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Cc: [Gosselin, Danielle](#)
Bcc:
Subject: Transmittal of Final Memorandum of Agreement and Response to Comments Document for Conrail's Proposed Abandonment of the Harsimus Branch in Jersey City, New Jersey (Docket No. AB-167 (Sub-No. 1189X))
Date: Tuesday, March 5, 2024 12:23:00 PM
Attachments: [Harsimus Final MOA 3-5-24.pdf](#)
[Response to Comments Final 3-5-24.pdf](#)
[Harsimus Final MOA 3-5-24 Redline.pdf](#)

To: Section 106 Consulting Parties

From: Alan Tabachnick, Federal Preservation Officer, Surface Transportation Board (Board), Office of Environmental Analysis (OEA)

Re: Transmittal of Final Memorandum of Agreement (Final MOA) and Response to Comments Document for Conrail's Proposed Abandonment of the Harsimus Branch in Jersey City, New Jersey (Docket No. AB-167 (Sub-No. 1189X))

This email is to inform all the consulting parties that OEA has prepared a Final Memorandum of Agreement for the aforementioned proceeding. The Final MOA reflects input OEA received through the consultation process from July 2023 through January 2024 (including comments from the September 28, 2023 public meeting). Comments and input received prior to that period were reflected in the Draft MOA dated June 14, 2023 and associated Response to Comments document.

OEA is requesting that the Section 106 consulting parties review the Final MOA to ensure that the correct signatories are listed in the signature blocks. Please provide any corrections by March 12th, 2024. A clean and a redline copy of the Final MOA (showing changes made) as well as a Response to Comments document addressing comments is attached. Following the receipt of any corrections by March 12th, OEA will circulate the Final MOA for signatures. OEA is also posting the attached documents on the Board's website (www.stb.gov).

Thank you for your continued participation in the Section 106 process for the proposed Harsimus Branch Abandonment. Please contact me if you have any questions.

Alan Tabachnick

Federal Preservation Officer
 Surface Transportation Board
 Office of Environmental Analysis
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MEMORANDUM OF AGREEMENT

AMONG THE SURFACE TRANSPORTATION BOARD, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, THE NEW JERSEY HISTORIC PRESERVATION OFFICE, AND CONSOLIDATED RAIL CORPORATION

REGARDING AB 167 (SUB-NO. 1189X),

ABANDONMENT EXEMPTION, IN CITY OF JERSEY CITY, HUDSON COUNTY, NEW JERSEY (The Pennsylvania Railroad Harsimus Branch and Embankment)

WHEREAS, on January 6, 2009, Consolidated Rail Corporation (Conrail), CSX Transportation, Inc. (CSXT), and Norfolk Southern Railway Company (NSR) jointly filed a verified notice of exemption with the Surface Transportation Board (Board) under 49 C.F.R. § 1152.50 seeking exemption from the requirements of 49 U.S.C. § 10903 for Conrail to abandon and for CSXT and NSR to discontinue service over an approximately 1.36-mile portion of a railroad known as the Harsimus Branch between Milepost 0.00 and Milepost 1.36 in Hudson County, New Jersey; and

WHEREAS, the abandonment of the Harsimus Branch constitutes an Undertaking under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, and as defined in 36 C.F.R. § 800.3(a) (the Undertaking); and

WHEREAS, unless otherwise defined in this Memorandum of Agreement (MOA), all terms are used in accordance with those set forth in 36 C.F.R. § 800.16; and

WHEREAS, the Board's Office of Environmental Analysis (OEA) issued a Final Environmental Assessment (Final EA) on September 23, 2021 that evaluated the potential environmental impacts of the proposed abandonment and that included consideration of potential effects on historic resources listed in or eligible for listing in the National Register of Historic Places (National Register), pursuant to 36 C.F.R. § 800.8(a); and

WHEREAS, OEA recommended that the Board impose a condition barring Conrail from consummating the proposed abandonment until the Section 106 process is complete; and

WHEREAS, OEA, in consultation with the New Jersey Historic Preservation Office (the State Historic Preservation Officer or SHPO), began the Section 106 process by delineating the Undertaking's Area of Potential Effects (APE), defined at 36 C.F.R. § 800.16(d), as centered on the rail right-of-way, but extending outward to include potential visual impacts (as shown in the map in **Appendix A**); and

WHEREAS, the Board notified and invited the Advisory Council on Historic Preservation (ACHP) to participate early in consultation and, by letter dated April 10, 2009, the ACHP chose to participate in the consultation pursuant to C.F.R. § 800.2(b)(1); and

WHEREAS, the following agencies, organizations, and legal entities have accepted OEA's invitation to participate in the Board's Section 106 process as consulting parties, in addition to the SHPO, ACHP, and Conrail: Bergen Arches Preservation Coalition; Bike JC; the City of Jersey City, New Jersey; Civic Jersey City; Donna Dorgan (property owner); East Coast Greenway; Friends of

Liberty State Park; Hamilton Park Neighborhood Association; Harsimus Cove Association; Historic Paulus Hook Association; Historic Jersey City & Harsimus Cemetery; Hudson County Office of Cultural & Heritage Affairs; Hudson County Division of Planning; Jersey City Landmarks Conservancy; Jersey City Parks Coalition; National Trust for Historic Preservation; Marin Boulevard LLC (property owner);¹ New York/New Jersey Baykeeper; Newport Neighborhood Association; the Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition; Pennsylvania Railroad Technical & Historical Society; Powerhouse Arts District Neighborhood Association; Preservation New Jersey; Rails-to-Trails Conservancy; the Van Vorst Neighborhood Association, and the Village Neighborhood Association; and

WHEREAS, OEA, in consultation with the Section 106 consulting parties, identified 19 historic properties within the APE that are listed in or eligible for listing in the National Register, as described in OEA's Cultural Resources Identification Report (May 5, 2017) and Cultural Resources Identification Report Addendum (October 16, 2018); and

WHEREAS, OEA determined, in consultation with the Section 106 consulting parties, that the portion of the Harsimus Branch from Control Point Waldo (CP Waldo) to Marin Boulevard, is eligible for listing in the National Register as the Pennsylvania Railroad Harsimus Right-of-Way Historic District; and

WHEREAS, the Pennsylvania Railroad Harsimus Right-of-Way Historic District includes the Pennsylvania Railroad Harsimus Branch Embankment, which received a Determination of Eligibility from the Keeper of the National Register in 2000 but was not listed due to objections to National Register listing, and is a key contributing element that is also individually eligible for listing in the National Register; and

WHEREAS, OEA typically does not consider the effects of potential post-abandonment activities on historic properties as part of the Section 106 process for proposed railroad abandonments but has included some limited consideration of such potential future activities in its Section 106 review for the proposed Harsimus Branch abandonment due to the unique circumstances of this case; and

WHEREAS, OEA, working with the consulting parties, identified three possible scenarios that could occur if abandonment authority were granted, and assessed the effects of those scenarios on historic properties in a Cultural Resources Effects Assessment Report (issued March 29, 2019) and an Effects Assessment Report Addendum (issued November 12, 2019); and

WHEREAS, the three scenarios are not alternatives under Section 106 because the Board has no jurisdiction or regulatory authority over post-abandonment uses of the Harsimus Branch and cannot determine which, if any, of these scenarios would occur if the proposed abandonment were to be authorized and consummated; however, the scenarios include reasonably foreseeable effects of abandonment authority here and therefore OEA is including those potential effects on historic properties in its Section 106 review in this case; and

WHEREAS, the only alternative to abandonment in this Undertaking is the No-Action Alternative, which would occur if the Board were to deny abandonment authority; and

¹ Marin Boulevard LLC consists of: 212 Marin Boulevard, LLC (property owner); 247 Manila Avenue, LLC (property owner); 280 Erie Street, LLC (property owner); 389 Monmouth Street, LLC (property owner); 354 Cole Street, LLC (property owner); 317 Jersey Avenue, LLC (property owner); 415 Brunswick Street, LLC (property owner); 446 Newark Avenue, LLC (property owner); NZ Funding, LLC (property owner).

WHEREAS, OEA has determined that the Undertaking could have an adverse effect on the Pennsylvania Railroad (New York to Philadelphia) Historic District; the New Jersey Railroad Bergen Cut Historic District; the Pennsylvania Railroad Harsimus Branch Embankment; St. Anthony's Polish Roman Catholic Church and School Complex; St. Anthony of Padua Roman Catholic Church; Hamilton Park Historic District and Extension; the Harsimus Cove Historic District; the Albaniel Dye & Chemical Co./Thomas J. Stewart Co. Building; the Holy Rosary Roman Catholic Church Complex; the Immigrant Roman Catholic Church Historic District; the Pennsylvania Railroad Harsimus Right-of-Way Historic District; and the Italian Village Historic District, which are listed in, or eligible for listing in, the National Register, and has consulted with the SHPO pursuant to 36 C.F.R. Part 800, the regulations implementing Section 106 (historic properties shown on mapping in **Appendix B**); and

WHEREAS, this MOA was developed to address adverse effects to historic properties located within the APE for the Undertaking; and

WHEREAS, pursuant to 36 C.F.R. § 800.6, OEA has consulted with the SHPO and the other consulting parties regarding ways to avoid, minimize, or mitigate potential effects to the historic properties that may result from an abandonment; and

WHEREAS, OEA has consulted with Conrail, pursuant to 36 C.F.R. § 800.6(c)(2)(iii) and has invited it to be an invited signatory in this MOA; and

WHEREAS, OEA has consulted with the other Section 106 consulting parties regarding the effects of the Undertaking on historic properties and has invited them to sign this MOA as concurring parties pursuant to 36 C.F.R. § 800.6(c)(3); and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), OEA notified the ACHP of its adverse effect determination with specified documentation, and the ACHP has chosen to participate in the consultation pursuant to 36 C.F.R. § 800.6(a)(1)(iii); and

WHEREAS, certain parties, including Conrail, other owners of the Harsimus Branch right-of-way, Jersey City, the Embankment Preservation Coalition, and the Rails-to-Trails Conservancy, have discussed potential plans for future reuse or redevelopment of the Harsimus Branch that could take place following an abandonment, including a possible settlement agreement. These future development plans could potentially include partial preservation of the Pennsylvania Railroad Harsimus Right-of-Way Historic District and the Pennsylvania Railroad Harsimus Branch Embankment but, if they occur, they would take place outside of the jurisdiction of the Board and outside the scope of this MOA. This MOA presents measures that the Board can ensure are carried out to avoid, minimize or mitigate the adverse effects of this Undertaking regardless of future reuse or redevelopment of the Harsimus Branch; and

WHEREAS, the Board's ability to impose involuntary mitigation to resolve adverse effects to historic properties in railroad abandonment cases is generally limited to the documentation of historic properties because railroad rights-of-way are private property and the Board's jurisdiction over those rights-of-way ends with the consummation of abandonment authority; and

WHEREAS, the Board paused the Section 106 process as per its decision on May 19, 2021 in order to evaluate whether there was a Section 110(k) of the NHPA violation, and on August 22, 2022 issued a decision finding that there was no violation of Section 110(k); and

WHEREAS, following the Board's decision that there was no Section 110(k) violation, OEA resumed the Section 106 process and is utilizing this MOA to resolve adverse effects to historic

properties.

WHEREAS, OEA has engaged in continued and extensive meetings and communication with the consulting parties as part of the Section 106 process, including meetings with all consulting parties and meetings with ACHP and the SHPO; conducted significant public outreach, including a public meeting on September 28, 2023; and has made all project documents relevant to the historic review process publicly available on the Board's website.

NOW, THEREFORE, the Board (through OEA), the SHPO, and the ACHP agree that the Undertaking shall be implemented in accordance with the following stipulations to take into account the effects of the Undertaking on historic properties.

STIPULATIONS

The Board, with the assistance of Conrail, shall ensure that the following measures are carried out:

I. MITIGATION

Conrail shall retain a historic preservation/cultural resource contractor(s) of its choice (Contractor) with personnel that meet one or more of the Secretary of the Interior's Professional Qualification Standards (History, Archeology, Architectural History, Historic Architecture), (36 C.F.R. Part 61, https://www.nps.gov/history/local-law/arch_stnds_9.htm) to complete the measures described below. Prior to the expiration of this MOA, Conrail shall ensure, and provide written notice to the Board and the SHPO, that the following recordation, documentation, and interpretation has been completed by the Contractor. The Contractor must consult with the SHPO prior to the initiation of the work to ensure that expectations and requirements for these mitigation measures are understood.

A. Recordation

1. Documentation of Pennsylvania Railroad Harsimus Branch Right-of-Way Historic District (CP Waldo to Marin Boulevard) and the Pennsylvania Railroad Harsimus Branch Embankment.
 - i. Conrail shall consolidate all of the previous data and documentation (prepared as part of the Board's Section 106 documentation process) and, in consultation with the SHPO and OEA, conduct any necessary additional archival research on the history of the Harsimus Branch, to supplement the extensive materials already gathered as part of the Section 106 process. The documentation effort shall be coordinated with the SHPO to ensure the product being developed is comprehensive and prepared in accordance with the relevant federal and state standards (Level I Historic American Building Survey/Historic American Engineering Record (HABS/HAER) standards as specified in 68 F.R. 43159).
 - ii. Conrail shall undertake additional field documentation, including photography depicting all the remaining built elements of the Harsimus Branch rail line within the right-of-way, including embankments, piers, footers, drainage features, ballast, signal, and electrical features, etc.

- iii. Copies of any relevant historical documents found pursuant to the archival research, as well as available maps of the rail line in its local context, shall be included in the documentation package.
- iv. The document shall include a thorough and detailed historic context (minimum of 150 pages of text) and include a minimum of seventy-five (75) illustrations (photographs/maps/engineering drawings, etc.).
- v. Upon completion of the draft documentation and archival research, Conrail shall submit the document (one digital copy and two hard copies) to OEA, ACHP, the SHPO, and the Section 106 consulting parties for review. OEA, ACHP, the SHPO, and the Section 106 consulting parties shall have 45 days to review and comment on the draft document. At the end of the 45-day period, Conrail shall prepare a final version of the document, taking into consideration any comments received, and submit the digital and hard copies of the final document, along with an additional document summarizing and responding to any comments received to OEA, ACHP, the SHPO, and the consulting parties. Copies of the report (digital and one hard copy) shall also be provided to local libraries, schools, historical societies, and other organizations (the list to be developed by the consulting parties, **Appendix C** (draft list)). Conrail shall also submit two (2) additional hard copies of the final document to the SHPO to be archived at the SHPO's office.

B. Additional Documentation and Interpretation

1. Interpretive Signage

- i. Conrail shall produce interpretive signage documenting the history of the rail line and associated historic properties. Signage may include, but not be limited to, the following:
 - a) Historic images of the Harsimus Branch, including captions detailing each image.
 - b) A narrative detailing the historic significance of the rail line and associated historic properties and how the rail line fits into the historic context of Jersey City's development during the late 19th through the mid-20th century as a shipping hub.
 - c) Educational panels illustrating the history and development of immigrant communities in Jersey City, with reference to the Harsimus Cove Historic District, the Hamilton Park Historic District, and/or the Italian Village Historic District, and tied to important themes (identified in the Cultural Resources Identification Report and the Cultural Resources Identification Report Addendum, or others identified through the Section 106 consultation process).
 - d) A narrative detailing the historic significance of the War of 1812 context in specific relation to the Jersey City and Harsimus Cemetery Historic District.
- ii. Conrail shall produce a minimum of six (6) educational panels, with content reviewed and approved by OEA and the SHPO. The panels and signs should be fabricated for outdoor display use, unless directed otherwise by OEA or the SHPO. Each panel should be a minimum of 24" by 36", or to a size agreed upon by OEA, the SHPO, and Conrail.

All proposed signage must comply with City of Jersey City's Design and Zoning Standards (Standards) and ordinances.

- iii. Conrail shall consult with OEA and SHPO on probable/potential sign locations prior to the development of the signs to ensure the content of each sign is appropriate for its location. Locations must also be approved by the City of Jersey City to be consistent with their Standards.
- iv. Upon completion of the draft signage, Conrail shall submit the materials to OEA, ACHP, the SHPO, and the other Section 106 consulting parties for review. OEA, ACHP, the SHPO, and the other Section 106 consulting parties will have 45 days to review and comment on the materials. At the end of the 45-day period, Conrail shall prepare a final version of the materials, taking into consideration any comments received, and submit the final materials to OEA, ACHP, the SHPO, and the other Section 106 consulting parties.
- v. Upon final approval from OEA, ACHP, and the SHPO, Conrail will fabricate a minimum of six (6) interpretive sign panels, to appropriate specifications for outdoor display (as determined through consultation between the signatories). Once the fabricated panels have been reviewed and approved, appropriate locations for the panels will be identified through consultation with the Section 106 consulting parties. Conrail will be responsible for storing and securing the sign panels until ready for installation. Conrail will also be responsible for erecting the sign panels if determined to be on property owned by Conrail or paying for the erection of the sign panels if on property owned by others. All locations for the signage will be identified through consultation. Installation of signage shall be in accordance with the City of Jersey City's Standards and ordinances.

2. Webpage Design and Content/Historic Digital Video

- i. Conrail shall develop historical and educational materials and utilize those materials to prepare a fully developed webpage, to be hosted on an agreed-upon website (either hosted on the Conrail website or Conrail agrees to pay for it to be hosted on another approved site). The webpage should, at a minimum, include:
 - a) A written summary of the history and significance of the Harsimus Branch, including historical images.
 - b) A digital video explaining the history and significance of the Harsimus Branch, including the Pennsylvania Railroad Harsimus Branch Embankment. This should be a minimum of twenty (20) minutes in length and in a format that can be distributed for viewing in addition to being available on the webpage. Organizations and/or locations that would receive digital copies of the video will be identified through consultation.
 - c) Information on the history and significance of immigrant communities in Jersey City with specific references to the surrounding historic districts and other landmarks.
 - d) Information on the National Register eligible and/or listed historic properties within the APE for the project, abstracted from the Section 106 documentation. Historic images, maps, and text should be prepared to illustrate these resources and their importance in the history of the area.

- e) Upon completion of the draft webpage, Conrail shall submit the materials to OEA, ACHP, the SHPO, and the other Section 106 consulting parties for review.
- f) OEA, ACHP, the SHPO, and the other Section 106 consulting parties shall have 45 days to review and comment on the draft webpage. At the end of the 45-day period, Conrail shall prepare a final version of the materials, taking into consideration any comments received. Conrail shall be responsible for hosting the webpage for a period not to exceed 5 years after the completion date of all of the mitigation items in this MOA. OEA shall track compliance with the mitigation requirements and will notify Conrail and the Section 106 consulting parties after all stipulations have been met.
- g) Conrail shall ensure that the webpage is fully functional and publicly accessible and will provide usage statistics as part of annual reporting.
- h) After the webpage hosting period has been completed, Conrail shall submit all digital files associated with the webpage to OEA. OEA shall provide a copy of all materials to the SHPO.

II. REVIEW PROCESS OF MITIGATION ITEMS

- A. OEA, ACHP, the SHPO and other Section 106 consulting parties shall have 45 days to review Conrail's documentation to provide input on the designs, content, etc.
- B. Conrail shall provide a document to the OEA, ACHP, SHPO and consulting parties summarizing all the comments it received on the draft and final deliverables and explain how it responded to these comments.
- C. Subsequent reviews, if necessary, shall also be completed by OEA, ACHP, the SHPO and other Section 106 consulting parties within 45 days of receipt of the requested revisions.

III. RESTRICTION RELATED TO SIGNAGE UPON SALE OF CONRAIL-OWNED PROPERTY WITHIN THE HARSIMUS BRANCH RIGHT-OF-WAY

Conrail has voluntarily agreed that any future agreement of sale between Conrail and any purchaser of the property within the right-of-way underlying the Harsimus Branch (property currently owned by Conrail) shall contain a provision requiring that such purchaser agree to leave the signage Conrail erects (if any, and in compliance with the requirements and stipulations of this MOA) on said property within the Harsimus Branch right-of-way.

IV. DURATION

This MOA will expire seven (7) years from the date of its execution or upon completion of all of its terms, whichever occurs earlier. Prior to such time, the Board may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation IX below.

V. POST-REVIEW DISCOVERIES

If the Board authorizes the proposed abandonment, and OEA subsequently determines that the

Undertaking would affect a previously unidentified property that may be eligible for inclusion in the National Register, OEA will address the discovery in accordance with 36 C.F.R. § 800.13(b)(3). OEA may assume the discovered property to be eligible for the National Register in accordance with 36 C.F.R. § 800.13(c).

VI. UNANTICIPATED DISCOVERY OF HUMAN REMAINS

If human remains are discovered during post-review salvage activities related to the proposed abandonment or other activities covered under this MOA (such as the installation of signage), Conrail shall immediately stop work and shall not disturb or remove the human remains or any associated artifacts until appropriate consultation has taken place and a plan of action has been developed. Within two (2) hours of any discovery of human remains, Conrail shall notify OEA, the SHPO, and the local Coroner, who will determine if the nature of the human remains is a recent forensic case or pre-contact/historic human remains. OEA, the SHPO, and Conrail will consult to determine the appropriate course of action in accordance with federal, tribal, state, and local laws. If it is determined that the remains are pre-contact, the appropriate federally-recognized Tribes (as per – <https://egis.hud.gov/TDAT/>) will be notified (within 24 hrs. of the determination), and formal government-to-government consultation initiated. This consultation shall continue until a resolution has been reached on an appropriate treatment measure for the pre-contact human remains. Conrail shall not resume work until the requirements of 36 C.F.R. § 800.13(b)(3) have been met.

VII. MONITORING AND REPORTING

Conrail, following the execution of this MOA until it expires or is terminated, shall provide monthly reports to OEA on the progress and implementation of the terms of this MOA. In addition, Conrail shall provide all parties to this MOA and the ACHP an annual summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received regarding Conrail's efforts to carry out the terms of this MOA.

VIII. DISPUTE RESOLUTION

Should any signatory or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, OEA shall consult with such party to resolve the objection. If OEA determines that such objection cannot be resolved, OEA will:

- A. Forward all documentation relevant to the dispute, including OEA's resolution, to the ACHP. The ACHP shall provide OEA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, OEA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories, and concurring parties, and provide them with a copy of this written response. OEA will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day period, OEA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, OEA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA and provide them and the ACHP with a copy of such written response.

- C. The Board's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

IX. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

X. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation IX, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the Undertaking, OEA must either (a) execute a MOA pursuant to 36 C.F.R. § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. OEA shall notify the signatories as to the course of action it will pursue.

XI. COUNTERPARTS; FACSIMILE OR .PDF SIGNATURES

This MOA may be executed in counterparts, each of which shall be considered an original and together shall be one and the same MOA. A facsimile or .pdf copy of this MOA and any signatures thereon will be considered for all purposes as an original.

Execution of this MOA by the Board, the SHPO, and ACHP, and implementation of its terms evidence that the Board has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORY PAGE

**MEMORANDUM OF AGREEMENT
AMONG
THE SURFACE TRANSPORTATION BOARD,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE NEW JERSEY HISTORIC PRESERVATION OFFICE, AND
CONSOLIDATED RAIL CORPORATION
REGARDING
AB-167 (SUB-NO. 1189X),
ABANDONMENT EXEMPTION, IN CITY OF JERSEY CITY,
HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)**

Surface Transportation Board

By: _____ Date: _____

Danielle Gosselin, Director, Office of Environmental Analysis

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New Jersey Historic Preservation Office

By: _____ Date: _____

Katherine Marcopul, Administrator and Deputy State Historic Preservation Officer

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(The Pennsylvania Railroad Harsimus Branch and Embankment)**

Advisory Council on Historic Preservation

By: _____ Date: _____

Reid Nelson, Executive Director

INVITED SIGNATORY PAGE

MEMORANDUM OF AGREEMENT

AMONG

**THE SURFACE TRANSPORTATION BOARD,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE NEW JERSEY HISTORIC PRESERVATION OFFICE, AND
CONSOLIDATED RAIL CORPORATION**

REGARDING

**AB-167 (SUB-NO. 1189X),
ABANDONMENT EXEMPTION, IN CITY OF JERSEY CITY,
HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)**

Consolidated Rail Corporation

By: _____ Date: _____

Jocelyn Gabrynowicz Hill, General Counsel

CONCURRING PARTY PAGE

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AMONG
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AB-167 (SUB-NO. 1189X),
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(The Pennsylvania Railroad Harsimus Branch and Embankment)**

City of Jersey City

By: _____ Date: _____

Peter Baker, Corporation Counsel

CONCURRING PARTY PAGE

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Embankment Preservation Coalition

By: _____ Date: _____

Stephen Gucciardo, President

CONCURRING PARTY PAGE

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(The Pennsylvania Railroad Harsimus Branch and Embankment)**

Rails-to-Trails Conservancy

By: _____ Date: _____

Andrea Ferster, General Counsel

CONCURRING PARTY PAGE

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THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE NEW JERSEY HISTORIC PRESERVATION OFFICE, AND
CONSOLIDATED RAIL CORPORATION
REGARDING
AB-167 (SUB-NO. 1189X),
ABANDONMENT EXEMPTION, IN CITY OF JERSEY CITY,
HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)**

Civic Jersey City

By: _____ Date: _____

Esther Wintner, President

CONCURRING PARTY PAGE

**MEMORANDUM OF AGREEMENT
AMONG
THE SURFACE TRANSPORTATION BOARD,
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Friends of Liberty State Park

By: _____ Date: _____

Sam Pesin, President

CONCURRING PARTY PAGE

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Hamilton Park Neighborhood Association

By: _____ Date: _____

Aaron Underwood, President

CONCURRING PARTY PAGE

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Harsimus Cove Association

By: _____ Date: _____

Tom Monahan, President

CONCURRING PARTY PAGE

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Historic Paulus Hook Association

By: _____ Date: _____

Diane Kaese, President

CONCURRING PARTY PAGE

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(The Pennsylvania Railroad Harsimus Branch and Embankment)**

Hudson County Office of Cultural & Heritage Affairs

By: _____ **Date:** _____

Gina Hulings, Director

CONCURRING PARTY PAGE

**MEMORANDUM OF AGREEMENT
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Hudson County Division of Planning

By: _____ Date: _____

Francesca Giarratana, Department Deputy Director

CONCURRING PARTY PAGE

**MEMORANDUM OF AGREEMENT
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Jersey City Landmarks Conservancy

By: _____ Date: _____

Christopher Perez, President

CONCURRING PARTY PAGE

**MEMORANDUM OF AGREEMENT
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Jersey City Parks Coalition

By: _____ Date: _____

Paula Mahayosnand, President

CONCURRING PARTY PAGE

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(The Pennsylvania Railroad Harsimus Branch and Embankment)**

East Coast Greenway

By: _____ Date: _____

Bruce Donald, Tri-State Coordinator

CONCURRING PARTY PAGE

**MEMORANDUM OF AGREEMENT
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(The Pennsylvania Railroad Harsimus Branch and Embankment)**

New York/New Jersey Baykeeper

By: _____ Date: _____

Gregory A. Remaud, Baykeeper and Chief Executive Officer

CONCURRING PARTY PAGE

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Pennsylvania Railroad Technical & Historical Society

By: _____ Date: _____

Dave Evans, President

CONCURRING PARTY PAGE

**MEMORANDUM OF AGREEMENT
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Powerhouse Arts District Neighborhood Association

By: _____ Date: _____

Kathryn Moore, President

CONCURRING PARTY PAGE

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(The Pennsylvania Railroad Harsimus Branch and Embankment)**

Preservation New Jersey

By: _____ Date: _____

Emily Manz, Director

CONCURRING PARTY PAGE

**MEMORANDUM OF AGREEMENT
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HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)**

Van Vorst Neighborhood Association

By: _____ Date: _____

Benjamin Bernouy, President

Cc: to Gerry Bakirtjy

CONCURRING PARTY PAGE

**MEMORANDUM OF AGREEMENT
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Village Neighborhood Association

By: _____ Date: _____

Eric Hofmann, President

CONCURRING PARTY PAGE

**MEMORANDUM OF AGREEMENT
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(The Pennsylvania Railroad Harsimus Branch and Embankment)**

Marin Boulevard LLCs (Property Owner)

By: _____ Date: _____

Peter Pfohl, Counsel

CONCURRING PARTY PAGE

**MEMORANDUM OF AGREEMENT
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(The Pennsylvania Railroad Harsimus Branch and Embankment)**

Donna Dorgan (Property Owner)

By: _____ Date: _____

Donna Dorgan

CONCURRING PARTY PAGE

**MEMORANDUM OF AGREEMENT
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Bergen Arches Preservation Coalition

By: _____ Date: _____

Rahid Cornejo, Director

CONCURRING PARTY PAGE

**MEMORANDUM OF AGREEMENT
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(The Pennsylvania Railroad Harsimus Branch and Embankment)**

Bike JC

By: _____ Date: _____

Ayla Schermer, President

CONCURRING PARTY PAGE

**MEMORANDUM OF AGREEMENT
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AB-167 (SUB-NO. 1189X),
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(The Pennsylvania Railroad Harsimus Branch and Embankment)**

National Trust for Historic Preservation

By: _____ Date: _____

Elizabeth Merritt, Deputy General Counsel

CONCURRING PARTY PAGE

**MEMORANDUM OF AGREEMENT
AMONG
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AB-167 (SUB-NO. 1189X),
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HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)**

Historic Jersey City & Harsimus Cemetery

By: _____ Date: _____

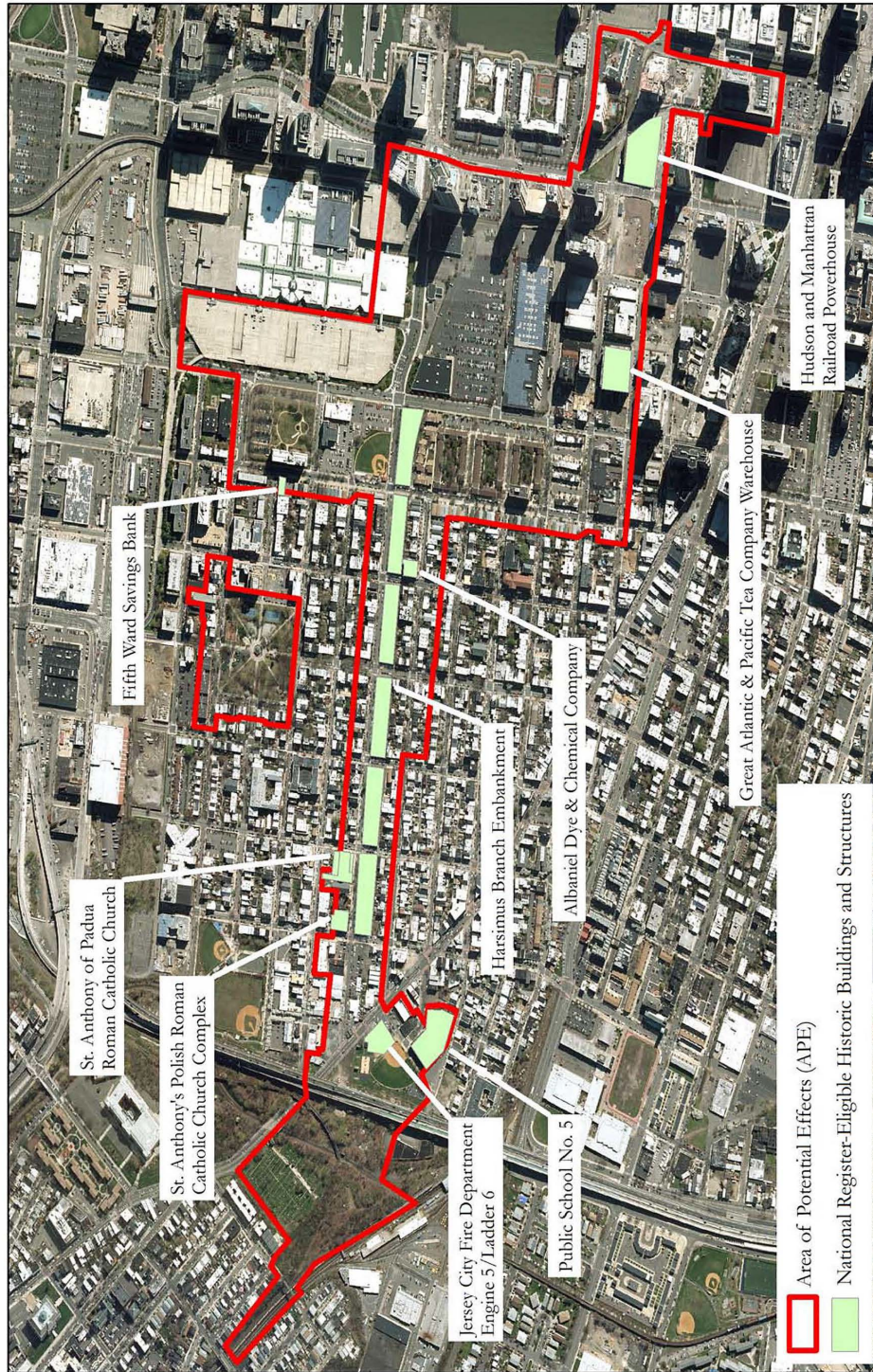
Aart Markenstein, President

Cc: Michele La-Monica, Director

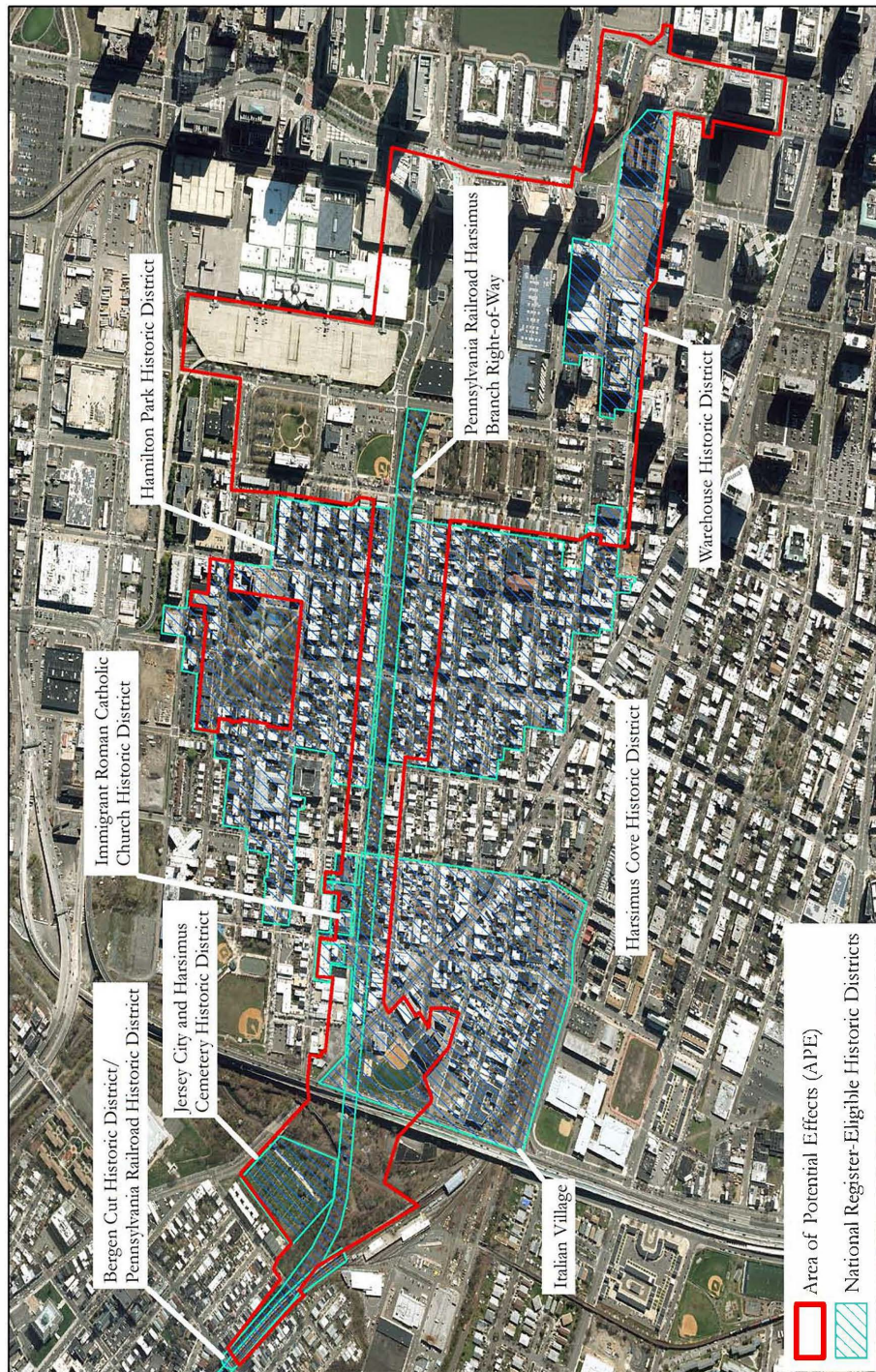
APPENDIX A – AREA OF POTENTIAL EFFECTS MAPPING



APPENDIX B – HISTORIC PROPERTY LOCATION MAPS



Individual Historic Properties within the APE



Historic Districts within the APE

APPENDIX C – CONSULTING PARTIES and ORGANIZATIONS TO RECEIVE THE DOCUMENTATION PACKAGE

CONSULTING PARTIES

Advisory Council on Historic Preservation	Hudson County Office of Cultural & Heritage Affairs
Bergen Arches Preservation Coalition	
Bike JC	Jersey City Landmarks Conservancy
City of Jersey City	Jersey City Parks Coalition
Civic Jersey City	Marin Boulevard LLC, et al.
Conrail	National Trust for Historic Preservation
Donna Dorgan	New Jersey State Historic Preservation Office
East Coast Greenway	New York/New Jersey Baykeeper
Embankment Preservation Coalition	Pennsylvania Railroad Technical & Historical Society
Friends of Liberty State Park	Powerhouse Arts District Neighborhood Association
Hamilton Park Neighborhood Association	
Harsimus Cove Association	Preservation New Jersey
Historic Jersey City & Harsimus Cemetery	Rails-to-Trails Conservancy
Historic Paulus Hook Association	The Van Vorst Neighborhood Association
Hudson County Division of Planning	The Village Neighborhood Association

OTHER ORGANIZATIONS

Jersey City Free Public Library	Roebling Chapter, Society for Industrial Archaeology
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MEMORANDUM OF AGREEMENT

AMONG THE SURFACE TRANSPORTATION BOARD, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, THE NEW JERSEY HISTORIC PRESERVATION OFFICE, AND CONSOLIDATED RAIL CORPORATION

REGARDING AB 167 (SUB-NO. 1189X),

ABANDONMENT EXEMPTION, IN CITY OF JERSEY CITY, HUDSON COUNTY, NEW JERSEY (The Pennsylvania Railroad Harsimus Branch and Embankment)

WHEREAS, on January 6, 2009, Consolidated Rail Corporation (Conrail), CSX Transportation, Inc. (CSXT), and Norfolk Southern Railway Company (NSR) jointly filed a verified notice of exemption with the Surface Transportation Board (Board) under 49 C.F.R. § 1152.50 seeking exemption from the requirements of 49 U.S.C. § 10903 for Conrail to abandon and for CSXT and NSR to discontinue service over an approximately 1.36-mile portion of a railroad known as the Harsimus Branch between Milepost 0.00 and Milepost 1.36 in Hudson County, New Jersey; and

WHEREAS, the abandonment of the Harsimus Branch constitutes an Undertaking under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, and as defined in 36 C.F.R. § 800.3(a) (the Undertaking); and

WHEREAS, unless otherwise defined in this Memorandum of Agreement (MOA), all terms are used in accordance with those set forth in 36 C.F.R. § 800.16; and

WHEREAS, the Board's Office of Environmental Analysis (OEA) issued a Final Environmental Assessment (Final EA) on September 23, 2021 that evaluated the potential environmental impacts of the proposed abandonment and that included consideration of potential effects on historic resources listed in or eligible for listing in the National Register of Historic Places (National Register), pursuant to 36 C.F.R. § 800.8(a); and

WHEREAS, OEA recommended that the Board impose a condition barring Conrail from consummating the proposed abandonment until the Section 106 process is complete; and

WHEREAS, OEA, in consultation with the New Jersey Historic Preservation Office (the State Historic Preservation Officer or SHPO), began the Section 106 process by delineating the Undertaking's Area of Potential Effects (APE), defined at 36 C.F.R. § 800.16(d), as centered on the rail right-of-way, but extending outward to include potential visual impacts (as shown in the map in **Appendix A**); and

WHEREAS, the Board notified and invited the Advisory Council on Historic Preservation (ACHP) to participate early in consultation and, by letter dated April 10, 2009, the ACHP chose to participate in the consultation pursuant to C.F.R. § 800.2(b)(1); and

WHEREAS, the following agencies, organizations, and legal entities have accepted OEA's invitation to participate in the Board's Section 106 process as consulting parties, in addition to the SHPO, ACHP, and Conrail: Bergen Arches Preservation Coalition; Bike JC; the City of Jersey City, New Jersey; Civic Jersey City; Donna Dorgan (property owner); East Coast Greenway; Friends of

Liberty State Park; Hamilton Park Neighborhood Association; Harsimus Cove Association; Historic Paulus Hook Association; [Historic Jersey City & Harsimus Cemetery](#); Hudson County Office of Cultural & Heritage Affairs; Hudson County Division of Planning; Jersey City Landmarks Conservancy; [Jersey City Parks Coalition](#); [National Trust for Historic Preservation](#); Marin Boulevard LLC (property owner);¹ ~~New Jersey Committee for the East Coast Greenway~~; New York/New Jersey Baykeeper; Newport Neighborhood Association; the Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition; Pennsylvania Railroad Technical & Historical Society; Powerhouse Arts District Neighborhood Association; Preservation New Jersey; Rails-to-Trails Conservancy; the Van Vorst [ParkNeighborhood](#) Association, and the Village Neighborhood Association; and

WHEREAS, OEA, in consultation with the Section 106 consulting parties, identified 19 historic properties within the APE that are listed in or eligible for listing in the National Register, as described in OEA's Cultural Resources Identification Report (May 5, 2017) and Cultural Resources Identification Report Addendum (October 16, 2018); and

WHEREAS, OEA determined, in consultation with the Section 106 consulting parties, that the portion of the Harsimus Branch from Control Point Waldo (CP Waldo) to Marin Boulevard, is eligible for listing in the National Register as the Pennsylvania Railroad Harsimus Right-of-Way Historic District; and

WHEREAS, the Pennsylvania Railroad Harsimus Right-of-Way Historic District includes the Pennsylvania Railroad Harsimus Branch Embankment, which received a Determination of Eligibility from the Keeper of the National Register in 2000 but was not listed due to objections to National Register listing, and is a key contributing element that is also individually eligible for listing in the National Register; and

WHEREAS, OEA typically does not consider the effects of potential post-abandonment activities on historic properties as part of the Section 106 process for proposed railroad abandonments but has included some limited consideration of such potential future activities in its Section 106 review for the proposed Harsimus Branch abandonment due to the unique circumstances of this case; and

WHEREAS, OEA, working with the consulting parties, identified three possible scenarios that could occur if abandonment authority were granted, and assessed the effects of those scenarios on historic properties in a Cultural Resources Effects Assessment Report (issued March 29, 2019) and an Effects Assessment Report Addendum (issued November 12, 2019); and

WHEREAS, the three scenarios are not alternatives under Section 106 because the Board has no jurisdiction or regulatory authority over post-abandonment uses of the Harsimus Branch and cannot determine which, if any, of these scenarios would occur if the proposed abandonment were to be authorized and consummated; however, the scenarios include reasonably foreseeable effects of abandonment authority here and therefore OEA is including those potential effects on historic properties in its Section 106 review in this case; and

WHEREAS, the only alternative to abandonment in this Undertaking is the No-Action Alternative, which would occur if the Board were to deny abandonment authority; and

¹ Marin Boulevard LLC consists of: 212 Marin Boulevard, LLC (property owner); 247 Manila Avenue, LLC (property owner); 280 Erie Street, LLC (property owner); 389 Monmouth Street, LLC (property owner); 354 Cole Street, LLC (property owner); 317 Jersey Avenue, LLC (property owner); 415 Brunswick Street, LLC (property owner); 446 Newark Avenue, LLC (property owner); NZ Funding, LLC (property owner).

WHEREAS, OEA has determined that the Undertaking could have an adverse effect on the Pennsylvania Railroad (New York to Philadelphia) Historic District; the New Jersey Railroad Bergen Cut Historic District; the Pennsylvania Railroad Harsimus Branch Embankment; St. Anthony's Polish Roman Catholic Church and School Complex; St. Anthony of Padua Roman Catholic Church; Hamilton Park Historic District and Extension; the Harsimus Cove Historic District; the Albaniel Dye & Chemical Co./Thomas J. Stewart Co. Building; the Holy Rosary Roman Catholic Church Complex; the Immigrant Roman Catholic Church Historic District; the Pennsylvania Railroad Harsimus Right-of-Way Historic District; and the Italian Village Historic District, which are listed in, or eligible for listing in, the National Register, and has consulted with the SHPO pursuant to 36 C.F.R. Part 800, the regulations implementing Section 106 (historic properties shown on mapping in **Appendix B**); and

WHEREAS, this MOA was developed to address adverse effects to historic properties located within the APE for the Undertaking; and

WHEREAS, pursuant to 36 C.F.R. § 800.6, OEA has consulted with the SHPO and the other consulting parties regarding ways to avoid, minimize, or mitigate potential effects to the historic properties that may result from an abandonment; and

WHEREAS, OEA has consulted with Conrail, pursuant to 36 C.F.R. § 800.6(c)(2)(iii) and has invited ~~them~~it to be an invited signatory in this MOA; and

WHEREAS, OEA has consulted with the other Section 106 consulting parties regarding the effects of the Undertaking on historic properties and has invited them to sign this MOA as concurring parties pursuant to 36 C.F.R. § 800.6(c)(3); and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), OEA notified the ACHP of its adverse effect determination with specified documentation, and the ACHP has chosen to participate in the consultation pursuant to 36 C.F.R. § 800.6(a)(1)(iii); and

WHEREAS, certain parties, including Conrail, other owners of the Harsimus Branch right-of-way, Jersey City, the Embankment Preservation Coalition, and the Rails-to-Trails Conservancy, have discussed potential plans for future reuse or redevelopment of the Harsimus Branch that could take place following an abandonment, including a possible settlement agreement. These future development plans could potentially include partial preservation of the Pennsylvania Railroad Harsimus Right-of-Way Historic District and the Pennsylvania Railroad Harsimus Branch Embankment but, if they occur, they would take place outside of the jurisdiction of the Board and outside the scope of this MOA. This MOA presents measures that the Board can ensure are carried out to avoid, minimize or mitigate the adverse effects of this Undertaking regardless of future reuse or redevelopment of the Harsimus Branch; and

WHEREAS, the Board's ability to impose involuntary mitigation to resolve adverse effects to historic properties in railroad abandonment cases is generally limited to the documentation of historic properties because railroad rights-of-way are private property and the Board's jurisdiction over those rights-of-way ends with the consummation of abandonment authority; and

WHEREAS, the Board paused the Section 106 process as per its decision on May 19, 2021 in order to evaluate whether there was a Section 110(k) of the NHPA violation, and on August 22, 2022 issued a decision finding that there was no violation of Section 110(k); and

WHEREAS, following the Board's decision that there was no Section 110(k) violation, OEA

resumed the Section 106 process and is utilizing this MOA to resolve adverse effects to historic properties.

WHEREAS, OEA has engaged in continued and extensive meetings and communication with the consulting parties as part of the Section 106 process, including meetings with all consulting parties and meetings with ACHP and the SHPO; conducted significant public outreach, including a public meeting on September 28, 2023; and has made all project documents relevant to the historic review process publicly available on the Board's STB website.

NOW, THEREFORE, the Board (through OEA), the SHPO, and the ACHP agree that the Undertaking shall be implemented in accordance with the following stipulations to take into account the effects of the Undertaking on historic properties.

STIPULATIONS

The Board, with the assistance of Conrail, shall ensure that the following measures are carried out:

I. MITIGATION

Conrail shall retain a historic preservation/cultural resource contractor(s) of its choice (Contractor) with personnel that meet one or more of the Secretary of the Interior's Professional Qualification Standards (History, Archeology, Architectural History, Historic Architecture), (36 C.F.R. Part 61, https://www.nps.gov/history/local-law/arch_stnds_9.htm) to complete the measures described below. Prior to the expiration of this MOA, Conrail shall ensure, and provide written notice to the Board and the SHPO, that the following recordation, documentation, and interpretation has been completed by the Contractor. The Contractor must consult with the SHPO prior to the initiation of the work to ensure that expectations and requirements for these mitigation measures are understood.

A. Recordation

1. Documentation of Pennsylvania Railroad Harsimus Branch Right-of-Way Historic District (CP Waldo to Marin Boulevard) and the Pennsylvania Railroad Harsimus Branch Embankment.
 - i. Conrail shall consolidate all of the previous data and documentation (prepared as part of the Board's Section 106 documentation process) and, in consultation with the SHPO and OEA, conduct any necessary additional archival research on the history of the Harsimus Branch, to supplement the extensive materials already gathered as part of the Section 106 process. The documentation effort shall be coordinated with the SHPO to ensure the product being developed is comprehensive and prepared in accordance with the relevant federal and state standards (Level I Historic American Building Survey/Historic American Engineering Record (HABS/HAER) standards as specified in 68 F.R. 43159).
 - ii. Conrail shall undertake additional field documentation, including photography depicting all the remaining built elements of the Harsimus Branch rail line within the right-of-way, including embankments, piers, footers, drainage features, ballast, signal, and electrical features, etc.

iii. Copies of any relevant historical documents found pursuant to the archival research, as well as available maps of the rail line in its local context, shall be included in the documentation package.

iii-iv. The document shall include a thorough and detailed historic context (minimum of 150 pages of text) and include a minimum of seventy-five (75) illustrations (photographs/maps/engineering drawings, etc.).

iv-v. Upon completion of the draft documentation and archival research, Conrail shall submit the document (one digital copy and two hard copies) to OEA, ACHP, the SHPO, and the Section 106 consulting parties for review. OEA, ACHP, the SHPO, and the Section 106 consulting parties shall have 30-45 days to review and comment on the draft document. At the end of the 30-45-day period, Conrail shall prepare a final version of the document, taking into consideration any comments received, and submit the digital and hard copies of the final document, along with an additional document summarizing and responding to any comments received to OEA, ACHP, the SHPO, and the consulting parties. Copies of the report (digital and one hard copy) shall also be provided to local libraries, schools, historical societies, and other organizations (the list to be developed by the consulting parties, **Appendix C** (draft list)). Conrail shall also submit two (2) additional hard copies of the final document to the SHPO to be archived at the SHPO's office.

B. Additional Documentation and Interpretation

1. Interpretive Signage

i. Conrail shall produce interpretive signage documenting the history of the rail line and associated historic properties. Signage may include, but not be limited to, the following:

- a) Historic images of the Harsimus Branch, including captions detailing each image.
- b) A narrative detailing the historic significance of the rail line and associated historic properties and how the rail line fits into the historic context of Jersey City's development during the late 19th through the mid-20th century as a shipping hub.
- c) Educational panels illustrating the history and development of immigrant communities in Jersey City, with reference to the Harsimus Cove Historic District, the Hamilton Park Historic District, and/or the Italian Village Historic District, and tied to important themes (identified in the Cultural Resources Identification Report and the Cultural Resources Identification Report Addendum, or others identified through the Section 106 consultation process).

d) A narrative detailing the historic significance of the War of 1812 context in specific relation to the Jersey City and Harsimus Cemetery Historic District.

ii. Conrail shall produce a minimum of six (6) educational panels, with content reviewed and approved by OEA and the SHPO. The panels and signs should be fabricated for outdoor display use, unless directed otherwise by OEA or the SHPO. Each panel should be a minimum of 24" by 36", or to a size agreed upon by OEA, the SHPO, and Conrail.

All proposed signage must comply with City of Jersey City's Design and Zoning Standards (Standards) and ordinances.

ii.iii. Conrail shall consult with OEA and SHPO on probable/potential sign locations prior to the development of the signs to ensure the content of each sign is appropriate for its location. Locations must also be approved by the City of Jersey City to be consistent with their Standards.

iii.iv. Upon completion of the draft signage, Conrail shall submit the materials to OEA, ACHP, the SHPO, and the other Section 106 consulting parties for review. OEA, ACHP, the SHPO, and the other Section 106 consulting parties will have ~~30~~45 days to review and comment on the materials. At the end of the ~~30~~45-day period, Conrail shall prepare a final version of the materials, taking into consideration any comments received, and submit the final materials to OEA, ACHP, the SHPO, and the other Section 106 consulting parties ~~for a final 15-day review period.~~

iv.v. Upon final approval from OEA, ACHP, and the SHPO, Conrail will fabricate a minimum of six (6) interpretive sign panels, to appropriate specifications for outdoor display (as determined through consultation between the signatories). Once the fabricated panels have been reviewed and approved, appropriate locations for the panels will be identified through consultation with the Section 106 consulting parties. Conrail will be responsible for storing and securing the sign panels until ready for installation. Conrail will also be responsible for erecting the sign panels if determined to be on property owned by Conrail or paying for the erection of the sign panels if on property owned by others. All locations for the signage will be identified through consultation. ~~erecting the sign panels at the locations identified through consultation.~~ Installation of signage shall be in accordance with the City of Jersey City's Standards and ordinances.

2. Webpage Design and Content/Historic Digital Video

- i. Conrail shall develop historical and educational materials and utilize those materials to prepare a fully developed webpage, to be hosted on an agreed-upon ~~locally administered~~ website (either hosted on the Conrail website or Conrail agrees to pay for it to be hosted on another approved site). The webpage should, at a minimum, include:
 - a) A written summary of the history and significance of the Harsimus Branch, including historical images.
 - b) A digital video explaining the history and significance of the Harsimus Branch, including the Pennsylvania Railroad Harsimus Branch Embankment. This should be a minimum of twenty (20) minutes in length and in a format that can be distributed for viewing in addition to being available on the webpage. Organizations and/or locations that would receive digital copies of the video will be identified through consultation.
 - c) Information on the history and significance of immigrant communities in Jersey City with specific references to the surrounding historic districts and other landmarks.
 - d) Information on the National Register eligible and/or listed historic properties within the APE for the project, abstracted from the Section 106 documentation. Historic

images, maps, and text should be prepared to illustrate these resources and their importance in the history of the area.

- e) Upon completion of the draft webpage, Conrail shall submit the materials to OEA, ACHP, the SHPO, and the other Section 106 consulting parties for review.

f) OEA, ACHP, the SHPO, and the other Section 106 consulting parties shall have ~~30~~ 45 days to review and comment on the draft webpage. At the end of the ~~30~~45-day period, Conrail shall prepare a final version of the materials, taking into consideration any comments received. Conrail shall be responsible for hosting the webpage for a period not to exceed 5 years after the completion date of all of the mitigation items in this MOA. OEA shall track compliance with the mitigation requirements and will notify Conrail and the Section 106 consulting parties after all stipulations have been met.

g) Conrail shall ensure that the webpage is fully functional and publicly accessible and will provide usage statistics as part of annual reporting. ~~then provide the final webpage to the SHPO for hosting by the SHPO or transfer to another local entity for hosting.~~

~~f)h)~~ After the webpage hosting period has been completed, Conrail shall submit all digital files associated with the webpage to OEA. OEA shall provide a copy of all materials to the SHPO.

II. REVIEW PROCESS OF MITIGATION ITEMS

- A. OEA, ACHP, the SHPO and other Section 106 consulting parties shall have ~~thirty (4530)~~ days to review Conrail's documentation to provide input on the designs, content, etc.
- B. Conrail shall provide a document to the OEA, ACHP, SHPO and consulting parties summarizing all the comments it received on the draft and final deliverables and explain how it responded to these comments.
- C. Subsequent reviews, if necessary, shall also be completed by OEA, ACHP, the SHPO and other Section 106 consulting parties within ~~thirty (4530)~~ days of receipt of the requested revisions.

III. RESTRICTION RELATED TO SIGNAGE UPON SALE OF CONRAIL-OWNED PROPERTY WITHIN THE HARSIMUS BRANCH RIGHT-OF-WAY

Conrail ~~has voluntarily agreed~~ agrees that any future agreement of sale between Conrail and any ~~immediately subsequent~~ purchaser of the property within the right-of-way underlying the Harsimus Branch (property currently owned by Conrail) shall contain a provision requiring that such purchaser agree to leave the signage Conrail erects (if any, and in compliance with the requirements and stipulations of this MOA) on said property within the Harsimus Branch right-of-way.

IV. DURATION

This MOA will expire ~~sevenfour~~ (47) years from the date of its execution or upon completion of all of its terms, whichever occurs earlier. Prior to such time, the Board may consult with the

other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation IX below.

V. POST-REVIEW DISCOVERIES

If the Board authorizes the proposed abandonment, and OEA subsequently determines that the Undertaking would affect a previously unidentified property that may be eligible for inclusion in the National Register, OEA will address the discovery in accordance with 36 C.F.R.

§ 800.13(b)(3). OEA may assume the discovered property to be eligible for the National Register in accordance with 36 C.F.R. § 800.13(c).

VI. UNANTICIPATED DISCOVERY OF HUMAN REMAINS

If human remains are discovered during post-review salvage activities related to the proposed abandonment or other activities covered under this MOA (such as the installation of signage), Conrail shall immediately stop work and shall not disturb or remove the human remains or any associated artifacts until appropriate consultation has taken place and a plan of action has been developed. Within two (2) hours of any discovery of human remains, Conrail shall notify OEA, the SHPO, and the local Coroner, who will determine if the nature of the human remains is a recent forensic case or pre-contact/historic human remains. OEA, the SHPO, and Conrail will consult to determine the appropriate course of action in accordance with federal, tribal, state, and local laws. If it is determined that the remains are pre-contact, the appropriate federally-recognized Tribes (as per – <https://egis.hud.gov/TDAT/>) will be notified (within 24 hrs. of the determination), and formal government-to-government consultation initiated. This consultation shall continue until a resolution has been reached on an appropriate treatment measure for the pre-contact human remains. Conrail shall not resume work until the requirements of 36 C.F.R. § 800.13(b)(3) have been met.

VII. MONITORING AND REPORTING

Conrail, following the execution of this MOA until it expires or is terminated, shall provide monthly reports to OEA on the progress and implementation of the terms of this MOA. In addition, Conrail shall provide all parties to this MOA and the ACHP an annual summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received regarding Conrail's efforts to carry out the terms of this MOA.

VIII. DISPUTE RESOLUTION

Should any signatory or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, OEA shall consult with such party to resolve the objection. If OEA determines that such objection cannot be resolved, OEA will:

- A. Forward all documentation relevant to the dispute, including OEA's resolution, to the ACHP. The ACHP shall provide OEA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, OEA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories, and concurring parties, and provide them with a copy of this written response. OEA will then proceed according to its final decision.

- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day period, OEA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, OEA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA and provide them and the ACHP with a copy of such written response.
- C. The Board's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

IX. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

X. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation IX, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the Undertaking, OEA must either (a) execute a MOA pursuant to 36 C.F.R. § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. OEA shall notify the signatories as to the course of action it will pursue.

XI. COUNTERPARTS; FACSIMILE OR .PDF SIGNATURES

This MOA may be executed in counterparts, each of which shall be considered an original and together shall be one and the same MOA. A facsimile or .pdf copy of this MOA and any signatures thereon will be considered for all purposes as an original.

Execution of this MOA by the Board, the SHPO, and ACHP, and implementation of its terms evidence that the Board has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORY PAGE

**MEMORANDUM OF AGREEMENT
AMONG
THE SURFACE TRANSPORTATION BOARD,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE NEW JERSEY HISTORIC PRESERVATION OFFICE, AND
CONSOLIDATED RAIL CORPORATION
REGARDING
AB-167 (SUB-NO. 1189X),
ABANDONMENT EXEMPTION, IN CITY OF JERSEY CITY,
HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)**

Surface Transportation Board

By: _____ Date: _____

Danielle Gosselin, Director, Office of Environmental Analysis

SIGNATORY PAGE

**MEMORANDUM OF AGREEMENT
AMONG
THE SURFACE TRANSPORTATION BOARD,
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AB-167 (SUB-NO. 1189X),
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HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)**

New Jersey Historic Preservation Office

By: _____ Date: _____

Katherine Marcopul, Administrator and Deputy State Historic Preservation Officer

SIGNATORY PAGE

**MEMORANDUM OF AGREEMENT
AMONG
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THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
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AB-167 (SUB-NO. 1189X),
ABANDONMENT EXEMPTION, IN CITY OF JERSEY CITY,
HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)**

Advisory Council on Historic Preservation

By: _____ Date: _____

Reid Nelson, Executive Director

INVITED SIGNATORY PAGE

MEMORANDUM OF AGREEMENT
AMONG

THE SURFACE TRANSPORTATION BOARD,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE NEW JERSEY HISTORIC PRESERVATION OFFICE, AND
CONSOLIDATED RAIL CORPORATION

REGARDING

AB-167 (SUB-NO. 1189X),
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HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)

Consolidated Rail Corporation

By: _____ Date: _____

Jocelyn Gabrynowicz Hill, General Counsel

CONCURRING PARTY PAGE

MEMORANDUM OF AGREEMENT
AMONG

THE SURFACE TRANSPORTATION BOARD,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE NEW JERSEY HISTORIC PRESERVATION OFFICE, AND
CONSOLIDATED RAIL CORPORATION

REGARDING

AB-167 (SUB-NO. 1189X),
ABANDONMENT EXEMPTION, IN CITY OF JERSEY CITY,
HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)

City of Jersey City

By: _____ Date: _____

Peter Baker, Corporation Counsel

CONCURRING PARTY PAGE

MEMORANDUM OF AGREEMENT
AMONG

THE SURFACE TRANSPORTATION BOARD,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE NEW JERSEY HISTORIC PRESERVATION OFFICE, AND
CONSOLIDATED RAIL CORPORATION

REGARDING

AB-167 (SUB-NO. 1189X),
ABANDONMENT EXEMPTION, IN CITY OF JERSEY CITY,
HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)

Embankment Preservation Coalition

By: _____ Date: _____

Stephen Gucciardo, President

CONCURRING PARTY PAGE

MEMORANDUM OF AGREEMENT
AMONG

THE SURFACE TRANSPORTATION BOARD,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE NEW JERSEY HISTORIC PRESERVATION OFFICE, AND
CONSOLIDATED RAIL CORPORATION

REGARDING

AB-167 (SUB-NO. 1189X),
ABANDONMENT EXEMPTION, IN CITY OF JERSEY CITY,
HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)

Rails-to-Trails Conservancy

By: _____ Date: _____

Andrea Ferster, General Counsel

CONCURRING PARTY PAGE

MEMORANDUM OF AGREEMENT
AMONG

THE SURFACE TRANSPORTATION BOARD,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE NEW JERSEY HISTORIC PRESERVATION OFFICE, AND
CONSOLIDATED RAIL CORPORATION

REGARDING

AB-167 (SUB-NO. 1189X),
ABANDONMENT EXEMPTION, IN CITY OF JERSEY CITY,
HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)

Civic Jersey City

By: _____ Date: _____

Esther Wintner, President

CONCURRING PARTY PAGE

MEMORANDUM OF AGREEMENT
AMONG

THE SURFACE TRANSPORTATION BOARD,
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THE NEW JERSEY HISTORIC PRESERVATION OFFICE, AND
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REGARDING

AB-167 (SUB-NO. 1189X),
ABANDONMENT EXEMPTION, IN CITY OF JERSEY CITY,
HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)

Friends of Liberty State Park

By: _____ Date: _____

Sam Pesin, President

CONCURRING PARTY PAGE

MEMORANDUM OF AGREEMENT
AMONG

THE SURFACE TRANSPORTATION BOARD,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE NEW JERSEY HISTORIC PRESERVATION OFFICE, AND
CONSOLIDATED RAIL CORPORATION

REGARDING

AB-167 (SUB-NO. 1189X),
ABANDONMENT EXEMPTION, IN CITY OF JERSEY CITY,
HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)

Hamilton Park Neighborhood Association

By: _____ Date: _____

Aaron Underwood, President

CONCURRING PARTY PAGE

MEMORANDUM OF AGREEMENT
AMONG

THE SURFACE TRANSPORTATION BOARD,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE NEW JERSEY HISTORIC PRESERVATION OFFICE, AND
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REGARDING

AB-167 (SUB-NO. 1189X),
ABANDONMENT EXEMPTION, IN CITY OF JERSEY CITY,
HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)

Harsimus Cove Association

By: _____ Date: _____

Tom Monahan, President

CONCURRING PARTY PAGE

MEMORANDUM OF AGREEMENT
AMONG

THE SURFACE TRANSPORTATION BOARD,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE NEW JERSEY HISTORIC PRESERVATION OFFICE, AND
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REGARDING

AB-167 (SUB-NO. 1189X),
ABANDONMENT EXEMPTION, IN CITY OF JERSEY CITY,
HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)

Historic Paulus Hook Association

By: _____ Date: _____

Diane Kaese, President

CONCURRING PARTY PAGE

MEMORANDUM OF AGREEMENT
AMONG

THE SURFACE TRANSPORTATION BOARD,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE NEW JERSEY HISTORIC PRESERVATION OFFICE, AND
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REGARDING

AB-167 (SUB-NO. 1189X),
ABANDONMENT EXEMPTION, IN CITY OF JERSEY CITY,
HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)

Hudson County Office of Cultural & Heritage Affairs

By: _____ Date: _____

Gina Hulings, Director

CONCURRING PARTY PAGE

**MEMORANDUM OF AGREEMENT
AMONG**

**THE SURFACE TRANSPORTATION BOARD,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE NEW JERSEY HISTORIC PRESERVATION OFFICE, AND
CONSOLIDATED RAIL CORPORATION**

REGARDING

**AB-167 (SUB-NO. 1189X),
ABANDONMENT EXEMPTION, IN CITY OF JERSEY CITY,
HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)**

Hudson County Division of Planning

By: _____ Date: _____

Francesca Giarratana, Department Deputy Director

CONCURRING PARTY PAGE

MEMORANDUM OF AGREEMENT
AMONG

THE SURFACE TRANSPORTATION BOARD,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE NEW JERSEY HISTORIC PRESERVATION OFFICE, AND
CONSOLIDATED RAIL CORPORATION

REGARDING

AB-167 (SUB-NO. 1189X),
ABANDONMENT EXEMPTION, IN CITY OF JERSEY CITY,
HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)

Jersey City Landmarks Conservancy

By: _____ Date: _____

Christopher Perez, President

CONCURRING PARTY PAGE

MEMORANDUM OF AGREEMENT
AMONG

THE SURFACE TRANSPORTATION BOARD,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE NEW JERSEY HISTORIC PRESERVATION OFFICE, AND
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REGARDING

AB-167 (SUB-NO. 1189X),
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(The Pennsylvania Railroad Harsimus Branch and Embankment)

Jersey City Parks Coalition

By: _____ Date: _____

Paula Mahayosnand, President

CONCURRING PARTY PAGE

MEMORANDUM OF AGREEMENT
AMONG

THE SURFACE TRANSPORTATION BOARD,
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REGARDING

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(The Pennsylvania Railroad Harsimus Branch and Embankment)

East Coast Greenway

By: _____ Date: _____

Bruce Donald, Tri-State Coordinator

CONCURRING PARTY PAGE

MEMORANDUM OF AGREEMENT

AMONG

**THE SURFACE TRANSPORTATION BOARD,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
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REGARDING

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ABANDONMENT EXEMPTION, IN CITY OF JERSEY CITY,
HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)**

New York/New Jersey Baykeeper

By: _____ Date: _____

Gregory A. Remaud, Baykeeper and Chief Executive Officer

CONCURRING PARTY PAGE

MEMORANDUM OF AGREEMENT
AMONG

THE SURFACE TRANSPORTATION BOARD,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
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REGARDING

AB-167 (SUB-NO. 1189X),
ABANDONMENT EXEMPTION, IN CITY OF JERSEY CITY,
HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)

Pennsylvania Railroad Technical & Historical Society

By: _____ Date: _____

Dave Evans, President

CONCURRING PARTY PAGE

MEMORANDUM OF AGREEMENT
AMONG

THE SURFACE TRANSPORTATION BOARD,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
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AB-167 (SUB-NO. 1189X),
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HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)

Powerhouse Arts District Neighborhood Association

By: _____ Date: _____

Kathryn Moore, President

CONCURRING PARTY PAGE

MEMORANDUM OF AGREEMENT

AMONG

**THE SURFACE TRANSPORTATION BOARD,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
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REGARDING

**AB-167 (SUB-NO. 1189X),
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Preservation New Jersey

By: _____ Date: _____

Emily Manz, Director

CONCURRING PARTY PAGE

**MEMORANDUM OF AGREEMENT
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**THE SURFACE TRANSPORTATION BOARD,
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REGARDING

**AB-167 (SUB-NO. 1189X),
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HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)**

Van Vorst Neighborhood Association

By: _____ Date: _____

Benjamin Bernouy, President

Cc: to Gerry Bakirtjy

CONCURRING PARTY PAGE

MEMORANDUM OF AGREEMENT
AMONG

THE SURFACE TRANSPORTATION BOARD,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE NEW JERSEY HISTORIC PRESERVATION OFFICE, AND
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(The Pennsylvania Railroad Harsimus Branch and Embankment)

Village Neighborhood Association

By: _____ Date: _____

Eric Hofmann, President

CONCURRING PARTY PAGE

MEMORANDUM OF AGREEMENT
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THE SURFACE TRANSPORTATION BOARD,
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REGARDING

AB-167 (SUB-NO. 1189X),
ABANDONMENT EXEMPTION, IN CITY OF JERSEY CITY,
HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)

Marin Boulevard LLCs (Property Owner)

By: _____ Date: _____

Peter Pfohl, Counsel †

CONCURRING PARTY PAGE

**MEMORANDUM OF AGREEMENT
AMONG
THE SURFACE TRANSPORTATION BOARD,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE NEW JERSEY HISTORIC PRESERVATION OFFICE, AND
CONSOLIDATED RAIL CORPORATION
REGARDING
AB-167 (SUB-NO. 1189X),
ABANDONMENT EXEMPTION, IN CITY OF JERSEY CITY,
HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)**

Donna Dorgan (Property Owner)

By: _____ Date: _____

Donna Dorgan

CONCURRING PARTY PAGE

**MEMORANDUM OF AGREEMENT
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THE NEW JERSEY HISTORIC PRESERVATION OFFICE, AND
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AB-167 (SUB-NO. 1189X),
ABANDONMENT EXEMPTION, IN CITY OF JERSEY CITY,
HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)**

Bergen Arches Preservation Coalition

By: _____ Date: _____

Rahid Cornejo, Director

CONCURRING PARTY PAGE

**MEMORANDUM OF AGREEMENT
AMONG
THE SURFACE TRANSPORTATION BOARD,
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REGARDING
AB-167 (SUB-NO. 1189X),
ABANDONMENT EXEMPTION, IN CITY OF JERSEY CITY,
HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)**

Bike JC

By: _____ Date: _____

Ayla Schermer, President

CONCURRING PARTY PAGE

MEMORANDUM OF AGREEMENT
AMONG
THE SURFACE TRANSPORTATION BOARD,
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THE NEW JERSEY HISTORIC PRESERVATION OFFICE, AND
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REGARDING
AB-167 (SUB-NO. 1189X),
ABANDONMENT EXEMPTION, IN CITY OF JERSEY CITY,
HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)

National Trust for Historic Preservation

By: _____ Date: _____

Elizabeth Merritt, Deputy General Counsel

CONCURRING PARTY PAGE

MEMORANDUM OF AGREEMENT

AMONG

THE SURFACE TRANSPORTATION BOARD,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE NEW JERSEY HISTORIC PRESERVATION OFFICE, AND
CONSOLIDATED RAIL CORPORATION

REGARDING

AB-167 (SUB-NO. 1189X),
ABANDONMENT EXEMPTION, IN CITY OF JERSEY CITY,
HUDSON COUNTY, NEW JERSEY
(The Pennsylvania Railroad Harsimus Branch and Embankment)

Historic Jersey City & Harsimus Cemetery

By: _____ Date: _____

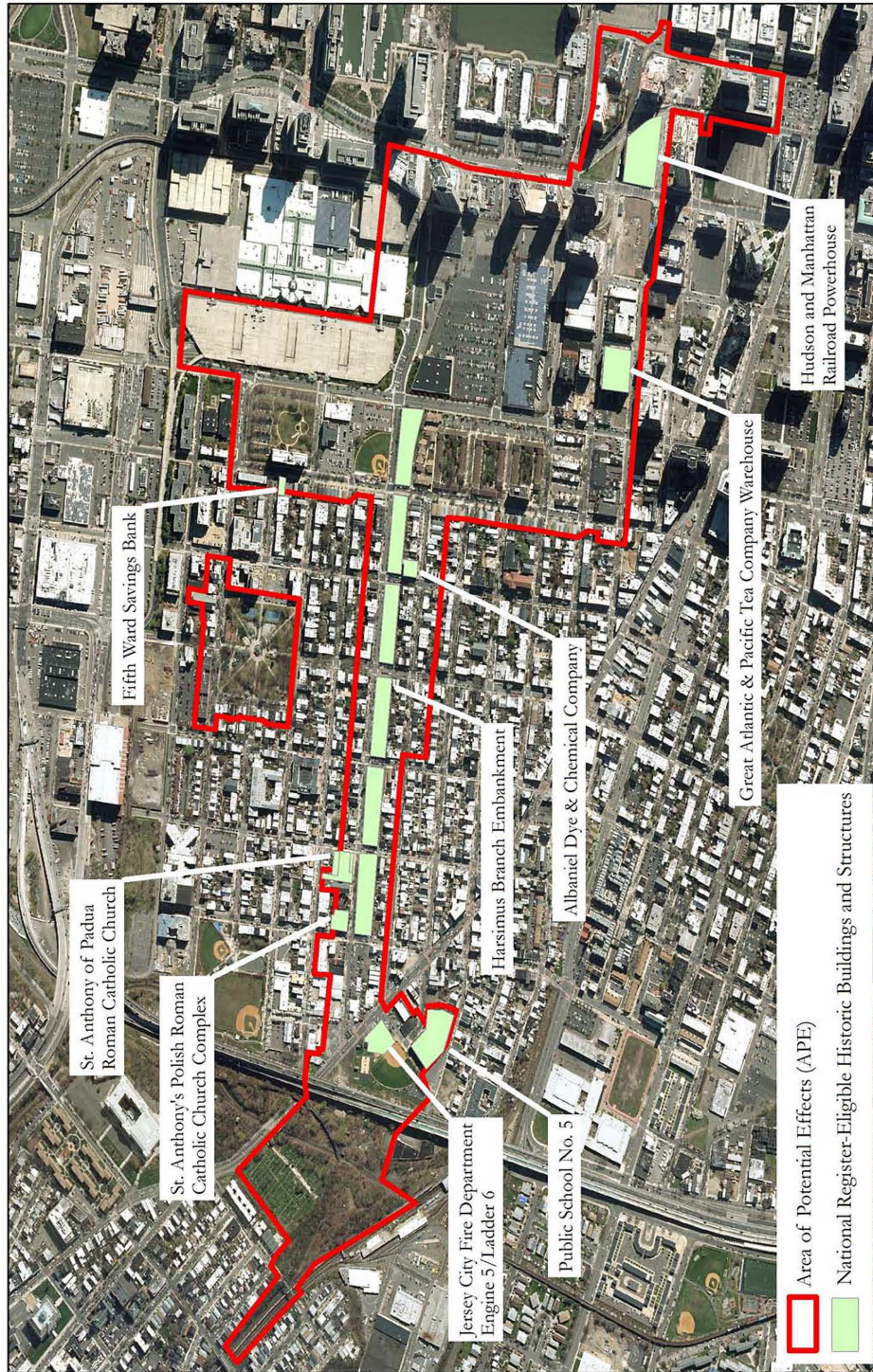
Aart Markenstein, President

Cc: Michele La-Monica, Director

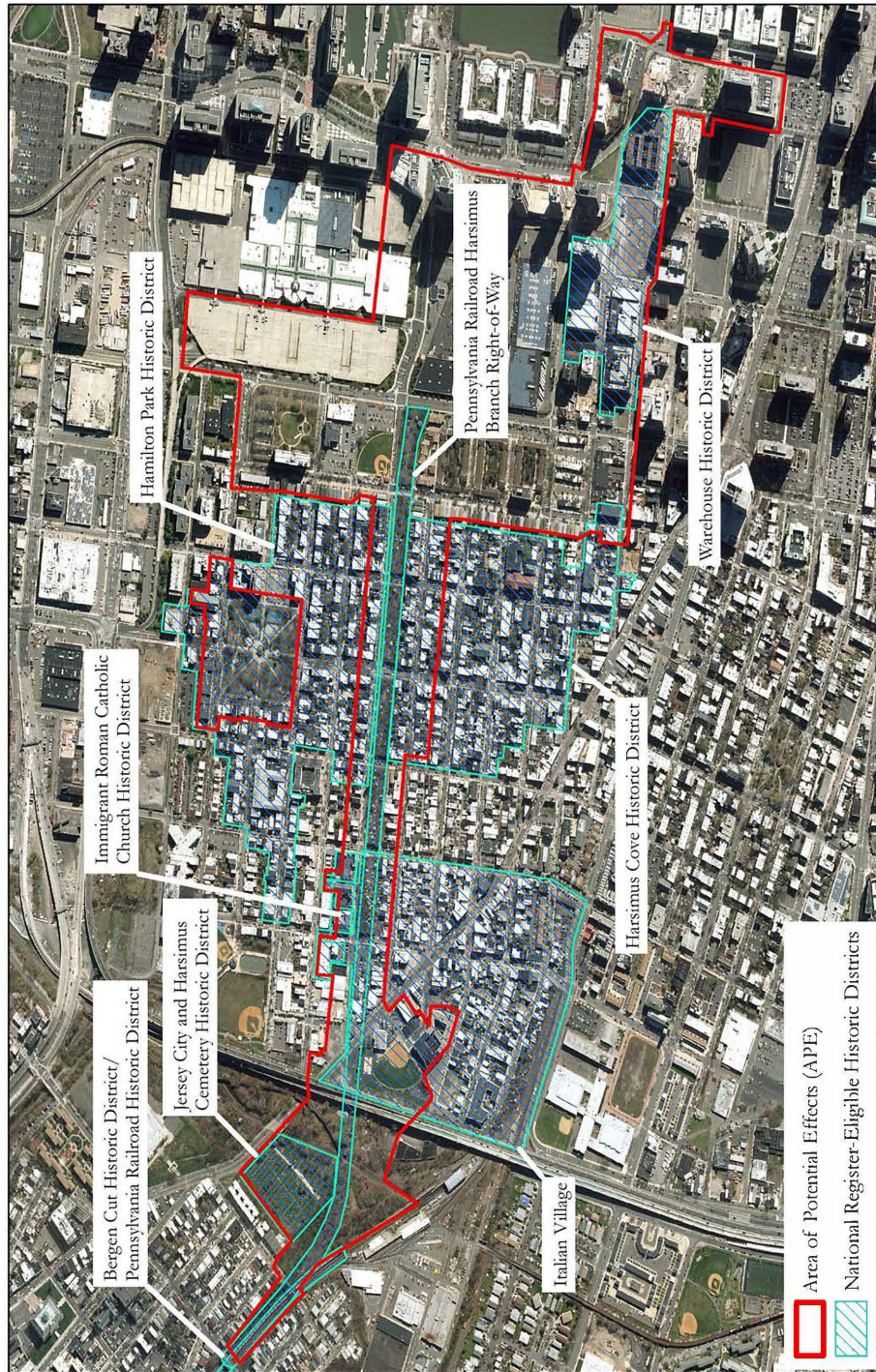
APPENDIX A – AREA OF POTENTIAL EFFECTS MAPPING



APPENDIX B – HISTORIC PROPERTY LOCATION MAPS



Individual Historic Properties within the APE



Historic Districts within the APE

-APPENDIX C – CONSULTING PARTIES and ORGANIZATIONS TO RECEIVE THE DOCUMENTATION PACKAGE

CONSULTING PARTIES

Advisory Council on Historic Preservation

Bergen Arches Preservation Coalition

Bike JC

City of Jersey City

Civic Jersey City

Conrail

Donna Dorgan

East Coast Greenway

Embankment Preservation Coalition

Friends of Liberty State Park

Hamilton Park Neighborhood Association

Harsimus Cove Association

Historic Jersey City & Harsimus Cemetery

Historic Paulus Hook Association

Hudson County Division of Planning

Hudson County Office of Cultural & Heritage
Affairs

Jersey City Landmarks Conservancy

Jersey City Parks Coalition

Marin Boulevard LLC, et al.

National Trust for Historic Preservation

New Jersey State Historic Preservation Office

New York/New Jersey Baykeeper

Pennsylvania Railroad Technical & Historical
Society

Powerhouse Arts District Neighborhood
Association

Preservation New Jersey

Rails-to-Trails Conservancy

The Van Vorst Neighborhood Association

The Village Neighborhood Association

OTHER ORGANIZATIONS

Jersey City Free Public Library

Roebling Chapter, Society for Industrial
Archaeology

RESPONSES TO COMMENTS ON THE REVISED DRAFT MOA (JUNE 14, 2023) AND THE SECTION 106 PROCESS

(Comments Received Between July 2023 and January 2024)

for the

Harsimus Branch Abandonment - AB 167 (Sub-No. 1189X)

Hudson County, New Jersey

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1. INTRODUCTION

The Surface Transportation Board's (Board) Office of Environmental Analysis (OEA) is continuing consultation under Section 106 of the National Historic Preservation Act (NHPA), and continuing the Resolution of Adverse Effects phase, Step 4 of the NHPA's Section 106 process. Previously, 19 properties were identified within the Area of Potential Effects (APE) that are either listed in or eligible for listing in the National Register of Historic Places, and the New Jersey Historic Preservation Office (SHPO) concurred with OEA's determination that all of these historic properties remained eligible (January 17, 2020). OEA also determined that the proposed abandonment could potentially have an Adverse Effect on historic properties, and the SHPO concurred with this finding (January 17, 2020).

On October 14, 2020, OEA circulated a Draft Memorandum of Agreement (Draft MOA) for review and comment. OEA then presented and discussed the Draft MOA with the consulting parties at a meeting on October 27, 2020. Between March, 2021 and August, 2022, the Section 106 process was paused while the Board evaluated whether there was a Section 110(k) violation of the NHPA. In August 2022, the Board determined there was no Section 110(k) violation, and in January 2023, after a court challenge to the Section 110(k) decision was dismissed, OEA restarted the Section 106 process with the SHPO, the Advisory Council on Historic Preservation (ACHP), the consulting parties, and the public. OEA held a Section 106 consulting parties meeting on June 8, 2023, where it updated all the parties on the status of the case, and on June 14, 2023, distributed a revised Draft MOA to all of the consulting parties along with a table summarizing all previously submitted comments on the Draft MOA and OEA's responses. These materials were also posted on the Board's website (as are all documents and correspondence).

OEA received extensive comments on the revised Draft MOA in the summer and fall of 2023, and on September 28, 2023, held a Section 106 virtual public meeting to give the public an additional opportunity to provide input on the Section 106 process. This meeting was widely advertised and promoted, which resulted in approximately 400 registrants. OEA then analyzed all of the comments received on the revised Draft MOA, including comments submitted in writing, via email, and public comments recorded during the public meeting. OEA has revised the June 14, 2023 Draft MOA and is now providing this Response to Comments Document to accompany the Final Memorandum of Agreement (Final MOA), which is being circulated to all of the Section 106 consulting parties. The Final MOA is also being made available to the general public on the Board’s website (www.stb.gov).

2. COMMENT ANALYSIS PROCESS

This comment/response document responds to the 109 written comments on the revised Draft MOA that OEA received between July 2023 and January 2024, as well as the 76 comments from individuals who spoke during the public meeting on September 28, 2023. Comments received prior to July 2023 were previously addressed in the revised Draft MOA package that OEA circulated on June 14, 2023, and are not repeated in this document.

Section 3.1 below is a narrative response to common requests for actions by OEA that are outside the scope of the Section 106 process and/or the Board’s jurisdiction. Section 3.2 is a comment/response chart that groups comments/responses by topic.

3. RESPONSES TO COMMENTS

3.1 RESPONSES TO REQUESTS FOR OEA TO TAKE ACTIONS OUTSIDE THE SCOPE OF THE HISTORIC REVIEW PROCESS AND/OR THE BOARD’S JURISDICTION

Several questions have arisen repeatedly regarding OEA’s role in abandonment proceedings and the limits of the Board’s jurisdiction. Although these issues have previously

been addressed,¹ OEA will provide an overall summary here to assist the public and clarify why certain requests for OEA to take actions during the Section 106 review process are beyond the scope of the historic review process and the Board's regulation.

Board Jurisdiction and Processes

The Board has jurisdiction over transportation by rail carrier over rail lines that are part of the interstate rail network. 49 U.S.C. § 10501. The scope of the Board's jurisdiction is defined by the ICC Termination Act of 1996, as amended (ICCTA). 49 U.S.C. §§ 10101, 10501, 10901, 10903, 11323. As part of the Board's economic regulation of the interstate rail network, the Board authorizes entry into and exit from the interstate rail system and regulates railroad acquisitions and mergers, rail service disputes, and rail rates. *Id.*

As stated, the Board has jurisdiction over exit from the interstate rail system, and railroads must come to the Board for prior approval to abandon a rail line. 49 U.S.C. §§ 10903, 10502. Under 49 U.S.C. § 10906, however, Board authority is not required for the abandonment or discontinuance of ancillary "spur" or switching track. Once the Board authorizes an abandonment of a rail line, the railroad generally has one year to notify the Board that it has exercised that authority and consummated the abandonment. 49 C.F.R. § 1152.29(e)(2). After the railroad consummates the abandonment, the line is no longer part of the interstate rail network and the Board has no jurisdiction over the rail line. *Preseault v. ICC*, 494 U.S. 1, 5 n.3 (1990); *RLTD Ry. Corp. v. STB*, 166 F.3d 808, 814 (6th Cir. 1999); *Consol. Rail Corp. v. STB*, 93 F.3d 793, 797 (D.C. Cir. 1996). Authorization to abandon a long out-of-service rail line is generally a simple process, and thus, the Board's regulations

¹ See e.g. EO-33212 (2/21 Email from OEA to ACHP and SHPO), EO-3311 (2/20 Letter from OEA to ACHP), EO-3818 (6/23 Response to Comments on MOA).

contemplate a quick resolution. *See* 49 C.F.R. § 1152.50 (establishing expedited 60-day process for lines on which there has been no rail service for at least two years).

Before the Board can make its decision whether to grant or deny abandonment authorization, it must comply with various environmental laws, including the National Environmental Policy Act (NEPA) and NHPA. *See* 49 C.F.R. § 1105.1. The Board has delegated responsibility for conducting the environmental and historic review to OEA. 49 C.F.R. § 1105.2. Once OEA's environmental and historic review is complete, the entire record from the environmental and historic analysis is part of the record that will be considered when the Board makes its decision on whether to grant or deny abandonment authorization. 49 C.F.R. § 1105.10(f). Because the Board's jurisdiction ends upon consummation of abandonment, historic conditions need to be satisfied before a carrier consummates any abandonment authority and jurisdiction ends. *See Missouri—Kansas-Texas R.R. Co.—Abandonment—in St. Charles, Warren, Montgomery, Callaway, Boone, Howard, Cooper and Pettis Ctys., MO—Petition for Declaratory Order*, AB 102 (Sub No. 13) (STB served July 13, 2010).

In this proceeding, OEA is still conducting the historic review under Section 106 of the NHPA. OEA has already completed the required steps of identifying historic properties and effects. OEA now intends to complete the last step in the Section 106 process by finalizing and circulating for signature the Final Memorandum of Agreement (Final MOA) (the required signatories being OEA, the Advisory Council on Historic Preservation, the New Jersey State Historic Preservation Office, and Conrail). Once the Section 106 process is complete, the Board will consider the environmental and historic record (including any OEA recommendations for mitigation conditions), along with the record on the transportation merits, when making its decision regarding whether to grant or deny abandonment authority.

Specific Comments

1. *Imposing NHPA Conditions on Use of Property After Abandonment*

Multiple commenters have asked OEA to recommend imposing historic preservation conditions under NHPA that would limit or dictate use of the rail property post-abandonment (if the Board ultimately decides to grant authority).² However, “[w]here historic property is involved, [the Board’s] ability to protect it is very limited.” *In re Implementation of Env’t Laws*, 7 I.C.C.2d 807, 828 (1991). The agency has made clear that it “do[es] not have the power to force a railroad to sell (or donate) its property, or impose a restrictive covenant upon the deed, as a condition to obtaining abandonment or acquisition authority.” *Id.* at 829. Accordingly, “as a practical matter, documentation of the historic resources involved in the proposal under review (before they are altered or removed) is the only form of nonconsensual mitigation available” to the Board.³ *Id.*; see also *Section 110(k) Decision*, slip. op. at 15 n.30. (“[B]ecause of the limits of the Board’s jurisdiction over interstate rail lines, which ends upon the consummation of abandonment, the historic preservation mitigation that the Board can impose in an abandonment proceeding is generally limited to requiring documentation.”).

² As the Board noted previously in this proceeding, “requests to impose conditions or other relief as part of any grant of abandonment authority . . . will be addressed, as appropriate, by the Board in its final decision in this proceeding.” *Consol. Rail Corp.—Abandonment Exemption—In Hudson Cty., N.J.*, AB 167(Sub-No. 1189X) et al. (*Section 110(k) Decision*), slip. op. at 15 n.30 (STB served Aug. 22, 2022).

³ Documentation under Section 106 can include requiring the railroad to prepare historic resource surveys and maps of the historic property, research and document the historic context of the area, and install interpretive signage depending on the facts and historic resources involved. *In re Implementation of Env’t Laws*, 7 I.C.C.2d at 828-29. In this case, the documentation OEA has included in the Final MOA requires Conrail to (1) draft a detailed document providing historic context for the Harsimus Branch (with photographs/maps/engineering drawings, etc.) after developing additional field documentation and conducting archival research; (2) create interpretive signage documenting the history of the rail line and associated historic properties; and (3) develop historical and educational materials and utilize those materials to prepare a fully developed webpage.

Rail property is private property over which the Board has economic regulatory authority only while it is part of the interstate rail system within the Board's jurisdiction. Moreover, while a rail line is under the Board's jurisdiction, the owner of that private rail property line may modify rail structures on the line without Board authority. *Mo. Cent. R.R.—Acquis. & Operation Exemption—Lines of Union Pac. R.R.*, FD 33508 et al., slip op. at 7 (STB served Sept. 14, 1999), *petition for review denied*, *Lee's Summit, Mo. v. STB*, 231 F.3d 39 (D.C. Cir. 2000) (rail line owners "may repair, replace, rehabilitate, or rebuild the line without Board authority.").⁴ There is nothing in Section 106 of the NHPA that expands a federal agency's authority. *See* 54 U.S.C. § 300101 *et seq.*

Further, the Board has found that imposing involuntary post-abandonment land use restrictions under Section 106 on private property without compensation would constitute an unconstitutional taking of private property under the Fifth Amendment. *See In re Implementation of Env't Laws*, 7 I.C.C.2d at 828-29; *see also Preseault*, 494 U.S. at 13-15 (addressing when Fifth Amendment takings occur under the Trails Act). As a result, the historic preservation mitigation that the Board can impose in an abandonment proceeding is generally limited to requiring documentation and does not include imposing restrictions on use of private property after abandonment is consummated and the Board's jurisdiction ends. *In re Implementation of Env't Laws*, 7 I.C.C.2d at 828-29; *Consol. Rail Corp.—Aban.*, 4 S.T.B. 312, 318 (1999); *Section 110(k) Decision*, slip. op. at 15 n.30 (STB served Aug. 22, 2022).

⁴ *See also Swanson Rail Yard Terminal*, FD 35424 (STB served June 14, 2011) ("no Board authority is necessary when a carrier proposes to improve or relocate an existing line without extending the railroad's territory"); *City of Detroit v. Canadian Nat'l Ry.*, 9 I.C.C.2d 1208, 1219 (1993), *aff'd sub nom. Detroit/Wayne Cty. Port Auth. v. ICC*, 59 F.3d 1314 (D.C. Cir. 1995) ("Many carrier improvements to their existing system lie outside our jurisdiction" even though they can be extensive).

For the same reasons, OEA cannot, as some commenters have requested, include in the Final MOA compliance with a settlement agreement between private parties regarding post-abandonment use of the rail property. The Board cannot impose an involuntary historic condition limiting post-abandonment use of the property that constitutes the Harsimus Branch and the Embankment. Moreover, even if the Board could require compliance with a settlement agreement, nothing in the record supports the conclusion that a settlement agreement will be reached within the foreseeable future given that the possibility of settlement was raised at least as early as 2016 without any resolution to date. Further delay to these proceedings for a future potential settlement agreement would not be warranted.

2. Conrail's Sale of the Embankment Without Board Authority

Some commenters have asserted that during the Section 106 process, OEA and the Board have failed to hold Conrail accountable for its improper sale of the Embankment (from Marin Boulevard to Brunswick Street) prior to seeking and obtaining Board authority. But Section 106 only imposes obligations on the federal agency undertaking an action to ensure that both the agency and the public are informed about the potential impacts of the agency action on historic resources. The provision of the NHPA that directly addresses an applicant's conduct with respect to historic resources is Section 110(k) (anticipatory demolition).⁵

Because Section 110(k) goes to the ultimate substantive decision of whether to grant or deny a request for authority, it is a question for the Board and not part of OEA's historic

⁵ Section 110(k) provides that a federal agency "shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant that, with intent to avoid the requirements of [Section 106 of NHPA], has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, has allowed the significant adverse effect to occur, unless the agency, after consultation with [ACHP], determines that circumstances justify granting the assistance despite the adverse effect created or permitted by the applicant." 54 U.S.C. § 306113.

review. *See e.g., Union Pac. R.R.—Constr. & Operation Exemption—in Maricopa Cnty., Ariz.*, FD 36501 (STB served Dec. 11, 2023); *Section 110(k) Decision* (both pausing the historic review to allow the Board to address Section 110(k)). Here, after providing an opportunity for discovery and for all interested parties to provide submissions, the Board has already resolved the question of whether the sale in this proceeding violated Section 110(k). The Board found, among other things, that (1) at the time of the sale of the Embankment, Conrail believed that the Harsimus Branch was ancillary § 10906 track that did not require Board authority to abandon, (2) Conrail did not reach that conclusion in reckless disregard of the facts, and (3) there was no violation of Section 110(k).⁶ *Section 110(k) Decision*, slip op. at 10-13. Further, because the involuntary type of historic preservation mitigation measures that the Board can require are generally limited to documentation, the unauthorized sale of the Harsimus Branch did not adversely affect the Board’s ability to impose historic conditions. *See id.* at 15. Thus, as it relates to the NHPA, the Board has addressed the sale of the Embankment.

OEA further notes that, after the Board issued a declaratory order finding that the Harsimus Branch was in fact a railroad line requiring Board abandonment authority and the court agreed, Conrail promptly sought remedial abandonment authority for the Harsimus Branch.⁷

⁶ The Board also addressed the allegation regarding the removal of a stanchion after the sale, determining that (1) no stanchion related to the Embankment was removed after the sale and (2) an abutment removed in 2006 was in an area not identified as potentially historically significant until 2018. *Section 110(k) Decision* at 14-15.

⁷ The Board has permitted parties to obtain after-the-fact licensing authority for a transaction when the failure to seek approval was without malice and by mistake. *See e.g., Winthrop Sargent—Acquis. of Control—Plymouth & Brockton St. Ry., MCF 21089, slip op. at 2* (STB served Jan. 3, 2020) (citing *Allied Indus. Dev. Corp.—Pet. for Declaratory Order*, FD 35477, slip. op. at 6 (STB served Sept. 17, 2015); *Gen. Ry.—Exemption for Acquis. of R.R.*

3. *Public Use Condition*

Some commenters have urged OEA to impose a public use condition as a historic preservation condition under Section 106. This request misunderstands the public use condition process. OEA has no authority to issue public use conditions, which, in any event, are completely separate from the Section 106 process. Under 49 U.S.C. § 10905 and 49 C.F.R. § 1152.28, the public use condition process permits the Board, upon request and as part of the merits proceeding deciding whether to authorize abandonment, to make a determination that the property is appropriate for use for public purposes. 49 U.S.C. § 10905; 40 C.F.R. § 1152.28. And, if the Board makes that public use finding as part of the abandonment proceeding, it may place a condition on the abandonment preventing that property from being sold for a period of up to 180 days unless the property has first been offered for sale for public purposes. *Id.* Thus, the determination of whether a public use condition may be appropriate is one made by the Board as part of its abandonment determination and is not a condition that can be imposed by OEA under Section 106. Further, the public use condition provision is not, as some commenters appear to believe, authority for the Board to require use of the property for public purposes after abandonment, but rather provides the *opportunity* (a maximum of 180 days) for a sale for public purposes before the property can be sold for other purposes. *See id.*

Line—in Osceola & Dickinson Cntys., Iowa, FD 34867, slip op. at 5 (STB served June 15, 2007); *Savannah Indus. Transp., LLC—Operation Exemption—in Effingham Cnty., Ga.*, FD 36489, slip op. at 2-3 (STB served Aug. 1, 2023).

3.2 RESPONSES TO COMMENTS

Commenter(s)	Comment Topic	Summary of Comment	Response
Comments on Matters Outside of the Scope of the Section 106 Review Process			
Charles Montange (City of Jersey City (JC) Rails to Trails Conservancy (RTC) Harsimus Embankment Preservation Coalition (EPC)), Beatriz Bofill (Bike JC (BJC)), Anne Percoco, Claire Perrault, Stephen Gucciardo (Embankment Preservation Coalition (EPC)), Robb Kushner, Tom Monahan (Harsimus Cove Association (HCA)), Nancy and John Perls, Maureen Crowley (EPC), James Solomon (OJCC/WE), Michael Darling, Sam Pesin (FLSP), William Matsikoudis, Barbara Seddon, Arthur Cook, Joanne Gucciardo, Laura Skolar-Gamarello (Jersey City Parks Coalition (JCPC)),	Prior sale of the Embankment property	Commenters raised concerns related to Conrail's prior sale of the Embankment property.	See Section 3.1, pages 7-8.

Commenter(s)	Comment Topic	Summary of Comment	Response
(JCPC), Katherine Marcopul (SHPO), Maggie O'Neill (JC), Liliane Freitas, Tom Slattery (JC), Ryan Williams (EPC, Bike Jersey City (BJC), Hudson County Complete Streets (HCCS)), David Czehut, Julianna Dawson, John Gomez (Jersey City Landmarks Conservancy (JCLC), Peter Zirnis, Caryn Rogoff, Colin Egan, Eleana Little, Joann Brennan McKee, Jennifer Meyer, Paula Mahayosn (Jersey City Parks Coalition (JCPC)), Tom Sexton (Rails to Trails (RTC)), Diane Atwell (Hamilton Park Neighborhood Association (HPNA)), Diane Tider, Diane Kaese (Historic Paulus Hook Association (HPHA)), Rochelle Myers-Hoffman (We CARE Movement, Inc. (WCMI)), William DiMotta, Rochelle Magno, James Lee, Will			

Commenter(s)	Comment Topic	Summary of Comment	Response
Stamatis, Jake Lefeber, Aaron Underwood (HPNA), Gerry Bakirtjy (Van Vorst Neighborhood Association (VVNA)), Christopher Perez (Jersey City Landmarks Conservancy (JCLC)), Stephanie DiBrita, Smaranda Grajdieru, Rebecca Missel (NJ-08 for Progress (NJ08P)), Andrea Ferster (RTC)			
Katherine Marcopul (SHPO)	Abandonment decision	Commenter requested an explanation of the process by which the Board would grant or deny abandonment authority.	See Section 3.1, pages 3-4.
Maureen Crowley (EPC), Charles Montange (JC, RTC, EPC)	Public use condition	Commenter noted that any project Memorandum of Agreement (MOA) should include a public use condition.	See Section 3.1, page 9.
Stephen Gucciardo (EPC), Steve Lipski, Maureen Crowley (EPC), Charles Montange (JC, RTC, EPC)	Settlement agreement	Commenters raised issues about a private settlement agreement, such as the Board's authority to enforce any post-abandonment settlement agreements and a desire for the LLC's and developers to sign the settlement agreement before more litigation ensues. Commenters further noted that OEA should be supportive of and facilitate reaching a settlement agreement, and that any such agreement should be included in the project MOA.	See Section 3.1, page 7.
Barkha Patel, Maureen Crowley (EPC), Austin	Post-abandonment development and restrictions	Commenters noted that the MOA should include more about the impacts of redevelopment plans,	OEA's effects analysis assessed three reasonably foreseeable redevelopment scenarios that could occur if abandonment authorization is granted by the Board.

Commenter(s)	Comment Topic	Summary of Comment	Response
Sakong (JCHPC), Maggie O'Neill (JC), Colin Egan, Elizabeth Merritt (National Trust for Historic Preservation (NTHP)), Eleana Little, Robb Kushner, Paula Mahayosn (JCPC), Annie Kessler (HCA), Natalia Gallagher, Stephanie Daniels (HPHA), Eileen Ferara, Beatriz Bofill (BJC), Joanne Gucciardo, Stephen Gucciardo (EPC), Charles Montange (JC, RTC, EPC)		and that preservation mitigation measures addressing such redevelopment activities should be in the project MOA.	Post-abandonment development plans and their potential effects on historic properties have been extensively documented in the Cultural Resources Effects Assessment Report (March 2019) and in the Cultural Resources Effects Assessment Report Addendum (November 2019). The Final MOA documents the project's potential adverse effect and references the aforementioned reports for more details of the effects evaluation process. Additional detail about post-abandonment development plans in the Final MOA is not necessary. In response to the request to include post-abandonment preservation conditions on redevelopment, see also Section 3.1, pages 5-7.
Anne Percoco, Claire Perrault, Tom Monahan (HCA), Jessica Costantine, Peter Delman, James Solomon (OJCC/WE), Austin Sakong (JCHPC), Sean Gallagher, Michael Darling, Sam Pesin (FLSP), Russell Angle, Sharon Torres, Dr. Frank Gallagher (RU), Christina Donnelly, Joanne Gucciardo, Maggie O'Neill (Jersey City)	Preservation of the Embankment in perpetuity	Commenters noted that the Embankment should be preserved in perpetuity for a variety of reasons.	See Section 3.1, pages 5-6.

Commenter(s)	Comment Topic	Summary of Comment	Response
(JC)), Liliane Freitas, David Czehut, Clara Richardson (Brunswick Community Garden (BCG)), Wynn Wagenseil, Ayla Schermer (BJC), Elma Mukaida, Faith Lau, Marina Conlin, Emmanuelle Morgen (HCCS), Patricia Giordan, Eleana Little, Tony Borelli (BJC), Jennifer Meyer, Gabby Feliu (HCA), Ben Schwartzbach, Paula Mahayosn (JCPC), Annie Kessler (HCA), Melida Rodas, Natalia Gallagher, Stephanie Daniels (Historic Paulus Hook Association (HPHA)), Kamal Shah, Donna Ristorucci, Joey O'Rourke, Elvin Dominici, Kaya Stein, William Raymond, Carl Johansson, Diane Tider, Maryanne Serafin, Bethany Wall, Ashwani Vasishth, Eileen Ferara, Diane Kaese (HPHA), Andrew Saccomanno, Rochelle Myers- Hoffman (WCMI),			

Commenter(s)	Comment Topic	Summary of Comment	Response
Jennifer Dickinson, Ellen Glynn, Roger Heitmann, Jerry Homan, Debra Kagan (New Jersey Bike & Walk Coalition (NJBWC)), Vivek Viswanathan, Rochelle Magno, Dennis Murphy, Wayne Zimnoch, Lenny Spiro, Thomas Young, Evan Bender, Richelle Reyes, Agnes de Bethune, Bobby, James Lee, Beatriz Bofill (BJC), Galina Espinoza, Michael Kopf, Will Stamatis, Lisa Schneider, Jake Lefeber, Charles Montange (JC, RTC, EPC), Margaret Kessler, Craig Buckbee, James Conlin, Aaron Underwood (HPNA), Rahid Cornejo (Bergen Arches Preservation Coalition (BAPC)), Donna Dorgan, Stephen Gucciardo (EPC), Christopher Perez (JCLC), Andrea Ferster (RTC), Laura Skolar-Gamarello			

Commenter(s)	Comment Topic	Summary of Comment	Response
(JCPC), Valeriya Efimova, Hadi Chemaly, Stephanie DiBrita, Katherine Glavin Auteri, Smaranda Grajdieru, Abhilasha Meshram (Sustainable Jersey City (SJC)),			
Stephen Gucciardo (EPC), Tom Monahan (HCA), Sean Gallagher, Cynthia Sanford, William Matsikoudis, Barbara Seddon, Ben LaGue, Russell Angle, Donna Dorgan, John Delman, Christina Donnelly, Maggie O'Neill (JC), Tom Slattery (JC), Katrina Borisjuk, Ryan Williams (EPC, BJC, HCCS), David Czehut, Caryn Rogoff, Colin Egan, Emmanuelle Morgen (HCCS), Eleana Little, Steve Lipski (Jersey City Planning Board (JCPB)), Paula Mahayosn (JCPC), Annie Kessler (HCA), Natalia Gallagher, Stephanie Daniels (HPHA), Thomas Shen, Yraida Aponte-Lipski, Joey O'Rourke, Diane	Denial of abandonment if the Embankment can't be preserved.	Commenters stated that the Board should not allow abandonment if it cannot mitigate adverse effects and preserve the Embankment. They also requested that the Board place restrictions on the future use of the Embankment. Commenters noted that the Draft MOA does not ensure preservation of the Embankment.	See Section 3.1, pages 5-6.

Commenter(s)	Comment Topic	Summary of Comment	Response
Atwell (HPNA), Diane Tider, Eileen Ferara, Diane Kaese (HPHA), Debra Kagan (NJBWC), James Lee, Katy Lyness, Will Stamatis, Jake Lefeber, Charles Montange (JC, RTC, EPC), Donna Ristorucci, Maryanne Serafin, Devika Brown, Kevin Brown, Peter Gliatto, Craig Buckbee, Marina Conlin, Chris Cordell, Steve Krinsky, Richard Paget, Andrea Underwood, Suzanne Winkler, Arthur Cook, Alexander Brody, Susan Flores, Joanne Gucciardo, Joseph Vita, Geoffrey Eisele, Gail Kutac, Dina Lucchesi, Paul-Martin Maki, Vi Nguyen, David Silverman, Claire Suh, Aaron Underwood (HPNA), Wai-Sing Chew, Elizabeth Drenning, Nisha Ahamed, Irene Barnaby, Gary Bucca, Carol Massar, Greg Remaud (New York/New Jersey			

Commenter(s)	Comment Topic	Summary of Comment	Response
Baykeeper (NYNJB)), Andrea Ferster (RTC), Laura Skolar-Gamarello (JCPC), Mia Scanga, Danny Victor, Gabriel Senbei, David Yeager, Stephanie DiBrita, Robert Garner, Katherine Glavin Auteri, Smaranda Grajdieru, Rebecca Missel (NJ08P), Scott Moulaison, Susan Schmidler, Robert Garner			
Donna Dorgan, Tim Binder, Valeriya Efimova	Overdevelopment	Commenter noted that overdevelopment is a problem in Jersey City and that the future development of Block 1 would contribute to that issue.	Comment noted.
Anne Percoco, Claire Perrault, Barkha Patel, Nancy and John Perls, Jessica Costantine, Peter Delman, James Solomon (OJCC/WE), Greg Remaud (NYNJB), Austin Sakong (Jersey City Historic Preservation Council (JCHPC)), Sean Gallagher, Michael Darling, Cynthia Sanford, Sam Pesin (Friends of Liberty	Benefits of preserving the Embankment	Commenters noted a variety of benefits from preserving the Embankment property, post-abandonment including: green space/open space, public park, recreational rail/trail use, cultural landmark, possible transportation corridor, reduction in climate change impacts, improved air quality, reduction in flooding and storm water issues, reduction in heat/global warming, increased biodiversity, improved mental and physical health, beneficial economics, equitable mobility, quality of life, and educational benefits, among others.	Comments noted. See Section 3.1, pages 5-6.

Commenter(s)	Comment Topic	Summary of Comment	Response
State Park (FLSP)), William Matsikoudis, Donna Dorgan, Sharon Torres, Dr. Frank Gallagher (RU), Arthur Cook, John Delman, Christina Donnelly, Irene Barnaby, Liliane Freitas, Katrina Borisjuk, Ryan Williams (EPC,BJC, HCCS), David Czehut, Tom Ogorzalek, Julianna Dawson, Clara Richardson (BCG), Wynn Wagenseil, Steve Krinsky, Elma Mukaida, Faith Lau, Caryn Rogoff, Marina Conlin, Emmanuelle Morgen (HCCS), Patricia Giordan, Eleana Little, Tony Borelli (BJC), Robb Kushner, Paula Mahayosn (JCPC), Annie Kessler (HCA), Melida Rodas, Natalia Gallagher, Kamal Shah, Thomas Shen, Joey O'Rourke, Maryanne Serafin, Bethany Wall, Eileen Ferara, Ellen Glynn, Jerry Homan, Debra Kagan (NJBWC), Dennis Murphy, Lenny Spiro, Thomas Young,			

Commenter(s)	Comment Topic	Summary of Comment	Response
Agnes de Bethune, Tom Monahan (HCA), James Lee, Beatriz Bofill (BJC), Galina Espinoza, Michael Kopf, Will Stamatis, Lisa Schneider, Peter Gliatto, Tim Binder, Nisha Ahamed, Rahid Cornejo (BAPC), Andrea Ferster (RTC), Ayla Schermer (BJC), Valeriya Efimova, Hadi Chemaly, Katherine Glavin Auteri, Smaranda Grajdieru, Abhilasha Meshram (SJC), Susan Schmidler, Stephanie DiBrita, Katherine Glavin Auteri			
Nancy and John Perls, Peter Delman, James Solomon (Office of Jersey City Councilman/Ward E (OJCC/WE)), Sean Gallagher, William Matsikoudis, Barabara Seddon, Ben LaGue, Donna Dorgan, Sharon Torres, John Delman, Christina Donnelly, Irene Barnaby, Laura Skolar-Gamarello (JCPC), Liliane Freitas,	Impacts of removing the Embankment	Commenters noted a variety of issues that could arise if the Embankment property was demolished, post-abandonment including: reduction in open space and parkland, reduced air quality, increase in flooding and stormwater issues, reduction in biodiversity, removal of cultural landmarks (impacts to adjacent historic districts), reduction in trail and transportation options, increase in local temperatures contributing to global warming, construction impacts, reduction in property values, and damage to adjacent properties, among others.	Comments noted.

Commenter(s)	Comment Topic	Summary of Comment	Response
Katrina Borisjuk, David Czehut, Julianna Dawson, Wynn Wagenseil, Elma Mukaida, Faith Lau, Caryn Rogoff, Natalia Gallagher, William DiMotta, Ellen Glynn, Roger Heitmann, Lenny Spiro, Bobby, Galina Espinoza, Michael Kopf, Jake Lefeber, Danny Victor, Margaret Kessler, Donna Ristorucci, Maryanne Serafin, Devika Brown, Kevin Brown, Peter Gliatto, Craig Buckbee, Marina Conlin, Chris Cordell, Richard Paget, Andrea Underwood, Suzanne Winkler, Alexander Brody, Susan Flores, Joseph Vita, Geoffrey Eisele, Gail Kutac, Dina Lucchesi, Paul-Martin Maki, Vi Nguyen, David Silverman, Claire Suh, Wai-Sing Chew, Elizabeth Drenning, Nisha Ahamed, Gary Bucca, Carol Massar, Greg Remaud (NYNJB), Mia Scanga, Valeriya			

Commenter(s)	Comment Topic	Summary of Comment	Response
Efimova, David Yeager, Stephanie DiBrita, Robert Garner, Smaranda Grajdieru, Scott Moulaison, Susan Schmidler			
Donna Dorgan	Uniform restrictions should be placed on the entire Embankment	Commenter noted that each Embankment block should have uniform redevelopment restrictions placed on it by the Board and that Block 1 (potential development location) should not be treated differently.	See Section 3.1, pages 5-6.
Peter Pfohl (Marin Boulevard LLC (MB)), Eugene Paolino (Albanese Organization (AO))	Abandonment won't lead to destruction of the Embankment	Commenters stated that the Board's potential granting of abandonment authority would not lead to the demolition of the Embankment, as it is protected under Jersey City planning and zoning processes.	Comments noted.
Tom Slattery (JC)	Conrail's participation in preservation efforts after abandonment	Commenters noted that once abandonment has been authorized, Conrail would have no reason to participate in preservation efforts.	The execution of the Final MOA would legally bind Conrail to comply with its terms. Post-abandonment land use is outside the scope of OEA's historic review process. See Section 3.1, pages 5-6.
Maureen Crowley (EPC)	Section 110(k) of the National Historic Preservation Act (NHPA)	Commenter disagreed with the Board's conclusion that no anticipatory demolition by Conrail occurred in this case.	Comment noted. In a decision issued on August 22, 2022, the Board, after allowing for public input by all interested parties, found that there was no violation of Section 110(k) of the NHPA. See Section 3.1, pages 7-8.
Peter Pfohl (MB), Eugene Paolino (AO)	Recognizing the limits of the Board's jurisdiction over rail lines, as well as the absence of a role in local zoning or post-abandonment preservation and/or redevelopment activities	Commenters stated that the Board has no jurisdiction over post abandonment redevelopment, nor does the Board have any control over, or input into, local land development and zoning. Additionally, the commenters stated that the development of the Embankment and associated zoning is controlled by the City of Jersey City. Finally, the commenters noted that recently passed zoning by the Jersey City Council mandates	Comments noted.

Commenter(s)	Comment Topic	Summary of Comment	Response
		that Embankment Blocks 2 through 6 be used as a park, subject to a settlement agreement and that the Embankment is protected under local Preservation Act protections.	
Peter Pfohl (MB), Eugene Paolino (AO)	Board should authorize abandonment	Commenters supported the timely completion of the Section 106 process and the Board's authorization of the abandonment of the Harsimus Branch.	Comments noted.
Michael Rosenthal (Conrail)	Post-abandonment land use	Commenter stated that the Board should not consider post-abandonment uses.	Comment noted. See Section 3.1, pages 5-6.
Peter Pfohl (MB), Eugene Paolino (AO)	Public engagement	Commenters noted that community engagement on the project has been long-standing, and as development plans were being presented and considered, there were numerous public planning board, zoning board, and Jersey City Municipal Council meetings.	Comments noted.
Maureen Crowley (EPC)	Environmental Impact Statement (EIS) versus Environmental Assessment (EA)	Commenter noted that it would have been more appropriate for OEA to have prepared an EIS instead of an EA.	Comment noted.
Maureen Crowley (EPC)	Challenging Section 110(k) decision	Commenter noted that City et al. reserved the right to challenge the Board's Section 110(k) decision, and this should be noted in the MOA.	The Board's Section 110(k) decision is an interlocutory decision and will be subject to judicial review under the Hobbs Act after the Board issues its final decision on the abandonment. The right to challenge the Section 110(k) decision was not added to the Final MOA as it is outside of OEA's historic review process.
Comments on OEA's Section 106 Process			
Maureen Crowley (EPC), Peter Delman, Michael Darling, Sam Pesin (FLSP), Donna Ristorucci, Rochelle	Public involvement inadequate	Commenters stated that the public has not been meaningfully engaged during the Section 106 process. A number also commented that OEA did not fully engage the Section 106 consulting parties sufficiently on ways to avoid, minimize, or mitigate	Since 2008, OEA has provided extensive opportunities for public participation during the environmental and historic review process. These opportunities have included ten public comment periods on Section 106 and NEPA documents issued by OEA; six in-person and online

Commenter(s)	Comment Topic	Summary of Comment	Response
Myers-Hoffman (WCMI), Margaret Kessler, Maryanne Serafin, Devika Brown, Kevin Brown, Liliane Freitas, Peter Gliatto, Tim Binder, Craig Buckbee, Marina Conlin, Chris Cordell, Richard Paget, Andrea Underwood, Suzanne Winkler, Arthur Cook, Alexander Brody, Susan Flores, Joanne Gucciardo, Joseph Vita, Geoffrey Eisele, Gail Kutac, Dina Lucchesi, Paul-Martin Maki, Vi Nguyen, David Silverman, Claire Suh, Wai-Sing Chew, Elizabeth Drenning, Eric Hofmann (Village Neighborhood Association (VNA)) , Nisha Ahamed, Gerry Bakirtjy (VVNA), Irene Barnaby, Gary Bucca, Donna Dorgan, Christopher Perez (JCLC), Diane Kaese, Carol Massar, Andrea Ferster (RTC), Mia Scanga, Danny Victor, Gabriel Senbei, Robert		potential adverse effects. Finally, some also commented that the September 28, 2023 public meeting should have been in person, should have included a Spanish translator, and one commenter stated that there was insufficient outreach to Spanish speaking residents in the area concerning the September 28, 2023 public meeting.	meetings with the Section 106 consulting parties; and a public meeting on September 28, 2023 with approximately 400 registrants. In addition, OEA has undertaken continual consultation efforts with the 28 Section 106 consulting parties (representing local neighborhood associations, preservation and advocacy organizations, local agencies, the City of Jersey City, Hudson County, the SHPO and the Advisory Council on Historic Preservation (ACHP)). OEA also has posted all Section 106 and NEPA documents and correspondence on the Board’s website, thus making them available to all interested parties including the general public. The September 28, 2023 public meeting was extensively advertised and promoted, using direct mailings to hundreds of adjacent property owners, newspaper advertisements, online advertising, email outreach, and coordination with the consulting parties and City of Jersey City in promoting the meeting. The only request for bilingual services was not made until it was too late to provide a Spanish translator at the September 28th meeting. Opportunities for the public to comment were not limited to the public meeting and, both before and after the meeting, members of the public had the ability to comment on the Section 106 process and request language assistance.

Commenter(s)	Comment Topic	Summary of Comment	Response
Garner, Rebecca Missel (NJ08P), Scott Moulaison			
Andrea Ferster (RTC), Maureen Crowley (EPC)	Foreclosure of ACHP's ability to comment	Commenters stated that OEA's position that it is limited to documentation as a historic preservation mitigation measure in this abandonment amounts to an admission that the ability of the ACHP to comment has been foreclosed.	The ACHP has been a Section 106 consulting party since 2009 and has been actively providing comments and input on all aspects of the Section 106 process. Their ability to comment has not been foreclosed. With respect to the limits on the historic preservation mitigation measures that the Board can impose, see Section 3.1, pages 5-7.
Peter Pfohl (MB), Eugene Paolino (AO)	Public engagement	Commenters noted that the public has been fully involved and informed during the Section 106 process.	Comments noted.
Maureen Crowley (EPC), Andrea Ferster (RTC), Elizabeth Merritt (NTHP), Charles Montange (JC, RTC, EPC), Aaron Underwood (HPNA), Gerry Bakirtjy (VVNA), Christopher Perez (JCLC), Andrea Ferster (RTC), Diane Kaese	Section 106 process doesn't comply with the NHPA	Commenters noted that the Section 106 process and the MOA do not comply with the NHPA or the spirit of federal laws designed to protect historic resources. They further noted that the Board is proceeding without exploring options for mitigation of adverse effects and is not using the power of the Board to protect the Harsimus Branch. Finally, commenters noted that OEA's narrow construction of Board powers conflicts with its responsibilities.	OEA's historic review complies with Section 106 of the NHPA, and the SHPO has concurred on Step 1 (Initiation), Step 2 (Identification), and Step 3 (Assess Effects) of the Section 106 process. Execution of this Final MOA will finish Step 4 (Resolve Adverse Effects) and complete the Section 106 process. The Section 106 process has been ongoing since 2008 and has been extensive and thorough. OEA has included mitigation stipulations in the Final MOA that are appropriate and are within the agency's jurisdiction to impose. See Section 3.1, pages 5-6.
David Czehut, Michael Kopf, Donna Dorgan, Gabriel Senbei	Public engagement	Commenters noted that their properties adjoin the Embankment and that they have never been contacted about the potential impacts to their property.	Although some residents and property owners may not have been directly contacted, OEA has undertaken an extensive outreach program as part of the NEPA and Section 106 processes. The assessment of potential effects of the Board's granting abandonment authority were documented in the Cultural Resources Effects Assessment Report and Addendum (2019). Both of these documents were shared with the Section 106 consulting parties, publicly posted on the Board's website, and were

Commenter(s)	Comment Topic	Summary of Comment	Response
			available for review and comment. Further, the public meeting held on September 28, 2023 was widely advertised to ensure that all potentially interested parties had the opportunity to participate.
Diane Atwell (HPNA)	September 28, 2023 public meeting	Commenter stated that representatives for the Albanese Group and Marin Boulevard LLC should not have been at that meeting.	Comment noted. The September 28, 2023 meeting was open to the public and all attendees were welcome.
Peter Pfohl (MB), Eugene Paolino (AO)	Support for OEA's Section 106 process	Commenters stated that OEA's Section 106 process has been comprehensive and exhaustive.	Comments noted.
Maureen Crowley (EPC)	Native American outreach	Commenter noted that the project is located on lands once inhabited by native peoples and asked about tribal outreach.	In the 2009 Draft Environmental Assessment, OEA evaluated whether any federally recognized Tribes had ancestral connections to the project corridor. In doing so, OEA checked the Native American Consultation Database, which did not identify any Tribes with an interest. In addition, OEA conducted a full Phase IA Archaeological Survey of the APE for the proposed abandonment and determined that due to substantial modern disturbance and construction, there was low potential for any significant prehistoric materials here. OEA has received no comments or calls from Tribes, and no tribal entities have requested to participate in either the NEPA or the Section 106 processes.
Maureen Crowley (EPC)	Interested parties	Commenter provided a list of potential interested parties and raised a question about Tribal involvement.	OEA has continually updated the list of consulting parties and has updated the list of consulting parties appropriately. There has been appropriate Tribal outreach throughout the Section 106 and NEPA processes. To date, no Tribes have expressed an interest in the project.
Maureen Crowley (EPC), Katherine Marcopul (SHPO)	Voluntary mitigation	Commenters noted that the Board can consider voluntary mitigation but has refused to make it part of the Section 106 process, including the settlement agreement. Commenters requested	The Board does impose voluntary mitigation, which can sometimes be more far reaching than the mitigation that the Board could unilaterally impose. Voluntary mitigation that has been proposed here is included in the Final MOA, which, when executed, will be binding on Conrail. Over

Commenter(s)	Comment Topic	Summary of Comment	Response
		that the Board should explore this voluntary mitigation and make it binding.	the course of the project, OEA has continually encouraged the parties' efforts to execute an agreement to resolve the private property issues in this corridor.
Comments Specific to the MOA			
Anne Percoco, Claire Perrault, Stephen Gucciardo (EPC), Tom Monahan (HCA), Jessica Costantine, James Solomon (OJCC/WE), Austin Sakong (JCHPC), Sean Gallagher, Michael Darling, Cynthia Sanford, Sam Pesin (FLSP), Ben LaGue, John Delman, Christina Donnelly, Laura Skolar-Gamarello (JCPC), Katrina Borisjuk, Ryan Williams (EPC,BJC, HCCS), David Czehut, Peter Zirnis, Caryn Rogoff, Colin Egan, Emmanuelle Morgen (HCCS), Ben Schwartzbach, Natalia Gallagher, Tom Sexton (RTC), Thomas Shen, Joey O'Rourke, Eileen Ferara, Diane Kaese (HPHA), Debra Kagan (NJBWC), James Lee, Will Stamatis, Jake Lefeber, Eric Hofmann	Documentation stipulation inadequate (Stipulation I)	Commenters noted that the documentation stipulation was inadequate to mitigate the potential adverse effect of the project.	See Section 3.1, pages 5-6.

Commenter(s)	Comment Topic	Summary of Comment	Response
(VNA), Gerry Bakirtjy (VVNA), Christopher Perez (JCLC), Greg Remaud (NYNJB), Andrea Ferster (RTC)			
Michael Rosenthal (Conrail)	Generally, documentation appropriate	Commenter stated that they agree that historic documentation is the only mitigation requirement that the Board is authorized to impose in a Section 106 proceeding.	Comment noted.
Michael Rosenthal (Conrail)	Proposed interpretation measures too extensive	Commenter stated that some of the interpretive measures are outside the scope of reasonable documentation.	The documentation stipulations in the June 14, 2023 Draft MOA were appropriate measures to take into account the effects of the Undertaking on historic properties. No changes were necessary in the Final MOA based on this comment.
Maggie O'Neill (JC), Tom Slattery (JC)	Does not mention the history of the project	Commenters noted that the MOA did not adequately describe the history of the project.	The history of the project and the Section 106 process from 2009 through to the present is included in appropriate detail in the 2017 Cultural Resources Identification Report, the 2018 Cultural Resources Identification Report Addendum, the March 2019 Cultural Resources Effects Assessment Report, and in the November 2019 Cultural Resources Effects Report Addendum. It was not appropriate to include that level of detail in the June 14, 2023 Draft MOA. No changes were necessary in the Final MOA based on this comment.
Katherine Marcopul (SHPO)	Why is mitigation limited to documentation	Commenter requested an explanation regarding the limitation of mitigation items to only documentation.	See Section 3.1, pages 5-6.
Stephen Gucciardo (EPC), Maggie O'Neill (JC), Katherine Marcopul (SHPO)	Conrail's responsibilities not clear (signage, web page, hosting, costs, etc.)	Commenters noted that the MOA did not clearly define Conrail's responsibilities, including preparation of the historic documentation package, the interpretive signage, and the	In response to comments, the Final MOA has been revised to clarify that Conrail would be responsible for compliance with these stipulations after review and approval by OEA, the SHPO, and with input from the

Commenter(s)	Comment Topic	Summary of Comment	Response
		preparation and hosting of the website. Commenters also questioned how Conrail would be held responsible for the commitments.	Section 106 consulting parties. Once the Final MOA is executed by all the necessary parties, Conrail would be required to comply with the responsibilities assigned to it in the Final MOA.
Maggie O'Neill (JC), Maureen Crowley (EPC), Katherine Marcopul (SHPO)	Signage stipulation (Stipulation I.B.1)	Commenters noted that the signage stipulation was not feasible or enforceable, and raised questions regarding compliance with Jersey City signage ordinances. Finally, questions were raised regarding Stipulation III, "Restriction Related to Signage Upon Sale of Right-of-Way."	The signage stipulation is feasible and enforceable, and in response to commenters' concerns, the Final MOA clarifies the signage stipulation so that legal responsibilities are clear. Stipulation I.B.1.ii has been revised to state that "All proposed signage must comply with City of Jersey City's Design and Zoning Standards (Standards) and ordinances. Stipulation I.B.1.iii has been replaced with the following: "Conrail shall consult with OEA and SHPO on probable/potential sign locations prior to the development of the signs to ensure the content of each sign is appropriate for its location. Locations must also be approved by the City of Jersey City to be consistent with their Standards." Stipulation I.B.1.v. (formerly Stipulation I.B.1.iv) has been revised to the following: "Upon final approval from OEA, ACHP, and the SHPO, Conrail will fabricate a minimum of six (6) interpretive sign panels, to appropriate specifications for outdoor display (as determined through consultation between the signatories). Once the fabricated panels have been reviewed and approved, appropriate locations for the panels will be identified through consultation with the Section 106 consulting parties. Conrail will be responsible for storing and securing the sign panels until ready for installation. Conrail will also be responsible for erecting the sign panels if determined to be on property owned by Conrail or paying for the erection of the sign panels if on property owned by others. All locations for the signage

Commenter(s)	Comment Topic	Summary of Comment	Response
			will be identified through consultation. Installation of signage shall be in accordance with the City of Jersey City's Standards and ordinances." Finally, Stipulation III has been clarified to now state the following: "III. Restriction Related to Signage Upon Sale of Conrail-Owned Property Within the Harsimus Branch Right-of-Way. Conrail has voluntarily agreed that any future agreement of sale between Conrail and any purchaser of the property within the right-of-way underlying the Harsimus Branch (property currently owned by Conrail) shall contain a provision requiring that such purchaser agree to leave the signage Conrail erects (if any, and in compliance with the requirements and stipulations of this MOA) on said property within the Harsimus Branch right-of-way."
Michael Rosenthal (Conrail)	Draft signage review process	Commenter noted that the additional 15-day final review period in the draft MOA (Stipulation I.B.1.iv) was unnecessary and inconsistent with the review process timeframes for the webpage (Stipulation I.B.2) and requested to remove that requirement. Commenter also requested that the MOA include a statement that if a party does not review materials within the allotted time frame, Conrail and OEA can assume concurrence and proceed.	In response to this comment, OEA has revised Stipulation I.B.1.iv to make it consistent with the review process periods for the webpage (Stipulation I.B.2). Stipulation I.B.1.iv has been revised to the following: "Upon completion of the draft signage, Conrail shall submit the materials to OEA, ACHP, the SHPO, and the other Section 106 consulting parties for review. OEA, ACHP, the SHPO, and the other Section 106 consulting parties will have 45 days to review and comment on the materials, taking into consideration any comments received, and submit the final materials to OEA, ACHP, the SHPO, and the other Section 106 consulting parties." All parties are expected to provide their input and review comments within the assigned time frames. However, if comments are not received in a timely manner, OEA will assume concurrence.

Commenter(s)	Comment Topic	Summary of Comment	Response
Michael Rosenthal (Conrail)	Qualified professionals to undertake work	Commenter agreed with the Draft MOA regarding the retention of qualified professionals to do the work. Commenter disagreed that additional archival research would be necessary.	Additional archival research may be appropriate during the documentation and consultation process required in the Final MOA.
Michael Rosenthal (Conrail)	Section II of the MOA (Review Process)	Commenter stated that Section II of the Draft MOA did not need to include review durations, nor require Conrail to summarize comments on the final deliverables. Commenter also requested that Stipulation II.C be removed as it was not necessary.	Section II of the June 14, 2023 Draft MOA remains appropriate as it provides the overall review periods for the required documentation. Section II has been revised to increase overall review periods from 30 days to 45 days for the entire Final MOA. Conrail's requirement to summarize all comments and how they were addressed in both draft and final documentation remains in the Final MOA as it is necessary to document the input from the Section 106 consulting parties and how that input was reflected in the documentation. Finally, Stipulation II.C is necessary but has been modified based upon the comment, as follows: "Subsequent reviews, if necessary, shall also be completed by OEA, ACHP, the SHPO, and other Section 106 consulting parties within 45 days of receipt of the requested revisions." OEA anticipates that the 45-day review period is for all documentation in the Final MOA will be sufficient to gather appropriate input and feedback and then incorporate it into the final versions of the documentation.
Michael Rosenthal (Conrail)	Restrictions related to signage upon sale of right-of-way	Commenter stated that Conrail is willing to commit that any sales of remaining Conrail-owned right-of-way will contain a provision requiring the purchaser to leave any signage in place.	Comment noted.
Maggie O'Neill (JC), Katherine Marcopul (SHPO)	Request standards for information on the proposed website (Stipulation I.B.2)	Commenters requested additional information and minimum standards for the information to be included and presented on the proposed website.	In response to concerns raised by commenters, Stipulation I.B.2 of the Final MOA has been revised to include additional information on the requirements for the proposed website.

Commenter(s)	Comment Topic	Summary of Comment	Response
Katherine Marcopul (SHPO), Maureen Crowley (EPC)	Request an increase in the duration of the MOA (Stipulation IV)	Commenters requested an increase in the duration of the MOA.	In response to concerns raised by commenters, Stipulation IV of the Final MOA has been revised to increase the duration from 4 years to 7 years. 7 years is a reasonable time period for the mitigation in the Final MOA to be satisfied.
Katherine Marcopul (SHPO)	Clarify the professional qualifications (Stipulation I)	Commenter requested clarification on the application of professional qualifications to undertake the work required under the MOA.	In response to questions raised by commenters, Stipulation I of the Final MOA has been revised to clarify the required qualifications under 36 C.F.R. Part 61. Contractors can meet any of the qualification areas (Architecture, History, Archaeology, or Historic Architecture).
Katherine Marcopul (SHPO)	Request minimum standards for the documentation product (HABS 1) (Stipulation I.A.)	Commenter requested that the minimum standards for documentation should be Historic American Building Survey/Historic American Engineering Record (HABS/HAER Level I).	In response to this request, Stipulation I.A. of the Final MOA has been revised so that the required documentation is HABS/HAER Level I.
Katherine Marcopul (SHPO)	Request to include summary of public comments from 9/28/23 public meeting	Commenter requested a summary of public comments from the September 28, 2023 public meeting to be included as a Whereas clause.	In response to this request, the Final MOA has been revised to reference the September 28, 2023 meeting (see page 4 of the Final MOA), but no summary of comments has been included as the comments are in the public record and are summarized in this document.
Katherine Marcopul (SHPO), Maureen Crowley (EPC)	Request edit to determination of eligibility clause on Embankment (11 th Whereas clause)	Commenters requested to revise the 11 th Whereas clause to acknowledge that the Embankment received a Determination of Eligibility from the Keeper of the National Register in 2000, not formal listing, due to the property owner's (Conrail) objection to listing.	In response to these requests, the 11 th Whereas clause in the Final MOA has been revised to read as follows: “WHEREAS, the Pennsylvania Railroad Harsimus Right-of-Way Historic District includes the Pennsylvania Railroad Harsimus Branch Embankment, which received a Determination of Eligibility from the Keeper of the National Register in 2000 but was not listed due to objections to National Register listing, and is a key contributing element that is also individually eligible for listing in the National Register”

Commenter(s)	Comment Topic	Summary of Comment	Response
Tom Monahan (HCA), James Lee, Beatriz Bofill (BJC), Will Stamatis, Stephen Gucciardo (EPC), Sam Pesin (FLSP)	Settlement agreement should be included in MOA	Commenters stated that any preservation agreement between the LLCs, the Embankment Preservation Coalition, and Jersey City should be included in the project MOA.	See Section 3.1, page 7.
Austin Sakong (JCHPC), Michael Darling, Laura Skolar-Gamarello (JCPC), Maggie O'Neill (JC), Tom Slattery (JC), Elizabeth Merritt (NTHP) Natalia Gallagher, Tom Sexton (RTC), Diane Tider, Tom Monahan (HCA), James Lee, Beatriz Bofill (BJC), Will Stamatis, Charles Montange (JC, RTC, EPC), Maureen Crowley (EPC), Sam Pesin (FLSP), Andrea Ferster (RTC)	Reject/Object to the Draft MOA	A number of commenters objected to, or rejected, the Draft MOA, citing its inadequate resolution of the project's potential adverse effect.	Comments noted.
Maureen Crowley (EPC)	Lacks information to allow agency head to understand adverse effects	Commenter noted that the Draft MOA lacked sufficient information for the head of the agency to understand the potential adverse effects.	Comment noted. The June 14, 2023 Draft MOA and the Final MOA clearly state that the proposed abandonment could have an adverse effect on historic properties. No further changes are necessary based on this comment. Moreover, additional information regarding the potential adverse effects is publicly available in the Cultural Resources Effects Assessment Report (March 2019) and the Cultural Resources Effects Assessment Report Addendum (November 2019).

Commenter(s)	Comment Topic	Summary of Comment	Response
Maureen Crowley (EPC)	Proposes change in the title of the MOA	Commenter suggested using the historic name of the Harsimus Branch instead of "The Harsimus Branch Embankment" in the MOA.	In response to this comment, the historic name in the title of the Final MOA has been changed to "Pennsylvania Railroad Harsimus Branch and Embankment."
Maureen Crowley (EPC)	Proposes new language in "Whereas" statements (1 st Whereas clause)	Commenter proposed the following language change: " "WHEREAS Conrail et al. filed this notice belatedly, after parts of the regulated rail line were sold for private development and before the companies applied for required authorization to abandon the rail line; and WHEREAS, STB decided to prepare an EA rather than an EIS as requested by hundreds of members of the public concerned about the impacts of possible demolition of a massive structure between Historic Districts as well as the disassembly of a century-old transportation corridor; and WHEREAS STB appears to have already decided to do nothing about the unlawful sale of portions of the regulated Harsimus Branch for private development; and WHEREAS STB and consulting parties have not considered in the Section 106 process measures that exist to avoid or minimize adverse effects, including voluntary mitigation plans, and WHEREAS a Section 106 process must be completed in order for STB to authorize abandonment..." etc. etc."	Comment noted. OEA is not inserting these suggested "Whereas" clauses into the Final MOA as the proposed language is not appropriate and does not correctly reflect OEA's NEPA and Section 106 processes or the facts in the record.
Maureen Crowley (EPC)	Visual effects and APE (6 th Whereas clause)	Commenter noted that the APE developed for the project, including potential visual impacts, was flawed.	OEA developed the APE in consultation with the SHPO and received concurrence. This APE has been used consistently for all Section 106 analyses and documents

Commenter(s)	Comment Topic	Summary of Comment	Response
			since 2008. No changes are necessary in the Final MOA based on this comment.
Maureen Crowley (EPC)	Notification of ACHP (7 th Whereas clause)	Commenter questioned whether OEA notified the ACHP or if other parties requested their involvement.	OEA notified the ACHP in 2009 that the project could have an adverse effect on historic properties and invited it to participate in the Section 106 process. The ACHP has been actively involved in the Section 106 process.
Maureen Crowley (EPC)	Consultation on post-abandonment scenarios (12 th Whereas clause)	Commenter noted that OEA's consideration of post abandonment effects was too limited, focusing on "the premature sale of parts of the regulated rail line" and the effects that was having on the Section 106 process.	Comment noted. See Section 3.1, pages 5-6.
Maureen Crowley (EPC)	Consultation on post abandonment scenarios and input from consulting parties (13 th Whereas clause)	Commenter stated that "working with" is too strong to describe the drafting of these scenarios. [EPC's] recollection is that they were created by the contractor/OEA." Commenter requested clarification of the parties involved.	The APE Report, including the methodology, was approved by the SHPO in 2008. The APE and the methodology for developing the scenarios and the resultant APE were included in the 2017 Cultural Resources Identification Report, the 2018 Cultural Resources Identification Report Addendum, as well as the Cultural Resources Effects Assessment Report and Addendum (2019). All of these documents were shared publicly, posted on the Board's website, and have been available for review and comment.
Maureen Crowley (EPC)	Post abandonment demolition and redevelopment (14 th Whereas clause)	Commenter stated that demolition of the Embankment was more than "reasonably foreseeable."	Comment noted. See Section 3.1, pages 5-6.
Maureen Crowley (EPC)	Reference to "No-Action Alternative" in the MOA (15 th Whereas clause)	Commenter asked why OEA was not exploring the "No-Action Alternative."	OEA has appropriately evaluated the No-Action alternative. The decision whether to grant or deny abandonment authority is for the Board, and the Board will make that determination based on the entire environmental and historic record and the record on the transportation merits after the conclusion of the Section 106 process. See Section 3.1, page 4.

Commenter(s)	Comment Topic	Summary of Comment	Response
Maureen Crowley (EPC)	Reference to the adverse effect finding (16 th Whereas clause)	Commenter questioned why OEA was preparing a MOA and what was the point of the Section 106 process if there was no avoidance or minimization of adverse effects.	Comment noted. OEA is moving this Undertaking through the Section 106 process in accordance with 36 C.F.R. § 800. See Section 3.1, pages 5-6.
Maureen Crowley (EPC), Christopher Perez (JCLC)	Adverse effect not adequately discussed in the MOA (17 th Whereas clause)	Commenters noted that the Draft MOA did not adequately convey the spectrum of potential significant adverse effects and requested a detailed list of all effects be included.	The June 14, 2023 Draft MOA and the Final MOA both appropriately include the agency's determination of a potential adverse effect. The adverse effects are identified and described in the Cultural Resources Effects Assessment Report (2019) and the Cultural Resources Effects Assessment Addendum Report (2019) that OEA prepared in consultation with the consulting parties. These documents are and have been available on the Board's website. No additional detail is needed in the Final MOA based on this comment.
Maureen Crowley (EPC)	Consultation with Conrail (19 th Whereas clause)	Commenter asked whether STB had consulted with Conrail on the proposed mitigation. The commenter also suggested that the Draft MOA did not address property that Conrail has not yet sold and that property should remain under "agency control" to preserve the historic transportation corridor.	OEA has consulted with Conrail, as well as all other consulting parties, on the mitigation included in the Final MOA. Conrail has agreed to the proposed mitigation included in the Final MOA and to modification of the language in the Final MOA to address the comment regarding property still owned by Conrail. Post-abandonment land use is addressed in Section 3.1, pages 5-6.
Maureen Crowley (EPC)	ACHP notification of adverse effect (21 st Whereas clause)	Commenter asked if the ACHP was participating in the Section 106 process due to it being a "controversial case."	The ACHP was notified of the adverse effect as per the regulations (36 C.F.R. § 800.6(a)(1)) and chose to participate.
Maureen Crowley (EPC)	Redevelopment plans in relation to the Embankment (22 nd Whereas clause)	Commenter requested that Jersey City's Redevelopment plans that include the Harsimus Embankment and Branch be included in the MOA and that the Board and OEA should take an active role to make those plans binding as part of mitigation.	Post abandonment property use, including potential redevelopment plans (like the Sixth Street Redevelopment Plan) is addressed in Section 3.1, pages 5-6. No further changes are necessary in the Final MOA based on this comment.

Commenter(s)	Comment Topic	Summary of Comment	Response
Maureen Crowley (EPC)	MOA expiration	Commenter asked why the MOA expires, how might it be changed, and what interest do consulting parties have in any changes if they aren't signatories.	The agreement document would expire upon the completion of all mitigation items or 7 years, whichever comes first. The purpose of the 7-year expiration of the Final MOA is to ensure that the mitigation included in the Final MOA is complied with in a reasonable period of time. The Final MOA outlines the process by which it could be amended.
Katherine Marcopul (SHPO)	Abandonment consummation in the MOA	Commenter requested to revise the 5 th Whereas clause to clarify how abandonment could be consummated if the Section 106 process is not complete.	The abandonment cannot be consummated if the Section 106 process is not complete. Execution of the MOA completes the Section 106 process. No changes are necessary in the Final MOA based on this comment.
Katherine Marcopul (SHPO)	Private property (AKA Embankment) not protected by the NJ Register of Historic Places	Commenter noted that the New Jersey Register of Historic Places listed properties receive no regulatory oversight or protections pursuant to the New Jersey Register of Historic Places Act unless it is in public ownership. The Embankment is in private ownership, so not protected. MOA does not ensure preservation.	Comment noted.

4. LIST OF COMMENTERS (WITH AFFILIATION)

1. Ahamed, Nisha
2. Angle, Russell (Resident)
3. Atwell, Diane (HPNA)
4. Bakirtjy, Gerry (VVNA)
5. Barnaby, Irene
6. Bender, Evan
7. Binder, Tim
8. Bobby [no last name provided]
9. Bofill, Beatriz (BJC)
10. Borelli, Tony (BJC)
11. Borisjuk, Katrina (Resident)
12. Brennan McKee, Joann
13. Brody, Alexander
14. Brown, Devika
15. Brown, Kevin
16. Bucca, Gary
17. Buckbee, Craig
18. Chemaly, Hadi
19. Chew, Wai-Sing
20. Conlin, James
21. Conlin, Marina
22. Cook, Arthur
23. Cordell, Chris
24. Cornejo, Rahid (BAPC)
25. Costantine, Jessica
26. Crowley, Maureen (EPC)
27. Czehut, David
28. Daniels, Stephanie (HPHA)
29. Darling, Michael (Resident)
30. Dawson, Julianna
31. de Bethune, Agnes
32. Delman, John
33. Delman, Peter (EPC)
34. DiBrita, Stephanie
35. Dickinson, Jennifer
36. DiMotta, William
37. Dominici, Elvin
38. Donnelly, Christina
39. Dorgan, Donna (Property Owner)
40. Drenning, Elizabeth
41. Efimova, Valeriya
42. Egan, Colin
43. Eisele, Geoffrey
44. Espinoza, Galina
45. Feliu, Gabby (HCA)
46. Ferara, Eileen
47. Ferster, Andrea (RTC)
48. Flores, Susan
49. Freitas, Liliane
50. Gallagher, Frank (RU)
51. Gallagher, Natalia
52. Gallagher, Sean (EPC)
53. Garner, Robert
54. Giordan, Patricia
55. Glavin Auteri, Katherine
56. Gliatto, Peter
57. Glynn, Ellen
58. Gomez, John (JCLC)
59. Grajdieru, Smaranda
60. Gucciardo, Joanne
61. Gucciardo, Stephen (EPC)
62. Heitmann, Roger
63. Hofmann, Eric (VNA)
64. Homan, Jerry
65. Kaese, Diane (HPHA)
66. Kagan, Debra (NJBWC)
67. Kessler, Annie
68. Kessler, Margaret
69. Kopf, Michael
70. Krinsky, Steve
71. Kushner, Robb
72. Kutac, Gail
73. LaGue, Ben
74. Lau, Faith
75. Lee, James
76. Lefeber, Jake
77. Lipski, Steve
78. Little, Eleana (Resident)
79. Lucchesi, Dina
80. Lyness, Katy

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|--------------------------------------|-------------------------------------|
| 81. Magno, Rochelle | 118. Saccomanno, Andrew |
| 82. Mahayosn, Paula | 119. Sakong, Austin |
| 83. Maki, Paul-Martin | 120. Sanford, Cynthia |
| 84. Marcopul, Katherine (SHPO) | 121. Scanga, Mia |
| 85. Massar, Carol | 122. Schermer, Ayla (BJC) |
| 86. Matsikoudis, William | 123. Schmidler, Susan |
| 87. Merritt, Betsy (NTHP) | 124. Schneider, Lisa |
| 88. Meshram, Abhilasha (SJC) | 125. Schwartzbach, Ben |
| 89. Meyer, Jennifer | 126. Seddon, Barbara |
| 90. Missel, Rebecca (NJ08P) | 127. Senbei, Gabriel |
| 91. Monahan, Tom (HCA) | 128. Serafin, Maryanne |
| 92. Montange, Charles (EPC, JC, RTC) | 129. Sexton, Tom (RTC) |
| 93. Morgen, Emmanuelle (HCCS) | 130. Shah, Kamal |
| 94. Moulaison, Scott | 131. Silverman, David |
| 95. Mukaida, Elna | 132. Skolar-Gamarello, Laura (JCPC) |
| 96. Murphy, Dennis | 133. Slattey, Thomas (JC) |
| 97. Myers-Hoffman, Rochelle (WCMI) | 134. Solomon, James (OJCC/WE) |
| 98. Nguyen, Vi | 135. Spiro, Lenny |
| 99. O'Neill, Maggie (JC) | 136. Stamatis, Will |
| 100. O'Rourke, Joey | 137. Stein, Kaya |
| 101. Ogorzalek, Tom | 138. Suh, Claire |
| 102. Paget, Richard | 139. Tider, Diane |
| 103. Paolino, Eugene (AO) | 140. Torres, Sharon |
| 104. Patel, Barkha (JC) | 141. Underwood, Aaron (HPNA) |
| 105. Percoco, Anne | 142. Underwood, Andrea |
| 106. Perez, Christopher (JCLC) | 143. Vasishth, Ashwani |
| 107. Perls, Nancy and John | 144. Victor, Danny |
| 108. Perrault, Claire | 145. Viswanathan, Vivek |
| 109. Pesin, Sam (FLSP) | 146. Vita, Joseph |
| 110. Pfohl, Peter (MB) | 147. Wagenseil, Wynn |
| 111. Raymond, William | 148. Wall, Bethany |
| 112. Remaud, Greg (NYNJB) | 149. Williams, Ryan |
| 113. Reyes, Richelle | 150. Winkler, Suzanne |
| 114. Richardson, Clara (BCG) | 151. Yeager, David |
| 115. Ristorucci, Donna | 152. Young, Thomas |
| 116. Rogoff, Caryn | 153. Zimnoch, Wayne |
| 117. Rosenthal, Michael (Conrail) | 154. Zirnis, Peter |

ORGANIZATIONS

Albanese Organization (AO)
 Bergen Arches Preservation Coalition (BAPC)
 Bike JC (BJC)
 Brunswick Community Garden (BCG)

City of Jersey City (JC)
City of Jersey City, Rails to Trails Conservancy, and Embankment Preservation Coalition
(City et al)
Consolidated Rail Corporation (Conrail)
Embankment Preservation Coalition (EPC)
Friends of Liberty State Park (FLSP)
Hamilton Park Neighborhood Association (HPNA)
Harsimus Cove Association (HCA)
Historic Paulus Hook Association (HPHA)
Hudson County Complete Streets (HCCS)
Jersey City Landmarks Conservancy (JCLC)
Jersey City Parks Coalition (JCPC)
Marin Boulevard LLC (MB)
National Trust for Historic Preservation (NTHP)
New Jersey Bike & Walk Coalition (NJBWC)
NJ-08 for Progress (NJ08P)
New York/New Jersey Baykeeper (NYNJB)
Office of Jersey City Councilman/Ward E (OJCC/WE)
Rails to Trails Conservancy (RTC)
Rutgers University (RU)
Sustainable Jersey City (SJC)
Van Vorst Neighborhood Association (VVNA)
Village Neighborhood Association (VNA)
We CARE Movement, Inc. (WCMI)