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February 29, 2016

Ms. Victoria Rutson
Director
Office of Environmental Analysis
Surface Transportation Board
395 E St. SW
Washington, D.C. 20423

Att: Mr. Jeff Irwin

Re: Harsimus Branch, STB Dkt. No. AB 167 (Sub-no. 1189X); Letter, R. Jenkins (Conrail) to V. Rutson (STB OEA), Feb. 29, 2016; Letter, D. Horgan (LLCs) to V. Rutson (STB OEA), Feb. 29, 2016

Dear Ms. Rutson:

By letter dated September 17, 2015, STB's Office of Environmental Analysis ("STB OEA") inquired of the City of Jersey City ("City") concerning re-use plans for the Harsimus Branch should the agency authorize abandonment. We understand that STB OEA sent a similar letter to the LLCs and perhaps to Conrail. In all events, Mayor Fulop responded by letter dated December 14 that the City sought the Harsimus Branch "for public purposes compatible with historic preservation...." City, in a letter dated January 22, 2016 (in which Rails to Trails Conservancy and PRR Harsimus Stem Embankment Preservation Coalition participated in part), provided additional information germane to the September 17 STB OEA inquiry. In particular, the City provided information on its plans derived from its applicable Master Plan. The City, RTC and Coalition, provided information on the plans of Conrail and the LLCs based chiefly on their submissions to the City or in litigation elsewhere.

I.

It is our understanding that STB OEA for purposes of a meeting on March 2, 2016, wishes to focus on Stage Two of its

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administration of Section 106. We further understand that Stage Two is the compilation of historic assets which may be impacted by the proposed abandonment of the Harsimus Branch. Attached hereto as Exhibit I is a compilation from the City germane to that issue. The agency needs to explore historic assets that may be impacted by abandonment of the Branch all the way to Waldo Avenue, and not limit itself to the Embankment parcels. City reserves the right to amend this list. RTC and Coalition reserve the right to comment further.

II.

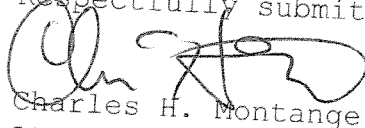
Clearly substantial adverse impact on (as in destruction of) Section 106 assets will be "reasonably foreseeable" in the event this agency authorizes abandonment. In addition, since 2007, Conrail has advocated or supported development of thousands of units in the Palisades portion of the Harsimus Branch in conjunction with SLH Holding Company, which is under the same ownership or control as the LLCs. For these and other reasons, Mr. Jenkins' letter of February 29 appears wholly disingenuous.

Conrail and the LLCs jointly engaged in an unlawful de facto abandonment that envisions the complete demolition of a section 106 protected asset. They refuse all compromise unless they not only are guaranteed huge profits from the unlawful de facto abandonment, but also are granted unlawful de facto exemption from compliance either with STB rail regulation or with state and local land use law or with both. They threaten all whom they view as in their way with interminable litigation. To this end, they have sued the City multiple times (alluded to in part in the LLCs February 29 letter); they have also sued RTC, the Coalition, and lawyers for same, including the undersigned. These threats and suits, which have been going on for over ten years now, are in the nature of "strategic lawsuits against public participation" ("SLAPP" suits). They neither designed nor intended to support the regulatory process, let alone the Section 106 process. They are neither designed nor intended to resolve a conflict on the merits. They instead are designed and intended to deprive the public of an opportunity for comment and for relief. This is presumably not something this Board should encourage either overtly by ignoring the unlawful actions of Conrail and the LLCs, or indirectly by further delaying relief to the City and to the public. This agency in Consummation of Rail Line Abandonments that Are Subject to Historic Preservation and Other Environmental Conditions, E.P. 678, served April 23, 2008, clearly indicated that de facto abandonments were unlawful, and that the agency would take "whatever steps were necessary" to "enforce" compliance in such situations with statutes like the National Historic Preservation Act. There cannot be meaningful compliance so long as (1) the LLCs or any affiliated party claims title to the Branch by reason of the unlawful de facto abandonment, and (2) the 2007 contract by which Conrail bound itself to implement the LLCs' objectives remains in effect. It is time instead to implement E.P. 678, supra.

The February 29 letters from Conrail and the LLCs are not responsive to the Section 106 process but instead seek to avoid it. These two entities otherwise appear to be posturing for the

March 2 meeting to be held at STB OEA. Any failure by City, RTC or Coalition to comment further should not be taken as an admission that anything in the letters this agency has received from Conrail or the LLCs has any merit.

Respectfully submitted,



Charles H. Montange
Attorney for City of Jersey City,
Rails to Trails Conservancy, and
Pennsylvania Railroad Harsimus Stem
Embankment Preservation Coalition

Exhibit I (preliminary City list of historic assets)

Exhibit II (Conrail joinders in demolition demand)

cc. Conrail (Mr. Jenkins); LLCs (Mr. Horgan); City; RTC;
Coalition (by email attachment)

Exhibit I

Historic Districts and Sites for Section 106 Analysis in AB 167-1189X, for use in connection with STB OEA meeting, March 2, 2016

From Mr. Wrieden (City Historic Preservation Officer):

- Harsimus Cove Historic District
- Hamilton Park Historic District
- Jersey City Harsimus Cemetery (potentially eligible)
- Dickinson HS (on State and Nat. Registers)

From Conrail consultants (APE report, p. 8, by Richard Grubb & Associates):

- Pennsylvania Railroad (New York to Philadelphia) Historic District (Multiple SHPO Opinions; eastern boundary undefined)
- New Jersey Railroad Bergen Cut Historic District (SHPO Opinion. 5/21/1999; eastern boundary undefined)
- Public School No. 5, 182-196 Merseles Sr (SHPO Opinion: 2/28/1991)
- Pennsylvania Railroad Harsimus Branch Embankment (SR: 12/29/1999; DOE: 3/16/2000; COE: 6/9/1999)
- St. Anthony's Polish Roman Catholic Church and School Complex (SHPO Opinion: 4/13/1994)
- St Anthony of Padua Roman Catholic Church (SR: 12/24/2003; NR: 3/22/2004)
- Hamilton Park Historic District (SR: 4/27/1978; NR-1/25/1979)
- Harsimus Cove Historic District (SR: 10/15/1987; NR-12/9/1987)
- 88-92 Erie Street, Albaniel Dye & Chemical Co (SHPO Opinion 7/2/1980; DOE: 8/27/1980)
- Warehouse Historic District (SHPO Opinion. 2/28/1991)

- Hudson & Manhattan Railroad Powerhouse (COE: 10/7/1999; NR: 11/23/2001)
- Great Atlantic & Pacific Tea Company Warehouse (SR- 6/2/1978, NR: 6/2/1978; NHL ID No. 1504)

From Brian Blazek (City Historic Preservation Specialist):

American Railway Express Building (ID#3187) 262 Brunswick Street
SHPO Opinion: 2/28/1991

Burke Brothers Livery Stable/Garage (ID#4531) 369 Fifth Street
COE: 10/31/2005

Butler Brother's Warehouse (ID#5280) 335-341 Washington Street
COE: 9/5/2013

From Mr. Cotter (City's Director of Planning):

Entire Harsimus Branch (see relevant portions of City Master Plan and recommendations)

City is also concerned about the area being analyzed. It should include rail property at least as far west as Waldo Avenue. That is, analysis should not be limited to the Harsimus Embankment.

Michele R. Donato

A Professional Corporation
Attorney at Law

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106 Grand Central Avenue
Lavallette, NJ 08735

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December 14, 2007

BY EMAIL TRANSMISSION AND FEDERAL EXPRESS

Daniel Wrieden
Historic Preservation Officer
Division of City Planning
City of Jersey City
30 Montgomery Street, Suite 1400, 14th Floor
Jersey City, NJ 07302

Re: Applications for Certificates of No Effect and
Appropriateness and for Certificates of Economic
Hardship:

247 Manila Avenue, LLC
212 Marin Boulevard, LLC
354 Cole Street, LLC
280 Erie Street, LLC
317 Jersey Avenue, LLC
389 Monmouth Street, LLC

Dear Mr. Wrieden:

In connection with the applications for Certificates of Appropriateness pending before the Historic Preservation Commission on December 17, 2007, I am attaching the executed consents to the applications signed by Consolidated Rail Corporation. The original signed documents will be delivered at the time of the hearing.

We will be prepared on December 17, 2007 to present our witnesses. The reports were previously delivered to your office.

If you have any questions or problems, please do not hesitate to contact me.

Daniel Wrieden
Historic Preservation Officer
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December 14, 2007

I thank you for your courtesies and cooperation.

Very truly yours,

Michele R. Donato

MRD:dp

Encs.

cc: (with encs.)

Carmine Scarpa, Esq.

(by email transmission only)

Mrs. Vickie Peslak Hyman

(by email transmission only)

Mr. Robert Whyte

(by email transmission only)

Carmine Alampi, Esq.

(by email transmission and regular mail)

Jeffrey Lewis, Esq.

(by email transmission only)

Joseph H. Burgis, PP, AICP

(by email transmission only)

Steven J. Kurtz

(by email transmission only)

Dean Marchetto, AIA

(by facsimile transmission only 201-795-0171)

JOINDER AND CONSENT TO APPLICATION FOR RELIEF FROM THE
JERSEY CITY HISTORIC PRESERVATION COMMISSION

The undersigned hereby joins in and consents to the pending application of 354 COLE STREET, LLC for a Certificate of Appropriateness for demolition of the Sixth Street Embankment and a Certificate of Economic Hardship and supplements the application with the following information:

Name: Consolidated Rail Corporation
Address: 2001 Market Street
Philadelphia, PA 19103
Telephone (Work): (215) 209-2000

12/13/07
Date

Jonathan M. Broder
Consolidated Rail Corporation
VP + General Counsel

JOINDER AND CONSENT TO APPLICATION FOR RELIEF FROM THE
JERSEY CITY HISTORIC PRESERVATION COMMISSION

The undersigned hereby joins in and consents to the pending application of 280 ERIE STREET, LLC for a Certificate of Appropriateness for demolition of the Sixth Street Embankment and a Certificate of Economic Hardship and supplements the application with the following information:

Name: Consolidated Rail Corporation
Address: 2001 Market Street
Philadelphia, PA 19103
Telephone (Work): (215) 209-2000

12/13/07
Date

Jonathan M. Butler
Consolidated Rail Corporation
VP + General Counsel

CONSENT TO FILING APPLICATION

The undersigned hereby joins in and consents to the pending application of 317 JERSEY AVENUE, LLC for Certificate of Appropriateness and a Certificate of Economic Hardship for Demolition of portion of the Sixth Street Embankment on this tract, and supplements the application with the following information:

Name: Consolidated Rail Corporation
Address: 2001 Market Street
Philadelphia, PA 19103
Telephone (Work): (215) 209-2000

12/13/07
Date

Jonathan M. Bruck
Consolidated Rail Corporation
VP + Gen. Counsel

JOINDER AND CONSENT TO APPLICATION FOR RELIEF FROM THE
JERSEY CITY HISTORIC PRESERVATION COMMISSION

The undersigned hereby joins in and consents to the pending application of 247 MANILA AVENUE, LLC for a Certificate of Appropriateness for demolition of the Sixth Street Embankment and a Certificate of Economic Hardship and supplements the application with the following information:

Name: Consolidated Rail Corporation
Address: 2001 Market Street
Philadelphia, PA 19103
Telephone (Work): (215) 209-2000

12/13/07
Date

Jonathan M. Brack
Consolidated Rail Corporation

JOINDER AND CONSENT TO APPLICATION FOR RELIEF FROM THE
JERSEY CITY HISTORIC PRESERVATION COMMISSION

The undersigned hereby joins in and consents to the pending application of 212 MARIN BOULEVARD, LLC for a Certificate of Appropriateness for demolition of the Sixth Street Embankment and a Certificate of Economic Hardship and supplements the application with the following information:

Name: Consolidated Rail Corporation
Address: 2001 Market Street
Philadelphia, PA 19103
Telephone (Work): (215) 209-2000

12/13/07
Date

Jonathan M. Braden
Consolidated Rail Corporation
VP + General Counsel

JOINDER AND CONSENT TO APPLICATION FOR RELIEF FROM THE
JERSEY CITY HISTORIC PRESERVATION COMMISSION

The undersigned hereby joins in and consents to the pending application of 389 MONMOUTH STREET, LLC for a Certificate of Appropriateness for demolition of the Sixth Street Embankment and a Certificate of Economic Hardship and supplements the application with the following information:

Name: Consolidated Rail Corporation
Address: 2001 Market Street
Philadelphia, PA 19103
Telephone (Work): (215) 209-2000

12/13/07
Date

Jonathan M. Bonds
Consolidated Rail Corporation
VP + General Counsel