimize or mitigate adverse effects. Given the widespread public interest in this project, as well as the complexity of addressing the anticipatory demolition, the ACHP will participate in the Section 106 review. Accordingly, we will notify the STB Board that this undertaking invokes Appendix A of our regulations, and we believe our participation is warranted.

We look forward to receiving STB’s response to this matter. If you have additional questions, or require further assistance, please contact Najah Gabriel at (202) 517-0210 or via email at ngabriel@achp.gov.

Sincerely,

A handwritten signature in black ink, reading "Charlene Dwin Vaughn". The signature is fluid and cursive, with the first name "Charlene" being the most prominent.

Charlene Dwin Vaughn, AICP

Assistant Director

Office of Federal Agency Programs

Federal Permitting, Licensing, and Assistance Section