

ORIGINAL

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COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

Board of Supervisors of Bart Township v. Consolidated Rail Corporation, Pennsylvania Department of Transportation and County of Lancaster et al. Alleges unsafe bridge carrying Township Road T-774 (Lamparter Road) over and above the tracks of Conrail. Bart Township requests respondents immediately make repairs. Respondents are: Consolidated Rail Corporation, Pennsylvania Department of Transportation and County of Lancaster.

Docket No. C-00913256

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 No. A-00111016

Further hearings.

Pages 715 through 1146

Hearing Room 2 North Office Building Harrisburg, Pennsylvania

Thursday, June 12, 1997

Met, pursuant to adjournment, at 9:00 a.m.

BEFORE:

LOUIS G. COCHERES, Administrative Law Judge

APPEARANCES:

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C O N T E N T S

	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Brenda Barrett				
	By Ms. Nettke	719	--	805	--
4	By Mr. Salapa	--	721	--	--
	By Mr. Eaton	--	726	--	--
5			776		
			793		
6	By Mr. Zielonis	--	755	--	823
			799		
7	By Ms. D'Alfonso	--	759	--	--
			802		
8	By Ms. S. Smith	--	760	--	--
	By Mr. Ranck	--	767	--	--
9			800		
	By Mr. Wyland	--	791	--	--
10					
11	Michael Keiser				
	By Ms. D'Alfonso	826	--	--	--
12	By Ms. Nettke	--	829	--	--
			845		
13	By Mr. Ranck	--	841	--	--
	By Mr. Zielonis	--	844	--	--
14					
15	Harvey Cassell				
	By Ms. D'Alfonso	848	--	896	--
16				903	
	By Mr. Eaton	--	857	--	--
17	By Mr. Salapa	--	857	--	--
	By Mr. Ranck	--	864	--	899
18	By Ms. Nettke	--	877	--	900
					903
19					
20	Mark Wilson				
	By Ms. Nettke	906	--	--	--
	By Mr. Salapa	--	908	--	--
21	By Mr. Wyland	--	915	--	--
22					
23	Roger Heebner				
	By Mr. Eaton	919	--	--	--
	By Mr. Ranck	--	933	--	--
24					
25					

C O N T E N T S (Continued)

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
David Oliver				
By Mr. Salapa	935	--	978	--
By Ms. D'Alfonso	--	938	--	--
By Mr. Wyland	--	943	--	--
By Mr. Eaton	--	946	--	--
		977		
By Ms. Nettke	--	951	--	--
By Mr. Ranck	--	967	--	--
 Thomas Sexton				
By Ms. Nettke	981	--	1032	--
By Ms. D'Alfonso	--	989	--	--
By Mr. Wyland	--	992	--	--
By Mr. Ranck	--	997	--	1039
By Mr. Zielonis	--	1002	--	--
By Mr. Salapa	--	1008	--	--
By Mr. Eaton	--	1016	--	--
 Julie Nettke				
By Ms. Nettke	1041	--	1109	--
By Mr. Wyland	--	1054	--	--
By Mr. Zielonis	--	1067	--	--
By Mr. Salapa	--	1098	--	--
By Ms. D'Alfonso	--	1103	--	--
BY Mr. Ranck	--	1104	--	--

E X H I B I T S

<u>NUMBER</u>	<u>FOR</u> <u>IDENTIFICATION</u>	<u>IN</u> <u>EVIDENCE</u>	<u>REJECTED</u>	<u>WITHDRAWN</u>
<u>E.A.S.T. Statements</u>				
No. 3 (B. Barrett) ✓	718	1126	--	--
No. 4 (M. Wilson) ✓	906	908	--	--
No. 5 (J. Nettke - including Exhibits A through I) ✓	1042	1124	--	--
No. 6 (J. Nettke - including Exhibits A through C) ✓	1042	1124	--	--
(Exhibit C)	(1042)	--	--	1052

FORM 2

EXHIBITS (Continued)

<u>NUMBER</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>	<u>REJECTED</u>	<u>WITHDRAWN</u>
<u>F.A.S.T. Exhibits</u>				
Barrett A (B.Barrett)	718	1126	--	--
✓ Barrett B (B. Barrett) ✓	718	1126	--	--
✓ A-Wilson (M. Wilson)	906	908	--	--
✓ B-Wilson (M. Wilson)	906	908	--	--
Sexton No. 1 (T. Sexton)	981	--	--	1053
<u>Conrail Exhibits</u>				
✓ No. 7 (ICC Ex Parte No. 55)	746	847	--	--
✓ No. 8 (survey/drawing)	921	1145	--	--
<u>PennDOT Statements</u>				
✓ No. 1 (H. Cassell) ✓	856	857	--	--
✓ No. 2 (M. Keiser) ✓	826	828	--	--
<u>PennDOT Exhibits</u>				
✓ Nos. 1 through 8 ✓ (H. Cassell)	856	857	--	--
<u>Commission Staff Statements</u>				
✓ No. 1 (D. Oliver) ✓	936	937	--	--
<u>Commission Staff Exhibits</u>				
✓ Nos. 1 through 50 ✓ (bridge crossing photos)	937	937	--	--
✓ No. 51 (letter, T. Sexton) ✓	1015	1145	--	--

E X H I B I T S (Continued)

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<u>NUMBER</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>	<u>REJECTED</u>	<u>WITHDRAWN</u>
<u>Townships Exhibits</u>				
No. 10 (answers to F.A.S.T. interrogatories, Set II)	1058	1059	--	--
No. 11 (financial statements)	1059	1125	--	--

NOTE: The Afternoon Session begins on page 847

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FORM 2

P R O C E E D I N G S

1
2 ADMINISTRATIVE LAW JUDGE LOUIS G. COCHERES: Good
3 morning, ladies and gentlemen. As you well know by now, my
4 name is Louis Cocheres, and I am the administrative law
5 judge assigned to hear the matter of the application of
6 Conrail at Commission Docket No. A-00111016, and
7 consolidated with it the Board of Supervisors of Bart
8 Township, vs. Consolidated Rail Corporation, the
9 Pennsylvania Department of Transportation, the County of
10 Lancaster, and others, at Commission Docket No. C-00913256.

11 We're here today for what I assume is going to be the
12 final hearing in these cases. We went rather late last
13 night. I trust everybody had a safe trip home, got a good
14 night's rest, and are ready to go this morning.

15 We'll use pretty much the same format that we did
16 yesterday. I'll look to break for lunch about 12:30. And I
17 simply do that to get us out of the noontime rush for
18 restaurants around here. It makes it more efficient to have
19 your meal and get back here.

20 I don't anticipate going as late tonight. I think we
21 have less witnesses. Hopefully we'll have less questions.

22 (Laughter.)

23 JUDGE COCHERES: Are there any preliminary matters I
24 need to deal with before we get on to the matter of
25 witnesses; other than I don't see the first witness for the day?

1 MS. NETTKE: She has not come yet, but I remember she
2 was here when we discussed her coming on at 9:00, and she
3 hasn't told us she has a problem with that.

4 JUDGE COCHERES: Yes, I appreciate that.

5 Are there any preliminary matters that I need to deal
6 with?

7 (No audible response.)

8 JUDGE COCHERES: All right. Let's go off the record
9 for a moment.

10 (Discussion off the record.)

11 JUDGE COCHERES: Back on the record.

12 **Whereupon,**

13 **BRENDA BARRETT**

14 **having been duly sworn, testified as follows:**

15 MS. NETTKE: Your Honor, I need to indicate that I
16 marked her statement as F.A.S.T. Statement 3. I had not
17 previously marked that. I want to now bring it to the
18 attention of the parties that that's how it's been marked.
19 And I've given copies to the reporter.

20 In addition, I've offered another exhibit called
21 Barrett B.

22 JUDGE COCHERES: All right.

23 (Whereupon, the documents were marked as
24 F.A.S.T. Statement No. 3, including Barrett
25 Exhibit A and Exhibit B, for identification.)

1 MS. NETTKE: I haven't yet had a chance to hand a
2 copy to Ms. Barrett.

3 (Document handed to witness.)

4 **DIRECT EXAMINATION**

5 BY MS. NETTKE:

6 Q. Ms. Barrett, did you submit in this proceeding on
7 behalf of Friends of the Atglen Susquehanna Trail a
8 statement that's now been marked as F.A.S.T. Statement No. 3
9 as your written direct testimony on behalf of F.A.S.T.?

10 A. Yes, I did.

11 Q. Could you take a look at that, please?

12 (Witness perusing document.)

13 A. Yes, this is my direct testimony that was
14 submitted as part of this.

15 Q. And does that include an Exhibit A, which is
16 professional qualifications related to your work experience?

17 A. Yes.

18 Q. Have you reviewed a copy of that before coming
19 over here?

20 A. Yes, I have.

21 Q. If you had to submit that today -- it was
22 submitted a year or so ago -- are there any additions or
23 corrections that you would make?

24 A. Well, things would be -- the process or the
25 proceedings has moved forward, and there was additional

1 correspondence in the file.

2 Q. I'm sure you'll be asked about that, but --

3 A. Right. But the things that are in my direct
4 testimony are, indeed, --

5 Q. Are they still true and correct?

6 A. They are still true and correct, yes.

7 Q. Thank you. Do you have a copy of that with you
8 now?

9 A. Yes, I do.

10 MS. NETTKE: I'll make the witness available for
11 cross examination.

12 JUDGE COCHERES: I'm having a small problem,
13 Ms. Nettke, with one of those little housekeeping problems.
14 You told me before you started speaking to your witness that
15 you had an Exhibit B. You only talked about A.

16 MS. NETTKE: I have handed around this morning a
17 paper, one page, double-sided, marked Barrett B, which I've
18 given a copy to all the parties and the court reporter.

19 JUDGE COCHERES: All right.

20 MS. NETTKE: I could and should authenticate that
21 also with Ms. Barrett.

22 JUDGE COCHERES: Yes, that would be a good idea.

23 BY MS. NETTKE:

24 Q. Ms. Barrett, do you recognize that document that
25 I've given you a copy of called Barrett B?

1 A. Yes, I do.

2 Q. And is that your signature at the end of that
3 document?

4 A. Yes, it is.

5 Q. And it is a letter addressed to David Eaton,
6 dated April 10, 1996. Can you authenticate that you did,
7 indeed, write that letter?

8 A. Yes, I did.

9 MS. NETTKE: Thank you, Your Honor.

10 JUDGE COCHERES: All right.

11 MS. NETTKE: And I'll offer that now.

12 JUDGE COCHERES: In that case, F.A.S.T. Statement No.
13 3 and its attached Exhibit A, as well as Barrett Exhibit B,
14 are admitted subject to cross examination and any timely
15 motions.

16 JUDGE COCHERES: Now, who has questions for this
17 witness?

18 Mr. Salapa?

19 **CROSS EXAMINATION**

20 BY MR. SALAPA:

21 Q. Ms. Barrett, Historic and Museum Commission is an
22 agency of the commonwealth; is it not?

23 A. Yes.

24 Q. And am I correct in condensing your testimony
25 that it would be consistent with the policy of the historic

1 code to keep all of these structures in place?

2 A. The mission of our agency is to preserve the
3 historic and archeological heritage in Pennsylvania. Yes,
4 that's our mission. And so we advocate, we assist, we
5 provide technical assistance, we provide funding, dollars;
6 we encourage state policy to preserve historic and
7 archeological resources, yes, as our mission.

8 Q. Would PHMC, as an agency of the commonwealth, be
9 willing to assume maintenance responsibility for any of
10 these structures?

11 A. The Pennsylvania Historic and Museum Commission
12 owns sixteen historic sites and properties at this time. Of
13 course, I'm not authorized to accept maintenance or
14 responsibility for any particular structure, usually,
15 without an act of the legislature.

16 Q. So the answer would be no?

17 A. The answer is no, right. Today, no.

18 Q. Are you aware of a commonwealth court decision, I
19 think the caption is Connor vs. PA PUC?

20 A. Yes. I haven't read it recently, but I'm aware
21 of the decision.

22 Q. What does that say with regard to PHMC and its
23 relationship with the commission?

24 A. In that decision it says that our goal is one of
25 providing advice and providing -- we provide expert

1 testimony and information on the value of historic
2 resources, and we advise on their preservation, yes;
3 consistent with our mission.

4 Q. Does it not also say that the determinations of
5 the PHMC are not binding on the Public Utility Commission?

6 A. Yes, it says that.

7 Q. And are you also aware of the commonwealth court
8 case, I believe it's Goldsboro vs. Lower Marion School
9 District?

10 A. Uh-huh.

11 Q. And what does that case say with regard to PHMC
12 and its role vis-a-vis local agencies?

13 A. With regard to local agencies, I think, again,
14 our role is advisory. And I can't summarize all the details
15 of that decision, but clearly, if our role and relationship
16 with local agencies, not agencies of the commonwealth,
17 agencies -- not agencies that have actual jurisdiction and
18 control over a historic resource, our role, again, is
19 advisory.

20 Q. So, in other words, the PHMC has no jurisdiction
21 over local entities other than advisory?

22 A. Over local government agencies, no.

23 Q. And does not Goldsboro also state that the PHMC's
24 authority over state agencies is limited to those state
25 agencies that own real estate?

1 A. No, I think what it said -- and I've got to
2 paraphrase it, but I think it talks about jurisdiction and
3 control. And it looked at one particular section of the
4 history code.

5 And in other sections of the history code it's clear
6 that it's our responsibility to advise governmental, as in
7 state governmental, agencies on historic preservation; and
8 also to ensure -- it's the responsibility of the actual
9 state government agency to ensure that their programs,
10 policies, grant assistance, actions, consider historic
11 preservation goals.

12 Q. But in terms of control of property or real
13 estate, it defines that as being ownership of property or
14 real estate?

15 A. I think you really have to look at two different
16 sections here. One of them deals, when a state governmental
17 agency, like a state park, actually owns or -- the
18 Department of Transportation -- actually owns a piece of
19 real estate. In that case, before the state agency can
20 access that property, or take any actions, alter or demolish
21 the resources on that property, they have an affirmative
22 responsibility to consider preservation options and to
23 consult with us.

24 There's a second section in the history code that
25 says that it is the responsibility of state agencies to

1 institute policies, procedures, programs to preserve and
2 consider historic values in their own policies and
3 procedures.

4 So, for example, let's just take the Department of
5 Transportation for a moment. The Department of
6 Transportation has an affirmative responsibility to consider
7 historic preservation values and to weigh their decision-
8 making against historic value that a resource may have.

9 Now, how that plays out exactly in a Public Utility
10 Commission adjudicatory hearing, I think, is something that
11 has not been completely worked out.

12 Again, I think the Public Utility Commission has a
13 responsibility to add, to consider those historic values in
14 decisions they make. And we can jump right to Article I,
15 Section 127 of the Pennsylvania Constitution.

16 Q. And that could be done through the hearing
17 process?

18 A. I suppose that it could be. I don't -- you know;
19 I would think that those would be the kinds of factors that
20 would be added to the scales as a decision is made.

21 Q. Thank you.

22 MR. SALAPA: That's all that I have.

23 JUDGE COCHERES: Mr. Eaton.

24 MR. EATON: Thank you, Your Honor.

25

CROSS EXAMINATION

1
2 BY MR. EATON:

3 Q. Ms. Barrett, the term "Section 106 process" has
4 been used on a number of occasions in these proceedings.
5 Will you tell us, first, what the Section 106 refers to?

6 A. It refers to Section 106 of the National Historic
7 Preservation Act.

8 Q. That's a federal statute; is it not?

9 A. That's a federal statute, correct.

10 Q. And what is the process which is encompassed
11 within that Section 106 proceeding or process?

12 A. Section 106 is a responsibility of federal
13 agencies. And the federal agencies have also an affirmative
14 responsibility when they are undertaking actions. And these
15 could be permits, licenses, grants, ownership and control,
16 that whole range of actions. They have to identify historic
17 resources, or require an applicant to them for assistance
18 identify historic resources; they have to evaluate those
19 resources, are they eligible for listing in the National
20 Register of Historic Places, which is sort of the criteria
21 that triggers the Section 106 process.

22 And then they have to consider what the effect of
23 their actions might be. And there's a detailed regulatory
24 scheme for that.

25 And finally, they have to mitigate the impact of

1 their actions on historic resources. It is not a veto
2 stamp, it is, again, a balancing test that federal agencies
3 are responsible for carrying out.

4 Q. You say they have to mitigate. And who do you
5 refer to by "they"?

6 A. The responsibility is on the federal agency,
7 whoever that may be. But many federal agencies, of course,
8 place that responsibility for taking actual actions on
9 permittees, grant applicants, licensees, and other
10 individuals or corporations that are before them for a
11 particular approval.

12 Q. In a context with which we are concerned here,
13 that is a notice of abandonment, --

14 A. Yes.

15 Q. -- filed by Conrail with the Interstate Commerce
16 Commission at that time.

17 A. Uh-huh.

18 Q. The Section 106 process then governs the ICC, or
19 governed the ICC?

20 A. Governed the ICC, yes.

21 Q. And perhaps we can agree that the Surface
22 Transportation Board, for our purposes, at least, is
23 essentially a continuation of the ICC?

24 A. That's my understanding.

25 Q. All right. And isn't it a fact that the ICC had

1 perceived its duty under the Section 106 process to refer a
2 proposed abandonment to the state historic preservation
3 officer of the state in which the property is located for an
4 opportunity to review and comment?

5 A. That is correct. Federal agencies have a
6 responsibility at every step in their process to obtain
7 comment or concurrence, depending on the regulatory section
8 we're under, from the state historic preservation office.

9 Q. And isn't it true that you, as the state historic
10 president officer for Pennsylvania, were certainly empowered
11 to comment, but that your power extended no further than the
12 power to comment on the historic values, and perhaps your
13 views as to what preservation should be undertaken?

14 A. That is indeed our responsibility. Although in
15 some cases we have a responsibility to concur. And it is
16 the affirmative responsibility of the federal agency or
17 their applicant to make sure that they have concurrence
18 every step of the way. And if there's not concurrence, then
19 it triggers a review by the Advisory Council on Historic
20 Preservation.

21 Q. The advisory council being what body?

22 A. The Advisory Council on Historic Preservation is
23 a private -- well, not private, independent federal body
24 that is set up by the National Historic Preservation Act.
25 And its board of directors, or its council, is made up of

1 the various major federal agencies, like the Department of
2 Defense, Department of Transportation, Department of
3 Interior, and some presidential appointees.

4 Q. Can we agree that the Section 106 process
5 initiated by the request of the ICC to you to undertake that
6 process had been complied with when you had had an
7 opportunity to comment on the structures and the property
8 and the rail line comprising the Enola Branch to Lancaster
9 County?

10 A. I don't know if I can completely agree with that.
11 The process was initiated, we provided information and
12 comments in 1989 on the historic significance of the
13 resources, but the paper trail at some point goes cold and
14 it doesn't look like there was a final consultation that
15 involved a finding of effect and then mitigation. The
16 process just seems to have stopped somewhere.

17 Q. Well --

18 A. I mean from our records. Now, maybe it went on
19 to the advisory council, which is usually the case where an
20 adverse effect, that is, an adverse impact, would end up
21 going to, the Advisory Council on Historic Preservation.

22 Q. To put this chronologically in context, is it not
23 correct that Conrail filed its original notice of
24 abandonment in, I think it was October of 1989?

25 A. Yes. Or at least that's when we heard about it.

1 Q. And that was my next question. When were you
2 requested by the ICC to undertake the state assessment of
3 the historic significance of the property?

4 A. Well, I think what happened was, as very often
5 happens, is that the ICC required the applicant for an
6 abandonment to come to us with information on their
7 proposal. And it looks like that's what happened in 1989.

8 Q. Okay.

9 A. And the information was provided to us about the
10 abandonment and about the individual structures and about
11 the line, and we commented back saying that we felt that
12 many of the bridges -- and I can pull out all the records
13 and give the exact numbers, but I'd prefer not to do that
14 right now, but that many of the bridges were historically
15 significant, and that the demolition of the bridges would be
16 an adverse effect.

17 Q. So that you -- going back a little bit, I have a
18 note here of a letter of October 18, 1989, from Kurt Carr.

19 A. Uh-huh.

20 Q. Is he a co-worker of yours?

21 A. Yes, he is.

22 Q. A subordinate, perhaps?

23 A. Right, he's a subordinate.

24 Q. To John Paylor, of Conrail, requesting further
25 information on specific bridges.

1 A. Right. And my summary in the April 10th letter
2 of 1966 (sic) to you -- and again, I could go through the
3 file and get the actual reply; but we asked for additional
4 information, and additional information was submitted to us.

5 Q. All right. And that, in fact, was submitted to
6 Mr. Carr --

7 A. Right.

8 Q. -- on November 15, 1989?

9 A. Right.

10 Q. Then, again, going forth chronologically, I have
11 a note here of a letter of yours to Mr. Paylor in December
12 of 1989 listing 44 bridges on this line considered not
13 eligible for listing on the National Register of Historic
14 Places, and 33 bridges which were considered eligible.

15 So, is it fair to say -- or maybe I should complete
16 that thought. And 37 bridges at locations believed to have
17 possible archeological significance.

18 Having made that determination, what further had you
19 to do to comply with the Section 106 process?

20 A. Well, again, it's not our process, it's the
21 federal agency's process. And they delegated, or they
22 require applicants for them to carry out the process, or
23 they do it themselves.

24 We are in a more reactive role. We actually will --
25 in many cases people come to us, or agencies come to us,

1 applicants come to us, with projects. The projects
2 sometimes go forward, and sometimes they don't.

3 So it's not unusual to find a half-completed Section
4 106 process in our files. The next step, as we understand
5 it, would have been for Conrail, as the applicant, to do an
6 assessment of effect, what is the effect?, and if the effect
7 is adverse, then they would have needed to consult with us
8 and other interested parties, and then they would have
9 developed a memorandum of agreement, which is a final
10 closeout document that says: And this is what we're going
11 to do about these adverse effects. We're going to preserve
12 certain bridges, we're going to record other bridges. I'm
13 just giving you examples of what might be an outcome.

14 But again, it's not our responsibility to take that
15 process forward. The applicant and the agency set the pace
16 in which they want to consult.

17 Q. All right. And again, we're still in 1989,
18 that's eight years ago?

19 A. That's right.

20 Q. In your December 12th letter also requested,
21 again, according to my note, some additional information.

22 A. Uh-huh.

23 Q. That is, specifically, a map or map locations of
24 the bridges. And isn't it true that Mr. Paylor responded
25 providing requested maps with bridge locations marked; and

1 that occurred in January of 1990?

2 A. Uh-huh, I think that's correct.

3 Q. Now, I have noted a number of items of
4 correspondence which I'll call your attention to, in which
5 the correspondence suggests that the 106 process has been
6 completed, so far as your office was concerned, in
7 September; September 4, 1991.

8 I refer to a letter of yours to John, it looks like
9 Mickalachek (phonetic), of Lancaster County, reciting that
10 the project had been reviewed. A letter in --

11 MR. RANCK: Excuse me. May I object, Your Honor? I
12 don't know whether she's going to be able to answer without
13 being given an opportunity to see it. I don't really think
14 it's fair.

15 THE WITNESS: Yes, I found it now.

16 MS. NETTKE: And I would join in that objection.

17 BY MR. EATON:

18 Q. You have the letter?

19 A. Yes, I do. And I think what we're saying here is
20 that it's not that the -- we don't state in here that the
21 process has been completed. What we state is that we have
22 determined the eligibility of certain resources, the
23 bridges, on the line.

24 Q. Does that language appear in the letter: The
25 above-named project has been reviewed?

1 A. Yes.

2 Q. All right.

3 A. It states that. And it has been reviewed. That
4 doesn't mean it was completed, it's been reviewed as to that
5 phase of the 106 process.

6 Q. And again I refer to similar language, that the
7 project has been reviewed, which I have found in various
8 subsequent correspondence originating with your office. And
9 I'll refer them to you to see whether you're able to confirm
10 that.

11 (Documents handed to witness.)

12 Q. February 24, 1994, to Wendy Tippetts.

13 A. Uh-huh.

14 Q. April 19, 1994 --

15 A. Wait, I want to make the same comment, though,
16 that we are speaking about the eligibility. We have
17 reviewed this project. And that was absolutely true. But
18 reviewed does not mean completed; the Section 106 review.
19 Review means we have reviewed the project. Information has
20 come to us, we have reviewed it.

21 Q. And would you agree that there were a number of
22 subsequent letters to various people which again used the
23 language that the project had been reviewed, --

24 A. Yes.

25 Q. -- or has been reviewed?

1 A. I will agree that we had reviewed it, we had seen
2 extensive information on the project, and we had commented,
3 provided our opinion on the eligibility of certain
4 resources.

5 But the Section 106 process has a number of
6 additional steps in it. Which are, again, required for the
7 applicant or federal agency to conclude. And when they come
8 to us, we will review that portion of the process, too.

9 Q. Now, going back to December of 1989, you had
10 reported to Mr. Paylor that various bridges were eligible
11 for inclusion on the national register, and some other
12 things. Did you provide that same information to the ICC?
13 I think it was still the ICC at that time.

14 A. I don't know if we provided it directly or
15 whether we expected that the applicant or the -- I'm not
16 quite sure of the right word here; before the ICC would
17 provide it.

18 Q. Well, let's make the question a bit more general.
19 It's true that the --

20 A. Well, here's our letter of October 18, 1989,
21 asking for more information. Now, that was copied to the
22 ICC.

23 Q. Yes, I think we referred to that earlier.

24 A. And our December 12, 1989 letter also was copied
25 to the Interstate Commerce Commission.

1 Q. Okay.

2 A. So that they were made aware through a courtesy
3 copy.

4 Q. And it was through the Interstate Commerce
5 Commission that you were initially involved in this project;
6 is it not?

7 A. That's correct. We assumed that they required
8 applicants to --

9 Q. All right. And what I'm looking for is whether
10 you at any time had written a report to the ICC, or the
11 Surface Transportation Board, commenting on your findings
12 relative to the line, since it was that board which, I
13 believe, you thought was required to act further.

14 A. We responded to the information that was provided
15 to us by Conrail. We did not independently respond to the
16 ICC.

17 Q. All right.

18 A. I don't believe.

19 Q. Now, with respect to the review of this project
20 by your office, can you tell me when that review began? And
21 I'm talking now about the substantive review, I'm not
22 talking about miscellaneous correspondence. And when the
23 last time was that there was a significant further step in
24 that substantive review?

25 A. We first reviewed the project in our September

1 1989 letter when we asked -- when we reviewed a request from
2 Conrail for comments on the project. We asked for more
3 information, and Conrail provided more information to us.
4 We responded on December 12, 1989, to that comment. And on
5 March 5, 1990, we responded to Conrail thanking them for the
6 additional maps that showed the actual location.

7 And after that, I don't think we were consulted again
8 about this project by Conrail, who would have been, again,
9 carrying out the responsibilities under the National
10 Historic Preservation Act.

11 Q. So it's been about seven years since you had
12 anything further substantively to do with this project?

13 A. Well, there is one thing that happened, which
14 was, we did get a letter from the Surface Transportation
15 Board -- I'm looking for that right now -- or a copy of a
16 letter, saying that this issue might still be open, and
17 pointing out that there had been a condition or a statement
18 made by the ICC, I believe, that the 106 process still
19 needed to be completed.

20 Q. Now, you said that was from the Surface
21 Transportation Board. Did it, in fact, purport to be from
22 the board itself, or merely from an employee of the board?

23 A. When a federal agency writes a letter, we assume
24 they have the authority to do so.

25 Q. Well, I'm trying to --

1 A. So, no, we don't question who is writing that
2 letter. When we see a letter coming from a federal agency,
3 we assume they have -- that they are an agent of the agency.

4 Q. Well, I choose not to be quite so receptive. So
5 would you mind telling us who the person was that signed
6 that letter and what their capacity was, if it is shown on
7 the letter?

8 A. The letter was signed by Elaine Kaiser, chief,
9 section on environmental analysis, Surface Transportation
10 Board.

11 Q. So that was not signed by a member of the board
12 or the secretary to the board, but simply by a branch
13 officer?

14 A. Well, let me say, in the Section 106 process that
15 many -- of course, many of the pieces of correspondence that
16 we get from federal agencies, state agencies, or
17 implementing federal programs, and in many cases we never
18 even deal with the federal agency at all, we deal with the
19 applicant.

20 So we have to make the assumption that when someone
21 writes to us stating something, that they are who they say
22 they are, and that they have the authority to do so; and
23 that decision is not ours to make.

24 Q. You don't draw a distinction between dispositive
25 action and simply a conveyance of information?

1 A. Section 106 process is a process. I mean, most
2 of it is based on information that is coming in. And,
3 really, the dispositive end is when, in the case of adverse
4 effects, that is when there is a negative outcome for a
5 historic resource, the real end of it is when the agents,
6 the federal agency, its applicant, and the Advisory Council
7 on Historic Preservation sign a memorandum of agreement.
8 And that, of course, the signatures on that are extremely
9 important.

10 Q. Now, I understand from your testimony that your
11 office has had an opportunity to review the historic
12 significance of this particular line, and structures on it,
13 that you have commented, and that you believe that the ICC,
14 or, now, the Surface Transportation Board, has yet the
15 opportunity to do certain things relative to that
16 information. Am I correct on that?

17 A. You're correct that even after an eight- to
18 ten-year gap, the Section 106 process could go forward,
19 and often does on projects. I mean, so that the next step
20 in the process, the assessment of effect, consultation
21 between the parties, and a memorandum of agreement could go
22 forward on this project.

23 Q. Okay. Do you agree with me that the ICC cannot
24 deny approval, or the Surface Transportation Board cannot
25 deny approval to Conrail of the abandonment which has been

1 noticed, on the grounds of the historic significance of the
2 line?

3 A. I can't agree with that, because I really don't
4 know if that could be a factor that would play into their
5 denial. I don't know their proceedings enough to say that.

6 Q. All right. Let me refer you to an order of the
7 ICC which is identified as Ex Parte No. 55, found at 7 ICC
8 2nd 828 and 829, in which the commission has said: Nor can
9 we deny ICC approval of a transaction solely on the ground
10 that it would adversely affect historic resources.

11 MS. NETTKE: I'll object just temporarily until see
12 if that letter is in Ms. Barrett's possession.

13 MR. EATON: I did not suggest that it was a letter in
14 her file. I've asked if she is familiar with this
15 particular section of an ICC order; and I think I'm entitled
16 to read the order to her so that she can advise whether she
17 is familiar with it.

18 MS. NETTKE: Well, the objection still stands.
19 And --

20 MR. EATON: Well, they I will wait for a decision.

21 MS. NETTKE: -- Mr. Eaton referred to it, and I could
22 give her a copy of it. I was just trying to find out if she
23 has a copy of it. I believe I do; and she could look at it
24 then.

25 JUDGE COCHERES: First I'm going to allow you to

1 finish your question.

2 MR. EATON: Thank you.

3 JUDGE COCHERES: Why don't you start it again.

4 BY MR. EATON:

5 Q. I'm reading an excerpt from the order that I've
6 referred to. And I'm going to read just a bit more of it:
7 Where historic property is involved, our ability to protect
8 it is very limited, despite the broad scope of the ACHP
9 regulations, which encompasses all property in the vicinity,
10 we can impose historic preservation conditions only to the
11 extent the particular property is owned by the applicant
12 carrier and has a sufficient nexus to the proposal under
13 review. Moreover, even where the property is subject to our
14 conditioning authority, we do not have the power to force a
15 railroad to sell or donate its property, or impose a
16 restrictive covenant on the deed, as a condition to
17 obtaining abandonment or acquisition authority; nor can we
18 deny ICC approval of a transaction solely on the ground that
19 it would adversely affect historic resources. Thus, as a
20 practical matter, documentation of the historic resources
21 involved in the proposal under review, before they are
22 altered or removed, is the only form of non-consequential
23 mitigation available to us.

24 You have completed your survey of the property, if
25 I'm not mistaken, and that information has been made

1 available to Conrail. So far as we know, Conrail has made
2 it available to the Surface Transportation Board. Is that
3 not so? You don't know?

4 JUDGE COCHERES: Wait a minute, Mr. Eaton. You've
5 skipped a step here. You were reading that passage --

6 MR. EATON: You're right.

7 JUDGE COCHERES: -- to ask the witness --

8 MR. EATON: I jumped just a bit there.

9 JUDGE COCHERES: Yes, you did.

10 MR. EATON: Let me stop after the conclusion of the
11 reading.

12 BY MR. EATON:

13 Q. Are you familiar with that order of the ICC, or
14 that portion of the order?

15 A. No, I am not.

16 Q. Okay. So that is new to you?

17 A. That is new to me. Is this the order for this
18 particular project?

19 Q. No, this is an ex parte order.

20 JUDGE COCHERES: Well, why don't you show the witness
21 a copy.

22 MR. EATON: Unfortunately -- well, maybe I do have
23 the original here.

24 THE WITNESS: I'm asking, is this the order that the
25 ICC -- is this the dispositive order on this particular

1 abandonment?

2 JUDGE COCHERES: The answer, I believe, is "no."

3 THE WITNESS: The answer is "no"? It's an order in
4 another project

5 JUDGE COCHERES: I don't know.

6 BY MR. EATON:

7 Q. I will show you the order in its entirety.

8 (Document handed to witness - witness perusing
9 document.)

10 A. So this is basically a policy statement that the
11 ICC developed?

12 Q. And if you'll refer to pages 828 and 829, you
13 still find the language which I've just referred you to.

14 (Pause.)

15 A. So this is really acting as a policy statement
16 for the ICC on how they wanted to see in cases where the
17 Section 106 process indicates that there are historic
18 resources; correct?

19 Q. And would it be fair to say that it's also a
20 statement of what the ICC has seen to be its limitations?

21 MS. NETTKE: Your Honor, I'll object, because I don't
22 think there's been a showing that this is actually an order;
23 or it's so very questionable whether it's an order; and if
24 it's in an order, in what case is it an order.

25 THE WITNESS: And can I just state that just because

1 it's --

2 MR. EATON: I think I've already --

3 THE WITNESS: I mean, federal agencies comply with
4 the comply with the National Historic Preservation Act in
5 various ways. Sometimes their interpretations are correct,
6 sometimes they're not. And this may indeed may be the ICC's
7 interpretation in 1991, and may be the correct way to
8 implement the National Historic Preservation Act, and it may
9 not be.

10 JUDGE COCHERES: Well, now wait a minute --

11 THE WITNESS: And it may be a substantive order since
12 then; I don't know.

13 JUDGE COCHERES: Well, Ms. Barrett, I appreciate that
14 you're an attorney, and you have been a very articulate
15 witness, and very interesting. But don't sit there and tell
16 me that when you get a document signed by the Surface
17 Transportation Board employee that you accept it as a
18 representation that it is correct for what it says, and then
19 challenge a legal order for its legality. All right?

20 THE WITNESS: Okay. I am not challenging that it is
21 not a legal order.

22 JUDGE COCHERES: Fine.

23 THE WITNESS: I believe that the ICC issued it, I'm
24 not going to challenge whether they indeed did that. And
25 that could be, indeed, their opinion. Or that sounds like

1 that's their opinion and their approach to these resources,
2 yes.

3 MR. EATON: And I think in light of the examination
4 which has developed into a discussion here, I'm going to
5 request that this document be identified as a Conrail
6 exhibit, and I'm going to ask leave to withdraw it until I
7 can make the required copies.

8 JUDGE COCHERES: That's fine. There are lots of
9 copies of things in this record. And insofar as I'm
10 concerned, I might add that, without having myself examined
11 it closely -- first of all, is it published in any of the
12 federal documents --

13 MR. EATON: It is. It's published in 7 ICC Reports
14 2nd.

15 JUDGE COCHERES: All right. In that case it is not
16 necessary for you to make it an exhibit.

17 MS. NETTKE: Could we have the rest of the cite?

18 JUDGE COCHERES: Yes, there should be more to it than
19 that.

20 MR. EATON: Beginning at page 807 --

21 JUDGE COCHERES: It would then be an official report,
22 much like commonwealth courts reports are official reports.

23 MR. EATON: My purpose in admitting it was that it's
24 a document which may be difficult for others to locate, and
25 perhaps you, for all I know.

1 JUDGE COCHERES: Yes.

2 MR. EATON: And perhaps it would be a convenience.

3 JUDGE COCHERES: In that instance, I will accept your
4 offer to make it an exhibit.

5 MR. EATON: All right. It's also an administrative
6 ruling, rather than statutory, and there may be some
7 question there as to whether you can simply take notice.

8 JUDGE COCHERES: Well, as I indicated yesterday, I
9 reserve, normally, my questions for the witness until after
10 I've heard cross examination. And I will implement that
11 system today with Ms. Barrett.

12 In the meantime, I want you to continue your
13 examination, Mr. Eaton, if you have any.

14 MR. EATON: If you'll bear with me half a moment.

15 JUDGE COCHERES: Yes. And I will tell you that at
16 the present time, according to my notes, Mr. Eaton, that
17 will be identified as Conrail Exhibit No. 7.

18 **(Whereupon, the document was marked as**
19 **Conrail Exhibit No. 7 for identification.)**

20 BY MR. EATON:

21 Q. Ms. Barrett, I've referred to a fair amount of
22 documentary material here in this electrical shock. Let's
23 leave that for a moment.

24 What is your own personal understanding of what more
25 is required of Conrail before it can convey the property

1 which is under review here, under consideration here, and
2 before structures along that property can be removed for the
3 purpose of enhancing public safety?

4 A. Under the Section 106 process, it is my opinion
5 that this is not -- the Conrail submission is not complete.
6 Again, the process has several steps to it. The first step
7 is identifying the historic resources. The documentation
8 that Conrail provided to us is not the kind of recording of
9 bridges that was envisioned even in the ICC document. That
10 information that was submitted to us was for the purposes of
11 determining historic significance. It is not an archivally
12 stable record of those bridges.

13 If the 106 process went forward in following the
14 federal regulations, the next step would be for the federal
15 agency, or whoever the federal agency delegated that
16 responsible to, to assess effect. What is the effect of the
17 project; and if the effect is adverse, to follow up with a
18 memorandum of agreement under those regulations that talks
19 about what is going to happen to the historic resources.

20 In some cases, it may be as limited a preservation
21 solution as recording the resources. But the documentation
22 that's been submitted to us is not a recording of the
23 resources. It is, you know, color xeroxes and USGS maps,
24 and non-stable information that was provided for the purpose
25 of making a determination of eligibility for the resource.

1 Q. Have you gone back to Conrail and requested
2 further information?

3 A. No.

4 Q. Or further documentation?

5 A. No, because the eligibility step is complete, and
6 the next step really depends on the applicant, Conrail in
7 this case, when they're ready to take the next step.

8 In many cases we receive projects that are not going
9 anywhere. And again, you get information from an applicant
10 or an agency that says, here are the resources; is there
11 anything eligible here?; and the project just stops. The
12 agency decides not to do the project for some reason.

13 Q. In fact, that's what's happened here; isn't it?
14 It stopped?

15 A. The project has stopped. I mean, that could be
16 the case.

17 Q. Nothing's occurred in seven, eight years?

18 JUDGE COCHERES: Well, no, there have been lots of
19 wheels spun in seven or eight years.

20 (Laughter.)

21 THE WITNESS: My point is, not to make judgment on
22 how the process is working, but to say that from a Section
23 106 regulatory point of view, the process is not complete.
24 And that's the responsibility of the federal agency to
25 enforce. I'm giving you my opinion as the reviewer of these

1 kinds of projects.

2 BY MR. EATON:

3 Q. Are you familiar with the body of administrative
4 law contained in a series called Code of Federal
5 Regulations, CFR? Are you familiar that there is such a
6 set?

7 A. I certainly am.

8 Q. Okay.

9 A. I'm familiar that it exists.

10 Q. Now I want to ask you --

11 A. I'm not familiar with the body.

12 Q. I want to ask you if you're familiar with a
13 particular section now; that being found in 49 CFR, Section
14 1105.8(f), which provides -- and let me read it to you:
15 Historic preservation conditions imposed by the commission
16 in rail abandonment cases generally will not extent beyond
17 the 330-day statutory time period, in 49 USC 10 904, for
18 abandonment proceedings.

19 Are you familiar with that section at all?

20 A. I've seen it referred to, but I'm not familiar
21 with it.

22 Q. In fact, that is somewhat of a sunset provision
23 on inquiries into the historic preservation process; is it
24 not?

25 A. I'm only familiar with the regulations of the

1 advisory council on historic preservation that implement the
2 National Historic Preservation Act responsibilities. And
3 they set out very strict time frames for response agency or
4 applicant inquiries, for example, 30 days to respond;
5 however, set no time frame for the totality of the
6 proceedings, probably for a very good reason that projects
7 can span over many, many years, and maybe stop and start for
8 a variety of other perfectly good reasons.

9 Q. I think one final question. I'd like you, for a
10 moment, to ignore what you may believe the federal agencies
11 are empowered to do, and set aside your own personal
12 desires, and ask you, as the state Historic and Museum
13 Preservation officer, whether there is any factual basis on
14 which you are authorized to oppose the conveyance of the
15 Enola Branch extending from the Chester County line through
16 Lancaster County, to a point approximately a mile east of
17 Safe Harbor, and whether you have any basis on which to
18 prohibit, or condition, the removal of structures along that
19 line which are removed because of the judgment of highway
20 authorities that those structures pose a danger to the
21 traveling public.

22 A. Our role is not --

23 MR. RANCK: Excuse me. May I just object to the form
24 of the question, and preserve that? Because I'm not sure
25 that that is based upon facts that have been established

1 across the board.

2 It's an overly generalized statement, Your Honor, and
3 I don't believe it's fair to ask her to comment on it,
4 phrased as Mr. Eaton did.

5 JUDGE COCHERES: That's very interesting, and I think
6 I'll allow the witness to try and answer.

7 THE WITNESS: I've given you my opinion as the deputy
8 state historic preservation officer for Pennsylvania, that
9 the Section 106 process does not seem to be completed, based
10 on the information that we have in our file. So that's the
11 first part of that question.

12 The second issue has to do with the --

13 BY MR. EATON:

14 Q. Excuse me. And incomplete because you have no
15 evidence of submission of additional materials to the
16 Surface Transportation Board?

17 A. No, incomplete because I have no evidence that
18 the Surface Transportation Board or the applicant have come
19 to us to concur on effect, as required by the regulations,
20 have come to us to consult on adverse effect, and have come
21 to us to sign a memorandum of agreement that memorializes
22 the actions they're going to be taking to close out the
23 project, or close out the Section 106 process.

24 Q. Okay.

25 A. So that's the reason that's incomplete. A more

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1 unclear area is the whole -- is the responsibility of the
2 Public Utility Commission and the Pennsylvania Department of
3 Transportation, and our agency's role in reviewing railroad
4 bridge abandonments.

5 Q. Okay. Now, let's --

6 A. The history code clearly requires state agencies,
7 like the Department of Transportation, and, to be honest,
8 like the Public Utility Commission, to come up with policies
9 and procedures to encourage historic preservation.

10 Q. Okay. Now --

11 A. And state agencies --

12 MS. NETTKE: Your Honor, I would request she be
13 allowed to finish explaining.

14 MR. EATON: I think we've gotten a little away from
15 being responsive to the question that was asked.

16 THE WITNESS: You said, didn't we have a right to
17 prohibit -- no, maybe you should rephrase the question then,
18 because I think you were saying, what other things -- since
19 you asked the question broadly, I can respond broadly. You
20 said: What other things would the Historic and Museum
21 Commission, or how else would they be involved in this
22 process? And my answer is: They would be involved through
23 the history code and through the responsibilities of state
24 agencies such as the Department of Transportation and the
25 Public Utility Commission to adopt policies and procedures

1 to consider historic preservation and to consider the
2 protection and preservation of historic resources in their
3 actions.

4 And that is how -- that is the other part of the
5 process, which is the state side of the process.

6 Q. Now going back to my original question: Have you
7 -- you perceive that you, as the deputy historic
8 preservation officer, are entitled to act to bar either the
9 conveyance or the removal of certain of the structures for
10 the reasons that I have stated; that is, for public safety
11 reasons?

12 A. We review, in cooperation with the Department of
13 Transportation, every significant, or major and minor,
14 highway- and transportation-related project in Pennsylvania.

15 Q. Now, let me stop you for a moment. I understand
16 that you review, but my question relates not to review, but
17 whether you concede that you have the power to prohibit.

18 A. No, this is a -- we have a mission to encourage
19 preservation. All state agencies have that mission. And of
20 course, everything will be, in the end -- or at least not in
21 this proceeding it's not a regulatory balancing, but under
22 the history code and under the National Historic
23 Preservation Act, there is a regulatory balancing, and a
24 process, whereby historic preservation can be added into the
25 mix of project development to encourage the preservation of

1 heritage values.

2 Q. Now, am I correct that your office is -- I don't
3 know how to put this -- not subordinate to, but at least is
4 at administratively down the line from the Historic and
5 Museum Commission of Pennsylvania?

6 A. The Historic and Museum Commission is a
7 gubernatorially-appointed board that also includes four
8 members of the legislature.

9 Q. Okay.

10 A. They are a board of directors they appoint an
11 executive director, and the executive director has four
12 program bureaus; and I'm the head of one of the program
13 bureaus.

14 Q. Okay. So that you're the head of a bureau of the
15 State Historic and Museum Commission. I always get that
16 backwards.

17 Now; question. Have either your office or the State
18 Historic and Museum Commission appeared in this proceedings
19 as a party? Have you intervened as a party?

20 A. No.

21 MR. EATON: That's all.

22 JUDGE COCHERES: Thank you.

23 Mr. Zielonis.

24 MR. ZIELONIS: Thank you, Your Honor.

25

CROSS EXAMINATION

BY MR. ZIELONIS:

Q. Good morning, Ms. Barrett.

You were asked by F.A.S.T. to testify today on their behalf?

A. I'm testifying under subpoena from F.A.S.T.

Q. Were you provided any instructions in the creation of your testimony from F.A.S.T.?

A. No.

Q. Is the mission of your agency to develop trails in Pennsylvania?

A. The mission of our agency is to encourage preservation of historic and archeological resources. And we work in partnership with many organizations who have different but similar missions, such as the development of trails, the development of museums, the development of tourism, centers, main streets.

Q. Your specific mission is not to develop trails; correct?

A. No, that is not our specific mission, no.

Q. And indeed, your mission could be incompatible with the development of a trail; is that not correct?

A. I'm sure there's some scenario where that might be correct.

Q. Okay. Now, you state in your testimony on page

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1 ll that you support reuse -- or that the commission
2 responded to Lancaster County's Department of Parks and
3 Recreation.

4 A. Uh-huh.

5 Q. That the commission stated its support for a
6 trail, provided all bridges were retained, and no
7 archaeological sites were destroyed; is that correct?

8 A. That is correct.

9 Q. Should I state that if one bridge is removed,
10 that the commission withdraws its support --

11 A. No.

12 Q. -- for a proposed trail?

13 A. No, that would not be correct.

14 Q. Would, if one bridge is removed, would your
15 commission still support development of a trail?

16 A. The rail line is important as a complete entity,
17 just the way a historic district in downtown Lancaster is
18 important as an assembly of buildings. If one building is
19 torn down in a historic district, we don't say that we don't
20 support the historic district anymore.

21 If one bridge, or a number of bridges, on a rail line
22 of such historic importance as this is lost, the rail line
23 is indeed diminished, but it does not lose it's historic
24 value.

25 Q. And you stated earlier, I believe, on cross

1 examination by Mr. Salapa that historic preservation
2 requires a balancing?

3 A. Our job is to provide the encouragement and
4 support for historic preservation. The regulatory scheme
5 developed under the history code, under the National
6 Historic Preservation Act, requires other parties who may
7 have to make decisions to add historic preservation into the
8 mix. But of course, their decision, as a regulatory body,
9 will be one of balancing various factors.

10 JUDGE COCHERES: Just let me interrupt. Let's go off
11 the record.

12 (Discussion off the record.)

13 JUDGE COCHERES: Back on the record.

14 BY MR. ZIELONIS:

15 Q. Ms. Barrett, when I ask you a question, if you
16 could please respond "yes" or "no" first, and then give your
17 explanation.

18 A. Oh, sure.

19 Q. I think your response to my previous question
20 regarding the balancing was "yes"?

21 A. Yes.

22 Q. So that if one bridge is removed from this line,
23 that doesn't necessarily mean the commission would oppose
24 it?

25 A. No.

1 Q. Now, I have a question regarding the Martic Forge
2 project, the \$100,000 that was administered. Or, I'm sorry.
3 You said awarded to the Martic Forge project.

4 A. Where is that?

5 Q. That's page 12, on lines 19 through 21.

6 A. Okay, yes.

7 Q. And you state that you awarded, or that the
8 commission awarded --

9 A. The commission awarded.

10 Q. -- \$100,000 to the Martic Forge Bridge project.

11 A. Uh-huh.

12 Q. Is that separate and apart from F.A.S.T.?

13 A. The applicant for the funding was F.A.S.T.

14 Q. I believe that project requires a matching?

15 A. Yes.

16 Q. And are there any conditions on what the source
17 of the funds for the match?

18 A. The funding should not be other keystone bond
19 funding. This project is being funded from the Keystone
20 Recreation and Conservation Bond Issue. And keystone
21 recreation bond money cannot be used as a match for that
22 project. However, private funds, local government funds,
23 federal funds could be used as a match.

24 Q. Is that award transferrable to another entity or
25 applicant?

1 A. Our general policy is not to do that. However,
2 we have transferred grant awards in certain cases if there
3 were unusual circumstances.

4 Q. But nothing would prohibit, for example, the
5 County of Lancaster approaching the commission for such a
6 grant in a similar amount for preservation of that bridge?

7 A. No, nothing would prohibit the county from doing
8 that.

9 MR. ZIELONIS: Your Honor, that's all the questions I
10 have.

11 JUDGE COCHERES: Any additional examination?

12 Ms. D'Alfonso.

13 **CROSS EXAMINATION**

14 BY MS. D'ALFONSO:

15 Q. Good morning, Ms. Barrett.

16 The advisory mentioned way back in your testimony;
17 does that get involved in projects where federal money is
18 not being used?

19 A. It gets involved in projects under the National
20 Historic Preservation Act, which includes licenses, ICC
21 abandonments, permits. So it's not just the review of
22 projects by the advisory council, it's not just triggered by
23 federal dollars.

24 Q. I guess from my premise words, if it would be a
25 PennDOT project, it wouldn't go to the advisory council

1 unless federal funds were being used; is that correct?

2 A. Right. But most PennDOT projects involve federal
3 dollars. But, for example, the Corps of Engineers; their
4 permits may be reviewed by the advisory council.

5 Q. Thank you. I understand the difference.

6 A. Sure.

7 JUDGE COCHERES: Ms. Smith.

8 MS. SUSAN SMITH: Thank you.

9 **CROSS EXAMINATION**

10 BY MS. SUSAN SMITH:

11 Q. Hello, Ms. Barrett.

12 A. Who are you with? Because I think I know almost
13 everybody.

14 Q. The townships.

15 A. You're with the townships, okay.

16 Q. Yes.

17 Following up on Mr. Zielonis's questions to you
18 regarding the Martic Forge trestle and the preservation
19 grant.

20 A. Uh-huh.

21 Q. You indicated that the grant was awarded to
22 F.A.S.T.

23 A. Yes.

24 Q. Is it a fair statement to say, however, that the
25 grant was awarded based on PHMC's perception or recognition

1 of the bridge as a structure with historic significance, and
2 suitable for preservation?

3 A. Yes, in the sense that you have to have a
4 historic resources to receive grants under our program. But
5 grants are very competitive with the Keystone Historic
6 Preservation Grant Program, and usually our program is over-
7 subscribed seven to one. And we send our grant applications
8 to a review panel of experts, who review it; they make
9 recommendations to the staff, and then those recommendations
10 are presented to the commission.

11 So, but, yes, you must have a historic resources to
12 apply for the grant.

13 Q. So, if you received a grant application from an
14 entity other than F.A.S.T. who would like to preserve and
15 take actions to preserve that historic resources, you would
16 consider that application --

17 A. Yes.

18 Q. -- as much as you did F.A.S.T.?

19 A. Yes.

20 Q. You have today characterized PHMC's role as
21 advisory and reactive. With reference to your testimony
22 regarding mitigation, would you agree that the authority,
23 statutory authority granted to PHMC, does not call for you
24 to take a proactive mitigation role?

25 A. Would you describe what a proactive mitigation

1 role would be?

2 Q. Opposite from reactive. I would characterize
3 reactive as being reactive to applicants coming before you,
4 reacting to information being requested of you; proactive
5 being taking an initiative.

6 A. We attempt to take initiatives in the sense of
7 providing technical assistance, providing actual dollars.
8 But we work in -- we have to work in partnership with
9 whoever's interested in preserving a particular resource.
10 And we work proactively with state agencies to encourage
11 their policies and procedures to match up with the
12 preservation values in the commission.

13 Q. I know that you are familiar with the
14 Pennsylvania Historic Code; you've referenced it several
15 times today. You are likewise probably familiar with
16 Section 502 of that code, which sets forth the powers and
17 duties --

18 A. Uh-huh.

19 Q. -- of the commission. Would you agree that
20 mitigation does not find its way to the language as to the
21 powers and duties of the PHMC?

22 A. I guess, you know, when I use "mitigation," I'm
23 using it in a very technical sense, which is to remediate,
24 if I could use that word, the adverse effect of a federal or
25 state project on a resource.

1 But many things that we do encourage, actively
2 encourage, historic preservation within communities, within
3 counties, within nonprofit organizations, and within state
4 agencies.

5 So I would say that to say that mitigation is not
6 listed in those powers, that's not -- mitigation's just the
7 flip side of preservation.

8 Q. You had indicated that you would encourage and
9 advise, in your response just now. Is that the extent of
10 your action with reference to mitigation?

11 A. Well, under certain circumstances, we can, you
12 know, not require mitigation, but we have a very strong role
13 in determining what the mitigation might be. And again,
14 that's the action to reduce adverse impacts.

15 Q. But again, you can't require mitigation?

16 A. Under the National Historic Preservation Act,
17 it's the responsibility of the federal agency to require
18 mitigation. And under the history code, in many cases,
19 mitigation is agreed to as a condition for moving a project
20 forward.

21 For example, if it was a state-owned resource, the
22 state of Pennsylvania owned the property, I think it's
23 pretty clear that we would have a -- our advice on what to
24 do about the alteration and demolition of that resource
25 would be a mitigation.

1 Q. You've commented in your testimony, and I think
2 you've mentioned it today, the eligibility for the national
3 register. That process has not been completed; none of the
4 properties or structures identified as eligible have, in
5 fact, been placed on the national register?

6 A. No, they have not been listed.

7 Q. You've also, in your testimony, referenced the
8 Rails-to-Trails Conservancy Project. That Rails-to-Trails
9 Conservancy Project is not a regulatory function of PHMC; is
10 it?

11 A. Can you point to where that exactly is? I'm not
12 sure of the --

13 Q. Okay, but bear with me.

14 (Pause.)

15 Q. Page 14, on the first full paragraph.

16 (Witness perusing document.)

17 A. No, they are -- the Rails-to-Trails Conservancy
18 is a private, nonprofit organization that encourages the
19 reuse of rail lines.

20 Q. Following up on some questioning from Mr. Eaton.
21 Would you agree that PHMC would not put forward a concern
22 with preservation as an impediment where a structure is
23 found to be unsafe? Impediment in the sense that it would
24 not meet the -- the preservation would not be used to
25 preclude actions to make a structure safe.

1 A. Our responsibility is to provide our professional
2 opinion on the eligibility or the significance, the historic
3 significance of a resource, and to encourage its
4 preservation. All these things are -- there's always a
5 level of, you know, judgments in every decision that is
6 made.

7 And we work with, for example, the Department of
8 Transportation on a daily basis, balancing these issues of
9 historic value, safety, condition, tourism, scenic values;
10 all these different issues -- transportation, speed; all
11 these different issues are balanced out in planning
12 projects.

13 Q. Including safety?

14 A. Including safety. And obviously the agency
15 that's going to undertake the project has the final decision
16 on whether to undertake the project. But the history code,
17 or the National Historic Preservation Act, requires that
18 they add in the consideration of historic resources as part
19 of that mix in making a decision.

20 I mean, there are ways to make transportation
21 resources, let's say bridges, safer without necessarily
22 demolishing them. There may be ways to make a bridge
23 crossing, a rail crossing and a road crossing safer without
24 destroying the historic resources. There may be all kinds
25 of alternatives.

1 Q. It's a fair statement to say that there may be
2 circumstances where they cannot be made safe, a structure
3 may not be made safe with demolition?

4 A. That's true, absolutely.

5 Q. Is PHMC willing to work with the townships on
6 preservation of any of the bridges along the line?

7 A. Work with them in what way? Yes, we --

8 Q. In your role.

9 A. Yes, we would be -- we want to work for the
10 preservation of the bridges and the rail line, yes.

11 Q. Thank you.

12 JUDGE COCHERES: Mr. Ranck.

13 MR. RANCK: Thank you, Your Honor.

14 MR. ZIELONIS: Your Honor, before Mr. Ranck proceeds,
15 I would like to reserve the right -- perhaps the other
16 parties would -- if this is friendly cross examination, to
17 have the right to recross the witness.

18 JUDGE COCHERES: I was wondering when that subject
19 would come up. We have not heard his cross examination. If
20 at the conclusion of his cross examination you believe that
21 it has been friendly, we will discuss it at that point. The
22 regulations already give you the right to continue cross
23 examination, if I determine it was friendly.

24 MR. ZIELONIS: Thank you.

25 JUDGE COCHERES: Mr. Ranck.

CROSS EXAMINATION

1
2 BY MR. RANCK:

3 Q. Ms. Barrett, there has been considerable
4 exploration of the paper trail in this case and whether or
5 not it complies with the requirements.

6 Let me ask you just a couple simple questions, if I
7 might. Michael Ranck, for the Historic Preservation Trust
8 of Lancaster County.

9 If the owner of the property, Conrail in this case,
10 had never asked for any input from your agency, would that
11 have complied with the requirements?

12 A. In my opinion, no.

13 Q. As I understand your testimony, Conrail did ask
14 for your input, and a review of the materials that were
15 submitted by Conrail was done by your agency up to a point.

16 A. Yes.

17 Q. And at that point you determined that there were
18 historically significant resources involved in the property
19 that was sought to be transferred?

20 A. Yes.

21 Q. And had, at that your point, your review
22 concluded that there were no historically significant
23 resources, and you communicated that, would that have been
24 the end of the requirements as far as compliance with the
25 historic preservation statutes, from your standpoint?

1 A. Yes.

2 Q. From your agency's standpoint.

3 A. Yes.

4 Q. That was not the case; am I correct?

5 A. Correct.

6 Q. What were your other choices? Assuming that you
7 -- as you stated, you did find that there were historic
8 assets or resources involved. There's a proposal to
9 demolish, and there's a proposal to transfer some of these
10 assets under maintenance agreements.

11 What possible conclusions as to the effect of the
12 proposal are open to your agency?

13 A. We really have to work together --

14 Q. But I mean, no effect --

15 A. Right, you have to --

16 Q. Okay.

17 A. In my opinion, the next step to complying with
18 the National Historic Preservation Act responsibilities
19 would be for the Surface Transportation Board, or Conrail
20 acting for them, to come to us with a finding of effect;
21 then move into consultation, and then to conclude with a
22 memorandum of agreement that, again, lays out what the steps
23 are going to be for each of the eligible resources, whether
24 they're going to be demolished, preserved, maintained.

25 Q. Have you been contacted by Conrail to ask for

1 your approval of any such documentation?

2 A. We have not been contacted since we made our
3 finding of eligibility for studying the process.

4 Q. Have you been contacted by PennDOT for the same
5 purpose?

6 A. No.

7 Q. Who must sign the memorandum of agreement for the
8 disposition of assets that have been determined to be
9 historically significant?

10 A. Under the National Historic Preservation Act, the
11 federal agency has signatory authority, the Advisory Council
12 on Historic Preservation needs to sign, the state historic
13 preservation office, and if there is, indeed, an applicant
14 who's actively involved in the project, then they need to
15 sign, too.

16 Q. Is there any distinction between eligibility for
17 the national register and actual listing in the national
18 register as far as compliance requirements?

19 A. For the purposes of the National Historic
20 Preservation Act or the history code, no.

21 Q. There has been a response filed by Conrail to the
22 petition by the Historic Preservation Trust to intervene,
23 and in numerous places this response states that assertions
24 regarding the historic nature are outside the jurisdiction
25 of the commission in a crossing abandonment proceeding.

1 And my question is: Do you know of any authority for
2 the exemption of crossing abandonment proceedings from the
3 application of either the Pennsylvania History Code or the
4 National Preservation Act?

5 A. No.

6 Q. There were also numerous references in the
7 Conrail answer to the matters being time-barred. Now, I
8 believe you covered that somewhat. But in reference to your
9 letter marked Barrett B, I would like to ask you a question
10 regarding the following sentence. And I'll quote from your
11 letter:

12 "Bolstered by the Surface Transportation Board's
13 finding on March 20, 1996, that the `historic preservation
14 conditions imposed by the ICC (and now the board) in
15 abandonment proceedings do not expire or lapse through the
16 passage of time,' the Section 106 process must be completed
17 before abandonment or demolition proceedings occur."

18 Is that still your understanding as far as the
19 applicability of the assertion that matters are time-barred?

20 A. Our understanding is that the regulations that
21 implement the National Historic Preservation Act do not have
22 a time frame associated with them.

23 Q. What is your position regarding the actions that
24 should have been taken by PennDOT with respect to
25 consultation with your agency?

1 A. Well, this is an issue that we're certainly under
2 discussion with PennDOT on. But in my opinion, it's the
3 responsibility of PennDOT to develop policies and procedures
4 in bridge abandonments that add in the historic preservation
5 values of a resource as part of their decision-making
6 process.

7 Q. I believe you answered you haven't been contacted
8 since your initial assessment of eligibility.

9 A. I don't believe we've been contacted by PennDOT,
10 no.

11 Q. And have you been presented with a stipulation
12 for settlement which is now before this hearing, before this
13 Judge?

14 A. No.

15 Q. Let me ask you a couple general questions. And
16 I'm going to have to ask you to assume that these facts are
17 in the proposed agreement, the stipulation for agreement.
18 That the assets would be transferred to certain
19 municipalities in Lancaster County under either authority to
20 demolish them or to maintain them.

21 If such a proposal were presented to your agency,
22 what specifics would you require before signing off on such
23 a stipulation of agreement?

24 A. I think we would like to see that there was a
25 consideration to preserving the historic resource, and it

1 would have some -- I think we should be involved, actually,
2 up front in the process. Not at a point where a final
3 agreement has been presented, but that the values of
4 historic preservation and the potential of retaining
5 significant structures had been considered by the Department
6 of Transportation in making their original recommendation.

7 So, I think it would put us in a difficult position
8 to receive something that had not had that kind of
9 consideration ahead of time. We don't have a veto stamp.
10 As I said before, our role is to provide technical
11 assistance, information, and funding, and programs to
12 encourage the preservation of historic resources, and meet
13 the specific responsibility to work with state agencies, and
14 the state agencies have a specific responsibility to work
15 with us.

16 Q. Would you look, in connection to such a proposal,
17 to see whether the new proposed owner had the wherewithal,
18 or was able to make provisions for the preservation of the
19 historic asset?

20 A. But that would be part of the overall review.

21 Q. I'd ask you to assume that there was testimony
22 yesterday concerning the proposal, which includes payment of
23 \$450,000 to two townships for the Martic Forge Bridge; and
24 the testimony of the witness indicted that they had gotten
25 bids for demolition of the bridge, and those figures were

1 used in the negotiations with Conrail for the establishment
2 of a \$450,000 price tag; and that no estimates for annual
3 maintenance had been obtained by the townships. Would those
4 facts, assuming them to be correct, would those facts be of
5 significance to you in evaluating the appropriateness of a
6 proposed transfer?

7 MR. EATON: Objection. That hypothetical assumes
8 some facts that are not in evidence.

9 JUDGE COCHERES: For example?

10 MS. D'ALFONSO: Well, for example, that -- I think
11 I'm correct -- that there was no estimate obtained for
12 maintenance; secondly, that the estimate obtained was for
13 demolition, but omits the significant fact that it was for
14 the purpose of determining the costs that a township might
15 face in the eventuality of demolition.

16 I think the question is misleading; I think it
17 assumes facts that are not in evidence. I object to it.

18 JUDGE COCHERES: Mr. Ranck?

19 MR. RANCK: I think what Mr. Eaton stated in the
20 first part was exactly that was testified to yesterday.
21 There were no bids obtained for annual maintenance. That's
22 clearly on --

23 JUDGE COCHERES: That is my recollection.

24 MR. EATON: I think I agreed that there were no bids
25 obtained. I don't think the question was put in terms of

1 bids. The question was put in terms of information.

2 MR. RANCK: I believe my question to the witness,
3 Your Honor, was: Did you obtain any estimates for the cost
4 of annual maintenance for the bridge; and the witness
5 indicated that hey had not obtained any estimates for the
6 cost of maintenance.

7 JUDGE COCHERES: I agree.

8 MR. RANCK: If it helps, I'll withdraw and ask it
9 specifically on that issue.

10 JUDGE COCHERES: It would help; all right. And
11 mainly because of that testimony that was taken yesterday,
12 it is not transcribed for me to review, or for us to review,
13 anything better than our recollection.

14 And I think the real fault with it is not that you
15 misstated the record. I disagree with Mr. Eaton that you
16 should be faulted for misstating the record. But what I
17 think his real objection is that you unfairly edited the
18 record.

19 And I'm not sustaining that objection either. He
20 didn't make it. But I think it would help this proceeding
21 go forward if you would simply rephrase your question.

22 MR. RANCK: Thank you, Your Honor.

23 And thank you, Mr. Eaton.

24 BY MR. RANCK:

25 Q. Would it be of significance to you if you were

1 told that a proposed transferee looked into the cost of
2 demolition of the asset and did not do the cost of annual
3 maintenance?

4 A. Yes, that would be a concern.

5 Q. Why?

6 A. I think it goes to the possible future of the
7 particular historic resource. In this case, again, I think
8 that if we had had an opportunity to have this project
9 reviewed by us, to ask questions about the maintenance,
10 about the resource and the future intent and the future use
11 of the property, I think those are the kinds of things that
12 should be considered by the Department of Transportation in
13 making their recommendations, and by the Public Utility
14 Commission in approving any particular order, adding in
15 those historic preservation values.

16 Q. Thank you very much.

17 MR. RANCK: That's all I have, Your Honor.

18 JUDGE COCHERES: Is there any additional cross
19 examination for the witness?

20 (No audible response.)

21 JUDGE COCHERES: Ms. Barrett, we have to talk.

22 (Laughter.)

23 MS. NETTKE: Your Honor, may I have redirect when
24 you're finished then?

25 JUDGE COCHERES: Normally, you do.

1 MS. NETTKE: Thank you.

2 MR. EATON: Your Honor, there's one question I think
3 I would like to ask Ms. Barrett. I'm delayed here, because
4 I'm not certain it's not redundant.

5 JUDGE COCHERES: Oh, there's been lots of redundancy
6 already.

7 MR. EATON: I'm very aware of that, and I hate to
8 transgress, but I shall, if I may, very briefly.

9 **CROSS EXAMINATION, (Resumed)**

10 BY MR. EATON:

11 Q. Ms. Barrett, you have referred a number of times
12 to additional mitigation, or additional steps in mitigation
13 beyond the assembly of information which I think has been
14 accomplished so far that's within your jurisdiction to do
15 that. Am I correct on that?

16 A. Yes, I had spoken about additional steps in the
17 Section 106 process.

18 Q. Okay. I want to ask you whether, in light of one
19 of the provisions of the ICC order that we had referred to,
20 that is Ex Parte No. 55 -- I'll give it to you.

21 (Document handed to witness.)

22 MR. RANCK: May I just, in the interests of saving
23 time, object? Because I don't think this is anything that I
24 covered in mine, which was the only reason for additional
25 cross examination.

1 JUDGE COCHERES: That wasn't necessarily a
2 restriction I had placed on it.

3 MR. RANCK: All right.

4 JUDGE COCHERES: No one objected that your
5 examination was friendly cross examination. Mr. Eaton did
6 ask to be able to continue his cross examination, and I have
7 permitted that.

8 MR. RANCK: Very well, Your Honor.

9 BY MR. EATON:

10 Q. And in light of this particular provision within
11 the ICC order -- and I refer you to what I think is on page
12 829.

13 A. 829?

14 Q. Thus, as a practical matter, documentation of the
15 historic resource involved in the proposal under review
16 before they are altered or removed is the only form of non-
17 consensual mitigation available to us.

18 Have I read that correctly?

19 A. Yes.

20 Q. In light of that provision of the Interstate
21 Commerce Commission order, do you still concede that there
22 were additional steps in mitigation beyond the mere assembly
23 of documentation which were required to complete the Section
24 106 process?

25 A. I think my answer hinges on the word

1 "documentation." The information, or if you want to call it
2 documentation, that we have received is to identify whether
3 we have a historic resource before us.

4 Documentation, under the regulations of the National
5 Historic Preservation Act -- and I believe I can't read into
6 this order exactly what they thought documentation was. But
7 documentation means the actual historic documentation of a
8 resource; that is, archivally stable photographs, drawings.
9 Usually a package that is sent to the Library of Congress as
10 a permanent record.

11 So I think that they're the same, that documentation
12 is the only -- I think what they're talking about here is
13 mitigation. They're talking about mitigation, which is the
14 final step in the process after identification, after
15 effect, after the memorandum of agreement is developed, then
16 the only, they said non-consensual, meaning -- certainly a
17 memorandum of agreement could be developed that had many
18 other elements in it, if everyone agreed, which is the
19 purpose, again, of the process, is to bring people to
20 agreement as to what is going to happen to those historic
21 resources.

22 And here they're stating that documentation -- and I
23 believe that to say as mitigation documentation, which is
24 the archivally stable package of information that would be
25 curated or archived somewhere forever, concerning a resource

1 that is to be lost forever.

2 Q. And your agency has received all documentation
3 that you have requested; has it not?

4 A. Not documentation as mitigation, no. We have
5 received --

6 Q. No, but that you have requested.

7 A. That we have specifically requested?

8 Q. Yes.

9 A. Correct.

10 Q. Okay. Thank you.

11 JUDGE COCHERES: Ms. Barrett, first of all, I want to
12 thank you for coming today.

13 As you can tell from the questions that have been
14 posed to you, they're a contentious lot, but they're
15 basically friendly.

16 (Laughter.)

17 THE WITNESS: And lots of them, too.

18 (Laughter.)

19 JUDGE COCHERES: That's right, that's right.

20 Is there any reason why I shouldn't consider not only
21 your direct testimony, but your very articulate responses to
22 the cross examination, as the opportunity of your agency to
23 make input into the decision of this agency about this
24 application to abandon crossings?

25 THE WITNESS: No, there's no reason you shouldn't.

1 JUDGE COCHERES: Fine. Now, do you know, based on
2 your expertise, whether regulations existed in the code of
3 federal regulations in 1989 and 1990 that set forth the 106
4 process in such a fashion that as an applicant to the ICC,
5 Conrail would have been on notice of what steps it had to
6 take to comply with the process?

7 MR. EATON: Excuse me, Your Honor. Conrail, I think,
8 filed a notice as opposed to an application.

9 JUDGE COCHERES: Fine. Thank you for the correction.

10 THE WITNESS: The regulations that implement the
11 National Historic Preservation Act have been in effect for
12 18-20 years with only minor modifications. The regulations
13 are 36 CFR 800, and I think they certainly were easily
14 available to them.

15 JUDGE COCHERES: But are they indexed in such a
16 fashion that a party before the ICC would be aware of their
17 application?

18 THE WITNESS: I don't know the answer to that.

19 JUDGE COCHERES: You and, particularly Mr. Eaton,
20 have had a long colloquy on the subject of whether or not
21 the process is concluded. Very clearly, he thinks it has
22 been, you think it hasn't been.

23 THE WITNESS: Right.

24 JUDGE COCHERES: Fine. Let's focus on what you think
25 needs to be done. And let's take this from the perspective

1 of things that we already know in the record.

2 What we know in the record is that there's been an
3 abandonment process initiated before the ICC; your agency
4 became involved in the usual federal process; and that
5 Conrail has responded to it.

6 In the process, as you have testified to, as
7 confirmed by Mr. Eaton's cross examination, you have
8 identified certain bridges. You have reviewed the entire
9 line. And as I remember, the description was that 33
10 bridges were determined to be historically significant; is
11 that right?

12 THE WITNESS: Yes. The numbers have been floating
13 around a lot, but, yes, I think that was the number.

14 (Pause.)

15 THE WITNESS: Yes, 33 bridges were termed eligible
16 for inclusion in the national register.

17 JUDGE COCHERES: Fine. Although you can't imagine
18 the amount of fun you missed by not being here all day
19 yesterday, --

20 (Laughter.)

21 JUDGE COCHERES: -- indeed, it developed after you
22 left that what is presently pending before my commission is
23 a settlement proposal. And included in that settlement
24 proposal is the agreement between Conrail, PennDOT and the
25 townships to demolish, I believe, ten structures on the line

1 out of well over 100 that you have talked about.

2 And what I would like to do with you right now is to
3 ask you if you know enough about this project to tell me
4 whether the ones slated for demolition -- and I might add,
5 Martic Forge Bridge is not on the list; all right? -- slated
6 for demolition are historically significant, and among the
7 33 that we just talked about?

8 THE WITNESS: I'll tell you, it would involve a lot
9 of fumbling through my papers to try to do that as you read
10 them out. I think it would be -- we would be happy, if
11 there's some way we can do this, to provide that information
12 to you in a setting where I can actually pull up the maps
13 and make sure that the bridge that you were giving, or that
14 is in the settlement agreement, is the bridge, or a bridge
15 is not a bridge that we have said is historically
16 significant. I think it might be difficult for me, right at
17 this moment, to go through and actually line those things
18 up.

19 JUDGE COCHERES: Well, this is the last day of
20 hearing, this is the last day that the evidentiary record is
21 open.

22 THE WITNESS: I could get it to you in an hour or
23 two. Is there a way we could do that? I think it just
24 would be hard.

25 JUDGE COCHERES: All right.

1 THE WITNESS: Because I'd have to lay out the maps,
2 and --

3 JUDGE COCHERES: I'll tell you what. Let me think
4 about that.

5 THE WITNESS: Okay.

6 JUDGE COCHERES: Because there are some other things
7 that we want to talk about. And as a matter of fact,
8 basically my idea in asking you this question is to confirm
9 that not all the bridges listed for demolition are
10 historically significant. Indeed, it's been pretty clear
11 from the parties' testimony that not all of them are.

12 THE WITNESS: Right.

13 JUDGE COCHERES: And let me just think about that;
14 all right?

15 THE WITNESS: All right.

16 JUDGE COCHERES: But do you see how I'm trying to
17 narrow the scope of being concerned about the historic
18 nature of this entire line to ten bridges that I actually
19 have to be concerned about?

20 THE WITNESS: Right. But can I also say, though,
21 that even though demolition is a needed outcome for some of
22 these, there is the historically significant bridges that
23 are transferred without immediate demolition plans and may
24 also be at risk.

25 JUDGE COCHERES: They all are at risk.

1 THE WITNESS: Right.

2 JUDGE COCHERES: Let me make that perfectly clear.
3 The stipulation agreement, as has been brought out many
4 times yesterday in cross examination, as, again, part of the
5 fun you missed, made it clear that once the townships accept
6 responsibility for maintenance of the structures, and this
7 proceeding has concluded, that the term "maintenance" is
8 sufficiently broad enough to include demolition of the
9 structure in the future at the discretion of the township,
10 or PennDOT. And that's stated in the agreement.

11 MS. D'ALFONSO: Your Honor, if I may correct, the
12 department is not taking maintenance responsibility for any
13 of the structures that formerly carried the railroad, only
14 for structures that are carrying highways.

15 JUDGE COCHERES: Yes, there's no question that --

16 MS. D'ALFONSO: When you reference demolition by
17 PennDOT, I didn't want that to be mistaken by Ms. Barrett.

18 JUDGE COCHERES: Okay, fine.

19 MS. D'ALFONSO: Thank you.

20 JUDGE COCHERES: All right. Now, I want you also to
21 understand, if it hasn't already been made clear to you,
22 that the real basis for my commission's jurisdiction is
23 limited statutorily to the subject of the crossings and to
24 safety at the crossings.

25 Would you agree with me that if a school bus, by

1 virtue of the shape of the arch that forms the crossing on
2 the highway is required to straddle the yellow line to go
3 through the archway, that that is an unsafe condition?

4 THE WITNESS: Yes, I would agree. Yes, I would agree
5 with you, and I'm sure there are many, many other scenarios
6 similar to that.

7 JUDGE COCHERES: Yes, there are. There are. And I
8 asked that question because I wanted you to acknowledge on
9 the record that there is a safety problem that we have to
10 deal with with some of these crossings.

11 THE WITNESS: There are safety problems many places,
12 yes.

13 JUDGE COCHERES: Okay. Now, I want to focus for a
14 moment on what you say you believe is the end of the 106
15 process. And that, I believe, is a signed agreement.

16 Depending on how I want to listen to the examination
17 and your testimony, I could regard that as the most onerous
18 piece of paperwork in the world, or simply another step in
19 the bureaucratic process to finish and bring to an end an
20 administrative procedure.

21 But what I really need to know from you is what's
22 involved here. You have talked -- and it was one of the
23 points I wanted to discuss with you, but it's, frankly,
24 contained in your Barrett Exhibit B, that mitigation is
25 permissible and does not require as an absolute necessity

1 that, in this case, the bridge structure be permanently
2 enshrined in plastic in place; does it?

3 THE WITNESS: No.

4 JUDGE COCHERES: No. You started to talk about what
5 is necessary to preserve it from an archival standpoint.
6 And I believe you talked about photographs and drawings.
7 Well, elaborate on that concept for me.

8 THE WITNESS: Again, we are talking of two processes
9 here. One is the federal process and one is the state
10 process.

11 When we review a federal project with a federal
12 agency and their applicant, and there is going to be adverse
13 effect, a resource is going to be lost, usually through
14 demolition, if after consultation, and I think it's really
15 important to emphasize, that usually things are done not
16 with me sitting in a witness stand, but with everyone
17 scattered around a table with a roll of drawings. We try to
18 work together to identify what is a possible reuse
19 potential, or the safety hazards, what are the options for a
20 resource.

21 If after discussion and negotiation, which sometimes
22 can take some time, it is determined that a historic
23 resource -- that demolition is the only outcome, then the
24 regulations of the advisory council provide, as a mitigation
25 option, documenting the property. And documenting the

1 property is making a permanent record of the property with
2 archivally stable photographs, drawings, or original
3 drawings, which in many cases are available, and historic
4 information on the property.

5 And usually these records are placed in either state
6 archives, or in the case of federal projects, and very
7 significant projects, in the Library of Congress. This is a
8 permanent record, a permanent historic record for all time
9 of a resource that was lost.

10 And my disagreement with Mr. Eaton was really that
11 the information that we have here, which includes color
12 xeroxes and maps, is not a document of an historic resource.
13 It is enough information for us to identify and review the
14 resource and say, yes, this meets the national register
15 criteria. And that's the responsibility of the federal
16 agency or the federal agency's applicant.

17 But the documentation step, which is at the end of a
18 process as one possible outcome, is a different kind of
19 documentation. It's a permanent record, a record that can
20 be reviewed, hopefully, 100 years from now. And that's the
21 difference.

22 And I think the 106 -- I don't want to make these
23 processes sound totally that we're just pushing things
24 through a bureaucratic process. The goal here is to try to
25 achieve preservation, if possible, and to make sure that all

1 -- you know, that the apple is rotated around and that every
2 option has been considered, and all the partners have had a
3 chance to weigh in, give their two cents; and after that,
4 then a decision has to be made. And sometimes resources are
5 lost, and sometimes they're preserved.

6 JUDGE COCHERES: With respect to the Section 106
7 process, can I safely assume that it is not your agency's
8 responsibility to see that that process is concluded?

9 THE WITNESS: No, that is not our responsibility. We
10 are, as we were characterized, somewhat reactive in that
11 process. I can only give you my opinion based on what we
12 received, that it seems to have stopped somewhere along the
13 line.

14 JUDGE COCHERES: All right. Based on your
15 experience, suppose I were to say, today the hearings are
16 over, tomorrow I wanted to finish the 106 process. How long
17 would it take?

18 THE WITNESS: Again, the applicant of the federal
19 agency sets the pace, but probably develop a memorandum of
20 agreement that takes 60 to 90 days.

21 JUDGE COCHERES: And then that --

22 THE WITNESS: On a fast track.

23 JUDGE COCHERES: On a fast track.

24 THE WITNESS: Right.

25 JUDGE COCHERES: And then would that include the

1 documentation that you just referred to?

2 THE WITNESS: That could include it, or it could
3 include a guarantee that it will be produced at the
4 appropriate time. In many cases, the documentation is not
5 produced when the agreement is reached, the documentation is
6 produced before the actual resource is lost.

7 JUDGE COCHERES: Now, is there any reason that the
8 responsibility for the documentation, or that the
9 responsibility for completing the 106 process, wouldn't run
10 with the asset?

11 In other words, if this stipulation goes through,
12 Conrail has effectively sold the entire line. Perhaps
13 "sold" is not a good way to think about it, because I don't
14 think they got any money in return.

15 (Laughter.)

16 JUDGE COCHERES: I think they gave money away to get
17 rid of it. As well as all of the identified assets involved
18 in it. But they won't be the owners anymore. There will be
19 a whole new list of owners.

20 Are the responsibilities in the Section 106 process
21 transferred to the new owners?

22 THE WITNESS: Usually not. Usually, the 106 process
23 is completed before the asset is transferred out from under
24 the federal agency's control; for a very obvious reason.
25 The Surface Transportation Board has no authority to make

1 the new owners do anything. And that's the reason that
2 the --

3 JUDGE COCHERES: That's the carrot on the stick.

4 THE WITNESS: Well, the --

5 JUDGE COCHERES: For the Surface Transportation Board
6 to complete its action, the carrot is to finish the 106
7 process.

8 THE WITNESS: Right. But the responsibility should
9 be complete before the federal agency makes their final
10 action. And I can't give you an opinion on where they are
11 in their process.

12 JUDGE COCHERES: Well, you can't give it to me; I
13 assure you, I can't give it to you.

14 THE WITNESS: Well, I meant opinion of where the
15 Surface Transportation Board is.

16 JUDGE COCHERES: Right.

17 THE WITNESS: I'm talking about, I could give you an
18 opinion as to where the Section 106 process is, but as far
19 as the abandonment at the federal level, I have no idea
20 where that process is.

21 JUDGE COCHERES: All right.

22 Is there any further cross examination based on my
23 examination of the witness?

24 Mr. Wyland.

25 MR. WYLAND: Thank you, Your Honor.

CROSS EXAMINATION

1
2 BY MR. WYLAND:

3 Q. Scott Wyland, for the townships.

4 I want you to assume for a moment that Conrail owns a
5 piece of property, and Conrail itself is going to demolish a
6 structure on its property. Also assume that Conrail does
7 not need any federal agency approval for the destruction of
8 the structure. Would you agree that in that case there's no
9 implication of the national legislation?

10 A. I agree.

11 Q. Are you aware that, to the best of our knowledge,
12 that only -- well, of the structures that your commission
13 has designated as eligible for the inclusion on the national
14 list, that four of those will be demolished; namely crossing
15 no. 10, Pumping Station Road, Eden Township, crossings 15
16 and 16 in Providence Township, and also in Providence
17 Township, crossing no. 21.

18 Those four crossing structures are to be demolished
19 by Conrail while Conrail owns the property, and not pursuant
20 to its notice of abandonment.

21 So, in that case, would you agree that the Section
22 106 process is not required prior to Conrail's own
23 demolition of its own structure?

24 A. There is a provision in the National Historic
25 Preservation Act that talks about anticipatory demolition to

1 avoid the Section 106 process. I don't know if that would
2 apply or not.

3 Agencies and applicants for -- this has actually been
4 very strictly construed, agencies and applicants for federal
5 permits who go ahead and demolish the resource, to say, we
6 don't want to comply with a later, when they know that they
7 are going to have to go to receive a federal permit, that is
8 actually statutorily prohibited.

9 So, but again, I really don't know where Conrail is
10 in the process. Our job, our responsibility, is to provide
11 federal agencies and their applicants with our opinions,
12 concurrence, advice on these issues. It is the
13 responsibility of the federal agencies and their applicants
14 to follow the procedures.

15 Q. Right. There are no facts before you now which
16 would force you to conclude that Conrail was undertaking any
17 action simply to avoid the Section 106 procedure?

18 A. Nothing except what you said.

19 (Laughter.)

20 Q. My question doesn't force you to conclude that;
21 does it?

22 A. I'm not going to make that conclusion. Why don't
23 we move on to the next question?

24 JUDGE COCHERES: Is there any additional examination
25 for the witness based on my examination?

1 MR. EATON: Judge, I hope this might elucidate rather
2 than becloud further.

3 CROSS EXAMINATION, (Resumed)

4 BY MR. EATON:

5 Q. Is it not true that the Historic Preservation Act
6 and the protections of properties of historic interest that
7 are encompassed or envisioned by that act are limited to
8 those properties which are the subject of governmental
9 action? That is -- well, can you answer that question as
10 asked thus far?

11 A. The Section 106 procedures only apply to
12 properties that are subject to some kind of governmental
13 action. The Historic Preservation Act overall, of course,
14 involves itself in assistance, advice, funding and
15 preservation advocacy.

16 Q. I'm thinking primarily in terms of the
17 prohibitory provisions of the act which would require --

18 A. Procedural provisions.

19 Q. All right. Which would require that the Federal
20 Government undertake certain steps --

21 A. Right.

22 Q. -- and may permit an agency to actually prohibit
23 the demolition of federal structures, for example, where
24 they're found to have significant historic value. Am I
25 right that the act does extent that far?

1 A. You mean the act prohibits the demolition of
2 federal structures?

3 Q. Well, it may, upon determination that the
4 structures are, in fact, of significant historic value.

5 A. You're talking about properties that are owned by
6 the Federal Government?

7 Q. Yes.

8 A. The Federal Government has a higher -- under a
9 separate section in the act, Section 110, there's specific
10 responsibilities for federally-owned property, yes.

11 Q. Okay. And if I may refer to such provisions as
12 mandatory provisions, although they may be the reverse of
13 that, such mandatory provisions, in fact, do not extend to
14 the owners of private property; do they?

15 A. The National Historic Preservation Act sets out a
16 -- excuse me; the Section 106 procedures set out a process
17 whereby when there is a nexus between a federal action and
18 either a private property owner, or it could be a regulated
19 utility, it could be a variety of different actors, or it
20 would be a federal agency itself granting zones or grants,
21 there's a process whereby historic values are considered in
22 the process.

23 Q. I appreciate the explanation, but let me go back
24 to the question that was asked, and ask you to answer that.

25 The prohibitory or mandatory provisions of the act do

1 not apply to privately-owned property; do they?

2 A. Section 106 applies, Section 110 does not.

3 Q. Could you give me a yes or no answer, and then
4 explain it, please?

5 A. Okay. Yes, the -- well, now I'm trying to
6 remember where we are in the question.

7 Q. Well, the fundamental question is this: Do you
8 the mandatory or prohibitory provisions of the Historic
9 Preservation Act, that is, those that would prevent the
10 Federal Government from tearing down a post office which is
11 of historic significance, will those same provisions permit
12 the Federal Government to prohibit the demolish of
13 privately-owned structures?

14 A. No.

15 Q. Okay.

16 A. Section 106 must be followed for them.

17 Q. Okay. And isn't it a fact then that the impact
18 of the Federal Historic Preservation Act in this particular
19 project lies in the fact that it may be limiting on the ICC
20 at the time, and now the Surface Transportation Board,
21 because that is a federal agency which is acting; am I
22 correct?

23 A. Correct.

24 Q. And would it then not be fair to say that where
25 the agency has acted in accordance with what it deems to be

1 its duty under that act, that then the limitations which it
2 may impose upon a public utility, subject to its
3 jurisdiction, such as, in this case, Conrail, has
4 terminated? That is that if the ICC has complied with its
5 duty under the act, that then there is no prohibition
6 stemming from the act upon Conrail to do as it wishes with
7 its own property?

8 A. That's correct.

9 Q. Okay.

10 A. If the federal agency's complied, then there are
11 no other prohibitions.

12 Q. Okay. Going back to your letter to me of
13 April 10, 1996, you've said, on the second page, the last
14 paragraph, that the Section 106 review is a three-step
15 process involving identification, determination of effect,
16 and mitigation.

17 And I had referred you earlier to that provision if
18 the ICC's own regulation, stating: Thus, as a practical
19 matter, documentation of the historic resources involved in
20 the proposal under review before they are altered or removed
21 is the only form of non-consensual mitigation available to
22 us.

23 And so, with that background, I ask you if it's not
24 fair to read that sentence of your letter to me, a three-
25 step process involving identification, determination of

1 effect, and end it there; because the ICC itself has said
2 the only mitigation available to it is documentation of the
3 resource.

4 A. No, I don't think I would -- I don't think these
5 things are totally inconsistent. I think what the ICC is
6 saying is that at the end of the Section 106 process, after
7 determination of effect, after the consultation between
8 parties, when the memorandum of agreement is developed, the
9 only thing that we can order an unwilling party to do is to
10 do the historic documentation of the resource.

11 That doesn't mean that through the process, other
12 preservation options might not emerge. But the ICC is
13 saying, in their opinion, that the only thing they can
14 order, directly order, is this documentation mitigation.

15 Q. And I'm suggesting, and perhaps you don't agree
16 with me -- and I'm beginning to think perhaps you don't.

17 (Laughter.)

18 JUDGE COCHERES: He's slow on the uptake, but that's
19 okay.

20 (Laughter.)

21 BY MR. EATON:

22 Q. That, in fact, Conrail is under no obligation to
23 participate in any conference or any discussions, or any
24 other matter relative to the demolition of its own property,
25 and that it is absolutely entitled to destroy that property

1 as soon as it's clear, under the Federal Interstate Commerce
2 Act, that it has effectively abandoned its line; and upon
3 approval by this commission of the abolition of the
4 crossings involved, which is what this proceeding is geared
5 toward.

6 A. I don't know the status of your actions in front
7 of the Surface Transportation Board. It is the
8 responsibility of the federal agency to ensure that
9 permittees, licensees, applicants before them follow the
10 National Historic Preservation Act.

11 In my opinion, the process has not -- based on the
12 records that we have before us, the full process has not
13 been followed.

14 But as the responsibility of the federal agency not
15 -- you know, it's not our job to enforce these issues, it's
16 our job to participate in the process.

17 Q. Well, I think I'd like to argue further, and I
18 understand that I may be in argument at this point, and so
19 I'll defer. Thank you.

20 JUDGE COCHERES: It is obvious that you two disagree.

21 MR. ZIELONIS: I had some follow-up to your
22 questions.

23 JUDGE COCHERES: Fine. Mr. Zielonis.

24 MR. ZIELONIS: Thank you.
25

1 CROSS EXAMINATION, (Resumed)

2 BY MR. ZIELONIS:

3 Q. Ms. Barrett, you indicated you can't sit here
4 today, when the Judge asked you to identify the historic
5 structures on this line; is that correct?

6 A. I'm saying that --

7 Q. At this instant now.

8 A. At this instant now, unless we all want to take a
9 break while I roll out the maps and, you know, put on my
10 reading glasses and stuff for --11 Q. Could we assume generally, though, that the
12 structures that would have historic value would be the stone
13 arches?14 A. We have a list of resources that we evaluated as
15 being eligible, and that does include stone arch bridges,
16 yes.17 Q. Let's assume for safety reasons, as indicated by
18 the Judge, one of the stone arches has to come down. Would
19 a mitigation effort be, if a trail is developed,
20 construction of some kind of shrine that shows photographs
21 of the structure and maybe a piece of the rock there?22 A. Well, I would like to see that you're really
23 participating in the kind of consultation discussions that
24 take place when we deal with these issues. Yes, that kind
25 of mitigation, documentation, signage, those kinds of things

1 are part of mitigation, yes.

2 Q. And would an agreement that preserves the entire
3 length of the corridor, from a real estate perspective,
4 would that also be a mitigation effort?

5 A. The key word is "preserve;" but, yes.

6 MR. ZIELONIS: Your Honor, that's all the questions I
7 have.

8 JUDGE COCHERES: Mr. Ranck.

9 MR. RANCK: Thank you, Your Honor.

10 **CROSS EXAMINATION, (Resumed)**

11 BY MR. RANCK:

12 Q. Ms. Barrett, there's been some focusing on
13 individual elements of the line. But it's my understanding
14 that the entire line has been declared eligible; is that
15 correct?

16 A. Yes, just like a historic district may have
17 contributing and non-contributing buildings, the importance
18 of this resource is not just bridge by bridge, the
19 importance of the resource, of course, is the whole
20 engineering conception of the low grade line.

21 Q. And is it of significance to the commission that
22 the line be preserved essentially in its present
23 configuration, as opposed to just contiguous parcels of real
24 estate?

25 A. A better preservation option, or approach, would

1 be to preserve the whole line, the whole line for its
2 historic and engineering significance, than to preserve just
3 a piece of it, yes.

4 Q. Well, the reason I'm following up counsel's
5 description of from a real estate standpoint. And I took
6 that to mean that as long as we have big chunks of the line
7 owned by different municipalities, but the chunks are
8 maintained in contiguous fashion, that that would pass
9 muster as mediation.

10 What I was seeking to get your opinion on is whether
11 you feel that is enough to comprise mitigation as opposed to
12 maintaining the grade, the current level of the line, as a
13 whole.

14 A. Naturally, the best preservation would be to
15 retain the whole line in its complete form. And common
16 ownership or common agreement on how a resource is going to
17 be managed, it is more likely to provide long-term
18 preservation than a resource that is a segment.

19 So I think preservation options, or a series of
20 tiered approaches, with the ideal options and less ideal
21 options -- but clearly, the most ideal option is to reserve
22 the resource in its entirety. And then there are secondary
23 options, as, I would think, the management; as management
24 considerations, safety considerations, and others, are
25 weighed in.

1 Q. Okay, thank you. I believe you previously said
2 that you have not been presented with the proposed
3 stipulation of agreement by PennDOT or Conrail that is
4 before the Court?

5 A. No.

6 Q. I'm correct that you have not --

7 A. You're correct, I have not seen it.

8 Q. So, nobody has objected to you that your agency
9 is sitting on a proposed stipulation of agreement and
10 delaying things?

11 A. No.

12 Q. Have you ever been, or did Conrail ever move to
13 compel your commission to act with reference to the notice
14 that it filed before the Federal Government?

15 A. No.

16 Q. Did anybody ever move to compel your agency to
17 take action, to sign off, or put your stamp of approval on
18 anything to this date?

19 A. No.

20 Q. Thank you.

21 MR. RANCK: That's all.

22 JUDGE COCHERES: Ms. D'Alfonso.

23 **CROSS EXAMINATION, (Resumed)**

24 BY MS. D'ALFONSO:

25 Q. Ms. Barrett, could not PHMC, your bureau,

1 whomever, you yourself, have intervened in this proceeding?

2 A. Yes, it's possible that we could have, but we
3 have very limited resources and --

4 Q. You chose not to?

5 A. -- no legal staff -- yes, we chose, or we were
6 unable to intervene in this proceeding and in other
7 proceedings, similar proceedings, that deal with historic
8 resources.

9 Q. So the opportunity is available to PHMC to
10 participate as a party in proceedings before the Public
11 Utility Commission?

12 A. Yes.

13 MS. D'ALFONSO: Thank you.

14 MR. ZIELONIS: Your Honor, at the risk of incurring
15 your wrath --

16 JUDGE COCHERES: And you are at risk.

17 (Laughter.)

18 MR. ZIELONIS: My question relates to what I perceive
19 as friendly cross examination by Mr. Ranck of Ms. Barrett
20 concerning my questioning regarding mitigation.

21 JUDGE COCHERES: He's allowed to ask follow-up
22 questions. Rather than permitting examination, let me give
23 you a recap of what your positions are.

24 Yours, Mr. Zielonis's and Mr. Ranck's, yours, very
25 clearly, as posed through your questions, was for the

1 purpose of establishing that other concepts, which were
2 presented yesterday, can help to form the basis for
3 mitigation within the terms as this witness uses them.

4 His was to say: But, Your Honor, wouldn't it be
5 better to preserve the whole line in plastic?

6 And the answer to that question, as this witness has
7 said, is always, yes, it is best to preserve the entire line
8 intact, unchanged, and for us to hire helicopters to fly by
9 and take a look at them.

10 But that's not going to happen. And she recognized
11 in her answer to him that, yes, that's the best option, but
12 there are alternatives that we have to consider.

13 Now, what further do you think you could develop
14 after that point?

15 MR. ZIELONIS: Nothing, Your Honor.

16 JUDGE COCHERES: That's the right answer.

17 (Laughter.)

18 MR. EATON: I don't think I'll raise my hand.

19 (Laughter.)

20 JUDGE COCHERES: But I do recognize that Ms. Nettke,
21 as the sponsor of this witness, does have the right to
22 conduct redirect examination, albeit limited.

23 MS. NETTKE: Thank you, Your Honor.

24
25

REDIRECT EXAMINATION

1
2 BY MS. NETTKE:

3 Q. There's been a great deal said; and first,
4 Ms. Barrett, I would like to clarify with you whether the
5 Martic Forge Bridge is on the list of contributing factors.

6 MS. NETTKE: And if I may approach the witness, Your
7 Honor.

8 BY MS. NETTKE:

9 Q. I think there was a question as to whether the
10 Martic Forge Bridge was on that list. You said you would
11 have to really dig to find that list.

12 MR. EATON: I'll stipulate it's on the list.

13 JUDGE COCHERES: Yes, there's no controversy about
14 that, Ms. Nettke.

15 MS. NETTKE: All right.

16 THE WITNESS: No, I have a list, but I'd have to --
17 if the Judge rattled off a series of bridge names, it would
18 take me a while.

19 MS. NETTKE: I wanted to make sure the record was
20 clear on that.

21 JUDGE COCHERES: No, there's no doubt about that,
22 Ms. Nettke. Let me just also indicate:

23 Mr. Wyland, in your examination of the witness, you
24 named four bridges that you thought were historically
25 significant. Why did you designate those four bridges that

1 are subject to demolition as historically significant?

2 MS. SUSAN SMITH: Perhaps I can answer for him. In
3 the October 17, 1994 letter of the PHMC, they specifically
4 identified bridges subject to this proceeding that they
5 considered to be significant. And we compared that; and
6 that's how we came up with the four named bridges.

7 JUDGE COCHERES: So you've already done Ms. Barrett's
8 work for her?

9 MS. SUSAN SMITH: That's correct.

10 JUDGE COCHERES: Thank you.

11 Please continue, Ms. Nettke.

12 MR. EATON: What are the four bridges, by the way?

13 JUDGE COCHERES: By my notes, they are bridge no. 10,
14 Pumping Station Road, bridge no. 15, Oak Bottom Road in
15 Providence Township, bridge no. 16, Route 222, Providence
16 Township, and bridge no. 21, Hollow Road in Providence
17 Township.

18 Ms. Nettke, I'm sorry to keep interrupting you, but I
19 do want you to continue.

20 BY MS. NETTKE:

21 Q. Ms. Barrett, does the fact that the entire line
22 is eligible for the national register mean that the 106
23 process needs to be completed with regard to the entire line
24 if there's a proposal to transfer the line?

25 A. That really depends on the role of the Surface

1 Transportation Board at the federal level.

2 Q. As part of --

3 A. As, you know, what their approvals are related
4 to; whether they're related to abandonment of specific
5 crossings, or whether they're related to the transfer of the
6 line.

7 Q. Assuming that the intention is to abandon the
8 entire line.

9 A. Yes, then the entire line --

10 Q. Needs to --

11 A. Right.

12 Q. -- have the 106 process completed --

13 A. That's right.

14 Q. -- with regard to it? Is the process also a
15 consultative process, the 106 process?

16 A. Yes. In fact, that's the heart and sole of the
17 process.

18 Q. And what triggers the consultation phase of the
19 process?

20 A. After the resource -- after resources have been
21 identified as eligible, and after there is a finding of
22 effect, then official consultation begins if there's an
23 adverse effect, because the goal of consultation is to see
24 if there's a way to reduce the adverse effect, or, you know,
25 actually maybe even change the result of a federal action to

1 preserve the resource or to minimize the effect; and
2 finally, just to record the resource if there is no other
3 options.

4 Q. Before I forget, for the record, are the 106
5 regulations that we're talking about set forth at Volume 36,
6 Code of Federal Regulations 800, and following sections; is
7 that correct?

8 A. Yes.

9 Q. Do those regulations actually spell out what is
10 an adverse effect on a historic property?

11 A. Yes, they do.

12 Q. Do you know them, and can you tell us? Or shall
13 I read it for you?

14 A. I'd be just as happy if you read them for me.

15 MR. WYLAND: I'll stipulate to the contents of the
16 Code of Federal Regulations.

17 MS. NETTKE: May I refer the witness, Your Honor, to
18 the specific section, and then ask if she's familiar?

19 JUDGE COCHERES: Fine.

20 BY MS. NETTKE:

21 Q. I'll refer you to Section 800.9(b). And
22 "Undertaking Adverse Effects," is the title of that. An
23 undertaking is considered to have an adverse effect on a
24 historic property -- or, excuse me; when the effect on a
25 historic property may diminish the integrity of the

1 property's location, design, setting, materials,
2 workmanship, feeling, or association.

3 Adverse effects on historic properties include, but
4 are not limited to -- and it lists five. Physical
5 destruction, damage or alteration of all or part of the
6 property.

7 Number two is, isolation of property from or
8 alteration of the character of the property's setting, when
9 that character contributes to the property's qualification
10 for the national register.

11 Number three; introduction of visual, audible or
12 atmospheric elements that are out of character with the
13 property or altered setting.

14 Number four; neglect of a property resulting in its
15 deterioration or destruction.

16 And number five; transfer, lease or sale of the
17 property.

18 And that ends the list. And are those the criteria,
19 of course, that you use?

20 A. Yes.

21 Q. Getting back to that consultation process, is
22 there a role for interested and consulting parties other
23 than the applicant and the state agencies?

24 A. Yes, the regulations specifically provide that
25 interested parties can participate in the Section 106

1 process. Interested persons, I guess, actually.

2 Q. And is there a role for consulting parties as
3 this process of talking about mitigation goes forward?

4 A. Yes, the interested persons are to participate
5 in the consultation on what are the options for the
6 preservation or reduction of adverse effects on the
7 resource.

8 Q. Are there interested parties in that process with
9 regard to this line of structures, that you know of?

10 A. There are a lot of people that are interested,
11 but since the process never reached a finding of effect,
12 there are no official interested persons.

13 Q. Are you aware that the trust and F.A.S.T. have
14 asked to be considered interested parties --

15 A. Yes.

16 Q. -- as the process moves forward?

17 A. Yes.

18 Q. Mr. Zielonis asked you a question a minute ago
19 with regard to the Martic Forge Bridge. I'll withdraw that.
20 I'm not sure if it was Mr. Zielonis's question, there have
21 been so many.

22 With regard to the Martic Forge Bridge, the \$100,000
23 grant that was awarded to F.A.S.T., and there were questions
24 asked you about that. And the criteria for awarding that
25 grant, you said there must be a historic structure, first of

1 all.

2 A. Right.

3 Q. Are there other criteria that you can recall for
4 awarding such a grant?

5 A. Well, we look at the quality of the application,
6 we look at the preservation solution for the application, we
7 look at such factors as is the resource at risk and will our
8 grant assist in its preservation, reduction of risk; we look
9 at the qualifications of the applicant to carry out the
10 project.

11 So we look at a variety of issues. And again, our
12 program is very competitive.

13 Q. Do you remember anything about what F.A.S.T.'s
14 proposal was for the Martic Forge Bridge when they were
15 awarded that grant?

16 A. I can't recall the grant application directly,
17 but I assume it was part of the overall goal for a trail
18 project.

19 Q. Did it deal with rehabilitating the bridge for
20 trail use? Do you recall that?

21 A. Yes. I believe that was the content of the
22 grant.

23 Q. Mr. Zielonis did ask you this question. If there
24 were an agreement among the future owners to preserve this
25 corridor, whether that would -- I don't remember the exact

1 wording of the question; but whether that would help you to
2 feel more comfortable with the fact that the corridor would
3 be preserved, and you said the key word is "preserve."

4 A. Right. Yes, I said that the key word is
5 "preserve."

6 Q. And I think the tone of your answer was that you
7 would be more comfortable.

8 A. Well, again, it's the better preservation
9 solution. I think the word "how I feel" is not the issue.
10 The issue is, what is the best preservation solution for the
11 resource.

12 Q. However, if such an agreement excluded from its
13 coverage all of the bridges, how would that affect your
14 comfort level with such an agreement?

15 A. You mean a preservation agreement excluded the
16 preservation of the bridges?

17 Q. Without defining the term "preservation" as it's
18 meant, yes.

19 A. The bridges, or a good percentage of the bridges
20 on this project, as identified by our office are important
21 historic resources that contribute the significance of the
22 line. And if they're preservation was at risk, that would
23 be a less ideal preservation solution.

24 Q. Thank you.

25 Since your letter which is identified as Barrett B --

1 the letter to Mr. Eaton which has been discussed. After you
2 wrote that letter to Mr. Eaton and to Conrail, did you
3 receive any follow-up letters from Conrail saying, we
4 recognize, Ms. Barrett -- or saying anything concerning this
5 subject?

6 (Pause.)

7 A. I don't know if we did. I'd have to really go
8 through the pile to see if we did receive another letter. I
9 don't believe we did.

10 Q. Are you familiar with, have you seen, or been
11 brought to your attention, a copy of a petition filed by
12 F.A.S.T. with the Surface Transportation Board asking to
13 reopen the abandonment proceeding and to recognize that 106
14 has not been completed?

15 A. I'm aware that that's happened, and I may have a
16 copy of that, but I --

17 Q. Have you seen anything indicating to you that
18 there's been a disposition of that petition by the ICC?

19 A. No.

20 Q. Or the STB.

21 A. Again, I have nothing in my files that shows
22 that.

23 Q. When you testified that your agency, under the
24 federal regulations, doesn't have the power to prohibit an
25 adverse action to a property, or a demolition, does the fact

1 you don't have the power to prohibit an adverse action in
2 any way relieve an affected entity or owner or party of
3 their duty to comply with the mitigation and documentation
4 process?

5 A. The responsibility of federal agencies and
6 applicants to federal agencies was independent of our
7 agency. Their responsibilities are laid out in the National
8 Historic Preservation Act, and our agency's responsibilities
9 are laid out both in the act and in the regulations. We're
10 there to consult, we're there to concur, we're there to
11 provide assistance.

12 Q. Are you familiar with the fact that the ICC
13 sometimes -- although it may not be able to prohibit an
14 action by a private entity or owner, that the ICC sometimes
15 will stay an action until the process is complete; the 106
16 process?

17 A. I'm not familiar with what their action is. But
18 as a federal agency it's their responsibility to make sure
19 that the National Historic Preservation Act and regulations
20 are complied with before they take a final action that would
21 foreclose any -- foreclose compliance with those
22 regulations. I think that's clear.

23 Q. There is an order of the ICC entered February 14,
24 1990, which has been submitted into this record as part of
25 various filings, and also as part of that motion to the STB,

1 which includes as a condition the requirement that Conrail
2 take no steps to alter the historic integrity of the bridges
3 on the line until completion of the Section 106 process of
4 the National Historic Preservation Act. And I believe you
5 may have seen that.

6 A. Yes, I have seen that.

7 Q. Have you subsequently seen any orders of the ICC,
8 or the STB, or any letters; or has anyone brought to your
9 attention any order discharging or vacating that condition?

10 A. The only correspondence we have from the ICC, or
11 the STB, recently is the letter that was written to you by
12 Elaine Keimer. And there's no other correspondence.

13 Q. Elaine Kaiser? Is that the letter dated March 7,
14 1995? Or March 20, I'm sorry.

15 A. March 20, 1996.

16 Q. And signed by Elaine Kaiser, chief of the section
17 of environmental analysis?

18 A. Right.

19 Q. Do you take that to be a staff interpretation?

20 MR. EATON: I'm going to object. I think it's pretty
21 speculative.

22 BY MS. NETTKE:

23 Q. Well, you were asked --

24 JUDGE COCHERES: Ms. Nettke, do you want to respond
25 to the objection?

1 MS. NETTKE: I'm sorry.

2 There's been quite a bit of discussion about whether
3 or not that was actually from the ICC, whether it was issued
4 under the authority of the ICC. STB; excuse me, I keep
5 saying the wrong agency. Whether it was from the board.
6 Ms. Barrett then responded that she took it to mean that it
7 was the position of that agency because it came from that
8 agency. That's why I'm asking her a follow-up.

9 JUDGE COCHERES: Fine; it was covered in cross
10 examination. Objection overruled.

11 BY MS. NETTKE:

12 Q. Do you take that to be a staff interpretation?

13 A. I took this to be a status report on where the
14 project was at this time. I mean, it is not moving the 106
15 process forward. I took it to be a status report. This is
16 where, you know -- inquiries come to us as to what is the
17 status of this project, and our opinion is the status of the
18 project is this.

19 And that's the way I read that letter. I didn't see
20 it as an action item. I just saw it as an interpretation of
21 where the proceedings were in front of the Surface
22 Transportation Board.

23 Q. Thank you. Would the fact that an unsafe
24 condition at a structure, a finding that there was an unsafe
25 condition at a structure, relieve the applicable parties

1 from following through with the 106 process before
2 demolishing the structure?

3 A. If it's not an emergency situation, no.

4 Q. You spoke about a memorandum of agreement that
5 was a step in --

6 A. Uh-huh.

7 Q. One of the concluding steps in this process,
8 actually. If the persons who need to sign a memorandum of
9 agreement can't agree, what then happens?

10 A. Under the regulations, the matter is referred to
11 the full advisory council, which is the body made up of
12 federal agencies. And they review the matter and issue an
13 opinion.

14 And again, their opinion is advisory. But it is made
15 to the head of the agency who is undertaking the action.
16 And I would say that things rarely get that far, and usually
17 agencies at that point try to work out a compromise
18 solution.

19 Q. And when you say it is referred, whose
20 responsibility would it be to refer it?

21 A. A variety of interested parties could refer it,
22 actually.

23 Q. Anybody could?

24 A. Yes.

25 Q. Okay. Is an agency like the Historic

1 Preservation Trust a type of agency that often is considered
2 an interested party, or a consulting party, on --

3 A. Yes.

4 Q. -- the historic --

5 A. Yes. They may be a consulting party if a
6 historic resource is involved in their area.

7 Q. As part of the award of the grant, the type of
8 grant that was awarded for the Martic Forge Bridge, is there
9 a condition on how long a party has to, or the recipient of
10 such a grant would need to preserve the resource?

11 A. Yes. Our procedures require that anyone
12 accepting commonwealth funding for a resource will preserve
13 it for a period of fifteen or twenty years, depending on the
14 size of the grant. The covenant is placed on there to
15 protect the public dollars that are invested in the
16 resource.

17 Q. Does "preserve," in that sense that you just used
18 it, include maintaining it?

19 A. Yes. The covenant specifically discusses
20 maintenance. Because maintenance is the most important
21 issue.

22 Q. For something like a bridge, is your definition
23 of "maintenance" similar to what you take to be the
24 commission's definition of "maintenance"?

25 A. Well, that's a hard question to answer. But I

1 assume that they would be somewhat similar, because
2 maintaining the bridge is ensure that it is preserved in the
3 condition that it can be used. And that involves whatever
4 maintenance, whether it's painting or cleaning or checking
5 for cracks, or whatever else needs to be done.

6 Q. I think there's been a question explored with you
7 whether you work with the townships who intend to take
8 ownership. If you had awarded such a grant to the new
9 owner, being a governmental unit for such an historic
10 bridge, and they decided they wanted to take it down, would
11 there be a procedure that they needed to then go through,
12 having received the grant?

13 A. The covenant is a fairly strong document. But
14 basically --

15 Q. It's a legally binding contract?

16 A. Yes, it's a legally binding contract that
17 property will be preserved and maintained in the sense of
18 maintenance to keep the property standing for the period of
19 the covenant. And I think that everyone would have to have
20 a clear understanding of that if they received a grant from
21 our agency.

22 Again, our goal is to preserve historic resources and
23 to spend public dollars wisely in doing that.

24 Q. You talked about anticipatory demolition. Is
25 that concept found in the -- did I say the correct wording?

1 A. Yes, anticipatory demolition.

2 Q. Is that what someone might try to go ahead and do
3 to get out of their responsibilities under 106?

4 A. Right.

5 Q. And I think you said you don't imply that anybody
6 is trying to do that.

7 A. No.

8 Q. Can a party get out of its responsibilities under
9 106 by transferring, selling or leasing a property to a new
10 owner prior to the completion of 106?

11 A. If a federal action is needed for -- it really
12 goes back to the root federal action that is involved. If
13 the approval of a federal agency for permit or a license is
14 required from a federal agency to do an action, just moving
15 the asset or moving the action to someone else would not
16 necessarily, I think, excuse the party from getting the
17 approval.

18 Again, I don't know the status of this process in
19 front of the Surface Transportation Board, and I don't know
20 what the responsibilities are.

21 But for example, I don't think you could just move an
22 action to avoid getting a necessary federal approval. But
23 if there were no federal approval requirement, that might
24 indeed be the case.

25 I think it really would be very case-specific, and

1 I'm not familiar with exactly how the Surface Transportation
2 Board treats abandonments.

3 If they have no jurisdiction, if Conrail was sell
4 this to private parties, and they have not jurisdiction at
5 all in the abandonment, then there would be no Section 106
6 if that was the case.

7 But if an action is needed by the Surface
8 Transportation Board, then just selling it to avoid that
9 action, I think, would not be appropriate.

10 Q. Thank you.

11 MS. NETTKE: May I have one minute to see if I want
12 to ask anything else?

13 (Pause.)

14 BY MS. NETTKE:

15 Q. With a petition that's been brought to your
16 attention -- I think you remembered it -- pending before the
17 Surface Transportation Board, alleging that 106 is not
18 complete, that the board has placed a condition on Conrail
19 not to take action regarding a resource until it is
20 complete; Conrail has answered, of course, that they
21 disagree with that. But I brought to your attention that no
22 disposition from the STB has been made, or you said you've
23 not seen or heard of any, and no one else has brought
24 forward any disposition of that petition.

25 In your opinion, then, assuming that that petition

1 was still hanging out there and not decided, do the parties
2 who are proposing this transfer of the line and certain
3 actions concerning the bridges, and this commission who's
4 been asked to approve those bridges, need to wait to take
5 such actions until the conclusion of the STB's decision on
6 whether that condition is discharged?

7 A. I really can't answer that, because I don't know
8 the relationship between the Public Utility Commission
9 proceeding and the ICC or the Surface Transportation Board
10 proceedings.

11 However, it would be unfortunate if there were
12 inconsistent actions taken, where one governmental body says
13 one thing and another governmental body says something
14 different. It seems to me that one would want to try, from
15 a practical point of view, would want to try to bring those
16 matters together.

17 Q. Especially if they were state and federal law, --

18 A. Right, right.

19 Q. -- would it be fair to say?

20 A. Yes.

21 Q. Thank you.

22 MS. NETTKE: No further questions.

23 JUDGE COCHERES: Is there recross examination?

24 Mr. Zielonis.

25 MR. ZIELONIS: Thank you, Your Honor.

1
2 **REXCROSS EXAMINATION**

3 BY MR. ZIELONIS:

4 Q. Ms. Barrett, you indicated on redirect
5 examination that the grant for the Martic Forge Bridge
6 required, I believe, anyone who takes and accepts one of
7 those grants, they have to agree not to demolish the project
8 from ten to fifteen years?9 A. Well, it's they agree to preserve and maintain
10 the project for a period commensurate with the size of the
11 grant. I think it's more like fifteen to twenty years, but
12 I'd have to exactly check the length of term of the
13 covenant.14 Q. Should I imply by your answer that the entity
15 then has to have an ownership interest in order to provide
16 the promise to maintain?17 A. The grantee does not have to have an ownership
18 issue, but the -- interest; but they must have the consent
19 of the owner of the property, and the owner of the property
20 actually has to, of course, take on the company covenant.21 MR. ZIELONIS: Your Honor, that's all the questions I
22 have.

23 JUDGE COCHERES: Any additional recross?

24 (No audible response.)

25 JUDGE COCHERES: The witness is excused.

Thank you very much for coming, you were very

1 helpful. And very patient.

2 MS. D'ALFONSO: I have an off-the-record request for
3 information; easy request.

4 Ms. Smith represents, I believe, an October 17th
5 letter -- I don't remember the year -- that listed the
6 structures. Perhaps that could be provided to the parties
7 as Barrett C sometime during the course of the day, and made
8 part of the record.

9 JUDGE COCHERES: Do you remember what Ms. Smith
10 referred to?

11 THE WITNESS: Yes, I do. And I'm just going to have
12 to look through for the actual letter. I'm working off the
13 December 12, 1989 letter.

14 JUDGE COCHERES: Let's go off the record.

15 (Discussion off the record.)

16 JUDGE COCHERES: Let's go back on the record.

17 Ms. D'Alfonso, during our off-the-record discussion,
18 were you able to procure a copy?

19 MS. D'ALFONSO: Yes, I was, Your Honor, and I will
20 withdraw the request that it be provided and made part of
21 the record, as I am being provided right now with a copy.
22 Thank you.

23 JUDGE COCHERES: Thank you

24 All right; the witness is excused.

25 THE WITNESS: Thank you.

1 (Witness excused.)

2 JUDGE COCHERES: And we're ready to move on. Let's
3 go off the record for a moment while this transition is
4 occurring.

5 (Off-the-record pause.)

6 JUDGE COCHERES: Let's go back on the record.

7 Let me simply say that Ms. Barrett took the time to
8 come here and give us all the information that she did. And
9 I think I've been very patient with your questioning of her.
10 And in addition to my own questions, I'd say that there was
11 a lot repetition in the examination I heard of her. Because
12 much of the material that you folks covered was, in fact,
13 either contained in her testimony or in some of the exhibits
14 she sponsored. My point is, we have to go a little faster
15 with the rest of the witnesses.

16 And I believe, Ms. D'Alfonso, are you next with your
17 witnesses?

18 MS. D'ALFONSO: Yes, I am, Your Honor.

19 JUDGE COCHERES: Fine.

20 MS. D'ALFONSO: I have two witnesses, one who I
21 believe will be shorter than the other. Though his
22 statement is marked Statement 2, if the parties are not
23 opposed, I will reverse witnesses.

24 MR. RANCK: I have no objection.

25 MS. D'ALFONSO: Mr. Keiser.

1 Whereupon,

2 MICHAEL KEISER

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. D'ALFONSO:

6 Q. Would you please state your name, and spell your
7 last name?

8 A. My name is Michael Keiser, last name is spelled
9 K-E-I-S-E-R.

10 Q. Are you an employee of PennDOT?

11 A. Yes, I am.

12 Q. I'm going to show you a document that I have
13 tentatively marked for identification purposes as Department
14 Statement No. 2.

15 (Whereupon, the document was marked
16 as PennDOT Statement No. 2 for
17 identification.)

18 (Document handed to witness.)

19 Q. Can you identify that document?

20 A. Yes, I can.

21 Q. And what is that?

22 A. That's my testimony.

23 Q. Was that document prepared under your direction
24 or guidance?

25 A. Yes, it was.

FORM 2

1 Q. And do you have any corrections or additions to
2 your prepared testimony?

3 A. Yes, I'd just like to make two additions,
4 starting on page 1. I'd just like to convey that I am a
5 registered professional engineer for the state of
6 Pennsylvania.

7 Q. So, after your name it would be appropriate to
8 put a comma, P.E.?

9 A. Yes, it would.

10 Q. And the next correct?

11 A. The next correction is on page 3, identified by
12 the answer starting at line 6. The question was conditions
13 on the enhancement program; my response was that, yes, we
14 needed to execute a reimbursement agreement.

15 Obviously, the conditions within the reimbursement
16 agreement are presented there in the next statement. But
17 what I wanted to add is, in addition to the reimbursement
18 agreement, we need federal authority for that particular
19 project, and also a third party engineering agreement. The
20 department would execute a third party engineering agreement
21 between the engineering group that is doing the work and the
22 sponsor of the project.

23 And that would be all of the additions that I have.

24 Q. I have one additional question. The application
25 that was presented to receive the enhancement funds; did

1 that application anticipate the installation of a pedestrian
2 structure over Route 222?

3 A. Yes, it did.

4 Q. And going back to Statement No. 2, if I were to
5 ask you those questions today, as corrected this morning,
6 would your answers be the same?

7 A. Yes, they would.

8 Q. And are they true and correct, to the best of
9 your information, knowledge and belief?

10 A. Yes, they are.

11 MS. D'ALFONSO: With that, Your Honor, Mr. Keiser is
12 available for cross examination. And I would move for the
13 admission of Statement No. 2.

14 JUDGE COCHERES: PennDOT Statement No. 2, as amended,
15 is admitted, subject to cross examination and any timely
16 motions.

17 **(Whereupon, the document marked as**
18 **PennDOT Statement No. 2 was received**
19 **in evidence.)**

20 JUDGE COCHERES: And do I have any person who wants
21 to examine the witness?

22 MS. NETTKE: I do.

23 JUDGE COCHERES: Ms. Nettke.
24
25

CROSS EXAMINATION

1
2 BY MS. NETTKE:

3 Q. Mr. Keiser, are you involved with a decision to
4 award an ISTEА grant, or is that made by -- ISTEА meaning
5 enhancements. And I know it's not a grant. What shall I
6 call it, a --

7 A. Federal program.

8 Q. Federal program award.

9 A. That's fine.

10 Q. Are you involved with the decision-making and the
11 process for actually awarding those grants to applicants?

12 A. No, I'm not.

13 Q. There is a special board of council or body that
14 does that; is that correct?

15 A. Yes, that is correct.

16 Q. Do you know the name of that?

17 A. I believe the proper name is the Transportation
18 Enhancement Advisory Committee. I do not know who chairs on
19 that committee other than members of the transportation
20 department.

21 Q. So that's the committee or board that reviews all
22 of the grant applications for PennDOT; is that correct?

23 A. And ultimately would approve that as a project,
24 yes.

25 Q. And once those things are approved for a

1 particular project, at what point do you personally become
2 involved?

3 A. If the particular project falls within our
4 district, our engineering district, that would be assigned
5 then to District 8. And from there a project manager would
6 be assigned the enhancement project just as any other
7 highway project is assigned. And in this case, the project
8 of your involved was assigned to --

9 Q. To you?

10 A. Right.

11 Q. For the uninitiated here, geographically, what
12 does District 8 include?

13 MS. D'ALFONSO: That's in the direct testimony.

14 MS. NETTKE: Oh, I'm sorry, I didn't pick up on that.

15 BY MS. NETTKE:

16 Q. It includes Lancaster County; doesn't it?

17 A. Yes, yes.

18 Q. Are you involved with any other bridge projects
19 in Lancaster County?

20 A. I have several projects in various counties of
21 the district.

22 Q. Are you involved with any programs to preserve
23 historic bridges in Lancaster County; covered bridges, any
24 kind of bridges?

25 A. Not directly, no.

1 Q. To your knowledge, is District 8 involved with
2 some --

3 MS. D'ALFONSO: Your Honor, that's going beyond the
4 scope of his direct examination. I object.

5 JUDGE COCHERES: Ms. Nettke?

6 MS. NETTKE: I'll withdraw it.

7 BY MS. NETTKE:

8 Q. You've added that an engineering agreement is
9 required before the ISTEPA process can -- or the project can
10 go forward, for which ISTEPA is being used?

11 A. Yes.

12 Q. Who selects the engineering firm or the engineer
13 to --

14 A. With federal dollars involved, the department
15 gives guidance to, in this case, the sponsor on how that
16 selection would occur.

17 I think in this particular case, F.A.S.T. has
18 requested, and we have actually approved, an engineer to get
19 to the point where we would sit down, agree on a proposal
20 that would serve as the basis of the third party agreement.

21 Q. I was going to bring you to that point. Do you
22 remember who that engineering firm is?

23 A. Yes, the engineering firm is Pennoni Associates.

24 MS. D'ALFONSO: Excuse me. I'm asking the witness to
25 keep his voice up. His voice is dropping.

1 THE WITNESS: Okay.

2 JUDGE COCHERES: At some later time, for the benefit
3 of my court reporter, if you could tell him how to spell
4 Pennoni Associates.

5 MS. NETTKE: P-E-N-N-O-N-I.

6 JUDGE COCHERES: Thank you.

7 BY MS. NETTKE:

8 Q. Mike, you had various meetings over a period of a
9 year or so around the time F.A.S.T. applied for the ISTE
10 grant, with members of F.A.S.T., up at District 8; is that
11 correct?

12 A. Yes, it is.

13 Q. And it's correct, isn't it, that the thrust of a
14 F.A.S.T. grant application -- I keep saying grant; excuse me
15 -- application under ISTE, had emphasis on a pedestrian
16 bridge at Route 222 and the Martic Forge Bridge project; do
17 you recall that?

18 A. I guess I know for sure that 222 was part of that
19 process. Again, that served as the body of the application
20 itself. Martic Forge, I know, was a structure of interest
21 to F.A.S.T.

22 My concern was with the amount of money that was made
23 available to F.A.S.T., we needed to put limits on the
24 project, you know, to stay within budget.

25 Q. Have you looked at your file on this project

1 recently before coming over here so that you're familiar
2 with the various documents and so on?

3 A. Yes, I have.

4 Q. It's correct, isn't it, that you had, you or your
5 agency through you, had offered a reimbursement agreement to
6 F.A.S.T. for signing concerning the ISTEA project here?

7 A. Yes, we have.

8 Q. And it's correct, isn't it, that except for a
9 couple of modifications of language, of details in wording,
10 that was ready for signing?

11 A. There were requests for modifications. I don't
12 know that we ever agreed to how the modifications should
13 fall on the table. But we provided a reimbursement
14 agreement to F.A.S.T.; there were some comments and
15 suggestions made to that standard reimbursement agreement.

16 Q. The ISTEA program includes a requirement for a
17 match, doesn't it, when funds are awarded?

18 A. Yes, it does.

19 Q. Do you recall that there was discussion whether
20 if F.A.S.T. took ownership of the line, F.A.S.T. would be
21 able to use the donated property which we, F.A.S.T.,
22 intended to get from Conrail as our match, or as the match
23 for it?

24 A. Right. Again, that is stated in the application,
25 that the matching funds would be the monetary value of the

1 donated right of way.

2 Q. And then do you remember that there was further
3 discussion about that and the type of match that would
4 actually be included, that would be required -- excuse me --
5 where our project director, Ms. Julie Nettke, contacted your
6 agency? And I'm going to refer you to a letter to refresh
7 your memory, if I may, dated January 4, 1995, to District 8,
8 Mr. Keiser and Ms. Barr.

9 (Document handed to witness - witness perusing
10 document.)

11 MS. D'ALFONSO: Your Honor, may I look over the
12 witness's shoulder?

13 JUDGE COCHERES: Certainly.

14 BY MS. NETTKE:

15 Q. Without asking you to recall the --

16 MS. D'ALFONSO: May I have an opportunity to look at
17 the letter, please?

18 MS. NETTKE: Sure.

19 (Pause.)

20 MS. D'ALFONSO: Thank you, Your Honor.

21 BY MS. NETTKE:

22 Q. Mike, do you recall that this was sent to you
23 with offering amendments to the ISTE A reimbursement
24 agreement, and that this addressed the type of match that
25 would be needed? Do you recall getting this or seeing this,

1 or discussion about it?

2 MS. D'ALFONSO: Your Honor, I'm going to object. The
3 testimony was very limited to the fact that there is not a
4 reimbursement agreement executed right now, and what the
5 application indicated what was going to be used for the
6 match. Mr. Keiser was being offered for those purposes. I
7 think we are going beyond the scope of his prepared direct
8 testimony and the corrections that he made this morning.

9 In continuance, I don't believe it's relevant to go
10 into the terms of the negotiations of the reimbursement
11 agreement, what the changes are. What's relevant right now
12 is that there is not an executed reimbursement agreement.

13 JUDGE COCHERES: Ms. Nettke?

14 MS. NETTKE: Your Honor, I have a feeling you're
15 going to sustain that objection.

16 JUDGE COCHERES: Well, I will if you offer no
17 convincing rebuttal.

18 MS. NETTKE: I'm offering it because there has been a
19 great deal of discussion when F.A.S.T. appeared here in the
20 end of '95, which is on this record, and I don't ask anyone
21 to recall it verbatim.

22 However, there was a great deal of discussion about
23 the funds that were available to F.A.S.T. for this project.
24 And it's been raised again and again in discovery, and now
25 we're talking to a witness who actually knows about the

1 funds available for this project, and I'd like to clarify
2 what that funding is all about and how it can come to a
3 recipient.

4 JUDGE COCHERES: Well, Ms. Nettke, let me, as I did
5 with Mr. Zielonis a moment ago, recap the record in this
6 fashion. There is no question from this record that the
7 organization you represent initiated an admirable effort to
8 bring about the formation of a Rails-to-Trails organization
9 to take over the Enola low grade line.

10 Due to my own lack of familiarity with the process of
11 how you go from what is obviously a very intensely
12 interested grass roots organization that you represent to
13 getting hundreds of thousands of dollars to do this, this
14 question has arisen.

15 You have satisfied me in terms of the record that
16 this is not a normal -- I mean, I think I can probably be
17 quoted somewhere in the context of these proceedings of
18 saying, I don't know how you go from bake sales to getting
19 hundreds of thousands of dollars to do this kind of project.
20 But that is basically what your organization was attempting
21 to do. And I don't think anybody in this room contests that
22 point.

23 The purpose of this witness's testimony is to
24 indicate that money was put in in such a format that it
25 would be available for this project. And there's no real

1 dispute about that.

2 So that going back to what I said just before the
3 introduction of this witness, can we move on? I mean,
4 that's not a point that's in dispute.

5 You are not contending that you have fully complied
6 with all the department's criteria to be eligible for this
7 funding; are you?

8 MS. NETTKE: At the time it was awarded to us, yes, I
9 am. And then the only thing remaining to be done was to
10 negotiate the contract.

11 JUDGE COCHERES: Well, doesn't that seem like a big
12 if there?

13 MS. NETTKE: I know we shouldn't get into a colloquy
14 about this, but you asked.

15 JUDGE COCHERES: Yes.

16 MS. NETTKE: It was up to us to either accept the
17 agreement as written, and all we had to do was sign our
18 name to it, and that was it. So we had fulfilled the
19 requirements

20 If we chose to offer a couple wording changes and
21 hope they'd accept them, we just do that. But we were ready
22 to get that funding, yes.

23 JUDGE COCHERES: Let's cut to the chase. Do you have
24 a signed agreement?

25 MS. NETTKE: No.

1 JUDGE COCHERES: Bingo. You don't have the money, do
2 you?

3 MS. NETTKE: We don't have the money. You're
4 question, though, Your Honor, to be fair, was whether we had
5 fulfilled all the department's requirements.

6 JUDGE COCHERES: Well, and you just told me that the
7 last step was a signed agreement. All right?

8 MS. NETTKE: You're cross-examining me.

9 JUDGE COCHERES: But what I'm trying to get to is
10 that this line of questioning about what negotiations have
11 existed between the department and your organization is not
12 fruitful with developing this inquiry today. All right?

13 So your prediction is correct, I'm sustaining the
14 objection.

15 MS. NETTKE: Thank you, Your Honor, I understand.

16 BY MS. NETTKE:

17 Q. You stated, Mr. Keiser, that you consider this to
18 still be a viable project. And that's on the last page, I
19 think, of your testimony.

20 MS. D'ALFONSO: Your Honor, may I just that when
21 Ms. Nettke is referring to you and referring to Mike Keiser
22 that she understands the answer is the department's opinion,
23 not Mr. Keiser individually.

24 JUDGE COCHERES: Well, I think that's pretty obvious.

25 MS. D'ALFONSO: Thank you.

1 BY MS. NETTKE:

2 Q. The department still considers this to be a
3 viable project. Are you talking about the project as
4 described in F.A.S.T.'s grant award -- excuse me,
5 enhancements application, and the project that was actually
6 approved by the Transportation Enhancements Advisory Board?

7 A. Yes.

8 Q. In order for that funding to be transferred to
9 another entity, the new entity that wanted the money
10 transferred would have to go through an application process
11 as well; is that correct?

12 A. Let me just say that at a minimum, the department
13 will look at getting approval from the Transportation
14 Enhancement Advisory Council to move forward to another
15 entity.

16 Q. And if the scope of the project were
17 substantially changed, then that would be reviewed again as
18 well; is that correct?

19 A. Absolutely.

20 Q. Before the money could be transferred?

21 A. Yes.

22 Q. And would you agree with me -- this is my last
23 question -- that the fact that this money was awarded to
24 F.A.S.T. based on their description of their proposed
25 project, indicated the department's recognition that that

1 project was feasible for these bridges that were involved?

2 A. I think the awarding of that project, the
3 department was saying, we agree that a trail of some sort is
4 appropriate or could be looked upon for that branch. When
5 we get into words like "scope," that concerns me as an
6 engineer again because of working within the budgetary
7 requirements of the specific project.

8 Q. Well, now I have to ask you a second question
9 then. It wasn't my last.

10 The awarding of the grant, which had an emphasis on a
11 pedestrian bridge at 222, indicates that PennDOT was in
12 agreement with the idea of a pedestrian bridge at 222.
13 Wouldn't that be fair to say?

14 A. I think it indicates that the Transportation
15 Enhancement Advisory Council was in agreement with your
16 scope.

17 Again, I don't know the makeup of that board.
18 There's no one on that board from District 8 that I'm
19 familiar with that would have had a role in determining
20 that.

21 But, yes, there was approval of a project. In your
22 description of the project, it's stated right here in your
23 application: The project will also include the placement of
24 a pedestrian over a busy state highway at the entrance to
25 the town of Quarryville. This will preserve a crucial link

1 in the main population center in a safe and attractive way,
2 replacing an existing railroad tunnel with inadequate
3 clearances.

4 Q. And that's what was approved?

5 A. Right.

6 Q. Thank you.

7 MS. NETTKE: No further questions.

8 JUDGE COCHERES: Any additional questions for this
9 witness?

10 Mr. Ranck.

11 **CROSS EXAMINATION**

12 BY MR. RANCK:

13 Q. Mr. Keiser, when you became involved in this
14 project, were you given a list of written directions as to
15 what your responsibilities were?

16 A. No, my responsibilities would be the same for
17 each project, so they're already assumed.

18 Q. Is there a written protocol that exists in the
19 department that applies to all your assignments?

20 A. If we look at assignments that are involved with
21 outside entities. In other words, local bridge bill project
22 where we would be working with a municipality, enhancement
23 projects where we're working with a sponsor, yes, there's
24 general bookkeeping work that needs to be done before we can
25 get started on a project.

1 Q. Let me focus. Basically what I'm looking for is
2 any written directions that you have in carrying out your
3 duties with regard to compliance with the provisions of the
4 Pennsylvania History Code or the national 106 requirements.

5 MS. D'ALFONSO: Your Honor, I'm going to object as
6 going beyond the scope of Mr. Keiser's direct examination.

7 JUDGE COCHERES: Mr. Ranck?

8 MR. RANCK: Well, I'll withdraw it if there's another
9 witness that I can ask about this, and what the directions
10 are of these witnesses as to their obligation to comply with
11 historic preservation concerns.

12 MS. D'ALFONSO: Your Honor, Mr. Keiser is not
13 testifying regarding a PennDOT project, Mr. Keiser was
14 offering testimony regarding the enhancement funds that were
15 made available to the project of which F.A.S.T. was a
16 proponent.

17 JUDGE COCHERES: I'm having trouble seeing the
18 relationship here, Mr. Ranck. I know why you want that
19 information, but why is it related to what this witness had
20 to say?

21 MR. RANCK: Fine, I'll withdraw it.

22 BY MR. RANCK:

23 Q. In your analysis of the project, are you familiar
24 with the concept of maintenance and maintenance
25 responsibility for the structures involved?

1 MS. D'ALFONSO: Your Honor, I'm going to object
2 again. There is no project; we're not talking about
3 maintenance of a particular structure. He was referring to
4 the enhancement, or application for enhancement money for
5 the project that F.A.S.T. was a proponent of.

6 MR. RANCK: Well, that's what I meant by the project,
7 the overall concept, Your Honor. If that's a problem, I'll
8 rephrase.

9 JUDGE COCHERES: Why don't you rephrase it then.

10 BY MR. RANCK:

11 Q. In your consideration of the enhancement
12 procedures, do you deal with the concept of maintenance
13 responsibility?

14 MS. D'ALFONSO: Your Honor, I'm going to object
15 again. Mr. Keiser testified that he is not part of that
16 committee that looks at the enhancement project.

17 MR. RANCK: Okay.

18 BY MR. RANCK:

19 Q. Who sits on the enhancement board representing
20 District 8?

21 MS. D'ALFONSO: Asked and answered, Your Honor.

22 THE WITNESS: To my knowledge, no one.

23 JUDGE COCHERES: Wait a minute.

24 MR. RANCK: I don't remember it being asked and
25 answered.

1 JUDGE COCHERES: Well, it was.

2 MR. RANCK: Okay.

3 JUDGE COCHERES: It was several times.

4 MR. RANCK: Okay. I believe the witness just said no
5 one. Is that consistent?

6 MS. D'ALFONSO: That's consistent.

7 JUDGE COCHERES: That's what he answered the last
8 time. It's consistent.

9 MR. RANCK: Okay. I just wanted to make sure that's
10 the same.

11 No further questions, Your Honor.

12 JUDGE COCHERES: Mr. Zielonis.

13 **CROSS EXAMINATION**

14 BY MR. ZIELONIS:

15 Q. Mr. Keiser, have you been approached by another
16 entity for purposes of securing these funds, ISTEAF funds?

17 A. Yes. Yes, we have.

18 Q. And who was that entity?

19 A. Lancaster County.

20 Q. Were the discussions -- were you involved in that
21 meeting?

22 A. I'm not sure I was involved in each meeting, but
23 I was involved in --

24 Q. One meeting?

25 A. In at least one meeting, yes.

FORM 2

1 Q. Was the subject matter of that meeting a
2 preliminary investigation of how Lancaster County would
3 secure these funds?

4 A. Yes.

5 Q. In your estimation, was that a fruitful meeting?

6 A. Yes, it was.

7 MR. ZIELONIS: Your Honor, that's all the questions I
8 have.

9 JUDGE COCHERES: Is there any redirect for the
10 witness?

11 MS. D'ALFONSO: No, thank you.

12 MS. NETTKE: Your Honor, could I request we recross
13 as a result of what Mr. Zielonis has just asked?

14 JUDGE COCHERES: Well, I won't call it recross, but
15 you're allowed to continue your cross examination, if you
16 wish.

17 MS. NETTKE: Thank you.

18 **CROSS EXAMINATION, (Resumed)**

19 BY MS. NETTKE:

20 Q. Was that request also for funds for a pedestrian
21 bridge at 222, or was it for something different?

22 A. I don't think we specifically talked about
23 particular improvements, but just the concept. If the
24 county came forward and was supportive of a trail, would the
25 district look at supporting their request in getting the

1 enhancement money.

2 Q. Well, do you know if they intended to apply for
3 it for bridges?

4 A. I have no idea.

5 MS. NETTKE: Thank you.

6 JUDGE COCHERES: Any redirect?

7 MS. D'ALFONSO: No, thank you, Your Honor.

8 JUDGE COCHERES: Perfect. The witness is excused.

9 Thank you for coming, sir.

10 THE WITNESS: Thank you.

11 (Witness excused.)

12 JUDGE COCHERES: Let's go off the record.

13 (Discussion off the record.)

14 (Whereupon, at 12:25 p.m., the hearing was adjourned,
15 to reconvene at 1:30 p.m., this same day.)

16 ***

AFTERNOON SESSION

(1:33 p.m.)

JUDGE COCHERES: Let's go back on the record.

During the break I notice that I have received a copy of Conrail Exhibit No. 7, which we had previously admitted to the record. And it is a copy of the Interstate Commerce Commission decision at Ex Parte No. 55, regarding the implementation of environmental laws.

(Whereupon, the document marked as
Conrail Exhibit No. 7 was received
in evidence.)

MR. EATON: And if anybody didn't get a copy, there are a couple of copies here yet.

JUDGE COCHERES: All right.

Now, I believe, Ms. D'Alfonso, you had another witness.

MS. D'ALFONSO: Yes. Mr. Cassell.

Whereupon,

HARVEY CASSELL

having been duly sworn, testified as follows:

JUDGE COCHERES: Please be seated; and good afternoon to you.

THE WITNESS: Good afternoon, sir.

DIRECT EXAMINATION

1
2 BY MS. D'ALFONSO:

3 Q. Would you please state your full name, and spell
4 your last name?

5 A. Harvey Cassell, C-A-S-S-E-L-L.

6 Q. And Mr. Cassell, by whom are you employed?

7 A. Pennsylvania Department of Transportation.

8 Q. I'd like to show you a document that I have
9 tentatively marked as PennDOT Statement No. 1, and ask you
10 if you could identify it.

11 (Document handed to witness.)

12 A. Yes.

13 Q. Could you tell us what that is?

14 A. That's my direct testimony.

15 Q. Was that prepared under your direction or
16 guidance?

17 A. Yes.

18 Q. Do you have any corrections or additions to this
19 document as prepared?

20 A. Yes, I do.

21 Q. And could you please direct us to those
22 corrections?

23 A. On page 1, line 9, three years is presently five
24 years.

25 (Laughter.)

1 A. The second item, anywhere in the document that it
2 refers to Conrail's Exhibit A would now read Conrail's
3 Exhibit 6B.

4 MS. D'ALFONSO: And for the court reporter, I've made
5 those corrections on the two copies that we have provided to
6 him.

7 JUDGE COCHERES: Would you be a little more specific?

8 MS. D'ALFONSO: Sure, we can point you out in one
9 place. It's repeated numerous times.

10 BY MS. D'ALFONSO:

11 Q. Mr. Cassell, page 10, the very last line.

12 A. Yes.

13 (Pause.)

14 JUDGE COCHERES: I'm sorry, I'm not --

15 THE WITNESS: Page 1, the very last line, line 23.

16 JUDGE COCHERES: Let's go off the record for a
17 moment.

18 (Discussion off the record.)

19 JUDGE COCHERES: Let's go back on the record.

20 Thank you for your patience. In the interim I was
21 able to discover that I was looking at the wrong text of
22 Mr. Cassell's testimony. I was looking at an old draft of
23 it.

24 Thank you, Counselor. If you would just proceed with
25 your examination.

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MS. D'ALFONSO: Thank you.

BY MS. D'ALFONSO:

Q. Mr. Cassell, if I were to ask you the questions that are answered in Department Statement No. 1 today, would your answers be the same?

A. Yes, they would.

Q. And is the information contained in Statement No. 1 true and correct, to the best of your knowledge, knowledge and belief?

A. Yes, it is.

MS. D'ALFONSO: Your Honor, I do have a few further questions on direct, if I may.

JUDGE COCHERES: Go right ahead.

MS. D'ALFONSO: Thank you.

BY MS. D'ALFONSO:

Q. Mr. Cassell, when the department was concurring with recommendations or making recommendations as to which structures over state routes should be removed, what design criteria did the department refer to?

A. For removing the structures?

Q. Where the department has made a recommendation or concurs with a recommendation that a railroad structure over a highway should be removed in accordance with the stipulation of settlement, what were the design criteria?

A. The design criteria that we used was the vertical

FORM 2

1 clearance and the horizontal clearance. The vertical
2 clearance of the structure, it was a concrete structure, and
3 it was not able to provide the 14-6 vertical clearance, and
4 we recommended that it be removed.

5 Q. Did the department utilize what is known in the
6 design manual as the three-R criteria?

7 A. Yes.

8 Q. Can you tell us what three-R stands for?

9 A. The three-R criteria -- let me be sure that I
10 get it correct -- is resurfacing, restoration and
11 rehabilitation.

12 Q. Did the department also refer to any other design
13 criteria?

14 A. Yes. We also used, in some instances, the
15 criteria for rural design.

16 Q. Okay.

17 A. And the rural design, the definition for that,
18 versus another criteria that we have, urban design criteria,
19 is that urban design is for populations of 50,000 or
20 greater, or a small urban -- I believe it's a small urban,
21 area, which is from 5- to 50,000 population.

22 Q. Okay. You're familiar with the stipulation of
23 settlement between the department and Conrail known as
24 Conrail Exhibit 6B?

25 A. Yes.

1 Q. And under the terms of that stipulation of
2 settlement, can you identify by crossing number the
3 structures which formerly carried the railroad over a state
4 highway that the department concurs can be removed?

5 A. Yes. The first structure would be crossing
6 no. 4, White Oak Road; the second structure would be
7 crossing no. 10, Pumping Station Road; the third one would
8 be crossing no. 16, commonly known as Beaver Valley Pike.

9 Q. Does that have a U.S. designation?

10 A. U.S. 222.

11 Q. Is there another structure which may or may not
12 be removed?

13 A. Yes, there is a fourth structure which may or may
14 not be removed, which is crossing no. 27, Marticville Road,
15 which is S.R. 324.

16 Q. And that was the subject of some discussion
17 yesterday with Lancaster County's witness; is that correct?

18 A. That is correct.

19 Q. What do crossings 10, 16 and 27 have in common?

20 A. They're all three concrete arches that have
21 insufficient vertical clearance to meet our criteria of 14
22 foot, 6 inches, and therefore we have recommended they be
23 removed.

24 Q. And since they're stone arches, is it also the
25 consensus that there is no other remedial work that can be

1 done to improve that vertical clearance?

2 A. That is correct. They are unable to be raised as
3 a steel girder would be able to be raised.

4 Q. And that would be what the situation is at
5 crossing 4; is that correct? That's a steel girder?

6 A. That is correct. It's our position that that
7 could be raised, but the township or no other party has come
8 forward to accept maintenance of that structure. Therefore
9 we recommended that it be removed.

10 Q. And the township testified to that yesterday?

11 A. Yes, they did.

12 Q. Now, the removal of the structures at crossings
13 -- the proposed removal of the crossings 10, 16 and 27; at
14 this time, are any of those removals PennDOT projects?
15 Strike that.

16 Under the terms of the stipulation, are the
17 structures at crossings 10 and 16 to be removed by Conrail?

18 A. Yes, that is correct.

19 Q. As well as crossing 4?

20 A. That is correct.

21 Q. And crossing 27, who is to remove that structure;
22 do you recall?

23 A. Yes. The stipulation points out that the
24 township would, at its option, either retain or remove that
25 structure, depending on what happens with the relocation

FORM 2

1 project that PennDOT is looking into.

2 Q. Mr. Cassell, if between the time we leave here,
3 hopefully today, and an order is entered perhaps directing
4 that structures are to be removed over state highways in
5 accordance with the stipulation of settlement, a trail comes
6 to fruition using this corridor, is the department willing
7 to work with the operator of that trail at crossings with
8 state highways so that the most responsible way for the
9 trail to cross the highway can be implemented?

10 A. Yes, the department would be very willing to work
11 with any entity with respect to the trail.

12 Q. There is one more crossing that involves a state
13 route that is to be removed under the terms of the
14 stipulation of settlement; is that correct?

15 A. That is correct.

16 Q. Can you tell us what crossing that is?

17 A. Crossing no. 17, Fairview Road.

18 Q. Now, is that a railroad structure over the
19 highway, or a highway structure over the railroad?

20 A. It's a highway structure over the railroad.

21 Q. And briefly, what is the reason for the
22 recommendation that that structure be removed?

23 A. That structure is in very bad shape condition-
24 wise. It has a load limit. The approach roadways to the
25 structure are both approximately 90 degrees. The department

1 is proposing to provide a relocation of that crossing, and
2 cross the former railroad at an at-grade crossing, and
3 correct the alignment.

4 Q. Have you looked at the master plan that was
5 prepared by Mr. Flink, I think his name is?

6 A. I've leafed through it. I have not really --

7 Q. Okay. Did you look at any of it as it relates to
8 what the proposal was for crossing 17?

9 A. I saw they also had an at-grade crossing at that
10 location.

11 MS. D'ALFONSO: I have no further questions for
12 Mr. Cassell. However, I was remiss in asking him if there
13 were any exhibits that were part of Statement No. 1.

14 THE WITNESS: Yes, there is.

15 BY MS. D'ALFONSO:

16 Q. Can you tell us how many exhibits?

17 A. Two -- oh, many more. There's --

18 (Laughter.)

19 Q. Would it help you if I told you eight?

20 (Pause.)

21 A. I would accept that.

22 Q. If I can speed this along. Would the location
23 map be Exhibit 1?

24 A. Correct.

25 Q. And kind of a master code be Exhibit 2?

1 A. Yes.

2 Q. And then a series of orders being Exhibits 3
3 through 8?

4 A. That is correct.

5 (Whereupon, the document was marked
6 as PennDOT Statement No. 1, with
7 attached Exhibit Nos. 1 through 8,
8 for identification.)

9 MS. D'ALFONSO: I have nothing further for
10 Mr. Cassell. He's available for cross examination.

11 JUDGE COCHERES: Mr. Cassell, what's the final page
12 number on your testimony?

13 THE WITNESS: 66.

14 JUDGE COCHERES: Let's go off the record for a moment
15 again.

16 (Discussion off the record.)

17 JUDGE COCHERES: Let's go back on the record.

18 MS. D'ALFONSO: If I may, Your Honor, before the
19 witness is tendered for cross examination, I would like to
20 move for the admission of Statement 1 and Exhibit Nos. 1
21 through 8.

22 JUDGE COCHERES: PennDOT Statement No. 1 and Exhibits
23 1 through 8 are admitted subject to cross examination and
24 any timely motions.

25

1 (Whereupon, the document marked as
2 PennDOT Statement No. 1, with attached
3 Exhibit Nos. 1 through 8 was, received
4 in evidence.)

5 JUDGE COCHERES: And do I have questions for
6 Mr. Cassell?

7 MR. EATON: Just one.

8 JUDGE COCHERES: Mr. Eaton.

9 **CROSS EXAMINATION**

10 BY MR. EATON:

11 Q. Would you characterize the necessity for removing
12 crossings 4, 10, 16 and 17 as safety concerns?

13 A. Yes.

14 MR. EATON: That's all. Thank you.

15 JUDGE COCHERES: Mr. Salapa.

16 MR. SALAPA: Thank you, Your Honor.

17 **CROSS EXAMINATION**

18 BY MR. SALAPA:

19 Q. Mr. Cassell, throughout your testimony you refer
20 to numbers of reportable accidents at these various
21 crossings. What is a reportable accident?

22 A. An accident that has been reported to the police
23 and is in the department's records as having occurred.

24 Q. So there could be any number of unreported
25 accidents at these various crossings that the department is

1 not aware of?

2 A. That is correct.

3 Q. With regard to crossing no. 1, the stipulation
4 between the department and Conrail indicates that the
5 department will do modifications as it deems necessary. And
6 then it goes on to state it includes installing guardrails,
7 signing, that kind of thing.

8 Do you know, is that meant that the department will
9 do that, or that the department may do it at its option?
10 The language was not clear to me.

11 A. The department fully feels that they will comply
12 with any safety concerns at that crossing. And that would
13 mean that we would intend to comply with putting guide rail
14 in. And the other concerns that we would deem necessary, we
15 would do.

16 Q. Also with regard to crossing no. 1, I take it
17 from your statement that since that is not one of the
18 structures that is to be removed, that it complies with the
19 department's current design criteria with regard to roadway
20 alignment?

21 A. We would apply to that particular structure our
22 three-R criteria in evaluating the safety features at that
23 crossing.

24 Q. And could you reiterate that again, the three-R?

25 A. Resurfacing, restoration --

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(Pause.)

JUDGE COCHERES: Rehabilitation.

THE WITNESS: And rehabilitation.

BY MR. SALAPA:

Q. So you did not use rural design criteria in evaluating this structure; is that what you're saying?

A. That is correct.

Q. All right. Would you agree, as a professional engineer, that there may be more than one set of standards that could be used in evaluating a crossing like this with regard to roadway alignment or clearances?

A. Yes, there could be.

Q. Would one of them be the Department of Transportation's criteria?

A. Yes.

Q. Could another one of them be ASHCO (phonetic) standards?

A. Yes.

Q. And you're saying that this three-R standard is yet another one?

A. Three-R is a state standard.

Q. Okay. It's part of the design criteria and so forth?

A. Yes, it's in Design Manual 2.

Q. Okay. And I would assume then that for crossing

FORM 2

1 14, when I asked you about the repairs or modifications the
2 department deems necessary, that would include guide rails
3 and signing in the area of the crossing?

4 A. That is correct.

5 Q. And so, similarly there, the department would
6 have used the three-R criteria in evaluating the roadway
7 through the crossing?

8 A. That is correct.

9 Q. With regard to crossing 17, I believe in your
10 testimony you state that there is no posted weight limit.
11 Is that correct; or is that an error in your testimony?

12 (Pause.)

13 MR. RANCK: What page, if you know?

14 THE WITNESS: I don't believe I addressed the weight
15 limit in my testimony.

16 JUDGE COCHERES: What page are you on, Mr. Cassell?

17 THE WITNESS: Structure 17 is located on pages 36
18 through 40.

19 (Pause.)

20 BY MR. SALAPA:

21 Q. I'm looking at the bottom of page 38, line 25,
22 and on over to page 39, line 9.

23 A. Sorry.

24 Q. Do you have page 38?

25 A. Yes, I see it.

FORM 2

1 Q. Line 25, the very bottom. It says: There is no
2 load restriction posted at the bridge.

3 (Pause.)

4 A. I guess I would have to stand by that then. I
5 thought there was one, but I maybe get some of the crossings
6 mixed up.

7 But my testimony -- I would stand by what I said in
8 my testimony, because I did research at that time.

9 Q. All right, fair enough. Is it possible then that
10 there may have been no sign at one time, and then one was
11 placed there, or one was there and was subsequently removed?

12 A. Or I may have not noted it in my notes that I
13 picked it up.

14 Q. That's fair enough.

15 JUDGE COCHERES: Are you willing to accept, on
16 Mr. Salapa's representation, that the bridge is now posted?

17 THE WITNESS: It could be.

18 MS. D'ALFONSO: Your Honor, the witness, or the
19 individual from the district, is confirming that it is, in
20 fact, posted. We will accept Mr. Salapa's statement that it
21 is posted currently.

22 JUDGE COCHERES: Fine. Thank you.

23 BY MR. SALAPA:

24 Q. With regard to crossing no. 23, that's Route 272
25 northbound, you indicate, or I believe it is in the

1 stipulation, that the department will not be responsible for
2 maintaining sidewalks. Is that because there are no
3 sidewalks there?

4 A. The previous order from, I think, 1970, or
5 whenever the order was issued, it indicated in the order
6 that the department was responsible for maintaining the
7 sidewalks and curbs.

8 It appears, from being out in the field, that there
9 are no longer sidewalks and curbs at that location. So we
10 are asking that that particular maintenance responsibility
11 not be continued.

12 Q. Does the department see any reason for there to
13 be sidewalks there?

14 A. From the people that I've spoken with, the answer
15 is no.

16 Q. So, I take it from your answer, the township has
17 not requested that sidewalks be installed?

18 A. Not that I'm aware of.

19 Q. With regard to crossing 24, you indicate in your
20 testimony that there were ten reportable accidents at or
21 near this location.

22 A. That is correct.

23 Q. And I believe you say that a number of those were
24 vehicles striking a stationary object; is that correct?

25 A. Yes.

1 Q. What stationary object or objects are you talking
2 about?

3 A. We requested the accident reports for the latest
4 six accidents. Of those six accidents, I believe two of
5 them indicate that they struck fixed objects, which was the
6 tunnel. The other four accidents occurred at the
7 intersection of Pennsy Road and 272.

8 And really, there were -- we requested accident
9 reports within 100 feet on either side of the crossing area.
10 The intersection on the road is within that area, and those
11 accidents were picked up.

12 The other four accidents we do not have accident
13 reports for, only the type-outs in our computer, which
14 indicate that there were some accidents also that struck
15 fixed objects. Whether that fixed object was the tunnel
16 also, or a guide rail, I can't tell you.

17 Q. And with regard to both crossings 23 and 24, the
18 272 tunnels, the department will install guide rails and
19 signage as appropriate?

20 A. Yes, they will.

21 Q. And that would, hopefully, ameliorate the
22 destructiveness of the accidents that are currently taking
23 place?

24 A. Well, as I pointed out, some of those accidents
25 are occurring at an intersection because people do not stop

1 at the stop signs on Pennsy Road, or there's some other
2 reason. In one case an individual did stop, and pulled out,
3 and pulled out in front of somebody, because they indicated
4 that they couldn't see as well as they should have.

5 It will prevent the cars from hitting the culvert
6 itself, the tunnel. The accidents that occurred in the
7 tunnel that I have records were, there were property damage
8 and some minor injury, but no serious accidents.

9 It would prevent those types of accidents to some
10 degree. The guide rail will deflect a car so that it
11 doesn't have quite the impact that it might otherwise.

12 Q. Okay.

13 MR. SALAPA: Thank you. That's all that I have.

14 JUDGE COCHERES: Any other questions for this
15 witness?

16 Mr. Ranck.

17 MR. RANCK: Thank you, Your Honor.

18 **CROSS EXAMINATION**

19 BY MR. RANCK:

20 Q. Mr. Cassell, in your testimony at page 2, you
21 were asked whether the department recommends the adoption of
22 the stipulation of settlement. And your response was, yes,
23 it was the department's opinion that this stipulation of
24 settlement adequately addresses the department's safety
25 concerns at the crossings of Conrail with state highways,

1 and is consistent with the governor's policy on structure
2 preservation.

3 What criteria were you assigned to take into
4 consideration in formulating your answer? Safety criteria,
5 obviously; correct?

6 A. Correct.

7 Q. What other criteria, or other subjects, were you
8 asked to address in formulating your answer?

9 A. With respect to the governor's policy?

10 Q. With respect to any other things that you were
11 assigned in your role as professional engineer in connection
12 with this application.

13 A. Well, let's take the governor's policy, for one.

14 Q. Okay.

15 A. The governor's policy was an extension of
16 negotiations between the Department of Transportation and
17 the Department of Conservation and Natural Resources, DCNR.

18 Over a period of time some guidelines were set forth,
19 and a flow chart was created to try to implement the
20 procedure that need to be gone through in order to mitigate
21 the type of work that would need to be done by the parties
22 to determine whether or not a structure at a rail-highway
23 crossing should be retained or removed. And those
24 guidelines were developed with the Enola Branch as a guide.

25 We had already processed, gone through, the ADR

1 mediation; we had other meetings before we had the ADR. We
2 tried to work with all the parties, and that was instructive
3 in developing the flow chart and the guidelines for,
4 eventually, the governor's policy

5 Q. Is this flow chart or guideline chart that you
6 are describing published in any official publication in the
7 state of Pennsylvania?

8 A. I don't know that it is published as a final. It
9 has been published as a draft. It has been circulated in
10 certain areas.

11 Q. Where has it been published, and how has it been
12 circulated?

13 A. I can't tell you that.

14 Q. What has it been published in?

15 A. The guide, the flow chart has not been published.

16 Q. Okay.

17 A. It's not official; it's in draft form.

18 Q. Okay. Well, I'm trying to find out. You said it
19 was published and circulated, but in draft form.

20 A. The governor's policy has been published. It's
21 in everything. It's been in the paper, it's been circulated
22 through other means. He gave --

23 Q. All right. You've changed from the flow chart to
24 the governor's policy. I'm asking you about the flow chart
25 that you talked about.

1 A. Okay.

2 Q. And you said that was published, but not
3 published as a final.

4 A. That -- well --

5 Q. And my question is --

6 A. I made a mistake.

7 Q. Okay.

8 A. It's not published as a final thing, it's in
9 draft form.

10 Q. Well, then where was it published in draft form?

11 A. Within the department.

12 Q. Okay.

13 A. Within DCNR.

14 Q. Is that two different entities that you were just
15 referring to?

16 A. Department of Transportation and Department of
17 Conservation and Natural Resources; yes, they are two
18 different entities.

19 Q. Well, you said the department, and then you
20 mentioned initials, and I wasn't sure whether you were
21 talking about the same thing.

22 Has your department furnished to you any
23 documentation or authority that these guidelines that you're
24 referring to meet all requirements imposed by the
25 Pennsylvania History Code and/or the national Act 106

1 requirements.

2 MS. D'ALFONSO: Your Honor, I'm going to object. The
3 structures and the stipulation of settlement does not, at
4 this time, as it relates to railroad structures, reference
5 any of those projects as being a PennDOT project. The only
6 project which will be a PennDOT project is the state
7 highway. And to the extent it's not a PennDOT project, it's
8 my legal opinion that the historic code, etcetera, doesn't
9 apply to PennDOT at that time.

10 JUDGE COCHERES: Mr. Ranck?

11 MR. RANCK: May I still ask the question?

12 (Laughter.)

13 MR. RANCK: I mean, that's her opinion. I don't --

14 MS. D'ALFONSO: I'm objecting, I don't think it's
15 relevant for those reasons.

16 MR. RANCK: My question was trying to find out from
17 the witness whether he was instructed on compliance with
18 historic preservation criteria.

19 JUDGE COCHERES: Yes, I know, and you have brought
20 that subject up on behalf of your client before. And I
21 don't have a problem with you doing that, but I think what
22 Ms. D'Alfonso is trying to tell you is that there's very
23 limited scope to the department's involvement here. And if
24 you're limiting your question to that portion of the
25 settlement agreement that deals only with the actions

1 required by the department, then I will allow the question.

2 MR. RANCK: So amended.

3 THE WITNESS: Would you repeat the question?

4 MR. RANCK: So that we don't run afoul, Judge, would
5 you care to --

6 JUDGE COCHERES: He wants to know, Harvey, if when
7 you're looking at this overall settlement, insofar as it
8 concerns the department, whether you have any instruction
9 from your superiors to consider historical landmarks and
10 preservation.

11 THE WITNESS: As a general statement, we always
12 comply with all regulations. The department tries to follow
13 all the regulations that are required. In this particular
14 case, where our project is on crossing no. 17, it's a non-
15 contributing structure.

16 BY MR. RANCK:

17 Q. Well, let me ask you specifically. Since your
18 testimony says the stipulation is consistent with the
19 governor's policy on structure preservation, let me ask you
20 what you meant by that.

21 A. The governor's policy that was published.

22 Q. Okay. In what form did the stipulation comply
23 with the governor's policy, that you refer to in your direct
24 testimony?

25 A. The governor's policy says, according to the

1 draft flow chart, which is a flow chart that puts in blocks
2 the steps that are taken, which comes from the statement of
3 the governor's policy, we, in fact, did those processes in
4 the Enola Branch to determine whether or not a structure
5 that we wanted to remove met that criteria.

6 Q. Do those items addressed in the governor's policy
7 include consideration of the development of trails?

8 A. The governor's policy does make mention of
9 trails.

10 Q. Does the proposed stipulation, in the
11 department's estimation, comply with a goal of preserving
12 trail integrity where possible?

13 A. I believe the department's position is that we're
14 concerned with the crossings where a rail and highway cross,
15 intersect. Not that the department in some aspects is not
16 concerned with the trail in between the crossings, but my
17 particular job is at the crossings.

18 We are not opposed to the trail, but our
19 considerations are for highway safety. And with that in
20 mind, our objectives are isolated to the crossing area. How
21 it affects the trail, if it can be mitigated, we try to do
22 that.

23 Q. Do I understand you correctly that compliance
24 with the governor's policy on structure preservation was
25 what you covered in your application of the three-R

FORM 2

1 criteria?

2 A. No.

3 Q. Okay. That is something else?

4 A. Three-R criteria addresses safety.

5 Q. All right. What does the governor's policy on
6 structure preservation address?

7 A. Well --

8 Q. In addition to trails.

9 (Pause.)

10 MS. D'ALFONSO: Your Honor, I'm going to object. I
11 believe that question in another form was asked and
12 answered. Mr. Cassell talked about safety, how it affects
13 the trail, and mitigation, if possible.

14 Maybe I misunderstood your question, Mr. Ranck.

15 MR. RANCK: Your Honor, I understand that the
16 department focus on safety, and there's been quite a lot of
17 coverage on the focus on safety. And obviously, what I'm
18 trying to find out is, what, in addition to safety, what
19 other items of consideration did you address in coming up
20 with your answer on page 2, other than safety.

21 MS. D'ALFONSO: And Your Honor, the same objection.
22 He said that the department referred to the criteria that
23 was in the draft decision tree that was implemented as a
24 result of the governor's policy. And he described what
25 those instances are.

1 JUDGE COCHERES: I appreciate that he presented that
2 material. But since I have never seen the decision tree,
3 flow chart, whatever you want to call it, I must confess
4 that I'm not entirely clear on how that interacts with the
5 idea of trail preservation and historic preservation. So
6 I'm going to allow Mr. Ranck to continuing questioning,
7 because it's not clear to me either.

8 BY MR. RANCK:

9 Q. Sir, did you understand what the Judge's remark
10 just was?

11 A. Yes, he's going to allow you to ask the question.

12 (Laughter.)

13 Q. My concerns are, what aspects of historic
14 preservation were entailed in the department's answer on
15 page 2.

16 A. Well, let's take an example. Let's take the 272
17 arches. If, in fact, nobody would have come forward to take
18 maintenance responsibility for those structures, then the
19 department's position would have been, and was, to remove
20 those structures.

21 Since a party did come through and was willing to
22 maintain those structures, the department mitigated, and
23 said that we would allow those structures to remain in if
24 that enhanced -- which it would -- enhanced the trail and
25 the preservation of those structures.

1 We were agreeable to that. We would do safety
2 concerns that met what we felt needed to be done to try to
3 enhance the safety of those crossings.

4 Q. So, do I take it correctly that if you got
5 somebody to take over the responsibilities who agreed to
6 maintain the structure, that would meet the governor's
7 concerns?

8 A. Well, it would meet the preservation and
9 historical aspects that you're asking about.

10 Q. Do you give the same answer is maintenance is
11 also interpreted to mean demolition?

12 A. You'd have to define those two terms. I don't
13 under -- to me, demolition is removal; maintenance means fix
14 something up.

15 Q. That's what it means to me, too. But the
16 stipulation says maintenance shall also include removal or
17 demolition.

18 MR. EATON: Objection; a clarification as to the
19 stipulation that's being referred to.

20 JUDGE COCHERES: Mr. Ranck, please understand that,
21 for the benefit of the record, there are two stipulations
22 pending. Mr. Cassell is testifying about the one between
23 his department and Conrail, not the one that you're
24 referring to about the meaning of maintenance.

25 MR. RANCK: All right, very well.

1 JUDGE COCHERES: If you wish to question him about
2 that, fine, but don't call it "the stipulation." There are
3 two of them.

4 MR. RANCK: Point well taken. Thank you, Your Honor.

5 MR. WYLAND: Your Honor, I'd just object for the
6 purpose of making sure that he characterizes it correctly as
7 well, because maintenance does not mean destruction. Not
8 only does it disallow it as nothing, but I think you also
9 heard testimony from Providence Township that it was not
10 their intention to destroy any crossing unnecessarily.

11 BY MR. RANCK:

12 Q. Would you consider compliance was an obligation
13 if an obligation to preserve a structure were recognized?
14 Would you consider compliance by the department to enter
15 into an agreement for maintenance if that agreement for
16 maintenance also permitted the person accepting the
17 responsibility to remove the structure at their discretion?

18 MS. D'ALFONSO: Your Honor, I'm going to object. I
19 believe that's speculative; and secondly, that the
20 department was not a signator to the stipulation between
21 Conrail and the townships where that characterization is
22 outlined that we had referenced before between maintenance
23 and demolition.

24 JUDGE COCHERES: Mr. Ranck?

25 MR. RANCK: I wasn't referring to the specific

1 agreement, I was just asking as a concept.

2 BY MR. RANCK:

3 Q. If your department recognized an obligation to
4 look after the preservation of the structure, would it be
5 the department's position that entering into an agreement to
6 pass that structure to somebody else who could tear it down
7 at their discretion, would be in compliance?

8 A. I don't think at my level that I could make that
9 decision on behalf of the department.

10 Q. You were called here to say that you felt that
11 the proposed stipulation between PennDOT and Conrail meets
12 the applicable criteria; aren't you? Isn't that the purpose
13 of your testimony, in part?

14 A. I would assume so.

15 Q. Did you, as the engineer on this case, consult
16 with Historic and Museum Commission regarding the effects of
17 the actions of this proposed stipulation of agreement on
18 historic and cultural resources?

19 MS. D'ALFONSO: Your Honor, I'm going to object on
20 the basis of an earlier objection. Whatever happens to
21 these structures in the future is not a PennDOT project but
22 for crossing 17, Fairview Road. I believe Your Honor
23 limited the question to that before.

24 JUDGE COCHERES: That's the only thing that they're
25 working on, is crossing no. 17, Mr. Ranck. If you want to

1 ask all your questions in terms of crossing 17, that's what
2 this witness is here to talk about.

3 There are other state highways involved, but insofar
4 as the structures that you are interested in preserving are
5 concerned, they will become, if my commission approves it,
6 the responsibilities of other parties.

7 BY MR. RANCK:

8 Q. Does your department also support the township
9 stipulation to the proposed inter-municipal agreement?

10 A. Yes.

11 Q. Is it the department's position that the inter-
12 municipal agreement adequately provides for the addressing
13 of historic preservation concerns of structures?

14 MS. D'ALFONSO: Your Honor, I'm going to object. I
15 have not seen a copy of the inter-municipal agreement. And
16 as was testified to yesterday, that's not an executed
17 document.

18 MR. RANCK: Okay, well, let me withdraw.

19 BY MR. RANCK:

20 Q. The stipulation with Conrail. Is it the
21 department's position that the stipulation with Conrail
22 adequately addresses the concerns for historic preservation?

23 MR. EATON: Objection.

24 MR. WYLAND: Objection.

25 MR. EATON: What stipulation?

1 MR. RANCK: The stipulation as to the exhibit here
2 that's been introduced by --

3 MR. WYLAND: There's two stipulations.

4 MR. RANCK: -- PennDOT.

5 MS. D'ALFONSO: And, Your Honor, I am going to object
6 to, I believe he did say PennDOT and Conrail, because the
7 department is not going to have ownership responsibility or
8 maintenance responsibility of the structures that formerly
9 carried the railroad. That's the responsibility of other
10 governmental entities. It's beyond the scope of the
11 department.

12 JUDGE COCHERES: Mr. Ranck?

13 MR. RANCK: I'll withdraw.

14 (Pause.)

15 MR. RANCK: Thank you, Your Honor, that's all the
16 questions I have.

17 **CROSS EXAMINATION**

18 BY MS. NETTKE:

19 Q. I'm going to take up what Mr. Ranck was just
20 asking you. I think it's a matter of terminology.

21 Does PennDOT support, in addition to your own
22 stipulation with Conrail, does PennDOT support the
23 stipulation between Conrail and the townships that has been
24 offered to the commission for its approval?

25 A. I thought that's what I answered when Mr. Ranck

1 asked the question. And the answer is "yes."

2 Q. But he referred to an inter-municipal agreement.
3 That's a different document?

4 A. I was thinking of a different document.
5 That's --

6 Q. All right. You referred to a flow chart. Is
7 that part of -- or not part of -- include a decision tree
8 that --

9 A. That is the decision tree. My definition of a
10 flow chart, the decision tree is one and the same.

11 Q. Well, those are all terms that I would not
12 presume to define. But if I show you a document --

13 MS. NETTKE: Ms. D'Alfonso, I'll show you.

14 (Pause.)

15 BY MS. NETTKE:

16 Q. A document entitled: Rails-to-Trails Program;
17 disposition of rail-highway structures on abandoned rail
18 lines intersecting state highways for trail use; decision
19 tree, PennDOT and DCNR testimony before PUC crossing
20 abolition proceedings by PDT, DCNR, Joint Rails-to-Trails
21 Committee, dated January 1997.

22 I show you that.

23 (Document handed to witness.)

24 Q. And then it goes on for a number of pages here.
25 And please take a minute to look at it.

1 A. I'm familiar with that.

2 Q. You are?

3 A. Yes.

4 Q. And part of that is entitled: Decision tree; and
5 then that looks like --

6 A. A flow chart.

7 Q. -- a standard flow chart. But also, directing
8 your attention a little further, where there's a more
9 narrative part of that document, which is a number of steps
10 that are set forth. How many, I don't know. Up to 60, I
11 think, steps; is that correct?

12 A. Well, I think --

13 Q. You said you're familiar with it. Yes, the last
14 step is --

15 A. I don't think it's 60 steps, I think that there's
16 number identifications for each block.

17 Q. Okay. And the blocks are entitled "step" at the
18 top; is that right? Okay, block, step, whatever.

19 So, having refreshed your memory looking at this, and
20 you said you're familiar with it, then can I ask you: This
21 is a document, or a procedure, that's been developed by the
22 two agencies together, or representatives of the two
23 agencies together, DCNR and PennDOT; am I correct?

24 A. That is correct.

25 Q. To address issues where there's a great separated

1 crossing on a proposed abandoned rail line --

2 A. That is correct.

3 Q. -- where there's a proposed rail trail. Am I
4 correct there?

5 A. Yes.

6 Q. Okay. And you said you're familiar with it; and
7 it deals with a number of steps. Are we in agreement there?

8 A. Yes.

9 Q. And again we're in agreement that that was --
10 it's dated here January 1997; that it's recently issued and
11 developed in response to the governor's policy? Are we in
12 agreement there? You talked about the governor's bridge
13 preservation policy.

14 A. I think they were done simultaneously.

15 Q. There you go.

16 MS. D'ALFONSO: Excuse me, Ms. Nettke. Just so that
17 the record is clear and we don't have to worry about it
18 every time we reference --

19 MS. NETTKE: Fine.

20 MS. D'ALFONSO: -- decision tree flow chart, decision
21 tree and flow chart are the same thing, and they are still
22 in a draft form; can we agree to that? So that you don't
23 have to keep referring to them as --

24 MS. NETTKE: I just have no way of knowing if it's
25 still in draft form.

1 MS. D'ALFONSO: Is the document you're looking at a
2 draft?

3 MS. NETTKE: It doesn't say draft on it. Is this the
4 latest draft, as far as you know?

5 MS. D'ALFONSO: Whatever was in the binder at the
6 governor's conference is the latest draft.

7 MS. NETTKE: Can you and I stipulate that this is
8 from my binder at the governor's conference?

9 MS. D'ALFONSO: I will trust you that you took it
10 from the binder.

11 MS. NETTKE: Even though this is apparently draft,
12 can we stipulate there are probably prior drafts? But
13 anyway --

14 BY MS. NETTKE:

15 Q. Mr. Cassell, is it your testimony then that
16 PennDOT is already using this document, or referring to it,
17 in evaluating structures? And you said you did, I believe
18 here, someone.

19 A. Well, when we evaluated the structures, and in
20 negotiations where the stipulations were being conducted,
21 this flow chart was not available. Neither were the steps
22 that go along with the decision tree flow chart.

23 The flow chart decision tree is a development as a
24 result of the process that we went through in the Enola
25 Branch, to a major degree. So, no, we did not use this.

1 Q. So, you haven't actually evaluated the Enola
2 Branch proposals in light of this policy, then; have you,
3 Mr. Cassell?

4 A. I would disagree with you. I think that we more
5 than evaluated the Enola Branch with respect to this policy.

6 Q. Over what period of time?

7 A. Over years.

8 Q. Well, how could you do that when the policy
9 wasn't yet in existence? And I don't mean to argue with
10 you; but you couldn't do it, could you, when the policy
11 wasn't yet in existence?

12 A. I disagree.

13 MS. D'ALFONSO: Your Honor, asked and answered. And
14 she is being argumentative.

15 JUDGE COCHERES: Ms. Nettke?

16 MS. NETTKE: I'll rephrase the question.

17 BY MS. NETTKE:

18 Q. You couldn't do it, could you, if the policy
19 didn't exist years ago?

20 MS. D'ALFONSO: Asked and answered, Your Honor.

21 JUDGE COCHERES: Ms. Nettke, do you have a response
22 here?

23 You know, I have counsel formulating an objection.
24 When that happens, and I've done this for a day and a half
25 in this courtroom, I always listen to the objection, and I

1 always give the other side the opportunity to respond. If
2 the other side says they'll withdraw the question or
3 rephrase it, as, for example, Mr. Ranck has done several
4 times, I make no ruling. But if you give me no response,
5 I'm going to rule against you.

6 Now, do you have a response?

7 MS. NETTKE: I beg your pardon. I rephrased the
8 question, and I should have said I would withdraw the
9 question and rephrase the question.

10 JUDGE COCHERES: Okay.

11 MS. NETTKE: And I did that. And I'll ask no further
12 question about that anyway.

13 BY MS. NETTKE:

14 Q. But getting to the governor's policy which you
15 quoted from, if I show you a document -- and I have copies
16 here for everyone, because I intended to refer to this today
17 only --

18 MS. D'ALFONSO: Your Honor, I don't recall
19 Mr. Cassell quoting from the governor's policy. I will
20 stand corrected if he did.

21 MS. NETTKE: I'll stand corrected if it wasn't an
22 exact quote. It was several references --

23 JUDGE COCHERES: He certainly referred to it. I
24 don't remember him quoting from it either.

25 MS. NETTKE: And we don't have it before us yet.

1 BY MS. NETTKE:

2 Q. And I'm not sure if you know whether it's been
3 published in a document such as the Pennsylvania Bulletin.
4 It's my understanding it hasn't been, but it's a policy out
5 of the governor's office.

6 But anyway, I'm going to show you a document. I
7 haven't yet marked it as an exhibit.

8 (Document handed to witness.)

9 Q. But it's from governor's office, and at the top
10 it indicates that it's a press release concerning the
11 governor's policy. And I'll give you a minute to look at
12 it. But please note that the date at the end of it is 1996,
13 the end of the year.

14 MS. D'ALFONSO: The bottom line's dated October 17th,
15 Ms. Nettke.

16 MS. NETTKE: That's right at the top.

17 JUDGE COCHERES: Let's be off the record. Let the
18 witness signal when he's ready.

19 (Off-the-record pause.)

20 JUDGE COCHERES: Let's go back on the record.

21 BY MS. NETTKE:

22 Q. Having reviewed that, Mr. Cassell, and exclusive
23 of the first two paragraphs, but beginning where the
24 quotation marks start, the beginning of the third paragraph,
25 "Pennsylvania railroads helped form this nation," etcetera,

1 and following for the rest of the document, do you recognize
2 that policy as the policy that you've been referring to here
3 as the governor's policy?

4 A. They're not the same verbiage as what I was
5 referring to that we have in draft form as the governor's
6 policy. This is making generalized statements referring to
7 the governor's policy, but this is not the governor's
8 policy.

9 Q. This is not?

10 A. Not that I'm aware of.

11 Q. Can you elaborate on what the governor's policy
12 that you are referring to is, what form it's in?

13 A. I have a draft form in front of me. I do not
14 know --

15 Q. Does it have a title on it, could you tell us?

16 MS. D'ALFONSO: He just said it's a draft.

17 MR. WYLAND: I'd like to raise an objection as to
18 relevance of this line of questioning. I think the
19 Department of Transportation has set forth its policy and
20 its decision and its support of the stipulation.

21 Also, Mr. Cassell has testified that he's taken into
22 consideration the governor's policy in formulating the
23 opinion. And unless the Department of Transportation is
24 going to change its opinion now, I don't see that we should
25 go any further in terms of exploring the basis for the

1 department's decision.

2 MR. EATON: Your Honor, I think I'm going to join in
3 the objection, and add to it that what seems to be occurring
4 here is an argument as to whether a proper standard was
5 used. And that's an appropriate argument to make in
6 briefing following this hearing, but I don't see that
7 arguing with the witness is accomplishing anything. I
8 therefore object.

9 MS. D'ALFONSO: And if I may join in, if Ms. Nettke
10 would like to offer testimony to the contrary, or Mr. Ranck,
11 there is certainly a way to do that through their own
12 witness, or witnesses, as opposed to fighting with
13 Mr. Cassell as to whether or not the department actually
14 complied the statement, or if it did comply with the basic
15 essence of the policy and the draft decision tree.

16 MR. RANCK: May I respond, Your Honor?

17 JUDGE COCHERES: Well, wait. Since I seem to be
18 having a lineup on the objection side here, before I switch
19 over to the defense side, is there anyone else who wishes to
20 speak?

21 (No audible response.)

22 JUDGE COCHERES: All right, Mr. Ranck, you've
23 volunteered to go first.

24 MR. RANCK: Okay. All I point out, Your Honor, is
25 that if it weren't contained in the direct printed

1 testimony, we wouldn't be having this argument. And I think
2 we are entitled to know what in the world this animal is
3 that's referred to in the testimony.

4 MS. NETTKE: Your Honor, I agree with that. And I
5 wouldn't even say it's an argument. I've been trying to pin
6 down what policy Mr. Cassell meant when he said, we applied
7 the governor's policy. He's said that several times. I
8 sincerely thought it was this policy, I offered it to him,
9 and now he says it's not; and that's where we are.

10 JUDGE COCHERES: Okay, I see on page 1 the words
11 "governor's policy."

12 Look, the man says he used the governor's policy;
13 she's entitled to probe it. So far as I can tell, her first
14 attempt in terms of this document, which has not fully been
15 identified for the record, and may not be, and that's fine,
16 is not what she thought it was, and it's not what the
17 witness was implying.

18 She's entitled to probe that. She's entitled to test
19 his knowledge of the governor's policy by presenting him
20 with this document. And there's nothing improper in her
21 cross examination, insofar as I can tell. It's within the
22 scope of direct.

23 MS. D'ALFONSO: Your Honor, if I may, I think the
24 problem with using this document is that these are quotes
25 from the policy, perhaps, and the document that is the

1 policy looks different than this.

2 JUDGE COCHERES: Yes.

3 MS. D'ALFONSO: And I think that's the problem, Your
4 Honor.

5 JUDGE COCHERES: Well, fine. And it says "news
6 release." This is pretty obviously a press release. And if
7 she wants to probe the witness's knowledge of the governor's
8 policy, she's allowed to, and she's allowed to use this
9 document.

10 Please continue, Ms. Nettke.

11 BY MS. NETTKE:

12 Q. Mr. Cassell, I'm asking you to help everybody
13 here by describing more fully what is the policy that you're
14 referring to. How is it entitled; what does it contain? In
15 your own words, tell us. You have it in front of you. We
16 don't have the document in front of us.

17 A. The draft is entitled, "Joint Rails-to-Trails
18 Policy, Department of Transportation and Department of
19 Conservation and Natural Resources."

20 Q. Where did you obtain that, may I ask?

21 (Pause.)

22 A. I don't know from what source it came from.

23 Q. Through channels in the department; would that be
24 fair?

25 A. Yes, yes.

1 Q. Would it be fair to say it's the same document I
2 just showed you, and you called it a flow chart; or not?

3 A. The governor's policy was something that he
4 presented at, in your press release that you have here,
5 which states portions of what is in draft form the
6 governor's policy.

7 Q. But you're saying you have the real thing, the
8 real --

9 A. No, I have a --

10 Q. -- draft form in front of you. Right? I think
11 you said that.

12 A. No, I don't have the real thing, I have a draft.

13 Q. I'm asking you -- I think you did get as far as
14 what it was entitled. How does it differ from what I've
15 just shown you then? It has additional material; is that
16 it?

17 A. Yes.

18 Q. And do you think you would want to show your
19 document to your counsel so that she can look at it, and you
20 can decide whether you would like to offer it in support of
21 your testimony that you have referred to the governor's
22 policy?

23 MS. D'ALFONSO: Your Honor, it's a draft. If he
24 doesn't have the final version, I don't have a final version
25 in my possession. I certainly do not intend to offer a

1 draft that Mr. Cassell has brought to the stand with him,
2 other than anything but a draft. I certainly will not
3 represent that it's the final form.

4 JUDGE COCHERES: I'm not going to tell you how to run
5 your case, Counselor. If you don't want to put it in, I'm
6 not going to make you.

7 MS. D'ALFONSO: I'm responding to Ms. Nettke.

8 JUDGE COCHERES: I understand.

9 BY MS. NETTKE:

10 Q. Did you get a chance to review the document that
11 I handed you?

12 A. I've scanned it.

13 Q. Does it set forth the substance of what you
14 understand to be the policy, whether in draft form or not?

15 A. To a limited degree, yes.

16 Q. Okay.

17 A. It's incomplete.

18 Q. Is some of what's in there, some of what you're
19 saying that the department has looked at? And you just
20 testified you followed the governor's policy. I don't want
21 to talk about this all afternoon. Okay?

22 A. Uh-huh.

23 Q. You followed the governor's policy as you
24 described it. Did you mean the flow chart that you just
25 referred to?

1 A. Yes, we used -- we didn't use that flow chart,
2 per se. We used the information that was used to develop
3 that flow chart in evaluating the Enola Branch.

4 Q. So you didn't really evaluate the Enola Branch
5 using that flow chart; did you, Mr. Cassell?

6 MS. D'ALFONSO: Your Honor, I hate to be --

7 BY MS. NETTKE:

8 Q. The answer can be "yes" or "no."

9 MS. D'ALFONSO: It's an asked and answered question,
10 Your Honor.

11 JUDGE COCHERES: Ms. Nettke, I have sustained that
12 objection twice already. Mr. Cassell has explained more
13 than once how he came to his decision. The objection is
14 sustained.

15 BY MS. NETTKE:

16 Q. I believe you said the decision tree and flow
17 chart are the same thing; is that right?

18 A. That's correct.

19 Q. I'm going to show you a copy of a letter to me
20 from your counsel dated February 3, 1997.

21 (Document handed to witness.)

22 A. And I'll refer you to where it says the decision
23 tree was not followed verbatim.

24 (Atty. Nettke indicating on document.)

25 Q. Is that correct?

1 A. Yes.

2 MS. NETTKE: If I could have a minute, I want to see
3 if there's any other topic.

4 (Pause.)

5 BY MS. NETTKE:

6 Q. Is it your contention that PennDOT, in evaluating
7 what it needed do in reaching the agreement submitted here,
8 had no obligation to do anything, according to the historic
9 preservation laws and regulations?

10 MS. D'ALFONSO: Your Honor, that again is a question
11 that was asked by Mr. Ranck and answered, and limited in
12 scope of question.

13 JUDGE COCHERES: Ms. Nettke?

14 BY MS. NETTKE:

15 Q. Were you here for Ms. Barrett's testimony this
16 morning?

17 A. Yes.

18 Q. After hearing that -- well, did that testimony
19 affect your thinking at all on whether PennDOT has any
20 obligation?

21 MS. D'ALFONSO: Your Honor, I object to the question
22 that was asked by Mr. Ranck, answered to the extent that the
23 effects of the consideration of a historic code in the 106
24 process -- I'm embellishing the 106; I strike that. But the
25 consideration of the historic impacts was something that

1 Mr. Cassell's already answered.

2 JUDGE COCHERES: Ms. Nettke, do you agree?

3 MS. NETTKE: Do I agree? All right, I agree. I'll
4 say I do.

5 JUDGE COCHERES: Okay.

6 MS. NETTKE: I don't agree with the answer, I agree
7 it was answered. I'll withdraw it.

8 JUDGE COCHERES: Fine.

9 BY MS. NETTKE:

10 Q. Are you aware of the proposal to put a pedestrian
11 bridge at 222?

12 A. I'm aware that there was a proposal to put a
13 pedestrian bridge at 222.

14 Q. You are?

15 A. It's no longer a proposal to put a bridge at 222.

16 Q. Why do you say that?

17 A. It's not part of the stipulation.

18 Q. I see. You're aware there formerly was a
19 proposal?

20 A. Originally, I'm aware that F.A.S.T. had proposed
21 to put one there. In your master plan, I was made aware
22 yesterday that you were putting one in.

23 Q. When you considered, you said you did, the
24 governor's policy on preservation of bridges for trails with
25 regard to the structure at 222, did you consider the

1 installation of a pedestrian bridge as a way in which that
2 crossing could be made feasible for a trail?

3 A. That's a PennDOT -- or it's not a PennDOT
4 project. The 22 project is a Conrail project. Conrail will
5 remove the structure, according to the stipulation.

6 Q. But PennDOT was involved in reaching the decision
7 that was arrived at that it would be Conrail who would
8 finally remove that structure; right?

9 A. That is correct.

10 Q. And when you were involved in that process of
11 reaching that decision, did you consider the possibility of
12 a pedestrian bridge?

13 A. A pedestrian bridge was discussed as to whether
14 or not one could be put in in the future.

15 Q. And that would have preserved the intersection
16 for trail use; wouldn't it, to do that?

17 MS. D'ALFONSO: Your Honor, Mr. Cassell was asked on
18 direct if the department would cooperate with trail
19 operators in the future, if there is going to be a trail,
20 for the most responsible way to cross state roads, and he
21 did answer "yes."

22 MS. NETTKE: Your Honor, I think it was a legitimate
23 question.

24 JUDGE COCHERES: Well, she didn't make that an
25 objection. I think it's an interesting comment, and I want

1 the witness to answer the question.

2 MS. D'ALFONSO: I'm objecting as to asked and
3 answered on direct.

4 JUDGE COCHERES: I disagree, and the objection is
5 overruled.

6 MR. WYLAND: I would like to object as to form,
7 simply because the question was in the past answered about
8 whether the structure of the pedestrian bridge would have
9 had some effect.

10 MS. NETTKE: I'll withdraw the word "have."

11 BY MS. NETTKE:

12 Q. The installation of a pedestrian bridge --
13 rephrasing the question --

14 JUDGE COCHERES: Fine.

15 BY MS. NETTKE:

16 Q. -- would preserve that intersection, the
17 configuration of that crossing for trail use; wouldn't it?

18 A. It's a true statement.

19 MS. NETTKE: No further questions.

20 JUDGE COCHERES: Is there any further cross
21 examination for the witness?

22 (No audible response.)

23 JUDGE COCHERES: Any redirect?

24 MS. D'ALFONSO: Thank you, Your Honor.

25

REDIRECT EXAMINATION

1
2 BY MS. D'ALFONSO:

3 Q. Mr. Cassell, are you aware that at one point
4 there was a proposal for a pedestrian crossing on 222?

5 A. Yes, I am.

6 Q. Were you not aware that at one point in the
7 distance past that was something that, as part of a highway
8 project, the department was willing to do?

9 A. It was -- as I understand the proposal, was that
10 the department was willing to put in an abutment so that the
11 trail could put in a bridge at a later date.

12 Q. Was that a more current scenario? Is that the
13 only scenario you're familiar with?

14 A. That's the only scenario that I was familiar
15 with.

16 Q. Mr. Cassell, when looking at the crossings, did
17 the department take into consideration the safety of the
18 motoring public?

19 A. Yes.

20 Q. Did the department take into consideration where
21 the safety of the motoring public was not satisfied by the
22 current configurations, whether or not there was any
23 mitigation that could occur at those locations; guide rail,
24 signage?

25 (Pause.)

1 Q. Did the department --

2 A. I missed the first part of your question.

3 Q. Did the department consider mitigation at
4 crossing locations where the department is less than
5 satisfied with the safety for the motoring public?

6 A. Yes.

7 Q. And when the safety concerns of the motoring
8 public could be met short of removal of the structure, did
9 the department agree that the structure could stay in place?

10 A. That is correct.

11 Q. Was there any condition upon a structure staying
12 in place regarding maintenance?

13 A. Yes.

14 Q. And what would that condition have been for
15 maintenance?

16 A. That some party other than the department take
17 the responsibility for future maintenance of that structure.

18 Q. Would that party also have to be under the
19 jurisdiction of the PUC?

20 A. Yes.

21 Q. Isn't it true that the department consistently
22 has been looking for a governmental entity to maintain
23 structures over state highways since -- I'll end it there.

24 A. Yes.

25 Q. Are those some of the factors that the department

1 took into consideration?

2 A. Yes.

3 Q. Are the safety concerns consistent with the
4 decision tree?

5 A. Yes.

6 Q. The draft decision tree which you've referred to?

7 A. Yes.

8 Q. There are safety considerations there?

9 A. Yes.

10 Q. Do you know whether or not the governor's policy
11 also recognizes public safety?

12 A. Yes.

13 Q. So safety is always a consideration; correct?

14 A. Definitely.

15 MS. D'ALFONSO: Nothing further. Thank you.

16 Oh, one more.

17 JUDGE COCHERES: Go ahead.

18 MS. D'ALFONSO: Thank you.

19 (Pause.)

20 MS. D'ALFONSO: I have nothing else. Thank you.

21 JUDGE COCHERES: I see Mr. Ranck wants to perform
22 recross.

23 MR. RANCK: Thank you, Your Honor.

24

25

1
2 **RE CROSS EXAMINATION**

3 BY MR. RANCK:

4 Q. Mr. Cassell, again, page 2 of your testimony
5 talks about the department addressing safety concerns and
6 the governor's policy on structure preservation. With
7 reference to the press release from the governor's office,
8 dated October 17, 1996, I direct your attention to the
9 second to last paragraph on the first page.10 And I quote: With this new policy DCNR and PennDOT
11 will work together to determine the potential future use of
12 structures like bridges and tunnels before they are turned
13 down when a rail line is abandoned. A joint agency review
14 will assure that public safety and structure maintenance
15 concerns will be addressed in a way that enhances the
16 protection of structures and future recreational trail
17 developed; end quote.

18 Do you see that?

19 A. Yes, sir.

20 Q. Would I be incorrect in reading that to imply
21 that public safety and structure maintenance are on an equal
22 footing?23 MR. WYLAND: Objection as to form. The form of the
24 question is asking the witness to interpret the questioners
25 reading of the document, which is the best evidence of its
own contents.

1 MR. RANCK: All right, I'll withdraw it.

2 BY MR. RANCK:

3 Q. Did you treat public safety and structure
4 maintenance with equal weight in your consideration when you
5 formulated your testimony?

6 MS. D'ALFONSO: Your Honor, I would just ask for a
7 definition of "maintenance" in this question.

8 MR. RANCK: I don't know what he means, Judge. He
9 brought up the governor's policy. I'm just asking whether
10 he gave equal weight to public safety and structure
11 maintenance, whatever that means to him.

12 MS. D'ALFONSO: That's fine.

13 JUDGE COCHERES: That's fair.

14 THE WITNESS: And the answer would be, yes.

15 MS. NETTKE: May I have one more question?

16 JUDGE COCHERES: You're entitled to do recross
17 examination, and you're not limited to one question,
18 Counselor.

19 MS. NETTKE: I know; and I never do anyway.

20 (Laughter.)

21 **RE CROSS EXAMINATION**

22 BY MS. NETTKE:

23 Q. Isn't it correct that your agency decided not to
24 undertake a joint agency review of the Enola Branch,
25 pursuant to the governor's recently issued policy?

1 A. We believe we did do a joint --

2 Q. And that comes from -- I'll add; that comes from
3 the same letter from your counsel that I showed you. It's
4 the first line in that letter.

5 (Document handed to witness.)

6 A. In conclusion, through the recently released
7 policy, the decision tree was --

8 Q. I'm asking you about the first line of that
9 letter. We do not intend to undertake a joint agency
10 review. Did your counsel accurately represent the truth?

11 A. Let me see where your first line is.

12 MS. D'ALFONSO: First paragraph.

13 BY MS. NETTKE:

14 Q. First line of the letter. Well, maybe the first
15 line responsive.

16 A. And it also says: Pursuant to the governor's
17 recently issued policy on Rails-to-Trails.

18 Q. That's right. Would you answer my question,
19 though? You did not undertake a joint agency review; did
20 you, Mr. Cassell?

21 A. We did not undertake a joint agency review with
22 respect to the governor's recently issued policy on Rails-
23 to-Trails, the formal --

24 Q. Right. That's what I asked you.

25 A. -- decision tree.

1 JUDGE COCHERES: Just let him finish the answer. All
2 right? You have consistently, throughout this proceeding,
3 been interrupting all of the witnesses. I don't normally
4 allow that, but I appreciate your concerns. But let the
5 witness answer the question.

6 Mr. Cassell?

7 THE WITNESS: Well, there's more to the statement.
8 May I see that again?

9 (Document handed to witness.)

10 THE WITNESS: We did not, as counsel has related to
11 you, undertake a joint agency review with respect to the
12 governor's recently issued policy on Rails-to-Trails. Which
13 means that we did not formally go through the decision tree;
14 because, as you suggested before, the decision tree was not
15 available when we were going through all the negotiations on
16 the Enola Branch.

17 But essentially, we covered all the bases of that
18 decision tree in the negotiations for the Enola Branch. And
19 therefore we didn't have to go back and do something that we
20 had already done.

21 MS. NETTKE: Thank you. Nothing further.

22 JUDGE COCHERES: Thank you.

23 Ms. D'Alfonso, you can't possibly want re-redirect,
24 do you?

25 MS. D'ALFONSO: Yes, I do.

1 (Laughter.)

2 JUDGE COCHERES: Okay.

3 **FURTHER REDIRECT EXAMINATION**

4 BY MS. D'ALFONSO:

5 Q. Do you recall whether or not DCNR was present at
6 any of the sessions?

7 A. For the ADR, on the Enola Branch?

8 Q. Yes.

9 A. I believe they were.

10 MS. D'ALFONSO: That's all. Thank you.

11 JUDGE COCHERES: More questions for the witness?

12 MS. NETTKE: Your Honor, in response to that?

13 JUDGE COCHERES: Yes.

14 **FURTHER RECROSS EXAMINATION**

15 BY MS. NETTKE:

16 Q. We're talking about who was present at the
17 mediation sessions; is that correct?

18 JUDGE COCHERES: Yes?

19 MR. RANCK: The witness didn't respond verbally.

20 MS. NETTKE: The witness didn't respond.

21 JUDGE COCHERES: Oh, I'm sorry.

22 THE WITNESS: Well, I didn't know she was done asking
23 the question.

24 BY MS. NETTKE:

25 Q. Is that what you mean, the mediation sessions,

1 when you were talking about DCNR being -- your counsel asked
2 if you were present at any of the sessions. Are you talking
3 about the ADR sessions?

4 A. Yes.

5 Q. And is that the negotiations that you're talking
6 about?

7 A. Yes.

8 Q. And without referring to anything that was said
9 there or done there or concluded there, F.A.S.T. was present
10 also; is that correct?

11 A. That is correct.

12 Q. It's also true, isn't it, that after the first
13 day of those negotiations, F.A.S.T. was no longer involved?

14 MS. D'ALFONSO: Your Honor, I'm going to object. I
15 just asked if DCNR was there. It's a simple yes or no
16 question.

17 JUDGE COCHERES: Well, you have opened the door. I
18 don't see that as far as Ms. Nettke has gone that she's
19 crossed any lines and asked any questions that she's not
20 entitled to ask.

21 BY MS. NETTKE:

22 Q. Isn't it true that after the first day, when the
23 township takeover proposal came to light, F.A.S.T. was no
24 longer involved in those negotiations?

25 A. I do not remember. I do not have a list of all

1 representatives that were at the session, and I don't
2 remember whether or not F.A.S.T. was represented or not.

3 Q. You seem to remember -- well, that might be
4 argumentative.

5 MS. NETTKE: I'm finished.

6 JUDGE COCHERES: You're finished?

7 There being no further questions for this witness,
8 the witness is excused.

9 Thank you for coming, sir.

10 (Witness excused.)

11 JUDGE COCHERES: Who is the next volunteer to put
12 witnesses on?

13 MR. SALAPA: I only have one witness.

14 MS. NETTKE: Mark Wilson is under some time
15 constraints, and he's been waiting all morning.

16 JUDGE COCHERES: I think we'll take Ms. Nettke's
17 witness.

18 MR. SALAPA: Very well, Your Honor.

19 MS. NETTKE: Thank you, Your Honor. I'll call
20 Mark Wilson.

21 **Whereupon,**

22 **MARK WILSON**

23 **having been duly sworn, testified as follows:**

24 JUDGE COCHERES: Please be seated; and good afternoon
25 to you.

DIRECT EXAMINATION

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BY MS. NETTKE:

Q. Mr. Wilson, did you submit some written direct testimony on behalf of F.A.S.T. for this proceeding?

A. Yes, I did.

Q. And it's now been marked. It wasn't marked when you last saw it, but it's now been marked as F.A.S.T. Statement 4 -- and I'll show it to you -- entitled Statement of Mark Wilson, P.E.

(Whereupon, the document was marked as F.A.S.T. Statement No. 4, with attached Exhibits A-Wilson and B-Wilson, for identification.)

(Document handed to witness.)

A. It looks like the one, yes.

Q. Is that what you submitted?

A. Yes.

Q. And would you make any additions or corrections to that if you were asked to submit that today?

A. No, I wouldn't.

Q. There's one typographical correction that I would bring to your attention, and I'd like to correct it for the record. You probably didn't notice it. It's on page 2, the word "trial" should say "trail." And that's about six lines down, and then again ten lines down. Is it correct that

1 that ought to say "trail"?

2 A. That's correct. And I did catch that when I read
3 it.

4 MR. ZIELONIS: Your Honor, where was that other one?

5 MS. NETTKE: Page 2, ten lines down.

6 JUDGE COCHERES: Page 2, lines 6 and 10,
7 approximately.

8 MR. ZIELONIS: Thank you.

9 JUDGE COCHERES: Ms. Nettke, would you continue?

10 BY MS. NETTKE:

11 Q. There are also some exhibits to your testimony.
12 One is entitled A-Wilson, Mark Wilson, P.E., credentials.
13 Do you recall that?

14 A. Yes. And that could be updated, but for purposes
15 of this we can forego that, I think.

16 Q. Well, are your credentials substantially the same
17 as they were then?

18 A. Much better since then.

19 (Laughter.)

20 Q. And your second exhibit is called B-Wilson,
21 Friends of the Atglen Susquehanna Trail Bridge Study? I'll
22 show you the cover page of that.

23 A. Yes, I recognize that.

24 Q. Okay. That being done, I'll make you available
25 for cross examination.

1 JUDGE COCHERES: All right. F.A.S.T. Statement No. 4
2 and its attached exhibits, Exhibit A-Wilson and B-Wilson,
3 are admitted, subject to cross examination and any timely
4 motions.

5 (Whereupon, the document marked as
6 F.A.S.T. Statement No. 4, with attached
7 Exhibits A-Wilson and B-Wilson, were
8 received in evidence.)

9 JUDGE COCHERES: Do I have questions for this
10 witness?

11 Mr. Salapa.

12 MR. SALAPA: Thank you, Your Honor.

13 **CROSS EXAMINATION**

14 BY MR. SALAPA:

15 Q. Mr. Wilson, if you could refer to Exhibit B in
16 your testimony, the bridge inventory.

17 A. Okay.

18 Q. You have a list of bridges there, and then
19 several columns. And the one I'm interested in in
20 particular -- actually, there are two I'm interested in in
21 particular. One says under-clearance.

22 A. Yes.

23 Q. What is that a measurement of?

24 A. To my recollection -- and this is only -- I can't
25 tell you definitively, because it's the maximum under-

1 clearance of the structure.

2 Q. That's the maximum under-clearance; is that what
3 you're saying?

4 A. No, no. I could have taken that from the HRG
5 reports, because I was using those when I did my cursory
6 inspection. I had HRG reports, reports by another
7 consulting firm, with me at that time.

8 Q. So, for instance --

9 A. So I may have pulled those out of that report and
10 then put them in here as -- and you see footnote 3 says that
11 the under-clearances are approximate.

12 Q. So, for instance, if you take, for example, the
13 bridge at mile post 11.68, in Eden Township, Pumping Station
14 Road, when that says 15 feet, 3 inches, that would be from
15 the center of the arch?

16 A. I can't tell you definitively, but that very well
17 could be what measurement. I just can't answer that
18 accurately, because I don't remember.

19 Q. Let me just see if I have this straight. You
20 don't know whether that's the maximum under-clearance or the
21 minimum under-clearance?

22 A. As opposed to, what's the other one you would be
23 thinking of? What's the other clearance you'd be thinking
24 of?

25 Q. Well, is it the maximum under-clearance, or would

1 it be the minimum under-clearance?

2 A. You mean at the edge of lane?

3 Q. Yes.

4 A. I can't tell you. Honestly, I just don't
5 remember what it is. I could look at the HRG reports or
6 look at my old notes, but I can't tell you.

7 Q. Do you know then -- the next measurement over is
8 width. Is that measured from base of abutment to base of
9 abutment?

10 A. That's measured, the rail bed, measured, the
11 spanner walls, over to the girders. That's not the roadway
12 underneath.

13 Q. That's not the roadway underneath, that is the
14 railroad right of way on top?

15 A. Right.

16 Q. Okay. Are you aware of an inspection report done
17 in November of 1992 on the Martic Forge Bridge?

18 A. Yes, I did the inspection on that bridge.

19 Q. You did the inspection on that bridge?

20 A. Yes.

21 Q. Do you have a copy of that inspection report in
22 front of you?

23 A. I don't have it with me, no, but I'm pretty
24 familiar with it.

25 MR. SALAPA: Could I approach the witness, Your

1 Honor?

2 JUDGE COCHERES: Certainly.

3 BY MR. SALAPA:

4 Q. Could you please look at the front cover of that
5 and verify that that is the inspection report that you did?

6 (Document handed to witness.)

7 A. Yes, that's it.

8 Q. All right. On page 24 of that inspection report,
9 about two thirds of the way down, it says: Cost of yearly
10 maintenance. What is the amount that you have there?

11 A. I put \$5,000 per year for 30 years. \$5,000 a
12 year.

13 Q. Thank you.

14 A. We increased that for --

15 Q. And what would that be based on, the \$5,000
16 estimate?

17 A. That was probably a seat-of-the-pants estimate at
18 that point in time. Kind of an order of magnitude estimate.
19 We did not run through an analytical thing in depth.

20 Q. That did not include then yearly, or however
21 frequently, inspections of the bridge?

22 A. I don't believe that it would have, no.

23 Q. That was strictly a \$5,000 a year to --

24 A. If I'd be looking at something like that, it
25 would be, for instance, dressing up the ballast, fixing

1 fence railings, clearing and grubbing of brush at each end
2 of the bridge, keeping vegetation off the bridge, cleaning
3 the beam seats. These are the kind of things that I
4 consider maintenance that the maintenance boys would have to
5 go out and do every year or two years.

6 And so, working, doing under the bridges, bridge
7 inspections, and having certain costs available to you for
8 these bridge inspections, you can pretty much seat-of-the-
9 pants the number and put it in there and say \$5,000 a year
10 is a reasonable amount. That's really the --

11 Q. And that would be to keep the bridge in its
12 existing condition, as opposed to upgrading its condition?

13 A. I don't think that much thought went into it, but
14 that's the intent. You know, certainly that was the intent
15 of keeping the structures so we can maintain it to keep it
16 in its current condition.

17 Q. One other thing. Back to Exhibit B. When you
18 did the inventory, did you do any measuring as to site
19 distance, roadway width, shoulder width?

20 A. No, we didn't, because, you have to understand,
21 the purpose of this whole study was not an in-depth safety
22 study. It was a study done as a cursory inspection to
23 develop order-of-magnitude costs for what it would take for
24 a group, whoever that group is, F.A.S.T. or whatever -- they
25 hired me to do that -- how much is it going to take to not

1 only maintain this line, but how much is it going to cost
2 rehab or rehabilitation certain structures to bring it up to
3 a trail use. That was the purpose of it.

4 So, safety things; no. We didn't go out there and
5 measure site distances, do traffic studies, and that kind of
6 thing.

7 MR. SALAPA: May I approach the witness again, Your
8 Honor?

9 JUDGE COCHERES: Certainly.

10 BY MR. SALAPA:

11 Q. I'd like to refer you to your inspection report
12 again of the Martic Forge Bridge.

13 A. Okay.

14 (Document handed to witness.)

15 Q. And on page 26, could you just read the
16 highlighted sentence, beginning: "If this bridge"?

17 A. "If this bridge is properly rehabilitated and
18 maintained with only light vehicle and pedestrian traffic,
19 we feel it's remaining life is no less than 50 years."

20 Q. Thank you. What would happen at the end of the
21 remaining life of that bridge?

22 A. What would happen at the end of the remaining
23 life?

24 Q. Yes. You're saying that it had possibly a
25 remaining life of no less than 50 years.

1 A. Right.

2 Q. What happens when it reaches the end of that
3 remaining life?

4 A. I define its remaining life as it standing there
5 until something happens to the structure where you can no
6 longer use it. That being a localized failure, or somebody
7 inspecting the bridge and seeing a member buckled, and you
8 say -- you close the bridge and say, you can't use it
9 anymore till we fix it.

10 What I'm saying is, if you maintain it and do a
11 minimum rehabilitations, you can to 50 years without that
12 happening. That may happen in 50 years. It may not happen
13 for 100 years; it may not happen for 200. Nobody is that
14 good to make that assessment. But I'm saying that you'll
15 get 50 years out of that structure with minimal input into
16 the bridge.

17 Q. And at some point in time, though, is what you're
18 saying that the bridge may require some sort of substantial
19 rehabilitation; or if that is cost-prohibitive, removal of
20 the structure?

21 A. I can guarantee you'll need major rehabilitation
22 if you don't have a program to maintain it. Maybe I'm
23 trying --

24 Q. Answer my question. If you reach the point where
25 you've reached the end of the remaining life of the

1 structure, could it at that point necessitate either a major
2 rehabilitation or removal altogether?

3 A. Could be either one.

4 Q. Could be either one. Would you agree with me, in
5 your opinion as a professional engineer, that no bridge, no
6 matter how well constructed, has an indefinite life span?

7 A. Nothing will last forever.

8 Q. And that at some point maintenance of an existing
9 structure becomes either cost-prohibitive or impossible from
10 an engineering standpoint?

11 A. That's a pretty reasonable statement. I mean,
12 after a while you're going to lose a section and you're
13 going to -- sure.

14 Q. Okay. Thank you.

15 MR. SALAPA: That's all that I have.

16 JUDGE COCHERES: Any other questions for this
17 witness?

18 Mr. Wyland.

19 **CROSS EXAMINATION**

20 BY MR. WYLAND:

21 Q. All the work that you did with respect to the
22 bridges on this line were based upon cursory inspections on
23 your part?

24 A. Let me be clear here that there was three -- I've
25 worked on this line on three different instances. One of

1 those instances was a cursory inspection of a handful of the
2 bridges. Those bridges are listed on the one you just
3 referred to here.

4 Q. Okay. Let me --

5 A. Okay. Is that what you're talking about, the
6 *cursory inspections only*?

7 Q. Yes.

8 A. Okay.

9 Q. That particular inspection was done for the
10 purpose of determining the scope of work needed to open the
11 bridges for trail use; is that right?

12 A. Again, it was for the purposes of the trail group
13 understanding what kind of funding do then need to get this
14 trail open in a minimum capacity; okay?

15 Q. Right.

16 A. Okay. Not a -- when you say scope of work, that
17 means something to me different than it probably means
18 something to you. Scope of work is you're clearly defining
19 what you're going to design and put together out there.
20 That was never done, and it has not been done to this date.

21 Q. In your testimony on page 2, you talk about the
22 purpose of your study in that instance was to determine the
23 scope of work needed in order to open the bridges for trail
24 use.

25 A. Okay.

1 Q. I just wanted to confirm that the scope of work
2 that you're talking about on page 2 of your testimony, and
3 that --

4 A. Okay.

5 Q. -- it was only focused on opening --

6 A. Right.

7 Q. -- for trail use, and for no other extraneous
8 purposes.

9 A. And the scope that that specific statement is
10 referring to is the scope -- as you'll see further back
11 where you have a description of items in here as far as
12 construction work. And these were very, very briefly
13 described as what, to give them an idea of what they're in
14 for when they would take over this line.

15 MR. WYLAND: No further questions.

16 JUDGE COCHERES: Is there any redirect for the
17 witness?

18 MS. NETTKE: No.

19 JUDGE COCHERES: The witness is excused.

20 Thank you for coming, sir. Thank you for your
21 patience, as well, I appreciate it.

22 (Witness excused.)

23 JUDGE COCHERES: Mr. Salapa.

24 MR. SALAPA: Thank you, Your Honor.

25 Do you want to put your witness on?

1 MR. EATON: I'm perfectly willing to put Mr. Heebner
2 on to produce the one additional exhibit which you have
3 pointed to. It may be that that would be advisable in
4 advance of Mr. Oliver.

5 MR. SALAPA: It doesn't matter, Your Honor. I just
6 thought since Mr. Heebner was only going to be put on for
7 the purpose of introducing the survey, we could let him get
8 out of here.

9 JUDGE COCHERES: Again, it doesn't matter to me. I
10 have directed that that survey be made a part of the record,
11 so I don't have any problem with Mr. Heebner doing it now.

12 MR. SALAPA: Go ahead.

13 MR. EATON: Mr. Heebner.

14 JUDGE COCHERES: While Mr. Heebner is taking the
15 stand, I only need remind him that he has already been
16 identified as a witness and sworn in, and so he remains
17 under oath.

18 Let's go off the record for a second.

19 (Discussion off the record.)

20 JUDGE COCHERES: Let's go back on the record.

21 **Whereupon,**

22 **ROGER HEEBNER**

23 **having previously been duly sworn, testified further as**
24 **follows:**

25 JUDGE COCHERES: Mr. Heebner, you're already under

1 oath. Please be seated, and good afternoon to you.

2 THE WITNESS: Thanks for inviting me back.

3 (Laughter.)

4 JUDGE COCHERES: You're quite welcome.

5 **DIRECT EXAMINATION**

6 BY MR. EATON:

7 Q. Mr. Heebner, you have familiarity, do you not,
8 with the stipulation that's been entered into between
9 Conrail and the various townships involved with the Enola
10 Branch?

11 A. I do.

12 Q. With respect to Conestoga Township, it became
13 necessary, did it not, to subdivide land of Conrail in order
14 to convey a portion of that land to Conestoga Township?

15 A. That's correct.

16 Q. In recognition of that fact, did you undertake to
17 procure a survey to establish the division line or lines
18 between that property to be conveyed and that to be retained
19 by Conrail?

20 A. I did.

21 Q. And by whom was that survey worked on; and will
22 you tell us approximately when it was done?

23 A. Consolidated Rail Corporation has several
24 surveying firms under contract and retainer to do work for
25 them at various areas across their system. This particular

1 area is an area which normally Erdman-Anthony, in Camp Hill,
2 does the work.

3 As a result, I contacted Erdman-Anthony, and they had
4 arranged for their chief surveyor to proceed with the
5 preparation of a survey delineating the parcel of property
6 to be conveyed to Conestoga Township.

7 I instructed him with several basic parameters of
8 what we were attempting to accomplish; physical
9 characteristics, things to include, points to start and
10 stop.

11 Q. Has that survey been completed, to the best of
12 your knowledge?

13 A. Essentially, yes. We have prepared a description
14 and plan. It's been stamped, it's been provided to the
15 attorney representing Conestoga Township.

16 From Conrail's standpoint, we believe it has been
17 completed. I guess there remains the possibility that there
18 might be slight changes.

19 We had a field meeting out there with the surveyor,
20 with the township, with Conrail, to look at all areas, talk
21 about physical characteristics, and we believe the survey
22 represents, to the best of our efforts, the results of that
23 field meeting and our discussions.

24 Q. Now, do you have a copy of the plan drawn from
25 that survey?

1 A. I do.

2 MR. EATON: And let's have that identified as Conrail
3 Exhibit -- I guess this would be about No. 8.

4 JUDGE COCHERES: Yes, I think it is.

5 (Whereupon, the document was marked
6 as Conrail Exhibit No. 8 for
7 identification.)

8 BY MR. EATON:

9 Q. Now, that's an extra copy that you can part with;
10 am I correct?

11 A. That's correct.

12 MR. EATON: And I'll represent that I will call
13 Erdman-Anthony tomorrow and see whether we can have more
14 reproduced. However, these are relatively expensive, and
15 there are four sheets to the drawing.

16 I think, really, only Conestoga is directly
17 interested.

18 MR. WYLAND: And we have a copy.

19 MR. EATON: And you have a copy. I will be happy to
20 provide two copies for the reporter, in addition to one,
21 which we will leave with Judge Cocheres.

22 JUDGE COCHERES: Do it the other way around, give one
23 the one to the reporter, and send me one later.

24 MR. EATON: Okay.

25 JUDGE COCHERES: Is there anyone who needs a copy of

1 this survey?

2 MS. NETTKE: Would it be available for inspection at
3 someplace if we wanted to look at it, without running up to
4 Conrail in Harrisburg?

5 MR. EATON: Well, that's where the drawing will be,
6 is in my office in Harrisburg.

7 MR. WYLAND: Your Honor, it can be observed and
8 reviewed, and even copied, at the Conestoga Township
9 offices.

10 MS. NETTKE: Thank you.

11 JUDGE COCHERES: Apparently then we only need a copy
12 for me and an extra copy for the court reporter. I see no
13 one else that seems to be interested.

14 MR. EATON: All right.

15 BY MR. EATON:

16 Q. Now, with respect to that drawing, will you tell
17 us what the necessity for the subdivision was?

18 A. We had originally anticipated conveying the
19 property in parcels to the various municipalities in the
20 fashion that Conrail normally does. Just reference the
21 centerline of track referring to stations or mile posts
22 along the track.

23 Further discussions revealed that we're going to have
24 to be a little more detailed; specifically, to determine the
25 end point, and specifically due to the fact that the

1 property was contiguous to the Port Road, which remained an
2 active line of Consolidated Rail Corporation, and the line
3 between the two needed to be defined so that Conrail could
4 retain ownership on the Port Road while conveying a
5 completed parcel to Conestoga Township of the former Enola
6 Branch.

7 Q. And does the drawing which has been identified
8 establish a line separating Conrail's retained land
9 comprising the Port Road from that which is to be conveyed
10 to Conestoga Township?

11 A. Yes, a description was -- or a plot was laid out
12 and a description prepared, taking, describing an area from
13 Shenks Ferry Road, which I believe is the last crossing on
14 the application, up to a point that the township and Conrail
15 have referred to as approximately Brenner Hollow Road, which
16 is west, westerly of Shenks Ferry Road.

17 Q. And do you understand whether that is a public
18 road?

19 A. I believe it is a public road to the tracks.
20 Whether, in fact, it crosses the tracks presently, I don't
21 believe so.

22 Q. And can you locate Brenner Hollow Road for us in
23 relation to, say, Safe Harbor?

24 A. It is east of Safe Harbor. It is between Shenks
25 Ferry Road and Safe Harbor.

1 Q. And if I suggested it was perhaps a mile from
2 Safe Harbor, would that be roughly accurate?

3 A. I would think you're in the vicinity, yes.

4 MR. EATON: With that I offer Conrail Exhibit No. 8
5 into evidence, and I offer an opportunity for anyone here
6 that wishes to examine it, to do so, prior to any cross
7 examination.

8 I might also at this time offer into evidence Conrail
9 Exhibit 7, which was identified during the course of an
10 adverse witness.

11 JUDGE COCHERES: I no longer remember, but I thought
12 I had already admitted Conrail Exhibit 7.

13 MR. EATON: I think perhaps you did, but I had not
14 offered it for admission. But in any event, I'll offer it
15 now.

16 JUDGE COCHERES: It's like that spaghetti sauce; it's
17 in there.

18 (Laughter.)

19 JUDGE COCHERES: I am troubled by one thing; and you
20 were careful to point it out in your opening statement,
21 Mr. Eaton. And that one thing is that the possibility
22 exists -- and it's really a question directed at Mr. Wyland
23 -- that there may be some correction.

24 MR. WYLAND: Your Honor, first of all, the
25 stipulation of settlement under consideration by the

1 commission gives a general description. The purpose of the
2 survey was to nail down the various tiny details of the
3 division and the line drawing.

4 Conestoga Township, counsel for Conrail, Mr. Heebner
5 and the surveyor all met on the site and walked the lines.
6 And as you can see from reviewing the plot, it's a very
7 complicated set of jogs.

8 The line that was -- the new line that was drawn, in
9 fact, has a series of twists and turns on it, too, mostly
10 due to the topography.

11 Conrail provided Friends of the Atglen Susquehanna
12 Trail, through counsel, a copy of the drawing, which was the
13 first drawing, and hopefully the only drawing, perhaps, that
14 came out of that field conference.

15 Conestoga Township needs some additional time to go
16 over the fine points of it; and Conrail has well noted that
17 in that this was the first generation of it, there may be
18 some small details to be worked out.

19 But I think we can proffer for the record that we are
20 in concurrence with Conrail that this substantially complies
21 with and adds a great level of detail to the general
22 description that's before the commission in the stipulation
23 of settlement.

24 We will work diligently with Conrail to nail down the
25 last few details on the specifics of the line drawing. And

1 I think there are only possibly two small areas that are in
2 question. And both of those are just really whether a line
3 should be moved one way or the other within several feet,
4 and I don't think they represent any substantial problem, or
5 certainly any reason that should be cause for concern here.

6 MR. EATON: I can add to that, if I might. The
7 stipulation that is under consideration here would terminate
8 the limited conveyance at the western end at the northern
9 line of Brenner Hollow Road. Or, that is, the northern line
10 of Brenner Hollow Road as extended at right angles across
11 the rail bed property. The survey, however, I think, goes
12 only to the centerline of Brenner Hollow Road as extended
13 across the right of way.

14 If we're going to be consistent, we're going to have
15 to modify either the stipulation or the drawing. And we
16 have selected the drawing as that which might be more
17 reasonably amended.

18 Secondly, the subdivision requirements in this
19 municipal unit are those provided by Lancaster County. And
20 Lancaster County's subdivision requirements may have to be
21 complied with here, notwithstanding the somewhat unusual
22 nature of the subdivision which is under consideration.

23 The drawings as they presently exist do now comply in
24 several respects with Lancaster County's planning
25 commission's specific requirements; such as, for example,

1 showing foliage, showing topographic elevations, showing
2 approval blocks, and that kind of thing.

3 So the drawing will have to be amended to the extent
4 that Lancaster County will require; which is not to say that
5 we may not seek a waiver of some requirements. Which, given
6 the development of this case, may be possible.

7 JUDGE COCHERES: Well, my concern is that the
8 stipulation that is currently pending before this commission
9 encompasses within it the requirement that a survey be
10 completed. And indeed, that's what I framed in my Interim
11 Order No. 6 when I directed that that survey should be
12 completed by today.

13 MR. EATON: And I represent to you it is complete.
14 I'll represent to you that it is inaccurate in some
15 respects, and therefore will have to be modified. But it is
16 complete as it stands.

17 (Laughter.)

18 JUDGE COCHERES: Well, now that you're done
19 dancing --

20 (Laughter.)

21 JUDGE COCHERES: -- I can represent that I'm not
22 entirely satisfied with that answer. And what I am more
23 concerned about, in a constructive manner, is that I have a
24 finalized stipulation, including this survey. What I want
25 to know is the usual question: How long will it take to get

1 to that point?

2 MR. EATON: I've had the survey about a week. It's
3 been only within the last couple of days that I've been able
4 to narrow down what may be the remaining items to be ironed
5 out.

6 If the surveyor is available and cooperative, we
7 should be able to have the modifications required completed
8 within, I would think, a week to ten days.

9 JUDGE COCHERES: That still doesn't fully answer the
10 question if you have the hurdle of Mr. Zielonis's client to
11 deal with, although, albeit, perhaps a low one.

12 MR. EATON: Well, I had thought that I would
13 invite --

14 JUDGE COCHERES: The hurdle, not his client.

15 (Laughter.)

16 MR. EATON: -- a conference among the surveyor,
17 Conrail's person responsible for real estate in the area,
18 Mr. Zielonis, and Mr. Wyland so that we can all get our
19 requirements in with the hope that they can be met quickly.

20 But I can only say that while we have been trying to
21 get this survey for, lo, these many weeks, it's been
22 available only for a very short period, and there hasn't
23 been time to iron out all the glitches, or even identify all
24 the glitches.

25 JUDGE COCHERES: Mr. Zielonis, do you want to even

1 dare to participate in this conversation, or do you think
2 that silence is golden?

3 MR. ZIELONIS: The latter, Your Honor.

4 JUDGE COCHERES: Excellent.

5 MR. ZIELONIS: I would say that we're willing to
6 cooperate, Your Honor.

7 JUDGE COCHERES: If you had to say anything, those
8 were the words.

9 (Laughter.)

10 JUDGE COCHERES: What I'm hearing is that it's going
11 to take at least a week to finalize the drawing, to know
12 whether it's going to take more than that to meet whatever
13 requirements Lancaster County cares to impose, is going to
14 take longer.

15 I think I'm going to impose upon you, Mr. Eaton, as
16 the applicant, a requirement that you submit a finally
17 approved subdivision plan within 30 days.

18 MR. EATON: Approved by Lancaster County?

19 JUDGE COCHERES: Yes.

20 MR. EATON: I can't guarantee completion of review by
21 Lancaster County in six months, let alone six days. I've
22 had subdivision problems in the past. All I can do is
23 represent that we will have submitted within a required
24 period what we understand to be the requirements.

25 JUDGE COCHERES: Why don't you and Mr. Wyland point

1 out for me in Exhibit 6A, which is your stipulation, where
2 the language on the survey is.

3 MR. EATON: Paragraph 9.1 on page 10.

4 JUDGE COCHERES: How interesting. I was there.

5 MR. EATON: And excuse me; that is where the
6 undertaking is -- yes, okay. Then over on page 11, the last
7 paragraph, 9.1: The boundaries in this paragraph will be
8 surveyed at Conrail's sole expense, and drawn as set forth
9 above, to the mutual satisfaction of the parties.

10 But in all honesty, Your Honor, my thought had been
11 that county approval of the subdivision plans was not
12 necessarily antecedent to determination of the issues before
13 you.

14 MR. WYLAND: I would agree, and add, Your Honor, that
15 we purposely drew paragraph 9.1 to be a general description
16 of the conveyance, thinking that at any time, independent of
17 the approval of the stipulation, the details of it remains
18 to be worked out. And I think they substantially are.

19 JUDGE COCHERES: All right. I agree with your
20 analysis generally, and I will remove the requirement that
21 you have an approved subdivision plan from Lancaster County,
22 because you have not set forth in your stipulation that that
23 is a subject that is necessary for agreement between the
24 parties.

25 I am going to require that you have the completed

1 survey filed as a late exhibit, Exhibit 8A, within two weeks
2 of today. Is that possible?

3 MR. EATON: Subject to the availability of the
4 surveyor, yes. I'm assuming that he'll make himself
5 available, given the client that's involved.

6 JUDGE COCHERES: Let's go off the record.

7 (Discussion off the record.)

8 JUDGE COCHERES: Back on the record.

9 During our off-the-record discussion, I was persuaded
10 to amend some of my earlier comments and requirements.

11 We have designated as Conrail Exhibit No. 8 a
12 document that is going to be simply submitted today as one
13 copy for the record, the drawing referred to and identified
14 by Mr. Eaton.

15 But as part of our discussion both on and off the
16 record, we realized that that document still needs some
17 refinement.

18 To that extent, I will reserve for entry into the
19 record what I will call Late Filed Conrail Exhibit No. 9.
20 It is to be, for lack of a better word, the final draft of
21 the survey that is required to be completed by the
22 stipulation as submitted by the parties, and currently
23 marked Conrail Exhibit 6A.

24 It is my requirement that that document be prepared
25 and submitted no later than two weeks from today. Since the

1 court reporter will have completed the transcript, it should
2 be sent to my office with essentially three copies.

3 And parties who contact Mr. Eaton may arrange for
4 additional copies, if they so desire. I know a copy will,
5 of course, be in hand to Conestoga Township, because it
6 directly impacts that portion of the settlement that is
7 related to the agreement between Conrail and Conestoga
8 Township.

9 And I believe that properly summarizes the changes
10 that I have made. I will note for the record that I am no
11 longer requiring the railroad and municipalities to produce
12 a document that has been approved by the Lancaster County
13 planning commission. I have changed my mind on that
14 subject, because I am persuaded that the stipulation as
15 submitted does not necessarily contemplate the planning
16 commission's action; although ultimately the planning
17 commission will be required to approve a subdivision plan
18 here.

19 I would note that that approval process may not be
20 completed prior to any possible activity or approval by this
21 commission of the stipulation that's currently pending.
22 Which puts us in the position of somebody has to go first.
23 I'm saying that if my decision and my commission's decision
24 are to approve this stipulation, then we will at least have
25 that many steps completed, and the parties can work on it

1 from there.

2 Does anyone disagree with my summary of the events
3 we've just finished?

4 (No audible response.)

5 JUDGE COCHERES: Fine.

6 With that all being said, have you completed your
7 direct examination of Mr. Heebner?

8 MR. EATON: I have.

9 JUDGE COCHERES: Is there any cross examination for
10 Mr. Heebner?

11 MR. RANCK: Could I just ask a couple questions?

12 JUDGE COCHERES: Yes, certainly.

13 **CROSS EXAMINATION**

14 BY MR. RANCK:

15 Q. Mr. Heebner, can you tell us the cost of the
16 survey that the Judge has just been discussing?

17 A. No.

18 Q. You don't know?

19 A. No idea. It goes into the bucket that we pay
20 Erdman-Anthony on.

21 Q. Isn't that part of a budget entry for this
22 particular project, the Enola line?

23 A. If all things are equal, it probably should have
24 been, and it wasn't included.

25 Q. Well, what is the budget for this abandonment of

1 the Enola line?

2 A. I would guess if you would total the dollars
3 included in the stipulation, that's what it would be.

4 Q. Well, what I'm asking, what do you know from --

5 A. I believe I was asked yesterday, it was somewhere
6 in the neighborhood of a million and a half dollars.

7 Q. That's just what's being paid out of the
8 stipulation.

9 A. Right.

10 Q. I'm talking about what the total budget allotment
11 for --

12 A. Well, you'd have to include the costs of
13 Mr. Eaton, the cost of myself. I don't know that that's
14 been tabulated. I know what that dollar is, and I don't
15 think that Conrail knows. I guess they could find it out if
16 they so chose.

17 (Laughter.)

18 A. But they haven't to date.

19 Q. Or haven't confided in you.

20 A. Or they haven't confided in me, that's correct.

21 MR. RANCK: Thank you.

22 JUDGE COCHERES: Any additional questions?

23 (No audible response.)

24 JUDGE COCHERES: Once again, Mr. Heebner, you're
25 excused.

(Witness excused.)

JUDGE COCHERES: Mr. Salapa, I think the idea of taking a break is an excellent one. Be back in your seats at 4:00.

(Recess.)

JUDGE COCHERES: Let's go back on the record.

Whereupon,

DAVID OLIVER

having been duly sworn, testified as follows:

JUDGE COCHERES: Please be seated; and good afternoon to you.

THE WITNESS: Thank you.

DIRECT EXAMINATION

BY MR. SALAPA:

Q. Could you please state your name for the record, please?

A. David Oliver.

Q. And Mr. Oliver, by whom are you employed, and in what capacity?

A. Pennsylvania Public Utility Commission as a civil engineer.

Q. How long have you held that position?

A. Approximately thirteen years.

Q. Let me direct your attention to a document that has been marked for identification as Statement No. 1. Does

1 that document represent your direct testimony in this
2 matter?

3 A. Yes.

4 JUDGE COCHERES: Excuse me, Counselor. Let's call
5 that Staff Statement No. 1.

6 MR. SALAPA: Sorry, Your Honor.

7 (Whereupon, the document was marked as
8 Commission Staff Statement No. 1 for
9 identification.)

10 BY MR. SALAPA:

11 Q. Was that testimony prepared by you or under your
12 supervision?

13 A. Yes.

14 Q. Do you have any changes or modifications you
15 would like to make to that statement at this time?

16 A. Yes. We could, on page no. 1. How long have you
17 been employed by the -- the question is posed: How long
18 have you been employed by the Public Utility Commission.
19 Approximately ten and a half years. We can change that to
20 approximately thirteen years.

21 As you go through the testimony, you'll have the
22 question, when did you last visit the site of crossing no.
23 1, and consecutively through all the crossings. Wherever
24 that is seen, I'd like to change the March 30th date to the
25 fall of 1995.

1 And throughout the entire pre-written testimony,
2 anywhere where you see "urban design criteria," I'd like
3 that you'd get that changed to "rural design criteria."

4 Q. Thank you. Mr. Oliver, with respect to Staff
5 Statement No. 1, your direct testimony, if I were to ask you
6 the questions that are set forth in that statement, would
7 your answers be the same as are presently contained in
8 Statement No. 1?

9 A. Yes.

10 Q. Is the information contained in that statement
11 true and correct to the best of your knowledge, information
12 and belief?

13 A. Yes.

14 MR. SALAPA: Your Honor, with that I would move for
15 the admission of Staff Statement No. 1 and Staff Exhibits, I
16 believe it's 1 through 50, subject to cross examination.

17 JUDGE COCHERES: Staff Statement No. 1 and Staff
18 Exhibits 1 through 50 are admitted subject to cross
19 examination and any timely motions.

20 **(Whereupon, the document marked as**
21 **Commission Staff Statement No. 1 was**
22 **received in evidence.)**

23 **(Whereupon, the documents were marked as**
24 **Commission Staff Exhibit Nos. 1 through 50**
25 **for identification and received in evidence.)**

1 JUDGE COCHERES: I'm pausing for just a moment to
2 complete my note-making based on his changes to his
3 testimony.

4 (Pause.)

5 JUDGE COCHERES: All right. Who has questions for
6 this witness?

7 MS. D'ALFONSO: I do.

8 JUDGE COCHERES: Ms. D'Alfonso.

9 **CROSS EXAMINATION**

10 BY MS. D'ALFONSO:

11 Q. Good afternoon, Mr. Oliver.

12 You've eliminated some of my questions by changing
13 your testimony to reflect that it was rural design criteria.
14 But I do still want to ask you: Are you aware about the
15 other criteria that Mr. Cassell referred to, the
16 resurfacing, restoration and rehabilitation?

17 A. Not specifically, no.

18 Q. Are you aware that it exists?

19 A. Would you mean as a policy within the department?

20 Q. Well, I mean as found in the design manual, part
21 2, right after rural criteria.

22 A. No.

23 Q. I'd like to direct your attention specifically
24 right now to crossing 1, if we may.

25 A. Yes.

1 Q. Would you agree with me at this location that
2 there are geographical and manmade constraints at that
3 location and the approaches?

4 A. Yes.

5 Q. Is the railroad structure consistent with the
6 other geographical and manmade constraints at that location?

7 MR. SALAPA: Objection. Could you clarify that?

8 MS. D'ALFONSO: Sure.

9 BY MS. D'ALFONSO:

10 Q. The manmade and geographical constraints I'm
11 referring to, concur with me if you can, would be guide
12 rail; is that true?

13 A. Well, there is guide rail there.

14 Q. Okay. Are there utility poles at the edge of the
15 right of way?

16 A. Yes.

17 Q. Are there fences along the property on the
18 approaches?

19 A. Yes.

20 Q. Okay. From your recollection of visiting the
21 site, would the abutments at that structure be in the same
22 right of way location -- not same right of way location, but
23 same right of way area as those utility poles and the guide
24 rail and fences? Except where the spring is, or the creek,
25 on the roadway side.

1 A. They would generally have approximately the same
2 longitudinal alignment with the roadway.

3 Q. Fair answer; thank you.

4 Do you recall, is the road at the railway bridge at
5 that crossing painted with a double yellow line?

6 A. Yes.

7 Q. What does that indicate to you?

8 A. No passing.

9 Q. And you reference passing sight distance as a
10 concern of the Staff at this location?

11 A. That's -- I included that as part of the
12 criteria.

13 Q. Will you agree with me when it's a striped double
14 yellow line, that would be an illegal maneuver of the
15 driver?

16 A. Yes.

17 Q. Moving from crossing 1, straight down crossing
18 14.

19 A. Are we doing crossing 14 now?

20 Q. Yes, we are going to crossing 14.

21 JUDGE COCHERES: It's page 42.

22 BY MS. D'ALFONSO:

23 Q. You've recognized as one of your reasons for the
24 removal of the structure that the bridge would prevent any
25 proposed highway improvements; is that correct?

1 A. Yes.

2 Q. Would you agree with me that if the Department of
3 Transportation wanted to do a highway project there in the
4 future, that PennDOT and the Commonwealth has the power of
5 eminent domain?

6 A. Yes.

7 Q. Are you aware of the safety enhancements that the
8 department and its stipulation of settlement proposed before
9 the commission today with Conrail is agreeable to safety
10 enhancements at this location, such as guide rail or
11 repairing loose stone?

12 A. I'll just say generally, yes.

13 Q. Is that a good idea?

14 A. Yes.

15 Q. There are two more crossings that I'd just like
16 to ask you a few questions about. We can do them together,
17 if you'd like. Crossings 23 and 24; 272 northbound and
18 southbound.

19 Would you agree with me there at those locations that
20 the shoulder widths and roadway widths of 272 are consistent
21 through the structure as they are on the approaches?

22 A. To the best of my recollection, I believe they
23 were, except for crossing no. 23. I believe you got into
24 some curbing.

25 Q. Pardon me?

1 A. I believe there was some curbing inside the
2 tunnel.

3 Q. Was that part of the sidewalks and curbings that
4 Mr. Cassell mentioned that were referenced in a prior order
5 of the commission?

6 A. That could very well be.

7 Q. Speaking of prior orders of the commission, would
8 not the commission or the Public Service -- what was it
9 before the commission?

10 A. Public Service Commission.

11 Q. Thank you. Would they not have had to approve
12 the construction of this roadway under these arches in the
13 late sixties, early seventies?

14 A. Theoretically, yes.

15 Q. Would you agree with me that the orders that the
16 department offered as exhibits would speak for themselves?

17 A. Yes.

18 Q. And again, here at crossings 23 and 24, another
19 one of your concerns would have been that the structure
20 would prohibit any future highway project there? Or
21 proposed improvements to the roadway; I'll quote you
22 directly.

23 A. Yes.

24 Q. Again, would you agree that if PennDOT wanted to
25 do a major project at 272, it would find a way to do so?

1 A. They would have a better chance than anybody else
2 I know of.

3 Q. Fair enough. Thank you.

4 MS. D'ALFONSO: I have no further questions for
5 Mr. Oliver.

6 JUDGE COCHERES: Mr. Wyland.

7 **CROSS EXAMINATION**

8 BY MR. WYLAND:

9 Q. Mr. Oliver, your testimony seems to indicate that
10 the crossing structures, because they're no longer used for
11 rail purposes, generally should be removed.

12 Would you agree with me that the removal of a
13 structure constitutes a permanent way to alleviate concerns
14 about safety, as far as the users of the roadway are
15 concerned?

16 A. Yes.

17 Q. Would you agree with me that it's also safe, or
18 it's possible in general, to have a relatively safe crossing
19 with the structure in place if there are certain conditions
20 met?

21 A. You use the term "relative." If there's a lot of
22 flexibility there, then I have to say yes.

23 Q. Okay. Let's talk specifically about the Shenks
24 Ferry Crossing, the very last one. Are you familiar with
25 that, in Conestoga Township? It would be crossing no. 31.

1 A. Yes.

2 Q. Do you recognize that that's a seasonal use only
3 roadway?

4 A. Yes.

5 Q. Are you aware of the testimony of Conestoga
6 Township that traffic at that section is very slow-moving?

7 A. Yes.

8 Q. Have you required any modifications to the
9 crossing for safety purposes in the last three years?

10 MR. SALAPA: Excuse me. I'm going to object. You,
11 meaning Mr. Oliver personally, the commission, or the Bureau
12 of Transportation and Safety?

13 MR. WYLAND: I'll rephrase the question.

14 BY MR. WYLAND:

15 Q. Has the Bureau of Transportation and Safety
16 recommended any improvements for safety reasons in the last
17 three years at Shenks Ferry Road, for safety reasons?

18 A. None that I'm aware of.

19 Q. Are you aware of whether the commission has
20 ordered at any time in the last three years any
21 modifications of Shenks Ferry Crossing in the last three
22 years for safety purposes?

23 A. None that I'm aware of.

24 Q. Are you aware that the stipulation of settlement
25 would, if approved, turn over the maintenance

1 responsibilities at some of the crossings to the townships?

2 A. Yes.

3 Q. Are you generally aware that the townships
4 involved in this proceeding maintain miles of roadways in
5 each of their respective townships?

6 A. Yes.

7 Q. Are you aware of any facts or reasons why the
8 townships would not be able to maintain these crossings in
9 the future?

10 A. The only -- none from the technical point of
11 view.

12 Q. In the instance where there's a fairly narrow
13 rural township road approaching an existing crossing
14 structure, is it a fair statement that removal of the
15 crossing structure itself will not cause any general
16 improvement to the condition of the roadway before and
17 after, that is, on either side of the crossing?

18 In other words, your position that the crossing
19 structure should be removed is a solution only with respect
20 to the very specific location of the crossing structure
21 itself; true?

22 A. Basically, yes.

23 Q. So if there are other constraints, that is, the
24 narrow nature of the road, those particular constraints are
25 not addressed by the mere removal of a structure; is that

1 true?

2 A. Well, generally, that could be the case.

3 Q. Let's talk about the Martic Forge trestle. Are
4 you aware of that?

5 A. Yes.

6 Q. Has the Bureau of Transportation and Safety at
7 any time in the last three years recommended any specific
8 improvements at that location for safety reasons?

9 A. No.

10 Q. Are you aware of any order of the Public Utility
11 Commission in the last three years requiring any
12 improvements at that crossing for safety reasons?

13 A. No.

14 MR. WYLAND: No further questions.

15 JUDGE COCHERES: Mr. Eaton.

16 **CROSS EXAMINATION**

17 BY MR. EATON:

18 Q. Mr. Oliver, I want to inquire; I think I'll just
19 inquire about one bridge, that being crossing no. 14, Church
20 Street, in Quarryville.

21 Is it fair to say that your recommendation of each
22 crossing has been that because there's no further need for
23 the bridge, at least where the bridges are railroad bridges,
24 that there's no longer a need for the bridge and that it
25 should be removed?

1 MR. SALAPA: I'm going to object, only because
2 Mr. Eaton started out saying that he was asking about
3 crossing 14, and then said in general.

4 Are we referring strictly to crossing 14?

5 MR. EATON: No, in general I'm talking about
6 generally his reports with respect to all the crossings.
7 Crossing 14 is one of those; and I will come to that in half
8 a moment.

9 MR. SALAPA: So you're asking, if I may get further
10 -- Mr. Eaton, you are asking generally with regard to his
11 testimony?

12 MR. EATON: Yes.

13 BY MR. EATON:

14 Q. Is it a fair construction of your testimony that,
15 at least where there are railroad bridges, that is, bridges
16 formerly carrying railroad line, that you have recommended
17 that those be removed?

18 A. Well, yes.

19 Q. Okay. Have you given any consideration to either
20 the historical or the scenic or picturesque, or even
21 engineering features of those structures which may be
22 considered worthwhile?

23 MR. SALAPA: I'm going to object; only because
24 there's nothing in the question or answers that indicates
25 anything about historic or aesthetic considerations. Nor is

1 there anything in Mr. Oliver's qualifications that indicate
2 that he has had any training or continuing education courses
3 in historic preservation.

4 MR. EATON: I understand that. But on the other
5 hand, it seems to me that it's appropriate to inquire
6 whether he's considered that factor, which seems to have
7 been a major factor in the minds of some during the course
8 of this hearing.

9 JUDGE COCHERES: I have no problem with the subject
10 matter. I'm only amazed at the person making the inquiry.

11 (Laughter.)

12 MR. EATON: I take it that the objection's overruled?

13 JUDGE COCHERES: Yes. And my apologies for not
14 making it clear for the record.

15 (Laughter.)

16 BY MR. EATON:

17 Q. Then I said before that I was going to talk about
18 crossing 14. Let's focus on --

19 JUDGE COCHERES: Let's get the answer to the question
20 that you posed.

21 MR. EATON: Pardon?

22 JUDGE COCHERES: Which was: Did you take into
23 consideration --

24 MR. EATON: I thought his answer was "no."

25 THE WITNESS: I don't recall answering.

1 MR. EATON: I'm sorry.

2 THE WITNESS: But that's a good answer, I'll accept
3 that.

4 (Laughter.)

5 MR. EATON: Okay.

6 BY MR. EATON:

7 Q. Now, with respect to crossing no. 14, in your
8 testimony at page 43, you were asked to describe the type of
9 structure at crossing 14. And you described it as a stone
10 ribbed arch bridge.

11 Your photographs don't show the ribbed arch
12 configuration that you refer to; nor, I must confess, do
13 Conrail's photographs. What is a ribbed arch bridge?

14 A. Rather than the inside surface of the arch,
15 having, let's say, a smooth surface as you would normally
16 see in every other type of concrete or stone arch, think of
17 it in terms of it having like separate rings to it that are
18 offset from each other at each course. It's somewhat
19 staggered. It's for the purposes of taking care of skew.

20 Q. And would I be correct that these ribs then would
21 appear to the observer on the highway level as actually ribs
22 extending across the ceiling, if you will, of the arch
23 above?

24 A. Well, I don't know how they would interpret it.
25 That's from the way I was originally taught. That's the

1 name that was assigned to that type of structure. But how
2 somebody else would interpret it, I have no idea.

3 Q. And would it be true that the clearance from
4 roadway to the highest point of a rib would be less than the
5 clearance between the roadway and the space between ribs?

6 (Pause.)

7 A. That is, another way to look at it, do the ribs
8 project from the general ceiling level of the arch?

9 A. If I understand your question correctly, in a
10 manner of speaking, yes.

11 Q. Okay. Is that a usual type of construction?

12 A. No.

13 Q. Are you aware of similar construction in a stone
14 arch bridge in the immediate Harrisburg vicinity?

15 A. Yes.

16 Q. And where is there one locally?

17 A. If you go up to Fishing Creek Road, I believe
18 where the Harrisburg to Buffalo main line goes up through, I
19 believe there's one up there.

20 Q. Is that a railroad bridge over a highway or over
21 a stream?

22 A. No, it's a stream crossing. There aren't that
23 many around.

24 Q. All right. It's not unique, but would you agree
25 with me it's unusual?

1 A. Something along those lines.

2 Q. Am I correct that assign no value to the
3 preservation of this unusual stone structure?

4 A. I wouldn't characterize it as such.

5 Q. Well, how would you characterize it? I want to
6 be fair.

7 A. That it's not a consideration.

8 Q. Okay. That's fair.

9 MR. EATON: That's all.

10 JUDGE COCHERES: Additional cross examination?

11 MS. NETTKE: I have a couple questions.

12 **CROSS EXAMINATION**

13 BY MS. NETTKE:

14 Q. Is it fair to say that, in all the cases where
15 you -- almost all the cases, with one or two exceptions --
16 where you recommended removing a bridge, you've recommended
17 sloping the embankments two to one?

18 A. Yes.

19 Q. Is it fair to say where you've answered a
20 question asking you if, after removal, it could facilitate a
21 trail, you've answered, yes, that the embankment being
22 sloped -- I could read the words; I don't have it right here
23 -- the embankment being sloped could accommodate a trail,
24 that people would walk down the embankment and across the
25 road and back up? Is that a fair characterization?

1 A. Yes, but I'd treat it as being two separate
2 ideas.

3 Q. Which is two separate ideas?

4 A. In other words, a two-to-one slope being limited
5 to simply the idea of there being a two-to-one slope. Now,
6 if you wanted to incorporated the idea of there being a
7 trail, then disregard the two-to-one slope suggestion.

8 In other words, in a normal sense -- and I don't
9 think it's any secret, that for trail use, the tendency is
10 to have a greater slope.

11 MS. NETTKE: Could I have a minute, please?

12 JUDGE COCHERES: Certainly.

13 MS. NETTKE: This testimony is upside down, which
14 doesn't help.

15 (Pause.)

16 BY MS. NETTKE:

17 Q. Let's look back at 43, which you were just asked
18 about; to be consistent, the stone arch, ribbed arch at
19 crossing 14.

20 A. Yes.

21 Q. Looking at your testimony, on page 43, first you
22 said it's in fair condition. The next question, what work
23 should be performed; and you said remove and slope back
24 two-to-one.

25 Then there's another question asking what formed the

1 basis for your recommendation, and you said because there's
2 no longer any use for the bridge.

3 Then the next question is: If the bridge is removed,
4 can crossing 14 accommodate trail use? And you said: Yes.
5 Sloping of the earth fill embankment would provide
6 continuous use to a potential trail.

7 So, are you telling us that those questions don't
8 follow in the order that you answered them, so that we would
9 take your later answer about trail use as referring to the
10 two-to-one slope? Is that what you're telling us? You
11 didn't mean that?

12 MR. SALAPA: Objection, Your Honor. I think he's
13 already been asked, and answered that.

14 MS. NETTKE: I think it calls for some clarification.
15 A normal reading of it would be that he was referring back
16 to his previous answer of sloping two-to-one.

17 MR. SALAPA: Asked and answered, Your Honor.

18 JUDGE COCHERES: I think I'd rather have a
19 clarification of the record. Your objection's overruled.

20 THE WITNESS: Okay. If you want to interpret it as
21 the question and answer's not following, I don't have a
22 problem with that. But I'm still saying the same thing,
23 that if it was simply a matter of establishing a trail, it's
24 general knowledge that the slope is -- you know, you're
25 getting into the five-to-one, six-to-one, and there was even

1 a discussion on twelve-to-one, for the purpose of trail
2 usage. And that's, I don't have any problem with that, I
3 don't have any dispute with it. I think that's been
4 established.

5 BY MS. NETTKE:

6 Q. Did you take into account then the need for a
7 more gradual slope for trail use when you recommended and
8 formed a conclusion that it ought to be sloped two-to-one?

9 A. Yes.

10 Q. And when you took that into account, then you
11 later disregarded that need; didn't you?

12 A. Well, I think you're doing what I tried to
13 suggest to you not to do earlier on, not run the two
14 subjects together.

15 I mean, it's my testimony that's what I'm suggesting
16 to you to view it as. If you choose to do it any other way,
17 that's up to you, but I'll just keep telling you the same
18 thing.

19 Q. And you'll stand by your two-to-one as your
20 recommendation; is that correct, just for the record? The
21 recommendations are two-to-one?

22 A. In the context that it's presented as. If you're
23 talking about actually getting involved in a trail and trail
24 use, then you would have to say that your five-to-one, six-
25 to-one or twelve-to-one slope would be your better slope.

1 It would be more preferred; it's more acceptable. It's
2 considered to be more customary. You're basically heading
3 in a direction of those types of standards being established
4 for trail use.

5 Q. It does sound like your answers to the questions
6 concerning trail use assume that the trail user would in all
7 cases go down an embankment and walk across a road and up
8 another embankment; is that fair?

9 MR. SALAPA: I'm going to object, only because I
10 think that mischaracterizes the testimony when counsel says
11 that that's all. There are several places in Mr. Oliver's
12 testimony where he indicates that a pedestrian bridge could
13 be constructed.

14 BY MS. NETTKE:

15 Q. Let's look back at crossing no. 14 then and be
16 specific again. Is it fair to say that the thrust of your
17 testimony there is that the trail user would walk down the
18 embankment on one side, across the road, and up the other
19 side?

20 A. Generally, I'm stating that that's one of the
21 possibilities. You see, the way this thing would normally
22 work is, depending on the final decision of the Judge, or
23 his recommendation to the commissioners, it would normally
24 require plans to be submitted.

25 At the time of the plan submission -- whatever the

1 case may be. I'm not trying to preclude what he may decide
2 on. But just as an example. If he were to determine that
3 that structure were to be removed, okay, and the idea of a
4 trail is to be included, plans would be required, or in the
5 normal sense, required to come out. And of course, whenever
6 you talk about construction plans, there would be the
7 details that would be included addressing the question of
8 trail use.

9 Now, if any of the parties aren't satisfied with the
10 slopes, maybe there's even some sort of switchback
11 arrangement. I have no idea what the final recommendation
12 would be in terms of plans.

13 The parties of record would have an opportunity to
14 comment on that. If any of them object to what is shown on
15 those plans, then, of course, you either resolve the
16 dispute, or you're back in here.

17 So, as a practical matter, it's simply just a
18 recommendation, and there are other alternatives, and there
19 will be lots of opportunities in the future to decide on
20 whether you like them or not. The final plans is the thing
21 you want to look for.

22 Q. Well, I do appreciate your explanation, and am
23 aware that construction plans will be done after an order of
24 the commission.

25 However, you would agree, wouldn't you, that the

1 Judge, before making a decision, is mandated to consider the
2 effects on the use of trails in the commonwealth under the
3 trail --

4 MR. SALAPA: Your Honor, I'm going to object. I
5 think that's calling for a legal conclusion.

6 JUDGE COCHERES: Ms. Nettke?

7 MS. NETTKE: I can try to rephrase the question.

8 JUDGE COCHERES: Fine.

9 BY MS. NETTKE:

10 Q. Are you aware that in the Judge's reaching a
11 determination, at the stage where various parties are making
12 recommendations and offering evidence, that the Judge then
13 needs to have information and recommendations before him
14 concerning trail use, before reaching that conclusion?

15 MR. SALAPA: I'm going to object again, Your Honor.
16 I think the question is assuming something that may not be
17 within Mr. Oliver's purview.

18 MS. NETTKE: Your Honor, it was in response to what
19 Mr. Oliver said. And what he said was a lot, but it seemed
20 to be saying that Your Honor didn't need to consider
21 configuring a crossing for possible trail use until after an
22 order of this commission. And I was trying to --

23 MR. SALAPA: Your Honor, I don't see how Mr. Oliver
24 can cross-examined on what Your Honor and the commission may
25 or may not consider.

1 MS. NETTKE: Well, if he can't be cross-examined on
2 it, then I can move to strike his testimony on it. But he
3 did testify about it.

4 JUDGE COCHERES: It seems to me that Mr. Oliver has
5 presented a series of solutions somewhat different from all
6 of the other considerations that are pending now.

7 I think, Ms. Nettke, that you are certainly entitled
8 to probe those recommendations.

9 (Pause.)

10 JUDGE COCHERES: I think I'm just simply going to
11 overrule the objection and let Ms. Nettke continue.

12 BY MS. NETTKE:

13 Q. Then you need to answer.

14 A. Let's try the question again.

15 MS. NETTKE: Can the question be read back?

16 JUDGE COCHERES: Yes, it can be.

17 (Whereupon, the court reporter read from the record
18 as requested.)

19 THE WITNESS: Yes.

20 BY MS. NETTKE:

21 Q. Your recommendation, in its plain words, would
22 mean to me -- and we'll look at crossing 14, where you said
23 that sloping of the earth fill embankment would provide
24 continuous use to a potential trail and also provide an
25 access point for emergency services; the plain meaning of