

ET-16298 KB



HPO-A2009-166

Log # 08-0811-5

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

January 26, 2009

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

Dear Madam Secretary:

As Deputy State Historic Preservation Officer for New Jersey, in accordance with 36 CFR Part 800: Protection of Historic Properties, as published in the *Federal Register* on December 12, 2000 (65 FR 77725-77739) and amended on July 6, 2004 (69 FR 40544-40555), I am providing **Continuing Consultation Comments** for the following proposed undertaking:

**Conrail (former Pennsylvania Railroad) Harsimus Branch and Embankment
City of Jersey City, Hudson County, New Jersey
Application for Abandonment Docket Number AB-167-1189-X
Surface Transportation Board (STB).**

I write to express my deep concern about the Notice of Exemption for Abandonment proposed by Conrail. The timeframe established by the Notice of Exemption for Abandonment proposed by Conrail (despite the proposed stay of the effective date) would prevent the full completion of the letter/intent of the National Historic Preservation Act. Steps taken to date by Conrail show a failure to adequately plan for public involvement/participation in the Section 106 process. This letter is in response to the Historic Preservation Office's receipt of:

Conrail Rail Corporation – Abandonment Exemption STB Docket No. AB 167 (Sub-No. 1189X), Motion to Stay Effective Date of Verified Notice of Exemption and to Waive Pre-Filing Notification Requirements, letter dated January 6, 2009, submitted by Mr. John K. Enright (Conrail) and Mr. Robert M. Jenkins III (Mayer-Brown LLP);

Re: Consolidated Rail Corporation – Abandonment Exemption in Hudson County, NJ AB-167 (Sub-no 1189X) and Related Proceedings to Prevent Abandonment on that Date, letter dated January 14, 2009, submitted by Charles H. Montange, for the City of Jersey

City, Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition, and Rails to Trails Conservancy; and

Re: Consolidated Rail Corporation – Abandonment Exemption in Hudson County, NJ AB-167 (Sub-no 1189X) and Related Proceedings, Action Requested on or Before January 26, 2009 to Prevent Ex-Parte Abandonment, letter dated January 20, 2009, submitted by Charles H. Montange, for the City of Jersey City, Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition, and Rails to Trails Conservancy.

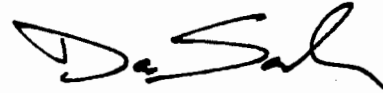
As of today, the consultation process pursuant to Section 106 of the National Historic Preservation Act has barely begun. Although we are aware of a large number of historic properties in the project area, including the Harsimus Branch, the Identification of Historic Properties has not yet been completed. There has, therefore, been no assessment of effects. If Conrail continues to pursue sale and demolition, the project will result in an adverse effect on the historic Embankment. The Advisory Council on Historic Preservation must be notified of an adverse effect finding, and invited to participate in consultation pursuant to 36 CFR Part 00.6(a)(1). To my knowledge, the Advisory Council on Historic Preservation has not been notified of the potential for adverse effects. Furthermore, given the complexity of the project circumstances described below, and the number of parties that have asked to be involved in the Section 106 review process, it is unreasonable to think 106 can be completed on the timetable that would be established if Conrail's notice of Exemption were accepted.

Since cessation of active use of the Harsimus Branch, bridges that carried the Embankment over local roadways have been removed. Conrail has sold portions of the Embankment, and joined with the developer in applications for demolition permits. A number of parties, including the City of Jersey City, who propose to preserve the Embankment have asked to be interested parties. The City, the Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition and Rails to Trails Conservancy have argued that Conrail's actions represent a violation of Section 110k of the National Historic Preservation Act. Because the Harsimus Embankment (a segment of the Harsimus Branch) has received a Determination of Eligibility (DOE) from the Keeper of the National Register of Historic Places (NRHP) and is within or abuts at least 14 other (previously identified) historic properties, evaluating the applicability of Section 110(k) to the current Notice of Exemption abandonment proceedings is relevant not only to the Harsimus Embankment but also to the other previously identified historic properties located within the Area of Potential Effects (APE) established by Conrail, the Surface Transportation Board, and the HPO for the cultural resource evaluation of Docket Number AB-167-1189-X.

The Historic Preservation Office (HPO) agrees with the comments submitted by the City of Jersey City, Pennsylvania Railroad Harsimus Stem Embankment Coalition, and Rails to Trails that the Conrail application to abandon the Harsimus Branch using the Notice of Exemption procedures should not be granted because there would not be sufficient time to fully complete the Section 106 process, and because the applicability Section 110 (k) of the National Historic Preservation Act regarding anticipatory demolition should be thoroughly evaluated in accordance with the Surface Transportation Board's policy statement of April 23, 2008 (*Consummation of Line Abandonments that Are Subject to Historic Preservation and Other Environmental Conditions STB Ex Parte No. 678*).

The HPO appreciates having the opportunity to offer comments at this early stage of the proceedings and looks forward to actively participating in subsequent consultation in accordance with Protection of Historic Properties, 36 CFR Parts 800.4, 5, and, as needed, 6. Should you need any further assistance or if you have any questions regarding these comments, please contact Charles Scott at (609) 633-2396 or Charles.Scott@dep.state.nj.us.

Sincerely,



Daniel D. Saunders
Deputy State Historic
Preservation Officer

- C: Jerramiah Healy, Mayor, City of Jersey City
Thomas DeGise, County Executive, Hudson County
John Enright, Conrail
Advisory Council on Historic Preservation
Stephen Gucciardo, Jersey City Historic Preservation Commission
Michael Selender, Jersey City Landmarks Conservancy
William LaRosa, Hudson County Office of Cultural and Heritage Affairs
Alan Buchan, Pennsylvania Railroad Technical and Historical Society
John Kilbride, Camden and Amboy Railroad Historical Group
Maureen Crowley, Harsimus Embankment Coalition
Lynn Rakos, Roebling Chapter, Society for Industrial Archaeology
Martin Judd, NJ Transit
Robert Miller, Assistant Commissioner, NJDOT
Ken Koschek, NJDEP
Historic Sites Council
Jill Edelman, Powerhouse Arts District Neighborhood Association
Ron Emrich, Preservation, New Jersey
Eric Fleming, Harsimus Cove Association
Daniel Frohwirth, Jersey City Economic Development Corporation
Robert M. Jenkins III, Mayer-Brown LLP
Charles H. Montange, Esq., Harsimus Embankment Coalition
Dolores P. Newman, NJ Committee for the East Coast Greenway
Sam Pesin, Friends of Liberty State Park
Gretchen Scheiman, Historic Paulus Hook Association
Robert Viven, Newport Neighborhood Association
Dan Weber, Van Vorst Park Association
Greg Remaud, NY-NJ Baykeeper
Andrea Fester, Rails to Trails Conservancy
Jennifer Greely, Hamilton Park Neighborhood Association
William Bolger, National Park Service, North-East Regional Office

HPO- A2009-166
Log # 08-0811-1, 2, 3 & 4

CS:C/STBConrailHarsimusInitofConsult