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SERVICE DATE – FEBRUARY 27, 2026

SURFACE TRANSPORTATION BOARD

DECISION

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 OF SERVICE EXEMPTION—IN
HUDSON COUNTY, N.J.

Docket No. AB 290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE
EXEMPTION—IN HUDSON COUNTY, N.J.

Digest:¹ This decision vacates a stay and allows Consolidated Rail Corporation to abandon, and CSX Transportation, Inc. and Norfolk Southern Railway Company to discontinue service over, an approximately 1.36-mile portion of a line of railroad in Jersey City, N.J., subject to historic preservation and public use conditions. This decision also denies an appeal of a May 23, 2025 decision rejecting an offer of financial assistance from the City of Jersey City.

Decided: February 26, 2026

On February 26, 2009, Consolidated Rail Corporation (Conrail), CSX Transportation, Inc. (CSXT), and Norfolk Southern Railway Company (NSR) (collectively, Applicants) jointly filed verified notices of exemption under 49 C.F.R. part 1152, Subpart F—Exempt Abandonments and Discontinuances of Service for Conrail to abandon, and for CSXT and NSR to discontinue service over, an approximately 1.36-mile portion of a line of railroad known as the Harsimus Branch in the City of Jersey City, N.J.² Notice of the exemptions was served and published in the Federal Register on March 18, 2009 (74 Fed. Reg. 11,631). The exemptions were scheduled to become effective on April 17, 2009, but the Board stayed the effective date of the exemptions in an April 16, 2009 decision.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² Collectively, the dockets are referred to as the Harsimus Abandonment Proceeding.

For the reasons discussed below, the Board will vacate the April 16, 2009 stay and allow the exemptions to become effective immediately, subject to historic preservation and public use conditions. Additionally, the Board will deny an appeal of a May 23, 2025 decision by the Acting Director of the Office of Proceedings (Acting Director) rejecting an offer of financial assistance (OFA) from the City of Jersey City (the City).³

BACKGROUND

History of the Line

The Harsimus Branch extends between milepost 0.0, CP Waldo, and milepost 1.36, a point east of Washington Street in Jersey City. Part of the Harsimus Branch was built on top of a series of six embankments located between city streets and joined by plate girder bridges that spanned north-south streets (Embankment). See Harsimus Aban. Proc. (Aug. 2014 Decision), AB 167 (Sub-No. 1189X) et al., slip op. at 2 (STB served Aug. 11, 2014); see also Consol. Rail Corp. v. STB, 571 F.3d 13, 16 n.6 (D.C. Cir. 2009). Conrail began operating the Harsimus Branch in 1976,⁴ but it sold much of the trackage in the area by the mid-1980s. See Aug. 2014 Decision, AB 167 (Sub-No. 1189X) et al., slip op. at 2-3. In 1994, Conrail permitted the City and a private developer to remove one of the bridges and girders on the Embankment and, at the City's request, later removed the remaining connecting bridges and girders. Id. at 3. Conrail then offered to sell the Embankment to the City, but negotiations ended without an agreement. Id.

In October 2002, Conrail put the six Embankment properties and two other properties up for sale through a bidding process and invited the City to participate. Id. Soon thereafter, the City designated the Embankment properties as a "historic landmark" under municipal law, and Conrail informed prospective bidders that the designation would require a developer to obtain the consent of the Jersey City Historic Preservation Commission to proceed with development of those properties. Id. In July 2005, Conrail sold the eight parcels to a group of eight developers

³ Effective August 1, 2025, the Board's Office of Proceedings and Office of the General Counsel were combined into the Office of Chief Counsel. See Interim Delegations, EP 784 (STB served Aug. 4, 2025); see also Nomenclature Corrs. Due to Office Reorganization, Removal of Obsolete References, and Payment Processing Changes, EP 786 (STB served Jan. 30, 2026).

⁴ Conrail was created by the Regional Rail Reorganization Act of 1973, 45 U.S.C. §§ 701-719 (3R Act). Under the 3R Act, several bankrupt railroads merged into Conrail, and the United States Railway Association was created to identify lines that would be retained in active service and conveyed to Conrail. The plan identifying the rail properties to be conveyed to Conrail was known as the Final System Plan (FSP). The Harsimus Branch was transferred to Conrail in 1976 pursuant to the FSP.

(LLCs),⁵ treating the property as spur or yard track that did not require abandonment authority from the Board under 49 U.S.C. § 10906. Id.

Board and Court Proceedings

In January 2006, the City and several other parties petitioned the Board for a declaratory order finding that the Harsimus Branch was a line of railroad that should not have been sold to the LLCs without Conrail first receiving abandonment authority from the Board.⁶ City of Jersey City—Pet. for Declaratory Ord. (Jersey City Dec. Ord.), FD 34818, slip op. at 1 (STB served Aug. 9, 2007), vacated by Consol. Rail Corp., 571 F.3d 13. The Board determined—based on the parties’ evidence, and an examination of the deed, additional historical information detailing the trackage found in “valuation maps,” Pennsylvania Railroad Track Charts, and other information about the history of the Line and other rail lines in the area—that the Harsimus Branch is not ancillary track but is a line of railroad subject to the Board’s abandonment licensing authority.⁷ Jersey City Dec. Ord., FD 34818, slip op. at 10-11. The Board’s decision was appealed to the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) on October 2, 2007.

While the D.C. Circuit appeal was pending, Applicants filed their verified notices of exemption at issue here, and notice of the exemptions was served and published in the Federal

⁵ The developers include: 212 Marin Boulevard, LLC; 247 Manila Avenue, LLC; 280 Erie Street, LLC; 317 Jersey Avenue, LLC; 354 Cole Street, LLC; 389 Monmouth Street, LLC; 415 Brunswick Street, LLC; and 446 Newark Avenue, LLC.

⁶ The other petitioners were the Rails to Trails Conservancy, the Pennsylvania Railroad Harsimus Stem Embankment Coalition, and State Assemblyman Louis M. Manzo.

⁷ While the Board has jurisdiction over ancillary track, Board authority is not required to abandon such track. 49 U.S.C. § 10906; see, e.g., Tri-City R.R.—Pet. for Declaratory Ord., FD 36037, slip op. at 4 (STB served June 1, 2017). In determining whether a particular track is rail line subject to the Board’s licensing authority or excepted track under § 10906, the Board has adopted a case-by-case approach that examines factors such as the length of the track; whether it serves more than one shipper; whether it is stub-ended; whether it was built to penetrate new markets; whether the shipper is located at the end of the track; whether there is regularly scheduled service; traffic volume; who owns and maintains the track; whether the track was constructed with light-weight rail; the condition of the track; what the track is used for (e.g., switching, loading, and unloading); and whether there are stations on the track. Tri-City R.R., FD 36037, slip op. at 3.

Register.⁸ 74 Fed. Reg. 11,631 (Mar. 18, 2009).⁹ The filing of the verified notices triggered the Board's environmental review under the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 to 4370m-11,¹⁰ and historic review under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108.¹¹ On March 23, 2009, a Draft Environmental Assessment (EA) was issued for public review and comment (Draft EA).¹² OEA received approximately 2,000 comments on the Draft EA. By decision served April 16, 2009, the effective date of the notices of exemption was stayed to allow the Board to complete the environmental and historic review process and consider and address comments on the Draft EA.

Meanwhile, publication of the notices of exemption triggered the deadline for submitting formal notices of intent to file an OFA under 49 C.F.R. § 1152.27(c)(2) (2009).¹³ As relevant here, the Board received a timely notice of intent from the City on March 27, 2009. In a May 26, 2009 decision, the Board directed Conrail to provide information necessary to allow the formulation of an OFA and tolled the time period for the City to file an OFA until 10 days after Conrail provided the City with the information specified in 49 C.F.R. § 1152.27(a) and notified the Board that it had done so.¹⁴

⁸ Under the exemption process, the Board may grant authorization to abandon rail lines that have been out of service for two years or more in what is intended to be a generally simple and quick process. See 49 C.F.R. § 1152.50 (establishing an expedited 60-day process for out-of-service lines). No rail traffic has moved over the Harsimus Branch for decades. Final EA 1 n.1.

⁹ The Board permits parties to obtain after-the-fact licensing authority for a transaction under certain circumstances. See, e.g., Allied Indus. Dev. Corp.—Pet. for Declaratory Ord., FD 35477, slip. op. at 6 (STB served Sept. 17, 2015); Gen. Ry.—Exemption for Acquis. of R.R. Line—in Osceola & Dickinson Cntys., Iowa, FD 34867, slip op. at 5 (STB served June 15, 2007); Savannah Indus. Transp., LLC—Operation Exemption—in Effingham Cnty., Ga., FD 36489, slip op. at 2-3 (STB served Aug. 1, 2023).

¹⁰ Under NEPA, the Board considers the reasonably foreseeable environmental effects of the major federal actions it takes. The Board's environmental regulations implementing NEPA are set forth at 49 C.F.R. part 1105.

¹¹ Section 106 of the NHPA requires federal agencies to take into account the effects of their "undertakings" on historic properties listed in or eligible for listing in the National Register of Historic Places (the National Register). 54 U.S.C. §§ 300101–307108.

¹² The Draft EA is summarized below. The Section of Environmental Analysis, which preceded the current Office of Environmental Analysis (OEA), prepared the Draft EA. For convenience, this decision refers to OEA.

¹³ As stated in prior decisions in the Harsimus Abandonment Proceeding, the OFA process here is governed by the OFA regulations in effect when this proceeding began in 2009.

¹⁴ The May 26, 2009 decision also summarized the OFA standard. See Harsimus Aban. Proc., AB 167 (Sub-No. 1189X) et al., slip op. at 2-3 (STB served May 26, 2009).

On June 26, 2009, the D.C. Circuit vacated the Board's decision in Jersey City Declaratory Order, finding that the Board lacked jurisdiction to determine the status of the trackage to be abandoned because the City's declaratory order petition fell within the exclusive jurisdiction of the United States District Court for the District of Columbia (District Court) as successor to a "Special Court" that had original and exclusive jurisdiction to interpret the FSP. Consol. Rail Corp., 571 F.3d at 19.

On October 7, 2009, the City, Rails to Trails Conservancy, and Pennsylvania Harsimus Stem Embankment Preservation Coalition (Plaintiffs) filed an action against Conrail in the District Court, seeking a determination as to whether the Harsimus Branch was conveyed to Conrail as regulated or excepted ancillary track. (See City Letter, Ex. A at 3, Nov. 22, 2013.) By an April 20, 2010 decision, the Board stayed the Harsimus Abandonment Proceeding, including the environmental and historic review process, pending a decision from the District Court.

On September 30, 2013, the District Court granted summary judgment for the Plaintiffs based on a stipulation by the Plaintiffs and LLCs that the Harsimus Branch was conveyed to Conrail as a line of railroad subject to ICC (and now Board) abandonment licensing authority. City of Jersey City v. Consol. Rail Corp., 968 F. Supp. 2d 302, 307 (D.D.C. 2013). The D.C. Circuit summarily affirmed the District Court decision on February 19, 2014. City of Jersey City v. Consol. Rail Corp., Case No. 13-7175 (D.C. Cir. Feb. 19, 2014).

On August 11, 2014, the Board vacated the April 2010 stay of proceedings and stated that it would proceed with the environmental and historic review process. The Board specified that OEA would issue a Supplemental EA for public review and comment, followed by a Final EA assessing any comments received. Aug. 2014 Decision, AB 167 (Sub-No. 1189X) et al., slip op. at 6 (explaining that the initial March 2009 EA may not be current or relevant, and that a Supplemental EA was warranted under the unique circumstances and "to assure that the EA is as current as possible").

Following reinstitution of the Harsimus Abandonment Proceeding, OEA resumed its review.¹⁵ OEA conducted the environmental and historic reviews through separate documentation processes because most of public interest focused on the potential historic impacts and the historic review process.

¹⁵ After lifting the stay, the Board permitted the City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition to seek discovery of valuation information and information potentially relevant to their claims regarding alleged violations of the NHPA process. While discovery is typically disfavored in abandonment cases, see Cent. R.R. of Ind.—Aban. Exemption—in Dearborn, Decatur, Franklin, Ripley, & Shelby Cntys., Ind., AB 459 (Sub-No. 2X) (STB served Apr. 1, 1998), the Board acknowledged the unique circumstances of this case, and a significant amount of discovery was subsequently conducted. Harsimus Aban. Proc., AB 167 (Sub-No. 1189X) et al., slip op. at 8-9 (STB served May 22, 2015) (noting that discovery in abandonment proceedings normally is limited but permitting reasonable discovery due to the complex and controversial issues presented).

Environmental Review

As stated above, OEA issued a Draft EA in March 2009. The Draft EA examined the potential effects on the environment and historic resources if the Board were to authorize abandonment of the Harsimus Branch and solicited public comment.

In the Draft EA, OEA explained that the Board's NEPA review of a proposed abandonment is limited to potential environmental impacts that result from diversion of traffic from rail to other modes and salvage of the line.¹⁶ Draft EA 7. As to the proposed abandonment of the Harsimus Branch, OEA found no potential for significant environmental impacts from diversion of traffic and salvage—in part because no rail traffic had moved over the Harsimus Branch for at least a decade, the track had been removed many years prior, and Conrail otherwise does not propose to conduct any salvage as part of the proposed abandonment. Draft EA 8. OEA also concluded that preparation of an Environmental Impact Statement (EIS) was unnecessary. Draft EA 7-8.

In response to comments about potential post-abandonment activities, OEA stated that the Board ordinarily does not consider environmental impacts of potential reuse of an abandoned right-of-way. Draft EA at 8-9.¹⁷ OEA summarized its findings on the relevant resource areas and responded to comments. Additionally, OEA recommended one environmental condition: a Coastal Zone Management Act (CZMA) condition requiring Conrail to consult with the New Jersey Department of Environmental Protection's Office of Coastal Management (OCM) to obtain a consistency determination if required. *Id.* OEA also recommended a historic condition: that Conrail retain its interest in, and take no steps to alter, the historic integrity of all historic properties within the project right-of-way that are eligible for listing or are listed in the National Register until the Section 106 process was complete. *Id.*

After reinstatement of the Harsimus Abandonment Proceeding, OEA issued a September 10, 2020 Draft Supplemental EA (DSEA) that addressed comments on the Draft EA, updated the environmental analysis, and provided an opportunity for further public comment.

¹⁶ See Iowa S. R.R.—Exemption—Aban., 5 I.C.C.2d 496, 501 (1989), *aff'd*, Goos v. ICC, 911 F.2d 1283 (8th Cir. 1990) (stating that the only reasonably foreseeable environmental impacts caused by the abandonment are impacts from the removal of the physical components of the track itself (i.e., salvage) and impacts from changes in rail operations resulting from the removal of the rail line from the interstate rail network (i.e., diversion)).

¹⁷ Any such activities, because they take place post-abandonment, necessarily occur outside of the Board's jurisdiction and control. See Baros v. Tex. Mex. Ry., 400 F.3d 228, 234 (5th Cir. 2005) ("Once a rail carrier abandons a line, the line is no longer part of the national transportation system, and the [Board's] jurisdiction terminates."); see also Hayfield N. R.R. v. Chi. & N.W. Transp. Co., 467 U.S. 622, 632-33 (1984) (explaining that once a rail line is abandoned, the underlying right-of-way becomes "ordinary real property," and its disposition becomes subject to the application of state property law); Final EA 9-10 ("The Board does not and cannot control what a railroad does with property after the abandonment process has been completed and the property is no longer part of the interstate rail system and no longer being used for rail transportation purposes.").

Approximately one-third of comments on the Draft EA requested that OEA prepare an EIS. DSEA 13. OEA stated that preparation of an EIS was not warranted because the comments were premised on concerns about the possible demolition and reuses of the Embankment rather than the environmental impacts of the abandonment itself.¹⁸ *Id.* at 13-14. OEA noted, again, that Conrail does not intend to conduct any salvage as part of the proposed abandonment, and explained that comments regarding re-use of the Embankment were beyond the scope of the NEPA process because “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.” *Id.* at 9, 11, 15.

The DSEA concluded that an EIS was unnecessary, that the recommended CZMA condition was no longer necessary, and that the historic recommendation condition recommended in the Draft EA should remain in place pending conclusion of the Section 106 process. *Id.* at 17. The DSEA also determined that there was no need for any additional environmental conditions.

On September 23, 2021, OEA issued a Final EA, which completed the environmental review process. The Final EA addressed the environmental issues raised in the 13 comments OEA received on the DSEA and summarized what had become a separate Section 106 process (see below). As in the Draft EA and DSEA, OEA concluded that preparation of an EIS was not warranted because the environmental effects of the proposed abandonment are not significant. Final EA 11. In response to comments regarding post-abandonment reuse of the right-of-way, OEA emphasized—again—that such activities are “beyond the scope of environmental review under NEPA in rail line abandonment proceedings” as the “whole point of a railroad seeking abandonment authority from the Board is to remove the line from . . . the Board’s jurisdiction.” *Id.* at 9-10. OEA also continued to recommend that the Board impose a Section 106 historic preservation condition, in any decision that would grant Conrail abandonment authority, if a Memorandum of Agreement (MOA) was not executed prior to the Board’s issuance of such a decision.¹⁹ *Id.* at 13.

Historic Review

OEA initiated the historic review process in 2009 when it defined the undertaking and the Area of Potential Effects (APE) in consultation with the New Jersey Historic Preservation Office (SHPO) and other Section 106 consulting parties. While the 2009 Draft EA included both an environmental and historic review, as well as a recommended condition requiring completion of the Section 106 process, when OEA restarted the NEPA and NHPA processes in 2014, it decided to conduct the environmental and historic reviews separately given the extent of the comments on the Draft EA involving historic preservation issues.

After restarting the process and beginning its identification of historic properties in the APE, OEA consulted extensively with the SHPO and other consulting parties, including during

¹⁸ OEA noted that commentors focused on the Embankment as an important historic resource and explained that those issues were being considered in the historic review process.

¹⁹ OEA explained that execution of the MOA would conclude the Section 106 process.

in-person consulting party meetings in May and June of 2016. OEA then issued a Cultural Resources Identification Report (Identification Report) on May 5, 2017, and, after additional consultation with the SHPO and other participating parties, issued an addendum to the Identification Report (Identification Report Addendum) on October 16, 2018.

OEA then conducted a thorough assessment of potential impacts and issued a Cultural Resources Effects Assessment Report (Effects Report) on March 29, 2019, that documented the potential impacts of the proposed abandonment on historic properties. OEA conducted additional consultation and review and issued an addendum to the Effects Report (Effects Report Addendum) on November 12, 2019. OEA explained in both the Effects Report and the Effects Report Addendum that the Board's jurisdiction is limited to the decision of whether to authorize the abandonment and the Board has no role in planning or regulating any potential post-abandonment uses of the rail right-of-way.²⁰ See Effects Report Addendum, Executive Summary at vi. Despite the fact that the Board has no jurisdiction over post-abandonment activities nor can it impose involuntary restrictions on the use of the rail right-of-way post-abandonment, because of the unique circumstances, including the level of public interest concerning post-abandonment use of the Embankment, the Effects Report and the Effects Report Addendum assessed the effects of three potential post-abandonment scenarios: (i) the complete preservation of the rail right-of-way and the Embankment, (ii) complete demolition and redevelopment of the Embankment, and (iii) a negotiated settlement agreement involving partial preservation and partial redevelopment of the Embankment and the Harsimus Branch right-of-way based on information available about such a potential settlement. Id.

OEA then began the final step under the Section 106 process: preparation of a Draft MOA that would set forth measures to avoid, minimize, or mitigate adverse effects to historic properties listed in or eligible for listing in the National Register of Historic Places.²¹ OEA circulated the Draft MOA to the consulting parties for review and comment on October 14, 2020,

²⁰ Rail property is private property over which the Board has regulatory authority only while it is part of the interstate rail network and hence within the Board's jurisdiction. See 49 U.S.C. § 10501. That jurisdiction ends upon consummation of abandonment, and, therefore, historic conditions need to be satisfied before a carrier consummates any abandonment authority and jurisdiction ends. See Mo.—Kan.—Tex. R.R.—Aban.—in St. Charles, Warren, Montgomery, Callaway, Boone, Howard, Cooper & Pettis Cntys., Mo.—Pet. for Declaratory Ord., AB 102 (Sub-No. 13) (STB served July 13, 2010).

²¹ The primary mitigation that may be imposed in an MOA governing rail line abandonment is historic documentation. Because the Board's jurisdiction over the privately owned rail right-of-way ends upon abandonment consummation, "[w]here historic property is involved, [the Board's] ability to protect it is very limited." In re Implementation of Env't Laws, 7 I.C.C.2d 807, 828 (1991). The Board "do[es] not have the power to force a railroad to sell (or donate) its property, or impose a restrictive covenant upon the deed, as a condition to obtaining abandonment" and "as a practical matter" nonconsensual mitigation is limited to "documentation of the historic resources involved." Id. at 829. See also Response to Comments on the Revised Draft MOA (June 14, 2023) and the Section 106 Process at 7, EO-3911 (Mar. 3, 2024) ("The Board cannot impose an involuntary historic condition limiting post-abandonment use of the property that constitutes the Harsimus Branch and the Embankment.").

and held a virtual consulting parties meeting on October 27, 2020, to provide an additional opportunity for the parties to provide comments.²²

Before OEA could complete the MOA process, ACHP requested that the Board determine whether Section 110(k) of NHPA applied based on the removal of bridges and related rail infrastructure in the mid-1990s and Conrail's sale of the Embankment properties to the LLCs in 2005 before progressing any further.²³ By a May 19, 2021 decision, the Board permitted parties to submit argument and evidence pertaining to the applicability of Section 110(k), and explained that it would determine such applicability before proceeding with any further historic review under Section 106 if appropriate. See Harsimus Aban. Proc., AB 167 (Sub-No. 1189X) et al., slip op. at 3 (STB served May 19, 2021). And, in accordance with ACHP's request, OEA suspended completion of the Section 106 review pending the Board's Section 110(k) determination.

By decision served August 22, 2022, the Board determined that Conrail did not engage in "anticipatory demolition" of historic properties in violation of Section 110(k) either in the 1990s when bridges and related infrastructure were removed from the Embankment or in 2005 when it sold the Embankment properties to the LLCs because there was neither an intent to avoid Section 106 of the NHPA nor was there intent to adversely affect historic resources. See Harsimus Aban. Proc. (Section 110(k) Decision), AB 167 (Sub-No. 1189X) et al., slip op. at 10 (STB served Aug. 22, 2022); see also 54 U.S.C. § 306113. The Board determined that, in the 1990s, Conrail reasonably believed the Harsimus Branch was excepted track that did not require abandonment authority or Section 106 review. Section 110(k) Decision, AB 167 (Sub-No. 1189X), slip op. at 11. Further, the bridges were removed by the City itself and subsequently by Conrail in response to requests from the City (rather than to avoid Section 106), and Conrail did not know that the Embankment was a historic resource to which Section 106 would apply. Id. at 11, 13. As for the sale of the Embankment properties, the Board determined that no evidence showed that Conrail or the LLCs had any intent to harm a historic resource, and that neither the Embankment nor the remaining rail infrastructure had been significantly adversely affected by the sale. Id. at 14.²⁴

²² The consulting parties include the Advisory Council on Historic Preservation (ACHP), the City, Rails to Trails Conservancy, Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition, and 20 other local and historic organizations.

²³ Section 110(k) of NHPA states that federal agencies "shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of [Section 106], has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the agency, after consultation with [ACHP] determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant." 54 U.S.C. § 306113; see also 36 C.F.R. § 800.9(c).

²⁴ Plaintiffs petitioned the D.C. Circuit for review of the Section 110(k) Decision, but the court granted a motion to dismiss the petition for lack of jurisdiction. City of Jersey City v. STB, No. 22-1270 (D.C. Cir. Jan. 6, 2023).

Following the Board’s determination that Section 110(k) did not apply, OEA resumed its Section 106 process. On June 14, 2023, OEA circulated a revised draft MOA, which reflected the Board’s decision that Section 110(k) did not apply and other revisions and included a table summarizing the previously submitted comments on the draft MOA and OEA’s responses. On March 5, 2024, OEA circulated a Final MOA to the Section 106 consulting parties along with a memorandum responding to comments received during the consultation process from July 2023 through January 2024. By letter dated April 12, 2024, the SHPO declined to sign the MOA and terminated consultation. Thereafter, OEA and ACHP further consulted and agreed to execute a two-party MOA. Consistent with the Board’s limited ability to protect historic property post-abandonment, *see supra* note 21, the parties limited mitigation to documentation which will include conducting extensive research, collecting archival maps and documentation, photographing and otherwise documenting the Line’s current status, and creating a website with comprehensive educational and historical information about the Harsimus Branch and the surrounding historic districts. MOA 4-7. OEA and ACHP executed the MOA in August 2024, and Conrail signed as an invited signatory on October 31, 2024. This completed the historic review process.

Offer of Financial Assistance

Following completion of the environmental and historic review process, the Board, by decision served February 10, 2025, directed Conrail to either certify the accuracy of its prior valuation information or inform the Board that it would update the valuation,²⁵ and directed the City to inform the Board if it still intended to submit an OFA. Conrail responded that it would provide updated valuation information, and the City informed the Board of its intent to submit an OFA.

By decision served March 5, 2025, the Board directed Conrail to submit updated valuation information and permitted the City to submit an OFA within 30 days of Conrail’s submission. The Board noted that “the OFA process is designed for the purpose of providing continued rail service”—i.e., continued freight rail service—and that the sale of a line under the OFA provisions is not required where the Board finds that the offeror “has no genuine interest in providing rail service or that there is no likelihood of future traffic.” *Harsimus Aban. Proc.*, AB 167 (Sub-No. 1189X) et al., slip op. at 3 (STB served Mar. 5, 2025). The Board further stated that any OFA in this proceeding should address one or more of the following: whether there is a demonstrable commercial need for freight rail service, as manifested by support from shippers or receivers on the Line or as manifested by other evidence of immediate and significant commercial need; whether there is community support for rail service; and whether rail service is operationally feasible. *Id.*

²⁵ In a December 2014 motion, the City and several other parties sought a Board order compelling Conrail to produce valuation information for the Harsimus Branch. By a decision served May 22, 2015, the Board granted the motion and indicated that it would set a due date for OFAs in a future decision. Conrail provided the valuation information on June 1, 2015.

On April 17, 2025, Conrail submitted updated valuation information. Conrail stated that it obtained an appraisal to value the parcel beneath the former Harsimus Branch trestle,²⁶ and that such land is valued at \$500,000. (Conrail Reply 2, Apr. 17, 2025.)

On May 19, 2025, the City filed an OFA to purchase Conrail's interests in the Harsimus Branch between "the west boundary of Marin Boulevard on the east side" and "Chestnut Avenue on the west side," plus two additional Conrail-owned properties that are not part of the Harsimus Branch but would support the City's proposed rail use. (OFA 1, 10-11.) The City offered to pay \$767,100,²⁷ and stated that, as a governmental entity, it is presumed financially responsible. (*Id.* at 12-13.) The City explained that its offer exceeded Conrail's valuation because the offer included more acreage and accounted for errors made by Conrail's appraiser.²⁸ (*Id.* at 13-14.)

In its OFA, the City "readily acknowledge[d] that the driving force behind the City's OFA is for passenger/light rail use of the corridor," but asserted that the planned passenger service "makes freight rail potentially viable" and that restoration of the Harsimus Branch for passenger rail "can be done compatibly with freight rail use." (*Id.* at 8-9 (stating that the proposed passenger system would essentially subsidize costs associated with reconstruction of the line, including for freight rail use).) The City also argued that it did not need to demonstrate a commercial need for rail service because the OFA sought to "preserve a line for light rail/passenger commuting purposes." (*Id.* at 15-16.) Instead, the City presented argument and evidence as to a need for passenger service along the Harsimus Branch. (*Id.* at 16-28.)

On May 21, 2025, Conrail replied in opposition to the City's OFA.²⁹ Conrail argued that the City failed to demonstrate a continued need for freight rail service over the Harsimus Branch. (Conrail Reply 1, 3-4, May 21, 2025.) Conrail also argued that the City did not show that it is financially capable of restoring freight service over the Harsimus Branch. (*Id.* at 5-6 (asserting that the City should not be presumed financially responsible and, alternatively, that any presumption was rebutted).) Further, Conrail argued that the City's proposal is not feasible because it depends on the use of parcels that are not facilities on the Harsimus Branch, and which cannot be acquired through the OFA process. (*Id.* at 7-9.)

²⁶ Specifically, a "60-foot-wide strip of land between CP Waldo and the western edge of the 446 Newark Avenue, LLC, parcel beneath what was the former Harsimus Branch trestle." (Conrail Reply 2, Apr. 17, 2025.)

²⁷ The City offered to pay an additional \$3 million "[i]f Conrail is able to convey or cause to be conveyed to [the] City in fee the eight blocks of the [Harsimus] Branch" that Conrail "transferred to its chosen developer." (OFA 2 n.1.)

²⁸ According to the City, Conrail valued approximately 1.24 acres, and the City valued approximately 2.33 acres, including an aerial easement over Conrail's National Docks line. (OFA 13-14.)

²⁹ In its current appeal, the City states that "[t]here is no provision for replies to OFA[s]." (OFA Appeal 5 n.5.) Under the Board's rules, however, a party may submit a reply "to any pleading" unless otherwise provided. 49 C.F.R. § 1104.13.

On May 23, 2025, the Acting Director rejected the City’s OFA.³⁰ First, the Acting Director determined that the OFA did not show a need for continued freight rail service on the Harsimus Branch. See Harsimus Aban. Proc. (May 2025 Ord.), AB 167 (Sub-No. 1189X) et al., slip op. at 4 (STB served May 23, 2025). The May 2025 Order explained that the OFA contemplated only a “hypothetical possibility of compatible freight service,” which did not demonstrate that shippers would likely use the line if continued freight rail service were made available and that there was likely to be any traffic enabling the City to provide such service. Id. (citing Union Pac. R.R.—Aban. & Discontinuance of Trackage Rts. Exemption—in L.A. Cnty., Cal. (L.A. Cnty.), AB 33 (Sub-No. 265X), slip op. at 2 (STB served May 7, 2008); Roaring Fork R.R.—Aban. Exemption—in Garfield, Eagle, & Pitkin Cntys., Colo., AB 547X, slip op. at 4 (STB served May 21, 1999)). The Acting Director also noted that the City appeared to have no genuine interest in providing freight rail service. Id. at 5. Second, the Acting Director determined that the City had not shown that rail service on the Harsimus Branch was operationally feasible, including because the OFA contemplated use of parcels that are not part of the Harsimus Branch. Id. Accordingly, the May 2025 Order rejected the City’s OFA and declined to address arguments regarding the City’s financial responsibility. Id. at 5 n.5.

On May 30, 2025, the City appealed the May 2025 Order to the Board. The City asserts that neither ground for the Acting Director’s rejection has merit. (OFA Appeal 5.) According to the City, an OFA need only demonstrate that there is a prospect of continuing or resuming freight rail service. (Id. at 5-6 (citing Yakima Interurban Lines Ass’n—Aban. Exemption—in Yakima Cnty., Wash., AB 600 (Sub-No. 1X) (STB served Feb. 17, 2006)).) The City argues that an OFA may be used for passenger rail service if such service is “compatible” with freight rail service and the offeror is willing to provide freight service for two years, and that the City satisfied those requirements. (Id. at 6-7.) The City argues that Roaring Fork and L.A. County are distinguishable, and that the Acting Director ignored relevant legal authority in requiring a showing of freight rail need. (Id. at 8 (citing Chi. & N. W. Transp. v. United States (CNW), 678 F.2d 665 (7th Cir. 1982); Offers of Fin. Assistance (EP 729), EP 729 (STB served June 29, 2017)).)

As to operational feasibility, the City argues that the OFA statute allows the purchase of Conrail-owned parcels “off the Harsimus [Branch]” that the City deems necessary for its future rail operations. (Id. at 13 (citing Iowa Terminal R.R. v. ICC, 853 F.2d 965 (D.C. Cir. 1988)).) The City argues that an OFA is not limited “to an arbitrary boundary set by the abandoning railroad (or the Board),” and that the City may “seek all property needed for effective future transportation purposes contiguous to the line it seeks to [purchase].” (Id. at 14-15.)

³⁰ On the same day, the City filed a reply to Conrail’s May 21, 2025 reply. The Acting Director did not address the City’s reply. Nevertheless, the City’s filing is prohibited under the Board’s regulations. See 49 C.F.R. § 1104.13(c); see also, e.g., Sunflower State Indus. Ry.—Pet. for Declaratory Ord., FD 36714 (Sub-No. 1), slip op. at 2 n.3 (STB served Mar. 28, 2025) (“The Board assesses that the benefits from the orderly and efficient administration of cases, including reducing burden on the public and agency, justify enforcing this rule more strictly.”). In any event, even if the Board were to accept the City’s May 23, 2025 reply into the record, doing so would not change the results reached in today’s decision because the City’s reply largely restates the City’s prior arguments of record that are addressed herein.

Alternatively, the City argues that the Board should accept its OFA even if the non-rail parcels cannot be acquired. (*Id.* at 15-16.)

On June 9, 2025, Conrail and the LLCs both filed replies to the City’s appeal. Conrail argues that the May 2025 Order correctly rejected the OFA because the City did not provide evidence of a continued need for freight rail service over the Harsimus Branch. (Conrail Reply 1-5, June 9, 2025.) Conrail also argues that the Acting Director correctly rejected the OFA because it contemplates use of Conrail-owned parcels that are not facilities on the Harsimus Branch, including an abandoned portion of Conrail’s River Line. (*Id.* at 6.) Conrail asserts that “an OFA cannot be used to acquire just any property of the abandoning rail carrier that the offeror claims is necessary to restore freight rail service on the line.” (*Id.* at 7.) Rather, “the line to be abandoned includes ‘all facilities *on the line* or portion necessary to provide effective transportation services.’” (*Id.* (quoting 49 U.S.C. § 10904(f)(1)(B)).) Conrail states that the River Line parcel has never been a facility on the Harsimus Branch, and thus that parcel cannot be acquired through the City’s OFA. (*Id.* at 7-8.) In response to the City’s assertion that its OFA should proceed without acquisition of the River Line parcel, Conrail argues that the River Line thus is not necessary for the City’s proposed operations and that the City has failed to show where it would feasibly operate a transload facility on the Harsimus Branch. (*Id.* at 9.) Lastly, Conrail argues that the City should not be presumed financially responsible and, even if the presumption applies, it is rebutted by facts showing that rehabilitation of the Harsimus Branch would exceed funds allocated by the City to the OFA process. (*Id.* at 10-11.)

Similarly, the LLCs argue that the May 2025 Order correctly rejected the OFA because it did not show a continued need for freight rail service. (LLCs Reply 3-5, June 9, 2025.) The LLCs assert that CNW does not support the City’s argument that “the mere possibility of future freight rail service restoration should be enough to support its passenger-focused OFA,” and that the City has no genuine interest in providing freight rail service.³¹ (LLCs Reply 5-7, June 9, 2025.) The LLCs also argue that the Acting Director properly concluded that the City failed to present a feasible operational plan, as the City “presented no feasibility studies, designs, plans, or approvals” even though it had “well over a decade . . . to come up with a feasible plan for freight rail service restoration.” (*Id.* at 10-11.) Further, the LLCs argue that the OFA did not explain how passenger rail use would subsidize freight service on the Harsimus Branch, and instead

³¹ The LLCs state that the City has approved two redevelopment plans pertaining to the Embankment that prohibit freight rail service on the property. *See* Luis Munoz Marin Boulevard (Henderson Street) Redevelopment Plan (last amended July 10, 2024), https://data.jerseycitynj.gov/api/datasets/1.0/luis-munoz-marin-boulevard-redevelopment-plan/attachments/luis_munoz_marin_rdp_amd7_20240710_pdf; Sixth Street Embankment Redevelopment Plan (adopted Nov. 28, 2022), https://data.jerseycitynj.gov/api/datasets/1.0/redevelopment-plan-6th-street-embankment/attachments/6th_street_embankment_rdp_original_adoption_20221128_pdf.

The City’s OFA referenced redevelopment plans, including the Sixth Street Embankment Redevelopment Plan. (*See, e.g.*, OFA, App. IV, V.S. Patel et al., para. 1.) However, it is not clear that the record before the Acting Director included the redevelopment plans. Thus, although the redevelopment plans do not appear to contemplate freight rail service on the Harsimus Branch, the Board will not consider them here.

proposed light rail passenger service that “is in fact already established and fully operational,” indicating that the City does not have any interest in such service. (Id. at 10-12.)

Subsequently, the City submitted letters from U.S. Representative Robert Menendez and New Jersey State Senator Raj Mukherji, both expressing support for the City’s appeal.³² Representative Menendez states that “transforming [the line] into a critical piece of infrastructure could help the community achieve their goals in moving people and freight” and result in environmental benefits. (Hon. Menendez Letter, Aug. 8, 2025 (noting that the City’s OFA has received public support).) State Senator Mukherji asserts, among other things, that the Acting Director denied the City’s OFA request “on the basis that there is no identifiable freight need for the line, an absence that exists precisely because the Board kept the corridor in limbo” for nearly two decades. (State Sen. Mukherji Letter 1-2, July 30, 2025.)

DISCUSSION AND CONCLUSIONS

OFA Appeal

The OFA process in this proceeding is governed by the OFA procedures applicable when notices of intent to file an OFA were first submitted in 2009.³³ Under 49 C.F.R. § 1011.7(b)(2) (2009), now 49 C.F.R. § 1011.7(a)(2)(ii), the Board has delegated authority to the Director of the Office of Proceedings (or Acting Director in the Director’s absence) to determine whether OFAs satisfy the statutory standards of 49 U.S.C. § 10904(d). Initial decisions by the Director under 49 C.F.R. § 1011.7(b)(2) are reviewed by the Board under 49 C.F.R. § 1011.2(a)(7).

The City urges the Board to reverse the May 2025 Order because it is “arbitrary and capricious, not in accordance with law, beyond the Board’s authority, and otherwise flawed.” (OFA Appeal 5.) The LLCs respond that the Board should deny the City’s appeal because it has not shown that the May 2025 Order ““would be affected materially because of new evidence, changed circumstances, or material error.”” (LLCs Reply 3, June 9, 2025 (quoting 49 C.F.R. § 1152.25(e)(2)(ii)).) Neither of the standards of review proposed by the parties applies here.

In reviewing appeals of initial decisions by the Director (or Acting Director) under 49 C.F.R. § 1011.7(b)(2), the Board considers whether the Director made the correct decision, given the circumstances presented. See R. J. Corman R.R. Prop., LLC—Aban. Exemption—in Scott, Campbell, & Anderson Cntys., Tenn., AB 1296X, slip op. at 3 (STB served Sept. 23,

³² In replies to both letters, the LLCs expressed disagreement and argued that the letters constitute late replies to the City’s appeal. (LLCs Reply 1, Aug. 5, 2025; LLCs Reply 1, Aug. 12, 2025.) The Board does not construe the letters from State Senator Mukherji and Representative Menendez as replies to the City’s appeal and will accept both letters into the record.

³³ See Harsimus Aban. Proc., AB 167 (Sub-No. 1189X) et al., slip op. at 3 n.6 (STB served Feb. 10, 2025) (stating that, when the Board revised its OFA regulations in 2017, it stated that the preliminary financial responsibility calculation requirement would not be imposed retroactively on notices of intent filed before the new rule became effective).

2020).³⁴ Therefore, the Board here considers whether the Acting Director’s decision was correct in light of the evidence and argument before the Acting Director at the time of the May 2025 Order. For the reasons stated below, the Board finds that the Acting Director made the correct decision given the circumstances presented.

Freight Rail Service

The City argues that the Acting Director incorrectly required the OFA to “demonstrate that the line was necessary for freight use and that it would be so used evidently for some arbitrary period well beyond two years.” (OFA Appeal 8.) According to the City, the Board must accept an OFA for passenger rail service “so long as that use [is] compatible with freight service” and the offeror is willing to provide freight rail service for two years. (*Id.* 6-7); see § 10904(f)(4)(A) (prohibiting the purchaser of a line sold under that section from transferring or discontinuing service on the line during the two-year period after consummation of the sale). The City argues that its position is supported by authorities that the Acting Director ignored. Specifically, the City asserts that the Board accepted an OFA from a consortium of towns dedicated to preserving commuter rail service in CNW, and that the Board “affirmed the availability of [the] OFA [process] for use for passenger rail” in EP 729. (OFA Appeal 6-7; see OFA 15.) The City also argues that the Acting Director incorrectly relied on Roaring Fork and L.A. County, as those cases are distinguishable. (OFA Appeal 10-11.)

The City’s arguments are unpersuasive. As the Acting Director stated, the Board need not require the sale of a line under the OFA provisions where freight rail service would not be likely to result from the OFA proposal. May 2025 Ord., AB 167 (1189X), slip op. at 4. The OFA process is “for the purpose of continuing to provide freight rail service” and thus “an offeror must be able to demonstrate that its OFA is for continued rail freight service” before the Board will force a railroad to sell property against its will. Roaring Fork, AB 547X, slip op. at 4; see L.A. Cnty., AB 33 (Sub-No. 265X), slip op. at 2. In its OFA, the City identified no potential shippers, traffic, or affirmative plans for freight rail service. Indeed, the City argued that “evidence of commercial need (like shipper or receiver letters)” was “neither relevant nor controlling” because the OFA was for passenger and commuter rail use. (OFA 16; see OFA Appeal 7 (“The City made no secret in its OFA that the rail use it seeks is passenger/commuter in nature.”).) The City stated only that its planned passenger service would make freight rail service “potentially viable” by subsidizing freight use, (OFA 9), but this mere “expression of willingness to haul traffic that seems unlikely to materialize does not provide a sufficient basis for invoking section 10904.” Burlington N. & Santa Fe Ry.—Aban. Exemption—in King Cnty., Wash., AB 6 (Sub-No. 380X), slip op. at 10 (STB served Aug. 5, 1998); see also Aban. of R.R.

³⁴ The LLCs cite Board decisions that review Director OFA determinations under the material error standard in 49 C.F.R. § 1152.25(e)(2)(ii). See Consol. Rail Corp.—Aban. Exemption—in Phila., Pa., AB 167 (Sub-No. 1191X) et al., slip op. at 5 (STB served Oct. 26, 2012); Ind. Sw. Ry.—Aban. Exemption—in Posey & Vanderburgh Cntys., Ind., AB 1065X, slip op. at 4 (STB served Apr. 8, 2011). However, the Board has since clarified that 49 C.F.R. § 1152.25(e)(2)(ii) applies to petitions to reopen entire Board decisions, and not to the Board’s review of a Director order. CSX Transp. Inc.—Aban. Exemption—in Pinellas Cnty., Fla., AB 55 (Sub-No. 794X), slip op. at 3-4 n.6 (STB served June 22, 2020).

Lines & Discontinuance of Serv., 365 I.C.C. 249, 260 (1981) (stating that, where an offeror “has no affirmative plans for continuation or resumption of service but merely holds out the possibility of service at some unspecified future time,” such an offer does not fall within the scope of § 10904). Accordingly, the Acting Director correctly determined that the City’s OFA failed to demonstrate any likelihood of freight rail service sufficient to support an OFA.

Further, the City fails to show that its OFA is meaningfully distinguishable from the OFAs rejected in L.A. County and Roaring Fork. The City states that the OFA in L.A. County was rejected because it improperly sought to purchase trackage rights over a line segment that the railroad did not own. (OFA Appeal 10-11.) However, the City ignores the aspects of L.A. County that are analogous to the situation here, where the OFA also sought to purchase a railroad-owned line. In rejecting the proposal to purchase the railroad-owned line, the Board reasoned that there was “essentially no possibility” of freight rail service because there were no active shippers, the sole business located on the segment had not expressed interest in rail service, and there was no location along the line where rail-served customers could locate.³⁵ L.A. Cnty., AB 33 (Sub-No. 265X), slip op. at 2 (“It is well settled that the Board need not require the sale of a line under the OFA provisions if it determines that the offeror is not genuinely interested in providing rail service or that there is no likelihood of future traffic.”). Similarly, the City’s OFA did not even attempt to demonstrate that there is a likelihood of future freight rail service on the Harsimus Branch. (See OFA 16.)

Likewise, in Roaring Fork, the Board rejected the OFA because “the statutory objective of continued freight rail service would not be likely to result from [the] OFA proposal.” Roaring Fork, AB 547X, slip op. at 5. The Board reasoned that, while the offeror had identified five potential shippers, three were not in a position to use the line and traffic projections for the other two were “too indefinite and insufficient to support continued freight rail operations.” Id. It also relied on the offeror’s acknowledgment that “continued freight service would not be self-sustaining.” Id. As with the OFA in Roaring Fork, the City’s OFA was properly rejected because the statutory objective of continued freight rail service would not be likely to result from the City’s proposal.

Moreover, the City does not show that precedent requires the Board to accept an OFA for passenger rail use. The City relies on CNW, but that case did not involve a dispute about the likelihood of continued freight rail service on a rail line. The line at issue was actively being used for both freight and passenger rail service, and the sole issue before the court was the proper valuation of the line. CNW, 678 F.2d at 666 (noting that “freight service was down to less than once a week”). Thus, CNW does not support the City’s argument that the OFA process may be used to purchase a rail line for passenger rail use where there is no likelihood of continued freight rail service. See Roaring Fork, AB 547X, slip op. at 3 (stating that an offeror must show that an OFA is for continued freight rail service “when disputed”). Similarly, EP 729 states that an OFA may be for *combined* passenger and freight service, including where the OFA is

³⁵ In rejecting the OFA as to the non-railroad-owned line segment, over which the railroad had sought to discontinue trackage rights, the Board reasoned that an OFA to purchase a line is not available in discontinuance proceedings. L.A. Cnty., AB 33 (Sub-No. 265X), slip op at 2. That it is not at issue here.

primarily focused on passenger rail service. EP 729, slip op. at 17; see id. at 15 (citing Roaring Fork, AB 547X). Here, the Acting Director did not reject the City’s OFA based on the fact that the OFA’s primary motivation is a passenger rail project. Instead, the Acting Director correctly determined that the OFA failed to show that freight rail service was likely to continue *in combination with* the proposed passenger rail service. May 2025 Ord., AB 167 (1189X), slip op. at 4.

Operational Feasibility

In determining that the City’s OFA failed to demonstrate that rail service on the Harsimus Branch is operationally feasible, the Acting Director noted separately that the OFA “contemplates the use of Conrail-owned parcels that are not part of the Harsimus Branch.” May 2025 Ord., AB 167 (1189X), slip op. at 5 (stating that one such parcel is an abandoned rail line, which raised jurisdictional questions). The City does not dispute that its OFA contemplates the use of two non-rail properties that are not part of the Harsimus Branch as described by Applicants. It also does not indicate how it could acquire those parcels outside of the OFA process. Rather, the City argues that, under the OFA process, it may purchase non-rail property contiguous to the Harsimus Branch if the property is needed for its effective transportation purposes. (OFA Appeal 13-15 (citing Iowa Terminal, 853 F.2d at 971); see also OFA 30.) According to the City, its OFA properly included an abandoned portion of Conrail’s River Line that is needed for freight transload operations, and a separate Conrail-owned parcel that would provide a route for workers and equipment to access the Harsimus Branch. (OFA 30-31; OFA Appeal 13-14.)

The City fails to show that the Acting Director’s decision is incorrect given the circumstances presented. As the Board has stated, “any acquisition of assets other than the line itself is outside of the OFA purchase process.” EP 729, slip op. at 12. Upon request, the Board may determine the price of the line, to include “all facilities *on the line* or portion necessary to provide effective transportation services.” 49 U.S.C. § 10904(f)(1)(B) (emphasis added). Facilities outside the line that a rail carrier seeks authority to abandon are not contemplated by the OFA statute, and thus their sale cannot be forced as part of the OFA process.³⁶

Further, contrary to the City’s argument, Iowa Terminal did not hold that property encompassed by § 10904(f)(1)(B) includes “land adjacent to a line.” (OFA Appeal 13.) In that case, the D.C. Circuit was asked to review an ICC order establishing the purchase price of a

³⁶ Moreover, the City makes no argument that the River Line is a “facility on the line.” And because the Board finds that property outside the Harsimus Branch cannot be obtained through the OFA purchase process, the Board need not determine whether the River Line connected to the Harsimus Branch. (Compare OFA Appeal 14 (claiming that the River Line connected to the Harsimus Branch), with Conrail Reply 6, June 9, 2025 (stating that the River Line connected to its Passaic & Harsimus Line, and not the Harsimus Branch).) See also Conrail Aban. of the Weehawken Branch—in Hudson Cnty., N.J., AB 167 (Sub-No. 766N) et al., slip op. at 2 n.4 (STB served Jan. 17, 2002) (describing a segment of the River Line being authorized for abandonment as running “from the connection to the Passaic and Harsimus Branch” at CP Waldo in Jersey City “to the south side of Clifton Road in Weehawken”).

10.4-mile section of rail line known as the Mason City Division, pursuant to former § 10904(f)(1)(B).³⁷ Iowa Terminal, 853 F.2d at 968. The underlying ICC order included the sale of a 10-acre parcel of land that previously had not been used for rail operations. On appeal, the railroad argued that only two acres of the 10-acre parcel were “‘necessary’ to operate a railroad.” Iowa Terminal, 853 F.2d at 971. The D.C. Circuit upheld the sale of the entire parcel, explaining that it would “not challenge the ICC’s expert determination that . . . the land is required to assure the effective operation of the Mason City Division in the future.” Id. (stating that the OFA statute instructed the ICC to “calculate the value of ‘all facilities on the line or portion necessary to provide effective transportation services’”). But the D.C. Circuit did not address the ICC’s prior determination that the 10-acre parcel was a “facility on the line” under the OFA statute, as that matter was not contested. Because the D.C. Circuit did not disrupt the ICC’s determination that the 10-acre parcel was a facility on the line within the meaning of the OFA statute, there is no merit to the City’s assertion that the court “specifically held” otherwise. (OFA Appeal 13); see Iowa Term. R.R.—Aban.—in Cerro Gordo & Floyd Cntys., Iowa, AB 269 et al., slip op. at 3 (ICC served Mar. 31, 1987) (“We found that [the OFA applicant] had met its burden of proving that the 10-acre parcel of land was a ‘facility’ on the line necessary to provide effective transportation services within the meaning of [former § 10904(f)(1)(B)].”).

Notably, the City argues on appeal that its OFA should be accepted even if it cannot acquire the River Line parcel because “transload [is] still feasible elsewhere.” (OFA Appeal 15-16.) Because this argument was not raised before the Acting Director’s decision, it does not provide a basis for appeal. In any event, any argument that transload may be possible elsewhere undercuts the City’s argument that the River Line parcel is “necessary to provide effective transportation services.” (OFA 30.) Nor does the City adequately explain where and how transload would otherwise occur. The City references a verified statement submitted with its OFA, which indicates that freight transload is feasible at two locations. (OFA Appeal 16, n.16 (citing OFA, App. VIII, V.S. Allen 3).) The verified statement suggests that “a portion of the line between Journal Square and the Embankment could be designed to accommodate freight transload, although additional rights would of course be needed to allow the interchange of freight cars with the General System, which would need to occur between Waldo Avenue and the vicinity of Journal Square.” (OFA, App. VIII, V.S. Allen 4.) But it is not clear if this other location is on the Harsimus Branch or what “additional rights” are needed to use such property. Therefore, without the River Line parcel, the OFA failed to show that rail service on the Harsimus Branch is operationally feasible.³⁸

For the above reasons, the Board finds that the May 2025 Order correctly rejected the City’s OFA because it failed to show both that continued freight rail service would likely result from the OFA proposal and that rail service on the Harsimus Branch is operationally feasible.³⁹

³⁷ See 49 U.S.C. § 10905(f)(1)(C) (1988).

³⁸ The City does not attempt to explain how rail service is operationally feasible without the second Conrail-owned property contemplated by its OFA, which allegedly is necessary for future rail operations on the Harsimus Branch.

³⁹ Given this finding, the Board need not address Conrail’s argument that the City failed to show that it is financially responsible. (See Conrail Reply 10-11, June 9, 2025.)

Environmental and Historic Review

The Board will adopt the analysis and recommendations in the Final EA and historic review documents. Based on OEA's recommendations, the Board concludes that the proposed abandonment, as conditioned, will not significantly impact the quality of the human environment or the conservation of energy resources.

Public Use

Under 49 U.S.C. § 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment. To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. 49 C.F.R. § 1152.28(a)(2).⁴⁰

Several parties requested that Conrail be prohibited from disposing of the Harsimus Branch for a 180-day period from the effective date of the abandonment exemption to permit public agencies to exercise eminent domain authority.⁴¹ They state that the Harsimus Branch should be preserved as a park and trail, or an ecologically sensitive rail alternative, to relieve surface transportation congestion in Jersey City. According to the requests, such use would benefit the public and link the East Coast Greenway to Manhattan from Philadelphia.

The requests satisfy the requirements of 49 C.F.R. § 1152.28(a)(2), and thus a public use condition will be imposed, requiring Conrail to keep intact the right-of way (including trail-related structures such as bridges, trestles, culverts, and tunnels) and refrain from disposing of the corridor, other than tracks, ties, and signal equipment, for a 180-day period commencing from February 27, 2026, the effective date of the exemption, to August 26, 2026. A public use condition is not imposed for the benefit of any one potential purchaser but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, Conrail may engage in negotiations with other interested persons.

⁴⁰ Requests were made during the historic review process that the Board use section 10905 to require use of the property for public purposes after abandonment. Section 10905, however, gives the Board only the authority to provide the *opportunity* (a maximum of 180 days) for a sale for public purposes before the property can be sold for other purposes.

⁴¹ The Board received an April 2, 2008 request from Civic JC; an April 2, 2008 request from the Harsimus Cove Association, the Hamilton Park Neighborhood Association, the Powerhouse Arts District Neighborhood Association, the Village Neighborhood Association, Van Vorst Park Neighborhood Association, Historic Paulus Hook Association, and the Newport Neighborhood Association; an April 2, 2008 request from the Jersey City Landmarks Conservancy; and an April 7, 2008 request from The Friends of Liberty State Park.

It is ordered:

1. The stay issued on April 16, 2009, is vacated.
2. The City's appeal of the Acting Director's May 23, 2025 decision is denied.
3. The notice served and published in the Federal Register on March 18, 2009, exempting abandonment of, and discontinuance of service over, the Harsimus Branch as described above is effective immediately subject to the following condition: Conrail shall keep intact the right-of-way, including potential trail-related structures such as bridges, trestles, culverts, and tunnels, and refrain from disposing of the corridor, other than tracks, ties, and signal equipment, for a period of 180 days from the effective date of the exemption, until August 26, 2026, to enable any state or local government agency, or other interested person, to negotiate the acquisition of the right-of-way for public use.
4. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, and Schultz. Board Member Hedlund concurred with a separate expression.

BOARD MEMBER HEDLUND, concurring:

I concur in the Board's decision. However, notwithstanding the reference in the opinion to the broadly-stated principle that the Board lacks authority to impose any conditions on rail line abandonments that could apply post-consummation, I wish to point out that the Board itself has imposed such conditions in a variety of cases.¹ Regardless, I believe the recommendations set forth in the Final EA and historic review documents are appropriate.

¹ See, e.g., BNSF Ry.—Aban. Exemption—In Los Angeles Cnty., Cal., AB 6 (Sub-No. 477X), slip op. at 7 n.13 (STB served Sept. 16, 2011); Landowners—Motion for Declaratory Ord. & Injunctive Relief, AB 1065 (Sub-No. 1X), slip op. at 5 n.5 (STB served Jan. 27, 2020); Cent. Kan. Ry.—Aban. Exemption—In Clark & Comanche Cntys., Kan., AB 406 (Sub-No. 5X), slip op. at 2 n.5 (STB served Oct. 28, 2020). See also Consummation of Rail Line Abans. that are Subject to Historic Pres. & Other Env't Conditions, EP 678, slip op. at 5 (STB served April 23, 2008) (concluding that a condition on salvage “remains in place as a condition that attaches to the property and applies to salvage activities whenever they occur”).