APPENDIX D:
AGENCY COORDINATION LETTERS

SR 26, Atlantic Avenue from Clarksville to Assawoman Canal
Environmental Assessment and Section 4(f) Evaluation

U.S. Department of Transportation
Federal Highway Administration

STATE OF DELAWARE
Department of Transportation

LETTER Response

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

CAROLANN WICKS, P.E.
SECRETARY

February 28, 2008

Mr. Frank Cianfrani
Army Corps of Engineers
Philadelphia District
Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107-3390

Dear Mr. Cianfrani:

The Delaware Department of Transportation is pleased to submit the Draft Environmental Assessment for the reconstruction of SR 26, Atlantic Avenue, from Clarksville to the Assawoman Canal in Sussex County. The DelDOT Contract Number is 24-112-10 and the Federal Highway Administration Contract Number is ESTP-5026(6). The purpose of the project is to improve traffic operations, safety and roadway conditions within the project area.

Construction of the project will widen the existing two-lane roadway to include two 11-foot travel lanes with 5-foot shoulder/bike lanes and 12-foot wide continuous shared center left turn lanes. The western portion, from Clarksville to Old Mill Road, incorporates an open drainage section with no sidewalks. The eastern portion, from Old Mill Road to the Assawoman Canal, is designed with a curb and gutter, closed drainage and a five-foot sidewalk.

Please provide any comments you may have within thirty (30) days of receiving the Draft Environmental Assessment. Please note that we have been coordinating this project with Mr. Kevin Faust of your office.

We look forward to continuing our coordination with you on this project.

Sincerely,

Therese M. Fulmer
Manager, Environmental Studies

TF:tfb
Enclosure
cc: Hassan Raza, FHWA
Robert Taylor, Chief Engineer, DelDOT
Robert McCleary, Assistant Director, Engineering Support, DelDOT
Michael Simmons, Assistant Director, South Project Development, DelDOT
Tom Banez, Project Manager, South Project Development, DelDOT
Kevin Faust, Army Corps of Engineers (with attachments)
File

DelDOT

DEPARTMENT OF THE ARMY
PHILADELPHIA DISTRICT CORPS OF ENGINEERS
WANAMAKER BUILDING, 100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107-3390

REPLY TO ATTENTION OF

MAR - 7 2008

Regulatory Branch
Applications Section I

SUBJECT: CENAP-OP-R-2008-231
Project Name: DELDOT- SR-26, Atlantic Avenue From Clarksville to Assawoman Canal

Therese M. Fulmer
Manager, environmental Studies
DELDOT
800 Bay Road
Post Office Box 778
Dover, Delaware 19903

Dear Ms. Fulmer:

This is written in regard to your letter dated February 28, 2008, requesting comments regarding the draft February 2008, Environmental Assessment & Section 404 (f) Evaluation for the reconstruction of SR-26, Atlantic Avenue from Clarksville to Assawoman Canal, Sussex County, Delaware.

Under current Federal regulations, a Department of the Army permit is required for work or structures in navigable waters of the United States and the discharge of dredged or fill material into waters of the United States including their adjacent wetlands.

Waters of the United States including wetlands as identified and described in Section III D 2 (a) & (b) [pages III 34-36], were determined in the field by the undersigned utilizing an internal guidance memorandum entitled: U.S. Army Corps of Engineers Philadelphia District's Technical *Support Document* Concerning Clean Water Act Jurisdiction Over Streams and Ditches, dated July 3, 2003. The *Technical Support Document* (TSD) was subsequently invalidated by Court Order on July 26, 2006 (see *National Association of Homebuilders v. US Army Corps of Engineers*, et. al., D.C. District Court Case No. 1:06-cv-00502).

On June 5, 2007, The US Army Corps of Engineers and the US Environmental Protection Agency issued Joint Guidance interpreting the US Supreme Court's 2006 Clean Water Act Rapanos decision (Rapanos ET UX., ET AL. v. United States, 547 U.S. 04-1034 and 04-1384). The relevant guidance document is entitled: *U.S. Army Coprs of Engineers Jurisdictional Determination Form Instructional Guidebook* which resulted from the US Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States*.

Regarding CWA jurisdiction over drainage ditches, the guidance states:

"The agencies generally will not assert jurisdiction over the following features:
- Swales or erosional features (e.g., gullies, small washes characterized by low volume, infrequent, or short duration flow);
- Ditches (including roadside ditches) excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water."

Due to the remand of the TSD and implementation of the Rapanos Guidance, the Corps of Engineers may need to re-evaluated its earlier decision regarding the road side drainage ditches and wetlands as identified in the draft February 2008, Environmental Assessment & Section 404 (f) Evaluation.

This letter does not affect your responsibility to obtain any other Federal, State, or local approvals required by law for the proposed work.

If you should have any questions regarding this matter, please contact me at 302-736-9764 between the hours of 1:00 and 3:30 p.m. or write to the above address.

Sincerely,

Kevin Faust
Biologist, Regulatory Branch

e-mail Respons

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

CAROLANN WICKS, P.E.
SECRETARY

February 28, 2008

Laura Herr
DNREC
Division of Water Resources
Wetlands & Subaqueous Lands Section
89 Kings Highway
Dover, DE 19901

Dear Ms. Herr:

The Delaware Department of Transportation is pleased to submit the Draft Environmental Assessment for the reconstruction of SR 26, Atlantic Avenue, from Clarksville to the Assawoman Canal in Sussex County. The DelDOT Contract Number is 24-112-10 and the Federal Highway Administration Contract Number is ESTP-5026(6). The purpose of the project is to improve traffic operations, safety and roadway conditions within the project area.

Construction of the project will widen the existing two-lane roadway to include two 11-foot travel lanes with 5-foot shoulder/bike lanes and 12-foot wide continuous shared center left turn lanes. The western portion, from Clarksville to Old Mill Road, incorporates an open drainage section with no sidewalks. The eastern portion, from Old Mill Road to the Assawoman Canal, is designed with a curb and gutter, closed drainage and a five-foot sidewalk.

Please provide any comments you may have within thirty (30) days of receiving the Draft Environmental Assessment.

We look forward to continuing our coordination with you on this project.

Sincerely,

Therese M. Fulmer
Manager, Environmental Studies

TF:tfb
Enclosure
cc: Hassan Raza, FHWA
Robert Taylor, Chief Engineer, DelDOT
Robert McCleary, Assistant Director, Engineering Support, DelDOT
Michael Simmons, Assistant Director, South Project Development, DelDOT
Tom Banez, Project Manager, South Project Development, DelDOT
File

DelDOT

Fulmer Terry (DelDOT)

To: Fulmer Terry (DelDOT)

Subject: RE: SR 26, Atlantic Avenue from Clarksville to Assawoman draft environmental assessment

From: Lee Joanne M. (DNREC)
Sent: Friday, April 04, 2008 4:41 PM
To: Fulmer Terry (DelDOT)
Subject: SR 26, Atlantic Avenue from Clarksville to Assawoman draft environmental assessment

Terry, I don't recall doing a formal jd on this project, but I do recall a field trip. The document suggests that I only identified one tidal waterway - the east branch of White Creek. For formal delineations I do a background review and look at various maps. Based on a review of the USGS there appears to be other possible tidal waterways on the west branch of White Creek. We should talk about this. I am out Monday. Joanne

Joanne Lee
DNREC
Wetlands and Subaqueous Lands Section
89 Kings Highway
Dover, Delaware 19901

Phone - (302) 739-9943
Fax - (302) 739-6304

4/25/2008

No Response

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

CAROLANN WICKS, P.E.
SECRETARY

February 15, 2008

Sara Cooksey
DNREC
Division of Soil & Water Conservation
89 Kings Highway
Dover, DE 19901

Dear Ms. Cooksey:

The Delaware Department of Transportation is pleased to submit the Draft Environmental Assessment for the reconstruction of SR 26, Atlantic Avenue, from Clarksville to the Assawoman Canal in Sussex County. The DelDOT Contract Number is 24-112-10 and the Federal Highway Administration Contract Number is ESTP-5026(6). The purpose of the project is to improve traffic operations, safety and roadway conditions within the project area.

Construction of the project will widen the existing two-lane roadway to include two 11-foot travel lanes with 5-foot shoulder/bike lanes and 12-foot wide continuous shared center left turn lanes. The western portion, from Clarksville to Old Mill Road, incorporates an open drainage section with no sidewalks. The eastern portion, from Old Mill Road to the Assawoman Canal, is designed with a curb and gutter, closed drainage and a five-foot sidewalk.

Please provide any comments you may have within thirty (30) days of receiving the Draft Environmental Assessment.

We look forward to continuing our coordination with you on this project.

Sincerely,

Therese M. Fulmer
Manager, Environmental Studies

TF:tfb
Enclosure
cc: Hassan Raza, FHWA
Robert Taylor, Chief Engineer, DelDOT
Robert McCleary, Assistant Director, Engineering Support, DelDOT
Michael Simmons, Assistant Director, South Project Development, DelDOT
Tom Banez, Project Manager, South Project Development, DelDOT
File

DelDOT

No response

NO RESPONSE

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

CAROLANN WICKS, P.E.
SECRETARY

February 28, 2008

Kevin Magerr
Environmental Protection Agency
1650 Arch Street (3EP30)
Philadelphia, PA 19103

Dear Mr. Magerr:

The Delaware Department of Transportation is pleased to submit the Draft Environmental Assessment for the reconstruction of SR 26, Atlantic Avenue, from Clarksville to the Assawoman Canal in Sussex County. The DelDOT Contract Number is 24-112-10 and the Federal Highway Administration Contract Number is ESTP-5026(6). The purpose of the project is to improve traffic operations, safety and roadway conditions within the project area.

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Please provide any comments you may have within thirty (30) days of receiving the Draft Environmental Assessment.

We look forward to continuing our coordination with you on this project.

Sincerely,

Therese M. Fulmer
Manager, Environmental Studies

TF:tfb
Enclosure
cc: Hassan Raza, FHWA
Robert Taylor, Chief Engineer, DelDOT
Robert McCleary, Assistant Director, Engineering Support, DelDOT
Michael Simmons, Assistant Director, South Project Development, DelDOT
Tom Banez, Project Manager, South Project Development, DelDOT
File

DelDOT

From: Lee Joanne M. (DNREC)
Sent: Wednesday, May 21, 2008 12:13 PM
To: Fulmer Terry (DelDOT); Ford Joy (DelDOT)
Subject: Route 26 DEIS

Terry and Joy,

I have some concerns about the DEIS for Route 26 from Clarksville to the Assawoman Canal. I feel that the inaccurate in some sections and I hope that we can improve the document. I have recently completed a site 26 and re-read the document "SR 26, Atlantic Avenue from Clarksville to Assawoman Canal Draft Environm Assessment and Section 4(f) Evaluation." I have the following comments:

Wetlands
There is one tidal wetland located in the vicinity of the construction in close proximity to the existing SR 26. headwater of White Creek located east of Old School Lane, west of Woodland Avenue, and north of Route identified on the DNREC tidal wetland map on DNR042 as marsh and it may correspond to Wetland 3 in the

- The statement on page III-34, first paragraph under Wetlands, that states that none of the wetlands study area may be incorrect, depending on the boundary lines of the study area. We recommend th the tidal wetland map DNR-042. A state Wetlands permit may be required if work occurs in the wet

FYI - Directly west of the study area, west of Holts Landing Road and north of Route 26, a tidal forested/scr shrub wetland is identified on DNR-075. This tidal wetland is a headwater of Blackwater Creek. It doesn't a work will be completed in this location, but it should be noted so that there is no impact to this area.

- We recommend that a review of the DNREC tidal wetland maps be included in the desktop review.

Waters
During a recent site visit, I saw at least 4 jurisdictional subaqueous lands in the study area. Other waterwa observed, but due to time limitations, I only focused on the larger waterways. During the site visit, I did not flow upstream at any of these 4 waterways; however, given this limited review, I did not find that a conclusiv determination of whether the waterway was tidal. After the site visit, I checked the elevation contours on th Frankford, Del and Bethany Beach, Del. quads to evaluate whether the streams could be tidal.

The following were the subaqueous lands identified on my recent site visit, the DEIS waterway designation believe corresponds with it, and the USGS contour elevations at the existing road.
1. Clarksville Branch, a headwater of Blackwater Creek, located approximately 600 feet east of Powell Far (WA2?). Portions of this waterway were piped and a Good Year service center stands in the vicinity of the Elevation contour at roadway = 10 feet.
2. A tributary of White Creek located just east of Clubhouse Road and the Town Hall (WA5), Contour Eleva
3. A tributary of White Creek located west of Grants Avenue and the First Federal Bank (WA8). Contour E feet.
4. Headwater of White Creek, located approximately 1,200 feet west of Woodland (WA10). Contour Eleva believe this is the one stream the DEIS identifies as tidal.

The following are additional comments and questions:

- I disagree with some of the classification of the waterways as "streams and ditches," as used within the document. The document identifies 2 streams and 8 ditches, whereas the 1917 USGS maps identify 4 streams and the 1974 Soil Survey of Sussex County identifies 3 streams in the study area. Many of the streams in Delaware have been modified, but we disagree that they would then be ditches.
- I disagree with the statement on page III-36, paragraph 2 under Open Waters of the document that states one waterway, the East Branch of White Creek, is jurisdictional as a subaqueous lands. Other waterways in the study area are jurisdictional as subaqueous lands. However, depending on the exemptions used by DelDOT, a permit may not be required for work in non-tidal waters.
- Based on the preceding statement, I question what study went into the determination of whether the waterways are tidal or not. Based on the elevation of 5 foot contours for some of the streams at the roadway, it appears that more streams may be tidal. Visual, short-term observations in the field may not be sufficient to determine whether some of the waterways are tidal.

I have some concerns that our coordination on this roadway project was not as thorough as it should have been and I hope that we can coordinate to make sure that this document is accurate.

Joanne

Joanne Lee
DNREC
Wetlands and Subaqueous Lands Section
89 Kings Highway
Dover, Delaware 19901

Phone - (302) 739-9943
Fax - (302) 739-6304

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

CAROLANN WICKS, P.E.
SECRETARY

July 22, 2008

Ms. Joanne Lee
Department of Natural Resources and Environmental Control
Wetlands and Subaqueous Lands Section
89 Kings Highway
Dover, DE 19901

Dear Ms. Lee:

This letter is in response to your email dated May 21, 2008 regarding comments on the Draft Environmental Assessment for the **SR 26, Atlantic Avenue from Clarksville to Assawoman Canal project, Contract #24-112-10, ESTP-S026(6)**. After receiving the comments, Century Engineering, Inc. (CEI), the design consultant for the project, conducted a field visit on June 24, 2008 to revisit the project area wetlands and waterways. An inter-agency field meeting with the DNREC, COE, DelDOT and CEI was held on July 16, 2008.

The SR 26 project has been under design since early 2004. Early on in Project Development, CEI conducted an extensive desktop review including examination of existing literature, review of USGS maps, NWI maps, DNREC Online mapping and the Soil Survey maps followed by the field delineation of the wetlands and waters within the project limits. After the initial field delineation was completed, a field meeting was held with representatives from DelDOT, CEI, DNREC and the ACOE on August 24, 2004. During this meeting, DNREC and the ACOE observed and concurred with the delineation, but no final jurisdictional determination was completed. Delineations were updated in April 2006 due to changes from development within the project area. An additional field visit was conducted by CEI on May 17, 2006 to determine the tidal influence at WA 5 and WA 10.

The following is a list of comments and the associated responses:

Comment: There is one tidal wetland located in the vicinity of the construction in close proximity to the existing SR 26. It is the headwater of White Creek located east of Old School Lane, west of Woodland Avenue, and north of Route 26. It is identified on the DNREC tidal wetland map on DNR-042 as marsh and it may correspond to Wetland 3 in the document. The statement on page III-34, first paragraph under Wetlands, which states that none of the wetlands are tidal in the study area, may be incorrect, depending on the boundary lines of the study area. We recommend that you review the tidal wetland map DNR-042. A state Wetlands permit may be required if work occurs in the wetland.

Response: The tidal wetland systems mapped on DNR-042 are located on the north side of SR 26 in the vicinity of wetland areas W3 & W4. W3 is located on the north side of SR26 (adjacent to WA 15). The actual field delineated (COE) boundary of area W3 is located approximately 35 feet from the edge of roadway. Scaling from the DNR-042 map, the DNREC wetland boundary is located approximately 50 feet from the edge of the roadway. Based on the current construction plan, impact to wetland area W3 is not anticipated. Any changes in the plan that result in an impact to these wetlands will be coordinated with the DNREC and COE during the permit review process. The Environmental Assessment has been updated to identify W3 as a tidal wetland.

W4 is also located on the north side of SR 26 (adjacent to WA10). The actual field delineated (COE) wetland boundary is located approximately 8 feet from the edge of the roadway. The DNR-042 mapping locates the DNREC tidal wetland boundary approximately 25 feet from the edge of the roadway. As now designed, the proposed construction will result in a COE wetland impact of approximately 0.0416 acres, of which 0.015 acres are within the DNREC tidal limits. Since the DNREC tidal wetlands will be impacted, a State Wetlands Permit will be required. This effort will be coordinated with your office as we progress thru the permit coordination/review process and the Environmental Assessment has been updated accordingly.

Comment: Directly west of the study area, west of Holts Landing Road and north of Route 26, a tidal forested/scrub-shrub wetland is identified on DNR-075. This tidal wetland is a headwater of Blackwater Creek. It doesn't appear that any work will be completed in this location, but it should be noted so that there is not impact to this area.

Response: This wetland is well outside of the project study area. Therefore, no impacts to this wetland will occur due to the SR 26 Atlantic Avenue project.

Comment: During a recent site visit, I saw at least 4 jurisdictional subaqueous lands in the study area. Other waterways were observed, but due to time limitations, I only focused on the larger waterways. During the site visit, I did not observe tidal flow upstream at any of these 4 waterways; however, given this limited review, I did not find a conclusive determination of whether the waterway was tidal. After the site visit, I checked the elevation contours on the 1984 Frankford, Del and Bethany Beach, Del. quads to evaluate whether the streams could be tidal. The following were the subaqueous lands identified on my recent site visit, the DEIS waterway designation number that I believe corresponds with it, and the USGS contour elevations at the existing road.

1. Clarksville Branch, a headwater of Blackwater Creek, located approximately 600 feet east of Powell Farm Road (WA2?). Portions of this waterway were piped and a Good Year service center stands in the vicinity of the waterway. Elevation contour at roadway = 10 feet.
2. A tributary of White Creek located just east of Clubhouse Road and the Town Hall (WA5), Contour Elevation = 5 feet.

3. A tributary of White Creek located west of Grants Avenue and the First Federal Bank (WA8). Contour Elevation = 5 feet.
4. Headwater of White Creek, located approximately 1,200 feet west of Woodland (WA10). Contour Elevation = 5 feet. I believe this is the one stream the DEIS identifies as tidal.

Response: The project limits were surveyed with the vertical datum being NGVD 1988. The 1984 Frankford & Bethany USGS Quad Maps are based on the NGVD 1929 datum. The above referenced waterways were revisited at the June 24, 2008 field review. The following are the field observations at these locations:

1. WA 2: Invert elevation of the channel at the downstream limit of the project was surveyed at 4.59'. At the latest field review, no water was observed in this channel and there was abundant in-channel vegetation with no evidence of tidal influence. This abundant in-channel vegetation masked the defined channel and ordinary high water mark, which was observed at previous field reviews. Additionally, review of the NWI maps reveals non-tidal mapping units located upstream (PF01/4C) and downstream (PFO1/4E) of the Route 26 crossing of this waterway (identified as St. Georges Tax Ditch on construction plans). Tidal influence is not recorded on the NWI maps until the waterway crosses under Holts Landing Road (located north of the project study area). Based on the information gathered to date and consistent with what was reported in the Environmental Assessment, we have determined that this waterway is not tidal.

2. WA 5: Invert elevation of the channel at the downstream limit of the project was surveyed at 1.22. Water was observed in the channel north of SR 26; the water was stagnant and covered with green algae. South of SR 26, the channel was full of vegetation and no water was visible; however, where the stream continues west of Windmill Drive, there was still water visible in the channel (also covered with green algae). During the field visit on May 17, 2006, this stream was staked to determine whether there was any tidal influence. Data from NOAA's Tide Stations in the Indian River Bay was used to approximate the high and low tides for this location. Prior to the anticipated low tide, flags were placed on the banks at water level, for a distance of approximately 15 feet upstream and downstream from Bridge No. 427.

   The stream was monitored hourly for the next 12+ hours; there was no change in the elevation of the water level. This channel appears not to be tidally influenced. Further, the NWI map shows this waterway (identified as Derrickson Canal Tax Ditch on the construction plans) flowing into a non-tidal PF01/4E system north of the project limits. Further downstream and just to the west of Old Mill Road, the system is mapped as a tidal E2EM5Pd system. Based on the information gathered to date and consistent with what was reported in the Environmental Assessment, we have determined that this waterway is not tidal.

3. WA 8: Invert elevation of the channel at the downstream limit of the project was surveyed at 2.78. At the latest field review, no water was observed in this channel and there was abundant in-channel vegetation with no evidence of tidal influence. This abundant in-channel vegetation masked the defined channel and ordinary high water mark which was observed at previous field On the NWI maps, WA 8, an unnamed tributary of White Creek, flows into a non-tidal PFO1A system before it becomes a tidal E2EM5Pd system (outside our project limits). Scaling from map DNR-042, the DNREC tidal wetland boundary is located approximately 400 feet from the edge of the roadway (north side). Based on the information gathered to date and consistent with what was reported in the Environmental Assessment, we have determined that this waterway is not tidal.

4. WA 10: Invert elevation of the channel at the downstream limit of the project was surveyed at -1.10. Water was observed in this channel on both sides of SR 26. Water appeared to be flowing; there was a visible high water mark and no in-channel vegetation. This channel was also staked on May 17, 2006 to observe the tidal influence. Data from NOAA's Tide Stations in the Indian River Bay was used to approximate the high and low tides for this location. Prior to the anticipated low tide, flags were placed on the banks at water level, for a distance of approximately 15 feet upstream and downstream from Bridge No. 428. The following table presents the results of these field measurements. The "L" refers to low tide measurements and the "H" refers to high tide measurements. The numbered flags were placed on the right bank of the stream and the lettered flags were placed on the left bank of the stream.

WA10: Tide Elevations

Low Tide	Elevation	High Tide	Elevation	Change (ft)
L1	-0.38128	H1	0.0679	0.44918
L2	-0.39278	H2	-0.03409	0.35869
L3	-0.35044	H3	0.084	0.43444
L4	-0.352	H4	-0.01332	0.33868
L5	-0.40783	H5	0.03085	0.43868
L6	-0.27821	H6	0.0923	0.37051
LA	-0.7964	HA	0.02577	0.82217
LB	-0.3777	HB	0.08141	0.45911
LC	-0.31389	HC	0.04814	0.36203
LD	-0.36932	HD	0.09389	0.46321

Changes in elevation were observed in this channel over a 12+ hour period. The change in water elevation was measured to be between 0.36 foot and 0.82 foot. This channel, Banks-Bennett Tax Ditch (eastern branch of White

Creek) is tidal and was identified in the Environmental Assessment as being tidal.

Comment: I disagree with some of the classification of the waterways as "streams and ditches," as used within the document. The document identifies 2 streams and 8 ditches; whereas the 1917 USGS maps identify 4 streams and the 1974 Soil Survey of Sussex County identifies 3 streams in the study area. Many of the streams in Delaware have been modified, but we disagree that they would then be ditches.

Response: The term "ditch" was used to specifically refer to any channel that appeared to be manipulated/manmade. Unfortunately, this term is often used too loosely. As jurisdictional streams are straightened/manipulated and included in the county tax ditch system, they often loose their identity as a stream from a labeling/name perspective. The USGS maps display blue-line streams that correspond to WA2, WA5, WA8 and WA10. With the exception of WA 8, all appear to be associated with the county tax ditch system. WA 8 is a small, unnamed tributary of White Creek (currently crosses under SR 26 via 18" pipe) and does not appear to be a part of the county tax ditch system. Per our field review on July 16, 2008, these waterways are DNREC jurisdictional streams. The Environmental Assessment has been revised to include the correct terminology to describe these resources.

Comment: I disagree with the statement on page III-36, paragraph 2 under Open Waters of the document that states one waterway, the East Branch of White Creek, is jurisdictional as a subaqueous lands. Other waterways in the study area are jurisdictional as subaqueous lands. However, depending on the exemptions used by DelDOT, a permit may not be required for work in non-tidal waters.

Response: We acknowledge that the DNREC jurisdictional status of the waterways were incorrectly represented in the draft Environmental Assessment. WA2, WA5, WA8, WA10, are blue line streams and considered to be waterways under DNREC jurisdiction. However, with the exception of WA10, which is tidal, these crossings have been determined to be non-tidal with contributing drainage areas measuring less than 800 acres (back-up information regarding the drainage areas will be submitted with the permit application). The Special Exemptions in the Subaqueous Lands Act (7217a) do not require a permit for any State work in non-tidal waters in the Delaware Atlantic Coastal Plain with a contributing drainage area of less than 800 acres (This information is consistent with our February 2008 e-mail exchange regarding this project – attached). As such, a Subaqueous Lands Permit application will only be prepared for the impacts associated with the tidal crossing, WA 10. The open water impacts at this crossing are estimated to be 914.76 square feet, 0.0210 acres. Additionally, a Wetland Permit application will be prepared for the DNREC tidal wetland impacts associated with this crossing (wetland area W4). The DNREC tidal wetland impact is estimated to be 653.40 square feet, 0.015 acres.

In consultation with your office and as we progress through the design and permit coordination process, the appropriate permit requirements will be determined. It is anticipated that we will be making application for a COE NWP 14. Given the new Regional Conditions for Delaware, DNREC Water Quality Certification and Coastal Zone Consistency Certification will not be required since there are no critical resource areas within the project limits. Preliminarily, it is estimated that the impacts to be reported for the COE permit application will be as follows:

4242.744 square feet or 0.0974 acres of open water impact
(Tidal = 0.0210 ac. Non-Tidal = 0.0764 ac.)

2774.772 square feet or 0.0637 acres of wetland impact
(Tidal = 0.0416 ac. Non-Tidal = 0.0221 ac.)

Comment: Based on the preceding statement, I question what study went into the determination of whether the waterways are tidal or not. Based on the elevation of 5 foot contours for some of the streams at the roadway, it appears that more streams may be tidal. Visual, short-term observations in the field may not be sufficient to determine whether some of the waterways are tidal.

Response: During the August 2004 field meeting, WA5 and WA10 were identified as the two potentially tidal streams within the study area. CEI conducted a field observation on May 17, 2006 to determine whether either of these streams is tidally influenced. Using tidal data from stations in the Indian River Bay, times of high and low tide were estimated for these locations. Flags were placed at the water level during the projected low tide in the morning and immediately surveyed to determine their exact location and elevation. Water levels were observed hourly for a period of 12 hours, during which time the approximate high tide should have occurred. There was no change in the water level of WA5. WA10 did fluctuate and the water level was surveyed again to determine elevation. As a result of this observation, we concluded that WA10 is tidally influenced but WA 5 is not. As noted above, surveyed elevations in the channel at the downstream project limits are 1.22 for WA 5 and -1.10 for WA 10.

Comment: I have some concerns that our coordination on this roadway project was not as thorough as it should have been and I hope that we can coordinate to make sure that this document is accurate.

Response: The project team will continue to coordinate with your office to help alleviate your concerns. The first step in this continued coordination effort was the field visit held on July 16, 2008. We understand that additional back-up information that supports our tidal determinations and drainage basin size will need to be submitted to your office for review. After this submittal, if you feel that we still have not adequately addressed your concerns, we can discuss a plan of action for more intense investigative work to determine tidal influence, permitting needs, etc.

The SR 26 Atlantic Avenue project is approaching final design stage. Revised semi-final plans are to be submitted early fall 2008 with final right of way plans to be approved summer 2008. Final construction plans for bid advertisement are to be submitted in April 2010 with utility relocations beginning in fall 2010 and construction following in spring 2011. We anticipate submitting permit applications in spring 2009.

Coordination with all agencies involved will continue through the design and construction of this project. Thank you for your time and continued cooperation. If you have any questions, please don't hesitate to call Jill Frey at 734-9188 or Joy Ford at 760-2107.

Sincerely,

Therese M. Fulmer
Manager, Environmental Studies

cc: Mike Simmons, Assistant Director, South
Tom Banez, Project Manager, South I
Nick Blendy, FHWA
Joy Ford, Environmental Studies
Jill Frey, Century Engineering, Inc.

Jill Frey

Subject: FW: SR 26 Mainline, #24-112-10, Question regarding level of permitting needed
Attachments: NWP REG COND for DE(Draft Dec 07) (4).doc

From: Sullivan Carol (DelDOT) [mailto:Carol.Sullivan@state.de.us]
Sent: Thursday, February 21, 2008 11:05 AM
To: Ford Joy (DelDOT); lmiller@centuryeng.com
Subject: FW: SR 26 Mainline, #24-112-10, Question regarding level of permitting needed

something else to think about.

I'm thinking that either way, we will need to obtain WQC & CZM (NWP #14 - WQC & CZM are denied and we'd need to also get them for an IP).

From: Lee Joanne M. (DNREC)
Sent: Thursday, February 21, 2008 8:32 AM
To: Sullivan Carol (DelDOT)
Subject: RE: SR 26 Mainline, #24-112-10, Question regarding level of permitting needed

Carol,
Another thought on your permit:

Given the new regional conditions, there will be a lot more projects that need WQC, either because the State denied them outright or they are in Critical Resource Waters. We will both have to review the NWP Regional Conditions for Delaware to see if the NWPs are applicable. Attached is a copy of the draft regional conditions that I believe I sent to you earlier. This is the latest version I have available. Joanne

Joanne Lee
DNREC
Wetlands and Subaqueous Lands Section
89 Kings Highway
Dover, Delaware 19901

Phone - (302) 739-9943
Fax - (302) 739-6304

From: Sullivan Carol (DelDOT)
Sent: Wednesday, February 20, 2008 11:36 AM
To: Lee Joanne M. (DNREC)
Subject: RE: SR 26 Mainline, #24-112-10, Question regarding level of permitting needed

Hi Joanne,
No, it's been awhile since we've looked at this. I think the last time we were out there with the agencies was on 4-17-06.

Thanks for the information!!
Sincerely,
Carol

From: Lee Joanne M. (DNREC)
Sent: Tuesday, February 19, 2008 4:26 PM
To: Sullivan Carol (DelDOT)
Subject: RE: SR 26 Mainline, #24-112-10, Question regarding level of permitting needed

Carol,

Sorry, I completely missed the first e-mail. This seems like a long ago site review. Have we looked at this recently?

The Special Exemptions in the Subaqueous Lands Act (7217a) does not require a permit for any state work in non-tidal waters in the Delaware Atlantic Coastal Plain with a contributing drainage area of less than 800 acres. 7217b states that the Subaqueous Lands Act does not apply to maintenance, reconstruction or retrofitting work performed by the state in any nontidal subaqueous land.

Given that information, the tidal crossing definitely needs a permit. It is my hazy recollection that there were some ditches that were of questionable jurisdiction, but others that may be jurisdictional. It sounds like the drainage area exemption will exempt you from getting permits for most of the work, with the exception of the tidal waterway. However, we would like you to document the exemption, if requested, by providing drainage areas for the ditches that are exempt on a USGS map.

Will you need an individual permit? If so, you still need WQC.

Joanne

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From: Sullivan Carol (DelDOT)
Sent: Tuesday, February 19, 2008 3:55 PM
To: Lee Joanne M. (DNREC)
Subject: FW: SR 26 Mainline, #24-112-10, Question regarding level of permitting needed

Joanne,
Your e-mail reminded me that this question is still hanging out there...
Thanks!
Carol

From: Sullivan Carol (DelDOT)
Sent: Friday, February 01, 2008 3:41 PM
To: Lee Joanne M. (DNREC)
Subject: SR 26 Mainline, #24-112-10, Question regarding level of permitting needed

Hi Joanne,
As you may recall, we are proposing to do a road widening project along SR 26 in Sussex County, from Clarksville to the Assawoman Canal. Specifically, the existing roadway will be widened to the folowing:

--provide one eleven (11) foot lane in each direction with five (5) foot shoulders
--a 12-foot center turn lane will be included through the length of the project
--separate 11' wide right turn lanes will be added at some intersections.

As you may recall, there are several "ditches" that will be impacted, as well as two bridges that will be widened, Bridge 427 and 428. Bridge 427 is non-tidal and has a drainage area of 608 acres. Bridge 428 is tidal.

My question to you is this: is a subaqueous lands permit needed for just the tidal crossing (Bridge 428), or we need to make application for the entire project?

Your guidance would be greatly appreciated.

Sincerely,
Carol