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Before the Surface Transportation Board

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Conrail -- Abandonment)
) AB 167 (Sub-no. 1189X)
--in Hudson County, NJ.)

And

CSX Transp. - Discon. of)
Service - same) AB 55 (Sub-no. 686X)

and

Norfolk Southern -)
Discon. of Service - same) AB 290 (Sub-no. 306X)

City of Jersey City, et al's Reply
To Cover Letters dated May 2017 by Victoria Rutson
and to
the Cultural Resources Identification Report

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Table of Contents

Comments	1
Summary	3
I. The Cover Letter and Report Mischaracterize The Case	11
II. Certain Factual Errors and Misleading Statements	31
III. CRI Report Discussion of Developer and City "Plans"	36
IV. Section 110(k)	45
V. Harsimus Branch Is Eligible for Protection from Marin to CP Waldo	54
VI. Other Matters	60
Conclusion	61

Appendix Table of Contents

Exhibit I (Curley email and Dedication Deed for Gangemi Drive)
Exhibit II (N.J.S.A. 48:12-125.1)
Joint Verified Statement of Brian Blazak and Daniel W. Wrieden
Verified Statement of Ulana Zakalak
Verified Statement of Allen Kratz
Verified Statement of Diane Kaese

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By letter dated 4 May 2017, Victoria Rutson conveyed notice of the "Cultural Resources Identification Report" ("CRI Report") to Jersey City's Mayor Fulop.¹ By identical letter dated 8 May 2017, Ms. Ruston conveyed the CRI Report to counsel for City of Jersey City, Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition, and Rails to Trails Conservancy ("City et al"). The Mayor joins City et al in expressing appreciation for the notice, and acknowledging the work represented by the Report. The following comments will focus solely on matters of

¹ The CRI Report was too lengthy to convey by email attachment. In order to have at least one complete and colorized copy, counsel representing the City subsequently requested the agency's "Office of Environmental Analysis" ("OEA") to supply two copies to counsel, including one for the Division of Planning.

concern to City et al suggested or omitted in the notice letter and in the Report.

City et al understand the CRI Report to have been prepared by consultants retained by Consolidated Rail Corporation to assemble information for use by the Office of Environmental Analysis ("OEA"), which Ms. Rutson directs, for purposes of complying with section 106 of the National Historic Preservation Act, formerly 16 U.S.C. 470f, recodified to 54 U.S.C. 306108, since OEA lacks resources to fund or otherwise to perform an independent investigation. Because the consultants were selected and retained by Conrail, it is vital that their work be independently analyzed.²

The stated purpose of the CRI Report is to identify historic properties within the "Area of Potential Effect (APE) of the proposed abandonment that are listed in or are eligible for listing in the National Register of Historic Places (the National Register)." Letter to Mayor Fulop, p. 1; Letter to counsel for City et al, p.1 (hereinafter jointly referred to as "cover letter"). Despite the stated purpose of the CRI Report, the Report along with the cover letter deals relatively extensively with analysis of effects and possible lines of mitigation, and in particular, contains statements that

² He who pays the piper generally is posited to have some influence over the tune, if not ultimate control.

unlawfully constrain the Board's future analysis of effects and the availability of meaningful mitigation. In addition, there are certain legal and factual errors manifest in the CRI Report. Parts I, II and III of these comments deal with these matters.

Part IV of these comments reiterates City et al's concern that STB is failing to fulfill its obligations under 110(k) as well as 106 of the National Historic Preservation Act (NHPA), formerly 16 U.S.C. 470h-2(k), now 54 U.S.C. 306113.

The CRI Report states that one of its main purposes is to determine if the Harsimus Branch itself qualifies for the National Register. City et al concur that this is perhaps the single most important identification issue that the Report should address. Unfortunately, the Report does not present viable analysis of this issue, and appears in Chapter V cryptically to conclude that the Branch lacks sufficient integrity for eligibility for the National Register. The Report similarly dismisses the Branch as a continuous contributing element for the PRR Philadelphia to New York historic district. In Part V of these comments (and expert opinions presented therewith), City et al show that the Branch from Marin Boulevard to CP Waldo is eligible for the National Register and is a continuous contributing element for the PRR Philadelphia to New York historic district.

Summary

"Background issues." Although the cover letter and the Report purport to supply "background" facts presumably so readers can understand the importance of the CRI Report, the facts that OEA and Report relate omit key matters and are misleading as to others. For example, both the OEA cover letter and the CRI Report fail to mention that Conrail and its chosen developer (a group of "LLCs" d/b/a 212 Marin Boulevard, LLC, et al, also sometimes referred to as "SLH Properties" or the "Hyman interests") engaged in an unlawful de facto abandonment of the Harsimus Branch in 2003-05. The railroad acted intentionally or with willful blindness without first obtaining the authorization of the Surface Transportation Board (STB) for abandonment of the Harsimus Branch prior to removal of rail structures and sale of the property for non-rail use (the definition of de facto abandonment). The railroad thereby illegally evaded federal and federally-mediated state remedies that would have secured the Harsimus Branch in City ownership. The OEA cover letter and the Report also fail to mention that this illegal de facto abandonment included the six-block long Harsimus Embankment, listed on the State Register since 1999. The Embankment was formally determined to be eligible for the National Register in

2000, and thereby subject to protection under Sections 106 and 110 of the NHPA.³

The OEA cover letter and the Report are misleading in suggesting, inter alia, that City and Conrail broke off discussions about acquisition of the line for public use in 1999. It is more accurate to state that Conrail broke off discussion, because it was hostile to the City's continued interest in the property for purposes consistent with preservation, and that the railroad from 1999 onward sought to evade all federal and federally-mediated state remedies that the City would enjoy to secure the Embankment. The railroad took this course in order to avoid historic resource protections for pecuniary gain.

"Corrections of fact in CRI Report." Evidently because it was prepared by Conrail consultants, the CRI Report fails to use the Milepost numbers associated with the Branch in STB decisions. This is confusing. The relevant portion of the Branch is listed on all relevant PRR, Penn Central and Conrail track charts, including the deeds to Conrail, as approximately MP 1.0 (Hudson River) to approximately MP 2.54 (CP Waldo). Marin Avenue, then called Henderson Street, was approximately MP

³Conrail's president refused to consent to actual listing based on his assessment that National Register-listing would interfere with railroad's ability to profit from disposal of the line.

1.3. See City et al, Petition for Declaratory Order, F.D. 34818, filed January 12, 2006, pp. 1-2 and Exhibit A attached thereto. We list below some other factual assertions that we regard as wrong or misleading.

- The CRI Report claims (e.g., p. ii) that the City owns none of the Harsimus Branch and that no trace of the right of way exists in the old Harsimus Cove Yard area east of Marin. The City in fact has long owned in fee simple absolute the Harsimus Cove Yard track from the end of the Embankment at Marin Boulevard east to the Hudson (currently Thomas Gangemi Drive, which is tantamount to an extension of Sixth Street).⁴
- The CRI Report fails to disclose Conrail's illegal sale of the Harsimus Branch in 2005 (e.g., pp. i-v). Similarly, the CRI Report fails to note that STB has the power to void illegal sales.
- The CRI Report fails to disclose the fact that Conrail entered into a contract⁵ binding itself to support

⁴ See email J. Curley to C. Montange, Dec. 7, 2016, and Dedication Deed dated May 22, 1995 (email and deed in Exhibit I).

⁵ See, e.g., Exhibit A to City et al, Motion for a Scheduling Order, AB 167-1189X, filed June 17, 2014. The referenced exhibit was first made available by the LLCs in support of their cross claim against Conrail for fraud in USDC for DC, Case 1:09-cv-01900-CKK, Document 94-3, filed 11/08/12. Another copy is supplied at pp. 108-09 in Appendix IV to City et al,

development as proposed by its chosen developer, which development would result in the demolition of the Harsimus Embankment. E.g., id.

- The CRI Report fails to disclose the fact that the developer applied for demolition permits to destroy the Embankment, that Conrail joined in those applications, and that the developer has offered to donate the Embankments for landfill. E.g., id.
- The CRI Report fails to disclose that when City et al challenged the illegal abandonment by filing the Petition for Declaratory Order in F.D. 34818, the developer bulldozed a stanchion and threatened additional structures that City et al sought to preserve.⁶ Upon the objection of City et al in pleadings before STB,⁷ the developer agreed to cease demolition activities pending a determination of regulatory status.⁸

Supplemental Environmental Comments in AB 167-1189X, filed Sept. 25, 2014.

⁶ See Verified Statement of John Curley, p. 2 para 5, filed in F.D. 34818 on January 25, 2006. A fax filing is also recorded in F.D. 34818 on January 23, 2006, containing the Verified Statement.

⁷ E.g., Reply by City et al in F.D. 34818, filed Jan. 23, 2006.

⁸ See STB's decision in City et al, Petition for Declaratory Order, F.D. 34818, p. 2, served Feb. 8, 2006 ("during the pendency of the proceeding, SLH will not demolish or remove any pier or other structure on the property").

■ The CRI Report claims that "it is questionable whether any foreseeable third-party reuse of the Embankment is reasonably foreseeable under NHPA." *Id.* at iii. This is preposterous in light of the City's publicly announced desire and legislative authorization to acquire the Embankment for rail and trail use. Indeed, the U.S. Court of Appeals for the D.C. Circuit specifically relied on persuasive evidence "from the City's Mayor and City Planning Director declaring the City's strong interest in acquiring and preserving the Embankment, but the City passed an ordinance providing that "[t]he Corporation Counsel of the City of Jersey City ... and the Business Administrator are *authorized and directed* to undertake any actions and execute any documents necessary or appropriate to acquire the property either by purchase or condemnation in accordance with [New Jersey law]." Ordinance of Jersey City, N.J. 04-096. City of Jersey City v Conrail, 668 F3d 741, 745 (D.C. Cir. 2012). By contrast, the record is replete with evidence that the developer wishes to demolish the Embankment.⁹ There will be no Embankment to "reuse" (except

⁹ E.g., Appendix V to City et al, Supplemental Environmental Comments in AB 167-1189X, filed Sept. 25, 2014 (Verified Statement of Stephen Marks, June 10, 2014 recounting developer offer to donate the stone walls and infill of the Embankment to Hoboken for use as landfill) (Rebuild by Design website at pp.

as fill) if this Board allows an unconditioned abandonment leaving the Embankment to the control of Conrail and its chosen developer. Conrail has joined in demolition requests, and contracted with the developer to support the developer's plans.¹⁰ Conrail could not be more proactive in maximizing the threat to the Embankment and to the rail line west of the Embankment.

- The CRI Report purports to conclude (id.at iii) that there are "no foreseeable effects to historic properties" from abandonment of the western portion of the Harsimus Branch (roughly Brunswick Street to Chestnut Street). This statement is both absurd and completely out of order. The CRI Report is supposed to be about identification of historic properties and not about assessment of effects. In any event, since the entire Harsimus Branch from Marin Boulevard to CP Waldo should be deemed eligible for the National Register, and since the developer is being restrained from destroying remaining structure west of Brunswick only by STB jurisdiction (see notes 5-7), destruction of an historic asset in the Brunswick to Chestnut Street area is clearly foreseeable. Indeed, it has

11-13 sets forth communication from Steven Hyman to similar effect).

¹⁰ See footnote 4 supra.

already begun by the developer. See note 5 supra (Curley Verified Statement).

"Developer and City plans." The CRI Report states that it is dealing only with identification issues but then contains an extensive discussion of re-use plans. As indicated below, these "plans" go to adverse impact and to mitigation and are not appropriate for the CRI Report. In particular, the CRI Report contains a discussion about the "plans" of the developer (who unlawfully acquired the property) and the "plans" of the City (which ironically still may not lawfully acquire the property due to a combination, first, of STB's preemptive jurisdiction until an abandonment authorization becomes effective and, second, STB's failure to implement remedies to address the anticipatory demolition by the LLCs and Conrail's unlawful actions that foreclose any meaningful Section 106 review, discussed below). The developer's plans, which are based on an unlawful de facto abandonment, unquestionably call for destruction of the entire historic Embankment. Conrail has pledged itself in a contract to implement the developer's plans. Those plans are germane to "adverse impact" (indeed, they unequivocally demonstrate maximum adverse impact), but the CRI Report supposedly is not dealing with that subject. The City's plans, which call for preservation of the entire Harsimus Branch from Marin Boulevard to CP Waldo consistent with the National

Historic Preservation Act goals and purposes, are germane to mitigation and avoidance of adverse impact. Again, the CRI Report says it is not dealing with that subject.

In all events, the CRI Report claims the developer's and the City's "plans" are "speculative." This statement has no justification in the circumstances. In this case, Conrail and its chosen developer have jointly applied for permission to destroy the Embankment; the developer is even offering to donate it as landfill (see note 8 supra); Conrail has contracted to support the developer's plans (see note 4 supra). In the circumstances, destruction of an asset embodied in the Harsimus Branch by demolition jointly sought by Conrail and the developer is hardly speculative but in important part what AB 167-1189X is all about. The City's commitment to acquire the property for purposes consistent with historic preservation is also hardly speculative. The only factor generating uncertainty about the reuse plans proposed by both the City's and the LLC's re-use plans is the STB's inaction in this proceeding.

"Section 110(k)." OEA has consistently refused as part of these proceedings to address issues relating to NHPA section 110(k) despite the fact that OEA noted this issue in its initial "environmental assessment" ("EA"). Indeed, City et al understands that OEA takes the position it has no procedures or resources to address section 110(k). The NHPA and its binding

regulations require the STB independently to examine whether Conrail engaged intentionally or (the equivalent) with willful blindness in the demolition (or sale) of portions of the Harsimus Branch prior to seeking an abandonment authorization. Conrail clearly engaged in such conduct in violation of section 110(k). The Harsimus Branch was a Pennsylvania Railroad freight mainline. Conrail by law could not evade STB abandonment jurisdiction by arbitrarily reclassifying it to spur status. STB OEA needs to define procedures to address the anticipatory demolition issue if the agency intends to represent that its NHPA process provides meaningful opportunities for public involvement and manifests reasonable compliance with statutes and regulations germane to the NHPA.

"Whether the Harsimus Branch qualifies." The CRI Report in chapter one states that a "key goal" of the Report is to determine if the Harsimus Branch itself qualifies for section 106 protection. The Report in chapter five has only the barest discussion of the Branch, and concludes cryptically that it does not qualify as eligible or as a contributing resource to the PRR Philadelphia to New York historic district evidently for lack of integrity. The Report does not contest the sufficiency of the integrity of the six-block long Embankment, so the authors of the Report are basically contending that the Branch has lost integrity west of Brunswick. To the contrary, the remaining

stanchions and structures clearly identify the alignment and there is no new or otherwise intervening structure that disrupts continuity. Rail lines can qualify for the National Register even though their track and tie and other structures are removed so long as they are historic (the Report does not quibble with the historic nature of the Branch) and their alignment remains in place.¹¹

Here the right of way not only remains in place but is clearly delineated with stanchions and pediments from Marin Boulevard through the Embankment parcels all the way to Chestnut Street. The Report's cryptic assessment that the Branch from Brunswick to Chestnut lacks sufficient integrity is thus incorrect. In addition, the right of way remains intact, but for the unlawful sale in 2005 to the developer in evasion of STB jurisdiction, from Marin to CP Waldo. STB clearly has the power to void the unlawful 2005 sale, and has exercised that power in similar situations. It can readily do so here. Thus the

¹¹ See, e.g., Friends of Atglen Susquehanna Trail v. STB, 252 F.3d 246 (3rd Cir. 2001) (noting finding by the National Register that the Enola Branch and the Atglen & Susquehanna Branch both were eligible for listing in the National Register). See also Blackwater Trail, a former rail corridor that was determined National Register-eligible as part of the Section 106 process for Appalachian Corridor H, notwithstanding the absence of track and ties. <http://www.saveblackwater.org/>. Numerous other examples exist, including the Historic Union Pacific Rail Trail (a state park) into Park City, Utah, and the Aspen Branch from Glenwood Springs to Aspen in Colorado.

unlawful sale cannot be construed as disrupting corridor integrity. Removal of deteriorated trestles and track and tie does not disqualify an otherwise historic corridor from protection.

City et al supplies with these comments the expert opinions of Brian Blazek and Daniel W. Wrieden (the City's historic preservation staff), Diane Kaese, Ulana Zakalak, and Allen Kratz showing the Branch continues to manifest the requisite integrity from Marin Boulevard to CP Waldo for listing, and that for similar reasons it must be viewed as a continuous contributing element to the PRR Philadelphia to New York historic district. These opinions are corroborated by the expert opinion of Richard James, submitted coterminously herewith. Mr. James prepared the successful nomination of the Harsimus Embankment approximately twenty (20) years ago.

I. The Cover Letter and Report Mischaracterize This Case

While not germane to identification of historic resources, the OEA cover letter and the CRI Report both purport to summarize the "background" of the proposed abandonment of the Harsimus Branch. "Background" discussions generally set the stage not for identification of historic resources but instead for analysis of impacts and mitigation. City et al take issue with the "background" as stated in the cover letter. The OEA "cover letter" appears to adopt Conrail's argument that the City

should have purchased the right of way before it was acquired by the developer. The cover letter (and Conrail's argument) rests on the premise that the City had a lawful opportunity to acquire the line in the 1990's. But this premise is false.

The City did not have a lawful opportunity to acquire the property in the 1990's, nor at any time up through the date these Comments are filed. A railroad must obtain STB's authorization for abandonment before a lawful transfer of a rail line for non-rail purposes may occur. The OEA cover letter thus ignores entirely the fact that Conrail engaged in an unlawful de facto abandonment of the Harsimus Branch in 2003 to 2005 in evasion of federal and state remedies that would have served, had Conrail timely complied with the law, to preserve the Harsimus Branch intact for public use.

The OEA premise that the City could have acquired the property is also contrary to law of this case. As noted above, both STB and the United States Court of Appeals have rejected the notion that local governments must engage in self-help remedies in violation of STB jurisdiction in order to preserve their rights. City of Jersey City v Conrail, 668 F3d at 745. For these and other reasons, the cover letter's "background" summary is misleading.

In addition, the error manifest in OEA's cover letter calls into question the reliability of the agency's entire section 106 process.

City et al provide below a fair and neutral "background" summary for incorporation into future STB summaries of the case, including summaries by OEA and the consultants which Conrail has supplied to OEA.

The Harsimus Branch was the mainline for common carrier freight for the Pennsylvania Railroad from the Harsimus Cove Yards (occupying the Hudson River waterfront west to present day Marin Boulevard) and the Midwest. It was electrified. Railroads did not electrify mere spurs. The Harsimus was obviously a mainline of railroad.¹² It was used by Conrail for thousands of carloads per year into the mid-1980's. It was obviously a line of railroad subject to Interstate Commerce Commission (ICC) and Surface Transportation Board (STB)

¹²As STB determined in one of its early decisions on the matter (City of Jersey City et al - Pet Dec. Order, F.D. 34818, served Aug 9, 2007, slip op. at 10), "Conrail's position that the Embankment is merely ancillary track ignores the fact that the Embankment was operated for over 100 years as part of PRR's major freight route connecting with the piers at Harsimus Cove Yard. As the record here shows, Penn Central continued to operate over the Embankment after the marine operations at Harsimus Cove Yard relocated. After acquiring the line, Conrail operated over the Embankment to move substantial amounts of traffic to serve shippers located on Hudson Street. Thus, this track was not used as ancillary track."

abandonment jurisdiction. Any representation by Conrail to the contrary has to be viewed as intentionally deceptive, or made with "willful blindness" to the facts,¹³ which is equivalent to intentional deception. In all events, Conrail must be charged with foreknowledge that it was unlawfully abandoning a line of railroad subject to STB abandonment jurisdiction.

Incidentally, any buyer should have known the status of the Harsimus Branch as a regulated line of railroad as well. Under the applicable title practice standards in New Jersey, the buyer (e.g., SLH Properties/212 Marin Boulevard et al) must be charged with that knowledge as well.¹⁴ The buyer should have sought proof of abandonment authority, or that none was required, but did not, even though the Conrail sales documents clearly described the Harsimus Branch as a line of railroad.

By roughly 1986, most shippers had disappeared, and by 1994, Conrail stopped using the trackage. Conrail began selling

¹³ A party engages in conduct knowingly when it has actual knowledge, or when it is willfully "blind" to the facts. Under the willful blindness doctrine, a party acts knowingly when it recklessly or intentionally does not inquire into what otherwise is obvious. See, e.g., United States v. Jewell, 532 F.2d 697 (9th Cir. 1976); In re Aimster Copyright Litigation, 334 F.3d 643 (7th Cir. 2003) ("[w]illful blindness is knowledge ... in the law generally"). The willful blindness doctrine is especially pertinent to a corporation, which being artificial has no actual mind, and whose intent must be inferred from what it should have known, and what it did.

¹⁴ See note 17 infra.

off the old Harsimus Cove Yard, although it evidently retained a rail easement through the Yard.

The City of Jersey City became concerned that deteriorating structures on the line (which the railroad refused to maintain) posed a safety hazard, and the City's independent Redevelopment Agency began working with Conrail to find a possible developer for a portion of the line west of Marin Boulevard. However, the property in question contained a massive six block-long elevated structure (the Harsimus or Sixth Street Embankment) which carried the multi-tracked mainline over underlying City streets. The Embankment was clearly historic, and was nominated for the New Jersey and National Registers with knowledge that it could not be sold without a "federal permit" necessitating a Section 106 review if the nomination were successful. See Comments and Statement of Richard James in AB 167 (Sub-no. 1189X), page 1 (second full paragraph), filed June 19, 2017.

The Embankment's Certification of Eligibility for listing in the New Jersey and National Registers of Historic Places dates from February 17, 1999; it was listed on the State Register on Dec. 29 of that year; and the Keeper formally determined it eligible for listing in the National Register on March 16, 2000. Conrail by its President filed a sworn statement with New Jersey Department of Environmental Protection ("DEP," which also is the State Historic Protection Office)

protesting the determination on grounds that it rendered the property unattractive for redevelopment and was detrimental to the railroad's economic interests.¹⁵ In particular, if the Embankment were listed on the State Register, then the Redevelopment Agency could not participate in its demolition for private redevelopment without approval from the SHPO (Department of Environmental Protection). Such approval was unlikely, thus reducing the marketability and value of the property, in the eyes of Conrail, for development. Indeed, because the State Register listing in essence precluded the Redevelopment Agency from participating in the removal of the Embankment, the Redevelopment Agency suspended negotiations with Conrail to facilitate private development. In response to the historic designation, Conrail evidently decided to retaliate against the City, despite the City's continued interest in the line for preservation purposes.¹⁶

The retaliation manifest itself in the railroad's unlawful circumvention of the federal rail abandonment licensing and

¹⁵ See Notarized letter dated June 4, 1999, Timothy O'Toole (Conrail) to DEP, contained in Appendix III at ppp. 92-93 of 117 in City et al's Additional Environmental Comments, filed Sept. 25, 2014 in AB 167-1189X.

¹⁶ City et al's "Opening Statement" filed in F.D. 34818 at Appendix III, filed March 10, 2006, contains a host of letters, chiefly from early 2003, including a letter from the City's then Mayor, calling on Conrail to work with the City and/or Coalition to preserve the Harsimus Branch Embankment.

section 106 process. To evade the law, the railroad purported to arbitrarily "reclassify" the Harsimus Branch as spur track, and on that basis, take the position it need not seek STB abandonment authorization. But it has long been established that railroads cannot evade abandonment authority by reclassifying lines to spur status.¹⁷ Conrail's reclassification amounted to an intentional or willfully blind pretext to evade STB abandonment authority. This fraudulent act also served as the railroad's pretext to evade the City's right of first refusal to acquire the property pursuant to N.J.S.A. 48:12-125.1 (copy attached as Exhibit II). The latter statute applies to all rail property for which Conrail seeks federal abandonment authority. It provides that deeds to developers of lines subject to STB abandonment authority in derogation of a local government's right of first refusal are void.

Pursuant to its pretext, Conrail offered the Harsimus Embankment parcels for sale per a "Request for Proposals" in 2002 that described the parcels as part of a "line of railroad." By that time, the City's interest in the property shifted to

¹⁷ A railroad may not avoid the prior approval requirements for abandonments and rail line transfers to developers by reducing a line to spur status without prior ICC, now STB, approval. See Old Colony Railroad Co. Trustees Abandonment, 224 ICC 681, 682-83 (1938); Honey Creek Railroad - Petition, STB F.D. 34869, served June 4, 2008, slip op. at 6 (no de facto abandonment); Allegheny Valley RR Co. - Petition, STB F.D. 35239, served June 14, 2010, slip op. at 19 (abandonment authorization required)

preservation, which was not a concern of the Redevelopment Agency. Conrail advised all potential respondents to its RFP that the City was considering designating the Embankment as a Historic Landmark by letter dated January 13, 2003. The City subsequently adopted legislation to this end. A host of political figures and government leaders, supplemented with local neighborhood associations and historic preservation groups, wrote Conrail in support of City and Embankment Coalition efforts to acquire the property for preservation purposes. See note 17. The property, after all, is the last underutilized transportation corridor remaining (1) to serve fast-growing downtown Jersey City, and (2) is located so as to link the downtown not only to Journal Square but also (using underutilized rail corridors elsewhere) the Secaucus transportation hub. In addition, the property is the preferred route of the East Coast Greenway between Newark and Manhattan. Both rail and trail uses are consistent with park, open space, and historic preservation purposes.

The City, joined by the Embankment Coalition, took action to determine if Conrail had obtained an abandonment authorization so that the property could be lawfully marketed.¹⁸

¹⁸ The City's Engineering Department files contain a memo suggesting Conrail felt the line was a Branch requiring abandonment authority. See "Opening Statement" in F.D. 34818, p. 90 of 460 (memo dated March 29, 1994). However, no one could

After extensive research including inquiry to STB, land planner Andrew Strauss could find no evidence of lawful abandonment. See Verified Statement of Andrew Strauss, Exhibit H (p.129-142 of 282) to "Summary Statement" in AB 167-1189X, filed Jan. 21, 2009.¹⁹

Nonetheless, Conrail purported to sell the property to SLH Properties, which took an option on the property. City et al understand that SLH Properties was the only entity willing to agree to buy the line of railroad on the unlawful terms under which it was offered by Conrail. The D.C. Circuit has determined that the City of Jersey City was under no obligation to buy or to offer to buy the line of railroad without STB abandonment authorization. City of Jersey City v Conrail, 668 F.3d at 745.²⁰

find any information on what had happened. The Coalition retained a land planning expert to search for evidence.

¹⁹ Mr. Strauss explained that Conrail took the position at the time that City action to acquire the property (e.g., by condemnation) was preempted, and he undertook to determine the regulatory status of the Harsimus Branch because any sale of the property (e.g., to a developer) would, he felt, be unlawful if the property were not authorized for abandonment. See Strauss V.S. and attachments thereto.

²⁰ The Court further explained that "Conrail claims that the City should seize the property anyway and that even if such an action is unlawful, the City would suffer no concrete injury because it has not 'identified anyone who could reasonably be expected to attack the City's title on the basis of the jurisdictional status of the property.' ... [The City] is suing under a federal statute that offers it an array of rights and benefits, it seeks to void an allegedly unlawful sale of railroad line that threatens its interests in the historic and environmental value

Faced with Conrail's insistence that it would nonetheless sell to SLH Properties (which later assigned its rights to eight commonly owned and managed LLCs), the City authorized eminent domain proceedings. Mr. Curley is a diligent legal practitioner. He was aware of the New Jersey Title Practice Manual's specific instructions concerning Conrail property. Those instructions provide that a buyer through his title officer should insist on proof of STB abandonment authorization, or proof that none is required prior to purchase.²¹ As explained in 212 Marin Boulevard LLC et al v. Chicago Title Insurance Company, Superior Court of NJ, Docket No. HUD-L-5801-09, filed Dec. 2, 2010,²² slip op. at 3-4, after the City adopted an

of that property. In that context, the City's refusal to invade federal jurisdiction and engage in unlawful self-help can hardly deprive it of [its rights to federal remedies]." Id.

²¹ This standard of practice for acquiring rail property from Conrail in New Jersey is set forth in L. Fineberg, Handbook of New Jersey Title Practice, published by the New Jersey Land Title Institute, 3d ed. Revised Sept. 2005, volume II, chapter 98, section 9806. That standard requires the title examiner, among other things, to require that Conrail provide proof of approval by STB for the conveyance "or, in the alternative, proof that such approval is not required."

²² 212 Marin v. Chicago Title was a lawsuit brought by the LLCs to compel the company that provided title insurance for their purchase from Conrail to bear the costs of their defense of title. The City's ordinance referred to in 212 Marin and Mr. Curley's Declaration attesting his retention to secure the Embankment are already in the record in F.D. 34818, and in the United States District Court proceeding, relied upon by the United States Court of Appeals in its holding that Plaintiffs have standing to sue for the relief they seek.

ordinance authorizing purchase or eminent domain of the parcels on September 8, 2004, the City retained experienced counsel (Mr. John Curley) to bring the proceeding. On June 7, 2005, Mr. Curley, in accordance with New Jersey standards of practice, duly requested of Conrail proof of abandonment authorization. Conrail's attorney advised Mr. Curley that the railroad had not received abandonment authorization, but instead had taken the unilateral position in 1994 that the Harsimus Branch was a spur track not requiring abandonment authorization. Conrail then promptly purported to sell the property to the eight LLCs.

The unlawful sale was by quitclaim deed. The railroad did NOT retain a rail easement of any sort. Moreover, the railroad has already taken out the track, ties, and bridges. The developer immediately began removing stanchions, and filed for demolition permits to destroy the Embankment. Conrail subsequently joined in the developer's demolition permit request to destroy the section 106-protected Embankment (among other things, this puts the lie to any Conrail pretense that it had somehow intended to reserve, or understood itself to reserve, a rail easement).

In short, the sale of the former Pennsylvania Railroad freight main line in 2005 in the face of the City's inquiry for proof of abandonment authority was an intentional and reckless unlawful de facto abandonment. The de facto abandonment put in

jeopardy, and continues to put in extreme jeopardy, well-recognized section 106 assets. Since STB has not authorized abandonment, the City cannot lawfully acquire the property. City et al.'s attempt to seek federal and federally-mediated state remedies against the unlawful abandonment have not yet been addressed. City et al nonetheless expect meaningful remedies.

This agency has consistently followed the rule that de facto abandonments without ICC or STB prior authority are illegal, and potentially unlawfully circumvent NEPA and the NHPA:

"A railroad may not "abandon" a rail line (i.e., be relieved of its common carrier obligation to provide rail service over that line and dispose of the property for non-rail use) without express permission from the Board. Chi. & N. W. Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 321-22 (1981). Under 49 U.S.C. 10903, the Board may affirmatively approve the abandonment of a line by determining that the public convenience and necessity require or permit the proposed abandonment. Alternatively, the agency may authorize abandonment by granting an exemption (individually or by class of rail lines) under 49 U.S.C. 10502. See 49 CFR 1152.50 and 1152.60. Under either procedure, the Board must meet its responsibilities under other Federal statutes, including NEPA, NHPA, and the National Trails System Act (Trails Act) at 16 U.S.C. 1247(d). To meet those responsibilities, the Board may need to impose conditions that limit or postpone the carrier's ability to exercise its abandonment authorization in whole or in part."

Consummation of Rail Line Abandonments ..., STB Ex Parte 678, served April 23, 2008, slip op. at 2 (emphasis added).

In that same policy statement, STB noted that it frequently does not find out about unlawful de facto abandonments until after they have occurred. (The agency lacks the field offices and investigative staff of the old ICC.) The agency said the abandonments are nonetheless unlawful, and that it would take all necessary actions to apply section 106:

"In some cases railroads have taken actions affecting rail property without first seeking abandonment authority. When this occurs on in active lines, we generally do not discover these actions until after the fact when the carrier seeks abandonment authority. Such actions are unlawful. Not only is the rail line unlawfully severed from the national transportation system when this occurs, but the Board's ability to carry out its obligations under NEPA and NHPA may then be adversely affected. The Board will continue to carry out its obligations under those statutes and will take whatever steps necessary to enforce compliance with them. Railroads that take such actions may find not only that obtaining abandonment authority is delayed, but that the Board will require historic preservation training for the railroad's staff members who are involved with abandonment projects and require the railroad to document the in-house measures that it will implement to prevent such actions from occurring in the future. Other possible actions the Board may take include restricting the railroad's future ability to employ expedited procedures to obtain abandonment authority, imposing a financial penalty, and seeking a legal remedy against the railroad in a court of law."

Consummation, supra, slip at 4.

In short, under this Board's applicable Policy Statement, Conrail in 2005 engaged in an illegal de facto abandonment of a rail line containing an important section 106-protected asset,

and the agency ultimately must take "whatever steps [are] necessary to enforce compliance [with NHPA provisions]."

OEA is legally obligated to confirm its reviews and findings to the law and the Policy Statement and the findings of the Board and reviewing court in this case. OEA in its Cover Letter and Report must acknowledge that Conrail engaged in an unlawful abandonment in the purported 2005 sale of a segment of the Harsimus Branch to the developer.

City et al initially responded to the illegal de facto abandonment by petitioning STB for a declaration that the Harsimus Branch from Marin Boulevard to CP Waldo was a line of railroad subject to STB abandonment jurisdiction. See City of Jersey City et al, Petition, STB F.D. 34818, filed January 12, 2006.²³ City et al prevailed, but Conrail and the developer petitioned for review in the D.C. Circuit, contending that STB lacked jurisdiction. Conrail and the developer also entered into a contract under which Conrail pledged to do whatever "may be required" to secure title to eight blocks of the Harsimus Branch in the developer and to ensure he received all "necessary approvals" to "develop the property."²⁴ In return, the developer

²³ This action was consistent with advice City et al.'s counsel received from STB's Office of Public Assistance.

²⁴ The LLCs and Conrail for many years kept their agreement to cement their illegal sale secret. However, the LLCs finally released the secret agreement in their papers filed in United

supposedly agreed not to sue Conrail. Based on representations from counsel for Conrail, this contract in effect precludes Conrail from settling the dispute with City et al, except on terms dictated by the developer. This contract maximizes the adverse impacts on historic resources flowing from the unlawful de facto abandonment, and also renders mitigation difficult and quite likely impossible absent a voiding of the unlawful sale to the developer.

States District Court contending Conrail had engaged in fraud. The secret agreement to persist in fraud has already been filed multiple times with STB (see note 4). In it, Conrail agreed to "execute any ... documents as may be required to effectuate and/or confirm the 2005 [illegal] sale of the property" (para 1), to cooperate with the LLCs "to secure all necessary approvals" to "develop the property" (that is, demolish the historic Embankment) (para 3), and to appeal STB's August 9, 2007 decision in F.D. 34818 (para 4). Conrail and the LLCs further agreed that so long as the LLCs still on-going suit (212 Marin Blvd. et al v. City of Jersey City, et al, HUDL-4908-05) was extant, then Conrail would not object to being sued by them "in any other proceeding." See contract para 5. Evidently this provision was intended to waive any statute of limitations defense by Conrail against the LLCs' fraud and negligence claims, while the LLCs and Conrail endeavored to litigate City et al into giving up on its efforts to forestall the illegal de facto abandonment of the Harsimus Branch.

The developer, faced with loss of its argument against STB jurisdiction, has alleged that Conrail fraudulently misrepresented that the Harsimus Branch was not subject to STB abandonment jurisdiction. See, e.g., 212 Marin (developer) Amended Answer in City of Jersey City v. Conrail, USDC for DC No. 09-cv-1900, filed 10/4/12, at (inter alia) paragraphs 128 and 140, as filed as Exhibit C by Jersey City et al in AB 167 (Sub no. 1189X) on Nov. 22, 2013 (developer states that Conrail fraudulently misrepresented regulatory status of Harsimus Branch to the developer and to the City for "pecuniary gain").

Conrail, the developer, the developer's purported back-up plan (Riffin), or some combination thereof have been seeking to evade STB jurisdiction over the Harsimus Branch from the 1990's up until present day. Most recently, James Riffin, claiming to be the developer's "back-up" plan, filed an out-of-time "notice of intent" to make an OFA. Mr. Riffin explained that if STB allowed his OFA, the developer would force Conrail to sell the property to him, essentially as a front for the developer. Over the objection of Conrail and City et al, the agency accepted Riffin's late-filing. Concerned that Riffin's participation amounted to nothing more than a perversion of the OFA process to assist the developer in his unlawful purported purchase of the Harsimus Branch, City et al undertook discovery pursuant to this Board's rules into the relationship between Riffin and the developer. Riffin proved evasive, which triggered considerable motions practice to obtain discovery. Suffice it to say that the agency recently affirmed an ALJ order expelling Riffin from the proceeding for failure to comply with discovery orders.²⁵ In the process, the agency also rejected a Riffin effort to contest

²⁵ Decision in AB 167-1189X, served April 28, 2017. Riffin's declaratory proceeding, which in effect contested STB jurisdiction in AB 167-1189X, and which was evidently undertaken for compensation from the developer, amounted to an effort to hold up the Metro Plaza development. The agency struck the petition in James Riffin - Petition for a Declaratory Order, F.D.36078, served April 27, 2017.

the agency's jurisdiction.²⁶ Yet another Riffin effort contesting the agency's jurisdiction is now pending.²⁷ The purpose of these efforts collectively has been to render excessively burdensome enforcement of this Board's jurisdiction and to preclude meaningful access to federal remedies, including those afforded under the NHPA, as well as federally-mediated remedies, like NJSA 48:12-125.1 (see Exhibit II).

Per the OEA, STB reinitiated the section 106 process in July 2015.²⁸ The OEA cover letter purports to describe a meeting hosted by OEA in STB's offices, attended by City and Conrail attorneys, and by the principal of the LLCs and his attorney.²⁹ OEA and its Conrail-supplied consultants provided some general

²⁶ See April 28 decision in AB 167-1189X, *supra*, p. 5 n.5. In addition, Riffin filed a declaratory proceeding, which in effect contested STB jurisdiction in AB 167-1189X, and which was evidently undertaken for compensation from the developer, in an effort to hold up the Metro Plaza development in the old Harsimus Cove Yard. The agency struck the petition in James Riffin - Petition for a Declaratory Order, F.D.36078, served April 27, 2017.

²⁷ Riffin Petition to Reopen/Reconsider in AB 167-1189X, filed May 31, 2017 (claims lack of STB jurisdiction).

²⁸ STB lifted its stay of AB 167-1189X on August 11, 2014, but OEA apparently did not restart the environmental process until May of the following year.

²⁹ The LLCs' then-attorney stated to the ALJ that said principal is now no longer representing the LLCs due to undefined lack of capacity or limited capacity. The LLCs' attorney withdrew as counsel to the LLCs in this proceeding in a filing on June 11, 2017.

information about the section 106 process, but seemed to emphasize exploration into a possible settlement. None was foreseeable. The City explained that it sought to acquire the Branch for public use consistent with historic preservation. The contract between the developer and Conrail precludes Conrail from settlement unless the developer consents. The developer seeks the benefits of his unlawful purchase; namely, to remove the Embankment in favor of townhouses and/or skyscrapers. Conrail is, as already noted, contractually committed to supporting the development proposed by the developer so the railroad shares the adamancy of the developer. Neither Conrail nor its chosen developer are prepared to mitigate the unlawful de facto abandonment for section 106 purposes or any other purposes.

II. Certain Factual Errors and Misleading Statements

The CRI Report contains statements of fact, and conclusions based thereon, which are incorrect and/or misleading.

City et al will address those found in the Executive Summary in this section of our comments. Some of the matters discussed (Second through Sixth) deal with issues that do not appear to relate to the CRI Report's claimed purpose (identification of historic properties). These matters instead bear on issues of adverse effect on historic properties and on the availability of mitigation opportunities. City et al urge

that prejudicial statements by OEA and its consultants prejudging impacts as minimal or non-existent, or suggesting that no means are available to mitigate adverse impacts be omitted from the Report or corrected.

First, the Report asserts that City owns no portion of the Harsimus Branch and that it is obliterated east of Marin Boulevard. Once the Harsimus Branch reached Marin Boulevard (formerly Henderson Street), the Branch entered the Harsimus Cove Yard. Although Conrail is not obligated to seek STB authority to abandon a railyard, a railroad is generally required to seek abandonment to the end of its yard. The location in a yard is arbitrary from the perspective of City et al. The City long ago preserved what it regards as a portion of the Yard sufficient for its purposes in the form of Thomas Gangemi Drive, which is tantamount to an extension of Sixth Street (essentially a 100 foot right of way directly east of the Harsimus Branch, clearly visible as a divided boulevard-type street on Google Maps). City et al thus view the CRI Report as misleading insofar as it claims the City has no claim of ownership in any portion of the Branch and that the Branch is totally obliterated east of Marin. The yard is gone, but not a right of way insofar as the rail line extending off the Embankment directly to the Hudson is currently operated by the City as a street. As already noted, the City owns that property

in fee simple and can use it for rail purposes. See note 4^{supra} (reference to light rail).

Second, the authors of the CRI Report contend that much of the right of way has already been sold. Given City's maintenance of the right of way from Marin to roughly the Hudson, the only sale that is germane is the 2005 unlawful de facto abandonment sale between Marin and CP Waldo to the developer. That sale, as already indicated, amounted to a knowing and intentional violation of this Board's abandonment jurisdiction. Conrail knowingly or with willful blindness sold the property in violation of STB jurisdiction and to evade federal and federally mediated remedies under which the City could have acquired the right of way. Moreover, the sale was in the face of a City inquiry for proof of abandonment authority or that none was required. City et al challenged the sale when negotiations broke down and the developer threatened demolition. STB has jurisdiction and an obligation to void that sale. In addition, City et al note that City timely filed a "notice of intent" to file an offer of financial assistance to acquire the Harsimus Branch from Marin Boulevard west to end of abandonment in CP Waldo (roughly Chestnut Street). If STB allows the OFA, and there is no reason consistent with STB precedent to do otherwise, then the entire right of way will be restored. This itself indicates that the Branch remains intact for NHPA

purposes, at least from Marin to CP Waldo. In addition, in the event an STB abandonment authorization became effective, N.J.S.A. 48:12-125.1 applies. Under this provision, the sale to the developer would be voided, and City would have a right to acquire the eight-block segment sold to the developer for the same price paid by the developer. See Exhibit II. OEA and the authors of the CRI Report cannot pretend that the unlawful sale somehow foreshortens the application of NHPA to any portion of the Harsimus Branch in the circumstances.

Third, the CRI Report fails to acknowledge that when City et al challenged Conrail's illegal de facto abandonment in F.D. 34818, Conrail entered into a contract with the developer pledging Conrail to support development proposed by the developer. This amounts to continued intentional action to demolish the Harsimus Branch and to remove it from this Board's jurisdiction. It is germane to issues under both section 106 and section 110(k).

Fourth, Conrail subsequently joined in the demolition permits that the developer sought to destroy the six-block-long section 106-protected Harsimus Embankment, in advance of obtaining abandonment authority, much less section 106 compliance. In short, rather than mitigate its unlawful de facto abandonment, the railroad exacerbated the scope and adverse impacts of its actions. This again evinces the

railroad's intention to evade STB jurisdiction and to obtain demolition of the Embankment prior to abandonment authorization.

Fifth, the CRI Report suggests that it is questionable whether third-party reuse of the Embankment is foreseeable. As noted above, the City's re-use plans are well-known and were acknowledged by the Court of Appeals. As also noted above, the railroad and the developer seek to demolish the Embankment and have entered into a contract that in effect pledges the railroad to accomplish this end, and to pursue the development plans of the developer. The developer in fact demolished a stanchion and was forced into committing itself to cease destruction of remaining rail assets only because of protests of City et al to this agency. To intimate that destruction and development are not "foreseeable" in these circumstances strains credulity. Environmental review is supposed to be based on what the applicants actually are seeking to do. If they seek to construct a railroad, that is what the agency analyzes. Here we know what the railroads seek to do: destroy the Embankment and substitute, at the very least, high rises and townhouses. Conrail embodied that in a contractual commitment and then joined demolition permit applications. At the very least, "salvage" activities are foreseeable in any abandonment proceeding (the agency supposedly always analyzes their impacts), and destruction of the Embankment by Conrail and its

chosen developer is salvage as much as Conrail's unlawful destruction of bridges and trestles on this line.

Sixth, the CRI Report claims there are no foreseeable impacts to historic properties from abandonment east of the illegal sale area (roughly Brunswick to Chestnut). This assessment of impacts is vastly premature. As shown in Part V, City et al.'s experts indicate that the entire area in question is eligible for the State and National Registers. The salvage of remaining rail structures on the corridor and disruption of the alignment therefore will be an adverse impact. In addition, Conrail (among other things) has indicated to the City that it desires the City to pre-approve huge billboards and 10,000 units of development in that area as a condition for settlement. Development of any sort inconsistent with the City's plans for rail, trail and open space use will have an adverse impact on historic properties throughout the historic areas surrounding the Harsimus Branch. In addition, by depriving City of the last underutilized transportation corridor suitable to support downtown Jersey City, the loss of the historic asset represented by the Harsimus Branch will have adverse environmental impacts throughout the downtown core.

III. CRI Report Discussion of Developer and City "Plans"

Although the City understands that the CRI Report is supposed to focus solely on identification of historic

resources, the Report notes that the OEA inquired into "plans" of the developer and the City for the Branch. E.g., Executive Summary at ii. The CRI report indicates that STB does not ordinarily inquire into post-abandonment use of property, but it devotes some pages to a discussion of the plans, which the Report claims are "speculative" (p. 1-5, as to the City) or "uncertain..." (p. iii) as to the developer/Conrail. The CRI Report almost sounds apologetic about looking at plans. However, the binding Section 106 regulations clearly direct an examination of adverse effects, including those that are reasonably foreseeable. 36 C.F.R 800.5(a)(1) ("Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.") As noted above, these third-party plans are plainly foreseeable actions following and depending on the outcome of these proceedings. Moreover, in abandonment proceedings, the agency routinely analyzes the impact of salvage activities, because they are attendant to abandonment. Here, the railroad and the developer have both engaged in illegal salvage (removal of assets like rail, tie, bridges and -- in developer's case -- a stanchion) in advance of STB authorization. The removal of the Embankment amounts to a foreseeable salvage activity. Since the Embankment is eligible for the National Register, the agency need not inquire into

"plans" to be obligated to analyze the complete obliteration of the six-block long Embankment as part of this proceeding. In addition, since City et al, supported by the opinions of six experts, show that the entire Harsimus Branch from Marin to CP Waldo qualifies for the National Register, the issue is not simply destruction of six blocks of historic structure but destruction of an historic right of way.

To reiterate, the Harsimus Branch proposed for abandonment contains a huge section 106 asset: the Harsimus Embankment. As the D.C. Circuit clearly found, the consequence of the abandonment to the Embankment under current conditions is hardly speculative: Conrail and the developer seek demolition of the Embankment. Conrail has applied with the developer for demolition, and is contractually bound to support the developer in his destructive purposes. The only legal requirement currently protecting the Embankment from destruction is this agency's continued jurisdiction. Relinquishment by this agency of jurisdiction by authorizing abandonment will thus result in the most extreme adverse impact conceivable for the asset. It in turn itself will have profound adverse impacts on adjoining historic assets. The CRI Report's discussion of the developer's plans not only overlooks this point, but fails to point out that Conrail has bound itself to the developer's destructive intentions.

In addition, the purpose of the CRI Report discussion of plans is unclear. The developer's plans seem relevant to the issue of "impact" from an abandonment authorization, but the CRI Report is supposedly not yet dealing with that issue. The City's plans are germane to avoiding and mitigating adverse impacts, and thus would serve as an essential part of the remedy for the unlawful de facto abandonment which Conrail and the developer are attempting to engineer. But the CRI Report supposedly is not dealing with mitigation.

The CRI Report's discussion of the developer's plans and the City's plans are substantively incorrect as well. For example, the developer's plans (as already indicated) are tantamount to Conrail's plans, since, in the unique circumstances here, Conrail has entered into a contract binding it to take all steps that "may be required" to ensure that the developer can develop the property" notwithstanding the unlawful de facto abandonment in which the railroad intentionally engaged. In effect, Conrail has pledged to evade any remediation of its illegal actions. This is not a mere "abandonment." Conrail has signed on to destruction of the Embankment and actual development for whatever non-rail uses the developer proposes. The developer's intentions are clear: the developer has offered to donate the Embankment for fill, has knocked out one stanchion and would have knocked out more but for City et

al's protests to STB. The developer's intentions are in effect those now of Conrail. The railroad has clearly been vigorously implementing its agreement to act illegally, even in the face of agency and judicial determinations. Thus, while seeking to evade STB jurisdiction, the railroad joined in the developer's applications to demolish the six-block-long National Register-eligible Embankment. The developer has also applied to erect structures on the parcels in question after destroying the Embankment. Under the circumstances, the agency must assume for purposes of section 106 analysis that the railroad and developer will implement the developer's current plans, for that is what they have contracted and applied to do. There is nothing speculative about this.³⁰

As to the City's plans, the City has designated the Embankment parcels as Historic Landmarks, and they are listed in the State Register. Should they be acquired by the City they will not be demolished for the same reasons that Conrail's president himself objected to listing of the Embankment parcels in the National Register (DEP approvals would be needed for destruction, and would be very unlikely to be achieved).

³⁰ The only matter open to speculation is whether the developer (and Conrail) will seek more development than they have currently proposed. The developer has called for huge skyscrapers to be built on the corridor, and Conrail has suggested 10,000 units and huge billboards be constructed in the CP Waldo area.

Consistent with the City's applicable Master Plan provisions, the City would employ the entire Branch from Marin Boulevard to CP Waldo for rail transportation (including passenger use in order to relieve downtown congestion)³¹; open space, park and trail (East Coast Greenway)³²; and historic preservation purposes (with which rail, trail and open space are all consistent).³³

City is prepared to enter into a Memorandum of Agreement pursuant to section 106 to commit to these ends. STB and its OEA will thus face no meaningful uncertainty about what happens to historic assets (they will be protected), if City is allowed to implement its plans. The only uncertainty as to the City's plans arises from the fact that City et al and the public are deprived of any meaningful opportunity to implement these ends due to the illegal sale of the property to a developer before

³¹ The City timely filed a notice of intent to OFA, and desires to implement that remedy from Marin Boulevard to CP Waldo. This would keep the line under STB jurisdiction and avoid any adverse impacts on historic sites or structures within the meaning of section 106 and implementing regulations. If STB OEA desires certainty in "plans" for section 106 purposes, and wishes further to avoid adverse impacts on section 106 assets, it should recommend that STB allow the City to acquire the property pursuant to the City's OFA.

³² The right of way in general is wide enough to accommodate rail with trail and greenway.

³³ Thomas Gangemi Drive is available to extend rail and/or trail use of the Harsimus Branch all the way to the existing Hudson Bergen light rail system east of Marin Boulevard, and indeed all the way to the waterfront. See note 3.

Conrail sought STB abandonment authority. Since this agency still has jurisdiction, City still cannot lawfully acquire the property. In sum, there is nothing speculative for purposes of section 106 about the City's plans except when they can begin to be implemented, and that uncertainty arises from the fact that the corridor is still under STB regulation for rail purposes and cannot be acquired by the City except pursuant to authorities, terms and conditions yet to be stated by this agency. If the agency were to void the deeds, then City is prepared to commit as stated.

This raises the question whether STB has power to void the deeds. STB most certainly does. Faced with an illegal transfer of the Harsimus Branch, the Surface Transportation Board unequivocally has power to void the deeds from Conrail to the developer, to order Conrail to re-acquire the property, and/or to order reconveyance of the property to Conrail. In The Land Conservancy of Seattle & King County-Acquis. & Operation Exemption-The Burlington N. & Santa Fe Ry., FD 33389, slip op. at 3 (STB served Sept. 26, 1997), reconsideration denied, The Land Conservancy of Seattle & King County-Acquis. & Operation Exemption-The Burlington N. & Santa Fe Ry., FD No. 33389 et al. (STB served May 13, 1998), pet. for judicial review dismissed sub nom. The Land Conservancy of Seattle & King County v. STB, 238 F.3d 429 (9th Cir. 2000), the Board invalidated deeds when

it found that a railroad transferred a line to a third party for non-rail use (as a trail) without the railroad first seeking abandonment authorization. Here Conrail transferred a line to a developer for conversion into buildings without applying for any transfer or abandonment authority, much less receiving same, and then, when apprised of its illegal conduct, the railroad pledged itself to implement the developer's plans. The case is stronger for invalidation in AB 167-1189X than in F.D. 33389. The key difference between AB 167-1189X and F.D. 33389 is that the seller and purchaser in F.D. 33389 timely sought to comply with STB jurisdiction. In contrast, Conrail and the Hyman interests involved in AB 167-1189X not only never did, but attempted at every turn to thwart STB jurisdiction and in addition entered into a contract to thwart any STB order that might mitigate the illegal de facto abandonment. A first step in mitigating any of the adverse impacts flowing from this abandonment will be voiding the deeds or otherwise requiring a reconveyance.

City et al remain concerned that STB OEA is assuming in its section 106 review that the agency cannot do anything about unlawful de facto abandonments. Instead, the agency should acknowledge it has power to undo illegal abandonments. This problem has long been pointed out to the agency. For example, the New Jersey State Historic Preservation Office (SHPO) explained long ago that the agency's March 2009 Environmental

Assessment "attempt[s] to unilaterally dictate that Section 106 consultation be completed by parties with no ownership of the Harsimus Branch and with minimal oversight from the STB." SHPO noted that the EA's position that the section 106 process would be completed by Conrail prior to effectiveness of abandonment "suggests that STB has, in effect, already granted de facto approval of the abandonment"; in other words, already approved Conrail's illegal sale. SHPO noted that the current "owner" of the Embankment "continues to pursue demolition locally, and operates as if unconstrained by the Section 106 review process." As SHPO indicates, the Section 106 process proposed in the agency's EA is a process in which meaningful consideration of preservation of the Branch is foreclosed. "[I]nstead, [the agency's process] leads to loss of historic property at the consummation of abandonment." SHPO questioned "how the letter and intent of the Section 106 process can be completed while the property is held by a third party." Letter, D. Saunders (NJ SHPO) to Acting STB Secretary Quinlan, May 7, 2009, p. 2. Further, as noted below, the Advisory Council on Historic Preservation (ACHP) has likewise expressed serious concerns that its ability to comment has been foreclosed by the unlawful sale of the Embankment.

Before proceeding to the next steps in the section 106 process, STB OEA must cease pretending or assuming that the

agency cannot require reconveyance of the property from the developer to Conrail. Until OEA accepts that the agency can require reconveyance, 300- or 600- or 1000-page Cultural Resources Identification Reports serve mainly to lull the public into thinking the agency is seriously considering meaningful remedies for an unlawful de facto abandonment. The agency needs to implement meaningful relief from the unlawful de facto abandonment in order to comply with NHPA.

IV. Section 110(k)

The ACHP letter of August 4, 2016, indicates that STB should investigate the applicability of section 110(k) ("anticipatory demolition") of the National Historic Preservation Act ("NHPA"), 54 U.S.C. 306113, "before it proceeds with Section 106 consultation." Letter dated August 4, 2016, p. 1, first para, last sentence.

As we have already indicated in these comments, STB OEA and its consultants in the CRI Report have ignored the obvious fact that Conrail, which must be charged with a knowing violation of STB abandonment jurisdiction, sold the Embankment portions of the Harsimus Branch to a developer without any compliance with applicable STB licensing requirements or with Section 106. The Embankment portions included the Sixth Street (or Harsimus) Embankment, determined eligible for listing on the National Register in 2000. The developer tore out a stanchion before

stopped by City et al's objection to STB, but, with Conrail concurrence, applied to demolish the Embankment.³⁴ When Conrail's conduct was challenged, Conrail entered into a contract with the developer essentially to take all actions necessary to support the developer's non-rail development plans. All this constituted an unlawful de facto abandonment in intentional violation of federal law. It also amounts to intentional demolition of historic assets in violation of section 110(k).

The CRI Report shows that the agency is ignoring the fact that Conrail knowingly violated STB abandonment jurisdiction not only when it engaged in salvage of track and bridgework but also when it sold the Embankment to a developer for removal. The CRI Report also implies that the agency is continuing to ignore its power to void the deeds. While merely identifying historic resources (the stated purpose of the CRI Report) may not interfere with implementation of section 110(k), further action by the agency to discuss effects and mitigation cannot occur without addressing the 110(k) issues. The agency cannot ignore what is its duty to acknowledge under section 110(k). If the agency continues to ignore this remedy, OEA or its consultants will continue to claim that the abandonment will have no adverse

³⁴ The developer seeks to remove the Embankment and replace it with townhouses or skyscrapers.

impact on historic properties because those properties (as the CRI Report argues) already have been sold and thus will be destroyed anyway. This of course begs the question. If the deeds cannot be voided, then Conrail has all the more clearly engaged in an intentional anticipatory demolition. In that case, pursuant to section 110(k), STB in consultation with the Advisory Council, will have no alternative but to refuse to grant abandonment authority (until the property is reconveyed to Conrail) due to anticipatory demolition.

Likewise, the agency may take the position it cannot mitigate adverse effects because the property has been sold. The City is prepared to enter into a memorandum of agreement under section 106 to preserve the properties if the agency will address the unlawful sale. The irony here is that the City at all relevant times has been barred from mitigating the adverse impacts of this abandonment because of the agency's continued jurisdiction, which preempts the City from lawfully acquiring the property until the agency issues an effective abandonment authorization. The agency should not reward Conrail and the developer for breaking the law, and penalize the City and the public for adhering to it. That sends the wrong message to the regulated industry and to the public, suggesting to the industry that railroads benefit by acting unlawfully and, to the public, that the law is meaningless.

The unlawful de facto abandonment as manifest in the unlawful sale clearly forecloses any opportunity for meaningful consideration of measures to void or mitigate adverse effects to the historic Harsimus Embankment and other affected resources under Section 106. City et al has already shown that the sale was a knowing violation of federal law. At the time of sale, Conrail knew or was willfully blind to the fact that the Harsimus Branch at the time of sale was still a regulated line of railroad subject to the STB's jurisdiction requiring an abandonment authorization before the sale that occurred. The developer also can be charged with knowing violation of the law, for the facts indicating that the line was a line were readily available and should have been disclosed under the New Jersey's standards for title practice. The de facto abandonment and sale was a ruse to evade remedies that would preserve the Embankment and rail line for public purposes consistent with NHPA. For this and other reasons, the unlawful sale and de facto abandonment constitutes a prima facie anticipatory demolition in violation of section 110(k).

STB should now do what ACHP's letter indicates is necessary to comply with Section 110(k): STB, for example, must provide "documentation specifying the circumstances, including the degree of damage to the integrity of any historic property affected[,] and the agency "must clarify if the abandoned

Harsimus line is National Register eligible and what effect has resulted from abandonment." City et al shows herein that the entire Harsimus line west of Marin Boulevard is eligible for the National Register (see Part V of these comments). Of course, it is well-known that the Embankment parcels west of Marin Boulevard are National-Register-eligible and will be demolished by the developer and Conrail as a result of the abandonment and sale.

Under Section 110(k), the agency, if confronted with an anticipatory demolition, may not proceed with the proposed licensing action, absent special findings taken in consultation with ACHP. If the agency does not void the 2005 deeds or otherwise order Conrail to reclaim the property, it follows that Section 110(k) currently bars the agency from allowing the abandonment to become effective west of Marin Boulevard due to the anticipatory demolition that occurred there.

There are several relatively easy ways out of this problem. For example, STB OEA could recommend, and STB could impose, conditions barring Conrail from consummating any abandonment authorization for the property west of Marin Boulevard until it had re-acquired its prior property interests in that portion of the rail line. Alternatively, the agency could simply void the deeds purporting to convey that property for non-rail purposes without the required STB abandonment authorization. Under

either approach, the Section 106 process could move forward, and any potential adverse effects to the property could be avoided by allowing the City of Jersey City to acquire the property. City et al note that the City is actively pursuing a notice of intent to make an offer of financial assistance ("OFA") pursuant to 49 U.S.C. 10904. The City is ready, willing and able to acquire all of the property including the Embankment pursuant to the OFA. Alternatively, if the deeds from Conrail to the developer are voided, City is ready, willing and able to acquire all of the property pursuant to N.J.S.A. 48:12-125.1. Under either statute, Conrail will receive its constitutional entitlement to just compensation as construed under this Board's OFA precedent. The STB's failure to address this issue is clearly subverting the agency's core mission of protecting the public convenience and necessity in rail service.

City et al have repeatedly urged STB to address the Section 110(k) issue. In OEA's March 2009 "environmental assessment," OEA took the position that there is no Section 110(k) issue, misleadingly claiming that the City asked Conrail to redevelop the property in 1984, before it was recognized as National-Register-eligible, and also that Conrail filed an abandonment

proceeding in response to litigation filed by City et al. (first at this agency, and then in Special Court).³⁵

³⁵ OEA made the following statement in its March 13, 2009, "Environmental Assessment" in AB 167-1189X, at p. 14, which stands as the agency's only pronouncement on Section 110(k) in this proceeding:

"The SHPO and others, including the City, argue that the historic review process should not proceed because Conrail has engaged in "anticipatory demolition" in violation of Section 110(k) of NHPA. Section 110(k) permits an agency to suspend processing of an application when "an applicant who, with intent to avoid the requirements of [Section 106], has intentionally significantly adversely affected a historic property." 16 U.S.C. 470h-2(k). In support of their anticipatory demolition argument, these parties assert that Conrail should have known that the Harsimus Branch was a "line of railroad" requiring abandonment authority from the Board and that by removing bridges and track structure, Conrail demonstrated intent to harm the Embankment.

"This argument fails because the parties making this argument have not demonstrated any intent on Conrail's part to harm historic sites or structures. It was the City itself, starting in 1984, that asked Conrail to make available for redevelopment underutilized railroad property and trackage, and specifically urged Conrail to remove the Embankment. In 1994, after completing a new rail connection at Marion, New Jersey, Conrail permitted the City (as well as National Bulk Carriers, Inc.) to remove a bridge on the Embankment at Marin Boulevard. At the urging of the City, Conrail removed the remaining bridges. And when the Board issued its decision in the declaratory order proceeding finding the Harsimus Branch to be a line of railroad, Conrail acted appropriately and in good faith-hiring a historic resource contracting firm, preparing the Area of Potential Effect Report, consulting with the SHPO and others, and developing the historic report and supplement to the report in compliance with the Board's environmental regulations. To accuse Conrail of intent to harm the Embankment ignores these facts."

To the contrary, Conrail engaged in an unlawful de facto abandonment, and the only reason for Conrail to act unlawfully

In fact, the grounds OEA offered to evade compliance with 110(k) in March 2009 are specious. It is well established that requests or support by a City for redevelopment involving rail facilities does not excuse a railroad (or STB) from railroad abandonment licensing, which includes National Historic Preservation Act requirements.³⁶ This position was confirmed in Special Court and the D.C. Circuit. It is now law of the case. The City is not required to act unlawfully (acquire the property without STB authorization). In addition, as the developer itself has pointed out, Conrail's claims that the line did not require abandonment approval were fraudulent (intentionally false, and made with the intent to deceive inter alia the STB

was to evade the listing of the Harsimus Embankment on the National Register. Conrail sought abandonment authority only in response to litigation, and steadfastly supported the developer's efforts to demolish the Embankment without any meaningful compliance with section 106 or application of section 110(k).

³⁶ E.g., City of Jersey City, et al - Pet. Declaratory Order, F.D. 34818, served Dec. 19, 2007: "[L]ocal governments and planning agencies frequently ask railroads to participate in redevelopment or joint use projects with the understanding that the railroad will obtain appropriate authorization from the Board, if necessary. The Board has authorized a number of abandonment proposals that were submitted by rail carriers to facilitate redevelopment projects. [Footnote omitted.] Support by a local government does not excuse the railroad from seeking abandonment authority prior to removal of a rail line from the national rail transportation system."

and the Courts) for the pecuniary gain of Conrail.³⁷ Moreover, the fact that Conrail filed an abandonment proceeding only when forced by litigation brought by City et al does not vitiate the anticipatory demolition that happened before the abandonment application was filed. To the contrary, the railroad entered into a contract with the developer to ensure railroad support for the developer's plans. Conrail joined in a demolition application. And as we have noted, the developer should be charged with knowledge of acting unlawfully as well, pursuant to New Jersey title standards. See note 15.

So far as City et al are aware, STB OEA has done nothing to address Section 110(k) issues since its erroneous findings in 2009. OEA staff has repeatedly informed counsel for City et al that OEA has no procedures or personnel for such purpose. STB OEA relies on consultants hired by Conrail to compile information concerning National Historic Preservation Act issues. The consultants are not examining Section 110(k) matters. Since STB has no other investigators, there is no other STB effort to examine the anticipatory demolition that occurred on the Harsimus Branch. Contrary to STB OEA's position

³⁷ See City et al "Notice of Decision", Exhibit C (excerpts from LLCs' proposed Amended Answer), in AB 167-1189X, filed November 22, 2013 (available on STB website, e-library, filings for that date).

in a letter to ACHP, there was no on-going discovery on 110(k) issues.

Until the agency's power to void the deeds is acknowledged, there can be no further meaningful public comment under Section 106, let alone section 110(k). Accord, Comment and Statement of Richard James, pp. 1-4, in AB 167 (Sub-no. 1189X), filed June 19, 2017. Section 110(k) as applied here would seem to preclude the agency from moving forward at all, unless the deeds are voided, for the fact that Conrail engaged in an intentional anticipatory demolition is abundantly clear. The only path lawfully to proceed with an abandonment in the circumstances (other than to grant the City's OFA) is to void the unlawful 2005 deeds, require a reconveyance to Conrail, and then implement section 106. For that reason, City et al agree with ACHP's 2016 letter indicating that the agency must look at all NHPA issues, and not try to evade them by ignoring particular laws or facts at certain stages in the process.

V. Harsimus Branch Is Eligible for Protection
from Marin to CP Waldo

Chapter one of the CRI Report states that "one of the goals of this investigation is to evaluate the eligibility of the entire Harsimus Branch right of way as a potential contributing resource to the National Register-eligible PRR (New York to Philadelphia) Historic District ... and the Harsimus Cove Historic

District..." CRI Report at p 1-5. Indeed, this is the only goal specifically mentioned for the Report. The Report notes that the property is out of service, most of the property sold off, and only piers, abutments and embankments remain intact. Id. at p. 1-5. Although the Report concludes that the Embankment (six blocks long) should "be considered a discontinuous key contributing resource within the National Register-eligible PRR (New York to Philadelphia) Historic District" (p.5-4), the Report claims that the Embankment is disconnected with the rest of the railroad, and the "intervening space lacks integrity." P. 5-11. This is roughly the entire analysis presented in the Report in support of its conclusion against the eligibility of the Harsimus Branch for listing in the National Register, or as part of the referenced PRR Historic District.

To the contrary, Conrail still owns the intervening space, but for the illegal and voidable sale, and the remaining piers, stanchions and supporting structures clearly indicate the location of the line. In general, removal of bridges, track and ties does not disqualify a railroad corridor from eligibility for listing in the National Register. See note 11 supra (giving a few of many examples of lines with structures removed that are eligible for the National Register).³⁸

³⁸ Indeed, the Oregon California Railroad historic district in Oregon comprises 20 miles of right of way excavated for a

Since the Report acknowledges the important historic nature of the Harsimus Branch, it apparently bases its conclusion on an arbitrary assessment that the Branch lacks integrity. City et al supply, with these comments, the Verified Statements set forth below expressing the opinions of preservation experts that the Branch qualifies as eligible for the National Register from Marin Boulevard to CP Waldo for the National Register and possesses all the integrity necessary for that purpose. For similar reasons, the Branch from Marin to CP Waldo must be deemed a continuous contributing element to the PRR Philadelphia to New York Historic District.

In particular, City et al supply herewith and incorporate herein the following verified statements:

- Joint Verified Statement of Brian Blazak and Daniel M. Wrieden. These two experts are Historic Preservation Specialists with the Jersey City Division of City Planning. They conclude for reasons set forth in their Statement that the Branch from Marin to CP Waldo is historically significant at the National, State and Local levels, and that the portion from Brunswick to CP Waldo has sufficient integrity to be eligible for listing. They attach

railroad but on which a railroad was never constructed. This district has nonetheless been determined eligible for the National Register. The point is that presence or absence of railroad structures is not what eligibility turns upon.

photographs showing railroad structure in the CP Waldo area (the most inaccessible portion of the Branch) based on a Conrail-authorized inspection on June 14, 2017.

- Verified Statement of Ulana Zakalak. Ms. Zakalak is the principal of Zakalak Associates, specializing in historic preservation planning and design. Ms. Zakalak, who also participated in the inspection and presents photographs, notes that integrity is supposed to be evaluated in terms of "location, design, setting, materials, workmanship, feeling and association." V.S. at p. 11. Ms. Zakalak shows that the entire Branch from Marin to CP Waldo satisfies integrity when analyzed pursuant to the relevant criteria. V.S. pp. 11-13.

- Verified Statement of Allen Kratz. Mr. Kratz is the principal of Allen W. Kratz Historic Preservation Consulting. He concludes (V.S. p. 2) that the entire length of the Branch from Marin to CP Waldo merits listing on the National Register. After discussing the importance of the Branch historically (V.S. pp.3-8), he addresses integrity, noting that in comparison to other listed historic freight transportation corridors (the Morris Canal and the Delaware and Raritan Canal), the Harsimus Branch displays more integrity. V.S. 9-11.

■ Verified Statement of Diane Kaese. Ms. Kaese is a registered architect specializing inter alia in preservation and she co-authored the Jersey City preservation ordinance. She participated in the June 14 inspection, and, consistent with the other experts, concludes that the Branch is significant at national, state and local levels of significance and is a continuous contributing element for the PRR Philadelphia to New York Historic District. She shows, based on her inspection, that the western portion of the Branch has ample integrity, noting that the rail line could be reconstructed today. V.S. p. 4. She finds the various criteria for integrity to be fulfilled, consistent with the findings of Ms. Zakalak. V.S. 4-6.

In addition, Richard James, the historic preservation expert who prepared the nomination for the Harsimus Embankment approximately twenty years ago, participated in the June 14 inspection of the CP Waldo area. Mr. James, who feels strongly concerning the matter, requested that his comments and statement be submitted independently of the comments of City et al (1) to emphasize his independent judgment that the entire Branch from Marin to CP Waldo merits listing, and (2) to underscore his concern that Conrail's de facto abandonment as manifest in, among other things, the 2005 sale of the Embankment parcels amounted to an intentional evasion of intended historic

preservation laws applicable to the Harsimus Branch in the STB abandonment process. City et al hereby incorporate his separately submitted comments and statement herein.

As City et al has previously pointed out, Jersey City's master plan documents have been consistent to this end since 2005, calling for the entire "Harsimus Stem" (Harsimus Branch from Marin to CP Waldo) to be treated as an historic landmark.³⁹

³⁹ Jersey City Master Plan, available at <http://jerseycitynj.gov/cityplanning/>

2.A. Reexamination Report of 12-02-05 discusses the impact of the new light rail system and recommends that the Embankment be added to the list of historic landmarks to preserve its character and the Right of way for open space, preservation, and transportation options.

p. 4:

"It is recommended that the master plan be amended to include the following.

The Harsimus Stem of the Pennsylvania Railroad should be added to the list of Historic Landmarks to preserve the historic character of the stone embankments and the right-of-way, including the sections without embankment structures. This will provide areas for open space, historic preservation, and transportation options. Losing this rail road right-of-way and historic engineering marvel would adversely impact the booming residential component of the city's growth as it would remove possible improvements to accessibility as well desperately needed open space. A public walkway, similar to Manhattan's High Line and Paris' Promenade Plantee, can be developed on top of the structures. The East Coast Greenway has selected the Embankment as part of the Jersey City link. Light Rail transit could also be installed in a narrow strip of the Embankment at some point in the future and still leave room for these pedestrian and bicycle uses."

2B. R-1 A Master Plan Re-examination Report 11-13-2006

As City et al have already noted, the City already owns a segment of the old Yard, extending from Marin Boulevard to the waterfront (Thomas Gamgemi Drive). This portion of the Yard serves to demarcate the extension of the PRR all the way to the Hudson.

The Report's conclusion that the Branch lacks integrity all the way from CP Waldo to the Embankment also ignores the City's efforts to acquire the property pursuant to 49 USC 10904 ("offers of financial assistance") for rail (including light rail) and other compatible purposes. There is no new structure or intervening development in the corridor that precludes replacing the former freight rail track and structures with modern track and structures sufficient to provide rail passenger and freight transload services. The City's OFA, if successful, would not only be consistent with section 106 of the National Historic Preservation Act but also render further analysis under section 106 unnecessary because a successful City OFA would void

"The Historic Preservation Element of the Jersey City Master Plan shall be amended to include the Sixth Street Embankment, formally known as the Pennsylvania Railroad Harsimus Branch Embankment. This will be done as follows:

Add, to Table IX-2, page IX-5 of the Jersey City Master Plan, 2000, as amended, the following:

31. Resource- Pennsylvania Railroad Harsimus Branch Embankment
Location - Parallels Sixth Street, between Brunswick Street and Marin Boulevard

Register and Date of Listing - SR 12/29/99; DOE 3/16/2000"

the offending deeds, preserve the Embankment, and restore and maintain the transportation corridor. Mr. James makes the same point in his Comments.

VI. Other Matters

Failure to comment on any particular assertion in the Cover Letter or CRI Report should not be taken as agreement or disagreement. Rather it is a function of time constraints and City et al's resultant need to concentrate efforts on what City et al collectively view as key matters.

City of Jersey City wishes to note that it has not completed its analysis of the Italian Village, White Eagle Hall, Healy's Tavern, and Mary Benson Park, and other potential historic assets, for purposes of eligibility for listing in their own right or as contributing to other districts.

City et al reserve the right to further participation in this proceeding.

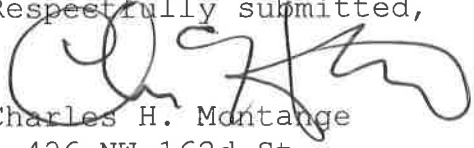
City et al finally note that the Embankment Preservation Coalition, while joining in these comments, is also filing separate comments.

Conclusion

The agency's analysis manifest in the CRI Report is based on mistakes of law and fact. The only way to provide an opportunity for meaningful comment in the section 106 process is to void the deeds that were part of the unlawful 2005 de facto

abandonment. The deeds will be voided anyway if STB allows the City's OFA, and in any event are in effect void by operation of NJSA 48:12-125.1. The Harsimus Branch from Marin Boulevard to CP Waldo is eligible for listing on the National Register as a continuous corridor, and in particular exhibits all the integrity for that purpose necessary. In addition, it is an integral contributing part of the PRR Philadelphia to New York Historic District. Authorizing an unconditional abandonment of the line at this point will result in destruction of the Embankment and of the Harsimus Branch. This constitutes the most severe form of adverse impact on at least three National Register-eligible assets: the Embankment, the Branch, and the PRR Philadelphia to New York Historic District. The CRI Report speaks of uncertainty as to foreseeable impacts, but there in fact is no question as to impacts, other than the uncertainty which arises from STB's failure timely to grant effective relief to facilitate preservation of these assets.

Respectfully submitted,



Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
Fax: -3739
Counsel for City et al

Of counsel for RTC:

Andrea Ferster
General Counsel, Rails to Trails Conservancy
2121 Ward Ct. NW, #5
Washington, D.C. 20036

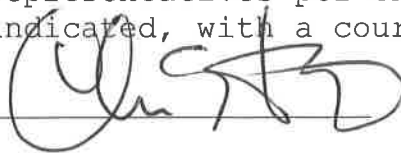
Attached as separate Appendix:

Exhibit I (Curley email and Dedication Deed for Gangemi Drive)
Joint Verified Statement of Brian Blazak and Daniel W. Wrieden
Verified Statement of Ulana Zakalak
Verified Statement of Allen Kratz
Verified Statement of Diane Kaese

City et al also incorporate into said Appendix the
Comments and Statement of Richard James in AB 167 (Sub-no.
1189X) (also verified)

Certificate of Service

The undersigned hereby certifies service by posting the foregoing in the US Mail, postage pre-paid, first class or priority mail, on or before the 19th day of June 2017 addressed to the parties or their representatives per the service list below, unless otherwise indicated, with a courtesy copy to ALJ Dring.



Service List
(current as of June 12, 2017)

Michele Donato
106 Grand Central Avenue
Lavallette, NJ 08735 (LLCs) [also by email]

Robert M. Jenkins III
Mayer Brown LLP
1999 K Street, N.W.
Washington, D.C. 20006-1101 (Conrail)[also by email]

Jill Edelman, President
Powerhouse Arts District Nbd Ass'n
140 Bay Street, Unit 6J
Jersey City, NJ 07302

President
The Village Nbd Ass'n
365 Second Street
Jersey City, NJ 07302

Daniel Frohwith
Jersey City Economic Development Corporation
30 Montgomery St., Suite 820
Jersey City, NJ 07302

Gregory A. Remaud
Conservation Director
NY/NJ Baykeeper
52 West Front Street
Keyport, NJ 07735

Sam Pesin, President
Friends of Liberty State Park
580 Jersey Ave., Apt. 3L
Jersey City, NJ 07302

Eric S. Strohmeier
Vice President, COO
CNJ Rail Corporation
81 Century Lane
Watchung, NJ 07069 [also by email]

James Riffin
PO Box 4044
Timonium, MD 21094 [also by email]

Supplemental Service List

The following are current representatives of parties at their current addresses. In all cases, the STB service list fails to state the correct current representative or the correct current address.

Katherine Marcopul
State Historic Preservation Office
Mail Code 501-04B
NJ Dept. Environmental Protection
P.O. Box 420
Trenton, NJ 08625-0420

[formerly sent to Daniel
Saunders, now retired]

Massiel Ferrara, PP, AICP, Director
Hudson County Division of Planning
Bldg 1, Floor 2
Meadowview Complex
595 County Avenue
Secaucus, NJ 07094

[formerly sent to Stephen
Marks, who is no longer with
the County, and address has
also changed]

Jeremy Jacobson, President
Harsimus Cove Association
20 Erie Street, Apt. #2
Jersey City, NJ 07302

[new President]

President
Historic Paulus Hook Ass'n
192 Washington Street
Jersey City, NJ 07302

[new President]

President
Van Vorst Park Association
The Barrow Mansion
83 Wayne Street
Jersey City, NJ 07302 [new address]

The following former parties (no longer listed as parties) are receiving a courtesy copy:

Dennis Markatos-Soriano
Exec. Director
East Coast Greenway Alliance
5826 Fayetteville Rd., Suite 210
Durham, NC 27713-8684

Justin Frohwith, President
Jersey City Landmarks Conservancy
54 Duncan Avenue
Jersey City, NJ 07303

President
Hamilton Park Neighborhood Association
PMB 166
344 Grove Street
Jersey City, NJ 07302

Aaron Morrill
Civic JC
64 Wayne St.
Jersey City, NJ 07302

Joseph A. Simonetta, CAE,
Executive Director
Preservation New Jersey
414 River View Plaza
Trenton, NJ 08611

Per a prior request of the Board, service is also made on the following addressees, although none is believed to continue to represent a party in the proceeding and/or is otherwise superseded. In all cases, City et al are attempting to serve the correct representative at the representative's correct address as set forth above.

Stephen Marks
Hudson County
583 Newark Avenue
Jersey City, NJ 07306

Gretchen Scheiman
Historic Paulus Hook Association
121 Grand Street
Jersey City, NJ 07302

Michael Selender
Jersey City Landmarks Conservancy
P.O. Box 68
Jersey City, NJ 07303-0068

Brian P. Stack
411 Palisade Avenue
Jersey City, NJ 07307

The post office is returning mail addressed to Mr. Dan Weber.
The correct address for Van Horst Park Association has been
served.

Before the Surface Transportation Board

Conrail -- Abandonment)
) AB 167 (Sub-no. 1189X)
--in Hudson County, NJ.)

And

CSX Transp. - Discon. of)
Service - same) AB 55 (Sub-no. 686X)

and

Norfolk Southern -)
Discon. of Service - same) AB 290 (Sub-no. 306X)

City of Jersey City, et al's Reply
To Cover Letters dated May 2017 by Victoria Rutson
and to
the Cultural Resources Identification Report

Appendix
containing
Exhibit and Verified Statements

Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
Fax: -3739
Counsel for City et al

Of counsel for RTC:

Andrea Ferster
General Counsel, Rails to Trails Conservancy
2121 Ward Ct. NW, #5
Washington, D.C. 20036

For filing 19 June 2017

Table of Contents

Comments (separate cover)	1
Summary	3
I. The Cover Letter and Report Mischaracterize The Case	11
II. Certain Factual Errors and Misleading Statements	31
III. CRI Report Discussion of Developer and City "Plans"	36
IV. Section 110(k)	45
V. Harsimus Branch Is Eligible for Protection from Marin to CP Waldo	54
VI. Other Matters	60
Conclusion	61

Appendix Table of Contents

Exhibit I (Curley email and Dedication Deed for Gangemi Drive)
Exhibit II (N.J.S.A. 48:12-125.1)
Joint Verified Statement of Brian Blazak and Daniel W. Wrieden
Verified Statement of Ulana Zakalak
Verified Statement of Allen Kratz
Verified Statement of Diane Kaese

Exhibit I

Dedication Deed and Related Email

Subject: RE: Newport Phase II Roadway Dedication Deed
From: John J. Curley (JCurley@curlaw.com)
To: c.montange@frontier.com;
Date: Wednesday, December 7, 2016 3:37 PM

Charles

The deed conveys a fee title to the City of Jersey City. Block 20, lot 5.01 appears to be Sixth Street. The City is free to do what it wants with the land subject only to the restrictions imposed in the deed. Most of these deal with accommodation of existing easements. In my opinion, the City may allow the light rail to use the land in the bed of Sixth Street. This is an example of a municipality becoming the owner of the fee title of land dedicated as a public street.

Jack

John J. Curley, Esq.

John J. Curley LLC

Harborside Financial Center

1202 Plaza Ten

Jersey City, NJ 07311

Tel: (201) 217-0700 Fax: (201) 360-3797

Please use 3 2nd St., Jersey City, NJ 07302 for GPS directions.

95 MAY 31 PM 2:49

Samuel C. Chubbuck
HUDSON COUNTY, N.J.
Feb. 10, 1905

JAMES C. McCANN, ESQ.

... A COPY OF THE LHM
HAS BEEN SENT TO CLASSROOM 212

DEED

DEDICATING CERTAIN PHASE II ROADWAYS AND UTILITIES

THIS DEED, made as of this 23rd day of May, 1995 between NEWPORT ASSOCIATES DEVELOPMENT COMPANY, a New Jersey Partnership having an office at 2 Sixth Street, Jersey City, New Jersey (hereinafter referred to as "GRANTOR"), and the CITY OF JERSEY CITY, a public body corporate and politic existing under the laws of the State of New Jersey, having its office at City Hall, 280 Grove Street, Jersey City, New Jersey 07302 (hereinafter referred to as "GRANTEE").

WITNESSETH, that the Grantor, for and in consideration of the mutual promises made by each of the respective parties, other good and valuable consideration, and \$1.00 in hand paid and the Grantee being herewith fully satisfied, does by those presents remise, release and convey unto Grantee fee simple title in perpetuity to all of the property described herein below along with all of its rights and appurtenances, subject to certain easements, agreements, rights of entry, and reservations, and the conditions, exceptions, and reservations hereinafter expressed to hold for Grantee's use and benefit now and forever. The Grantee being herewith fully satisfied, does hereby accept ownership of the property described herein in its "as is" condition, without any representation or warranty with respect to fitness for use or otherwise.

- 1) The property conveyed in this Deed consists of the following:

Certain constructed improved roadways (hereinafter collectively referred to as "roadways"), medians, sidewalks, utilities, watermain, storm sewers and sanitary sewers (said storm sewers and sanitary sewers are hereinafter collectively referred to as the "sewer utilities") located in the City of Jersey City, County of Hudson, and State of New Jersey, which are shown on Exhibits A, C, and D attached hereto and made a part hereof, and more particularly described on Exhibit B attached hereto and made a part hereof, certain bridges, including

Record and Return to:

City of Jersey City
Law Department
280 Grove Street
Jersey City, N.J. 07302
Attn: Raymond Reddington, Esq.

COUNTY	STATE	I.P.S.R.F.	TOTAL
00	00	00	00
7/1	7/1	7/1	7/1

BK 4866 PG 195

STATE OF NEW JERSEY
AFFIDAVIT OF CONSIDERATION OR EXEMPTION
(c. 49, P.L. 1968)

ALL-STATE LEGAL SUPPLY CO.
One Commerce Drive, Cranford, N. J. 07016

DGRV17-2

To Be Recorded With Deed Pursuant to c. 49, P.L. 1968, as amended by c. 235, P.L. 1983 (N.J.S.A. 46:15-3 et seq.)

STATE OF NEW JERSEY

COUNTY OF HUDSON

FOR RECORDER'S USE ONLY

Consideration \$ 214,000
Ready Transfer Fee \$ 19.00
Date 5-31-85 By [Signature]

(1) TRANSFEROR OR LEGAL REPRESENTATIVE (See Instructions #3, 4 and 5 on reverse side)

Deponent, Raymond Redington

being duly sworn according to law upon his/her oath deposes and says that he/she is the legal representative of the Grantor

In a deed dated May 23, 1984 transferring real property identified as Block No. 261, 225, 285, 253, 210, 205, 14, 5, 01, 5, 09, 5, 16, 5, 10, 2, 13, 5, 06 Lot No. 11, 2, 12, 22, 5 located at Sixth Street and other streets, Newport Redevelopment area Jersey City, Hudson County

(2) CONSIDERATION (See Instruction #6)

Deponent states that, with respect to deed hereto annexed, the actual amount of money and the monetary value of any other thing of value constituting the entire consideration paid or to be paid for the transfer of title to the lands, tenements or other realty, including the monetary amount of any other thing of value, is \$1.00

(3) FULL EXEMPTION FROM FEE

Deponent claims that this deed transaction is fully exempt from the Ready Transfer Fee imposed by c. 49, P.L. 1968, for the following reason(s): Explain in detail. (See Instruction #7.) Mere reference to exemption symbol is not sufficient.

7(a) & (b) Grantor is a municipality which is a subdivision of the State.

Deed dedicates roadways as public right of way.

(4) PARTIAL EXEMPTION FROM FEE

NOTE: All boxes below apply to grantor(s) only. ALL BOXES IN APPROPRIATE CATEGORY MUST BE CHECKED. Failure to do so will void claim for partial exemption. (See Instructions #8 and #9)

Deponent claims that this deed transaction is exempt from the increased portion of the Ready Transfer Fee imposed by c. 176, P.L. 1973 for the following reason(s):

a) SENIOR CITIZEN (See Instruction #8)

☐ Grantor(s) 62 yrs. of age or over, *
☐ One or two-family residential premises

☐ Owned and occupied by grantor(s) at time of sale.
☐ No joint owners other than spouse or other qualified exempt owners.

b) DISABLED (See Instruction #8)

☐ Grantor(s) legally blind, *
☐ One or two-family residential premises.

☐ Owned and occupied by grantor(s) at time of sale.
☐ No joint owners other than spouse or other qualified exempt owners.

c) DISABLED (See Instruction #8)

☐ Grantor(s) permanently and totally disabled, *
☐ One or two-family residential premises.
☐ Receiving disability payments.

☐ Owned and occupied by grantor(s) at time of sale.
☐ Not gainfully employed.
☐ No joint owners other than spouse or other qualified exempt owners.

*IN THE CASE OF HUSBAND AND WIFE, ONLY ONE GRANTOR NEED QUALIFY.

d) LOW AND MODERATE INCOME HOUSING (See Instruction #8)

☐ Afforded according to H.U.D. standards.
☐ Made under provisions of Region.

☐ Reserved for Occupancy.
☐ Subject to Rental Controls.

e) NEW CONSTRUCTION (See Instruction #9)

☐ Built after January 1, 1978.
☐ Not previously occupied.

☐ Not previously occupied.

Deponent makes this Affidavit to induce the County Clerk or Register of Deeds to record the deed and accept the fee submitted herewith in accordance with the provisions of c. 49, P.L. 1968.

Subscribed and sworn to before me this 31st day of May, 1985.

At Jersey City, NJ

ANANIAS S. ABUNQUE

Notary Public for New Jersey

Raymond Redington
City Hall, 280 Grove St.
Jersey City, NJ

Neapack Associates
Development Company
2 Sixth Street
Jersey City, NJ

FOR OFFICIAL USE ONLY This space for use of County Clerk or Register of Deeds.
My Comm. Expires On 06/01/87 Instrument Number 008077 County Hudson
L.D. No. 20100 Deed Number 0-28-95 Book 5-31-85 Page 1
Date Dated 5-31-85 Date Recorded 5-31-85

IMPORTANT - BEFORE COMPLETING THIS AFFIDAVIT, PLEASE READ THE INSTRUCTIONS ON THE REVERSE SIDE HEREOF.
This form is prescribed by the Director, Division of Taxation in the Department of the Treasury, as required by law, and may not be altered or amended without the approval of the Director.
ORIGINAL - While copy to be retained by County.
DUPLICATE - 1 more copy to be forwarded by County to Division of Taxation on partial exemption from two (2) A.L.A.C. 10110-6.10.
TRIPPLICATE - Pink copy is your file copy.

BK4866PG196

bridge abutments, piers, foundation structures (hereinafter collectively referred to as the "bridges"); and all appurtenant street hardware, drainage structures, pipes, conduits, manholes, and landscaping, (hereinafter collectively referred to as the "tangible property"), traffic signal equipment, and street lighting equipment existing within the roadway rights of way as shown on Exhibits A, C and D, but not including that portion of any sewer pipeline constructed on and extending from any of Grantor's property to the sewer main connection or water pipe line constructed on and extending from any of Grantor's property to any water main connection located in any of the roadways dedicated herein.

2) In connection with the conveyance of this property, the Grantee covenants that:

a) Except for the maintenance of landscaping on roadway medians, landscaping on the sidewalk area, and landscaping on areas located on both sides of the 11th Street Viaduct, Grantee shall repair, maintain, replace and operate those items specifically described in paragraph 1 aforesaid in conformance with the then existing design standards of Grantee.

b) Grantee shall assume all obligations of Grantor under any existing easements and encumbrances of record affecting the roadways, utilities, sewer utilities, bridges and tangible property for the remaining term of said easements and encumbrances. It is hereby acknowledged by Grantee that Grantor's obligations under all of the aforementioned documents ceased upon the execution of the Newport Roadways and Municipal Utilities Dedication Agreement Phase II dated July 13, 1995.

c) Grantee shall assume the following obligations presently performed by the Grantor: lighting, garbage collection, and removal of snow and ice from the roadways up to the curb line but excluding the sidewalks.

3) In connection with the conveyance of this property, the Grantor covenants that:

a) Grantor shall maintain the landscaping on the roadway medians; the landscaping on the sidewalk areas and the landscaping of the areas located on both sides of the 11th Street Viaduct.

b) Grantor shall maintain that portion of any sewer pipeline constructed on and extending from any of Grantor's property to the sewer main connections or water pipe line constructed on and extending from any of Grantor's property to any water main connection located in any of the roadways.

4) The conveyance of this property is made subject to the following:

a) All easements in, on, or below the roadways, utilities, sewer utilities, bridges, tangible property and properties conveyed by this Deed and recorded in the Office of the Hudson County Register for the benefit of public or private entities for the purpose of installing, operating, maintaining, inspecting, protecting, repairing, replacing or reconstructing any existing water, sewer or other utility lines or utility services, including the sewer utilities, together with the right of ingress and egress across the dedicated property at all times for such purposes and all other purposes in connection with or in any way relating to the public or private utilities' respective use or operation of water, sewer or other utility lines or utility services including the sewer utilities, and the medians, sidewalks, bridges, and tangible property.

b) All existing easements, encumbrances, and agreements which have been recorded in the Office of the Register of Hudson County prior to the effective date of the dedication of the roadways, utilities, and other items made reference to in Paragraph 1 herein which is hereby deemed to be the date of the delivery of this Deed to the City.

c) Those easements listed on Exhibit F attached hereto and made a part hereof (formerly described in Jersey City Ordinance 93.051 Accepting the Dedication of Certain Phase II Roadways, Sidewalks, Medians, Watermains, Utilities and Bridges located within the Newport Redevelopment Zone as unrecorded and unexecuted easements) which were recorded in the Office of the Register of Hudson County after the adoption of the aforementioned Ordinance but prior to the date of the delivery of this Deed to the City.

5) The conveyance of the property is made subject to the following reservations:

a) Subject to compliance with all applicable federal, state, county, and municipal laws and regulations and subject to review and approval by the municipal engineer of the City of Jersey City, which approval shall not be unreasonably withheld or delayed, Grantor shall be permitted to modify the roadways, medians, sidewalks, watermains, bridges, utility systems, and sewer utilities being conveyed, including the tangible property and their hardware and appurtenances, and to install, modify and maintain advertising signage within the respective roadways right-of-way as the Newport Project continues to develop to its full build-out as established in the November 1983 Final Environmental Impact Statement for the Newport City Development Project as prepared by the City of Jersey City and the February 1985 Newport Redevelopment Plan as amended by the Jersey City Planning Board on July 12, 1988 and by the Jersey City Council on September 22, 1988.

b) Grantor reserves the right to have the City repair, maintain, replace and operate those certain roadways, medians, sidewalks, watermains, bridges, utilities, sewer utilities, tangible property and properties, and items made reference to in paragraph 1 aforesaid in accordance with a design standard, more costly than that of the Grantee's then existing design standard and shall exercise said right by giving Grantee reasonable notice of its decision and agreeing to pay the additional cost above the then existing design standard cost of each such item to be repaired, maintained, replaced or operated. Grantee shall cooperate with the Grantor by providing, in writing, the then existing design standard cost of any item to Grantor. Nothing contained herein this reservation shall obligate the Grantor to undertake such repairs, maintenance, replacements or operations in the roadways, medians, sidewalks, watermains, bridges, sewer utilities, tangible property, utilities, and properties aforesaid.

c) In the event Grantee fails to timely repair, maintain, replace, and operate those certain roadways, medians, sidewalks, watermains, bridges, utilities, sewer utilities, tangible property, properties and other items made reference to in paragraph 1, Grantor reserves the right to undertake the repair, maintenance, replacement, and operation of the roadways, medians, sidewalks, watermains, bridges, utilities, sewer utilities, tangible property, properties and other items aforesaid at its own cost and expense but shall only exercise said right after giving the Grantee 10 days written notice of its intention to do so and after obtaining street opening and closing permits. Nothing contained herein this reservation shall obligate the Grantor to undertake such repairs, maintenance, replacements or operations in the roadways, medians, sidewalks, watermains, bridges, utilities, sewer utilities, tangible property and properties aforesaid.

d) Notwithstanding anything herein to the contrary, Grantor shall remain the fee title owner of that portion of any sewer pipeline constructed on and extending from Grantor's property to the sewer main connection or water pipe line constructed on and extending from Grantor's property to the water main connection located in any of the roadways.

Grantor covenants that Grantee shall not be responsible to Grantor or any regulatory agency for performing mitigation or remediation of environmental threshold exceedences of any nature or kind which existed on the dedicated lands before the execution of the Newport Roadways and Municipal Utilities Dedication Agreement - Phase II dated July 23, 1993.

Grantor covenants that it will continue to be responsible for monitoring post construction activities and compliance with the Remedial Plan, to the extent that said plan is applicable to the dedicated lands, during such activities pursuant to the Newport Administrative Consent Order and Amended Consent Order with the Department of Environmental Protection, except as may be otherwise specifically provided for in an Agreement dated January 30, 1986 and amended November 21, 1990, between the City, the Jersey City Redevelopment Agency and/or Grantor pertaining to post construction activity affecting the roadways and/or utilities including sewer

utilities, dedicated under the Newport Roadways and Municipal Utilities Dedication Agreement - Phase II dated May 12, 1993. Further, Grantor covenants that if any portion of the dedicated lands are disturbed as a result of Grantor's environmental obligations, Grantor shall be responsible for restoring the improvements to their original condition. Further, Grantor acknowledges that Grantee shall assume no obligations of Grantor imposed by the New Jersey Department of Environmental Protection Permits which affect the dedicated lands by Grantor to Grantee under the Newport Roadways and Municipal Utilities Dedication Agreement - Phase II dated May 12, 1993. Grantee shall have no responsibility to Grantor or to any regulatory agency for performing mitigation or remediation of environmental threshold exceedences of any nature or kind which existed on the dedicated lands prior to or as of the date of the delivery of this Deed to the City.

The invalidity of any covenant, restriction, exception, reservation, limitation or other provision set forth herein shall not impair or affect in any manner the validity, enforceability, or effectiveness of the balance of this conveyance and each covenant, restriction, reservation, exception, condition, limitation, or other provision shall be enforceable to the greatest extent permitted by law. The covenants, restrictions, exceptions, reservations, limitations, and provisions contained herein are covenants only and are not conditions, and the failure of the parties to satisfy any such covenants, restrictions, exceptions, reservations, limitations, or provisions shall not result in a forfeiture or reversion of title.

The failure of Grantor or Grantee to enforce any easement, covenant, reservation, exception, or restriction, limitation or provision created by this Deed shall not be deemed a waiver of the right to enforce the same thereafter as to any breach thereof, nor as to any breach occurring prior or subsequent thereto. Any waiver made by any party to this Deed must be duly made in writing in order to be considered a waiver of any other provision thereof unless specifically made in writing as aforementioned.

The covenants, restrictions, exceptions, reservations, limitations, or other provisions made in this Deed are legally binding on Grantor and all who lawfully succeed to Grantor's rights and responsibilities, including Grantor's successors and assigns. The covenants, restrictions, exceptions, reservations, limitations, or other provisions, made in this Deed can be enforced by Grantor and all who lawfully succeed to Grantor's rights and responsibilities, including Grantor's successors and assigns. The covenants, restrictions, exceptions, reservations, limitations, or other provisions made in this Deed are legally binding on Grantee, and all who lawfully succeed to Grantee's rights and responsibilities, including Grantee's successors and assigns. The covenants, reservations, limitations, restrictions, exceptions or other provisions made herein by Grantee can be enforced by Grantee and all future owners of the property, including Grantee's successors and assigns.

The covenants, restrictions, exceptions, reservations, limitations, or other provisions made in this Deed shall be construed and governed by the laws of the State of New Jersey without giving effect to the principles of conflict of laws.

All notices, demands, requests or other communications which may be or are required to be given, served or sent under this Deed shall be in writing and shall be deemed to have been properly given or sent:

(a) if personally served upon each of the parties and any other party subject to this Deed, or

(b) if mailed by registered or certified mail with postage prepaid, return receipt requested, addressed to the other party at each party's respective address as follows:

- (1) Newport Associates Development Company
#2 Sixth Street
Jersey City, New Jersey 07310
Attn: Richard S. Lefrak, Esq.
- (2) City of Jersey City
Office of the City Clerk
City Hall, 280 Grove Street
Jersey City, New Jersey 07302
Attn: Robert Byrne, City Clerk

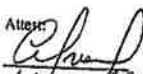
with a copy of each notice addressed to Grantor also sent to:

Richard S. Lefrak, Esq.
40 West 57th Street, Room 1510
New York, NY 10019

Randolph L. Foxworthy, Esq.
155 W. Washington Street
P.O. Box 7033
Indianapolis, IN 46207

Howard L. Boris, Esq.
97-77 Queens Boulevard, Penthouse Floor
Rego Park, NY 11374

IN WITNESS WHEREOF, the Grantor and Grantee have entered into this Agreement as of the date and year first above written.

Attest:

Laurence M. Greenwald
Assistant Secretary

NEWPORT ASSOCIATES DEVELOPMENT COMPANY,
a New Jersey General Partnership

By: SIMON NEWPORT LIMITED PARTNERSHIP,
an Indiana limited partnership

By: S.N.P., Inc.,
an Indiana corporation,
general partner therein

Dated: 5/4/95

By: 
Name: R.L. Foxworthy
Title: Vice President
(corporate seal)

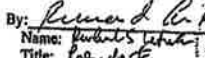
Attest:

Paul J. Greenwald
Assistant Secretary

By: LF NEWPORT JERSEY LIMITED
PARTNERSHIP,
a New Jersey limited partnership

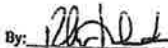
By: Newport Real Estate Dev. Corp.,
a New Jersey corporation,
a general partner therein

Dated: 5/4/95

By: 
Name: Robert Lombard
Title: President
(corporate seal)



CITY OF JERSEY CITY

By: 
Name: Robert Lombard,
Title: Business Administrator

Approved as legal counsel
Raymond Roddington,
Assistant Corporation Counsel, City of Jersey City

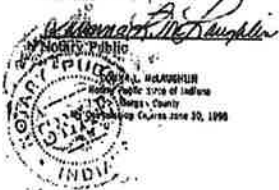
STATE OF INDIANA
)ss:
COUNTY OF MARION

BE IT REMEMBERED that on May 5, 1995, before me, the subscriber, personally appeared R. L. Foxworthy, who, being by me duly sworn upon his oath, deposes and makes proof to my satisfaction that, he is the Vice President of S.N.P., Inc., an Indiana corporation which is a general partner in Simon Newport Limited Partnership, an Indiana limited partnership, a general partner in Newport Associates Development Company, a New Jersey general partnership and the entity that executed the within instrument; that deponent knows that R. L. Foxworthy is the Vice President of said corporation and he acknowledged before me that he received a true copy of the within instrument on behalf of the entity named within.

The execution as well as the making of this instrument has been duly authorized by a proper resolution of the Board of Directors of said corporation; that the deponent well knows the corporate seal of said corporation; that the seal affixed to the said instrument is the proper corporate seal and was thereto affixed and said instrument signed and delivered by said Vice President as and for the voluntary act and deed of said corporation as general partner in Simon Newport Limited Partnership; as general partner in Newport Associates Development Company in the presence of the deponent who thereupon subscribed his name thereto as attesting witness.


Name of Attesting Witness:
Title: Lawrence A. Greenwald
Assistant Secretary

Sworn to and subscribed
before me on the date
aforesaid



STATE OF New York
COUNTY OF Westchester

BE IT REMEMBERED that on Dec. 4, 1995, before me, the subscriber, personally appeared Richard S. Leitch, who, being by me duly sworn upon his oath, deposes and makes proof to my satisfaction that, he is the President of Newport Real Estate Dev. Corp., a New Jersey corporation which is a general partner in LP Newport Jersey Limited Partnership, a New Jersey limited partnership, a general partner in Newport Associates Development, a New Jersey general partnership and the entity that executed the within instrument; that deponent knows that Richard S. Leitch is the President of said corporation and he acknowledged before me that he received a true copy of the within instrument on behalf of the entity named within.

The execution as well as the making of this instrument has been duly authorized by a proper resolution of the Board of Directors of said corporation; that the deponent well knows the corporate seal of said corporation; that the seal affixed to the said instrument is the proper corporate seal and was thereto affixed and said instrument signed and delivered by said Richard S. Leitch as and for the voluntary act and deed of said corporation as general partner in LP Newport Jersey Limited Partnership; as general partner in Newport Associates Development Company in the presence of the deponent who thereupon subscribed his name thereto as attesting witness.

[Signature]
Name of Attesting Witness: Paul P. Brown
Title: Notary Public

Sworn to and subscribed
before me on the date
aforesaid

[Signature]
Notary Public



STATE OF NEW JERSEY)

COUNTY OF HUDSON)

BE IT REMEMBERED that on May 23, 1995, before me, the subscriber, personally appeared **ROBERT LOMBARD**, who, being by me duly sworn upon his oath, deposes and makes proof to my satisfaction that, he is the Business Administrator of the City of Jersey City the entity that executed the within instrument; that deponent knows that **ROBERT LOMBARD** is the Business Administrator of said City and he acknowledged before me that he received a true copy of the within instrument on behalf of the entity named within.

The execution as well as the making of this instrument has been duly authorized by a proper resolution of the Mayor, and City Council of the City of Jersey City; that the deponent well knows the seal of said City; that the seal affixed to the said instrument is the proper seal and was thereto affixed and said instrument signed and accepted by said Business Administrator as and for the voluntary act and deed of said City in the presence of the deponent who thereupon subscribed his name thereto as attesting witness.

ROBERT BYRNE,
City Clerk,
City of Jersey City

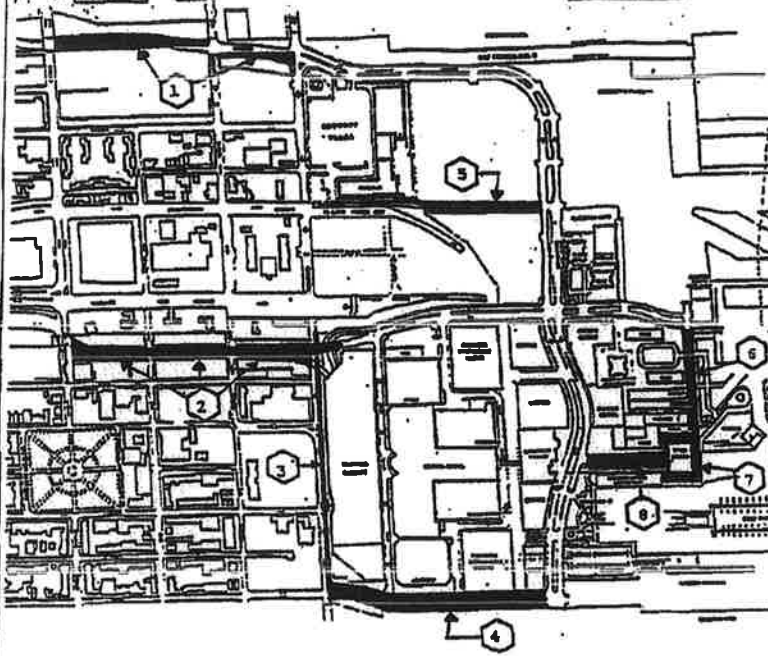
Sworn to and subscribed
before me on the date
aforesaid

Ronald R. Ralston
Notary Public Alameda, at Law

Record and Return to:
City of Jersey City
Law Department
280 Grove Street
Jersey City, N.J. 07302
Attn: Joanne Monahan, Esq.
Raymond Reddington, Esq.

Map - Dwd-01.7

EXHIBIT A



LEGEND

1. Eighteenth Street (Block 261 Lot 11, Block 225 Lot 2)
2. Eleventh Street Viaduct (Block 285 Lot 12, Block 253 Lot 22, Block 216 Lot 3) including Bridges at Erie Street, Manilla Avenue, Luis Munoz Marin Boulevard and Mall Road. (The Ramp Bridge to the Mall Parking Garage and its foundation will be retained by Newport).
3. Luis Munoz Marin Boulevard Widening (Block 20 Lot 5.14)
4. Sixth Street (Block 20 Lot 5.01)
5. Fourteenth Street (Block 20 Lot 5.09)
6. River Drive South (Block 20 Lot 5.16)
7. Town Square Ring Road (Block 20 Lot 5.10)
8. Pavonia Avenue (Block 20 Lot 5.06)

NEWPORT ROADWAY DEDICATION PHASE II

BK 4866 PG 206

EXHIBIT "B"

BK4866PG207

GEOD

DESCRIPTION OF PROPOSED LOT 11 BLOCK 261

A COPY OF THIS DEED
MAY BE SEEN HERE TO ANYONE ON OR-OR

As shown on, GEOD Corporation Final Subdivision of Eighteenth Street
Corridor at Newport, Jersey City, Hudson County, New Jersey, date
May 17, 1991, NADC drawing number 120,06, and more particularly
described as follows:

BEGINNING at a point (N693,122.95 E2,173,336.84), in the westerly line
of Grove Street (80 feet wide), distant 72.99 feet measured northerly
along said westerly line of Grove Street from its intersection with
the projected northerly line of Eighteenth Street (60 feet wide), also
being in the dividing line of lands now or formerly of Newport
Associates Development Company, designated as proposed Lots 10 and 11
of Block 261 and Lot 2 of Block 292.1 as shown on said map and running
from said beginning point; thence,

- 1) North 83 degrees 30 minutes 30 seconds west for a distance of
431.70 feet to a point along the northerly line of Eighteenth
Street (60 feet wide); thence, still
- 2) North 83 degrees 30 minutes 30 seconds west for a distance of
395.39 feet to a point in the easterly line of Jersey Avenue (80
feet wide); thence,
- 3) North 06 degrees 16 minutes 35 seconds east along said easterly
line of Jersey Avenue for a distance of 68.00 feet to a point in
the dividing line between Lot 11 and Lot 10; thence,
- 4) South 83 degrees 30 minutes 30 seconds east along the same
dividing line for a distance of 395.23 feet to a point of curve;
thence,
- 5) Southeasterly along a curve to the right, having a radius of
799.00 feet, an arc length of 236.40 and a delta of 16 degrees 31
minutes 07 seconds, to a point of reverse curve; thence,
- 6) Southeasterly on a curve to the left, having a radius of 766.00
feet, an arc length of 226.63 feet and a delta of 16 degrees 37
minutes 07 seconds, to the point and place of beginning.

Containing 42,507 square feet 0.976 acres.

Being also known and designated as part of Lot F2 in Block 261 on the
current Tax Assessment Map of the City of Jersey City.

Paul J. Calibus
Paul J. Calibus, PLS, FF
N.J.P.L.S. No. 11363

EX 4 866 PG 208

GEOD

DESCRIPTION OF PROPOSED LOT 2 BLOCK 225

A COPY OF THIS DEED
HAS BEEN SENT TO ASSESSMENT OFFICE

As shown on, GEOD Corporation Final Subdivision of Eighteenth Street Corridor at Newport, Jersey City, Hudson County, New Jersey, date May 17, 1991, NADC drawing number 120.06, and more particularly described as follows:

BEGINNING at a point (N693.012.33 E2,179,801.18), of intersection of the westerly line of Luis Munoz Marin Boulevard (60 feet wide), and the southerly line of Eighteenth Street (60 feet wide) distant 100.00 feet measured northerly along said westerly line of Luis Munoz Boulevard from the change in width of said boulevard; thence, along said westerly line of Luis Munoz Marin Boulevard,

- 1) South 06 degrees 15 minutes 42 seconds west for a distance of 100.00 to a point at the change in width of Luis Munoz Marin Boulevard; thence,
- 2) North 83 degrees 44 minutes 18 seconds west for a distance of 10.00 feet to a point along the boundary Lot 1 Block 225; thence, the following three courses and distances running along Lot 1 and Lot 2 of Block 225,
- 3) North 06 degrees 15 minutes 42 seconds east for a distance of 88.07 feet to a point; thence,
- 4) Northwesterly along a curve to the left, having a radius of 465.00 feet, an arc length of 149.80 feet and a delta of 18 degrees 27 minutes 27 seconds, to a point of tangent; thence,
- 5) North 83 degrees 49 minutes 10 seconds west for a distance of 236.30 feet to a point in the easterly line of Grove Street (80 feet wide), thence, along said line,
- 6) North 06 degrees 11 minutes 54 seconds east for a distance of 8.00 feet to the point of intersection with the south line of Eighteenth Street (60 feet wide); thence, along the southerly line of Eighteenth Street,
- 7) South 83 degrees 49 minutes 10 seconds east for a distance of 393.56 feet to the point and place of beginning.

Containing 3,230 square feet 0.120 acres.

Being also known and designated as part of Lot M1 in Block 225 on the current Tax Assessment Map of the City of Jersey City.

Paul J. Emilius
Paul J. Emilius, PLS, PP
N.J.P.L.S. No. 11363

BK 4866 PG 209



GEOD CORPORATION

PHOTOGRAMMETRIC SCIENCES - SURVEY TECHNOLOGIES

A COPY OF THIS DEED
HAS BEEN SENT TO ADEQUATE OFFICE

DESCRIPTION OF PROPOSED LOT 12 BLOCK 286

As shown on, GEOD Corporation Final Subdivision of Eleventh Street Corridor at Newport, Jersey City, Hudson County, New Jersey, date May 17, 1991, NADC drawing number 120.07, and more particularly described as follows:

BEGINNING at a point (N 691,202.67 E 2,172,675.74), in the Westerly line of Erie Street (60 feet wide), distant 199.86 feet measured Northerly along said Westerly line of Erie Street from its intersection with the Northerly line of Tenth Street (60 feet wide), also being in the dividing line of lands now or formerly of Newport Associates Development Company, designated as proposed Lot 1 of Block 287 and Lot 12 of Block 286 as shown on said map and running from said beginning point; thence, along said Westerly line of Erie Street,

- 1) South 06 degrees 10 minutes 36 seconds West for a distance of 60.00 feet to a point in the dividing line between Lot 12 and Lot 11 of Block 286; thence, along said dividing line,
- 2) South 83 degrees 48 minutes 58 seconds East for a distance of 400.00 feet to a point in the Easterly line of Jersey Avenue (80 feet wide); thence, along said Easterly line,
- 3) North 05 degrees 10 minutes 36 seconds East for a distance of 130.00 feet to a point on the dividing line of Lot 1 Block 287; thence, along said dividing line on a curve to the left,
- 4) South Easterly along a curve to the left, having a radius of 125.00 feet an arc length of 109.44 and a delta of 50 degrees 09 minutes 50 seconds to a point along the same dividing line; thence,
- 5) South 83 degrees 48 minutes 58 seconds East for a distance of 320.44 feet to the point and place of BEGINNING.

Containing 25,944 square feet 0.596 acres.

Being also known and designated as part of Lot H in Block 286 and part of Lot S in Block 287 on the current Tax Assessment Map of the City of Jersey City.

Paul C. Emilius
PAUL C. EMILIUS, PLS, PP
N.J.P.L.S. NO. 11363

113-4116.mxd

18-24 Marquette Road, Newboundford, N.J. 07405
(201) 607-2122 FAX (201) 638-8433

OFFICES: New York City, New York
Waltham, New Hampshire
Medway, Massachusetts

(212) 850-7700
(603) 888-6000
Fax (603) 888-6200
(603) 825-1290

BK4866PG210



GEOD CORPORATION
PHOTOGRAMMETRIC SCIENCES - SURVEY TECHNOLOGIES

A COPY OF THIS DEED
HAS BEEN SENT TO APPROPRIATE OFFICE

DESCRIPTION OF PROPOSED LOT 22 BLOCK 253

As shown on, GEOD Corporation Final Subdivision of Eleventh Street Corridor at Newport, Jersey City, Hudson County, New Jersey, date May 17, 1991, NADC drawing number 120.07, and more particularly described as follows:

BEGINNING at a point (N 691,252.41 E 2,173,143.81), in the Westerly line of Manila Avenue (60 feet wide), distant 199.81 feet measured Northerly along said Westerly line of Manila Avenue from its intersection with the Northerly line of Tenth Street (60 feet wide), also being in the dividing line of lands now or formerly of Newport Associates Development Company, designated as proposed Lot 22 of Block 253 and Lot 1 of Block 254 as shown on said map; thence, running from said beginning point, along the Westerly sideline of Manila Avenue,

- 1) South 06 degrees 10 minutes 36 seconds West for a distance of 60.00 feet to a point, also being in the dividing line between Lot 21 and Lot 22 of Block 253; thence, leaving said Westerly sideline and running along said lot line,
- 2) North 83 degrees 48 minutes 58 seconds West for a distance of 400.00 feet to a point in the Easterly sideline of Erie Street; thence, along said Erie Street sideline,
- 3) North 06 degrees 10 minutes 36 seconds East for a distance of 60.00 feet to a point in the dividing line between Lot 22 of Block 253 and Lot 1 of Block 254; thence, along said dividing line,
- 4) South 83 degrees 48 minutes 58 seconds East to the point and place of BEGINNING.

Containing 24,000 square feet 0.551 acres.

Being also known and designated as part of Lot A in Block 253 on the current Tax Assessment Map of the City of Jersey City.

Paul E. Emilius
PAUL E. EMILIUS, PLS, FP
N.J.P.L.S. NO. 11363

122-132.04

16-24 Karouse Road, New Brunswick, N.J. 07433
(201) 897-2122 FAX: (201) 838-6433

OFFICES: New York City, New York
Waltham, New Hampshire
Medway, Massachusetts

(212) 890-7730
(603) 543-6089
Fax: (603) 543-6319
(603) 433-1200

BK 4866 Pg 2 1/1



GEOD CORPORATION
 PHOTOGRAMMETRIC SCIENCES - SURVEY TECHNOLOGIES

A COPY OF THIS DEED
 HAS BEEN SENT TO ADEQUATE OFFICE

DESCRIPTION OF PROPOSED LOT 5 BLOCK 218

As shown on, GEOD Corporation Final Subdivision of Eleventh Street Corridor at Newport, Jersey City, Hudson County, New Jersey, date May 17, 1991, NADC drawing number 120.07, and more particularly described as follows:

BEGINNING at a point (N 691,252.39 E 2,173,608.07), in the Westerly line of Luis Munoz Marin Boulevard (60 feet wide), distant 249.75 feet measured Northerly along said Westerly line of Luis Munoz Marin Boulevard from its intersection with the Northerly line of Tenth Street (60 feet wide), also being in the dividing line between Lots S Block 218 and Lot A of Block 219 as designated on the current Tax Assessment Map of the City of Jersey City; thence, along the Westerly line of Luis Munoz Marin Boulevard, the following course and distance to the point of beginning,

- a) South 06 degrees 15 minutes 42 seconds West for a distance of 30.00 feet to the point of beginning, also being in the dividing line between Lot 3 and Lot 3 of Block 218; thence, continuing along said Westerly line,
- 1) South 06 degrees 15 minutes 42 seconds West for a distance of 121.82 feet to a point in the dividing line between Lot 5 and Lot 2; thence, along said dividing line the following three courses and distances,
- 2) Northwesterly a curve to the left having a radius of 215.00 feet, an arc length of 108.36 feet and a delta of 28 degrees 55 minutes 48 seconds to a point of tangent; thence,
- 3) North 78 degrees 48 minutes 58 seconds West for a distance of 298.63 feet to a point,
- 4) North 83 degrees 48 minutes 58 seconds West for a distance of 2.55 feet to a point in the Easterly line of Manila Avenue; thence, along said Easterly line,
- 5) North 06 degrees 10 minutes 36 seconds East for a distance of 60.00 feet to a point in the dividing line between Lot 3 and Lot 5; thence, along said dividing line,
- 6) South 83 degrees 48 minutes 58 seconds East for a distance of 401.49 feet to the point and place of **BEGINNING**.

Containing 31,919 square feet 0.733 acres,

Being also known and designated as part of Lot B6 in Block 218 on the current Tax Assessment Map of the City of Jersey City.

Paul G. Emilius
 PAUL G. EMILIUS, PLS, PP
 N.J.P.L.S. NO. 11363

LS-4218and

18-24 Marouan Road, Newboundland, N.J. 07435
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OFFICES: New York City, New York (212) 680-7700
 Woburn, New Hampshire (603) 688-0268
 Medway, Massachusetts (603) 688-0128 FAX: (603) 688-0128

8K4866PG2 1/2



GEO D CORPORATION
PHOTOGRAMMETRIC SCIENCES - SURVEY TECHNOLOGIES

A COPY OF THIS DEED
HAS BEEN SENT TO LANDMARKS OFFICE

DESCRIPTION OF LOT 5:14

As shown on, GEOD Surveying & Aerial Mapping Final Subdivision Plat at Newport, Jersey City, Hudson County, New Jersey, date November 12, 1990, NADC drawing number 120.01 and 120.02, and is more particularly described as follows:

Beginning at a point (N 689,587.70 E 2,173,485.78), being the common intersection of the southwesterly corner of the lands, now or formerly, of NEWPORT ASSOCIATES DEVELOPMENT COMPANY, and the northwesterly corner of the lands, now or formerly of HARSIMUS COVE SOUTH DEVELOPMENT COMPANY, said point also being the intersection of the westerly line of Lot 5.14 and the easterly right-of-way line (30 feet from centerline) of LUIS MUNOZ MARIN BOULEVARD (formerly HENDERSON STREET); thence,

- 1) Along the easterly line of said LUIS MUNOZ MARIN BOULEVARD, N06°-15'-42"E 1638.19 feet, to a point, being the southwesterly corner of Port Authority Damage Parcel 1; thence,
- 2) Along the southerly line of Port Authority Damage Parcel 1, S83°-48'-58"E 12.00 feet, to a point, (42 feet from centerline of LUIS MUNOZ MARIN BOULEVARD); thence,
- 3) Along a line, (42 feet from centerline of said LUIS MUNOZ MARIN BOULEVARD), S06°-15'-42"W 300.83 feet, to a point; thence,
- 4) S09°-41'-43"W 100.18 feet to a point, (36 feet from centerline of LUIS MUNOZ MARIN BOULEVARD); thence,
- 5) Along a line, (36 feet from centerline of said LUIS MUNOZ MARIN BOULEVARD), S06°-15'-42"W 1239.44 feet, to a point in the line of aforesaid lands now or formerly of HARSIMUS COVE SOUTH DEVELOPMENT COMPANY; thence,
- 6) Along the line of said lands now or formerly of HARSIMUS COVE SOUTH DEVELOPMENT COMPANY, N64°-45'-01"W 6.34 feet, to the point and place of beginning.

Containing 12,060 square feet 0.277 acres

Paul J. Emilius
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(508) 533-1200

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GEO D CORPORATION
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DESCRIPTION OF LOT 5.01

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As shown on, GEO D Surveying & Aerial Mapping Final Subdivision Plat at Newport, Jersey City, Hudson County, New Jersey, date November 12, 1990, NADC drawing number 120.01 and 120.02, and is more particularly described as follows:

Starting at a point (N 689,587.70 E 2,173,485.78), being the common intersection of the southwesterly corner of the lands, now or formerly, of NEWPORT ASSOCIATES DEVELOPMENT COMPANY, and the northwesterly corner of the lands, now or formerly of HARSIMUS COVE SOUTH DEVELOPMENT COMPANY, said point also being the intersection of the westerly line of Lot 5.14 and the easterly right-of-way line (30 feet from centerline) of LUIS MUNOZ MARIN BOULEVARD (formerly HENDERSON STREET); thence, the following courses to the point and place of beginning:

- a) Along the northerly line of the said lands now or formerly of HARSIMUS COVE SOUTH DEVELOPMENT COMPANY, said line also being the southerly line of the said Lot 5.14, S64°-43'-01"E 6.34 feet, to a point, said point also being the southwesterly corner of Lot 7.01; thence,
- b) Along the westerly line of said Lot 7.01, said line also being the easterly line of said Lot 5.14, N06°-15'-42"E 16.35 feet to the point and place of beginning; thence,
- 1) Still along the easterly line of Lot 5.14, N06°-15'-42"E 160.09 feet, to a point, said point also being a southwesterly corner of the southwest quadrant; thence,
- 2) Along the southerly line of the said southwest quadrant in a southeasterly direction on a curve to the left, having a radius of 33.00 feet, an arc length of 80.30 feet, a delta of 86°-48'-37", and a chord of S37°-08'-37"E 72.84 feet, to a point of reverse curve; thence,
- 3) Along the same, in an easterly direction, on a curve to the right, having a radius of 33.00 feet, an arc length of 98.88 feet, a delta of 16°-08'-29", and a chord of S72°-28'-41"E 98.56 feet, to a point of tangent; thence,

10-24 Kanouse Road, Newfoundland, N.J. 07433
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OFFICES: New York City, New York
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Description of Lot 5.01
Page 2

- 4) Still along the same, S64°-24'-26"E 169.85 feet, to a point of curve; thence,
- 5) Still along the same, in an easterly direction, on a curve to the left, having a radius of 249.00 feet, an arc length of 83.44 feet, a delta of 19°-39'-39", and a chord of S74°-14'-16"E 85.02 feet, to a point of tangent; thence,
- 6) Still along the same, S84°-04'-05"E 789.13 feet, to a point of curve; thence,
- 7) Still along the same, in an northeasterly direction on a curve to the left, having a radius 40.00 feet, an arc length of 36.68 feet, a delta of 81°-11'-06", and a chord of N53°-20'-22"E 42.05', to a point of compound curve in the westerly line of Lot 5.02 (Washington Boulevard); thence,
- 8) Along the said westerly line of Lot 5.01, in a southerly direction, on a curve to the right, having a radius of 1058.00 feet, an arc length of 70.17 feet, a delta of 03°-48'-01", and a chord of S16°-38'-30"W 70.16 feet, to a point of tangent; thence,
- 9) Along the same, S18°-32'-50"W 68.59 feet to a point in the northerly line of aforesaid lands, now or formerly, of HARSINUS COVE SOUTH DEVELOPMENT COMPANY; thence,
- 10) Along the said northerly line of lands, now or formerly, of HARSINUS COVE SOUTH DEVELOPMENT COMPANY, then along the northerly line of Lot 7.01, N84°-04'-05"W 800.63 feet, to a point; thence,
- 11) Along the northerly line of said Lot 7.01, in a northwesterly direction, on a curve to the right, having a radius of 351.00 feet, an arc length of 120.44 feet, a delta of 19°-39'-39", and a chord of N74°-14'-16"W 119.85 feet, to a point of tangent; thence,
- 12) Along the same, N64°-24'-26"W 169.85 feet, to a point of curve; thence,
- 13) Still along the same, in a northwesterly direction, on a curve to the left, having a radius of 249.00 feet, an arc length of 84.01 feet, a delta of 19°-19'-52", and a chord of N74°-04'-22"W 83.61 feet, to a point of tangent; thence,

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Description of Lot 5.01
Page 3

- 14) Still along the same, N83°-44'-18"W 16.52 feet, to a point of curve; thence,
- 15) Still along the same, in a southwesterly direction, on a curve to the left, having a radius of 20.00 feet, an arc length of 13.31 feet, a delta of 44°-25'-37", and a chord of S74°-02'-53"W 15.12 feet, to the point and place of BEGINNING.

Containing 124,915 square feet 2.868 acres

Paul J. Emlus

Paul J. Emlus, P.L.S.
N.J. LIC. NO. 11363

BK 4866 PG 216



GEO D CORPORATION
PHOTOGRAMMETRIC SCIENCES - SURVEY TECHNOLOGIES

A COPY OF THIS DEED
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DESCRIPTION OF LOT 3.09

As shown on, GEO D Surveying & Aerial Mapping Final Subdivision Plat at Newport, Jersey City, Hudson County, New Jersey, date November 12, 1990, NADC drawing number 120.01 and 120.02, and is more particularly described as follows:

Starting at a point (N 689,587.70 E 2,173,483.78), being the common intersection of the southwesterly corner of the lands, now or formerly, of NEWPORT ASSOCIATES DEVELOPMENT COMPANY, and the northwesterly corner of the lands, now or formerly of HARSIMUS COVE SOUTH DEVELOPMENT COMPANY, said point also being the intersection of the westerly line of Lot 3.14 and the easterly right-of-way line (30 feet from centerline) of LUIS MUNOZ MARIN BOULEVARD (formerly HENDERSON STREET); thence, the following courses to the point and place of beginning:

- a) Along the westerly line of said Lot 3.14 and along the easterly right-of-way line of the said LUIS MUNOZ MARIN BOULEVARD, N06°-15'-42"E 1638.19 feet, to a point, being the intersection of the easterly right-of-way line of the said LUIS MUNOZ MARIN BOULEVARD with the northwesterly corner of said Lot 3.14, and the southwesterly corner of Port Authority Damage Parcel 1; thence,
- b) Along the northerly line of said Lot 3.14, and the southerly line of said Port Authority Damage Parcel 1, S83°-48'-58"E 37.42 feet to a point; thence,
- c) Along the southerly line of said Port Authority Damage Parcel 1, in a northeasterly direction, on a curve to the right, having a radius of 157.00 feet, an arc length of 142.06 feet, a delta of 31°-30'-30", and a chord of N70°-15'-47"E 137.26 feet, to a point of tangent; thence,
- d) Still along the same, S83°-48'-58"E 75.69 feet, to a point of curve; thence,
- e) Still along the same, in a northeasterly direction, on a curve to the left, having a radius of 290.00 feet, an arc length of 77.90 feet, a delta of 15°-23'-27", and a chord of N88°-29'-12"E 77.67 feet, to a point of tangent; thence,

15-24 Hancock Road, New Brunswick, N.J. 07433
(201) 681-2122 FAX: (201) 685-5432

OFFICES: New York City, New York
Wellesboro, New Hampshire
Methen, Massachusetts

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(603) 549-6379
(508) 533-1290

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DESCRIPTION OF LOT 5.09
Page 2

- f) Still along the same, then along the southerly line of Port Authority Damage Parcel 2, N80°-47'-35"E 281.29 feet, to a point of curve; thence,
- g) Along the southerly line of said Port Authority Damage Parcel 2, in a northeasterly direction, on a curve to the right, having a radius of 1022.00 feet, an arc length of 177.80 feet, a delta of 00°-58'-03", and a chord of N85°-46'-37"E 177.57 feet, to a point of compound curve; thence,
- h) Still along the same, in a southeasterly direction, on a curve to the right, having a radius of 1532.00 feet, an arc length of 146.90 feet, a delta of 05°-23'-24", and a chord of S86°-31'-40"E 146.85 feet, to a point of tangent; thence,
- i) Still along the same, then along the southerly line of the northwest quadrant, S83°-48'-58"E 390.14 feet, to a point of curve; thence,
- j) Still along the same, in a northeasterly direction, on a curve to the left, having a radius of 10.00 feet, an arc length of 15.33 feet, a delta of 87°-49'-39", and a chord of N52°-16'-02"E 13.87 feet, to a point in the westerly line of Lot 5.02 (Washington Boulevard); thence,
- k) Along the westerly line of said Lot 5.02 and the easterly line of the said northwest quadrant, N08°-21'-03"E 340.60 feet to the point and place of beginning; thence,
- 1) Along the said northwest quadrant, in a northwesterly direction, on a curve to the left, having a radius of 25.00 feet, an arc length of 40.21 feet, a delta of 92°-09'-31", and a chord of N37°-43'-53"W 36.02 feet, to a point of tangent; thence,
- 2) Along the same, N83°-48'-48"W 599.39 feet, to a point in the line of lands of others; thence,
- 3) Along said line, N27°-44'-39"W 18.27 feet, to a point; thence,
- 4) Along the same, N02°-49'-40"W 25.11 feet, to a point; thence,

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DESCRIPTION OF LOT 5.09
Page 3

- 5) Still along the same, N83°-42'-19"W 12.60 feet, to a point; thence,
- 6) Still along the same, S27°-32'-06"E 23.92 feet, to a point; thence,
- 7) Still along the same, in a westerly direction, on a curve to the right, having a radius of 902.00 feet, an arc length of 13.82 feet, a delta of 00°-52'-41", and a chord of N82°-32'-27"W 13.82 feet, to a point; thence,
- 8) Still along the same, in a northwesterly direction, on a curve to the left, having a radius of 30.00 feet, an arc length of 60.96 feet, a delta of 69°-51'-08", and a chord of N44°-11'-33"W 37.25 feet, to a point of reverse curve; thence,
- 9) Still along the same, in a westerly direction, on a curve to the right, having a radius of 868.00 feet, an arc length of 47.68 feet, a delta of 03°-08'-50", and a chord of N77°-32'-42"W 47.67 feet, to a point of reverse curve; thence,
- 10) Still along the same, in a westerly direction, on a curve to the left, having a radius of 892.00 feet, an arc length of 122.11 feet, a delta of 07°-50'-37", and a chord of N79°-53'-36"W 122.02 feet, to a point in the former easterly line of vacated Provost Street; thence,
- 11) Along the former easterly line of said vacated Provost Street, N06°-15'-42"E 10.00 feet, to a point; thence,
- 12) Along a southerly line of the aforesaid northwest quadrant, in an easterly direction, on a curve to the right, having a radius of 902.00 feet, an arc length of 123.47 feet, a delta of 07°-50'-34", and a chord of S79°-53'-34"E 123.37 feet, to a point of reverse curve; thence,
- 13) Along the same, in an easterly direction, on a curve to the left, having a radius of 858.00 feet, an arc length of 117.43 feet, a delta of 07°-50'-31", and a chord of S79°-53'-32"E 117.34 feet to a point of tangent; thence,
- 14) Still along the same, S83°-48'-48"E 592.03 feet, to a point of curve; thence,

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DESCRIPTION OF LOT 5.09
Page 4

- 15) Still along the same, in a northeasterly direction, on a curve to the left, having a radius of 25.00 feet, an arc length of 36.33 feet, a delta of $87^{\circ}-30'-09''$, and a chord of $H52^{\circ}-16'-08''E$ 34.48 feet, to a point in the westerly line of the aforesaid Lot 5.02; thence,
- 16) Along the westerly line of said Lot 5.02, $S08^{\circ}-21'-03''W$ 46.09 feet, to an angle point; thence,
- 17) Along the same, $S83^{\circ}-48'-46''E$ 12.01 feet, to an angle point; thence,
- 18) Still along the same, $S08^{\circ}-21'-03''W$ 67.99 feet, to the point and place of beginning.

Containing 43,811 square feet 1.006 acres

Paul J. Ebilius

Paul J. Ebilius, P.L.S.
N.J. LIC. NO. 11363

BK4866Pg220

DESCRIPTION OF LOT 5.16 IN BLOCK 20 AT NEWPORT, CITY OF JERSEY
CITY, HUDSON COUNTY, NEW JERSEY

BEGINNING at a point having coordinates in the NJPCS of north 690,485.6918 feet and east 2,175,801.1391 feet and described as being the following courses from the intersection of the proposed northerly right-of-way line of Pavonia Avenue with the proposed easterly right-of-way line of Washington Boulevard:

- a) Along the aforesaid line of Pavonia Avenue, S 83° 42' 51" E, 422.15 feet, thence;
- b) Along the proposed right-of-way line of the Town Square Ring Road, N 06° 15' 42" E, 129.56 feet, thence;
- c) Along the same, S 83° 44' 18" E, 189.00 feet, thence;
- d) Still along the same, N 06° 15' 42" E, 134.87 feet, thence;
- e) Still along the same, S 83° 44' 18" E, 65.00 feet to point of BEGINNING, all as shown on a certain map entitled, "Final Subdivision Plat, Southeast Quadrant at Newport, City of Jersey City, County of Hudson, New Jersey, Date: November 12, 1990, NADC Dwg. No. 130.03" said map to be filed in the Hudson County Clerks Office, and running thence;
1. Along the easterly line of lands now or formerly of the NC Housing Associates' #100 Co., as shown on a certain map entitled, "Final Subdivision Plan for Newport City, Jersey City, Hudson County, New Jersey, Dwg. No. 100.01," prepared by GEOD Surveying and Aerial Mapping Corporation and filed in the Hudson County Clerk's Office on December 12, 1985 as Map No. 3195 N 06° 15' 42" E, 510.00 feet, thence;
2. Along the southerly right-of-way line of proposed Newport Parkway, S 83° 48' 58" E, 5.00 feet, thence;
3. Parallel with and 5.00 feet easterly of the first course described, S 06° 15' 42" W, 510.01 feet, thence;
4. N 83° 44' 18" W, 5.00 feet to the point of BEGINNING.

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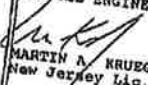
89-243-05
December 14, 1990
Page 2 of 2

Herein described containing 1,950 square feet or 0.09854
acres.

Subject to PATH and Holland Tunnel Easements and Port
Authority Pile License area.

Description in accordance with a certain map entitled,
"Final Subdivision Plat, Southeast Quadrant at Newport, City
of Jersey City, County of Hudson, New Jersey, Date: November
12, 1990, NADC Dwg. No. 120.03" prepared by Boswell
Engineering, South Hackensack, New Jersey, said map to be
filed in the Hudson County Clerks Office.

BOSWELL ENGINEERING


MARTIN A. KRUEGEL, P.L.S.
New Jersey Lic. No. 24202

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89-243-05
December 14, 1990
Page 1 of 2

DESCRIPTION OF LOTS 5.10 AND 2.13 IN BLOCK 20 AT NEWPORT, CITY
OF JERSEY CITY, HUDSON COUNTY, NEW JERSEY

BEGINNING at a point at the northeasterly corner of lands now or formerly of the Newport Office Center-I Co., said lands being designated as Lot 2.01 in Block 20 as shown on a certain map entitled: "Survey for the Newport Office Center I, Now or Formerly Designated as Tract 2-B, City of Jersey City, County of Hudson, New Jersey, Dwg. No. 85-269-98-FM" prepared by Boswell Engineering and filed in the Hudson County Clerk's Office on June 27, 1990 as Map No. 3441, having coordinates in the NJPCS of North 690,179.7658 feet and East 2,175,532.1730 feet, said point further described as being S 83° 42' 51" E, 466.21 feet as measured along the proposed southerly right of way line of Pavonia Avenue from the intersection of said line with the proposed easterly right of way line of Washington Boulevard and running thence:

1. N 09° 54' 19" W, 71.85 feet, thence;
2. N 06° 15' 42" E, 129.56 feet, thence;
3. S 83° 44' 18" E, 189.00 feet, thence;
4. N 06° 15' 42" E, 134.87 feet to a point in the southerly line of lands now or formerly of the MC Housing Associates #100 Co., thence;
5. Along and continuing past said lands of the MC Housing Associates #100 Co., S 83° 44' 18" E, 70.00 feet, thence;
6. S 06° 15' 42" W, 62.63 feet, thence;
7. N 83° 44' 18" W, 1.63 feet, thence;
8. S 06° 15' 42" W, 319.62 feet to a point of curvature, thence;
9. Southerly then westerly, along a curve to the right having a radius of 40.00 feet and an arc length of 62.83 feet to a point tangency, thence;
10. N 83° 44' 18" W, 167.54 feet to a point of curvature, thence;
11. Westerly then northwesterly, along a curve to the right having a radius of 40.00 feet and an arc length of 33.40 feet to a point of non-tangency, thence;

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89-243-05
December 14, 1990
Page 2 of 2
Lot 5.10 & 2.13

12. N 06° 17' 09" E, 75.66 feet to the point of BEGINNING.

Excepting from the hereinbefore described that land to become known as Town Square or Lot 2.13 in Block 20 said land more explicitly defined as,

BEGINNING at a point have coordinates in the NJPCS of North 690,321.2296 feet and East 2,175,980.5553 feet, said point further described as being 52.67 feet easterly and 52.67 feet southerly as measured at right angles from the 2nd and 3rd courses previously described and running thence;

1. Parallel with the aforesaid and previously described 3rd course, S 83° 44' 18" E, 158.66 feet, thence;
2. Parallel with and 45.84 feet west of the previously described 8th course, S 06° 15' 42" W, 192.03 feet, thence;
3. Parallel with and 42.67 feet north of the previously described 10th course, N 83° 44' 18" W, 158.66 feet, thence;
4. N 06° 15' 42" E, 192.03 feet, to the point of BEGINNING.

Town Square (proposed Lot 2.13, Block 20) to have an area of 10,468 square feet or 0.69945 acres.

Proposed Town Square Loop Road to have a net area of 49,816 square feet or 1.14361 acres.

Description in accordance with a certain map entitled "Final Subdivision Plat, Southeast Quadrant at Newport, City of Jersey City, County of Hudson, New Jersey, Date: November 12, 1990, NADC Dwg. No. 120.03" prepared by Boswell Engineering, South Hackensack, New Jersey, said map to be filed in the Hudson County Clerks Office.

BOSWELL ENGINEERING

MARTIN A. KUEGEL, P.L.S.
New Jersey Lic. No. 24202

BK 4866 PG 224

89-243-05
December 14, 1990
Page 1 of 1

DESCRIPTION OF LOT 9.06 IN BLOCK 20 AT NEWPORT, IN THE CITY OF
JERSEY CITY, HUDSON COUNTY

BEGINNING at a point in the proposed easterly right-of-way line of Washington Boulevard, having coordinates in the NJPCS of North 690,230.6101 feet and East 2,175,068.7624 feet said point further described as being N 83° 42' 51" W, 46.71 feet as measured from the northwesterly corner of lands now or formerly of the Newport Office Center-I Co., said lands being designated as Lot 2.01 in Block 20 as shown on a certain map entitled "Survey For The Newport Office Center I, Now or Formerly Designated as Tract 2-B, City of Jersey City, County of Hudson, New Jersey, Dwg. No. 85-289-98-PK" prepared by Boswell Engineering and filed in the Hudson County Clerk's Office on June 27, 1990 as Map No. 3441, all as shown on a certain map entitled, "Final Subdivision Plat, Southeast Quadrant at Newport, City of Jersey City, County of Hudson, New Jersey, Date: November 12, 1990, NADC Dwg. No. 120.03" said map to be filed in the Hudson County Clerks Office, and running, thence;

1. Along the aforesaid proposed right-of-way line of Washington Boulevard, N 25° 29' 14" E, 73.06 feet, thence;
2. S 83° 42' 51" E, 422.15 feet, thence;
3. S 09° 54' 19" E, 71.85 feet, thence;
4. Along and continuing past the northerly line of the aforesaid Lot 2.01, Block 20, N 83° 42' 51" W, 466.21 feet to the point of BEGINNING.

Herein described containing 10,648 square feet or 0.70358 acres.

Subject to PATH Easements and Port Authority Pile License Area.

Description in accordance with a certain map entitled "Final Subdivision Plat, Southeast Quadrant at Newport, City of Jersey City, County of Hudson, New Jersey, Date: November 12, 1990, NADC Dwg. No. 120.03" prepared by Boswell Engineering, South Hackensack, New Jersey, said map to be filed in the Hudson County Clerks Office.

BK4866PG225

1st
MARTIN A. KRUEGEL, P.L.S.
New Jersey Lic. No. 34202

A COPY OF THIS DEED
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BN 4866PG226

11/16/74

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HAS BEEN SENT TO APPROPRIATE OFFICE

EXHIBIT E

LIST OF EASEMENTS EXECUTED AND RECORDED SUBSEQUENT TO
THE ADOPTION OF ORDINANCE 93.051 ADOPTED BY MUNICIPAL
COUNCIL OF JERSEY CITY ACCEPTING DEDICATION OF CERTAIN
ROADWAYS, SIDEWALKS, WATERMAINS, SEWER UTILITIES AND
BRIDGES LOCATED WITHIN THE CITY OF JERSEY CITY.

- N.O.C. 1 OFFICE BUILDING TELEPHONE EASEMENT AGREEMENT;
- N.O.C. 1 OFFICE BUILDING GAS EASEMENT AGREEMENT;
- N.O.C. 1 OFFICE BUILDING ELECTRIC EASEMENT AGREEMENT;
- N.O.C. 1 OFFICE BUILDING WATER EASEMENT AGREEMENT;
- N.O.C. 1 OFFICE BUILDING STORM WATER SEWER EASEMENT AGREEMENT;
- N.O.C. 1 OFFICE BUILDING TANK LINE SANITARY SEWER EASEMENT
AGREEMENT;
- N.O.C. 1 OFFICE BUILDING ACCESS EASEMENT AGREEMENT;
- PACE MEMBERSHIP STORE ACCESS EASEMENT AGREEMENT ALONG 14th STREET;
- PACE MEMBERSHIP STORE STORM AVENUE WATER SEWER EASEMENT
AGREEMENT ACROSS 14th STREET, NEWPORT PLAZA, AND NORTH TRACT
OUTFALL.
- N.O.C. 1 GARAGE ACCESS EASEMENT AGREEMENT;
- N.O.C. 1 GARAGE ELECTRIC EASEMENT AGREEMENT;
- N.O.C. 1 GARAGE SANITARY SEWER EASEMENT AGREEMENT;
- N.O.C. 1 STORM WATER SEWER EASEMENT AGREEMENT;
- N.O.C. 1 TELEPHONE EASEMENT AGREEMENT;
- N.O.C. 1 GARAGE WATER EASEMENT AGREEMENT.

8K 4866 PG 227

Exhibit II

N.J.S.A. 48:12-125.1

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2013 New Jersey Revised Statutes

Title 48 - PUBLIC UTILITIES

Section 48:12-125.1 - Railroad rights of way; acquisition; abandonment; sale, conveyance.

Universal Citation: [NJ Rev Stat § 48:12-125.1 \(2013\)](#)

48:12-125.1 Railroad rights of way; acquisition; abandonment; sale, conveyance.

1. a. In order to permit the State and its political subdivisions to receive notice of, and be afforded an opportunity to acquire, by purchase or condemnation, railroad rights of way proposed to be abandoned, any railroad company which makes application to the Surface Transportation Board for authority to abandon any part of its right of way on which passenger or freight services are operated, or to abandon, sell, or lease any of its right of way over which services have previously been authorized for abandonment and title to such right of way currently remains with the railroad shall, within 10 days of making such application, serve notice thereof upon the State and upon each county and municipality in which any part of the right of way proposed for abandonment is located.

b.No sale or conveyance of any part of such right of way shall thereafter be made to any entity other than the State, or a county or municipality, for a period of 90 days from the date of approval by the Surface Transportation Board of the application for abandonment or from the date of service of the notice required by subsection a. of this section, whichever occurs later, unless prior thereto each governmental entity

entitled to such notice shall have filed with the railroad company a written disclaimer of interest in acquiring all or any part of said right of way during the time period in which a railroad company is restricted from selling or conveying any part of a right of way pursuant to this subsection.

c. During the period of 90 days in which a railroad company is prohibited from selling or conveying any part of a right of way pursuant to subsection b. of this section, such railroad company shall negotiate in good faith for the sale or conveyance of the right of way with the State, or with any municipality or county in which the right of way proposed for abandonment is located and which expresses written interest in acquiring such right of way.

d. Any sale or conveyance of a right of way made after the expiration of the foregoing 90-day period to any entity, other than the State or a county or municipality in which any part of the right of way proposed for abandonment is located, shall be subject to the right of first refusal by any of the foregoing governmental entities, provided that the governmental entity has made an offer to purchase such right of way during the 90-day period and which offer was refused by the railroad company. The governmental entity shall have no less than 90 days from either the date of receipt from the railroad company of an offer to purchase the right of way by an entity, other than one of the foregoing governmental entities, or any other contract setting forth the terms and conditions governing the sale to which this right of first refusal is applicable or the effective date of abandonment as authorized by the Surface Transportation Board, including the expiration of any stays, whichever occurs later, to exercise this right of first refusal. Upon exercising this right of first refusal, the governmental entity shall purchase the right of way for the same amount agreed upon between the railroad company and the person to whom the company attempted to sell or convey such right of way pursuant to this subsection.

e. Any sale or conveyance made in violation of P.L.1967, c.282 (C.48:12-125.1 et seq.) shall be void.

As used in this act "right of way" means the roadbed of a line of railroad, not exceeding 100 feet in width, as measured horizontally at the elevation of the base of the rail, including the full embankment or excavated area, with slopes, slope ditches,

retaining walls, or foundations necessary to provide a width not to exceed 100 feet at the base of the rail, but not including tracks, appurtenances, ballast nor any structures or buildings erected thereon.

L.1967, c.282, s.1; amended 2009, c.323.

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Joint Verified Statement of Brian Blazak and Daniel W. Wrieden

BEFORE THE SURFACE TRANSPORTATION BOARD

Consolidated Rail Corporation -)
Abandonment Exemption -) AB 167 (Sub-no 1189X)
in Hudson County, NJ)

JOINT VERIFIED STATEMENT OF BRIAN J. BLAZAK

AND DANIEL M. WRIEDEN,

DIVISION OF PLANNING, CITY OF JERSEY CITY

We, Brian J. Blazak and Daniel M. Wrieden, state that we are Historic Preservation Specialists employed by the Division of City Planning for the City of Jersey City. We make this verified statement as part of the City of Jersey City's response to the Cultural Resources Identification Report (CRID) issued in the above captioned proceeding on or about May 5, 2017. Due to our training and experience in our positions within the Division of City Planning, we have expertise in the application of the criteria for eligibility of properties for protection under section 106 of the National Historic Preservation Act, and comparable state and city statutes and ordinances. Our resumes are attached.

1. Based on all information to date, and for the reasons stated below, we conclude that the Harsimus Branch west of Marin Boulevard through and including its westernmost

boundary in CP Waldo (approximately Chestnut Street) is historically significant at the National, State and Local levels for the reasons noted in the CRID. The CRID appears to conclude, however, that the portion of this property west of Brunswick Street though CP Waldo (that is, west of the Embankment structures) does not have enough integrity to convey its significance. For the reasons stated below, we believe that the section of the right of way west of Brunswick Street, through to and including CP Waldo, in fact demonstrates sufficient integrity to be eligible for listing in the National Register, and STB should so determine.

2. We disagree with the findings of the consultant that "with the exception of the previously listed Embankment (milepost 0.36 to milepost 0.88), approximately two thirds of the Harsimus Branch Right of Way is either obliterated by subsequent development or lacking in a physical cohesiveness." While staff will agree that the Harsimus Cove Yard has been obliterated by subsequent development, the Harsimus Branch Right of Way from Marin Boulevard to CP Waldo still exists unencumbered, uninterrupted and is easily identifiable and is linearly cohesive between those points.

3. Staff agrees with the findings of the CRID that the six elevated sections of the Embankment are contributing resources to the PRR (New York to Philadelphia) Historic District. However, we disagree that the Harsimus Branch Right of Way is not eligible individually for the National Register or as a contributing resource to the PRR (New York to Philadelphia) Historic District because of its lack of physical integrity. We believe that the unobstructed linear path of the right of way from Marin Boulevard to CP Waldo along with the remains of physical materials and human intervention which serve to delineate the historic right of way, as well as its proximity to the adjacent currently operating rail lines all contribute to the identification of the Harsimus Branch Right of Way and contribute to understanding the Branch's significance in relationship to Commerce, Community Planning and Development, Engineering, Politics/Government and Transportation. We believe that the right of way is eligible for inclusion on the National Register in its own right, and as a contributing resource to the PRR (New York to Philadelphia) Historic District under Criteria A & C.
4. Staff affirms that the that the property west of Brunswick Street still maintains integrity of location, setting,

feeling and association to a high degree and retains some integrity of design, materials and workmanship in the remaining abutments and piers which once supported bridges and track work over the Harsimus Branch Right of Way from the CP Waldo through to the Yards.

5. Staff notes that the property comprising the Western portion of the right of way of the Harsimus Branch still maintains integrity of location because the physical right of way assembled by 1875 still exists unencumbered and unimpeded by physical obstruction.
6. Staff affirms that the property west of Brunswick Street to CP Waldo maintains integrity of setting. The right of way is clearly discernible as uninterrupted from CP Waldo to Marin Boulevard. Physical attributes and artifacts in the right of way such as the pattern of vegetative growth, the remaining stone abutments, the foundations of the catenaries, the rocks and gravel of the railroad bed, the adjacent metal culverts running into the adjacent drainage ditches; the right of way's relationship to the (expanded) Bergen Cut and the existing, active, neighboring rail lines to which the branch would have connected at CP Waldo all contribute to the integrity of setting.

7. In reading the report and looking at the photographic record there appears to have been scant if any physical investigation and documentation from the crossing of the circa 1968 Penn Central Steel Viaduct west to CP Waldo (the area immediately to the south and southwest of the Harsimus Cemetery), which would have easily revealed the continuation of the Harsimus Branch Right of Way without interruption. Staff affirms, after a physical inspection on the morning of Wednesday, June 14th, that considerable material still remains to demarcate and illustrate that a rail line existed and passed through the area west of the Brunswick terminus of the Embankment structures through to CP Waldo.
8. The branch still exhibits integrity of location. The alignment and right of way is still extant from Marin Boulevard to CP Waldo without interruption or permanent blockage, which would preclude reactivation of the right of way.
9. In regard to feeling, the remaining physical features convey the unmistakable characteristics of a late nineteenth and early twentieth century railroad use and right of way. A reasonable person would not mistake this area as purposely built for another or non-rail means of

transportation. The stations and the abutments clearly point to a rail use while the raised rock and gravel surface bed, the cantenary support piers and the expanded Bergen Cut through the palisade all demonstrate the physical characteristics of a rail line.¹

10. In regards to Association, and as previously noted, the entirety of the Harsimus Branch from Marin Boulevard to CP Waldo is sufficiently intact and its materials are easily identifiable in such a manner to convey that there was historically a rail line operating as a freight link from CP Waldo to Marin Boulevard and down to the Yards, which fostered the development of the economy of Jersey City and the New York Metropolitan Region by connecting the Hudson River ports to the national rail network.

11. For the above stated reasons, we as the Historic Preservation Specialists for the City of Jersey City reaffirm the above and conclude that the Harsimus Branch Right of Way from CP Waldo to Marin exhibits integrity of setting, location, feeling and association and sufficient material and design integrity when viewed as it was intended to be used, as a whole, not as the random

¹ The removal of rock from the Bergen cut would have been a massive undertaking both financially and engineering wise. The railroads would have been in the position to meet the challenges of such an undertaking.

assemblage of discontinuous and unrelated pieces as
suggested in the CRID

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty
of perjury under the laws of the United States of America that
the foregoing is true and correct.

A handwritten signature in cursive script, reading "Brian J. Blazak". The signature is written in dark ink and is positioned above the printed name.

Brian J. Blazak,

Historic Preservation Specialist

Dated: 6.16.17

A handwritten signature in cursive script, reading "Daniel M. Wrieden". The signature is written in dark ink and is positioned above the printed name.

Daniel M. Wrieden,

Historic Preservation Specialist

Dated: 6-16-17























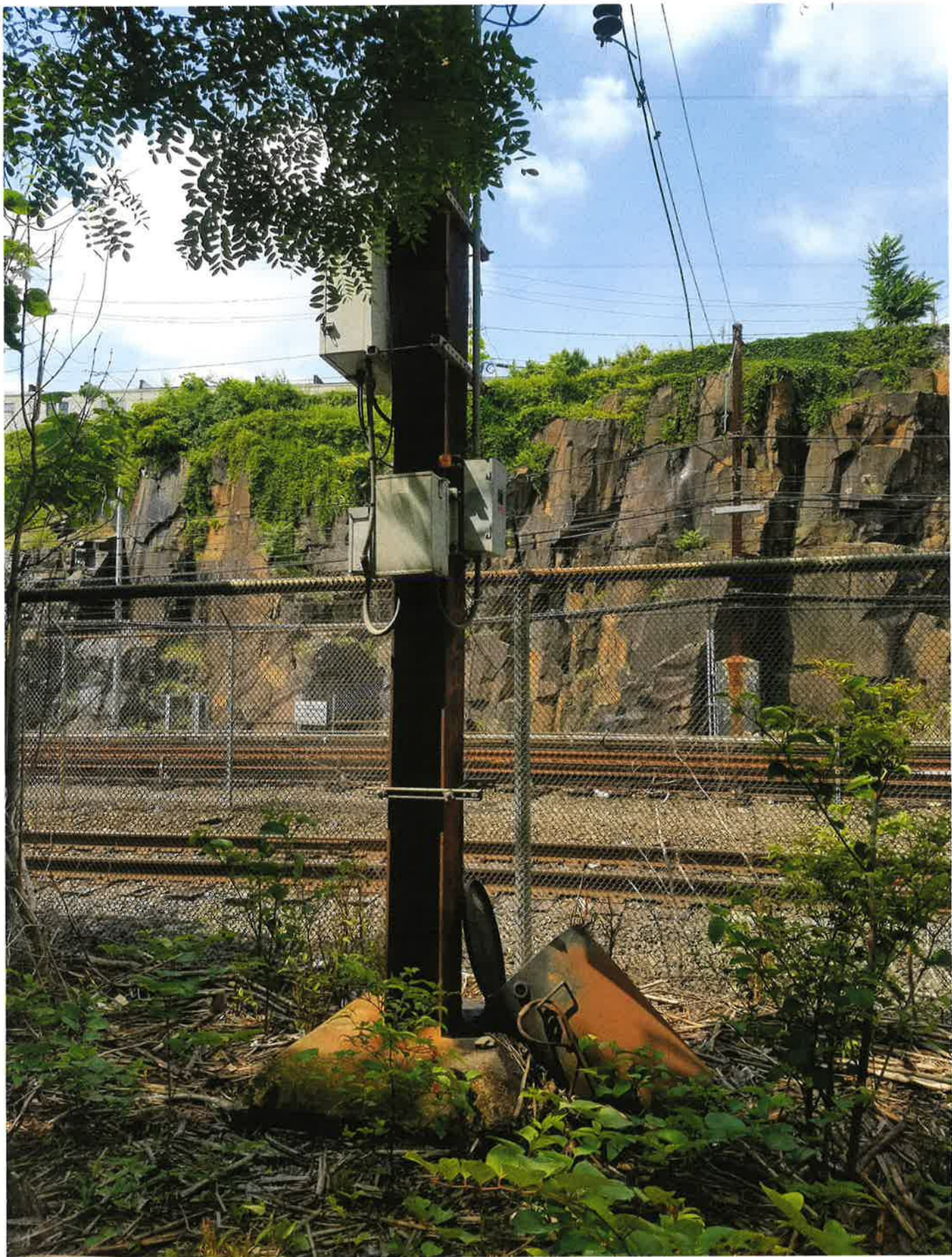




















Brian J. Blazak

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Education

Pratt Institute
Historic Preservation M.S.

New York, NY
December 2011

Richard Stockton College of NJ
History B.A.

Pomona, NJ
December 2009

Experience

Division of City Planning
Historic Preservation Specialist

Jersey City, NJ
October 2012-Present

- Reviews applications for Certificates of No Effect and Certificates of Appropriateness and applies the *Secretary of the Interior's Standards for the Treatment of Historic Properties*, the *City of Jersey City's Rules & Regulations for Alterations & Additions to Buildings & New Construction in Historic Districts* and the *Jersey City Land Development Ordinance* for review of such applications.
- Composes agendas and leads meetings of the Historic Preservation Commission. Presents findings, makes recommendations and gives staff comment to the HPC regarding applications.
- Conducts site visits, reviews site evidence and photographic documentation to assess work progress in conformance with Certificates of No Effect and Certificates of Appropriateness.
- Identifies, describes, researches, analyzes, photographs, maps or otherwise records information concerning properties being inventoried.
- Attends meetings, lectures, seminars, and conferences. Organizes, maintains, and retrieves cultural resource data from the NJ Historic Sites Inventory, State and National Register, project-specific surveys, office library and other relevant sources.
- Works with a consultant on the Municipal/State/National Register application and nomination for the West Bergen-East Lincoln Park Historic District.
- Prepares clear, technically sound, accurate, and informative reports containing finding, conclusions, and recommendations.

Roosevelt Island Historical Society
Historical Society Internship

New York, NY
July 2011-August 2011

- Organized and documented historical society documents: historic writings, photographs, memorabilia, financial records etc. into a spreadsheet and filed correctly
- Co-curated a window display and a gallery exhibition to showcase the collection to the general public

Greenwich Village Society For Historic Preservation
Research Intern

New York, NY
August 2010-June 2011

- Conducted research at the NYC Municipal Archives studying tax records, photographs, block and lot folders for GVHSP's East Village documentation and landmarking initiative
- Familiarity with researching at NY Public Library, NYC Dept. of Housing Preservation and Development, Ancestry.com, NY Times.com and other resources
- Promoted public programs via GVHSP's blog "Off the Grid" on preservation

Division of City Planning
Historic Preservation Intern

Jersey City, NJ
February 2010-June 2010

- Under direction of HPO reviewed applications for Certificates of No Effect/Appropriateness
- Answered applicant and constituent questions regarding the Historic Preservation Process
- Conducted building and architectural research at City Hall and New Jersey Room, JCPL.

DANIEL M. WRIEDEN
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Jersey City, New Jersey 07302
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EDUCATION

New Jersey City University, Jersey City, NJ
Major: American History

Bachelor of Arts Magna Cum Laude: May, 2001
Minor: African-African American Studies

RELATED WORK EXPERIENCE

JERSEY CITY DIVISION OF PLANNING
Supervising Historic Preservation Specialist

October 2013-Present
40 hours per week

Continues to serve as the city's professional preservation staff under the Direction of the Director of City Planning, supervising the programs and staff of the Jersey City Historic Preservation Commission, coordinating and supervising all components of municipal project reviews, surveys, preservation planning, Municipal, State and National Register nominations, preservation, education and technical preservation services on behalf of the Jersey City Historic Preservation Commission.

Supervises the review and analysis of development projects on behalf of the Commission, identifying cultural resources within project impact areas, determining the project effects on resources, and recommending mitigation according to state, federal and municipal laws and regulations in accordance with accepted industry practice and the *Secretary of the Interior's Standards and Guidelines for the Treatment of Historic Properties*. Reviews and comments on municipal, state and federal legislation and regulations, participating in policy development for zoning and redevelopment law. Supervises preservation education on behalf of the Commission addressing local community groups, preservation and civic associations on historic preservation, historic site and other cultural programs. Plans, organizes and speaks at conferences, meetings, workshops and public hearings. Prepares reports regarding development, applications for development and preservation issues containing findings, conclusion and recommendations. Plans, organizes, and assigns work to Historic Preservation Commission Staff within the Division of City Planning and evaluates employee performance and conduct, enabling the effective recommendation of the hiring, firing, promoting, and disciplining of employees as necessary.

JERSEY CITY DIVISION OF PLANNING
Historic Preservation Specialist

July 2002-October 2013
37.5 hours per week

Responsible for oversight and management of four municipal Historic Districts and locally designated individual landmarks. Reviews all applications for Certificates of No Effect and Certificates of Appropriateness. Determine disposition of applications for development. Review architectural specifications and preservation plans. Conduct site visits of all on-going work and provide written historic structures research reports summarizing findings, conclusions and recommendations. Provide information and assistance to the public concerning the Historic Preservation Commission, application procedures, and appropriate preservation methods. Explain requirements of the Jersey City Zoning ordinance and Historic Preservation Guidelines and the *Secretary of the Interior's Standards* to applicants and community organizations. Responsible for preparation of State/National Register Nomination Reports. Provide administrative and technical support to the Jersey City Historic Preservation Commission. Makes recommendations to the Commission as to the appropriateness of applications at monthly meetings. Addresses Planning Board and Zoning Board on Matters of Historic Preservation in regards to applications, ordinances and redevelopment plans. Supervise the maintenance and creation of files for all historic properties and districts. Provide assignments and instructions to administrative and professional staff as well as seasonal interns as necessary. Supervise staff correspondence and interaction with the public regarding historic preservation reviews, procedure and application filing.

NEW YORK CITY LANDMARKS PRESERVATION COMMISSION

November 2000-August 2001

Paid Internship: Historic Preservation Grant Program

30 hours per week

Provided administrative and professional support to the Director of the Grant Program. Prepared correspondence, memoranda and reports and maintained all program and ancillary files including negative and slide library. Prepared and maintained all documents for grants including bid scopes and contracts. Responded to public inquiries regarding eligibility for CDGB Grants. Sent appropriate information to prospective clients. Reviewed completed grant applications. Researched property histories and conducted site visits. Provided written reports containing findings, conclusions and recommendations. Acted as liaison between Grant Program staff and Board of Directors, property owners and contractors. Attended public hearings. Received Asa S. Knowles award for Excellence in Cooperative Education.

DAVISON INTERMEDIA, INC., Jersey City, NJ

September 1997-December 1999

Director of Client Development and Customer Service

30 hours per week

Directed significant expansion of office and client base. Oversaw implementation of new customer services procedures. Established scheduling and staff utilization plans.

DIVISION OF NEIGHBORHOOD IMPROVEMENT, Jersey City, NJ

June 1996-August 1997

Manager: 1996. Acting Director: March-September 1997

37.5 hours per week

Encouraged community groups and residents in neighborhood beautification and revitalization projects and offered access to city services. Attended community meetings and gave presentations on the work of the division and responsibilities of city residents with regard to municipal codes. Implemented city workfare program in the NID Division. Supervised full time staff of 65 and 128 part time student workers to facilitate prompt delivery of public services to city residents.

KAMINSKI REALTORS, Brooklyn, NY

January 1994-May 1996

Administrative Assistant

25 hours per week

Directed office of active real estate broker/ property manager. Researched and provided reports on historic properties. Reviewed restoration/rehabilitation plans for appropriateness. Acted as general contractor for renovations and restoration of properties. Managed office files and records.

JERSEY CITY PUBLIC LIBRARY, Jersey City, NJ

March 1994-March 1995

Special Project Staff, New Jersey Room

20 hours per week

Prepared historic 18th and 19th century maps of Jersey City for conservation treatment and provided preliminary bibliographical notation. Cleaned, organized, repaired, and indexed selections from the manuscript and scrapbook collections for conservation treatment. Researched collections and related materials to place them in proper historic context. Provided written reports on collections.

RELATED EXPERIENCE:

FRIENDLY NEIGHBORS, Jersey City, NJ

1995-2002

Acted as point person on historic preservation for neighborhood organization serving downtown historic districts. Conducted research and gave reports and lectures to membership on historic preservation. Provided detailed information to property owners on history of their buildings including recommendations for preservation/restoration projects. Maintained preservation themed private library and database to assist members. Helped homeowners prepare applications for Certificates of No Effect and Appropriateness.

BARROW MANSION DEVELOPMENT CORPORATION, Jersey City, NJ

1997-1998

Served as board member. Helped manage the restoration of the Barrow Mansion. Participated in cleanups. Participated in project decisions based on review of historic structures reports. Aided in grant application process and fundraising. Planned special historically themed events for the public.

BAY RIDGE HISTORICAL SOCIETY, Brooklyn, NY

1982-1992

Initiated and oversaw restoration of two local historic cemeteries and researched and documented their histories. Aided Society and property owners in application for New York City landmark process. Provided programs, lectures and tours of local historic sites.

Verified Statement of Ulana Zakalak

Before the Surface Transportation Board

Conrail – Ab. Ex. –
In Hudson County

AB 167-1189X

Statement of
ULANA ZAKALAK

I, Ulana Zakalak, make these comments for use in connection with issues raised or addressed in the “Cultural Resources Identification Report” issued on or about May 5, 2017 in AB 167 (Sub no. 1189X). I am the principal of Zakalak Associates, specializing in historic preservation planning and design. My resume is attached. These comments also embody my expert opinion concerning the eligibility of the Harsimus Branch from Marin Boulevard continuously to CP Waldo for the National Register of Historic Places.

On June 14, 2017, I made a site visit along the route of the western third of the Pennsylvania Railroad Harsimus Branch with members of the Embankment Preservation Coalition as well as local historic preservationists and experts in the area of rail transportation. The site visit revealed multiple components of the western end of the Harsimus Branch that had apparently not been visited or surveyed by Conrail’s consultant, RGA. In their report, RGA denies the integrity of the entire Harsimus Branch, recognizing only the six-block portion of the Embankment, which is already listed on the New Jersey State Register of Historic Places. Although they mention some of the stone and concrete stanchions of the middle part of the Branch in the Village section of Jersey City, they seem to have assumed that there were no other remaining components or vestiges of the line to CP Waldo.

The field visit involved climbing the hill behind the garage of the Jersey City and Harsimus Cemetery. The group hiked first in a westerly direction looking for the Harsimus Branch but encountered only the remains of the Nave connector. Turning in an easterly direction, the group encountered a path that led to the old railroad bed of the Harsimus Branch. Although somewhat overgrown, the low growth and young trees indicated that the shrubbery was recent and the grade could be detected through the plants. Evidence of crushed rock typical of rail beds was everywhere, and lacking tools, we could not dig to determine if track rail or ties were below the rock and soil (this should be investigated).

However, by scouting the edges of the rail bed, we soon realized that the foundation blocks of the former catenary poles flanked the rail bed, including a complete catenary pole at the end of the line where the Harsimus Branch joined the main line. The catenary pole foundations were paired, two to a set, one on the north side and one on the south side of the rail bed. These were cast concrete blocks with embedded iron beams cut off either at the base or several inches above it. Along the northern edge of the rail bed, a ditch with man-made concrete and brick edging paralleled the rock-face cut and carried a small stream. A culvert with an iron outflow pipe was also found. As we followed the rail bed, we could see that the concrete and brick bumpers were designed to allow the water to flow around the base of the foundation blocks without eroding them. The great stone wall to the north of the ditch was cut out by hand to accommodate the rail line. This rock wall continues along the northern edge of the rail line and forms a distinct backdrop to it.

Today's findings make clear that there are three distinct sections to the Harsimus Branch forming a cohesive rail line with sections built based on topography. The Embankment is the first above ground section. The second section is the elevated railroad section that transverses the Village in the form of concrete and stone stanchions. The third section is the grade-level western section found in our field visit. Together, these three sections delineate the entire Harsimus Branch west of Marin Boulevard and are a recognizable and distinct part of the Pennsylvania Railroad.



Photo 1. Foundation block for a catenary pole on the north side of the rail bed.



Photo 2. The matching south side catenary pole base.



Photo 3. The second set of catenary foundation blocks. This one is on the north side.



Photo 4. The south side block of the second set of catenary foundation blocks.



Photo 4. Culvert on the north side of the rail bed with man made stone banks. Looking north.



Photo 5. Third set of catenary pole foundation blocks. This one is on the south side.



Photo 6. This one is the north block of the third set.



Photo 7. The fourth set of catenary foundation blocks, on the north side of the culvert.



Photo 8. The fourth set, south side of the rail bed.



Photo 9. This stone wall was excavated to accommodate the Harsimus Branch and remains a monument to the engineering of this line.



Photo 10. A complete catenary pole and foundation block at the western end of the Harsimus Branch.



Photo 11. Catenary foundation block with cut-off, riveted iron beam on the north side.



Photo 12. North side catenary pole with gate beyond showing junction of the Harsimus Branch with the main line.



Photo 13. Beyond the last set of catenary foundation blocks (and complete pole) is this gate leading to the end of the Harsimus Branch where it merged with the main line.

Elements of the western end of the Harsimus Branch found on the field visit of June 14, 2017:

- Track bed and original grade of the Harsimus Branch (intact)
- Affiliated ditch and culvert on the north side of the track bed (intact)
- Rock wall, which had been excavated to provide the track bed (intact)
- 10 (Ten) catenary pole foundation blocks
- 1 complete catenary pole (intact)
- The junction of the Harsimus Branch with the main line.

The Argument for Integrity

The CRID report states that there is not enough integrity to the remaining Harsimus Branch for it to be eligible for the National Register of Historic Places. It cites the complete lack of the westernmost section as evidence. The field visit findings clearly rebuke this finding. While evaluation of integrity is a subjective judgment, it must always be grounded in an understanding of the subject, its physical features, and how these features relate to the subject's significance. There are also various factors to consider (see herein) that reduce the subjectivity. The person, or persons, making this judgment on integrity, must be versed in knowledge about the subject. In the case of the Harsimus Branch, the person making the judgment must be knowledgeable about railroad history and industrial archaeology. In the CRID report, the apparent lack of a site visit or

findings of the westernmost section of the Branch resulted in a flawed conclusion that must be rectified. It is also not certain if the consultant writing the report had the requisite knowledge to recognize the significance of the Harsimus Branch nor to evaluate its components.

The National Register criteria recognize seven aspects or qualities that, in various combinations, define integrity. In order to have integrity, the subject must have several, and usually most, of these seven aspects. The seven aspects of integrity are: location, design, setting, materials, workmanship, feeling and association.

Location is the place where the historic property was constructed, or the place where the historic event occurred. The relationship between the property and its location is important to understanding why the property was created or why something happened. The actual location of a historic property, complemented by its setting, is significant in recapturing the sense of historic events and persons. In the case of the Harsimus Branch, all of the components of the rail line are in their original location. The location is extremely significant for the Pennsylvania Railroad as the Harsimus Branch was necessary to carry goods to the Harsimus Yards at the Jersey City waterfront to be placed on ferries and shipped to New York. It was so important, that the rail line was built into an already developed middle-class neighborhood where houses had to be removed to accommodate the line. The neighborhoods along the line then continued to develop around the train line, encountering the rail line on a daily basis with the sounds and movements of the trains headed for the years. The location of the Harsimus Branch is original and complete, adding this aspect of integrity to the subject.

Design is the combination of elements that create the form, plan, space, structure, and style of a property. It comes from thoughtful and thorough planning and engineering to design a transportation corridor that would work best for the Pennsylvania Railroad to get goods to the Harsimus Yards, and then on to New York City. It involved architects, engineers, stonecutters, masons, teamsters, laborers and the community to construct such a line, to design the perfect grade, to overcome topographic challenges to accomplish the goal of joining the Branch to the main line, and to provide an enduring, low maintenance, civil engineering project. Not only are the individual components important but also the way they are combined together to form a cohesive, linear transportation corridor is significant design. The spatial relationships between the sections of the Embankment, the gaps between the stone and concrete stanchions in the Village, and the grade level rail bed with its catenary bases are all related and united in one goal. The layout and materials of the line form the industrial design that successfully results in the transportation of goods from one point to another. This design exists today, in a very dramatic way with the Embankment, but also with the concrete and stone stanchions in the Village and the at grade rail bed in the western section. This cohesive design adds this aspect of integrity to the Harsimus Branch.

Setting is the physical environment of the property. This is different than location because it refers to the character of the place in which the subject played its historic role. It refers to how, not just where, the subject property is situated and its relationship to surrounding features and open space. The setting of the Harsimus Branch is unique in that it has not changed significantly from when it was built. The Embankment was built into an existing 19th century neighborhood. Today the six sections of the Embankment

are still in the low-scale 19th century with the Hamilton Park Historic District to the north and the Harsimus Cover Historic District to the south. It is such a part of the neighborhood that when the great churches of St. Anthony of Padua and Blessed Sacrament were built cheek by jowl across from the Embankment, their masonry structures echoed the dramatic stone walls of the Embankment forming a historic corridor along Sixth Street. The elevated railroad stanchions in the Village once carried the railroad aloft, high above the houses of the neighborhood. Today, they stand testament to the same houses. The only change in that section was the construction of Route 78 high above. The westernmost section of the Harsimus Branch went past the Jersey City and Harsimus Cemetery then and it still does now. Visitors to the cemetery in the late 19th century, could hear the train as it made its way to the main line, skirting the southern edge of the rustic cemetery. The relationship of the rail bed with the Cemetery exists today. This historic setting adds this aspect of integrity to the Harsimus Branch.

Materials are the physical elements that were combined or deposited during a particular period of time in a particular pattern or configuration to form a historic property. The choice and combination of materials necessary to build the Harsimus Branch reveals construction patterns of the early 20th century and how the architects and engineers who designed the rail line thought about transportation. Do these materials, so carefully thought out in the late 19th and early 20th centuries, still exist today? There is no question that all three sections of the Harsimus Branch retain information about the preferential building materials of the time, and, the availability of these materials, all of which help define the area's sense of time and place. All three sections show different building materials that were necessary to deal with topographic changes. All three sections still show these original materials through which one can ascertain how the railroad functioned and how it looked. The Harsimus Branch has retained its key exterior materials dating from its period of significance. The remaining historic materials of all three sections add this aspect of integrity to the Harsimus Branch.

Workmanship is the physical evidence of the crafts of a particular culture or people during any given period in history or prehistory. The workmanship exhibited in all three sections of the Harsimus Branch cannot be debated. The incredible stonework of the Embankment, even without its bridges, is impressive in scale, building methodology, stone cutting, and assembly. The elevated railroad stanchions of the Village section are also impressive in scale and masonry construction, designed to take the train into the sky and carry it to its at-grade western section. The catenary bases and poles were themselves handmade, the great iron beams with their hand-placed rivets evident in the last remaining catenary pole at the westernmost end of the line at its juncture with the main line. This workmanship shows the high level of craftsmanship available in Jersey City at this time, as well as the technological practices of the Pennsylvania Railroad in the late 19th and early 20th century. The workmanship exhibited in the construction of the entire Harsimus Branch, from Marin Boulevard to CP Waldo, adds this aspect of integrity to the Harsimus Branch.

Feeling is a property's expression of the aesthetic or historic sense of a particular period of time. Do the elements of a particular subject or the subject itself convey the property's historic character? Does the setting reflect the feeling of late 19th century Jersey City? With the exception of the Route 78 overpass, the three sections of the Harsimus Branch indeed do reflect this feeling. The railroad within a 19th century Jersey City

neighborhood is still the railroad in a Jersey City neighborhood today. The low scale streetscapes of the Embankment and the Village, and the rural, isolated feeling of the western end next to the rugged cemetery conveys this feeling very strongly. While in the cemetery, one can hear the trains of the National Docks line moving through, a feeling that 19th century Jersey City residents must have been very familiar with. Just being on the rail bed of the Harsimus Branch next to the cemetery feels very rural and ancient. Being in the shadow of the Embankment is a feeling that parishioners of St. Anthony's or Blessed Sacrament were used to when the churches were first built, and the feeling is the same today. In July of every year, both churches have week-long festivals when the streets are closed and tables are set up in the shadow of the Embankment. People celebrate, dance, enjoy homemade food and socialize in the shadow of the Embankment just as they did in the 19th century. Exhibits of historic church photos at the festivals show parades and feasts with marching bands along the Embankment. The physical features of the Embankment influence people's daily lives today as they did then. The historic sense is ever present. This feeling of living in history whether next to the Embankment or in the cemetery adds this aspect of integrity to the Harsimus Branch.

Association is the direct link between an important historic event or person and a historic property. A property retains association if it is the place where the event or activity occurred and is sufficiently intact to convey that relationship to an observer. The association requires the presence of the physical features that convey a property's historic character. The intact remains of the Harsimus Branch convey this association with the history of transportation, industry and trade in Jersey City. The Harsimus Branch is the embodiment of what it meant to transport goods through Jersey City to New York. It is a manifestation of the engine of industry that created the ports of New York as well as Jersey City. This association with historic transportation that made New York what it is today adds this aspect of integrity to the Harsimus Branch.

In summary, the entire Harsimus Branch possesses all seven aspects of integrity, and the entire rail line, from Marin Boulevard to CP Waldo, must be considered eligible for the National Register of Historic Places. By the same token, it should be viewed as a contributing element to the PRR Philadelphia to New York Historic District.

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States that the foregoing is true and correct.



Ulana D. Zakalak

Dated: June 17, 2017

Resume attached.



Professional Qualifications

ZAKALAK ASSOCIATES: COMPANY RESUME

Zakalak Associates is a cultural resource management firm founded in 1986 by Ulana Zakalak, the principal. The firm provides a full range of the highest quality architectural and planning services, such as Tax Act certification applications, historic preservation planning and design, resource documentation and evaluation, review and compliance. National Register nominations, HABS/HAER recordings, and owner representation are also available.

Zakalak Associates has established a solid base of experience with municipalities, historic preservation commissions, non-profit groups, developers, churches and private clients. Since starting her consulting practice over thirty years ago, Ms. Zakalak has gained a reputation for her documentation and preservation of urban sites, in particular the built environments of Jersey City and the City of Newark. Current projects include the preparation of Tax Credit applications for multiple commercial buildings in downtown Newark, including the Hahne and Company building, the New Jersey Bell Telephone Company Headquarters, the St. Francis Hotel and St. Michael's Hospital. Zakalak Associates has also consulted on the new Prudential office towers in the Military Park Commons Historic District, and the creation of Teachers Village in the Four Corners Historic District, both in Newark. Zakalak Associates authored the Historic Preservation Element of the 2012 Newark Master Plan and was co-author of the Neighborhoods Element. Zakalak Associates was also successful in qualifying the former Jersey City Medical Center, now known as the Beacon, as the largest tax credit project in the country.

A leading practitioner in New Jersey's preservation community, Zakalak Associates has completed cultural resource surveys of the City of Paterson, the Town of West New York, and fifteen Essex County municipalities. The firm has also been successful in qualifying prominent historic sites for acceptance to the New Jersey State and National Register of Historic Places, including the Forest Hill Historic District in Newark, one of the largest historic districts in New Jersey listing over 1,200 properties. Zakalak Associates was also responsible for the Weequahic Park, Military Park Commons, Four Corners and North Broad Street Historic Districts in Newark.

In 1991, Ms. Zakalak was honored with a Certificate of Appreciation from the Newark Preservation and Landmarks Committee for her "Outstanding Contribution to the Preservation of Newark's Past." In 2005, Zakalak Associates was presented with the New Jersey Historic Preservation Award for Historic Rehabilitation and Adaptive Reuse for the Union Building on Clinton Street in Newark. The project also won an Award of Merit from New York Construction Best of 2004 Awards. Ms. Zakalak won the 2009 New Jersey Historic Preservation Award for the Restoration of the Rialto and Capitol Buildings at the Beacon; in 2010, the New Jersey Historic Preservation Award for the Restoration of the John F. Peto House and Studio in Island Heights, NJ; and in 2014, for the G. G. Green Opera House adaptive reuse in Woodbury, NJ. In 2015, Ms. Zakalak won the New Jersey Historic Preservation Award for the restoration of the Wright-Clark house at 527 Mt. Prospect Avenue in Newark as well as for the Hotel Indigo. Most recently, Zakalak won awards for the restoration of the Criterion and Hague Buildings at the Beacon in Jersey City. Ms. Zakalak is a trustee of the Jersey City Landmarks Conservancy and a consultant to the Newark Preservation and Landmarks Committee.

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Ulana D. Zakalak

E d u c a t i o n

Columbia University, Graduate School of Architecture, Planning and Preservation 1982
New York, New York
Master of Science in Historic Preservation.

Rutgers College, Rutgers University 1979
New Brunswick, New Jersey
Bachelor of Arts, Archaeology and American History.

P r o f e s s i o n a l e x p e r i e n c e

Zakalak Associates LLC 1986-present
Jersey City, New Jersey
Principal of a cultural resource management firm specializing in historic preservation planning, surveys, documentation, review and compliance, and owner representation.

Zakalak Restoration Arts LLC
Jersey City, New Jersey 2007-present
Founder and principal of a historic restoration contracting firm.

Robert E. Meadows, P.C. Architect 1981-1985
New York, New York
Associate-in-Charge of Cultural Resource Management, Project Director:

- Historic Structure Report: Allaire Village, Farmingdale, NJ
- Cultural Resources Survey, Downtown Newark, City of Newark, NJ
- Cultural Resources Survey, City of Passaic
- Thematic Nomination of NJ Post Offices Built Between 1900-1941
- Documentation of the Ford Assembly Plant, Edgewater, NJ
- Archaeologist for the renovation of Gracie Mansion, New York, NY

Astoria Development Project 1980
New York, NY
Historic Preservation Consultant

Rutgers Archaeological Survey Office 1979
New Brunswick, NJ
Archaeologist

P r o f e s s i o n a l M e m b e r s h i p s

*SBA Emerging Leaders Initiative; Preservation Alumni, Columbia University;
Society for Industrial Archaeology (Roebeling Chapter); National Trust for Historic Preservation*



ZAKALAK ASSOCIATES: SELECTED PROJECT EXPERIENCE

National Register of Historic Places Nominations:

Military Park Commons Historic District, Newark
Newark Public Schools Multiple Property Documentation Application, Newark
St. Stanislaus Bishop and Martyr RC Church, Newark
Temple B’Nai Abraham (Deliverance Temple), Newark
Bay Head Historic District, Bay Head, New Jersey
Probasco-Dittmar House, Colts Neck, New Jersey
St. Anthony of Padua Roman Catholic Church, Jersey City
Weequahic Park Historic District, Newark
Robbins-Messler House, Asbury Park
Grover House, Lincroft, Monmouth County
Ahavas Sholom, last remaining synagogue in Newark
Four Corners Historic District, Newark
Riverbank Park, Newark
Montrose Park Historic District, South Orange
South Orange Fire Station, South Orange
St. Casimir’s Polish Roman Catholic Church, Newark
St. Lucy’s Church, Newark
North Broad Street Historic District, Newark
Kenney (Community) Memorial Hospital, Newark - first NJ African-American hospital
Hahne and Company Department Store, Newark
Thematic Nomination of the Outdoor Sculpture of Gutzon Borglum, Newark
Robert Treat Hotel, Park Place, Newark
Old School Baptist Church and Cemetery, Main Street, South River, Middlesex Cty.
Glencoe (Coe Mansion), Martin Luther King Boulevard, Newark
Schooley’s Mountain Historic District, Washington Township, Morris County
Essex Club, Park Place, Newark
Essex County Jail, Newark (designed by John Haviland, 1828)
George Wurts House, Asbury Park, Monmouth County
State Street School, Newark
Oheb Shalom, (Metropolitan Baptist Church), Newark
Walker-Combs-Hartshorne Farmstead, Freehold, Monmouth County
Forest Hill Historic District, Newark
Fairmount Baptist Church (Old Bethany), Newark
Protestant Foster Home, Broadway, Newark
Belleville Avenue Cong. Church (Clinton AME Zion), Newark
Casa Italiana, the former Stanley Theater, South Orange Avenue, Newark
Watts, Campbell Company, machine shop, McCarter Highway, Newark
Tiffany and Company Factory, silversmiths and stationers, Newark

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Preservation Planning and Design Assistance:

City of Newark Master Plan
Symphony Hall Renovation, Newark
Military Park Renovation, Newark
Pierre Apartments, Camden
North Star Academy Charter School, Newark (Uncommon Schools)
Team Academy, Newark (Kipp Schools)
40 Rector Street, (Science High School) Newark, NJ (Boraie Development)
2 Center Street, Newark, NJ (Dranoff Properties)
Borden Farm Products Pasteurization and Distribution Plant, Newark
Teachers Village, Four Corners Historic District, Newark (RBH Group)
Jersey City Medical Center, now "The Beacon" (Metrovest Equities, Building Land and Technology)
Halsey Street Streetscape Rehabilitation, Newark (Brick City Development Corp.)

Cultural resources (historic sites) surveys:

Reconnaissance and Intensive Level Surveys of the City of Paterson
Reconnaissance Level Survey of 15 Essex County municipalities, e.g.: Belleville, Caldwell, Essex Fells, Manlewood, Nutley, Roseland, South Orange, West Caldwell and West Orange



ZAKALAK ASSOCIATES
HISTORIC PRESERVATION CONSULTANTS

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Glencoe (Coe Mansion), Martin Luther King Boulevard, Newark
Schooley’s Mountain Historic District, Washington Township, Morris County
Essex Club, Park Place, Newark
Essex County Jail, Newark (designed by John Haviland, 1828)
George Wurts House, Asbury Park, Monmouth County
State Street School, Newark
Oheb Shalom, (Metropolitan Baptist Church), Newark
Walker-Combs-Hartshorne Farmstead, Freehold, Monmouth County
Forest Hill Historic District, Newark
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Belleville Avenue Cong. Church (Clinton AME Zion), Newark
Casa Italiana, the former Stanley Theater, South Orange Avenue, Newark
Watts, Campbell Company, machine shop, McCarter Highway, Newark
Tiffany and Company Factory, silversmiths and stationers, Newark

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Military Park Renovation, Newark
Pierre Apartments, Camden
North Star Academy Charter School, Newark (Uncommon Schools)
Team Academy, Newark (Kipp Schools)
40 Rector Street, (Science High School) Newark, NJ (Boraie Development)
2 Center Street, Newark, NJ (Dranoff Properties)
Borden Farm Products Pasteurization and Distribution Plant, Newark
Teachers Village, Four Corners Historic District, Newark (RBH Group)
Jersey City Medical Center, now "The Beacon" (Metrovest Equities, Building Land and Technology)
Halsey Street Streetscape Rehabilitation, Newark (Brick City Development Corp.)

Cultural resources (historic sites) surveys:

Reconnaissance and Intensive Level Surveys of the City of Paterson
Reconnaissance Level Survey of 15 Essex County municipalities, e.g.: Belleville, Caldwell, Essex Fells, Maplewood, Nutley, Roseland, South Orange, West Caldwell and West Orange
Reconnaissance and Intensive Level Surveys of the Town of West New York
Various Newark neighborhoods for the Housing Authority of the City of Newark

HABS/HAER Recordings:

Colgate-Palmolive plant, oldest soap manufacturing plant in the US, Jersey City, NJ
Central Railroad of New Jersey Newark Station, Broad Street, Newark.
Blocks 51 and 52 in Newark for the new Prudential towers, Newark, NJ.

Tax Act Certifications:

Jersey City Medical Center (10 high-rise buildings converted to market-rate housing)
Hahne's Department Store, Newark, NJ
St. Michael's Hospital, Newark, NJ
National State Bank Building, 810 Broad Street, Newark, NJ (conversion of bank to Hotel Indigo)
Columbian Steam Laundry, 127 Halsey Street, Newark, NJ
240 Martin Luther King Boulevard, Newark, NJ
James Wright Clark House, Mt. Prospect Avenue, Newark, NJ
Crescent Gardens, Camden (18 buildings)
G.G.Green's Block, Woodbury
Carlton Hotel (Hotel St. Francis) Newark
Bloomfield South Junior High School, Bloomfield (loft-style residential conversion)
Barr's Block, Bridgeport, CT (market-rate residential conversion)
North Broad Street Historic District, Newark, for the St. James Development Corporation (8 buildings)
Union Building, 11-15 Clinton Street, Newark (12-story office building to loft conversion)
Colleoni Apartments, Newark (market-rate apartment conversion)
Columbian Block, 224-226 Market Street, Newark, NJ (loft-style residential conversion)

ZAKALAK ASSOCIATES: SELECTED PROJECT EXPERIENCE

Tax Act Certifications (continued):

216, 218, 222 Market Street, Newark, NJ (Rock Plaza Lofts: residential and commercial conversion)
Bowers Building, 189-191 Market Street, Newark, NJ (loft-style residential conversion)
John Frederick Peto House and Studio, Island Heights, NJ
Fort Monmouth Historic District, Non-Commissioned Officers Housing

Television Documentaries:

A Walk through Newark (PBS – Channel 13)
Our Vanishing Past (New Jersey Network Public Television)

Historical/Architectural Documentations and Assessments:

Borough of Tinton Falls, design guidelines and consultant to Preservation Commission
Llewellyn Park Gate House, West Orange, Local Register Designation Application
St. Cloud Presbyterian Church, West Orange, Local Register Designation Application
Crawford House Historic Preservation Plan, Tinton Falls
Closter Victorians Local Historic District (Durie/Knickerbocker Avenue)
Pierson's Mill, Maplewood Township, Essex County
Montrose Park Historic District, Village of South Orange, Essex County
Magnolia Avenue Local Historic District, Tenafly
Summit Avenue Historic District, Hackensack, Bergen County
University Heights Science Park, Newark
NJ DOT Bridge Replacement Study: various locations
Atlantic City Inlet/Gardiner's Basin Area, Atlantic City, Atlantic County
New Jersey Performing Arts Center site, Newark
Liberty State Park, Jersey City, design guidelines for the North Terminal walkway and bulkhead
Historic Structure Report on Maybury Hill, Princeton Township, Mercer County
Old Stone House, South Orange, Essex County
First Baptist Church, Paterson
65 Central Avenue, Newark Museum, Newark
NJ Transit Light Rail Line, Newark
Conover-Crine House, Colts Neck, Monmouth County
Fort Monmouth Historic District, North and South Posts, Oceanport, NJ

Selected List of Clients:

Berger Hotels Group, Newark
Biederman Redevelopment Ventures Corp.
Building Land and Technology, Stamford, CT
Boraie Development, New Brunswick
Borough of Bay Head
Borough of Closter
Borough of Tenafly
Borough of Tinton Falls, Historic Preservation Commission and Planning Board
Brick City Development Corporation, Newark

ZAKALAK ASSOCIATES: SELECTED PROJECT EXPERIENCE

Selected List of Clients (continued)

City of East Orange
City of Newark
City of Newark Landmarks and Historic Preservation Commission
City of Paterson
City University of New York, New York
Civic Builders, New York
Colgate-Palmolive Company, New York
County of Essex
CTS Architects, Chatham, NJ
Dranoff Properties, Philadelphia
Dubrow Management Corporation, Newark
Durand Hedden House and Garden Museum, Maplewood
Elizabethtown Water Company
Episcopal Development Corporation, Newark
Fidelco, Millburn and Newark
Hanini Construction, Newark
Housing Authority of the City of Newark
Kajima International, Fort Lee
Kipp Schools, Newark
Langan Engineering, Elmwood Park
L & M Development, Larchmont, NY
M & M Development, Newark, NJ
Metrovest Equities, NYC
Middletown Township Historic Preservation Commission
Montrose Park Historic District Assn., South Orange
National Park Service, Department of the Interior
New Jersey Transit
New Jersey Water Supply Authority, Clinton
Newark Museum
Newark Preservation and Landmarks Committee
Prudential Insurance Company of America
Public Storage Inc., Pasadena, California
RBH Group, New York
Regan Development, Ardsley, New York
RPM Development, Montclair and Camden, NJ
South Orange Historical and Preservation Society, South Orange
South River Historical and Preservation Society, South River
Uncommon Schools, New York
St. Anthony of Padua Church, Jersey City
St. Casimir's Church, Newark
St. James Community Development Corporation, Newark
St. Lucy's Church, Newark
Town of Clinton
Town of West New York
Township of Washington, Morris County
Township of West Orange Historical Preservation Commission
University Heights Science Park, Inc., Newark

Verified Statement of Allen Kratz

BEFORE THE SURFACE TRANSPORTATION BOARD

Consolidated Rail Corporation -)
Abandonment Exemption -) AB 167 (Sub-no 1189X)
in Hudson County, NJ)

VERIFIED STATEMENT OF ALLEN W. KRATZ

Principal, Allen W. Kratz Historic Preservation Consulting, LLC

I, Allen W. Kratz, state that I am the principal of Allen W. Kratz Historic Preservation Consulting, LLC. My resume is attached.

I have two decades of experience in researching and writing about the history of New Jersey, particularly (a) transportation history and (b) economic and industrial history at the end of the 19th Century.

I earned a certificate in historic preservation from Drew University and taught two classes in Drew's historic preservation program: a course on the economics of historic preservation and a course on urban issues related to historic preservation.

I worked in the real estate and economic development division of the Finance Department of NJ Transit, the statewide public transportation agency.

I have successfully nominated two properties in Hoboken for listing on the National Register of Historic Places and New Jersey Register of Historic Places.

I am familiar with the subject property. I have walked the length of the "Sixth Street Embankment" numerous times. I reviewed the photographs and report resulting from a site visit to property on June 14, 2017.

On the basis of my training and experience, I am qualified to render an expert opinion recommending that the Harsimus Branch from Marin Boulevard to the western boundary of CP Waldo (roughly Chestnut Street) in Jersey City, New Jersey, be determined eligible for the New Jersey Register of Historic Places and the National Register of Historic Places.

The entire length of the Harsimus Branch of the former Pennsylvania Railroad, from Marin Boulevard to CP Waldo (near Chestnut Street) in Jersey City, warrants listing on the National Register of Historic Places and New Jersey Register of Historic Places. Listing will showcase the property's association with significant events in the history of New Jersey, i.e., expansion of the nation's railroad infrastructure

to serve New York City in the region's burgeoning economy in the late 1800s.

The Harsimus Branch remains an intact historic resource. It includes structural features characteristic of the Pennsylvania Railroad's standards and business practices for property acquisition, engineering, architectural design and capital investment in the late 19th Century and Early 20th Century. Still readily visible along portions of the rail bed are vestiges of railroad operations: rails, ballast, ties, tie plates and other infrastructure. The Harsimus Branch is a continuous view corridor that illustrates how a large portion of the nation's manufacturing and commercial output a century ago traveled by rail to the Jersey City waterfront to be floated eastward across the Hudson River for the final leg of its journey to the all-important New York market.

This historic freight transportation resource retains a greater degree of character-defining elements than do other former freight transportation resources in New Jersey that are listed on the National Register of Historic Places.

This statement addresses two subjects: (a) the historic economic significance of the Harsimus Branch and (b) the

precedent for adding the Harsimus Branch to the National Register that is established by National Register listing of two other freight-transportation resources. They are the Morris Canal and the Delaware & Raritan Canal.

Like the Harsimus Branch, the two canals no longer provide freight-transportation. Nonetheless, their significance in New Jersey's economic development warranted their addition to the National Register. Moreover - important to note - they were added even they did not, and do not, display the resource integrity that the Harsimus Branch retains from Marin Avenue to CP Waldo.

Economic Historic Significance

Connected to the Pennsylvania Railroad's primary trackage to Philadelphia, the Harsimus Branch played a key role in enabling the Pennsylvania Railroad to compete against other railroads for market share in the nation's most populous city, New York.

Competitive New York market

In the 1800s, as New York eclipsed other port cities, including Philadelphia, which at that time was the Pennsylvania Railroads easternmost city and market, railroads vied to

increase profitability and shareholder value by extending their railroad tracks eastward -- not to Manhattan, blocked by the Hudson River, but, instead to the west bank of the Hudson River, where goods and produce could be floated across the river.

During the 1840's, the Baltimore & Ohio Railroad proposed laying track from Pittsburgh to the port city of Baltimore, alarming Philadelphians to the point of inducing the state legislature to charter the Pennsylvania Railroad to expand east to the port of Philadelphia. In 1871, having expanded west to Cleveland, Chicago and St. Louis, but unable to transport Midwest grain and livestock to New York, the Pennsylvania Railroad acquired routes to Newark, then Jersey City.

Competitors to the Pennsylvania Railroad

To seek and gain a competitive edge, the Pennsylvania Railroad's acquired access to Jersey City none too soon. As early as the 1840's, the New York Central Railroad provided direct access to the island of Manhattan by avoiding the Hudson River at its widest point, at Manhattan, and, instead, finding and easier crossing up river.

In 1861, another competitor, the Erie Railroad had completed its Bergen Tunnel through the Palisades in Jersey

City, availing itself of direct access to the waterfront for trans-Hudson shipping of goods and products from the southern tier of New York State and beyond.

By 1864, yet another competing railroad, the Central Railroad of New Jersey, had completed its route from Elizabeth, New Jersey, to the Communipaw section of Jersey City's waterfront. Its facilities became a transfer point for livestock and produce arriving from New Jersey farms and fields.

Coal from Pennsylvania arrived in trains operated by still another competitor of the Pennsylvania Railroad, the Lehigh Valley Railroad, which operated on the Central Railroad of New Jersey's right of way.

At the northern end of Jersey City's waterfront, another competitor, the predecessor to what would become the Delaware Lackawanna & Western Railroad, had begun constructing waterfront facilities for the trans-shipment of its primary tonnage: anthracite coal from Pennsylvania and milk from western New Jersey.

Pennsylvania Railroad's Harsimus Branch

In response to competitive pressures the Pennsylvania Railroad in 1874 purchased waterfront property at Harsimus Cove in Jersey City, 97 acres along 1,800 feet of waterfront, and connected it to its far reaching rail system on temporary tracks along the waterfront. Ten years later, the railroad established a more direct connection to its new waterfront acquisition: a two-track elevated iron structure paralleling fifth and Sixth Streets in Jersey City, i.e., the Harsimus Branch.

Completion of the Harsimus Branch enabled the Pennsylvania Railroad to handle agricultural, mining and manufacturing products from eastern Pennsylvania, Pittsburgh, the Ohio Valley, Great Lakes region and Midwest farms. Perishable and agricultural produce from the south Atlantic and Gulf Coast states also made their way to New York City via the Harsimus Branch.

Demand for increased service prompted the Pennsylvania Railroad to widen the Harsimus Branch during 1901 and 1902. It replaced the two track elevated structure by building a seven-track, earth-filled, ashlar-block-supported embankment between Fifth Street and Sixth Street, the "Sixth Street Embankment," in local parlance.

Economic Impact

By the end of the 19th Century, railroad companies owned most of Jersey City's waterfront for their trans-Hudson operations: docks, railyards, warehouses, and facilities for fueling and repairs. The competitive market for moving goods, livestock and produce from America's heartland to its most populous city provided economic support to New Jersey, particularly Jersey City, in terms of jobs and tax revenue.

For example, of the eight largest property owners in Jersey in 1910, five were railroads, among them the largest property owner, the Central Railroad of New Jersey with 913 acres, and the Pennsylvania Railroad, in second place controlling 533 acres. The assessed value of the Pennsylvania Railroad's property was \$12,985,000, the Jersey Central's, \$10,586.

Railroads, including the Pennsylvania Railroad and its ownership and use of Harsimus Branch, supported Jersey City's economy in terms of tax revenue and employment. National Register listing of the Harsimus Branch will facilitate opportunities to showcase this significant part of the economic history of Jersey City and the State of New Jersey to future generations.

Historic Resource Integrity

National registration of the Harsimus Branch as a historic place that is not used for its original purpose (transportation) would follow the precedent of Register listing of two other historic transportation rights-of-way in New Jersey that no longer serve their original freight-transportation: the Morris Canal, which, like the Harsimus Branch, terminates in Jersey City, and the Delaware and Raritan Canal, which traverses the mid-section of New Jersey,

At the time of their listing on the Register (and currently), neither canal exhibited the historic integrity that the Harsimus Branch still displays.

Morris Canal

All 107 miles of the Morris Canal were added to the National Register in 1974 even though portions had been covered over, converted to other use or deteriorated. The registration form notes gaps in historic integrity on Continuation Sheet 7. For example, "The eastern terminus of the canal at Hudson and Green Streets, on the Hudson River in Jersey City, is still in evidence. In addition to the existence of the Little Basin, there is the Big Basin, of a later date, alongside the Jersey

Central Railroad Terminal in Jersey City. From this point to Paterson there is little surface evidence of the Morris Canal, except for a small section between Clifton and Bloomfield.
(Emphasis added.)

"The city of Dover had five locks, but none exist today. Only a small section of the canal bed and tow path are recognizable in Dover. Of Plane 7E in Wharton there is nothing left on the surface. (Emphasis added.)

"Plane 8W is unrecognizable except for the grade of the slope. Presently used for agriculture. (Emphasis added.)

Delaware and Raritan Canal

Similarly, the entire 44-mile length of the Delaware and Raritan Canal was listed on the Register in 1973 even though portions of the canal were covered over, converted to roadways or otherwise altered after canal traffic ended in the 1920s.

In discussing the matter of historic integrity, the registration form (on Continuation Sheet 7) acknowledged the loss of portions of the historic resource. Notwithstanding gaps in the canal system, as early as the 1940's, state officials identified the value of preserving what remained. The

nomination form cited a 1945 report prepared by the New Jersey Department of Conservation and Development (a predecessor to the Department of Environmental Protection). The report addressed the future of the canal, stating "Enough present canal structures show the original construction to permit a relatively easy restoration of desirable units and canal waterway part of the recreational development." (Emphasis added.)

The 1945 report also made the case for registering the canal despite gaps in its integrity. "As transportation modes change in future years the relics of early canal usage such as the locks, swing bridges and other canal structures will gain in importance. Too often the opportunity to preserve such portions of past history are allowed to slip by in doing what is necessary or expedient in present day trends..."

Conclusion

The entire length of the Harsimus Branch of the former Pennsylvania Railroad, from Marin Boulevard to CP Waldo, warrants listing on the National Register of Historic Places. Listing will recognize the property's association with significant events in the history of New Jersey, i.e., expansion of the nation's railroad infrastructure to serve New York City

in the region's burgeoning economy in the late 19th Century and early 20th Century (Criterion A).

The Harsimus Branch, once used as a freight rail corridor, is a historic transportation resource that retains a greater degree of character-defining elements than do other former transportation resources listed on the National Register of Historic Places. The entire Harsimus Branch warrants listing on the National Register of Historic Places and the New Jersey Register of Historic Places.

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Attachment -- CV

A handwritten signature in blue ink that reads "Allen W. Kratz". The signature is fluid and cursive, with a large loop at the end of the last name.

Allen W. Kratz, Principal

Allen W. Kratz Historic Preservation
Consulting, LLC

Dated:

June 16, 2017

ALLEN W. KRATZ



Allen W. Kratz Historic Preservation Consulting, LLC
1245 Bloomfield Street
Hoboken, NJ 07030

201-214-7476 allenkratz@optonline.net

Historic Preservation Expertise and Experience

- | | |
|------------------------------|---|
| CLIENT REPRESENTATION | <ul style="list-style-type: none">• Secured Historic Preservation Commission approvals for commercial and residential clients in Hoboken, Jersey City, 2015, 2016, 2017.• Secured approval from N.J. Historic Sites Council for NJ Transit to add advertising to historic main waiting room of Newark Penn Station while respecting Art Deco architecture, 2009. |
| LEGISLATION | <ul style="list-style-type: none">• Redrafted City of Hoboken's preservation ordinance; adopted 2012. |
| DOCUMENTATION | <ul style="list-style-type: none">• Successfully nominated two buildings to National and New Jersey Registers of Historic Places: First Baptist Church, Hoboken, 2005; Hoboken Free Public Library and Manual Training School, 2013. |
| ADVOCACY | <ul style="list-style-type: none">• Testified in favor of Hoboken Zoning Board variances for modern architectural design complementary to historic district, 2013.• Cross-examined developer's planner and preservationist to defeat demolition of Hoboken's historic Neumann Leathers factory, 2008.• Testified at state legislative hearings and lobbied members of Congress in favor of historic preservation funding, 2014, 2015, 2016. |
| PROBLEM SOLVING | <ul style="list-style-type: none">• Arranged with municipality and college to provide free parking for parishioners of nearby historic 1890 church, thereby inducing congregation to use -- i.e., preserve -- building instead of decamping to suburbs and selling church to developer, 2005. |
| FINANCING | <ul style="list-style-type: none">• Enabled Hoboken YMCA to qualify for historic-preservation tax-credits by discovering the 1927 rendering of never-built fifth floor, 2007. |
| MANAGEMENT | <ul style="list-style-type: none">• Headed \$3.3 M preservation/flood-proofing of 1897 Hoboken Public Library as trustees' president, 2012-2017; secured first-ever rehab subcode waivers from municipality's construction office, 2014. |
| ORGANIZING | <ul style="list-style-type: none">• Led a grass-roots effort that defeated zoning variances sought for a nine-story overbuild and partial demolition of three National Register buildings on Church of the Holy Innocents site in Hoboken, 2007. |
| EDUCATION | <ul style="list-style-type: none">• Produced a "then and now" tour of Hoboken Terminal comparing issues facing Lackawanna Railroad in 1907 and NJ Transit currently. |
| TEACHING | <ul style="list-style-type: none">• Attorney licensed in New Jersey; taught historic preservation law for N.J. Institute for Continuing Legal Education, 2010, 2011.• Initiated and taught "The Challenge of Saving Our Urban Legacy" and "Economic Development and Historic Preservation," Drew University's continuing education program, 2003-2008.• Scripted and led four separate walking tours to all 17 National Register sites in Hoboken for Hoboken Historical Museum, 2005-06. |
| CIVIC SERVICE | <ul style="list-style-type: none">• Gubernatorial appointee, N.J. Historic Trust, 2004-2009. |
| EDUCATION | <ul style="list-style-type: none">• B.A., Earlham College; M.L.S., Drexel University; J.D., American University; historic preservation certificate, Drew University. |

Verified Statement of Diane Kaese

BEFORE THE SURFACE TRANSPORTATION BOARD

Consolidated Rail Corporation -)
Abandonment Exemption -) AB 167 (Sub-no 1189X)
in Hudson County, NJ)

VERIFIED STATEMENT OF DIANE S. KAESE R.A.

I, Diane S. Kaese, state that I am a Registered Architect in New Jersey, New York and Pennsylvania. My resume is attached. I have extensive experience in Historic Preservation; specializing in failure analysis and repair. I have my Masters in Historic Preservation from Columbia University's School of Architecture Preservation and Planning. I co-authored the Jersey City Preservation Ordinance. I have practiced architecture for over 30 years and maintain an active practice that includes many different types of structures and objects. I apply the principles of preservation to my projects. My practice typically involves looking for clues to determine possible causes of failures. Looking for evidence of a railroad is a slightly larger scale than many of the clues I typically deal with but the process is the same, large or small. Determining the integrity of the evidence is something that I do with regularity in my practice. I am qualified to render an expert

opinion recommending that the Harsimus Branch from Marin Boulevard to the western boundary of CP Waldo (roughly Chestnut Street) be determined eligible for the New Jersey Register of Historic Places and the National Register of Historic Places. At the request of City of Jersey City, Rails to Trails Conservancy, and/or Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (City et al), I participated in a site visit, accompanied by representatives of Consolidated Rail Corporation, on June 14, 2017, to the western end of the Harsimus Branch in the CP Waldo area. The purpose of my visit was to inspect a key portion of the site not otherwise visible from public streets for purposes of formulating an expert opinion on eligibility of the entire Harsimus Branch from Marin Boulevard to CP Waldo for the State and National Registers. I make this verified statement of my expert opinion for use by City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Preservation Coalition ("City et al") as part of their response to the Cultural Resources Identification Report (CRID) issued in the above captioned proceeding on or about May 5, 2017.

1. Based on all information to date, and for the reasons stated below, I conclude that the Harsimus Branch west of Marin Boulevard through and including its westernmost boundary in CP Waldo (approximately Chestnut Street) is

historically significant at the national, state and local levels for the reasons alluded to in the CRID. However, I disagree with the CRID's conclusion that that the portion of this property west of Brunswick Avenue (that is, west of the Embankment) to and including CP Waldo has lost integrity so as not to be qualified for listing on the State or National Registers. For the reasons stated below, the section west of Brunswick through and including CP Waldo in fact has sufficient integrity to be eligible for listing in the National Register, and STB should so determine. For similar reasons, the entire Harsimus Branch from the Embankment west to CP Waldo should be included as a continuous contributing element for the PRR New York to Philadelphia Historic District.

2. Integrity is the ability of a property/site/etc. to convey its significance. Integrity is grounded in an understanding of the physical features and how they relate to the significance of the property. In this case, we are addressing a railroad line that qualifies for the National and State Registers of Historic Places under Criteria A - contributions to the broad patterns of our history. The line in question once connected a major freight distribution and transshipment center on the edge of the east coast to the rest of America.

3. Does the Harsimus line still have physical integrity?

The section of the Harsimus line which I inspected on Wednesday, June 14 retains the original track bed in the original rock cut, the grade has not been altered, the catenary support bases for the line are extant although most of the vertical steel elements have been removed. Additional railroad accessories including switch boxes and ties were observed. Culverts constructed to divert water away from the catenary bases and under the rail bed were observed and were still functioning albeit partially filled with vegetation and construction debris. The majority of the stanchions that crossed the low-lying areas between Brunswick Street and the depressed cut for the Conrail (National Docks) line are still in place. If not for the vegetation on the western portions of the site, a walkthrough of the area would have been unnecessary as the remaining evidence of the line from the western CP Waldo connection to the stone embankment east of Brunswick Street would have been clearly visible via overhead photography including but not limited to Google Earth Mapping Service™.

4. If desired, a railroad line could be reconstructed today along the existing track bed and using the line of existing stanchions reconnecting them essentially as they were prior to disassembly. The ability to reconstruct the railroad in

its original location using existing artifacts clearly exhibits that integrity of location and setting is intact.

5. In addition to the finds during the walkthrough, a tie-in to the existing tracks on the west end of the site, the CP Waldo Connection, is still possible. Train tracks and train bed engineering has not significantly changed since this line was installed. Reinstallation of new tracks and the reuse of the existing rail line, rail bed, stanchions could, and likely would, be constructed of materials and designs similar to those removed when portions of the line were disassembled. In my view, the integrity of the materials and the design is not lost nor are the details unknown. Missing portions can be relatively easily reestablished as this line is part of a much bigger whole that was constructed (necessarily) using standardized details and equipment. If the craftsmanship used in constructing the railroad wasn't consistent it simply couldn't function. By the nature of railroad construction, integrity of workmanship is a given.

6. The majority of the area addressed in the walk-through is under the control of Conrail and is clearly a nexus of railroad activity with the Path lines to the south, the Conrail (National Docks) line to the east and the abandoned Nave/River line crossing over the Harsimus line and running

through the same general area where the Harsimus line is located. In addition to the physical presence the sounds and vibrations of active rail lines along with the plentiful artifacts of the Harsimus line provide no question that the Harsimus line retains its railroad feeling and association as a structure in this location.

7. Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Diane S. Kaese". The signature is written in a cursive style with a large, looped initial "D".

Diane S. Kaese R.A.

Dated:19 June 2017

Diane S. Kaese, R.A.

(917) 414-8097 (c)

dskaese@kaeselynych.com

Experience

Kaese & Lynch Architecture and Engineering LLP, 2009 to present
Diane S. Kaese, R.A., Sole Proprietor, 2008 to 2009
Senior Project Manager, Simpson Gumpertz & Heger Inc., 2004 to 2008
Senior Architect, WJE Engineers and Architects P.C., 1988 to 2004
Project Manager, Tishman Construction Corporation, 1985 to 1988
Staff Architect, The Ehrenkrantz Group, 1983 to 1985
Draftsperson, Meadows/Woll Architects, 1981 to 1983
Building Inspector, City of Lincoln, Nebraska, 1978 to 1980

Investigations

- Old Child's Restaurant, Coney Island, NY (landmarked terra cotta and masonry structure)
- Bleeker Street Subway Station, New York, NY (IRT 1904 historic finishes consulting-terra cotta, mosaics, glass tile; determine scope of work for MTA contract documents)
- 11 E 44th Street, New York, NY (circa 1928 office/retail building, storefront investigation and Local Law 11 inspection)
- 807 Park Avenue, New York, NY (LL11 inspection and report for 11-story tall building)
- West End Collegiate Church, New York, NY (water leak investigation and rebuilding dormers at circa 1890s Dutch Revival church)
- Pennsylvania Museum, Harrisburg, PA (circa 1968 conditions survey and recommendations for repair for the marble clad concrete structure)
- Music Box Theater, New York, NY (conditions survey and recommendations for repair)
- One Morton Square, New York, NY (conditions survey of roof, facades and interior building systems including firestopping)
- The Pavilion at Philip Johnson Estate, New Canaan, CT (evaluation and design for temporary stabilization of a deteriorated decorative precast concrete structure)
- 983 Park Avenue, New York, NY (evaluated existing penthouse wall and roof systems, provided recommendations for removal and repair)
- Montauk Lighthouse, Montauk, NY (circa 1790, investigation to determine causes of peeling paint and vertical cracking)
- Pennsylvania Archives Building, Harrisburg, PA (circa 1968 conditions survey and recommendations for repair for the marble clad steel structure)
- Buckley School, New York, NY (conditions surveys and local Law 11 filings for 5 connected brick structures of various ages and construction types)
- Jefferson Park Boys Club, New York, NY (conditions survey of the circa 1927 brick, terra cotta and cast stone community facility)
- 7 West 29th Street, New York, NY (conditions survey for 1880's brick and limestone commercial structure)
- Kings County Hospital, Brooklyn, NY (conditions survey and Local Law 11 filing of 7 brick and limestone buildings with decorative lead panels circa 1926-1944)
- 264 West 11th Street, New York, NY (water leak investigation and reconstruction of a brick addition to a historic structure to address long-term water leaks)
- Board of Education Storage Facility, Long Island City, NY (concrete testing and development of repairs for Works Progress Administration historic poured-in-place concrete structure)
- Crescent Avenue Church, North Plainfield, NJ (investigation of brownstone and cast stone failures, design of stabilization and temporary protection)

- Guardian Life Insurance Company of America, 7 Hanover, New York, NY (due-diligence survey and repair details for the brick curtain wall corporate headquarters)
- Cadman Towers, New York, NY (concrete testing and peer review for repairs for the poured-in-place concrete residential structures, circa 1973)
- Royster Building, Norfolk, VA (conditions survey and repair recommendations for the severely deteriorated brick and terra cotta facade)
- Marble Collegiate Church, New York, NY (conditions survey and cleaning tests for the landmarked Tuckahoe marble structure)
- 345 Adams Street, Brooklyn, NY (investigate the deteriorated terra cotta, brick and stucco facades of the mixed use city-owned building)
- Guardian Life Insurance Company of America (Annex), Union Square, New York, NY (investigate the curtain wall and the failure of a large sheet of glass in the 1961 Skidmore, Owings & Merrill annex)
- Guardian Life Insurance Company of America, Union Square, New York, NY (Local Law 11 survey for the 1910 granite and brick company headquarters)
- Custom House, New York, NY (investigated plaster deterioration to determine the need for replacement at the long abandoned circa 1899 Cass Gilbert structure, tested paint strippers for use on the plaster and addressed plaster concerns during construction; cleaning tests products for interior stone; sounded the interior marble installations after several panel failures)
- Sun Oil Company, Philadelphia, PA (investigation of severely deteriorated brick office structures)
- Cornell Club, New York, NY (tests in preparation for the cleaning of the stained limestone facade)
- Bronx Museum of the Arts, Bronx, NY (investigation of granite facade tile installation failures)
- Pan Am Building (now the Met Life Building), New York, NY (soiling evaluation and cleaning tests in preparation for the cleaning of the 58-story precast concrete commercial structure designed by Emery Roth & Sons with the assistance of Walter Gropius and Pietro Belluschi)
- District Building, Washington, DC (assessment of the marble facade condition and recommendations for cleaning)
- Juilliard School, New York State Theater, Metropolitan Opera at Lincoln Center, New York, NY (circa 1968, condition survey of the travertine facade, design repairs)
- Fred F. French Building, New York, NY (conditions survey of the 1927 terra cotta and brick facade, Local Law 11 inspection)
- 120 Broadway, New York, NY (investigated and documented conditions of the circa 1912 brick and terra cotta facades; designed repairs; detailed the first major use of fiberglass as a replacement for terra cotta cornices, National Register Landmark)
- National Arts Club, New York, NY (conducted a window condition survey of the 1870's Calvert Vaux designed structure)
- Sailors Snug Harbor, Staten Island, NY (documentation of all 1830's brick structures on the campus)

Roofing/Waterproofing

- Clare Rose Inc., Brookhaven, NY (peer review of masonry waterproofing details for new warehouse)
- Unitarian Universalist Congregation at Shelter Rock, Manhasset, NY (phased slate roof replacement)
- Buckley School, New York, NY (water leakage investigations and repairs for courtyard/plaza)
- Private Residence, Fisher's Island, NY (Slate repairs associated with replacement of copper roofing and flashing)
- Lyceum Theater, New York, NY (replacement of the historic slate mansard roof, copper dormers, and ornamental metalwork)
- Temple Emanu-El, New York, NY (consulting for slate roof fall protection system and snow guard system)
- Jefferson Park Boys Club, New York, NY (replaced the copper mansard roof, dormers and the supporting steel structure)
- Buckley School, New York, NY (roof replacement program for 12 different roofs using various roof systems)
- Third Church of Christ, New York, NY (replacement of flashing and gutters at the slate roof)
- Vassar Library, Poughkeepsie, NY (investigation and recommendations to address leaks in new slate roof installation)
- Eldridge Street Synagogue, New York, NY (installation of a new slate roof)
- Guardian Life Insurance Company of America New York, NY (Carlyle roof patching and repair program to extend life of roof)

Construction Documents

- Trinity Lutheran Church, New York, NY (fall protection and remediation of unsafe masonry)
- 92 Warren Street, New York, NY (brick vault repair and waterproofing)
- One South Broad Street, Philadelphia, PA (circa 1929 granite facade, repair and restoration drawings)
- West End Collegiate Church, New York, NY (brick dormer rebuilding, new flashing)
- 11 East 44th Street, New York, NY (storefront demolition and rebuilding, facade repairs to bulkhead)
- One Morton Square, New York, NY (repair documents to address water leaks, missing firestopping and flashing)
- Lyceum Theater, New York, NY (circa 1905, prepared construction documents for the restoration of the terra cotta facade, the slate mansard roof, the decorative metalwork and dormers)
- Whitehall Apartments, Bronx, NY (design documents for new brick cladding of one-story school and garage structure)
- Jefferson Park Boys Club, New York, NY (documents for the masonry and roofing repairs to the 1927 community facility)
- Buckley School, New York, NY (documents for roof replacements, sidewalk replacement, facade repairs, facade and parapet rebuilding, Local Law 11 repairs)
- Fred F. French Building, New York, NY
- Little Red Lighthouse, New York, NY (prepared repair documents for the stabilization and "warehousing" of the abandoned cast iron lighthouse)

Construction Administration

- West End Collegiate Church, New York, NY (east side brick dormer rebuilding, new flashing details)
- Clare Rose Inc., Brookhaven, NY (periodic review of masonry and waterproofing installations at new warehouse)
- Bleeker Street Subway Station, New York, NY (administer historic portion of 1904 IRT station restoration)
- 59th Street Columbus Circle Subway Station, New York, NY (administer historic portions of the IRT 1904 station-historic terra cotta, mosaics, brick and marble cleaning and rebuilding)
- 11 East 44th Street, New York, NY (administered bulkhead facade repairs, storefront demolition and rebuilding)
- Whitehall Apartments, Bronx, NY (administered the recladding of the one-story school/garage structure)
- Lyceum Theater, New York, NY (administered the restoration of the terra cotta facade, the slate mansard roof, the decorative metalwork and dormers)
- Buckley School, New York, NY (administered construction of roof replacements, facade repairs, courtyard/plaza rebuilding, facade and parapet rebuilding, and Local Law 11 repairs)
- Whitney Museum of American Art, New York, NY (administered the removal, cleaning, and replacement of the stone facade of the museum, miscellaneous projects to attach artwork to restored facade)
- Marble Collegiate Church, New York, NY (administered the restoration of the facade including repointing, cleaning, rebuilding of the finials, and the installation of dutchmen)
- Juilliard School, New York State Theater, Metropolitan Opera at Lincoln Center, New York, NY (administer repairs to the travertine facade)
- Bronx Museum of the Arts, Bronx, NY (administered the recladding and reroofing of the museum)
- Fred F. French Building, New York, NY (administered the replacement of over 3200 pieces of polychrome terra cotta, replacement of sills, brick corners, and the complete rebuilding of the fire escape in the occupied landmarked structure)
- Carnegie Hall, New York, NY (project manager for the rehabilitation of the main hall, stage, and patron facilities area of the landmarked structure)
- National Arts Club, New York, NY (administered the rehabilitation of the windows and the polychromatic brownstone and granite facades of this NYC and National Register landmark structure)
- Prospect Park Boathouse, Brooklyn, NY (administered the rehabilitation of the abandoned landmarked 1905 terra cotta boathouse to a visitors center and park rangers police station; the project included new terra cotta, new terrace roofing, a complete interior fit out, and a new clay tile roof)
- Helen Hayes Theater, New York, NY (documented and catalogued the removal of designated artifacts from the theater for storage at the NYC Landmarks artifact warehouse)

Consulting/Reports

- Trinity Lutheran Church, New York, NY (conditions assessment, space planning for accessibility)
- One South Broad Street, Philadelphia, PA (conditions assessment)
- Unitarian Universalist Congregation at Shelter Rock, Manhasset, NY (conditions assessment)
- 59th Street Columbus Circle Subway Station, New York, NY (historic consultant for general contractor)
- Bleeker Street Subway Station, New York, NY (historic consultant for project architect)
- Free Synagogue of Flushing, Flushing, NY (conditions assessment of Former Mann residence and Synagogue)
- Roebling Gatehouse, Roebling, NJ (Historic Structures Report)

Owners Representative

- Stephen Wise Free Synagogue, New York, NY (2010)
- Eldridge Street Synagogue, New York, NY (1988 to 2008)
- 309 West 104th Street, New York, NY (1996 to present)

Registration

Registered Architect: New York (Lic. No. 019042)
Registered Architect: New Jersey (Lic. No. 21AIO1788400)
Registered Architect: Pennsylvania (Lic No. RA021917)

Education

University of Nebraska, Lincoln, Nebraska
B.S. in Architecture, 1979
Columbia University, New York, NY
M.S. in Preservation, 1983
RESTORE Certificate, New York, NY, 1985

Professional Activities

Association for Preservation Technology - member
National Trust for Historic Preservation - member
Historic Paulus Hook Association
 President, 1999 – 2003, 2014 and 2015
 Chair, Construction Committee 1999 to present
Municipal Arts Society
 Preservation Committee 1989 – present
Preservation New Jersey, 2000 – 2009
 Board Member
 Education Committee, chair
Co-Author Jersey City Historic Preservation Ordinance, 1986
Member Jersey City Historic Preservation Commission, 1986 to 1993
Lecturer at numerous conferences on various topics associated with preservation, construction management, professional projects, and roles and responsibilities of parties involved in construction

Honors and Awards

MTA Bleeker Street Subway Station
 New York Landmarks Conservancy Lucy Moses Award, 2013
Eldridge Street Synagogue
 National Trust for Historic Preservation, 2008
 AIA New York-Merit Award for Historic Preservation, 2008
 New York State Preservation League, 2008
 Lucy Moses Award, 2008
 The Victorian Society of America, 2008

Municipal Arts Society MASTerwork Award, 2008
Whitney Museum of Art
Friends of the Upper East Side Certificate of Merit, 1999
Fred F. French Building
New York City Landmark Preservation Commission Award, 1993

Teaching Experience

Pratt Institute, New York City, 2004 to 2013: Taught classes in architectural history, New York City history, and preservation theory and practice

Columbia University, New York City, 2004 to present: Taught classes in preservation technology

Drew University, Madison NJ, 2006, 2008, 2010, 2013: Presented Seminars on Historic Plaster and Mortar

Eldridge Street Project/Museum at Eldridge Street, 2000 to present: Developed and conducted walking tours and lectures related to the building and surrounding neighborhood

Career Day, Parent Participant (Architect) – York Preparatory School, MAT (PS 136), PS 11

Developed curriculum for fifth graders with Eldridge Street Project staff and New York City teachers to explore basic concepts of the built environment. Taught segment of the curriculum for ten years.

Mentor in Engineering, 1987 – 1991

(6/15)