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## NEW JERSEY GENERAL ASSEMBLY

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April 16, 2008

Ms. Victoria Rutson, Chief  
Section of Environmental Analysis  
Surface Transportation Board  
395 E Street, SW  
Washington, D.C. 20423-0001

Re: Consolidated Rail Corp. – Abandonment Exemption - Jersey  
City, NJ, AB 167 (Sub-no. 1189X) and related proceedings

Dear Ms. Rutson:

I am writing to object to a fast-track “class exemption” proceeding proposed by Conrail, as well as to the inadequate Environmental Report (ER) and Historical Report (HR) submitted in the case cited above, and to call for a full Environmental Impact Statement (EIS) and other relief in this most controversial case before any decision is issued allowing Conrail to abandon the Harsimus Branch. I reserve the right to make additional comments.

I represent the people of the 31st Legislative District in the New Jersey State Assembly. This District contains the Harimsus Branch segment and the Hudson Industrial Track, the subjects of the cited proceeding. My comments in this letter are confined to the Harsimus Branch, which I believe should be separated from the Hudson Industrial Track in your considerations.

Before I was elected Assemblyman, I served from 1993-2005 on the Municipal Council of the City of Jersey--from 2001 to 2005 as Council President. In 2004, after the untimely death in office of our Mayor, Glenn D. Cunningham, I served as Acting Mayor of the City of Jersey City. During my time on the Council and as Acting Mayor, many matters concerning the Harsimus Branch Embankment came before me, and I am very familiar with its history, both long-term and recent.

In 1998, the Jersey City Redevelopment Agency (JCRA) contracted with a firm, Dresdner Robin, to prepare a Subsurface and Geotechnical Investigation Report for the “Sixth Street Embankment,” as a section of the Harsimus Branch is locally known. At this time the JCRA was exploring the possibility of acquiring the Embankment for redevelopment. Subsequent events,

including the addition of the Harsimus Embankment to the State Register of Historic Places and its eligibility for the National Register, ended the JCRA's interest in the matter. This report, however, should have been supplied to your office by Conrail as part of its ER

In 2002, the New Jersey Department of Transportation issued its "Bergen Arches Study," which identified the 6<sup>th</sup> Street (Harsimus Branch) corridor as a potential transportation corridor.

In 2003, the Municipal Council of Jersey City unanimously voted to make the Harsimus Embankment—already on the State Register of Historic Places and eligible for the National Register of Historic Places—a Municipal Landmark. At that time, besides four Downtown National Historic Districts, Jersey City had only a few other Municipal Landmarks, two of which were the internationally known Ellis Island and the Statue of Liberty. You can see from these illustrious examples that our determination to add the Embankment to the registry was not arrived at lightly.

In 2004 and 2005, recognizing the importance of the Harsimus Branch Embankment in a City with a severe deficit of open space, the Municipal Council under my leadership approved the submission of applications to New Jersey's Green Acres program. The City was subsequently awarded two grants, for a total of \$1.6 million, for Embankment acquisition.

In 2004, the Municipal Council under my leadership also passed an ordinance enabling the City to pursue acquisition through negotiation or eminent domain. In 2005, the Council passed an ordinance clarifying the area to be acquired.

In May 2004, the New Jersey Department of Transportation released its "East Coast Greenway Northern New Jersey Route Study." This study identified the Harsimus Branch Embankment as a segment of the recommended route for the Greenway through Jersey City. The Municipal Council endorsed this recommended route, as did the Hudson County Board of Chosen Freeholders. Indeed, all 26 municipalities and six counties along the route in New Jersey endorsed the route. The East Coast Greenway Alliance, the Rhode-Island-based nonprofit that spearheads the effort to implement the greenway, highlighted the Jersey City segment during its 2004 Annual Conference here in Jersey City; the City of Jersey City was a co-sponsor.

The City of Jersey City, along with the advocacy of numerous residents organized as the Embankment Preservation Coalition, succeeded in securing an appropriation for the Embankment greenway in the federal SAFETEALU bill that passed Congress in July 2005.

Despite Jersey City's intentions, Conrail purported to sell the property to a developer in July 2005, without first abandoning the rail line through the federal permitting process.

Since leaving municipal government in 2005, I have kept informed about the events regarding this branch, including the petition brought by the City of Jersey City et al. to the Surface Transportation Board and the subsequent STB decision that the Harsimus Branch remains part of the national rail system. Rather than accept the spirit and letter of the STB decision, however,

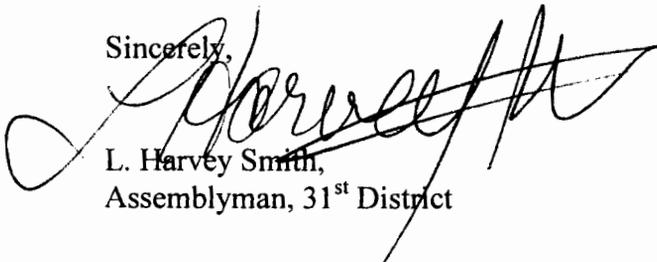
Conrail is both appealing the decision in The U.S. Court of Appeals, D.C. Circuit, while at the same time indicating it will seek a fast-track "class exemption."

Conrail should not be allowed a fast-track abandonment, which may negate certain protections afforded the public under federal and state law. Its actions and proposed actions significantly adversely affect the environment. The City of Jersey City wants the Harsimus Branch section for light rail, trail, and park. All these uses are public uses that fill great needs in our area. These uses would maintain the historic Embankment structure, a landmark in its own right and one that is integral to the National Historic Districts to the north and south. Conrail's would-be developer agent, on the other hand, has pursued demolition permits that would remove the historic structure. Subsequently, he also floated an alternative plan that would be as destructive, calling for scooping out the Embankment walls for parking and building five towers containing up to 1500 housing units. These towers would severely adversely affect the two National Historic Districts, and the resources within them, as well as the Embankment structure itself.

The controversial nature of Conrail's actions to date, as well as the complexity of environmental and historical issues, and the significant effect that a class exemption permit would have on the environment, require that a full Environmental Impact Statement (EIS) be prepared before any decision is made on a class exemption for Conrail. Conrail's illegal actions to date should not be rewarded with a fast-track abandonment permit before a full EIS and NHPA Section 106 review.

By the signature below, I certify service by U.S. Mail, postage prepaid, first class, on Mr. John K. Enright, Associate General Counsel, Conrail, 1000 Howard Boulevard, 5<sup>th</sup> Floor, Mt. Laurel, NJ 08054.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Harvey Smith", written over a horizontal line.

L. Harvey Smith,  
Assemblyman, 31<sup>st</sup> District