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25 April 2019

By Federal Express Delivery

Office of Environmental Analysis
Surface Transportation Board
Attn: Joshua Wayland
395 E Street, S.W.
Washington, D.C. 20024

Re: STB Docket AB 167-1189X
Conrail - Ab.Ex. --
in Hudson County, NJ and related dockets

For filing prior to 29 April 2019 deadline

Dear Ms. Rutson and Mr. Wayland:

On behalf of City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (City et al.) please find comments on the "CREAR" issued on or about March 29, 2019 in the above docket. CREAR p. 5-4 calls for comments to be submitted no later than April 29. We believe a 30-day period too short to mobilize experts to review all historic sites within the APE, at least thoroughly, for adverse impacts. However, inasmuch as counsel was informed that extensions would not be available owing to the request of the developer, we are tendering these comments within the period specified. As indicated in the comments, the agency's proposed action poses inherent and severe adverse impacts on important section 106 assets, and the agency has far more power to mitigate those impacts, including by simply implementing the "no action" alternative, than the agency admits.

Thank you for this opportunity to submit comments.

Very truly,

A handwritten signature in black ink, appearing to read 'C. H. Montange', written over the typed name.

Charles H. Montange
Counsel for City et al.

cc. Ms. Ferster (co-counsel for RTC)
City et al.
Experts who furnished opinions annexed to comments
NJ SHPO

Before the Surface Transportation Board

Conrail -- Abandonment)
) AB 167 (Sub-no. 1189X)
--in Hudson County, NJ.)

and

CSX Transp. - Discon. of)
Service - same) AB 55 (Sub-no. 686X)

and

Norfolk Southern -)
Discon. of Service - same) AB 290 (Sub-no. 306X)

Comments of City of Jersey City,
Pennsylvania Railroad Harsimus Stem Embankment Preservation
Coalition, and
Rails to Trails Conservancy
In connection with
the Surface Transportation Board's
March 29, 2019
Cultural Resources Effects Assessment Report
in partial discharge of
the Agency's Obligations under Section 106 of the
National Historic Preservation Act

On March 29, 2019, the Surface Transportation Board ("STB")
published a Cultural Resources Effects Assessment Report
("CREAR") pertaining to application by Consolidated Railroad
("Conrail") for an abandonment license (loss of federal
jurisdiction) over the Harsimus Branch, the former mainline of
the Pennsylvania Railroad (and successors) for freight in Jersey
City. These comments are submitted on behalf of the City of
Jersey City ("City"), Pennsylvania Railroad Harsimus Stem
Embankment Preservation Coalition ("Coalition"), and Rails to

Trails Conservancy ("RTC") (collectively "City et al."). City et al. are all "consulting parties" in this review, which is undertaken pursuant to section 106 of the National Historic Preservation Act ("NHPA"), 54 U.S.C. § 306108. See CREAR at 1-5 to 6.

Under the applicable regulations, the Section 106 process ordinarily proceeds as follows: the agency first establishes an area of potential effects ("APE") from a proposed federal action, then determines what historic resources exist in that APE, and then determines if any of these resources are adversely impacted. If there are adverse impacts, the agency must arrange for consultations concerning mitigation, ultimately looking to achieve a memorandum of agreement providing for elimination, or if that is not possible, minimization and mitigation of the adverse impacts flowing from the proposed federal action. See 36 C.F.R. Part 800.

Summary

The CREAR completely misses the key adverse impact on all the properties which it purports to analyze. That adverse impact is loss of Federal jurisdiction (upon abandonment) without any comparable restrictions on the Harsimus Branch or the Embankment to preserve them. 36 C.F.R. 800.5(a)(2)(vii). The agency spends much time claiming it cannot be responsible for the uncertain future, but that uncertain future for which

the agency seeks to evade responsibility is, under the law, exactly the adverse impact which the agency must seek to mitigate.

City et al. agree with the ultimate conclusion in the CREAR insofar as it concludes that an unconditioned abandonment of the Harsimus Branch will result in destruction and severe adverse impact on relevant historic assets in the APE.

The CREAR discusses a conjectured settlement scenario and concludes that the settlement scenario will also have adverse impacts on all relevant historic assets in the APE. City et al concur.

The CREAR also purports to analyze preservation of the entire Branch (and Embankment). It concludes that under this scenario, there would not be any adverse impacts. Again, City et al. concur in the CREAR insofar as it thus concludes.

The CREAR also claims that the "no action" alternative (defined as continued STB jurisdiction) will have the adverse impact of "demolition by neglect." This conclusion is true only if the agency does not enforce its jurisdiction. STB jurisdiction precludes dismantlement and sale of a regulated rail line prior to the railroad's receipt of an effective STB abandonment authorization,¹ unless a railroad acts unlawfully and

¹ Consummation of Rail Line Abandonments..., Ex Parte 678, supra, slip at 4: "In some cases railroads have taken actions affecting

STB decides (contrary to law) to tolerate the illegal conduct. If the agency does its job, then continued jurisdiction would preserve all the historic assets otherwise to be destroyed or at risk of destruction in this case. The agency has known since at least 2006 (arguably well before) that Conrail has engaged in unlawful de facto abandonment and anticipatory demolition of the Branch. The agency appears to be tolerating unlawful conduct by Conrail (de facto abandonment and anticipatory demolition), rather than enforcing its jurisdiction. By tolerating unlawful conduct, STB actively forecloses an opportunity for meaningful comment, including the formulation of responsible remedies to avoid or to mitigate demolition of the Embankment and loss of other historic assets.

Settlement

In email communications, STB's Office of Environmental Analysis ("OEA") has encouraged City et al. to engage in settlement negotiations to resolve all outstanding issues and disputes among the parties, including those under section 106.² At the same time, the regulatory side of the agency has failed

rail property without first seeking abandonment authority. When this occurs on inactive lines, we generally do not discover these actions until after the fact when the carrier seeks abandonment authority. Such actions are unlawful."

² V. Rutson (Director, STB OEA) to Ms. Donato (developer attorney), Mr. Montagne [sic] (attorney for City et al.), and "other consulting parties," Nov. 16, 2018.

to set a time line to adjudicate the outstanding offer of financial assistance invoked by the City, by which the City could secure the property for the price paid by the developer, thus resolving the section 106 process in a fashion that preserves all historic assets.

As the agency appears to recognize, abandonment of the Harsimus Branch will involve serious adverse impacts on one or all of the historic assets in the APE. The issue in a settlement that must be addressed by the New Jersey State Historic Preservation Office (SHPO) and Advisory Council on Historic Council(ACHP) as well as STB OEA is whether the settlement adequately mitigates those adverse impacts on historic sites. Indeed, that is the next stage of the section 106 process.

In light of the above, it is pertinent to provide an update on the settlement process. City et al. have engaged (as they have attempted in the past) in good-faith settlement negotiations. Those negotiations have matured in an exchange of drafts of a "term sheet" outlining a settlement concept. There is an expectation of confidentiality as to the specifics of the settlement at this time, and City et al. does not feel at liberty otherwise to disclose those specifics. At the time of writing (4/24), communications with attorneys for Conrail and/or its chosen developers suggest fundamental differences remain

concerning protection of the Harsimus Branch from development. It is not clear when a term sheet will be completed. In all events, the term sheet has not been executed, and if executed, would not in any way be binding but would serve only as a basis for a settlement agreement, which would hopefully incorporate measures sufficient in the view of NJ SHPO and other officials to mitigate adverse effects embodied in the proposed settlement.

If there is a settlement, City et al. believe that the parties must present it and likely other information, including land use permits and conditions, and proposed title restrictions, to NJ SHPO, ACHP, STB OEA and other consulting parties to negotiate a Memorandum of Agreement (MOA) consistent with the terms of the settlement agreement. If the City is then able to deliver the required land use approvals (conditioned upon eventual STB abandonment effectiveness and on the various mitigation measures), the parties would advise STB (a) that the LLCs and Conrail were ready to consent to conditions requiring transfer of certain properties to the City for historic preservation, park, trail, and light rail uses in mitigation; and (2) that City et al. in turn and on that condition would waive or withdraw all requests for relief from STB or at state law. The agency could facilitate the settlement at that time by issuing an effective abandonment authorization so conditioned. Various property transfers at that point would be made pursuant

to the STB order, land use approvals would become effective, state court litigation would be dismissed with prejudice, releases would be issued, and the settlement would otherwise be effectuated.

However, as noted, a term sheet has not yet been agreed to at this time, much less a settlement agreement. In the meantime, City et al. must therefore treat this Office's 30-day deadline for comments on the CREAR as a quasi-pleading in a contested matter, in which the City et al. must and does continue to seek all the relief to which it is entitled in light of Conrail's unlawful³ de facto abandonment of the Harsimus Branch as manifest in the sale of eight blocks containing the historic Harsimus Embankment to a developer for demolition and commercial purposes in 2005.

The following comments are therefore based on the assumption of no settlement but instead a fully contested proceeding.

I. The CREAR Fails Accurately to Analyze the
Central "Adverse Effect"

The OEA's CREAR says STB generally does not consider post-abandonment land uses, because it views them as speculative and/or as outside its jurisdiction. The CREAR suggests that

³ There is no question but that the sale to the developer in 2005 was unlawful. See Consummation of Rail Line Abandonments, STB Ex Parte 678, served April 23, 2008, slip op. at 4.

owing to unspecified special features of this case, the OEA nonetheless agreed to analyze adverse effects on historic sites under three scenarios: (1) abandonment followed by demolition, (2) abandonment followed by a settlement preserving all but one block, and (3) abandonment followed by complete preservation. The agency concluded that it found adverse impacts on six historic properties listed on pp. 1-11 to 12 in the APE under the first scenario (demolition), and under the second scenario (settlement). The agency found no adverse impacts under the third scenario (preservation).⁴

OEA has undertaken this analysis in a flawed fashion. The adverse effect in this proceeding is loss of federal jurisdiction and its consequences. 36 C.F.R. 800.5(a)(2)(vii). Accord, Joint Verified Statement of Daniel M. Wrieden and Margaret O'Neill (Div. of Planning, City of Jersey City), attached, p.2 ("We find that the CREAR does not discuss the most obvious of adverse effects, the loss of federal control of the Harsimus Branch. All other adverse effects stated in the report can be eliminated with the retention of federal control").

So long as the Harsimus Branch remains subject to federal rail regulatory jurisdiction, the Harsimus Branch cannot lawfully be converted to non-rail uses, nor its historic

⁴ City et al. concur that demolition and settlement would have adverse impacts.

Embankment destroyed. This flows from 49 U.S.C. 10501(b) which provides that STB exercises exclusive and preemptive jurisdiction over rail property. Literally, the Harsimus Branch cannot lawfully be sold to developers, nor may Conrail (or others) lawfully remove it, until and unless STB licenses an abandonment that unconditionally authorizes that activity. Accord, Consummation of Rail Line Abandonments..., Ex Parte 678, supra, slip at 4 ("In some cases railroads have taken actions affecting rail property without first seeking abandonment authority. When this occurs on inactive lines, we generally do not discover these actions until after the fact when the carrier seeks abandonment authority. Such actions are unlawful. Not only is the rail line unlawfully severed from the national transportation system when this occurs, but the Board's ability to carry out its obligations under NEPA and NHPA may then be adversely affected" (emphasis added)).

The risk of development is very real here. Accord, Joint Ver. Statement of Mr. Wrieden and Ms. O'Neill, supra, p. 2; Verified Statement of Diane Kaese, Ulana Zakalak and Allen Kratz ("Independent Historic Preservation Consultants"). This rail line is in a major metropolitan area under intense development pressure and harboring a host of historic sites and districts. Conrail has already (unlawfully) purported to sell eight blocks of the Branch (including the six-block Embankment) to a

developer (the LLCs). This action was taken in 2005 in the face of knowledge that the Embankment was eligible for the National Register of Historic Places and a City Landmark, and without even seeking an abandonment authorization for the line, in the face of deeds confirming that the property in question was part of a "line of railroad." The LLCs (the developer that unlawfully acquired the property from Conrail) have explained that the Embankment will inevitably be demolished for exclusive residential and commercial development once it leaves the jurisdiction of this agency. Letter, Mr. Horgan (for LLCs) to STB OEA, Dec. 7, 2015, p.2 and passim.⁵ This expected outcome is corroborated by Conrail's own actions in connection with this property, including its conscious decision to sell the historic portions of a "line of railroad" for commercial development before seeking STB abandonment authorization and in joining in demolition permit requests to facilitate that development in the face of this agency's jurisdiction.

In the circumstances, the loss of federal jurisdiction is tantamount to destruction of the Branch and the Embankment and a clear adverse impact on all the relevant section-106-protected properties.

⁵ The LLCs assert that any regulation of their right to demolish the property and re-develop it for commercial uses would amount to a "taking" requiring just compensation which they suggest would be in excess of \$100 million. Letter, p. 4 and passim.

City et al. have arranged for three historic preservation consultants (Diane Kaese, Ulana Zakalak, and Allen Kratz), to analyze the CREAM, to prepare an expert opinion, and to review these comments. As shown by Ms. Kaese, Ms. Zakalak, and Mr. Kratz in their Verified Statement at pp. 7-15, an STB abandonment authorization as contemplated by STB would result in severe adverse effects not only on the six historic assets found to be adversely impacted in the CREAM but also on other historic assets protected under section 106 in the APE. City et al. incorporate the findings in the referenced Verified Statement herein. City et al. is authorized to state that the three consultants concur in all conclusions expressed herein relating to adverse impact and related issues pertaining to preserving the integrity of historic resources in the Area of Potential Effects.

II. The Analysis in the CREAM Again Ignores or Downplays the Agency's Power to Grant Relief in the Circumstances Here

The OEA also claims that, while it does not know what will happen following abandonment authorization, STB lacks any power to influence post-abandonment land use in favor of mitigating adverse impacts after granting an unconditioned abandonment license to Conrail.

Although the OEA's limited view of authority to resolve adverse effects is not directly relevant to the CREAM's

determination of adverse effect, this view is flawed as a matter of law. In Consummation of Rail Line Abandonments, supra, slip at 2, the agency explained its general authority over abandonments as follows: "A railroad may not "abandon" a rail line (i.e., be relieved of its common carrier obligation to provide rail service over that line and dispose of the property for non-rail use) without express permission from the Board. Chi. & N. W. Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 321-22 (1981). Under 49 U.S.C. 10903, the Board may affirmatively approve the abandonment of a line by determining that the public convenience and necessity require or permit the proposed abandonment. Alternatively, the agency may authorize abandonment by granting an exemption (individually or by class of rail lines) under 49 U.S.C. 10502. See 49 CFR 1152.50 and 1152.60. Under either procedure, the Board must meet its responsibilities under other Federal statutes, including National Environmental Protection Act (NEPA, NHPA), and the National Trails System Act ("Trails Act") at 16 U.S.C. 1247(d). To meet those responsibilities, the Board may need to impose conditions that limit or postpone the carrier's ability to exercise its abandonment authorization in whole or in part." In short, the agency has stated that it can limit or postpone abandonment of a line in exactly the case at issue here.

Moreover, under 49 U.S.C. 10903(f), the agency enjoys a general power to approve abandonments "with modifications and require compliance with conditions the Board finds are required by public convenience and necessity." In Reed v. Meserve, 487 F.2d 648 (1st Cir. 1973), the court of appeals held that an agency charged with designing part of transportation policy (the ICC in that case) does not overstep its authority when it prudently undertakes to minimize the destruction of available transportation corridors painstakingly created over several generations. This is the last underutilized transportation corridor serving downtown Jersey City and certainly a candidate of STB assistance in preservation, even if it were not historic, which it very much is.

In 2008, this agency's Consummation of Abandonments Policy Statement, STB acknowledged that it does not find out about illegal abandonments of inactive lines until after unlawful actions are taken.⁶ The agency stated that it nonetheless "will take whatever steps are necessary to enforce compliance with

⁶ Consummation of Rail Line Abandonments that Are Subject to Historic Preservation and Other Environmental Conditions, Ex Parte 678, served April 23, 2008, slip op. at 4 ("In some cases railroads have taken actions affecting rail property without first seeking abandonment authority. When this occurs on inactive lines, we generally do not discover these actions until after the fact when the carrier seeks abandonment authority. Such actions are unlawful.").

[NEPA and NHPA]."⁷ The courts, in enforcing Section 106 in other contexts, have rejected similar efforts by agencies to disclaim their legal authority to protect historic properties in advance of completion of the Section 106 process stating, "it is impossible for us to know with any degree of certainty just what the end result of the NHPA process would be," and therefore that "it would be inappropriate to pre-judge those results . . . , or to relieve an agency from its obligation to engage in the process" by concluding that no relief is possible. Vieux Carre Property Owners, Residents & Associates, Inc. v. Brown, 948 F.2d 1436, 1447 (5th Cir. 1991)

Here, the actions of the railroad by the admission of its chosen developer have foreclosed meaningful comment under section 106, implicated section 110(k), and interfere with efforts to keep the last underused transportation corridor into downtown Jersey City intact for viatic uses. It is inconsistent with 49 U.S.C. 10903(f), cases like Reed v. Meserve, 49 U.S.C. 306113, and the agency's only statements in Ex Parte 678 concerning section 106 for the agency to claim that it lacks power to do anything more than inventory lost assets when a railroad forecloses comment by unlawfully selling off historic property in advance of the licensing process.

⁷ Id.

The OEA has the legal authority to impose conditions that return the Embankment property to its status quo ante and ensure that the City may acquire the eight blocks unlawfully sold to the developer on terms no worse than the developer obtained. OEA also has the legal authority to impose conditions that preserve the remainder of the Harsimus Branch. In short, STB OEA should recommend, and the agency should impose, conditions on any abandonment consistent with preservation of the entire Harsimus Branch proposed for abandonment in this proceeding. As we said in our letter of January 22, 2016, "City et al are eager to work with this Office to develop meaningful preservation options for the historic transportation asset involved in this proceeding, and City et al stand ready to implement those options. City et al. request this agency to work closely with the Advisory Council on Historic Preservation and the New Jersey Historic Preservation Office to this end. City et al. also support active participation by local neighborhood associations, recreation and historic preservation organizations, and all others interested in preserving the Harsimus Branch for public uses and congestion alleviation consistent with Jersey City's Master Plan and related planning documents, and of course with Section 106 and Section 110(k) of the NHPA." There is ample basis for this agency to eliminate the clearly unnecessary destruction of the Harsimus Branch.

At the very least, the agency must also more seriously evaluate the alternative of taking "no action" - that is, denying the abandonment application (or alternatively only granting discontinuance authority). This scenario would preserve the Embankment properties and the entire Branch under STB jurisdiction, thereby precluding Conrail from unlawful sales and dismemberment of historic assets. It would resolve adverse impacts on historic resources resulting from abandonment, and is a plausible remedy for an unlawful de facto abandonment. It is especially appropriate because Conrail is a repeat-offender, having engaged in other illegal de facto abandonments in Jersey City. E.g., Conrail - Ab. Ex. - in Hudson County, AB 167-1190X, STB Environmental Assessment served Dec. 12, 2008, noting Conrail's admission of another unlawful de facto abandonment in Jersey City: "In its filing to the Board, Conrail states that the track material was removed in the late 1970s or early 1980s, and the majority of the underlying right-of-way has been sold to various parties. [footnote omitted] Conrail further explains that it did not retain an easement for the portions of the right-of-way that were sold."

The CREAR gives short shrift to the no action alternative. STB states that, at the behest of SHPO, it was analyzing "no action," construed as meaning that it would not license the abandonment. The CREAR says that under this scenario, the

historic assets would suffer demolition by neglect, which it terms an adverse impact.⁸ This completely ignores the fact that STB jurisdiction renders unlawful exactly the break up of the corridor for development that is the adverse impact at issue pursuant to 36 C.F.R. 800.5(a)(2)(vii). The CREAR statement is simply not true. The no action alternative would keep the entire Harsimus Branch corridor intact from Waldo Avenue to Marin Boulevard. Conrail could not lawfully sell it for non-rail uses, and owing to federal preemption, developers to whom Conrail purported to sell the property could not lawfully develop it. The property and its viewshed would remain wholly intact. There would be no adverse impact on most of the historic properties listed at p. 1-11 to -13. The CREAR asserts that vegetation growth and natural weathering constitute "demolition by neglect" to rail structures in or adjacent to certain historic properties. E.g., p. 1-12. But the CREAR indicates that the chief rail structure of historic significance remaining in or adjacent to the historic properties is the six-block-long Harsimus Embankment. This structure was designed to, and is made up of materials that, resist natural weathering.

⁸ The agency's conclusion as to the "no action" alternative is clearly erroneous, certainly as to all the historic assets identified in the APE other than the Embankment, and likely erroneous as to the Embankment as well, as will be discussed *infra*.

The Independent Historic Preservation Consultants confirm the robustness of the structure in greater detail.⁹ If that structure were transferred to a conservation owner, it is not clear how it would be treated differently than it is now. Certainly there is now vegetation on top of the Embankment, but if that structure were transferred to a conservation owner, it would most likely be devoted to park and trail uses, and the vegetation would continue to grow atop the Embankment. To be sure, a conservation owner would likely trim the vegetation, at least in the vicinity of any trail atop the structures. But the City under generally applicable nuisance laws can require the existing owner (if necessary) to engage in vegetation trimming to prevent tree limbs from crashing down on unsuspecting pedestrians on walkways, streets and properties abutting the Embankment.¹⁰ In addition, in light of Conrail's complicity in a de facto abandonment of what it knew was a section 106 asset, it is completely appropriate for the agency to require Conrail to maintain the property. The Independent Historic Preservation Consultants have outlined in their Verified Statement a maintenance plan by which Conrail or its assignee would be accountable for maintaining the property (which they otherwise

⁹ See Joint Statement of Diane Kaese, et al., attached, p.21.

¹⁰ See Joint Verified Statement of D. Wrieden and M. O'Neill, attached, p.2, last sentence of second numbered paragraph.

apparently seek to demolish) consistent with the Secretary of Interior's Standards for the Treatment of Historic Properties.¹¹ The agency has failed to demonstrate that there is any substantial adverse impact that flows from "no action." If there is any demolition by neglect, it is de minimis compared to what will happen when the agency loses control by granting an abandonment authorization without preservation conditions equivalent to those achieved by retaining control. And any demolition by neglect here is preventable if the agency requires the parties who engaged in the unlawful de facto abandonment to prevent the harm to which they have exposed historic assets by reason of their unlawful actions. Indeed, the "no action" alternative in fact is tantamount to the agency's conservation alternative, for which the agency finds no adverse effect.

We agree with the agency's implicit assumption that it would be better from a historic preservation perspective if the property were transferred to a third-party subject to legally binding covenants and restrictions that would sustain the property's historic features. See 36 C.F.R. 800.5(a)(2)(vii). Our point is that "no action" is obviously preferable compared to immediate loss of the historic properties without any

¹¹ See Joint Verified Statement of Diane Kaese, et al., attached, pp. 22-24.

protection at all, which is the alternative the agency seems to pretend is its only option.

New Jersey SHPO by pleading filed May 15, 2009, in AB 167-1189X

([https://www.stb.gov/Filings/all_2000s.nsf/d6ef3e0bc7fe3c6085256fe1004f61cb/85257ca7006c955b852575ba0079a667/\\$FILE/225129.PDF](https://www.stb.gov/Filings/all_2000s.nsf/d6ef3e0bc7fe3c6085256fe1004f61cb/85257ca7006c955b852575ba0079a667/$FILE/225129.PDF))

explained to the agency that the section 106 process must occur prior to the granting of a license authorizing destruction of historic assets, not afterward. If the section 106 process is timely pursued, then negotiation of means to preserve the asset is facilitated, not ruptured. SHPO objected to the illegal de facto abandonment that STB appears still to be facilitating.

SHPO noted that preservation alternatives could not be readily pursued in the face of unlawful actions. SHPO stated that

"[t]he process proposed by STB does not lead to full

consideration of alternatives; instead, it leads to loss of the historic property at the consummation of abandonment." SHPO

requested that "STB retain full regulatory jurisdiction over the railroad right of way" in the circumstances. STB has not done anything to correct the unlawful de facto abandonment to date, but continues to purport to process Conrail's effort to gloss over its unlawful conduct. As SHPO said in 2009, STB must retain full regulatory jurisdiction in the circumstances.

Accord, Joint Verified Statement of Mr. Wreiden and Ms. O'Neill, supra, p.3.

III. The Agency Fails to Consider "Foreclosure" of
Meaningful Comment under Section 106 and Applicability
Of Section 110(k)

The CREAR's denial that the agency has power to address destruction of section 106 assets in AB 167-1189X (Harsimus Branch) cannot be squared with the agency's own policy statement in Consummation of Rail Abandonments, supra, issued in 2008. The Policy Statement indicated that the agency would do whatever necessary to prevent a railroad from prejudicing meaningful 106 review through destruction of 106 assets on a rail line prior to abandonment authorization. That Policy lists a number of actions STB can take to remedy conduct of a railroad prejudicial to section 106, including monetary penalties on a railroad (presumably to mitigate destruction by endowing restoration or preservation) and taking the railroad to court (presumably to undo harmful actions). We will focus in this section on additional remedies the agency could take by reason of NHPA itself.

The first set of remedies involves the concept of "foreclosure" for purposes of NHPA. Foreclosure occurs when an applicant or the agency takes an action that prevents meaningful consideration of comments prior to implementation of a federal

license. In the situation faced in Jersey City, the license applicant has removed trestles and track-related structure, and sold the historic Harsimus Embankment and two additional blocks to a developer intent on demolishing the Embankment. Had the applicant instead first sought its federal license, the property would still be intact and in Conrail's hands. The railroad could not have alienated the property until completion of the 106 process, and then only pursuant to conditions set by the agency. City et al.'s Independent Historic Preservation Consultants conclude, for the reasons set forth in their Verified Statement (attached), that the adverse effects already arising from Conrail's physical destruction of the Branch property "have foreclosed a reasonable opportunity to offer expert advice on how to prevent those adverse effects." The experts go on (Joint V.S. at 26):

"In addition, these removals and sale of the corridor without first seeking ICC or STB abandonment authorization manifest knowing evasion of section 106 processes. In our opinion, STB, ACHP and NJ SHPO should determine corrective action and penalties on Conrail and not seek to assist Conrail in obtaining an abandonment authorization that amounts to loss of Federal control over the important section 106 assets remaining in the corridor."

Unless a settlement is reached by parties providing for a resolution that will result in no adverse effect to the Harsimus Branch and surrounding historic properties, the ACHP's opportunity to comment on the undertaking will have been foreclosed by Conrail's unlawful sale of the property in 2005. This in turn means that there has been a foreclosure of meaningful comment on issues germane to adverse impacts and mitigation. Indeed, because STB did not start, much less complete, section 106 analysis prior to the actions foreclosing comment by ACHP (and other interested parties) a foreclosure has necessarily occurred for purposes of 36 CFR 800.9(b). Under that regulation, STB must provide the ACHP with information concerning the foreclosure so ACHP can make a publicly available determination.

A foreclosure has also occurred by reason of STB's own conduct. The City and the Coalition had sought information from STB in 2004 concerning whether Conrail had proper abandonment authorization -- well before City et al. filed their petition for a declaratory order regarding line status in January 2006.¹²

¹² See Exhibit D to Pet. Dec. Order in F.D. 34818, Verified Statement of Andrew Strauss, executed Jan. 6, 2006, attaching a Memorandum dated Nov. 17, 2004, stating that Mr. Strauss had "spent many hours talking to STB officials and reviewing the STB website on the question whether Conrail obtained abandonment authorization for the Harsimus Branch. Mr. Strauss reported extensive research work with STB Staff Attorney Rudy Saint-Louis and STB Librarian Kelley Weber, and Paul Markoff of STB's

Yet Conrail precipitously transferred the key Embankment parcels out of the "line" to a developer who promptly filed local land use applications to demolish and redevelopment the parcels. STB has repeatedly warned parties not to misuse its processes by acquiring lines for abandonment.¹³ Here Conrail did not even bother with an agency process; it simply acted unlawfully, transferring the line to a developer for abandonment. Conrail even joined in demolition permit requests. Yet in all these years, the agency has done nothing to require Conrail to reassemble the corridor so that the parties could comment on preservational alternatives prior to dismemberment. The agency is thus itself involved in the foreclosure.

The second set of NHPA remedies arises under section 110(k). Section 110(k), originally codified at 16 U.S.C. 470h-2(k) and now codified at 54 U.S.C. 306113, deals with anticipatory demolition by an applicant for a license. In the

Environmental Analysis Section. The entire Pet. Dec. Order may be found in STB's e-library, filings, or by use of this web link:

[https://www.stb.gov/Filings/all_2000s.nsf/d6ef3e0bc7fe3c6085256fe1004f61cb/85257ca7006c955b852570f50051d380/\\$FILE/215553.pdf](https://www.stb.gov/Filings/all_2000s.nsf/d6ef3e0bc7fe3c6085256fe1004f61cb/85257ca7006c955b852570f50051d380/$FILE/215553.pdf)

¹³ E.g., City of Temple, Tex. - Acquisition and Operation Exemption - Georgetown Railroad Company, F.D. 35369, served April 23, 2010, slip op. p. 1 ("acquiring a line of railroad for the purpose of abandoning rather than operating over it constitutes a misuse of [this Board's] procedures"). This agency has voided deeds, or required reconveyance, in such situations. E.g., The Land Conservancy of Seattle & King County - Acquisition & Operation Exemption -- BNSF, F.D. 33389, served Sept. 26, 1997, slip op. at 3.

words of ACHP (36 CFR 800.9(c)), it prohibits STB "from granting a ... permit [or] license to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the [license] would relate, or having legal power to prevent it, has allowed such adverse effect to occur," unless the agency after consultation with ACHP determines that the circumstances justify granting the assistance despite the adverse effect created or permitted by the applicant.

Anticipatory demolition implicating section 110(k) of the NHPA, 54 U.S.C. §306113, has clearly occurred here. First, Conrail clearly knew at all relevant times that the Embankment was protected by section 106.¹⁴ The President of Conrail, after all, objected to listing the Embankment on the National Register in the year 2000 on the ground that the listing would interfere with maximizing value from sale of the property.¹⁵ Furthermore,

¹⁴ E.g., Appendix 3 to Additional Supplemental Comments dated Sept. 24, 2014 in AB 167-1189X (Letter, D. Guzzo to Conrail, Jan. 25, 2000 (congratulating Conrail upon entry of the Harsimus Branch Embankment on the New Jersey Register of Historic Places and eligibility for National Register). The Additional Supplemental Comments are available in the STB e-library filings per the following web link:
[https://www.stb.gov/Filings/all.nsf/d6ef3e0bc7fe3c6085256fe1004f61cb/9abb0d6felcb9e8085257d5e007284b7/\\$FILE/236736.pdf](https://www.stb.gov/Filings/all.nsf/d6ef3e0bc7fe3c6085256fe1004f61cb/9abb0d6felcb9e8085257d5e007284b7/$FILE/236736.pdf)

¹⁵ E.g., id. (Letter, Conrail President and CEO Timothy O'Toole to D. Guzzo, objecting to listing, stating that Conrail "wishes to realize [the Embankment's] real estate value" and indicating

City et al. have supplied STB with an expert opinion that under the relevant facts, a railroad would have known that the Harsimus Branch was a line of railroad subject to STB jurisdiction.¹⁶ Any sale of such an asset for non-rail use without prior STB abandonment would thus constitute a knowing violation of the law, or the equivalent under the "willful blindness" doctrine. In short, the railroad knew the asset was protected by section 106, and also knew, or was willfully blind, to the fact that it was legally bound to comply with section-106-enabled licensing prior to sale.

Conrail nonetheless sought buyers who would knowingly assume the risk of the Embankment's historic status. It found one: 212 Marin Boulevard LLC, et al. Knowing that the railroad was on the verge of selling the property to the developer, the City indicated it was prepared to initiate eminent domain proceedings, and asked for evidence that the line had been authorized for abandonment or that none was required (as required not only by applicable title standards in New Jersey

that Conrail wished to avoid adverse impact on real estate values flowing from historic designations).

¹⁶ Verified Statement of Thomas McFarland, attached as Exhibit to Letter, Montange to V. Rutson and J. Wayland, Oct. 6, 2017, available in the following web link in the STB environmental correspondence website:

[https://www.stb.gov/ect1/ecorrespondence.nsf/UNID/3AFDB67B694DA697852581B1007223A4/\\$file/20171006004751.pdf](https://www.stb.gov/ect1/ecorrespondence.nsf/UNID/3AFDB67B694DA697852581B1007223A4/$file/20171006004751.pdf)

but also under STB's preemption of state law eminent domain prior to abandonment). Rather than supply that information, Conrail precipitously sold the property to the developer, unlawfully purporting to transfer eight blocks of the Harsimus Branch including the historic six-block Embankment without any abandonment authority from STB.¹⁷

The developer promptly filed for development approvals looking to destroy the rail line and the Embankment, and in fact commenced removal of a remaining rail structures in block seven, which actions stopped only when City et al. filed a proceeding at STB and sought a stay. Even then, the developer nonetheless purported to swap part of block seven with another landowner, and suffered title to be transferred to other parcels by tax sale certificate to encumber efforts to unwind the unlawful transfer. Conrail also subsequently expressly joined in local demolition permit requests filed by the developer (212 Marin Boulevard, LLC, et al).¹⁸ Indeed, Conrail entered into a

¹⁷ See generally, Appendix 2 to Additional Supplemental Comments, *supra*, J. Curley Declaration Nov. 3, 2005, collecting correspondence.

¹⁸ The Conrail documents joining in the developer's demolition requests were signed by Conrail's VP and General Counsel Jonathan Broder and were filed with STB as exhibits to a scheduling order filed in AB 167-1189X on June 17, 2014, and are accessible in the STB e-library filings, and per the following web link:

[https://www.stb.gov/Filings/all.nsf/d6ef3e0bc7fe3c6085256fe1004f61cb/2350286946ac153485257cfa004ce051/\\$FILE/236196.pdf](https://www.stb.gov/Filings/all.nsf/d6ef3e0bc7fe3c6085256fe1004f61cb/2350286946ac153485257cfa004ce051/$FILE/236196.pdf).

Unfortunately, the e-library version is somewhat garbled, so

contract to do whatever it took to keep the Embankment parcels in the developer's hands for demolition purposes notwithstanding any action by STB.¹⁹ Despite efforts by Conrail and the developer to litigate City et al. into submission (including the use of Strategic Lawsuits Against Public Participation for that purpose), the U.S. District Court for the District of Columbia ultimately dispositively ruled that the Harsimus Branch was a line of railroad that required STB abandonment authority. This decision was affirmed despite appeals by the developer to the D.C. Circuit.

There is ample information in the history and pleadings of this case showing that the railroad, which knew the resource was historic, not only alienated it with the intention of demolishing a section 106 asset without prior compliance with 106, but doubled down in doing so by contracting with its chosen developer to defeat STB remedies, should the agency endeavor any. Under section 110(k), the agency must consider withholding the abandonment license that would condone this unlawful

legible copies are being tendered herewith. Conrail joined in demolition permit requests for each of the six blocks of the Embankment, as witnessed by the six "Joinders." The documents evidently were executed on Dec. 13, 2007, after STB had initially determined that the Harsimus Branch was a line of railroad subject to abandonment licensing jurisdiction in F.D. 34818 (decision served August 9, 2007), but well before Conrail had instituted any abandonment proceeding.

¹⁹ Attached as Appendix 4(b) to Additional Supplemental Comments, supra.

conduct, or engage in a consultation with ACHP concerning what to do if the agency wishes to grant the license anyway. What to do can include conditions to mitigate the adverse impacts caused by the anticipatory demolition, such as voiding deeds and restoring the property to Conrail ownership, directing a sale to the City at the price paid by the developer, and other matters.

STB OEA has indicated that it does not itself consider section 110(k) issues or applicability of section 110(k), and perhaps not foreclosure of comment. Instead, it leaves those matters to other offices within the agency. Further, the CREAR was prepared by consultants retained by Conrail, who evidently are not funded or authorized by their scope of work to analyze information, or to reach conclusions, adverse to Conrail on matters like foreclosure or section 110(k). Although there may be institutional barriers within STB (or the consultant) to consideration of foreclosure and section 110(k), or economic barriers flowing from lack of funding by Conrail to support any research or consideration of these matters, none of these constitute grounds to ignore the law.

Specifically, the OEA cannot ignore the realities of the circumstances of this case in addressing the range of potential effects of the undertaking. If no settlement is reached that would resolve the adverse effects of the abandonment, the only alternatives that can be considered consistent with Section

110(k) are denial of Conrail's proposed abandonment (or perhaps allowing a discontinuance only but not abandonment), or conditioning any abandonment on requiring Conrail to reassemble the property and make it available to the City for preservational purposes, and/or monetary penalties on Conrail to support such measures as are necessary to ensure preservation and conservation, and/or other comparable measures that preserve the Branch.

Conclusion

City et al. agree with the CREAR insofar as it concludes that loss of federal jurisdiction will result in overwhelming adverse impacts on historic properties in the APE, that any settlement is likely also to have significant adverse impacts, and that conservation of the Branch and Embankment would eliminate the adverse impacts. City et al. (and all five of City et al.'s experts) disagree with the agency's suggestion that "no action," defined as denying abandonment authorization, would have an adverse impact, and certainly any adverse impact similar to the loss of jurisdiction or settlement scenarios.

City et al. continue to object to the agency's claims that it cannot afford remedies in cases of unlawful de facto abandonments, and in cases like this one in which meaningful comment opportunities are foreclosed and section 110(k) implicated. The agency cannot deny away power long held by the

agency and its predecessor (Interstate Commerce Commission) to remedy abuses by railroads engaged in illegal conduct. Nor is that in the public interest. Railroads will willfully abuse, or continue willfully to abuse, public interest statutes and this agency's abandonment jurisdiction generally (as occurred here) if the agency denies any ability meaningfully to enforce its own regulations and jurisdiction. It hardly behooves STB to rubberstamp and to facilitate unlawful conduct in the railroad industry. That furthers no federal rail policy (see 49 U.S.C. 10101) and is inconsistent with respect for Rule of Law.

City et al. are working diligently to achieve a settlement that will mitigate adverse impacts on the bulk of the historic resources at issue in this proceeding, but careful consultation will be necessary under section 106 in order to assure adequate mitigation should a settlement framework be agreed. City et al. request the opportunity to work closely with NJ SHPO, ACHP, and STB OEA, and our counterparties and the public, to achieve a responsible outcome that affords meaningful protection to the historic assets involved in this de facto and unlawful abandonment.

Respectfully submitted,



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cc. City of Jersey City, Rails to Trails Conservancy,
Pennsylvania RR Harsimus Stem Preservation Coalition, Ms. Kaese,
Ms. Zakalak, Mr. Krantz, Mr. Wrieden and Ms. O'Neill, NJ SHPO

Attachments:

1. Verified Statement of Diane Kaese, et al. (Independent Historic Preservation Consultants)
2. Joint Verified Statement of Daniel Wrieden and Margaret O'Neill (Division of Planning, City of Jersey City)
3. Conrail joinder in developer demolition permit requests for all six blocks of the Embankment
4. NJ SHPO demand in 2009 that STB retain jurisdiction given the unlawful de facto abandonment which subverted the 106 process

ATTACHMENT 1

Verified Statement of Diane Kaese, Ulana Zakalak
and Allen Krantz
(Independent Historic Preservation Consultants)

BEFORE THE SURFACE TRANSPORTATION BOARD

Consolidated Rail Corporation –)
Abandonment Exemption –) AB 167 (Sub-no 1189X)
in Hudson County, NJ)

JOINT VERIFIED STATEMENT OF DIANE KAESE,

ULANA ZAKALAK, AND ALLEN KRATZ

(Independent Historic Preservation Consultants)

I, Diane Kaese, state that I am owner of Kaese Architecture PLLC (architecture and preservation in Greater New York City area), that I hold a Master of Science degree from Columbia University in Historic Preservation, that I have expertise in historic preservation, including assessment of adverse effects on section 106 assets, and that my resume is attached.

I, Ulana Zakalak, state that I am the owner of Zakalak Associates (historic preservation consulting in the Greater New York City area) and Zakalak Restoration Arts (historic preservation-related construction), that I hold a Master of Science degree from Columbia University in Historic Preservation, that I have expertise in historic preservation, including assessment of adverse effects on section 106 assets, and that my resume is attached.

I, Allen Kratz, state that I am an independent consultant and principal of Allen W. Kratz Historic Preservation Consulting, LLC. I have two decades of experience in economic development, property management, project management, and historic preservation, including work for the Real Estate and Economic Development Division of NJ Transit. I was a gubernatorial appointee to the New Jersey Historic Trust, am a mayoral appointee to the Hoboken Historic Preservation Commission, and have experience in the drafting of historic preservation ordinances and a National Register nomination. My resume is attached.

We make this verified statement at the request of Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition as part of its response, along with Rails-to-Trails Conservancy and City of Jersey City, to the Cultural Resources Effects Assessment Report (CREAR) issued in the above captioned proceeding on or about March 29, 2019. As a result of our training and experience, we have expertise in the application of the criteria for determining adverse effects on properties eligible for the protections of section 106 of the National Historic Preservation Act and comparable state and city statutes and ordinances. The Surface Transportation Board Office of Environmental Analysis has provided only a 30-day comment period on the CREAR and we understand has informed counsel for the Coalition that extensions of time are unlikely. Our

evaluation is therefore constrained by what we are able to provide within the time period the agency is affording.

Introduction

1. The Cultural Resources Effects Assessment Report (CREAR) that the Surface Transportation Board (STB) issued in March 2019 concludes that Conrail's proposed actions in the above-referenced matter would result in adverse effects to historic properties listed in or eligible for listing in the National Register. We concur. Adverse effects are virtually assured for this property once this agency removes federal jurisdiction from the rail corridor by granting an unconditioned abandonment license to Conrail, for this will permit developers to acquire and/or to develop the property for non-rail uses, a process that has unfortunately already commenced owing to Conrail's sale of key portions of the property to a developer before complying with section 106 of the National Historic Preservation Act. "The transfer, lease, or sale of property out of Federal ... control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance" is an adverse effect. 36 C.F.R. 800.5(a)(2)(vii). We also concur in the CREAR conclusion that redevelopment of the Branch, or a settlement involving partial redevelopment of the Branch, will have adverse impacts, and that preservation will not have adverse impacts.

2. While the agency is not yet considering mitigation measures, it is clear that a key part of any mitigation strategy associated with loss of Federal control (that is, Surface Transportation Board (STB) granting an abandonment license to Conrail) is the imposition of “adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property’s historic significance.” STB appears to contend that the prior sale by Conrail to a developer of the six-block-long Embankment and an additional two blocks of the historic Harsimus Branch somehow limit the agency’s options for meaningful mitigation. We are informed that the agency has the power to condition or to deny abandonments in the public interest, both under its organic statute (49 U.S.C. 10903) and under section 110(k) of the National Historic Preservation Act, 49 U.S.C. 306113 (remedies against “anticipatory demolition,” as occurred here). Simple denial of the abandonment license (the no-action alternative that the agency states that New Jersey SHPO requested the agency to analyze) would eliminate loss of Federal control and preserve all the historic assets. Alternatively, the agency could deny abandonment and simply authorize discontinuance, thus relieving Conrail of common carrier obligations but at the same time maintaining Federal control sufficient to prevent destruction of the historic assets. Should the agency authorize abandonment, then the agency should insist on levels of protection from Conrail and its chosen

developers for the property comparable to those that would have been achieved had the agency denied Conrail's abandonment request. We do NOT concur with the CREAR conclusion that "no action" (denial of the rail abandonment license) will have adverse impacts, including "demolition by neglect."

Analysis

3. We now address six questions that arise in regard to the CREAR:

A. If the Board were to authorize abandonment, what adverse effects would ensue from each of these three potential scenarios: (1) the complete preservation of the rail right-of-way and the Embankment (Scenario 1, page 1-10); (2) demolition and redevelopment of the Embankment (Scenario 2, page 1-10), and (3) an "agreement" among "owners of the Harsimus Branch right-of-way and [City of] Jersey City... that involves partial preservation and partial redevelopment of the Embankment and the Harsimus Branch right-of-way" (Scenario 3, page 1-11)?

Stated another way: The OEA finds adverse impacts in Scenario 2 and Scenario 3 on six of the properties in the Area of Potential Effect listed at pages 1-11 and 1-12. Using the Section 800.5(a)(2) criteria for adverse impact, do we concur?

B. In our expert opinion, should the list of adversely affected properties within the APR include additional properties from the list at 1-7 to 1-10, given the criteria for adverse impacts?

- C. As to Scenario 2 (demolition and redevelopment of the Embankment), to what extent, and at what pace, would the “market” likely develop the Embankment and remaining right of way and create additional effects within the adjacent historic neighborhoods and their National Register and National Register-eligible resources?
- D. Is the STB OEA correct in characterizing “no action” (denial of an abandonment license) as having the adverse impact of “demolition by neglect?”
- E. What mitigation is recommended if, under Section 110(k) of the National Historic Preservation Act, the right of way is transferred back to Conrail for conservation?
- F. Has Conrail’s *de facto* abandonment of the Harsimus Branch, by removing many rail-related materials from the branch, and selling the eight blocks of real estate prior to the start of the Section 106 process, foreclosed reasonable opportunity for comment?

Discussion of Questions A-F

Question A. *If the Board were to authorize abandonment, what adverse effects would ensue from each of these three potential scenarios: (1) the complete preservation of the rail right-of-way and the Embankment (page 1-10), (2) demolition and redevelopment of the Embankment” (page 1-10). and (3) an “agreement” among “owners of the Harsimus Branch right-of-way and [City of]*

Jersey City... that involves partial preservation and partial redevelopment of the Embankment and the Harsimus Branch right-of-way" (page 1-11)?

Stated another way: The OEA finds adverse impacts in (1) and (2) on six of the properties in the Area of Potential Effect listed at pages 1-11 and 1-12.¹ Using the Section 800.5(a)(2) criteria for adverse impact, do we concur?

We offer our expert opinion regarding "Question A" as follows, noting, as time constraints allow, the specific historic, architectural, and cultural significance of each of the listed resources:

1. Pennsylvania Railroad Harsimus Branch Embankment.

Demolition of the massive stone structure would be the severest of adverse effects on the historic structure itself – eradication. Demolition and redevelopment would have cascading adverse effects, including removal of the easternmost part of the extant Pennsylvania Railroad Harsimus Branch Right of Way Historic District, closest to the Hudson River and the Port of New York and New Jersey that the Harsimus Branch played an important role in building. Similarly, the Pennsylvania Railroad (New York to Philadelphia) Historic District would lose an important contributing element.

¹ (1) Pennsylvania Railroad Harsimus Branch Embankment, (2) Pennsylvania Railroad Harsimus Branch Right-of-Way Historic District, (3) Pennsylvania Railroad (New York to Philadelphia) Historic District, (4) New Jersey Railroad Bergen Cut Historic District, (5) Hamilton Park Historic District and Extension 1-12, and (6) Harsimus Cove Historic District.

Demolition and redevelopment of the Embankment would also have a severe negative effect on the abutting historic districts of Hamilton Park and Harsimus Cove. Richard James, who wrote the *Nomination* of the Embankment to the State and National Registers of Historic Places, notes elsewhere that "The adjacent neighborhoods of Hamilton Park and Harsimus Cove developed with and were structured by the rail infrastructure. This is their real history. In the Hamilton Park nomination (Sheehan, 1977), the embankment is described as both the southern "edge" and "boundary" of the district. In the Harsimus nomination (Sullebarger, 1987) it is described as the northern "boundary."

Boundaries and edges are not voids. Often, they help define districts. If so, to obliterate an edge is to degrade the integrity of the district."²

Furthermore, demolition and redevelopment of the Embankment will have a profound adverse effect on the Immigrant Roman Catholic Church Historic District and its constituent churches of St. Anthony of Padua and Holy Rosary, as well as on other buildings listed in their own right on the State and National Registers. See items below.

2. Pennsylvania Railroad Harsimus Branch Right of Way (Milepost 0.00 near CP Waldo to Milepost 0.86 Newark Luis Munoz Marin Boulevard).

² Richard James, "Consultative Comment on AB-167_1189X, NHPA Section 1-6 Review," 7/6/2017.

The intact remains of the Harsimus Branch Right-of-Way, from CP Waldo to Marin Boulevard, convey the historic impact of transportation, industry, and trade in Jersey City. Without this Branch, the Pennsylvania would have been severely restricted from getting its goods into New York. As the local example of the engine of industry that created the port of New York and New Jersey as well as Jersey City, the extant Harsimus Branch makes manifest national transportation history and its local impact. The Harsimus Branch possesses all seven aspects of integrity as described by the National Register of Historic Places. The entire extant rail line, has been determined eligible for the National Register. The adverse effects of disassembly, demolition, and redevelopment would transform a wider historic landscape that includes listed or eligible properties as well as resources that might, with further consideration, be determined eligible.

3. Pennsylvania Railroad (New York to Philadelphia) Historic District.

The Pennsylvania Railroad (New York to Philadelphia) Historic District contains the most important rail line in the history of train transportation in the United States. Before bridges or tunnels were built to access the New York City market, passengers and cargo to the City were carried to Jersey City via multiple rail lines that terminated at the

Hudson River waterfront. There both passengers and cargo continued to New York on boats. The Pennsylvania Railroad's Harsimus Branch was one of the most important rail branches, diverging from the PRR passenger line near Waldo and carrying as many as seven tracks to the Harsimus Cove rail yards, where the cargo would be offloaded into warehouses or onto car floats. The loss of this Branch as a contributor would adversely affect the greater Historic District.

4. New Jersey Railroad Bergen Cut Historic District.

Time constraints made it impossible for us to consider adverse effects on this District in detail. It appears, however, to be adversely affected by any disassembly of the Harsimus Branch Right-of-Way Historic District.

5. Hamilton Park Historic District and Extension.

The disassembly of the Harsimus Branch Right-of-Way Historic District and the demolition and future redevelopment of the Embankment would have significant negative impacts on the Hamilton Park Historic District. Loss of the Embankment, which has been determined a contributor to the Historic District, would not only diminish the identity of the District but the adverse physical effects of removal of the massive stone structures—the resultant noise, dirt, release of contaminants, and shaking of historic buildings from heavy truck traffic and construction—

would also be extremely detrimental to the buildings within the District. In addition, Hamilton Park is centered on its public square, an oasis of green from which proposed towers, a jarring element in the historic landscape, would be visible. (See also item 6 below).

6. Harsimus Cove Historic District.

(See also Item 5 above.) The Embankment is a boundary of the Harsimus Cove Historic District, and its loss would damage the integrity of the District. The Embankment has also been determined to be a contributing element to both the Hamilton Park Historic District and Harsimus Cove Historic District. Both of these historic districts embracing the Embankment are low in scale and density, consisting primarily of two- or three-story-plus-basement Victorian-era brick and brownstone rowhouses. The area encompassed by the two historic districts predates the construction of the Embankment; dwellings similar to those extant in both districts were demolished to accommodate the construction of the Embankment. Both of these historic districts are known for the intact continuity of their historic row houses, dating from before the Civil War to the late nineteenth century. The demolition of the Embankment would result in construction-period vibrations to the buildings in both neighborhoods, at the risk of inadvertent environmental

contamination and the permanent loss of integrity to the historic fabric of both neighborhoods.

7. St. Anthony of Padua Roman Catholic Church.

The demolition of the Embankment would negatively affect St. Anthony's Polish Roman Catholic Church. St. Anthony's is on the National Register of Historic Places. Built in 1892, St. Anthony of Padua has survived remarkably intact for 126 years, its brownstone façade in close proximity to the great brownstone Embankment. The church is architecturally significant as a unique religious edifice in Jersey City. It is a colorful mixture of western and eastern design influences, with a Victorian Gothic exterior, a Byzantine-influenced interior, and a mix of ethnic art and symbolism. In both design and workmanship. St. Anthony of Padua Church is indicative of the high quality of late-nineteenth-century architecture in Jersey City. Most prominent are the church's significant examples of windows, as well as exquisite mosaics. Although unsigned, the windows are believed to the work of Franz Mayer or Francis Zettler, two masters of the Munich School of stained glass. The windows alone would cost several million dollars to reproduce if they were damaged.

An engineering report commissioned by the parish of St. Anthony of Padua Roman Catholic Church describes how vibrations from demolition of the Embankment and subsequent new construction on the cleared site would likely adversely affect the church, and in particular, its exterior envelope and stained-glass windows. From an engineering point of view, the Church's fragile brownstone envelope might not be able to withstand the vibrations from the demolition of the Embankment structures.

Vibrations can cause significant damage to buildings, especially ones that are old and already have underlying problems such as brownstone exfoliation. The steeple of the church might also not be able to withstand vibrations from demolition, pile driving, and trucks navigating around the neighborhood to transport tons of debris.

8. St. Anthony of Padua Roman Catholic Church and School Complex.

Any adverse effects on St. Anthony's Church would adversely affect the integrity of the Church and School Complex.

9. Immigrant Roman Catholic Church (St. Anthony's/Holy Rosary)
Historic District.

St. Anthony's Roman Catholic Church is the mother church of all Polish parishes in New Jersey. Holy Rosary is the first Italian parish in New Jersey; the current church cornerstone was laid in 1903,

contemporaneously with the construction of the stone Embankment across the street (1901-05). Located next to each other along Sixth Street, St. Anthony's and Holy Rosary together make up a historic district that strikingly conveys the history of the Catholic Church's accommodation of waves of immigrants into Jersey City and the nation.

Both St. Anthony of Padua and Holy Rosary use, and have used for decades, the Harsimus Branch Embankment as the backdrop for their summer festivals. Sixth Street is closed for the festivals, and the Embankment wall makes a handsome setting for musical bands, concession stands, religious processions, and the festivals in general. Because St. Anthony has no open space of any kind, the area in front of the Embankment serves as its yard for activities and the annual festivals. The festivals draw thousands of Jersey City residents and folks from surrounding areas and are the major fundraisers for both parishes. Without the Embankment, the parishes would not have a location to hold La Fiesta Italiana or other cultural and religious outdoor events for the benefit of the community.

10. Jersey City and Harsimus Cemetery Historic District.

If the Embankment were to be demolished and redevelopment allowed to proceed, redevelopment would predictably move in a westerly direction

until it bordered the historic cemetery. Chartered in 1829, the Jersey City and Harsimus Cemetery is a “garden cemetery,” one of the first landscaped, rural cemeteries in New Jersey. It was designed to appear rural and rustic, separate from urban cemeteries dominated by nearby commercial or residential buildings. Redevelopment would predictably detract from this historic aesthetic. The Jersey City and Harsimus Cemetery Historic District is eligible for listing in the National Register of Historic Places.

In sum, applying the Section 800.5(a)(2) criteria for adverse impact, our expert opinion aligns with that of the OEA in finding adverse impacts in Scenario 2 and Scenario 3 on the six properties in the Area of Potential Effect listed at pages 1-11 and 1-12.³ In our expert opinion, there would also be adverse effects under those scenarios on the additional specific properties that we have described above. Time constraints did not allow us to consider adverse effects on other properties in the APE.

³ (1) Pennsylvania Railroad Harsimus Branch Embankment, (2) Pennsylvania Railroad Harsimus Branch Right-of-Way Historic District, (3) Pennsylvania Railroad (New York to Philadelphia) Historic District, (4) New Jersey Railroad Bergen Cut Historic District, (5) Hamilton Park Historic District and Extension, and (6) Harsimus Cove Historic District.

Question B. *In our expert opinions, should the list of adversely impacted properties within the APE include additional properties from the list at 1-7 to 1-10, given the criteria for adverse impact?*

The short timeframe for comment does not enable us to offer a detailed expert opinion on this question. Nonetheless, in our expert opinion, we reasonably believe that loss of Federal jurisdiction and destruction of the Embankment would change the historic context of the properties in the Area of Potential Effect. Moreover, we reviewed the comments of the City et al. and concur in all conclusions expressed therein relating to adverse impact and related issues that would impair the integrity of the historic properties in the Area of Potential Effect.

Question C. *As to Scenario 2 (demolition and redevelopment of the Embankment), to what extent, and at what pace, would the “market” likely develop the Embankment and remaining right of way and create additional effects in the adjacent neighborhoods and their National Register and National Register-eligible resources?*

In our expert opinion, the Harsimus Branch is, and increasingly will become, the object of intense developer interest because it is a scarce resource in Downtown Jersey City: an underutilized transportation corridor and undeveloped open space. In the event of loss of Federal control by authorizing abandonment, the Harsimus

Branch would be destroyed by development. Three factors very likely would attract developer interest in developing the Harsimus Branch:

(a) proximity to Jersey City's "Gold Coast."

The eastern end of the Harsimus Branch is contiguous to the high-density, high-rise, high-market-value commercial and residential properties along the Hudson River, a waterfront area colloquially known in development circles as the "Gold Coast." We further understand that at one point the Hyman limited liability corporations (developer to whom Conrail sold eight blocks of the Branch in 2005) proposed to Jersey City's governing body, the City Council, that the Hyman interests construct high-rise buildings along the entire embankment structure within the Harsimus Branch. In addition, we note that Conrail proposed constructing 10,000 residential units on property that it owns adjacent to the western portion of the Harsimus Branch, near the "Palisades" portion of the Harsimus Branch.

(b) adjacency to low-rise, architecturally appealing, well-maintained historic neighborhoods.

The above-grade portion of the Harsimus Branch is contiguous to and, according to a SHPO Opinion, a contributing element to two historic neighborhoods – Hamilton Park and Harsimus Cove, both of which are

historic districts designated by Jersey City and listed on the New Jersey Register of Historic Places and the National Register of Historic Places. In both neighborhoods, the multiple blocks of largely intact 19th-century single-family residences have historic architectural charm that has created cohesive neighborhoods with high market appeal, owner investment, and ever-increasing property values. Typically preserved at the historic, low-rise height, the single-family residences offer a further bonus to prospective developers: new, higher buildings will have unobstructed views above the second and third stories. In short, in our expert opinion, well-preserved historic residential neighborhoods invite real-estate interests to invest nearby in hopes of capturing the value of the existing neighborhood's economic stability

(c) development plan approvals for the easternmost block of the Embankment.

The City of Jersey City in 2015 approved its latest update of the City's Luis Munoz Marin Boulevard Redevelopment Plan, which includes the easternmost portion of the Harsimus Branch (the block from Luis Munoz Marin Boulevard west to Manila Avenue). Contingent upon settlement of the legal dispute between the City, Embankment Preservation Coalition, and Rails-to-Trails Conservancy on one side and

Conrail and LLCs on the other, and contingent upon other terms and conditions, the redevelopment plan permits as of right on the Block One portion of the Harsimus Branch, providing for, in relevant part: two residential high-rise towers containing a maximum of 400 dwelling units and 200 hotel rooms, the west tower being no higher than 35 stories and the east tower being no higher than 45 stories, both constructed on a parking base that must include at least one restaurant or café that is open to the public and that is directly accessible from a public walkway that spans the length of the block. The walkway is at least 30 feet wide, accessible by a “grand stairway” from Luis Marin Boulevard and extends west across Manila Avenue by means of a bridge to be constructed as part of the development.⁴

In addition, we understand that the Hyman limited liability corporations (parties to litigation related to the above-referenced STB proceeding) proposed high-rise redevelopment for the entire embankment structure.

⁴ See Division of Planning, City of Jersey City, New Jersey, Marin Boulevard (Henderson Street) Redevelopment Plan, Amended May 13, 2015, pages 6-7. Among the other conditions: Seven segments of the Historic Pennsylvania Railroad Harsimus Branch Embankment must be transferred in fee simple ownership to the City of Jersey City for use as a public park and trail/light rail corridor and site plan approval by the City's Planning Board is required for implementation of any improvements on the land. See Jersey City, City Ordinance 120047 “Ordinance of the Municipal Council of the City of Jersey City Adopting Amendments to the Luis Munoz Marin Boulevard Redevelopment Plan,” adopted by City Council April 11, 2012.

Furthermore, we understand that Conrail (a party to this STB proceeding) proposed constructing 10,000 residential units on its portion of the Harsimus Branch.

In summary, in our expert opinion, development pressures will lead to demolition and redevelopment of the Branch. This in turn will create adverse effects upon neighboring properties (a) by causing “physical destruction of or damage to all or part of the property’ within the Area of Potential Effect (Section 800.5(a)(2)(i)), (b) by resulting in “changes [to] the character of the ...physical features with the property’s setting that contribute to its historic significance” (Section 800.5()(2)(iv)); and by the “introduction of visual, atmospheric or audible elements that diminish the integrity of the property’s significant historic features. (Section 800.5(a)(2)(v).

Question D. *Is the Board correct in characterizing “no action” as “demolition by neglect?”*

OEA states in conclusory fashion (that is, without analysis) that rail-related material and structures within the rail right-of-way, including the Embankment, “would continue to deteriorate over time due to vegetation growth and natural weathering.” (page 3-7). We note the OEA’s additional belief that “physical

deterioration of rail-related materials, sites and structures within the rail right of way would eventually create maintenance or public safety concerns that would necessitate the property owners to remove them” or public-agency removal. (page 3-8). The loss of those materials over time, the OEA concludes, “would constitute demolition by neglect.” (page 3-8)

We disagree. In our expert opinion, the Embankment—constructed with a live-load capacity for locomotives and fully-loaded freight rail cars to operate in simultaneous motion over its seven active Class I railroad tracks—is well positioned to withstand the relatively passive effects of nature and of volunteer vegetation that the owner can control with routine maintenance. It is unlikely that the Embankment will deteriorate to the point of its masonry collapsing or its structural components falling onto adjacent properties. The Embankment is not prone to be demolished by neglect and, therefore, in our expert opinion, “no action” would not result in “physical destruction of or damage to all or part of the property,” an adverse effect under Section 800.5(a)(2)(i).

We find support for our expert opinion from the OEA itself elsewhere in the report: “OEA determined that “the complete preservation of the Harsimus Branch by Jersey City (Scenario 1) would not result in any adverse effects to historic properties listed or eligible for listing in the National Register....This scenario would avoid adverse effects to National Register-listed and National Register-

eligible historic properties with the APE....” (page 1-11). It is our expert opinion that preservation of the Branch, which can be accomplished here by taking “no action” on Conrail’s abandonment request, will, as STB OEA suggests, have no adverse impact on section 106 properties.

Moreover, in our expert opinion, continued STB jurisdiction will inhibit further removal of rail-related structures and appurtenances and further dismemberment of the corridor, by Conrail, its successors and assigns. In addition, continued STB jurisdiction could create conditions for reassembling land interests encompassed by the corridor.

Question E. *What mitigation is recommended if, under Sec. 110(k) of the National Historic Preservation Act, the right of way is transferred back to Conrail for conservation?*

If STB implements “no action” or actually enforces Section 110(k), or otherwise seeks to mitigate the de facto abandonment by Conrail, we recommend the following mitigation to preserve the Harsimus Branch and the Embankment:

1. Conrail shall prepare—for prior written approval by the City of Jersey City (City) and the New Jersey State Historic Preservation Office—a plan for maintaining the Harsimus Branch, including the Embankment, in a state of good repair.

2. The approved maintenance plan shall include vegetation control at grade and, on the Embankment, prevention of damage that would be caused by uncontrolled volunteer trees, vines, and other vegetation.
3. The maintenance plan for the Embankment structure shall adhere to the Secretary of the Interior's *Standards for the Treatment of Historic Properties*.
4. Conrail shall implement the plan, or cause its assignee to implement the plan.
5. The City shall enforce the plan with fines and penalties appropriate to any deviation from the plan.
6. Conrail shall place in escrow, or by means of a letter of credit drawn to the favor of Jersey City, a sum of funds sufficient for the City to use, solely upon its demand, and with no intervention by Conrail, to remediate any maintenance or repair that Conrail declines to perform.
7. Any cost incurred by the City of Jersey City or other party to enforce the terms of the maintenance plan, including the cost of engineering analysis, legal representation, and court costs, shall be borne by Conrail.

8. To the extent that Conrail contracts maintenance activities to another party, Conrail shall name the City of Jersey City as the secondary obligee.
9. To the extent that Conrail obtains property and casualty insurance coverage and liability coverage for the property, it shall name the City of Jersey City and the New Jersey State Historic Preservation Office as "Additional Insureds."
10. The maintenance plan shall be binding upon Conrail, its successors and assigns.
11. A complete copy of the maintenance plan shall be filed with the Recorder of Deeds of Hudson County.
12. A copy of the maintenance plan shall be provided to the Surface Transportation Board and the New Jersey Historic Preservation Offices for inclusion in their files related to the above-referenced proceeding.

In our expert opinion, if the right of way were to be returned to Conrail for conservation, the creation, adoption, implementation, and enforcement of a maintenance plan that includes all of the terms and conditions summarized above will completely and at minimal expense prevent any possible adverse effects described in Section 800.5, namely, "physical destruction of...part of the property"

(Section 800.5(a)(2)(i); “alteration of [the] property...that is not consistent with the Secretary’s standards for the treatment of historic properties and applicable guidelines” (Section 800.5(a)(2)(ii), and a “change of the...physical features within the property’s setting that contribute to its historic significance” (Section 800.5(a)(2)(iv).

Question F. *Has Conrail’s de facto abandonment of the Harsimus Branch, by removing many rail-related materials from the branch, and selling the eight blocks of real estate prior to the start of the Section 106 process, foreclosed reasonable opportunity for comment?*

We note the OEA’s description of Conrail’s “removal for transportation and public safety purposes prior to the start of the Board’s abandonment proceeding,...the entire superstructure of the viaduct that once conveyed the elevated rail line to the west of the Embankment; the bridges connecting the Embankment segments; all but one of the catenary poles that once supported the electrical lines powering the electrified rail line; and all rail and railroad ties.”
(page 4-70; emphasis added)

Assuming, solely for the sake of argument, that Conrail had valid “transportation and public safety” reasons for removing the listed items above, in our expert opinion, Conrail’s actions nonetheless constitute adverse effects in that

these represented “physical destruction of...part of the property” (Section 800.5(a)(2)(i); “alteration of [the] property...that is not consistent with the Secretary’s standards for the treatment of historic properties and applicable guidelines” (Section 800.5(a)(2)(ii), and a “change of the...physical features within the property’s setting that contribute to its historic significance” (Section 800.5(a)(2)(iv).

In our expert opinion, the adverse effects listed above have foreclosed a reasonable opportunity to offer expert advice on how to prevent those adverse effects. In addition, since the Harsimus Branch was an integral part of the former mainline of the Pennsylvania Railroad for freight, and publicly available records showed no indication that the line had ever been abandoned, these removals and sale of the corridor without first seeking ICC or STB abandonment authorization manifest a knowing evasion of section 106 processes. In our opinion, STB, ACHP, and NJ SHPO should determine corrective action and penalties on Conrail and not seek to assist Conrail in obtaining an abandonment authorization that amounts to loss of Federal control over the important section 106 assets remaining in the corridor.

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Diane Kaese

Dated:

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

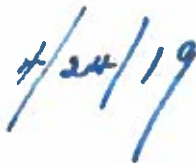
Ulana Zakalak

Dated:

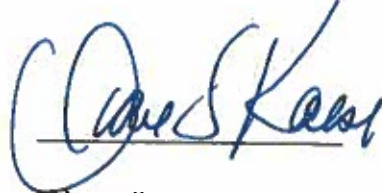
Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


Allen Kratz

Dated:



Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

A handwritten signature in blue ink, appearing to read "Diane Kaese", written over a horizontal line.

Diane Kaese

Dated: 4.24.2019

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Ulana Zakalak

Dated:

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Allen Kratz

Dated:

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Diane Kaese

Dated: 4/24/19

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


Ulana Zakalak

Dated:

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Allen Kratz

Dated:

Diane S. Kaese, R.A., AIA

(917) 414-8097 (c)

dskaeese@kaesearch.com

Experience

Kaese Architecture PLLC, 2017 to present
Kaese & Lynch Architecture and Engineering LLP, 2009 to 2017
Diane S. Kaese, R.A., Sole Proprietor, 2008 to 2009
Senior Project Manager, Simpson Gumpertz & Heger Inc., 2004 to 2008
Senior Architect, WJE Engineers and Architects P.C., 1988 to 2004
Project Manager, Tishman Construction Corporation, 1985 to 1988
Staff Architect, The Ehrenkrantz Group, 1983 to 1985
Draftsperson, Meadows/Woll Architects, 1981 to 1983
Building Inspector, City of Lincoln, Nebraska, 1978 to 1980

Investigations

- Hutchinson Elementary School, Pelham, NY (circa 1912/1924, facade conditions assessment and report)
- Old Child's Restaurant/Ford Amphitheater, Coney Island, NY (landmarked terra cotta and masonry structure)
- Bleeker Street Subway Station, New York, NY (IRT 1904 historic finishes consulting-terra cotta, mosaics, glass tile; determine scope of work for MTA contract documents)
- 11 E 44th Street, New York, NY (circa 1928 office/retail building, storefront investigation and Local Law 11 inspection)
- 807 Park Avenue, New York, NY (LL11 inspection and report for 11-story tall building)
- West End Collegiate Church, New York, NY (water leak investigation and rebuilding dormers and gables at circa 1890s Dutch Revival church)
- Pennsylvania Museum, Harrisburg, PA (circa 1968 conditions survey and recommendations for repair for the marble clad concrete structure)
- Music Box Theater, New York, NY (conditions survey and recommendations for repair)
- One Morton Square, New York, NY (conditions survey of roof, facades and interior building systems including firestopping)
- The Pavilion at Philip Johnson Estate, New Canaan, CT (evaluation and design for temporary stabilization of a deteriorated decorative precast concrete structure)
- 983 Park Avenue, New York, NY (evaluated existing penthouse wall and roof systems, provided recommendations for removal and repair)
- Montauk Lighthouse, Montauk, NY (circa 1790, investigation to determine causes of peeling paint and vertical cracking)
- Pennsylvania Archives Building, Harrisburg, PA (circa 1968 conditions survey and recommendations for repair for the marble clad steel structure)
- Buckley School, New York, NY (conditions surveys and local Law 11 filings for 5 connected brick structures of various ages and construction types)
- Jefferson Park Boys Club, New York, NY (conditions survey of the circa 1927 brick, terra cotta and cast stone community facility)
- 7 West 29th Street, New York, NY (conditions survey for 1880's brick and limestone commercial structure)
- Kings County Hospital, Brooklyn, NY (conditions survey and Local Law 11 filing of 7 brick and limestone buildings with decorative lead panels circa 1926-1944)
- 264 West 11th Street, New York, NY (water leak investigation and reconstruction of a brick addition to a historic structure to address long-term water leaks)

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- Board of Education Storage Facility, Long Island City, NY (concrete testing and development of repairs for Works Progress Administration historic poured-in-place concrete structure)
- Crescent Avenue Church, North Plainfield, NJ (investigation of brownstone and cast stone failures, design of stabilization and temporary protection)
- Guardian Life Insurance Company of America, 7 Hanover, New York, NY (due-diligence survey and repair details for the brick curtain wall corporate headquarters)
- Cadman Towers, New York, NY (concrete testing and peer review for repairs for the poured-in-place concrete residential structures, circa 1973)
- Royster Building, Norfolk, VA (conditions survey and repair recommendations for the severely deteriorated brick and terra cotta facade)
- Marble Collegiate Church, New York, NY (conditions survey and cleaning tests for the landmarked Tuckahoe marble structure)
- 345 Adams Street, Brooklyn, NY (investigate the deteriorated terra cotta, brick and stucco facades of the mixed-use city-owned building)
- Guardian Life Insurance Company of America (Annex), Union Square, New York, NY (investigate the curtain wall and the failure of a large sheet of glass in the 1961 Skidmore, Owings & Merrill annex)
- Guardian Life Insurance Company of America, Union Square, New York, NY (Local Law 11 survey for the 1910 granite and brick company headquarters)
- Custom House, New York, NY (investigated plaster deterioration to determine the need for replacement at the long abandoned circa 1899 Cass Gilbert structure, tested paint strippers for use on the plaster and addressed plaster concerns during construction; cleaning tests products for interior stone; sounded the interior marble installations after several panel failures)
- Sun Oil Company, Philadelphia, PA (investigation of severely deteriorated brick office structures)
- Cornell Club, New York, NY (tests in preparation for the cleaning of the stained limestone facade)
- Bronx Museum of the Arts, Bronx, NY (investigation of granite facade tile installation failures)
- Pan Am Building (now the Met Life Building), New York, NY (soiling evaluation and cleaning tests in preparation for the cleaning of the 58-story precast concrete commercial structure designed by Emery Roth & Sons with the assistance of Walter Gropius and Pietro Belluschi)
- District Building, Washington, DC (assessment of the marble facade condition and recommendations for cleaning)
- Juilliard School, New York State Theater, Metropolitan Opera at Lincoln Center, New York, NY (circa 1968, condition survey of the travertine facade, design repairs)
- Fred F. French Building, New York, NY (conditions survey of the 1927 terra cotta and brick facade, Local Law 11 inspection)
- 120 Broadway, New York, NY (investigated and documented conditions of the circa 1912 brick and terra cotta facades; designed repairs; detailed the first major use of fiberglass as a replacement for terra cotta cornices, National Register Landmark)
- National Arts Club, New York, NY (conducted a window condition survey of the 1870's Calvert Vaux designed structure)
- Sailors Snug Harbor, Staten Island, NY (documentation of all 1830's brick structures on the campus)

Roofing/Waterproofing

- Clare Rose Inc., Brookhaven, NY (peer review of masonry waterproofing details for new warehouse)
- Unitarian Universalist Congregation at Shelter Rock, Manhasset, NY (phased slate roof replacement, misc. waterproofing)
- Buckley School, New York, NY (water leakage investigations and repairs for courtyard/plaza)
- Private Residence, Fisher's Island, NY (Slate repairs associated with replacement of copper roofing and flashing)
- Lyceum Theater, New York, NY (replacement of the historic slate mansard roof, copper dormers, and ornamental metalwork)
- Temple Emanu-El, New York, NY (consulting for slate roof fall protection system and snow guard system)
- Jefferson Park Boys Club, New York, NY (replaced the copper mansard roof, dormers and the supporting steel structure)
- Buckley School, New York, NY (roof replacement program for 12 different roofs using various roof systems)
- Third Church of Christ, New York, NY (replacement of flashing and gutters at the slate roof)
- Vassar Library, Poughkeepsie, NY (investigation and recommendations to address leaks in new slate roof installation)

- Eldridge Street Synagogue, New York, NY (installation of a new slate roof)
- Guardian Life Insurance Company of America New York, NY (Carlyle roof patching and repair program to extend life of roof)

Construction Documents

- Various schools, Pelham Free School District, Pelham, NY (documents for masonry repairs)
- 158 Franklin Street, New York, NY (documents for masonry restoration and vault reconstruction)
- American Academy of Dramatic Arts, New York, NY (circa 1908, documents for masonry repairs, cast iron cornice repair)
- Fort Washington Collegiate Church, New York, NY (documents for removal of cast stone, masonry repairs)
- 269 Bowery, New York, NY (documents for two-story vault repairs and additional plumbing stack)
- Trinity Lutheran Church, New York, NY (documents for fall protection, steeple removal and remediation of unsafe masonry)
- 92 Warren Street, New York, NY (brick vault repair and waterproofing)
- One South Broad Street, Philadelphia, PA (circa 1929 granite facade, repair and restoration drawings)
- West End Collegiate Church, New York, NY (brick dormer and gable rebuilding, new flashing)
- 11 East 44th Street, New York, NY (storefront demolition and rebuilding, facade repairs to bulkhead, masonry repairs)
- One Morton Square, New York, NY (repair documents to address water leaks, missing firestopping and flashing)
- Lyceum Theater, New York, NY (circa 1905, prepared construction documents for the restoration of the terra cotta facade, the slate mansard roof, the decorative metalwork and dormers)
- Whitehall Apartments, Bronx, NY (design documents for new brick cladding of one-story school and garage structure)
- Jefferson Park Boys Club, New York, NY (documents for the masonry and roofing repairs to the 1927 community facility)
- Buckley School, New York, NY (documents for roof replacements, sidewalk replacement, facade repairs, facade and parapet rebuilding, Local Law 11 repairs)
- Fred F. French Building, New York, NY (documents for facade restoration including terra cotta and masonry)
- Little Red Lighthouse, New York, NY (prepared repair documents for the stabilization and "warehousing" of the abandoned cast iron lighthouse)

Construction Administration

- American Academy of Dramatic Arts, New York, NY (masonry repairs, cast iron cornice repair, make-safe repairs to facade elements)
- Old Child's Restaurant/Ford Amphitheater, Coney Island, NY (restoration and/or replacement of masonry and polychrome terra cotta)
- Ghostbuster Fire Station – Ladder Company No.8, New York, NY (facade restoration of brick and limestone firehouse)
- West End Collegiate Church, New York, NY (brick dormer rebuilding, new flashing details, gable rebuilding)
- Clare Rose Inc., Brookhaven, NY (periodic review of masonry and waterproofing installations at new warehouse)
- Bleeker Street Subway Station, New York, NY (administer historic portion of 1904 IRT station restoration)
- 59th Street Columbus Circle Subway Station, New York, NY (administer historic portions of the IRT 1904 station-historic terra cotta, mosaics, brick and marble cleaning and rebuilding)
- 11 East 44th Street, New York, NY (administered bulkhead facade repairs, storefront demolition and rebuilding)
- Whitehall Apartments, Bronx, NY (administered the recladding of the one-story school/garage structure)
- Lyceum Theater, New York, NY (administered the restoration of the terra cotta facade, the slate mansard roof, the decorative metalwork and dormers)
- Buckley School, New York, NY (administered construction of roof replacements, facade repairs, courtyard/plaza rebuilding, facade and parapet rebuilding, and Local Law 11 repairs)
- Whitney Museum of American Art, New York, NY (administered the removal, cleaning, and replacement of the stone facade of the museum, miscellaneous projects to attach artwork to restored facade)
- Marble Collegiate Church, New York, NY (administered the restoration of the facade including repointing, cleaning, rebuilding of the finials, and the installation of dutchmen)

- Juilliard School, New York State Theater, Metropolitan Opera at Lincoln Center, New York, NY (administer repairs to the travertine facade)
- Bronx Museum of the Arts, Bronx, NY (administered the recladding and reroofing of the museum)
- Fred F. French Building, New York, NY (administered the replacement of over 3200 pieces of polychrome terra cotta, replacement of sills, brick corners, and the complete rebuilding of the fire escape in the occupied landmarked structure)
- Carnegie Hall, New York, NY (project manager for the rehabilitation of the main hall, stage, and patron facilities area of the landmarked structure)
- National Arts Club, New York, NY (administered the rehabilitation of the windows and the polychromatic brownstone and granite facades of this NYC and National Register landmark structure)
- Prospect Park Boathouse, Brooklyn, NY (administered the rehabilitation of the abandoned landmarked 1905 terra cotta boathouse to a visitor's center and park rangers police station; the project included new terra cotta, new terrace roofing, a complete interior fit out, and a new clay tile roof)
- Helen Hayes Theater, New York, NY (documented and catalogued the removal of designated artifacts from the theater for storage at the NYC Landmarks artifact warehouse)

Consulting/Reports

- Hutchinson Elementary School, Pelham, NY (conditions assessment)
- Old Child's Restaurant/Ford Amphitheater, Coney Island, NY (conditions assessment, materials consulting for project architect)
- Trinity Lutheran Church, New York, NY (conditions assessment, space planning for accessibility)
- One South Broad Street, Philadelphia, PA (conditions assessment)
- Unitarian Universalist Congregation at Shelter Rock, Manhasset, NY (conditions assessment)
- 59th Street Columbus Circle Subway Station, New York, NY (historic consultant for general contractor)
- Bleeker Street Subway Station, New York, NY (historic consultant for project architect)
- Free Synagogue of Flushing, Flushing, NY (conditions assessment of Former Mann residence and Synagogue)
- Roebling Gatehouse, Roebling, NJ (Historic Structures Report)

Owners Representative

- Stephen Wise Free Synagogue, New York, NY (2010)
- Eldridge Street Synagogue, New York, NY (1988 to 2008)
- 309 West 104th Street, New York, NY (1996 to present)

Registration

Registered Architect: New York (Lic. No. 019042)
Registered Architect: New Jersey (Lic. No. 21AIO1788400)
Registered Architect: Pennsylvania (Lic No. RA06829)

Education

University of Nebraska, Lincoln, Nebraska
B.S. in Architecture, 1979
Columbia University, New York, NY
M.S. in Preservation, 1983
RESTORE Certificate, New York, NY, 1985

Professional Activities

Association for Preservation Technology – Member
Sealant Waterproofing and Restoration Institute – Member, Board Member 2018 - 2019
American Institute of Architects - Member
National Trust for Historic Preservation – Member
New York City Department of Buildings Construction Requirements and Materials Committee (Code Revisions) – 2014-2015, 2017 - present

Historic Paulus Hook Association
President, 1999 – 2003, 2014 – 2017, 2018
Chair, Construction Committee 1999 - present
Municipal Arts Society
Preservation Committee 1989 – present
Preservation New Jersey, 2000 – 2009
Board Member
Education Committee, chair
Member Jersey City Historic Preservation Commission, 1986 - 1993
Co-Author Jersey City Historic Preservation Ordinance, 1986
Lecturer at numerous conferences on various topics associated with preservation, construction management, professional projects, and roles and responsibilities of parties involved in construction

Honors and Awards

Old Child's Restaurant/Ford Amphitheater
New York Landmarks Conservancy Lucy Moses Award, 2018
Palladio Award – Adaptive Reuse/Sympathetic Addition, 2018 - Traditional Building Magazine
Trinity Award – SWR Institute, 2017
AIA New York State 2018 Excelsior Award of Merit, Historic Preservation
Gold Reconstruction Award 2017, Building Design and Construction
Engineering News Record – 2017 Best Landscape/Urban Development
Greater New York Construction User Council - 2017 Outstanding Cultural Project
Building Brooklyn Awards, 2017 - Destination Arts Award, Brooklyn Chamber of Commerce
MTA Bleeker Street Subway Station
New York Landmarks Conservancy Lucy Moses Award, 2013
Eldridge Street Synagogue
National Trust for Historic Preservation, 2008
AIA New York-Merit Award for Historic Preservation, 2008
New York State Preservation League, 2008
Lucy Moses Award, 2008
The Victorian Society of America, 2008
Municipal Arts Society MASTERwork Award, 2008
Whitney Museum of Art
Friends of the Upper East Side Certificate of Merit, 1999
Fred F. French Building
New York City Landmark Preservation Commission Award, 1993

Teaching Experience

Pratt Institute, New York City, 2004 to 2013, 2017 and 2018: Taught classes in architectural history, New York City history, and preservation theory and practice

Columbia University, New York City, 2004 to 2014: Taught classes in preservation technology

Drew University, Madison NJ, 2006, 2008, 2010, 2013: Presented Seminars on Historic Plaster and Mortar

Eldridge Street Project/Museum at Eldridge Street, 2000 to 2008: Developed and conducted walking tours and lectures related to the building and surrounding neighborhood

Career Day, Parent Participant (Architect) – York Preparatory School, MAT (PS 136), PS 11

Developed curriculum for fifth graders with Eldridge Street Project staff and New York City teachers to explore basic concepts of the built environment. Taught segment of the curriculum for ten years.

Mentor in Engineering, 1987 – 1991

(4/19)



Professional Qualifications

ZAKALAK ASSOCIATES: COMPANY RESUME

Zakalak Associates is a cultural resource management firm founded in 1986 by Ulana Zakalak, the principal. The firm provides a full range of the highest quality architectural and planning services, such as Tax Act certification applications, historic preservation planning and design, resource documentation and evaluation, review and compliance. National Register nominations, HABS/HAER recordings, and owner representation are also available.

Zakalak Associates has established a solid base of experience with municipalities, historic preservation commissions, non-profit groups, developers, churches and private clients. Since starting her consulting practice over thirty years ago, Ms. Zakalak has gained a reputation for her documentation and preservation of urban sites, in particular the built environments of Jersey City and the City of Newark. Current projects include the preparation of Tax Credit applications for multiple commercial buildings in downtown Newark, including the Hahne and Company building, the New Jersey Bell Telephone Company Headquarters, the St. Francis Hotel and St. Michael's Hospital. Zakalak Associates has also consulted on the new Prudential office towers in the Military Park Commons Historic District, and the creation of Teachers Village in the Four Corners Historic District, both in Newark. Zakalak Associates authored the Historic Preservation Element of the 2012 Newark Master Plan and was co-author of the Neighborhoods Element. Zakalak Associates was also successful in qualifying the former Jersey City Medical Center, now known as the Beacon, as the largest tax credit project in the country.

A leading practitioner in New Jersey's preservation community, Zakalak Associates has completed cultural resource surveys of the City of Paterson, the Town of West New York, and fifteen Essex County municipalities. The firm has also been successful in qualifying prominent historic sites for acceptance to the New Jersey State and National Register of Historic Places, including the Forest Hill Historic District in Newark, one of the largest historic districts in New Jersey listing over 1,200 properties. Zakalak Associates was also responsible for the Weequahic Park, Military Park Commons, Four Corners and North Broad Street Historic Districts in Newark.

In 1991, Ms. Zakalak was honored with a Certificate of Appreciation from the Newark Preservation and Landmarks Committee for her "Outstanding Contribution to the Preservation of Newark's Past." In 2005, Zakalak Associates was presented with the New Jersey Historic Preservation Award for Historic Rehabilitation and Adaptive Reuse for the Union Building on Clinton Street in Newark. The project also won an Award of Merit from New York Construction Best of 2004 Awards. Ms. Zakalak won the 2009 New Jersey Historic Preservation Award for the Restoration of the Rialto and Capitol Buildings at the Beacon; in 2010, the New Jersey Historic Preservation Award for the Restoration of the John F. Peto House and Studio in Island Heights, NJ; and in 2014, for the G. G. Green Opera House adaptive reuse in Woodbury, NJ. In 2015, Ms. Zakalak won the New Jersey Historic Preservation Award for the restoration of the Wright-Clark house at 527 Mt. Prospect Avenue in Newark as well as for the Hotel Indigo. Most recently, Zakalak won awards for the restoration of the Criterion and Hague Buildings at the Beacon in Jersey City. Ms. Zakalak is a trustee of the Jersey City Landmarks Conservancy and a consultant to the Newark Preservation and Landmarks Committee.

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Ulana D. Zakalak

E d u c a t i o n

Columbia University, Graduate School of Architecture, Planning and Preservation 1982
New York, New York
Master of Science in Historic Preservation.

Rutgers College, Rutgers University 1979
New Brunswick, New Jersey
Bachelor of Arts, Archaeology and American History.

P r o f e s s i o n a l e x p e r i e n c e

Zakalak Associates LLC 1986-present
Jersey City, New Jersey
Principal of a cultural resource management firm specializing in historic preservation planning, surveys, documentation, review and compliance, and owner representation.

Zakalak Restoration Arts LLC 2007-present
Jersey City, New Jersey
Founder and principal of a historic restoration contracting firm.

Robert E. Meadows, P.C. Architect 1981-1985
New York, New York
Associate-in-Charge of Cultural Resource Management, Project Director:

- Historic Structure Report: Allaire Village, Farmingdale, NJ
- Cultural Resources Survey, Downtown Newark, City of Newark, NJ
- Cultural Resources Survey, City of Passaic
- Thematic Nomination of NJ Post Offices Built Between 1900-1941
- Documentation of the Ford Assembly Plant, Edgewater, NJ
- Archaeologist for the renovation of Gracie Mansion, New York, NY

Astoria Development Project 1980
New York, NY
Historic Preservation Consultant

Rutgers Archaeological Survey Office 1979
New Brunswick, NJ
Archaeologist

P r o f e s s i o n a l M e m b e r s h i p s

*SBA Emerging Leaders Initiative; Preservation Alumni, Columbia University;
Society for Industrial Archaeology (Roebling Chapter); National Trust for Historic Preservation*



ZAKALAK ASSOCIATES: SELECTED PROJECT EXPERIENCE

National Register of Historic Places Nominations:

Military Park Commons Historic District, Newark
Newark Public Schools Multiple Property Documentation Application, Newark
St. Stanislaus Bishop and Martyr RC Church, Newark
Temple B'Nai Abraham (Deliverance Temple), Newark
Bay Head Historic District, Bay Head, New Jersey
Probasco-Dittmar House, Colts Neck, New Jersey
St. Anthony of Padua Roman Catholic Church, Jersey City
Weequahic Park Historic District, Newark
Robbins-Messler House, Asbury Park
Grover House, Lincroft, Monmouth County
Ahavas Sholom, last remaining synagogue in Newark
Four Corners Historic District, Newark
Riverbank Park, Newark
Montrose Park Historic District, South Orange
South Orange Fire Station, South Orange
St. Casimir's Polish Roman Catholic Church, Newark
St. Lucy's Church, Newark
North Broad Street Historic District, Newark
Kenney (Community) Memorial Hospital, Newark - first NJ African-American hospital
Hahne and Company Department Store, Newark
Thematic Nomination of the Outdoor Sculpture of Gutzon Borglum, Newark
Robert Treat Hotel, Park Place, Newark
Old School Baptist Church and Cemetery, Main Street, South River, Middlesex Cty.
Glencoe (Coe Mansion), Martin Luther King Boulevard, Newark
Schooley's Mountain Historic District, Washington Township, Morris County
Essex Club, Park Place, Newark
Essex County Jail, Newark (designed by John Haviland, 1828)
George Wurts House, Asbury Park, Monmouth County
State Street School, Newark
Oheb Shalom, (Metropolitan Baptist Church), Newark
Walker-Combs-Hartshorne Farmstead, Freehold, Monmouth County
Forest Hill Historic District, Newark
Fairmount Baptist Church (Old Bethany), Newark
Protestant Foster Home, Broadway, Newark
Belleville Avenue Cong. Church (Clinton AME Zion), Newark
Casa Italiana, the former Stanley Theater, South Orange Avenue, Newark
Watts, Campbell Company, machine shop, McCarter Highway, Newark
Tiffany and Company Factory, silversmiths and stationers, Newark

ZAKALAK ASSOCIATES: SELECTED PROJECT EXPERIENCE

Preservation Planning and Design Assistance:

City of Newark Master Plan
Symphony Hall Renovation, Newark
Military Park Renovation, Newark
Pierre Apartments, Camden
North Star Academy Charter School, Newark (Uncommon Schools)
Team Academy, Newark (Kipp Schools)
40 Rector Street, (Science High School) Newark, NJ (Boraie Development)
2 Center Street, Newark, NJ (Dranoff Properties)
Borden Farm Products Pasteurization and Distribution Plant, Newark
Teachers Village, Four Corners Historic District, Newark (RBH Group)
Jersey City Medical Center, now "The Beacon" (Metrovest Equities, Building Land and Technology)
Halsey Street Streetscape Rehabilitation, Newark (Brick City Development Corp.)

Cultural resources (historic sites) surveys:

Reconnaissance and Intensive Level Surveys of the City of Paterson
Reconnaissance Level Survey of 15 Essex County municipalities, e.g.: Belleville, Caldwell, Essex Fells, Maplewood, Nutley, Roseland, South Orange, West Caldwell and West Orange
Reconnaissance and Intensive Level Surveys of the Town of West New York
Various Newark neighborhoods for the Housing Authority of the City of Newark

HABS/HAER Recordings:

Colgate-Palmolive plant, oldest soap manufacturing plant in the US, Jersey City, NJ
Central Railroad of New Jersey Newark Station, Broad Street, Newark.
Blocks 51 and 52 in Newark for the new Prudential towers, Newark, NJ.

Tax Act Certifications:

Jersey City Medical Center (10 high-rise buildings converted to market-rate housing)
Hahne's Department Store, Newark, NJ
St. Michael's Hospital, Newark, NJ
National State Bank Building, 810 Broad Street, Newark, NJ (conversion of bank to Hotel Indigo)
Columbian Steam Laundry, 127 Halsey Street, Newark, NJ
240 Martin Luther King Boulevard, Newark, NJ
James Wright Clark House, Mt. Prospect Avenue, Newark, NJ
Crescent Gardens, Camden (18 buildings)
G.G.Green's Block, Woodbury
Carlton Hotel (Hotel St. Francis) Newark
Bloomfield South Junior High School, Bloomfield (loft-style residential conversion)
Barr's Block, Bridgeport, CT (market-rate residential conversion)
North Broad Street Historic District, Newark, for the St. James Development Corporation (8 buildings)
Union Building, 11-15 Clinton Street, Newark (12-story office building to loft conversion)
Colleoni Apartments, Newark (market-rate apartment conversion)
Columbian Block, 224-226 Market Street, Newark, NJ (loft-style residential conversion)

ZAKALAK ASSOCIATES: SELECTED PROJECT EXPERIENCE

Tax Act Certifications (continued):

216, 218, 222 Market Street, Newark, NJ (Rock Plaza Lofts: residential and commercial conversion)
Bowers Building, 189-191 Market Street, Newark, NJ (loft-style residential conversion)
John Frederick Peto House and Studio, Island Heights, NJ
Fort Monmouth Historic District, Non-Commissioned Officers Housing
Whitlock Cordage Buildings, Jersey City, NJ

Television Documentaries:

A Walk through Newark (PBS – Channel 13)
Our Vanishing Past (New Jersey Network Public Television)

Historical/Architectural Documentations and Assessments:

Borough of Tinton Falls, design guidelines and consultant to Preservation Commission
Llewellyn Park Gate House, West Orange, Local Register Designation Application
St. Cloud Presbyterian Church, West Orange, Local Register Designation Application
Crawford House Historic Preservation Plan, Tinton Falls
Closter Victorians Local Historic District (Durie/Knickerbocker Avenue)
Pierson's Mill, Maplewood Township, Essex County
Montrose Park Historic District, Village of South Orange, Essex County
Magnolia Avenue Local Historic District, Tenafly
Summit Avenue Historic District, Hackensack, Bergen County
University Heights Science Park, Newark
NJ DOT Bridge Replacement Study: various locations
Atlantic City Inlet/Gardiner's Basin Area, Atlantic City, Atlantic County
New Jersey Performing Arts Center site, Newark
Liberty State Park, Jersey City, design guidelines for the North Terminal walkway and bulkhead
Historic Structure Report on Maybury Hill, Princeton Township, Mercer County
Old Stone House, South Orange, Essex County
First Baptist Church, Paterson
65 Central Avenue, Newark Museum, Newark
NJ Transit Light Rail Line, Newark
Conover-Crine House, Colts Neck, Monmouth County
Fort Monmouth Historic District, North and South Posts, Oceanport, NJ

Selected List of Clients:

Berger Hotels Group, Newark
Biederman Redevelopment Ventures Corp.
Building Land and Technology, Stamford, CT
Boraie Development, New Brunswick
Borough of Bay Head
Borough of Closter
Borough of Tenafly
Borough of Tinton Falls, Historic Preservation Commission and Planning Board

ZAKALAK ASSOCIATES: SELECTED PROJECT EXPERIENCE

Selected List of Clients (continued)

City of East Orange
City of Newark
City of Newark Landmarks and Historic Preservation Commission
City of Paterson
City University of New York, New York
Civic Builders, New York
Colgate-Palmolive Company, New York
County of Essex
CTS Architects, Chatham, NJ
Dranoff Properties, Philadelphia
Dubrow Management Corporation, Newark
Durand Hedden House and Garden Museum, Maplewood
Elizabethtown Water Company
Episcopal Development Corporation, Newark
Fidelco, Millburn and Newark
Hanini Construction, Newark
Housing Authority of the City of Newark
Kajima International, Fort Lee
Kipp Schools, Newark
Langan Engineering, Elmwood Park
L & M Development, Larchmont, NY
M & M Development, Newark, NJ
Metrovest Equities, NYC
Middletown Township Historic Preservation Commission
Montrose Park Historic District Assn., South Orange
National Park Service, Department of the Interior
New Jersey Transit
Newark Museum
Newark Preservation and Landmarks Committee
Prudential Insurance Company of America
Public Storage Inc., Pasadena, California
RBH Group, New York
Regan Development, Ardsley, New York
RPM Development, Montclair and Camden, NJ
Smithsonian Institution
South Orange Historical and Preservation Society, South Orange
South River Historical and Preservation Society, South River
Uncommon Schools, New York
St. Anthony of Padua Church, Jersey City
St. Casimir's Church, Newark
St. James Community Development Corporation, Newark
St. Lucy's Church, Newark
Town of Clinton
Town of West New York
Township of Washington, Morris County
Township of West Orange Historical Preservation Commission
University Heights Science Park, Inc., Newark

ALLEN W. KRATZ, M.L.S, J.D.

PRINCIPAL, ALLEN W. KRATZ HISTORIC
PRESERVATION CONSULTING, LLC

1245 Bloomfield Street
Hoboken, NJ 07030

201-214-7476 allenwkratz@gmail.com

COMMUNITY ORGANIZING

- Led a grassroots effort that defeated variances for an overbuild and partial demolition of the landmark Church of the Holy Innocents in Hoboken, 2007.
- Helped Jersey City's Embankment Preservation Coalition defeat zoning variances to demolish historic former railroad right of way, 2010-2011.

LEGAL EXPERTISE

- Redrafted Hoboken's preservation ordinance; adopted 2012.
- Cross-examined developer's planner and preservationist to defeat demolition of Hoboken's historic Neumann Leathers factory (work space for artists, small entrepreneurs) for residential condo development, 2008.
- Represented NJ Transit before N.J. Historic Sites Council, 2009, 2011.

MANAGEMENT

- President of Hoboken Public Library's trustees, 2013-2017, oversaw \$3.2M historic preservation and flood-resilience project; secured \$2M federal, state, county and municipal funding; obtained Hoboken's first waivers under New Jersey's rehab subcode for historic structures as part of project.

NATIONAL REGISTER LISTING

- Documented history of two properties for listing on National and New Jersey Registers of Historic Places: 1891 First Baptist Church, Hoboken 2005; 1897 Hoboken Free Public Library & Manual Training School, 2013.

HERITAGE TOURISM

- Scripted and led four unique walking tours for Hoboken Historical Museum to all 17 National Register sites in Hoboken, 2005-06.
- Produced a "then and now" tour of Hoboken Terminal for national conference of transportation professionals comparing form and function issues faced by Lackawanna Railroad in 1907 and NJ Transit in 2007.

TEACHING

- Led sessions on historic preservation laws for N.J. Institute for Legal Education, 2010, 2011.

CONSENSUS BUILDING

- Worked with NJ Transit, its advertising contractor and N.J. Historic Sites Council to add advertising in the main waiting room of 1935 Newark Penn Station while respecting character-defining Art Deco architecture, 2009.

PROBLEM SOLVING

- Arranged nearby property owner to provide sabbath parking for parishioners of historic church, inducing congregation to use its church instead of decamping to suburbs and selling building to developer, 2005.

CIVIL SERVICE

- Gubernatorial appointee, New Jersey Historic Trust, 2004-2009.
- Mayoral appointee, Hoboken Historic Preservation Commission, 2018- .
- Mayoral appointee, advisory group for flood-resilience project, 2018- .
- Board of Selectmen appointee, Brooksville (Maine) Comprehensive Plan Committee and Ordinance Committee, 2017 -.

EDUCATION

- B.A., Earlham College; M.L.S., Drexel University; J.D., American University; historic preservation certificate, Drew University.

CLIENTS

- Rebuild by Design, a Rockefeller Foundation initiative to maximize citizen engagement in design of seven HUD-funded post-Sandy resilience projects.

ATTACHMENT 2

Joint Verified Statement of Daniel Wrieden
And Margaret O'Neill
(Division of Planning, City of Jersey City)

BEFORE THE SURFACE TRANSPORTATION BOARD

Consolidated Rail Corporation -)
Abandonment Exemption -) AB 167 (Sub-no 1189X)
in Hudson County, NJ)

JOINT VERIFIED STATEMENT OF DANIEL M. WRIEDEN

AND MARGARET A. O'NEILL,

DIVISION OF PLANNING, CITY OF JERSEY CITY

I, Daniel M. Wrieden, state that I am the Historic Preservation Officer, in the Division of Planning for the City of Jersey City. I, Margaret A. O'Neill, state that I am the Historic Preservation Specialist in the Division of Planning for the City of Jersey City. We make this verified statement as part of the City of Jersey City's response to the Cultural Resources effects Assessment Report (CREAR) issued in the above captioned proceeding on or about March 29, 2019. As a result of our training and experience in our positions within the Division of Planning, we have expertise in the application of the criteria for determining adverse effects on properties eligible for the protections of section 106 of the National Historic Preservation Act, and comparable state and city statutes and ordinances. Our resumes are attached. The Office of Environmental Analysis has provided only a 30-day comment period

and informed counsel for the City of Jersey City that extensions of time are unlikely. Our evaluation is constrained by what we are able to provide within the time period the agency is affording.

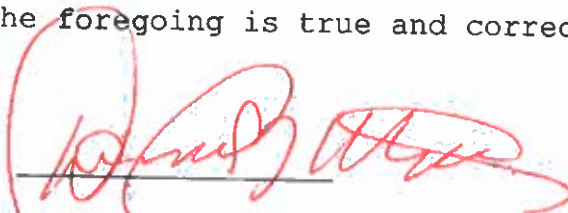
1. We find that the CREAR does not discuss the most obvious of adverse effects, the loss of federal control of the Harsimus Branch. All other adverse effects stated in the report can be eliminated with the retention of federal control. As one of the most desirable areas for development in Jersey City, there is little doubt in HPC Staff's mind that there will be proposals for development in direct proximity to and on the branch itself. These developments, only possible through the loss of federal control of the branch, would cause the most extreme adverse effect to the property itself and the properties immediately surrounding it. The loss of federal jurisdiction is equivalent to destruction of the Branch and the Embankment and would cause an adverse impact on all the relevant section 106-protected properties.

2. The proposed adverse effect of "demolition by neglect" via a "no-action" outcome is a stretch at best, especially when

considering that this has been, to HPC Staff's knowledge, the current state of the branch for the entirety of its recent ownership. The City has a number of actions it can mandate owners of neglected properties to undertake to ensure proper maintenance and public safety.

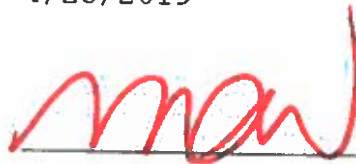
3. We find that a possible abandonment, which, again, would cause the most extreme adverse effect, without conditions placed on the branch, to be an unsustainable and inappropriate solution.

Pursuant to 28 U.S.C. 1746, we each separately declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Daniel M. Wrieden, Historic
Preservation Officer

Dated: 4/23/2019



Margaret A. O'Neill, Historic
Preservation Specialist

Dated: 4/23/2019

DANIEL M. WRIEDEN
97 Wayne Street
Jersey City, New Jersey 07302
201.332.8914
email: danwrieden@comcast.net

EDUCATION

New Jersey City University, Jersey City, NJ
Major: American History

Bachelor of Arts Magna Cum Laude: May, 2001
Minor: African-African American Studies

RELATED WORK EXPERIENCE

JERSEY CITY DIVISION OF PLANNING

Supervising Historic Preservation Specialist

October 2013-Present
40 hours per week

Continues to serve as the city's professional preservation staff under the Direction of the Director of City Planning, supervising the programs and staff of the Jersey City Historic Preservation Commission, coordinating and supervising all components of municipal project reviews, surveys, preservation planning, Municipal, State and National Register nominations, preservation, education and technical preservation services on behalf of the Jersey City Historic Preservation Commission.

Supervises the review and analysis of development projects on behalf of the Commission, identifying cultural resources within project impact areas, determining the project effects on resources, and recommending mitigation according to state, federal and municipal laws and regulations in accordance with accepted industry practice and the *Secretary of the Interior's Standards and Guidelines for the Treatment of Historic Properties*. Reviews and comments on municipal, state and federal legislation and regulations, participating in policy development for zoning and redevelopment law. Supervises preservation education on behalf of the Commission addressing local community groups, preservation and civic associations on historic preservation, historic site and other cultural programs. Plans, organizes and speaks at conferences, meetings, workshops and public hearings. Prepares reports regarding development, applications for development and preservation issues containing findings, conclusion and recommendations. Plans, organizes, and assigns work to Historic Preservation Commission Staff within the Division of City Planning and evaluates employee performance and conduct, enabling the effective recommendation of the hiring, firing, promoting, and disciplining of employees as necessary.

JERSEY CITY DIVISION OF PLANNING

Historic Preservation Specialist

July 2002-October 2013
37.5 hours per week

Responsible for oversight and management of four municipal Historic Districts and locally designated individual landmarks. Reviews all applications for Certificates of No Effect and Certificates of Appropriateness. Determine disposition of applications for development. Review architectural specifications and preservation plans. Conduct site visits of all on-going work and provide written historic structures research reports summarizing findings, conclusions and recommendations. Provide information and assistance to the public concerning the Historic Preservation Commission, application procedures, and appropriate preservation methods. Explain requirements of the Jersey City Zoning ordinance and Historic Preservation Guidelines and the *Secretary of the Interior's Standards* to applicants and community organizations. Responsible for preparation of State/National Register Nomination Reports. Provide administrative and technical support to the Jersey City Historic Preservation Commission. Makes recommendations to the Commission as to the appropriateness of applications at monthly meetings. Addresses Planning Board and Zoning Board on Matters of Historic Preservation in regards to applications, ordinances and redevelopment plans. Supervise the maintenance and creation of files for all historic properties and districts. Provide assignments and instructions to administrative and professional staff as well as seasonal interns as necessary. Supervise staff correspondence and interaction with the public regarding historic preservation reviews, procedure and application filing.

Daniel M. Wrieden

NEW YORK CITY LANDMARKS PRESERVATION COMMISSION

November 2000-August 2001

Paid Internship: Historic Preservation Grant Program

30 hours per week

Provided administrative and professional support to the Director of the Grant Program. Prepared correspondence, memoranda and reports and maintained all program and ancillary files including negative and slide library. Prepared and maintained all documents for grants including bid scopes and contracts. Responded to public inquiries regarding eligibility for CDGB Grants. Sent appropriate information to prospective clients. Reviewed completed grant applications. Researched property histories and conducted site visits. Provided written reports containing findings, conclusions and recommendations. Acted as liaison between Grant Program staff and Board of Directors, property owners and contractors. Attended public hearings. Received Asa S. Knowles award for Excellence in Cooperative Education.

DAVISON INTERMEDIA, INC., Jersey City, NJ

September 1997-December 1999

Director of Client Development and Customer Service

30 hours per week

Directed significant expansion of office and client base. Oversaw implementation of new customer services procedures. Established scheduling and staff utilization plans.

DIVISION OF NEIGHBORHOOD IMPROVEMENT, Jersey City, NJ

June 1996-August 1997

Manager: 1996. Acting Director: March-September 1997

37.5 hours per week

Encouraged community groups and residents in neighborhood beautification and revitalization projects and offered access to city services. Attended community meetings and gave presentations on the work of the division and responsibilities of city residents with regard to municipal codes. Implemented city workfare program in the NID Division. Supervised full time staff of 65 and 128 part time student workers to facilitate prompt delivery of public services to city residents.

KAMINSKI REALTORS, Brooklyn, NY

January 1994-May 1996

Administrative Assistant

25 hours per week

Directed office of active real estate broker/ property manager. Researched and provided reports on historic properties. Reviewed restoration/rehabilitation plans for appropriateness. Acted as general contractor for renovations and restoration of properties. Managed office files and records.

JERSEY CITY PUBLIC LIBRARY, Jersey City, NJ

March 1994-March 1995

Special Project Staff, New Jersey Room

20 hours per week

Prepared historic 18th and 19th century maps of Jersey City for conservation treatment and provided preliminary bibliographical notation. Cleaned, organized, repaired, and indexed selections from the manuscript and scrapbook collections for conservation treatment. Researched collections and related materials to place them in proper historic context. Provided written reports on collections.

RELATED EXPERIENCE:

FRIENDLY NEIGHBORS, Jersey City, NJ

1995-2002

Acted as point person on historic preservation for neighborhood organization serving downtown historic districts. Conducted research and gave reports and lectures to membership on historic preservation. Provided detailed information to property owners on history of their buildings including recommendations for preservation/restoration projects. Maintained preservation themed private library and database to assist members. Helped homeowners prepare applications for Certificates of No Effect and Appropriateness.

BARROW MANSION DEVELOPMENT CORPORATION, Jersey City, NJ

1997-1998

Served as board member. Helped manage the restoration of the Barrow Mansion. Participated in cleanups. Participated in project decisions based on review of historic structures reports. Aided in grant application process and fundraising. Planned special historically themed events for the public.

BAY RIDGE HISTORICAL SOCIETY, Brooklyn, NY

1982-1992

Initiated and oversaw restoration of two local historic cemeteries and researched and documented their histories. Aided Society and property owners in application for New York City landmark process. Provided programs, lectures and tours of local historic sites.

Margaret A. O'Neill | Curriculum Vitae

Margaretoneill10@gmail.com | (201) 919-4569

EDUCATION

Savannah College of Art and Design (SCAD); Savannah, Georgia
BFA in Historic Preservation, Architectural History, Magna Cum Laude

RELEVANT PROFESSIONAL EXPERIENCE

Historic Preservation Specialist, City of Jersey City Division of City Planning; Jersey City, NJ – Present

- Reviewed building permit applications for compliance with Historic Zoning Standards and Guidelines in historic districts or landmarked sites, such as change of use, repair, alteration, rehabilitation, restoration, new construction, and demolition
 - Reviews local, county, state and federally funded, sponsored or licensed projects to determine effect of the project on cultural resources, and if appropriate recommends mitigation or avoidance measures in accordance with state and federal law, particularly Section 106
 - Prepares clear sound accurate and informative reports on historic preservation and cultural management containing findings, conclusions, and recommendations for projects effecting historic sites and properties
 - Developing, reviewing, and editing scopes of work in historic districts or sites, such as repair, alteration, rehabilitation, restoration, new construction, and demolition
 - Executed official business, including preparation of draft ordinances, preliminary reviews, staff reports, site visits and inspections, and attending meetings
 - Knowledge of Federal, State, and Local laws, regulations, and ordinances pertaining to historic preservation and land use
 - High experience and capacity for communicating with various parties i.e. City departments/division, government officials, organizations, including the public through day to day office tasks, project meetings and public programs offered
- In addition, working with customers such as property owners, architects, business people, and contractors to provide adequate information and to ensure projects conform to technical preservation guidelines
- Knowledge of preservation/conservation technology; ability to read architectural drawings, and have the ability to offer technical assistance to applicants, owners, developers, and planners

Chair, Borough of Montvale Historic Preservation Commission, Montvale, NJ - Present

- Hear testimony on all applications for site plan approval, variance requests, site use permits, etc.
- Create and set all agendas for meetings, including distribution to members of the Commission, public, Borough Officials, etc.
- Hear applications for Certificates of Appropriateness of all Borough Landmarks
- Report to Planning and Zoning Board on Commission activity

Alternate, Borough of Montvale Planning and Zoning Board, Montvale, NJ - Present

- Hear testimony on all applications for site plan approval, variance requests, site use permits, etc.
- Make, adopt, and amend the Borough of Montvale Master Plan
- Participate in the preparation and review of programs and plans required by the state or federal law
- Grant or deny conditional uses in accordance with the provisions of the Borough Zoning Ordinance and Municipal Land Use Law
- Provide informal review of concept plans for development on an as-requested basis
- Advise the Planning and Zoning Board on preservation planning and historic sites as needed
- Planning and Zoning Board representative on the Pascack Valley Regional Planning Advisory Committee

Historic Preservation Specialist, City of Paterson Division of Historic Preservation; Paterson, NJ – December 2016-March 2018

- Reviewed building permit applications to assess the impact on development for most types of proposed exterior work in historic districts or sites, such as change of use, repair, alteration, rehabilitation, restoration, new construction, and demolition
- Developing, reviewing, and editing scopes of work in historic districts or sites, such as repair, alteration, rehabilitation, restoration, new construction, and demolition

- Preparing, executing, and managing Preservation grants, Hazardous Discharge Site Remediation Fund Grants, design guidelines, building reports, recommendations, etc.
 - Works closely with Department of Economic Development's staff on individual projects and more comprehensive plans. In addition, maintains project deadlines, reviews, and data relating to structures and sites
 - Executed official business, including preparation of draft ordinances, preliminary reviews, staff reports, site visits and inspections, and attending meetings
 - Knowledge of Federal, State, and Local laws, regulations, and ordinances pertaining to historic preservation and land use
 - High experience and capacity for communicating with various parties i.e. City departments/division, government officials, organizations, including the public through day to day office tasks, project meetings and public programs offered
- In addition, working with customers such as property owners, architects, business people, and contractors to provide adequate information and to ensure projects conform to preservation design and technical guidelines
- Knowledge of preservation/conservation technology; ability to read architectural drawings, and have the ability to offer technical assistance to applicants, owners, developers, and planners
 - Social Media account manager for the Division of Historic Preservation
 - Graphic Designer for print and digital media, including but not limited to briefs, event flyers and programs, official reports, etc.

Board Secretary, City of Paterson Historic Preservation Commission, Paterson, NJ – December 2016 – July 2018

- Make a record of all public proceedings and other official actions before the Commission at meetings, and from these records develop abbreviated minutes which reflect application details, persons in attendance, applicant and witness names and contact information, significant comments, Commission actions and comments, and other relevant information for use as the official record of Commission proceedings and activities at its meetings
- Staff member for Public Art and Murals Taskforce
- Responsible for the preparation of the Commission's accounting records, such as requests and forms as required for orders, purchases, billing, reimbursements or other such activities
- Responsible for and assists with executing logistical aspects of Commission meetings, such as physical set up and break down of furniture and other related equipment, coordination of catering or purchase of refreshments, and other duties as required

Training Developer, National Center for Preservation Technology and Training, National Park Service; Natchitoches, LA – June 2015 – October 2016

- Contracted position to build and implement a historic preservation maintenance eLearning program, in partnership with the Olmstead Center for Landscape Preservation, in Boston, Massachusetts
- Program was distributed (in a beta version) nation-wide to public and private historic sites, to train staff in historic preservation concepts that apply to maintenance
- Event space manager for NCPTT's in-house auditorium
- Graphic designer for print and digital media; including briefs, conference programs, and symposium proceedings
- Assisted in the planning and implementation of A Century of Design in the Parks, part of the National Park Service Centennial Symposium Series
- Produced and transcribed podcasts and education-based videos
- Worked with and instructed on Adobe Creative Suite, Articulate Storyline, Final Cut Pro, Audacity, Moodle, and other LMS software

President, SCAD Student Preservation Association; Savannah, Georgia, September 2013-May 2015

- Managed email database of 1000+ students, alumni, and industry professionals and was responsible for all communications
- Created and distributed all digital and print media via mailings and online sources
- Managed and created content for all social media platforms, including Facebook, Instagram, Twitter, Tumblr, and SCAD blog
- Planned, publicized, and coordinated all meetings, events, workshops, guest speakers, fundraisers, and trips
- Liaison between SCAD Administrators, Historic Preservation Department, Faculty advisor, and outside groups

Survey and Research Intern, Chatham County Metropolitan Planning Commission; Savannah, Georgia, March-June 2015

- Assisted with an update to Savannah's Victorian District, both local and National Register designated Historic Landmark District; update included eligibility assessments on rear structures and carriage houses
- Completed full chain of title research on 25 properties in the Eastern Victorian District
- Surveyed and documented 25 properties in the Eastern Victorian District, filed digitally into a searchable database (SAGIS)

Historical Interpreter, Coastal Heritage Society; Savannah, GA - February 2014 – June 2015

- Interpreter at Georgia State Railroad Museum, the largest collection of pre-civil war railroad buildings in the country. Site interpretation included history of steam power in America, historic train travel, locomotive history, and site history.
- Student Learning Group Interpreter; worked to coordinate school groups of up to 500 children through the site
- Retail experience in gift shop and ticket booth, providing information about the site and selling admission, merchandise, and memberships

Design Intern, Acheson Doyle Partners Architects, P.C.; New York, New York - June – September 2014

- Assisted associates and partners on projects ranging from feasibility studies to design development on a multitude of historically landmarked properties within Manhattan and Brooklyn
- Surveyed and digitally documented commercial and residential sites

Museum Collections Intern, Passaic County Historical Society at Lambert's Castle; Paterson, NJ - June – August 2012

- Digitized and reassessed collection; entered collection into PastPerfect
- Implemented organizational systems for collections totaling over 100,000 pieces
- Photographed objects
- Conducted accession research

SOFTWARE:

Microsoft Office Suite, AutoDesk AutoCAD, Revit Architecture, Adobe Creative Suite, Past Perfect, Moodle, Articulate Storyline, 123D Catch, Final Cut Pro, Audacity , Multiple Social Media Platforms, Eventbrite, Constant Contact/Mail Chimp, Edmunds Finance, Edmunds MCSJ, KVS Financial Systems

RECOGNITION AND LEADERSHIP:

SCAD, Dean's List (2011-2015); SCAD Sigma Pi Kappa Honor Society Member (2014, 2015); SCAD Tau Sigma Delta Honor Society Member (2013-2015), SCAD School of the Building Arts Award for Outstanding Achievement in Historic Preservation, 2015; SCAD Student Preservation Association President (2014-2015), Public Relations Chair (2012-2014); SCAD Art History Society Treasurer (2012-2015); Board Member and Web Designer, Natchitoches Humane Society (2016-Present); Girl Scout for 13+ years - Bronze and Silver Awards, 1000+ hours of Community Service

PROFESSIONAL MEMBERSHIP:

- National Trust for Historic Preservation, New Jersey Planning Officials

PUBLISHED WORK:

- National Center for Preservation Technology and Training, Podcast 74: "Job Hunting Tips for Historic Preservation"
 - Producer and Author
- National Center for Preservation Technology and Training, Podcast 72: "The Diverse Stories at the Cultural Heritage Society"
 - Producer and Author
- National Trust for Historic Preservation Forum Journal, Fall 2015, Volume 30, No. 1
 - Contributor, *Thinking Ahead: Forum Members Share Vision for Preservation's Future*, by Elizabeth Byrd Wood
- National Center for Preservation Technology and Training, Podcast 66: "Why Historic Preservation?", by Jason Church
 - Contributor
- National Center for Preservation Technology and Training, Podcast 69: "Moving Cultural Landscapes into the 21st Century"
 - Producer and Author
- National Center for Preservation Technology and Training, "Preservation in Your Community 2015"
 - Presenter, "eLearning for Historic Preservation Maintenance"
- Red River Radio: Preservation in Your Community 2015, 9:30 am, July 28, 2015; Gary Joiner, Ph.D.
 - Contributor

ATTACHMENT 3

Conrail Joinder in Demolition Permit Requests
for Each of the Six Embankment Blocks

**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

John M. Brady
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

**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 384 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

12/13/02
Date

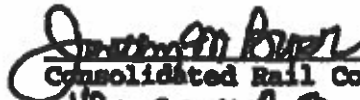
Jonathan M. Boudier
Consolidated Rail Corporation
VP + General Counsel

**JOINDER AND COMMENT 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


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. Bouché
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 MONTELA 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

Justin M. Beach
Consolidated Rail Corporation

ATTACHMENT 4

NJ SHPO Letter to STB, filed May 15, 2009

225129



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Log #08-0811-6
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State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

NATURAL & HISTORIC RESOURCES, HISTORIC PRESERVATION OFFICE

PO Box 404, Trenton, NJ 08625

TEL: (609) 984-0176 FAX: (609) 984-0578

www.state.nj.us/dep/hpo

JON S. CORZINE
Governor

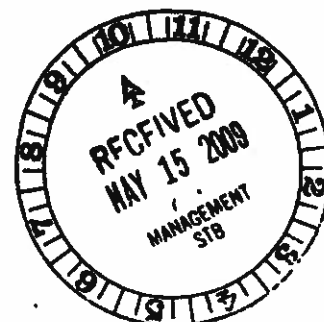
MARK N. MAURIELLO
Acting Commissioner

May 7, 2009

ENTERED
Office of Proceedings

MAY 18 2009

Part of
Public Record



Honorable Ann K. Quinlan
Acting Secretary
Surface Transportation Board
Patriots Plaza
395 E Street SW
Washington, DC 20423

Re: Hudson County, City of Jersey City
Proposed Abandonment of Harsimus Branch

Environmental Assessment, STB Docket No. AB-167 (Sub-No. 1189X), Consolidated Rail Corporation - Abandonment Exemption - in Hudson County, NJ; STB Docket No. AB-55 (Sub-No. 686X), CSX Transportation, Inc. - Discontinuance Exemption - in Hudson County, NJ; STB Docket No. AB-290 (Sub-No. 306X), Norfolk Southern Railway Company - Discontinuance Exemption - in Hudson County, NJ.

Dear Acting Secretary Quinlan:

The New Jersey Historic Preservation Office (HPO) has reviewed the Environmental Assessment (EA) and has substantial concerns regarding the prescribed process for completing Section 106 consultation. Section 106 of the National Historic Preservation Act is a consultative process that seeks to accommodate historic preservation concerns with the needs of Federal undertakings. The Section 106 process must be completed "prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license" (36 CFR §800.1), and requires the head of any Federal agency to take into account the effect of the undertaking on historic properties.

Under normal circumstances, the Section 106 consultation process for the abandonment would have begun prior to the sale of the Harsimus Branch alignment to a private developer. The identification of historic properties could have been completed, identifying the Harsimus Branch as a resource that has been previously determined to be individually eligible for listing on the National Register of Historic Places by the Keeper

of the National Register. A historic preservation easement for the Harsimus Branch could have been developed by Surface Transportation Board (STB), in consultation with consulting parties. The historic preservation easement could have been executed, establishing a measure of protection of the Harsimus Branch, the STB could then have authorized the sale of the Harsimus Branch with the historic preservation easement in place, resulting in a determination of no adverse effect under Section 106.

The situation in the current case is extraordinary. The STB has not yet approved the proposed abandonment, yet Conrail has already sold the historic property to a developer. The developer is actively pursuing demolition of the historic property. This all occurred before the initiation of the Section 106 review process, let alone any discussion of ways to avoid, reduce or mitigate the clearly foreseeable adverse effects. STB now seeks to redress that lack of timely Section 106 consultation by establishing a Section 106-like review process whose certain outcome is an adverse effect including the probable demolition of the historic property.

The Section 106 consultation process is separate and distinct from the Environmental Assessment that was developed by the STB. However, through the Environmental Assessment, the STB is attempting to unilaterally dictate that Section 106 consultation be completed by parties with no ownership of the Harsimus Branch and with minimal oversight from the STB. Furthermore, that Section 106 consultation would be completed by Conrail as a condition of any decision granting abandonment authority suggests that STB has, in effect, already granted *de facto* approval of the abandonment. Finally, the "owner" of the Harsimus Branch Embankment continues to pursue demolition locally, and operates as if unconstrained by the Section 106 review process.

This is inconsistent with the letter and intent of Section 106 of the National Historic Preservation Act and 36 CFR §800.1(c) which require the completion of the Section 106 consultation process "...prior to the expenditure of any Federal funds on the undertaking or prior to the issuance of any license." The proposed process limits the potential for meaningful Section 106 consultation because it limits the ability of the Federal agency to complete a full consideration of alternatives to the undertaking, pursuant to 36 CFR §800.1(c), and 36 CFR §800.6(a). The EA asks to accept as a Section 106 equivalent, a process in which any sale of the property with an easement has been foreclosed. The process proposed by STB does not lead to a full consideration of alternatives; instead, it leads to loss of the historic property at the consummation of abandonment.

The HPO understands that Section 106 consultation for this project was initiated prior to the completion of the EA and the HPO has previously been involved in the early stages of Section 106 consultation. However, at that time, the STB did not make it known that it would be giving *de facto* approval of the abandonment. The State Historic Preservation Office requests that the STB retain full regulatory jurisdiction over the railroad right of way, and questions how the letter and intent of the Section 106 process can be completed while the property is held by a third party.

Thank you for your consideration in this matter. Please do not hesitate to contact me at (609) 984-0176 with any questions.

Sincerely,



Daniel D. Saunders
Deputy State Historic
Preservation Officer

Cc: Charlene Dwin Vaughn – Advisory Council on Historic Preservation
Najah Duvall-Gabriel – Advisory Council on Historic Preservation
Kenneth Blodgett – Surface Transportation Board
Jerramiah Healy, Mayor, City of Jersey City
John Enright, Conrail
Stephen Gucciardo, Jersey City Historic Preservation Commission
Maureen Crowley, Harsimus Embankment Coalition
Rom Emrich, Preservation New Jersey
Charles H. Montange, Esq., Harsimus Embankment Coalition