

**MEMORANDUM OF AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION,
THE TOWN OF DERRY,
AND THE
NEW HAMPSHIRE STATE HISTORIC PRESERVATION OFFICER
REGARDING THE DERRY-LONDONDERRY 13065 PROJECT**

WHEREAS, the New Hampshire Department of Transportation (NHDOT) and the towns of Derry and Londonderry plan to request approval and federal-aid highway funds from the Federal Highway Administration (FHWA) for a new Interstate Access point/Interchange, pursuant to Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended, 54 U.S.C. § 306108; and

WHEREAS, the undertaking consists of the NHDOT creating a new interstate interchange between exits 4 and 5 in the town of Derry and Londonderry. The new corridor will be approximately 3.2 miles, including about one mile of new roadway construction, and 2.2 miles of existing roadway reconstruction; and

WHEREAS, FHWA has defined the undertaking's area of potential effects (APE) as shown in Attachment A; and

WHEREAS, FHWA has determined that the undertaking will have an adverse effect on the Manchester-Lawrence Railroad Historic District which is eligible for listing in the National Register of Historic Places, and has consulted with the New Hampshire State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108); and

WHEREAS, FHWA has consulted with four Consulting Parties (Chris McCarthy, Derry property owner; Colleen Madden, Derry property owner; Mark Connors, concerned citizen; Cowasuck Band of Pennacook-Abenaki People) regarding the effects of the undertaking on historic properties; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), FHWA has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation, and the ACHP has chosen *not* to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

NOW, THEREFORE, FHWA, NHDOT and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

FHWA/NHDOT shall ensure that the following measures are carried out:

- I. **Interpretive Signage** – NHDOT will work with the Town and the Derry Heritage Commission, to develop an interpretive panel that will focus on the history of the Manchester-Lawrence Railroad, and its association to the town of Derry. The panel's content and material will be prepared by a 36 CFR 61-qualified architectural historian. NHDOT will be provided 15 days to review the initial draft of the panel. The SHPO will be provided an

opportunity to review one (1) draft of the panel's content with a review period of thirty (30) days. Upon approval of the panel by NHDOT, it will be fabricated and installed at a location to be determined in consultation with the Town of Derry, preferably along the rail trail near the new crossing. Digital copies of the panel will be provided to NHDOT and the Town of Derry.

II. **Rail Trail Underpass Aesthetic Treatment** – NHDOT, and its consultant, will work with the Town of Derry on the aesthetic treatment to the newly constructed underpass headwalls. The concrete will be stamped with a faux-stone design that will be chosen in consultation with the Town. The style of lighting will be chosen in consultation with the Town.

III. **Archaeological Resources and Stonewalls** –NHDOT commits ensuring all phases of archaeology will be completed at the sensitive locations prior to any ground disturbing activities. Should National Register eligible sites be identified and potentially impacted, NHDOT will ensure that an Archaeological Discovery Plan be completed. This plan will be written by the archaeologist on the project and will outline the steps for both the archaeologist and contractor pertaining to the sites. All archaeological studies shall be completed in accordance with the Secretary of the Interior's Standards as outlined in 36 CFR 800, the Guidelines for Archaeological Documentation (48 FR 44720-44726).

Stonewall assessments, per the NHDOT Stonewall Policy, will be completed on all stonewall segments within the APE that may be impacted. Treatments options per the policy will be coordinated with the Town and any impacted property owners.

IV. **DURATION**

This MOA will expire if its terms are not carried out within seven (7) years from the date of its execution. Prior to such time, FHWA may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with the Amendment Stipulation below.

V. **POST-REVIEW DISCOVERIES**

If properties are discovered that may be historically significant or unanticipated effects on historic properties found, NHDOT shall contact the signatories to this agreement. Should human remains be uncovered, NH RSA 227-C. IV shall be followed.

If unanticipated archaeological sites or features are discovered, that portion of the project shall stop immediately. The resident engineer shall notify the NHDOT Cultural Resources Program Specialist/Archaeologist or Cultural Resources Program Manager and the State Archaeologist at the NH SHPO so that the proper steps may be taken by these agencies to determine proper procedures. Regulation 36 CFR 800.13 (b) states that if historic properties are located after the conclusion of the Section 106 process as "post review discoveries," for example those arising during construction, the federal agency official shall ensure that every reasonable effort will be taken to avoid, minimize, or mitigate the effect of the project on the properties. In such situations in which the NHDOT must recover archaeological remains in a short time period and they do not involve human remains, the identified features and artifact concentrations shall be recovered following the guideline for Phase III excavations as closely

as possible. Construction monitoring of the affected area may follow this recovery if the type of archaeological site, deposit, landscape, vegetation, and project allows this approach to be effective.

VI. MONITORING AND REPORTING

Each year following the execution of this MOA until it expires, is terminated or completed, NHDOT shall provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in FHWA's efforts to carry out the terms of this MOA.

VII. DISPUTE RESOLUTION

Should any signatory or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, FHWA shall consult with such party to resolve the objection. If FHWA determines that such objection cannot be resolved, FHWA will:

- A. Forward all documentation relevant to the dispute, including the FHWA's proposed resolution, to the ACHP. The ACHP shall provide FHWA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FHWA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. FHWA will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, FHWA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FHWA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.
- C. FHWA's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

VIII. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

IX. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation VIII, above. If within thirty (30) days (or another time period agreed to by all

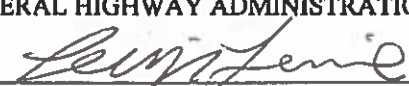
signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, FHWA must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. FHWA] shall notify the signatories as to the course of action it will pursue.

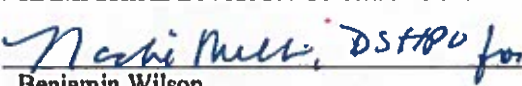
Execution of this MOA by FHWA, NHDOT SHPO and implementation of its terms evidence that FIIWA has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES:

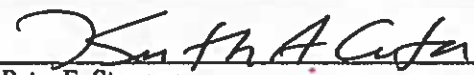
NH FEDERAL HIGHWAY ADMINISTRATION

By:  Date: 10/29/19
For: Patrick A. Bauer
Division Administrator

NEW HAMPSHIRE DIVISION OF HISTORICAL RESOURCES

By:  DSTPO for Date: 10/25/19
Benjamin Wilson
NH State Historic Preservation Officer

NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION













By:  Date: 10/29/19
For: Peter E. Stamnas
Director of Project Development

TOWN OF DERRY

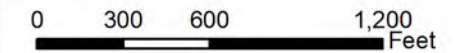
By:  Date: 10/24/19
David Caron
Administrator

I-93 Exit 4A Supplemental Draft EIS

Page 1 of 3

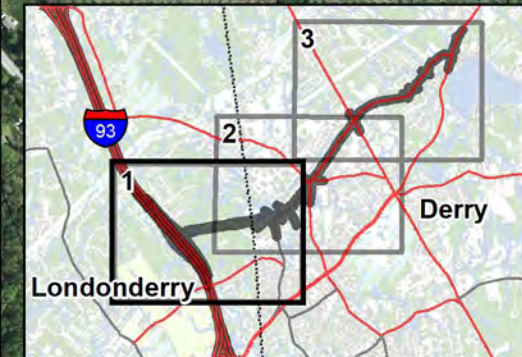
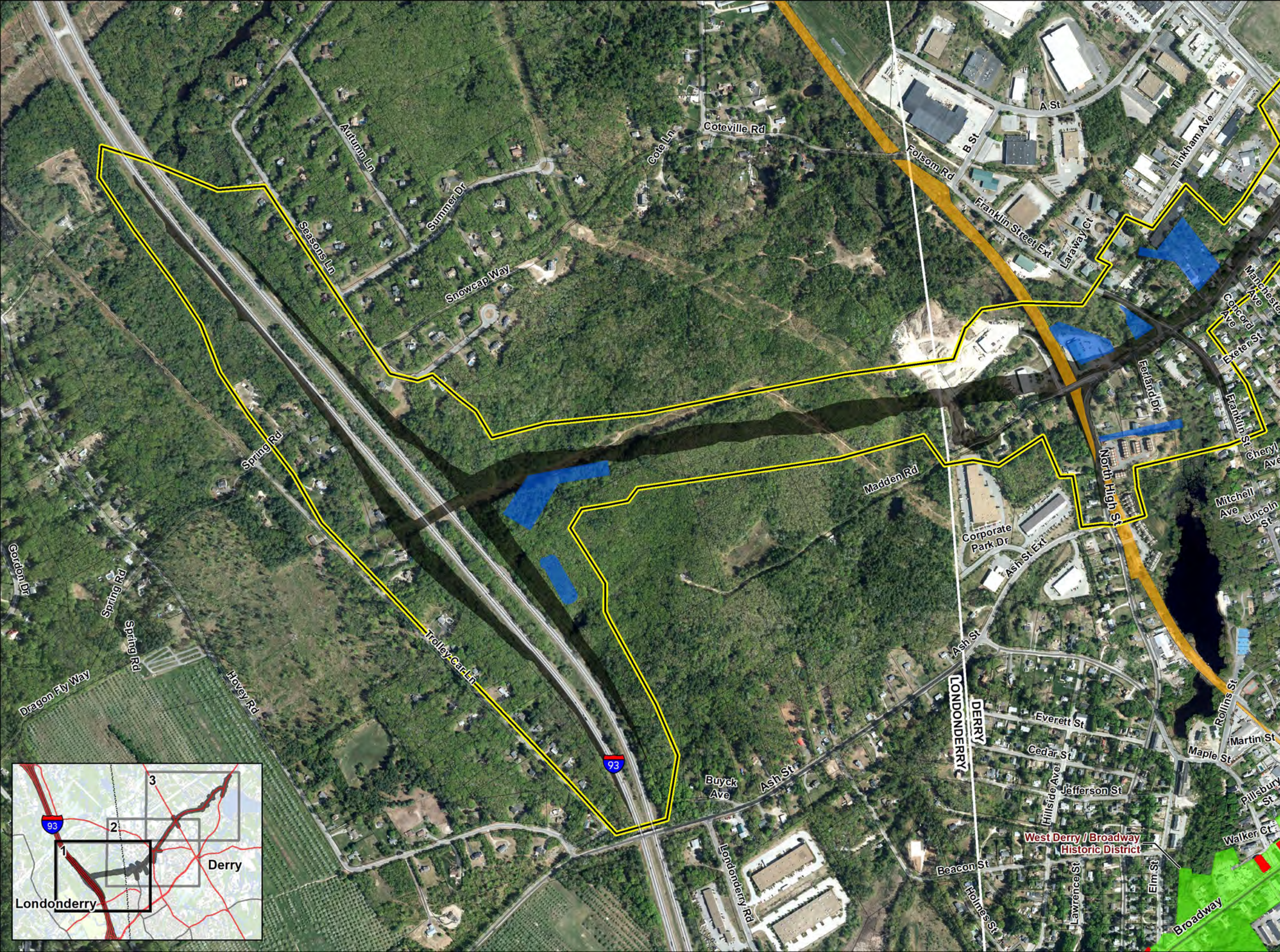
-  Historic Resources APE
- Historic Resources**
-  Historic Building
-  Historic District
-  Former Manchester and Lawrence Railroad ROW
-  Other Historic Resource
- Road**
-  Interstate
-  Major Road
-  Local Road
-  Alt A Footprint
-  Stormwater Easement
-  Parcels
-  Town Boundaries

Sources:
 CLD Engineers
 Town of Derry GIS
 Town of Londonderry GIS
 State of New Hampshire
 New Hampshire DOT








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 New Hampshire (feet)






Date:
 February 27, 2019



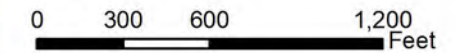
West Derry / Broadway
 Historic District

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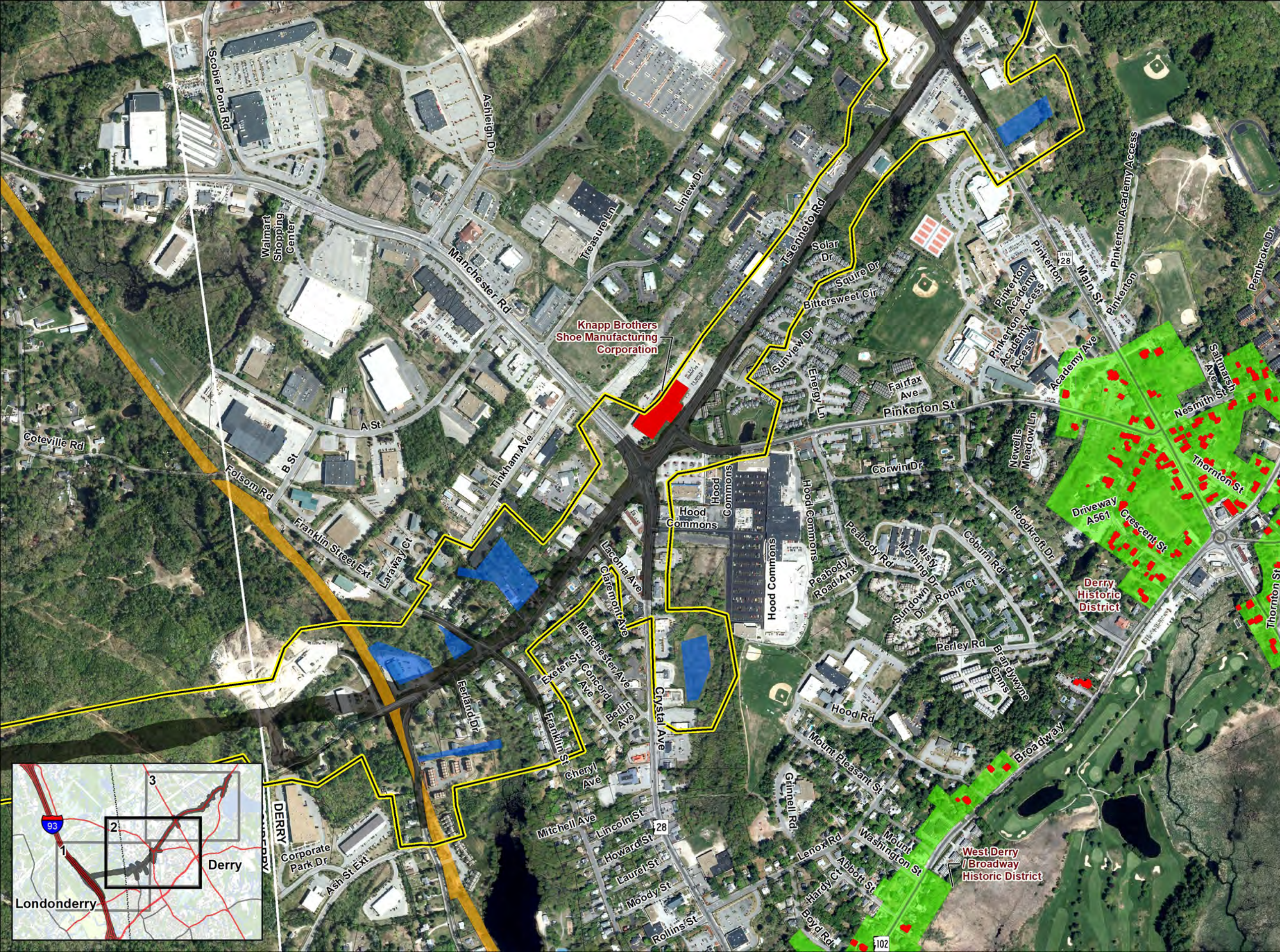
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





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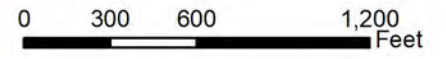


I-93 Exit 4A Supplemental Draft EIS

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