

Attachment F: Agency Letters

Record of Decision

Attachment F
Agency Letters

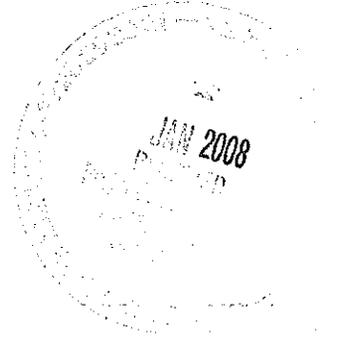


**FAA
Airports Division
Eastern Region**

**3905 Hartzdale Drive
Suite 508
Camp Hill, PA 17011
(717) 730-2830**

December 26, 2007

Mr. Mark Tudor, Proj Director
Delaware DOT
800 Bay Rd
Dover, Delaware 19903



Re: Final Environmental Impact Statement (EIS) for the US301 Project

Dear Mr. Tudor,

This letter acknowledges receipt of the Final EIS for the US301 Highway Project.

We thank you for addressing the comments we submitted in the Draft EIS. We have no further comments on the Final EIS document.

When the project moves forward to design and construction, we recommend airport trailblazer (I-5) signs for all airports at appropriate locations along the route.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan L. McDonald". The signature is fluid and cursive.

**Susan L. McDonald
Acting Manager**

cc:

**Michael Kirkpatrick, DelDOT
Finn Neilson, Summit Airport**



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

PHONE: (302) 739-9000
FAX: (302) 739-6242

OFFICE OF THE
SECRETARY

January 10, 2008

Carolann Wicks, Secretary
Delaware Department of Transportation
800 Bay Road
Dover, Delaware 19903

**Re: Delaware Department of Natural Resources and Environmental Control
Review of the US 301 Final Environmental Impact Statement**

Dear Secretary Wicks:

Thank you for the opportunity to review the Final Environmental Impact Statement for the US 301 Project Development effort. Previously the Department of Natural Resources and Environmental Control (DNREC) provided substantial comments on the Draft EIS in a letter dated February 23, 2007. The comments consisted of a comprehensive evaluation of the project's environmental impacts as well as strategies for avoidance, minimization and mitigation of those impacts. Those comments were addressed and incorporated into the Final EIS.

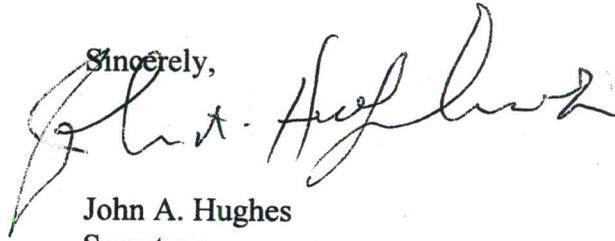
I recognize that selecting the preferred alternative was a challenge for DeIDOT given the myriad of technical, social and environmental factors that required consideration. Established communities and wildlife habitat are typically at odds when it comes to major transportation endeavors. New highways can disrupt community cohesion. However, new highways in undeveloped areas negatively impact wildlife habitat. The chosen route strikes a balance between community and natural resource impacts. DeIDOT has proposed sufficient mitigation for unavoidable impacts to wetland and forest resources as well as preservation and enhancement of additional acreage for wildlife habitat and water quality benefits. DeIDOT has also indicated its intention to continue to consult and coordinate with DNREC to ensure that all proposed mitigation measures achieve their maximum potential. As such, DNREC is not opposed to the preferred alternative, Green North with Ratledge Road Area Option 4B Modified.

The Department will continue its regulatory review, permitting process and advisory role as design refinements are made and this project moves toward construction. I look forward to further coordination with DeIDOT's project team to minimize impacts to the State's natural resources.

Delaware's Good Nature depends on you!

Letter to Secretary Wicks
January 7, 2008
Page 2

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Hughes". The signature is fluid and cursive, with a large initial "J" and "H".

John A. Hughes
Secretary

pc: Robert Kleinburd, Federal Highway Administration
Mark Tudor, Delaware Department of Transportation
Edward Bonner, Army Corps of Engineers
Kathy Bunting-Howarth, Division of Water Resources
Karen Bennet, Division of Fish and Wildlife
Sarah Cooksey, Division of Soil and Water Conservation



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029
January 16, 2008

Mr. Hassan Raza, Division Administrator
Federal Highway Administrator
300 South New Street
Dover, DE 19901

**Subject: Final Environmental Impact Statement for the Delaware Department of
Transportation (DelDOT) US 301 Project (CEQ 20060469)**

Dear Mr. Raza:

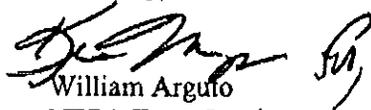
In accordance with the National Environmental Policy Act (NEPA), Section 309 of the Clean Air Act, Section 404 of the Clean Water Act (Section 404), and the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR 1500-1508), the U. S. Environmental Protection Agency (EPA) has reviewed the Final Environmental Impact Statement (FEIS) for the above referenced project. The FEIS was prepared by DelDOT and the Federal Highway Administration (FHWA) in cooperation with the US Army Corp of Engineers, US Fish and Wildlife and the US Environmental Protection Agency (EPA).

As you are aware, the US 301 project proposes to improve and enhance highway safety, manage truck traffic, and address existing and projected traffic congestion in the Delaware portion of the highway, while minimizing environmental impacts and accommodating existing and planned development. The project proposes to provide improved travel conditions for vehicles traveling north/south between US 301 at the Delaware/Maryland state line and points north of the Chesapeake and Delaware Canal via State Road (SR) 896 (Summit Bridge) and SR-1 in Southern New Castle County, Delaware.

On September 17, 2007, EPA provided a comment letter on the Agency Preview of the FEIS. The letter included comments on wetland mitigation and storm water management associated with the highway project. DelDOT has allayed our concerns by providing additional information on proposed wetland mitigation and storm water management. Those additional measures will be incorporated into the proposed project's Record of Decision.

Thank you for the opportunity to provide comments on the FEIS. EPA looks forward to the continued coordination as DelDOT progresses forward with this project. Should you have any questions regarding our comments concerning the NEPA process, please contact Kevin Magerr at 215-814-5724.

Sincerely,


William Argulo
NEPA Team Leader

cc: Robert Taylor, DelDOT

From: Bonner, Edward E NAP [mailto:Edward.E.Bonner@usace.army.mil]
Sent: Monday, January 14, 2008 10:14 AM
To: Johnson, Dan W.
Cc: Fulmer Terry (DeIDOT); Bill Hellmann; Mark.Tudor@state.de.us
Subject: Rt 301 in Delaware

Dan,

As part of our on-going agency coordination and discussions with respect to the proposed Rt. 301 project in Delaware, the following message is being forwarded to you for your added information and understanding as we move toward the Record of Decision (ROD) and finalization of the Corps' regulatory review of this project.

The USACE has participated in the US 301 Project Development process since DeIDOT's initiation of the project in April, 2005. Utilizing the environmental streamlining process developed by the Mid-Atlantic Transportation and Environment Task Force (MATE) to address the Integrated National Environmental Policy Act / 404 Process, USACE has been involved in Scoping, Purpose and Need, Alternatives Development, Detailed Alternatives Analysis, Draft NEPA documentation, Identification of Preferred Alternative, Conceptual Mitigation Plan, and Final NEPA Documentation.

The fourteen multi-agency project review meetings held between April 2005 through February 2007 were well attended by the resource and regulatory agencies and the DeIDOT Project Team. At these meetings the cooperating agencies (USACE, EPA, and USFWS) along with interested state agencies (DNREC Wetlands Section, DNREC Natural Heritage Section, DNREC Coastal Programs, Delaware Department of Agriculture, and SHPO) worked with FHWA and DeIDOT through the MATE process. In addition to purpose and need, alternatives, and environmental consequences; other elements, including public comments, design elements, impact minimization, mitigation and cultural heritage issues were evaluated by the DeIDOT Project Team and discussed by the Agencies. The presentation of materials by the Project Team, normally in Power Point format, and the detailed meeting notes are documented in three volumes of notebooks, provided to each agency. Also included in the Agency notebooks was the material presented at the five rounds of public workshops and the joint public hearing, along with reduced versions of display panels, handout materials, and comment forms. The results of the workshops were presented and discussed at the followup Agency meeting, as the project moved forward through the MATE process.

The agencies have also reviewed the natural resources in the project area and discussed potential impacts of each retained alternative during 19 field views from June 2005 to December 2007. A number of these field views consisted of wetland and other waters of the US boundary reviews, and these reviews included discussions of feature quality, type and scope of Section 404 regulatory jurisdiction. Representatives of DNREC were often present for these field inspections. Some field views were alternative-focused, during which most of the natural resource agency representatives would visit multiple locations along a particular set of alternatives, or options, and discuss impacts and merits of each alternative. Multi-agency field reviews were also conducted to discuss wetland crossings and to review wetland mitigation site locations.

The USACE has concurred with the project's Purpose and Need, provided input on the potential and subsequently agreed upon range of alternatives, and the recommended and subsequently agreed upon alternatives retained for detailed study. We have reviewed and provided comments on the DEIS and FEIS. The combined location-design public hearing and workshop, was jointly sponsored by FHWA, USACE, and DelDOT and held in two sessions on January 8 and 9, 2007. This hearing served as the USACE public hearing on the Section 404 permit application. Public and private testimony from these hearings has been considered and incorporated in Section 404 decision process through the Final EIS and draft ROD.

USACE coordination has continued since the publication of the FEIS. We have reviewed draft mitigation area plans with the Project Team and the compensatory mitigation package (attachment B in the draft ROD). We have reviewed the wetland structure crossings concepts with pier locations (attachment F in the draft ROD) and the FEIS commitments outlined in attachment C of the draft ROD. Finally we have reviewed and subsequently agreed upon the project commitments to the USACE as outlined in attachment D of the draft ROD.

Throughout the MATE process there has been a concerted effort by all of the inter-agency team members to achieve consensus on the myriad of issues toward the development of a balanced project. These have included: project purpose and need; analysis of environmental consequences associated with each alternative; social and cultural impacts; residential, business and overall community impacts; and on-going efforts to address the concerns and mitigate the impacts for all of the stakeholders in this project. Based on the evaluation of all available information to date, the US Route 301 Project alternative, Green Alternative, North Option plus Spur Road, including Armstrong Corner Road Area Option 2A, Summit Interchange Option 3B and Ratledge Road Area Option 4B Modified has been identified as the least environmentally damaging practicable alternative. This conclusion is contingent upon fulfillment of DelDOT's commitment to provide the total compensatory mitigation package, which has been developed in concert with the State and Federal environmental resource agencies during the review and development of the FEIS and the draft ROD for this project.

With the continued USACE participation in the project development process toward the implementation of a comprehensive environmental package and the development of appropriate permit conditions to assure that these tasks are completed, the selected alternative described should receive the necessary Department of the Army authorization.

It is further anticipated that the permit can be issued based upon the preliminary design documentation in the FEIS and shown on the US 301 Project Wetland Impact Plates. While these plans are considered preliminary, they do offer sufficient details with respect to impacts on wetlands and waters of the United States to facilitate an informed decision by the Corps. The permit document would be conditioned to require continued USACE review and approval of final design plans, final mitigation plans, and temporary impact restoration plans. The commitments of the FEIS, ROD, and Biological Assessment (BA) would be incorporated into the permit document along with other environmentally protective design elements, such as minimum heights for bridge crossings and designed wildlife corridors and crossings. We look forward to the DelDOT Project Team's continued coordination with the USACE and the other

resource and regulatory agencies involved in the US 301 project and their continued efforts to avoid and minimize impacts during the anticipated design and construction phases.

If you should have any questions, feel free to contact me.

Edward E. Bonner
Biologist
Regulatory Branch
Applications Section I
215-656-5932
edward.e.bonner@usace.army.mil



United States Department of the Interior



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

January 8, 2008

Mr. Hassan Raza
Federal Highway Administration
DELMAR Division – Delaware
300 South New Street, Suite 2101
Dover, DE 19904



Re: Endangered Species Act Biological Assessment for the US 301 Project from the MD/DE line to SRI, New Castle County, DE

Dear Mr. Raza:

We have reviewed the referenced Biological Assessment dealing with impacts of the referenced project on the threatened bog turtle (*Glyptemys [=Clemmys] muhlenbergii*) in the Scott Run watershed, just south of the C&D Canal in New Castle County, Delaware. These comments are provided in accordance with Section 7 of the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*).

We concur with the conclusion of the Biological Assessment that the proposed project is not likely to adversely affect the bog turtle.

We commend the Federal Highway Administration and the Delaware Department of Transportation on their thoroughness in conducting a comprehensive survey for bog turtles, with intensive surveys focused on the Scott Run watershed, where bog turtles were documented in the early 1970's. These intensive surveys together with project modifications to minimize any impacts of the proposed project on the Scott Run wetlands in the vicinity of the area documented to support bog turtles in the 1970's, have resulted in a project which is not likely to adversely affect the species.

We appreciate the effort that went into developing these modifications and look forward to working with you in the future to conserve this and other threatened and endangered species.

Sincerely,

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

Cc: Terry Fulmer, Delaware Department of Transportation
Holly Niederriter, Delaware Natural Heritage and Endangered Species Program
Justin Reel, RK&K

State of Delaware
Historical and Cultural Affairs

21 The Green
Dover, DE 19901-3611

Phone: (302) 736.7400

Fax: (302) 739.5660

*Bill Hellman
Rk+k*

December 6, 2007

DATE RECEIVED

DEC 10 2007

RUMMEL, KLEPPER & KAHL, LLP

Mr. Robert Kleinburd
Division Program Manager
Federal Highway Administration
J. Allen Frear Federal Building
300 South New Street
Dover, DE 19904-6726

RE: US 301 Project Development; Finding of Adverse Effect and Memorandum of Agreement

Dear Mr. Kleinburd:

The DE SHPO has reviewed the revised documentation of Adverse Effect for the US 301 project. The revised documentation addresses comments this office provided on the draft, and contains the information needed to support this finding, as stipulated in 36 CFR Part 800.11(e) of the regulations which implement Section 106 of the National Historic Preservation Act.

The documentation demonstrates that the Federal Highway Administration (FHWA) has, with assistance from the Delaware Department of Transportation (DelDOT), applied the Criteria of Adverse Effect (800.5) to the twenty-two properties located within the Preferred Alternative's Area of Potential Effect that are listed in or are eligible for the National Register of Historic Places. The FHWA has made the following determinations with respect to these properties:

1. Seven properties will not be affected by the project: Cochran Grange (Cultural Resource Survey Number N-117); Weston (N-121); Woodside (N-427); Achmester (N-3930); Fairview (N-5244); State Bridge Number 383 (N-12636); and Shahan Farm (N-14388);
2. Three properties will not be adversely affected by the project: Hedgelawn (N-118); Lovett Farm (N-5132); and J. Houston House (N-5195); and
3. Twelve properties will be adversely affected by the project: The Maples (N-106); S. Holton Farm (N-107); Choptank (N-109); Summerton (N-112); Rumsey Farm (N-113); Idalia Manor (N-3947); Governor Benjamin T. Biggs Farm (N-5123); T.J. Houston Farm (N-5131); Armstrong-Walker House (N-5146); Rosedale (N-5148); C. Polk House Estate (N-5221); and B.F. Hanson House (N-5225).

Based on the current proposed design of the project, the DE SHPO concurs with these findings.



Letter to R. Kleinburd

December 6, 2007

Page 2

The documentation discusses DelDOT's commitment to seek ways to avoid or minimize the adverse effects to the above-cited twelve properties, and its proposed measures to mitigate for any adverse effects that cannot be avoided. These measures are more specifically outlined in the Memorandum of Agreement (MOA), which DelDOT prepared in consultation with this office and with the Maryland SHPO. With respect to potential archaeological properties, the MOA also outlines the process for:

1. phased identification and evaluation of archaeological sites;
2. assessing the effects of the project on eligible archaeological sites;
3. consulting on ways to avoid, minimize and/or mitigate for adverse effects; and
4. involving other consulting parties, including Native Americans, and the public.

This office agrees that the measures outlined in the MOA are appropriate. Therefore, the DE SHPO has signed the Agreement and forwarded it to DelDOT.

The FHWA should forward a copy of this letter, along with the Adverse Effect documentation and executed MOA, to the Advisory Council on Historic Preservation, in accordance with Section 800.6(b)(1)(iv).

Thank you for your consideration of these comments. This office looks forward to continuing to work with FHWA and DelDOT in implementing the stipulations of the MOA. If you have any questions at this time, please do not hesitate to contact Gwen Davis (at gwen.davis@state.de.us or 302-736-7410), who is reviewing this project.

Sincerely,



Stephen Marz, Deputy Director
and Deputy State Historic Preservation Officer

cc: Edward Bonner, Philadelphia District, U.S. Army Corps of Engineers
Timothy Slavin, Director and SHPO, Division of Historical & Cultural Affairs
Robert Taylor, Assistant Director, Engineering Support, DelDOT
Mark Tudor, Project Manager, Project Development North II, DelDOT
Therese M. Fulmer, Manager, Environmental Studies, DelDOT
Michael C. Hahn, Senior Highway Planner, DelDOT
David Clarke, Archaeologist, DelDOT
Gwenyth A. Davis, Archaeologist, SHPO, Division of Historical & Cultural Affairs
Christine Quinn, Preservation Planner, New Castle County Dept. of Land Use
✓ Bill Hellmann, RK&K, Inc.
Helen German, RK&K, Inc.