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February 29, 2016

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

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

Dear Ms. Rutson:

I am writing on behalf of Consolidated Rail Corporation (“Conrail”), in response to letters submitted to OEA on December 7, 2015, by Daniel Horgan (on behalf of his clients the “LLCs”) and January 22, 2016, by Charles Montange (on behalf of his clients the “City Parties”). In those letters the LLCs and the City Parties offered their views on the reasonably foreseeable reuse of the Harsimus Branch after abandonment by Conrail.

Conrail’s view is that it is entirely speculative how the Harsimus Branch will be reused post abandonment, and neither the LLCs’ nor the City Parties’ suggestions for how the property could be reused are “reasonably foreseeable” within the meaning of either the National Environmental Policy Act (“NEPA”) or the National Historic Preservation Act (“NHPA”).

The LLCs claim that the properties they own will be developed for multi-family residential housing—as neighboring properties of similar commercial value have been, and are being, developed. The LLCs’ Embankment properties, however, have been designated a Municipal Landmark by Jersey City. No development that would involve a significant demolition of the Embankments is possible without the prior approval of the Jersey City Historic Preservation Commission. As detailed in the Supplemental Environmental and Historic Report that Conrail filed with the Board on August 21, 2014, the LLCs have specifically been denied waivers to develop the Embankment properties for residential housing, after extensive proceedings, by both the Historic Preservation Commission and the Jersey City Zoning Board of Adjustment. While the LLCs have appealed the Zoning Board’s decision, that appeal is on hold (and, even if it were not, any prediction of the results of that appeal are obviously speculative). Thus, it is not reasonably foreseeable for either NEPA or NHPA purposes that the LLCs will be permitted to demolish the Embankments post abandonment.

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The City Parties claim that the City has a variety of possible plans for the Harsimus Branch post abandonment — including park, trail, and passenger rail use.¹ Of these, only passenger rail use would appear potentially to have any significant environmental effects or effects on historic properties. And that use is not reasonably foreseeable for NEPA and NHPA purposes, because it is undeniably speculative. Passenger rail use of the Embankments and connecting properties would be enormously expensive; it is completely unfunded; and no concrete plans have even been presented to, much less approved by, New Jersey Transit and the other local and state entities that would be involved. Park and trail use may be less speculative, but unless the City presents plans for such use that could have significant environmental or historic effects, such potential reuse is of no moment for Section 106 purposes.

The City Parties suggest in their letter that in addition to addressing post-abandonment reuse of the LLCs' properties, the Board should address the LLCs' "vision" of 10,000 units of real estate and huge billboards—which the City Parties say Conrail "from time to time has parroted"—on Conrail's property in the Palisades. City Parties' January 22 Letter at 13. We cannot speak to whatever "visions" the LLCs may have for development anywhere in Jersey City, but the properties in the Palisades belong to Conrail, Conrail has no plans to sell them, and Conrail has no current plans to develop them. Moreover, even if Conrail had concrete plans to develop one or more of its properties in the Palisades, the only issue here is whether Conrail has definitive plans for post-abandonment reuse of the Harsimus Branch right of way (which constitutes only a fraction of Conrail's property in the area). Conrail has no such plans.

As OEA knows, while Conrail is firmly of the view that post-abandonment reuse of the right-of-way at issue here is too speculative for Section 106 analysis, if OEA determines to press forward on the basis of the Area of Potential Effects ("APE") Report that Conrail submitted in 2008, then the LLCs' plans reflected in that APE Report should continue to define the area of potential effects. While those plans have been stymied by the refusal of the Historic Preservation Commission and the Jersey City Zoning Board to waive the strictures of the City's Municipal Landmark designation for the Embankment properties, those plans at least are based on the existing zoning that would govern absent the Municipal Landmark designation. To speculate about what zoning changes might be permitted in the future to allow more or less intensive development—if, contrary to current fact, the Municipal Landmark designation were removed or modified—would simply compound the undue speculativeness of the entire process for Section 106 purposes.

¹ The City also says that it contemplates possible freight rail use for the Harsimus Branch, but its plan for freight use is not only highly speculative but also contingent on the STB's acceptance of an Offer of Financial Assistance ("OFA") from the City. See City Parties' January 22 Letter at 6. As the City points out, if the STB approves an OFA from the City, then there is no abandonment and the Section 106 process is moot. *Id.* The City's suggestion of possible freight rail use, therefore, is not germane to the Section 106 process.

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Sincerely yours,

A handwritten signature in black ink, appearing to read "RM Jenkins III", written in a cursive style.

Robert M. Jenkins III

cc: Jeffrey Irwin (via e-mail)
Charles Montange (via e-mail)
Daniel Horgan (via e-mail)