

Tabachnick, Alan

From: Tabachnick, Alan
Sent: Wednesday, June 14, 2023 4:11 PM
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Cc: Gosselin, Danielle
Subject: Circulation of Revised Draft Memorandum of Agreement (MOA) and Response to Comments Document for Conrail's proposed abandonment of the Harsimus Branch in Jersey City, NJ, Docket No. AB-167 (Sub-No. 1189X)
Attachments: Harsimus Revised Draft MOA Clean 6-14-23 for Circulation.pdf; Harsimus Revised Draft MOA with Redline 6-14-23 for Circulation Final.pdf; Responses to Comments on MOA for Circulation 6-14-23 Final.pdf

To: Section 106 Consulting Parties

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

Re: Circulation of Revised Draft Memorandum of Agreement (MOA) and Response to Comments Document for Conrail's proposed abandonment of the Harsimus Branch in Jersey City, NJ, Docket No. AB-167 (Sub-No. 1189X)

The Surface Transportation Board's (Board) Office of Environmental Analysis (OEA) is continuing consultation under Section 106 of the National Historic Preservation Act (NHPA), 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 Officer (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 MOA for review and comment. OEA then presented and discussed the draft MOA with the consulting parties at a meeting on October 27, 2020. OEA was in the process of revising the draft MOA in response to consulting party input when the Section 106 process was paused in the Spring of 2021. In a letter dated March 8, 2021, the Advisory Council on Historic Preservation (ACHP) requested that the Board determine whether Conrail violated Section 110(k) of the NHPA prior to OEA's completion of the Section 106 process. Consistent with that request, the Board formally started considering the Section 110(k) issue in May 2021. After a year-long review of all the facts and case history, and reviewing the information provided by various parties, the Board, in August 2022, found that Conrail did not engage in "anticipatory demolition" of historic properties in violation of Section 110(k) of the NHPA.

OEA has now restarted the Section 106 process and is continuing consultation with the SHPO, the ACHP, and the Section 106 consulting parties on methods to avoid, minimize, or mitigate adverse effects. OEA held a Section 106 consulting parties meeting on June 8, 2023, where we updated the parties on the status of the case, including the Board's Section 110(k) decision. As noted during that meeting, OEA has revised the 2020 draft MOA based upon consulting party and public comments received and to reflect the Board's decision that there was no violation of Section 110(k) of the NHPA. Revisions also include minor edits to the text for clarity. We are now circulating the attached, revised draft MOA (clean and redline versions) to all of the Section 106 consulting parties, along with a table summarizing the previously submitted comments on the draft MOA and OEA's responses. These materials will also be posted for public review and comment on our website (www.stb.gov).

OEA remains committed to continuing to work with the consulting parties to complete the Section 106 process. OEA requests comments within 30-calendar days, **to and including July 14, 2023**, on the revised draft MOA. Because the revised draft MOA remains substantively the same as the 2020 draft MOA previously circulated, reviewers should focus their comments on the updated language in the revised draft MOA. Comments can be submitted via the Surface Transportation Board's website (<https://www.stb.gov/proceedings-actions/e-filing/environmental-comments/>) or can be emailed to Alan Tabachnick at alan.tabachnick@stb.gov.

Thank you for your continued interest and participation in the Section 106 process. We look forward to receiving your comments on the revised draft MOA **by July 14, 2023**. If you have any questions or require additional information, please contact me.

Alan Tabachnick

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Surface Transportation Board
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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 Harsimus Branch 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 Draft Environmental Assessment (Draft EA) on March 23, 2009 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: the City of Jersey City, New Jersey; Civic Jersey City; Friends of Liberty State Park; Hamilton Park Neighborhood Association; Harsimus Cove Association; Historic Paulus

Hook Association; Hudson County Office of Cultural & Heritage Affairs; Hudson County Division of Planning; Jersey City Landmarks Conservancy; 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); 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 Park 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, 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

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 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.

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.

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) that meets the Secretary of the Interior's Professional Qualification Standards (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 state standards.
 - 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. 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 days to review and comment on the draft document. At the end of the 30-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.
- iii. 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 days to review and comment on the materials. At the end of the 30-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. 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 erecting the sign panels at the locations identified through consultation.

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. 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.
- 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 days to review and comment on the draft webpage. At the end of the 30-day period, Conrail shall prepare a final version of the materials, taking into consideration any comments received. Conrail shall then provide the final webpage to the SHPO for hosting by the SHPO or transfer to another local entity for hosting.

II. REVIEW PROCESS OF MITIGATION ITEMS

- A. OEA, ACHP, the SHPO and other Section 106 consulting parties shall have thirty (30) 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 shall also be completed by OEA, ACHP, the SHPO and other Section 106 consulting parties within thirty (30) days of receipt of the requested revisions.

III. RESTRICTION RELATED TO SIGNAGE UPON SALE OF RIGHT-OF-WAY

Conrail agrees that any agreement of sale between Conrail and any immediately subsequent purchaser of the right-of-way underlying the Harsimus Branch 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) within the right-of-way.

IV. DURATION

This MOA will expire four (4) 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 Harsimus Branch 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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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,
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CONSOLIDATED RAIL CORPORATION**

REGARDING

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

Consolidated Rail Corporation

By: _____ Date: _____

Jocelyn Gabrynowicz Hill, General Counsel

CONCURRING PARTY PAGE

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

City of Jersey City

By: _____ Date: _____

Peter Baker, Corporation Counsel

CONCURRING PARTY PAGE

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(The Harsimus Branch Embankment)**

Embankment Preservation Coalition

By: _____ Date: _____

Stephen Gucciardo, President

CONCURRING PARTY PAGE

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Rails-to-Trails Conservancy

By: _____ Date: _____

Andrea Ferster, General Counsel

CONCURRING PARTY PAGE

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

Civic Jersey City

By: _____ Date: _____

Esther Wintner, President

CONCURRING PARTY PAGE

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

Hamilton Park Neighborhood Association

By: _____ Date: _____

Aaron Underwood, President

CONCURRING PARTY PAGE

**MEMORANDUM OF AGREEMENT
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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

**MEMORANDUM OF AGREEMENT
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(The Harsimus Branch Embankment)**

Hudson County Office of Cultural & Heritage Affairs

By: _____ **Date:** _____

Gina Hulings, Director

CONCURRING PARTY PAGE

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Hudson County Division of Planning

By: _____ Date: _____

Francesca Giarratana, Department Deputy Director

CONCURRING PARTY PAGE

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(The Harsimus Branch Embankment)**

Jersey City Landmarks Conservancy

By: _____ Date: _____

Christopher Perez, President

CONCURRING PARTY PAGE

**MEMORANDUM OF AGREEMENT
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(The Harsimus Branch Embankment)**

Jersey City Parks Coalition

By: _____ Date: _____

Paula Mahayosnand, President

CONCURRING PARTY PAGE

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

East Coast Greenway

By: _____ Date: _____

Bruce Donald, Tri-State Coordinator

CONCURRING PARTY PAGE

**MEMORANDUM OF AGREEMENT
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ABANDONMENT EXEMPTION, IN CITY OF JERSEY CITY,
HUDSON COUNTY, NEW JERSEY
(The Harsimus Branch Embankment)**

New York/New Jersey Baykeeper

By: _____ Date: _____

Gregory A. Remaud, Baykeeper and Chief Executive Officer

CONCURRING PARTY PAGE

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

Pennsylvania Railroad Technical & Historical Society

By: _____ Date: _____

Dave Evans, President

CONCURRING PARTY PAGE

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HUDSON COUNTY, NEW JERSEY
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Powerhouse Arts District Neighborhood Association

By: _____ Date: _____

Kathryn Moore, President

CONCURRING PARTY PAGE

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

Preservation New Jersey

By: _____ Date: _____

Emily Manz, Director

CONCURRING PARTY PAGE

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

Village Neighborhood Association

By: _____ Date: _____

Eric Hofmann, President

CONCURRING PARTY PAGE

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

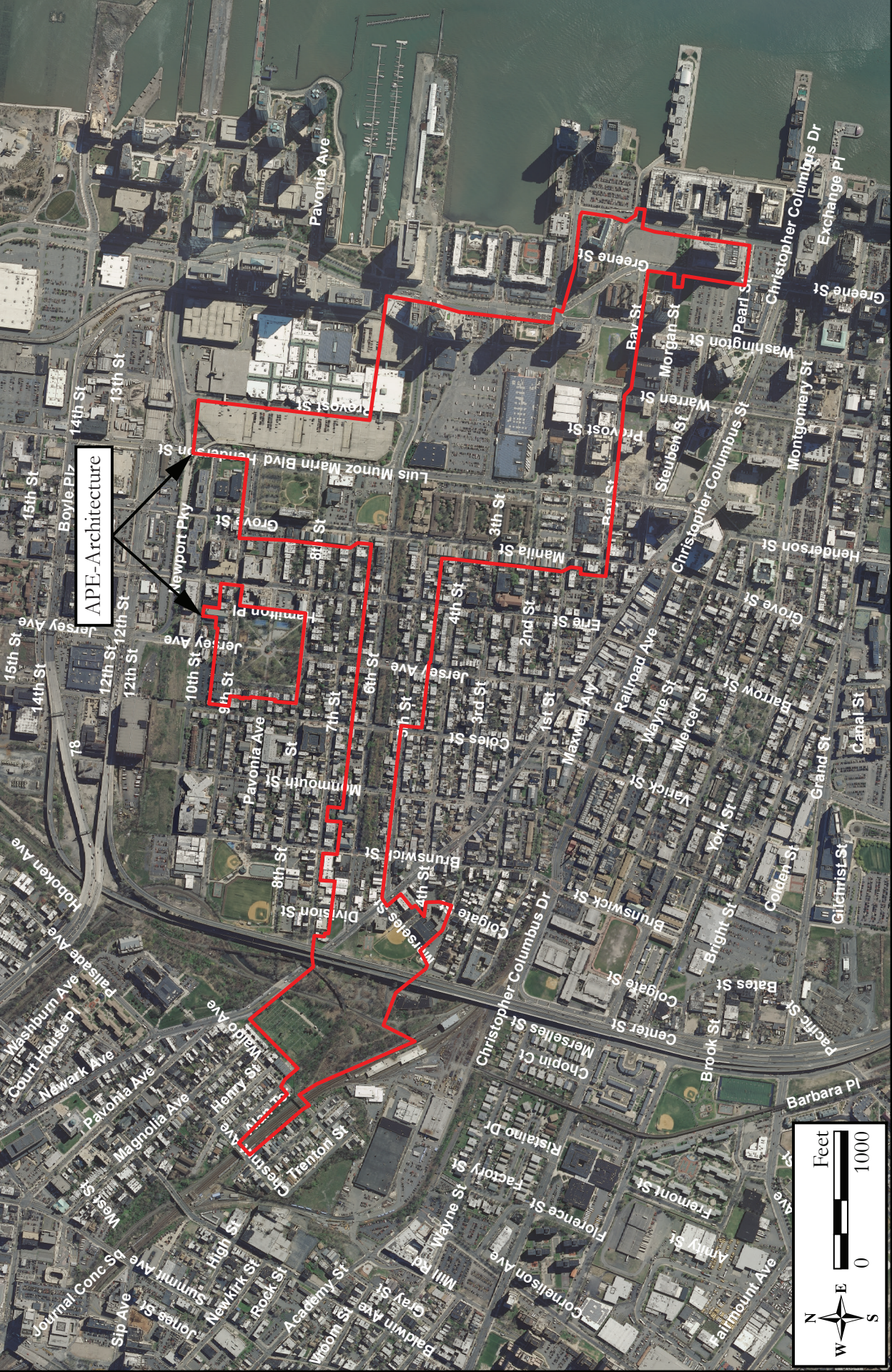
Marin Boulevard LLCs (Property Owner)

By: _____ Date: _____

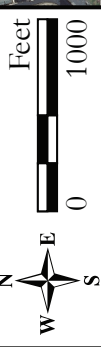
Peter Pfohl

APPENDIX A – AREA OF POTENTIAL EFFECTS MAPPING

DRAFT

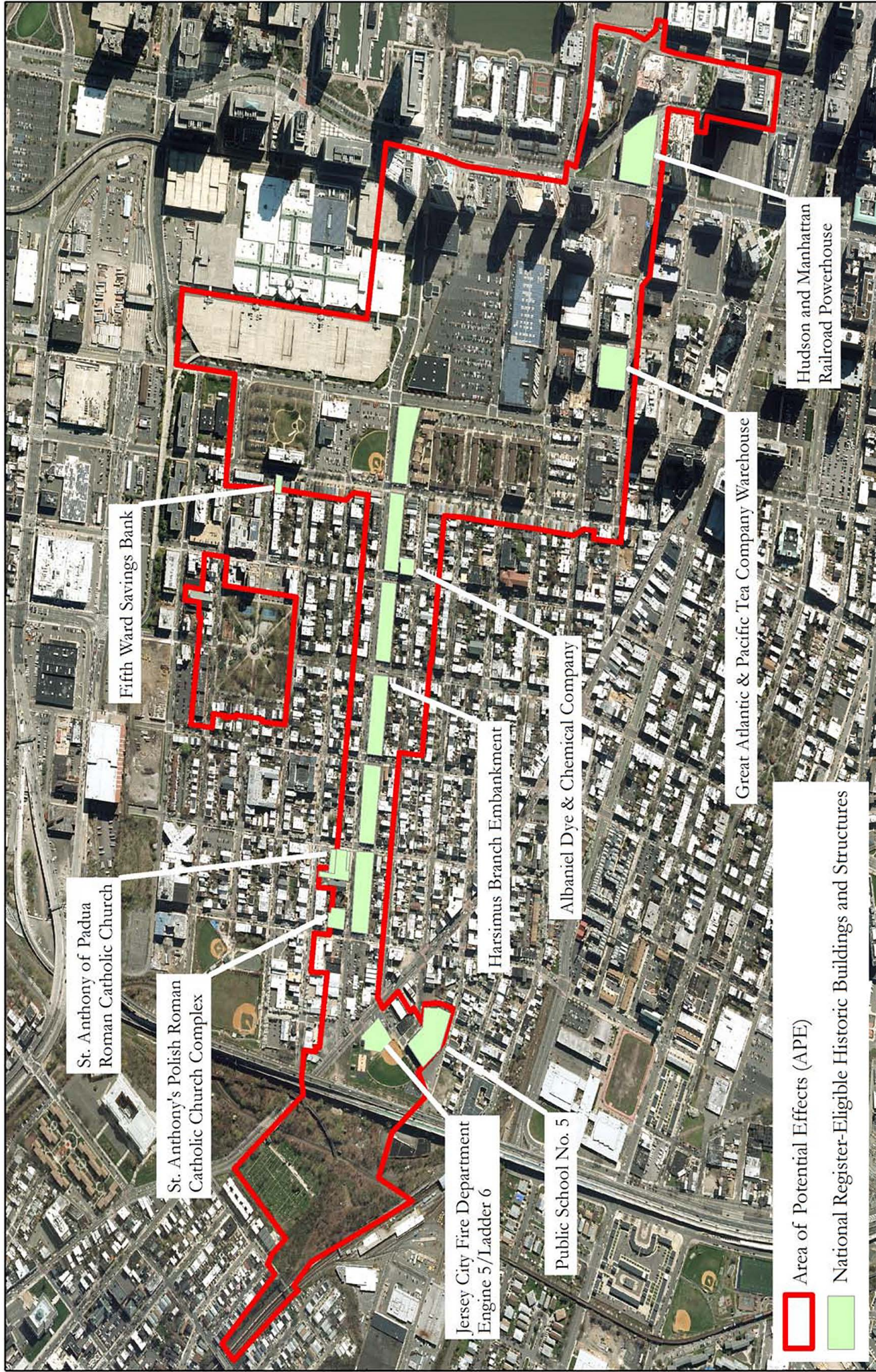


APE-Architecture

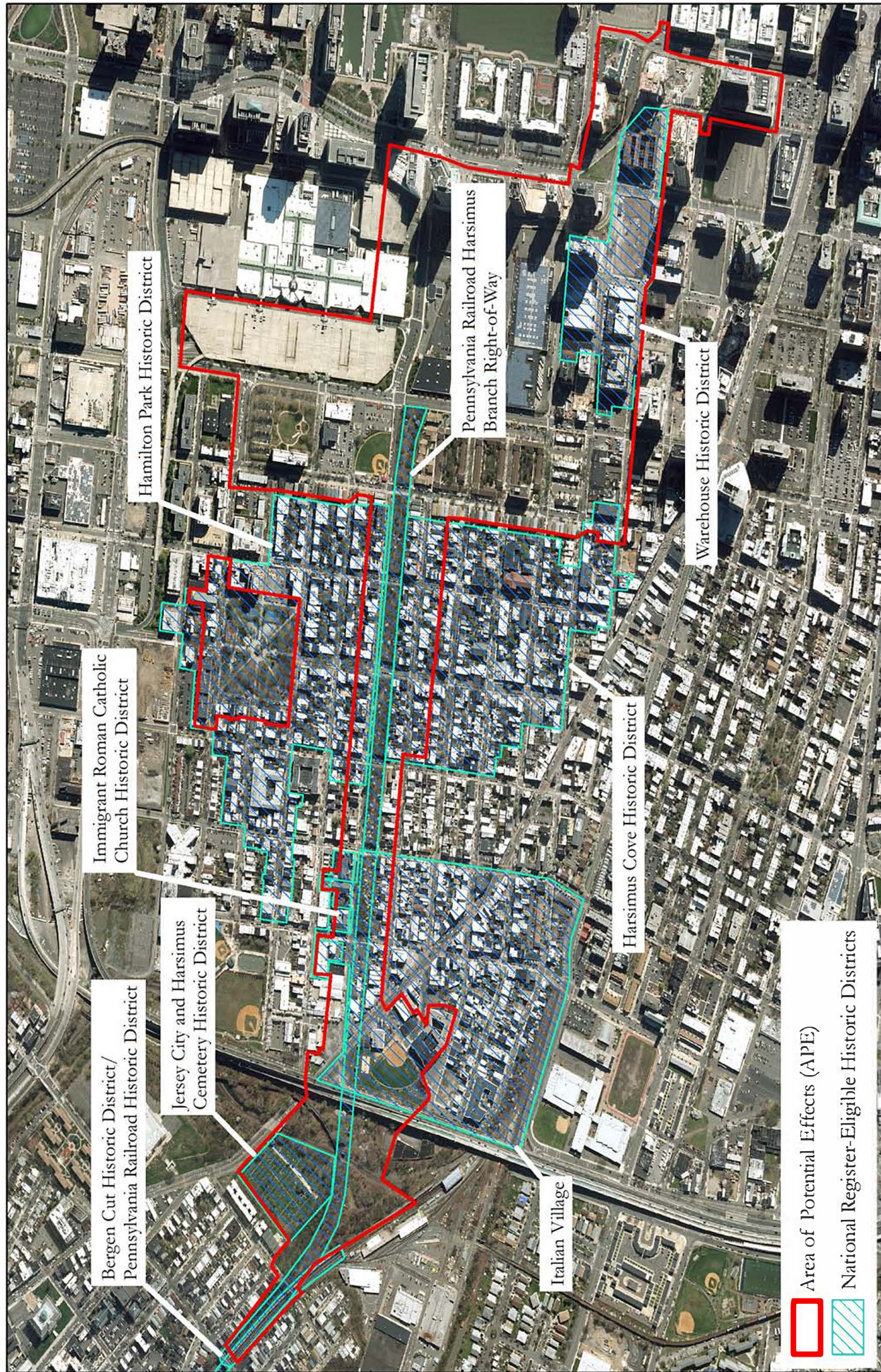


APPENDIX B – HISTORIC PROPERTY LOCATION MAPS

DRAFT



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

City of Jersey City

Civic Jersey City

Conrail

East Coast Greenway

Embankment Preservation Coalition

Friends of Liberty State Park

Hamilton Park Neighborhood Association

Harsimus Cove Association

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.

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

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 Harsimus Branch 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.~~ 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 ~~draft~~ Draft Environmental Assessment (Draft EA) on March 23, 2009 that evaluated the potential ~~for environmental impacts of the proposed~~ abandonment ~~of the Harsimus Branch to adversely affect the environment 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: the City of Jersey City, New Jersey; Civic Jersey City; Friends of Liberty State Park; Hamilton Park Neighborhood Association; Harsimus Cove Association; Historic Paulus

Hook Association; Hudson County Office of Cultural & Heritage Affairs; Hudson County Division of Planning; Jersey City Landmarks Conservancy; 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); 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 Park 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, 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; and 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

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 ~~as-at that may~~ result ~~off 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 to be ~~a~~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~~ Advisory Council on Historic Preservation (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; ~~and. 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.

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.

NOW, THEREFORE, the Board (through OEA, ~~the~~ SHPO, ~~Conrail~~, and the ACHP agree that the Undertaking shall be implemented in accordance with the following stipulations to take into account

the effects of the ~~proposed abandonment on historic properties, and further agree that these stipulations shall govern the Undertaking, and all of its parts until this MOA expires or is terminated. Additionally, the Board, SHPO, and Conrail agree that the execution of this MOA and its subsequent submission to the ACHP in accordance with 36 C.F.R. § 800.6(b)(1)(iv), shall, pursuant to 36 C.F.R. § 800.6(e), be considered to be an agreement with the ACHP for purposes of the NHPA. Execution and submission of the MOA, and implementation of its terms, evidences that the Board has afforded the ACHP an opportunity to comment on the proposed action relating to the rail line, and that the Board has taken into account the effects of the abandonment on historic properties and is satisfying the requirements of Section 106 of the NHPA for the Undertaking.~~

STIPULATIONS

~~The Board, with the assistance of Conrail, shall ensure that the following measures are carried out: Conrail shall fulfill these stipulations and shall submit monthly reports to OEA on its progress.~~

I. MITIGATION

Conrail shall retain a historic preservation/cultural resource contractor(s) of its choice (Contractor) that meets the Secretary of the Interior's Professional Qualification Standards (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 state standards.
 - 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. 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 days to review and comment on the draft document. At the end of the 30-day period, Conrail shall prepare a final version of the document, taking into consideration any comments received, and submit the ~~final document~~ (digital and hard ~~copy~~) 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.
- iii. 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 days to review and comment on the materials. At the end of the 30-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. 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, the panels will be delivered to the SHPO to be stored while appropriate locations are for the panels will be identified, and agreements made for the erection, display, and future maintenance of through consultation with the Section 106 consulting parties. Conrail will be responsible for erecting the sign panels at the interpretive signage locations identified through consultation.

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. 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.
 - 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 days to review and comment on the draft webpage. At the end of the 30-day period, Conrail shall prepare a final version of the materials, taking into consideration any comments received. Conrail shall then provide the final webpage to the SHPO for hosting by the SHPO or transfer to another local entity for hosting.

II. REVIEW PROCESS OF MITIGATION ITEMS

- A. OEA, ACHP, the SHPO and other Section 106 consulting parties shall have thirty (30) 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.

- B.C. Subsequent reviews shall also be completed by OEA, ACHP, the SHPO and other Section 106 consulting parties within thirty (30) days of receipt of the requested revisions.

III. RESTRICTION RELATED TO SIGNAGE UPON SALE OF RIGHT-OF-WAY

Conrail agrees that any agreement of sale between Conrail and any immediately subsequent purchaser of the right-of-way underlying the Harsimus Branch 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) within the right-of-way.

IV. DURATION

This MOA will expire ~~if its terms are not carried out within~~ four (4) years from the date of its execution. ~~At such time, and prior to work continuing on the Undertaking, OEA shall either (a) execute a new MOA pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments upon completion of the ACHP under 36 C.F.R. § 800.7, all of its terms, whichever occurs earlier.~~ Prior to such time, ~~OEA~~the Board may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation IX below. ~~OEA shall notify the signatories as to the course of action it will pursue.~~

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 ~~immediately~~ 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

~~Each year~~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 ~~or PA~~ 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.

~~I. SCOPE OF AGREEMENT~~

~~This MOA is limited in scope to the proposed abandonment of the section of the Harsimus Branch from CP Waldo to Marin Boulevard and is entered into solely for that purpose. Execution of this MOA by the Board, the SHPO, ~~Conrail~~, 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. This MOA will take effect on the date that it has been executed by the Board, after being signed by the SHPO, , and the ACHP.~~

DRAFT

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 Harsimus Branch Embankment)**

Surface Transportation Board

By: _____ Date: _____
Danielle Gosselin, Director, Office of Environmental Analysis

SIGNATORY PAGE

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AMONG
THE SURFACE TRANSPORTATION BOARD,
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New Jersey Historic Preservation Office

By: _____ Date: _____

Katherine Marcopul, Administrator and Deputy State Historic Preservation Officer

SIGNATORY PAGE

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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,
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REGARDING

**AB-167 (SUB-NO. 1189X),
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Consolidated Rail Corporation

By: _____ Date: _____

Jocelyn Gabrynowicz Hill, General Counsel

CONCURRING PARTY PAGE

**MEMORANDUM OF AGREEMENT
AMONG
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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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Rails-to-Trails Conservancy

By: _____ Date: _____

Andrea Ferster, General Counsel

CONCURRING PARTY PAGE

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Civic Jersey City

By: _____ Date: _____

Esther Wintner, President

CONCURRING PARTY PAGE

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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

**MEMORANDUM OF AGREEMENT
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(The Harsimus Branch Embankment)**

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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Hudson County Office of Cultural & Heritage Affairs

By: _____ **Date:** _____

Gina Hulings, Director

CONCURRING PARTY PAGE

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Hudson County Division of Planning

By: _____ Date: _____

Francesca Giarratana, Department Deputy Director

CONCURRING PARTY PAGE

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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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East Coast Greenway

By: _____ Date: _____

Bruce Donald, Tri-State Coordinator

CONCURRING PARTY PAGE

**MEMORANDUM OF AGREEMENT
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New York/New Jersey Baykeeper

By: _____ Date: _____

Gregory A. Remaud, Baykeeper and Chief Executive Officer

CONCURRING PARTY PAGE

**MEMORANDUM OF AGREEMENT
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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

**MEMORANDUM OF AGREEMENT
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Preservation New Jersey

By: _____ Date: _____

Emily Manz, Director

CONCURRING PARTY PAGE

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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

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(The Harsimus Branch Embankment)**

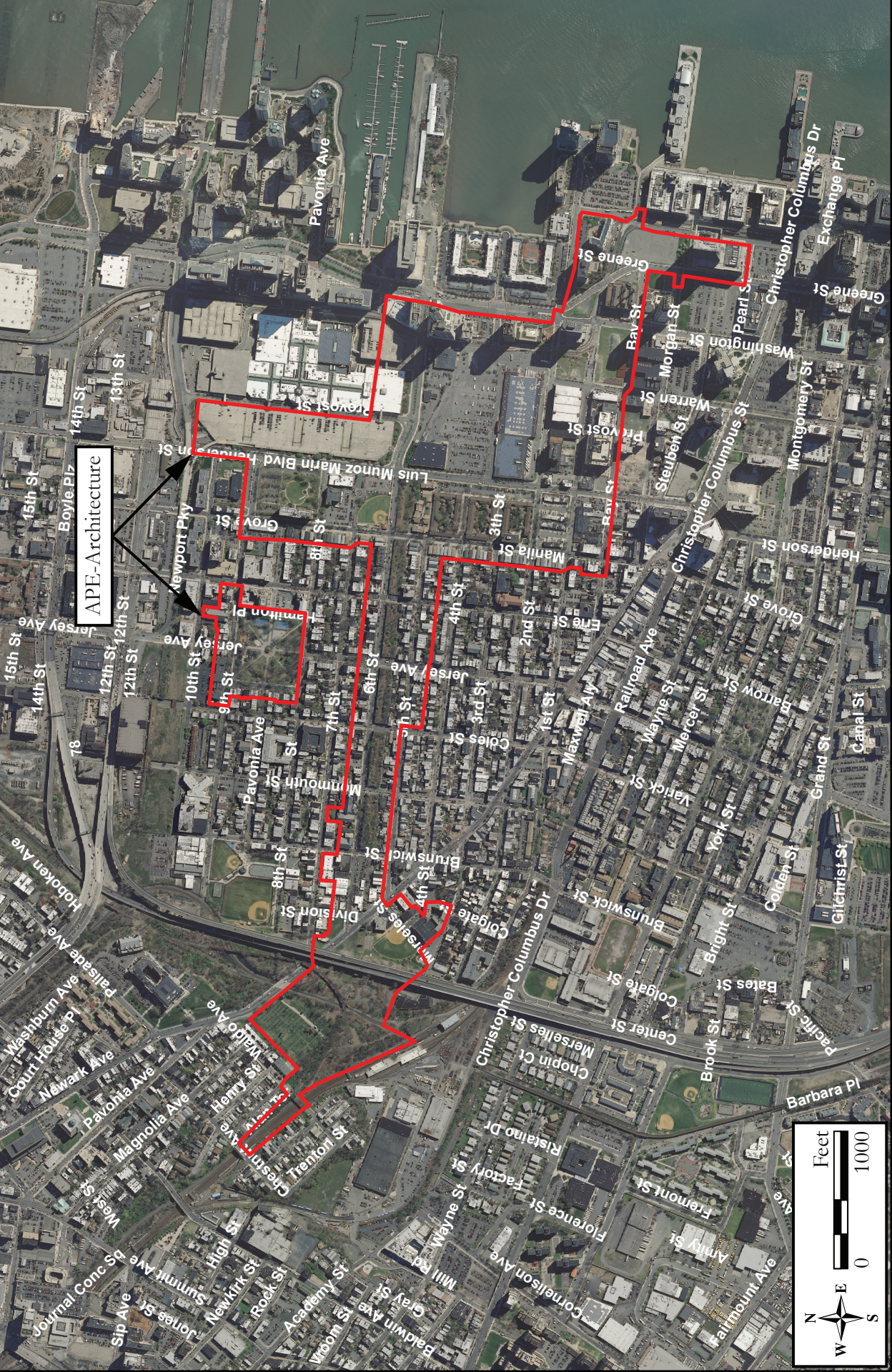
Marin Boulevard LLCs (Property Owner)

By: _____ Date: _____

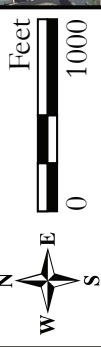
Peter Pfohl

APPENDIX A – AREA OF POTENTIAL EFFECTS MAPPING

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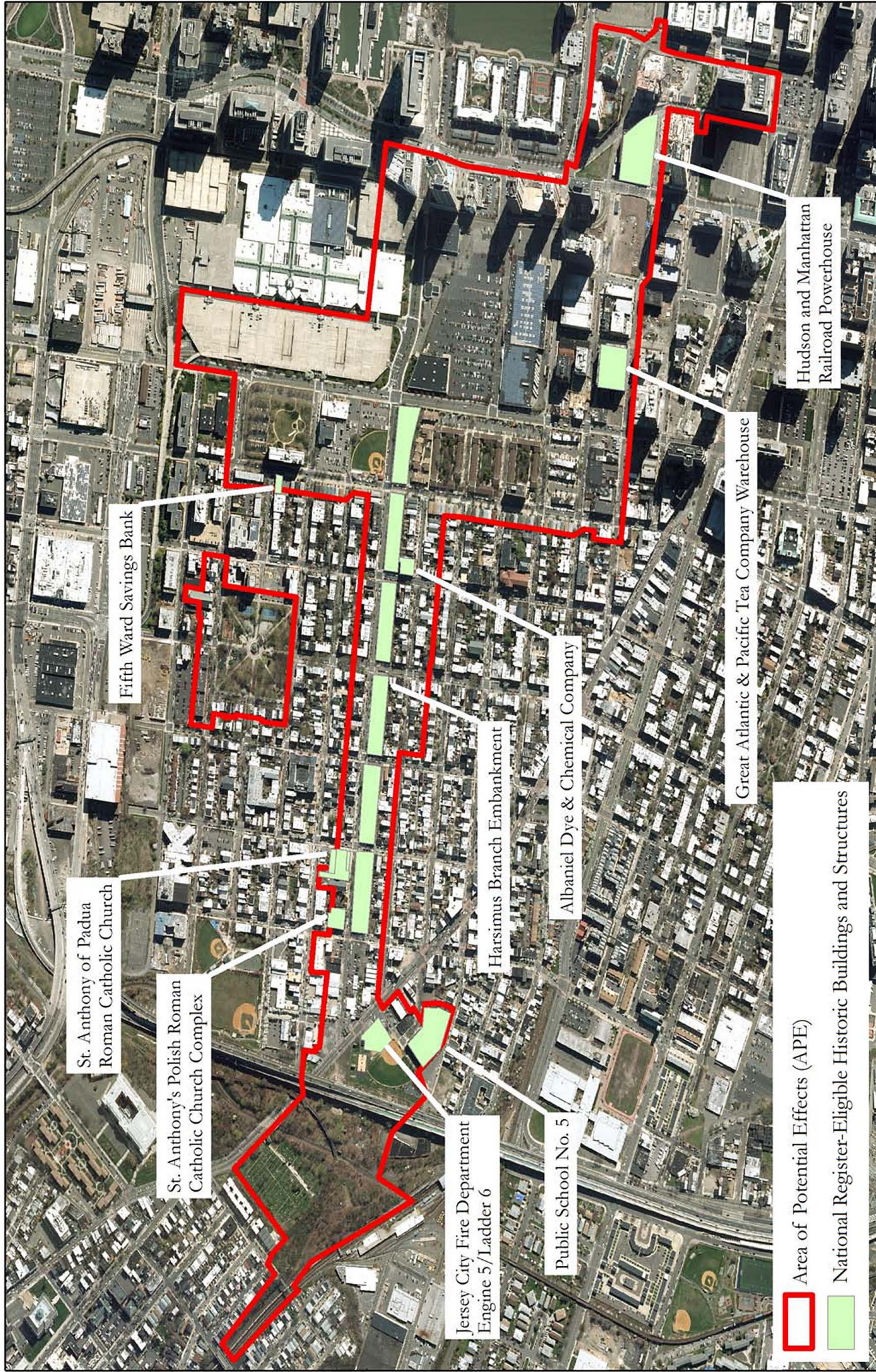


APE-Architecture

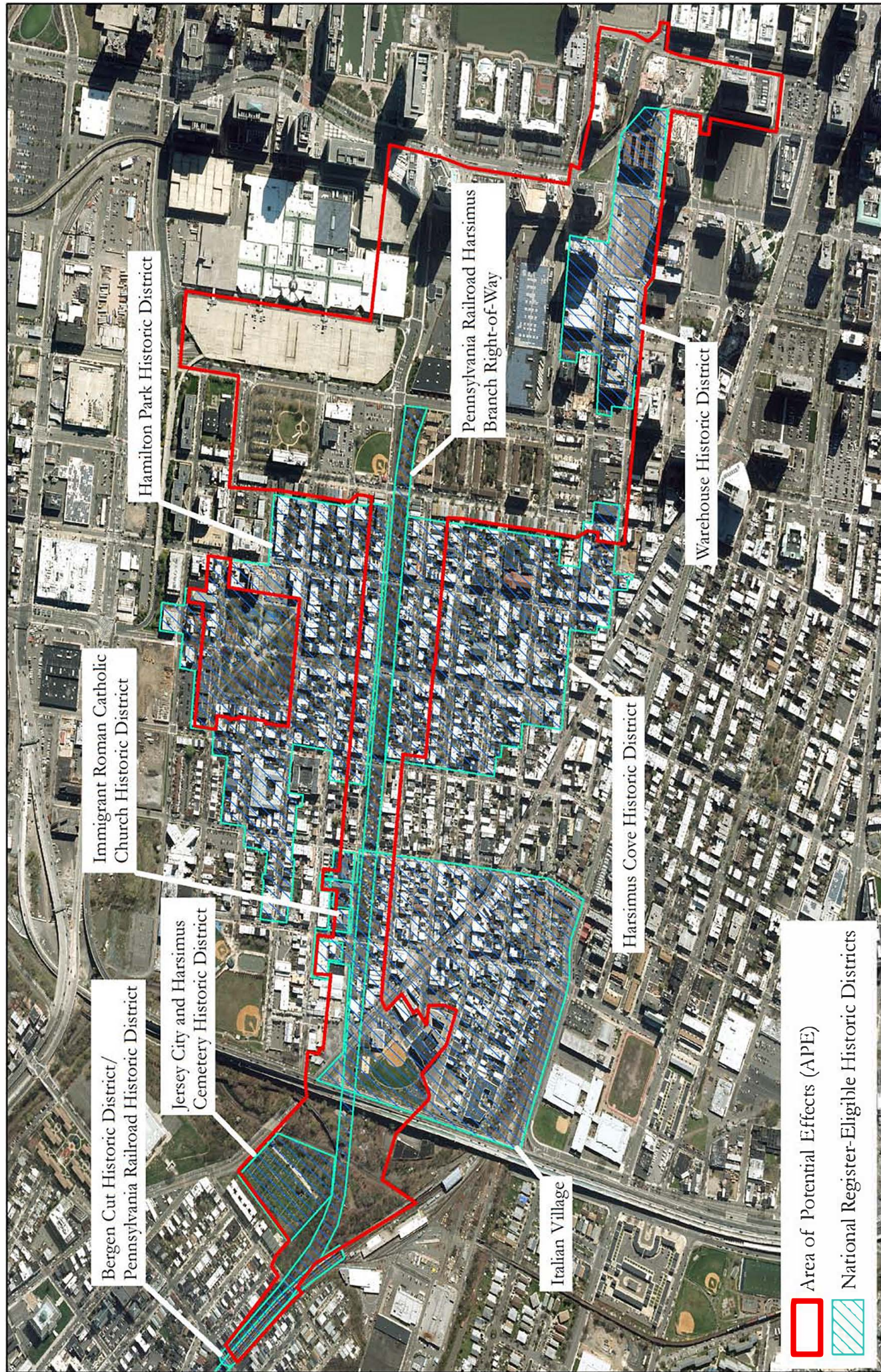


APPENDIX B – HISTORIC PROPERTY LOCATION MAPS

DRAFT



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

City of Jersey City

Civic Jersey City

Conrail

East Coast Greenway

Embankment Preservation Coalition

Friends of Liberty State Park

Hamilton Park Neighborhood Association

Harsimus Cove Association

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.

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

Harsimus Branch Abandonment (AB 167 (Sub-No. 1189X))
Comment/Response Summary Table
Harsimus Revised Draft Memorandum of Agreement
June 14, 2023

Comment Number	Organization	Commenting Party	Type of Comment	Comment	Response
1	City of JC; EC; RTC – Montange for all (Jersey City et al.)	Charles Montange, Attorney for City of Jersey City, Embankment Coalition, Rails to Trails Conservancy, 10-29-20	General comments on 106 process; Specific to MOA - Request two conditions to be added to the MOA.	Jersey City et al. requests that the Board void the sale of the Embankment blocks.	No condition voiding the sale of the Embankment was, or should have been, included in the 2020 draft MOA, nor is it included in the current 2023 revised draft MOA. The Board’s authority to impose mitigation conditions related to historic preservation is generally limited to imposing conditions related to documentation of a historic property or voluntary mitigation measures that the parties have agreed to. The Board’s authority to impose mitigation conditions related to historic preservation in an abandonment proceeding is limited by the fact that railroad rights-of-way are private property and the Board’s jurisdiction ends when an abandonment is consummated. The decision as to whether to authorize abandonment will be made by the Board and is beyond the scope of the MOA and OEA’s historic review process. The Board may also address any unlawful conduct as appropriate.
2				Jersey City et al. requests that OEA add a condition to the MOA recommending that the Board impose a Public Use Condition for 180 days.	Requests for the imposition of a public use condition under 49 C.F.R. § 1152.28 are premature and are outside the scope of OEA’s historic review. Requests for public use conditions are granted, if appropriate, by the Board when the Board issues its final decision in an abandonment proceeding. Therefore, it was not appropriate for OEA to add this as a condition in the revised draft MOA.
3	City of Jersey City (Jersey City)	Peter Baker, Corporation Counsel for City of Jersey City, 10/29/20 (included with Montange submission, above)	General comment on MOA and 106 process	Jersey City states that the proposed MOA calls for Conrail to prepare a plaque and a tombstone, for each block of the Embankment. Jersey City also states that this fails to mitigate the adverse impacts on historic assets including the whole Harsimus Branch. Under an unconditioned abandonment, “the entire Branch from Marin Boulevard to the Waldo and Chestnut Avenue	The Board’s authority to impose mitigation conditions related to historic preservation is generally limited to imposing conditions related to documentation of historic property or voluntary mitigation measures that the parties have agreed to. The Board does not have authority to impose historic preservation mitigation measures relating to potential post-abandonment activities along the Harsimus Branch. The whole point of an abandonment is to allow a railroad to remove a rail line from the Board’s jurisdiction because there is no longer any need for rail service on the line. Once the line is abandoned, because it is private property, the owner of

Harsimus Branch Abandonment (AB 167 (Sub-No. 1189X))
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				areas will be dismembered and lost” and “there will also be adverse impacts on adjoining historic assets and districts.”	the line can use the property for other purposes. The Interstate Commerce Act, as amended, does not give the Board the authority to control or otherwise retain property in the interstate rail network that is no longer needed for rail service. In addition, the NHPA requires the Board to consider mitigation, but it does not provide any additional legal authority that would allow the Board to order that a railroad must retain rail-related structures post-abandonment. Here, to mitigate the adverse effects of the abandonment, Conrail will be required to undertake a wide range of activities, including: 1) recordation of the Harsimus Branch (in consultation with the SHPO and OEA); 2) development of a webpage and digital video of the Harsimus Branch (in consultation with all of the consulting parties); and 3) preparation of interpretive signage to document the history of the rail line and associated historic properties and historic districts (in consultation with all of the consulting parties). These mitigation measures are part of the required stipulations in the MOA to take into account the effects of the Undertaking on historic properties.
4			General Comment	Jersey City advocates preserving the Harsimus Branch for multiple public purposes including historic preservation, trail, park, green space and rail purposes in order to mitigate adverse impacts.	Comment noted.
5			General Comment	Jersey City states that it wanted to acquire the Harsimus Branch and in 2005 authorized eminent domain proceedings.	Comment noted.
6			General Comment	Jersey City states that it cannot acquire the property until there is proof of Board abandonment authorization or proof that none is required. Jersey City also states that it tried to get proof from Conrail but was unsuccessful. Conrail then sold the 8 blocks to	Comment noted.

Harsimus Branch Abandonment (AB 167 (Sub-No. 1189X))
Comment/Response Summary Table
Harsimus Revised Draft Memorandum of Agreement

June 14, 2023

Comment Number	Organization	Commenting Party	Type of Comment	Comment	Response
				SLH Properties. Jersey City also states that “According to STB and federal statutes, this sale was and is unlawful.”	
7			General Comment leading to statement relating to MOA	Jersey City states that the Board should not “rubberstamp willful unlawful conduct by a railroad with an unconditioned abandonment authorization, which the current MOA in our view does.”	OEA has not simply “rubberstamped” the railroad’s conduct. Rather, OEA diligently engaged in the Section 106 process over the course of many years in this case. In consultation with the Section 106 consulting parties and the public, OEA progressed through the four Section 106 steps of definition of the undertaking, identification of historic properties, assessment of effects, and resolution of adverse effects. OEA also provided ample opportunities for the consulting parties and the public to participate in each step. In consultation with the consulting parties and the public, OEA determined that the proposed abandonment could have an Adverse Effect on historic properties and developed a draft MOA to resolve the adverse effects to those historic properties. If finalized and executed, the MOA would include stipulations that must be completed prior to the consummation of abandonment authority should the Board grant such authority. Thus, compliance with the terms of the executed MOA will be mandatory and will ensure that adverse effects to historic properties are appropriately addressed before this abandonment could be consummated if abandonment is authorized. The decision as to whether to authorize abandonment will be made by the Board and is beyond the scope of the MOA and OEA’s historic review process. The Board may also address any unlawful conduct as appropriate.
8			General Comment	Jersey City states that the sale deprived the city of meaningful comment under Section 106 and NEPA.	The City of Jersey City has been a Section 106 consulting party and an active participant in the Section 106 and NEPA processes for the entire duration of the project and continues to participate.
9			General Comment	Jersey City states that the sale amounted to “willful anticipatory demolition for purposes of section 110(k) of the NHPA.”	The Board recently resolved the Section 110(k) issue. In response to a letter dated March 8, 2021, from the ACHP requesting that the Board determine whether Conrail violated Section 110(k) before completing the Section 106 process, the Board commenced consideration of the

Harsimus Branch Abandonment (AB 167 (Sub-No. 1189X))
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Harsimus Revised Draft Memorandum of Agreement
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Comment Number	Organization	Commenting Party	Type of Comment	Comment	Response
					applicability of Section 110(k). After considering the evidence and arguments submitted by the parties on that issue, along with the entire record, the Board, in a decision issued August 22, 2022, found that Conrail did not engage in “anticipatory demolition” of historic properties in violation of Section 110(k). As part of its analysis, the Board concluded that the sale at issue here did not result in a Section 110(k) violation, that there was no intent to harm historic resources following the sale, and that the sale had not resulted in adverse effects to the remaining rail infrastructure.
10			General Comment	Jersey City requests that the Board “restore Jersey City to the position and rights that Jersey City would have had but for Conrail’s unlawful de facto abandonment and sale to SLH properties.”	This request for relief is outside the scope of the MOA and OEA’s historic review process.
11			MOA – Add condition	Jersey City requests that the Board impose a condition voiding all of the deeds of sale	See response to Jersey City et al. comment above (Responses #1, #3, #7).
12			MOA – Add two conditions	Jersey City requests that the Board grant a 180-day public use condition barring Conrail from disposing the property other than for public use so that Jersey City can then invoke eminent domain remedies or use a special statute to acquire the property at the same price paid by current owners. Jersey City states that this would permit preservation of the property for public purposes and mitigate adverse impacts.	See responses to Jersey City et al. comment above (Response #2).
13			MOA – Opposed without conditions	Jersey City states that it opposes any MOA which does not incorporate the two elements discussed above.	See responses to Jersey City et al. comments above (Responses #1, #2, #3, and #7).

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14	Embankment Coalition	Maureen Crowley, Embankment Coalition Comments on MOA from testimony at 10/27/20 CP meeting (included with Montange submission, above)	General Comment	The Embankment Coalition states that the Board is proceeding without meaningfully protecting historic assets or the environment.	OEA's revised draft MOA includes revisions reflecting the comments of the consulting parties and appropriately addresses adverse effects on historic properties through the implementation of reasonable mitigation measures to protect historic resources. OEA understands that some commenters would prefer more far-reaching mitigation. However, the mitigation in the revised draft MOA is consistent with the Board's regulatory responsibilities and limited jurisdiction, specifically the fact that railroad rights-of-way are private property, and that the Board's jurisdiction ends when an abandonment is consummated. See responses to Jersey City et al. comments above (Responses #1, #2, #3, and #7).
15			General Comment	The Embankment Coalition states that the Board is proceeding without accommodating meaningful settlement negotiations that are well underway.	The Board is a federal agency tasked with regulating the interstate rail network and does not license, design, fund, or approve local development plans on property that would no longer be part of the interstate rail network if an abandonment is granted. OEA has supported the efforts of various stakeholders involved in the Harsimus Branch abandonment case to enter into a settlement agreement to resolve their differences related to future use of the rail property. However, OEA would have no role in any post-abandonment development of the rail right-of-way in this or any abandonment proceeding because the Board's jurisdiction ends when an abandonment is consummated. Because the Board cannot be involved in any ongoing settlement agreement negotiations, and because any settlement agreement would be outside of the scope of the Section 106 review process and would address post-abandonment issues that are outside of the Board's jurisdiction, it would be inappropriate to delay finalizing the MOA by waiting to accommodate settlement negotiations that may or may not be ongoing. Accordingly, OEA has not added

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					language to the revised MOA to discuss the status or possible content of a potential settlement agreement.
16			General Comment	The Embankment Coalition states that the sale of the historic corridor was unlawful without a required prior Board license.	Comment noted. See responses to Jersey City et al. comments above (Responses #1, #2, #3, and #7).
17			General Comment	The Embankment Coalition states that the Board's apparent intention is to endorse Conrail's unauthorized abandonment.	Comment noted. See responses to Jersey City et al. comments above (Responses #1, #2, #3, and #7).
18			General Comment	The Embankment Coalition states that anticipatory demolition occurred here by Conrail, in violation of NHPA.	See response to Jersey City comment on Section 110(k) above (Response #9).
19			General Comment, MOA – Mitigation	The Embankment Coalition requests that the Board restore the situation to what it would have been had Conrail acted correctly.	This request for relief is outside the scope of the MOA and OEA's historic review process.
20			MOA – Add Conditions	The Embankment Coalition requests that the MOA should include condition the abandonment on voiding the deeds from Conrail to SLH properties.	See responses to Jersey City et al. comment above (Responses #1, #3, and #7).
21			MOA – Add Condition	Coalition requests that the MOA should include a public use condition barring Conrail from disposing of the property for other than public use for 180 days.	See responses to Jersey City et al. comment above (Response #2).
22			General Comment re: Settlement Agreement	Coalition requests that the Board cooperate with the litigation parties to reach a settlement to preserve the resource and avoid adverse effects.	See response to Embankment Coalition comment above (Response #15).
23	Rails to Trails Conservancy (RTC)	Andrea Ferster, RTC, 10/27/20;	General Comment	RTC states that there has been inadequate public participation opportunities during the 106 process.	Since the Section 106 process began in 2008, OEA has provided opportunities for extensive public participation during the Section 106 process. These opportunities have included six public comment periods on

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		included in City et al. 10-29-20			Section 106 and NEPA documents issued by OEA; open in-person and online meetings with the Section 106 consulting parties; and ongoing consultation with seven neighborhood associations and other local agencies and advocacy organizations. 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.
24			MOA	RTC states that the draft MOA was only circulated to consulting parties; cp meeting limited to only cps – public must be provided a meaningful opportunity to comment on the undertaking and to comment on the MOA.	The 2020 draft MOA was circulated appropriately to all consulting parties, representing local neighborhood associations, preservation organizations, the City of Jersey City, Hudson County, as well as the SHPO and the ACHP. The draft MOA was also made available to the public on the Board's website (www.stb.gov) for review and comment. Therefore, meaningful opportunities for comment and input on every aspect of the Section 106 review in this case have been provided.
25			General Comment	RTC states that OEA should have conferred with the consulting parties to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects.	OEA consulted extensively with the Section 106 consulting parties regarding the definition of the undertaking, including alternatives, and regarding potential options for resolving adverse effects on historic properties. In railroad abandonment cases, alternatives to abandonment include denial of abandonment authority, discontinuance of rail service without abandonment, and continued rail operation by another rail carrier. OEA, in consultation with the consulting parties, considered these alternatives as the No-Action Alternative, which would occur if the proposed abandonment was not authorized or consummated. OEA further concluded that the No-Action Alternative would avoid adverse impacts on historic properties.
26			MOA	RTC states that the draft MOA fails to consider any alternatives that would avoid or reduce identified adverse effects.	OEA's extensive Section 106 process evaluated the potential effects of granting abandonment authority, which could result in adverse effects on historic properties, depending on potential post-abandonment activities that are outside of the Board's jurisdiction and control. OEA also considered the potential effects of the No-Action Alternative and concluded that the No-Action Alternative would avoid all adverse effects

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					on historic properties. The extensive Section 106 process involved the evaluation of various post-abandonment scenarios and those potential effects on historic properties, even though the Board cannot control what happens with the property post-abandonment. The undertaking is the proposed abandonment, and it has been determined that the abandonment would cause an adverse effect.
27			General Comment	RTC states that there has been no acknowledgement of this post hoc effort to comply with Section 106 occurs in a context of Conrail's unlawful sale of the property to a private developer.	Comment noted.
28			MOA	RTC alleges that the limited terms of the MOA confirm that the unlawful sale compromised the Board's ability to comply with the requirements of Section 106.	The Board's ability to comply with Section 106 was not affected by the sale of the property. After Conrail applied for abandonment authority the Board conducted a full historic review identifying the historic properties, assessing effects, and addressing adverse effects. The Board's authority to impose mitigation conditions related to historic preservation is generally limited to imposing conditions related to documentation of historic properties or voluntary mitigation measures that the parties have agreed to. See responses to Jersey City et al. comments above (Responses #1, #2, #3, and #7). Thus, the mitigation measures in the MOA were not affected by the sale of property and the Board has complied with Section 106.
29			General Comment – 110(k)	RTC comments that ACHP directed OEA to address the issue of Conrail's anticipatory demolition under Section 110(k) of the NHPA.	After providing an opportunity for public comment on the potential application of Section 110(k), the Board issued a decision on August 22, 2022, finding that Conrail did not engage in "anticipatory demolition" of historic properties in violation of Section 110(k) of the National Historic Preservation Act.
30			General Comment 110(k)	RTC states that OEA noted that the Section 110(k) violation would be addressed by the Board after OEA completes its environmental and historic preservation review and all	Although the Board had intended to address Section 110(k) after completion of the environmental and historic review, the Board agreed to address the Section 110(k) issue prior to the completion of the Section 106 process after the ACHP asked the Board to do so. Once the Board decided

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				information is presented to the Board as it is making its abandonment decision. OEA indicated that the parties would be given an opportunity to present arguments to the Board, but no opportunity has been given to date.	to do so, it provided an opportunity for public comment by all interested parties, including all of the Section 106 consulting parties prior to issuing its decision finding no violation of Section 110 k on August 22, 2022.
31			General Comment	RTC states that the Board is required by both Section 110(k) and its own policy on consummation of abandonment to deny the abandonment unless and until Conrail returns the property to its status quo ante or adopts a preservation solution through the Section 106 process that avoids adverse effects.	RTC is incorrect. The Board found no Section 110k violation and has yet to rule on the Harsimus abandonment. The consummation policy statement only applies after the Section 106 process is completed and a railroad has obtained authority to abandon.
32	Embankment Coalition	Stephen Gucciardo, President EPC, 10/27/20; included in City et al. 10-29-20	General Comment	The Embankment Coalition states that loss of federal jurisdiction is a clear adverse effect.	OEA notes that the Board does not own or manage railroad property and that the Board's jurisdiction over lines of railroad proposed for abandonment is limited and ends when abandonment is consummated. OEA concluded that the Board's limited jurisdiction over the rail line proposed for abandonment in this case does not constitute "federal ownership or control" under 36 C.F.R. § 800.5(a)(2)(vii). Because there was no federal ownership or control over the railroad line at issue, OEA disagrees with the commenter's conclusion that the removal of Board jurisdiction over the Harsimus Branch would be an adverse effect under Section 106.
33			General Comment	The Embankment Coalition asks why OEA chose to prepare an MOA rather than a PA, when it claims that adverse effects cannot be foreseen.	In consultation with the SHPO and the ACHP, OEA determined that granting abandonment authority would result in adverse effects to historic properties and that an MOA is adequate and appropriate for this case. Pursuant to the applicable regulations, those adverse effects are identified and described in the Cultural Resources Effects Report and Cultural Resources Effects Report Addendum that OEA prepared in consultation

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					with the consulting parties. In consultation with the SHPO and ACHP, OEA determined that a MOA is appropriate in this case because it is known that the undertaking would result in adverse effects.
34			General Comment	The Embankment Coalition states that if OEA is now separating NHPA from NEPA, it should not make comments on both due at the same time. There is not enough time for review and comment. Sixty days would accommodate these organizations.	Comment noted.
35			General Comment	The Embankment Coalition states that the agency needs to consult on mitigation with the public and not just the CPs. When will the agency consult with the public? How will the public know to comment?	OEA is consulting on all aspects of the Section 106 process, including mitigation options, with the public, the 23 consulting parties (representing local neighborhood associations, preservation organizations, the City of Jersey City, Hudson County), the SHPO, and the ACHP. All documents produced during the Section 106 process have been posted publicly for review and comment. Opportunities to provide comment and input have been, and continue to be, extensive.
36			General Comment	The Embankment Coalition states that comment periods should be extended so that SHPO and ACHP can see the comments of all the parties.	All comments from parties have been and continue to be publicly posted on STB's website and are available for review by all consulting parties, as well as the general public.
37			General Comment	The Embankment Coalition requests a clear process description from the OEA as to how the consulting parties and the public are to make meaningful and timely contributions to the outcome.	OEA has consulted extensively with consulting parties and the public during the four-step Section 106 process. In preparing the revised draft MOA as part of step four of the process, OEA carefully considered all comments from consulting parties and the public that OEA received during the comment periods for the Draft EA, the Cultural Resources Identification Report, the Cultural Resources Effects Report, and the draft MOA. The Embankment Coalition, as well as the other consulting parties, will continue to be part of the Section 106 consultation process and will be notified in advance of any opportunities to provide meaningful input related to the project.

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38			General Comment	The Embankment Coalition asks that OEA coordinate with the consulting parties regarding privacy concerns related to sharing contact information. The Embankment Coalition asks that the OEA make the contact information public.	OEA has, and continues, to update its contact information for all the organizations and consulting parties, to ensure as accurate outreach as possible. All comments received from consulting parties and the public, including the contact information for commenters, are publicly available on the Board's website.
39			General Comment	The Embankment Coalition wants a better process, so parties are not caught unawares.	OEA continues to keep the consulting parties and the public informed of all project actions and activities, so as to provide opportunities for public review and comment. This includes posting every comment, report and Board decision on the STB website, emails to all parties notifying them of any decision, report or meeting, and being responsive to all emails and telephone requests for information.
40	LLCs – Property Owner Rep.	Michele Donato, 11/5/2020	Supportive of terms of MOA	The LLCs state that the draft MOA complies with applicable law and encourage the Board to continue this process.	Comment noted.
41	Conrail	Michael Rosenthal, Conrail, 11/13/2020	General support of MOA	Conrail states that it generally agrees with the mitigation measures proposed in the draft MOA.	Comment noted.
42				Conrail agrees that the Board can only impose documentation requirement.	Comment noted.
43				Conrail agrees that future use of the underlying property is beyond the scope of any consideration by the Board.	Comment noted.
44				Conrail notes that there is no legal basis for MOA to be a surrogate for broader community concerns about potential re-use scenarios.	Comment noted.

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45				Conrail notes that it has “consistently taken the position that STB should not consider post-abandonment uses under NEPA or the NHPA as they are not reasonably foreseeable.” Noted this in 2009 Draft EA (May 7, 2009), 2019 April comments on CREAR, and October 2020 comments on DSEA.	Comment noted.
46			Mitigation Efforts in MOA	Conrail indicates that the MOA should state that “the contractor’s work should be performed to a reasonable level of effort and may reuse historical research.”	The revised draft MOA includes appropriate performance standards and measures for the tasks to be completed.
47			Mitigation Efforts in MOA	Conrail states that there should be no need for the contractor to perform additional archival research given the extensive work already done.	Contrary to the commenter’s claims, additional research may be required, as appropriate, based on the results of the consultation process amongst the various parties to the MOA.
48			Mitigation Efforts in MOA	Conrail states that certain proposed interpretation measures are beyond the scope of any reasonable documentation of the historic rail line itself or the foreseeable impacts of the Board’s action.	Documentation and Interpretation requirements in the MOA are appropriate given the nature of the undertaking and the importance of the historic resources at issue here to the community.
49			Mitigation Efforts in MOA	Conrail does not think that educational panels illustrating the history and development of immigrant communities in Jersey City is relevant. Conrail does not think that the narrative detailing the historic significance of the War of 1812 context in relation to the cemetery HD is relevant. “These matters seem collateral to the effect of the rail line and the Harsimus Embankment, involve matters that in certain instances significantly pre-dated the	The development of the executed themes for the educational panels will evolve based upon consultation among all the consulting parties. Due to the high number of affected historic properties, it is appropriate to have a wider range of historical themes, including immigration and the War of 1812 and how they relate to Jersey City and Harsimus Cemetery Historic District.

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				historic features at issue, and that are unrelated to its historic features. There is no rational basis for including these requirements as mitigation for this abandonment undertaking.”	
50			Mitigation Efforts in MOA	Section III notes that Conrail might erect signage within the ROW of the Harsimus Branch. Conrail states that this seems inconsistent with the provision contemplating that sign panels would be delivered to the SHPO to be stored until future siting is agreed upon.	OEA has revised the text in Section III of the revised draft MOA in response to this comment to clarify that signage would be delivered to the SHPO and stored until its future siting can be determined through consultation. Then, Conrail will be responsible for erecting the signage.
51			Mitigation Efforts in MOA	Conrail states that the approval process for educational interpretive content is overly proscriptive and should be clarified. No basis for expanding the review and comment process into a requirement for approval before Conrail can move forward with its obligations to produce the sign panels. (See Section I.B.1.iv.) This may unduly delay completion of the requirements. Conrail recommends removing this requirement to make those provisions consistent with the review provided for the webpage described in Section I.B.2. Conrail also recommends adding a statement that if a party with a right to review does not do so within the 30-day period, Conrail and the Board “shall assume concurrence and proceed.”	The review and approval process for the Interpretive Signage (Section I.B.1.iv) in the MOA allows for substantive consulting party input into the development of the educational panels. The consulting parties will have a 30-day review period to provide comments on the draft materials. Conrail will then revise the draft materials as appropriate and submit the final materials to the consulting parties for a final 15-day review period. Once OEA has approved the materials, and after incorporating and/or addressing input from the consulting parties, Conrail will proceed with fabrication in accordance with Section I.B.1.iv). The revised draft MOA includes the 15-day final review period in Section I.B.1.iii).

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52	NJSHPO	Kate Marcopul, NJ SHPO 12/3/2020		SHPO has reviewed the ACHP's comments from 11/5/2020 and concurs with them.	Comment noted.
53		Kate Marcopul, SHPO 12/3/2020		Regarding the settlement agreement, SHPO states that in prior discussions "it was agreed that although the settlement agreement lies outside the Section 106 process, it has within its scope many items germane to understanding the reasonable and foreseeable effects of the abandonment. Therefore, if executed in advance of the MOA, it could be usefully referenced in the MOA. It is our understanding that the most recent impediment to the finalization of the settlement agreement was the issue of prevailing wage, but that this has been substantially resolved. The HPO recommends that OEA reach out to involved parties to determine the current status of the settlement agreement prior to finalizing a draft MOA."	OEA understands that there are currently no immediate plans to execute a settlement agreement. Because it is unlikely that a settlement agreement will have been executed prior to the finalization of the MOA, because the Board is not involved in settlement agreement negotiations, and because any settlement agreement would be outside of the scope of the Section 106 review process and would address post-abandonment issues that are outside of the Board's jurisdiction, OEA is not modifying the MOA to discuss the status or possible content of a potential settlement agreement.
54		Kate Marcopul, SHPO 12/3/2020	110(k)	SHPO agrees that Section 110(k) resolution after conclusion of 106 is essentially moot. Should be an indication in the MOA that OEA believes the Board should support a determination that 110(K) is not applicable in this case and why. Recommends OEA provide some guidance about what would happen if the Board determines that 110(K) does apply in this case? What would be the status of prior Section 106 consultation? Is the MOA still	The revised draft MOA reflects the decision issued on August 22, 2022 by the Board, finding that Conrail did not engage in "anticipatory demolition" of historic properties in violation of Section 110(k) of the National Historic Preservation Act.

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				valid? Would there be a need to consult on additional mitigation measures?	
55	City of JC; EC; RTC – Montange for all	Montange et al. Comments, 11/9/2020	General Comment	Jersey City et al. state that the Board should void the deeds upon the effectiveness of any abandonment authorization.	See response to comments above (Responses #1, #3, and #7).
56			General Comment	Jersey City et al. states that the Board should impose a public use condition barring Conrail from selling the property for other than public use for 180 days.	See response to comment above (Response #2).
57			MOA is premature due to 110(k) not being addressed	Jersey City et al. state that the Board so far has avoided any meaningful consideration of the requirements of Section 110(k) of the NHPA. They also stated that Conrail engaged in anticipatory demolition, for which Section 110(k) provides remedies. These remedies include denial of the abandonment license and presumably measures to restore Jersey City et al. to the position they would have enjoyed in terms of preserving historic assets but for the de facto abandonment actions of Conrail. These remedies are superior to, and would supplant, the mere documentation requirements embodied in the Board’s current draft MOA.	The revised draft MOA reflects the decision issued on August 22, 2022 by the Board, finding that Conrail did not engage in “anticipatory demolition” of historic properties in violation of Section 110(k) of the National Historic Preservation Act.
58	ACHP	Jaime Loichinger, 11/12/20	Format of MOA	ACHP recommends that OEA make the MOA more consistent with ACHP’s Guidance on Agreement Documents.	The revised draft MOA has been updated to make it more consistent with ACHP’s Guidance on Agreement Documents.

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59			Section 110(k)	ACHP asks OEA to clarify applicability of Section 110(k) of the NHPA to the undertaking.	The language in the 2020 draft MOA pertaining to Section 110(k) has been removed in light of the decision issued on August 22, 2022 by the Board, finding that Conrail did not engage in “anticipatory demolition” of historic properties in violation of Section 110(k) of the National Historic Preservation Act. The revised draft MOA appropriately addresses only issues involving and related to Section 106.
60			Stipulation revision.	ACHP requests that OEA revise Stipulation II to include a comment/response document prepared by Conrail to track consulting parties’ views for the draft and final deliverables as required with the mitigation measures.	OEA has revised Stipulation II to include a comment response document to be prepared by Conrail to track consulting parties’ views for all deliverables as required with the mitigation measures.
61			Suggest revisions to administrative stipulations.	ACHP suggests that the OEA should redraft certain administrative stipulations based upon ACHP’s edits and comments, including the duration and unanticipated discovery of human remains stipulations.	The revised draft MOA reflects suggested edits and comments from the ACHP and includes duration and unanticipated discovery of human remains stipulations.
62			Signing order for MOA	ACHP notes that it is the last agency to sign any agreement and that OEA should submit the final MOA to the ACHP with all the signatures when it is ready to be executed.	Comment noted.
63	None Identified	Richard James Author of Harsimus Embankment SR/NR nomination Brooklyn, NY 11/13/2020	MOA	Mr. James states that the Draft MOA should be “re-thought and radically amended, to reflect the traditions of public/civic/private, multi-partisan cooperation that has characterized American preservation practice for the last half-century.”	Comment noted.