



June 22, 2016

Victoria Rutson, Director
Office of Environmental Analysis and Federal Preservation Officer
Surface Transportation Board Office of Environmental Analysis
395 E Street, SW
Washington, DC 20423-0001

Re: Conrail Harsimus Branch, AB_167_1189X and related cases,

Dear Ms. Rutson:

As you know, the Embankment Preservation Coalition is a consulting party in the NHPA Section 106 review now underway. We continue to support and adopt all comments, arguments, and positions taken by our attorney in this matter. This letter is precipitated by our attendance at the OEA informational meeting on May 24, 2016, in Jersey City; it is intended to highlight some concerns that have arisen based on the May 24 meeting with regard to the Section 106 review to date, and specifically with the *2008 Area of Potential Effects Report and Proposed Methodology for Section 106 Consultation: Conrail Harsimus Branch Abandonment (STB Docket No. AB 167 (Sub No. 1189X), City of Jersey City, Hudson County, New Jersey, September 2008.*

Our goal is an impartial and fair process - a goal we believe the STB shares. To that end, we respectfully request that the STB (1) withdraw the 2008 Ape Report, (2) conduct the Section 106 review after reversing the transfer of deeds from Conrail to the LLCs (3) hire an independent preservation consultant (4) set a schedule with clear milestones that allow for ample contributions by civic organizations and individuals (5) explain when and how in the STB's processes NHPA Section 110K will be considered.

- (1) **Withdraw the 2008 APE Report.** It is our understanding that Richard Grubb & Associates Inc, (RGA) was commissioned by Conrail to write the report *before* Conrail applied for abandonment to the STB, and the consultants therefore operated under the original oversight of Conrail, not the agency. Perhaps owing to this Conrail-consultant relationship, the report appears to adopt Conrail legal positions - positions that have not been accepted by the STB. For example, the report states that Conrail retains a right of way easement while having sold only underlying property to the LLCs. We have seen no support for this position, either in history or deeds, nor has STB to our knowledge accepted this position.

The narrative also does not mention what we view as salient facts of this case: that Conrail removed character-defining features of historic assets along the Branch and sold a segment of the Branch for private development before applying

for required federal regulatory permission (unlawful abandonment, abuse of STB procedures, and anticipatory demolition under NHPA Section 110K); that, had the Conrail-LLC treatment of the rail line as unregulated gone uncontested by government and public interest groups, it would have avoided protections under federal law, including Section 106 review; and that the LLCs themselves later changed their position, stipulated that the rail line was a federally regulated rail line, and yet pursue a goal of demolishing historic assets.

We also believe the 2008 APE maps for Archeology and Architecture are too narrowly drawn from the perspective of NHPA criteria for evaluation, which include “districts, sites, buildings, structures, and objects” that possess “integrity of location, design, setting, materials, workmanship, feeling, and association.” Both the Embankment and the entire Harsimus right of way are multi-layered historic resources, and potential effects and adverse effects are different for different areas of potential significance. The importance of the Harsimus Branch in conveying a sense of broad patterns of our history cannot be minimized. To reduce potential adverse effects to the visual impact of one ten-story building on one Embankment segment is to trivialize this evaluation.

The 2008 APE fails to include most of the National Historic Districts of Hamilton Park and Harsimus Cove as well as a broader area that constitutes what is really one historic Downtown Jersey City historic fabric inclusive of residential, industrial, commercial, church, and civic buildings in neighborhoods essentially historically shaped by the railroad lines running through the Downtown.

Was this report formally submitted to the consultative parties for comment with outreach encouraging them to comment, as required by the federal regulations? We believe it was not, and letting the 2008 Grubb narrative stand would be a disservice to the public.

- (2) **Conduct the Section 106 review after reversing the transfer of deeds from Conrail to the LLCs.** We believe that the STB must reverse the sale of the property that Conrail unlawfully alienated from the national rail system. Letting the sale stand precludes the meaningful consideration of practicable alternatives that guarantee preservation of the resource, as prescribed under NHPA and NEPA. We do not believe the public interest in preservation should be compromised because a rational Section 106 process has been circumvented.

(3) **Hire an independent historic preservation consultant.** It is a conflict of interest for STB to rely on consultants originally working for Conrail to prepare any kind of independent analysis for the agency in a contested abandonment proceeding involving an unlawful abandonment and allegations of anticipatory demolition and deprivation of opportunity for meaningful comment. It is inappropriate for the agency to rely on Conrail's prior vendor for unbiased investigation, analysis, expert opinion, or advice. Conrail's prior vendor is an advocate for Conrail.

(4) **Set a schedule for the Section 106 review** dependent on deed reversal, with clear milestones, and with ample time for meaningful consultation with the many civic organizations that have expressed interest. These milestones could be flexible, depending upon circumstances, but should include

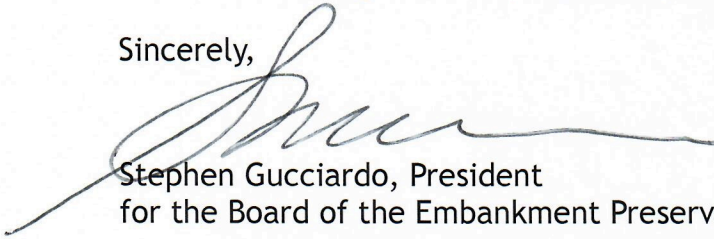
- a. Initial consultation with consulting parties, including SHPO and ACHP. (SHPO representatives were present at the May 24 meeting as passive participants, but ACHP was not represented.) We do not view the May 24th meeting as a consultative meeting, but rather as a presentation by your organization and by RGA representatives. We also note that although OEA solicited public questions and comments and many attendees commented, no official minutes or notes were taken.
- b. Issuance of historic preservation reports that consider all the NHPA evaluation criteria; these should be drafted by consultants with no prior relationship with Conrail.
- c. Public Meetings
- d. Formal Response of Consulting Parties
- e. Final Report

We ask that consulting parties and the public be provided with easily accessible written reports well in advance of public meetings or public comment deadlines. We also ask that public meetings be scheduled during non-holiday times to maximize public participation.

(5) **Explain when and how Section 110K will be considered.** Given that Conrail destroyed character-defining features of the historic Branch and its Embankment, we believe the Section 106 process should take into account Section 110K and its implications. The circularity of the consultants' preliminary findings that the Branch lacks integrity based on its unlawful destruction is astounding.

Thank you for considering the concerns we have outlined above. We hope that the STB will adopt our recommendations so that the public may have confidence that STB OEA is conducting a serious, impartial, and substantive consultative process.

Sincerely,



Stephen Gucciardo, President
for the Board of the Embankment Preservation Coalition

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