

EI-16036

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October 10, 2008

Ms. Andrea MacDonald
Chief, Division of Preservation Services
Bureau for Historic Preservation
Commonwealth Keystone Building, 2nd Floor
400 North Street
Harrisburg, PA 17120-0093

Re: File No. ER 08-1408-042-B
STB Docket No. AB-1020X, East Penn Railroad, LLC –
Abandonment Exemption – Berks & Montgomery Counties

Dear Ms. MacDonald:

This letter is in response to the letter addressed to you from the Law Offices of John D. Heffner ("Heffner Law Firm"), representing Berks County, PA ("County") and dated October 6, 2008 ("October Letter").

In their prior letter to the Bureau, dated September 30, 2008 ("September Letter"), the Heffner Law Firm urged to Bureau to reconsider its determination that the rail line at issue in this proceeding is not eligible for listing on the National Register of Historic Places ("National Register") for two reasons. First, they claim the line is eligible due to the fact that wooden railroad bridges are rare in Berks County. In other words, they would have the Bureau deem non-historic bridges historic because the County allegedly has no historic wooden railroad bridges.¹ Second, they seek eligibility because of historic sites, not on or adjacent to the rail line, but in nearby communities. If that were the defining factor, virtually all rail lines would be eligible for the National Register because there are undoubtedly historic sites located near all railroads.

In the October Letter, the Heffner Law Firm seeks eligibility because the rail line is located within the Schuylkill River Heritage Area ("Heritage Area"). Since they fail to explain why that fact renders the line eligible, logically one can only conclude that the Heffner Law Firm is of the misimpression that any structure located within the

¹ By that same logic, if there were only two cows in Berks County, the Heffner Law Firm would suggest that the U.S. Environmental Protection Agency place cows on the list of endangered species.

October 10, 2008

Page 2

confines of the Heritage Area is automatically eligible for listing on the National Register. The citizens of Berks County will surely be pleased to learn that their elected officials have hired a law firm advocating that all homes in Berks County are eligible for the National Register.

The position advocated by the Heffner Law Firm is, of course, as nonsensical as it is self-serving. The Heritage Area is not unique; there are 39 other National Heritage Areas. Also, there is nothing in the Act of Congress (S. 1584) ("Act") creating the Heritage Area that in any way alters the National Historic Preservation Act of 1966, or otherwise changes the standard for determining whether a structure is eligible for the National Register.

Indeed, the abandonment of the rail line and the planned rail-banking of the line is fully consistent with and promotes several of the aims of the Act: "preserving the Heritage Area" (the rail line's corridor and bridges will remain fully intact); "establishing and maintaining interpretive exhibits in the Heritage Area" (interpretive exhibits will be placed along the corridor); and "developing recreational resources in the Heritage Area" (the rail-banked corridor will be converted into a trail and incorporated into the extensive trail network within the Heritage Area).

Montgomery County is eager to have this abandonment approved so that they can move forward with the planned rail-banking of the line in that County. There are, however, some elements in Berks County who would like to re-acquire the line and have it sit idle in the quixotic hopes that someday a rail customer will return. Under Federal law, Berks County has the right to acquire the line for net liquidation value ("NLV"). Indeed, East Penn Railroad ("ESPN") has offered to sell the line to Berks County at NLV. Berks County, however, would like to pay significantly less than NLV.

Berks County is not seeking the assistance of the Bureau to preserve historic property. Rather, it is attempting to misuse the good offices of the Bureau and pervert Section 106 of the National Historic Preservation Act of 1966 in a cynical attempt to delay the pending abandonment proceeding in the hopes that ESPN will agree to sell the line for less than its salvage value. This reprehensible conduct, if successful, would belittle the Bureau and pervert the Section 106 process.

October 10, 2008

Page 3

ESPN again urges the Bureau to ignore these cynical attempts by Berks County to invoke the Section 106 process for its own financial gain. The citizens of Berks County will be better served by a trail that becomes part of the Heritage Area than a dormant rail line that will be an ever increasing financial drain on the County.

Sincerely,

A handwritten signature in black ink, appearing to read "Karl Morell". The signature is fluid and cursive, with the first name "Karl" being more prominent than the last name "Morell".

Karl Morell
Of Counsel

cc: Troy Brady
James H. M. Savage