

SERVICE DATE – SEPTEMBER 10, 2020

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

DRAFT SUPPLEMENTAL ENVIRONMENTAL ASSESSMENT

Docket No. AB 167 (Sub-No. 1189X)
Consolidated Rail Corporation – Abandonment Exemption – in Hudson County, N.J.

Docket No. AB 55 (Sub-No. 686X)
CSX Transportation, Inc. – Discontinuance Exemption – in Hudson County, N.J.

Docket No. AB 290 (Sub-No. 306X)
Norfolk Southern Railway Company – Discontinuance Exemption – in Hudson County, N.J.

OVERVIEW

In this proceeding, Consolidated Rail Corporation (Conrail), CSX Transportation, Inc. (CSXT), and Norfolk Southern Railway Company (NSR) jointly filed a verified Notice of Exemption with the Surface Transportation Board (Board or STB) under 49 C.F.R. § 1152.50¹ seeking Board authorization for Conrail to abandon and CSXT and NSR to discontinue service over an approximately 1.36-mile portion of a line of railroad known as the Harsimus Branch. The rail line extends from milepost 0.00, CP Waldo, to milepost 1.36, a point east of Washington Street, in Jersey City, Hudson County, New Jersey.² A map depicting the rail line in relationship to the area served can be found in Appendix A.

To comply with its responsibilities under the National Environmental Policy Act (NEPA),³ the Board's Office of Environmental Analysis (OEA) issued an Environmental

¹ The streamlined abandonment exemption process at 49 C.F.R. § 1152.50 applies to rail lines where no rail traffic has originated or terminated in the past two years and there is no overhead traffic that cannot be rerouted. These abandonments typically are decided within 60 days. No rail traffic has moved over the Harsimus Branch for decades.

² For simplicity, this document will reference only Conrail's Notice of Exemption seeking abandonment authority. All references to the Conrail notice incorporate the Notices of Exemption seeking discontinuance authority filed by CSXT and NSR.

³ 42 U.S.C. § 4321 *et seq.*

Assessment on March 23, 2009 (2009 Draft EA)⁴ examining the potential effects on the environment and historic resources if the Board were to authorize Conrail to abandon the Harsimus Branch. During the public review and comment period on the 2009 Draft EA, OEA received approximately 2,000 comments, many of which raised historic preservation concerns. Following receipt of these comments, OEA formally initiated the Section 106 process under the National Historic Preservation Act (NHPA).⁵ Before OEA was able to prepare a Final EA summarizing and responding to the comments on the 2009 Draft EA, the abandonment proceeding (along with the EA and Section 106 processes) halted when the Board issued a stay to allow litigation to proceed in the courts on matters unrelated to environmental or historic review.

The Board lifted the stay in a decision issued Aug. 11, 2014 (Aug. 2014 Decision)⁶ and OEA resumed its review processes, conducting the environmental review under NEPA and the Section 106 review under NHPA separately. OEA began with the Section 106 process. The multi-step historic review process is summarized below and remains ongoing, though nearing completion.⁷ OEA is now issuing this Draft Supplemental EA (DSEA) to continue with its environmental review under NEPA. The DSEA serves several purposes: it updates and addresses changed circumstances and new information since the issuance of the 2009 Draft EA, it summarizes and responds to the comments addressing environmental issues under NEPA submitted on the 2009 Draft EA, and it provides further opportunity for public review and comment. Comments on this DSEA must be received by **October 19, 2020**; details on how to submit comments can be found at the end of this DSEA.

Following receipt of comments on this DSEA, OEA will prepare and issue a Final EA. The issuance of the Final EA will conclude the NEPA process for this abandonment

⁴ At the time the 2009 Draft EA was prepared, OEA was known as the Section of Environmental Analysis or SEA. When discussing the work of SEA here, reference will be made to OEA for consistency.

⁵ 54 U.S.C. §§ 300101-307108 (1966). Section 106 requires the Board to consider the effects of its approval decisions on historic properties. There are four steps in the Section 106 process: establish the undertaking; identify and evaluate historic properties; assess effects on historic properties; and resolve adverse effects.

⁶ Consolidated Rail Corporation—Abandonment Exemption—in Hudson County, N.J., Docket No. AB 167 (Sub-No. 1189X) (STB served Aug. 11, 2014).

⁷ As explained below, as part of the ongoing Section 106 process OEA has issued several reports and addenda to reports on which stakeholders have submitted numerous comments. The documents issued and correspondence received are available on the Board's website, <https://prod.stb.gov>. Documents may be found by searching "decisions" using the docket number AB 167-1189X. Correspondence may be found by searching Environmental Comments using the same docket number.

proceeding. Once OEA completes both the Section 106 process and the NEPA review, the Board will consider the recommendations from OEA concerning the effects of the proposed abandonment on the environment and historic resources, will balance that information with the transportation merits of the proceeding, and will issue a final decision approving, denying, or approving with the imposition of conditions a grant of abandonment authority to Conrail.

BACKGROUND

History of the Harsimus Branch

The rail line proposed for abandonment, known as the Harsimus Branch, extends approximately 1.36 miles from Milepost 0.00 to Milepost 1.36, a point east of Washington Street in the City of Jersey City (City). The property was constructed by the United New Jersey Railroad and Canal Company (UNJRCC), leased to the Pennsylvania Railroad Company (PRR) in 1871, and used in rail service for much of the 20th Century. The trackage ran from a connection with the UNJRCC main line near Waldo Avenue to the Harsimus Cove area on the Hudson River.

In the early 1900s, six masonry-enclosed earthen structures were constructed to convey an elevated portion of the Harsimus Branch along Sixth Street between Brunswick Street and Marin Boulevard (the Embankment). These Embankment segments vary from approximately 35 feet high (at the western end) to 12 feet high (at the eastern end). Each segment is approximately 400 feet long and 100 feet wide. The six Embankment segments were historically joined by plate girder bridges that spanned north-south streets. The rail line was built on top of the Embankment segments and the connecting bridges.

Rail traffic on the Harsimus Branch declined in the 1950s and 1960s. The PRR merged into the Penn Central Transportation Company (Penn Central) in 1968. Penn Central and seven other northeastern railroads declared bankruptcy in 1970. In response to these bankruptcies, Congress enacted the Regional Rail Reorganization Act of 1973, 45 U.S.C. §§ 701-719 (3R Act), under which the bankrupt railroads were merged into a new entity: Consolidated Rail Corporation, or Conrail. In 1976 and as a result of the 3R Act, the Harsimus Branch was transferred to Conrail. Conrail began operating the Harsimus Branch in 1976.

By the mid-1980s, Conrail had sold much of its trackage in the area to developers or to the City. Conrail did not seek abandonment authority from the Board prior to many of these sales because they involved unregulated spur or yard track within the meaning of 49 U.S.C. § 10906. Railroads are not required to obtain Board authority to abandon unregulated spur or yard track. Starting in 1984, the City negotiated with Conrail to purchase the Embankment properties, but no deal was reached. In 1994, Conrail permitted the City and a private developer to remove the bridges on the Embankment. Conrail then offered to sell what remained of the Embankment to the City. Negotiations continued until 1999, at which point negotiations ended without an agreement when the Embankment was declared eligible for listing on the New Jersey Register of Historic Places. During this time, Conrail, treating the Harsimus Branch as

unregulated spur track within the meaning of 49 U.S.C. § 10906, sold the portion of the rail line east of Marin Boulevard to private developers without first seeking abandonment authority from the Board. That easternmost portion of the Harsimus Branch was redeveloped for commercial use years ago and no trace of the rail line remains today.

In October 2002, Conrail put the six Embankment segments and two other parcels west of the Embankment in the rail right-of-way back up for sale. Shortly thereafter, the City designated the Embankment as a “historic landmark” under municipal law, and Conrail informed prospective bidders that the designation would require a developer to obtain the consent of the Jersey City Historic Preservation Commission to proceed with development of those properties. Conrail then began negotiations to sell the eight parcels to a private developer and, still treating the Embankment as unregulated spur track within the meaning of 49 U.S.C. § 10906, completed the sale in July 2005. Today, nine limited liability companies controlled by SLH Properties (the LLCs) hold an ownership interest in the eight parcels, including the six Embankment segments. Conrail currently owns only an approximately 0.18-mile segment of the Harsimus Branch between Waldo Avenue and the New Jersey Turnpike.

Legal Actions Related to the Harsimus Branch

In January 2006, the City, the Pennsylvania Railroad Stem Embankment Coalition, and the Rails-to-Trails Conservancy (City Parties), along with New Jersey Assemblyman Louis M. Manzo, asked the Board for a declaratory order finding that the Harsimus Branch was a line of railroad subject to Board licensing rather than an unregulated spur and, therefore, should not have been sold without prior Board abandonment authority. The Board’s decision in Jersey City Dec. Order⁸ concluded that the Harsimus Branch had been conveyed to (and operated by) Conrail as a line of railroad subject to federal abandonment regulation.

Conrail and one of the LLCs appealed the Board’s decision to the D.C. Circuit. The court vacated the Board’s decision without reaching the merits of whether the line was a regulated rail line subject to Board licensing or excepted spur track. Instead, the court found that the Board lacked the jurisdiction necessary to determine the status of the trackage sought to be abandoned, because, under the 3R Act, such issues could only be determined in a “Special Court” created by the 3R Act. Conrail v. STB, 571 F.3d 13, 18 (D.C. Cir. 2009). The D.C. Circuit determined that the petition for declaratory order before the Board raised substantial questions with respect to the interpretation of the Final System Plan and that, therefore, it fell within the “original and exclusive jurisdiction” of the Special Court. Id. at 19.

On January 6, 2009, while the D.C. Circuit appeal was still pending, Conrail, CSXT, and NSR jointly filed their Notice of Exemption under the streamlined process for abandoning out-of-service rail lines at 49 C.F.R. § 1152.50. The Notice was served and published in the Federal

⁸ City of Jersey City—Pet. for Declaratory Order (Jersey City Dec. Order), FD 34818 (STB served Aug. 9, 2007).

Register on March 18, 2009 (74 Fed. Reg. 11,631-32) and was scheduled to become effective April 17, 2009.

Subsequently and in response to the D.C. Circuit's decision in Conrail v. STB, the City Parties filed an action against Conrail in the U.S. District Court for the District of Columbia (sitting as the Special Court), seeking a determination as to whether the Harsimus Branch was conveyed to Conrail as a regulated rail line subject to Board licensing or as excepted spur track. The Board, by decision served on April 20, 2010, then stayed the abandonment and discontinuance proceedings (in effect staying the completion of the environmental and historic review processes) to allow the District Court time to resolve the status of the Harsimus Branch.

The District Court initially ruled, without reaching the merits, that the plaintiffs lacked standing to bring the D.C. District Court action, but the D.C. Circuit reversed on appeal and remanded the case to the District Court. City of Jersey City v. Consol. Rail Corp., 741 F. Supp. 2d 131 (D.D.C. 2010), rev'd, 668 F.3d 741 (D.C. Cir. 2012). On July 10, 2012, parties to the litigation jointly stipulated that the Harsimus Branch was conveyed to Conrail as a line of railroad subject to the Board's abandonment authority, which meant that environmental and historic review under NEPA and Section 106 were required. Conrail neither joined nor opposed the stipulation.

On September 30, 2013, the District Court granted summary judgment for the City Parties, "given that the parties have now stipulated that the Harsimus Branch was conveyed to Conrail as a line and not a spur." City of Jersey City v. Conrail, 968 F.Supp.2d 302, 307 (D.D.C. Sept. 30, 2013), aff'd, No. 13-7175 (D.C. Cir. Feb. 19, 2014).

The NHPA and NEPA Processes

Pre-Notice of Exemption Process. Following the issuance of the Jersey City Dec. Order in 2007, Conrail began to prepare the environmental and historic reports required in abandonment cases. See 49 C.F.R. §§ 1105.7, 1105.8, 1105.10-11. After completing the consultations with state and federal agencies required by the Board's environmental rules, Conrail submitted environmental and historic reports to the Board in March 2008.

After submitting these reports, Conrail hired Richard Grubb and Associates, Inc. (RGA), a consulting firm with expertise in historic preservation analyses. In September 2008, RGA prepared a report entitled, "Area of Potential Effects Report and Proposed Methodology for Section 106 Consultation." Thereafter, in October 2008, Conrail invited the New Jersey State Historic Preservation Office (SHPO) and OEA to see the Harsimus Embankment and surrounding areas with representatives from Conrail and RGA. On December 23, 2008, SHPO concurred with the definition of the Area of Potential Effect (APE) in the RGA report.

2009 Draft EA. Conrail's 2009 filing of its Notice of Exemption triggered the start of OEA's preparation of an EA and the formal Section 106 historic review process. On March 23, 2009, OEA issued the 2009 Draft EA for public review and comment.

The 2009 Draft EA began by summarizing the Board's streamlined Notice of Exemption abandonment process for "out of service" rail lines and the Board's environmental and historic review processes. It then described the Harsimus Branch and its legal history, and the work done by RGA documenting the Harsimus Branch prior to Conrail filing with the Board for abandonment authority.

The 2009 Draft EA also explained that case law and Board precedent limit the Board's NEPA review of a proposed abandonment to the potential environmental impacts from diversion of rail traffic to other lines or other transportation modes, such as truck, and salvage of the rail line materials.⁹ Consistent with that precedent, the 2009 Draft EA assessed the potential environmental impacts that would result from the diversion of rail traffic to other transportation modes and salvage of the rail line. The document concluded that, because no rail traffic had moved over the line for years, there would be no impact from diversion of rail traffic. Similarly, because, as stated by Conrail, all profitably salvageable track materials associated with the Harsimus Branch were removed many years ago, the 2009 Draft EA concluded that there would be no environmental impact from salvage.

Other environmental resource areas addressed in the 2009 Draft EA included threatened and endangered species, wetlands and water quality, hazardous materials, air quality, energy, safety, and geodetic station markers. OEA concluded that the proposed abandonment would have no effect on these areas. The document also noted that OEA had conducted a search of federally-recognized Tribes with ancestral connections to the Harsimus Embankment. The Native American Consultation Database identified no Tribes with an interest in the proposed abandonment.

The 2009 Draft EA also summarized and responded to comments OEA had received raising environmental concerns about the proposed abandonment and arguing that preparation of an Environmental Impact Statement (EIS), instead of an EA, was warranted in this case. Commenters requesting that OEA prepare an EIS primarily focused on potential environmental impacts that could occur if the Embankment were to be demolished and the properties redeveloped for residential use after the conclusion of the Board's abandonment process. The 2009 Draft EA explained that the Board has no role in planning, approving, or regulating any potential post-abandonment use of this or any other rail right-of-way and, thus, such potential impacts were outside the scope of the Board's environmental review. Nevertheless, the 2009 Draft EA summarized several possible post-abandonment plans that could maintain the Embankment segments intact while developing residential properties, a park, trail, and transit. In the 2009 Draft EA, OEA also noted that what would occur post-abandonment with respect to the LLC's eight parcels was unknown and, moreover, that because the Embankment had been listed as a local historic landmark, none of the reuse concepts could move forward without local government approvals, which would be independent of the abandonment proceeding pending

⁹ See Iowa S. R.R.—Exemption—Abandonment, 5 I.C.C. 2d 496 (1989), aff'd sub nom. Goos v. ICC, 911 F.2d 1283 (8th Cir. 1990).

before the Board. Thus, the 2009 Draft EA concluded, impacts potentially resulting from various reuses of the property did not support preparing an EIS instead of an EA.

Prior to issuance of the 2009 Draft EA, the City Parties commented that the fill material in the Embankment segments is contaminated and that its removal would result in adverse environmental effects. In support, the City Parties provided a 1998 report written by an environmental consultant on behalf of the City that concluded that the fill material in the Embankment segments was nonhazardous waste. The Environmental Protection Agency had also raised concerns about hazard materials in the fill soils. In the 2009 Draft EA, OEA responded that, according to Conrail, soil sampling and analysis had been conducted in 2005 and had found no volatile organic compounds, pesticides or PCBs in the Embankment fill material. The 2005 soil sampling and analysis did detect semi-volatile organic compounds in excess of New Jersey Department of Environmental Protection (NJDEP) cleanup standards, but those compounds were classified as nonhazardous waste. Therefore, OEA concluded that the City Parties had not supported their claim of adverse impacts from hazardous materials and that this issue was not significant enough to warrant preparation of an EIS rather than an EA for the proposed abandonment.

In addition, the City Parties, as well as several other commenters, asserted that OEA should have prepared an EIS because potentially significant environmental impacts could result that could not be adequately mitigated and because the proposed abandonment is controversial. For example, the City Parties suggested that airborne dust from excavation and hauling of fill material during demolition of the Embankment could pose health hazards and that redevelopment of some portions of the Harsimus Branch could affect the 100-year floodplain. In the 2009 Draft EA, OEA responded by stating that based on information submitted by Conrail, OEA's independent investigation (including visual information obtained during the site visit), and comments received, and Board regulations providing that an EA is normally appropriate for an abandonment, preparation of an EA was adequate to consider the potential environmental consequences of the out-of-service rail line. OEA also noted that any potential demolition of the Embankment segments and any potential redevelopment of the Harsimus Branch would not be part of the proposed abandonment and would be appropriately assessed as part of local permitting processes.

OEA addressed comments stating that, should demolition of the Harsimus Embankment occur, adverse environmental impacts would include noise and vibration caused by trucks moving earth and rock spoil, emissions from trucks and fugitive dust harming public health, and increases in truck traffic of 14,000-20,000 disrupting traffic on local streets. OEA noted that any potential future redevelopment of the Harsimus Branch would not be part of the proposed abandonment and would be subject to local planning approvals, which would include consideration of potential impacts of the redevelopment plan, including potential increases in truck traffic during demolition or construction activities

OEA recommended that the Board impose two mitigation measures in the 2009 Draft EA. The first was a Coastal Zone Management Act (CZMA) condition requiring Conrail to complete consultation with the NJDEP's Office of Coastal Management (OCM) to determine

whether the proposed abandonment required a state coastal management consistency certification. If so, the recommended condition prohibited Conrail from consummating the abandonment until it obtained consistency certification under CZMA, 16 U.S.C. § 1451 *et seq.* and notified OEA. The second recommended condition required Conrail to retain its interest in and take no steps to alter the historic integrity of all historic properties with the project right-of-way eligible for listing or listed in the National Register of Historic Places until completion of the Section 106 process. Like the CZMA condition, the recommended Section 106 condition prohibited Conrail from consummating the abandonment until the Section 106 process is done and the Board removes the condition. Because the environmental and historic review processes are not yet complete—and because the Board has not issued a final decision in this proceeding—neither of these conditions has formally been imposed on Conrail.

Comments on the 2009 Draft EA were due April 7, 2009. OEA received approximately 2,000 comments, many of which requested that OEA prepare an EIS. The majority of commenters requesting an EIS raised concerns about impacts on the environment and historic properties that could potentially occur following abandonment as part of possible redevelopment of the Harsimus Branch right-of-way, including the potential demolition of the Embankment and construction of new building in the former rail right-of-way. By decision served April 16, 2009, the effective date of the Notice of Exemption was stayed to allow the Board to complete the NEPA and Section 106 processes and in early 2010 the entire abandonment proceeding was stayed to permit the federal court litigation discussed above to conclude.

Resuming the Section 106 and Environmental Review Process

Following the conclusion of the federal court proceedings involving the applicability of Board abandonment regulation summarized above, the Board issued a decision on August 11, 2014 (Aug. 2014 Decision) vacating the stay issued in 2009 and directing that the historic and environmental review processes proceed. In that decision, the Board noted that portions of the 2009 Draft EA might no longer be current or relevant. The Board directed OEA to issue a DSEA for public review and comment, followed by a Final EA assessing any comments received on the DSEA to meet the Board's obligations under NEPA.

UPDATES SINCE THE 2009 DRAFT EA

Progress in the Section 106 Historic Review. Because many of the comments on the 2009 Draft EA involved the historic Embankment and proposed reuse plans for it, OEA has focused on completing the historic review process for the proposed abandonment of the Harsimus Branch—studying historic sites and structures, including the Embankment. When OEA began the formal Section 106 process, OEA retained RGA because of its detailed knowledge of the Embankment and the historic neighborhoods and other resources surrounding the Embankment. RGA worked as a third-party contractor under OEA's sole direction, control, and supervision, but paid for by Conrail.

With assistance from RGA, OEA has been progressing through the four steps of the Section 106 process required under NHPA. OEA completed Step 1 of the Section 106 process

(Establishing the Undertaking) in 2009, when, in consultation with the SHPO and interested parties, OEA initiated the Section 106 process and defined the undertaking and Area of Potential Effects (APE). When the stay on the abandonment proceeding imposed by the Board in a 2010 decision was lifted in 2014, OEA proceeded to Step 2 (Identification of Historic Properties) by having in-person consulting party meetings in May and June of 2016 to discuss the approach for identifying additional historic properties within the APE and to share preliminary results. Following consultation with the SHPO and the other Section 106 consulting parties, OEA issued a Cultural Resources Identification Report on May 5, 2017. After receiving comments on that report from the SHPO and other consulting parties, OEA issued a Cultural Resources Identification Report Addendum on October 16, 2018, concluding the identification phase of the Section 106 process. To initiate Step 3 (Assessment of Adverse Effects), on March 29, 2019, OEA issued a Cultural Resources Effects Assessment Report (Effects Report) that documented the potential impacts of the abandonment on historic properties. After receiving and considering comments and input from the SHPO and other consulting parties, OEA issued an Effects Report Addendum to the Section 106 consulting parties and the public, marking the end of Step 3.

OEA began the final step in the Section 106 process, Step 4 (Resolution of Adverse Effects) at the beginning of 2020. OEA is currently preparing a Draft Memorandum of Agreement (MOA) to set forth measures the Board could impose on Conrail to avoid, minimize, or mitigate adverse effects to historic properties from the proposed abandonment. OEA plans to hold a public meeting in the near future to provide an opportunity for the Section 106 consulting parties and the interested public to respond to the Draft MOA and to offer their suggestions on how the Draft MOA could be modified to further avoid, minimize or mitigate adverse effects. The execution of the MOA by the Advisory Council on Historic Preservation (ACHP), the SHPO, OEA, and Conrail will conclude Step 4 and end the Section 106 process.

Potential Post-Abandonment Scenarios. Since the 2009 Draft EA, the potential post-abandonment scenarios have evolved. As stated in the 2009 Draft EA and the reports issued as part of the Section 106 process, the Board's jurisdiction is limited to the decision whether to authorize the proposed abandonment, and the Board has no role in planning, approving, or regulating any potential post-abandonment use of this or any other rail right-of-way. However, given available information about potential reuse, including a proposed settlement agreement that could govern reuse of the right-of-way and other property at issue in this proposed abandonment should a settlement be reached, OEA has discussed three post-abandonment reuse scenarios in its reports prepared in the Section 106 process. The post-abandonment reuse scenarios are as follows:

- Scenario 1—Complete preservation of the Harsimus Branch from CP Waldo to Marin Boulevard and conversion into a trail/park.
- Scenario 2—Demolition and full redevelopment of the Embankment blocks (Marin Boulevard to Brunswick Street) and development immediately to the west of the Embankment and east of the New Jersey Turnpike.

- Scenario 3—Partial Preservation of the Harsimus Branch right-of-way west of Marin Boulevard with Partial Demolition and Redevelopment of the Embankment, including what OEA has been told about terms under consideration for inclusion in a potential negotiated settlement agreement between Conrail, Jersey City, the Rails to Trails Conservancy, and the Embankment Coalition (with the SHPO and ACHP reviewing), which is discussed in detail in the Effects Report Addendum issued as part of the Section 106 process.

This DSEA provides no further analysis of historic preservation issues or potential reuse plans for the right-of-way because the three scenarios defined above are conceptual and are based only on broad and aspirational descriptions of potential preservation or potential demolition and redevelopment of the Embankment. This information is sufficient for taking the potential settlement agreement into account in assessing potential effects to historic properties under NHPA but is insufficient for conducting a meaningful environmental review under NEPA. OEA has no specific information regarding how future owners of various portions of the Harsimus Branch right-of-way could potentially implement reuse plans, such as the types of demolition or construction methods that could be used, the types or sources of materials that could be required, or the timing of redevelopment activities either in the short or the long term. Moreover, OEA, as the office at the Board responsible for conducting environmental reviews of proposals by railroads to construct and operate new rail lines or abandon rail lines, does not have the necessary expertise to make any assumptions or predictions regarding how residences or parks in the project area that could be built post-abandonment are typically designed and constructed or could be designed or constructed in the future. As discussed above, the Board would have no role in developing or approving any aspect of the potential post-abandonment scenarios, which would occur after the conclusion of the Board's abandonment process when the Harsimus Branch would no longer be part of the national rail system. Moreover, any potential reuse plans would be implemented in accordance with applicable local, state, and federal permitting requirements. Therefore, this DSEA is limited to providing OEA's response to comments on the 2009 Draft EA and providing (and requesting comments on) the updated and supplemented analysis of environmental issues under NEPA presented in the DSEA.

SUPPLEMENTAL ANALYSIS OF ENVIRONMENTAL ISSUES UNDER NEPA

As discussed in the 2009 Draft EA, the scope of OEA's analysis under NEPA in abandonment proceedings is limited. For every rail line proposed for abandonment, OEA looks at two major considerations to determine whether abandonment would potentially result in significant environmental impacts.¹⁰ These considerations are:

- (1) Will any salvage or demolition activities take place as a part of this abandonment? If so, what about potential environmental impacts?

¹⁰ See Iowa S. R.R.—Exemption—Abandonment, 5 I.C.C. 2d 496 (1989), aff'd sub nom. Goos v. ICC, 911 F.2d 1283 (8th Cir. 1990).

- (2) Will any rail traffic be diverted to trucking or other rail lines as a result of the proposed abandonment, and if so, will there be any environmental impacts?

With respect to issue No. 1, the first consideration is whether any salvageable materials such as track, ties, and other rail appurtenances are still present on the rail line. If a railroad intends to salvage those materials following authorization of abandonment, salvage operations could potentially cause environmental impacts, such as temporary increases in noise, dust, vibration, or traffic; disturbance of local wildlife, soils, water bodies, drainage patterns, or fill materials; or adverse impacts to air or water quality. As established in the 2009 Draft EA and in other case-related documentation, Conrail does not propose to conduct any salvage as part of the proposed abandonment. Tracks, ties, and other profitably salvageable materials were removed from the rail right-of-way years ago. Conrail no longer owns the portion of Harsimus Branch between the New Jersey Turnpike and Marin Boulevard, so Conrail would not demolish, salvage, or otherwise alter any of the rail-related structures, such as the Embankment, that are located along that segment of the rail line. Some rail-related materials, such as ballast and several catenary pole foundations, remain on the property that Conrail owns, but Conrail has no plans to remove or alter those materials as part of the proposed abandonment.

Because Conrail would not conduct salvage, the proposed abandonment would not involve any activity that would create a point source discharge requiring a Clean Water Act Section 402 permit or create dredged or fill materials that could degrade water quality requiring a Section 404 permit. Accordingly, the impacts of the proposed abandonment on wetlands or water quality would be insignificant, and there is no need for OEA to recommend any environmental conditions to address these issue areas. Because no salvage would occur, there would be no temporary noise, vibration, or air quality that could disturb or otherwise affect people, vegetation, or wildlife. Therefore, OEA is not recommending any mitigation related to those types of potential impacts.

The second major consideration in the NEPA review of proposed abandonments is whether any freight rail traffic currently moving on the rail line would be diverted to trucking or other rail lines following abandonment, as that may cause increased local traffic, air pollution, noise, and safety concerns. Abandonment also can result in potential energy impacts based on the differing fuel economies of moving freight by rail versus truck. The Harsimus Branch, however, has been out-of-service for decades and, therefore, no rail traffic remains that would require diversion to another rail line or to truck transportation if the Harsimus Branch was abandoned and removed from the interstate rail network. Accordingly, there will be none of the potential environmental impacts related to the diversion of rail traffic in this case. In March of 2009, the National Geodetic Survey (NGS) indicated that no geodetic survey markers were present in the area of the proposed abandonment.

In April of 2009, the NJDEP's Office of Permit Coordination and Environmental Review relayed comments from OCM that the areas proposed for abandonment were located outside of the coastal zone, and that the proposed abandonment would not have any reasonably foreseeable

effects on the uses or resources of the coastal zone of New Jersey.¹¹ The CZMA condition recommended in the 2009 Draft EA is no longer necessary in light of this response from NJDEP. Accordingly, the DSEA removes the proposed CZMA condition.

In addition, in the 2009 Draft EA, OEA recommended that a condition be imposed on any decision granting abandonment authority in this proceeding requiring that Conrail retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the APE that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process has been completed. The proposed condition requires Conrail to report back to OEA regarding any consultations with SHPO, any other Section 106 consulting parties that have been identified, and the public. Conrail would not be able to file its consummation notice until the Section 106 process has been completed and the Board had removed this condition.¹²

SUMMARY AND RESPONSE TO COMMENTS RECEIVED ON THE 2009 DRAFT EA

This section summarizes and responds to the comments received on the 2009 Draft EA. It does not recap the comments received before the 2009 Draft EA was issued—these comments were summarized and addressed in the 2009 Draft EA and do not raise issues affected by the supplemental information being presented/analyzed in this DSEA. It also does not discuss the numerous comments received during OEA’s Section 106 historic review process nor the comments submitted on the 2009 Draft EA raising historic resource issues because those comments have been and are being discussed and addressed in the documents prepared as part of the ongoing Section 106 process.¹³

¹¹ April 9, 2009 Letter from Kenneth Koschek, Office of Permit Coordination and Environmental Review, NJDEP to John Enright, Associate General Counsel, Conrail, available on the Board’s website at <https://prod.stb.gov> by searching Environmental Comments, AB 167-1189X, EI-17323.

¹² Because OEA has since decided to handle the Section 106 process in this case separately from its environmental review under NEPA and anticipates that the Section 106 process will be complete before any authorization to abandon might be granted, this condition will likely become unnecessary. If that occurs prior to the time the Final EA is issued, the Section 106 condition proposed in the 2009 Draft EA will be removed in the Final EA.

¹³ This includes six petition-style comments submitted by the Embankment Preservation Coalition. While each petition raised different issues, the six petitions all requested that OEA prepare an EIS and preserve the Harsimus Embankment. The comments submitted on the 2009 Draft EA can be viewed electronically on the Board’s website at <https://prod.stb.gov> by searching Environmental Comments, and entering docket (AB) (167) (1189) (X).

As noted above, OEA received approximately 2,000 comments on the 2009 Draft EA. This section of the DSEA groups the comments by issue area and summarizes them. Then, OEA provides its comment response.

Among those who submitted comments on the 2009 Draft EA were federal elected officials, federal agencies, state and local government agencies, local businesses, nonprofit organizations, and local groups. The U.S. Senator representing New Jersey Robert Menendez; Stephen Fulop, Mayor of Jersey City (then a Jersey City Council member); and L. Harvey Smith, Assemblyman for NJ's 31st District (then a Jersey City Council member, and Acting Mayor of Jersey City) all submitted comments on the proposed abandonment.¹⁴ Assemblyman Smith, along with approximately one-third of the commenters, requested that the Board prepare and issue an EIS instead of an EA.

OEA reviewed all the comments. In order to respond to such a large number of comments efficiently, OEA grouped the comments by issue. The NEPA issue most frequently raised was the need for OEA to prepare and issue an EIS. Most of the remaining environmental comments raised potential environmental impacts relating to the demolition of the Harsimus Branch Embankment. OEA summarizes and addresses these comments below.

Requests that the Board prepare an EIS instead of an EA to comply with the requirements of NEPA. Approximately one-third of commenters on the 2009 Draft EA requested that an EIS be prepared for the environmental review of the proposed abandonment under NEPA. Similar comments had been submitted prior to issuance of the 2009 Draft EA, where OEA previously found that an EIS was not required. In the 2009 Draft EA, OEA noted that the Board's environmental rules at 49 C.F.R. § 1105.6(b)(2) classify railroad abandonments as actions normally requiring the preparation of an EA. OEA further explained that the comments requesting preparation of an EIS largely were based on concerns that the potential demolition of the Harsimus Embankment would have significant adverse effects on the surrounding area and on the Embankment itself, a State Historic Resource, or claims that the proposed abandonment is controversial because of different views on the appropriate reuse of the Harsimus Embankment should the Board grant Conrail abandonment authority. Because requests for an EIS were based on concerns regarding possible reuses of the Harsimus Embankment rather than the environmental impacts of the abandonment itself, OEA concluded in the 2009 Draft EA that the preparation of an EA was appropriate.

Nothing in the comments received on the 2009 Draft EA lead OEA to change its decision that preparation of an EIS is not warranted here. EAs are prepared in virtually all abandonment cases filed with the Board, and the EA process here (including preparation of a DSEA to reflect

¹⁴ Senator Menendez, Mayor Fulop, and Assemblyman Smith requested, as hundreds of Jersey City residents did in their comments and petitions, that the Board carefully consider the value that the Harsimus Branch properties provide to the adjoining historic districts, neighborhoods, and the region as a whole. Like other comments relating to historic significance, these have been addressed in the separate but concurrent Section 106 process.

changed circumstances) will allow OEA, and then the Board, to take the requisite “hard look” at potential environmental impacts of the proposed abandonment, with ample opportunity for public input. Preparation of an EA is also consistent with the Board’s environmental rules. Moreover, no potentially significant environmental effects related to the proposed abandonment have been identified by the commenters seeking an EIS or OEA. The proposed abandonment of the Harsimus Branch would not involve any salvage activities because, as explained in the 2009 Draft EA and in other case-related documentation, all profitably salvageable materials were removed years ago and Conrail has no plans to remove or alter the few rail-related materials, such as ballast and several catenary pole foundations, that remain in the portion of the right-of-way that Conrail owns. The proposed abandonment also does not involve any construction- or demolition-related disturbance of land within the embankment properties because Conrail is not proposing any construction or demolition activities.

Other than potential environmental impacts from salvage, the removal of a rail line from the interstate rail network could, if active when abandoned, cause potential environmental impacts if rail traffic is diverted to other modes of transportation, such as trucking. But because no rail traffic currently traverses the Harsimus Branch, and none has for many years, any potential environmental impacts from such diversion are nonexistent in this case.

The overwhelming majority of potential environmental impacts identified by commenters as reasons for the Board to do an EIS are related to requests to consider the Harsimus Branch Embankment as an important historic resource because of the Embankment’s connection to the history of Jersey City and the surrounding area, and possible post-abandonment reuse scenarios, not the proposed abandonment itself. However, as discussed above, these issues are being appropriately considered in the ongoing historic review process under Section 106, which is a separate process from the environmental review process under NEPA.¹⁵ The Board will have those issues before it when it considers whether to authorize the proposed abandonment, and what, if any conditions to impose. OEA, however, notes in connection with both the NEPA and 106 process, that the Board does not plan, approve, or control post-abandonment re-use and, thus, impacts resulting from those activities are not within the scope of the Board’s undertaking in granting or denying abandonment authority.

Accordingly, OEA concludes, as it did in the 2009 Draft EA, that the preparation of an EA provides the appropriate level of environmental review for the proposed abandonment under NEPA and that preparation of an EIS is not necessary.

Concerns regarding the potential local and environmental impacts that could happen as a result of demolition of the Harsimus Branch Embankment. Of the 2,000 comments that OEA

¹⁵ Section 106 requires federal agencies to take into account the effects of their undertakings on historic properties and to provide the (ACHP with a reasonable opportunity to comment, as well as the SHPO, Tribal Historic Preservation Offices (THPO), Indian Tribes, and other interested consulting parties. All of these steps are being taken in the ongoing Section 106 process in this proceeding.

received in response to the 2009 Draft EA, roughly 40% raised concerns regarding nine areas of potential environmental effects (set forth in descending order of frequency raised) that, the commenters claimed, could occur if the Harsimus Embankment were to be demolished:

- Adversely impact the environment generally (approximately 9% of comments received)
- Negatively impact air quality by releasing harmful particles (7%)
- Destroy wildlife habitats and ecosystems (6%)
- Release contaminated soils (5%)
- Create stormwater and flooding impacts (4%)
- Increase traffic, noise, and pollution during and after demolition activities (4%)
- Cause potentially detrimental structural effects on nearby properties during demolition activities (3%)
- Contaminate local waters and diminish water quality (2%) and
- Diminish the quality of life for Jersey City residents (1%)

However, because these comments are substantively about what might happen following partial or full demolition of the Harsimus Branch Embankment, if abandonment is authorized and consummated, the concerns raised in these comments are beyond the scope of the NEPA process in this case.

Moreover, the comments that raised concerns about potential environmental impacts, wildlife habitats and ecosystems, stormwater and flooding impacts, contamination of local waters or soils, and local air quality also focused almost entirely on potential impacts that could occur as a result of the various post-abandonment use scenarios of the Harsimus Branch properties. Similarly, comments relating to a potentially diminished quality of life to Jersey City residents; any temporary or long-term impacts from increased traffic, noise, or vibration; and possible air or water pollution during or after demolition or construction activities are also substantively about different post-abandonment reuse scenarios, not the proposed abandonment of the Harsimus Branch by Conrail, which involves no salvage or demolition operations that could cause these potential impacts.

As stated above, OEA is assessing the potential impacts of the abandonment on historic properties pursuant to Section 106 in a process separate from this EA under NEPA. OEA's Section 106 documentation includes information on the three likely reuse scenarios and their potential to impact historic resources. However, OEA made clear there that, because the Board has no regulatory authority over post-abandonment uses of the Harsimus Branch, those three scenarios are not alternatives under Section 106, but are post-abandonment scenarios that could occur under the Action Alternative (that is, if the Board grants abandonment authority). The same reasoning holds true under NEPA. As explained during the 106 process (Effects Report, pages 3-1 through 3-7), the Board cannot dictate which of these three scenarios would occur nor place involuntary conditions on any post-abandonment scenario if the abandonment were to be authorized and consummated because at that point the rail corridor would no longer be within the Board's jurisdiction as part of the national rail system. The only feasible alternative to

authorizing abandonment in the present case is the No-Action Alternative, which would occur if the Board were to deny abandonment authority.

Review of potential environmental impacts of post-abandonment reuse scenarios that would occur only after the Board grants Conrail authority to abandon the property and Conrail consummates that authority by filing a notice of consummation under 49 C.F.R. § 1152.29(e)(2), thereby terminating the Board's jurisdiction over the property, are beyond the scope of this DSEA. Reuse scenarios that involve partial or total demolition of the Harsimus Branch Embankment or construction activities could potentially cause the kinds of potential environmental impacts that commenters raised concerns about, including noise, dust, and vibration impacts; disturbance of fill materials; temporary or long-term congestion and disruption of traffic; disturbance of wetlands or other water resources; potential water quality degradation; changes to flooding risks; or temporary or long-term air quality concerns from demolition or construction activities or future reuse operations. The duration and severity of those impacts would depend entirely on the methods used during demolition and construction, the types and sources of materials used, the timing of development activities, and the implementation of mitigation measures imposed by other government entities, none of which are known or can be predicted at this time. However, OEA anticipates that any environmental impacts associated with post-abandonment use of the Harsimus Branch would be assessed and mitigated by other appropriate local, state, and federal agencies during their permitting processes before the reuse scenarios could be implemented. Because the Board would have no role in approving any aspect of any post-abandonment scenario, they are not part of the Board's environmental review of the proposed abandonment under NEPA.

One of the topics most frequently commented on by local groups and individuals is the potential for demolition activities called for in certain reuse scenarios to potentially disturb and expose potentially contaminated fill materials within the Harsimus Branch Embankment to the environment, namely local air and waterways, which could adversely affect the health of people and wildlife. In the 2009 Draft EA, OEA noted that the City Parties submitted a 1998 report prepared by a consultant for the City, conducted after all track and track structure had been removed, that concluded that fill material could be classified as non-hazardous. Additionally, Conrail's Notice of Exemption indicates that soil sampling was conducted in 2005 in connection with a proposed redevelopment by a third party of the property and found no hazardous materials (specifically, no volatile organic compounds, pesticides, or polychlorinated biphenyls or PCBs).¹⁶ The report further concluded that the fill material could be recycled or disposed of at a landfill and that any detected contamination can be designated as "Historic Fill." According to Conrail, the fill at issue here is the same type of historic fill present in many properties in Jersey City and elsewhere in Hudson County, and handling the material has become a routine component of Hudson County real estate development. Commenters who submitted concerns about the potential hazardousness of fill materials did not provide data that cast doubt on the information provided by Conrail.

¹⁶ Notice of Exemption served February 26, 2009 (Filing ID 224608)

Finally, of the 2,000 comments submitted, approximately 14% supported preserving the Harsimus Branch embankment and converting it into green space for public use or using it to build a light rail system, grade-separated transportation system, or similar elevated transportation system on top of the embankment. Five comments supported demolition of the embankment. As previously indicated, the Board cannot dictate which, if any, proposed post-abandonment reuses would occur and the proposed plans for reuse of the right-of-way following the potential grant of abandonment authority is not part of the Board's environmental review under NEPA.

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that the Board's granting Conrail the authority to abandon the Harsimus Branch (the Action Alternative) would not significantly affect the quality of the human environment and that, therefore, the EIS process is unnecessary. Moreover, for the reasons discussed above, the CZMA condition recommended in the 2009 Draft EA is no longer necessary, and the historic recommendation condition recommended in the 2009 Draft EA will remain in place pending the conclusion of the Section 106 process. There is no need for OEA to recommend any additional environmental conditions in this DSEA, based on the insignificant nature of the environmental concerns under NEPA related to the proposed abandonment or the comments received in response to the 2009 Draft EA.

Alternatives to abandonment in rail line abandonment proceedings typically include denial on transportation grounds, authority to discontinue rail service without abandonment, and continued operation of a rail line authorized for abandonment by another carrier if a bona fide offer of financial assistance (OFA) to continue rail service is made under 49 U.S.C. § 10904. In decisions in this proceeding served May 22, 2015 and November 2, 2015, the Board stated that it will set a deadline for the filing of any OFAs in a future decision. If Conrail's request for abandonment authority is denied (the No-Action Alternative), the Harsimus Branch would remain part of the interstate rail network. No mitigation under NEPA or Section 106 would be imposed by the Board. The Harsimus Embankment would remain in place, and no redevelopment of the Harsimus Branch right-of-way would occur because the property would remain within the Board's jurisdiction.

PUBLIC USE

Following abandonment of the rail line, some portions of the right-of-way may be suitable for other public use under 49 U.S.C. § 10905. A request containing the requisite four-part showing for imposition of a public use condition (49 C.F.R. § 1152.28) must be filed with the Board and served on the railroad within the time specified in a future Board decision.

TRAILS USE

A request for a notice of interim trail use (NITU) to provide time to negotiate an arrangement for rail banking/interim trail use under 16 U.S.C. § 1247(d) for this right-of-way is

due to the Board, with a copy to the railroad, within 10 days of publication of the Notice of Exemption in the Federal Register. Nevertheless, the Board will accept late-filed requests if it retains jurisdiction to do so in a particular case. The Board will retain jurisdiction over the Harsimus Branch unless and until abandonment is authorized and Conrail files a timely notice of consummation under 49 C.F.R. § 1152.29(e)(2) to remove the line from the national rail system. Therefore, the right-of-way remains available for potential interim trail use. Any trail use request must comply with the Board's rules for use of rights-of-way as trails (49 C.F.R. § 1152.29).

AVAILABILITY OF THE DSEA AND HOW TO SUBMIT COMMENT

Because of the amount of time that has passed since the issuance of the 2009 Draft EA, OEA has taken several extra steps to notify the public about the issuance of the DSEA and the opportunity to review the document and submit comments prior to the issuance of a Final EA. First, OEA did what it could to verify and update the names and addresses it had, using the addresses on the correspondence submitted during the environmental review in this proceeding, including correspondence submitted during the Section 106 historic review, which is more current because several Section 106 documents have been issued recently. Second, the Board is issuing a press release announcing the availability of the DSEA on the Board's website. Third, OEA is publishing a Notice of Availability of the DSEA in the Federal Register and sending an email informing the commenters who provided us with their email addresses that the DSEA has been issued. Finally, OEA is providing a longer comment period than that normally provided for out-of-service rail line abandonments.

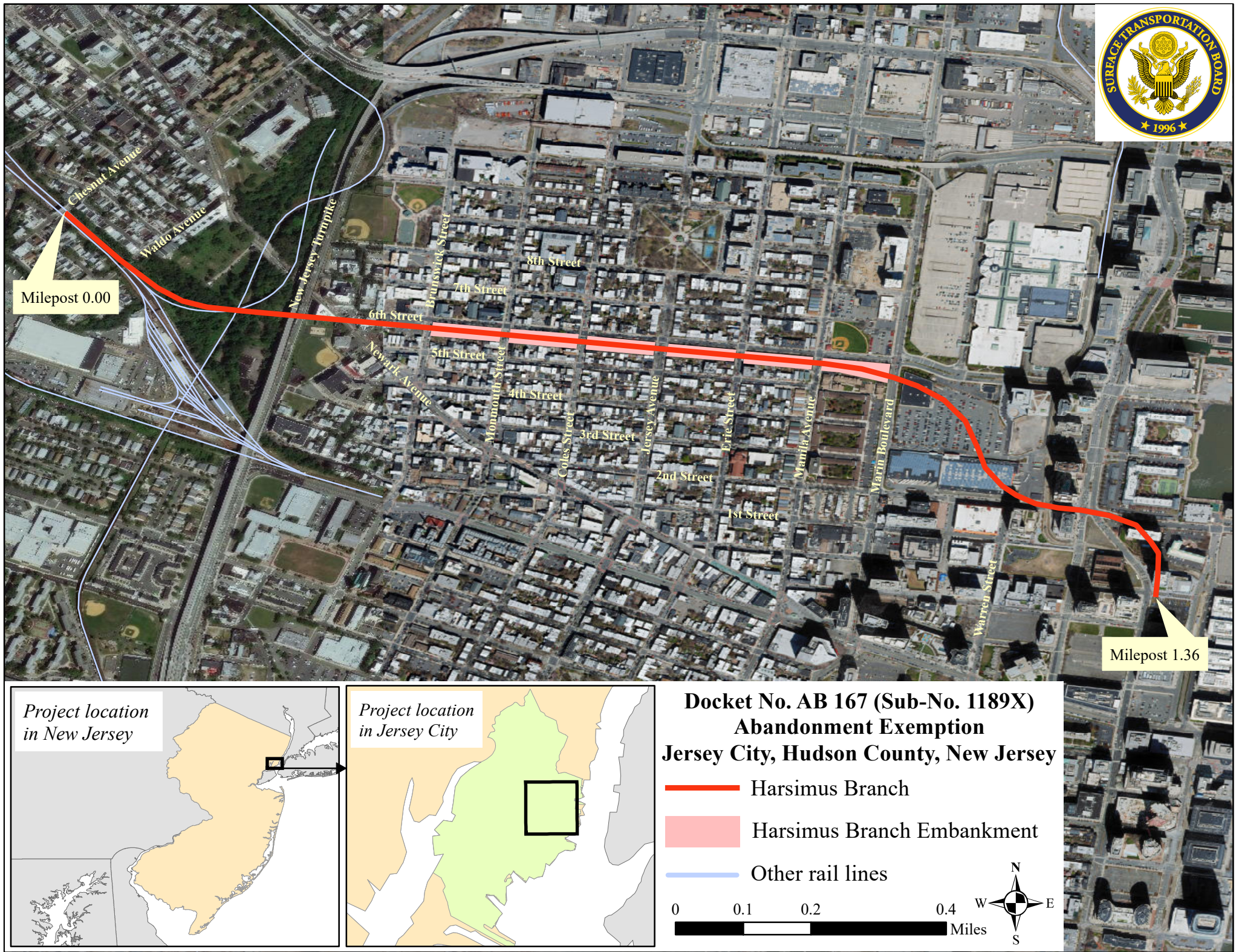
If you wish to submit comments regarding this DSEA, we encourage you to file your comments electronically on the Board's website, <https://prod.stb.gov> by clicking on the "E-FILING" link. Please refer to Docket No. AB-167 (Sub-No. 1189X) in all correspondence, including e-filings, addressed to the Board. If you are unable to submit your comments online, please mail your comment to the Surface Transportation Board, Case Control Unit, 395 E. St. SW, Washington, DC 20423, to the attention of Adam Assenza. If you have any questions regarding this Environmental Assessment, please contact Adam Assenza, the environmental contact for this case, by phone at (202) 245-0301 or e-mail at adam.assenza@stb.gov.

Date made available to the public: **September 10, 2020**

Comment due date: **October 19, 2020**

By the Board, Victoria Rutson, Director, Office of Environmental Analysis.

APPENDIX A: HARSIMUS SITE MAP



Milepost 0.00

Milepost 1.36

Project location
in New Jersey

Project location
in Jersey City

Docket No. AB 167 (Sub-No. 1189X)
Abandonment Exemption
Jersey City, Hudson County, New Jersey

-  Harsimus Branch
-  Harsimus Branch Embankment
-  Other rail lines

