

# CULTURAL RESOURCES EFFECTS ASSESSMENT REPORT ADDENDUM



## CONRAIL HARSIMUS BRANCH ABANDONMENT STB DOCKET NOS. AB 167 (Sub-No. 1189X), AB 55 (Sub-No. 686X), and AB 290 (Sub-No. 306X)



City of Jersey City, Hudson County, New Jersey

Office of Environmental Analysis  
Surface Transportation Board  
Washington, DC 20423

November 2019

# **Cultural Resources Effects Assessment Report Addendum**

**Dockets No. AB 167 (Sub-No. 1189X), AB 55 (Sub-No. 686X),  
and AB 290 (Sub-No. 306X)**

**Consolidated Rail Corporation – Abandonment – City of Jersey City, Hudson County, NJ**

**Historic Preservation Office Project Number: 08-0811**

**November 12, 2019**

## **Introduction**

The Surface Transportation Board’s (STB or Board) Office of Environmental Analysis (OEA) has prepared this Addendum to its Cultural Resources Effects Assessment Report (Effects Report) issued on March 29, 2019. This Effects Report Addendum is part of the Section 106 of the National Historic Preservation Act (NHPA) process being undertaken by the Board in response to a filing on January 6, 2009, by the Consolidated Rail Corporation (Conrail) requesting abandonment authority for a line of railroad in the City of Jersey City, Hudson County, New Jersey (Jersey City), known as the Harsimus Branch. The line proposed for abandonment extends approximately 1.36 miles from a milepost at CP Waldo to a point east of Washington Street in Jersey City, New Jersey.

As part of the Board’s responsibilities under Section 106, OEA has been moving the project through the four steps of the Section 106 review process. OEA completed Step 1 (Initiate the Process) in 2009, when, in consultation with the NJ SHPO and interested parties, OEA initiated the Section 106 process, and defined the undertaking and the Area of Potential Effects (APE). Before the Section 106 process could proceed further, the Board issued a stay of the abandonment case while litigation unrelated to Section 106 proceeded (see Attachment 3 for details). The stay was lifted in 2014, and OEA reinitiated Section 106 consultation with the New Jersey Historic Preservation Office (the New Jersey State Historic Preservation Officer or NJ SHPO), the Advisory Council on Historic Preservation (ACHP) and the other Section 106 consulting parties.

As part of Step 2 (Identification of Historic Properties), OEA held in-person consulting party meetings in May and June 2016 to discuss the approach for identifying additional historic properties within the APE and to share preliminary results. Following ongoing consultation with the NJ SHPO and the other Section 106 consulting parties, OEA issued the Cultural Resources Identification Report (CRI Report) on May 5, 2017. After receiving comments on the CRI Report from the NJ SHPO and other consulting parties, OEA issued a Cultural Resources Identification Report Addendum (CRI Report Addendum) on October 16, 2018. The issuance of the CRI Report Addendum concluded the identification phase of the Section 106 process.

To initiate Step 3 (Assessment of Adverse Effects), on March 29, 2019, OEA issued a Cultural Resources Effects Assessment Report (Effects Report) that documented the potential impacts of the abandonment on historic properties. The issuance of this Effects Report Addendum to the Section 106 consulting parties and the public marks the end of Step 3. Step 4 (Resolution of Adverse Effects) will now begin and will involve the preparation of a Programmatic Agreement (PA), as well as a public meeting in Jersey City, to present project information and to gather input on the mitigation of adverse effects. The Section 106 process for this project has been, and will continue to be, consultative, with all of the involved parties, organizations, agencies, and the public providing valuable input during each step.

This Effects Report Addendum has been prepared in consideration of the comments and input from the consulting parties. Multiple meetings have been held with the consulting parties during the Section 106 process, including meetings held in Jersey City (2016) and Washington, D.C. (2016). In order to continue consultation efforts, STB staff met with the ACHP in Washington, D.C. on June 11<sup>th</sup>, 2019, and with the NJ SHPO on July 29<sup>th</sup>, 2019, in Trenton, N.J. These meetings helped to clarify some of the points in the STB's Section 106 documents issued to date and to resolve outstanding issues regarding potential effects to historic properties and the limited ability of the Board to protect them.

During these recent meetings, both the NJ SHPO and the ACHP commented that the Effects Report did not adequately address how the project would impact the integrity of the various historic properties. This Effects Report Addendum addresses that issue and lays out specifically how each element of integrity may be impacted by the proposed project for each historic property.<sup>1</sup>

Section 1 of this Effects Report Addendum presents an overview of the federal undertaking (the proposed abandonment), alternatives to abandonment (the No Action Alternative), and three reasonably foreseeable scenarios that could occur if abandonment authority is granted. Section 2 provides clarifications and additional findings related to the Identification Phase of Section 106 and summarizes those findings (**Table 1**). Section 3 provides an updated assessment of the effects of the project (**Table 2**) and provides additional information and clarifications in order to address comments received. Section 4 presents the next steps in the Section 106 process, the Resolution of Adverse Effects (36 C.F.R. § 800.6), which will include a public consultation meeting in Jersey City to discuss mitigation opportunities and gather meaningful input from all parties. It should be noted that after extensive consultation with the NJ SHPO, there is agreement on most findings of effect for this undertaking.

A number of Attachments have also been prepared as part of the Effects Report Addendum to provide additional more detailed information. Attachment 1 provides a summary of all of the comments received to date on the Effects Report and provides OEA's responses. Attachment 2 provides an

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<sup>1</sup> National Register Bulletin, How to Apply the National Register Criteria for Evaluation. National Park Service. Accessed at: <https://www.nps.gov/nr/publications/bulletins/pdfs/nrb15.pdf> on 6/18/19.

Overview History of the Harsimus Branch. Attachment 3 contains information on the Legal Actions Related to the Abandonment Case. Attachment 4 presents STB's Role in Abandonment Proceedings (addressing STB's role as a licensing agency and the limits on STB's authority to impose conditions on privately-owned property). Attachment 5 presents a Section 106 Technical Memorandum providing clarification on the historic boundaries of the Jersey City and Harsimus Cemetery in relation to the Harsimus Branch right-of-way. This Effects Report Addendum should be read in conjunction with OEA's prior Section 106 documentation for complete information on all aspects of the historic review process in this case.

## **Section 1 – Overview of the Project, Alternatives, and Possible Scenarios**

### Overview of the Project

On January 6, 2009, Conrail, along with CSX Transportation (CSXT) and Norfolk Southern Railway Company (NSR), jointly filed a verified notice of exemption under 49 C.F.R. § 1152.50 with the Board, seeking authority for Conrail to abandon and for CSXT and NSR to discontinue service over an approximately 1.36-mile portion of a line of railroad known as the Harsimus Branch, between Milepost 0.00, CP Waldo Avenue, and Milepost 1.36, a point east of Washington Street (**Figure 1**).<sup>2</sup> The Harsimus Branch includes the Pennsylvania Railroad Harsimus Branch Embankment (Embankment), a series of six stone-lined structures that once conveyed the elevated rail line between Brunswick Street and Marin Boulevard. The Section 106 process for the project had begun in 2008, when OEA initiated consultation with the NJ SHPO. In March 2009, OEA informed ACHP that there was a potential for adverse effects to historic properties and invited ACHP to participate in the Section 106 process. ACHP agreed to participate. On March 29, 2009, OEA issued an Environmental Assessment (EA) that examined the potential environmental and historic impacts of the proposed abandonment. In that document, OEA also documented the project's APE, which was concurred with by the SHPO. Historic surveys were undertaken within the APE and after extensive background research, and consultation with the SHPO, 19 historic properties were identified, documented, boundaries developed, and eligibility determinations made (**Table 1**). Section 2 presents a summary of those resources.

The federal undertaking in this case is the Board's decision whether or not to authorize Conrail's proposed abandonment of the Harsimus Branch, the result of which, if authorized and consummated, would be to remove the line from the interstate rail system and the Board's jurisdiction. The two alternatives under consideration are the authorization of the abandonment (the Action Alternative) and the denial of abandonment authority (No Action Alternative).

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<sup>2</sup> In this case, Conrail filed a Notice of Exemption under the streamlined process at 49 C.F.R. § 1152.50, rather than a Petition for Exemption or Application for abandonment authority because the subject rail line had been out of rail service for more than two years.

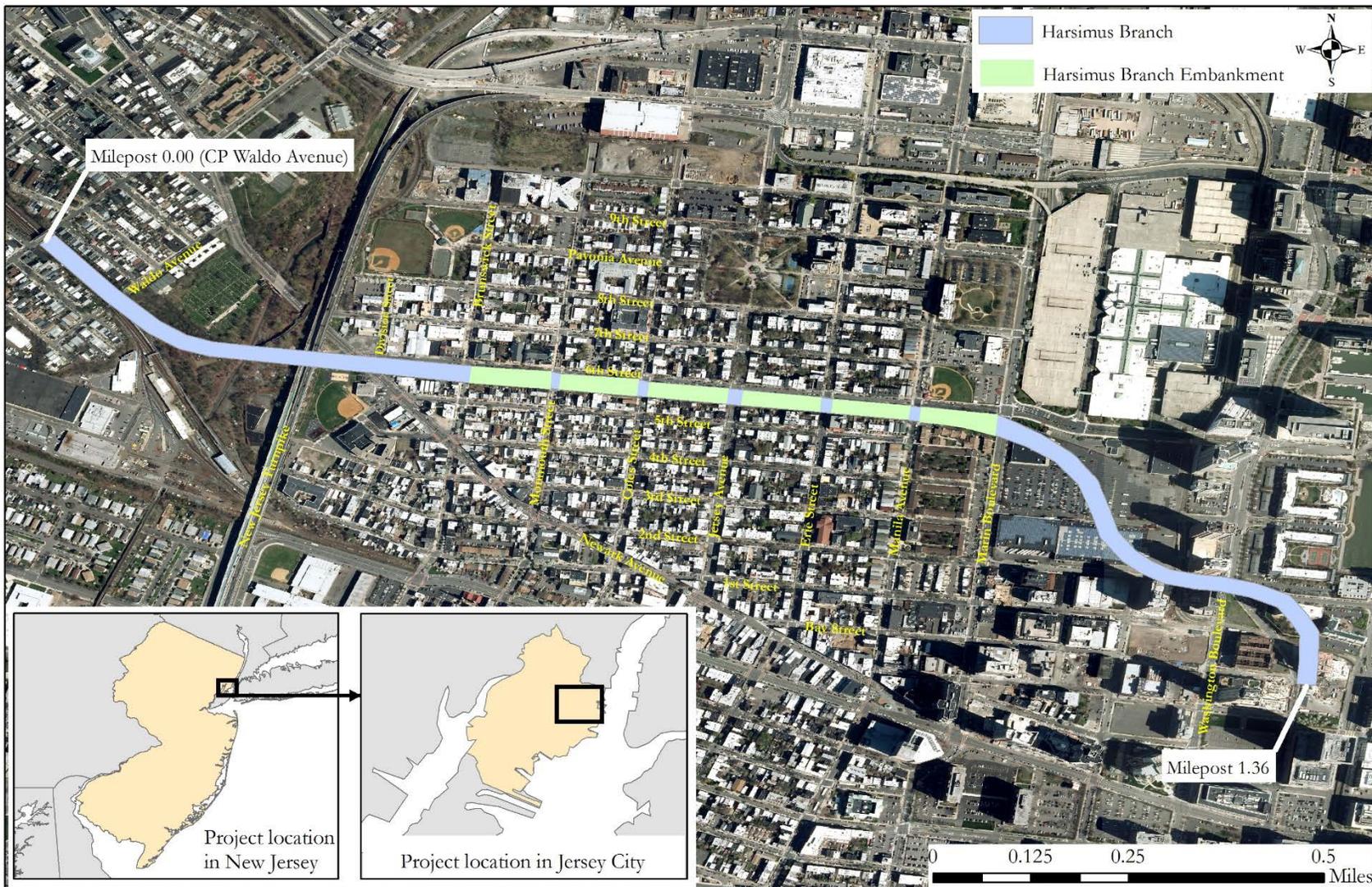


Figure 1: Project Location

## Development of Reasonable and Foreseeable Scenarios

The Harsimus Branch abandonment case presents unique circumstances that have warranted some changes to the scope of the Board's typical Section 106 process.<sup>3</sup> These unusual circumstances include the fact that the limited liability companies that own the six Embankment segments (collectively, the LLCs)<sup>4</sup> provided preliminary development plans for those properties early in the Section 106 process, giving OEA more information about potential post-abandonment activities by private parties than is typically the case. Accordingly, the agency's effects analysis assesses three reasonably foreseeable scenarios that could occur under the Action Alternative, based on the general information currently available regarding potential post-abandonment development plans proposed over the years, within the context of existing zoning and building regulations:

- Scenario 1—Complete preservation of the Harsimus Branch from CP Waldo to Marin Boulevard and conversion into a trail/park
- Scenario 2—Demolition and full redevelopment of the Embankment blocks (Marin Boulevard to Brunswick Street) and development immediately to the west of the Embankment and east of the New Jersey Turnpike
- Scenario 3—Partial Preservation of the Harsimus Branch right-of-way west of Marin Boulevard with Partial Demolition and Redevelopment of the Embankment, including what OEA has been told about terms under consideration for inclusion in a potential negotiated settlement agreement, which is discussed in more detail below

OEA's approach to the assessment of effects, including the use of the scenarios above, was originally proposed during the initiation of the Section 106 process in 2008 and was refined subsequently in consultation with the NJ SHPO, ACHP, and the other consulting parties. After OEA formally reinitiated Section 106 consultation in 2015, OEA discussed the scenario approach, including the definitions of Scenario 1 and Scenario 2, with the consulting parties during ongoing consultation leading to the preparation of the CRI Report, CRI Report Addendum, and the Effects Report. The NJ SHPO and ACHP were also provided with

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<sup>3</sup> In the typical railroad abandonment case, OEA assesses the potential effects to historic properties of abandonment-related salvage and of the diversion of rail traffic to other transportation modes. In this case, Conrail does not propose to conduct any salvage activities and there would be no diversion of rail traffic to truck traffic or other rail lines because no rail traffic has moved on the Harsimus Branch for many years. Moreover, at the start of the historic review process, OEA had information about potential reuse plans for the right-of-way, which is typically not the case.

<sup>4</sup> The "LLC's" refer collectively to the following entities: 212 Marin Boulevard, LLC; 247 Manila Avenue, LLC; 280 Erie Street, LLC; 389 Monmouth Street, LLC; 354 Cole Street, LLC; 317 Jersey Avenue, LLC; 415 Brunswick Street, LLC; 446 Newark Avenue, LLC; and NZ Funding, LLC.

preliminary results in 2017 and reviewed and approved the approach to the assessment of effects during the preparation of the Effects Report. Scenario 3 was added to the approach in 2018 after OEA was made aware of a potential negotiated settlement agreement between various parties.

Because the Board has no regulatory authority over post-abandonment uses of the Harsimus Branch, those three scenarios are not alternatives under Section 106, but are post-abandonment scenarios that could occur under the Action Alternative. As explained previously (Effects Report, pages 3-1 through 3-7), the Board cannot dictate which of these three scenarios would occur nor place involuntary conditions on any post-abandonment scenario if the abandonment were to be authorized and consummated because at that point the rail corridor would no longer be within the Board's jurisdiction as part of the national rail system. The only feasible alternative to abandonment in the present case is the No Action Alternative, which would occur if the Board were to deny abandonment authority. The three potential Action Alternative scenarios and the No Action Alternative are detailed below.

### **Scenario 1 - Complete Preservation of the Harsimus Branch from CP Waldo to Marin Boulevard and conversion into a trail/park**

Scenario 1 would involve the complete preservation of the Harsimus Branch from CP Waldo to Marin Boulevard as a public trail and park.<sup>5</sup> The scenario is based on a proposal by Jersey City to acquire that section of the Harsimus Branch right-of-way and convert it into a trail and park. Under Scenario 1, this entire section of the Harsimus Branch right-of-way would be preserved and no demolition, removal, or adverse alterations to any historic properties within the rail right-of-way would occur. The trail/park would be maintained by Jersey City with the purpose of preserving historic properties and facilitating public access to and appreciation of those properties. This scenario is reasonably foreseeable because Jersey City has expressed interest in this outcome and has sought to obtain the Harsimus Branch right-of-way for this purpose.

Because preservation of the Harsimus Branch from CP Waldo to Marin Boulevard under Scenario 1 would be undertaken by a nonrailroad entity outside of the Board's abandonment process, the design details of the trail/park have not been fully developed and likely would not be known before the Board's abandonment process has been completed. Therefore, OEA has made some general and reasonable assumptions about how Scenario 1 could be implemented, including the following:

- OEA assumed that the trail/park would be constructed and maintained by Jersey City;
- OEA assumed that Jersey City would design the trail/park in an historically appropriate and context-sensitive manner and that any alterations to the rail right-of-way would be guided by the Secretary of the Interior's *Standards for the Treatment of Historic*

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<sup>5</sup> It should be noted that the Harsimus Branch right-of-way east of Marin Boulevard was fully redeveloped years ago and is outside of the corridor being discussed as part of Scenario 1.

*Properties* (Standards for Rehabilitation) (Department of Interior regulations 36 C.F.R. § 67) in designing and constructing the trail/park, including any bridges and public access points;

- OEA assumed that Jersey City would consult with the NJ SHPO as part of an Application for Project Authorization, pursuant to the New Jersey Register of Historic Places Act (NJRHPA) regarding the design of the trail/park, as required by New Jersey regulations;
- OEA assumed that Jersey City would follow the design recommendations and requirements of the NJ SHPO, and;
- OEA assumed that the trail/park would be designed to preserve the Embankment and all other rail-related materials, features, and structures remaining in the rail right-of-way that contribute to the historic integrity of the Pennsylvania Railroad Harsimus Branch Right-of-Way Historic District.

Although OEA recognizes that Scenario 1 would avoid potential adverse effects to historic properties, OEA cannot guarantee this outcome because the Board has no authority to dictate the post-abandonment use of a rail line following consummation of an authorized abandonment. The Board is a federal agency tasked with regulating the interstate rail network and has no jurisdiction over, or role in, city planning, local zoning, or post-abandonment development of former rail rights-of-way (Attachment 4 – STB’s Role in Rail Abandonment Proceedings).

## **Scenario 2—Demolition and full redevelopment of the Embankment blocks; Partial redevelopment west of the Embankment (Brunswick to NJ Turnpike)**

Scenario 2 is based on various proposals that have been formally submitted (2005, 2007, 2012) to Jersey City by the LLCs for the redevelopment of the six blocks of Embankment properties. Scenario 2 was developed as a “worst case” reasonably foreseeable scenario from the perspective of historic preservation as it would involve the complete demolition of the six Embankment blocks, from Marin Boulevard on the east to Brunswick Street to the west. New residential and mixed-use buildings would be constructed on the lots where the Embankment once stood. Immediately to the west of the Embankment), plans called for the construction of multiple residences, which would require the demolition of one of the remaining Harsimus Branch piers which is located on that block. The details of the redevelopment plans on which Scenario 2 is based are summarized below:<sup>6</sup>

- 2005 Development Application – the LLCs proposed multiple residences on the block immediately west of the Embankment (between Brunswick and Division streets). The Embankment segments between Brunswick Street and Manila Avenue would also be demolished and the properties subdivided into 16 units with attached two-family houses on each unit;

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<sup>6</sup> Jersey City submitted information on these plans to OEA in 2015.

- 2007 Development Application – the LLCs requested approval for a four-story, mixed-use building, to be constructed on the westernmost Embankment segment property, along the western side of Newark Avenue. Four Harsimus Branch stone and concrete piers are present on this parcel, and would likely be demolished for this development;
- 2012 Development Application – the LLCs proposed demolishing the easternmost Embankment segment and constructing a mid-rise residential building on the property.

OEA used existing Jersey City zoning requirements to estimate the potential dimensions of buildings that could be constructed under Scenario 2. However, specific building dimensions, architectural style, materials, and other details are unknown, and those details likely would not be developed until the Board’s abandonment process is complete. OEA developed this scenario based upon the following assumptions:

- OEA assumed that redevelopment of the Embankment properties would be consistent with local zoning and building regulations in Jersey City, including regulations related to the heights and design of new residential buildings;
- OEA assumed that new residential buildings on the Embankment properties would use historically sensitive designs consistent with the architectural design of surrounding neighborhoods;
- OEA assumed that there would be no new development along the segment of the Harsimus Branch, east of Marin Boulevard, because that portion of the right-of-way has been previously redeveloped for commercial purposes; and
- OEA assumed that there would be no redevelopment along the portion of the Harsimus Branch right-of-way to the west of the New Jersey Turnpike, including the portion of the right-of-way owned by Conrail, because no proposals of which OEA is aware have been submitted for rezoning or redevelopment. Any predictions regarding potential future uses of that western segment of the Harsimus Branch would therefore be highly speculative and not reasonably foreseeable for the purposes of Section 106 review.

OEA considers the demolition and redevelopment of the Embankment properties under Scenario 2 to be reasonably foreseeable because it would be permissible under current zoning laws and regulations in Jersey City and because the LLCs have expressed interest in this outcome in the past. Although OEA recognizes that this scenario would result in adverse effects to historic properties, OEA could not prevent this outcome because the Board has no authority to dictate the post-abandonment use of a rail line once it is authorized to be abandoned and the abandonment is consummated. The Board is a federal agency tasked with regulating the interstate rail network and has no jurisdiction over or role in city planning, local zoning, or post-abandonment development of former rail rights-of-way that are no longer part of the national rail system.

**Scenario 3—Partial Preservation of the Harsimus Branch right-of-way with Partial Demolition and Redevelopment of the Embankment blocks** (including the potential negotiated settlement agreement among the parties)

While conducting the effects analysis leading to the completion of the Effects Report in 2018, OEA, in consultation with the NJ SHPO and ACHP, decided to also evaluate the potential effects to historic properties from a third reasonably foreseeable scenario (Scenario 3) that would involve partial development and partial preservation of the Harsimus Branch right-of-way. Scenario 3 is based on a proposed settlement plan that is being developed by Jersey City, the LLCs, the Embankment Coalition, the Rails-to-Trails Conservancy, and Conrail, all of which are consulting parties in the Board’s Section 106 review. The settlement agreement, if reached, would resolve various differences among those parties related to the post-abandonment use of the Harsimus Branch right-of-way, including issues that are unrelated to the Board’s abandonment process.

As explained in the Effects Report, Scenario 3 would involve developing a pedestrian trail and public park west of Marin Boulevard. Five of the six Embankment segments would be preserved in place to support the trail/park. The top surfaces of those five Embankment segments would be rehabilitated from their current deteriorated state to support a newly constructed public walkway. New bridges would be built to connect the Embankment segments, and stairs and ramps would be installed to grant public access to the elevated portions of the trail/park. The pedestrian trail and public park would extend westward of the Embankments, within the rail right-of-way. The placement and design of the trail/park (including all physical components (bridges, stairs, furniture, landscaping, etc.)) would be developed by Jersey City, in consultation with the NJ SHPO and other appropriate agencies, pursuant to applicable local and state regulations, following the completion of the Board’s abandonment process, including consummation, and the termination of the Board’s jurisdiction over the property.

Based upon the available information about a potential negotiated settlement agreement, some residential and commercial development would also occur under Scenario 3. The easternmost Embankment segment would be removed, and two new multi-story residential/commercial buildings would be constructed at that site. An additional building would be constructed immediately to the west of the westernmost Embankment segment. OEA understands that those buildings would be constructed so as not to interfere with the right-of-way of the trail/park.

OEA’s analysis of Scenario 3 in the Effects Report was based on the general information available to date about the potential settlement plan and several reasonable assumptions about how the plan could be implemented. The assumptions include:

- The majority of the Harsimus Branch right-of-way west of Marin Boulevard would be preserved as a trail and park by Jersey City;

- The trail and park would include the top portions of the Embankment, including the installation of new bridges between the Embankment segments;
- Jersey City would design the trail and park in a historically and context-sensitive manner and would be guided by the Secretary of the Interior’s Standards for the Treatment of Historic Properties (Standards for Rehabilitation) in designing and constructing the trail/park, including any bridges and public access points;
- The trail/park would be designed in consultation with appropriate local and state agencies, the NJ SHPO, and other interested parties, pursuant to applicable state and local laws and would be sensitive to the historic context and character of the Harsimus Branch and the Embankment;
- Some residential development would occur on portions of the rail right-of-way, including the construction of two buildings on the easternmost Embankment segment and another building planned on a portion of rail right-of-way west of the Embankment (east of the New Jersey Turnpike);
- The design of the buildings would be prepared by private development companies, in consultation with Jersey City and other appropriate agencies, pursuant to state and local laws and regulations, following the completion of the Board’s abandonment process, including consummation;
- The buildings constructed under Scenario 3 would be similar to those proposed under Scenario 2 and would conform to existing local zoning regulations. The new buildings proposed for the easternmost Embankment segment would be 11 stories in height, and the new building west of the Embankment would be three stories;
- The buildings constructed under Scenario 3 would be designed to be compatible with the trail and park, so that a continuous right-of-way between would be maintained.

In the Effects Report, OEA assessed the potential effects that could occur under Scenario 3 based on the general information available at that time regarding a potential settlement plan. OEA also made some general and reasonable assumptions about how the plan could be implemented. For multiple reasons, including the fact that many details of the plan have not been developed, a more detailed analysis of Scenario 3 was not possible. Because the trail/park would be constructed and maintained by Jersey City under Scenario 3, OEA assumes that any construction or redevelopment related to the trail/park that would affect the NJ Register-listed Embankment (or other NJ Register-listed historic properties that could be affected) would undergo additional review pursuant to state and local regulations, including the New Jersey Register of Historic Places Act (NJRHPA). That statute requires that state, municipal, and county agencies consult with the NJ SHPO and apply for project authorization before taking any action that could potentially result in a direct or indirect effect on the character-defining features that qualify an historic property for listing in the NJ Register.

The assumptions made in the Effects Report regarding Scenario 3 are reasonable because they are based on statements by Jersey City that redevelopment of the Harsimus Branch as a trail/park under the potential negotiated settlement agreement would prioritize historic

preservation and statements by the LLCs that residential and/or commercial development would be consistent with Jersey City's historic preservation efforts.

In June 2019, after issuance of the Effects Report, the parties involved in the settlement negotiations signed a term sheet, which sets out some of the key terms for a potential formal Settlement Agreement. The provisions of this private agreement are currently being finalized by the parties that are negotiating it, and the precise terms of any executed settlement agreement and when any final negotiated settlement agreement might be executed are not known. OEA has been informed that the most recent plan is broken down into two primary elements. The easternmost Embankment block, between Manila Avenue and Marin Boulevard, would be redeveloped with two 11 story commercial buildings, with a rail and trail easement retained, as well as access stairs, elevators, and connectors to the planned trail across the entire length of the Harsimus Branch. A pedestrian trail and public park would extend west of Manila Avenue within the rail right-of-way. The stone walls of the Embankment between Manila Avenue and Marin Boulevard might be removed as part of the redevelopment of that block, but the remaining Embankment structures would be preserved. In contrast to the Scenario 3 that was included in the Effects Report, the current plans do not include any development along the route of the Harsimus Branch west of Marin Boulevard other than the work between Manila Avenue and Marin Boulevard. Following consummation of abandonment—assuming abandonment is authorized and exercised, thereby terminating the Board's jurisdiction—the planned activities for the reuse of the Harsimus Branch right-of-way would have to go through applicable local, state, and possibly federal review and approvals in accordance with land use, planning, and other regulatory requirements before they could be implemented.

As set out in the Effects Report, Scenario 3 would result in some adverse effects to National Register-eligible historic properties within the APE while minimizing or avoiding other adverse effects. However, OEA cannot guarantee or prevent this outcome because the Board is not part of the parties' negotiations to reach a private agreement and the Board has no authority to determine the post-abandonment use of an abandoned rail line. The developments that have occurred since March 2019, including the term sheet, make clear that the parties involved in the negotiations are continuing to work toward reaching a final settlement agreement. Accordingly, Scenario 3 remains a reasonably foreseeable outcome in this case. OEA has taken into account in preparing this Effects Report Addendum the refinements that have been made to the parties' plans as negotiations to reach a final executed settlement agreement continue. In OEA's view, however, it would be premature and unnecessary to expand the analysis of Scenario 3 beyond the analysis of that scenario in the Effects Report. The changes that have been made to date are relatively minor and do not result in changes that are substantially different from what was analyzed in the Effects Report. Moreover, the final terms of any negotiated settlement agreement that might be executed are not settled, continue to evolve, and are outside the control of the Board.

OEA encourages the efforts of the various private parties involved in the negotiated settlement agreement process to seek to resolve their differences related to the post-abandonment

uses of the Harsimus Branch right-of-way in a manner that would result in the preservation of as many historic resources as possible. However, as explained in detail in the Effects Report, the Board cannot compel those parties to execute a private agreement or dictate the terms of any such agreement.

### **No Action Alternative**

In addition to the three scenarios discussed above, OEA also analyzed the potential effects of the No Action Alternative, which would occur if abandonment authority were denied. This analysis of the No Action Alternative provides a comparison case to the consulting parties, the public, and the Board. Although the Board has the authority to deny abandonment authority in any abandonment case, such a decision would be based on the Board's consideration of all of the transportation-related issues; the Board could not deny abandonment authority solely for the purposes of historic preservation.

During consultation leading up to the issuance of the Effects Report, the NJ SHPO requested that OEA provide the consulting parties with additional details regarding potential alternatives to the proposed abandonment. As discussed in the CRI Report, the CRI Report Addendum, and the Effects Report, alternatives to abandonment in rail line abandonment proceedings typically include denial on transportation grounds, authority to discontinue rail service without abandonment, and continued operation of a rail line authorized for abandonment by another carrier if a bona fide offer of financial assistance (OFA) to continue rail service is made under 49 U.S.C. § 10904. Under the No Action Alternative, the Harsimus Branch would remain part of the interstate freight rail network and no mitigation under Section 106 would be imposed by the Board. The Embankment would remain in place and no redevelopment of the Harsimus Branch right-of-way pursuant to a negotiated settlement agreement would occur because the property would remain within the Board's jurisdiction.

### **Section 2 - Identification Phase Findings and Clarifications (36 C.F.R. § 800.4)**

As noted previously, the Section 106 process for the project began in 2008, when OEA initiated consultation with the NJ SHPO. In 2009, the project's APE was developed by OEA and concurred with by the NJ SHPO. Surveys of historic resources were then undertaken, including extensive background research and consultation with the NJ SHPO and consulting parties. Twelve (12) resources within the APE had previously been surveyed and determined to be historic properties (eligible for or listed on the National Register of Historic Places. A number were also listed on the New Jersey Register). Seven (7) new historic properties were determined to be eligible as part of the surveys for this project. In addition, all of the previously surveyed historic properties (within the APE) were reevaluated to assess their current integrity to ensure they were still significant. In total, nineteen (19) historic properties were identified, documented, boundaries developed, and eligibility determinations made (**Figure 2, Figure 3, Table 1**).



Figure 2: Individual Historic Properties within the APE

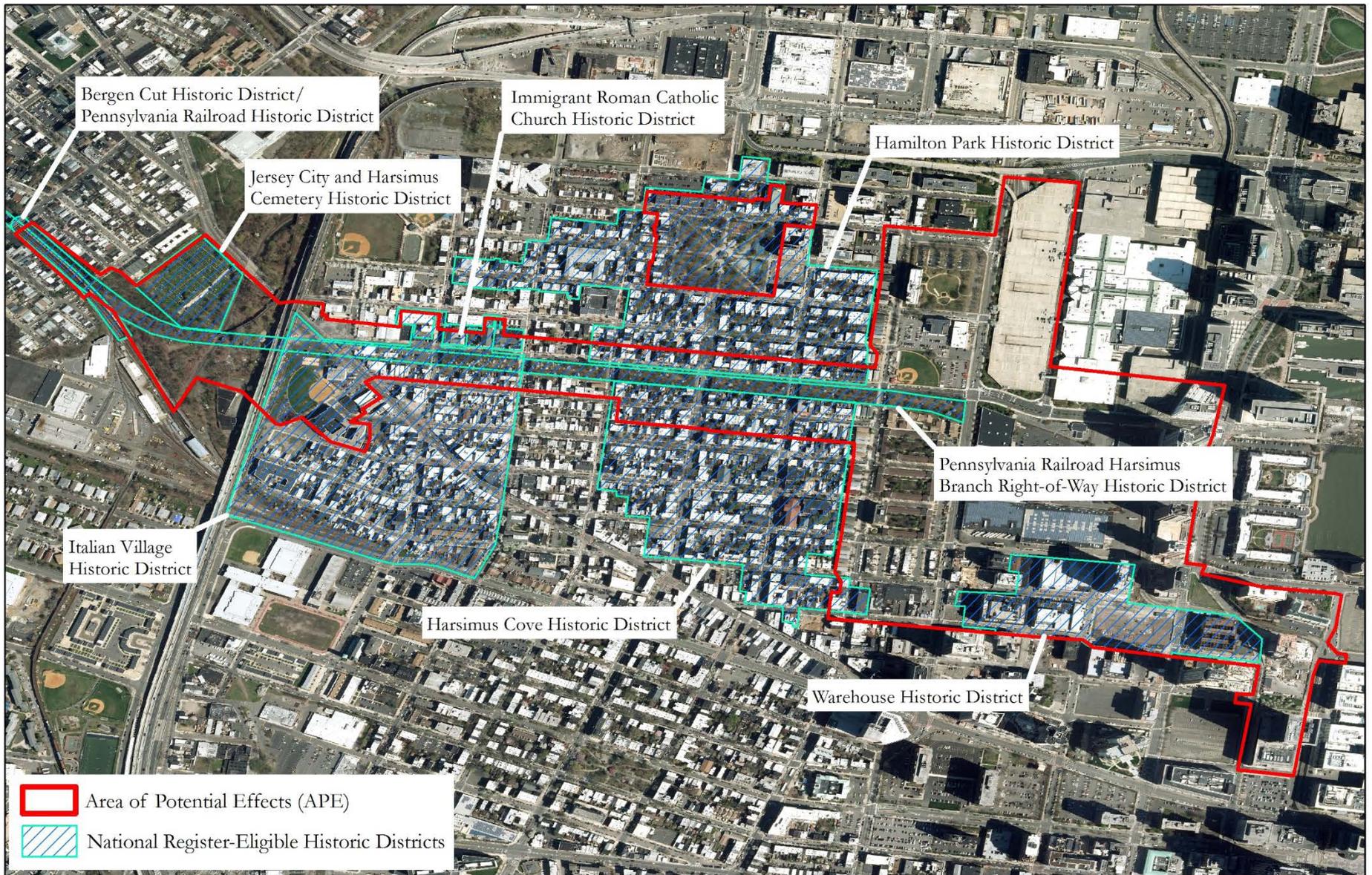


Figure 3: Historic Districts within the APE

**Table 1: Historic Properties**

Resource Name	Address or Location	Eligibility Determination	NJ SHPO Concurrence Status
<p><b>Pennsylvania Railroad (New York to Philadelphia) Historic District</b> (Embankment is a contributing resource)</p>	<p>Philadelphia to New York</p>	<p>NJ SHPO Opinion 3/3/2003</p> <p style="text-align: center;"><b>ELIGIBLE</b></p>	<p><b>NJ SHPO concurred</b> with OEA’s determination that the Pennsylvania Railroad Historic District retains integrity, remains Eligible, and that the Embankment is a contributing resource.</p>
<p><b>New Jersey Railroad Bergen Cut Historic District</b> (Embankment is a contributing resource)</p>	<p>New Jersey Railroad Right-of-Way (PATH) between the Hackensack River and approximately Waldo Avenue</p>	<p>NJ SHPO Opinion 5/21/1999</p> <p style="text-align: center;"><b>ELIGIBLE</b></p>	<p><b>NJ SHPO concurred</b> with OEA’s determination that the New Jersey Railroad Bergen Cut Historic District retains integrity, remains Eligible, and that the Embankment is a contributing resource.</p>
<p><b>Public School Number 5</b></p>	<p>182-196 Merseles Street</p>	<p>NJ SHPO Opinion 2/28/1991</p> <p style="text-align: center;"><b>ELIGIBLE</b></p>	<p><b>NJ SHPO concurred</b> with OEA’s determination that Public School Number 5 retains integrity and remains Eligible.</p>
<p><b>Pennsylvania Railroad Harsimus Branch Embankment</b></p>	<p>Parallels Sixth Street, between Brunswick Street to Marin Boulevard</p>	<p>COE 2/17/1999; NJ Register listed 12/29/1999; DOE due to owner objection 3/16/2000</p> <p style="text-align: center;"><b>NJR Listed/ELIGIBLE</b></p>	<p><b>NJ SHPO concurred</b> with OEA’s determination that the Embankment retains integrity and remains Eligible.</p>
<p><b>St. Anthony’s Polish Roman Catholic Church and School Complex and Convent</b> (also contributes to Immigrant Roman Catholic Church Historic District)</p>	<p>348-352 Sixth Street</p>	<p>NJ SHPO Opinion 4/13/1994</p> <p style="text-align: center;"><b>ELIGIBLE</b></p>	<p><b>NJ SHPO concurred</b> with OEA’s determination that the resource retains integrity, remains Eligible, and contributes to newly Eligible Immigrant Roman Catholic Church Historic District.</p>

<p><b>St. Anthony's of Padua Roman Catholic Church</b> (also contributes to Immigrant Roman Catholic Church Historic District)</p>	<p>457 Monmouth Street</p>	<p>NJ Register Listed 12/24/2003; NR Listed 3/22/2004;</p> <p style="text-align: center;"><b>NJ/NR Listed</b></p>	<p><b>NJ SHPO concurred</b> with OEA's determination that the resource retains integrity, remains significant (NJ/NR Listed), and contributes to newly Eligible Immigrant Roman Catholic Church Historic District.</p>
<p><b>Hamilton Park Historic District/Extension</b> (Embankment is a contributing resource)</p>	<p>6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup> streets at Hamilton Park; Extension – Jersey Avenue to 10<sup>th</sup> Street</p>	<p>NJ Register Listed 4/27/1998; NR Listed 1/25/1979; Extension – NJ Register Listed 10/1/1982; NR Listed 12/2/1982</p> <p style="text-align: center;"><b>NJ/NR Listed</b></p>	<p><b>NJ SHPO concurred</b> with OEA's determination that the NJ/NR Listed Hamilton Park Historic District/Extension retains integrity and that the Embankment is a contributing resource.</p>
<p><b>Harsimus Cove Historic District</b> (Embankment is a contributing resource)</p>	<p>Portions of Jersey Avenue, Bay, Cole, Erie, First, Second, Third, Fourth, Fifth streets, Manila Avenue</p>	<p>NJ Register Listed 10/15/1987; NR Listed 12/9/1987</p> <p style="text-align: center;"><b>NJ/NR Listed</b></p>	<p><b>NJ SHPO concurred</b> with OEA's determination that the NJ/NR Listed Harsimus Cove Historic District retains integrity and that the Embankment is a contributing resource.</p>
<p><b>Albaniel Dye &amp; Chemical Co.</b></p>	<p>88-92 Erie Street</p>	<p>NJ SHPO Opinion 7/2/1980; DOE 8/27/1980</p> <p style="text-align: center;"><b>Eligible</b></p>	<p><b>NJ SHPO concurred</b> with OEA's determination that Albaniel Dye &amp; Chemical Co. retains integrity and remains Eligible.</p>
<p><b>Warehouse Historic District</b></p>	<p>Marin Boulevard on the west, Greene Street on the east, Morgan Street on the south, and Second Street on the north (irregularly shaped)</p>	<p>NJ SHPO Opinion 2/28/1991; Also partially included in MPDF for Terminal Distribution Warehouses, NJ Register listed 10/26/2015</p> <p style="text-align: center;"><b>NJ Listed/Eligible</b></p>	<p><b>NJ SHPO concurred</b> with OEA's determination that the Warehouse Historic District retains integrity and remains Eligible.</p>

<b>Hudson &amp; Manhattan Railroad Powerhouse</b> (also within the Warehouse Historic District)	70-90 Bay Street, bounded by Washington Boulevard, First Street, and Greene Street	COE 10/7/1999; NR Listed 11/23/2001  <b>NR Listed</b>	<b>NJ SHPO concurred</b> with OEA's determination that the NR Listed Hudson & Manhattan Railroad Powerhouse retains integrity.
<b>Great Atlantic &amp; Pacific Tea Company Warehouse</b> (also within the Warehouse Historic District)	144-158 Bay Street; Provost Street between First and Bay streets	NJ Register listed 6/2/1978; NR listed 6/2/1978; NHL 6/2/1978  <b>NR Listed/NHL</b>	<b>NJ SHPO concurred</b> with OEA's determination that the NR Listed Great Atlantic & Pacific Tea Company Warehouse retains integrity.
<b>Jersey City and Harsimus Cemetery Historic District</b>	435 Newark Avenue	NJ SHPO Opinion 7/14/2017  <b>ELIGIBLE</b>	<b>NJ SHPO concurred</b> with OEA's determination that the Jersey City and Harsimus Cemetery Historic District is Eligible.
<b>Holy Rosary Roman Catholic Church Complex</b> (also contributes to the Immigrant Roman Catholic Church Historic District)	344 Sixth Street and 183 Brunswick Street	NJ SHPO Opinion 7/13/2017  <b>ELIGIBLE</b>	<b>NJ SHPO concurred</b> with OEA's determination that the Holy Rosary Roman Catholic Church Complex retains integrity, is Eligible, and contributes to newly Eligible Immigrant Roman Catholic Church Historic District.
<b>Immigrant Roman Catholic Church Historic District</b> (includes St. Anthony's/Holy Rosary)	344 Sixth Street and 183 Brunswick Street	NJ SHPO Opinion 7/14/2017  <b>ELIGIBLE</b>	NJ SHPO identified an Eligible Immigrant Roman Catholic Church Historic District, to include St. Anthony's and Holy Rosary Churches. <b>OEA agrees with NJ SHPO's recommendation.</b>
<b>Jersey City Fire Department Engine 5/Ladder 6</b>	355 Newark Avenue	NJ SHPO Opinion 7/14/2017  <b>ELIGIBLE</b>	<b>NJ SHPO concurred</b> with OEA's determination that the Jersey City Fire Department Engine 5/Ladder 6 is Eligible.
<b>Fifth Ward Savings Bank</b>	495 Manila Avenue	NJ SHPO Opinion 7/14/2017	OEA recommended that the Fifth Ward Savings Bank was not Eligible. After consultation with the NJ SHPO, OEA

		<b>ELIGIBLE</b>	has changed its determination and finds the resource Eligible. <b>The NJ SHPO concurred with this revised determination.</b>
<b>Pennsylvania Railroad Harsimus Right-of-Way Historic District</b>	Marin Boulevard to CP Waldo	NJ SHPO Opinion 7/14/2017  <b>ELIGIBLE</b>	OEA initially recommended that the Pennsylvania Railroad Harsimus Right-of-Way was not eligible due to a loss of integrity. After consultation with the NJ SHPO, and the review of additional information, OEA has changed its determination and finds the resource Eligible. <b>The NJ SHPO concurred with this revised determination.</b>
<b>Italian Village Historic District</b>	Roughly bounded by NJ Turnpike Extension; 6 <sup>th</sup> ; 7 <sup>th</sup> & Coles streets; Christopher Columbus Drive	NJ SHPO Opinion 5/13/2019  <b>ELIGIBLE</b>	OEA initially recommended a smaller Italian Village Historic District as Eligible. NJ SHPO concurred that the district was eligible but recommended larger boundaries. After consultation with the NJ SHPO, and additional analysis, OEA has revised its determination and agrees that the Italian Village Historic District is Eligible, and the recommended expanded boundaries are appropriate. <b>The NJ SHPO concurred with this revised finding.</b>

## Clarifications/Modifications to OEA's Resource Eligibility Determinations

OEA has consulted extensively with the NJ SHPO on all resource eligibility determinations, and the NJ SHPO has concurred with all the findings (for more detailed comments from the NJ SHPO and OEA responses, see Attachment 1). Minor inconsistencies were resolved, including:

- OEA initially recommended that Public School No. 4 was eligible. NJ SHPO disagreed. After consultation, OEA agreed that Public School No. 4 is Not Eligible.
- OEA determined that the Italian Village Historic District was eligible. NJ SHPO concurred with eligibility but recommended a larger boundary. After consultation, OEA agreed with the expanded boundary.
- NJ SHPO concurred with OEA that 364 Munoz Marin Boulevard is Not Eligible.
- NJ SHPO concurred with OEA that Philippine Plaza is Not Eligible.

In short, the identification phase (Step 2) of the Section 106 process has been completed, and the NJ SHPO has concurred with OEA's findings.

### **Section 3 - Analysis of Project Effects (36 C.F.R. § 800.5)**

After the completion of the identification phase, where 19 historic properties were identified and documented within the project's APE, OEA initiated the assessment of effects (Step 3), analyzing the potential impacts of the Action Alternative (with the three scenarios discussed above), and the No Action Alternative, on the resources. Each historic property was reviewed to ensure that it retained integrity, and the seven aspects of integrity were considered as an important part of the analysis of project effects. OEA applied the Criteria of Adverse Effects as the basis for this analysis. The Criteria of Adverse Effects (36 C.F.R. § 800.5(a)(1)) states that:

An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may occur later in time, be farther removed in distance or be cumulative.

This Effects Report Addendum builds upon the Effects Report and provides additional clarification regarding the impacts of the Action Alternative (with the three scenarios), and the No Action Alternative, on the integrity of the 19 resources (**Table 2**).

A few clarifications were made in response to the comments of the NJ SHPO in their May 13, 2019 review letter on the Effects Report:

- NJ SHPO noted that in order for Scenario 1 to have a No Adverse Effect finding, it would have to have “extensive and specifically worded conditions.” After consultation with OEA, NJ SHPO acknowledged that the Board cannot impose involuntary post-abandonment “conditions.” OEA is requesting NJ SHPO concurrence with a No Adverse Effect finding for Scenario 1 on all 19 resources based on the assumptions for post-abandonment development outlined above (page 6).
- NJ SHPO stated that the No Action Alternative would have No Effect on historic properties, whereas OEA, in the Effects Report, had concluded that there would be an Adverse Effect due to “demolition by neglect.” After consultation with NJ SHPO, OEA agrees that the No Action Alternative would have No Effect on historic properties.

### **Final Determinations of Effect**

As discussed above, the Harsimus Branch abandonment case presents unique circumstances that have justified OEA’s decision to expand the scope of the Board’s typical Section 106 process. These unusual circumstances include the LLCs providing preliminary development plans for the Embankment properties early in the Section 106 process, giving OEA more information about post-abandonment activities than is typically the case. As discussed in more detail above, the agency’s effects analysis assesses three reasonably foreseeable post-abandonment scenarios based on the general information currently available regarding potential development plans proposed over the years, within the context of existing zoning and building regulations. The following final determinations of the effect of the proposed abandonment resulted from OEA’s analysis of the Action Alternative’s three scenarios on historic properties and incorporates input from the NJ SHPO, ACHP, and other consulting parties:

- Scenario 1—Complete preservation of the Harsimus Branch from CP Waldo to Marin Boulevard and conversion into a trail/park
- Scenario 2—Demolition and full redevelopment of the Embankment blocks (Marin Boulevard to Brunswick Street) and development immediately to the west of the Embankment and east of the New Jersey Turnpike
- Scenario 3— Scenario 3—Partial Preservation of the Harsimus Branch right-of-way west of Marin Boulevard with Partial Demolition and Redevelopment of the Embankment (including the potential privately negotiated settlement agreement being discussed by the parties)

Because the Board has no regulatory authority over post-abandonment uses of the Harsimus Branch, those three scenarios are not alternatives under Section 106. As noted previously, the Board also cannot dictate which of these three scenarios would occur if the proposed abandonment were to be authorized and consummated. The only feasible alternative to

abandonment in the present case is the No Action Alternative, which would occur if the abandonment were not authorized or consummated.

OEA's final effects determinations also reflect input from other consulting parties. The determinations include a summary of what elements of integrity would be impacted by the scenario, for each historic property, in response to requests from the NJ SHPO and the ACHP. A summary of OEA's Final Determinations of Effect can be found in **Table 2**.

It should be noted that the approximately 0.87-mile portion of the Harsimus Branch right-of-way between Marin Boulevard on the east and CP Waldo on the west contains multiple railroad-related historic properties that are historically related and that contribute to each other's significance.<sup>7</sup> These resources include the Pennsylvania Railroad (New York to Philadelphia) Historic District, the New Jersey Railroad Bergen Cut Historic District, the Pennsylvania Railroad Harsimus Branch Embankment, and the Pennsylvania Railroad Harsimus Right-of-Way Historic District. As can be seen in the summary analysis below, an adverse effect determination to one of these resources automatically becomes an adverse effect to all of these resources, since they all are inter-related within this narrow rail corridor.

The final effects determinations of the proposed abandonment are as follows:

## **1. Pennsylvania Railroad (New York to Philadelphia) Historic District**

### Action Alternative

Scenario 1 – There would be No Adverse Effect to the integrity of the linear historic district as it would be preserved in place to support the construction of a trail/park. OEA is requesting NJ SHPO concurrence with the No Adverse Effect finding based on the assumptions that OEA made regarding how the trail/park would be designed and implemented (see page 6, above).

Scenario 2 – There would be an Adverse Effect as the linear historic district, consisting of Embankment segments as well as elements of railroad support features, would be demolished for development. The scenario calls for demolition and development from the New Jersey Turnpike east to Marin Boulevard, within the corridor right-of-way, impacting the location, design, setting, materials, workmanship, feeling, and association of the resource. The NJ SHPO concurred with the Adverse Effect finding in their May 13, 2019 comment letter on the Effects Report.

Scenario 3 – There would be an Adverse Effect as a portion of the linear historic district, including the easternmost Embankment block, would be heavily altered for modern development. Portions of the Embankment walls between Manila Avenue and Marin Boulevard are anticipated to be removed as the scenario calls for new construction on this block and trail/park development atop the remaining Embankment blocks and continuing to the west. This

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<sup>7</sup> The entire Harsimus Branch extends 1.36 miles, but the section east of Marin Boulevard to the Hudson River has been redeveloped and no longer reflects its previous rail function or character.

scenario would impact the location, design, setting, materials, workmanship, feeling, and association of the resource. In their May 13, 2019 comment letter on the Effects Report, the NJ SHPO concurred with the Adverse Effect finding.

#### No Action Alternative

This alternative would have No Effect on the linear historic district as it is the No Action Alternative, so there would be no changes as a result of the Board's denial of abandonment authority. The existing integrity of location, design, setting, materials, workmanship, feeling, and association would remain. Based upon consultation following the issuance of the Effects Report, the NJ SHPO has concurred with the No Effect finding.

## **2. New Jersey Railroad Bergen Cut HD**

#### Action Alternative

Scenario 1 – There would be No Adverse Effect to the integrity of the linear historic district as it would be preserved in place to support the construction of a trail/park. OEA is requesting NJ SHPO concurrence with the No Adverse Effect finding based on the assumptions that OEA made regarding how the trail/park would be designed and implemented (see page 6, above).

Scenario 2 – There would be an Adverse Effect as the linear historic district, consisting of Embankments as well as elements of railroad support features, would be demolished for development. The scenario calls for demolition and development from the New Jersey Turnpike east to Marin Boulevard, within the corridor right-of-way, impacting the location, design, setting, materials, workmanship, feeling, and association of the resource. The NJ SHPO concurred with the Adverse Effect finding in their May 13, 2019 comment letter on the Effects Report.

Scenario 3 – There would be an Adverse Effect as a portion of the linear historic district, including the easternmost Embankment block, would be heavily altered for modern development. Portions of the Embankment walls between Manila Avenue and Marin Boulevard are anticipated to be removed as the scenario calls for new construction on this block and trail/park development atop the remaining Embankment blocks and continuing to the west. This scenario would impact the location, design, setting, materials, workmanship, feeling, and association of the resource. The NJ SHPO concurred with the Adverse Effect finding in their May 13, 2019 comment letter on the Effects Report.

#### No Action Alternative

This alternative would have No Effect on the linear historic district as it is the No Action Alternative, so there would be no changes as a result of the Board's denial of abandonment authority. The existing integrity of location, design, setting, materials, workmanship, feeling, and association would remain. Based upon consultation following the issuance of the Effects Report, the NJ SHPO has concurred with the No Effect finding.

### 3. Public School No. 5

#### Action Alternative

Scenario 1 – This scenario would have No Effect on the seven aspects of integrity for this historic property as there would be no project activities that could have an impact on Public School No. 5. The NJ SHPO concurred with the No Effect finding in their May 13, 2019 comment letter on the Effects Report.

Scenario 2 – This scenario would have No Effect on the integrity of this historic property. The integrity of location, design, setting, materials, workmanship, feeling, and association would remain. The NJ SHPO concurred with the No Effect finding in their May 13, 2019 comment letter on the Effects Report.

Scenario 3 – This scenario would have No Effect on the seven aspects of integrity for this historic property as there would be no project activities that could have an impact on Public School No. 5. The integrity of location, design, setting, materials, workmanship, feeling, and association would remain. In their May 13, 2019 comment letter on the Effects Report, the NJ SHPO concurred with the No Effect finding.

#### No Action Alternative

This alternative would have No Effect on the historic property as it is the No Action Alternative, so there would be no changes as a result of the Board's denial of abandonment authority. The existing integrity of location, design, setting, materials, workmanship, feeling, and association would remain. The NJ SHPO concurred with the No Effect finding in their May 13, 2019 comment letter on the Effects Report.

### 4. Pennsylvania Railroad Harsimus Branch Embankment

#### Action Alternative

Scenario 1 – There would be No Adverse Effect to the integrity of the historic property as it would be preserved in place to support the construction of a trail/park. OEA is requesting NJ SHPO concurrence with the No Adverse Effect finding based on the assumptions that OEA made regarding how the trail/park would be designed and implemented (see page 6, above).

Scenario 2 – There would be an Adverse Effect as the historic property, consisting of Embankment segments, would be demolished for development. The demolition of the Embankment would impact the location, design, setting, materials, workmanship, feeling, and association of the resource. The NJ SHPO concurred with the Adverse Effect finding in their May 13, 2019 comment letter on the Effects Report.

Scenario 3 – There would be an Adverse Effect as a portion of the historic property, including the easternmost Embankment block, would be heavily altered for modern development. Portions of the Embankment walls between Manila Avenue and Marin Boulevard are anticipated to be removed as the scenario calls for new construction on this block and

trail/park development atop the remaining Embankment blocks and continuing to the west. This scenario would impact the location, design, setting, materials, workmanship, feeling, and association of the resource. The NJ SHPO concurred with the Adverse Effect finding in their May 13, 2019 comment letter on the Effects Report.

#### No Action Alternative

This alternative would have No Effect on the historic property as it is the No Action Alternative, so there would be no changes as a result of the Board's denial of abandonment authority. The existing integrity of location, design, setting, materials, workmanship, feeling, and association would remain. Based upon consultation following the issuance of the Effects Report, the NJ SHPO has concurred with the No Effect finding.

### **5. Saint Anthony's Polish Roman Catholic Church and School Complex**

#### Action Alternative

Scenario 1 – There would be No Adverse Effect to the integrity of the historic property as the Embankment, which is across the street from the resource, would remain intact and continue to be a part of the historic setting. There would be a change in the setting as the trail/park would be constructed on top of the Embankment, likely visible from the resource. However, there would be no changes to the location, design, materials, workmanship, feeling, and association of the resource in this scenario. OEA is requesting NJ SHPO concurrence with the No Adverse Effect finding based on the assumptions that OEA made regarding how the trail/park would be designed and implemented (see page 6, above).

Scenario 2 – There would be an Adverse Effect as the Embankment across the street from the historic property would be removed, allowing for future redevelopment. The Embankment is part of the historic setting for this resource, and its removal would impact the setting, feeling, and association of the resource. In their May 13, 2019 comment letter on the Effects Report, the NJ SHPO concurred with the Adverse Effect finding.

Scenario 3 – In the Effects Report, OEA originally determined that the undertaking would have an Adverse Effect on this historic property, and, in their May 13, 2019 comment letter, the NJ SHPO concurred with that finding. Based upon additional analysis and more detailed available plans, OEA now is making a finding of No Adverse Effect to this resource. There would be a change in the setting as the trail/park would be constructed on top of the Embankment, likely visible from the historic property. However, there would be no changes to the location, design, materials, workmanship, feeling, and association of the resource under this scenario. OEA is requesting NJ SHPO concurrence with the No Adverse Effect finding based on the assumptions that OEA made regarding how the trail/park would be designed and implemented (see page 9, above).

#### No Action Alternative

This alternative would have No Effect on the historic property as it is the No Action Alternative, so there would be no changes as a result of the Board's denial of abandonment authority. The existing integrity of location, design, setting, materials, workmanship, feeling, and association would remain. Based upon consultation following the issuance of the Effects Report, the NJ SHPO has concurred with the No Effect finding.

## **6. Saint Anthony of Padua Roman Catholic Church**

### Action Alternative

Scenario 1 – There would be No Adverse Effect to the integrity of the historic property as the Embankment, which is across the street from the resource, would remain intact and continue to be a part of the historic setting. There would be a change in the setting as the trail/park would be constructed on top of the Embankment, likely visible from the resource. However, there would be no changes to the location, design, materials, workmanship, feeling, and association of the resource in this Scenario. OEA is requesting NJ SHPO concurrence with the No Adverse Effect finding based on the assumptions that OEA made regarding how the trail/park would be designed and implemented (see page 6, above).

Scenario 2 – There would be an Adverse Effect as the Embankment across the street from the historic property would be removed, allowing for future redevelopment. The Embankment is part of the historic setting for this resource, and its removal would impact the setting, feeling, and association of the resource. The NJ SHPO concurred with the Adverse Effect finding in their May 13, 2019 comment letter on the Effects Report.

Scenario 3 – In the Effects Report, OEA originally determined that the undertaking would have an Adverse Effect on this historic property and NJ SHPO, in their May 13, 2019 comment letter, concurred with that finding. Based upon additional analysis and more detailed available plans, OEA is making a finding of No Adverse Effect to this resource. There would be a change in the setting as the trail/park would be constructed on top of the Embankment, likely visible from the resource. However, there would be no changes to the location, design, materials, workmanship, feeling, and association of the resource in this Scenario. OEA is requesting NJ SHPO concurrence with the No Adverse Effect finding based on the assumptions that OEA made regarding how the trail/park would be designed and implemented (see page 9, above).

### No Action Alternative

This alternative would have No Effect on the historic property as it is the No Action Alternative, so there would be no changes as a result of the Board's denial of abandonment authority. The existing integrity of location, design, setting, materials, workmanship, feeling, and association would remain. Based upon consultation following the issuance of the Effects Report the NJ SHPO has concurred with the No Effect finding.

## **7. Hamilton Park Historic District and Extension**

### Action Alternative

Scenario 1 - There would be No Adverse Effect to the integrity of the historic district as the Embankment, which is a contributing resource within the historic district, would remain intact and continue to be part of the historic setting. There would be a change in the setting as the trail/park would be constructed on top of the Embankment, likely visible from various points within the historic district. However, there would be no changes to the location, design, materials, workmanship, feeling, and association of the overall historic district in this Scenario. OEA is requesting NJ SHPO concurrence with the No Adverse Effect finding based on the assumptions that OEA made regarding how the trail/park would be designed and implemented (see page 6, above).

Scenario 2 – There would be an Adverse Effect as the Embankment, a contributing resource within the Hamilton Park Historic District and Extension, would be demolished for development. The removal of the Embankment would impact the location, design, setting, materials, workmanship, feeling, and association of the overall historic district. The NJ SHPO concurred with the Adverse Effect finding in their May 13, 2019 comment letter on the Effects Report.

Scenario 3 – There would be an Adverse Effect as the Embankment, a contributing resource within the Hamilton Park Historic District and Extension, would be altered for development. Portions of the Embankment walls of the easternmost block are anticipated to be removed as the scenario calls for new construction on this block and trail/park development atop the remaining Embankment blocks and continuing to the west. This scenario would impact the location, design, setting, materials, workmanship, feeling, and association of the resource. In their May 13, 2019 comment letter on the Effects Report, the NJ SHPO concurred with the Adverse Effect finding.

### No Action Alternative

This alternative would have No Effect on the historic district as it is the No Action Alternative, so there would be no changes as a result of the Board's denial of abandonment authority. The existing integrity of location, design, setting, materials, workmanship, feeling, and association would remain. Based upon consultation following the issuance of the Effects Report, the NJ SHPO has concurred with the No Effect finding.

## **8. Harsimus Cove Historic District**

### Action Alternative

Scenario 1 - There would be No Adverse Effect to the integrity of the historic district as the Embankment, which is a contributing resource within the historic district, would remain intact and continue to be part of the historic setting. There would be a change in the setting as the trail/park would be constructed on top of the Embankment, likely visible from various points

within the historic district. However, there would be no changes to the location, design, materials, workmanship, feeling, and association of the overall historic district in this Scenario. OEA is requesting NJ SHPO concurrence with the No Adverse Effect finding based on the assumptions that OEA made regarding how the trail/park would be designed and implemented (see page 6, above).

Scenario 2 – There would be an Adverse Effect as the Embankment, a contributing resource within the Hamilton Park Historic District and Extension, would be demolished for development. The removal of the Embankment would impact the location, design, setting, materials, workmanship, feeling, and association of the overall historic district. The NJ SHPO concurred with the Adverse Effect finding in their May 13, 2019 comment letter on the Effects Report.

Scenario 3 – There would be an Adverse Effect as the Embankment, a contributing resource within the Harsimus Cove Historic District, would be altered for development. Portions of the Embankment walls of the easternmost block between Manila Avenue and Marin Boulevard are anticipated to be removed as the scenario calls for new construction on this block and trail/park development atop the remaining Embankment blocks and continuing to the west. This scenario would impact the location, design, setting, materials, workmanship, feeling, and association of the resource. In their May 13, 2019 comment letter on the Effects Report, the NJ SHPO concurred with the Adverse Effect finding.

#### No Action Alternative

This alternative would have No Effect on the historic district as it is the No Action Alternative, so there would be no changes as a result of the Board's denial of abandonment authority. The existing integrity of location, design, setting, materials, workmanship, feeling, and association would remain. Based upon consultation following the issuance of the Effects Report, the NJ SHPO has concurred with the No Effect finding.

### **9. Albaniel Dye & Chemical Co.**

#### Action Alternative

Scenario 1 – There would be No Adverse Effect to the integrity of the historic property as the Embankment, which is directly behind the resource, would remain intact and continue to be a part of the historic setting. There would be a change in the setting as the trail/park would be constructed on top of the Embankment, likely visible from the resource. However, there would be no changes to the location, design, materials, workmanship, feeling, and association of the resource in this Scenario. OEA is requesting NJ SHPO concurrence with the No Adverse Effect finding based on the assumptions that OEA made regarding how the trail/park would be designed and implemented (see page 6, above).

Scenario 2 - There would be an Adverse Effect as the Embankment directly behind the historic property would be removed, allowing for future redevelopment. The Embankment is part of the historic setting for this resource, and its removal would impact the setting, feeling,

and association of the resource. In their May 13, 2019 comment letter on the Effects Report, the NJ SHPO concurred with the Adverse Effect finding.

Scenario 3 – There would be No Adverse Effect to the integrity of the historic property as the Embankment, which is directly behind the resource, would remain intact and continue to be a part of the historic setting. There would be a change in the setting as the trail/park would be constructed on top of the Embankment, likely visible from the resource. However, there would be no changes to the location, design, materials, workmanship, feeling, and association of the resource in this Scenario. OEA is requesting NJ SHPO concurrence with the No Adverse Effect finding based on the assumptions that OEA made regarding how the trail/park would be designed and implemented (see page 9 above).

#### No Action Alternative

This alternative would have No Effect on the historic property as it is the No Action Alternative, so there would be no changes as a result of the Board's denial of abandonment authority. The existing integrity of location, design, setting, materials, workmanship, feeling, and association would remain. Based upon consultation following the issuance of the Effects Report, the NJ SHPO has concurred with the No Effect finding.

### **10. Warehouse Historic District**

#### Action Alternative

Scenario 1 – This scenario would have No Effect on the seven aspects of integrity for this historic property as it is over 900 feet away from the project corridor and there would be no activities that could have an impact on the Warehouse Historic District. The integrity of location, design, setting, materials, workmanship, feeling, and association would remain. The NJ SHPO concurred with the No Effect finding in their May 13, 2019 comment letter on the Effects Report.

Scenario 2 – This scenario would have No Effect on the integrity of this historic district as it is over 900 feet away from the project corridor. The integrity of location, design, setting, materials, workmanship, feeling, and association would remain. The NJ SHPO concurred with the No Effect finding in their May 13, 2019 comment letter on the Effects Report.

Scenario 3 – This scenario would have No Effect on the seven aspects of integrity for this resource as there would be no project activities that could have an impact on the Warehouse Historic District. The integrity of location, design, setting, materials, workmanship, feeling, and association would remain. The NJ SHPO concurred with the No Effect finding in their May 13, 2019 comment letter on the Effects Report.

#### No Action Alternative

This alternative would have No Effect on the historic district as it is the No Action Alternative, so there would be no changes as a result of the Board's denial of abandonment

authority. The existing integrity of location, design, setting, materials, workmanship, feeling, and association would remain. The NJ SHPO concurred with the No Effect finding in their May 13, 2019 comment letter on the Effects Report.

## **11. Hudson & Manhattan Railroad Powerhouse**

### Action Alternative

Scenario 1 – This scenario would have No Effect on the seven aspects of integrity for this historic property as it is over 1700 feet away from the project corridor and there would be no activities that could have an impact on the Hudson and Manhattan Railroad Powerhouse. The integrity of location, design, setting, materials, workmanship, feeling, and association would remain. The NJ SHPO concurred with the No Effect finding in their May 13, 2019 comment letter on the Effects Report.

Scenario 2 – This scenario would have No Effect on the integrity of this resource as it is over 1700 feet away from the project corridor. The integrity of location, design, setting, materials, workmanship, feeling, and association would remain. In their May 13, 2019 comment letter on the Effects Report, the NJ SHPO concurred with the No Effect finding.

Scenario 3 – This scenario would have No Effect on the seven aspects of integrity for this resource as there would be no project activities that could have an impact on the Hudson and Manhattan Railroad Powerhouse. The integrity of location, design, setting, materials, workmanship, feeling, and association would remain. The NJ SHPO concurred with the No Effect finding in their May 13, 2019 comment letter.

### No Action Alternative

This alternative would have No Effect on the historic property as it is the No Action Alternative, so there would be no changes as a result of the Board's denial of abandonment authority. The existing integrity of location, design, setting, materials, workmanship, feeling, and association would remain. In their May 13, 2019 comment letter on the Effects Report, the NJ SHPO concurred with the No Effect finding.

## **12. Great Atlantic & Pacific Tea Company Warehouse**

### Action Alternative

Scenario 1 – This scenario would have No Effect on the seven aspects of integrity for this historic property as it is over 1150 feet away from the project corridor and there would be no activities that could have an impact on the Great Atlantic & Pacific Tea Company Warehouse. The integrity of location, design, setting, materials, workmanship, feeling, and association would remain. The NJ SHPO concurred with the No Effect finding in their May 13, 2019 comment letter on the Effects Report.

Scenario 2 – This scenario would have No Effect on the integrity of this historic property as it is over 1150 feet away from the project corridor. The integrity of location, design, setting, materials, workmanship, feeling, and association would remain. The NJ SHPO concurred with the No Effect finding in their May 13, 2019 comment letter on the Effects Report.

Scenario 3 – This scenario would have No Effect on the seven aspects of integrity for this historic property as there would be no project activities that could have an impact on the Great Atlantic & Pacific Tea Company Warehouse. The integrity of location, design, setting, materials, workmanship, feeling, and association would remain. The NJ SHPO concurred with the No Effect finding in their May 13, 2019 comment letter on the Effects Report.

#### No Action Alternative

This alternative would have No Effect on the historic property as it is the No Action Alternative, so there would be no changes as a result of the Board's denial of abandonment authority. The existing integrity of location, design, setting, materials, workmanship, feeling, and association would remain. The NJ SHPO concurred with the No Effect finding in their May 13, 2019 comment letter on the Effects Report.

### **13. Jersey City and Harsimus Cemetery Historic District**

#### Action Alternative

Scenario 1 – There would be No Adverse Effect to the integrity of the resource as any potential development of a trail/park would be undertaken within the existing Harsimus Branch rail right-of-way, which is outside of the boundary of the Jersey City and Harsimus Cemetery Historic District. In addition, the Harsimus Branch corridor is screened from the cemetery property by mature trees and vegetation, and thus any potential development of a trail/park would likely not be visible from within the cemetery. The introduction of a trail/park in the vicinity of the resource could potentially impact the setting and feeling of the Jersey City and Harsimus Cemetery Historic District, but the integrity of location, design, materials, workmanship, and association would remain. OEA is requesting NJ SHPO concurrence with the No Adverse Effect finding based on the assumptions that OEA made regarding how the trail/park would be designed and implemented (see page 6, above).

Scenario 2 – This scenario would have No Effect on the seven aspects of integrity for this resource. Under Scenario 2, the Embankment, between Marin Boulevard and Brunswick Street, would be removed in its entirety and new buildings would be constructed on the property underlying the Embankment segments. There would be no construction activities under this scenario west of the New Jersey Turnpike Extension, and no construction near the Jersey City and Harsimus Cemetery Historic District. The closest effect that would occur under this scenario would be the potential construction of a mixed-use building fronting Newark Avenue and backing onto the east side of the right-of-way of the New Jersey Turnpike. This potential new building would be over 400 feet east of the easternmost boundary of the historic district and would be screened by a dense line of vegetation. The view from the historic property is also

impacted by the presence of the New Jersey Turnpike, which is a major modern visual element in this location. The integrity of location, design, setting, materials, workmanship, feeling, and association of the Jersey City and Harsimus Cemetery Historic District would remain. In their May 13, 2019 comment letter, the NJ SHPO stated that they disagreed with OEA's No Effect determination and that Scenario 2 would be an Adverse Effect. Based on the known details of post-abandonment development that could occur under Scenario 2 and the reasonable assumptions that OEA made regarding the scenario (see page 6, above), OEA continues to believe that Scenario 2 would have No Effect on the Jersey City and Harsimus Cemetery Historic District because demolition of the Embankment properties would have no direct or indirect impacts on this historic property. OEA is requesting NJ SHPO concurrence on this finding.

Scenario 3 – There would be No Adverse Effect to the integrity of the resource as any potential development of a trail/park would be undertaken within the existing Harsimus Branch rail right-of-way, which is outside of the boundary of the Jersey City and Harsimus Cemetery Historic District. In addition, the former rail corridor is screened from the cemetery property by mature trees and vegetation, and thus any potential development of a trail/park would likely not be visible from within the cemetery. The potential construction of a mixed-use building west of Newark Avenue and east of the New Jersey Turnpike, part of Scenario 3's assumptions, would be over 400 feet east of the easternmost boundary of the historic district and would be screened by a dense line of vegetation. The introduction of a trail/park in the vicinity of the resource could potentially impact the setting and feeling of the Jersey City and Harsimus Cemetery Historic District, but the integrity of location, design, materials, workmanship, and association would remain. In their May 13, 2019 comment letter, the NJ SHPO concurred with OEA's No Effect finding in the Effects Report. After further analysis, however, OEA has determined that Scenario 3 would have No Adverse Effect on this historic property, based on the known details regarding a potential negotiated settlement agreement and the reasonable assumptions that OEA made regarding this scenario (see page 9, above). OEA is requesting NJ SHPO concurrence on this revised finding.

#### No Action Alternative

This alternative would have No Effect on the historic district as it is the No Action Alternative, so there would be no changes as a result of the Board's denial of abandonment authority. The integrity of location, design, setting, materials, workmanship, feeling, and association would remain. In the Effects Report, OEA recommended a finding of No Effect for this scenario. In their May 13, 2019 comment letter, however, the NJ SHPO stated that the scenario would result in a No Adverse Effect. OEA maintains that the No Action Alternative would have No Effect on the historic property because the status quo would be retained and is requesting NJ SHPO concurrence with that finding.

#### **14. Holy Rosary Roman Catholic Church Complex**

##### Action Alternative

Scenario 1 – There would be No Adverse Effect to the integrity of the historic property as the Embankment, which is across the street from the resource, would remain intact and continue to be a part of the historic setting. There would be a change in the setting as the trail/park would be constructed on top of the Embankment, likely visible from the resource. However, there would be no changes to the location, design, materials, workmanship, feeling, and association of the resource in this Scenario. OEA is requesting NJ SHPO concurrence with the No Adverse Effect finding based on the assumptions that OEA made regarding how the trail/park would be designed and implemented (see page 6, above).

Scenario 2 – There would be an Adverse Effect as the Embankment across the street from the historic property would be removed, allowing for future redevelopment. The Embankment is part of the historic setting for this resource, and its removal would impact the setting, feeling, and association of the resource. The NJ SHPO concurred with the Adverse Effect finding in their May 13, 2019 comment letter on the Effects Report.

Scenario 3 – There would be No Adverse Effect to the integrity of the historic property as the Embankment, which is across the street from the resource, would remain intact and continue to be a part of the historic setting. There would be a change in the setting as the trail/park would be constructed on top of the Embankment, likely visible from the resource. However, there would be no changes to the location, design, materials, workmanship, feeling, and association of the resource in this Scenario. OEA is requesting NJ SHPO concurrence with the No Adverse Effect finding based on the assumptions that OEA made regarding how the trail/park would be designed and implemented (see page 9, above).

#### No Action Alternative

This alternative would have No Effect on the historic property as it is the No Action Alternative, so there would be no changes as a result of the Board's denial of abandonment authority. The existing integrity of location, design, setting, materials, workmanship, feeling, and association would remain. Based upon consultation following the issuance of the Effects Report, the NJ SHPO has concurred with the No Effect finding.

### **15. Immigrant Roman Catholic Church**

#### Action Alternative

Scenario 1 – There would be No Adverse Effect to the integrity of the historic property as the Embankment, which is across the street from the resource, would remain intact and continue to be a part of the historic setting. There would be a change in the setting as the trail/park would be constructed on top of the Embankment, likely visible from the resource. However, there would be no changes to the location, design, materials, workmanship, feeling, and association of the resource in this Scenario. OEA is requesting NJ SHPO concurrence with the No Adverse Effect finding based on the assumptions that OEA made regarding how the trail/park would be designed and implemented (see page 6, above).

Scenario 2 – There would be an Adverse Effect as the Embankment across the street from the historic property would be removed, allowing for future redevelopment. The Embankment is part of the historic setting for this resource, and its removal would impact the setting, feeling, and association of the resource. The NJ SHPO concurred with the Adverse Effect finding in their May 13, 2019 comment letter on the Effects Report.

Scenario 3 – There would be No Adverse Effect to the integrity of the historic property as the Embankment, which is across the street from the resource, would remain intact and continue to be a part of the historic setting. There would be a change in the setting as the trail/park would be constructed on top of the Embankment, likely visible from the resource. However, there would be no changes to the location, design, materials, workmanship, feeling, and association of the resource in this Scenario. OEA is requesting NJ SHPO concurrence with the No Adverse Effect finding based on the assumptions that OEA made regarding how the trail/park would be designed and implemented (see page 9, above).

#### No Action Alternative

This alternative would have No Effect on the historic property as it is the No Action Alternative, so there would be no changes as a result of the Board's denial of abandonment authority. The existing integrity of location, design, setting, materials, workmanship, feeling, and association would remain. Based upon consultation following the issuance of the Effects Report, the NJ SHPO has concurred with the No Effect finding.

### **16. Jersey City Fire Department Engine 5/Ladder 6**

#### Action Alternative

Scenario 1 – This scenario would have No Effect on the seven aspects of integrity for this historic property and there would be no activities that could have an impact on the Jersey City Fire Department Engine 5/Ladder 6. It would remain in place and continue to be fully functional. The integrity of location, design, setting, materials, workmanship, feeling, and association would remain. The NJ SHPO concurred with the No Effect finding in their May 13, 2019 comment letter on the Effects Report.

Scenario 2 – This scenario would have No Effect on the integrity of this historic property. It would remain in place and continue to be fully functional. The integrity of location, design, setting, materials, workmanship, feeling, and association would remain. The NJ SHPO concurred with the No Effect finding in their May 13, 2019 comment letter on the Effects Report.

Scenario 3 – This scenario would have No Effect on the seven aspects of integrity for this historic property as there would be no project activities that could have an impact on the Jersey City Fire Department Engine 5/Ladder 6. It would remain in place and continue to be fully functional. The integrity of location, design, setting, materials, workmanship, feeling, and association would remain. The NJ SHPO concurred with the No Effect finding in their May 13, 2019 comment letter on the Effects Report.

## No Action Alternative

This alternative would have No Effect on the historic property as it is the No Action Alternative, so there would be no changes as a result of the Board's denial of abandonment authority. The existing integrity of location, design, setting, materials, workmanship, feeling, and association would remain. The NJ SHPO concurred with the No Effect finding in their May 13, 2019 comment letter on the Effects Report.

### **17. Fifth Ward Savings Bank**

#### Action Alternative

Scenario 1 – This scenario would have No Effect on the seven aspects of integrity for this historic property as it is over 1200 feet from the project corridor and there would be no activities that could have an impact on the Fifth Ward Savings Bank. The integrity of location, design, setting, materials, workmanship, feeling, and association would remain. The NJ SHPO concurred with the No Effect finding in their May 13, 2019 comment letter on the Effects Report.

Scenario 2 – This scenario would have No Effect on the integrity of this historic property as it is over 1200 feet from the project corridor. The integrity of location, design, setting, materials, workmanship, feeling, and association would remain. In their May 13, 2019 comment letter on the Effects Report, the NJ SHPO concurred with the No Effect finding.

Scenario 3 – This scenario would have No Effect on the seven aspects of integrity for this historic property as there would be no project activities that could have an impact on the Fifth Ward Savings Bank. The integrity of location, design, setting, materials, workmanship, feeling, and association would remain. In their May 13, 2019 comment letter on the Effects Report, the NJ SHPO concurred with the No Effect finding.

#### No Action Alternative

This alternative would have No Effect on the historic property as it is the No Action Alternative, so there would be no changes as a result of the Board's denial of abandonment authority. The existing integrity of location, design, setting, materials, workmanship, feeling, and association would remain. The NJ SHPO concurred with the No Effect finding in their May 13, 2019 comment letter on the Effects Report.

### **18. Pennsylvania Railroad Harsimus Right-of-Way Historic District**

#### Action Alternative

Scenario 1 – There would be No Adverse Effect to the integrity of the historic district as it would be preserved in place to support the construction of a trail/park. OEA is requesting NJ

SHPO concurrence with the No Adverse Effect finding based on the assumptions that OEA made regarding how the trail/park would be designed and implemented (see page 6, above).

Scenario 2 – There would be an Adverse Effect as the linear historic district, consisting of Embankment segments as well as elements of railroad support features, would be demolished for development. The scenario calls for demolition and development from the New Jersey Turnpike east to Marin Boulevard, within the corridor right-of-way, impacting the location, design, setting, materials, workmanship, feeling, and association of the resource. The NJ SHPO concurred with the Adverse Effect finding in their May 13, 2019 comment letter on the Effects Report.

Scenario 3 – There would be an Adverse Effect as a portion of the historic district, including the easternmost Embankment block between Manila Avenue and Marin Boulevard would be heavily altered for modern development. Portions of the Embankment walls between Manila Avenue and Marin Boulevard are anticipated to be removed as the scenario calls for new construction on this block and trail/park development atop the remaining Embankment blocks and continuing to the west. This scenario would impact the location, design, setting, materials, workmanship, feeling, and association of the resource. The NJ SHPO concurred with the Adverse Effect finding in their May 13, 2019 comment letter on the Effects Report.

#### No Action Alternative

This scenario would have No Effect on the historic district as it is the No Action Alternative, so there would be no changes as a result of the Board's denial of abandonment authority. The existing integrity of location, design, setting, materials, workmanship, feeling, and association would remain. Based upon consultation following the issuance of the Effects Report, the NJ SHPO has concurred with the No Effect finding.

### **19. Italian Village Historic District**

The Italian Village was not included in the Effects Report as at the time the Effects Report was prepared it was not within the APE. After review of the comment letter on the Effects Report from the NJ SHPO, and an evaluation of the proposed boundary expansion prepared as part of that letter, OEA agreed with the expanded boundary and now the effects of the project on the Italian Village Historic District are presented below.

#### Action Alternative

Scenario 1 - There would be No Adverse Effect to the integrity of the Italian Village Historic District as the Embankment, which is a contributing resource within the historic district, would remain intact and continue to be part of the historic setting. There would be a change in the setting as the trail/park would be constructed on top of the Embankment, likely visible from various points within the historic district. However, there would be no changes to the location, design, materials, workmanship, feeling, and association of the overall historic district in this Scenario. In their May 13, 2019 comment letter on the Effects Report, the NJ SHPO recommended a No Adverse Effect finding based on the assumptions that OEA made regarding

how the trail/park would be designed and implemented (see page 6). OEA agrees with that recommended finding of No Adverse Effect.

Scenario 2 – There would be an Adverse Effect as the Embankment, a contributing resource within the Italian Village Historic District, would be demolished for development. The removal of the Embankment would impact the location, design, setting, materials, workmanship, feeling, and association of the overall historic district. In their May 13, 2019 comment letter, the NJ SHPO recommended an Adverse Effect finding. OEA agrees with that recommended finding of Adverse Effect.

Scenario 3 – There would be an Adverse Effect as the Embankment, a contributing resource within the Italian Village Historic District, would be altered for development. Portions of the Embankment walls of the easternmost block between Manila Avenue and Marin Boulevard are anticipated to be removed as the scenario calls for new construction on this block and trail/park development atop the remaining Embankment blocks and continuing to the west. This scenario would impact the location, design, setting, materials, workmanship, feeling, and association of the resource. The NJ SHPO recommended an Adverse Effect finding in their May 13, 2019 comment letter. OEA agrees with that recommended finding of Adverse Effect.

#### No Action Alternative

This alternative would have No Effect on the historic district as it is the No Action Alternative, so there would be no changes as a result of the Board's denial of abandonment authority. The existing integrity of location, design, setting, materials, workmanship, feeling, and association would remain. The NJ SHPO recommended a No Effect finding in their May 13, 2019 comment letter. OEA agrees with that recommended finding of No Effect.

**Table 2: Final Determinations of Effect**

RESOURCE NAME	ACTION ALTERNATIVE			NO ACTION ALTERNATIVE
	SCENARIO 1	SCENARIO 2	SCENARIO 3	
	<b>Preservation of the Harsimus Branch and Conversion into a Trail/Park</b>	<b>Demolition and full redevelopment of the Embankment blocks; Partial redevelopment on blocks west of the Embankment (Brunswick to NJ Turnpike)</b>	<b>Partial Preservation and Partial Development of the Harsimus Branch</b>	<b>Abandonment not Consummated</b>
<b>Pennsylvania Railroad (New York to Philadelphia) Historic District</b> (Embankment HD is a contributing resource)	No Adverse Effect <sup>8</sup>	Adverse Effect	Adverse Effect	No Effect
<b>New Jersey Railroad Bergen Cut Historic District</b> (Embankment HD is a contributing resource)	No Adverse Effect	Adverse Effect	Adverse Effect	No Effect
<b>Public School Number 5</b>	No Effect	No Effect	No Effect	No Effect
<b>Pennsylvania Railroad Harsimus Branch Embankment</b>	No Adverse Effect	Adverse Effect	Adverse Effect	No Effect
<b>St. Anthony’s Polish Roman Catholic Church and School Complex and Convent</b> (also contributes to Immigrant Roman Catholic Church Historic District)	No Adverse Effect	Adverse Effect	No Adverse Effect	No Effect
<b>St. Anthony’s of Padua Roman Catholic Church</b> (also contributes to	No Adverse Effect	Adverse Effect	No Adverse Effect	No Effect

<sup>8</sup> All No Adverse Effect findings for Scenarios 1 and 3 are based upon assumptions that OEA made regarding how the trail/park would be designed and implemented.

Immigrant Roman Catholic Church Historic District)				
<b>Hamilton Park Historic District/Extension</b>  (Embankment HD is a contributing resource)	No Adverse Effect	Adverse Effect	Adverse Effect	No Effect
<b>Harsimus Cove Historic District</b>  (Embankment HD is a contributing resource)	No Adverse Effect	Adverse Effect	Adverse Effect	No Effect
<b>Albaniel Dye &amp; Chemical Co.</b>	No Adverse Effect	Adverse Effect	No Adverse Effect	No Effect
<b>Warehouse Historic District</b>	No Effect	No Effect	No Effect	No Effect
<b>Hudson &amp; Manhattan Railroad Powerhouse</b> (also within the Warehouse Historic District)	No Effect	No Effect	No Effect	No Effect
<b>Great Atlantic &amp; Pacific Tea Company Warehouse</b> (also within the Warehouse Historic District)	No Effect	No Effect	No Effect	No Effect
<b>Jersey City and Harsimus Cemetery Historic District</b>	No Adverse Effect	No Effect	No Adverse Effect	No Effect
<b>Holy Rosary Roman Catholic Church Complex</b> (also contributes to the Immigrant Roman Catholic Church Historic District)	No Adverse Effect	Adverse Effect	No Adverse Effect	No Effect
<b>Immigrant Roman Catholic Church Historic District</b> (includes St. Anthony's/Holy Rosary)	No Adverse Effect	Adverse Effect	No Adverse Effect	No Effect
<b>Jersey City Fire Department Engine 5/Ladder 6</b>	No Effect	No Effect	No Effect	No Effect

<b>Fifth Ward Savings Bank</b>	No Effect	No Effect	No Effect	No Effect
<b>Pennsylvania Railroad Harsimus Right-of-Way Historic District</b>	No Adverse Effect	Adverse Effect	Adverse Effect	No Effect
<b>Italian Village Historic District</b>	No Adverse Effect	Adverse Effect	Adverse Effect	No Effect
<b>SUMMARY OF EFFECT FINDING</b>	<b>ACTION ALTERNATIVE</b>			<b>NO ACTION ALTERNATIVE</b>
	<b>Scenario 1</b>	<b>Scenario 2</b>	<b>Scenario 3</b>	
	<b>NO ADVERSE EFFECT</b>	<b>ADVERSE EFFECT</b>	<b>ADVERSE EFFECT</b>	<b>NO EFFECT</b>

## **Conclusion**

OEA has determined that the Board's approval of the proposed abandonment (the Action Alternative) could adversely affect historic properties listed in or eligible for listing in the National Register because the abandonment would permit reasonably foreseeable redevelopment of all or part of the Harsimus Branch right-of-way. As noted previously, three scenarios were developed to evaluate the effects of the varied redevelopment scenarios on historic properties (**Table 2**). Scenario 1 would have No Adverse Effect on historic properties; Scenario 2 would have an Adverse Effect on some historic properties; and Scenario 3 would have an Adverse Effect on some historic properties. Under the No Action Alternative, the Board would deny Conrail's request for abandonment authority and there would be No Effect on historic properties. The No Adverse Effect determinations are based on the assumptions that OEA has made regarding how the trail/park would be designed and implemented.

In summary, the OEA has concluded that the proposed abandonment could result in adverse effects to the following National Register-listed and eligible properties:<sup>9</sup>

- Pennsylvania Railroad (New York to Philadelphia) Historic District (Scenarios 2 and 3)
- New Jersey Railroad Bergen Cut Historic District (Scenarios 2 and 3)
- Pennsylvania Railroad Harsimus Branch Embankment (Scenarios 2 and 3)
- St. Anthony's Polish Roman Catholic Church, School Complex, Convent (Scenario 2)
- St. Anthony's of Padua Roman Catholic Church (Scenario 2)
- Hamilton Park Historic District and Extensions (Scenarios 2 and 3)
- Harsimus Cove Historic District (Scenarios 2 and 3)
- Albaniel Dye & Chemical Co. (Scenario 2)
- Holy Rosary Roman Catholic Church Complex (Scenario 2)
- Immigrant Roman Catholic Church Historic District (Scenario 2)
- Pennsylvania Railroad Harsimus Branch Right-of-Way Historic District (Scenarios 2 and 3)
- Italian Village Historic District (Scenarios 2 and 3)

## **Section 4 – Resolution of Adverse Effects (36 C.F.R. § Part 800.6)**

As the next step of the Section 106 process OEA will prepare a Programmatic Agreement (PA) for the project, which will lay out the process for addressing adverse effects, and this document will also, as appropriate, refer to the terms developed within the separate settlement agreement (if executed) among all the project parties.

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<sup>9</sup> It should be noted that the Effects Report incorrectly stated in Table 4.1 that Scenario 1 would have an Adverse Effect on the Albaniel Dye & Chemical Co./Thomas J. Stewart Co. Building. The written analysis of effect for this resource on page 4-87 correctly made a finding of No Adverse Effect under Scenario 1.

The development of the PA, and the potential stipulations relating to mitigating the adverse effect of the project, will include substantial outreach to the consulting parties that have been part of this project over the years. OEA plans to hold a meeting in Jersey City to present the results of the assessment of effects and, most importantly, to allow the consulting parties and members of the public to present their views regarding what mitigation, consistent with the Board's limited jurisdiction, they would like to see for the Harsimus Branch, including the Embankment properties. Not all the ideas that are likely to be forthcoming during the public meeting will be in the Board's power to impose, but a free and open discussion of ideas will be helpful to gain a better understanding of the views and interests of the public.

As discussed in detail in the prior Section 106 documentation for this case, the Board's sole non-consensual mitigation option is documentation, but there is a wide spectrum of activities that could be part of an effort to develop reasonable documentation mitigation in this case. Typical documentation elements could include surveys, photographs, reports, motion pictures, and interpretive signage. Assuming no final settlement agreement is negotiated and executed prior to the public meeting, part of the intent of the meeting will be to encourage all of the parties to provide input and share ideas about the documentation effort, and then incorporate those ideas, as appropriate, into the planning process and also into the PA. Ongoing consultation between OEA, Conrail, NJ SHPO, ACHP, and the other consulting parties will be critically important during this process.

Following the public meeting, OEA will post the transcript on the Board's website,<sup>10</sup> summarize the range of mitigation measures suggested, identify the measures that are within the Board's power to require, and ensure that the parties negotiating the settlement agreement know about the other measures suggested during the public meeting. Then OEA will, in consultation with the consulting parties, develop a PA for review and signature by the appropriate parties. The Section 106 process will conclude once the PA has been signed and the Board imposes a condition requiring compliance with the terms of the PA in a final decision.

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<sup>10</sup> It typically takes several weeks for the agency to receive a copy of the transcript from the transcription company.

## **ATTACHMENT 1 - Comments on the Effects Report and OEA Responses**

OEA issued the Effects Report for review and comment on March 29, 2019. During the 30-day comment period, OEA received four comment letters from consulting parties. At the request of ACHP and the NJ SHPO, OEA extended the comment period by an additional 15 days and received two additional comment letters. This section summarizes the six comment letters received from consulting parties on the Effects Report and provides OEA responses to those comments. The comments and responses are presented in the order that they were received by the Board.

### **A. Comments from Jersey City, the Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (Coalition), and the Rails to Trails Conservancy**

By letter dated April 25, 2019, Jersey City, the Coalition, and the Rails to Trails Conservancy (Jersey City et al.) submitted joint comments on the Effects Report. Some of those comments are relevant to the assessment of effects phase of the Section 106 process, while other comments dealt with other matters. This section summarizes Jersey City et al.'s comments and provides OEA's responses.

1. Jersey City et al. disagree with OEA's explanation of the limits of the Board's jurisdiction in the Effects Report and other case documents. Specifically, Jersey City et al. state that OEA has the legal authority to return the Embankment properties to Conrail and ensure that Jersey City can acquire the properties at the same price or lower price paid by the LLCs. As explained in numerous documents associated with this case, including the CRI Report, the CRI Report Addendum, and the Effects Report, OEA has no authority to require that a railroad or nonrailroad entity sell or donate its property for the purposes of historic preservation.

2. Jersey City et al. disagree with OEA's conclusion that the No Action Alternative would result in adverse effects to some historic properties within the APE. Upon consultation with the Section 106 consulting parties, including ACHP and the NJ SHPO, and consideration of this comment, OEA now concurs with Jersey City et al. that the No Action Alternative would have no effect on any historic properties within the APE because abandonment authority would be denied.

3. Jersey City et al. state that the Effects Report fails to address allegations by Jersey City et al. that Conrail altered the historic integrity of historic properties within the rail right-of-way prior to seeking abandonment authority from the Board, in violation of Section 110(k) of the NHPA. Specifically, Jersey City et al. state that Conrail violated Section 110(k) by removing bridges between the Embankment segments and other rail-related materials in the 1990s. OEA notes that Conrail removed the bridges and other rail-related materials at the request of Jersey City at a time when Conrail believed the Harsimus Branch to be ancillary "spur" track exempted from Board regulation under 49 U.S.C. § 10906, not a line of railroad subject to Board licensing

under 49 U.S.C. § § 10901, 10903. As set forth in OEA’s September 21, 2016 letter to ACHP, the Board intends to come to a conclusion regarding the Section 110(k) issue once the full administrative record in the abandonment proceeding is complete. This approach is warranted by the unique circumstances in this case, including the point at which the applicability of Section 110(k) was raised—after the Section 106 process was already well underway—and the fact that the full administrative record has not yet been put before the Board.

4. Jersey City et al. state that the Effects Report fails to identify the loss of federal control over the Harsimus Branch as an adverse effect to the Embankment and other historic properties within the APE, pursuant to 36 C.F.R. § 800.5(a)(2)(vii). 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. Following consultation with ACHP, OEA and ACHP have 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, OEA cannot conclude that the loss of federal control over the Harsimus Branch would be a direct adverse effect under Section 106.

B. Comments from the Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition

The Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (Coalition) submitted comments on the Effects Report by letter dated April 28, 2019. This section summarizes the Coalition’s comments and provides OEA’s responses.

1. The Coalition states that the Effects Report fails to identify the loss of federal jurisdiction over the Harsimus Branch as a direct adverse effect of the proposed abandonment on the Embankment and other National Register-eligible properties within the APE. OEA notes that 36 C.F.R. § 800.5(a)(2)(vii) specifies that the loss of “federal ownership or control” over historic properties can be considered an adverse effect under Section 106. Following consultation with ACHP, however, OEA and ACHP have 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, OEA cannot conclude that the loss of federal control over the Harsimus Branch would be a direct adverse effect under Section 106.

2. The Coalition disagrees with OEA’s explanation of the Board’s jurisdiction in abandonment cases. OEA notes these comments from the Coalition and refers the Coalition to the discussion of this issue above and in the Effects Report.

3. The Coalition states that robust consultation during the mitigation phase of Section 106 will be required. OEA agrees with the Coalition that consultation with the Section 106 consulting parties and other interested stakeholders will be required to develop a plan to

avoid, minimize, or mitigate adverse effects to historic properties within the APE. Such a plan could include aspects of a voluntary negotiated settlement between the parties.

4. The Coalition states that the provisions of the potential settlement agreement between various parties regarding post-abandonment uses of the Harsimus Branch right-of-way should be incorporated into a Section 106 agreement document. OEA intends to work with the appropriate consulting parties to develop a PA to avoid, minimize, or mitigate adverse effects to historic properties. As previously explained in the Effects Report, the PA will reflect and take into account, as appropriate, the settlement agreement currently being negotiated by various private parties regarding post-abandonment uses of the Harsimus Branch, provided that the agreement document does not commit OEA or the Board to undertake actions, including enforcement actions, that are beyond the agency's legal authority.

5. The Coalition states that, if a settlement agreement cannot be reached, the Board must impose mitigation that would make the Harsimus Branch subject to enforceable covenants and restrictions that require the preservation of the right-of-way, including the Embankment. OEA notes that, as discussed in numerous case documents in this proceeding, including the 2009 EA, the 2017 CRI Report, the 2018 CRI Report Addendum, and the 2019 Effects Report, the Board cannot impose restrictive covenants on deeds in abandonment cases. In abandonment cases, the only form of involuntary mitigation that the Board can impose is the documentation of historic properties. OEA, however, encourages parties to negotiate mutually acceptable solutions to environmental and historic preservation concerns, including mitigation solutions more far reaching than mitigation the Board could impose unilaterally. The Board can adopt as part of its final mitigation certain mitigation measures that the railroad applicant voluntarily agrees to undertake.

### C. Comments from Conrail

Conrail submitted comments on the Effects Report on April 29, 2019. This section summarizes Conrail's comments and provides OEA's responses.

1. Conrail disagrees with OEA that the post-abandonment scenarios examined in the Effects Report are reasonably foreseeable under the NHPA. Conrail states that complete demolition of the Embankment (Scenario 2) is not reasonably foreseeable because demolition of the Embankment would require the LLCs to obtain a waiver from Jersey City, which has been denied. Conrail also states that complete preservation of the Harsimus Branch as a trail/park (Scenario 1) is also highly speculative. In response, OEA notes that the approach to the assessment of effects in this case, including the definitions of Scenario 1 and Scenario 2, were proposed by Conrail in Conrail's 2008 APE Report, which was provided to OEA and the NJ SHPO before Conrail filed its Notice of Exemption. OEA and the NJ SHPO concurred with Conrail's proposed approach at that time.

2. Conrail states that the No Action Alternative, which would occur if the Board were to deny abandonment authority, is not reasonable. Conrail notes that, because the Harsimus Branch has been out of service for many years and because there are no shippers on the line, the Board would have no lawful basis to deny Conrail abandonment authority provided that Conrail complies with the conditions that the Board is authorized to impose on an abandonment. OEA notes these comments from Conrail and points to the discussion of the No Action Alternative, and why it was considered, earlier in this Effects Report Addendum.

D. Comments from the 247 Manila Avenue, LLC; 280 Erie Street LLC; 389 Monmouth Street, LLC; 354 Cole Street, LLC; 317 Jersey Avenue, LLC; 415 Brunswick Street, LLC; and 446 Newark Avenue, LLC

By letter dated April 29, 2019, the seven limited liability companies that own the Embankment (collectively, the LLCs) submitted comments on the Effects Report. This section summarizes the comments from the LLCs and provides OEA's responses.

1. The LLCs state that the Effects Report thoroughly analyzes all potential impacts of the proposed abandonment of the Harsimus Branch and goes beyond the requirements for such reports to respond to concerns that are not usually addressed in abandonment proceedings. OEA notes these comments from the LLCs.

2. The LLCs concur with OEA that the Board's jurisdiction in railroad abandonment cases is limited and that the Board has no role in planning or regulating post-abandonment uses of an abandoned right-of-way. OEA notes those comments from the LLCs.

3. The LLCs state that the LLCs are working with Conrail, Jersey City, other stakeholders to develop a mitigation plan that would exceed the usual conditions for Section 106 mitigation. The LLCs also urge OEA to complete its review of the proposed abandonment in an orderly and timely manner. OEA notes those comments from the LLCs.

E. Comments from the NJ SHPO

The NJ SHPO submitted comments on the Effects Report by letter dated May 13, 2019. As part of the consultation process, OEA met with the NJ SHPO on July 29, 2019 to review their comments and to discuss the project. This section summarizes the NJ SHPO's comments and provides OEA's responses.

1. The NJ SHPO states that, in the NJ SHPO's experience with federal agencies such as the Federal Transit Administration, documentation of historic properties is understood to be part of the federal agency's responsibilities under Section 110 and does not constitute adequate mitigation for an adverse effect. In response, OEA notes that the Board's jurisdiction over rail lines proposed for abandonment is limited. The Board does not own or control railroad property and cannot place restrictive covenants on deeds or otherwise impose conditions that would place

enforceable restrictions on future land use in a former rail corridor. Documentation of historic properties is typically the only form of mitigation that the Board can impose on a railroad seeking abandonment authority. The Board can, however, adopt certain voluntary mitigation measures that a railroad voluntarily agrees to undertake.

2. The NJ SHPO concurred with some of OEA's conclusions regarding the assessment of effects to historic properties set forth in the Effects Report and disagreed with some of OEA's conclusions. The NJ SHPO also disagreed with some of OEA's conclusions regarding the identification of historic properties set forth in the CRI Report addendum. Section 2 of this Effects Report Addendum addresses the specific conclusions on which the NJ SHPO concurred or disagreed with OEA and provides OEA's response.

3. The NJ SHPO states that the Section 106 process in this case should be concluded with a PA, rather than a MOA. The NJ SHPO further states that the PA would need to lay out the conditions under which the findings reported in the Effects Report would be realized and lay out a path forward should any, or all, of the conditions not be met. OEA is amenable to working with the Section 106 consulting parties to draft a PA to resolve adverse effects to historic properties, provided that the agreement document does not commit the Board to actions, including enforcement actions, that are beyond the agency's authority.

#### F. Comments from ACHP

By letter dated May 14, 2019, ACHP submitted comments on the Effects Report. As part of the consultation process, OEA met with ACHP on June 11, 2019 to review their comments and to discuss the project. This section summarizes ACHP's comments and provides OEA's responses.

1. ACHP requested that OEA provide an update on the status of the Board's consideration of Section 110(k) in the Harsimus Branch abandonment case. As set forth in OEA's September 21, 2016 letter to ACHP and as discussed at the June 11, 2019 meeting between OEA and ACHP, the Board intends to come to a conclusion regarding the Section 110(k) issue once the full administrative record in the abandonment proceeding is complete. This approach is warranted by the unique circumstances in this case, including the point at which the applicability of Section 110(k) was raised and the fact that the full record in this case has not yet been put before the Board. ACHP stated at the June 11, 2019 meeting with STB staff that the ACHP does not object to this approach with respect to Section 110(k) in this proceeding.

2. ACHP states that it believes OEA has defined the undertaking in the Harsimus Branch abandonment case too narrowly. ACHP recommends that OEA broaden the definition of the undertaking to include the activities associated with the partial or full redevelopment of the Embankment properties and that OEA modify the Effects Report based on the revised definition. In response, OEA notes that a federal undertaking is defined under 36 C.F.R. § 800.16(y) as a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of

federal agency, including those carried out by or on behalf of a federal agency; those carried out with federal financial assistance; and those requiring a federal permit, license or approval. In rail line abandonment proceedings, the Board's role is limited to whether or not to authorize the abandonment; railroad rights-of-way are private property. Moreover, the Board does not permit, license, approve, sponsor, or fund any aspect of post-abandonment uses of an abandoned rail right-of-way and has no direct or indirect jurisdiction over former rail rights-of-way after an abandonment is authorized and has been consummated. Therefore, the federal undertaking in this and in all abandonment cases before the Board is limited to the Board's decision to grant or deny abandonment authority. OEA cannot expand the definition of the federal undertaking to include potential future activities that could occur after the rail right-of-way is no longer part of the national rail system and has left the Board's jurisdiction. As discussed above and in the Board's previous Section 106 documentation, OEA has, however, included limited consideration of post-abandonment activities in its Section 106 review here, due to the unique circumstances in this case.

3. ACHP states that the Effects Report would benefit from a more robust discussion of how each of the scenarios discussed in that report would affect the integrity of location, design, setting, materials, workmanship, feeling, and association for each of the identified historic properties in the APE. Section 2 of this Effect Report Addendum provides additional information regarding effects to the elements of integrity for each of the identified historic properties.

4. ACHP recommends that the Section 106 process in this case should be concluded with a PA, rather than a Memorandum of Agreement (MOA). OEA is amenable to working with the Section 106 consulting parties to draft a PA to resolve adverse effects to historic properties, provided that the agreement document does not commit the Board to actions, including enforcement actions, that are beyond the agency's authority.

5. ACHP requests that the Board clarify how the agency plans to finalize the Effects Report, including whether it will submit a formal finding of effect to the NJ SHPO. This Effects Report Addendum addresses the outstanding areas of concern and disagreement between the Section 106 consulting parties and provides OEA's formal finding of effect.

## **ATTACHMENT 2 – Overview History of the Harsimus Branch**

### History of the Harsimus Branch

The trackage at issue here is an approximately 1.36-mile portion of a line of railroad, known as the Harsimus Branch, located in an urban area of Jersey City, N.J. The Harsimus Branch extends between milepost 0.00, CP Waldo, and milepost 1.36, a point east of Washington Street, in Jersey City. The property was constructed by the United New Jersey Railroad and Canal Company (UNJRCC), leased to the Pennsylvania Railroad Company (PRR) in 1871, and used in rail service for much of the 20th Century. The trackage ran from a connection with the UNJRCC main line near Waldo Avenue to the Harsimus Cove area on the Hudson River. The Sixth Street Embankment is part of the Harsimus Branch and is a series of six embankments, located between city streets that were historically joined by plate girder bridges that spanned north-south streets. The Harsimus Branch was built on top of these embankments and bridges.

The PRR merged into the Penn Central Transportation Company (Penn Central) in 1968. Penn Central and seven other northeastern railroads declared bankruptcy in 1970. In response to these bankruptcies, Congress enacted the Regional Rail Reorganization Act of 1973, 45 U.S.C. §§ 701-719 (3R Act), under which the bankrupt railroads were merged into a new entity: Consolidated Rail Corporation, or Conrail for short. In 1976, the Harsimus Branch was transferred to Conrail under the Final System Plan (FSP).<sup>11</sup> Conrail began operating the Harsimus Branch in 1976.

By the mid-1980s Conrail had sold much of the trackage in the area to developers or to the Jersey City Development Agency (Agency). Starting in 1984, the Agency negotiated with Conrail to purchase the embankment properties, but no deal was reached. In 1994, Conrail permitted the City and a private developer to remove the bridges on the embankment. Conrail then offered to sell what remained of the embankment to the City. Negotiations continued until 1999, at which point, negotiations ended without an agreement when the properties were declared eligible for listing on the New Jersey Register of Historic Places.

In October 2002, Conrail put the six embankment properties and two other properties back up for sale. Shortly thereafter, the City designated the six embankment properties as a “historic landmark” under municipal law, and Conrail informed prospective bidders that the designation would require a developer to obtain the consent of the Jersey City Historic Preservation Commission to proceed with development of those properties. Conrail then began negotiations to sell the eight parcels to a group of eight developers. In July 2005, Conrail—treating the property as unregulated spur or yard track within the meaning of § 10906 and therefore not requiring abandonment authority from the Board—sold the eight parcels to the eight developers.

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<sup>11</sup> The FSP was the plan that identified the rail properties to be conveyed to Conrail.

### **ATTACHMENT 3 – Legal Actions Related to the Abandonment Case**

In January 2006, the City, the Pennsylvania Railroad Stem Embankment Coalition, the Rails to Trails Conservancy, and New Jersey Assemblyman Louis M. Manzo asked the Board for a declaratory order finding that the Harsimus Branch was a line of railroad rather than an unregulated “spur” and therefore should not have been sold without Board abandonment authority. The Board’s decision in Jersey City Dec. Order<sup>12</sup> concluded that the Harsimus Branch had been conveyed to (and operated by) Conrail as a line of railroad subject to federal abandonment regulation.

Conrail and one of the LLCs appealed the Board’s decision to the D.C. Circuit. The court vacated the Board’s decision without reaching the merits of whether the line was regulated or excepted “spur” track. Instead, the court found that the Board lacked the jurisdiction necessary to determine the status of the trackage sought to be abandoned, because, under the 3R Act, a “Special Court” had been created with exclusive jurisdiction “to interpret, alter, amend, modify or implement any of the orders entered by such court pursuant to section 743(b) of this title in order to effect the purposes of this chapter or the goals of the [FSP]. 45 U.S.C. § 719(e)(2).” Conrail v. STB, 571 F.3d 13,18 (D.C. Cir. 2009). The D.C. Circuit determined that the petition for declaratory order before the Board raised substantial questions with respect to the interpretation of the FSP, and that therefore, it fell within the “original and exclusive jurisdiction” of the Special Court. Id. at 19.

Following the issuance of the Jersey City Dec. Order, Conrail began to prepare the environmental and historic reports required in abandonment cases. See 49 C.F.R. §§ 1105.7, 1105.8, 1105.10-11. After completing the consultations with state and federal agencies required by the Board’s environmental rules, Conrail submitted environmental and historic reports to the Board in March 2008.

In 2009, Conrail, CSX Transportation, Inc. (CSXT), and Norfolk Southern Railway Company (NSR) jointly filed a verified Notice of Exemption under the streamlined process for out-of-service rail lines at 49 C.F.R. § 1152.50 for Conrail to abandon, and for CSXT and NSR to discontinue service over, the Harsimus Branch. The Notice of Exemption was served and published in the Federal Register on March 18, 2009 (74 Fed. Reg. 11,631-32). The exemption was scheduled to become effective April 17, 2009.

The filing of the notice triggered the start of the Board’s environmental and historic review. On March 23, 2009, OEA issued an Environmental Assessment (EA) for public review and comment. Consistent with Board and court precedent, the review of environmental impacts in the EA focused on the potential environmental effects resulting from diversion of traffic from rail to other modes and also from salvage activities. See Iowa S. R.R.—Exemption—Abandonment, 5 I.C.C. 2d 496 (1989), aff’d sub nom. Goos v. Interstate Commerce Commission, 911 F.2d 1283 (8th Cir. 1990). Comments on the EA were due April 7, 2009. OEA received approximately 2,000 comments on the EA. By decision served April 16,

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<sup>12</sup> City of Jersey City—Pet. for Declaratory Order (Jersey City Dec. Order), FD 34818 (STB served Aug. 9, 2007).

2009, the effective date of the Notice of Exemption was stayed to allow the Board to complete the environmental review and Section 106 processes.

At the same time that the environmental review was taking place, the City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (City Parties) filed an action against Conrail in the U.S. District Court for the District of Columbia (sitting as the Special Court), seeking a determination as to whether the Harsimus Branch was conveyed as regulated or excepted track. The Board, by decision served on April 20, 2010, stayed the abandonment and discontinuance proceedings (including completion of the environmental review process) to allow the District Court time to resolve the status of the Harsimus Branch.

The District Court initially ruled, without reaching the merits, that the plaintiffs lacked standing, but the D.C. Circuit reversed on appeal. City of Jersey City v. Consol. Rail Corp., 741 F. Supp. 2d 131 (D.D.C. 2010), rev'd, 668 F.3d 741 (D.C. Cir. 2012). The D.C. Circuit remanded the case back to the District Court. On July 10, 2012, the City Parties and the LLCs jointly stipulated that the Harsimus Branch was conveyed to Conrail as a line of railroad subject to the Interstate Commerce Commission's (ICC), and now the Board's, abandonment authority. Conrail neither joined nor opposed the stipulation.

On September 30, 2013, the District Court granted summary judgment for the City Parties, "given that the parties have now stipulated that the Harsimus Branch was conveyed to Conrail as a line and not a spur." City of Jersey City v. Conrail, 968 F.Supp.2d at 307.

## **ATTACHMENT 4 – STB’s Role in Rail Abandonment Proceedings**

The Board is a federal, bipartisan, independent adjudicatory board. It was established in 1996 to assume some of the regulatory functions that had been administered by the ICC when the ICC was abolished. The Board has broad economic regulatory oversight of railroads, including rates, service, the construction, acquisition, operation, and abandonment of rail lines, carrier mergers and interchange of traffic among carriers.

As part of its licensing responsibilities, the Board decides whether to authorize the abandonment of a rail line, thereby terminating the railroad’s common carrier obligation to provide rail service over a specific rail line on reasonable request and allowing the railroad to remove that line from the interstate rail network once abandonment authority is consummated. See 49 U.S.C. §§ 10903 (establishing “public convenience and necessity” test for applications to abandon rail lines); 10502 and 49 C.F.R. § 1152.50 (streamlined exemption process currently used for most rail line abandonments). See also 49 C.F.R. 1152.29(e)(2) (abandonment consummated by filing a timely notice of consummation).

Before the Board decides whether to approve a railroad’s proposed abandonment, the Board must comply with the National Environmental Policy Act and with NHPA’s Section 106, which requires federal agencies with licensing roles to consider the effects of their actions on historic properties. Under the Board’s environmental rules at 49 C.F.R. part 1105, compliance with these statutes is delegated to OEA.

Because the Board’s jurisdiction is limited to the decision whether to authorize the proposed abandonment, the Board has no role in planning or regulating any potential post-abandonment use of the rail right-of-way. The Board’s environmental and historic review in abandonment cases typically is limited to assessing the potential effects of salvage activities within the rail right-of-way and diverting any remaining rail traffic to other rail lines or transportation modes.

Moreover, although the Board can impose historic preservation conditions on railroad property, the historic preservation measures can only be imposed on the railroad applicant seeking abandonment authority and only on the property proposed for abandonment. The Board does not have the power to force a railroad to sell or donate property for a non-rail purpose as a condition to obtaining abandonment authority. Nor can the Board deny its approval of an abandonment transaction solely on the grounds that it would adversely affect historic resources. Thus, as a practical matter, documentation of the historic resources involved in the proposal under review (i.e., surveys, photographs, reports, motion pictures, signage) is the only form of nonconsensual mitigation available to the Board. A railroad may volunteer to undertake additional mitigation measures, such as donating its property for preservation purposes, but the Board cannot impose mitigation measures other than documentation without the railroad’s agreement. Mitigation measures in an abandonment case are typically set forth in a MOA or a

PA between the Board, the appropriate SHPO, the railroad applicant, and ACHP, if ACHP decides to participate. Other consulting parties may be invited to participate in a MOA/PA as invited signatories or concurring parties, as appropriate.

Once the rail applicant satisfies any conditions that may have been imposed by the Board in its final decision authorizing abandonment that are barriers to consummation (such as Section 106 conditions prohibiting the railroad from abandoning a line until completion of the Section 106 process), the railroad applicant is free to consummate the abandonment. The filing of a timely notice of consummation under 49 C.F.R. § 1152.29(e)(2) removes the line from the national rail system and terminates the Board's jurisdiction over the property.

**ATTACHMENT 5 – Section 106 Technical Memorandum,  
Jersey City and Harsimus Cemetery Historic District Boundary Clarification**

Harsimus Branch Abandonment, STB Docket Nos. AB 167 (Sub-No. 1189X),  
AB 55 (Sub-No. 686X) and AB 290 (Sub-No. 306X), HPO Project 08-0811

November 12, 2019

**Jersey City and Harsimus Cemetery Historic District Boundary Clarification**

**Introduction**

This Section 106 Technical Memorandum (Technical Memorandum) clarifies and corrects information set forth in the Surface Transportation Board’s (STB or Board) Cultural Resources Effects Assessment Report (Effects Report) issued on March 29, 2019 relating to the boundaries of the Jersey City and Harsimus Cemetery Historic District (Cemetery Historic District) in relation to the proposed abandonment of a line of railroad known as the Harsimus Branch in Jersey City, New Jersey.

The Board’s Office of Environmental Analysis (OEA) sent this Technical Memorandum to the New Jersey Historic Preservation Office (NJ SHPO) on October 25, 2019, for informational and clarification purposes. The document has had minor editorial revisions since that date. This Technical Memorandum was prepared by Historic Preservation Specialist Alan Tabachnick, who meets the Secretary of the Interior’s Professional Qualifications for history, architectural history, and archaeology.

**STB’s Section 106 Process to Date<sup>1</sup>**

As part of the Board’s responsibilities under Section 106, OEA has been advancing the four steps of the Section 106 review process. OEA completed Step 1 (Initiate the Process) in 2009, when, in consultation with the NJ SHPO and interested parties, OEA initiated the Section 106 process, and defined the undertaking and the Area of Potential Effects (APE). On March 23, 2009, OEA issued an Environmental Assessment (EA) recommending that the Board impose a condition requiring Conrail to take no steps to alter the historic integrity of any historic properties within the APE prior to the completion of the Section 106 process. Before the Section 106 process could proceed further, the Board issued a stay of the abandonment case while litigation unrelated to Section 106 proceeded. The stay was lifted in 2014 and OEA reinitiated Section 106 consultation.

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<sup>1</sup> This section summarizes the Board’s Section 106 process to date. Please see the Effects Report for a complete discussion.

As part of Step 2 (Identification of Historic Properties), OEA held in-person consulting party meetings in May and June 2016 to discuss the approach for identifying additional historic properties within the APE and to share preliminary results. Following ongoing consultation with the NJ SHPO and the other Section 106 consulting parties, OEA issued the Cultural Resources Identification Report (CRI Report) on May 5, 2017. After receiving comments on the CRI Report from the NJ SHPO and other consulting parties, OEA issued a Cultural Resources Identification Report Addendum (CRI Report Addendum) on October 16, 2018. The issuance of the CRI Report Addendum concluded the identification phase of the Section 106 process. In the CRI Report, OEA recognized the Cemetery Historic District as a resource eligible for listing on the National Register of Historic Places.

To initiate Step 3 (Assessment of Adverse Effects), on March 29, 2019, OEA issued a Cultural Resources Effects Assessment Report (Effects Report) that documented the potential impacts of the abandonment on historic properties. During the preparation of an Effects Report Addendum (November 2019) being prepared in response to comments and as part of the Section 106 consultation process, OEA reexamined the relationship between the Jersey City and Harsimus Cemetery and the proposed abandonment. This Technical Memorandum provides additional information on the Jersey City and Harsimus Cemetery Historic District and clarifies that the Harsimus Branch Rail Line and right-of-way does not cross any part of the Cemetery Historic District. This is a change from what was shown in earlier reports, where the right-of-way of the Harsimus Branch appeared to cross the boundary of the Cemetery Historic District.

### **The Cemetery Historic District and the Harsimus Branch Rail Line and the Depiction of their Property Lines**

The Cemetery Historic District, located at 435 Newark Avenue, Jersey City, consists of the cemetery and contributing resources that include the Gatehouse, and all structures, monuments, paths, steps, fences and walls dating to the period of significance. The boundary of the Cemetery Historic District is the property boundary (Block 10901, Lot 107). OEA determined and the NJ SHPO concurred in July 2017 that the property was eligible for listing on the National Register of Historic Places (NRHP) under Criteria A, C, and D, with a period of significance from 1812 to 1966.

In the Cultural Resources Inventory Report (CRI Report) issued by OEA in May 2017, the mapping used to illustrate the limits of the Harsimus Branch Rail line appeared to inaccurately place the route of the line across a portion of the Cemetery Historic District. This was due to the scale of the maps used to illustrate the location of the Harsimus Branch in the City of Jersey City and the Area of Potential Effects (APE) of the proposed abandonment, which covers a large geographic area. This mapping issue can be seen in a number of figures in the CRI Report (Figure 3.14c, 1885 Sanborn Map, page 3-18; Figure 3.15, 1886 Survey and Map of the Route of the Railroad of the New Jersey Junction Railroad Company, page 3-19; and Figure 3.18c, 1906 & 1910 Sanborn Map, page 3-23).

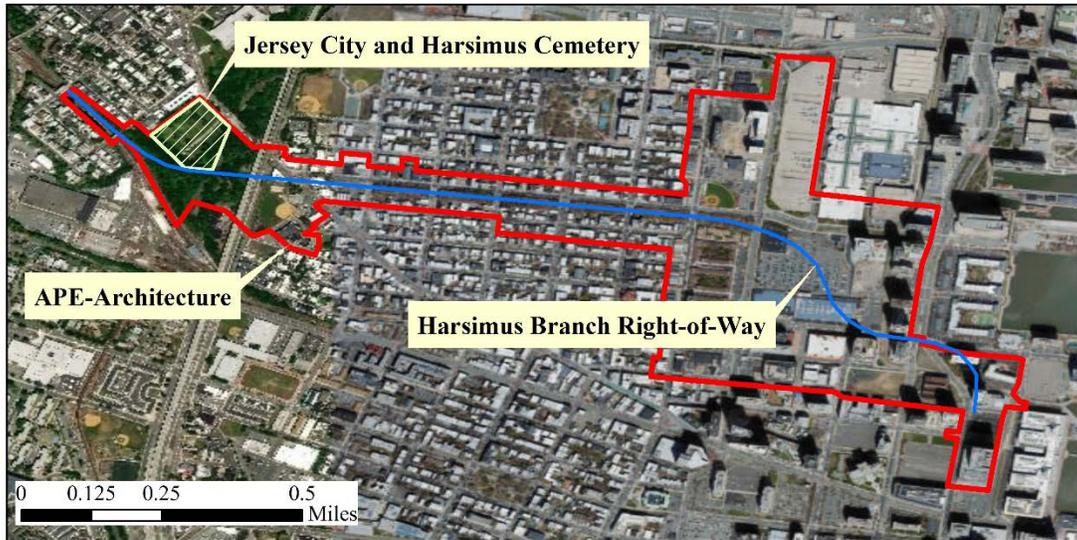


Figure 1: Harsimus Branch Right-of-Way in relation to the project APE.

The small-scale map above (Figure 1) shows the entire project area, using a blue line to indicate the rail line and a red line to indicate the project's APE. Use of similar small-scale maps in the Effects Report may have led to the misunderstanding that the rail right-of-way crosses the Cemetery Historic District. In contrast, the large-scale map below (Figure 2) focuses on the western end of the Harsimus Branch, where the Cemetery Historic District is located, and clearly demonstrates that the Harsimus Branch does not cross into the Cemetery Historic District.

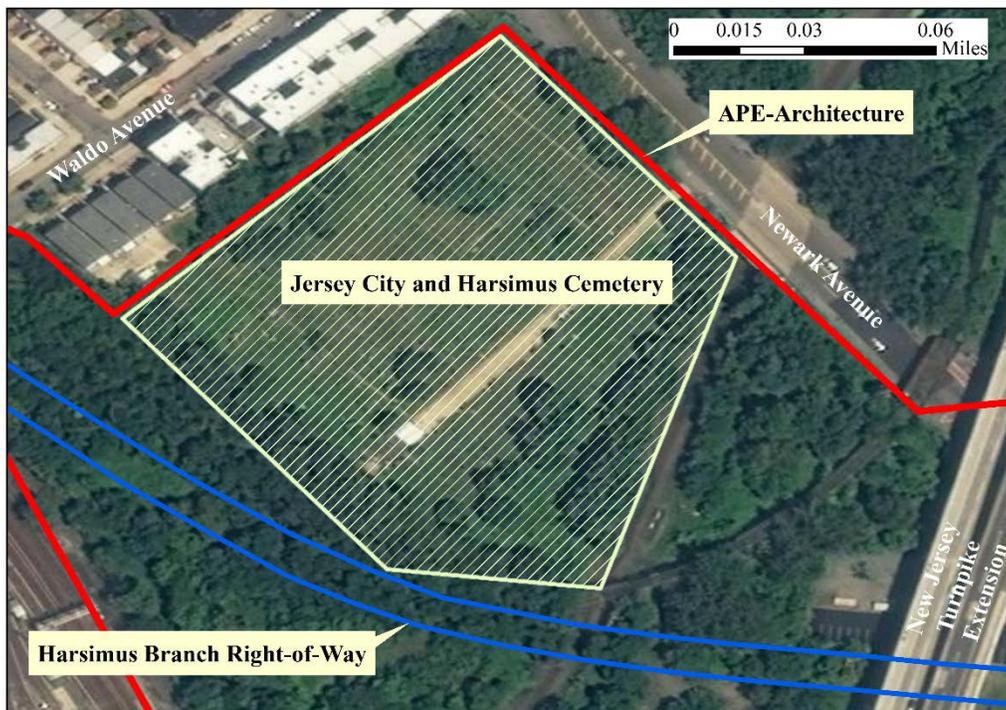


Figure 2: Harsimus Branch Right-of-Way in relation to the Cemetery Historic District.

In order to clarify the relationship between the Jersey City and Harsimus Cemetery and the Harsimus Branch, OEA undertook additional historic map research from a variety of sources. This analysis, presented below, helped to better understand how the landscape in this area developed over time, from the 1830s to the present. It also confirmed our assessment that the Harsimus Branch right-of-way did not cross any portion of the Jersey City and Harsimus Cemetery.

### Evolution of the Jersey City and Harsimus Cemetery in Relation to the Harsimus Branch

In analyzing the relationship of the Cemetery Historic District to the adjacent railroad network and understanding the evolution of the landscape in that location, it is helpful to review detailed mapping. The Jersey City and Harsimus Cemetery was not a static entity from its outset, and its limits evolved over time. In addition, a number of different railroads were introduced into this landscape (including the Harsimus Branch) in the 19<sup>th</sup> and 20<sup>th</sup> centuries. The following analysis illustrates the evolution of that location.

The original plan of the *Jersey City and Aharsimus Cemetery*<sup>2</sup> dates to 1831 (Figure 3; Bridges 1831). This map shows the planned cemetery property bounded by “The Turnpike” (what was to become Newark Avenue) on the north, land owned by John M. Newkirk (the future Waldo Avenue) on the west, the lands of a Cornelius V. Riper and H. D. Van Winkle to the east (in the future to be a railroad right-of-way), and land belonging to Stephen Simonson on the south (land that would become the Pennsylvania Railroad Harsimus Branch right-of-way). The cemetery is planned as a rough L/V shape, with a corner section excluded (in the northwest corner) and likely still remaining in private hands at that time (Figure 3; Bridges 1831).

During the nineteenth century, a number of railroads were introduced into this area, changing the landscape to the south and east of the cemetery. Over time the cemetery became landlocked by rail lines. Hackett’s 1873 Map (Figure 4) shows the “Proposed Line of Railroad” that was to become the Harsimus Branch line. The map also shows the outline of the Cemetery Historic District, roughly following the same outline as can be seen in the earlier map from 1831 (Figure 3). It appears to show that the southernmost corner of the cemetery may have been purchased by the railroad company for transportation use.

By 1879, the Pennsylvania Railroad had constructed its line between Fifth and Sixth Streets, connecting the waterfront to points west, and crossing to the immediate south of the cemetery (Figure 5; Dripps 1879). An 1880 Map of Jersey City shows the Cemetery Historic District (labeled “J.C. Cemetery,” with Newark Avenue to the north and the Pennsylvania Railroad to the south. A creek is also visible running to the east of the cemetery (Figure 6; Spielmann & Brush 1880). This map does not provide any details about the property limits of the cemetery at that time.

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<sup>2</sup> Bridges map from 1831 depicts the name of the planned cemetery as the *Jersey City and Aharsimus Cemetery*. Future maps refer to it as the *Jersey City Cemetery*.

By 1889, the New Jersey Junction Railroad had constructed a line that crossed to the immediate east of the cemetery, adjacent to its eastern property line (Figure 7: Harrison 1889). This map also shows the Pennsylvania Railroad Harsimus Branch to the south of the cemetery.

The 1919 Plat Book shows the Jersey City Cemetery, bounded by Newark Avenue on the north, the New Jersey Junction Railroad on the east, Waldo Avenue on the west, and unfortunately tears in the spine of the volume make it impossible to clearly see the full length of the cemetery's southern property line (Figure 8: Hopkins 1919). This map is valuable as it shows the location of the cemetery office and the greenhouse, adjacent to Newark Avenue. It also shows other parcel lines within the cemetery limits, as well as the hillside which forms the western property boundary, and within which burial vaults were constructed, which are contributing resources within the cemetery.

The 1928 Plat Book is the best historic source to provide detailed property boundaries for the Jersey City Cemetery, as well as for the railroads to the east and south (Figure 9: Hopkins 1928). This map clearly shows the cemetery, bounded by Newark Avenue to the north, Junction Railroad to the east, residential buildings along the east side of Waldo Avenue to the west, and lands belonging to the Pennsylvania Railroad to the south. The Pennsylvania Railroad Harsimus Branch occupies land up to the boundary of the cemetery but does not extend onto cemetery property. There are multiple parcels south of the Cemetery Historic District, and at that time all appear to be owned by the Pennsylvania Railroad.

Current tax parcel mapping of the Jersey City Cemetery in relation to Conrail property can be seen in Figure 10 (Tax Parcel Map entitled "Jersey City Harsimus Cemetery"). The Cemetery Historic District, labeled "J.C. Harsimus Cemetery," occupies Lot 107. The Harsimus Branch rail line is visible south of the property line of the cemetery, occupying Lot 92 (labeled "Conrail (Formerly P.C.T. CO.) Harsimus BR. Class II; and Conrail (Formerly P.C.T. Co.) Harsimus BR. Main Stem." The current tax parcel mapping shows that the rail corridor does not cross cemetery property. The N.J. Junction Branch Conrail (Formerly P.C.T. Co.) is visible along the eastern property line of the cemetery, occupying Lot 108. Neither of these former rail corridors appear to cross Cemetery Historic District property.

In sum, OEA concludes that, based on detailed examination of historic maps from 1831 through the present, the Harsimus Branch right-of-way does not cross any portion of the Cemetery Historic District. This conclusion supports OEA's findings regarding the potential effects of the proposed abandonment on the Harsimus Branch on the Cemetery Historic District set forth in the Effects Report and in a forthcoming addendum to that report, which will be submitted to the NJ SHPO in November 2019.

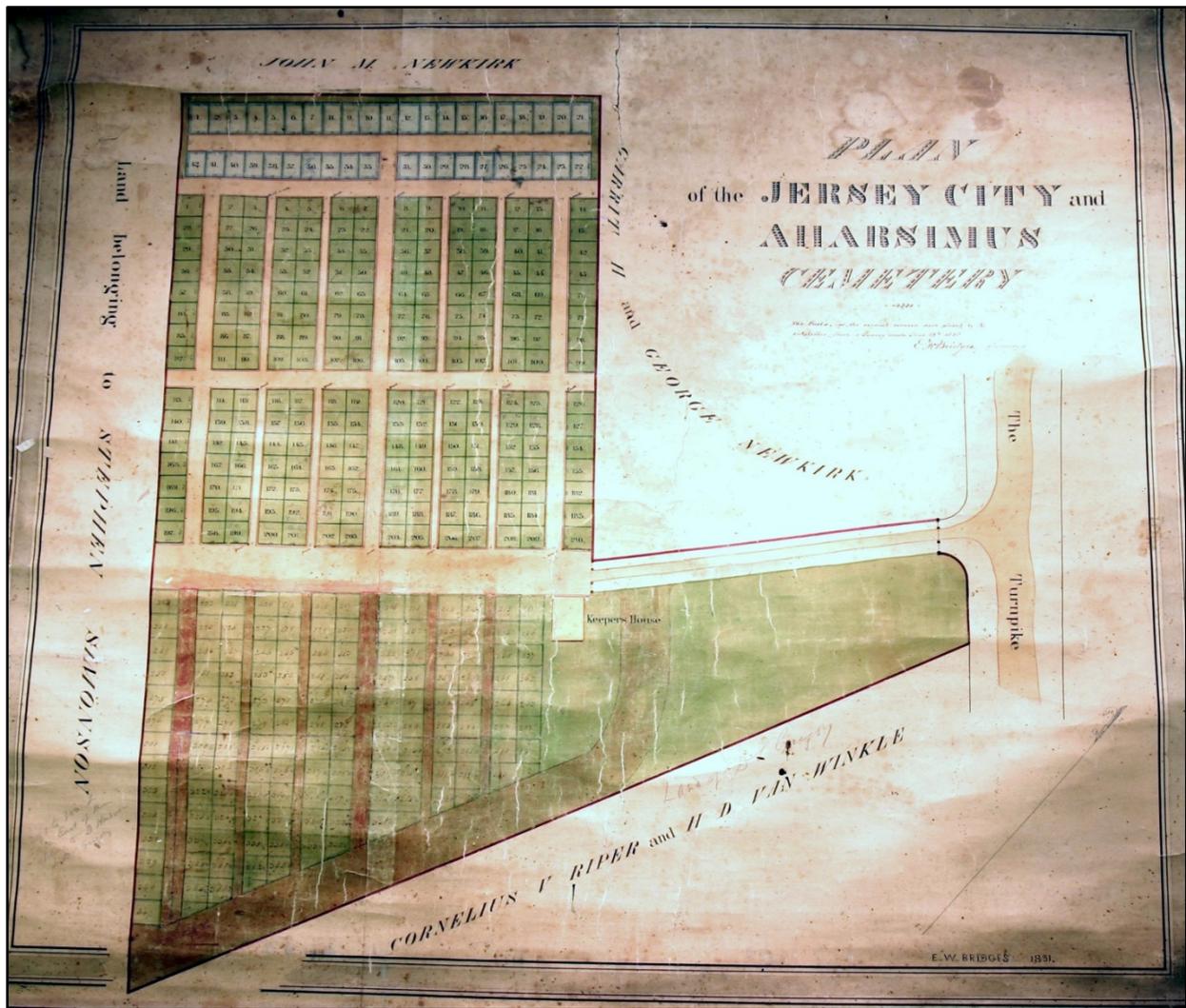


Figure 3: 1831 Plan of the Jersey City and Aharsimus [sic] Cemetery. Surveyed by William E. Bridges. Accessed on September 9, 2019 at <https://gardenstatelegacy.com>.

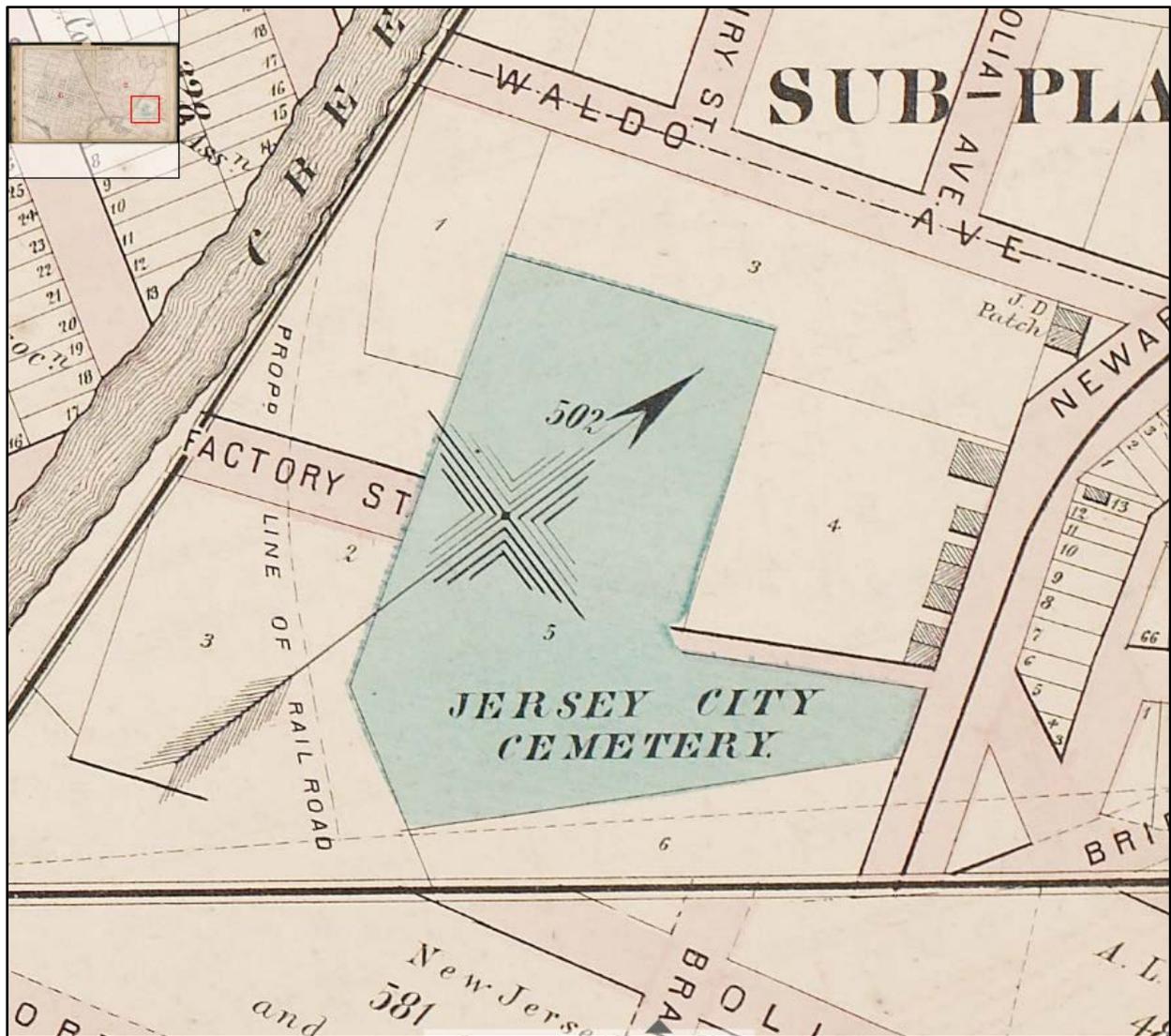


Figure 4: 1873 Map of the Jersey City Cemetery. The map shows the “Proposed Line of Railroad” that was to become the Harsimus Branch line. It also shows how the southernmost corner of the cemetery appears to have been purchased for future transportation use. Source: Atlas of New Jersey and Hudson County, William Hackett, 1873. Page 81. Accessed on September 9, 2019 at <https://mapmaker.rutgers.edu>.



Figure 5: 1879 Map of Jersey City showing the location of the cemetery in relation to the railroad and street network at that time. Source: Map of Jersey City and Hoboken, Hudson County, N.J. Published by M. Dripps, New York. Accessed on September 8, 2019 at <https://mapmaker.rutgers.edu>.

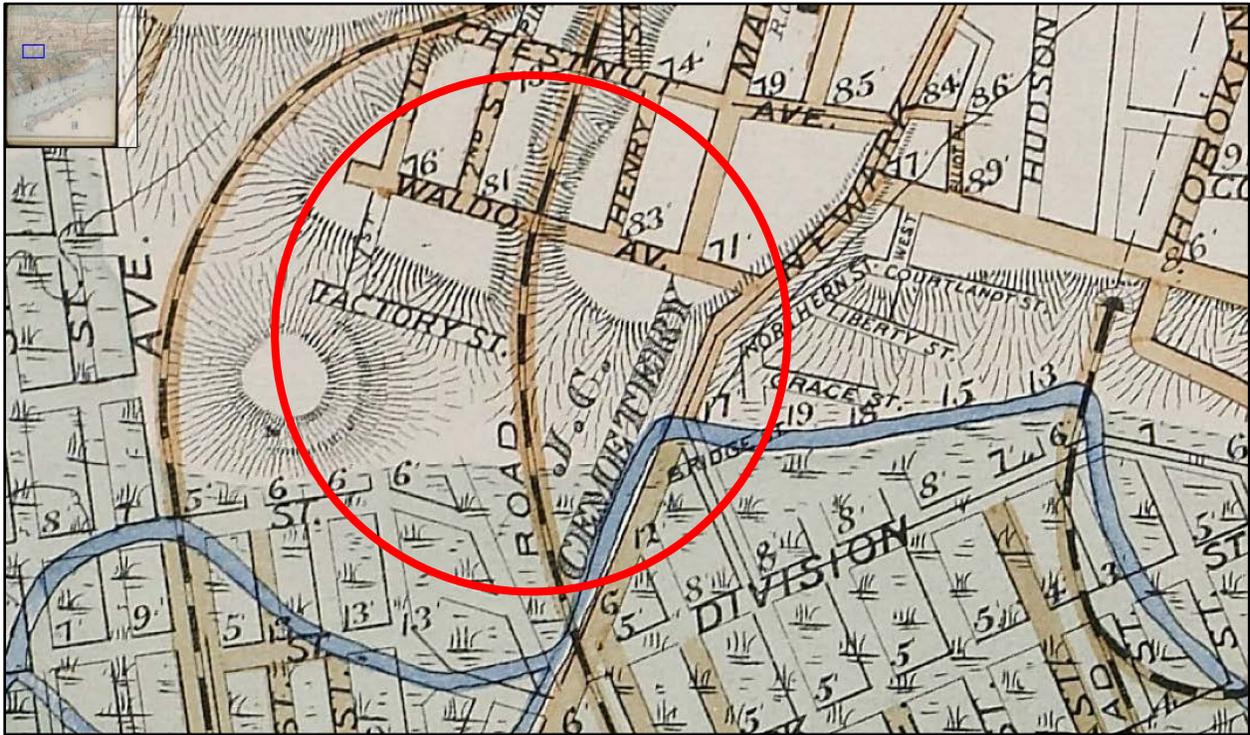


Figure 6: 1880 Map of the Jersey City Cemetery location. Shows the Pennsylvania Railroad crossing to the south of the Jersey City Cemetery, Newark Avenue to the north, and Walden Avenue to the west. Source: Spielmann & Brush 1880 (Plate 5). Accessed on September 23, 2019 at <https://mapmaker.rutgers.edu>.

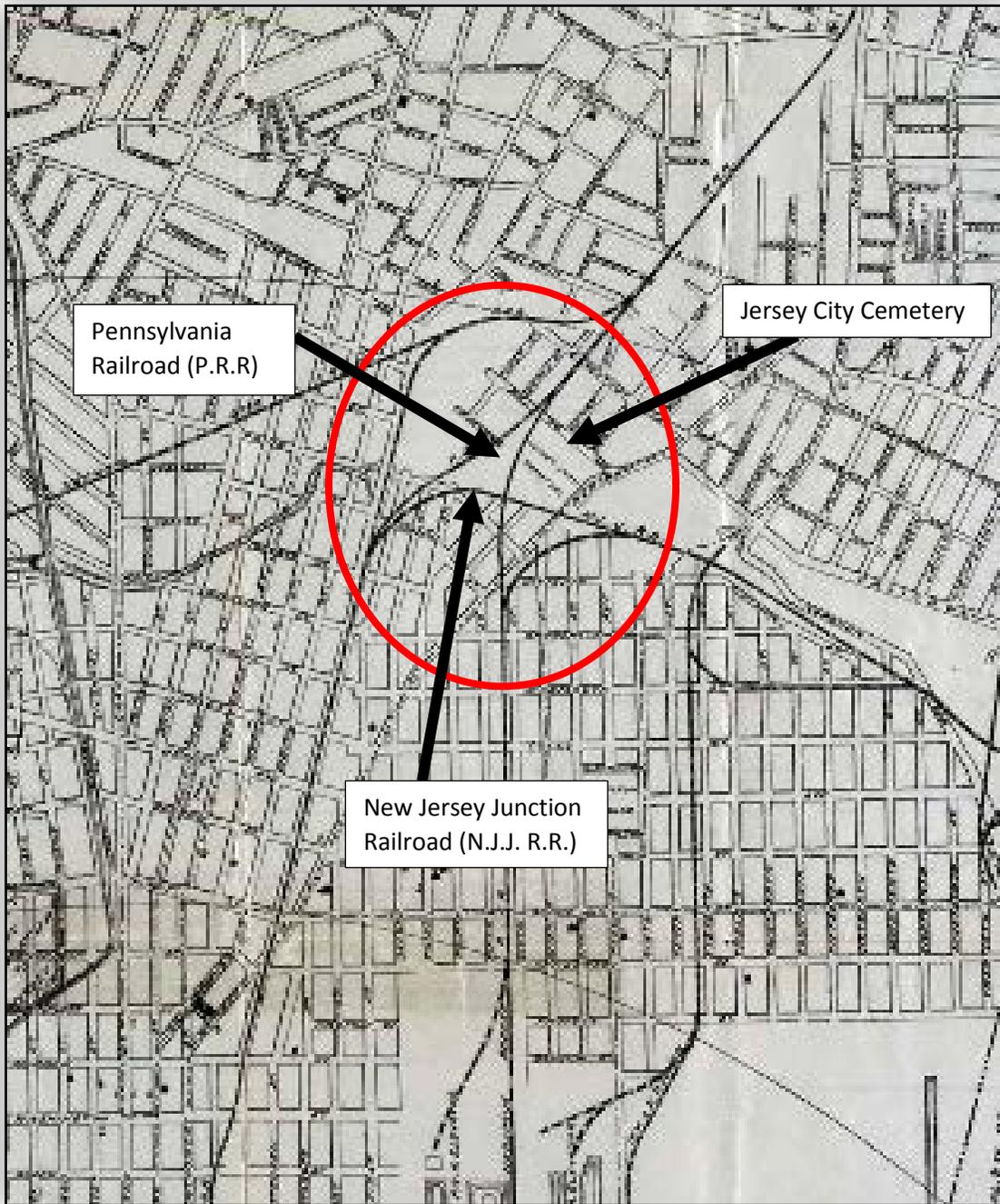


Figure 7: 1889 Map of Jersey City Showing Two Railroad Lines crossing adjacent to the cemetery. The P.R.R. is located to the south and the N.J.J. R.R. to the east. Source: Map of Jersey City and Environs, Hudson County, N.J. J.W. Harrison Publisher, Jersey City, N.J. Accessed on September 9, 2019 at <https://mapmaker.rutgers.edu>.

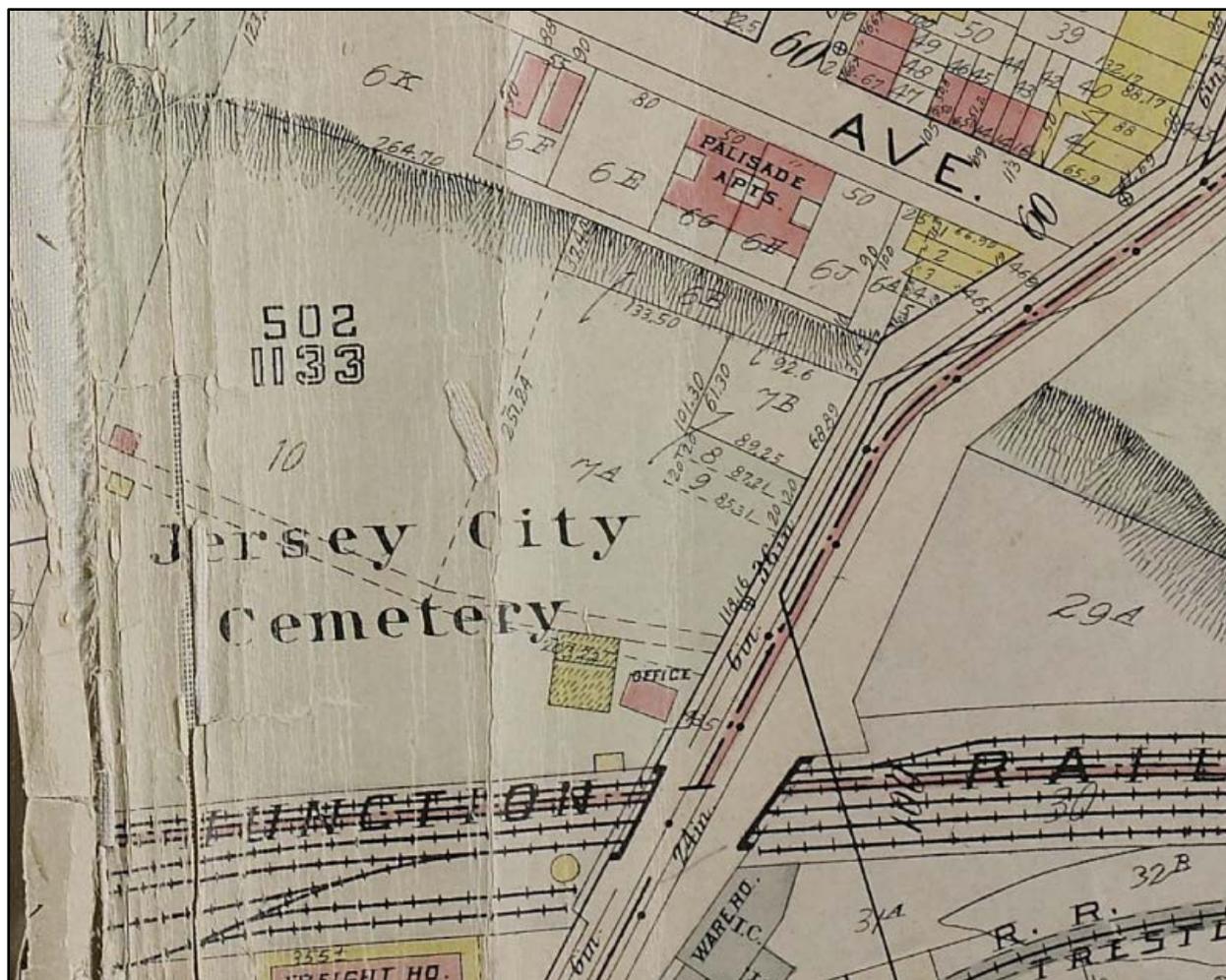


Figure 8: 1919 detailed view of Jersey City Cemetery. Note the Junction Railroad to the east, Newark Avenue to the north, and residential development along Waldo Avenue on the west. Source: Plat Book of Jersey City and Bayonne N.J. Published by G.M. Hopkins Co., Philadelphia, PA. Accessed on September 16, 2019 at <https://mapmaker.rutgers.edu/>.

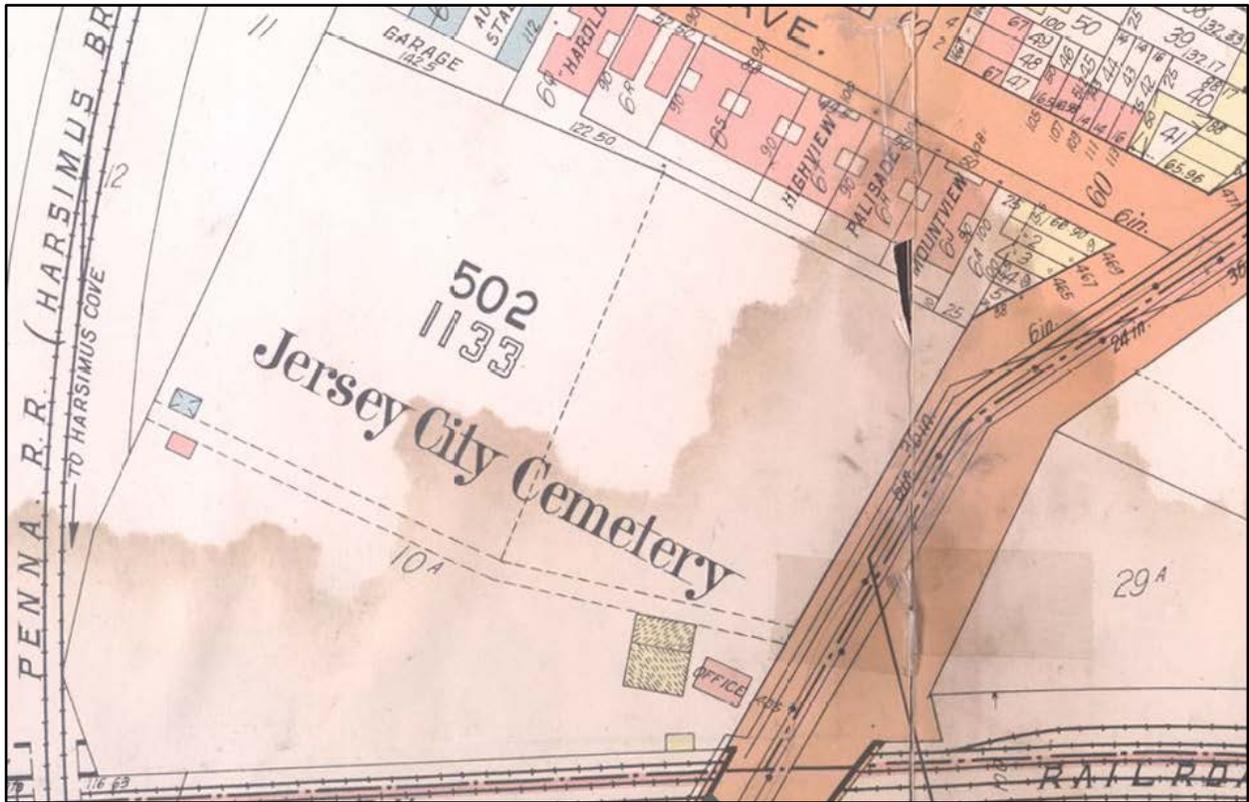


Figure 9: 1928 detailed view of the Jersey City Cemetery, including the office (in pink), and the greenhouse (in yellow). Source: Plat Book of Jersey City, Hudson County, NJ. Hopkins. Accessed on August 1, 2019 at [https://mapmaker.rutgers.edu/JCplat\\_book/Frontpage/index.htm](https://mapmaker.rutgers.edu/JCplat_book/Frontpage/index.htm).

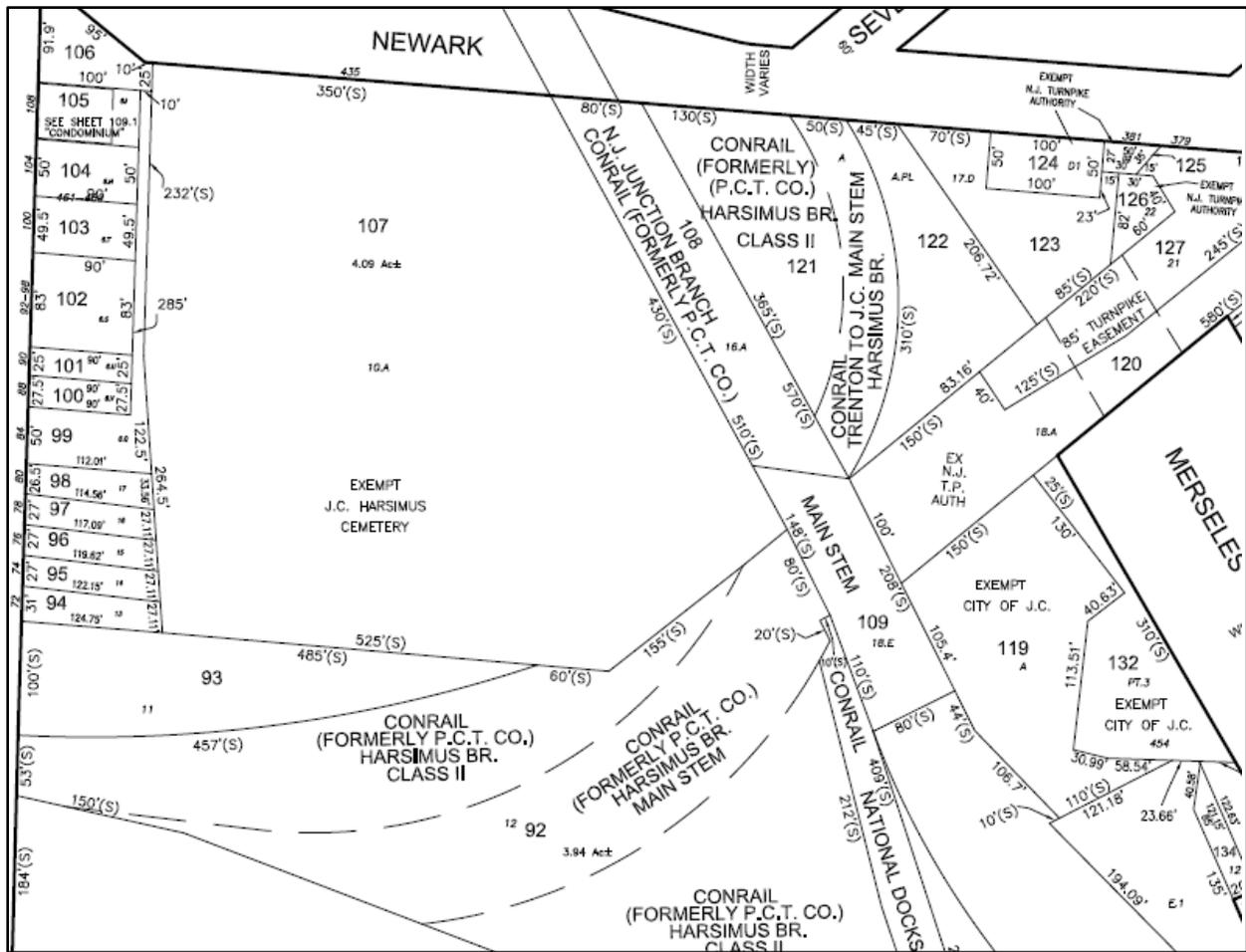


Figure 10: Tax Parcel Map of Jersey City Harsimus Cemetery. Available at: <http://hostedfiles.civilsolutions.biz/jerseycity/taxmaps/index.htm>, Accessed September 12, 2019.

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