



White Paper #2:

Amtrak's Inaccurate and Incomplete Consistency Assessment

April 23, 2018

Purpose

The purpose of this white paper is to provide a comprehensive review of the accuracy and completeness, or lack thereof, of the Federal Consistency Assessment Form (FCAF) prepared by Amtrak under public notice #F-2018-0060. The questions and comments are a summary of feedback that the Town of Germantown Waterfront Advisory Committee has collected through our 1.5 year-long Local Waterfront Revitalization Study (LWRS), three public visioning sessions, a public strategy meeting regarding this proposal, and review of comment letters submitted during this comment period.

Review of the Project Description

Item B1: Brief description of activity

The description of this activity is, in a word, inadequate. After the Germantown Waterfront Advisory Committee held a public meeting for concerned residents in the Town of Germantown, and after review of comment letters submitted so far, we ask the following clarifications:

1. When was the most recent survey completed, and is there proof that these proposed fences and gates are on land leased by Amtrak?
2. What are the exact locations of each proposed fence? Are they proposed parallel or perpendicular to the maps' arrows?
3. Where will there be gates, and where will there be fences?
4. Where there are references to color, such as the "red arrow" in Rhinecliff, to what are they referring in these documents reproduced in monochrome?
5. Some writing, such as the writing on the map showing the Ernest R. Lasher Jr. Memorial Park, is illegible. What does it say?
6. The photo, inserted without addendum or notification mid-comment period, shows a visually jarring fence. Have other more aesthetic alternatives been considered, and why were they abandoned?
7. What will the gates look like?
8. How will the gates operate?
9. Will the gates be locked, and if so, who will have a key?
10. Where gates restrict vehicle entrance to the access road, will non-vehicular traffic be allowed to pass?
11. How will the gates and fencing affect parking at each local park?
12. How will the gates and fencing affect the ability of fire apparatus and snow plows to maneuver at each site?
13. How will gates affect maintenance access, particularly to the Town of Germantown wastewater pumping station and outfall near Lower Main Street, the Village of Rhinebeck water treatment plant intake, and for Riversweep trash pick-up efforts?
14. How will access be provided to publicly-owned land, such as parcel 158.-1-87?



15. The expanded section B2 states that 8,200 linear feet of fencing will be installed, though the maps appear to only show approximately 2,270 linear feet of fencing. Where is the “missing mile” of fencing proposed?

Item B2: Purpose of activity

The committee finds the purpose, to “deter train [collisions]... and promote the well being of the general public,” to be unsubstantiated. The committee intends to challenge this purpose in more detail in our White Paper #3.

Review of the Coastal Assessment

- Item C.1.d: “*Will the proposed activity result in a reduction of existing or potential public access to or along coastal shores?*” Amtrak states that it will reduce access to lands that are not for public access. Though much of the land is privately owned by CSX, the shores of Germantown have been openly used by the public since the installation of the tracks. We have found that Amtrak has not proposed adequate solutions for the following potential impacts of the proposed access restrictions:
 - The proposed gates prevent access to the Town of Germantown’s Ice Company Landing (158.-1-87), a publicly owned parcel situated between Lasher Park and Cheviot Park on the river side of the tracks. The Town of Germantown is planning to turn the parcel into a Park, as described in our draft LWRS.
 - Approximately 5 miles of shoreline are within the Germantown Fire District and under the responsibility of the Germantown Fire Department. Approximately 3 miles of that shoreline are currently accessible by vehicle and regularly used by the public. Access is necessary for fire suppression within the ROW, search & rescue along the Hudson River, and any response for any train related emergencies.
 - The length of shoreline between Ernest R. Lasher Jr. Memorial Park and Cheviot Park, approximately 2.4 miles, has been maintained by local volunteers via the annual Riversweep cleanup, which is celebrating its 21st anniversary in Germantown this year. The proposed gates would prohibit this annual tradition.
 - Numerous private landowners claim land and riparian rights on the river side of the tracks. Amtrak has not proposed a means for these individuals to access their property.
- Item C.1.e “*Will the proposed activity result in adverse effect upon the commercial or recreational use of coastal fish resources?*” Amtrak incorrectly answered “no.” From roughly half a mile north of the foot of Main St. down past Cheviot the shoreline is adjacent to the Germantown-Clermont flats, which is a designated NY Significant Fish and Wildlife Habitat. The coastal shores south of Ernest R. Lasher Jr. Memorial Park to the end of the Germantown town line and beyond are very popular destinations for fishers. The end of April and beginning of May is a particularly popular season for fishing of striped bass.
- Item C.2.d: “*Will the proposed activity affect or be located in, on, or adjacent to a State designated significant scenic resource or area?*” As indicated, much of the reduced or eliminated access is in a designated Scenic Area of Statewide Significance (SASS). In Germantown, the shoreline south of Cheviot is a SASS, and access there would be reduced or eliminated by a gate. The parts of the project in Stuyvesant, Stockport, Tivoli and Rhinecliff are all within a SASS. According to the DOS, “A designated SASS encompasses unique landscapes which are accessible to the public and recognized for



their scenic quality.” Amtrak proposes to make these SASS areas inaccessible, which is in conflict with the state’s goals for a SASS. No solution has been provided.

- Item C.2.h: *“Will the proposed activity affect or be located in, on, or adjacent to any State, County or local park?”* The proposed action both effects and is adjacent to The Town of Germantown’s two Hudson River Parks: Ernest R. Lasher Jr. Memorial Park, which is also a NYSDEC boat launch, as well as Cheviot Park. The Town of Germantown is planning to create a third park called the “Ice Dock Parcel” or “Ice Company Landing” at parcel 158.-1-87, as described further in our draft LWRS. Further, the proposed gates appear to prohibit maintenance access by Town employees to the Ice Company Landing. The correct answer to this question is “yes”.
- Item C.2.i: *“Will the proposed activity affect or be located in, on, or adjacent to a historic resource listed on the National or State Register of Historic Places?”* The public gated grade crossings at Cheviot Park in Germantown and at Diana St. in Tivoli currently allow safe access to the 4.6 mile service road between these locations. There are also several private crossings in that segment, including two private grade crossings that do not have gates. The proposed service road gates at Tivoli and Cheviot may restrict access to this section of the ROW, which is adjacent to and runs through Clermont State Historic Site and Park (a New York State Historic Site and a National Historic Landmark). Clermont Park has a dock which is the location where Robert Fulton’s pioneering steamboat “Clermont” stopped overnight on its trial voyage between New York City and Albany in 1807. (Chancellor Livingston, whose home was Clermont, had been a longstanding patron and financial backer of Mr. Fulton.) The correct answer to this question is yes.
- Item C.3.a: *“Will the proposed activity require a waterfront site?”* Amtrak states that “the installation of the fence will not restrict the use of the waterway, just prevent pedestrians and vehicles to wind up on rail tracks.” This claim is incorrect because the waterway, aka the Hudson River, is routinely used from the shoreline for fishing and other water-dependent uses, and the fence and gates will restrict those uses.
- Item C.4: *“Will the proposed activity occur within and/or affect an area covered by a State-approved local waterfront revitalization program, or State-approved regional coastal management program?”* The proposal includes actions within the LWRP boundary of the Village of Tivoli and the Town of Rhinebeck. Additionally, access to portions of the waterfront in the Town of Red Hook’s LWRP may also be impacted. The correct answer is ‘YES’. Though not a full LWRP, it is worth mentioning that the Town of Germantown is also working on waterfront revitalization. In 2016 the Town of Germantown was awarded a grant from the NYSDOS to complete a Local Waterfront Revitalization Study (LWRS), which is somewhat of a precursor to a full LWRP. In March 2018 we submitted our LWRS to the NYSDOS for final review.

Conflicts with the New York State Coastal Policies

We find the following conflicts with the New York State Coastal Policies, last updated June 2017¹:

- *Policy 1: Restore, revitalize, and redevelop deteriorated and underutilized waterfront areas for commercial, industrial, cultural, recreational, and other compatible uses.* The Town of Germantown is undertaking efforts to revitalize our waterfront. In 2016 we received a grant from the NYSDOS to complete a Local Waterfront Revitalization Study

¹ New York State Department of State: Coastal Management Program. (2017) “*State Coastal Policies*”. Accessed April 2018 via <https://www.dos.ny.gov/opd/programs/pdfs/CoastalPolicies.pdf>



(LWRS), which was submitted for final review in March 2018. This proposal from Amtrak is inconsistent with our local revitalization goals.

- *Policy 2: Facilitate the siting of water dependent uses and facilities on or adjacent to coastal waters.* As previously described, the proposed gates will restrict many water dependent uses, such as fishing, duck hunting, wildlife viewing, and general enjoyment of the Hudson River's scenic views. It will also limit the Town of Germantown's ability to create a new primitive campsite on the Hudson River Greenway Water Trail, a goal described in our draft LWRS.
- *Policy 4: Strengthen the economic base of smaller harbor areas by encouraging the development and enhancement of those traditional uses and activities which have provided such areas with their unique maritime identity.* As described in our first white paper, the Town of Germantown is a river town by identity. We once had many deep water ports which were hubs of economic activity, such as the Germantown Ice Company docks and the Half Moon Anchorage community center and boat launch. In 1913, the ice company sold rights to their docks, and in the 1960s, the ACOE deposited dredge materials near the former site of the Half Moon Anchorage, the current site of the Ernest R. Lasher Jr. Memorial Park. Germantown's shores are no longer deep enough for significant industrial development, but we hope to revitalize our economy by improving our waterfront for recreation and tourism. The proposed gates are another of a long series of events that have hampered the Town's ability to retain its river-town identity.
- *Policy 9: Expand recreational use of fish and wildlife resources in coastal areas by increasing access to existing resources, supplementing existing stocks, and developing new resources.* The shoreline to which Amtrak proposes to restrict access is a popular destination for fishing, duck hunting, and wildlife viewing. This proposal would reduce, rather than expand access. As explained in our draft LWRS, the Town of Germantown is interested in protecting this area in a more sustainable way by working with Amtrak and CSX to more formally designate it as a public space.
- *Policy 18: To safeguard the vital economic, social and environmental interests of the State and of its citizens, proposed major actions in the coastal area must give full consideration to those interests, and to the safeguards which the State has established to protect valuable coastal resource areas.* The proposed action reduces the ability of local residents to access coastal resources for recreational purposes.
- *Policy 19: Protect, maintain, and increase the level and types of access to public water related recreation resources and facilities.* The proposed action reduces the ability of local residents to access coastal resources for recreational purposes.
- *Policy 20: Access to the publicly-owned foreshore and to lands immediately adjacent to the foreshore or the water's edge that are publicly-owned shall be provided and it shall be provided in a manner compatible with adjoining uses.* The proposed action will restrict access to publicly owned lands, including parcel 158.-1-87.
- *Policy 21: Water dependent and water enhanced recreation will be encouraged and facilitated, and will be given priority over non-water-related uses along the coast.* Amtrak's trains are non-water-related uses, which should not have priority over local water dependent uses such as fishing, waterfowl hunting, boating, wildlife viewing, and general enjoyment of the Hudson River's scenic views.



- *Policy 24: Prevent impairment of scenic resources of statewide significance.* The proposed activity reduces access to coastal areas within multiple scenic areas of statewide significance.
- *Policy 25: Protect, restore or enhance natural and man-made resources which are not identified as being of statewide significance, but which contribute to the overall scenic quality of the coastal area.* The fencing proposed near Lower Main Street would significantly impact the views of the Hudson River and Catskill Mountains. This location is the most accessible to pedestrians from the Town center, and is critical to economic development of the Town.

Additional Public Process Required

In 2001, CSX proposed to install gates in some locations very similar to the locations seemingly proposed by Amtrak today. The Town of Germantown rallied against the gates, and an agreement was eventually brokered by Governor Pataki. Public access was eventually restored, and the Governor promised to “establish a policy that would subject such issues to public scrutiny before CSX or a similar company could take action. ‘A railroad corporation would have to go through a procedure that included public notice to the community, public hearings, and approval from the State Department of Transportation,’” reported the Register Star². The solution was also documented in a resolution³ made by the Town of Germantown Town Board, which reads in part:

“WHEREAS, a solution was negotiated under the auspices of the Governor’s office which assures the preservation of public access to the Anchorage and Cheviot Parks, as well as a new park to be developed north of the Anchorage, and which sets up a policy and procedures that include notice and a public hearing before a railroad can implement actions blocking access to the river.”

Though previously requested by many, public hearings have not yet been scheduled. We once again ask that if Amtrak plans to continue with this proposal, public information meetings be conducted.

Conclusion

This proposal was carelessly prepared. It lacks detail, neglects relevant information, and does not adequately assess impacts to Hudson River communities. Where impacts are identified, no means of mitigation have been suggested. In countless ways, the Town of Germantown Waterfront Advisory Committee does not find this proposal consistent with the New York State Coastal Management Plan, nor is it consistent with our Local Waterfront Revitalization Study (LWRS), which is currently in final review at the NYSDOS and Town of Germantown Town Board. The Committee also asks that if Amtrak still plans to move forward with fencing and gates, public information meetings be conducted as agreed upon in 2001 under the guidance of Governor Pataki.

² Marr, Paul F. “Pataki: CSX will allow river access”. The Register Star July 25, 2001

³ Town of Germantown Town Board Resolution No. 11; August 13, 2001