

Before the Surface Transportation Board
Office of Environmental Analysis

Consolidated Rail Corp. –)
Aban. Exemption –) AB 167 (Sub-no. 1189X)
Hudson County, NJ)

Response on behalf of
City of Jersey City,
Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition,
and Rails to Trails Conservancy (collectively, City et al.)
to Office of Environmental Analysis (OEA)
Email Requesting Corrections
and Notice of Change of Address of Corporation Counsel

This response is on behalf of City of Jersey City, Pennsylvania Railroad
Harsimus Stem Embankment Preservation Coalition and Rails to Trails
Conservancy (collectively, “City et al.”) to an email from Mr. Tabachnick on behalf
of Office of Environmental Analysis (“OEA”) of the Surface Transportation Board
(“STB”) requesting final corrections (typographical errors and addresses) on a
“Memorandum of Agreement” (“MOA”) which OEA has prepared purportedly to
comply with the Section 106 process in the above captioned proceeding involving
the Harsimus Branch. The subject on which OEA tendered the proposed final

MOA for comment (typographical errors and addresses) is simply not the real concern.

As before, the legally significant concern with the proposed final MOA in this proceeding is that it does **not** provide any meaningful mitigation or relief to preserve the historic assets at issue in this proceeding. We stress again that this proceeding involves an illegal de facto abandonment in which the rail carrier concedes it sold a line of railroad which required STB abandonment authority (and STB compliance with NEPA and Section 106) before an STB abandonment authorization was even sought, much less granted. The railroad's precipitous and unlawful action was motivated by an intention to evade historic preservation regulation, and in particular to foster the demolition of the entirety of the historic Harsimus Embankment, which the railroad knew was eligible for the National Register of Historic Places (and thus protected under Section 106) at all relevant times.

In the face of this pattern of facts, it amounts to a dereliction of this agency's responsibility to fail to restore the property to its status quo before the patently unlawful de facto abandonment and sale of this railroad line. STB has the power to declare deeds issued in violation of its jurisdiction, as here, void, or to require re-acquisition. In lieu of requiring compliance with law as a condition of abandonment by returning the parties to the status quo prior to Conrail's unlawful

actions, the MOA instead proposes only to put up what amount to tombstones (plaques) and obituaries (website information) about what has already been, or may soon be, lost due to unlawful actions by the railroad in complicity with its chosen developer. The STB/OEA's continued failure to provide meaningful relief is contrary to the well-supported arguments and facts repeatedly presented by City et al. and many other commenting parties.

STB/OEA's rubberstamping of the unlawful de facto abandonment here serves only to encourage railroads and developers to engage in unlawful de facto abandonments by providing an easy avenue -- one without any legal consequences -- for them to engage in spoliation of known historic assets supposedly protected under Section 106. For this and other reasons, City et al., regard the MOA as arbitrary, capricious, an abuse of discretion and otherwise contrary to law.

In the circumstances, STB/OEA must and should continue consultations under section 106 and provide for meaningful mitigation and relief. City et al. reserve all their rights to judicial review should the agency issue a final order purportedly implementing this proposed final MOA or otherwise countenancing the Section 106 process that generated it. Failure to comment further at this time should not be construed as concurrence in the proposed draft MOA, or with any actions or inactions of STB to date.

In sum, STB's proposed final MOA is manifestly unlawful, prejudicial, and inadequate, and the agency clearly must therefore continue to consult. As a corollary, City et al. have no plans to execute the agency's current proposed final MOA. The proposed final MOA, especially in the circumstances here, does not provide meaningful mitigation of adverse impacts on historic assets flowing from the unlawful de facto abandonment, and instead undercuts historic preservation and the public interest in all future STB abandonment proceedings.

For purposes of communication with the City generally, please note that Peter Baker is no longer Corporation Counsel. He should be removed from service lists for the City. Brittany Murray is serving as Acting Corporation Counsel for the City. She should be substituted on service lists for the City. Her business address remains the same as her predecessor's. Her email is bmurray@jcnj.gov.

Respectfully submitted,

Charles H. Montange

Charles H. Montange
Law Offices of Charles H. Montange
426 NW 162nd St.
Seattle, WA 98177
(206) 546-1936
Fax: -3739
c.montange@frontier.com
For City et al.

11 March 2024

cc. commenting parties per STB email (by email)