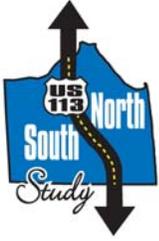




## APPENDIX B: LOGICAL TERMINI



## US 113 North/South Study Addendum to *Defining Logical Termini*

July 21, 2008

**DRAFT**

Logical termini for two sections of the US 113 North/South Study in Sussex County, Delaware were identified in the June 2004 report *Defining Logical Termini: US 113*, prepared by the Delaware Department of Transportation (DelDOT) in association with the Federal Highway Administration (FHWA). The purpose of that document was to provide State and Federal environmental agencies with information needed to determine the appropriateness of section limits for environmental reviews. The June 2004 logical termini, amended in December 2004 and determined in accordance with FHWA's guidance on *The Development of Logical Project Termini* (1993), are shown in Figures 1 and 2.

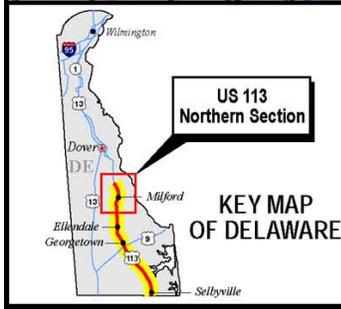
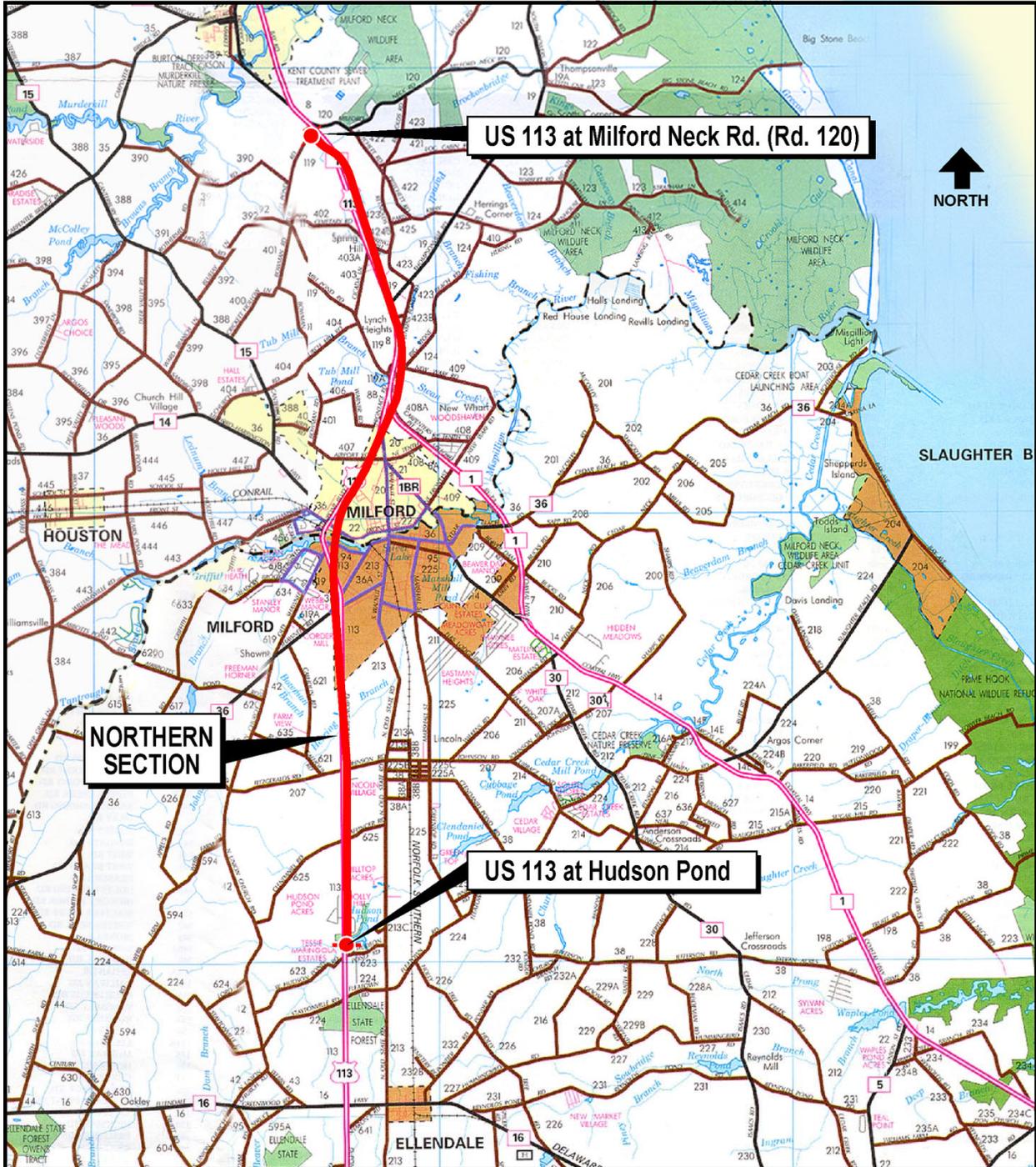
Since *Defining Logical Termini* was prepared in 2004, DelDOT has conducted extensive project development activities in conjunction with the environmental resource agencies, local working groups, elected officials, and the public. During those activities, DelDOT determined that it may be appropriate to divide the Southern (Georgetown-South Study Area) Section into two parts, each with independent utility. The Northern (Milford Study Area) Section remains unchanged.

To best capture stakeholder sentiment regarding the US 113 North/South Study in the Georgetown-South Area, DelDOT convened two working groups: one for the Georgetown area and one for the Millsboro-South area, which includes the Towns of Millsboro, Dagsboro, Frankford, and Selbyville. Through a three-year process involving the resource agencies, the public, and those working groups, recommendations were made regarding potential preferred alternatives.

- DelDOT's Recommended Preferred Alternative for the Georgetown Area is the Refined On-Alignment Alternative. This alternative is characterized by widening US 113 to three lanes in each direction along its existing alignment from Deer Forest Road north of Georgetown to south of Governor Stockley Road. Left turns and cross traffic would not be permitted. Access to properties along US 113 and to cross streets would be provided by right turns onto and off of US 113 in conjunction with grade separations at key intersections.
- Because environmental studies are not yet complete, DelDOT has not yet recommended a Preferred Alternative for the Millsboro-South area. However, the Millsboro-South Working Group overwhelmingly recommended the Blue Alternative, an eastern bypass of Millsboro, Dagsboro, and Frankford. Regardless of which alignment is ultimately recommended by the Department, all of the Millsboro-South alternatives diverge from the existing alignment of US 113 south of Governor Stockley Road. Thus, a point south of Governor Stockley Road serves as a rational division point between the Georgetown and Millsboro-South project areas, because the full range of alternatives for each section does not extend beyond that point.

Figure 3 illustrates the division of the Georgetown-South area into separate project areas termed Georgetown and Millsboro-South. Specifically, both the Georgetown and Millsboro-South project areas:

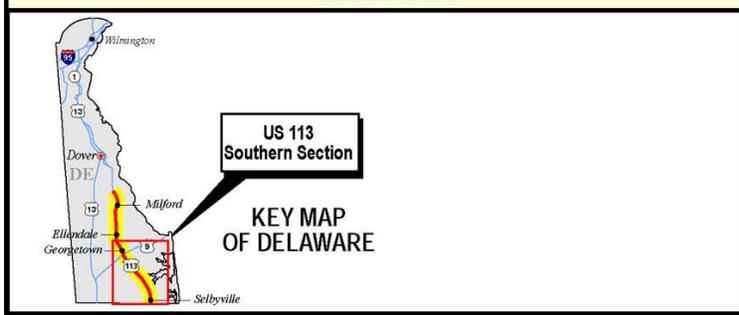
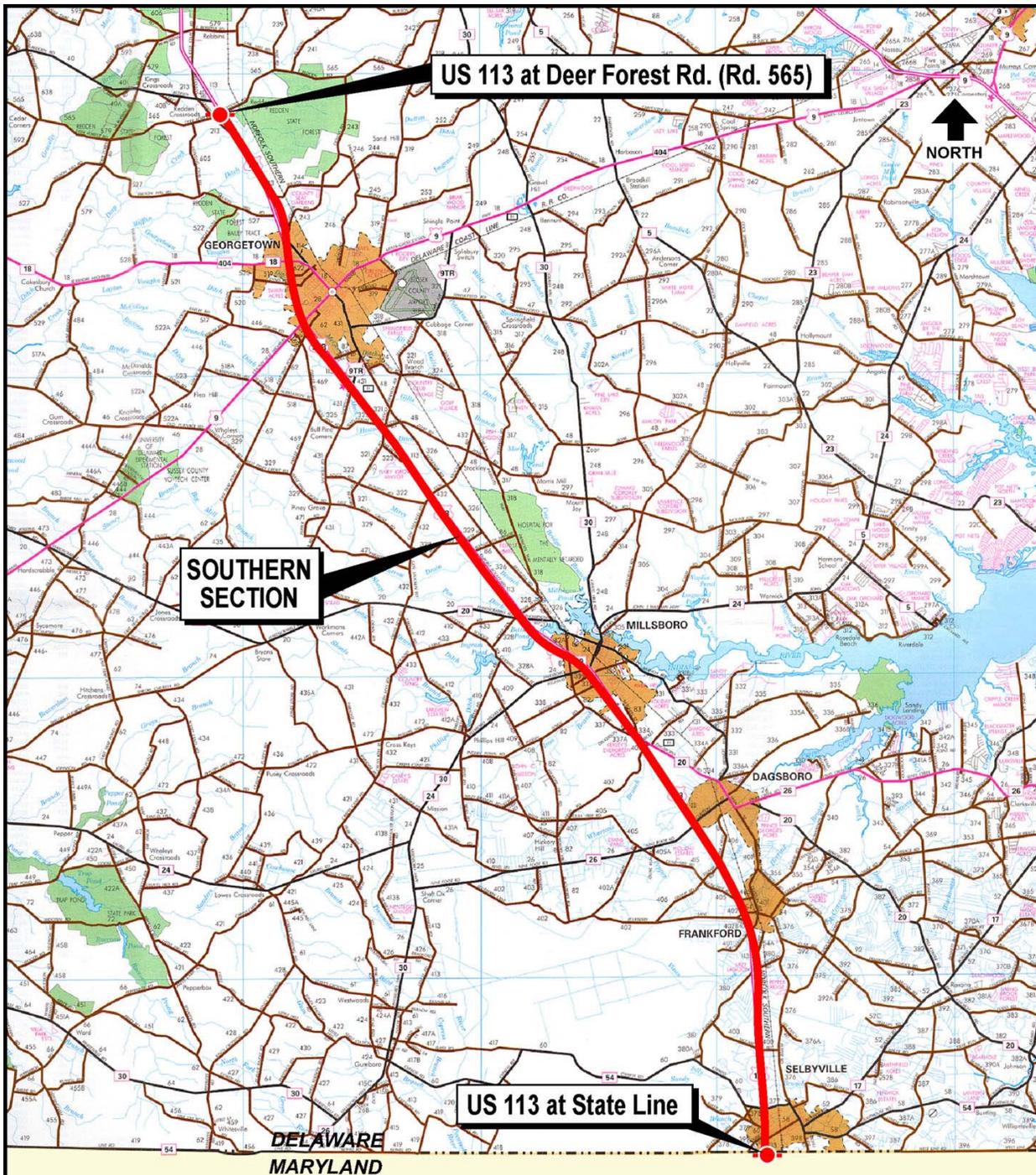
- **Connect logical termini and are of sufficient length to address environmental matters on a broad scope.** Now that a full range of alternatives has been developed in each area, it is confirmed that these logical termini allow for consideration of all potential environmental impacts associated with the study of those alternatives. There remain opportunities to adjust alternatives in each area to avoid or minimize impacts to natural and cultural resources without impacting alternatives in the other area.
- **Demonstrate independent utility.** Each of the two sections has independent utility. Each addresses specific elements of need within the two study areas and can be considered a reasonable expenditure of funds, even if no additional transportation improvements are made.
- **Allow for consideration of alternatives for foreseeable future transportation improvements.** A full range of alternatives has been developed within these logical termini with input from the environmental resource agencies, local working groups, and the public. Based on the project development process to date, it is not anticipated that additional alternatives extending beyond these logical termini will be developed.



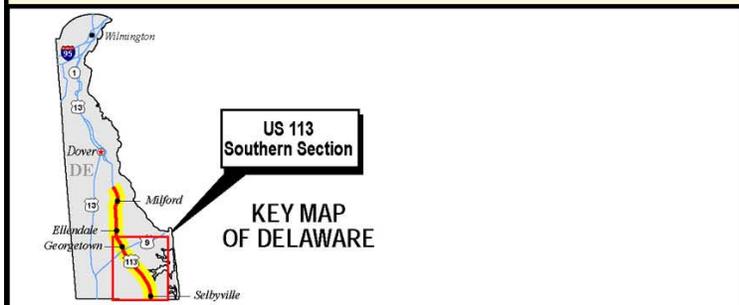
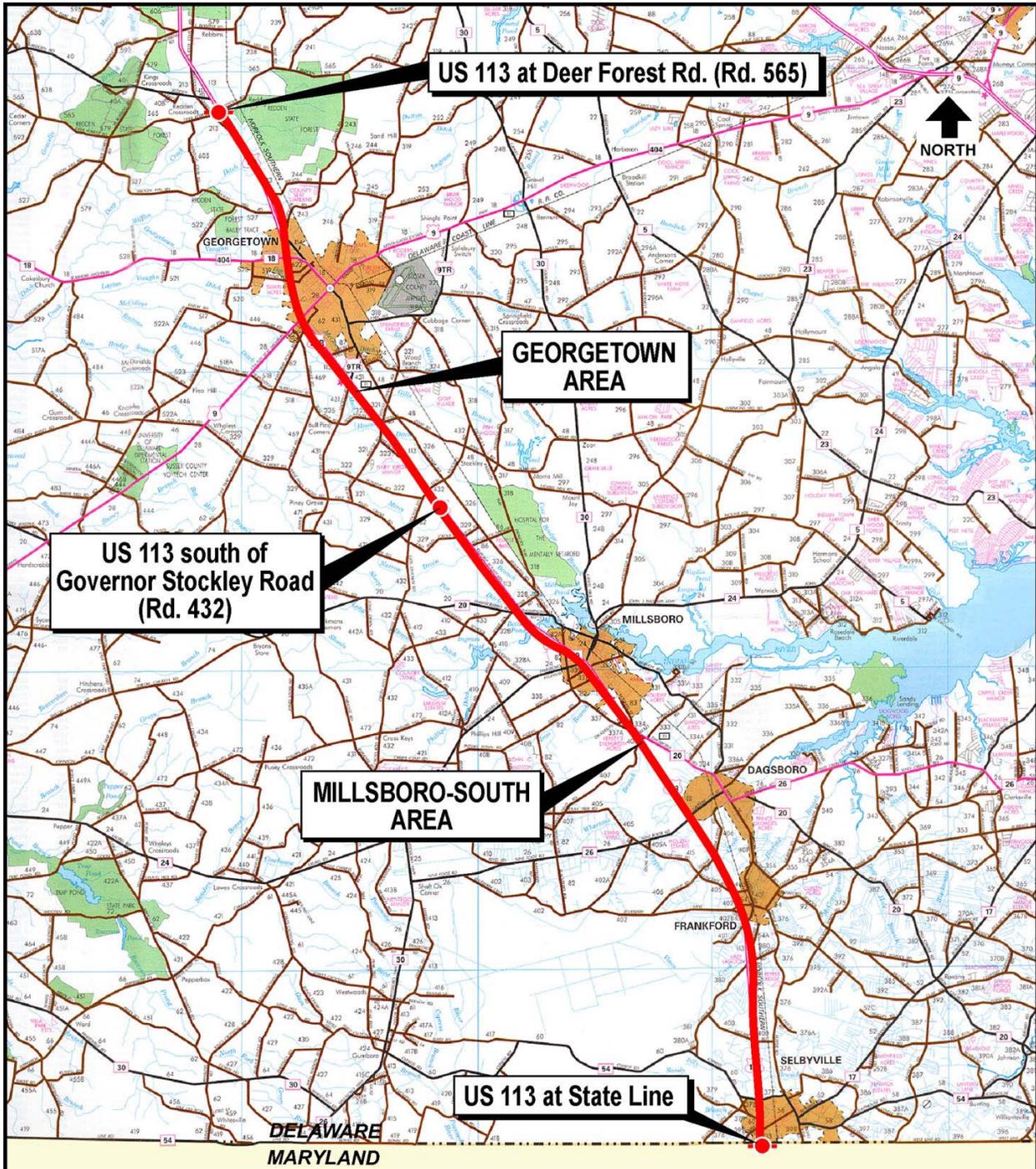
**US 113 North/South Study**  
SR 1 South to State Line

**US 113 Northern Section**  
(Milford Study Area)

Date	Scale in Miles	Figure
July 2008	0 1	1



<b>US 113 Southern Section (Georgetown-South Study Area) FORMER LIMITS</b>		
Date <b>July 2008</b>	Scale in Miles 	Figure <b>2</b>



 **US 113 North/South Study**  
SR 1 South to State Line

**US 113 Southern Section**  
**(Georgetown-South Study Area)**  
**NEW LIMITS**

Date	Scale in Miles	Figure
July 2008	0 1 2	3



## APPENDIX C: DRAFT SECTION 106 MEMORANDUM OF AGREEMENT

**MEMORANDUM OF AGREEMENT (MOA)**

**AMONG THE FEDERAL HIGHWAY ADMINISTRATION, THE DELAWARE STATE HISTORIC PRESERVATION OFFICE, AND THE DELAWARE DEPARTMENT OF TRANSPORTATION**

**REGARDING IMPLEMENTATION OF THE US 113 NORTH/SOUTH STUDY – MILLSBORO-SOUTH AREA PROJECT  
SUSSEX COUNTY, DELAWARE**

**STATE CONTRACT NUMBER: T200212701  
FEDERAL AID NUMBER: TBD**

WHEREAS, the Federal Highway Administration (FHWA) with the Delaware Department of Transportation (DelDOT) propose to construct approximately 14.3 miles of transportation improvements including, but not limited to, bridge overpasses, new corridor alignment, and grade separated interchanges along U.S. 113 in the Millsboro-South Area of Sussex County, Delaware, hereon referred to as the “Project”, (see **Attachment A**) and

WHEREAS, the FHWA in consultation with the Delaware State Historic Preservation Office (DE SHPO) and DelDOT has established the undertaking’s Area of Potential Effect (APE), as defined in 36 CFR 800.16(d), as those areas within the Limit of Construction (LOC), Temporary Construction Easements (TCE), Permanent Easements (PE), Right of Way (ROW), and adjacent or contiguous properties where visual effects may occur; and

WHEREAS, the FHWA has consulted with the DE SHPO in accordance with Section 106 of the National Historic Preservation Act, 16 U.S.C. Part 470, and its implementing regulations (36 CFR Part 800) to resolve any adverse effects that may occur as a result of this Project; and

WHEREAS, FHWA has elected to phase the identification and evaluation of historic properties as provided in 36 CFR 800.4(b)(2), but will ensure that DelDOT completes the process in a timely manner, to allow practical opportunities to avoid or minimize adverse affects to historic properties, as stipulated under this MOA; and

WHEREAS, the APE has been identified within the Project (see **Attachment A**) and FHWA and DelDOT have identified and evaluated buildings, structures and districts built in or before 1962; and

WHEREAS, FHWA acknowledges that in the extensive period it will take for DelDOT to complete the Project, additional buildings, structures or districts in the APE will come to meet the minimum fifty (50) year age criterion for historic properties, and FHWA shall address such properties through the process stipulated in this MOA; and

WHEREAS, FHWA pursuant to 36 CFR Part 800.4 (a)(2), has determined that within the APE, the following properties are listed in or are eligible for the National Register of Historic Places:

Holliway-Carey House (S02114);  
Joshua B. Murray House (S11770);  
Long-Mumford House (S10243);  
McCabe Farm (S01909);  
Pomeroy's (S10217);  
Selbyville Historic District (S09825), including English Cottage (S10181), St. Martin in the  
Fields (S11495), Selbyville Railroad Station (S12161);  
Selbyville School (S09137);  
Transpeninsular Monument 10 (D-101);  
Antioch AME Church & Camp Meeting (S08158/ S10759);  
Frankford Historic District (S08160), including Cannon and Messick Feed Store (S10659);  
Indian River High School (S09136);  
Landes Family Poultry Plant (S10655);  
Dagsboro South Historic District (S04910);  
Gray Farm (S04692);  
Prince George's Chapel (S00176);  
Charles B. Houston House (S10873);  
Godwin School (S04595);  
Hudson General Store (S10972);  
Millsboro Chicken Hatchery (S10799);  
Perry Shockley House (S05740);  
R. W. Tilney House (S04673);  
Stockley Center (S09126);  
Walter McKinley Betts House (S10611);  
Warren's Mill Historic District (S09147);  
Hickory Hill (7S-J-005);  
Indian River Archaeological Complex (S02108 / 7S-F-011, 7S-F-012, and 7S-F-013), and

WHEREAS, FHWA, in consultation with the DE SHPO, has applied the criteria of adverse effect to known historic properties; and

WHEREAS, FHWA, through DelDOT, has determined that the Project Preferred Alternative as proposed in the 2013 Draft Environmental Impact Statement (DEIS) will have no effect on:

Holliway-Carey House (S02114);  
Joshua B. Murray House (S11770);  
McCabe Farm (S01909);  
Selbyville School (S09137);  
Transpeninsular Monument 10 (D-101);  
Antioch AME Church & Camp Meeting (S08158 / S10759);  
Frankford Historic District (S08160), including Cannon and Messick Feed Store (S10659);  
Indian River High School (S09136);  
Landes Family Poultry Plant (S10655);  
Prince George's Chapel (S00176);  
Charles B. Houston House (S10873);

Godwin School (S04595);  
Hudson General Store (S10972);  
Millsboro Chicken Hatchery (S10799);  
Perry Shockley House (S05740);  
R. W. Tilney House (S04673);  
Stockley Center (S09126);  
Walter McKinley Betts House (S10611);  
Hickory Hill (7S-J-005); and

WHEREAS, FHWA, through DelDOT, has determined that this Project under the DEIS Preferred Alternative will have no adverse effect on:

Long-Mumford House (S10243);  
Gray Farm (S04692);  
Warren's Mill Historic District (S09147); and

WHEREAS, FHWA, through DelDOT has determined that this Project under the DEIS Preferred Alternative will have an adverse effect on:

Pomeroy's (S10217);  
Selbyville Historic District (S09825), including English Cottage (S10181), St. Martin in the Fields (S11495), Selbyville Railroad Station (S12161);  
Dagsboro South Historic District (S04910);  
Indian River Archaeological Complex (7S-F-011, 7S-F-012, and 7S-F-013), and

WHEREAS, FHWA has determined that the Project may also affect as yet unidentified historic properties in areas that have not been subject to prior cultural resource investigations, such as areas that are associated with proposed alignment modifications or other Project-related ancillary activities including, but not limited to, stormwater management facilities, wetland mitigation sites, reforestation areas, staging, stockpiling and access areas, and disposal sites, and that the APE may need to be revised to consider such areas; and

WHEREAS, FHWA and DelDOT have notified the Advisory Council on Historic Preservation (ACHP) and the DE SHPO of their intent to use the NEPA process for Section 106 purposes (36 CFR Part 800.8(c)), and provided the DEIS for review. The ACHP initially declined to participate in the consultation per letter dated July 20, 2010. However, if through the process outlined in this MOA, the signatories find that other historic properties may be adversely affected later in time, coordination with the ACHP may resume; and

WHEREAS, FHWA has contacted the Delaware Nation and The Delaware Tribe of Indians, hereafter referred to as the Federally Recognized Indian Tribes, to determine their interest in being a consulting party for this project. The Delaware Tribe of Indians has indicated their intent to participate as a consulting party to the MOA. DelDOT on behalf of FHWA will advise these Federally Recognized Indian Tribes of Native American archaeological sites, investigations, and treatments as a consulting party as provided for under the stipulations of this MOA, and

WHEREAS, FHWA has afforded the public an opportunity to comment on the effects of the Project on historic properties through the National Environmental Policy Act (NEPA) of 1969, as amended; and through DelDOT's Public Involvement Procedures; and

WHEREAS, as part of the above public outreach DelDOT has contacted the Nanticoke Indian Association and Lenape Indian Tribe of Delaware, hereafter referred to as the State Recognized Indian Tribes as potentially interested parties. DelDOT will continue to coordinate throughout this project with the State Recognized Indian Tribes as an interested party for all Native American Archaeological sites that will be adversely impacted by the project.

WHEREAS, DelDOT participated in the consultation, has responsibilities for implementing stipulations under this MOA, and has been invited to be a signatory to this MOA, pursuant to 36 CFR Part 800.6(c)(2); and

NOW, THEREFORE, FHWA, DE SHPO, and DelDOT agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the potential effect of the undertaking on historic properties to mitigate for the potential Adverse Effect.

### **Stipulations**

FHWA shall ensure that the following actions will be carried out:

#### **I. Archaeological Resources**

##### **A. Identification/Evaluation**

Prior to starting construction or other ground disturbing activities, DelDOT in consultation with the DE SHPO shall conduct identification (Phase I) archaeological surveys within the APE for the Preferred Alternative for the project, and will determine if identified sites will require a Phase II level archaeological survey to evaluate their National Register of Historic Places eligibility. This work will also include determining if unknown archaeological sites are located within and potentially impacted by the DEIS Preferred Alternative, and if so, evaluating their National Register eligibility. Evaluation Studies (Phase II) may require additional background research and/or additional field excavations. All surveys shall conform to the requirements of Stipulation VII of this MOA.

DelDOT shall prepare reports on findings of the archaeological identification/evaluation surveys and shall submit the reports to the DE SHPO for their review and concurrence. Upon receipt of the document, the review period will be thirty (30) days. FHWA and DelDOT will take into account comments and will recommend any next steps.

During the Evaluation Studies (Phase II), FHWA and DelDOT shall apply the National Register criteria (36 CFR 60.4) in accordance with 36 CFR 800.4(c), taking into account applicable

historic contexts and management plans developed for Delaware historic and prehistoric archaeological resources.

If FHWA and DelDOT determine that any of the National Register criteria are met, and the DE SHPO agrees the archaeological site(s) shall be considered eligible for the National Register.

If FHWA and DelDOT determine that the National Register criteria are not met, and the DE SHPO agrees, the archaeological site(s) shall be considered not eligible for the National Register.

Based on the Evaluation Studies (Phase II), should a signatory to this agreement not agree on the eligibility determination of an archaeological site(s), the DelDOT or FHWA shall obtain a determination from the Secretary of the Interior, pursuant to 36 CFR 800.4(c)(2), 36 CFR 63.2(c) and 63.3(d).

#### B. Effect Determination / Mitigation

1. For eligible archaeological sites that are potentially impacted based on development of project engineering, DelDOT will make every reasonable effort to avoid these sites or to minimize impacts upon them. If the site cannot be avoided and all reasonable measures to minimize impact have been considered, DelDOT will apply the Criteria of Adverse Effect in accordance with 36 CFR Part 800.5.

2. If listed or eligible Native American archaeological sites are identified and affected within the DEIS Preferred Alternative, FHWA will consult with the Federally Recognized Indian Tribes.

3. For the Indian River Archaeological Complex and for any other sites that are found to be adversely affected by the project, DelDOT in consultation with FHWA and the DE SHPO shall develop a treatment plan. The treatment plan may include elements of data recovery and/or an alternative mitigation plan. The Indian River Archaeological Complex was listed on the National Register of Historic Places in 1978; therefore the treatment plan for this site will take into account new methods and interpretations about Native American Sites due to the time span from when the site was registered until present day.

DelDOT shall submit the treatment plan to the FHWA, DE SHPO, and other interested or consulting parties that may be identified later in time for their review and comment including the Federally Recognized Indian Tribes, for their review and comment. Upon receipt of the document, the review period will be thirty (30) days. Following thirty (30) days, DelDOT will take into account any comments, and will recommend any next steps to the FHWA, DE SHPO and Federally Recognized Indian Tribes.

Should data recovery investigations be warranted, DelDOT and FHWA shall ensure that a data recovery plan is developed in consultation with the DE SHPO, and the Federally Recognized Indian Tribes or other consulting parties or interested parties identified later in time. The plan shall specify, at a minimum:

- the property, properties, or portions of properties where data recovery is to be carried out, and any property that will or may be destroyed without data recovery;
- the research questions to be addressed through data recovery, with an explanation of their relevance and importance;
- the research methods to be used, with an explanation of their relevance to the research questions;
- the methods to be used in analysis, data management, and data dissemination, including a schedule;
- a provision for assessing materials that may be in need of conservation;
- proposed disposition of recovered materials and records;
- proposed methods for involving the interested public in the data recovery, and for disseminating the results of the work to the interested public;
- a proposed schedule for the submission of progress reports to the DE SHPO; and
- provisions to meet on-site in order to evaluate the success of the initial fieldwork phase of any data recovery program, and near the end of the fieldwork efforts to validate substantial completion.

If the agreed-upon treatment plan includes preservation in place of all or part of an eligible site, FHWA, DelDOT and DE SHPO shall determine the need for and negotiate the terms of any legal instruments that would ensure long-term preservation or protection of the site. Any such legal instrument shall include, at a minimum, the following elements:

- a clearly defined list of allowed uses and prohibited uses of the site; and
- an acknowledgement that protection measures are being instituted in order to minimize or mitigate the Project's adverse effects to a National Register listed or eligible property; and
- a prohibition on any party, its successors, heirs or assigns, from terminating, modifying, altering or otherwise setting aside any such legal instrument unless the party, prior to taking such action, first provides the signatories to this MOA with written justification for termination, and consults with the signatories to develop a new treatment plan to address the potential adverse effects pursuant to 36 CFR Part 800.5, regardless of whether the term of this MOA has expired or not.

When and/or if an alternative mitigation strategy is chosen and approved by the DE SHPO, FHWA, and DelDOT, it may include but is not limited to: acquisition and protection of portion(s) of the site, analysis and synthesis of past data accumulated through either DE SHPO, FHWA, or DelDOT projects, updating the relevant DE SHPO and DelDOT archaeological websites and GIS databases, development of historic and prehistoric contexts and preservation priorities, statewide predictive models, development of travel or informational displays with the cultural resource work for this Project, oral histories from the project APE, documentaries about the history of the APE, virtual tour / website about the archaeological sites being mitigated in the APE, and improved archaeological data management and access for both DE SHPO and DelDOT.

DelDOT will complete all necessary data recovery fieldwork prior to commencing construction in the site areas. Alternative mitigation may or may not be completed prior to commencing construction in the site areas.

DelDOT shall provide all draft and final archaeological reports and public information materials to the DE SHPO for review and comment. DelDOT will take into account any comments received. All final reports shall meet the Secretary of the Interior's standards and Guidelines for Archaeological Documentation (48 FR 44734-37), while also satisfying the DE SHPO's guidelines for archaeological surveys or investigations.

DelDOT will also provide copies of relevant draft and final reports and public information materials to the Federally Recognized Indian Tribes for review and comment, and will take into account any comments the Federally Recognized Indian Tribes provide.

#### C. Public Involvement

DelDOT will prepare a public participation plan and public information materials. Before releasing materials to the public, DelDOT shall submit the proposed action plan(s) with any materials to the FHWA, DE SHPO, and other consulting or interested parties that may be identified for their review and comment. Upon receipt of the materials, the review period will be thirty (30) days. Following thirty (30) days, DelDOT will take into account any comments received, and will recommend any next steps, if necessary, to the FHWA, DE SHPO, and other consulting or interested parties that may be identified.

The public participation plan may include, but is not limited to, archaeological site tours for the public and educational groups. The specific public outreach materials produced will be determined individually for each site for which mitigation is necessary and may include, but are not limited to, pamphlets, videos, historical markers, brochures, websites, exhibits, displays for public buildings, booklets on the history or prehistory of the project area, lectures or presentations at academic conferences, and/or public institutions such as schools and historical societies.

DelDOT shall distribute the public information materials to other consulting parties and interested parties, local schools, historical societies, libraries, senior centers, museums and/or other venues and individuals deemed pertinent in consultation with the DE SHPO and FHWA.

#### D. Curation

DelDOT shall ensure that all records and materials resulting from the archaeological investigations will be processed, prepared for, and curated in accordance with 36 CFR Part 79 and the Division of Historical and Cultural Affairs' (DHCA) "Guidelines for the Curation of Archaeological Collections" (2001) or its successor. These records and materials shall be curated at the Division, or its designee, following the policies of the institution, except as may be provided for under the following paragraph.

As part of the Public Involvement efforts outlined in Stipulation I.C. of this Agreement, the FHWA, DelDOT, and DE SHPO will consult to determine if any archaeological materials may be loaned to a public museum or other public institution for the purposes of exhibit or research, following the DHCA loan policy and procedures. Such loans and exhibits may occur only after the curatorial procedures, referenced in the first paragraph in this stipulation, have been completed. As deemed appropriate by FHWA, DelDOT, the DE SHPO, and other consulting or interested parties identified later in time will be consulted concerning curation and any public exhibition of artifacts.

#### E. Discovery of and Treatment of Human Remains and Burials

DelDOT Environmental Studies and/or appropriate DelDOT construction engineering staff shall immediately (within 24 hours) notify the DE SHPO and FHWA of the discovery of any human remains encountered during the archaeological investigations or the project construction. DelDOT shall cease all activities that may disturb or damage the remains, and comply with the Delaware Unmarked Human Remains Act (7DE Code Chapter 54).

If the human remains are of Native American affiliation, then FHWA will immediately notify the Federally Recognized Indian Tribes. FHWA and DelDOT will forward information regarding Native American discoveries to the DE SHPO and the Federally Recognized Indian Tribes for review and comments. This will occur as soon as possible, within a period no longer than two (2) weeks. FHWA will request that the parties comment on the information within two (2) weeks of receipt. FHWA will then consult with the Federally Recognized Indian Tribes, the DE SHPO, and DelDOT to determine an appropriate course of action in accordance with 36 CFR 800, and taking into account the above cited state law.

The DE SHPO will comply with the Native American Graves Protection and Repatriation Act of 1990 (PL 101-601) with regard to disposition of the remains and/or associated funerary objects, as applicable.

#### F. Residual Right of Way

The Project under the DEIS Preferred Alternative will require property acquisition that may or may not involve impacts to archaeological sites. Should existing right of way or lands acquired (for purposes of the Project) be later subdivided and/or declared excess right of way (to be leased, transferred, or sold), preservation covenants for that subject parcel will first be considered by DelDOT, FHWA, and DE SHPO before DelDOT takes any action to divest itself from such lands. The parties will determine if the subject parcel(s) contain, or has the potential to contain, any historic properties. If so, the parties will determine the need for and negotiate the terms of any legal instruments that would ensure long-term preservation of such properties. Any such legal instrument shall include, at a minimum, the elements defined in Stipulation I.B. of this MOA. This will adequately address any reasonably foreseeable adverse effects that could occur due to transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions to ensure long-term preservation (or mitigation) of historic properties (36 CFR part 800.5(a)(2)(vii)).

## II. Historic Buildings

The Project under the DEIS Preferred Alternative will adversely affect historic properties by introducing visual or audible elements that may diminish the integrity of the property, and/or by changing the character of the property's use or of physical features within its setting that contribute to its historic significance. In consultation with the DE SHPO, FHWA and DelDOT have determined that there is no practical way to directly and fully mitigate the adverse effects to the following properties:

Pomeroy's (S10217);  
Selbyville Historic District (S09825), including English Cottage (S10181), St. Martin in the Fields (S11495), Selbyville Railroad Station (S12161);  
Dagsboro South Historic District (S04910).

### A. Pomeroy's (S10217)

DelDOT shall, in consultation with the DE SHPO and the property owner(s), develop conceptual plans for new travel information and/or directional signs along U.S. 113. DelDOT's Chief of Traffic will participate in the consultation. The intent of the roadside signs is to ensure that the typical traveler has sufficient, safe, and advanced knowledge that this property exists and remains open and accessible despite changes or access limitations resulting from the Project.

Conceptual plans will include suggested number, size, location, and content of the signs. If approved by the historic property owner(s), DelDOT shall install the signs in accordance with the agreed upon plans. DelDOT shall place the travel information or directional signs in a location that conform to DelDOT's Manual on Uniform Traffic Control Devices (MUTCD) ([http://deldot.gov/information/pubs\\_forms/manuals/de\\_mutcd/index.shtml](http://deldot.gov/information/pubs_forms/manuals/de_mutcd/index.shtml)), FHWA Policy, and Sussex County code, as applicable.

DelDOT shall install the travel information or directional signs prior to or as part of the Project. Being within state right of way, the travel or directional signs will be permanent fixtures and will remain "in perpetuity" under management of DelDOT's Traffic or Sign Shop Section so long as this historic building, structure, or other fixtures associated with the property remain visible from the U.S. 113 corridor and remain open for public and commercial use. This will alert the vehicular traveler on how access can still be achieved to this facility.

The travel or directional signs for Pomeroy's (S10217) may be combined, updated, or replaced with similar amenities for other roadside businesses or attractions that may be installed during the Project under the DEIS Preferred Alternative or later in time.

DelDOT environmental and design engineering will also consult with the owner of Pomeroy's (S10217) to determine if any access mitigation measures can be practically incorporated into the project without compromising the historic integrity and operations of the property; DelDOT shall notify FHWA and DE SHPO of its findings.

B. Selbyville Historic District (S09825) and Dagsboro South Historic District (S04910)

FHWA and DelDOT shall, in consultation with the DE SHPO, property owners, and town officials, develop and implement mitigation plans for both the Selbyville Historic District (S09825) and the Dagsboro South Historic District (S04910):

The measures defined below may be implemented alone or in combination with other measures. In addition, measures may be included for individual properties that are contributing to the historic district.

DelDOT and FHWA shall, in the course of project design and/or construction, seek ways to avoid, minimize or mitigate the adverse effects to either property, including but not necessarily limited to the following measures:

- refining the current proposed overpasses at Hosier Street and Cemetery Road with modifications and/or design standards at either location, including consideration of design exceptions or minimal design standards in travel, turning, or shoulder widths, as long as safety is not compromised; and,
- within the proposed right of way and/or along stormwater management areas, implement landscaping, fencing and/or other visual barriers within the new or modified roadway connectors;
- limit disposition of excess property acquired by DelDOT under this undertaking and establish permanent open space buffer zones at or near either historic district; this may be used in conjunction with tree mitigation, reforestation, stormwater management, or wetland mitigation;
- similar to Stipulation I. F., enacting land use controls and deed restrictions on state owned property to limit or prohibit the inevitable conversion of property to commercial or industrial improvements with disposition of properties involved near or along town limits of Selbyville or Dagsboro;
- design context sensitive bridges and/or overpasses within the view shed of either town's historic district area; such conceptual designs will be offered to the DE SHPO and the town's Historic District Commission for review and comment;
- incorporating curbs, closed drainage sections, or appropriate barriers to minimize grading or clear zone requirements;
- vibration monitoring as further outlined in Part C of this stipulation;
- access or egress improvements upon properties provided that changes will only serve an existing dwelling and/or garage and is not supporting other improvement that could lead toward re-development or assimilation of a parcel(s);
- installation of storm windows or improved insulation to help muffle noise;
- seek any FHWA grants available for comprehensive planning efforts slated for management of urban growth and preservation of the small town character; such grants can be used for adaptive reuse of buildings based on initial concurrence of FHWA, DelDOT and DE SHPO;
- public outreach materials that focus on the history of either town;

- relocation of a dwelling, re-set on a new foundation further back from the road, or on a new parcel (this option would require further consultation with the DE SHPO concerning the new location for the dwelling and the methods of relocation); and
- with input from town officials or interested parties identified at a later time, appropriate signage to indicate location of the historic district.

### C. Vibration Monitoring

DelDOT, in consultation with the DE SHPO and FHWA, will develop and implement a vibration monitoring plan to monitor the effects (or prevent further adverse effects) of the Project's construction on or adjacent to the properties within the Selbyville Historic District (S09825). Should an agreement be reached to monitor any other historic building as called upon by the DE SHPO, DelDOT will also include those additional properties.

As part of the vibration monitoring stipulation, DelDOT shall acquire the services of a professional engineer or other qualified expert, as appropriate, that is knowledgeable about the effects of construction vibration on historic buildings, to develop this plan. The plan will include a schedule for documenting the baseline conditions of the historic properties that will be monitored.

During construction, if the monitoring indicates that damage is occurring to historic properties subject to the monitoring plan, DelDOT shall instruct its contractor to cease construction in the immediate area. DelDOT shall then, in consultation with the DE SHPO, FHWA, and the property owners, acquire the services of a professional engineer and/or architect that is knowledgeable about the effects of construction vibration on historic buildings, to:

1. determine the nature and extent of the damage caused by the construction; and
2. alter any construction methods that may have caused the damage; and
3. develop and implement methods to stabilize and/or repair the damage, in accordance with the recommended approaches in the *Secretary of the Interior's Standards and Guidelines* or other agreed upon method.

### D. Additional Architectural Studies

During the annual review of this MOA, mandated in Stipulation X, DelDOT shall consult with the DE SHPO and FHWA to determine the need for additional survey for buildings, structures, or districts that have come to meet the minimum fifty (50) year age criterion. If so needed, DelDOT shall identify and evaluate any additional such properties, and assess the effects of the Project thereon, following the process outlined for Archaeological Resources in Stipulations I.A. and I.B. of this MOA. Because of the potential time delays in implementing the project, a reassessment of existing National Register eligible properties affected by the DEIS Preferred Alternative or subsequent modifications of the alternative may also be required.

### **III. Unexpected Discoveries**

In the event that previously unidentified cultural resources are discovered or unanticipated effects to historic properties occur during construction, DeIDOT shall instruct the contractor to cease construction in the immediate area, and immediately notify FHWA. FHWA shall comply with 36 CFR Part 800.13 by consulting with the DE SHPO. If said discovery or unanticipated effects pertain to resources of Native American affiliation, FHWA and DeIDOT shall include the Federally Recognized Indian Tribes in the consultation. The FHWA will notify the DE SHPO and the Federally Recognized Indian Tribes within one (1) working day of the discovery. The FHWA, DeIDOT, and the DE SHPO will meet at the location of the discovery within forty-eight (48) hours of the initial notification to determine appropriate treatment of the discovery prior to resumption of construction activities within the area of discovery. If the affected resource is of Native American affiliation, FHWA shall first consult with the Federally Recognized Indian Tribes before implementing any such treatment option.

### **IV. Disposal of Project Related Materials**

DeIDOT shall review locations proposed for the disposal of materials produced by demolition, construction, excavation, and/or dredging associated with the Project to ensure these activities do not adversely affect historic properties. Disposal sites are to be considered part of the Area of Potential Effect. DeIDOT qualified staff shall document the findings of all disposal site review in the project general file. DeIDOT will consult with the DE SHPO in cases where such activities may affect a historic property, and the contractor(s) could not identify an alternative location. DeIDOT shall document all disposal site reviews

### **V. Review of Project Plans**

DeIDOT shall provide copies of the preliminary, semi-final, and final design plans of the Project to the DE SHPO. DE SHPO will have thirty (30) days from the receipt of materials to provide comments on the plans. FHWA and DeIDOT shall take into account any comments provided.

### **VI. Subsequent Changes to the Project**

If DeIDOT proposes any changes to the Project affecting location, design, methods of construction, materials, or footprint of the Project, DeIDOT shall provide the DE SHPO and other consulting parties identified later in time with information concerning the proposed changes. The DE SHPO and consulting parties will have thirty (30) days from the receipt of this information to comment on the proposed changes. DeIDOT shall take into account any consulting party comments, prior to implementing such changes. Should changes occur, DeIDOT, in consultation with the DE SHPO, may need to redefine the APE beyond the areas depicted in Attachment A. DeIDOT shall consult with the DE SHPO to identify and evaluate historic buildings, sites, structures, and/or districts in any newly affected areas, and assess the effects of the project thereafter, following the process outlined for Archaeological Resources in Stipulations I.A. and I.B of this agreement, or as applicable under stipulation III.

## VII. Administrative Stipulations

### A. Personnel Qualifications

All cultural resource work carried out pursuant to this agreement will be performed by or under the direct supervision of a person or persons meeting at a minimum the “*Secretary of the Interior's Standards and Guidelines*” ([http://www.cr.nps.gov/local-law/Arch\\_Standards.htm](http://www.cr.nps.gov/local-law/Arch_Standards.htm)), formerly 61 CFR Appendix A. DelDOT’s Environmental Studies personnel will have direct authority to select and authorize any and all qualified cultural resource management firms or subconsultants to carry out this work on an as-needed basis throughout the duration of the Project.

### B. Survey and Data Recovery Standards

DelDOT shall ensure that any and all cultural resource surveys and/or data recovery plans conducted pursuant to this MOA are done in accordance with the *Secretary of the Interior’s Standards and Guidelines for Identification and Evaluation*, and for *Archaeological Documentation*, as applicable, and in accordance with the DE SHPO’s *Guidelines for Architectural and Archaeological Surveys in Delaware* (1993) or its successor.

Survey proposals and data recovery plans shall include a research design that stipulates: objectives, methods, and expected results; production of draft and final reports; and preparation of materials for curation in accordance with Stipulation I.E., including budgeting for initial conservation assessments and treatment. Additional requirements for data recovery plans are found in Stipulation I.B. of this Agreement.

All data recovery plans shall also take into account the Advisory Council on Historic Preservation’s guidance for *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites*. Reports will meet professional standards set forth by the Department of the Interior’s “*Format Standards for Final Reports of Data Recovery Program*” (42 FR 5377-79).

All data recovery plans, public outreach, or future consultation shall also follow and/or consider any supplemental guidance and provisions provided by, but not limited to, the American Association of State Highway Transportation Officials, FHWA, Transportation Research Boards, National Park Service, ACHP or recognized academic journals or professional organizations as identified by DelDOT and/or the DE SHPO.

DelDOT shall ensure that all draft and final cultural resource reports are provided to the FHWA and DE SHPO within two (2) years of the completion of any fieldwork. Draft and final cultural resource reports relevant to Native American Sites will also be provided to the Federally Recognized Indian Tribes and State Recognized Indian Tribes.

## **VIII. Dispute Resolution**

Should any signatory to this Agreement object in writing to any plans, specifications or actions proposed or carried out pursuant to this agreement, FHWA shall consult with the objecting party to resolve the objection. If FHWA determines that the objection cannot be resolved, FHWA shall forward all documentation relevant to the dispute to the ACHP. Within thirty (30) days after receipt of all pertinent documentation, the ACHP will either:

- A. Advise FHWA that the ACHP concurs in FHWA's proposed response to the objection, whereupon FHWA shall respond to the objection accordingly;
- B. Provide FHWA with recommendations, which FHWA will take into account in reaching final decision regarding the dispute; or
- C. Notify FHWA that it will comment pursuant to 36 CFR 800.7(a) and proceed to comment. Any ACHP comment provided in response to such a request will be taken into account by FHWA in accordance with 36 CFR 800.7(c)(4) with reference to the subject of the dispute.

Should the ACHP not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, FHWA may assume the ACHP's concurrence in its proposed response to the objection.

Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute; FHWA's responsibility to carry out all actions under this MOA that are not the subject of the objection will remain unchanged.

## **IX. Duration**

This MOA shall remain in force until its Stipulations have been fulfilled. This time period shall not exceed seven (7) years from the date of the final signature. If within six (6) months of the end of this seven year period, stipulations remain unfulfilled, the parties to this Agreement will consult to determine if extension or other amendment of the Agreement is needed. No extension or amendment will be considered in effect unless all the signatories to the MOA have agreed to it in writing.

## **X. Review of Implementation**

FHWA, DelDOT, and the DE SHPO shall review the project annually, to monitor progress of the implementation of the terms of this MOA. By agreement, DelDOT, DE SHPO and FHWA will meet in January of each year to discuss and report progress of active MOA's including this project. FHWA will then notify the Federally Recognized Indian Tribes each year of the status and progress of active projects and MOA's involving consultation with the Federally Recognized Indian Tribes.

**XI. Amendments**

Any party to this Agreement may propose to FHWA that the Agreement be amended, whereupon FHWA shall consult with the other parties to consider such an amendment, in accordance with 36 CFR Part 800.6(c)(7).

**XII. Termination**

- A. If the FHWA or DeIDOT determines that it cannot implement the terms of this MOA, or the DE SHPO determines that the MOA is not being properly implemented, FHWA, DeIDOT, or the SHPO may propose to the other parties to this MOA that it be terminated.
- B. The party proposing to terminate this MOA shall notify all parties to this MOA, explaining the reasons for termination and affording them at least thirty (30) days to consult and seek alternatives to termination. The parties shall then consult.
- C. Should all consultation fail, FHWA or the DE SHPO may terminate the MOA by so notifying all parties in writing.
- D. Should this MOA be terminated, FHWA shall either:
  - 1. Consult in accordance with 36 CFR 800.6(a)(1) to develop a new MOA or;
  - 2. Request the comments of the ACHP pursuant to 36 CFR 800.7(a)

Execution of this MOA by the FHWA, DE SHPO, and DeIDOT and implementation of its terms is evidence that the FHWA has afforded the ACHP an opportunity to comment on the U.S. 113 North/South Project in the Millsboro-South area and that the FHWA has taken into account the effects of the undertaking on historic properties.

FOR THE FEDERAL HIGHWAY ADMINISTRATION

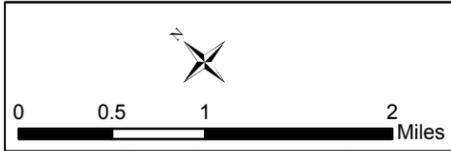
By: \_\_\_\_\_ Date: \_\_\_\_\_  
Mary Ridgeway P.E., Division Administrator, DELMAR Division

FOR THE DELAWARE STATE HISTORIC PRESERVATION OFFICER

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Timothy Slavin, DHCA Director and State Historic Preservation Officer

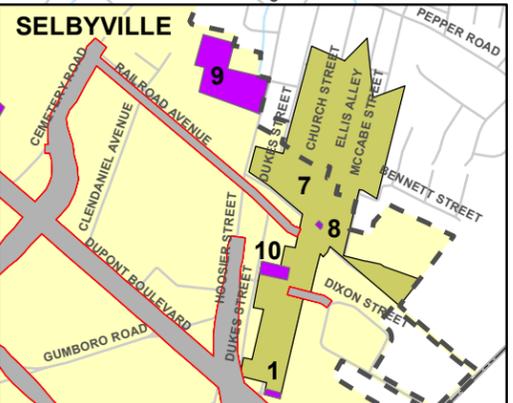
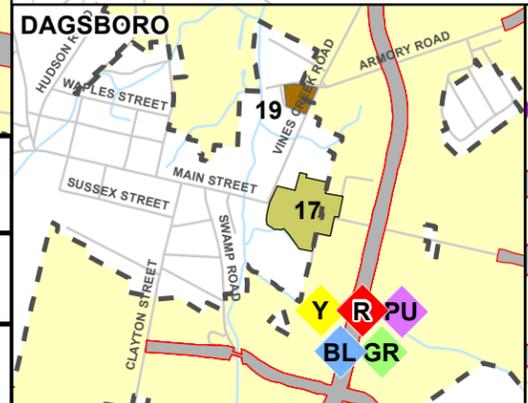
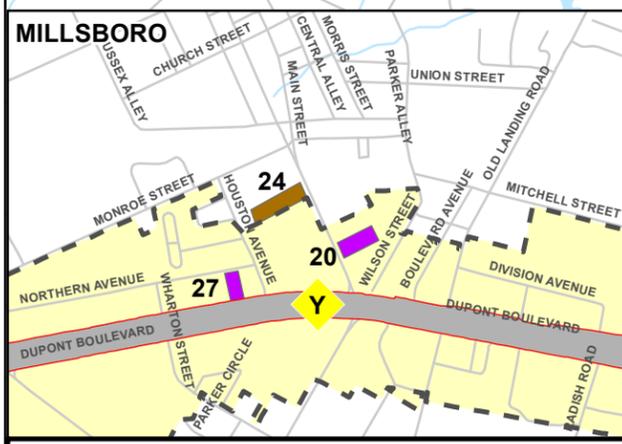
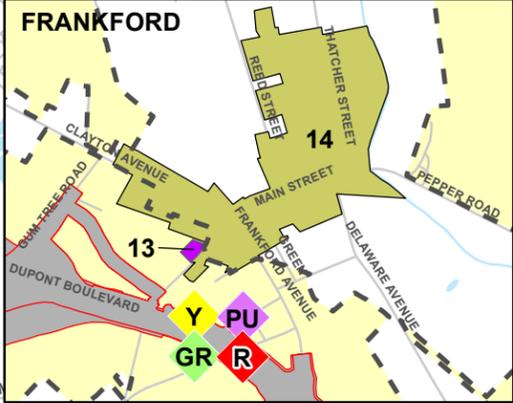
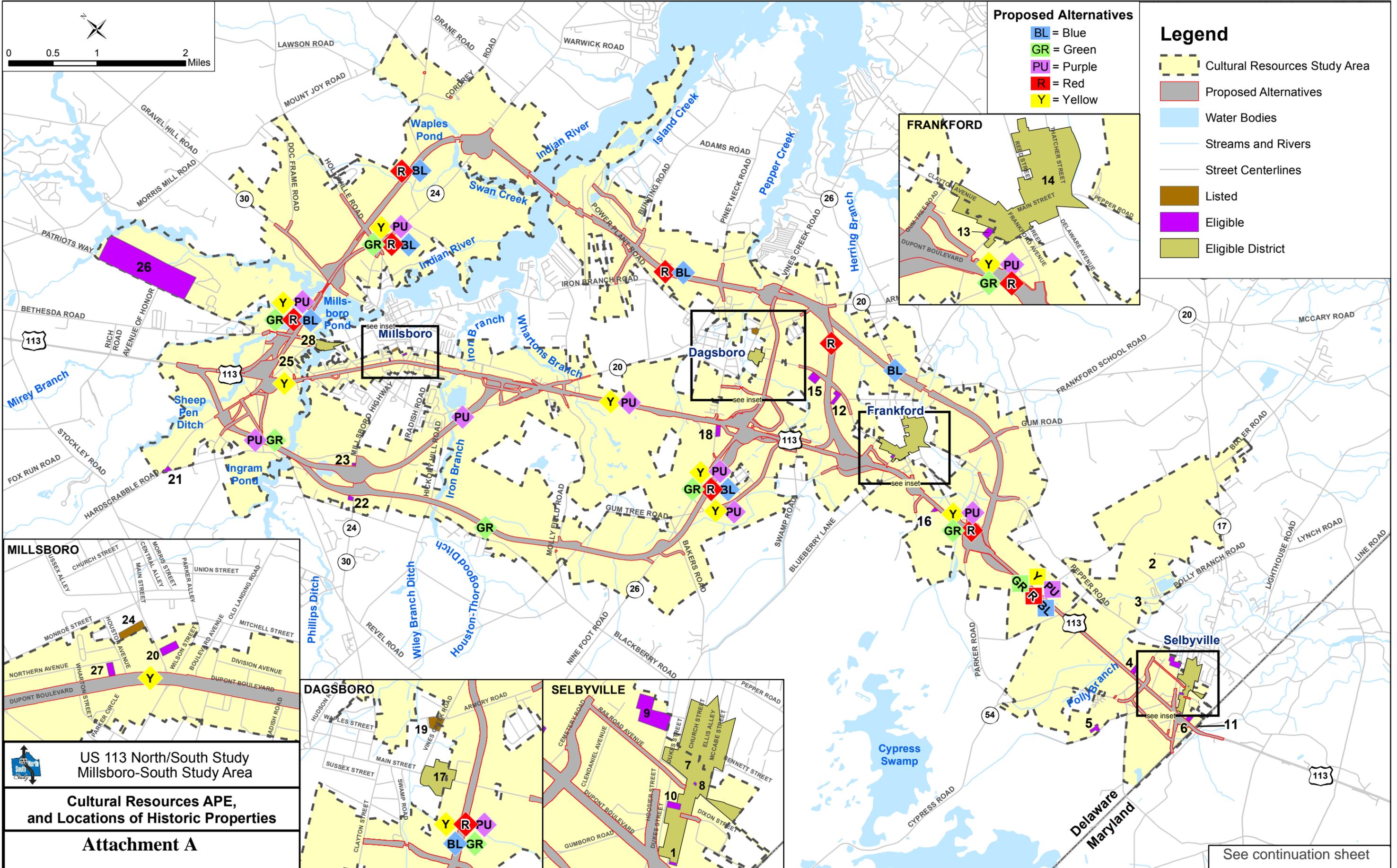
DELAWARE DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Natalie Barnhart P.E., DeIDOT Chief Engineer



- Proposed Alternatives**
- BL = Blue
  - GR = Green
  - PU = Purple
  - R = Red
  - Y = Yellow

- Legend**
- Cultural Resources Study Area
  - Proposed Alternatives
  - Water Bodies
  - Streams and Rivers
  - Street Centerlines
  - Listed
  - Eligible
  - Eligible District



US 113 North/South Study  
Millsboro-South Study Area

**Cultural Resources APE,  
and Locations of Historic Properties**

**Attachment A**

See continuation sheet

**Attachment A (continued) Cultural Resources APE, and Locations of Historic Properties**

<b>Number on Map</b>	<b>Cultural Resources Survey Number</b>	<b>Property Name</b>	<b>National Register Status</b>	<b>National Register boundary within 600 feet of Proposed Alternative(s)</b>
1	S-10181	English Cottage*	Eligible	All
2	S-02114	Holliday-Carey House	Eligible	None**
3	S-11770	Joshua B. Murray House	Eligible	None**
4	S-10243	Long-Mumford House	Eligible	All
5	S-01909	McCabe Farm	Eligible	None**
6	S-10217	Pomeroy's	Eligible	All
7	S-09825	Selbyville Historic District	Eligible	All
8	S-12161	Selbyville Railroad Station*	Eligible	All
9	S-09137	Selbyville School	Eligible	All
10	S-11495	St. Martin in the Fields*	Eligible	All
11	D-101	Transpeninsular Monument 10	Listed	All
12	S-08158/ S-10759	Antioch AME Church & Camp Meeting	Eligible	Red
13	S-10659	Cannon and Messick Feed Store***	Eligible	Green, Purple, Yellow, Red
14	S-08160	Frankford Historic District	Eligible	Green, Purple, Yellow, Red
15	S-09136	Indian River High School	Eligible	Red
16	S-10655	Landes Family Poultry Plant	Eligible	Green, Purple, Yellow, Red
17	S-04910	Dagsboro South Historic District	Eligible	All
18	S-04692	Gray Farm	Eligible	All
19	S-00176	Prince George's Chapel	Listed	All
20	S-10873	Charles B. Houston House	Eligible	Yellow
21	S-04595	Godwin School	Eligible	Green, Purple, Yellow
22	S-10972	Hudson General Store	Eligible	Green, Purple
23	S-10799	Millsboro Chicken Hatchery	Eligible	Purple
24	S-05740	Perry Shockley House	Listed	Yellow
25	S-04673	R. W. Tilney House	Eligible	All
26	S-09126	Stockley Center	Eligible	All
27	S-10611	Walter McKinley Betts House	Eligible	Yellow
28	S-09147	Warren's Mill Historic District	Eligible	All

\* Individually eligible properties that are within and contribute to the Selbyville Historic District; unless indicated differently, the District will be treated as one impacted resource.

\*\* Properties involved in the overall historic property identification effort. Upon consultation, those properties are no longer within or near the retained or proposed alternatives.

\*\*\* Individually eligible property that is within and contributes to the Frankford Historic District; the District will be treated as one impacted resource.



## APPENDIX D: AGENCY CORRESPONDENCE

**From:** [Clarke, David S. \(DelDOT\)](#)  
**To:** [Hahn, Michael \(DelDOT\)](#)  
**Subject:** FW: FHWA tribal consultation in State of Delaware  
**Date:** Tuesday, June 25, 2013 11:35:52 AM

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David S. Clarke  
DelDOT Archaeologist  
Department of Transportation  
P.O. Box 778-800 Bay Road  
Dover, DE 19903  
Phone: (302) 760-2271  
Fax: (302) 739-8282  
david.clarke@state.de.us  
www.archaeology.deldot.gov

-----Original Message-----

From: Nick.Blendy@dot.gov [<mailto:Nick.Blendy@dot.gov>]  
Sent: Friday, June 21, 2013 10:15 AM  
To: Clarke, David S. (DelDOT); Fulmer, Terry (DelDOT); Davis, Gwen (DOS)  
Cc: anna.price@dot.gov; Jeanette.Mar@dot.gov  
Subject: FW: FHWA tribal consultation in State of Delaware

Sherry has confirmed the following:

-official name is Stockbridge-Munsee Community

-they do not wish to claim Delaware as an area of interest

-There is no official paper work between the Delaware Tribe, Delaware Nation and the Stockbridge-Munsee Community we do this between us.

-They do not need to be notified if remains are found.

Let's discuss if the PA needs to be clarified. Do they need to be removed from PA and future MOA's?  
Nick

---

From: Blendy, Nick (FHWA)  
Sent: Friday, June 21, 2013 10:07 AM  
To: Sherry White  
Subject: RE: FHWA tribal consultation in State of Delaware

Sherry

Thank you for your prompt response. FHWA will consult with DelDOT and DE SHPO in these regards.  
Nick

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From: Sherry White [sherry.white@mohican-nsn.gov]  
Sent: Friday, June 21, 2013 9:31 AM  
To: Blendy, Nick (FHWA)  
Subject: RE: FHWA tribal consultation in State of Delaware

Our official name is Stockbridge-Munsee Community No we do not wish to claim Delaware as an area of interest There is no official paper work between the Delaware Tribe, Delaware Nation and the Stockbridge-Munsee Community we do this between us.  
No we do not need to be notified if remains are found.

-----Original Message-----

From: Nick.Blendy@dot.gov [<mailto:Nick.Blendy@dot.gov>]  
Sent: Friday, June 21, 2013 8:22 AM  
To: Sherry White  
Cc: David.Clarke@state.de.us; Terry.Fulmer@state.de.us; Gwen.Davis@State.De.US;  
anna.price@dot.gov  
Subject: RE: FHWA tribal consultation in State of Delaware

Sherry,

Thank you for the response. To clarify several items could you please answer or confirm the following for our files.

Nick

1. What is official tribal name? Mohican Tribe, Stockbridge-Munsee Territory, or a combination? Please specify.
2. The Mohican tribe also known as the Stockbridge-Munsee territory do not want to claim Delaware as an area of interest.
3. Are the Delaware Tribe and the Delaware Nation aware they need to request involvement of your Tribe for consultation of transportation projects in the State of Delaware (as you commented)? Is a tribal agreement available?
4. In the event Native American remains are discovered, does the Mohican Tribe want to be notified by FHWA (as currently stated in Section 106 MOA's) or be notified by the Delaware Tribe or Delaware Nation?

Your responses will assist us in development of pending DeIDOT project related MOA's in Delaware. Thanks again, Nick \_\_\_\_\_

From: Sherry White [sherry.white@mohican-nsn.gov]  
Sent: Wednesday, June 19, 2013 12:50 PM  
To: Blendy, Nick (FHWA)  
Subject: RE: tribal consultation in Delaware

Nick

The Mohican tribe also known as the Stockbridge-Munsee territory is not in the state of Delaware. We do work with the Delaware Tribe and Delaware Nation who I believe claim Delaware as an area of interest. We would work through them if they request us to assist or be involved with a project. So for your purposes you do not need to consult with us for any projects in the state of Delaware.  
Sherry

From: Nick.Blendy@dot.gov [<mailto:Nick.Blendy@dot.gov>]  
Sent: Friday, June 14, 2013 10:05 AM  
To: Sherry White  
Subject: tribal consultation in Delaware

Hi Sherry,

We have corresponded in the past mainly consultation requests for project level Section 106 Memorandum of Agreements (MOAs) for Delaware Department of Transportation (DeIDOT) projects.

The purpose of this email is to confirm that you continue as the tribal contact for cultural resource consultation in Delaware and to identify other tribal members for us to include in tribal consultation.

We are updating our tribal contact files and expect to send several documents for consultation shortly. These include a draft of a revised Delaware Draft Section 106 Programmatic Agreement for Minor Transportation Projects in the State of Delaware between DeIDOT, SHPO and FHWA. There are also several project level 106 MOA's we intend to send to initiate for nation to nation consultation.

We intend to prepare letters and attach as pdf's to emails. Could you also confirm if electronic exchange of information is acceptable to your tribe and provide emails for any new tribal contacts. Thanks. Nick

The tribal mailing address we have is on file is:

Stockbridge-Munsee Community

N8476 Moh He Con Nuck Road

PO Box 70

Bowler, Wisconsin 54416

Phone: (715) 793-4111

Fax: (715) 793-1307

Please confirm or update information in this email. Call or email any questions. Thank you. Nick Nick

Blendy FHWA DelMar Division, Dover Office Environmental Specialist

1201 College Rd, Suite 201

Dover, DE 19904

302.734.2966

Zimbra

jreel@rkk.com

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## Re: DFS impact calculations

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**From** : Craig Koppie <Craig\_Koppie@fws.gov>

Wed, Jul 01, 2009 12:25 PM

**Subject** : Re: DFS impact calculations

 2 attachments

**To** : Justin Reel <jreel@rkk.com>

**Cc** : David Smith <davids@coastal-resources.net>

Justin,

Should DelDot need to assess and calculate DFS impacts, the values for forest removal (3:1) and degradation (2.5:1) are correct. However, after discussing the project with Cherry Keller today, I have been informed that, at this time, DelDot has no ESA compliance requirement specific to the Delmarva fox squirrel. The observation of an individual DFS and negative trapping/photo data at Doe Bridge Nature Preserve is not sufficient to suggest a DFS population and the requirement of a 3-mile regulated buffer.

Craig Koppie, USFWS  
Endangered Species Biologist  
Chesapeake Bay Field Office  
Phone: 410/573-4534  
Fax: 410/269-0832  
E-mail: Craig\_Koppie@fws.gov

 Justin Reel <jreel@rkk.com>

**Justin Reel**  
<jreel@rkk.com>

07/01/2009 11:23 AM

To Craig Koppie <craig\_koppie@fws.gov>  
cc David Smith <davids@coastal-resources.net>  
Subject DFS impact calculations

Craig,

I very quickly wanted to confirm how I am calculating impacts to potential DFS habitat areas and mitigation ratios with you. Direct impacts will be calculated based on the limit of disturbance (trees will be removed). Degradation impacts will be calculated based on a 150 foot buffer from the limit of disturbance.

Direct impact mitigation ratio of 3 acres of preservation for every 1 acre of impact (3:1)  
Degradation impacts mitigation ratio of 2.5:1.

Please confirm these values for me. We left one area as questionable (Ingram Pond) from the field view (thinking that it might be too wet). For impact calculation purposes I have assumed worst case and include it as potential habitat. I will provide you with an impact table, and figure showing the alternatives for your consideration prior to the meeting on Tuesday.

Thanks

---

**JUSTIN REEL**  
Project Manager

RK&K  
81 Mosher Street  
Baltimore, MD 21217

410.728.2900 P  
410.728.2834 F  
www.rkk.com

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## Smith, Susan

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**From:** Smith, Susan  
**Sent:** Thursday, February 21, 2013 10:54 AM  
**To:** Smith, Susan  
**Subject:** FW: Delaware US 113 North/South Study update and Millsboro South project area nation to nation invite  
**Attachments:** US 113 North-South study regional maps.pdf

From: Blendy, Nick (FHWA)  
Sent: Monday, February 11, 2013 5:06 PM  
To: [tfrancis@delawarenation.com](mailto:tfrancis@delawarenation.com)<<mailto:tfrancis@delawarenation.com>>; [bobermeyer@delawaretribe.org](mailto:bobermeyer@delawaretribe.org)<<mailto:bobermeyer@delawaretribe.org>>; [robert.chicks@mohican-nsn.gov](mailto:robert.chicks@mohican-nsn.gov)<<mailto:robert.chicks@mohican-nsn.gov>>  
Cc: 'Davis Gwen (DOS)' ([Gwen.Davis@State.De.US](mailto:Gwen.Davis@State.De.US)<<mailto:Gwen.Davis@State.De.US>>); 'Fulmer Terry (DelDOT)' ([Terry.Fulmer@state.de.us](mailto:Terry.Fulmer@state.de.us)<<mailto:Terry.Fulmer@state.de.us>>); O'Donoghue, Ryan (FHWA); Price, Anna (FHWA); Mar, Jeanette (FHWA)  
Subject: Delaware US 113 North/South Study update and Millsboro South project area nation to nation invite

The intent of this email is to provide the federally recognized tribes (1)an update of three projects associated with the US113 North/South Study located in Sussex County DE and (2) initiate formal nation to nation consultation with federal tribes for the Millsboro South project area of the US 113 North-South Study. Mapping of the 73 mile long US 113 study corridor in DE with project areas is attached.

The current status of activities in each of the three geographic areas based on 24-Dec-2012 update by the Delaware Department of Transportation (DelDOT) is summarized below:

### Ellendale Area

The Ellendale Area Environmental Assessment (EA) was approved by the Federal Highway Administration (FHWA) on September 28, 2010 with a Finding of No Significant Impact (FONSI) on the natural and human environment. The approved EA contains the environmental analysis of the selected On-Alignment Alternative. The issuance of a FONSI by FHWA concluded the environmental process for the Ellendale Area. Elements of the On-Alignment Alternative will transition into preliminary engineering as funding becomes available. The Delaware Nation is a consulting party for the Ellendale project.

### Georgetown Area

The Georgetown Area Environmental Assessment (EA) was published on March 27, 2012 and the public comment period ended April 26, 2012. The EA contains the environmental analysis of the Refined On-Alignment Recommended Preferred Alternative that DelDOT announced in June 2007. Approval by the Federal Highway Administration (FHWA), with a Finding of No Significant Impact (FONSI) on the natural and human environment, is anticipated by the end of 2012. The issuance of a FONSI by FHWA concludes the environmental process for the Georgetown Area. Elements of the selected Refined On-Alignment Alternative will transition into preliminary engineering as funding becomes available. The tribes were provided the Section 106 Memorandum of Agreement (MOA) on 02/07/2013.

## Millsboro-South Area

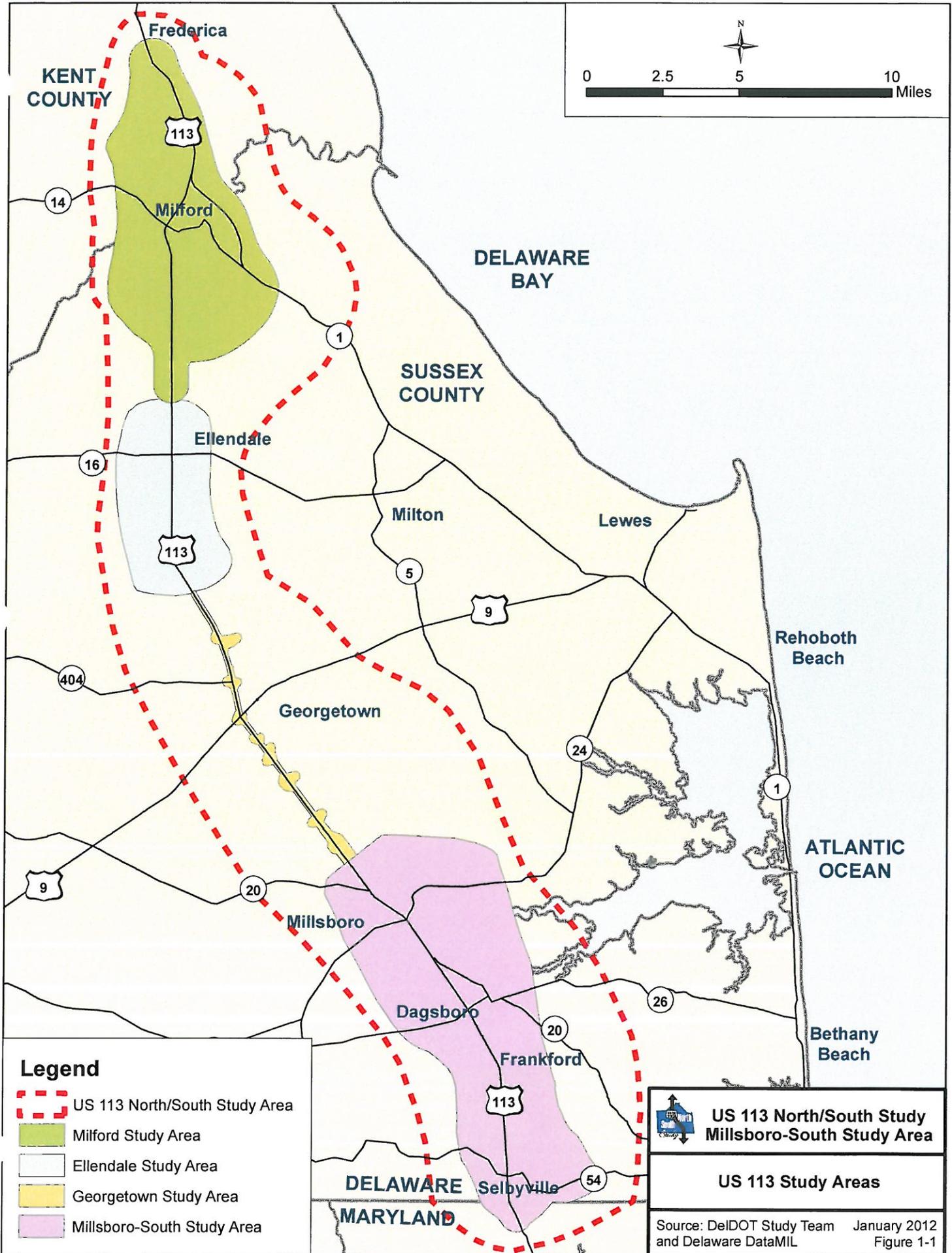
The DelDOT is preparing a Draft Environmental Impact Statement (DEIS) to document the analysis of the No-Build, On-Alignment, and Eastern and Western Bypass Alternatives of the Town of Millsboro. It is anticipated that the DEIS containing DelDOT's Recommended Preferred Alternative will be available in 2013 for public review and comment. You are invited to be a consulting party to the project.

In closing, please acknowledge receipt of this email by your tribe and verify that exchange of electronic notification of nation to nation initiation and project consultation is acceptable to your tribe.

To learn more about the US 113 North/South Study and the respective Ellendale, Georgetown and Millsboro South project areas, please visit DelDOT's projects at <http://deldot.gov/> . Thanks, Nick

Nick Blendy  
Environmental Specialist  
FHWA DelMar Division  
1201 College Park Road  
Dover DE 19904  
302-734-2966







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

CAROLANN WICKS, P.E.  
SECRETARY

July 20, 2010

Mr. Timothy Slavin, Director  
Division of Historic and Cultural Affairs  
The Green, Suite 21A  
Dover, DE 19977

Dear Mr. Slavin:

The Delaware Department of Transportation (DelDOT) Environmental Studies Section has received the draft National Register Eligibility Forms for architectural properties in the US 113 Millsboro South. The project is funded under State Project #22-127-01. The project is also considered a federal undertaking subject to NEPA requirements as well as Section 106 of the National Historic Preservation Act of 1966 (as amended). The Federal Highway Administration (FHWA) will principally fund construction and right of way efforts in the future.

Based on the undertaking's potential to affect historic properties, DelDOT, in consultation with your office, retained services of John Milner Associates, Inc., to conduct the intensive architectural survey, including preparing National Register eligibility determinations for properties extant pre-1962. For your information and records, the enclosed materials are the result of our continuing identification and evaluation efforts under 36 CRF 800.4(b)(2).

Following agency completion review of this material, we will comprehensively tie all eligibility assessments, CRS forms, and National Register nomination forms into one final report. Should any written comments be offered, please include FHWA for their information.

At this stage and for project development purposes, we have established a buffer of 600 feet (1200' total) around all proposed improvements for the planning level Area of Potential Effect (APE). The APE will be confirmed by our office and consulted with yours to consider any additional potential visual and/or audible impacts that may be experienced beyond the initial buffer. If so, we will include any additional properties in our final eligibility report. We will also keep you advised as field trips for continued Section 106 consultation are needed in the coming weeks.

On behalf of the Federal Highway Administration, it is also our agency's intent to use the NEPA process under the Environmental Impact Statement (EIS) for Section 106 purposes. Thus, it is our intention to notify you and the Council in advance that compliance measures shall take place under 36 CFR 800.8. To date, no consulting parties have been identified. However, we anticipate Native American involvement in the development of a Memorandum of Agreement. These federally



Letter to T. Slavin

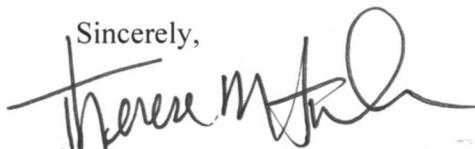
7/20/2010

Page 2 of 2

recognized groups may become a formal consulting party when sites have been identified with impacts. The effort to confirm their level of involvement is currently underway with FHWA. With this, we will ensure that proper standards for developing our environmental documents satisfy Section 106 consultation with inclusion of key written information and referenced elements in the EIS.

If there are any questions, please contact Michael Hahn at (302) 760-2131 or MichaelC.[Hahn@state.de.us](mailto:Hahn@state.de.us) . Thank you again for your continued cooperation.

Sincerely,



Therese M. Fulmer, Manager  
Environmental Studies

TF/mch

(attachments)

CC: Dan Montag, FHWA  
Nick Blendy, FHWA  
Reid Nelson, Advisory Council on Historic Preservation  
Gwen Davis, DE SHPO  
Joan Larrivee, DE SHPO  
Dan Parsons, Sussex County Department of Engineering – with copy  
Monroe Hite, Project Manager, South Project Development  
Michael Hahn, Environmental Studies  
Jon Schmidt, Environmental Studies  
Kevin Cunningham, Environmental Studies  
David Clarke, Environmental Studies  
William Hellmann, RK & K Engineers, Inc.  
Jeff Rigner, Whitman, Renquardt & Associates, Inc.  
Grace Ziesing, John Milner Associates, Inc.  
File



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

**CAROLANN WICKS, P.E.**  
**SECRETARY**

December 19, 2007

Commander (aowb)  
Fifth Coast Guard District  
LANTAREA  
Federal Building  
431 Crawford Street  
Portsmouth, VA 23704-5004

Dear Sir or Madam:

The Delaware Department of Transportation (DelDOT) is conducting the US 113 North/South Study to identify and evaluate alternatives, select a corridor, and then protect that corridor, for use in the future to provide additional highway capacity in Sussex County, Delaware. As a result of efforts to date, a series of alternatives, including alternatives on the east side of Millsboro, have been identified. These alternatives would include the construction of a new bridge over Indian River, a tidal and navigable waterway. The potential crossing would be located approximately 10 miles west of the Indian River Inlet Bridge, 2.4 miles east of the SR 24 crossing of Indian River in the Town of Millsboro, and would be located just east of the confluence of Swan Creek with Indian River. Enclosed please find a map showing the proposed Eastern Bypass alternatives in the Millsboro/Indian River area for your reference.

As a result of efforts by DelDOT and the Fifth Coast Guard District regarding the replacement of the SR 1 bridge over Indian River Inlet, a clearance of 45 feet above mean high tide was established for that new structure. In addition, the new Indian River Inlet Bridge will accommodate a navigational opening of up to 1,000 feet in the future. The SR 24 bridge over Indian River in Millsboro, upstream from the potential new crossing associated with the Eastern Bypass alternatives for the US 113 project, has an existing clearance of 4.95 feet over normal high tide and 7.95 feet over normal low tide and an opening width of 68 feet. A spillway is attached to the north side of the SR 24 bridge. Because these are the only two existing structures crossing the Indian River in the vicinity of the potential new crossing, we are seeking your guidance regarding the possible clearance and navigational channel width for this potential future crossing.



Commander (aowb)  
December 19, 2007  
Page 2

A review of navigational chart 12216, "Cape Henlopen to Indian River Inlet", indicates soundings of 1 to 2 feet below mean lower low water, as well as a channel of unknown width and depth in the vicinity of the potential new crossing. In addition, a review of aerial photography indicates a number of docks and boat slips along both sides of Indian River between the potential new crossing and the SR 24 bridge over Indian River in Millsboro. The docks and slips appear to be associated with individual homes rather than with industrial or marine uses along the river.

DelDOT recognizes that this is not a permit application and that as growth continues in this coastal area conditions may change, which could influence clearance and channel width. However, since the study is in the planning phase and construction of a potential new crossing of Indian River and is in all probability more than 20 years away if an Eastern Bypass alternative is selected, any guidance which you can provide at this time will be greatly appreciated at this point in the study.

Should you have any questions regarding this study, please feel free to contact me at (302) 760-2120.

Sincerely,



Monroe C. Hite, III, P.E.  
Project Manager  
Delaware Department of Transportation

MH:mhm  
Enclosure

cc: Robert Kleinburd, Federal Highway Administration, Delaware Division  
Carolann Wicks, P.E., Secretary  
Robert Taylor, P.E., Chief Engineer & Director of Transportation Solutions  
Michael Williams, Manager, Public Relations  
Michael H. Simmons, P.E., Assistant Director, Project Development  
Donald A. Plows, P.E., Group Engineer, Project Development  
Therese M. Fulmer, Manager, Environmental Studies



## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Chesapeake Bay Field Office  
177 Admiral Cochrane Drive  
Annapolis, MD 21401  
410/573-4575



November 28, 2006

Ericka Rush  
Urban Engineers, inc.  
530 Walnut St. 14th Flr.  
Philadelphia, PA 19106

*RE: US 113 North South Study*

Dear Ms. Rush

This responds to your letter, received November 27, 2006, requesting information on the presence of species which are federally listed or proposed for listing as endangered or threatened within the above referenced project area located along US 113 (from Georgetown down to US 113 at Hudson Pond). We have reviewed the information you enclosed and are providing comments in accordance with section 7 of the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.).

The federally threatened swamp pink (*Helonias bullata*) has been documented to occur in the project area. Swamp pink is a perennial wildflower that inhabits a variety of freshwater wetlands, including spring seepages, swamps, bogs, wet meadows and margins of small streams. We recommend that any wetlands to be filled or otherwise affected by the proposed project be surveyed for the presence of swamp pink by a professional botanist. Enclosed is a list of qualified individuals who have experience with swamp pink surveys. Even if no direct effects to potential swamp pink habitat are identified, any projects on this property must be designed to minimize impacts of hydrologic changes, siltation, and runoff (quantity and quality) on the watershed. Any such potential impacts on swamp pink habitat should be analyzed as a part of your environmental assessment. If such impacts may occur, further Section 7 consultation with the U.S. Fish and Wildlife Service may be required.

The federally threatened bald eagle (*Haliaeetus leucocephalus*) nests within the project area or within the vicinity of the project. For further information regarding activity at this nest, Christopher Heckscher of the Delaware Natural Heritage Program should be contacted at (302) 653-2880 ext 118. Any construction or forest clearing activities within one-quarter mile of an active nest may impact bald eagles. If such impacts may occur, further section 7 consultation with the U.S. Fish and Wildlife Service may be required.

Except for occasional transient individuals, no proposed or federally listed endangered or threatened species are known to exist within the project impact area. Therefore, no Biological Assessment or further Section 7 Consultation with the U.S. Fish and Wildlife Service is required. Should project plans change, or if additional information on the distribution of listed or proposed species becomes available, this determination may be reconsidered.

This response relates only to federally protected threatened or endangered species under our jurisdiction. For information on the presence of other rare species, you should contact Edna Stetzar, of the Delaware Natural Heritage and Endangered Species Program, at (302) 653-2883 ext. 126. You may also obtain information on how to make such a request by visiting the Program website at [www.dnrec.state.de.us/nhp](http://www.dnrec.state.de.us/nhp).

An additional concern of the Service is wetlands protection. The Service's wetlands policy has the interim goal of no overall net loss of Delaware Bay's remaining wetlands, and the long term goal of increasing the quality and quantity of the Basin's wetlands resource base. Because of this policy and the functions and values wetlands perform, the Service recommends avoiding wetland impacts. All wetlands within the project area should be identified, and if construction in wetlands proposed, the U.S. Army Corps of Engineers, Philadelphia District should be contacted for permit requirements. They can be reached at (215) 656-6728.

We appreciate the opportunity to provide information relative to fish and wildlife issues, and thank you for your interest in these resources. If you have any questions or need further assistance, please contact Devin Ray at (410) 573-4531.

Sincerely,



 Mary J. Ratnaswamy, Ph.D.  
Program Supervisor, Threatened and Endangered Species



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

CAROLANN WICKS, P.E.  
SECRETARY

October 20, 2010

Ms. Faye L. Lingo, Town Manager  
Town of Millsboro  
322 Wilson Highway  
Millsboro, DE 19966

Dear Ms. Lingo:

As you are aware, the Delaware Department of Transportation (DelDOT) has been preparing a Draft Environmental Impact Statement (DEIS) for the US 113 North/South Study in the Millsboro-South Area. The Town of Millsboro is located in the northern portion of the study area and alleviating east-west traffic congestion on State Route 24 through the Town of Millsboro is a major element of the project. To achieve this objective, the proposed alignment concept would require a crossing of Millsboro Pond within the town limits.

The DEIS is reviewed by the Federal Highway Administration (FHWA), which has a policy that precludes the taking of any right of way from publically owned parks or recreation areas unless there is no prudent and feasible alternative to doing so and; all possible measure to minimize harm have been taken into consideration. Since Millsboro Pond is a component of Millsboro's Parks and Recreation system, coordination with the official(s) with jurisdiction over the park must also be considered by DelDOT and FHWA and that is the primary purpose of this letter.

The proposed alternative would require two bridges to cross the two northern arms of Millsboro Pond. Although the design of the bridges is not known at this time, it is anticipated that the length of the bridges will necessitate piers in the pond. The height of the bridges will be designed to provide ample clearance for boaters to pass under the lowest point of the structures. The existing public access at the boat ramp off of Gravel Hill Road (SR 30) will not be affected by the proposed construction.

DelDOT and FHWA believe that the proposed crossing of Millsboro Pond would have a minimal or (*de minimus*) impact to the fishing and recreational opportunities provided at the pond. This letter is to solicit opinions and comments from the director or department head of the Town of Millsboro's Parks and Recreation staff regarding the potential impact of the proposed



Faye L. Lingo  
October 20, 2010  
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alternatives to Millsboro Pond. A letter outlining the Town's comments about the crossing of the pond is required by FHWA. This letter is required even if the Town shares the opinion of the *de minimus* impact of the structures.

Attached for your review is a plan view of the proposed alignment across Millsboro Pond with property lines and the proposed Sweetwater Point development superimposed on an aerial base. This figure is similar to what was presented at the workshops in May 2010. Should you have any questions about this request please do not hesitate contact me at (302) 760-2120.

Sincerely,

A handwritten signature in black ink, appearing to read "Monroe C. Hite, III". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Monroe C. Hite, III  
Project Manager, Project Development

Enclosure

- cc: Daniel Montag, Federal Highway Administration, DelMar Division  
Nick Blendy, Federal Highway Administration, DelMar Division  
Mike Williams, Manager, Public Relations  
Terry Fulmer, Manager, Environmental Studies



U. S. Department  
of Transportation

**Federal Transit Administration**  
1760 Market Street  
Suite 500  
Philadelphia, PA 19103  
215- 656-7100  
215-656-7260 (fax)

**Federal Highway Administration**  
1201 College Park Drive  
Suite 102  
Dover, DE 19904  
302-734-5323  
302-734-3066 (fax)

Refer to: HDA-DE

JUL 19 2013

Mr. Shailen Bhatt  
Secretary  
Delaware Department of Transportation  
800 Bay Road  
Dover, DE 19901

**RE: Sussex County, DE & Salisbury/Wicomico Metropolitan Planning Organization's (SWMPO) Conformity Determination for the 2008 8-hour Ozone National Ambient Air Quality Standards (NAAQS) for Sussex County, DE**

Dear Secretary Bhatt:

The Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) have completed a joint review of the Sussex County, DE & Salisbury/Wicomico Metropolitan Planning Organization's (SWMPO) conformity determination for the 2008 8-hour Ozone National Ambient Air Quality Standards (NAAQS) for Sussex County, DE. The conformity determination applies to SWMPO's 2011 Long Range Transportation Plan (LRTP) and the Fiscal Year (FY) 2013 - 2016 Transportation Improvement Plan (TIP), and the Sussex County, DE portion of Delaware's FY 2013-2016 Statewide Transportation Improvement Program (STIP).

On May 20, 2012, the U.S. Environmental Protection Agency's (EPA) 2008 8-hour Ozone nonattainment designations for most areas in the U.S. were published in the *Federal Register*, with an effective date of July 20, 2012. In new 2008 8-hour Ozone nonattainment areas, conformity of a MPO's LRTP and TIP must be determined by July 20, 2013 (end of a one-year grace period after the effective date of final designations) to avoid a conformity lapse. Sussex County, DE was newly designated as the Seaford, DE 2008 8-hour Ozone nonattainment area, formerly part of the 1997 Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE area.

In accordance with the 1990 Clean Air Act Amendments (CAAA) and 23 CFR 450.322(l), the FHWA and the FTA must make a joint air quality conformity determination. Based on our evaluation of the material submitted, coordination with EPA's Region 3 Office, and input from DelDOT and SWMPO, we have determined that SWMPO's 2011 LRTP and FY 2013-2016 TIP, as well as the Sussex County portion Delaware's FY 2013-16 STIP conform with the 1990 CAAA and 40 CFR Part 93; and, therefore, render a positive conformity determination for Sussex County, DE for the above mentioned NAAQS. The EPA, by letter dated July 10, 2013, determined that the LRTP and TIP meet Federal requirements; and, therefore, has no issues with the conformity determination.

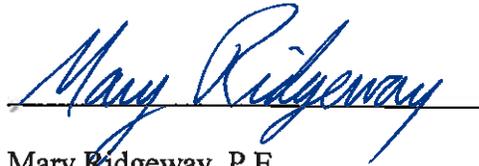
**RE: Sussex County, DE & Salisbury/Wicomico MPO's Conformity Determination**

If you have any questions, please contact Mr. Marc Dixon, Community Planner, FHWA DelMar Division, Delaware Office at (302) 734-4018, or Mr. Tony Cho, Community Planner, FTA Region III, at (215) 656-7250.

Sincerely,



*For* Brigid Hynes-Cherin  
Regional Administrator  
Region 3  
Federal Transit Administration



Mary Ridgeway, P.E.  
Division Administrator  
DelMar Division, Delaware Office  
Federal Highway Administration

ec: Keith Hall, Salisbury/Wicomico MPO  
Drew Boyce, DelDOT  
Mike DuRoss, DelDOT  
Mike Nixon, Maryland DOT  
Howard Simmons, Maryland DOT  
Tony Cho, FTA, Region 3  
Gregory Becoat, EPA, Region 3  
Anna Price, FHWA DelMar  
Marc Dixon, FHWA DelMar  
Kwame Arhin, FHWA DelMar