determination, you must submit a completed RFA form to the North Atlantic Division Office at the following address:

Michael G. Vissichelli
Regulatory Appeals Review Officer
North Atlantic Division, U.S. Army Corps of Engineers
Fort Hamilton Military Community
General Lee Avenue, Building 301
Brooklyn, NY 11252-6700
EMAIL: Michael.G.Vissichelli@usace.army.mil

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by 19 January 2009.

It is not necessary to submit an RFA form to the Division Office if you do not object to the determination in this letter.

If you should have any questions regarding this matter, please contact me at 302-736-9763 between the hours of 1:00 and 3:30 p.m. or write to the above address.

Sincerely,

John Brundage
Biologist, Regulatory Branch

****

SUBJECT PROPERTY: The DELDOT Little Heaven Grade Separated Intersection Project Site, Kent County, Delaware.

****

SURVEY DESCRIPTION: Plans dated August 2008, revised per USACE on July 31, 2008, entitled: *SR1/Little Heaven Grade Separated Interchange, Kent County, Delaware*, 10 sheets.

****

COMMENTS: The above referenced site was inspected by a Corps of Engineers representative on July 31, 2008.

****

Enclosures

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): November 19, 2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER:CENAP-OP-R-2008-916 (Waters 1 Kiunk Ditch)

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State:Delaware County/parish/borough: Kent City: Little Heaven
Center coordinates of site (lat/long in degree decimal format): Lat. 39.04583° Pick List, Long. -75.46305° Pick List.
Universal Transverse Mercator:
Name of nearest waterbody: Kiunk Ditch
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: St Jones River
Name of watershed or Hydrologic Unit Code (HUC): 02040207
☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
☐ Office (Desk) Determination. Date:
☒ Field Determination. Date(s): July 31, 2008

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There Pick List *"navigable waters of the U.S."* within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]
☐ Waters subject to the ebb and flow of the tide.
☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There Are *"waters of the U.S."* within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. Waters of the U.S.
   a. Indicate presence of waters of U.S. in review area (check all that apply): [1]
      ☐ TNWs, including territorial seas
      ☐ Wetlands adjacent to TNWs
      ☒ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
      ☐ Non-RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
      ☐ Impoundments of jurisdictional waters
      ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. Identify (estimate) size of waters of the U.S. in the review area:
      Non-wetland waters: 2000 linear feet: 6 feet ave. width (ft) and/or acres.
      Wetlands: 10 acres.

   c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual
      Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable):[3]
   ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **A ditch and small pond within the High Point residential development are artificial in nature, being entirely supplied with water by a man-made well and pump. These features are not waters of the US.**

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[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW
   Identify TNW:

   Summarize rationale supporting determination:

2. Wetland adjacent to TNW
   Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

   (i) General Area Conditions:
   Watershed size: Pick List
   Drainage area: Pick List
   Average annual rainfall: inches
   Average annual snowfall: inches

   (ii) Physical Characteristics:
   (a) Relationship with TNW:
   ☒ Tributary flows directly into TNW.
   ☐ Tributary flows through Pick List tributaries before entering TNW.

   Project waters are 1-2 river miles from TNW.
   Project waters are Pick List river miles from RPW.
   Project waters are 1-2 aerial (straight) miles from TNW.
   Project waters are Pick List aerial (straight) miles from RPW.
   Project waters cross or serve as state boundaries. Explain:

   Identify flow route to TNW[5]: Kiunk Ditch (RPW) to the St Jones River (TNW) to Delaware Bay (TNW).
   Tributary stream order, if known:

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b) General Tributary Characteristics (check all that apply):

Tributary is:
- ☐ Natural
- ☐ Artificial (man-made). Explain:
- ☒ Manipulated (man-altered). Explain: Kiunk Ditch is partially channelized for drainage purposes.

Tributary properties with respect to top of bank (estimate):
Average width: 10 feet
Average depth: 1 feet
Average side slopes: 3:1.

Primary tributary substrate composition (check all that apply):

☒ Silts	☒ Sands	☐ Concrete
☐ Cobbles	☐ Gravel	☐ Muck
☐ Bedrock	☐ Vegetation. Type/% cover:	
☐ Other. Explain:		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: stable.
Presence of run/riffle/pool complexes. Explain:
Tributary geometry: Relatively straight
Tributary gradient (approximate average slope): 2 %

(c) Flow:
Tributary provides for: Seasonal flow
Estimate average number of flow events in review area/year: 20 (or greater)
Describe flow regime: permanent.
Other information on duration and volume: stream appears to flow year-round.

Surface flow is: Discrete. Characteristics:

Subsurface flow: Pick List. Explain findings:
☐ Dye (or other) test performed:

Tributary has (check all that apply):
☒ Bed and banks
☒ OHWM[6] (check all indicators that apply):

☒ clear, natural line impressed on the bank	☐ the presence of litter and debris
☒ changes in the character of soil	☒ destruction of terrestrial vegetation
☐ shelving	☐ the presence of wrack line
☐ vegetation matted down, bent, or absent	☐ sediment sorting
☐ leaf litter disturbed or washed away	☐ scour
☐ sediment deposition	☐ multiple observed or predicted flow events
☐ water staining	☐ abrupt change in plant community
☐ other (list):	

☐ Discontinuous OHWM.[7] Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

☒ High Tide Line indicated by:	☒ Mean High Water Mark indicated by:
☐ oil or scum line along shore objects	☐ survey to available datum;
☐ fine shell or debris deposits (foreshore)	☐ physical markings;
☐ physical markings/characteristics	☐ vegetation lines/changes in vegetation types.
☐ tidal gauges	
☐ other (list):	

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain:
Identify specific pollutants, if known:

---

[6] A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7] Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- ☒ Riparian corridor. Characteristics (type, average width):
- ☒ Wetland fringe. Characteristics:
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings:
  - ☐ Fish/spawn areas. Explain findings:
  - ☐ Other environmentally-sensitive species. Explain findings:
  - ☐ Aquatic/wildlife diversity. Explain findings:

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size:10acres

Wetland type. Explain:mostly PFO1.

Wetland quality. Explain:relatively high in places but generally low in project area..

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: Pick List. Explain:

Surface flow is: Pick List

Characteristics:

Subsurface flow: Pick List. Explain findings:

- ☐ Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

- ☒ Directly abutting
- ☐ Not directly abutting
  - ☐ Discrete wetland hydrologic connection. Explain:
  - ☐ Ecological connection. Explain:
  - ☐ Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are 1-2 river miles from TNW.

Project waters are 1-2 aerial (straight) miles from TNW.

Flow is from: Wetland to navigable waters.

Estimate approximate location of wetland as within the 100-500-year floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: clear.

Identify specific pollutants, if known:

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

- ☒ Riparian buffer. Characteristics (type, average width):
- ☐ Vegetation type/percent cover. Explain:
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings:
  - ☐ Fish/spawn areas. Explain findings:
  - ☐ Other environmentally-sensitive species. Explain findings:
  - ☐ Aquatic/wildlife diversity. Explain findings:

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: Pick List

Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet width (ft), Or, acres.
   - ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☒ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: environmental scientist's report and personal observation of flow in July when stream flows are normally at their annual low.
   - ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review area (check all that apply):
☒ Tributary waters: **2000** linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):
☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
☒ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
☒ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: **Personal observation that the wetland and stream (RPW) share a continuous connection.**

☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

Provide acreage estimates for jurisdictional wetlands in the review area: **10**acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.[9]**
As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
☐ Demonstrate that impoundment was created from "waters of the U.S.," or
☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. **ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]**
☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ Interstate isolated waters. Explain: .
☐ Other factors. Explain: .

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[8] See Footnote # 3.
[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
[10] **Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.***

Identify water body and summarize rationale supporting determination:

Provide estimates for jurisdictional waters in the review area (check all that apply):
- ☐ Tributary waters: linear feet width (ft).
- ☐ Other non-wetland waters: acres.
  - Identify type(s) of waters:
- ☐ Wetlands: acres.

F. **NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**
- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- ☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - ☐ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- ☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:
- ☒ Other: (explain, if not covered above): **Artificial pond and ditch at High Point residential development (see above).**

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):
- ☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource:
- ☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):
- ☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource:
- ☐ Wetlands: acres.

SECTION IV: DATA SOURCES.

A. **SUPPORTING DATA. Data reviewed for JD (check all that apply** - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):
- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☒ Office concurs with data sheets/delineation report.
  - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps:
- ☐ Corps navigable waters' study:
- ☐ U.S. Geological Survey Hydrologic Atlas:
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name:
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation:
- ☒ National wetlands inventory map(s). Cite name:
- ☐ State/Local wetland inventory map(s):
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date):
  - or ☐ Other (Name & Date):
- ☐ Previous determination(s). File no. and date of response letter:
- ☒ Applicable/supporting case law: Rapanos ET UX., ET AL. v. United States, 547 U.S. 04-1034 and 04-1384 (2006)(Rapanos); National Association of Homebuilders v. US Army Corps of Engineers, et. al., D.C. District Court Case No. 1:06-cv-00502 (July 26, 2006)
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify): Regulatory Guidance Letters 07-01 (Documentation of JD's - JDIS Guidebook); 05-05 (OHWM); 05-02 (Geographic Extent of JD); 06-01(Timelines for Appeals).

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): November 19, 2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER:CENAP-OP-R-2008-916 (Waters2 UNT)

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State:Delaware County/parish/borough: Kent City: Little Heaven
Center coordinates of site (lat/long in degree decimal format): Lat. 39.04583° Pick List, Long. -75.46305° Pick List.
Universal Transverse Mercator:
Name of nearest waterbody: Unnamed tributary to the Murderkill River
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Murderkill River
Name of watershed or Hydrologic Unit Code (HUC): 02040207
☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
☐ Office (Desk) Determination. Date:
☒ Field Determination. Date(s): July 31, 2008

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There Pick List *"navigable waters of the U.S."* within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]
☐ Waters subject to the ebb and flow of the tide.
☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There Are *"waters of the U.S."* within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. Waters of the U.S.
   a. Indicate presence of waters of U.S. in review area (check all that apply): [1]
      ☐ TNWs, including territorial seas
      ☐ Wetlands adjacent to TNWs
      ☒ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
      ☐ Non-RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
      ☐ Impoundments of jurisdictional waters
      ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. Identify (estimate) size of waters of the U.S. in the review area:
      Non-wetland waters: 100 linear feet: 6 feet ave. width (ft) and/or acres.
      Wetlands: acres.

   c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual
      Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable):[3]
   ☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**
   Identify TNW:

   Summarize rationale supporting determination:

2. **Wetland adjacent to TNW**
   Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW**

   (i) **General Area Conditions:**
   Watershed size: Pick List
   Drainage area: Pick List
   Average annual rainfall: inches
   Average annual snowfall: inches

   (ii) **Physical Characteristics:**
   (a) Relationship with TNW:
   ☒ Tributary flows directly into TNW.
   ☐ Tributary flows through Pick List tributaries before entering TNW.

   Project waters are 1-2 river miles from TNW.
   Project waters are Pick List river miles from RPW.
   Project waters are 1-2 aerial (straight) miles from TNW.
   Project waters are Pick List aerial (straight) miles from RPW.
   Project waters cross or serve as state boundaries. Explain:

   Identify flow route to TNW[5]: Unnamed Tributary (RPW) to the Murderkill River (TNW) to Delaware Bay (TNW).
   Tributary stream order, if known:

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[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b) General Tributary Characteristics (check all that apply):

Tributary is:
- ☐ Natural
- ☐ Artificial (man-made). Explain:
- ☒ Manipulated (man-altered). Explain: The UNT has been channelized for drainage purposes.

Tributary properties with respect to top of bank (estimate):
Average width: 10 feet
Average depth: 1 feet
Average side slopes: 2:1.

Primary tributary substrate composition (check all that apply):

☒ Silts	☒ Sands	☐ Concrete
☐ Cobbles	☐ Gravel	☐ Muck
☐ Bedrock	☐ Vegetation. Type/% cover:	
☐ Other. Explain:		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: stable.
Presence of run/riffle/pool complexes. Explain: none.
Tributary geometry: Relatively straight
Tributary gradient (approximate average slope): 2 %

(c) Flow:
Tributary provides for: Seasonal flow
Estimate average number of flow events in review area/year: 20 (or greater)
Describe flow regime: seasonal.
Other information on duration and volume:

Surface flow is: Discrete and confined. Characteristics:

Subsurface flow: Pick List. Explain findings:
☐ Dye (or other) test performed:

Tributary has (check all that apply):
- ☒ Bed and banks
- ☒ OHWM[6] (check all indicators that apply):

☒ clear, natural line impressed on the bank	☐ the presence of litter and debris
☒ changes in the character of soil	☒ destruction of terrestrial vegetation
☐ shelving	☐ the presence of wrack line
☐ vegetation matted down, bent, or absent	☐ sediment sorting
☐ leaf litter disturbed or washed away	☐ scour
☐ sediment deposition	☐ multiple observed or predicted flow events
☐ water staining	☐ abrupt change in plant community
☐ other (list):	

- ☐ Discontinuous OHWM.[7] Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

☒ High Tide Line indicated by:	☒ Mean High Water Mark indicated by:
☐ oil or scum line along shore objects	☐ survey to available datum;
☐ fine shell or debris deposits (foreshore)	☐ physical markings;
☐ physical markings/characteristics	☐ vegetation lines/changes in vegetation types.
☐ tidal gauges	
☐ other (list):	

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain:
Identify specific pollutants, if known:

[6] A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7] Ibid.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet width (ft), Or, acres.
   - ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
   - ☒ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: Environmental Scientist's report.

Provide estimates for jurisdictional waters in the review area (check all that apply):
☒ Tributary waters: **100** linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
☒ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):
☒ Tributary waters: linear feet width (ft).
☒ Other non-wetland waters: acres.
Identify type(s) of waters: .

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
☒ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
☒ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

☒ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

Provide acreage estimates for jurisdictional wetlands in the review area: **10**acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
☒ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
☒ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.[9]**
As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
☒ Demonstrate that impoundment was created from "waters of the U.S.," or
☒ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
☒ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. **ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]**
☒ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☒ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☒ which are or could be used for industrial purposes by industries in interstate commerce.
☒ Interstate isolated waters. Explain: .
☒ Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

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[8] See Footnote # 3.
[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
[10] **Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.***

Provide estimates for jurisdictional waters in the review area (check all that apply):
- ☐ Tributary waters: linear feet width (ft).
- ☐ Other non-wetland waters: acres.
  - Identify type(s) of waters: .
- ☐ Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):
- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- ☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - ☐ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- ☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
- ☐ Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):
- ☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource: .
- ☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):
- ☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource: .
- ☐ Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. **Data reviewed for JD (check all that apply** - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):
- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: .
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☒ Office concurs with data sheets/delineation report.
  - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps: .
- ☐ Corps navigable waters' study: .
- ☐ U.S. Geological Survey Hydrologic Atlas: .
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: .
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: .
- ☒ National wetlands inventory map(s). Cite name: .
- ☐ State/Local wetland inventory map(s): .
- ☐ FEMA/FIRM maps: .
- ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date): .
  - or ☐ Other (Name & Date): .
- ☐ Previous determination(s). File no. and date of response letter: .
- ☒ Applicable/supporting case law: Rapanos ET UX., ET AL. v. United States, 547 U.S. 04-1034 and 04-1384 (2006)(Rapanos)
- ☐ Applicable/supporting scientific literature: .
- ☒ Other information (please specify): Regulatory Guidance Letters 07-01 (Documentation of JD's - JDIS Guidebook); 05-05 (OHWM); 05-02 (Geographic Extent of JD); 06-01(Timelines for Appeals).

B. ADDITIONAL COMMENTS TO SUPPORT JD: .

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Delaware Dept of Transportation		File: CENAP-OP-R-2008-916	Date: Nov 19, 2008
Attached is:			See Section below
☐	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)		A
☐	PROFFERED PERMIT (Standard Permit or Letter of permission)		B
☐	PERMIT DENIAL		C
X	APPROVED JURISDICTIONAL DETERMINATION		D
☐	PRELIMINARY JURISDICTIONAL DETERMINATION		E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://usace.army.mil/inet/functions/cw/cecwo/reg or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the Philadelphia District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations (JD) associated with the permit.

- OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the Philadelphia District Engineer. Your objections must be received by the Philadelphia District Engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the Philadelphia District Engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the Philadelphia District Engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the Philadelphia District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the North Atlantic Division Engineer, ATTN: CENAD-ET-O, Fort Hamilton Military Community, Building 301, General Lee Avenue, Brooklyn, NY 11252-6700. This form must be received by the North Atlantic Division Engineer within 60 days of the date of this notice with a copy furnished to the Philadelphia District Engineer.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the North Atlantic Division Engineer, ATTN: CENAD-ET-O, Fort Hamilton Military Community, Building 301, General Lee Avenue, Brooklyn, NY 11252-6700. This form must be received by the North Atlantic Division Engineer within 60 days of the date of this notice with a copy furnished to the Philadelphia District Engineer.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.

- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the North Atlantic Division Engineer, ATTN: CENAD-ET-O, Fort Hamilton Military Community, Building 301, General Lee Avenue, Brooklyn, NY 11252-6700. This form must be received by the North Atlantic Division Engineer within 60 days of the date of this notice with a copy furnished to the Philadelphia District Engineer.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION

If you have questions regarding this decision and/or the appeal process you may contact: John Brundage U.S. Army Corps of Engineers, Philadelphia District ATTN: CENAP-OP-R Wanamaker Building, 100 Penn Square East Philadelphia, PA 19107-3390 Telephone: 302-736-9763	If you only have questions regarding the appeal process you may also contact: Michael G. Vissichelli Regulatory Appeals Review Officer North Atlantic Division, U.S. Army Corps of Engineers Fort Hamilton Military Community General Lee Avenue, Building 301 Brooklyn, NY 11252-6700 Telephone: (718) 765-7150 E-mail: Michael.G.Vissichelli@.usace.army.mil

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

_____ Signature of appellant or agent.	Date:	Telephone number:

U.S. Department
of Transportation
**Federal Highway
Administration**

DELMAR Division - Delaware

**300 South New St., Suite 2101
Dover Delaware 19904**

April 3, 2009

In Reply Refer To: HDA-DE

Kerry Holton, Tribal President
Delaware Nation
PO Box 825
Anadarko, OK 73005

Dear Mr. Holton,

The purpose of this letter is to initiate consultation between the Delaware Nation and the Federal Highway Administration (FHWA) regarding the following federally funded project: **Little Heaven Grade Separated Interchange Project, Kent County, State Contract No. 24-122-02, Federal Aid Number NH-K008 (6).**

The Little Heaven Project southern limit is located just north of the SR1 North Frederica Grade Separated Intersection Project that the Delaware Nation is a consulting party including signature to the Memorandum of Agreement (MOA). Mapping is attached locating both projects.

The Little Heaven Project is currently being processed an Environmental Assessment (EA) and Phase I a & b archaeological surveys have been underway for the past few years and continues to date. No known Native American sites have been discovered so far. When and if any Native American archaeological sites are found, FHWA and the Delaware Department of Transportation (DelDOT) will continue coordination with you. Attached is a preliminary Draft MOA outlining the commitments that DelDOT will fulfill regarding the unfinished archaeological work and any future work if any site is found eligible to the National Register of Historic Places. You may contact David Clarke, DelDOT Project Archaeologist at (302) 760-2271 to discuss any questions that you or other Delaware Nation members may have regarding the surveys and Draft MOA.

After review, please let us know of the Delaware Nation interests in the Little Heaven Project and participation as a consulting party in the continued development of the Draft MOA. This is consistent with Delaware Nation comments made in a September 8, 2009 email regarding the North Frederica Project and responded to our October 3, 2009 exchange of emails (attached).

Thank you for your input in reviewing the above cited project. If interested in the project, FHWA and DelDOT look forward to working with you and members of the Delaware Nation. If you have any questions or would like further information please contact me at (302) 734-2966.

MOVING THE
AMERICAN
ECONOMY

Sincerely,

Nick Blendy
Environmental Specialist

cc: Tamara Francis, Cultural Preservation Director
Gwen Davis, DE SHPO
David Clarke, DelDOT
Kevin Cunningham, DelDOT
Terry Fulmer, DelDOT
Mike Simmons, DelDOT
Dan Johnson, FHWA

U.S. Department of Transportation
Federal Highway Administration

DELMAR Division - Delaware

300 South New St., Suite 2101
Dover Delaware 19904

April 3, 2009

In Reply Refer To: HDA-DE

Robert Chicks, President
Stockbridge Munsee Community Band of Mohican Indians
PO Box 70
Bowler, WI 54416

Dear Mr. Chicks,

The purpose of this letter is to initiate consultation between Stockbridge Munsee and the Federal Highway Administration (FHWA) regarding the following federally funded project: **Little Heaven Grade Separated Interchange Project, Kent County, State Contract No. 24-122-02, Federal Aid Number NH-K008 (6).** Project mapping is enclosed.

The Little Heaven Project is currently being processed an Environmental Assessment (EA) and Phase I a & b archaeological surveys have been underway for the past few years and continues to date. No known Native American sites have been discovered so far. When and if any Native American archaeological sites are found, FHWA and the Delaware Department of Transportation (DelDOT) will continue coordination with you. Attached is a preliminary Draft MOA outlining the commitments that DelDOT will fulfill regarding the unfinished archaeological work and any future work if any site is found eligible to the National Register of Historic Places. You may contact David Clarke, DelDOT Project Archaeologist at (302) 760-2271 to discuss any questions that you or other Stockbridge Munsee members may have regarding the surveys and Draft MOA.

After review, please let us know of Stockbridge Munsee interests in the Little Heaven Project including participation as a consulting party in the continued development of the Draft MOA.

Thank you for your input in reviewing the above cited project. If you are interested, FHWA and DelDOT look forward to working with you and the Stockbridge Munsee Community Band of Mohican Indians. If you have any questions or would like further information please contact me at (302) 734-2966.

MOVING THE AMERICAN ECONOMY

Sincerely

Nick Blendy
Environmental Specialist

cc: Terry White, Tribal Historic Preservation Officer
Gwen Davis, DE SHPO
David Clarke, DelDOT
Kevin Cunningham, DelDOT
Terry Fulmer, DelDOT
Mike Simmons, DelDOT
Dan Johnson, FHWA

Stockbridge-Munsee Tribal Historic Preservation Office

Sherry White - Tribal Historic Preservation Officer
W13447 Camp 14 Road
P.O. Box 70
Bowler, WI 54416

APR 17 2009

April 14, 2009

Nick Blendy
Environmental Specialist
Federal Highway Administration
300 South New St., Suite 2101
Dover, DE 19904

RE: Little Heaven Grade Separated Interchange Project
Kent County, State Contract No. 24-122-02
Federal Aid Number NH-K008 (6)

Dear Mr. Blendy:

Thank you for contacting the Stockbridge-Munsee Tribe regarding the above referenced project. The Tribe is committed to protecting archaeological sites that are important to tribal heritage, culture and religion. Furthermore, the Tribe is particularly concerned with archaeological sites that may contain human burial remains and associated funerary objects.

As described in your correspondence, the proposed ground disturbing activity of this project does not appear to be in a region of archaeological interest to the Stockbridge-Munsee Tribe.

We appreciate your cooperation in notifying the Historic Preservation Office. Should you have any questions, feel free to contact me.

Sincerely,

Sherry White/gj

Sherry White,
Tribal Historic Preservation Officer

(715) 793-3970

Email: sherry.white@mohican-nsn.gov

Preserving America's Heritage

November 12, 2008

Therese M. Fulmer
Manager, Environmental Studies
Department of Transportation
800 Bay Road
P.O. Box 778
Dover, Delaware 19903

Ref: *Proposed SR1, Little Heaven Grade Separated Intersection Project*
Kent County, Delaware

Dear Ms. Fulmer:

On October 27, 2008, the Advisory Council on Historic Preservation (ACHP) received your notification and supporting documentation regarding the adverse effects of the referenced undertaking on a property or properties listed or eligible for listing in the National Register of Historic Places. Based upon the information you provided, we have concluded that Appendix A, *Criteria for Council Involvement in Reviewing Individual Section 106 Cases*, of our regulations, "Protection of Historic Properties" (36 CFR Part 800), does not apply to this undertaking. Accordingly, we do not believe that our participation in the consultation to resolve adverse effects is needed. However, if we receive a request for participation from the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer, affected Indian tribe, a consulting party, or other party, we may reconsider this decision. Additionally, should circumstances change, and you determine that our participation is needed to conclude the consultation process, please notify us.

Pursuant to 36 CFR §800.6(b)(1)(iv), you will need to file the final Memorandum of Agreement (MOA), developed in consultation with the Delaware State Historic Preservation Office (SHPO) and any other consulting parties, and related documentation with the ACHP at the conclusion of the consultation process. The filing of the MOA and supporting documentation with the ACHP is required in order to complete the requirements of Section 106 of the National Historic Preservation Act.

Thank you for providing us with your notification of adverse effect. If you have any questions or require our further assistance, please contact Kelly Fanizzo at 202 606-8583 or via e-mail at kfanizzo@achp.gov.

Sincerely,

LaShavio Johnson

LaShavio Johnson
Historic Preservation Technician
Federal Permitting, Licensing and Assistance Section
Office of Federal Agency Programs

ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 803 • Washington, DC 20004
Phone:202-606-8503 • Fax: 202-606-8647 • achp@achp.gov • www.achp.gov

Delaware Department of Transportation
Carolann Wicks, P.E.
Secretary

SR 1, Little Heaven Grade Separated Intersection Project

30-Day Comment Period for Environmental Assessment and Draft Section 4(f) Evaluation

Kent County, Delaware

The Delaware Department of Transportation (DelDOT) and the Federal Highway Administration (FHWA) are undertaking a project that involves the proposed construction of a SR 1 grade separated intersection at Little Heaven in Kent County, Delaware. The purpose of the project is to improve traffic operations, safety and roadway conditions within the project area.

The project area extends 2.73 miles along SR 1 from south of Barratts Chapel Road (K371) to north of Mulberrie Point Road (K373). The project includes the construction of new SR 1 northbound lanes and a service road east of SR 1 from Barratts Chapel Road to Mulberrie Point Road in Little Heaven. The existing SR 1 northbound lanes will be converted to SR 1 southbound lanes, and the existing SR 1 southbound lanes will be converted to a service road. Both directions of SR 1 will be elevated at the intersection at Bowers Beach Road (K18) by the construction of a grade separation, which will provide access to and from the service roads on either side of SR 1.

DelDOT and the FHWA, in accordance with the Federal requirements of 23 CFR 771.119 and 23 CFR 774, are hereby notifying the public of the availability of the Environmental Assessment and Draft Section 4(f) Evaluation. Copies of the document are available at the DelDOT Administrative Building at 800 Bay Road, Dover, Delaware. Interested parties may also obtain a copy of the document by contacting DelDOT Public Relations at 302-760-2080.

All interested parties are invited to comment upon the project. Comments must be submitted in writing within 30 days of the publication of this notice or by May 21, 2010. Written comments may be sent to the following address:

Office of Public Relations
Delaware Department of Transportation
P.O Box 778
Dover, Delaware 19904

PUBLIC NOTICE

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

CAROLANN WICKS, P.E.
SECRETARY

April 5, 2010

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 Environmental Assessment for the SR 1, Little Heaven Grade Separated Intersection Project in Kent County. The DelDOT Contract Number is 24-122-02 and the Federal Highway Administration Contract Number is NH-K008(6). The purpose of the project is to improve traffic operations, safety and roadway conditions within the project area.

The project area extends 2.73 miles along SR 1 from south of Barratts Chapel Road (K371) to north of Mulberrie Point Road (K373). The project includes the construction of new SR 1 northbound lanes and a service road east of SR 1 from Barratts Chapel Road to Mulberrie Point Road in Little Heaven. The existing SR 1 northbound lanes will be converted to SR 1 southbound lanes, and the existing SR 1 southbound lanes will be converted to a service road. Both directions of SR 1 will be elevated at the intersection at Bowers Beach Road (K18) by the construction of a grade separation, which will provide access to and from the service roads on either side of SR 1.

Please provide any comments you may have within thirty (30) days of receiving the 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
Natalie Barnhart, Chief Engineer, DelDOT
Michael Simmons, Assistant Director, South Project Development, DelDOT
Thad McIlvaine, Project Manager, South Project Development, DelDOT
Michael Hahn, Environmental Studies

File

DelDOT

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

CAROLANN WICKS, P.E.
SECRETARY

April 5, 2010

Bob Zepp
U.S. Fish & Wildlife Service
177 Admiral Cochrane Drive
Annapolis, MD 21401

Dear Mr. Zepp:

The Delaware Department of Transportation is pleased to submit the Environmental Assessment for the SR 1, Little Heaven Grade Separated Intersection Project in Kent County. The DelDOT Contract Number is 24-122-02 and the Federal Highway Administration Contract Number is NH-K008(6). The purpose of the project is to improve traffic operations, safety and roadway conditions within the project area.

The project area extends 2.73 miles along SR 1 from south of Barratts Chapel Road (K371) to north of Mulberrie Point Road (K373). The project includes the construction of new SR 1 northbound lanes and a service road east of SR 1 from Barratts Chapel Road to Mulberrie Point Road in Little Heaven. The existing SR 1 northbound lanes will be converted to SR 1 southbound lanes, and the existing SR 1 southbound lanes will be converted to a service road. Both directions of SR 1 will be elevated at the intersection at Bowers Beach Road (K18) by the construction of a grade separation, which will provide access to and from the service roads on either side of SR 1.

Please provide any comments you may have within thirty (30) days of receiving the 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
Natalie Barnhart, Chief Engineer, DelDOT
Michael Simmons, Assistant Director, South Project Development, DelDOT
Thad McIlvaine, Project Manager, South Project Development, DelDOT
Michael Hahn, Environmental Studies

DelDOT

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

April 5, 2010

CAROLANN WICKS, P.E.
SECRETARY

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 Environmental Assessment for the SR 1, Little Heaven Grade Separated Intersection Project in Kent County. The DelDOT Contract Number is 24-122-02 and the Federal Highway Administration Contract Number is NH-K008(6). The purpose of the project is to improve traffic operations, safety and roadway conditions within the project area.

The project area extends 2.73 miles along SR 1 from south of Barratts Chapel Road (K371) to north of Mulberrie Point Road (K373). The project includes the construction of new SR 1 northbound lanes and a service road east of SR 1 from Barratts Chapel Road to Mulberrie Point Road in Little Heaven. The existing SR 1 northbound lanes will be converted to SR 1 southbound lanes, and the existing SR 1 southbound lanes will be converted to a service road. Both directions of SR 1 will be elevated at the intersection at Bowers Beach Road (K18) by the construction of a grade separation, which will provide access to and from the service roads on either side of SR 1.

Please provide any comments you may have within thirty (30) days of receiving the 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
Natalie Barnhart, Chief Engineer, DelDOT
Michael Simmons, Assistant Director, South Project Development, DelDOT
Thad McIlvaine, Project Manager, South Project Development, DelDOT
Michael Hahn, Environmental Studies

DelDOT

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

CAROLANN WICKS, P.E.
SECRETARY

April 5, 2010

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 Environmental Assessment for the SR 1, Little Heaven Grade Separated Intersection Project in Kent County. The DelDOT Contract Number is 24-122-02 and the Federal Highway Administration Contract Number is NH-K008(6). The purpose of the project is to improve traffic operations, safety and roadway conditions within the project area.

The project area extends 2.73 miles along SR 1 from south of Barratts Chapel Road (K371) to north of Mulberrie Point Road (K373). The project includes the construction of new SR 1 northbound lanes and a service road east of SR 1 from Barratts Chapel Road to Mulberrie Point Road in Little Heaven. The existing SR 1 northbound lanes will be converted to SR 1 southbound lanes, and the existing SR 1 southbound lanes will be converted to a service road. Both directions of SR 1 will be elevated at the intersection at Bowers Beach Road (K18) by the construction of a grade separation, which will provide access to and from the service roads on either side of SR 1.

Please provide any comments you may have within thirty (30) days of receiving the 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
Natalie Barnhart, Chief Engineer, DelDOT
Michael Simmons, Assistant Director, South Project Development, DelDOT
Thad McIlvaine, Project Manager, South Project Development, DelDOT
Michael Hahn, Environmental Studies

DelDOT

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

CAROLANN WICKS, P.E.
SECRETARY

April 19, 2010

Mr. Willie Taylor
Director Office of Environmental Policy and Compliance
U.S. Department of the Interior
1849 C Street, NW MS 2462
Washington, DC 20240

Dear Mr. Taylor:

The Delaware Department of Transportation is pleased to submit the Environmental Assessment/Draft Section 4(f) Evaluation for the SR 1, Little Heaven Grade Separated Intersection Project in Kent County (one hard copy and eight CD's enclosed). The DelDOT Contract Number is 24-122-02 and the Federal Highway Administration (FHWA) Contract Number is NH-K008(6), the FHWA contact is Nick Blendy, 302.734.2966, nick.blendy@dot.gov. The purpose of the project is to improve traffic operations, safety and roadway conditions within the project area.

The project area extends 2.73 miles along SR 1 from south of Barratts Chapel Road (K371) to north of Mulberrie Point Road (K373). The project includes the construction of new SR 1 northbound lanes and a service road east of SR 1 from Barratts Chapel Road to Mulberrie Point Road in Little Heaven. The existing SR 1 northbound lanes will be converted to SR 1 southbound lanes, and the existing SR 1 southbound lanes will be converted to a service road. Both directions of SR 1 will be elevated at the intersection at Bowers Beach Road (K18) by the construction of a grade separation, which will provide access to and from the service roads on either side of SR 1.

Please provide any comments you may have within forty-five (45) days of receiving the Environmental Assessment/Draft Section 4(f) Evaluation. Should you have any questions please feel free to contact me at 302.760.2095 or terry.fulmer@state.de.us.

Sincerely,

Therese M. Fulmer
Manager, Environmental Studies

TF:tfb
Enclosure
cc: Hassan Raza, FHWA
Natalie Barnhart, Chief Engineer, DelDOT
Michael Simmons, Assistant Director, South Project Development, DelDOT
Thad McIlvaine, Project Manager, South Project Development, DelDOT
Nick Blendy, FHWA
Dan Montage, FHWA
Michael Hahn, Environmental Studies
File

DelDOT

State of Delaware
Historical and Cultural Affairs

21 The Green
Dover, DE 19901-3611

Phone: (302) 736.7400 Fax: (302) 739.5660

June 3, 2010

Ms. Therese M. Fulmer, Manager
Environmental Studies
Delaware Department of Transportation
800 Bay Road, P.O. Box 778
Dover, DE 19904

RE: SR 1/Little Heaven Grade Separated Intersection Project (Clapham Road to Barratt's Chapel Road), Kent County, DE; State Contract No. 24-122-02; Federal Aid Project No. NH-K008(6); Memorandum of Agreement

Dear Ms. Fulmer:

This office had reviewed the final, revised Memorandum of Agreement (MOA), as received on May 27, 2010, for the SR 1/Little Heaven project, and agrees with the terms stated therein. It is understood that several minor typographical errors in the document will be corrected.

The State Historic Preservation Officer has signed the MOA, and per your request, is returning the document to DelDOT (enclosed). After the Federal Highway Administration (FHWA) has signed the MOA, please provide us with a copy of the executed agreement. Copies should also be sent to the Advisory Council on Historic Preservation and the Delaware Nation.

The DE SHPO looks forward to working with you to implement the terms of the MOA. Should you have any questions at this time, please do not hesitate to contact us. Thank you.

Sincerely,

Gwenyth A. Davis
Archaeologist

Enclosure
cc: Nicholas Blendy, Environmental Specialist, Federal Highway Administration
Stephen Marz, Deputy Director and Deputy SHPO, Division of Historical & Cultural Affairs

SAVING DELAWARE HISTORY

U.S. Department of Transportation
Federal Highway Administration

DELMAR Division – Delaware

300 South New St., Suite 2101
Dover, Delaware 19904

June 9, 2010

President Kerry Holton
The Delaware Nation
31064 State Highway 281
Anadarko, OK 73005

Dear Mr. Holton,

The Federal Highway Administration (FHWA) is providing the Delaware Nation a copy of the executed Memorandum of Agreement (MOA) for the federally funded project: **Little Heaven Grade Separated Project, Kent County, State Contract No. 24-122-02, Federal Aid Number NH-K008(6).** The draft MOA was appended to the April 2010 Environmental Assessment (EA)/Draft Section 4(f) Evaluation mailed to the Delaware Nation on April 21, 2010. The only public or agency comments received on the EA/Draft Section 4(f) Evaluation is the attached June 9, 2010 letter from the US Department of Interior recommending that a copy of the signed MOA be included in the final documentation for the Little Heaven EA/Section 4(f) Evaluation project. This will occur. Please advise if the Delaware Nation requests a copy of the final report for files.

Thank you again for the assistance the Delaware Nation has provided for the State of Delaware. If you have any questions or would like to further discuss, please contact me at (302) 734-2966 or by email at nick.blendy@dot.gov.

Sincerely,

Nick Blendy

Nick Blendy
Environmental Specialist

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

CAROLANN WICKS, P.E.
SECRETARY

June 10, 2010

Mr. Reid Nelson
Advisory Council on Historic Preservation
The Old Post Office Building
1100 Pennsylvania Avenue, NW, #809
Washington, D.C. 20004

Dear Mr. Nelson:

The Delaware Department of Transportation is pleased to submit the signed Memorandum of Agreement for the SR 1, Little Heaven Grade Separated Intersection Project in Kent County, DE. The DelDOT Contract Number is 24-122-02 and the Federal Highway Administration (FHWA Contract Number is NH-K008(6). The FHWA contact is Nick Blendy, 302-734-2966, nick.blendy@dot.gov. The purpose of the project is to improve traffic operations, safety and roadway conditions within the project area.

Pursuant to 36 CFR §800.6(b)(1)(iv), we are filing the final Memorandum of Agreement (MOA), developed in consultation with the Delaware State Historic Preservation Office (SHPO) and the Federal Highway Administration (FHWA), with the Advisory Council on Historic Preservation (ACHP) at the conclusion of the consultation process. The filing of the MOA and supporting documentation with the ACHP is required in order to complete the requirements of Section 106 of the National Historic Preservation Act.

Should you have any questions please feel free to contact me at 302-760-2095 or terry.fulmer@state.de.us.

Sincerely,

Therese M. Fulmer
Manager, Environmental Studies

(Attachments)
cc: Hassan Raza, FHWA

DelDOT

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

TAKE PRIDE IN AMERICA

JUN 9 2010

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PEP/NRM

ER 10/373

Ms. Therese M. Fulmer
Manager, Environmental Studies
Delaware Department of Transportation
800 Bay Road
Post Office Box 778
Dover, Delaware 19903

Dear Ms. Fulmer:

This is in response to a request for the Department of the Interior's (Department) review and comment on the Draft Environmental Assessment and Section 4(f) Evaluation for **SR-1, Little Heaven Grade Separated Intersection in Kent County, Delaware**. We offer the following comments on this project for your consideration.

Section 4(f) Comments

The Department concurs that there is no prudent and feasible alternative to the proposed use of Section 4(f) land, which consists of Barratt's Chapel and Cemetery, Thomas James House and the Mt. Olive Colored School/Mt. Olive School. The measures to minimize harm to historic resources listed on the National Register of Historic Places or determined eligible for listing, must, however, be explicitly consistent with the Memorandum of Agreement developed in consultation with the Delaware State Historic Preservation Office (SHPO) and concurred with by the Advisory Council on Historic Preservation. We recommend that a signed copy of the agreement documenting compliance with Section 106 of the National Historic Preservation Act be included in the final documentation to reflect the procedures for protecting cultural resources determined in consultation with the SHPO.

We appreciate the opportunity to provide these comments.

Sincerely,

Willie R. Taylor
Director, Office of Environmental
Policy and Compliance

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

CAROLANN WICKS, P.E.
SECRETARY

June 17, 2010

Hassan Raza, Division Administrator
Federal Highway Administration, Delmar Division
J. Allen Frear Federal Building
300 S. New Street, Room 2101
Dover, DE 19904-6726

Dear Mr. Raza:

The Delaware Department of Transportation (DelDOT) is requesting a Finding of No Significant Impact (FONSI) for the **SR 1/Little Heaven Grade Separated Intersection Project (Clapham Road to Barratt's Chapel Road), Kent County, Delaware State Contract No. 24-122-02, Federal Aid Project No. NH-K008(6).**

Public notice of the availability of the Environmental Assessment (EA) and Draft Section 4(f) Evaluation dated April 2010 was posted in the News Journal and the Delaware State News on April 20, 2010 providing a 30-day comment period. The 30-day period expired on May 21, 2010. No comments were received from the public notice.

On April 1, 2010, copies of the Environmental Assessment and Draft Section 4(f) Evaluation were forwarded to the Delaware Division of Natural Resources and Environmental Control (DNREC), Wetlands and Subaqueous Lands Section and Coastal Zone Management Office, the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service for a 30-day review period. No comments were received.

On April 19, 2010, copies of the Environmental Assessment and Draft Section 4(f) Evaluation were forwarded to the U.S. Department of Interior (DOI), Office of Environmental Policy and Compliance for a 45-day review period per 23 CFR 774 requirements. DOI responded suggesting we include a signed copy of the Memorandum of Agreement (MOA) developed with the Delaware State Historic Preservation Office (DE SHPO) and Federal Highway Administration (FHWA) in the final Environmental Assessment. The DOI letter dated June 9, 2010 and the signed MOA have been incorporated in the enclosed EA dated June 2010. Chapter V. Agency and Public Coordination has been updated to include the above information.

Based on the above, we request your concurrence in a FONSI determination for the SR 1/Little Heaven Grade Separated Intersection Project and approval of the Section 4(f) Evaluation.

Following your approval, we will notify the State Clearinghouse of the availability of the FONSI, issue a public notice on the FONSI determination, (draft notice attached for your review), as well as any other notifications you feel are appropriate.

As always, thank you for your continued cooperation.

Sincerely,

Natalie Barnhart

Natalie Barnhart
Director

TF:tfb
Enclosures
cc: Robert McCleary, Assistant Director, Engineering Support, DelDOT
Michael Simmons, Assistant Director, South Project Development, DelDOT
Basharat Siddiqi, FHWA
Dan Montag, FHWA
Nick Blendy, FHWA
Thad MacIlvaine, Project Manager, South Project Development, DelDOT
Therese Fulmer, Manager, Environmental Studies, DelDOT
Mike Hahn, Environmental Studies, DelDOT
File

Delaware Department of Transportation
Carolann Wicks, P.E.
Secretary

SR 1, Little Heaven Grade Separated Intersection Project

Approval of Location and Finding of No Significant ilmpact

Kent County, Delaware

The Delaware Department of Transportation (DelDOT) and the Federal Highway Administration (FHWA) are undertaking a project that involves the construction of a grade separated intersection at SR 1 and Little Heaven in Kent County, Delaware. The purpose of the project is to improve traffic operations, safety and roadway conditions within the project area.

The project area extends 2.73 miles along SR 1 from south of Barratts Chapel Road (K371) to north of Mulberrie Point Road (K373). The project includes the construction of new SR 1 northbound lanes and a service road east of SR 1 from Barratts Chapel Road to Mulberrie Point Road in Little Heaven. The existing SR 1 northbound lanes will be converted to SR 1 southbound lanes, and the existing SR 1 southbound lanes will be converted to a service road. Both directions of SR 1 will be elevated at the intersection at Bowers Beach Road (K18) by the construction of a grade separation, which will provide access to and from the service roads on either side of SR 1.

DelDOT and the FHWA, in accordance with the Federal requirements of the 23 CFR 771.121(b) , are hereby notifying the public of the issuance of a Finding of No Significant Impact (FONSI) for the project. The FONSI has been prepared in accordance with the National Environmental Policy Act to document and support FHWA's determination that the Selected Alternate would not have a significant effect on the human and natural environment. Copies of the FONSI documentsation are available at the DelDOT Administrative Building at 800 Bay Road, Dover, DE. Interested parties may also obtain a copy of the document by contacting DelDOT Public Relations at 1-800-652-5600 (in DE) or 302-760-2080. (in DE).

Office of Public Relations
Delaware Department of Transportation
P.O Box 778
Dover, Delaware 19903

PUBLIC NOTICE