



**US Army Corps
of Engineers®**
New York District

Passaic River, New Jersey
Passaic River Tidal General Reevaluation Report
Lower Passaic River, New Jersey

Appendix E
Programmatic Agreement

November 2018

DRAFT
PROGRAMMATIC AGREEMENT
AMONG
THE U. S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
AND
THE NEW JERSEY STATE HISTORIC PRESERVATION OFFICE
REGARDING
THE PASSAIC TIDAL PROTECTION AREA
COASTAL STORM DAMAGE REDUCTION PROJECT
CITY OF NEWARK, ESSEX COUNTY, NEW JERSEY

WHEREAS, the Passaic River Basin Project was authorized by Section 101(a)(18) of the Water Resources Development Act (WRDA) of 1990, as amended by Section 101(a)(18)(ii) WRDA 1990 and Section 327(i) WRDA 2000. The current reevaluation study was authorized, following Hurricane Sandy by the Disaster Relief Appropriation Act of 2013 (P.L. 113-2), Second Interim Report to Congress, which listed the Passaic Tidal Protection Area Coastal Storm Risk Management Project (the Undertaking) as eligible to be managed as a separate project; and

WHEREAS, the Undertaking is proposed to include construction and operation of seven (7) segments of floodwalls and closure gates with integrated interior drainage systems and ancillary features, all in the City of Newark, Essex County, New Jersey (Appendix A); and

WHEREAS, the U.S. Army Corps of Engineers, New York District (New York District) has defined the Area of Potential Effect (APE) for this Undertaking to include all features along the line of protection including floodwalls, pump stations and closure gates. There are no staging areas, access roads or other ancillary features presently defined for the project but would be considered within the APE once defined. The APE for archaeology, historic structures and historic landscapes has been defined as those areas along the proposed line of protection that would likely to be directly impacted by project construction. The APE for historic structures and historic landscapes includes also those locations that would be anticipated to have impacts visually from the completed project. The locations for some project features have yet to be determined; and

WHEREAS, a Programmatic Agreement (PA) was executed on 30 March 1993 among the New York District, the Advisory Council on Historic Preservation (ACHP) and the New Jersey State Historic Preservation Office (NJHPO) for the Passaic River Flood Protection Project (Passaic River Basin Project), but was not implemented as no project appropriation was received, the APE for which coincides in part with the APE of the Undertaking, and while having no Sunset Clause, this agreement shall supersede the previous agreement for locations within the Passaic Tidal Protection Area APE; and

WHEREAS, a Memorandum of Agreement (MOA) was executed on 6 March 1997 among the New York District, the ACHP and NJHPO for the Joseph G. Minish Passaic River Waterfront Park and Historic Area (Minish Park), City of Newark, New Jersey, the location of which coincides in part with Segment 8 of the Undertaking. The MOA, having no Sunset Clause, is being implemented by the New York District as that project proceeds. Several stipulations therein were implemented by the City of Newark in association with improvements to Riverfront Park, portions of which lie within the Minish Park APE. This work included a Phase III study of the National Register of Historic Places (NRHP)-eligible Balbach & Sons Smelting and Refining Works archaeological site (28-Ex-129) and investigations of the NRHP-listed Morris Canal. Stipulations contained in this PA will supersede those agreed to in the Minish Park MOA for Segment 8 of this Undertaking; and

WHEREAS, the New York District is applying the NRHP Criteria (Criteria) to properties identified within the APE on a phased basis, and to date has completed a baseline survey within the APE with the recognition that additional identifications and evaluations are required for project actions which have not yet been finalized (Appendix B); and

WHEREAS, consultation with the Delaware Nation, the Delaware Tribe of Indians, the Eastern Shawnee Tribe, and the Shawnee of Oklahoma was initiated in July 2017; and

WHEREAS, the New York District has determined that there are no known Traditional Cultural Properties within the APE; and

WHEREAS, the New York District has identified the following above ground NRHP-listed, eligible or potentially eligible properties within the APE: Lehigh Valley Railroad Historic District (LVRR HD), Pennsylvania Railroad (PRR) HD, LVRR Oak Island Yard HD, PRR New York Bay Branch HD, Newark Penn Station, Jackson Street Bridge, Second Reformed Church, Ironbound Trust Company, Riverbank Park and Field House, Passaic Valley Sewerage Commission Newark Bay Outfall Sewerage Works and 106 Rutherford Place; and

WHEREAS, the New York District has identified the following below ground NRHP-listed or eligible properties within the APE: Newark City Sewer System, Morris Canal HD, and Balbach & Sons Smelting and Refining Works (Site 28-Ex-129); and

WHEREAS, the New York District has determined that the Undertaking will have no effect on the NRHP-listed or eligible LVRR Oak Island Yard HD, Jackson Street Bridge, Second Reformed Church, Ironbound Trust Company, Riverbank Park and Field House, or the Passaic Valley Sewerage Commission Newark Bay Outfall Sewerage Works, and

WHEREAS, the New York District has determined that the Undertaking will have no adverse effect on the NRHP-listed or eligible LVRR HD, the PRR HD and the PRR New York Bay Branch HD; and

WHEREAS, the New York District has determined that construction of Segment 6 of the

Undertaking will have no adverse effect on the NRHP-listed Newark Penn Station provided that treatment plans are developed and implemented as per Stipulation III; and

WHEREAS, the New York District has determined that additional study is required to identify and evaluate the following above ground resources: possible contributing elements to the NRHP-eligible PRR HD (Segment 2) and 106 Rutherford Place (Segment 4); and

WHEREAS, the New York District has determined that below ground resources have the potential to be encountered during construction of the Undertaking and require additional study: NRHP-eligible Newark City Sewer System (Segments 1 and 8); railroad related archaeological resources (Segment 1); remains of the Robinson & Rodgers Company factory (Segment 6); and NRHP-listed Morris Canal HD (Segment 8); NRHP-eligible Balbach & Sons Smelting and Refining Works (Site 28-Ex-129) (Segment 8); and

WHEREAS, the New York District has invited the Advisory Council on Historic Preservation (ACHP), the Delaware Nation, The Delaware Tribe of Indians, the Eastern Shawnee Tribe, the Shawnee of Oklahoma and the City of Newark Landmarks & Historic Preservation Commission to participate in the Section 106 consultation process; and

WHEREAS; the New York District has initiated consultation with the following interested parties: Newark Preservation and Landmarks Committee, Ironbound Community Corporation, Trust for Public Land, Canal Society of New Jersey, Roebling Chapter Society for Industrial Archeology; and

WHEREAS, the New York District has not yet received responses from any of the Tribes or interested parties; and

WHEREAS, the New York District made the Draft PA available for public review in the Draft Environmental Assessment prepared under the National Environmental Policy Act which will serve as the District's Section 106 public coordination for this undertaking; and

WHEREAS, the New York District will implement the provisions of this PA as funding for the project is appropriated in future years; and

WHEREAS, in accordance with 36 CFR Part 800.14, the New York District and the NJHPO have determined that execution of this PA will establish alternative procedures to streamline the coordination of the Undertaking; and

NOW, THEREFORE, the New York District, and the NJHPO agree that the Undertaking shall be administered in accordance with the following stipulations to satisfy the New York District's Section 106 responsibility for all individual actions of the Undertaking.

Stipulations

The New York District shall ensure that the following measures are carried out:

I. IDENTIFICATION AND EVALUATION

- A. During the Project Engineering and Design (PED) phase of the project the New York District, in consultation with the NJHPO, will ensure the following actions are undertaken, listed below by Undertaking Segment (Segments requiring no further work are not included below; see Appendix B):

1. Segment 1

- a. Compare plans with detailed maps of the historic City of Newark sewers to ensure that that the historic sewer is not impacted by the measures proposed for Segments 1 and 8. If impacts are anticipated, measures to minimize or mitigate them will be developed as per Stipulation III.
- b. Conduct additional research on Peddie's Ditch to confirm it will not be impacted.
- c. Determine need for, and direction of, archaeological investigations for remains of railroad gate mechanism and railroad embankment.

2. Segment 2

Conduct an architectural survey of the PRR HD in the vicinity of proposed plans to determine presence of historic ancillary features such as catenary and lighting.

3. Segment 4

Conduct research and prepare NJHPO Architectural Survey Base Form and Eligibility Worksheet for 106 Rutherford Place.

4. Segment 6

Determine need for, and direction of, archaeological investigations for remains of the Robinson & Roders Company factory.

5. Segment 8

- a. Compare plans with detailed maps of the historic City of Newark sewers to ensure that that the historic sewer is not impacted by the measures proposed.
- b. Determine need for, and direction of, archaeological investigations for remains associated with the industrial development of the Passaic River waterfront and in particular evidence of the Morris Canal and Site 28-Ex-129.

6. Interior Drainage and Other Project Features

Determine need for, and direction of, archaeological investigations as project plans are defined.

- B. The survey design will be informed by the most recent archaeological and architectural documentation that is available including reports on file at the NJHPO, NJ State Museum, and additional local and regional repositories that house relevant documentation.

1. Archaeological Sites

- a. The New York District shall ensure that archaeological surveys within the uninvestigated portions of the APE are conducted in a manner consistent with the Secretary of the Interior's Standards and Guidelines for Identification (48 FR 44720-23) and the New Jersey Historic Preservation Office Guidelines for Phase I Archaeological Investigations: Identification of Archaeological Resources (N.J.A.C. 7:4-8.4).
- b. All phases of survey reporting will be in keeping with the New Jersey Historic Preservation Office Requirements for Archaeological Survey Reports – Standards for Report Sufficiency (N.J.A.C. 7:4-8.5) and will be submitted to the NJSHPO and other consulting parties for review and consultation.

2. Traditional Cultural Properties

- a. The New York District will ensure that future surveys within the APE include procedures to identify Traditional Cultural Properties and to consult with Federally Recognized Tribes and other affected parties in accordance with the guidelines provided by National Park Service Bulletin 38, Guidelines for Evaluating and Documenting Traditional Cultural Properties.
- b. In the event that a Federally Recognized Tribe or affected group contacts the New York District regarding its recognition of a Traditional Cultural Property located within the APE, the New York District will notify the NJHPO to initiate discussions to evaluate whether the property is a Traditional Cultural Property that meets the Criteria.

3. Buildings and Structures

- a. The New York District will ensure that architectural surveys are conducted for all buildings and structures within the APE in a manner consistent with the Secretary of the Interior's Standards and Guidelines for Identification (48 FR 44720-23) and which takes into account the statewide historic contexts developed by the NJHPO. The survey will be conducted following consultation with the NJHPO and other consulting parties, and a report of the survey, consistent with the NJHPO's Guidelines for Architectural Survey, will be submitted to the NJHPO and all other consulting parties for review and consultation.
- b. The New York District, in consultation with the NJHPO and consulting parties, will identify and evaluate buildings and structures that are located adjacent to listed or eligible NRHP Historic Districts to determine whether such properties should be considered as part of the Historic District or an expanded District.

4. Historic Landscapes and Viewsheds

- a. The New York District will consult with the NJHPO and participating historical societies to identify and evaluate historic landscapes and viewsheds located within the APE. The New York District will consult National Park Service Bulletins 18, How to Evaluate and Nominate Designed Historic Landscapes, and 30 Guidelines for Evaluating and Documenting Rural Historic Landscapes, National Park Service Preservation Brief 36, Protecting Cultural Landscapes, and other publications and materials made available by the NJSHPO to assist in defining the criteria that should be applied to such properties.
 - b. The objective in conducting the surveys is to identify NRHP listed or potentially eligible historic landscapes and affected viewsheds within the project area that may be adversely affected by the Undertaking, and to determine whether they meet the NRHP criteria set forth in 36 CFR Part 60.4.
- C. The New York District will ensure that qualified professionals meeting the National Park Service professional qualifications for the appropriate discipline [National Park Service Professional Qualification Standards, Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44738-39)] are used to complete all identification and evaluation efforts related to this undertaking, to include, but not limited to, archaeological surveys and testing, and architectural survey.
- D. The New York District and the NJHPO shall consider the views of the public and consulting parties in completing its identification and evaluation responsibilities.

II. EVALUATION AND EFFECTS DETERMINATION

Application of Criteria: The New York District, in consultation with the NJHPO, shall evaluate historic properties using the Criteria established for the NRHP [36 CFR 800.4(c)(1)]:

1. If the New York District and the NJHPO agree that the Criteria apply or do not apply, in evaluating the NRHP eligibility of a property, the property shall be treated accordingly for purposes of this PA.
2. If the New York District and the NJHPO disagree regarding NRHP eligibility, or if the ACHP so requests, prior to the start of any project-related work at the site or in the vicinity of the property, the New York District shall obtain a formal Determination of Eligibility (DOE) from the Keeper of the National Register (Keeper), National Park Service, whose determination shall be final.
2. The New York District shall ensure that the identification and evaluation of historic properties that may be affected by each phase of the Undertaking is completed prior to the initiation of any formal action by the Corps including rehabilitation, relocation, demolition, etc.
3. Disagreements on effect determinations. Should the New York District and NJHPO disagree as to whether the criteria of adverse effect apply to the effects of the Undertaking on particular historic properties, the New York District will request the ACHP to review the finding and request their written opinion within 30 days, in accordance with 36 CFR 800.5(c). The New York District will take the ACHP's opinion into account when reaching a final decision.
4. The New York District shall maintain records of all decisions it makes related to the NRHP eligibility and determination of effects on properties.

III. TREATMENT OF HISTORIC PROPERTIES

- A. The New York District, in consultation with the NJHPO and consulting parties, shall develop appropriate treatment plans for NRHP-listed Newark Penn Station. Measures may include minimizing direct impacts to historic fabric of the structure, making the measure reversible where feasible and design considerations.
- B. The New York District, in consultation with the NJHPO and consulting parties shall develop appropriate treatment plans for NRHP-eligible historic properties identified within the APE which may be affected by the Undertaking. Unless the NJHPO and consulting parties object within 30 days of receipt of any plan, the New York District shall ensure that treatment plans are implemented by the New York District or its representative(s). The New York District shall revise Plans to

address comments and recommendations provided by the NJHPO and consulting parties.

- C. The New York District shall ensure that qualified professionals meeting the NPS professional qualifications for the appropriate discipline [National Park Service Professional Qualification Standards, Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44738-39) are used to develop and implement all treatment plans.
- D. The New York District will adhere to the following treatment strategies in order to avoid or reduce adverse effects to historic properties that have been determined eligible for the NRHP.
1. Avoidance. The preferred treatment is avoidance of effects to historic properties. The New York District will, to the extent feasible, avoid historic properties that have been determine eligible for the NRHP either through project design changes, use of temporary fencing or barricades, realignments, landscaping, or other measures that will protect historic properties. The New York District, the NJHPO, and participating historical societies shall consult to develop plans for avoiding effects to historic properties. The New York District shall incorporate feasible avoidance measures into project activities as part of the implementation of the Undertaking. If avoidance is determined to be infeasible, the New York District will develop and implement treatment/mitigation plans. Unless the NJHPO and other consulting parties object within 30 days of receipt of any plan, the New York District will ensure that treatment plans are implemented by the New York District or its representative(s). The New York District will revise plans to address comments and recommendations provided by the NJHPO and other consulting parties.
 2. Minimization. When the New York District, the NJHPO, and participating historical societies agree that complete avoidance of historic properties is infeasible, the New York District will explore preservation in place, if appropriate. Preservation in place may entail partial avoidance or protection of historic properties against project-related activities in proximity to the property. The New York District will preserve properties in place through project design, i.e incorporating color, texture, scale, and/or materials which are compatible with the architectural or historic character of the historic property; use of fencing, berms or barricades; and/or preservation of vegetation including mature trees, landscaping and planting which screen the property.
 3. Mitigation. If the New York District, in consultation with the NJHPO and other consulting parties, determines that preservation in place is infeasible, the New York District shall develop and implement mitigation plans consistent with Stipulation V of this PA.

IV. RESOLUTION OF ADVERSE EFFECTS

- A. When the New York District, in consultation with the NJHPO and other consulting parties, determines that the Undertaking-related activities cannot adhere to treatment plans developed in accordance with Stipulation III or would otherwise have an adverse effect, the New York District shall:
1. Develop a Standard Mitigation Agreement (SMA) in coordination with the NJHPO and other consulting parties; or
 2. Consult with the ACHP to develop a Memorandum of Agreement (MOA) in accordance with 36 CFR Part 800.6 (c).

The New York District will invite the ACHP to participate in consultation when:

1. The New York District, other consulting parties, and NJHPO determine that an agreement or a SMA cannot be reached;
2. a National Historic Landmark is involved;
3. human remains have been identified; or
4. there is widespread public interest in a historic property or properties.

Development of Standard Mitigation Agreements (SMA).

1. The New York District, in consultation with the NJHPO and other consulting parties, as appropriate, will develop SMAs for NRHP-eligible or listed historic properties that will be adversely affected by the Undertaking. The New York District will submit the SMA to the NJHPO and consulting parties for review and approval by certified mail. The NJHPO shall have 30 days from receipt of adequate information in which to review and comment on the SMA(s). If the NJHPO fails to respond within 30 days, or if there is disagreement, the New York District shall notify the ACHP and consult to develop the proposed SMA into an MOA and submit copies of background information and the proposed SMA to facilitate consultation to develop an MOA in accordance with 36 CFR Part 800. After signing by the New York District, the NJHPO, and other PA signatories as appropriate, the New York District shall file all SMAs with the ACHP.
2. SMAs developed between the New York District, the NJHPO, and other consulting parties, may include one or more of the following stipulations which address routine adverse effects that may occur to historic properties as a result of project implementation. This is not a complete list of potential

mitigation stipulations, methods of mitigation should be tailored to the Undertaking and the individual resources impacted.

- a. Recordation. The New York District will consult with the NJHPO or Historic American Building Survey/Historic American Engineering Record (HABS/HAER) to determine the appropriate level and type of recordation for affected resources. For historic properties with state and/or local significance, recordation will be consistent with the requirements and standards of the Department of the Interior (April 2003). All documentation must be submitted to NJHPO and HABS/HAER for acceptance, prior to the initiation of project activities, unless otherwise agreed to by the NJHPO.
- b. Salvage and Donation of Significant Architectural Elements. Prior to demolition, partial demolition, or substantial alteration of historic properties, the New York District, in consultation with the NJSHPO and participating historical societies, will develop a salvage and donation plan to identify appropriate parties willing and capable of receiving and preserving the salvaged significant architectural elements. The New York District shall submit the plans to the NJSHPO and consulting parties for review and approval.
- c. Alternative Treatments or Design Plan which meet the Standards. Prior to demolition, partial demolition, or substantial alteration of historic properties, the New York District, in consultation with the NJSHPO and participating historical societies, will identify protocols treatment guidelines and/or design standards for new construction within historic districts that is in keeping with the Secretary's Standards. The New York District will submit the plans to the NJSHPO and the consulting parties for review and approval.
- d. Data recovery for archaeological sites eligible under Criterion D and others and data recovery and treatment of archaeological sites where data recovery will not result in a finding of no adverse effect. The New York District will conduct data recovery on archaeological sites following agreement on the prospective data recovery and treatment plans between the New York District, the NJSHPO, and other consulting parties as appropriate, when the archaeological sites are eligible for National Register inclusion under additional Criteria than Criterion D (for the information which they contain) or when the full informational value of the site cannot be substantially preserved through the conduct of appropriate research to professional standards and guidelines. To the maximum extent feasible, data recovery and treatment plans will be developed prior to construction to take into account and mitigate for the fullest range of archaeological site values and significance. The New York District will submit the plans to the NJSHPO and other consulting parties for review and approval.

V. DISCOVERY

- A. If previously unidentified properties are discovered during Undertaking implementation, the New York District shall cease all work in the vicinity of the discovered property until it can be evaluated pursuant to the guidelines in Stipulation I of this PA. If the property is determined to be eligible, the New York District will consult with the NJHPO, and other consulting parties to develop a treatment plan or SMA in accordance with Stipulations III and IV of this PA.

The New York District shall implement the treatment plan or SMA once approved by the NJHPO and consulting parties.

VI. TREATMENT OF HUMAN REMAINS:

- A. If any human remains and/or grave-associated artifacts are encountered, the New York District, the NJHPO, other consulting parties, and Tribes as appropriate shall consult to develop a treatment plan that is responsive to the ACHP's "Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects" (February 23, 2007), the Native American Grave Protection and Repatriation Act, As Amended (PL 101-601, 25 U.S.C. 3001 et seq.) and the U.S. Army Corps of Engineers, Tribal Consultation Policy (October 2013).
- B. Human remains must be treated with the utmost respect and dignity. All work must stop in the vicinity of the find and the site will be secured.
- C. The medical examiner/coroner, local law enforcement, the NJHPO, and Tribes will be notified. The coroner and local law enforcement will determine if the remains are forensic or archaeological in nature.
- D. If the remains are determined to be archaeological in nature a physical anthropologist will be employed to investigate the site to determine whether the remains are Native American or of some other origin.
- E. If the human remains are determined to be Native American they shall be left in place and protected from further disturbance until consultation and plan has been developed and approved by the New York District, NJHPO and Tribes.
- F. If human remains are determined to be non-Native American, the remains will be left in place and protected from further disturbance until a plan for avoidance or removal is developed and approved by the New York District, NJHPO and Federally Recognized Tribes or other parties, as appropriate.
- G. Avoidance of human remains is the preferred treatment.

VII. CURATION AND DISSEMINATION OF INFORMATION

- A. The New York District shall maintain all decision records on identification, evaluation, effects determination and mitigation of historic properties for this Undertaking.
- B. The New York District or its designee, in consultation with the NJHPO shall ensure that all materials and records resulting from the survey, evaluation, and data recovery conducted for the Undertaking will be curated in accordance with 36 CFR Part 79 "Curation of Federally-Owned and Administered Archaeological Collections" and ER 1130-2- 433 "Project Operations: Collections Management and Curation of Archaeological and Historical Data." All material and records recovered from non-Federally owned land shall be maintained in accordance with 36 CFR Part 79 until their analysis is complete and, if necessary, are returned to the property owner(s) or other appropriate entity as determined in consultation with the NJHPO.

VIII. COORDINATION OF REVIEWS FOR STUDY ACTIVITIES

- A. All plans, documents, reports, and materials shall be submitted by the New York District to the NJHPO and other consulting parties as appropriate by certified mail, for a 30 day review period unless otherwise stipulated in this PA. If the NJHPO and other consulting parties fail to comment within the specified time the New York District shall assume the agencies' concurrence. As appropriate, the New York District shall submit the comments of consulting parties to the NJHPO to facilitate further consultation.
- B. Should the activities relating to the undertaking change in any way following review by the NJHPO and other consulting parties the New York District shall submit new plans, documents, reports, and materials to allow the NJHPO and other consulting parties an opportunity to comment within a 30 day review period on the revisions.
- C. The New York District shall ensure that all submissions to the NJHPO, consulting parties, and the ACHP include all relevant information to facilitate their review. The New York District shall provide all additional information requested by NJHPO, consulting parties, or ACHP within a timely manner unless the signatories to this PA agree otherwise.
- D. The New York District shall ensure that all draft and final reports resulting from actions pursuant to the Stipulations of this PA will be provided to the NJHPO, all other consulting parties to this PA, and will identify the Principal Investigator responsible for the report. All reports will be responsive to contemporary standards, and as appropriate to the Department of the Interior's Format Standards for Final Reports of Data Recovery Programs (42 FR 5377-79) and

HPO report standards. Precise locational data may be provided only in a separate appendix if it appears that its release could jeopardize archaeological sites consistent with National Register Bulletin Number 29, Guidelines for Restricting Information about Historic and Prehistoric Resources.

- E. If the District proposes revisions or addenda to approved treatment/mitigation plans or other documents, the New York District, the NJHPO, and other participating parties shall consult to determine whether additional conditions or mitigation measures are appropriate.
- F. The New York District shall certify in writing that all requirements for identification and evaluation, and the implementation of treatment/mitigation plans have been satisfactorily completed prior to the initiation of construction activities for a specified portion of the navigation improvements recommended in the Study. The New York District shall submit a copy of this certification to the NJHPO and all other consulting parties by certified mail. The NJHPO and other consulting parties shall have 30 days to object to the certification based on a finding of incomplete compliance or inadequate compliance with the terms of this PA. If the NJSHPO or consulting parties do not object, the District may proceed with construction for the specified segment of the Study.

IX. ADMINISTRATIVE TERMS

A. DISPUTE RESOLUTION

- 1. The New York District will attempt to resolve any disagreement arising from implementation of this PA. If there is a determination that the disagreement cannot be resolved, the New York District will request the ACHP's recommendations or request the comments of the ACHP in accordance with 36 CFR Part 800.6(b).
- 2. Any ACHP recommendations or comments provided in response will be considered in accordance with 36 CFR Part 800.6(b), with reference only to the subject of the dispute. The New York District will respond to ACHP recommendations or comments indicating how the New York District has taken the ACHP's recommendations or comments into account and complied with same prior to proceeding with undertaking's activities that are subject to dispute. Responsibility to carry out all other actions under this PA that are not the subject of the dispute will remain unchanged.
- 3. If the ACHP does not provide its advice regarding the dispute within the thirty (30) calendar day time period, the New York District may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the New York District will prepare a written response that takes into account any timely comments regarding the dispute from the consulting

parties to the MOA, and provide them and the ACHP with a copy of such written response.

B. Public Involvement

1. In consultation with the NJHPO and other consulting parties, the New York District will inform potential interested parties of the existence of this Agreement, and the New York District's plan for meeting the terms of this PA. Copies of this Agreement and relevant documentation prepared pursuant to the terms of this PA shall be made available for public inspection (information regarding the locations of archaeological sites will be withheld in accordance with the Freedom of Information Act and National Register Bulletin 29, if it appears that this information could jeopardize archaeological sites). Any comments received from the public under this Agreement shall be taken into account by the New York District.
2. Public Objections. The New York District will review and resolve timely substantive public objections. Public objections shall be considered timely when they are provided within the review periods specified in this PA. The New York District shall consult with the NJHPO and other participating historical societies or Tribes, and as appropriate with the ACHP, to resolve objections. Study actions which are not the subject of the objection may proceed while the consultation is conducted.

C. Monitoring

1. The New York District will prepare annual reports summarizing the status of compliance with the terms of this PA and a summary of the completed activities and the exempt activities for the past year and proposed activities for the next fiscal year. Reports shall be submitted by January 31 of every year. The Annual Reports shall be provided to the ACHP, the NJHPO, and all other consulting parties until the Study-related activities are complete.
2. The ACHP, the NJHPO, and other consulting parties may request a site visit to follow up on information in the annual report or to monitor activities carried out pursuant to this PA. The ACHP, the NJHPO, or other consulting parties will provide the New York District with 30 days written notice when requesting a site visit unless otherwise agreed. The New York District may also schedule a site visit with the NJHPO, other consulting parties, and the ACHP at its discretion.

D. Amendments

Any signatory to this PA may request that it be amended, whereupon all the parties will consult in accordance with 36 CFR Part 800.6(b) to consider such amendment.

E. Termination

Any signatory to this PA may terminate it by providing thirty (30) days' notice to the signatories, provided that the signatories will consult during the period prior to termination by certified mail to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the New York District will comply with 36 CFR Parts 800.4 through 800.6 with regard to individual Undertaking actions covered by this Agreement.

F. Sunset Clause

This PA will continue in full force and effect until the construction of the Undertaking is complete and all terms of this PA are met. After a period of seven (7) years from execution of the PA, unless the Project has been completed or authorization rescinded, the consulting parties will coordinate to decide whether to extend the agreement as it is written or to update it provided all signatories concur.

G. Anti-Deficiency Act

All requirements set forth in this PA requiring expenditure of funds by the New York District are expressly subject to the availability of appropriations and the requirements of the Anti-Deficiency Act (31 U.S.C. 1341). No obligation undertaken by the New York District under the terms of this PA shall require or be interpreted to require a commitment to extend funds not appropriated for a particular purpose. If the New York District cannot perform any obligation set forth in this PA because of unavailability of funds, that obligation must be renegotiated among the New York District and the consulting parties as necessary.

Execution and implementation of this PA evidences that the New York District has satisfied its Section 106 responsibilities for all individual Undertakings of the Project, and that the New York District has afforded the ACHP an opportunity to comment on the undertaking and its effects on historic properties.

U.S. ARMY CORPS OF ENGINEERS

By: _____ Date: _____
Thomas D. Asbery
Colonel, U.S. Army
District Engineer

NEW JERSEY STATE HISTORIC PRESERVATION OFFICE

By: _____ Date: _____
Katherine Marcopul, Deputy State Historic Preservation Officer

Appendix A: Proposed Project Plans
Appendix B: Table of Identified and Potential Resources within the APE
and Need for Further Study

Appendix A
Proposed Plans

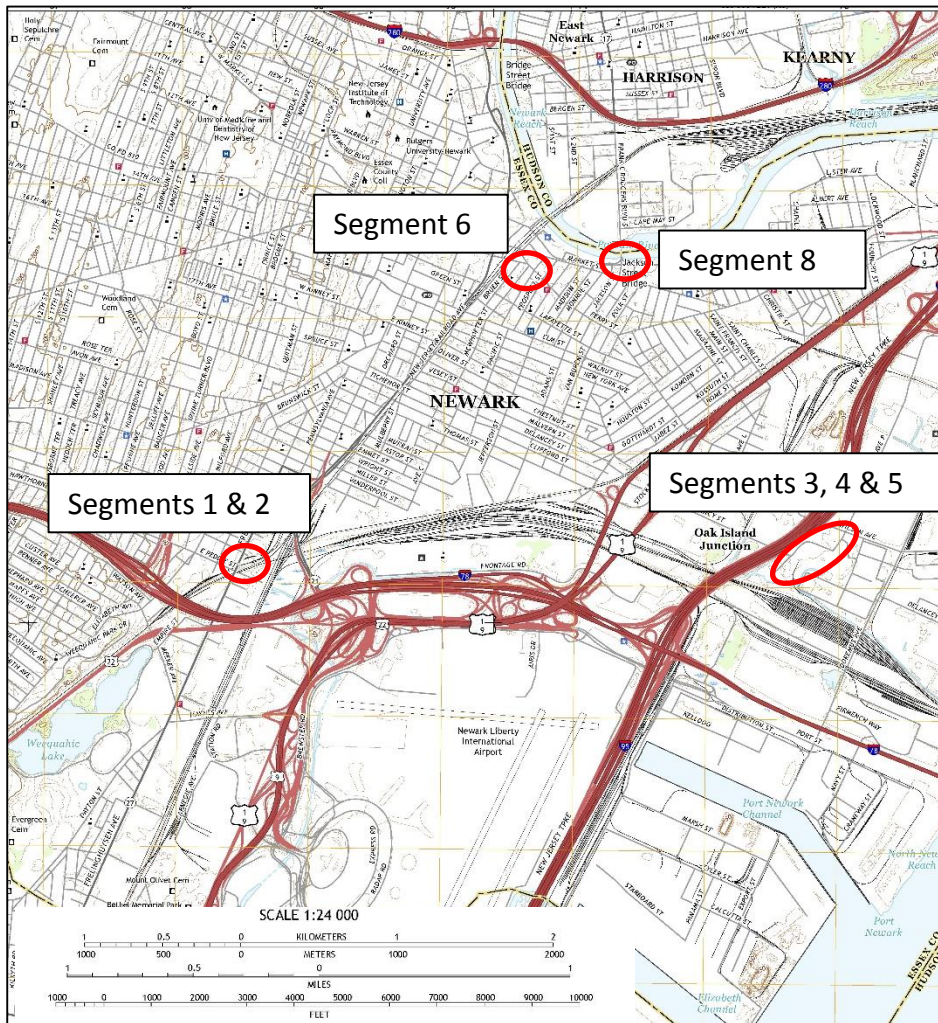
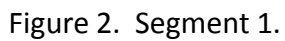


Figure 1. USGS Elizabeth, NJ-NY 7.5 minute quadrangle 2016. Location of proposed project segments circled.



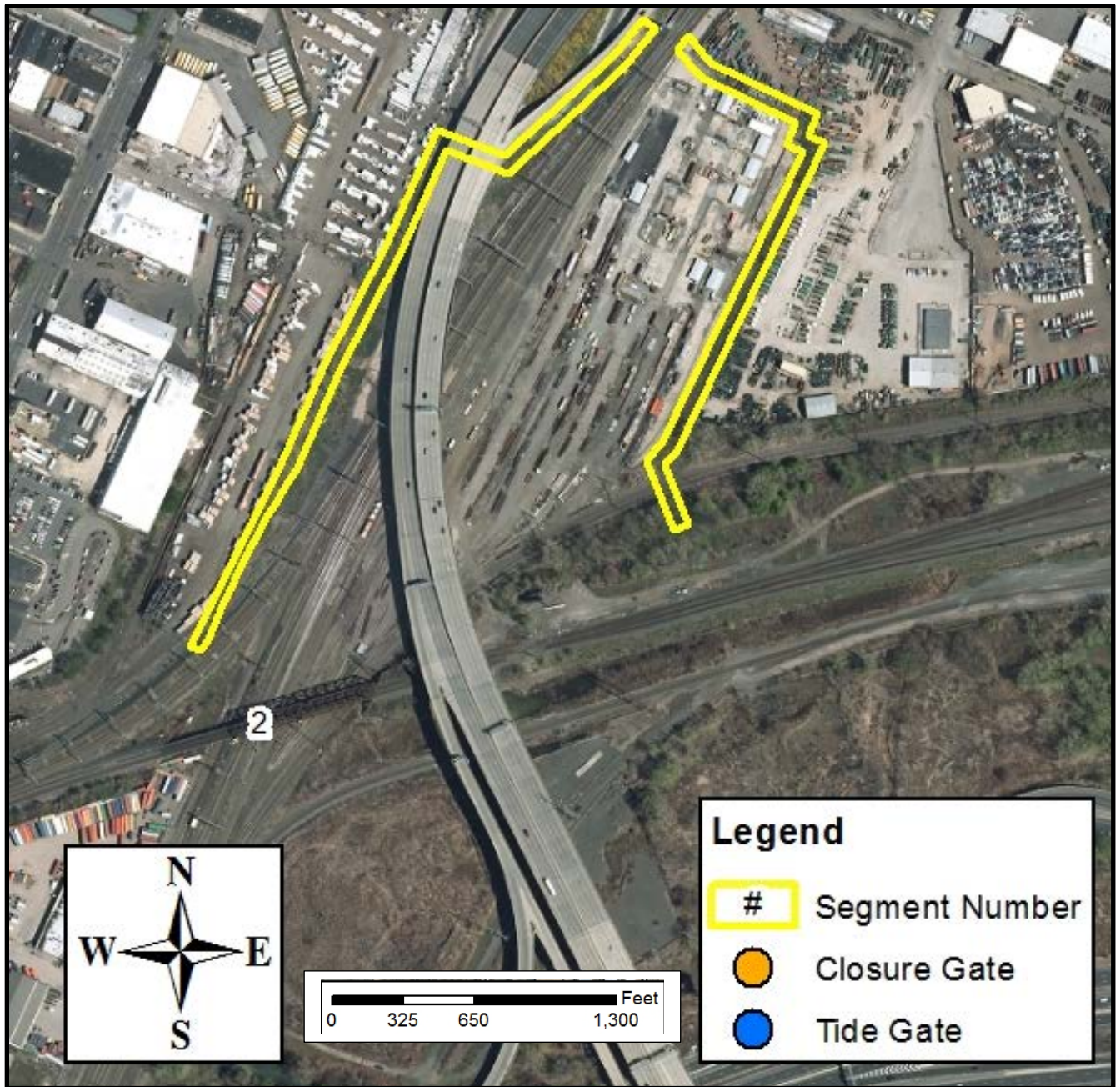
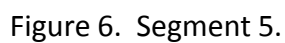


Figure 3: Segment 2





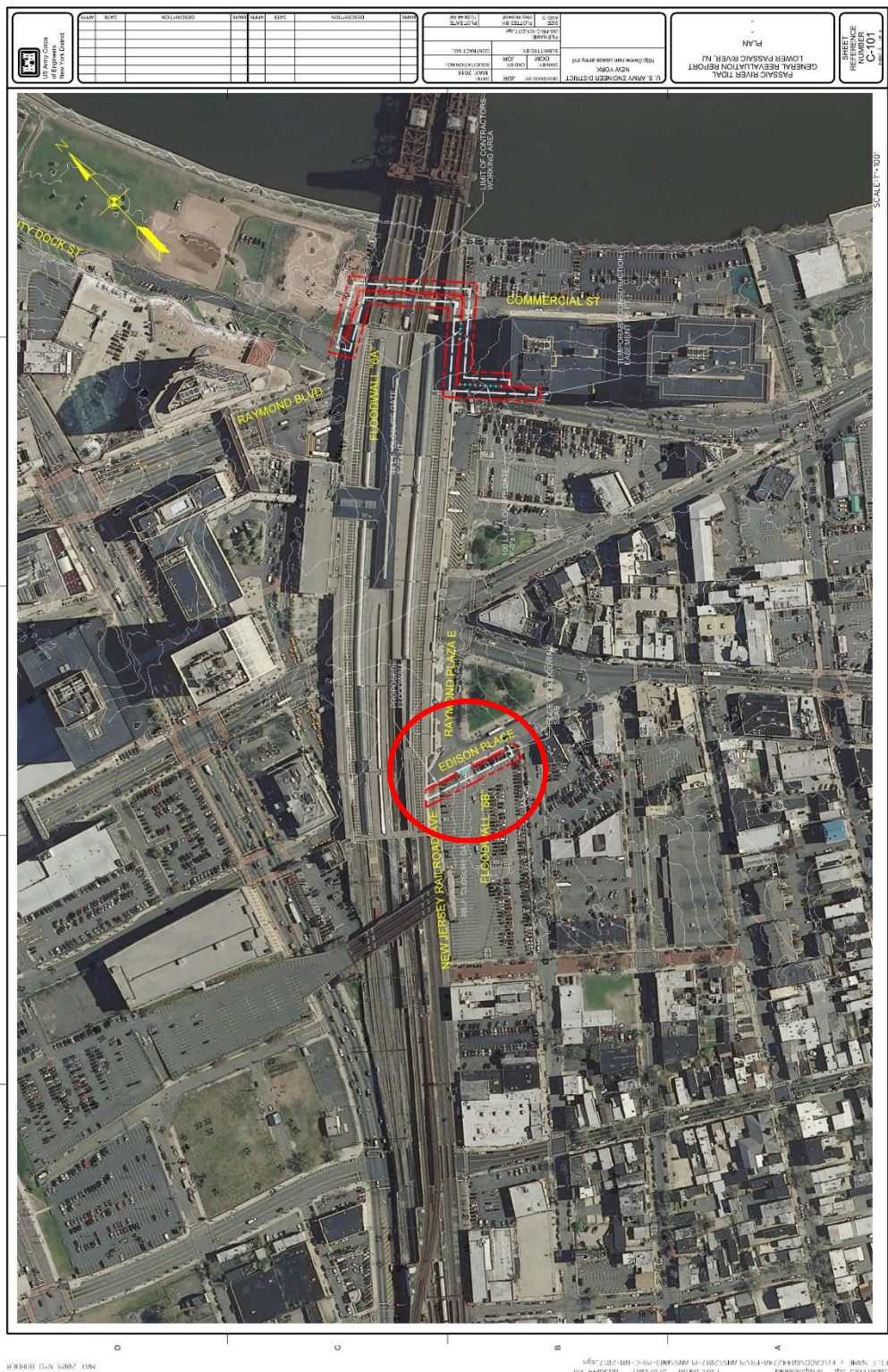


Figure 7. Segment 6 (circled). Other alignment shown has been removed from consideration



Figure 8. Segment 8.

Appendix B: Identified and Potential Historic Properties with the APE and Need for Further Study (detailed in the text below).

Segment	Above Ground	Further Study	Below Ground	Further Study
1	a. LVRR HD (NAE)	a. no	a. Newark City Sewer System b. Peddie's Ditch c. LVRR-related resources	a. yes b. yes c. yes
2	a. LVRR HD (NAE) b. PRR HD (NAE) c. PRR NYBB (NAE) d. PRR Hunter St. Freight Yard (TBD)	a. yes b. yes c. yes d. yes	a. Sensitivity for Native American Sites b. Historic Structures	a. yes b. yes
3	a. LVRR HD (NE) b. LVRR Oak Is. Yard (NE) c. PVSCNBOSW (NE)	a. no b. no c. no	None	no
4	a. 106 Rutherford Pl. (NE) b. PVCNBOSW (NE)	a. yes b. no	None	no
5	PVSCNBOSW (NE)	no	None	no
6	a. PRR HD (NAE) b. Newark Penn Sta. (NAE w/ TP) c. Second Reformed Dutch Church & Rectory (NE) d. Ironbound Trust Co. (NE)	a. yes b. yes c. no d. no	Robinson & Roders Company Factory site	yes
8	a. Jackson Street Bridge (NE) b. Riverbank Park & Fieldhouse (NE)	a. no b. no	a. Morris Canal HD b. Site 28-Ex-129 c. Newark City Sewer System	a. yes b. yes c. yes
Interior Drainage	TBD	yes	TBD	yes
Other Features	TBD	yes	TBD	yes
NAE = No Adverse Effect, NE = No Effect, AE= Adverse Effect, TP = Treatment Plans, TBD= To Be Determined				