

From: [Jaime Loichinger](#)
To: [Tabachnick, Alan](#)
Cc: [Marcopul, Kate](#); [Tingey, Andrea](#); [Andrea Ferster](#); [Sarah Stokely](#); [Charles H. Montange \(c.montange@frontier.com\)](#)
Subject: Harsimus Branch Abandonment - ACHP comments and questions
Date: Friday, January 22, 2021 3:09:39 PM
Attachments: [RTC ltr to ACHP re Harsimus- 1-22-21.pdf](#)

Hi Alan,

We recently spoke with the New Jersey SHPO regarding its concerns for the Section 106 consultation for the Harsimus Branch abandonment. In a timely coincidence, the Rails to Trails Conservancy (RTC) sent a comment letter to the ACHP, updating us on recent developments regarding the settlement agreement, and its interest in ensuring an appropriate resolution of adverse effects. Given that STB is the federal agency responsible for complying with Section 106, we are sharing RTC's letter with you for inclusion in STB's administrative record, and for consideration in conducting the next steps of the Section 106 review. Below are additional observations and inquiries from the ACHP.

- Section 110(k): we continue to have concerns that that STB will be making a decision about the applicability of Section 110(k) after we execute the Memorandum of Agreement (MOA). That decision will be moot at that point. STB staff should consider whether there is the possibility of them making at least a preliminary determination that Section 110(k) does not apply here based on information we know at this stage of the consultation. That could be included as a whereas clause in the MOA, stating that STB staff determined, after consulting with the ACHP, to move forward with the Section 106 review based on its preliminary determination that Section 110(k) does not apply and through execution of the MOA the Board approved the final Section 110(k) determination. We can modify the text in the language based on how internally the Board will make its decision about Section 110(k).
- Settlement: Through the RTC's letter, we understand that the settlement agreement among Conrail, Jersey City, the Embankment Coalition, Rail to Trails Conservancy, and Albanese (the Parties) is no longer an option. When will consulting parties be notified about this change? Has STB considered how the lack of a settlement agreement will affect the MOA's development?
- Mitigation Measures: particularly in the absence of a settlement agreement, additional measures may be needed to ensure that there is commensurate mitigation to offset the adverse effects to the historic properties. To that end, STB should clarify to the consulting parties the timeline for additional consultation to discuss mitigation and the MOA drafting process.

Given the breadth of these topics, it may be helpful for us to have a consultation meeting to discuss them appropriately. Accordingly, the ACHP is available at STB's convenience to participate in such a meeting, and looks forward to the ongoing discussion. Should you have any questions regarding these points, please don't hesitate to contact me or Sarah Stokely, copied here.

Sincerely,

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