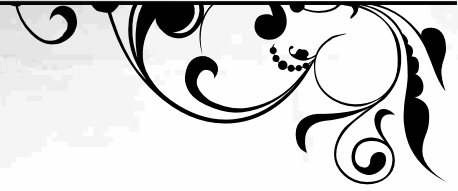




EMBANKMENT  
PRESERVATION  
COALITION

# Report to our Members

OCTOBER 25, 2008



## 1998-2008: A DECADE OF PROGRESS

In 1998, the small group who formed the Embankment Preservation Coalition recognized that the historic Harsimus Branch Embankment was a Jersey City asset that should be preserved and reused for park and greenway. Those neglected stone walls could support a future park and greenway uniting the interior neighborhoods with the Hudson River waterfront to the East and to other parts of Jersey City to the west.



**PRESERVATIONISTS HAVE SHOWN TIME AND TIME AGAIN THAT THE KEY TO PROVIDING A BETTER FUTURE IS IN HONORING THE PAST.**

- National Trust for Historic Preservation President, Richard Moe

We built our case and brought it to the public. As a result, Embankment preservation now enjoys wide support from the public, including our 1200 members and supporters, local, state, and regional organizations, and government officials.

Attaining our goal would take five years, we estimated. Ten years later, however, the project is still in jeopardy – not for lack of hard work but because securing the property has entailed an arduous process of research, documentation, public outreach, fund raising, government advocacy, and pursuit of legal remedies for the precipitous sale of the property by Conrail to a developer.

In these ten years, the Coalition secured historic protections and recognitions for the Embankment: State Register of Historic Places, eligibility for the National Register of Historic Places, City of Jersey City Municipal Landmark, Preservation NJ's 2006 Ten Most Endangered Sites List. We garnered open space and greenway recognitions: Hudson County Open Space Plan

priority acquisition, Jersey City Open Space and Recreation Plan priority acquisition, NY/NJ Harbor Estuary priority habitat acquisition, recommended route of the East Coast Greenway.

We commissioned a landscape designer to prepare a design concept for a habitat-oriented park and greenway, with a reserved strip for possible future light rail use (an appropriate historic use desired by Jersey City's mayor).

The Coalition helped Jersey City win \$1.6 million in New Jersey State Green Acres grants, \$1.6 million in a federal transportation earmark, and additional pledges and recognitions that will make the Embankment eligible for special funds.

We spearheaded a wider campaign for historic and open space preservation, beginning with the associations that are the backbone of our neighborhoods, and forged alliances with local, regional, and national preservation, transportation, arts, environmental, and public policy organizations. Articles, workshops,

displays, a newsletter, website, and other forms of information and advocacy have contributed to governmental actions benefiting not only the Embankment but also related projects and initiatives, for example, the Hudson County Open Space Tax and the Jersey City Recreation and Open Space Master Plan.

In 2006 the Coalition joined a petition, led by the City of Jersey City, to the federal Surface Transportation Board (STB) asking it to exercise oversight of rail abandonment. In August 2007 the STB ruled that the Embankment remained part of the national rail system, subject to its authority. This ruling means Conrail must apply for a federal permit to abandon the rail line; such application triggers historic preservation and environmental protections.



**Cassandra Wilday Landscape Architects.**  
Rendering of entrance to future park on Harsimus Branch Embankment, 6th Street, Jersey City. This concept drawing shows a three-part design carried throughout a larger park plan: reserved habitat strip, East Coast Greenway, and habitat-oriented public areas.

# AN ARGUMENT WITHOUT END

Conrail and its developer partner did not bow to the Surface Transportation Board (STB) decision. Instead, the developer appealed to the STB for reconsideration; that appeal was denied in December 2007. Conrail and the developer then appealed the STB decision to U.S. Court of Appeals for the District of Columbia Circuit. Despite this appeal, the STB decision is in effect and is not stayed.<sup>1</sup> Briefings are set to begin in the U.S. Court of Appeals on November 14, 2008, and to conclude in February 2009.

History is an argument without end. - Pieter Geyl

And so it seems with the Embankment. Simultaneously with its appeal of the STB decision, Conrail somewhat contradictorily notified the STB that it intended to file for an expedited rail abandonment permit. The Coalition objected to an expedited process, normally used in noncontroversial cases, and criticized the deficient Environmental Report and Historical Report filed by Conrail. We and allied organizations and elected officials called for a full Environmental Impact Statement and careful National Historic Preservation Act (NHPA) Section 106 review. Conrail then withdrew its notice of intention to file, saying it would prepare answers to the objections and file later.<sup>2</sup>

Although Federal rail abandonment law calls for a 180-day period for railroad negotiations with governments interested in purchase, and state law indicates that the developer's deeds are void, Conrail has refused to cooperate. It instead has indicated it intends to wait out the period and re-sell the property, if necessary, to the developer. Meanwhile the developer continues to pursue land-use permits, which would presumably raise the value of the property should the City decide to use eminent domain once an abandonment permit is granted.

Recently, the developer sued to force the City's Historic Preservation Commission (HPC), which denied it had jurisdiction over federal rails, to hear applications for demolition and hardship. The City sought to remove the case to federal court; the Embankment Preservation Coalition and Rails to Trails Conservancy filed an amici

brief. In October, Judge Stanley Chesler refused to take the case and remanded it to state courts. We now expect the developer to pursue demolition permits. If the HPC denies them, and if the developer's previous behavior predicts future actions, he can be expected to sue to have the denials overturned.

We believe that Conrail could restart an abandonment proceeding at STB at any time. Environmental and historic review procedures would then begin again. We expect the City to maintain its strong support for park, greenway, and future light rail and to vigorously pursue acquisition. Whatever the City's stance, however, the Coalition has requested consultative party status for NHPA Section 106 review and will urge the STB to place strict historic preservation and environmental conditions on Embankment reuse. We expect other interested parties to weigh in as well.

While monitoring or participating in the court actions, the Coalition has also explored the possibility of a settlement, walking the property with our attorney and with Conrail's developer and his team, and examining various proposals.

While the arguments go on, we have added approximately 120 new members and supporters to our organization's database this year, which now numbers more than 1200 individuals. More than sixty local businesses supported our 2008 activities. In June we held our first major fund-raising event, a Cocktail Hour and Dinner, at the aptly named Embankment restaurant. We are exploring funding sources for park and greenway maintenance.

## 2009 Resolution in Sight

The Coalition will continue to be open to a settlement. We are not counting on such, however, and must therefore be prepared to present a preservation case to the Historic Preservation Commission, to be a vigilant consultative party in the expected Section 106 review, and to hold Conrail and the developer accountable for their anticipatory demolition of rail assets, to the detriment of the public interest.

We will continue our efforts to strengthen our board, advisory board, and membership and volunteer organizations, in preparation for assuming a conservancy role when the City acquires the Embankment. We will mentor volunteers, with the aim that they will join our committees, advisory board, or board.

## Treasurer's Report

The Coalition fiscal year is from January 1 to December 30. Our Internal Revenue Service Form 990-EZ for 2007 reported end-of-year assets as \$12,030.

As of October 20, 2008, our treasury holds approximately \$19,000. Of this amount, \$3000 is a grant reserved for acquisition soft costs to be contributed to the City when it acquires the Embankment. The remainder may be used for Coalition operations and programs. We hold approximately \$3200 in a business checking account and the rest in an interest-bearing CD.

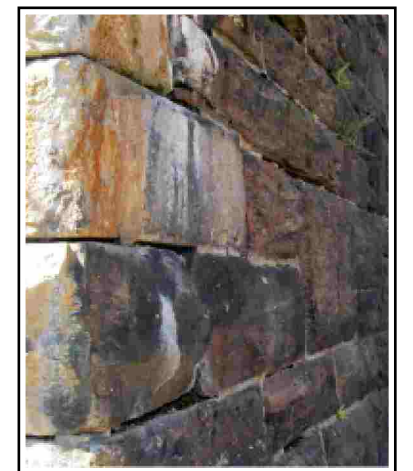
Our income in 2008 was from individual memberships, donations and donation matches, business sponsorships, a grant, and a fund-raising event. Our major expenses were for insurance and accountant and attorneys' fees and expenses.

**I don't like money, actually, but it quiets my nerves.**

-Joe Louis

Whatever route the preservation struggle takes this year, the Coalition anticipates further attorney and consultant fees in 2008-2009. These could rapidly drain our treasury. We therefore husband our financial resources for these professional services and important initiatives, and carefully monitor expenses.

The Coalition has no paid staff. The board is a working board comprising unpaid volunteers. We depend on thousands of hours of effort from them and additional volunteers. We are grateful for services and financial contributions from the community and welcome your continuing support.



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MY  
PARK**  
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<sup>1</sup>See [www.stb.dot.gov](http://www.stb.dot.gov) for the full record of the case. Choose E-Library, then Filings; search for FD 34818 0. Also choose E-Library, then Decisions & Notices; search for FD 34818 0. <sup>2</sup>See [www.stb.dot.gov](http://www.stb.dot.gov) for the filings to date. Choose Filings; search for AB\_167\_1189 X.



# Embankment

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