



EI - 30367

March 8, 2021

Ms. Danielle Gosselin
Deputy Director
Office of Environmental Analysis
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

Ref: *Proposed Abandonment of Consolidated Rail Corporation's Harsimus Branch*
Jersey City, Hudson County, New Jersey
ACHP Connect Case #001682

Dear Ms. Gosselin:

On November 12, 2020, the Advisory Council on Historic Preservation (ACHP) provided comments to the Surface Transportation Board (STB or Board) on the first draft Memorandum of Agreement (MOA) for the referenced undertaking. The draft MOA was submitted as part of the STB's compliance with Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. § 306108) and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800) for this undertaking. While the STB has our comments on the draft MOA, we would like to take this opportunity to revisit our concerns relating to STB's statutory requirement to determine the applicability of Section 110(k) of the NHPA to its applicant's actions, and STB's proposed plan to make such a determination concurrent with the execution of the MOA.

Since 2016, the ACHP has requested STB determine whether Section 110(k) is applicable to the applicant, Consolidated Rail Corporation's (Conrail's) actions, as it relates to Conrail selling the Harsimus Branch rail line in Jersey City, New Jersey, prior to requesting STB's approval of the rail line abandonment. We understand that STB had to first determine the status of the segment in question as a rail line or a spur before it could determine its jurisdiction for the rail abandonment. Further, we understand that once the status of the rail line was confirmed, STB worked to identify historic properties in and around the line and determine whether any effects to historic properties occurred as a result of Conrail's actions. As we previously advised, we agree that these actions were appropriate steps for STB to take. However, at this time, we believe STB should have sufficient information to determine whether Conrail intentionally significantly adversely affected any historic properties as a result of its actions for the purpose of avoiding the requirements of Section 106. This determination regarding the applicability of Section 110(k) is critical. The NHPA prohibits STB from granting a permit or license to Conrail if Section 110(k) applies unless, after consultation with the ACHP, STB determines that circumstances justify granting such license. Therefore, before STB conducts any further Section 106 review for this undertaking, it needs to complete this Section 110(k) assessment and if necessary, consult with the ACHP regarding next steps.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

401 F Street NW, Suite 308 • Washington, DC 20001-2637
Phone: 202-517-0200 • Fax: 202-517-6381 • achp@achp.gov • www.achp.gov

By deferring its Section 110(k) determination until the proposed execution of the MOA, STB would create a procedural situation that is inconsistent with the statute and the regulations, which are clear that the federal agency should make this determination *before* continuing consultation, up to and including the resolution of adverse effects. We strongly recommend STB assess and document whether Section 110(k) applies in this situation and advise the ACHP and the other consulting parties accordingly before moving forward with any further Section 106 work for this undertaking.

We look forward to receiving STB's response to these matters. If you have any questions, please contact Ms. Sarah Stokely at (202) 517-0224, or via e-mail at sstokely@achp.gov.

Sincerely,



Jaime Loichinger
Assistant Director
Federal Permitting, Licensing, and Assistance Section
Office of Federal Agency Programs