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December 5, 2002

Surface Transportation Board
Case Control Unit
Washington, DC 20423

Attn: Troy Brady

**Re: Docket No. AB-167 (Sub-No. 1095X)**
**Consolidated Rail Corporation - Abandonment Exemption - Lancaster & Chester Counties, PA**

Friends of the Atglen-Susquehanna Trail, Inc. ("FAST"), Plaintiff in Friends of the Atglen-Susquehanna Trail, Inc. V. Surface Transportation Board, 252 F.3d 246 (3d Cir.2001),hereby submits the following comments in response to STB's Notice to the Parties ("the Notice") served October 24, 2002. In these comments, Surface Transportation Board("STB") is used interchangeably with Section on Environmental Analysis ("SEA"). These comments attempt to answer the questions posed by STB in its Notice, although they are not presented in that particular order.

General Comments

The subject of these comments is the rail line which is the subject of the docket reference above, a rail line sixty-six and one-half miles long, including thirty miles in Lancaster County, Pennsylvania. STB has initiated a new "Section 106" process pursuant to the Third Circuit's remand in FAST v. STB, the Court having ruled that STB, in its prior proceedings, did not comply with the requirements of the regulations promulgated under the National Historic Preservation Act ("NHPA"). These regulations are known as "Section 106". (For the benefit of community groups and individuals interested in understanding these regulations, and the process as it should be carried out, see the Advisory Council on Historic Preservation's website (www.ACHP.com).

FAST submits there are three general areas of concern that must be addressed in the instant process. First, a full Section 106 review of the entire line must be conducted; second, Norfolk Southern's plans for the line must be identified or there can be no meaningful process to consider mitigation; third, public involvement must be actual and not pro forma.

1. The entire line must be included. The entire line is the subject of the proposed abandonment, and thus must be subject to the steps of the 106 process. The decision of the "Keeper" finding the entire line eligible for the National Register of Historic Places includes "66.5 miles known as the Enola Line in Lancaster and Chester Counties." The Keeper's decision is found at Joint Appendix, FAST v. STB at 000261. (See discussion infra).

2. Norfolk-Southern's plans must be identified. Since acquiring the property, Norfolk-Southern has at various times indicated to FAST, to governmental units, and to the public through the press (e.g., Lancaster New Era, January 28, 2000), that Norfolk-Southern intends to reinstitute rail service on all or part of the line. Does Norfolk-Southern in fact intend to do so?

Another issue is crucial concerning Norfolk-Southern's plans. This is the issue of Norfolk-Southern's position concerning the stipulation incorporated into a Pennsylvania Public Utility Commission Order regarding a twenty-three mile portion of the property. This Order predates the Keeper's determination and the Third Circuit decision. This Order would give part of the line to local governmental units to do with as they please, including demolition of historic structures. The said Order reflects a stipulation of only a few of the consulting parties to the 106 process and does not include any type of mitigation whatsoever. Therefore, the said Order is in conflict with the 106 process, as the stipulation of a few parties reflects conclusions and agreements, which are invalid because they were reached without adequate review as mandated by the 106 regulations. The new 106 process will require that Norfolk-Southern does not have a predisposed bias based upon its stipulation with those few consulting parties. Will Norfolk-Southern acknowledge at the outset that it may need to request the PUC to modify or vacate that Order depending on the outcome of the 106 process? These questions will need to be answered in order for the process to be carried out meaningfully and fairly. To state the obvious, there can be no meaningful consulting process to consider adverse affects of an undertaking, and possible mitigation, unless the parties and public know what is being proposed.

3. Public involvement must be actual and not merely pro forma. In carrying out the Third Circuit's mandate, there must be actual public involvement, and actual consultation, as the 106 regulations require, among "individuals and organizations with a demonstrated interest in the undertaking due to their legal or economic interest or their concern with the undertaking's effect on historic properties" and with "the public", after adequate notice.

As the process goes forward, the consulting parties and public must be kept informed. Both the letter and spirit of Section 106 require, and due process requires, that decisions are made with public input on an ongoing basis, and not behind closed doors. See, e.g., 800.6.

STB's Notice

Page one, 3d paragraph. SEA states the notice incorporates comments of the Advisory Council on Historic Preservation ("ACHP") and State Historic Preservation Officer ("SHPO") received to date. Those comments should be shared with other consulting parties.

Pages two-four. FAST will not herein comment on STB's summary of the relevant regulations. FAST will not comment on STB's characterization of the Third Circuit's decision in FAST v. STB. The decision speaks for itself. However, FAST's omission of comment on the case does not signify agreement or disagreement with STB's characterization contained in the Notice.

Page 5 - Section II A. Identification of Potential Consulting Parties. At Footnote 4, SEA has listed 51 potential consulting parties. FAST submits that SEA needs to determine through which Townships and Boroughs the line runs, then include not only the governing bodies, planning commissions of those entities, but also community groups concerned with conservation, in the area of the entire 66.5 miles. SEA has apparently adapted its list from other lists in its files, but needs to go beyond that in identification of potential interested parties. (The lists that SEA used appear to come from earlier service lists in proceedings concerning a twenty-three mile portion in Lancaster County proposed as the Atglen-Susquehanna Trail.) FAST has appended hereto a list of potential consulting parties with a known interest in preservation and conservation issues. Many of these have a specific interest in all or part of the subject rail line, and/or establishing recreational trail use upon the line as the best possible mitigation. (Attachment A).

SEA will also need to identify new officials when positions change in January, 2003, for example, Governor-elect Rendell and his appointees to relevant offices, and to make sure these officials are appropriately provided with ongoing information. The question also arises how the newly identified consulting parties will be brought into the process. SEA needs to share its plan to identify and include the broadest possible group of consulting parties, as well as the public at large. The regulations at 800.3 require SEA to develop a "plan" to involve the public. It is noteworthy that "the public" is named separately as an entity in this section, beyond specific groups, persons and organizations.

Full public involvement must include actual public meetings, after adequate public notice, perhaps with one or more site visits earlier in the day. In its public notice and at the first meeting, STB should explain its role and responsibility and describe its intended schedule for the 106 process. SEA should take the responsibility for this phase and for the entire process, and not delegate this responsibility to the railroad.

Moreover, although SEA should indeed ask known interested persons and groups to identify additional consulting parties, it is also part of SEA's responsibility to identify them using its own resources, which are much greater than those of most community organizations.

Providing information about this rail line and 106 process to conservation entities through the Internet is one way the SEA should attempt to widely publicize all phases of the process. However, the Internet should not be the only method used, but the local press,TV and radio stations, both public and private, are methods the SEA can use to alert the public to meetings and plans involved in the process.

Page 5 - Section IIB - Identification Phase. The STB should clarify, as requested by the Advisory Council on Historic Preservation in its letter to Mr. Brady, dated September 12, 2002, that the process will go forward considering the entire line as historic in accordance with the Keeper's determination as well as in accordance with the Regulations. This requires a complete review of the historic and archaeological resources of the line, and an up-to-date review of the environmental and physical characteristics of the line. The Notice recognizes that such reviews as were conducted are ten years old. SEA needs to identify who will conduct this review and how it will be conducted. The Regulations recognize the complexity of the process as it pertains to a "corridor" or large body of land. 800.5(a)(3).

At 800.8 the Regulations require coordination with the National Environmental Protection Act ("NEPA"). Any environmental reviews already done are old and inadequate in light of the Keeper's determination. Under this requirement, how will SEA assess, inter alia, the impacts on transportation, land use, air and water, wildlife? SEA will need to have a plan for assessment and share its plan with the consulting parties. Note that Lancaster County in its description of the corridor furnished to ICC in November 1989, stated "(T)he diversity of resources along the thirty-four mile stretch of corridor is unique in Lancaster County and unparalleled in the state of Pennsylvania. Beginning at its western terminus, the railroad corridor parallels the Susquehanna River for approximately 7.5 miles. The railroad line is located on the east bank of the River at the base of the valley wall. The valley wall is steep and thickly forested and

ranges in elevation from 400-600 feet above sea level... . (T)he Department of Environmental Resources has identified a number of rare plant and animal species and communities existing within the area." (Appendix to FAST v. STB at 000048). SEA must update the parties' information on resources such as those mentioned concerning all the resources of the line.

Also important, is the state of title regarding the line. A title search should be undertaken with regard to the line, and made a part of the record in the consulting process.

Note also that while the subject proceeding and the Keeper's determination pertain to the 66.5 miles of line within Lancaster and Chester counties, the SHPO's determination of eligibility includes the line in Cumberland and York counties as well. The SHPO wrote in 1994: "It is the opinion of the State Historic Preservation Officer that the following properties are eligible for listing in the National Register of Historic Places: Low Grade Freight, Enola Branch, Atglen & Susquehanna Branch, A&S, Chester, Cumberland, Lancaster and York Counties. This early 20th Century rail line meets National Register criteria A and C for the period 1903 to 1944." (See copy letter from Brenda Barrett, SHPO, February 24, 1994, Joint Appendix to FAST v. STB at 000210). In other words, the line extends across the Susquehanna River and includes land in Cumberland and York Counties as well as Lancaster and Chester Counties. STB will need to make a determination of the impact of the undertaking upon those portions of the historic line. It is noteworthy in this regard that a joint National Heritage Park, now in the planning stages, along the Susquehanna River within the Lancaster and York areas affected by the undertaking needs to be considered.

Page 6 - Section D. Mitigation Phase. See discussion Supra re need for a full review. Then, STB must go well beyond retreading the old Memorandum of Agreement terms. The Notice downplays the power and impact of the Section 106 process. A member of the Historic Preservation community in Lancaster asks, "Who says the only possible nonconsensual outcome is documentation?" In fact, that STB states that position in its decision denying reconsideration when the instant case was before the agency( see joint Appendix to FAST v. STB, at 000155). In so stating, and repeating that position in its Notice, STB relies on its own decision adopting its own rules for implementing NHPA, "Implementation of Environmental Laws", cited in the Notice at footnote 7. In fact, STB took the same position in its decision which was vacated by the Court in FAST v. STB.
More importantly however, with adequate community involvement, a consensual approach to actual mitigation can be achieved.

Such mitigation proposals will include trail use, as advanced by FAST in all the ongoing stages of these proceedings as the

highest and best use of the property. Ten thousand members of the public have signed petitions endorsing trail use on the twenty-three mile section previously considered. The arguments for trail use have been detailed throughout the proceedings relevant to that section. A master plan and hundreds of pages of documents in support of trail use are part of the record in those various proceedings, many of which are part of the record in FAST v. STB. FAST and other community groups believe that trail use is also the highest and best use of the additional miles of the line within Lancaster County, known as the "river section." This section is also very important because it includes nationally recognized archeological sites for Native American artifacts. These sites will need protection in the mitigation plan.

A full review will make clear whether trail use is a possibility for other sections of the line as well as the Lancaster County portion. Trail use, and/or railbanking must be fully considered as part of an adequate 106 consultation and mitigation process.

Entities near the subject line where rail trails are now in operation should be identified as consulting parties in the 106 process, for their experience to help inform the process about the viability of trail use on the subject line. Comments should be solicited from the National Rails To Trails Conservancy and from Pennsylvania Rails to Trails.

It is also essential that mitigation includes assurance of future involvement and consultation when and if changes which would affect the property are proposed.

In light of the Keeper's determination, and the significance and size of this property, the 1990s MOA which proposed a photographic display and a 6-8 minute video is woefully inadequate. As that proposal has been rejected, it should now be be laid to rest.

Thank you for the opportunity to submit these comments.

FRIENDS OF THE ATGLEN-SUSQUEHANNA TRAIL, INC.

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see also next page

Attachment A