EO-566

SURFACE TRANSPORTATION BOARD

Washington, DC 20423

Office of Economics, Environmental Analysis, and Administration

May 24, 2007

Township of West Sadsbury
Attn: James Landis, Chairman
6400 N. Moscow Road
Parkesburg, PA 19365-9044

RE: STB Docket No. AB-167 (Sub-No. 1095X) - Consolidated Rail Corporation – Abandonment Exemption in Lancaster and Chester Counties, PA

Dear Mr. Landis:

I am writing to you and the Section 106 consulting parties to provide a copy of a draft Memorandum of Agreement (MOA) in the above-captioned proceeding and to provide a 30 day period for your review and comment on this draft MOA. As described in the Background section below, the original MOA negotiated in this proceeding expired during litigation in state court regarding acquisition of the rail line. Now that the litigation has concluded, SEA has prepared this Draft MOA, in consultation with the signatories on the original MOA. This document replaces the original termination language making the MOA effective for 1 year from the date of its execution with language making the MOA effective for 3 years from the date of its execution. In all other aspects, this draft MOA is identical to the expired MOA.

We are inviting the consulting parties and members of the public to submit comments regarding the enclosed draft MOA **by June 25, 2007**. Please send your comments to the Surface Transportation Board, Section of Environmental Analysis, Suite 1100, 395 E Street, SW, Washington, DC 20423-0001, to the attention of Troy Brady. **Please refer to STB Docket No. AB 167 (Sub-No. 1095X) in your correspondence.**

BACKGROUND

The Memorandum of Agreement (MOA) in the above referenced proceeding was executed on August 4, 2004, and expired on August 4, 2005. During preparation of this MOA, Norfolk Southern Railway Company (NSR) requested that the expiration date be changed from the normally called for three years to one year, asserting that this shortened time frame would facilitate the completion of its responsibilities set forth in the MOA. However, because of subsequent litigation initiated by Lancaster County seeking to acquire the Enola Branch through

facilitate the completion of its responsibilities set forth in the MOA. However, because of subsequent litigation initiated by Lancaster County seeking to acquire the Enola Branch through eminent domain as well as its affirmative statements indicating that it, not NSR, would be responsible for fulfilling the requirements outlined in the MOA, the MOA expired.

On October 30, 2006, the Pennsylvania Commonwealth Court ruled that Lancaster County does not have the authority to seize the Enola Branch through eminent domain. The Pennsylvania Commonwealth Court also found 1) that Lancaster County does not have legal authority under County Code to take land owned by a railroad and 2) that Lancaster County's attempt to take the Enola Branch would violate a prior order by the Pennsylvania Public Utilities Commission allowing the Townships to accept the Enola Branch from NSR.

Next Steps

Following the completion of the litigation, NSR has engaged ASC Group, Inc., a qualified historian as identified by the Pennsylvania Museum and Historical Commission, to assist it in completing the remaining documentation requirements outlined in the MOA (both the original and the enclosed draft MOA).

We will receive and review all comments submitted on the draft MOA. If appropriate, and based on the comments received, we will finalize the draft MOA and will send the document around for signature. When the document is fully executed, we will provide a copy to the Advisory Council on Historic Preservation and will scan a copy onto the Board's website.

If you have questions regarding this letter or the draft MOA, please feel free to contact Troy Brady at (202) 245-0301, fax at (202) 245-0454, or e-mail at Troy.Brady@stb.dot.gov. We thank you for your continuing interest and participation in the historic preservation review process for the Enola Branch.

Sincerely,

Victoria Rutson
Chief, Section of
Environmental Analysis

Enclosure