

BOROUGH OF QUARRYVILLE



300 Saint Catherine Street
Quarryville, Pennsylvania 17566

717-786-2101

DOCUMENT FOLDER

717-786-2404

DOCKETED

SEP 22 1997

Honorable Louis G. Cocheres
Administrative Law Judge
Office of Administrative Law Judge
PA Public Utility Commission
North Office Building
P.O. Box 3265
Harrisburg, PA 17105-3265

September 16 1997

RECEIVED

SEP 18 1997

HARRISBURG, PA
PUBLIC UTILITY COMMISSION

PA P.U.C. OFFICE

97 SEP 19 AM 9:04

RECEIVED

RE: Application of Consolidated Rail Corporation, Docket No. A-111016

Dear Judge Cocheres:

As you are aware, Quarryville Borough has a keen interest in the above proceeding. A piece of the Conrail property that is proposed to be transferred by Conrail lies within our Municipal boundaries. We are concerned regarding the taking of that land by our neighbor, Providence Township.

Quarryville Borough has positioned itself as a holdout in this proceeding, not to prevent the Municipality from acquiring this land, but to assure that the residents and taxpayers of Quarryville Borough would be sheltered to the best of our abilities once this land was transferred.

While Quarryville pioneered the idea of an Intermunicipal Agreement to maintain the continuity of this corridor, we are aware the PUC's primary interest is the proper future maintenance of the crossings. This, too, is a priority to Quarryville Borough.

Quarryville Borough was diligently working with Conrail, and nearing an amicable settlement that we felt gave our residents the best future protection we could hope for. When Providence Township offered to Conrail to take the property from Conrail as an addition to what already existed in their township, this severely impacted our ability to negotiate with Conrail. Quarryville Borough does not want, nor did we ever plan, to be in the position of the deal breaker regarding these proceedings. We have negotiated this transaction from day one as elected officials whom our residents depend on to look out for their best interest.

We have on several occasions had discussion with Providence Township regarding the Borough taking ownership of the land within our Borough, only to result in conditions that we did not feel comfortable settling on. This interest by the Borough still exists. We intend to discuss this matter with our neighbor, Providence Township. We are opposed to the transfer of the land within our Municipality to an entity other than Quarryville Borough.

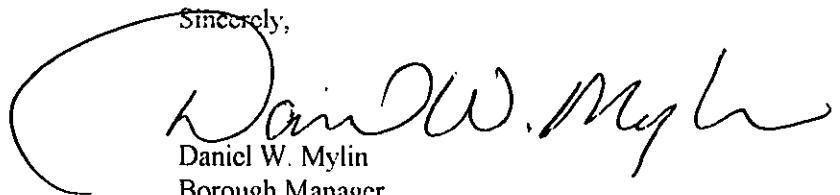
As you know, the agreement that you are currently reviewing requires the preapproval of the Lancaster County Planning Commission. The Borough is hoping it will not become necessary to contest this matter before the Planning Commission, which, if successful, could place a significant cloud on any action you may take. This

Honorable Louis G. Cocheres
September 16, 1997
Page 2

action also may nullify all of the hard work you, and all the municipalities including Quarryville, have put into this transaction. We wanted to alert you to our concerns regarding the transferring of this property to any municipality or entity other than Quarryville Borough, so that you may take them into consideration in your deliberations.

Since our ability to negotiate with Conrail has been removed, it is hopeful that in dealing solely with our neighbor, Providence Township, that an agreement can be reached which will not include any additional requirements over and above that which was originally negotiated with Conrail.

Sincerely,

A handwritten signature in cursive script, appearing to read "Daniel W. Mylin". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Daniel W. Mylin
Borough Manager
On behalf of Quarryville Borough Council

cc: All parties

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

REP



ORIGINAL

DOCUMENT
FOLDER

Office of Chief Counsel
Forum Place
555 Walnut Street - 9th Floor
Harrisburg, Pennsylvania 17101-1900
Telephone No. (717) 787-3128
Fax No. (717) 772-2741

September 24, 1997

James J. McNulty, Acting Prothonotary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RECEIVED
97 SEP 24 AM 11:00
JAMES J. MCNULTY
PROTHONOTARY'S OFFICE

Re: Application Docket No. A-00111016

Dear Acting Prothonotary McNulty:

Enclosed for filing please find the original and nine (9) copies of the Department's Exceptions in the captioned matter.

I hereby certify that a copy of the Department's Exceptions have been sent to all parties of record, as indicated on the Certificate of Service.

Very truly yours,

Gina M. D'Alfonso
Assistant Counsel in Charge

2200/GMD:sls

cc: William D. Pickering, P.E. (Attn: Harvey I. Cassell)
District 8-0 (Attn: Raymond W. Britcher)
Parties of Record

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In Re: Application of : Docket No. A-00111016
Consolidated Rail Corporation : Docket No. C-00913256
for the abolition of thirty- :
one crossings of the Enola :
Branch, LC:201323, MP 3.5 to :
MP 27.0, Sub. No. 1095X, :
Harrisburg Division, Lancaster: :
County, Pennsylvania and :
consolidated case re: :
Hamper Road, Bart Township :

DOCKETED
SEP 24 1997

PROTHONOTARY'S OFFICE
P.A.P.U.C.

97 SEP 24 AM 11:00

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**DOCUMENT
FOLDER**

EXCEPTIONS TO THE RECOMMENDED DECISION OF THE
ADMINISTRATIVE LAW JUDGE ISSUED SEPTEMBER 17, 1997

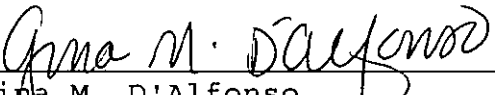
AND NOW, comes the Commonwealth of Pennsylvania, Department of Transportation (Department), by and through its counsel, Gina M. D'Alfonso, Assistant Counsel in Charge and offers the following exceptions:

1. The Department respectfully excepts to paragraph 118 of the Proposed Order. The Department agrees to do the work itemized in proposed ordering paragraph 118. However, the Department is cognizant of the one (1) year period of time for completion of the work and is of the opinion and belief that the Department will be unable to complete these items of work within the one (1) year period of time. The Department is respectfully requesting that the Order of the Commission allow two (2) years for the completion of the work itemized in proposed ordering paragraph 118.

2. The Department excepts to paragraph 123 of the Proposed Order. The Department agrees to furnish all material and do all work necessary as ordered. However, the Department is cognizant of the one (1) year period of time for completion of the work and is of the opinion and belief that the Department will be unable to complete the work within the one (1) year period of time. The Department is respectfully requesting that any Order of the Commission allow two (2) years for the completion of the work itemized in the proposed ordering paragraph 123.

WHEREFORE, the Department respectfully requests that this Honorable Commission grant its exceptions and enter an order consistent with the Exceptions of the Department.

Respectfully submitted,



Gina M. D'Alfonso
Assistant Counsel in Charge
Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel-9th Floor
Forum Place, 555 Walnut Street
Harrisburg, Pennsylvania 17101-1900
Telephone No. (717) 787-3128
Fax No. (717) 772-2741

Dated: September 24, 1997

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Exceptions, were served upon the parties listed below by 2-day, postage prepaid this 24th day of September, 1997.

Office of Special Assistants
Room 210
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

David A. Salapa, Esquire
PA PUC Legal Division
Bureau of Transportation & Safety
Box 3265
Harrisburg, PA 17105-3265

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Department of Conservation and Natural Resources
9th Floor RCSOB
P.O. Box 8767
Harrisburg, PA 17105-8767

David C. Eaton, Esquire
Consolidated Rail Corporation
Nauman, Smith, Shissler and Hall
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P.O. Box 840
Harrisburg, PA 17108-0840

Kenneth Zielonis, Esquire
Lancaster County
Stevens and Lee
208 N. 3rd Street, Suite 310
P.O. Box 12090
Harrisburg, PA 17108-2090

Carol K. Palmoski
Lancaster County Planning Commission
50 N. Duke Street
Lancaster, PA 17608

Scott T. Wyland, Esquire
Susan J. Smith, Esquire
Malatesta Hawke & McKeon
P.O. Box 1778
Harrisburg, PA 17105

Joyce A. Nettke, Esquire
Friends of Atglen Susquehanna Trail, Inc.
10 S. Decatur Street
P.O. Box 27
Strasburg, PA 17579

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C-TEC Corporation
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Wilkes Barre, PA 18703-3000

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Pennsylvania Power & Light Co.
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Kate Connor-Barand, Esquire
Solicitor, West Sadsburg Township
20 North Church Street
West Chester, PA 19380

James Landis, Chairman
West Sadsburg Township
Board of Supervisors
R.D. 1, Box 404
Parkesburg, PA 19365

H. Joseph Little Chairman
Eden Township Board of Supervisors
489 Stony Hill Road
Quarryville, PA 17566

Dennis Moore
National Railroad Passenger Corporation (AMTRAK)
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Washington, DC 20002

Scott K. Wasserkrug, Esquire
Consolidated Rail Corporation
2001 Market Street 16A
P.O. Box 41416
Philadelphia, PA 19101-1416

Roger Fickes, Director
Bureau of State Parks
Department of Environmental Resources
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Harrisburg, PA 17105-8551

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Law Department
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Floor 32N
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Solicitor's Office
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West Chester, PA 19380-3070

Robert Chambers, Construction Engineer
Sue Hinbach
Suburban Cable Company of Lancaster
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Lancaster, PA 17608

Brian MacEwen
Coatesville Water Authority
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Coatesville, PA 19320

John Chase
Quarryville Water Authority
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Quarryville, PA 17566

Samuel Morris, Vice President
Legal Department
202 Shoemaker Road
Pottstown, PA 19464

Daniel Mylin, Borough Manager
Barbara Tollinger, Secretary
Borough of Quarryville
330 St. Catherine Street
Quarryville, PA 17566

Nicholas Yoder, Chairman
Sadsbury Township
1077 White Oak Road
Christiana, PA 17509

John Wiker, Chairman
Conestoga Township Supervisors
P.O. Box 98
Conestoga, PA 17516

Ray Marvin, Chairman
Bart Township Supervisors
46 Quarry Road
Quarryville, PA 17566

Alan P. Novac, Esquire
Conrad, O'Brien, Gellman & Rohn
Coatesville Water Authority
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West Chester, PA 19382

Joseph J. Kenna, Commissioner
Karen L. Martynick
Chester County
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Suite 512
West Chester, Pa 19380-3066

William T. Keen, Esquire
Keen, Keen & Good
1 Bondsville Road
Downingtown, Pa 19355

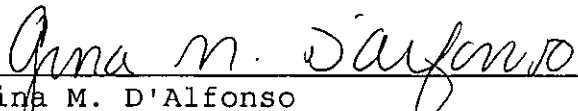
James H. Thomas, Esquire
Blakinger, Byler & Thomas, PC
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Lancaster, PA 17603

Frank Peiffer, Chairman
Martic Township
370 Steinman Farm Road
Pequea, PA 17565

Gerald Duvall, Chairman
Providence Township Supervisors
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New Providence, PA 17509

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William C. Crosswell, Esquire
Morgan, Hallgren, Crosswell & Kane, P.C.
700 North Duke Street
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Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel-9th Floor
Forum Place, 555 Walnut Street
Harrisburg, Pennsylvania 17101-1900
Telephone No. (717) 787-3128
Fax No. (717) 772-2741

Dated: September 24, 1997

RECEIVED
97 SEP 24 AM 11:00
F.A.P.U.C.
PROTHONOTARY'S OFFICE

COMMONWEALTH OF PENNSYLVANIA
Department of Conservation and Natural Resources


009189

September 22, 1997
97 SEP 26 PM 12:40

RECEIVED
PROTHONOTARY'S OFFICE

SUBJECT: A-00111016
Recommended Decision
Issued: September 17, 1997
Enola Branch
Lancaster County

TO: Office of Prothonotary File Room
Public Utility Commission

FROM: Edwin L. Deaton 
Chief
Park Planning Section
Resources Management and
Planning Division
Bureau of State Parks
Department of Conservation and
Natural Resources

In response to your recent request, attached is a PUC "Acknowledgment of Receipt & Acceptance of Service" form with signature and date acknowledging the Bureau of State Parks' receipt of the subject notice.

If you have any questions, please contact Eric Milliron at 717-783-3343.

Attachment

OVER SIZED DOCUMENTS

97 SEP 22 AM 9:20

RECEIVED

PA. P.L.S.
ROTHSCHILD'S OFFICE

ERDM
3 CRK
MEK

NO.	DATE	REMARKS
2	6/24/97	REVISE DESCRIPTION
1	6/19/97	REVISE DESCRIPTION

SEAL:

Donald A. Lindzey
DONALD A. LINDZEY, P.L.S.
PA PLS #042325-R

DOCUMENT
FOLDER

DOCKETED
SEP 26 1997

LEGEND

- PARCEL NUMBER
- DISTANCE ESTABLISHED BY THIS SURVEY
- DISTANCE ESTABLISHED BY COORDINATING PROPERTY PARCEL NUMBER
- 6"x6" STONE MONUMENT
- CONCRETE MONUMENT
- IRON PIPE
- CATENARY POLE
- GUY
- RAILROAD TRACKS
- ROCK CUT
- DEED BOOK
- DEED DATED
- DEED RECORDED
- PAGE

**RETRACEMENT / BOUNDARY SURVEY
 FOR PARTIAL CONVEYANCE TO
 CONESTOGA TOWNSHIP SITUATE IN
 CONESTOGA TOWNSHIP
 LANCASTER COUNTY, PENNSYLVANIA**

GENERAL NOTES

POWER TRANSMISSION LINES, CATENARY POLES, AND APPURTENANCES ARE COVERED BY A UTILITY EASEMENT PREVIOUSLY GRANTED TO THE RAILROAD PASSENGER CORPORATION ("AMTRAK")

DES: D.A.L.	DR: K.W.G.
CK: D.A.L.	IR:
DATE: MAY 19, 1997	
PROJECT NO. : 52110.73	
DRAWING NAME : TITLE.DWG	
SHEET NUMBER: 1 OF 4	

EXHIBIT
 CONRAIL NO.
 9

Joint Rails to Trails Policy
Department of Transportation and
Department of Conservation and Natural Resources

RECEIVED
 JUN 13 1997
 PA PURI HARRISBURG

Background

Pennsylvania is at a critical juncture regarding the issue of how we deal with the disposition of structures on available railroad corridors including bridges, tunnels and other crossings. These structures are essential in maintaining the linear integrity of available railroad corridors for recreational trail use. Once the Pennsylvania Public Utility Commission orders the removal of a structure, the resultant permanent loss often destroys the continuity of the corridor. While the removal of the structure enhances the safety of the highway public, it may present new and serious safety concerns due to the interfacing of the motoring public and trail user. Complicating the issues are concerns relating to the physical integrity of the railroad structure and the dangers imposed by at-grade crossings both for highway and trail users.

Both the Department of Conservation and Natural Resources and the Department of Transportation recognize the importance of preservation of these structures. However, neither department currently has adequate resources to preserve and maintain these structures for future recreational use.

Governor Tom Ridge proclaimed June 1, 1996 as Pennsylvania Trails Day and states that "Trail corridors and their users contribute to the economic well-being of Pennsylvania's tourism and outdoor recreation industries. It is time to recognize our trails as valued resources." If the railroad structures remain intact, our system of greenways will be enhanced, the considerable financial investment made to construct these bridges and tunnels will be protected, our rich railroad heritage will be preserved, and the recreation and tourism economy of the Commonwealth will be bolstered.

Proposed Policy

It shall be the policy of the Commonwealth of Pennsylvania to promote the preservation of railroad bridges, tunnels and other structures on available railroad corridors when they contribute to and enhance the recreational trail development and safety to the traveling public. If these railroad structures remain intact, our system of greenways will be enhanced, the considerable financial investment made to construct these bridges and tunnels will be protected, our rich industrial heritage will be preserved, and the recreation and tourism industry of the Commonwealth will be bolstered. These railroad structures should remain intact if it can be demonstrated that the recreational opportunities are feasible and warranted and resources are available to satisfy safety concerns and to provide future maintenance.

In carrying out this policy, consideration must be given to the safety of both the highway and the trail user. The Department of Conservation and Natural Resources and the Department of Transportation will work closely with sponsors and potential owners to promote the preservation of structures on available priority corridors.

October 16, 1996

Fr. 1054

LATE FILED EXHIBIT

Serton No. 2 TOTAL P. 02

REP

COMMONWEALTH OF PENNSYLVANIA

MEMORANDUM

DATE: September 19, 1997

SUBJECT: Application of Conrail, A-00111016
Late Filed Exhibits

TO: Agnes Brewster,
Supervisor, File Room

FROM: Louis G. Cocheres
Administrative Law Judge

Louis G. Cocheres

Attached are two late filed exhibits, Sexton No. 2 and Conrail No. 9, which were admitted to the record by my recommended decision, dated September 15, 1997. Please file them with the above captioned case accordingly.

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PAUL J. COCHERES
PROTHONOTARY'S OFFICE

ORIGINAL
BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

**DOCUMENT
FOLDER**

Application of Consolidated Rail Corporation for the :
Abolition of 31 Crossings of the Enola Branch, LC 201323, :
MP 3.5 to MP 27.0, Sub. No. 1095X, Harrisburg, : Docket No. A-00111016
Division, Lancaster County :

Board of Supervisors of Bart Township v. :
Consolidated Rail Corporation, Pennsylvania Department :
of Transportation and Lancaster County, et al. Alleges :
unsafe bridge carrying Township Road T-774 (Lamparter :
Road) over and above the tracks of Conrail. Bart : Docket No. C-00913256
Township requests Respondents immediately make :
repairs. Respondents are: Consolidated Rail Corporation, :
Pennsylvania Department of Transportation and County :
of Lancaster. :

DOCKETED
OCT 6 1997

**BART, CONESTOGA, MARTIC,
PROVIDENCE AND SADSBUARY TOWNSHIPS'
REPLIES TO EXCEPTIONS**

Scott T. Wyland
Susan J. Smith
Malatesta Hawke & McKeon
Harrisburg Energy Center
100 N. 10th Street
P. O. Box 1778
Harrisburg, PA 17105-1778
(717) 236-1300

Counsel for Bart, Conestoga, Martic,
Providence and Sadsbury Townships

DATED: October 3, 1997

PA:JUC:
PROTHONDARY'S OFFICE

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I. INTRODUCTION

Bart, Conestoga, Martic, Providence and Sadsbury Townships ("Townships"), by their counsel, hereby reply to Exceptions filed by the Historic Preservation Trust of Lancaster County, Inc. ("HPT"), Friends of the Atglen-Susquehanna Trail, Inc. ("FAST") and the Borough of Quarryville ("Quarryville").

This case involves an application by Conrail to abolish 31 rail/highway crossings along the Enola Low Grade Line in the above-named townships. Both HPT and FAST intervened, opposing the application. Quarryville waived its right to appeal and present evidence at the hearing and did not file briefs. On September 17, 1997, the Pennsylvania Public Utility Commission ("Commission") issued ALJ Louis G. Cocheres' 195-page Recommended Decision. FAST, HPT, Quarryville Borough, Conrail and PennDOT filed timely Exceptions to the Recommended Decision.

II. OVERVIEW OF EXCEPTIONS

The Townships take no position with respect to the Exceptions filed by Conrail and PennDOT. The Townships oppose the Exceptions filed by HPT, FAST and Quarryville. The Stipulations of Settlement represent a comprehensive solution to a complex problem – the disposition of some 31 rail-highway crossings along Conrail's former Enola Branch – a solution that balances issues of public safety arising from the abolishment of the crossings and other considerations, including historic preservation and rail-trail development.

FAST, the "rejected suitor" that unsuccessfully sought to purchase the former rail line from Conrail, presents largely formalistic exceptions to the Recommended Decision.

All of FAST's exceptions advance its view that all or most of the bridges ought to remain in place to allow for immediate trail use. The Recommended Decision carefully balances the realities of each crossing - the safety issues, expenses and condition of the crossing structures - and recommends adoption of the Stipulations among almost all of the parties. FAST's disappointment in not acquiring the rail line, and the associated pecuniary possibilities for its tiny active membership, should not be permitted to cloud the tremendous achievement wrought by this settlement. FAST's exceptions are not principled objections to the reasonableness of the settlement; they are the complaints of unsuccessful advocates for an extreme viewpoint - that entities other than themselves should construct, fund and maintain a recreational trail to FAST's liking.

HPT's eleventh-hour intervention precluded it from offering evidence in the proceeding. The exceptions of HPT address the Pennsylvania Historical and Museum Commission's evidence in the case. While HPT objects to the Recommended Decision's evaluation of the historical evidence in the case, HPT overlooks the fact that PHMC's witness testified at length at hearing and, most important, that PHMC has not filed exceptions to the Recommended Decision. HPT, a private organization, is not charged with presenting the historical perspective; PHMC, the governmental entity with that responsibility, did not intervene and does not except to the Recommended Decision.

Quarryville voluntarily withdrew from the settlement process, but was offered an opportunity to re-enter the settlement in writing by the Townships. Quarryville declined and, for more than a year, neglected to participate in negotiating, drafting and defending the settlement. Quarryville waived its right to appear and present evidence at hearing. Quarryville did not brief the case or oppose the settlement. Quarryville's exceptions

raise, for the first time on this record, Quarryville's latest change in position about rejecting, and then neglecting, its opportunity to accept the contractual responsibilities of settlement. Quarryville's ability to responsibly accept the settlement terms is a local political question more properly addressed by the Townships and Quarryville after conveyance of the line. Quarryville has been treated fairly by all parties, and it does not raise any valid legal objection to the Recommended Decision. .

The ALJ applied the proper analyses to the legal issues presented and evaluated the enormous factual record in a fair and balanced manner. The exceptions of FAST, HPT and Quarryville should be rejected, and the Recommended Decision should be adopted in its entirety.

III. REPLIES TO EXCEPTIONS

A. REPLIES TO EXCEPTIONS OF FAST

Reply to Exception No. 1: In Exception No. 1, FAST asserts that the Stipulation of Settlement should be rejected "in light of the Governor's policy favoring preservation of bridges for trail use." However, as conceded by FAST, the Governor's policy is yet under development and is not controlling in this pending matter.

The thrust of the Governor's policy is that all entities involved in the abandonment or abolition of rail/highway crossings ought to consider the impact of their actions upon the ability to develop recreational trail use of former railway lines. The safety of the motoring public must also be considered. The Governor's draft policy does not, itself, change the analysis to be used by the Commission in cases such as this. As the Recommended Decision recognizes, there are complex issues at play which prevent the

application of a blanket rule, such as that advocated by FAST. While the Recommended Decision squarely addresses the conflict between the safety of the motoring public and the preservation of crossing structures, it mandates the removal of structures only where safety requires it.¹

The existence of a policy announced by the Governor does not require the rejection of the Recommended Decision or a blanket order that each and every structure, including unsafe structures, must remain in place to the detriment of the safety of motoring public, particularly where trail development is speculative. In addition, even where crossing structures will be removed, later modifications can make crossings safe for both trail users and motorists.

Reply to Exception No. 2: In Exception No. 2, FAST asserts that the ALJ incorrectly held that Conrail had no further obligation under the National Historic Preservation Act “Section 106 process.” The ALJ properly found that the question of compliance with NHPA is moot.

At pages 99-103 of the Recommended Decision, the ALJ thoroughly reviewed the legal implication of the interaction between the National Historic Preservation Act and the Interstate Commerce Commission. The Recommended Decision correctly concludes that 49 C.F.R. §1105.8 limits to 330 days the effect of any delaying conditions imposed under the NHPA in rail abandonment cases. Correctly concluding that the NHPA issue is

¹ In fact, the Recommended Decision requires the demolition of crossing structure No. 2, an above-grade bridge that the settling parties did not seek to have removed. (Recommended Decision (“R.D.”), p. 105.)

moot, the Recommended Decision notes Conrail's record willingness voluntarily to complete the NHPA "Section 106" process.² Moreover, the ICC's compliance with the NHPA simply does not deprive the Pennsylvania Public Utility Commission of its jurisdiction over rail/highway crossings under the Public Utility Code.³

Reply to Exception No. 3: In Exception No. 3, FAST asserts that the ALJ should not have disregarded a motion filed by FAST with the Surface Transportation Board, seeking to reopen the STB abandonment proceedings. The fact that FAST filed a mere request to reopen the record before the Surface Transportation Board is of no effect on this Commission's ability to rule upon the instant settlement. What is most significant is that FAST's motion before the STB was never granted.

Reply to Exception No. 4: In Exception No. 4, FAST asserts that the ALJ erroneously concluded that the Pennsylvania History Code requirements have been met. FAST disregards that Brenda Barrett specifically advised the ALJ that her testimony in this proceeding would constitute the input of her agency in this matter.

FAST notes in its exceptions that the ALJ refused to receive the testimony of Randolph Harris, Executive Director of the Historic Preservation Trust ("HPT") of Lancaster County. The Commission should note that the ALJ properly refused HPT permission to enter this evidence due to its extremely late intervention in the proceedings

² R.D., pp. 102-103.

³ 66 Pa. C.S. §2702

and that HPT and FAST have not objected to that ruling. Thus the Commission should disregard any complaint by FAST that the record is devoid of testimony from Mr. Harris.

The ALJ reviewed thoroughly (beginning at p.156 of the Recommended Decision) the application of the Historic Preservation Act. The ALJ noted that PHMC was not a party, yet testified through a witness.⁴ The PHMC witness conceded that her testimony amounted to the opportunity of the PHMC to make input into the decision of the Public Utility Commission concerning the application to abandon the crossings.⁵ Most significantly, the PHMC has not intervened or filed exceptions to the Recommended Decision urging approval of the Stipulations of Settlement. Certainly, a private corporation should not be permitted to use the Pennsylvania Historic Preservation Act to torpedo a comprehensive, mediated settlement where the PHMC itself does not actively oppose the Recommended Decision.

Reply to Exception No. 5: In Exception No. 5, FAST argues that the Recommended Decision and proceedings did not adequately identify and evaluate alternatives to minimize any adverse impacts as mandated by the Trails Act. To the contrary, the Recommended Decision expressly addresses not only application of the Rails to Trails Act, but also considers the various alternatives for the disposition of each crossing structure. Beginning at p.150 of the Recommended Decision, the ALJ thoroughly discussed the Act:

The Trails Act not does not mandate the retention of any, all or a maximum number of grade separated crossings FAST fails

⁴ R.D., p. 158.

⁵ R.D., p. 158.

to recognize that at each crossing there are a minimum of three alternatives: 1) do nothing, 2) demolish the structure and 3) alter the crossing (e.g., post warning signs). Simply because the settlements and this decision analyze and emphasize one of these alternatives does not mean that the other alternatives were ignored. I hasten to add that the failure of the settlements to accept FAST's plan is also not grounds for claiming that the other alternatives were ignored, either.

(R.D., pp. 153-154.) The record demonstrates that much time and effort was expended on examining alternatives at each crossing. FAST actively advocated alternative crossing depositions at each crossing. FAST's Exception No. 5 is without merit.

Reply to Exception No. 6: In Exception No. 6, FAST argues that the placement of the "production burden for alternatives" was unfairly placed upon FAST. FAST complains that the ALJ did not identify alternatives but in fact pointed out FAST's failure to provide any coherent and meaningful alternatives to the stipulation of settlement. FAST confuses the Recommended Decision's thorough examination of alternative dispositions for each of the crossing structures (the Trails Act analysis) with its own failure to provide any comprehensive alternative to the settlement reached by the vast majority of the parties in the case.

FAST's own evidence in the case (promoting retention of the structures) eviscerates its argument that those alternatives were not considered. The alternative disposition of the crossing structures urged by FAST were not ignored, they simply were not chosen. The failure by FAST to convince the settling parties and the ALJ of the wisdom of its desires as to any given structure is not grounds to reject the Recommended Decision.

Reply to Exception No. 7: In Exception No. 7, FAST asserts that the ALJ misinterpreted FAST's engineering witness' testimony concerning the life span of subject bridges. FAST makes its argument out of context. At p. 140 of the Recommended Decision, the ALJ demonstrates that FAST's own engineering witness proves that the Townships should retain discretion to demolish crossing structures in the future, should their rehabilitation prove to be financially unwieldy as compared to demolition of the structure. How the ALJ interpreted the engineer's unclear statements is beside the point. The fact that each of the crossing structures has a finite life span militates in favor of the Townships' retention of discretion into the future. The Townships incorporate by reference their position, quoted at pp. 139-140 of the R.D., as though fully set forth.

Reply to Exception No. 8: In Exception No. 8, FAST asserts that the approval of the Stipulation as worded to include "demolition" within the term "maintenance" without any criteria required is not in the public interest. As is set forth above in reply to FAST Exception No. 7, the Townships incorporate by reference their argument cited at pp. 139-140 of the Recommended Decision, as well as the ALJ's conclusion at pp. 140-141 that the "inclusion of demolition within the ambit of maintenance [is] well founded and in the public interest. FAST's concern is simply misplaced."

Reply to Exception No. 9: In Exception No. 9, FAST asserts that the Stipulation is not supported by substantial evidence where the record does not show the relationship between the sums of money to be paid by Conrail to the townships and actual

maintenance/demolition costs. Through the settlement, the Townships agree to retain maintenance responsibility for the crossing structures allowed to remain in place. The imposition of future maintenance responsibilities by the Commission upon government entities such as the Second Class Townships here at issue, does not take into consideration ability to pay. Instead, the Commission relies upon the ability of the municipalities involved to collect and apply tax funds to their bridge maintenance responsibilities, much the way the Townships care for the many miles of roadway within their borders. Thus, any inquiry into the money paid by Conrail to the Townships under the settlement is irrelevant. To the extent that it is deemed relevant, the payment by Conrail to the Townships of sums relating to the maintenance responsibilities assumed by the Townships under the settlement can only weigh in favor of the adoption of the settlement. The fact that the amounts provided by Conrail were acceptable to the Townships is substantial evidence alone of the Townships' abilities to withstand the financial effects of their agreement.

Reply to Exception No. 10: In Exception No. 10, FAST asserts that Quarryville does not agree with Providence Township's acquisition of the Quarryville section of the line. The Townships adopt herein by reference their argument set forth at pp. 141-143 of the Recommended Decision. The Townships have filed a motion to strike the letter imprudently attached to FAST's exceptions.⁶ Whatever the effect of

⁶ This attempt by FAST to spirit into the record additional evidentiary material is typical of its continuous flouting of the Commission's procedural rules.

Quarryville's new-found interest in the Conrail conveyance, it does not amount to a reason that the Recommended Decision should be rejected or modified in any way.

Reply to Exception No. 11: In Exception No. 11, FAST excepts to the approval of the Stipulation for the Martic Forge Trestle without requiring any maintenance, rehabilitation or other plan for the trestle. Incredibly, FAST contends that it is not in the public interest to let two Second Class Townships assume maintenance responsibility to foreclose the dismantling and removal of the Martic Forge Trestle. At pp. 137-138 of the Recommended Decision, the ALJ points to the terms of a fully-executed inter-municipal agreement between Martic and Conestoga Townships concerning the future maintenance of the Martic Forge Trestle. Given that the parties could have agreed in their settlement to the demolition of the trestle, it is particularly ironic that FAST here excepts to terms of the Settlement that allow at least the possibility for the bridge to remain in place in the future, under the care of two responsible Townships, who have as a start a \$450,000 endowment by Conrail for preservation. Given that FAST has admitted on this record that it has no funds itself for any bridge maintenance (let alone sufficient funds to care for a bridge of this size), FAST's position with respect to this exception is nothing short of incomprehensible.

Reply to Exception No. 12: In Exception No. 12, FAST excepts to the approval of the Stipulation as it involves Eden Township. Eden Township is a full participant in the settlement and has adopted the Stipulation through official governmental action. It certainly was within Eden Township's discretion to not present a

witness at hearing. In fact, FAST failed to cross-examine Mr. Peiffer, a witness for Martic Township, during the many hours of hearings. Having waived the cross-examination of one Township witness, FAST has no basis to argue that the Recommended Decision should be rejected merely because Eden Township did not voluntarily testify at hearing. Moreover, FAST itself could have, but did not, call a witness from Eden Township.

Reply to Exception No. 13: In Exception No. 13, FAST objects to the portion of the Recommended Decision granting Bart's request to have the Commission's September 25, 1993 Order rescinded. FAST's exception is in the nature of a request for relief and is inappropriately framed in this pleading. FAST also argues that the disposition of crossing structures within Bart Township results in a series of mild grades that FAST finds objectionable. The Townships adopt by reference their argument concerning Bart Township's Petition to Amend found at pp.107-114 of the Recommended Decision. The ALJ completely and thoroughly analyzed the issue raised in FAST's Exception No. 13, applied the appropriate legal standard and reached the correct result. Moreover, FAST does not and will not own the tract and has no standing to object to the slope of the earth at the crossing or the absence of a dangerous culvert.

Reply to Exception No. 14: In Exception No. 14, FAST asserts that the interest in the trail concept by the Townships is not supported by the total record. FAST's hair-splitting with respect to record evidence concerning the Townships' support for a trail is completely irrelevant. The support by the Townships, individually or as a

group, of a “trail project” is not a necessary element of the adoption by this Commission of the Recommended Decision. No amount of argument (or antagonistic litigation) by FAST can foist FAST’s vision of a particular type of trail development upon the settling parties. FAST’s heavy-handed tactics aside, interest in a trail would be better fostered by FAST through education and cooperation rather than specious legal arguments. The subtext of this litigation is not so much trail versus no trail; it is the attempt by a small group of trail supporters to impose their imperfect “vision” upon Township residents most affected by the trail development issue. While that debate and controversy is interesting and worthwhile, it is not properly before the Commission in the context of evaluation of this Recommended Decision. Trail support is not a legal requirement under the Public Utility Code for the disposition of rail/highway crossing structures.

B. REPLIES TO EXCEPTIONS OF HPT

Reply to Exception No. 1: HPT assigns error concerning the failure of FAST and HPT to provide specific record evidence concerning the disposition of various crossings and their historical registrations, if any. Citations to arguments of counsel are inappropriate and certainly are not factual evidence in support of HPT’s exceptions. The Townships adopt by reference their previous discussions of the application of the Pennsylvania Historic Preservation Act in Reply to FAST Exception No. 4 above.

Reply to Exception No. 2: In Exception No. 2, HPT asserts that the ALJ failed to comply with the provisions of the Pennsylvania History Code. Contrary to HPT’s assertion, Ms. Brenda Barrett, Director of the Bureau for Historic Preservation,

clearly stated on the record that her testimony was sufficient to constitute the requisite input of the PHMC in this proceeding. Had the PHMC concluded otherwise, it would have formally intervened in the proceeding. However, it did not and Ms. Barrett's testimony was available to the Commission only upon subpoena of FAST.

The Townships adopt by reference their discussion of the application of the Pennsylvania Historic Preservation Act noted above. Moreover, the PHMC's opinions, which were presented in this case and are part of the formal record, are advisory and are not binding upon the Public Utility Commission. See discussion at p. 157 of the Recommended Decision. O'Connor v. Pennsylvania Public Utility Commission, 582 A.2d 427, 432 (Pa. Cmwlth. 1990).

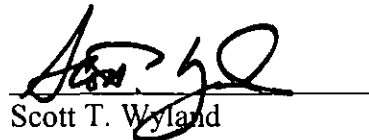
C. REPLIES TO EXCEPTIONS OF QUARRYVILLE

The Townships adopt by reference their discussion of the legal authority of Providence Township to accept the donation by Conrail of property located in the Borough of Quarryville as set forth in reply to FAST's Exception No. 10, above. Quarryville Borough's true motivations are shown in its Footnote No. 1 on page 3, wherein it sets forth a veiled threat to litigate unrelated subdivision issues in an attempt to support the current version of its ever-changing position with respect to this case. Quarryville has had every opportunity to participate in this settlement and in the proceedings and briefing of this matter. Quarryville has waived all of those opportunities and should not now be heard to oppose the Recommended Decision because it slept on its rights. Conveyance by Providence to Quarryville may be addressed and resolved later, outside the context of this proceeding.

WHEREFORE, Bart, Conestoga, Martic, Providence and Sadsbury Townships respectfully request that the Exceptions of the Historic Preservation Trust of Lancaster County, Inc., Friends of the Atglen-Susquehanna Trail, Inc. and the Borough of

Quarryville to the Recommended Decision of Administrative Law Judge Louis G. Cocheres issued on September 17, 1997, addressed herein, be denied.

Respectfully submitted,



Scott T. Wyland
Susan J. Smith
Malatesta Hawke & McKeon, LLP
100 N. 10th Street
P. O. Box 1778
Harrisburg, PA 17105-1778
(717) 236-1300

DATED: October 3, 1997

Counsel for Bart, Conestoga, Martic,
Providence and Sadsbury Townships

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the Replies to Exceptions of the Townships upon the persons named and in the manner indicated below.

VIA Hand-Delivery:

James McNulty, Prothonotary
Pennsylvania Public Utility Commission
P.O. Box 3265
Room 206, North Office Building
Harrisburg, PA 17105-3265

Gina M. D'Alfonso, Esquire
Assistant Counsel in Charge,
Utility Section
Department of Transportation
513 Transp. & Safety Building
Harrisburg, PA 17120

VIA First Class Mail:

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Pennsylvania Public Utility
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Eden Twp. Board of Supervisors
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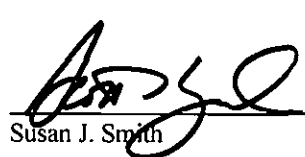
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PROthonotary's OFFICE



Susan J. Smith

DATED: October 3, 1997

ORIGINAL

THE LAW FIRM OF

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WILLIAM T. HAWKE
KEVIN J. McKEON
LOUISE A. KNIGHT
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HARRISBURG, PA 17105

October 3, 1997

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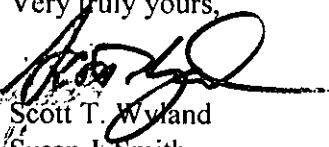
James McNulty, Prothonotary
Pennsylvania Public Utility Commission
P.O. Box 3265
Room 206, North Office Building
Harrisburg, PA 17105-3265

RE: Application of Consolidated Rail Corporation for the Abolition of 31 Crossings of the Enola Branch, LC: 201323, MP 3.5 to MP 27.0, Sub. No. 1095X, Harrisburg Division, Lancaster County; Docket Nos. A-00111016 and C-00913256; **MOTION TO STRIKE EXHIBIT A OF FAST'S EXCEPTIONS AND TOWNSHIPS' REPLIES TO EXCEPTIONS**

Dear Mr. McNulty:

Enclosed for filing with the Commission are the original and three (3) copies of Bart, Conestoga, Martic, Providence and Sadsbury Townships' ("Townships") Motion to Strike Friends of the Atglen - Susquehanna Trail, Inc.'s Exhibit A to its Exceptions filed in the above-captioned matter. Also enclosed is the original and nine (9) copies of the Townships' Replies to Exceptions.

A copy of these documents have been served on all parties of record pursuant to the attached Certificate of Service. Please direct any questions regarding this filing to us. Thank you for your attention to this matter.

Very truly yours,

Scott T. Wyland
Susan J. Smith

STW/SJS/deh
Enclosure
cc: Frank Peiffer
John Wiker
Ray Marvin
Nicholas Yoder
Gerald Duvall

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ORIGINAL

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge Louis G. Cocheres

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PETITIONARY'S OFFICE**

Application of Consolidated Rail Corporation for the :
Abolition of 31 Crossings of the Enola Branch, LC 201323, :
MP 3.5 to MP 27.0, Sub. No. 1095X, Harrisburg, : Docket No. A-00111016
Division, Lancaster County :

Board of Supervisors of Bart Township v. :
Consolidated Rail Corporation, Pennsylvania Department :
of Transportation and Lancaster County, et al. Alleges :
unsafe bridge carrying Township Road T-774 (Lamparter :
Road) over and above the tracks of Conrail. Bart : Docket No. C-00913256
Township requests Respondents immediately make :
repairs. Respondents are: Consolidated Rail Corporation, :
Pennsylvania Department of Transportation and County :
of Lancaster.

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**MOTION OF BART, CONESTOGA, MARTIC,
PROVIDENCE AND SADBURY TOWNSHIPS
TO STRIKE APPENDIX A OF FAST'S EXCEPTIONS**

AND NOW COMES, Bart, Conestoga, Martic, Providence and Sadsbury Townships ("Townships") and move to strike Exhibit A to the Exceptions filed by Friends of the Atglen - Susquehanna Trail, Inc. ("FAST"), and aver as follows:

1. The record in this proceeding was closed on June 12, 1997, following two days of hearings held on June 11-12, 1997. Prior to the close of the record, the presiding officer Administrative Law Judge Louis G. Cocheres expressly cautioned the parties regarding the improper attachment of outside-the-record documents to briefs.¹

2. On September 17, 1997, Administrative Law Judge Cocheres issued his Recommended Decision in the above-captioned matter.

3. On September 24, 1997, FAST filed its Exceptions to the Recommended Decision of ALJ Cocheres. Attached to and made part of FAST's Exceptions was Exhibit A, a two-page letter of the Borough of Quarryville. Exhibit A to FAST's Exceptions is not a part of the record below.

4. The Borough of Quarryville waived its right to participate in the proceeding and to file briefs.² FAST has no standing to assert a position on behalf of the Borough of Quarryville.

5. FAST has made no attempt to seek approval to reopen the record for the admission of Exhibit A. FAST's attempt to insert this document into the record at this late stage is improper, violates ALJ Cocheres' express directive regarding

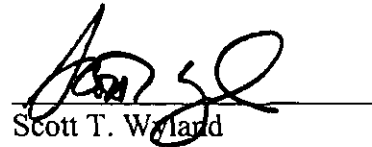
¹ June 12, 1997 Notes of Testimony at pp. 6-7.

² The Borough of Quarryville filed Exceptions to which the Townships have concurrently replied asserting that such exceptions are untimely, improper and irrelevant.

outside-the-record material and deprives the other parties of their procedural due process protections. FAST's conduct further demonstrates its continued flouting of Commission's procedural rules throughout this proceeding.

WHEREFORE, Bart, Conestoga, Martic, Providence and Sadsbury Townships respectfully request that Exhibit A to the Exceptions filed by Friends of the Atglen - Susquehanna Trail, Inc. be stricken.

Respectfully submitted,



Scott T. Wylard
Susan J. Smith
Malatesta Hawke & McKeon, LLP
100 N. 10th Street
P. O. Box 1778
Harrisburg, PA 17105-1778
(717) 236-1300

Counsel for
Bart, Conestoga, Martic, Providence
and Sadsbury Townships

DATED: October 3, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the Motion of Bart, Conestoga, Martic, Providence and Sadsbury Townships to Strike Appendix A of FAST'S Exceptions upon the persons named and in the manner indicated below.

VIA Hand-Delivery:

Honorable Louis Cocheres
Pennsylvania Public Utility
Commission
Room G-08, North Office Building
Harrisburg, PA 17120

Gina M. D'Alfonso, Esquire
Assistant Counsel in Charge,
Utility Section
Department of Transportation
513 Transp. & Safety Building
Harrisburg, PA 17120

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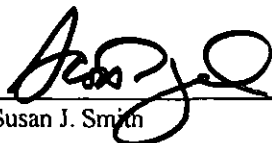
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Lancaster, PA 17604-4686

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Susan J. Smith

DATED: October 3, 1997

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

ORIGINAL



Office of Chief Counsel
Forum Place

555 Walnut Street - 9th Floor
Harrisburg, Pennsylvania 17101-1900
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October 3, 1997

James J. McNulty, Acting Prothonotary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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PROTHONOTARY'S OFFICE

Re: Application Docket No. A-00111016

Dear Acting Prothonotary McNulty:

Enclosed for filing please find the original and nine (9) copies of the Department's Reply Exceptions in the captioned matter.

I hereby certify that a copy of the Department's Reply Exceptions have been sent to all parties of record, as indicated on the Certificate of Service.

Very truly yours,

Gina M. D'Alfonso

Gina M. D'Alfonso
Assistant Counsel in Charge

2200/GMD:sls

cc: William D. Pickering, P.E. (Attn: Harvey I. Cassell)
District 8-0 (Attn: Raymond W. Britcher)
Parties of Record

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

In Re: Application of : Docket No. A-00111016
Consolidated Rail Corporation : Docket No. C-00913256
for the abolition of thirty- :
one crossings of the Enola :
Branch, LC:201323, MP 3.5 to :
MP 27.0, Sub. No. 1095X, :
Harrisburg Division, Lancaster: :
County, Pennsylvania and :
consolidated case re: :
Lamparter Road, Bart Township :

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COMMISSION
PROTHONOTARY'S OFFICE**

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REPLY EXCEPTIONS TO THE EXCEPTIONS FILED TO THE
RECOMMENDED DECISION OF THE ADMINISTRATIVE LAW JUDGE
ISSUED SEPTEMBER 17, 1997

AND NOW, comes the Commonwealth of Pennsylvania, Department
of Transportation (Department), by and through its counsel, Gina
M. D'Alfonso, Assistant Counsel in Charge and offers the
following Reply Exceptions:

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1. In response to the exceptions filed by the Historic
Preservation Trust of Lancaster County, Inc., the Department
replies that the record in this matter is replete with testimony
from the Pennsylvania Historic and Museum Commission regarding
the Enola Secondary Line. The Administrative Law Judge has, in
his recommended decision, reviewed all of the evidence and the
law before him and has concluded that the opinions of
Pennsylvania Historic and Museum Commission are advisory and not
binding on this Commission. The evidence and the case law cited

by the parties support this conclusion by the Administrative Law Judge. As such, the exceptions of the Historic Preservation Trust of Lancaster County are without merit.

2. In response to Exception 1 of FAST, the Department replies that the record is clear that the two agencies charged with implementing the Governor's policy, the Department of Transportation and the Department of Conservation and Natural Resources, both support the stipulations of settlement. It must be noted that the Governor's policy recognizes the safety to the travelling public. The policy further recognizes that "railroad structure should remain intact if it can be demonstrated that recreational opportunities are feasible and warranted and resources are available to satisfy safety concerns and to provide future maintenance". Sexton Exhibit 2. The structures recommended for removal in the stipulation of settlement between the Department and Consolidated Rail Corporation are those structures where safety concerns could not be satisfied absent the removal of the structures. As such, the recommended decision of the Administrative Law Judge is not contrary to the Governor's policy on Rails to Trails.

3. In response to Exception 4 of FAST, the Department incorporates Reply Exception 1 as if set forth completely herein.

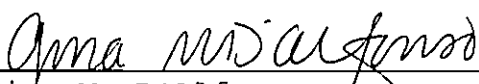
4. In response to exceptions 5 and 6 of FAST, the Department replies that in his Recommended Decision the Administrative Law Judge has an extensive analysis of the Rails to Trail's Act. The Administrative Law Judge has reached a conclusion supported by the law and the evidence. As such, exceptions 5 and 6 of FAST are without merit.

5. In response to the Exceptions filed by Quarryville Borough, Quarryville Borough had the opportunity to testify at the hearing and to offer evidence regarding the Stipulations of Settlement, and chose not to do so. The concerns raised in their Exceptions would have been more appropriately raised through testimony.

6. The Department does not oppose the Exceptions filed by Consolidated Rail Corporation.

WHEREFORE, the Department of Transportation respectfully requests that the Commission consider its Reply Exceptions and deny those Exceptions of the Historic Preservation Trust of Lancaster County, Inc., Friends of the Atglen Susquehanna Trail, and Quarryville Borough.

Respectfully submitted,



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Fax No. (717) 772-2741

Dated: October 3, 1997

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Reply Exceptions, were served upon the parties listed below by first class mail, postage prepaid this 3th day of October, 1997.

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Dated: October 3, 1997

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James J. McNulty, Acting Prothonotary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

Re: Application Docket No. A-00111916

Dear Sir:

I enclose herewith an original and nine copies of Reply Exceptions of Consolidated Rail Corporation to the Exceptions of Quarryville Borough. I am supplying a copy of the Reply Exceptions directly to the Judge as well as to the various other parties.

Yours very truly,

Benjamin C. Dunlap, Jr.
Benjamin C. Dunlap, Jr.

BCDjr/jai

Enclosures

cc: The Honorable Louis G. Cocheres
cc: Parties of Record

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ORIGINAL

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Consolidated	:	
Rail Corporation for the	:	
abolition of thirty-one	:	
crossings of the Enola Branch,	:	Docket Nos. A-00111016
Harrisburg Division, Lancaster	:	
County,	:	
	:	
Board of Supervisors of Bart	:	
Township	:	
	:	
v.	:	Docket No. C-00913256
	:	
Consolidated Rail Corporation	:	
and the Pennsylvania Depart-	:	
ment of Transportation and	:	
Commissioners of the County	:	
of Lancaster, et al	:	

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REPLY EXCEPTIONS OF CONSOLIDATED RAIL
CORPORATION TO EXCEPTIONS OF
QUARRYVILLE BOROUGH

AND NOW comes CONSOLIDATED RAIL CORPORATION ("Conrail"),
by and through its counsel NAUMAN, SMITH, SHISSLER & HALL, to
file the following Reply Exceptions to the Exceptions of the
Borough of Quarryville in the above matter.

1. The Exceptions of the Borough of Quarryville should be
stricken in their entirety, as the Borough was not represented

by an attorney in filing the Exceptions, as required by 52 Pa. Code §1.21(b).

2. The Exceptions of the Borough of Quarryville should be stricken in their entirety in that the Borough failed to follow the requirements of 52 Pa. Code §5.533(b) in its Exceptions.

3. If the Commission determines that the Exceptions of the Borough of Quarryville should not be stricken in their entirety for the foregoing reasons, Conrail excepts to that portion of the Borough's Exceptions stating that ALJ Cocheres did not rely on an objective standard in concluding that the requirements of 53 Pa. C.S. §66502 had been met in regard to Providence Township's acquisition of that portion of the subject former rail line located within the municipal limits of the Borough of Quarryville. To the contrary, under the aforementioned statutory provision, discretion is given to township supervisors in regard to the acquisition of real property. The Providence Township Ordinance upon which ALJ Cocheres based his determination is evidence of the Township's valid exercise of its discretion. Recommended Decision at 141 through 144. Therefore, the Borough of Quarryville's exception in this regard is without merit and should be denied.

4. If the Commission determines that the Exceptions of the Borough of Quarryville should not be stricken in their entirety, Conrail excepts to that portion of the Borough of Quarryville's Exceptions regarding an alleged lack of assurance that crossings located within Quarryville Borough will be properly maintained. As noted and discussed by ALJ Cocheres, only three and all are recommended to be altered in place. Recommended Decision at 143 through 144. Crossing No. 12 (State Street) will become PennDOT's responsibility, while Crossing No. 13 (Lime Street) and Crossing No. 14 (Church Street) will become the responsibility of Providence Township. Id. ALJ Cocheres found "more than sufficient evidence of record to support the conclusion that the settlements adequately protect the public safety at the crossings in question." Id. at 144. Buttressing ALJ Cocheres' conclusion regarding public safety at these crossings is the fact that the Commission will retain jurisdiction to enforce its orders regarding future maintenance of the structures and Quarryville Borough may file a complaint to enforce the Commission's Order

should Providence Township ever fail to uphold its obligations to maintain the structures located within the Borough. Therefore, the exception of Quarryville Borough in this regard is without merit and should be denied.

Respectfully submitted,

NAUMAN, SMITH, SHISSLER & HALL

BY:

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David C. Eaton, Esquire
Supreme Court ID#07169

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Counsel for Consolidated Rail Corporation

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Judy A. Imes, Secretary to
Benjamin C. Dunlap, Jr., Esquire

Dated: October 3, 1997

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October 3, 1997

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DOCUMENT
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PROTHONOTARY'S OFFICE

Re: Application Docket No. A-00111916

Dear Sir:

I enclose herewith an original and nine copies of Reply Exceptions of Consolidated Rail Corporation to the Exceptions of Historic Preservation Trust of Lancaster County, Inc. I am supplying a copy of the Reply Exceptions directly to the Judge as well as to the various other parties.

Yours very truly,

Benjamin C. Dunlap, Jr.
Benjamin C. Dunlap, Jr.

BCDjr/jai

Enclosures

cc: The Honorable Louis G. Cocheres
cc: Parties of Record

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Consolidated	:	
Rail Corporation for the	:	
abolition of thirty-one	:	
crossings of the Enola Branch,	:	Docket Nos. A-00111016
Harrisburg Division, Lancaster	:	
County,	:	
	:	
Board of Supervisors of Bart	:	
Township	:	
	:	
v.	:	Docket No. C-00913256
	:	
Consolidated Rail Corporation	:	
and the Pennsylvania Depart-	:	
ment of Transportation and	:	
Commissioners of the County	:	
of Lancaster, et al	:	

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REPLY EXCEPTIONS OF CONSOLIDATED RAIL
CORPORATION TO EXCEPTIONS OF
HISTORIC PRESERVATION TRUST
OF LANCASTER COUNTY, INC.

AND NOW comes CONSOLIDATED RAIL CORPORATION ("Conrail"),
by and through its counsel NAUMAN, SMITH, SHISSLER & HALL, to
file the following Reply Exceptions to the Exceptions of the
Historic Preservation Trust of Lancaster County, Inc. ("HPT")
in the above matter.

1. Conrail excepts to HPT's Exception No. 1, which alleges that the Recommended Decision fails to acknowledge the historic significance of the entire property at issue. To the contrary, ALJ Cocheres duly considered the historical significance of the Enola line and the structures located thereon throughout the Recommended Decision, particularly at pages 98-103 and 156-159. In addition, the Recommended Decision retains the majority of the crossing structures at issue and recommends demolition only of those crossings at which public safety is an issue. Recommended Decision at 154. Therefore, HPT's Exception No. 1 is without merit and should be dismissed.

2. Conrail excepts to HPT's Exception No. 2, which contends that the Recommended Decision fails to comply with the provisions of the Pennsylvania History Code (Act 72 of 1988, 37 Pa.C.S. §§102 and 508). Ms. Brenda Barrett, Director of the Bureau for Historic Preservation, Pennsylvania Historical and Museum Commission ("PHMC"), admitted on the record that her direct testimony and responses to cross-examination provided the opportunity for PHMC to have input into the Commission's decision-making process regarding the abandonment application. Recommended Decision at 158-159, citing N.T. at 779.

Furthermore, HPT admits in its own Exceptions that PHMC's opinions are not binding on other state agencies. HPT's Exceptions at 3. Therefore, the Commission has complied with the applicable provisions of the History Code by providing Ms. Barrett the opportunity to testify in these proceedings and considering her opinions in the Recommended Decision.

Moreover, contrary to the assertions of HPT, the Commission does have in place procedures and policies regarding compliance with §508 of the History Code, 37 Pa.C.S. §508, which includes the opportunity for PHMC to participate in Commission proceedings, as outlined in PUC counsel's letter of February 27, 1996, to HPT, which is attached to HPT's Motion to Intervene as Exhibit "E". The record is likewise clear that the structures at issue are not "under the ownership or control" of the Commission. The Commission neither owns nor controls any of the crossing structures. Conrail's present responsibilities for the crossings are being assumed by the various parties to the settlements, subject to approval of the PUC of the settlement agreements. Conrail Exhibits 6A and 6B. The

Recommended Decision therefore does not make contradictory conclusions regarding compliance with the History Code, and HPT's Exception No. 2 is without merit and should be dismissed.

Respectfully submitted,

NAUMAN, SMITH, SHISSLER & HALL

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Dated: October 3, 1997

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October 3, 1997

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97 OCT -3 PM 3:38

James J. McNulty, Acting Prothonotary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

Re: Application Docket No. A-00111016

Dear Sir:

I enclose herewith an original and nine copies of Reply Exceptions of Consolidated Rail Corporation to the Exceptions of Friends of the Susquehanna Trail, Inc. I am supplying a copy of the Reply Exceptions directly to the Judge as well as to the various other parties.

Yours very truly,

Benjamin C. Dunlap, Jr.

Benjamin C. Dunlap, Jr.

BCDjr/jai

Enclosures

cc: The Honorable Louis G. Cocheres
cc: Parties of Record

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Consolidated :
 Rail Corporation for the :
 abolition of thirty-one :
 crossings of the Enola Branch, : Docket Nos. A-00111016
 Harrisburg Division, Lancaster :
 County, :
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 v. : Docket No. C-00913256
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 Consolidated Rail Corporation :
 and the Pennsylvania Depart- :
 ment of Transportation and :
 Commissioners of the County :
 of Lancaster, et al :

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REPLY EXCEPTIONS OF CONSOLIDATED RAIL CORPORATION TO EXCEPTIONS OF THE FRIENDS OF THE SUSQUEHANNA TRAIL, INC.

AND NOW comes CONSOLIDATED RAIL CORPORATION ("Conrail"), by and through its counsel NAUMAN, SMITH, SHISSLER & HALL, to file the following Reply Exceptions to the Exceptions of the Friends of the Susquehanna Trail, Inc. ("FAST") in the above matter.

1. FAST's Exception No. 1, stating that "[i]n light of the Governor's policy favoring preservation of bridges for trail use, the Stipulation should be rejected," should be

dismissed in that it fails to except to or cite any portion of the Recommended Decision, as required by 52 Pa. Code §5.533(b). If FAST's Exception No. 1 is not rejected by the Commission for the foregoing reason, Conrail excepts to this Exception on the basis that ALJ Cocheres did consider and accommodate the Governor's policy on trail development in reaching his Recommended Decision. Recommended Decision at 150-156. FAST's Exception No. 1 is therefore without merit and should be dismissed.

2. Conrail excepts to FAST's Exception No. 2, which states that "[t]he Administrative Law Judge ("ALJ") incorrectly held Conrail has no further obligation under the National Historic Preservation Act '§106 process.'" ALJ Cocheres based his conclusion that the National Historic Preservation Act ("NHPA") §106 process was "moot" on the fact that the statutory time period of 330 days had run between the entry of the ICC stay on February 14, 1990, and the ICC's final Order allowing abandonment on April 14, 1993. Recommended Decision at 102. FAST cites no authority for its contention that the §106 condition "remains in effect until completed or discharged." Furthermore, FAST ignores the clear directive in Ex Parte No. 55 (Sub-No. 22A) Implementation of Environmental Laws, 375 ICC Reports 807, 827 (July 19, 1991) (Conrail Exhibit No. 7), which

states that "[a]ny delaying conditions that we impose under NHPA in rail abandonment cases will not extend beyond the 330-day statutory time period for abandonment proceedings, unless modified or earlier removed." FAST does not even assert that the 330-day statutory time period was modified to provide an extended period for the §106 process, nor was such modification ever made. Therefore, ALJ Cocheres correctly determined that the stay imposed to conduct the §106 process was vacated by operation of the ICC regulation codified at 49 C.F.R. §1105.8(f) and the aforementioned ICC Order. See also then-applicable 49 U.S.C. §10904 cited in the aforementioned ICC Order. FAST's Exception No. 2 is therefore without merit and should be dismissed.

3. Conrail excepts to FAST's Exception No. 3, which states that "[t]he ALJ should not have disregarded that a motion filed by FAST with the Surface Transportation Board, seeking to reopen the STB abandonment proceedings, remains pending." FAST's Exception No. 3 should be dismissed in its entirety, as the referenced motion and any exhibits attached thereto are not a part of the record in this proceeding. Merely serving a copy of the motion on the parties to this proceeding does not make it a part of the record. See 52 Pa. Code §5.402. In addition, ALJ Cocheres correctly considered and determined that the Commission's jurisdiction is not

dependant upon the ICC's authorization of abandonment of the subject line. Recommended Decision at 98-103. By way of further answer, Conrail incorporates herein its Reply Exception No. 2 above. For these reasons, FAST's Exception No. 3 is without merit and should be dismissed.

4. Conrail excepts to FAST's Exception No. 4, which states that "[t]he ALJ erroneously concluded that the Pennsylvania History Code (37 Pa.C.S. Section 501 et seq.) requirements have been met." As cited by ALJ Cocheres, FAST's own witness, Ms. Brenda Barrett, Director of the Bureau for Historic Preservation and an attorney, admitted on the record that her participation in these proceedings satisfied the requirements of the Pennsylvania History Code. Recommended Decision at 158-159, citing N.T. at 779. In addition, ALJ Cocheres correctly determined that the opinions of the Pennsylvania Historical and Museum Commission ("PHMC") are merely advisory and not binding on the Commission. Recommended Decision at 156-159. Therefore, FAST's exception in this regard is without merit and should be dismissed.

5. Conrail excepts to FAST's Exception No. 5, which states that "[t]he Decision and proceedings resulting in approval of the Stipulations did not adequately identify and

evaluate alternatives to minimize any adverse impacts as mandated by the Trails Act." To the contrary, as discussed in the Recommended Decision at 150-156, FAST's participation in these proceedings "injected the rails-to-trails issue into the case and made 'consideration' of the trail issue unavoidable." Id., 154-155. ALJ Cocheres noted that simply because FAST's plan was not adopted does not mean that it was not considered. Id., 153-154. At each of the ten crossings which ALJ Cocheres recommends be removed, there were "valid safety reasons of record" forming the basis for his decision. Id. at 154, 104-126. Therefore, FAST's Exception No. 5 is without merit and should be dismissed.

6. Conrail excepts to FAST's Exception No. 6, which states that "FAST strongly excepts to the placement of the production burden for alternatives solely on the trail group." As stated by ALJ Cocheres, FAST was given the opportunity to present its alternative plan for development of the line and to allow it to oppose the plan put forth in the settlement agreements. FAST's plan was duly considered by ALJ Cocheres and rejected as an alternative to the settlements. Recommended Decision at 153-155. By way of further answer, Conrail incorporates herein its Reply Exception No. 5 above. Therefore, FAST's Exception No. 6 is without merit and should

be dismissed.

7. Conrail excepts to FAST's Exception No. 7, which states that "[t]he ALJ misinterpreted Engineer Mark Wilson's testimony on the life span of the subject bridges." To the contrary, the evidence upon which ALJ Cocheres based his conclusions on pages 140-141 of the Recommended Decision was an exhibit introduced into the record by FAST as part of Mr. Wilson's written direct testimony, which speaks for itself. Id., citing Wilson Ex. B, Future Rehabilitation & Replacements. Therefore, FAST's Exception No. 7 is without merit and should be dismissed.

8. Conrail excepts to FAST's Exception No. 8, which states that "[a]pproval of the Stipulation as worded to include demolition within the term maintenance without any criteria required, is not in the public interest." ALJ Cocheres thoroughly considered the maintenance versus demolition issue at pages 138-141 of the Recommended Decision. Based on the testimony of FAST's own witness, Engineer Mark Wilson, he correctly concluded that Paragraph 12.5 of the Stipulation with the Townships (Conrail Ex. No. 6A) to be well founded and in the public interest. FAST's Exception No. 8 is therefore without merit and should be dismissed.

9. Conrail excepts to FAST's Exception No. 9, which states that "[a]pproval of the Stipulation is not supported by substantial evidence where the record does not show the relationship between the sums of money to be paid by Conrail to the townships and actual maintenance/demolition costs." FAST's alleged concern as to whether the townships are receiving a windfall or shortfall from Conrail is irrelevant in regard to approval of the Stipulation with the townships. Where the townships have agreed to assume maintenance/demolition responsibilities, and are so ordered by the Commission, the Commission will retain jurisdiction to enforce its orders in this regard. Whether any particular township is acquiring sufficient funds under the Stipulation to fulfill its obligations in this regard was lawfully determined by township officials, which necessarily included the opportunity for public input from residents. See 65 P.S. §272 et seq. Therefore, FAST's Exception No. 9 is without merit and should be dismissed.

10. Conrail excepts to FAST's Exception No. 10, which states that "Quarryville does not agree with Providence Township's acquisition of the Quarryville section of the line." The letter upon which FAST bases this exception, which is attached to its Exceptions as Exhibit "A", is not a part of the record and should be disregarded in its entirety. Furthermore,

ALJ Cocheres noted in the Recommended Decision that Quarryville Borough voluntarily chose not to participate in the settlements and had been given notice and an opportunity to object to the conveyance by Conrail to Providence Township of two of the crossing structures located within the Borough. The Borough did not take advantage of its opportunity to object. Recommended Decision at 141-142. Therefore, FAST's Exception No. 10 is without merit and should be dismissed.

11. Conrail excepts to FAST's Exception No. 11, which states that "FAST excepts to the ALJ approving the Stipulation for Martic Forge without requiring any maintenance, rehabilitation or other plan for this huge trestle." Addressing this exact concern, ALJ Cocheres stated that "[c]ontrary to FAST's assertions and given the preliminary stages of trail development which are reported in this record, the townships are not required to have a 'plan' for the preservation of this bridge." Recommended Decision at 138. He also found that FAST ignored the contents of the agreement between Martic and Conestoga Townships, in which they agreed to "be equally responsible for the maintenance, repair and removal of the Trestle and all costs and expenses related thereto.'" Id., citing Ex. TWP 8, p. 2, ¶1. He likewise cited Martic and Conestoga's commitment to the responsibilities set

forth in the townships' agreement with Conrail. Id., citing Conrail Ex. 6A, p. 10, ¶8. Therefore, FAST's Exception No. 11 is without merit and should be dismissed.

12. Conrail excepts to FAST's Exception No. 12, which states that "FAST excepts to the approval of the Stipulation as it involves Eden Township." FAST here contends that Eden Township's portion of the Stipulation was not introduced through a witness subject to cross-examination, and therefore should not be approved. FAST has waived any objection it might have had in this regard by failing to raise it at the hearing. In addition, FAST is disingenuous in raising this exception, as two of the crossings located within Eden Township No. 9, at Bushong Road and No. 11 at Hess Road, will be abolished in place with the township assuming future maintenance responsibilities. Recommended Decision at 33-34, 37-39. However, the crossing regarding which FAST expresses concern, Crossing No. 10 at Pumping Station Road, concerns a state road, not a township road. PennDOT witnesses were available for cross-examination regarding that crossing. Therefore, FAST's Exception No. 12 is without merit and should be dismissed.

13. Conrail excepts to FAST's Exception No. 13, which states that "FAST excepts to that portion of the Decision and Order granting Bart's request to have the Commission's October

25, 1993 Order rescinded." ALJ Cocheres gives due consideration to Bart Township's request to modify the October 15, 1993, Commission Order to accommodate the removal of the Lamparter Road structure and its replacement with fill, pursuant to the Townships' Stipulation with Conrail, and relieve Bart Township of its obligation under the 1993 Order to install a culvert under the roadway. Recommended Decision at 107-114. Contrary to FAST's assertion, it is irrelevant whether the determination of changed circumstances from 1993 justifying the modification was based upon a then-anticipated ownership of the line by FAST or some other entity. The circumstances still changed. For this reason as well as the reasons considered within the aforementioned portion of the Recommended Decision, FAST's Exception No. 13 is without merit and should be dismissed.


14. Conrail excepts to FAST's Exception No. 14, which states that "[i]nterest in the trail concept by the Townships is not supported by the total record." To the contrary, ALJ Cocheres thoroughly considered the issue of potential future use of the Enola line as a trail throughout his Recommended Decision, particularly at Pages 150-156, thus fulfilling the obligation of the Trails Act and the Governor's policy. He noted that conveyance of the line to the townships, pursuant to

the settlements, serves to enhance potential future trail use by retaining the continuity of the corridor. Id. at 152, citing Conrail B, pp. 15 through 17; Accord, N.T. 592-594. Therefore, FAST's Exception No. 14 is without merit and should be dismissed.

Respectfully submitted,

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Dated: October 3, 1997

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TO: Chery W. Davis, Diector
Office of Special Assistants

FROM: James McNulty
Acting Secretary.

**DOCUMENT
FOLDER**

**Application of Consolidated Rail Corporation...
Board of Supervisors of Bart Twp
v.
Consolidated Rail Corporation, PennDOT & Lancaster County, et al.**

Copies of the Recommended Decision have been served upon all parties of interest.

Exceptions have been filed by:

**Consolidated Rail Corporation
PennDOT
Friends of the Suquehanna Trail (Fast)
Quarryville Borough
Historic Preservation Trust of Lancaster County**

Reply Exceptions have been received from:

**Consolidated Rail Corporation
Penn DOT
Bart, Conestoga, Martic, Providence, Sadsbury TWPS**

cc: Annette Shelley