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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

December 23, 2008

Mr. Kenneth H. Blodgett
Section on Environmental Analysis
Surface Transportation Board
Patriots Plaza
395 E Street SW
Washington, DC 20423

Dear Mr. Blodgett:

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 Initial 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).**

This letter is in response to the submission of the *Area of Potential Effects (APE) Report and Proposed Methodology for Section 106 Consultation, Conrail Harsimus Abandonment, STB Docket No. AB 167 (Sub-No. 1189X)*, dated September 2008, prepared by Richard Grubb and Associates, Inc., and submitted by Mr. Robert M. Jenkins III of Mayer-Brown LLP, requesting the initiation of consultation in accordance with 36 CFR Parts 800.3 and 800.4.

SUMMARY: In addition to concurring with the Area of Potential Effects and the preliminary list of consulting and interested parties (with a request for some potential additions), the Historic Preservation Office is requesting additional information regarding the role in the consultation process of those listed as "Party of Record" in the Surface Transportation Board's Service List, requesting additional consultation to enhance the public involvement plan, and, consistent with previous comments from the public, requesting consideration of the preparation of an Environment Impact Statement in place of a less detailed Environmental Assessment. The details of these requests are presented hereafter in **800.3 Initiation of the Section 106 Process, 800.4 Identification of Historic Properties, and Additional Comments.**

800.3 Initiation of the Section 106 Process

I concur that the Historic Preservation Office (HPO), Conrail, City of Jersey City, and Hudson County are appropriate consulting parties for the initiation of consultation. The HPO is

aware that previous STB proceedings involving the proposed abandonment of the Harsimus Branch elicited a substantial public response from organizations and individuals that appear to qualify for consulting party status and that the HPO also reasonably anticipates that public involvement activities may identify a number of additional public and private consulting parties.

Consequently, the HPO would appreciate knowing the meaning or definition of "Party of Record" and "Non-Party" as listed on the STB Service List for AB-167-1189-X and the relation, if any, between Party of Record / Non-Party and consulting party as defined by 36 CFR Part 800.3. The STB Service List for AB-167-1189-X lists the following:

Party of Record: Robert Crowell, Monroe County Planning Department
 Jill Edelman, Powerhouse Arts District Neighborhood Association
 Ron Emrich, Preservation, New Jersey
 Eric Fleming and Luccio Valerio, Harsimus Cove Association
 Daniel Frohwirth, Jersey City Economic Development Corporation
 Mike Greely
 Robert M. Jenkins III, Mayer-Brown LLP
 Stephen Marks, Hudson County
 Charles H. Montange, Esq.
 Dolores P. Newman, NJ Committee for the East Coast Greenway
 Sam Pesin, Friends of Liberty State Park
 Gretchen Scheiman, Historic Paulus Hook Association
 Michael D. Selender, Jersey City Landmarks Conservancy
 Robert Viven, Newport Neighborhood Association
 Dan Weber, Van Vorst Park Association

Non-Party: Greg Remaud, NY-NJ Baykeeper.

The requested information regarding the meaning of Party / Non-Party of Record will substantially assist the HPO in evaluating the appropriateness of recommending additional consulting parties. Based upon their railroad transportation responsibilities and interest in the preservation of railroad rights-of-way, two additional potential consulting parties are the New Jersey Department of Transportation and New Jersey Transit.

The HPO appreciates the commitment (mentioned in the submitted report) to actively involving consulting parties and the public in the identification of historic properties, the assessment of effects, and the resolution of any adverse effects. The proposed public participation plan acknowledges that the cultural resources report(s) will document the comments and / or information provided by consulting parties and individuals and organizations with a knowledge of or an interest in historic properties within the project Area of Potential Effects and that the cultural resource report(s) will also be sent to all consulting parties and made available to the public in order to solicit input on the various elements of the project. The documentation of public participation in the evaluation of historic resources and project effects will substantially enhance the quality, the timeliness, and, especially, the public value of the Section 106 consultation. The HPO requests that all consulting parties and the public be afforded a simultaneous opportunity to review and comment on the cultural resources report(s) and that, in the event of an adverse effect, the consultation include meetings and face to face discussions in accordance with an enhanced public involvement plan as requested below.

The public involvement plan must be enhanced to include more specific provisions for involving consulting parties and interested members of the public in the consultation regarding the resolution of any adverse effects. This component of the public involvement plan must be responsive to the requirements of 36 Part 800.6 Resolution of Adverse Effects that all consulting and interested parties are afforded an opportunity to actively participate in the consultation regarding the avoidance, minimization, and/or mitigation of any adverse effects. The HPO looks forward to consulting and discussing with the STB regarding the details of this component of a public involvement plan for the consultation required by the regulations.

800.4 Identification of Historic Properties

The Area of Potential Effects (APE) for archaeological resource identification (as delineated on the Figure 2) appears to include all of the area that may be subject to the direct effects of any proposed abandonment. The HPO also agrees that the Area of Potential Effects (APE) for architectural (above ground) resource identification (delineated in Figures 6 and 7a-e) is appropriate to evaluating both direct and reasonably foreseeable (as currently understood) indirect (secondary) effects.

The HPO appreciates the inclusion in the submitted APE report of the list and brief summary of the large number and high density of currently known (New Jersey and / or National Registers of Historic Places (NRHP) listed or State Historic Preservation Officer (SHPO) opinioned NRHP eligible) historic properties within, abutting or in proximity the Harsimus Branch. This list includes:

- Pennsylvania Railroad Harsimus Branch Embankment (listed on the NJ Register of Historic Places (NJRHP) 12/29/1999 and Determination of Eligibility (DOE) for the National Register of Historic Places (NRHP) 3/16/2000)
- Hamilton Park Historic District (NJRHP 4/27/1978, NRHP 1/25/1979)
- Hamilton Park Historic District Extension (NJRHP 10/1/1982, NRHP 12/2/1982)
- Harsimus Cove Historic District (NJRHP 10/15/1987, NRHP 12/9/1987)
- St. Anthony of Padua Roman Catholic Church (NJRHP 12/24/2003, NRHP 3/22/2004)
- Hudson and Manhattan Railroad Powerhouse (NJRHP 11/23/2001)
- Great Atlantic and Pacific Tea Company Warehouse (NJRHP 6/2/1978, NRHP 6/21/1978, National Historic Landmark)
- 88-92 Erie Street, Albaniel Dye and Chemical Company (DOE 8/27/1984)
- Pennsylvania Railroad New York to Philadelphia Main Line Historic District (SHPO Opinion of Eligibility 3/3/2003)
- New Jersey Railroad Bergen Cut Historic District (SHPO Opinion 5/21/1999)
- Warehouse Historic District (SHPO Opinion 2/28/1991)
- Public School Number 5, 182-196 Merseles Street (SHPO Opinion 2/28/1991)
- St. Anthony's Roman Catholic School Complex (SHPO Opinion 4/13/1994)
- Hudson and Manhattan (PATH) Railroad Transit System (SHPO Opinion 3/4/2002).

I agree that, based upon their potential interest in and knowledge of historic properties within the APE, the Jersey City Historic Preservation Commission, Hudson County Office of Cultural and Heritage Affairs, Jersey City Landmarks Conservancy, Hamilton Park Neighborhood Association, Harsimus Cove Association, National Park Service North-East

Regional Office, NJ Committee for the East Coast Greenway, Pennsylvania Railroad Harsimus Stem Embankment Coalition, Preservation New Jersey, Rails to Trails Conservancy, Pennsylvania Railroad Technical and Historical Society, Camden and Amboy Railroad Historical Group, and Roebling Chapter of the Society for Industrial Archaeology should be considered information resources and interested parties. A number of the above listed information resources / interested parties may qualify for or request consulting party status and the HPO is aware that the Pennsylvania Railroad Harsimus Stem Embankment Coalition is one of the above listed organizations that is or will be seeking consulting party status for this proposed undertaking.

Additional Comments

The HPO understands that, in accordance with the STB regulations implementing the National Environmental Policy Act (NEPA), an Environmental Assessment prepared by the STB is required for all abandonment proceedings and that the Environmental Assessment will include, but is in addition to, the Historic Report required by the STB rules implementing the requirements of Section 106 of the National Historic Preservation Act. The HPO would appreciate confirmation that this understanding is correct and would also appreciate knowing whether STB will be classifying Conrail's request for abandonment of the Harsimus Branch and Embankment as a Notice of Exemption, Petition for Exemption or Regulated Abandonment. The HPO requests that the STB deliberations regarding the appropriate abandonment procedure recognize and give serious consideration to the historic, engineering, and transportation significance of the Harsimus Branch and Embankment, the potential for substantial adverse effects to multiple historic properties, and the existing record of substantial public interest in and concern for both the historic resources and the substance of the abandonment proceedings.

Based upon these issues of substance and procedure raised by the public during the original April 2008 submission by Conrail of a Notice of Exemption, the HPO requests that the STB give serious consideration to classifying the proposed abandonment of the Harsimus Branch and Embankment as at least a Petition for Exemption and also give serious consideration to requesting the preparation by the applicant of an Environmental Impact Statement (EIS) that fully explores all of the environmental issues associated with the proposed abandonment and thoroughly examines the alternatives that would avoid adverse effects or impacts on both the human and historic environments.

The Historic Preservation Office appreciates the inclusion of over 100 photographs of the APE in the submitted report. 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
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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

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