

## **MEMORANDUM OF AGREEMENT**

**Among the  
FEDERAL RAILROAD ADMINISTRATION,  
MARYLAND STATE HISTORIC PRESERVATION OFFICER,  
PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER,  
MARYLAND DEPARTMENT OF TRANSPORTATION PORT ADMINISTRATION,  
and  
CSX TRANSPORTATION**

**Regarding the  
HOWARD STREET TUNNEL PROJECT  
BALTIMORE CITY, MARYLAND  
and  
DELAWARE COUNTY, PENNSYLVANIA**

**WHEREAS**, the Howard Street Tunnel Project (HST Project) consists of the rehabilitation or replacement of six existing railroad tunnels and bridges along the CSX Transportation (CSX) I-95 Rail Corridor between Baltimore City, Maryland, and Philadelphia, Pennsylvania, which is the last major intermodal rail-freight corridor on the CSX network that does not provide modern double-stack service due to various height-clearance obstructions located in Maryland, Delaware, and Pennsylvania (Exhibit 1: HST Project Location Map and Area of Potential Effects Maps); and

**WHEREAS**, the U.S. Department of Transportation (USDOT) selected the Maryland Department of Transportation Maryland Port Administration (MDOT MPA) to receive a grant under its Fiscal Year 2019 Infrastructure for Rebuilding America (INFRA) program for final design and construction of the HST Project, for which additional funding sources will also be used; and

**WHEREAS**, CSX is the Project Sponsor and is carrying out the HST Project, and the USDOT's Federal Railroad Administration (FRA) is administering the INFRA grant; and

**WHEREAS** CSX owns and operates the I-95 Rail Corridor, including its tunnels, bridges, culverts, other infrastructure, and the right-of-way associated with the rail corridor, and is responsible for managing and designing the HST Project, including carrying out the preliminary engineering, final design, and construction; and

**WHEREAS**, the HST Project is an "Undertaking" pursuant to Section 106 of the National Historic Preservation Act of 1966 (54 USC Part 306108) (NHPA), as amended, and its implementing regulations at 36 CFR Part 800 (hereinafter collectively referred to as Section 106); and

**WHEREAS**, FRA is the federal agency responsible for compliance with Section 106 for the Undertaking; and

**WHEREAS**, FRA is the lead federal agency for the HST Project under the National Environmental Policy Act (NEPA) (42 USC § 4321 et seq.) and is preparing an Environmental Assessment (EA) to satisfy its NEPA obligations. Pursuant to 36 CFR § 800.8, FRA has coordinated Section 106 compliance with the NEPA process; and

**WHEREAS**, based on the level of HST Project design provided by CSX as of the date of execution of this MOA, FRA determined a number of project activities are exempt from Section 106 review under the *Program Comment to Exempt Consideration of Effects to Rail Properties Within Rail Rights-of-Way* issued by the Advisory Council on Historic Preservation (the ACHP) on August 17, 2018 (83 FR 42920, August 24, 2018, and amended 84 FR 31075, June 28, 2019); and

**WHEREAS**, in letters dated April 24, 2020, FRA initiated consultation with the Maryland Historical Trust (MHT), the Delaware Division of Historical and Cultural Affairs (DHCA), and the Pennsylvania Historical and Museum Commission (PHMC), which respectively serve as the State Historic Preservation Officers (SHPOs) for their respective states (MD SHPO, DE SHPO, and PA SHPO), pursuant to 36 CFR § 800.3(c) and established the preliminary discontinuous Area of Potential Effects (APE) for historic architecture and archaeology (36 CFR § 800.4(a)(1)), which was expanded in November 2020 to include additional locations (Exhibit 1: HST Project Location Map and Area of Potential Effects Maps); and

**WHEREAS**, proposed construction activities at the Howard Street Tunnel location involve a combination of track lowering and modification to the tunnel arch and/or invert; and

**WHEREAS**, proposed construction activities at the Boone Tunnel location involve a combination of track lowering and arch modification; and

**WHEREAS**, pursuant to 36 CFR § 800.3(f)(2), in a letter dated June 4, 2020, FRA invited the following federally recognized Indian tribes (herein collectively referred to as “Tribes”) to participate in the Section 106 process as Consulting Parties: 1) the Catawba Indian Nation, 2) the Delaware Nation, 3) the Delaware Tribe of Indians, 4) the Eastern Shawnee Tribe of Oklahoma, and 5) the Seneca-Cayuga Nation; and

**WHEREAS**, three Tribes responded with the following: 1) on July 7, 2020, the Catawba Indian Nation indicated they have no immediate concerns with regard to traditional cultural properties, sacred sites, or Native American archaeological sites within the boundaries of the proposed project areas, however, they requested to be notified if Native American artifacts and/or human remains are discovered during the HST Project’s ground disturbing activities; 2) on June 23, 2020, the Delaware Nation accepted the invitation to participate in consultation; and 3) on June 8, 2020, the Delaware Tribe of Indians accepted the invitation to participate in consultation with a request for locational information about exempted activities where ground disturbing activities are expected; and

**WHEREAS**, pursuant to 36 CFR § 800.3(f)(1), in a letter dated June 4, 2020, FRA invited 1) the B&O Railroad Museum; 2) the Baltimore & Ohio Railroad Historical Society; 3) the Baltimore City, Maryland, Commission for Historical and Architectural Preservation; 4) Baltimore

Heritage; 5) the Baltimore Heritage Area Association; 6) the City of Wilmington, Delaware Department of Planning and Development; 7) the Delaware County, Pennsylvania, Historical Society; 8) the Delaware County, Pennsylvania, Planning Department, Heritage Commission; 9) the Delaware Department of Transportation (DelDOT); 10) the Maryland Institute College of Art; 11) the New Castle County, Delaware, Department of Land Use, Development and Planning; 12) the New Castle, Delaware, Historical Society; 13) the Preservation Alliance for Greater Philadelphia; 14) Preservation Delaware; 15) Preservation Maryland; 16) Preservation Pennsylvania; 17) the Railroad Museum of Pennsylvania; and 18) the U.S. Department of the Interior, National Park Service (NPS), Northeast Region to consult in the Section 106 process regarding the effects of the HST Project on historic properties, and has afforded the public-at-large an opportunity to comment through the concurrent NEPA public involvement process; and

**WHEREAS**, per comments received from DE SHPO, FRA invited, in a letter dated January 14, 2021, two state-recognized Indian tribes as Consulting Parties, the Lenape Indian Tribe of Delaware and the Nanticoke Indian Tribe; and re-invited DelDOT and the City of Wilmington, Delaware Department of Planning and Development, who had not responded to FRA's initial invitation; and

**WHEREAS**, the following parties accepted the invitation to be a Consulting Party: 1) Preservation Maryland accepted on June 5, 2020; 2) Baltimore Heritage accepted on June 8, 2020; 3) the Delaware County, Pennsylvania, Planning Department accepted on June 8, 2020; 4) the City of Wilmington, Delaware Department of Planning and Development accepted on January 14, 2021; and 5) DelDOT accepted on February 9, 2021; and

**WHEREAS**, pursuant to 36 CFR § 800.4 and 800.5, CSX consultants, who meet the relevant standards outlined in the Secretary of the Interior's (SOI's) *Professional Qualifications Standards for Archeology and Historic Preservation* (36 CFR Part 61), conducted identification and effects assessment technical studies for both historic architecture and archaeology within the HST Project area, which included a revised APE to reflect design changes, and are documented in *Howard Street Tunnel Project: Architectural Historic Properties Identification and Effects Assessment Technical Report* (January 2021) and *Howard Street Tunnel Project: Phase IA Archaeological Assessment Technical Report* (January 2021); and

**WHEREAS**, based on the information in the reports, FRA identified a total of twenty-two architectural historic properties in the APE that are listed in or eligible for listing in the National Register of Historic Places (NRHP), and all located in Maryland and Pennsylvania; and

**WHEREAS**, FRA determined, in consultation with MD SHPO, DE SHPO, PA SHPO and the other Consulting Parties, that the HST Project will have an adverse effect on the following seven architectural historic properties, listed in order from south to north:

- Howard Street Tunnel & Power House (B-79) (Power House element is no longer extant) in Maryland, due to physical destruction and alteration of character-defining features of the tunnel
- Baltimore and Ohio (B&O) Railroad Baltimore Belt Line (B-5287) in Maryland, due to extensive alterations or complete replacement of multiple contributing elements

- Cannon Shoe Company (B-5332) in Maryland, due to construction vibration
- North Avenue Bridge (BC1208) (B-4521) in Maryland, due to physical destruction to a character-defining portion of the resource
- Guilford Avenue Bridge (BC8029) (B-4526) in Maryland, due to complete physical destruction of the resource
- Harford Road Bridge (BC8026) (B-4523) in Maryland, due to complete physical destruction of the resource
- Boone Tunnel (1997RE00650 [previously 106212]) in Pennsylvania, due to physical destruction and alteration of character-defining features of the tunnel; and

**WHEREAS**, the *Howard Street Tunnel Project: Architectural Historic Properties Identification and Effects Assessment Technical Report* (January 2021) used the *Draft Howard Street Tunnel Noise and Vibration Assessment Technical Report* (Yuan 2020), which was based on worst-case scenarios, and determined that the Build Alternative may have an adverse effect on one historic property, the Cannon Shoe Company (B-5332), due to construction vibration; and

**WHEREAS**, based on investigations of the archaeological APE conducted by CSX's SOI-qualified cultural resources consultants, and documented in the *Howard Street Tunnel Project, Phase IA Archaeological Assessment Technical Report, City of Baltimore, Maryland; Wilmington, Delaware; and Philadelphia County, Pennsylvania* (January 2021), FRA has concluded that the HST Project has limited potential to affect significant pre-contact or historic archaeological properties, therefore no additional archaeological investigations are recommended; and

**WHEREAS**, MD SHPO and PA SHPO concurred with FRA's identification of historic properties and effects findings in letters dated December 2, 2020 and February 18, 2021; and December 7, 2020, February 9, 2021, and February 12, 2021, respectively; and

**WHEREAS**, DE SHPO stated no objection to FRA's finding that the one architectural resource evaluated in Delaware within the APE is not eligible for NRHP listing, and concurred that there is little potential for intact archaeological resources and no further archaeological work is needed in Delaware if construction, staging, stockpiling, and access to the project locations in the state will be confined to the existing railroad right-of-way, in a letter dated January 6, 2021; and

**WHEREAS**, in accordance with 36 CFR § 800.10(c), FRA notified NPS that the Project would have no adverse effect on the one National Historic Landmark identified within the APE, namely the Mount Royal Station, by letter dated March 31, 2021, and NPS, by email dated April 21, 2021, concurred with FRA's finding and did not indicate an intent to participate in consultation; and

**WHEREAS**, FRA determined that a Memorandum of Agreement (MOA), prepared in accordance with the Section 106 regulations (36 CFR § 800.6(c)), is appropriate to resolve the potential adverse effects on historic properties that may occur from the implementation of the HST Project because the nature and extent of effects to historic properties are known at this stage of HST Project design, except for certain potential construction noise and vibration effects. CSX has

minimized adverse effects to the Howard Street Tunnel in Maryland and the Boone Tunnel in Pennsylvania by selecting less impactful construction methods at those locations; and

**WHEREAS**, MD SHPO and PA SHPO are Signatories to this MOA because the HST Project will have adverse effects in Maryland and Pennsylvania; and

**WHEREAS**, DE SHPO is not a Signatory to this MOA because the HST Project will not affect historic properties in the Delaware portion of the APE; and

**WHEREAS**, FRA has invited CSX, as the HST Project Sponsor, designer, owner, and operator of the I-95 Rail Corridor, to participate in this MOA as an Invited Signatory with responsibilities under this MOA, and CSX has accepted; and

**WHEREAS**, FRA has invited MDOT MPA, as the grantee, to participate in this MOA as an Invited Signatory with responsibilities under this MOA, and MDOT MPA has accepted; and

**WHEREAS**, FRA has invited all other Consulting Parties, including DE SHPO, to be Concurring Parties under this MOA, and these Consulting Parties may accept the invitation to become a Concurring Party by signing this MOA; and

**WHEREAS**, fulfillment of this MOA satisfies the responsibilities of any Maryland state agency under the requirements of the Maryland Historical Trust Act of 1985, as amended, State Finance and Procurement Article §§ 5A-325 and 5A-326 of the Annotated Code of Maryland, for any components of the Project that require licensing, permitting, and/or funding actions from Maryland state agencies; and

**WHEREAS**, fulfillment of this MOA satisfies the responsibilities of any Pennsylvania state agency under the requirements of the Pennsylvania History Code, as amended, for any components of the HST Project within the APE that require licensing, permitting, and/or funding actions from Pennsylvania state agencies; and

**WHEREAS**, in accordance with 36 CFR § 800.6(a)(1), FRA has notified the ACHP of its adverse effect finding and intention to enter into an MOA with specified documentation by letter dated April 2, 2021, and the ACHP, by letter dated April 9, 2021, declined to participate in consultation, pursuant to 36 CFR § 800.6(a)(1)(iii); and

**NOW, THEREFORE**, FRA, MD SHPO and PA SHPO as Signatories, and CSX and MDOT MPA as Invited Signatories (together the Signatories) agree the HST Project will be implemented in accordance with the following stipulations in order to take into account the effects of this undertaking on historic properties.

## **STIPULATIONS**

### **I. ROLES AND RESPONSIBILITIES**

#### **A. FRA**

1. FRA, as a Signatory and the lead federal agency for the HST Project, has authority to execute, amend, and/or terminate this MOA.
2. FRA has the primary responsibility to ensure the provisions of this MOA are carried out.
3. FRA is responsible for all government-to-government consultation with Tribes.

#### **B. MD SHPO and PA SHPO**

1. MD SHPO and PA SHPO, as Signatories with responsibility for regulatory review and compliance under Section 106, have authority to execute, amend, and/or terminate this MOA.
2. MD SHPO and PA SHPO will review, provide comment, and approve submittals, as specified in this MOA.

#### **C. CSX**

1. CSX, as an Invited Signatory, has the same rights with regard to seeking amendment and/or termination of this MOA as other Signatories and will ensure that specified stipulations and procedures, for which it has assumed responsibility, are carried out in accordance with the terms stipulated in this MOA.
2. CSX, as the Project Sponsor, is responsible for implementation and funding of the stipulations of this MOA, consistent with paragraph D.2 below.
3. As authorized by FRA, CSX will continue to coordinate and prepare any necessary analyses, documentation, and recommendations on its behalf, but FRA remains legally responsible for all findings and determinations, including determinations of eligibility and effects of the HST Project, as well as resolution of objections or dispute resolution.

#### **D. MDOT MPA**

1. MDOT MPA, as an Invited Signatory, has the same rights with regard to seeking amendment and/or termination of this MOA as other Signatories and will ensure that specified stipulations and procedures, for which it has assumed responsibility, are carried out in accordance with the terms stipulated in this MOA.

2. MDOT MPA will carry out certain responsibilities as indicated in Stipulation IV.D. of this MOA.
- E. Consulting Parties
1. Consulting Parties include Tribes, local governments and/or organizations with a demonstrated interest in the HST Project who have participated in the development of this MOA, or who may later join in as Consulting Parties in the Section 106 process due to the nature of their legal or economic relationship to the HST Project or affected properties, or their interest in the HST Project's effects on historic properties.
  2. Consulting Parties may participate in ongoing consultation, as stipulated by this MOA.
- F. Concurring Parties

Concurring Parties may participate in ongoing consultation, as stipulated by this MOA, and in review of the mitigation products specified in Section IV of this MOA.

## **II. PROFESSIONAL QUALIFICATIONS AND DOCUMENTATION STANDARDS**

- A. CSX will ensure that all work carried out pursuant to this MOA will be done by or under the direct supervision of qualified professionals in the disciplines of Archaeology, Architectural History, and/or History who meet the relevant standards outlined in the SOI's *Professional Qualifications Standards for Archeology and Historic Preservation* (36 CFR Part 61) ([http://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](http://www.nps.gov/history/local-law/arch_stnds_9.htm)).
- B. All documentation prepared or performed pursuant to this MOA will be consistent with all pertinent federal and state standards and guidelines, including, but not limited to, those developed by NPS, the ACHP, MD SHPO, and PA SHPO (Exhibit 2: List of Relevant Standards and Guidelines).

## **III. TIMEFRAMES, COMMUNICATION AND DOCUMENT REVIEW**

- A. CSX will provide all documentation prepared pursuant to this MOA to FRA for review and approval before CSX submits to the other Signatories, Concurring Parties, and Consulting Parties. Concurrent review between parties and FRA is acceptable for subsequent drafts, at FRA's discretion, and FRA approval is required prior to finalization.
- B. All time designations are in calendar days. If a review period ends on a Saturday, Sunday or federal holiday, the review period will be extended until the next business day.

- C. All review periods start on the day the documents are provided to the relevant parties, which constitutes notification, unless otherwise stipulated in this MOA.
- D. CSX, in coordination with FRA, will send all notifications required by this MOA by email and/or other electronic means, unless a mailed notification is requested by a recipient.
- E. For purposes of communication pursuant to this MOA, contact information for each of the Signatories, and the Consulting and Concurring Parties, including the Tribes, is provided in Exhibit 3: List of Contacts. Names and contact information therein may be updated, as needed, without an amendment to this MOA. It is the responsibility of each Signatory, and Consulting and Concurring Party to inform FRA and CSX of any change in contact information in a timely manner.
- F. Unless otherwise stated elsewhere in this MOA, MD SHPO, PA SHPO, MDOT MPA, and the Consulting or Concurring Parties, as appropriate, will provide comments on documents prepared pursuant to this MOA to CSX with a copy to FRA.
- G. Except as provided in Stipulation III.H. below, MD SHPO, PA SHPO, MDOT MPA, and the Consulting or Concurring Parties will have up to thirty (30) days from the date of delivery of any documents prepared pursuant to this MOA to review and provide written comments to CSX and FRA.
- H. At FRA's discretion, FRA may grant written requests from the Signatories or Consulting or Concurring Parties to extend the review period in Stipulation III.G. or may determine that an additional round of review of draft documents is necessary. All such written requests must be received by FRA in a timely manner and provide adequate justification to extend a review period. FRA will notify MD SHPO, PA SHPO, MDOT MPA, and the Consulting or Concurring Parties of its decision in writing, including specifying review timeframes.
- I. If a Consulting or Concurring Party does not provide written comments within the timeframes specified in this MOA, CSX will proceed to the next step in the review process, following approval by FRA, and MD SHPO and PA SHPO.
- J. If the Signatories and/or Consulting or Concurring Parties object to or recommend extensive revisions to submissions stipulated in this MOA, CSX, in coordination with FRA, will work to respond to the recommendations and resolve disputes in a timely manner and at the lowest appropriate staff level.
- K. If FRA, in coordination with CSX, cannot resolve a dispute within thirty (30) days, FRA may elect to follow the dispute resolution process identified in Stipulation XI to resolve any such dispute.



- L. In exigent circumstances (e.g., concerns over construction suspensions or delays), all parties will expedite their respective document review and/or dispute resolution obligations within seven (7) days.

#### **IV. TREATMENT MEASURES FOR ARCHITECTURAL HISTORIC PROPERTIES**

- A. CSX, in consultation with the Signatories and Concurring Parties, as directed by and under the authority of FRA, will mitigate the adverse effects of the HST Project on the seven architectural historic properties described in the Recitals above, according to the stipulations and procedures outlined herein. CSX will fulfill the stipulations herein in accordance with the HST Project schedule and the deadlines described below.
- B. Information used to develop content pursuant to this MOA will be utilized and shared amongst all documentation efforts stipulated so as to avoid duplication of research and writing efforts. As appropriate, the written documentation will draw upon original building, tunnel, and bridge construction documents; historic photographs; and interviews with local residents or individuals possessing special knowledge. Potential repositories to consult for information on individual buildings, structures, and railroad resources include, but are not limited to, the CSX archive, National Archives, Maryland State Archives, Maryland Historical Society, Pennsylvania State Archives, Baltimore City Archives, and Enoch Pratt Free Library.
- C. Update Historic Property Survey Files
  - 1. CSX will investigate the history, development, use, and evolution of the architectural historic properties listed below for the purposes of updating older historic property survey files of NRHP-listed and eligible historic properties, and for the purposes of establishing historic contexts:
    - a. Howard Street Tunnel & Power House (B-79) – updated MIHP Form
    - b. North Avenue Bridge (BC1208) (B-4521) – updated MIHP Form
    - c. Guilford Avenue Bridge (BC8029) (B-4526) – updated MIHP Form
    - d. Harford Road Bridge (BC8026) (B-4523) – updated MIHP Form
    - e. Boone Tunnel (1997RE00650) – updated evaluation-level documentation into PA-SHARE
  - 2. In Maryland, updates will be made to each property's Maryland Inventory of Historic Properties (MIHP) Form, which documents the property's physical integrity and place in Maryland history. Updates will not be made to the properties' Determination of Eligibility Forms. In Pennsylvania, updates will be made to the existing Historic Resource Survey Form (HRSF) in the form of evaluation-level documentation entered into PA-SHARE. Updated photographs, taken prior to the start of construction of the HST Project, will be included in the documentation.

CSX's investigations will focus specific attention on the railroads that historically utilized these properties.

3. CSX will submit drafts of the survey files to the Signatories and Concurring Parties for review and comment, following the steps described in Stipulation III. The final documents will be filed with MD SHPO and/or PA SHPO, as appropriate.

D. Electronic Informational Platforms

1. CSX will develop content to be posted on MDOT MPA's website that provides a platform for the electronic storage and public dissemination of information and documents resulting from implementation of the stipulations in this MOA for each of the seven architectural historic properties adversely affected by the HST Project. Content may include: Historic American Engineering Record (HAER) documentation (as outlined in Stipulation IV.E), photographs, the *Howard Street Tunnel Project: Architectural Historic Properties Identification and Effects Assessment Technical Report* (January 2021), and related material and other data, as appropriate.
2. CSX will coordinate with the Signatories and Concurring Parties on the final scope and format of the website content, including opportunities to partner with, and hyperlink to, other relevant preservation/history-based organizations or to utilize other forms of electronic communication.
3. CSX will implement this stipulation prior to initiation of construction of the HST Project and work with MDOT MPA to maintain and update the website content, as needed, for a period of one year after completion of the HST Project construction. After the conclusion of one year, neither CSX nor MDOT MPA shall have further obligation under this MOA to maintain or update the website content, and will use reasonable efforts to offer the website content to the Consulting Parties and other repositories.

E. Historic American Engineering Record Documentation

1. CSX will prepare a HAER written and photographic documentation for the Baltimore and Ohio (B&O) Railroad Baltimore Belt Line (B-5287) segment within the APE, to include the four individual contributing elements that will be adversely affected by the HST Project: Howard Street Tunnel & Power House (B-79), the North Avenue Bridge (BC1208) (B-4521), the Guilford Avenue Bridge (BC8029) (B-4526), and the Harford Road Bridge (BC8026) (B-4523) contributing elements of. Written documentation will include the history of the B&O Railroad's Baltimore Belt Line, including the tunnel and bridges, and the story behind the final location, design, engineering, and method of construction used for building the railroad alignment, including the tunnel and bridges. Photographic documentation for the tunnel will record significant elements of the tunnel structure, including the portals and representative views of the interior. The documentation will be

deposited with the Library of Congress (LOC) (via NPS), and the MD SHPO library.

2. CSX will contact staff at the NPS Northeast Regional Office for HABS/HAER guidance on the final scope, content, format, and disposition of each recordation effort. The photographic documentation will be prepared using digital images consistent with Level II HABS/HAER photography guidelines.
  3. Unless otherwise agreed to by FRA, NPS, and MD SHPO, CSX will ensure that all HAER recordation is completed and accepted prior to the commencement of construction or demolition that will affect historic properties, in order to advance the HST Project toward and/or through construction CSX will leave each of the identified historic properties' structure and its associated parcel of land in an unaltered appearance until the photographic documentation phase is completed.
  4. Unless otherwise agreed to by FRA, NPS, and MD SHPO, CSX will provide final copies of each recordation document to the NPS (to be housed at the LOC) and MD SHPO, and offer electronic copies to other Consulting Parties and repositories, as appropriate.
- F. Interpretive Display
1. CSX will endeavor to develop, fabricate, and install an interpretive sign and/or display and place it at an appropriate mutually agreeable location for the Boone Tunnel (1997RE00650).
  2. Possible interpretive themes for the displays include, but are not limited to, the history and construction of the Boone Tunnel and the B&O Railroad's Philadelphia Branch.
  3. CSX, in coordination with FRA, will endeavor to identify a historic preservation group, community organization, or county facility willing and capable of assuming ownership and ongoing maintenance of the interpretive sign and/or display.
  4. Should CSX not identify an interested and willing party within six (6) months of the last signature on this MOA, CSX will coordinate with and receive FRA approval prior to changing the type of treatment measure and notifying the Signatories and Concurring Parties. Instead of following the steps outlined in Stipulation IV.F. 5 and 6 below, CSX will complete HAER recordation following the steps outlined in Stipulation IV.E. of this MOA, as mitigation for the adverse effect to Boone Tunnel.
  5. Should CSX develop an interpretive sign and/or display, CSX will submit draft and final outlines, text copy, exhibition scripts, and/or design documents to the Signatories and Concurring Parties for review and comment following the steps

described in Stipulation III. The final form, location, content, and design-life of the interpretive displays will be decided in consultation among the Signatories.

6. Should CSX develop an interpretive sign and/or display, CSX will develop, fabricate, and install the interpretive display within one (1) year of HST Project construction completion. Immediately following installation, CSX will transfer permanent ownership of the display to the identified party, who will maintain the display for at least three (3) years following completion of the HST project construction. CSX may document an ownership and maintenance agreement with the identified party, as appropriate.

## **V. CONSTRUCTION-RELATED NOISE AND VIBRATION CONSIDERATIONS**

- A. In addition to the previously identified Cannon Shoe Company (B-5332) in Baltimore, Maryland, CSX will identify any additional historic properties that could also potentially be affected by construction-related noise or vibration, following the development and FRA review of the final engineering design and construction methodology(ies) for the HST Project.
- B. FRA, in coordination with CSX, will determine whether the Cannon Shoe Company (B-5332) and any additional historic properties will be adversely affected by construction-related noise or vibration. Steps to make this determination will be to revise the APE, identify historic properties, assess the effects to historic properties, and develop treatment measures to resolve any adverse effects.
- C. FRA and CSX, in consultation with the appropriate SHPO and the Consulting Parties, will attempt to identify measures or otherwise modify engineering design and construction methods to avoid or minimize any adverse effect to additional historic properties.
- D. Should FRA determine, in consultation with DE SHPO, MD SHPO, PA SHPO, and Consulting Parties, as applicable, that the HST Project will have an adverse effect on historic properties, CSX will prepare and implement a Historic Properties Construction Protection Plan (Protection Plan) to avoid, minimize, and/or mitigate for any construction-related noise or vibration effects for those properties identified during the steps outlined in Stipulation V.B. Measures outlined in the Protection Plan will be consistent with the SOI's *Standards for the Treatment of Historic Properties*, and will be overseen by a qualified professional as contained in Stipulation II.A s.
- E. CSX will develop and distribute the draft Protection Plan prior to construction to the Signatories and Consulting Parties for review and comment following the steps described in Stipulation III. CSX will implement the approved Protection Plan, in accordance with the schedule included in the Protection Plan.

- F. The Protection Plan will address measures to achieve compliance with local construction-related noise ordinances during HST Project construction and to avoid and/or mitigate the construction-related vibration effects to a potentially affected historic property, including identifying baseline conditions of the historic property prior to the commencement of construction activities; the type of monitoring equipment that will be used; the frequency with which such equipment will be used; and a description of how CSX will evaluate and repair any vibration damage that may result from the construction of the HST Project to historic properties. Should unavoidable construction-related vibration effects to historic properties be identified during advanced design or construction, the Protection Plan will include a commitment to proceed with Section 106 consultation for the affected historic properties pursuant to the processes outlined in Stipulations VII and VIII.

## **VI. PROJECT CHANGES**

CSX will notify FRA within 15 days of any proposed modifications to the HST Project that may result in additional or new effects on historic properties. Before CSX takes any action that may result in additional or new effects on historic properties, FRA, CSX, the SHPO, and Consulting Parties as appropriate, will consult to determine the appropriate course of action. This may include revision to the APE, identification of historic properties, assessment of effects to historic properties, and development of treatment measures to resolve adverse effects. If FRA determines that an amendment to the MOA is required, it will proceed in accordance with Stipulation XII.

## **VII. UNANTICIPATED DISCOVERIES**

- A. Pursuant to 36 CFR § 800.13, CSX will develop an Unanticipated Discoveries Plan (UDP) to be included in construction and bidding documents for contractor/team use if a previously undiscovered archaeological or historic architectural resource that is or could reasonably be a historic property is encountered during construction, or a previously known historic property will be affected in an unanticipated manner.
- B. The UDP will include a procedure for interacting with Consulting Parties and the public, as appropriate, the media, a chain of contact, and notification requirements, stop-work requirements, and other appropriate provisions, as needed. CSX will submit the draft UDP to FRA, who will then distribute to MD SHPO and PA SHPO for concurrent review and comment, in accordance with Stipulation III.
- C. If it is necessary to develop treatment measures, CSX will carry out the approach and treatment measures after approval by FRA.

## **VIII. TREATMENT OF HUMAN REMAINS**

- A. If human remains are encountered during construction of the HST Project, CSX will immediately halt disturbance within a 25-foot radius of the discovery and immediately secure and protect the human remains and any associated funerary

objects in place in such a way that minimizes further exposure or damage to the remains from the elements, looting, and/or vandalism.

- B. CSX will immediately notify the appropriate law enforcement agency and/or reviewing agency with jurisdiction to determine if the discovery is subject to a criminal investigation by law enforcement and notify the Signatories within twenty-four (24) hours of the initial discovery. Appropriate authorities, per SHPO guidance included in Exhibit 2, are as follows:
  - 1. In Delaware, the Director of the Delaware Division of Historical and Cultural Affairs and the Chief Medical Examiner, Department of Health and Social Services must be notified.
  - 2. In Maryland, the Maryland State Police, the State's Attorney of the county, and MD SHPO must be notified.
  - 3. In Pennsylvania, PA SHPO and the coroner should be notified.
- C. If a criminal investigation is not appropriate, CSX will apply and implement all relevant laws, procedures, policies, and guidelines contained in Stipulation II.B. concerning the treatment and repatriation of burial sites, human remains, and funerary objects.
- D. In the event the human remains encountered could be of Native American origin, whether prehistoric or historic, FRA will immediately notify the appropriate Tribe(s) and consult with them, MD SHPO, and/or PA SHPO, as appropriate, to determine the treatment plan for the Native American human remains and any associated funerary objects. Once the treatment plan has been agreed upon by FRA and the relevant SHPO(s), CSX will implement the plan.
- E. If the remains are not of Native American origin, CSX will, as appropriate, develop a research design/treatment plan for the appropriate treatment of the remains and any associated artifacts, consistent with procedures and guidelines contained in Stipulation II.B. and submit the plan for review and comment by the Signatories and other Consulting Parties following the steps described in Stipulation III. Once the research design/treatment plan has been agreed upon by FRA and the relevant SHPO(s), CSX will implement the plan.
- F. CSX will ensure its contractor does not proceed with work in the affected area until FRA, in consultation with MD SHPO, PA SHPO, Tribe(s), and other Consulting Parties, as appropriate, determines the development and implementation of an appropriate research design/treatment plan or other recommended mitigation measures are completed. However, work outside the area of discovery may continue.

## **IX. EMERGENCY SITUATIONS**

- A. Should an emergency situation occur during construction of the HST Project that represents an imminent threat to public health or safety or creates a hazardous condition and in either case has the potential to affect historic properties, CSX will contact the appropriate emergency response agency with jurisdiction as soon as possible. CSX will notify the Signatories and other Consulting Parties within twenty-four (24) hours of the condition which created the emergency, the immediate action taken in response to the emergency, the effects of the response to historic properties, and, where appropriate, further plans to address the emergency. This will include any further proposals to avoid, minimize, or mitigate potential adverse effects to historic properties.
- B. The Signatories and other Consulting Parties will have seven (7) days to review and comment on the plan(s) for further action. If FRA, MD SHPO, PA SHPO, and other Consulting Parties, as appropriate, do not object to the plan within the review period, then CSX will implement the proposed plan(s).
- C. Where possible, CSX will ensure that emergency responses allow for future preservation or restoration of historic properties, take into account the SOI's *Standards for the Treatment of Historic Properties*, and include on-site monitoring by the appropriate qualified professional as contained in Stipulation II.A.
- D. Immediate rescue and salvage operations conducted to preserve life, property, and/or public health are exempt from these and all other provisions of this MOA.

## **X. ANTI-DEFICIENCY ACT**

FRA's obligations under this MOA are subject to the availability of appropriated funds, and the stipulations of this MOA are subject to the provisions of the Anti-Deficiency Act (31 USC Part 1341). FRA will make reasonable and good faith efforts to secure the necessary funds to implement this MOA in its entirety. If compliance with the Anti-Deficiency Act alters or impairs FRA's ability to implement the stipulations of this agreement, or if another federal agency does not assume responsibility as lead federal agency, Signatories will consult in accordance with the amendment or termination procedures found in Stipulations XII and XIII, respectively.

## **XI. DISPUTE RESOLUTION**

- A. In the event any Signatory and/or Consulting Party to this MOA objects in writing to any actions proposed or the manner in which the terms of this MOA are implemented, FRA will first consult with the objecting party and other Signatories and Consulting Parties, as appropriate, within fifteen (15) days in an attempt to resolve the objection. If FRA determines that such objection cannot be resolved, FRA will proceed as set forth herein.

- B. FRA will forward all documentation relevant to the dispute, including FRA's proposed resolution, to the ACHP within fifteen (15) days of the determination that an unresolved dispute exists and request that the ACHP provide FRA with its advice on the resolution of the objection within thirty (30) days of receiving the documentation. Concurrently, FRA will also provide the Signatories and Consulting Parties with the same documentation for review and comment following the steps described in Stipulation III. FRA will prepare a written response to the objection, which will constitute FRA's decision regarding the objection, that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories and other Consulting Parties, and provide them with a copy of the written response. FRA will then proceed according to its decision.
- C. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, FRA may make a decision on the dispute and proceed accordingly. FRA will document this decision in a written response to the objection that takes into account any timely comments regarding the dispute from the Signatories and other Consulting Parties and provide the ACHP, Signatories and other Consulting Parties with a copy of such written response.
- D. Should disputes arise under exigent circumstances (e.g., concerns over construction suspensions or delays), all parties agree to expedite their respective document review and dispute resolution obligations.
- E. The Signatories remain responsible for carrying out all other actions subject to the terms of this MOA that are not the subject of the dispute.

## **XII. AMENDMENTS**

Any Signatory to this MOA may request that it be amended, whereupon that party will immediately consult with the other Signatories within thirty (30) days (or another time period agreed to by all Signatories) to consider such an amendment. FRA will be responsible for developing and distributing the resulting amendment among the Signatories in the same manner as the original MOA. The amendment will be effective on the date of the final amendment signature. FRA will file a copy signed by all Signatories with the ACHP.

## **XIII. TERMINATION AND WITHDRAWAL**

- A. If any Signatory to this MOA determines its terms will not or cannot be carried out, that party will immediately notify the other Signatories in writing and consult with them to seek resolution, or amendment per Stipulation XII. If, within sixty (60) days (or another time period agreed to by all Signatories), a resolution or an amendment cannot be reached, any Signatory may terminate the MOA upon written notification to the other Signatories. A Consulting Party does not have the ability to terminate the MOA.



- B. If the MOA is terminated, then, prior to work continuing the HST Project, FRA must either, 1) execute a new MOA or Programmatic Agreement (36 CFR § 800.6(c) or 800.14(b)) or 2) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. FRA will notify the Signatories and other Consulting Parties as to the course of action it will pursue.

#### **XIV. MONITORING AND REPORTING**

- A. Each year, following the effective date of this MOA until it expires or is terminated, CSX will provide the Signatories and other Consulting Parties a written report summarizing work undertaken and any tasks completed related to adversely affected historic properties, pursuant to the terms of this MOA. Such a report will include any scheduling changes proposed, problems encountered, and disputes and their resolution in the Signatories' efforts to carry out the terms of this MOA.
- B. CSX will submit the summary report to the other Signatories, Consulting Parties, and Tribes annually commencing one (1) year from the date of the last signature on this MOA.

#### **XV. DURATION, EFFECTIVE DATE, AND EFFECT OF EXECUTION**

- A. Duration

This MOA will expire when all its stipulations have been completed or in five (5) years from the effective date, whichever comes first, unless the Signatories agree in writing to an extension through an amendment pursuant to Stipulation XII.

- B. Effective Date

This MOA will go into effect on the date FRA signs the MOA, which will be the final signature among all the Signatories.

- C. Effect of Execution

Execution of this MOA by the Signatories, its subsequent filing with the ACHP, and implementation of its terms demonstrate FRA has taken into account the effect of the HST Project on historic properties and afforded the ACHP an opportunity to comment, and satisfied its responsibilities under Section 106 of the NHPA and its implementing regulations.

#### **XVI. LIMITATION ON LIABILITY**

This Agreement is between FRA, MD SHPO, PA SHPO, MDOT MPA, and CSX and does not confer or create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by any third person or party (public or private) against FRA, MD SHPO, PA SHPO, CSX, or against their officers or employees or any other person.

All parties are responsible for the acts and/or omissions of their own employees and/or agents.

.....

**SIGNATORIES**

Federal Railroad Administration  
Maryland State Historic Preservation Officer  
Pennsylvania State Historic Preservation Officer

**INVITED SIGNATORIES**


CSX Transportation  
Maryland Department of Transportation, Port Administration

**OTHER CONSULTING PARTIES (INVITED TO BE CONCURRING PARTIES)**

Delaware Nation (federally recognized Indian tribe)  
Delaware Tribe of Indians (federally recognized Indian tribe)  
Baltimore Heritage  
City of Wilmington, Delaware Department of Planning and Development  
Delaware County, Pennsylvania, Planning Department, Heritage Commission  
Delaware Department of Transportation  
Delaware State Historic Preservation Officer  
Preservation Maryland

**SIGNATORY**

**FEDERAL RAILROAD ADMINISTRATION**

By:  Date: May 25, 2021

Laura Shick  
Supervisory EPS, Environment and Project Engineering Division


**SIGNATORY**

**MARYLAND STATE HISTORIC PRESERVATION OFFICER**

By:  Date: 5-19-2021  
Elizabeth Hughes  
Maryland State Historic Preservation Officer

**SIGNATORY**

**PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER**

By:  Date: 5/25/2021  
Andrea MacDonald  
Deputy Pennsylvania State Historic Preservation Officer

**INVITED SIGNATORY**

**CSX TRANSPORTATION**

By: \_\_\_\_\_ Date: \_\_\_\_\_

William Parry, PG, CGWP  
Senior Manager Environmental Remediation

**INVITED SIGNATORY**

**MARYLAND DEPARTMENT OF TRANSPORTATION, PORT ADMINISTRATION**

By:  \_\_\_\_\_ Date: 18 May 2021  
William P. Doyle  
Executive Director

**CONCURRING PARTY**

**DELAWARE NATION (FEDERALLY RECOGNIZED INDIAN TRIBE)**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Deborah Dotson  
President



**CONCURRING PARTY**

**DELAWARE TRIBE OF INDIANS (FEDERALLY RECOGNIZED INDIAN TRIBE)**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Dr. Brice Obermeyer  
Tribal Historic Preservation Officer

**CONCURRING PARTY**

**BALTIMORE HERITAGE**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Johns Hopkins  
Executive Director

**CONCURRING PARTY**

**CITY OF WILMINGTON, DELAWARE DEPARTMENT OF PLANNING AND  
DEVELOPMENT**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Debra Martin  
Historic Preservation Planner

**CONCURRING PARTY**

**DELAWARE COUNTY, PENNSYLVANIA PLANNING DEPARTMENT, HERITAGE  
COMMISSION**

By: Beverlee Barnes Date: 5/19/21  
Beverlee Barnes  
Historic Preservation Planning Manager

**CONCURRING PARTY**

**DELAWARE DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Alexandra Tarantino  
Architectural Historian

**CONCURRING PARTY**

**DELAWARE STATE HISTORIC PRESERVATION OFFICER**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Gwenyth A. Davis  
Deputy State Historic Preservation Officer

**CONCURRING PARTY**

**PRESERVATION MARYLAND**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Nicholas Redding  
Executive Director

Memorandum of Agreement  
Howard Street Tunnel Project

**EXHIBITS**

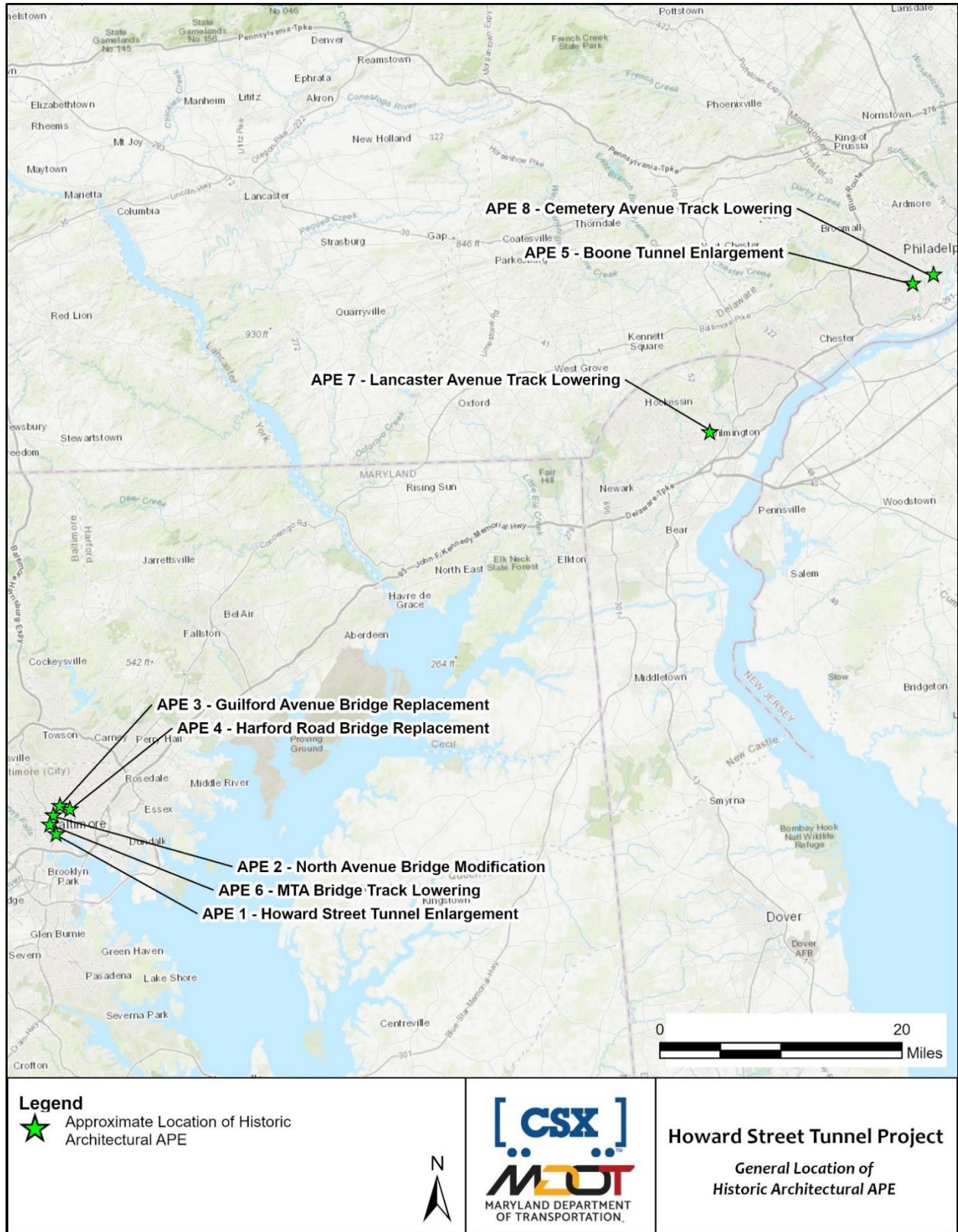
**Exhibit 1: HST Project Location Map and Area of Potential Effects Maps**

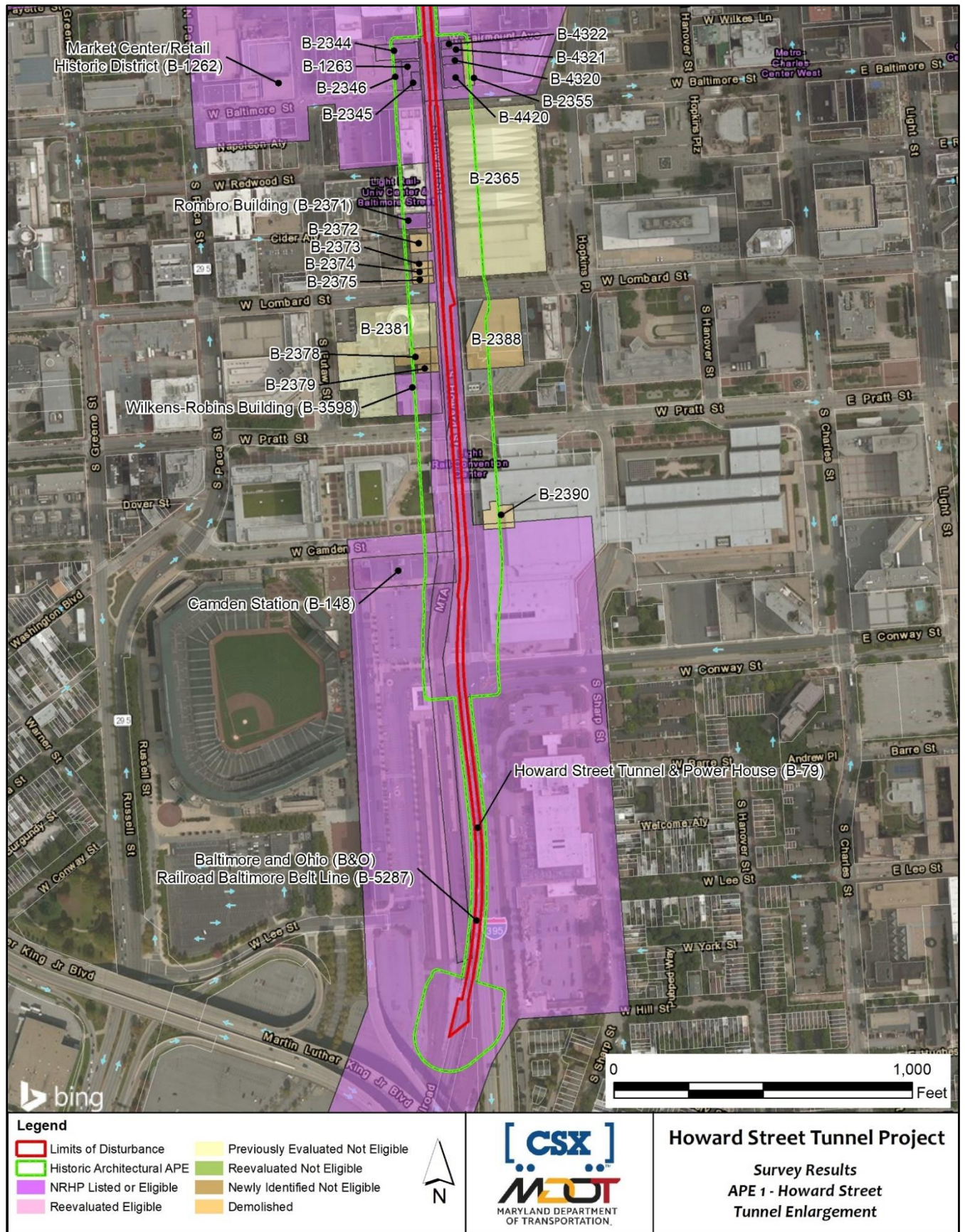
**Exhibit 2: List of Relevant Standards and Guidelines**

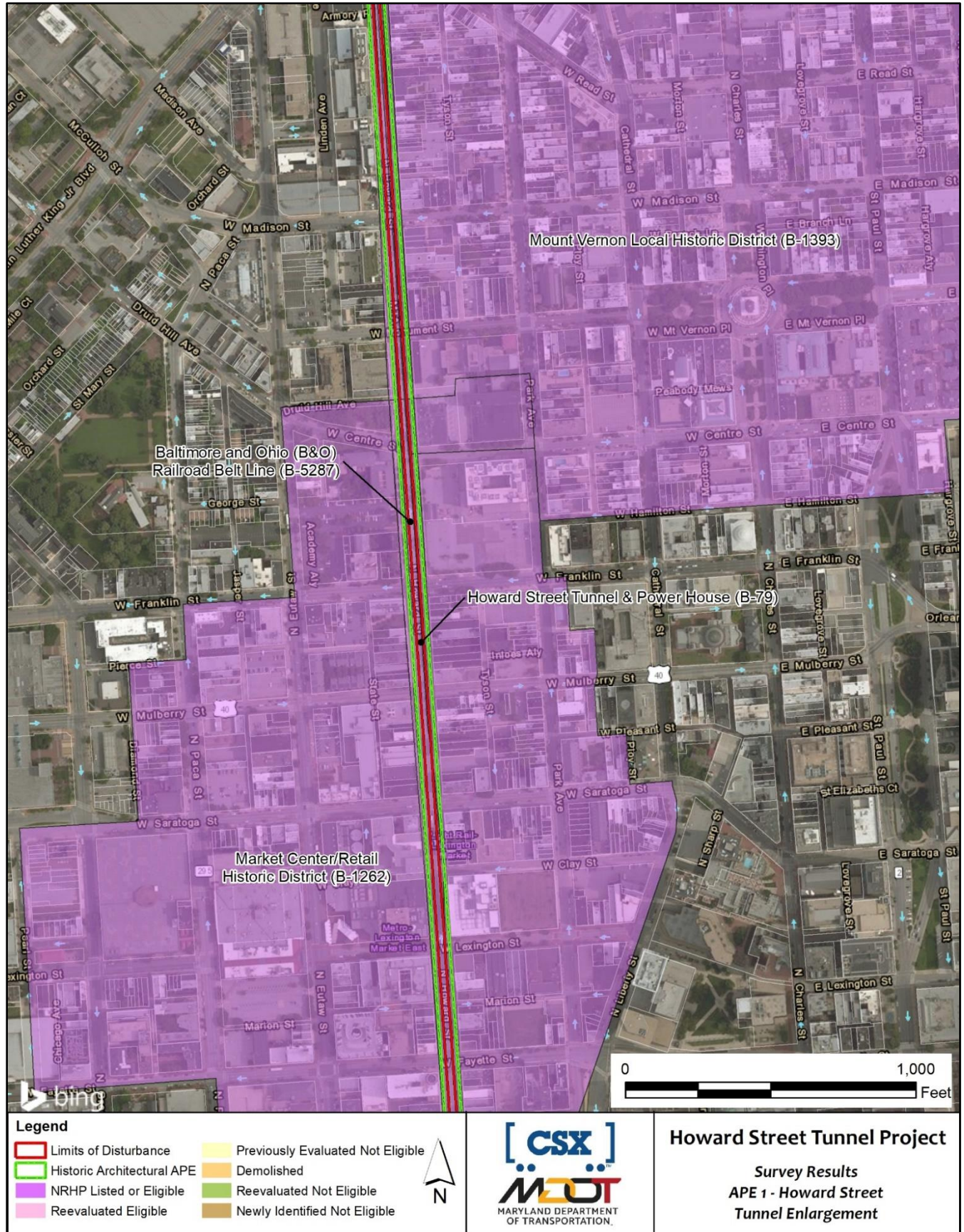
**Exhibit 3: List of Contacts**



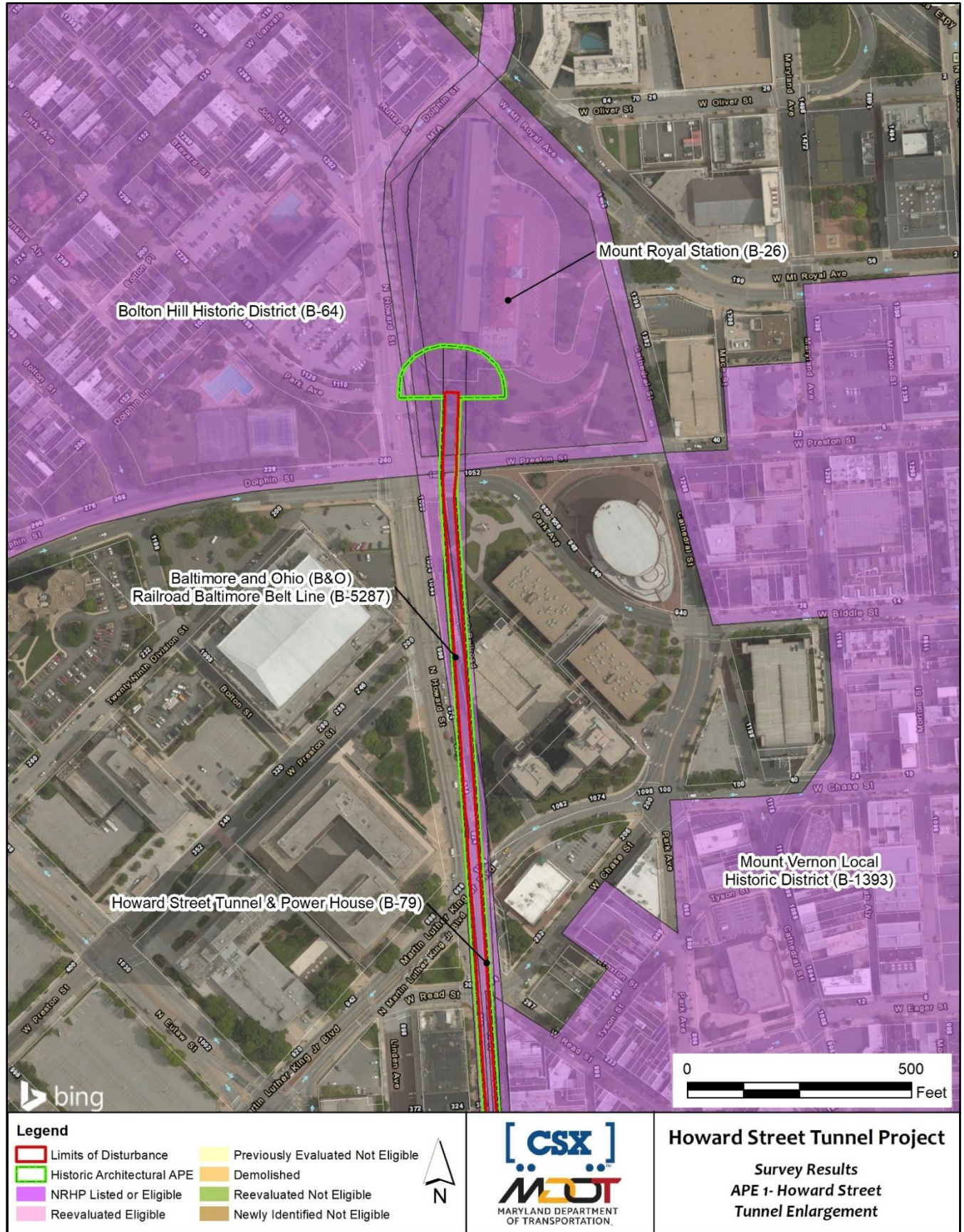
**Exhibit 1: HST Project Location Map and Area of Potential Effects Maps**



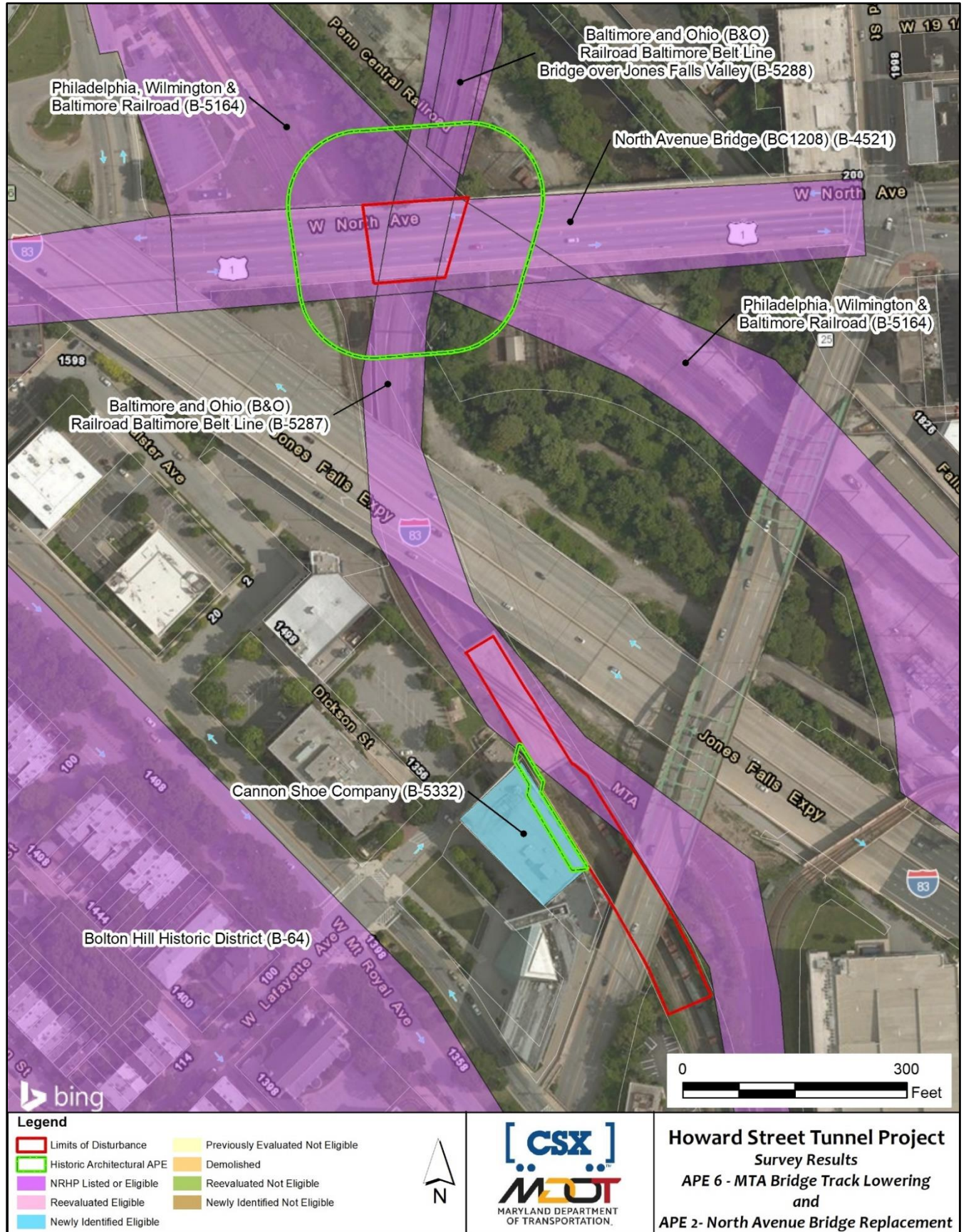


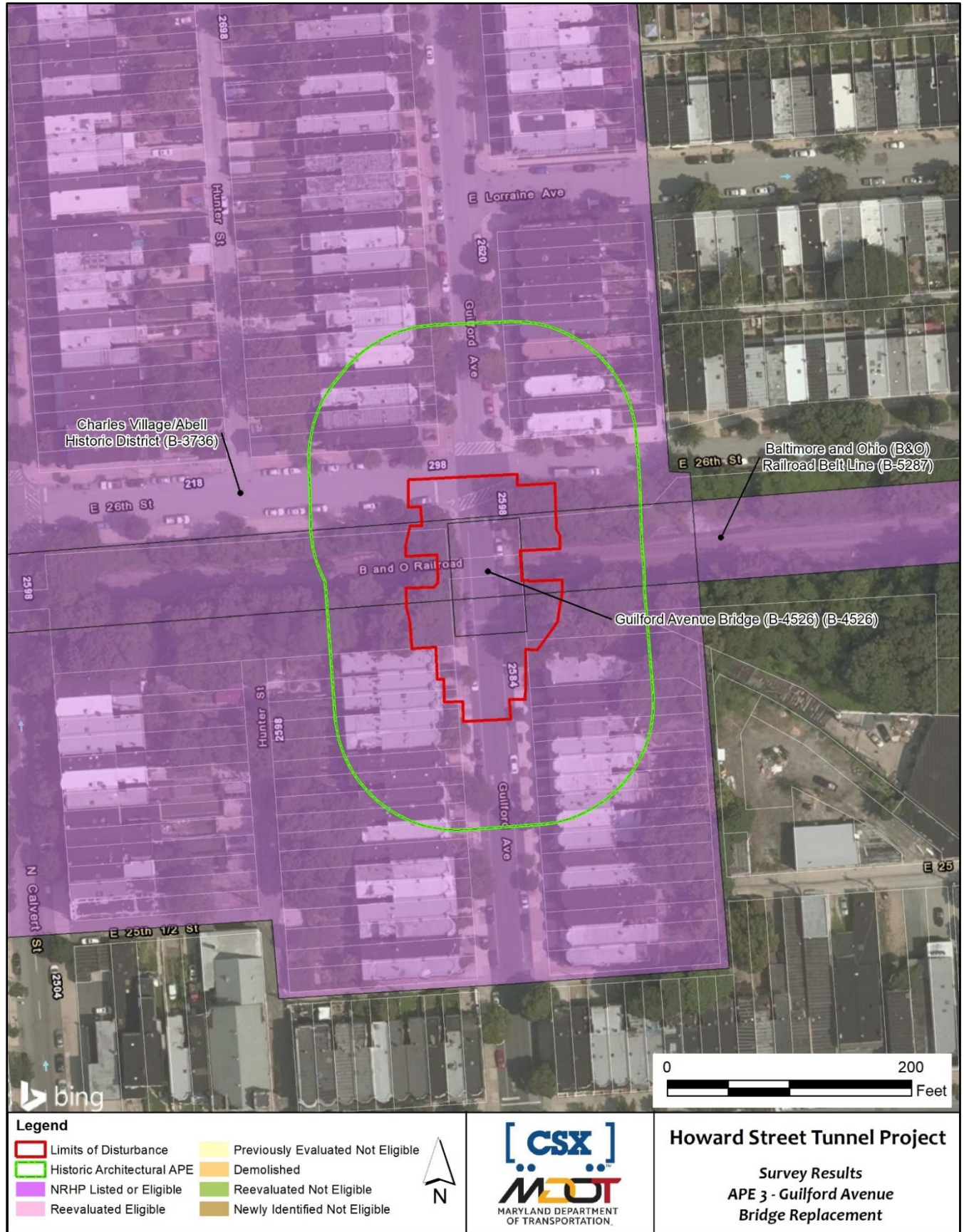


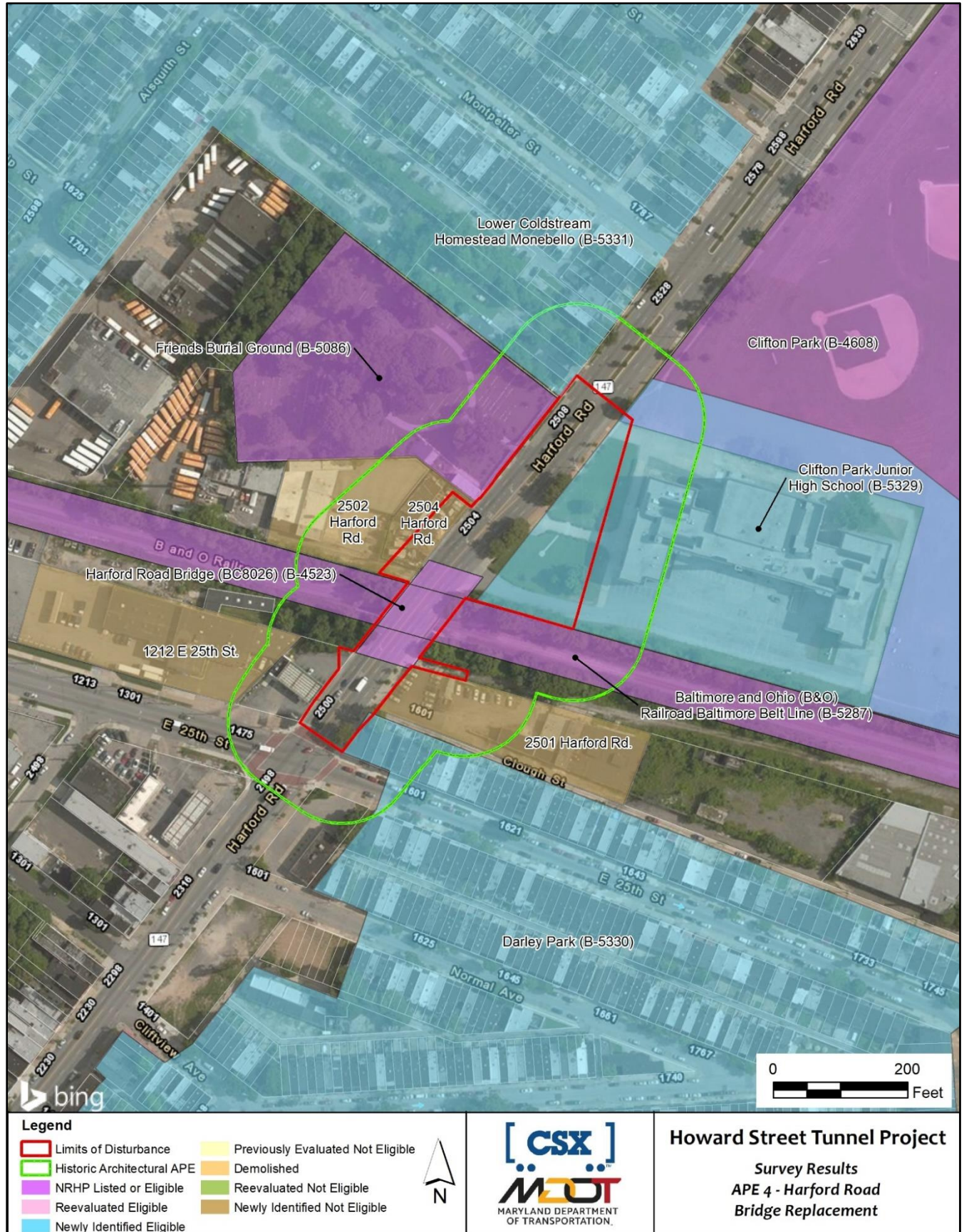
Memorandum of Agreement  
Howard Street Tunnel Project



Memorandum of Agreement  
Howard Street Tunnel Project















**Legend**

- Limits of Disturbance
- Historic Architectural APE
- NRHP Listed or Eligible
- Reevaluated Eligible
- Previously Evaluated Not Eligible
- Demolished
- Reevaluated Not Eligible
- Newly Identified Not Eligible



**Howard Street Tunnel Project**

Survey Results  
APE 8 - Cemetery Avenue  
Track Lowering

## **Exhibit 2: List of Relevant Standards and Guidelines**

Per Stipulation II.B. of this MOA, all documentation prepared or performed pursuant to this MOA will be consistent with all pertinent federal and state standards and guidelines, including, but not limited to, the following list. Implementation of the stipulations pursuant to this MOA will utilize, as appropriate, the following regulations, policies, standards, and guidelines, or any subsequent replacements of or revisions to same:

- Section 106, NHPA, as amended, and its implementing regulations (36 CFR § 800)
- *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings* (National Park Service, 1995)
- *Historic American Buildings Survey Guide to Field Documentation* (National Park Service, May 16, 2011)
- *Historic American Buildings Survey Guidelines for Historical Reports* (National Park Service, 2007)
- *Heritage Documentation Programs, HABS/HAER/HALS Photography Guidelines* (National Park Service, November 2011, updated June 2015)
- *Standards and Guidelines for Architectural and Historical Investigations in Maryland* (Maryland Historical Trust, 2019)
- *Guidelines for Compliance-Generated Determinations of Eligibility (DOEs)* (Maryland Historical Trust, 2002)
- *Guidelines for Architectural Investigations in Pennsylvania* (Pennsylvania Historical and Museum Commission, 2014)
- *The Pennsylvania State Historic Preservation Office's Researchers Guide for Documenting and Evaluating Railroads* (Pennsylvania Historical and Museum Commission, 2015)
- *Guidelines for Archaeological Investigations in Pennsylvania* (Pennsylvania State Historic Preservation Office, 2017)
- *Pennsylvania Archaeological Site Survey Files Site Identification Criteria* (Pennsylvania State Historic Preservation Office, 2017)
- *Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines* (48 FR 44716)
- *Section 106 Archaeology Guidance* (ACHP, 2009)
- *Standards and Guidelines for Archeological Investigations in Maryland* (Maryland Historical Trust, 1994)
- *Collections and Conservation Standards, Technical Update No. 1 of the Standards and Guidelines for Archeological Investigations in Maryland* (Maryland Historical Trust, Revised 2005)
- Curation of Federally Owned and Administered Archeological Collections (36 CFR § 79)
- Native American Graves Protection and Repatriation Act of 1990 (43 CFR § 10, as amended)
- Maryland Burial Law (Title 10 Subtitle 4 §§ 10-401 through 10-404 of the Annotated Code of Maryland)
- *Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects* (ACHP, February 23, 2007)

### **Exhibit 3: List of Contacts**

#### **Signatories**

Laura Shick  
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#### **Invited Signatories**

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**Additional Consulting Parties and Concurring Parties**

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Memorandum of Agreement  
Howard Street Tunnel Project

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