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State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

NATURAL & HISTORIC RESOURCES, HISTORIC PRESERVATION OFFICE

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JON S. CORZINE
Governor

MARK N. MAURIELLO
Acting Commissioner

May 7, 2009

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.

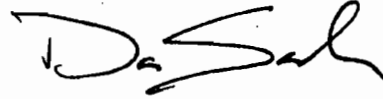
The Section 106 consultation process is separate and distinct from the Environmental Assessment that was developed by the STB. However, through the Environmental Assessment, the STB is attempting to unilaterally dictate that Section 106 consultation be completed by parties with no ownership of the Harsimus 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,

A handwritten signature in black ink, appearing to read 'D. Saunders', with a stylized flourish at the end.

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