



EI - 27088

Preserving America's Heritage

January 24, 2020

Ms. Victoria Rutson
Director
Office of Environmental Analysis
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

Ref: *Proposed Abandonment of Consolidated Rail Corporation's Harsimus Branch*
Jersey City, Hudson County, New Jersey
ACHP Connect Log Number #001682

Dear Ms. Rutson:

On November 13, 2019, the Surface Transportation Board (STB or Board) provided the Advisory Council on Historic Preservation (ACHP) with its Cultural Resources Effects Assessment Addendum Report (Addendum Report) regarding the referenced undertaking. The Addendum Report is submitted as part of the STB's compliance with the Section 106 (54 U.S.C. § 306108) of the National Historic Preservation Act (NHPA) (54 U.S.C. § 300101 et seq.) and its implementing regulations, "Protection of Historic Properties" (36 C.F.R. Part 800). In this Addendum Report, STB provided additional information and responded to the comments and questions from the ACHP, the New Jersey State Historic Preservation Officer (NJ SHPO), and the consulting parties on the first Cultural Resources Effects Assessment Effects Report (Effects Report) issued on March 29, 2019. However, the ACHP would like to clarify some of the STB's responses in the Addendum Report.

The Addendum Report appropriately responds to the majority of the ACHP's and consulting parties' comments and questions on the Effects Report. Additionally, the ACHP and STB met on June 11, 2019, to further discuss our questions and comments, and came to agreement on some key points summarized in this report. We offer the following observations to the Addendum Report's Attachment 1:

1. Section 110(k): The ACHP and STB agreed that an assessment regarding the applicability of Section 110(k) to this undertaking will be conducted once the full administrative record has been put before the Board for its review and decision. The ACHP understands the unique circumstances regarding this decision, and agrees that it can be completed at a later time. However, in future consultations, it is important for the STB to complete its Section 110(k) assessment prior to moving forward with other steps in the Section 106 review. This ensures consistency with the statutory requirements within the NHPA.
2. Definition of the undertaking: The STB has limited the definition of the undertaking to the Board's decision to grant or deny abandonment authority, which is inconsistent with our regulations. Pursuant to 36 C.F.R. § 800.16(y), the undertaking subject to review by the federal agency is not limited to the activity requiring federal approval. Rather, the undertaking encompasses the entire

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project, including but not limited to the components that require federal approval. Accordingly, the undertaking should be defined to include portions of the project area previously sold to a developer with the intention to develop it. It is evident that the land will be used for private and/or public usage based on information provided to STB and the consulting parties. Despite the undertaking being defined too narrowly, STB has made a reasonable and good faith effort to identify and evaluate historic properties and analyze the potential direct, indirect, reasonably foreseeable, and cumulative effects for four alternatives.

3. The Board's Limited Jurisdiction: While the ACHP and the STB previously discussed the small federal handle concept to address the STB's limited jurisdiction over the larger undertaking, the ACHP disagrees with the statement that "OEA and ACHP have concluded that the Board's limited jurisdiction over the rail line proposed for abandonment in this case does not constitute "federal ownership or control" under 36 CFR § 800.5(a)(2)(vii)." Rather, in justifying the applicability of the small federal handle for the undertaking, the STB should consider limitations on its responsibility to resolve adverse effects. Such a consideration would have to take into account that the undertaking's APE includes the Harsimus Branch rail line, the abandonment of which requires STB approval. This raises the question whether the undertaking would be developed without the STB's approval of the rail abandonment, and may challenge the applicability of the small federal handle to the undertaking. As the ACHP learned during our June 11, 2019, meeting, the STB does in fact have a significant amount of control over the line while in status and that control does amount to "federal jurisdiction." As such, STB's approval of a rail abandonment could be an adverse effect if there are not adequate conditions placed on the affected historic property to ensure its long-term preservation.

The ACHP recommends the STB incorporate these corrections into the Addendum Report. We appreciate the significant time and effort your agency has invested with this consultation, particularly in addressing the consulting parties' comments and questions on the analysis of the undertaking's potential effects. We look forward to continuing consultation to resolve the undertaking's adverse effects. Should you have any questions or concerns, please contact Sarah Stokely at (202) 517-0224, or via e-mail at sstokely@achp.gov.

Sincerely,



Jaime Loichinger
Assistant Director
Federal Permitting, Licensing, and Assistance Section
Office of Federal Agency Programs