

From: [Tabachnick, Alan](#)
Bcc: [REDACTED]

Subject: Circulation of Draft Memorandum of Agreement for Proposed Abandonment of the Harsimus Branch
Date: Wednesday, October 14, 2020 3:00:00 PM
Attachments: [Harsimus MOA Draft 10-2020 Updated.pdf](#)

To: Section 106 Consulting Parties

From: Alan Tabachnick, Historic Preservation Specialist, Surface Transportation Board, Office of Environmental Analysis

Re: Circulation of Draft Memorandum of Agreement (MOA) 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 Office of Environmental Analysis (OEA) is continuing consultation under Section 106 of the National Historic Preservation Act (NHPA), moving the process into 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 State Historic Preservation Officer (SHPO) has concurred with OEA's determination that all of these historic properties remain eligible (January 17, 2020). OEA has also determined that the project will have an Adverse Effect on historic properties, and the SHPO has concurred with this finding (January 17, 2020).

Numerous technical reports have been prepared and circulated publicly in support of these determinations, all of which are referenced (and links provided) in our September 25th email to the consulting parties.

OEA is continuing consultation with the SHPO, the Advisory Council on Historic Preservation, and the other Section 106 consulting parties on methods to avoid, reduce, or mitigate adverse effects. Attached for your information and review is the draft MOA, which will also be presented and discussed during the Section 106 consulting parties meeting on October 27th.

OEA remains interested in working with the consulting parties regarding the proposed mitigation items included in the draft MOA. This ongoing consultation process will result in the execution of a final version of the MOA which will finalize the Section 106 process. OEA has established a 30-calendar day review period for the draft MOA, and comments are due to be submitted by November 14, 2020. Comments can be submitted via the Surface Transportation Board's website (<https://prod.stb.gov/proceedings-actions/environmental-comments/>) or can be emailed to Alan Tabachnick at alan.tabachnick@stb.gov.

Thank you for your continued interest and participation and we look forward to talking with you on October 27th, and to receiving your comments on the draft MOA.

Alan Tabachnick

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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 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, as defined in 36 CFR § 800.3(a) (the Undertaking); and

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

WHEREAS, the Board's Office of Environmental Analysis (OEA) issued a draft Environmental Assessment on March 23, 2009 that evaluated the potential for abandonment of the Harsimus Branch to adversely affect the environment and historic resources listed in or eligible for listing in the National Register of Historic Places (National Register); 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 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, 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 (March 29, 2019) and an Effects Assessment Report Addendum (November 12, 2019); and

WHEREAS, the three scenarios are not alternatives under Section 106 because the Board has no regulatory authority over post-abandonment uses of the Harsimus Branch and cannot determine which of these scenarios would occur if the abandonment were to be authorized and consummated; 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. § 800, the regulations implementing Section 106 (historic properties shown on mapping in **Appendix B**); and

WHEREAS, this MOA was developed to address 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 a result of 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 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 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

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.

NOW, THEREFORE, 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(c), 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 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 CFR 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 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) 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.
 - 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 identified, and agreements made for the erection, display, and future maintenance of the interpretive signage.

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. 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) 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 of the ACHP under 36 C.F.R. § 800.7. Prior to such time, OEA 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. 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. 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, following the execution of this MOA until it expires or is terminated, Conrail shall provide all parties to this MOA and the ACHP a 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.

XII. 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, Conrail, and the ACHP.

SIGNATORIES:

Surface Transportation Board

_____ Date

[insert agency official name and title]

Advisory Council on Historic Preservation

_____ Date

John M. Fowler, Executive Director

New Jersey Historic Preservation Office

_____ Date

[insert name and title]

INVITED SIGNATORIES:

Consolidated Rail Corporation

_____Date

[insert name and title]

CONCURRING PARTIES:

[insert invited signatory name]

_____Date

[insert name and title]

CONCURRING PARTIES:

[insert name of concurring party]

Date

[insert name and title]

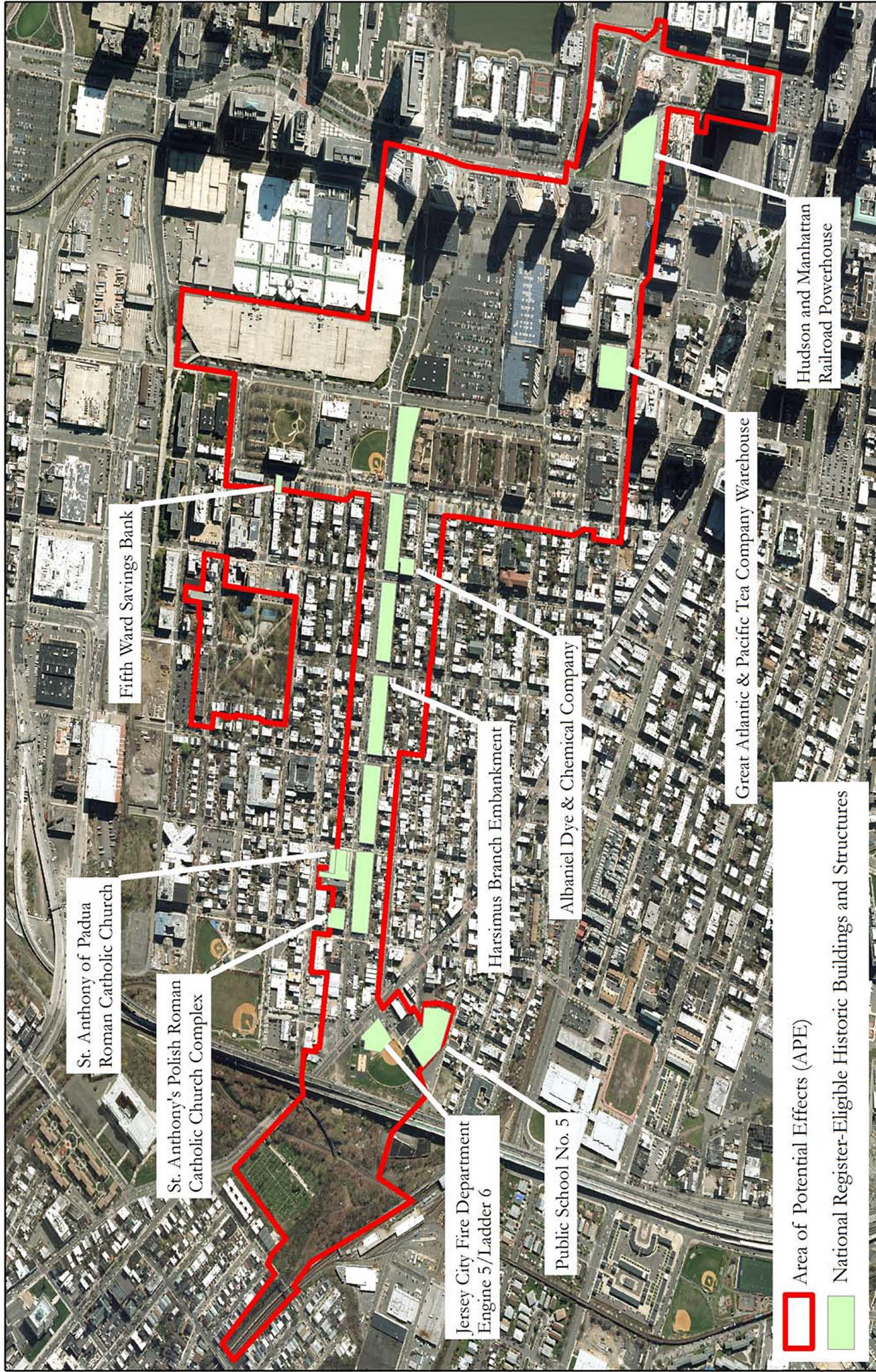
APPENDIX A – AREA OF POTENTIAL EFFECTS MAPPING

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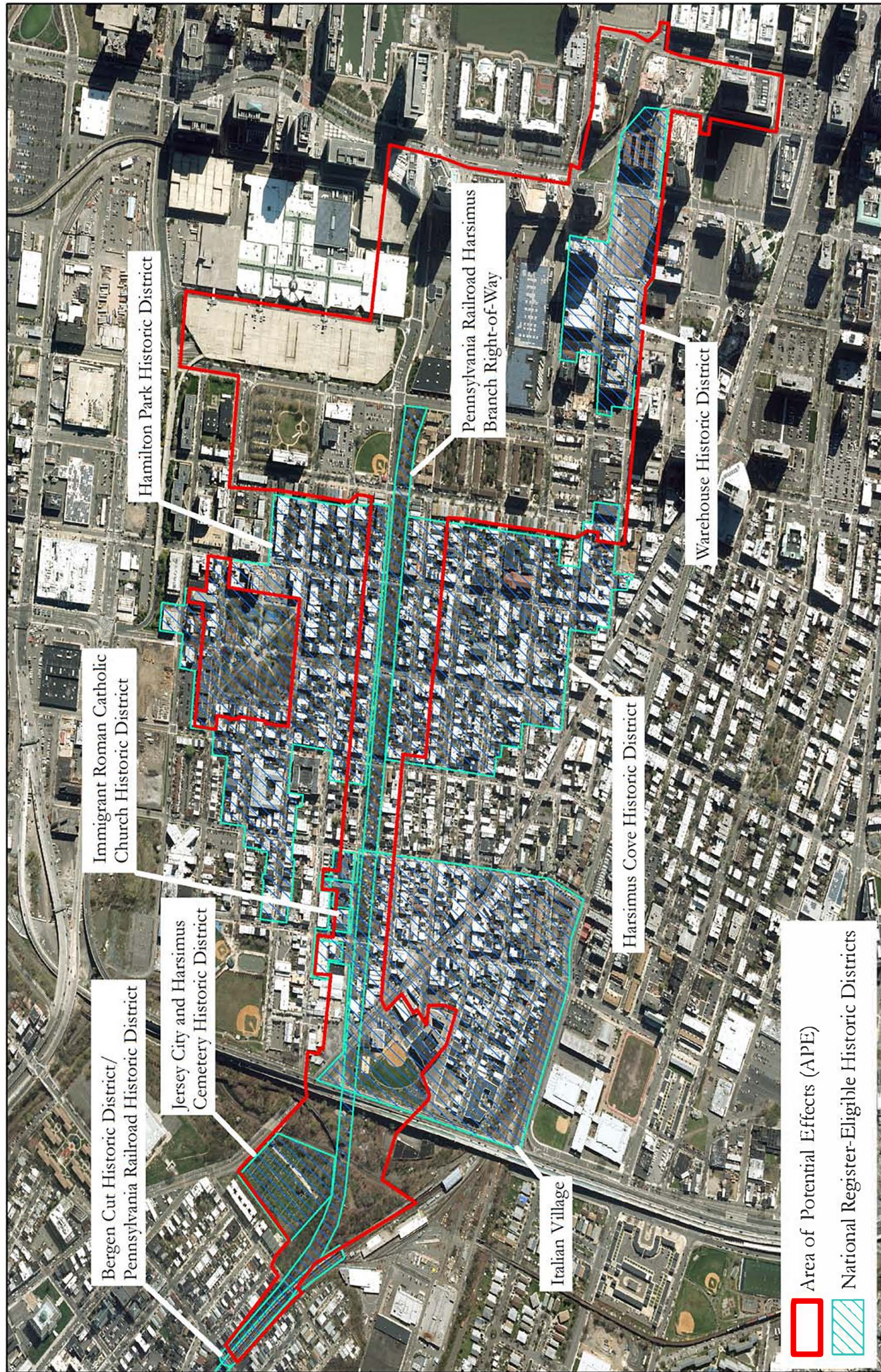
MAP SHOWING AREA OF POTENTIAL EFFECTS
TO BE PROVIDED

APPENDIX B – HISTORIC PROPERTY LOCATION MAPS

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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

Marin Boulevard LLC, et al.

New Jersey State Historic Preservation Office

New York/New Jersey Baykeeper

Newport Neighborhood Association

Pennsylvania Railroad Technical & Historical
Society

Powerhouse Arts District Neighborhood
Association

Preservation New Jersey

Rails-to-Trails Conservancy

Van Vorst Park Association

Village Neighborhood Association

OTHER ORGANIZATIONS

Jersey City Free Public Library

Jersey City Parks Coalition

Roebling Chapter, Society for Industrial
Archaeology