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July 28, 2017

VIA E-FILING

Office of Environmental Analysis
Surface Transportation Board
Attn: Joshua Wayland
395 E Street, S.W.
Washington, D.C. 20472

Re: Cultural Resources Identification Report,
STB Docket No. AB 167 (Sub-No. 1189X)

Dear Mr. Wayland:

The purpose of this letter is to reply, on behalf of the LLCs,¹ to the comments to the Cultural Resources Identification Report ("Report") submitted by the New Jersey State Historic Preservation Office ("SHPO") on July 14, 2017 ("SHPO Comments").

The need for this reply arises from the somewhat confusing nature and content of the SHPO Comments, particularly its far-ranging requests for supplemental cultural resource evaluation by the Office of Environmental Analysis ("OEA"), as well as its submission of several opinions on material matters that are largely conclusory and devoid of meaningful analysis or support.

In order for OEA to have a more complete basis on which to properly respond to and address these new SHPO requests and opinions, and to ensure there is an adequate record, the LLCs respectfully submit this reply, and request leave to do so, if and as necessary.

¹ The LLCs consist of 212 Marin Boulevard, LLC.; 247 Manila Avenue, LLC; 280 Erie Street, LLC; 317 Jersey Avenue, LLC; 354 Cole Street, LLC; 389 Monmouth Street, LLC; 415 Brunswick Street, LLC; and 446 Newark Avenue, LLC.

1. SHPO's Supplemental Evaluation Requests

In its Comments, the SHPO in large part concurs with the Report's identification and assessment of affected cultural resources. However, in material respects and in a variety of areas, the SHPO suggests that extensive additional surveys and evaluation should be conducted and prepared in "future submissions" or supplemental "Report Addendum[s]." These requests include, but are not limited to expansive re-surveys, photos, and new recommendations on 12 well-established historic resources that have been thoroughly and adequately documented previously, as well as new intensive-level surveys for certain properties situated on the outskirts of the APE-Architecture boundaries. Such requests, if accepted, would likely take many months, if not longer, to complete, further extending a process that has already been unduly delayed.

Without addressing each and every request made by the SHPO for Report supplementation, it is clear that each of the new requests sought for additional surveying and documentation is unnecessary and unfounded.

First, on the SHPO's resurveying request, nowhere in its APE Report did OEA commit to conducting such an expansive resurveying initiative. To the contrary, the OEA specified at the outset that these "well-established" and "well-documented" properties and districts falling within the APE-Architecture "will not be resurveyed as part of this undertaking." See *Area of Potential Effects Report and Proposed Methodology for Section 106 Consultation, Conrail Harsimus Branch Abandonment* (STB Docket No. AB 167 (Sub-No. 1189X)), *City of Jersey City, Hudson County, New Jersey* (Sept. 2008) at 8-9. Significantly, the SHPO agreed at the time on the proposed APE, thanked the OEA for "the inclusion of over 100 photographs of the APE in the submitted report," and in no way suggested the need for re-surveying of these 12 known and well-documented historic properties. See SHPO letter to STB (dated December 23, 2008)(EI-16244). The SHPO has provided no valid basis for reopening of the previously agreed upon APE methodology and no explanation for its reversal of position.

Second, notwithstanding its prior support for the APE methodology, as a consulting party that has actively participated with the Board in the Section 106 process, the SHPO has had plenty of additional opportunities far in advance of the issuance of the Report to express any such concerns regarding

the scope, methodology, or level of effort in the study. In fact, it has taken advantage of these opportunities. As the STB's Report notes: "[p]reliminary results were presented to the ACHP, SHPO, and the consulting and interested parties at meetings held in 2016 in Jersey City and Washington, DC. This final survey report takes into account the comments received during and following those meetings." Report at 2-2. The SHPO's requests for supplementation at this late stage are clearly belated.

Third, the SHPO's individual requests for Report supplementation deviate from well-established rules and guidance and at least border on the frivolous. For example, the supplemental intensive-surveys requested concern structures and properties on streetscapes that are not eligible for historic listing or properties that are clearly ineligible for Section 106 surveying.² The SHPO also requests "photokeys" for numerous streetscapes, even though it clearly already knows the streetscapes and local geography well as it admits that it has sent its personnel on a number of site visits for Section 106 review purposes.

Fourth, the governing Section 106 rules require the Agency to "make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey." 36 C.F.R. 800.4(b)(1). Advisory Council on Historic Preservation ("ACHP") guidance clarifies that "it is important to note that the regulations **do not require** identification of all properties." ACHP, "Meeting the 'Reasonable and Good Faith' Identification Standard in Section 106 Review" at 2 (emphasis in original) (located at www.achp.gov/docs/reasonable_good_faith_identification.pdf). Instead, the Board is required only to undertake "**some level of effort**" – at a minimum, a review of existing information on

² The two buildings identified by the SHPO in Attachment E of its Comments for additional intensive surveying are located on Marin Boulevard at the edges of the APE and far removed from the Embankments, and part of a streetscape which the SHPO agrees is ineligible for listing in the Registers. See SHPO Comments at 8 ("I concur with the reviewed report that the Luis Munoz Marin Boulevard Streetscape (Bay Street to Second Street) is not eligible for listing in the New Jersey or National Registers of Historic Places.") The other property identified by the SHPO for intensive surveying, 384 Manila Avenue, is located on the outskirts of the Harsimus Cove Historic District, and appears to consist of the Philippine Plaza Memorial, founded in 1992 – clearly an ineligible resource well inside of 50 years of age.

historic properties that are located or may be located within the APE. (36 CFR § 800.4(a)(2))." *Id.*

The ACHP further emphasizes what "a reasonable and good faith identification effort does **not** require":

- The 'approval' of a SHPO/THPO or other consulting party. The ACHP, SHPO/THPO and other consulting parties advise and assist the federal agency official in developing its identification efforts, but do not dictate its scope or intensity.
- Identification of every historic property within the APE. . . .
- Investigations outside of, or below, a properly documented APE. The Section 106 process does not require that the agency search for all historic properties in a given area. . . .
- Ground verification of the entire APE. . . .

Id. at 3 (emphasis in original). The SHPO would thus have the OEA do exactly what is not required, and thus create additional unwarranted delay.

The STB's Report is extremely thorough and comprehensive, consisting of 653 pages of intensive evaluation conducted over a prolonged, multi-year period. It unquestionably constitutes and far exceeds "a reasonable and good faith identification effort." The SHPO's expansive requests for supplementation are plainly excessive and unnecessary under the governing regulations and ACHP guidance.

Respectfully, the SHPO's belated and expansive requests for Report supplementation are patently unreasonable and by all appearances constitute a thinly veiled attempt to unnecessarily prolong the Section 106 review process by many months, if not longer. If accepted, the SHPO's requests would be fundamentally unfair to the participating parties in this docket, and lead to an abuse of the Agency's resources and its environmental review procedures, and the governing Section 106 rules and guidance.

2. SHPO's Opinions and Recommendations

As part of its Comments, the SHPO disagrees with the Report findings and opines that the right-of-way of the Embankment should be "eligible to be listed in the New Jersey and National Registers as the **Pennsylvania Railroad Harsimus Branch Right-of-**

Way Historic District." SHPO Comments at 6 (emphasis in original). The SHPO bases its opinion solely on selective public comments documenting at the end of the right-of-way near Waldo a few "surviving features of the line." SHPO Comments at 6. However, the cited additional documentation is nominal and unremarkable.

The Report already fully acknowledges that some of these railroad features remain present, but after further analysis, and considering that "[m]ost of the tracks, ties, ballast, bridges and other structures were removed in the mid-1990s, at least in part at the request of Jersey City and before Conrail sought abandonment authority," it soundly concluded that, "[w]ith significant losses in its original design, materials, workmanship, and setting, the PRR Harsimus Branch no longer conveys the feeling of a major railroad operation." Report at 5-17. No new documented railroad feature has been provided warranting a reversal of the Report's sound findings.

As part of its Comments, the SHPO also opines that "there is adequate rationale for expanding the boundaries of both the Hamilton Park Historic District and the Harsimus Cove Historic District to include the Embankment, which would then contribute to the significance of both districts." However, the SHPO fails to provide any explanation, let alone a reasoned explanation, of what the "adequate rationale" might be, other than simply stating that its opinion is provided "[a]fter carefully evaluating public comments, both for and against expanding the district boundaries." This lack of reasoned analysis or support for its findings on this controversial subject is remarkable and surprising, especially in light of the prior historical reviews and associated National Register nominations and the views of City officials that have thoroughly examined this matter and unanimously found that the historical record does not support including the Embankment in those districts. (Sheehan 1997 and Sullebarer and Arms 1987).³ The SHPO also fails to recognize or

³ See also Historic Resources Evaluation Sixth Street Railroad Embankment Study, Jersey City, New Jersey, Prepared for City of Jersey City by Louis Berger & Associates, Inc. (May, 1999) (contained in EI-26138, tab 10) ("The historic Pennsylvania Railroad Embankment along Sixth Street was not included in the adjacent Harsimus Cove National Register designation for sound reasons (Sullebarger and Arms 1987). The historic district consists primarily of 19th century residences that predate the construction of the 1901-02 embankment and most were built prior to and without regard for the freight rail line that was established circa 1870. Rather than forming a link with either the Harsimus Cove or Hamilton Park Historic Districts, the embankment was built with total disregard for the surrounding residential

address the additional extensive reasoning set forth in the LLCs' comments (EI-26114) (at 11-15) demonstrating that the Embankment is not a contributing resource to these historic districts.

* * *

As demonstrated herein, the SHPO's expansive requests for Report supplementation, presumably subject to further review and comment, are unwarranted and directly contrary to the governing rules and Section 106 guidance, would unnecessarily further delay the already long-protracted Section 106 review process, and should not be permitted or accepted. Additionally, as noted, several of the SHPO opinions and recommendations are one-sided, mistaken, and provide little or no reasoned analysis or support, and should be rejected.

Notwithstanding these glaring deficiencies, please be assured that the LLCs continue to remain willing to engage in a productive dialogue with the OEA, the SHPO, the City of Jersey City, and Conrail that will lead to a final resolution of Section 106 issues that ensures the implementation of appropriate historic resource protections, that ends the continuing punitive proceeding delays, and makes the best use of public and private resources.

The LLCs appreciate this opportunity to reply, and respectfully request that this reply be included as part of the record in this proceeding.

Very truly yours,



Michele R. Donato

MRD:dp

cc: Mrs. Vickie Hyman (via email)
Ray Obssuth, Esq. (via email)

neighborhoods."); July 7, 1999 letter of the Jersey City Mayor to New Jersey SHPO (contained in EI-26138, tab 9) ("[r]ather than forming a link with either the Harsimus Cove or Hamilton Park Historic Districts, the Embankment was built with total disregard for the surrounding residential neighborhoods, its purpose being to transport freight as efficiently as possible through this area to the waterfront yards. Construction of the Harsimus Branch freight line and the Embankment specifically created a barrier, rather than a link, between the historic residential neighborhoods.")