



February 15, 2007

Mr. Mark Zeigler
2607 Eastburn Center
Newark, DE 19711

RE: PLUS review – PLUS 2007-01-05; Riveredge Industrial Park

Dear Mr. Zeigler

Thank you for meeting with State agency planners on January 24, 2007 to discuss the proposed plans for the Riversedge Industrial Park project to be located on Cherry Lane in the Riversedge Industrial Park.

According to the information received, you are seeking site plan approval through the City of New Castle for a 50,000 sq. ft. office building.

Please note that changes to the plan, other than those suggested in this letter, could result in additional comments from the State. Additionally, these comments reflect only issues that are the responsibility of the agencies represented at the meeting. The developers will also need to comply with any Federal, State and local regulations regarding this property. We also note that as the City of New Castle is the governing authority over this land, the developers will need to comply with any and all regulations/restrictions set forth by the County.

Executive Summary

The following section includes some site specific highlights from the agency comments found in this letter. This summary is provided for your convenience and reference. The full text of this letter represents the official state response to this project. *Our office*

notes that the applicants are responsible for reading and responding to this letter and all comments contained within it in their entirety.

State Strategies/Project Location

The project is located in Investment Level 1 according to the 2004 State Strategies for Policies and Spending. Investment Level 1 reflects areas where growth is anticipated by local, county, and State plans in the near term future. State investments will support growth in these areas. Our office has no objections to this project.

Street Design and Transportation

- According to DelDOT maps, the right-of-way for Cherry Lane ends at the railroad tracks and the proposed access to the site would be through lands of Uniqema (formerly ICI Americas). Therefore DelDOT recommends that the developer work with Uniqema to establish a mutually acceptable easement or right-of-way to serve both properties.
- Because access to the property would involve crossing the Norfolk Southern railroad tracks, the access must necessarily remain private. State law prohibits the creation of new public at-grade railroad crossings. DelDOT recommends that the developer contact Norfolk Southern regarding their requirements for the crossing.

Natural and Cultural Resources

- **Rare Species and Wetland Buffers:** According to the Natural Heritage and Endangered Species Program database there are records of rare plants and *Speyeria idalia* (regal fritillary) associated with freshwater tidal marsh on this parcel. *Speyeria idalia* is a state-rare butterfly that inhabits wetlands and is believed to be declining due to habitat destruction. As long as the limit of disturbance does not include this marsh area, these species should not be directly impacted. Indirect impacts could occur if an adequate upland buffer of at least 100ft is not maintained along the boundary of wetlands on this property. This buffer zone should not contain buildings or infrastructure.

The following are a complete list of comments received by State agencies:

Office of State Planning Coordination – Contact: Herb Inden 577-5188

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local, county, and State plans in the near term future. State investments will support growth in these areas. Our office has no objections to this project.

Division of Historical and Cultural Affairs – Contact: Alice Guerrant 739-5685

Nothing is known within the area proposed for the State’s new office building. However, Beers Atlas of 1868 shows Waverly Place/the B.M.D. House within or close to this area. There may be historic-period archaeological resources associated with this house. There is also a high potential for a prehistoric-period archaeological site here.

Small, rural, family cemeteries often are found in relation to historic farm complexes, such as Waverly Place, usually a good distance behind or to the side of the house. The developer should be aware of Delaware’s Unmarked Human Remains Act of 1987, which governs the discovery and disposition of such remains. The unexpected discovery of unmarked human remains during construction can result in significant delays while the process is carried out, and the developer may want to hire an archaeological consultant to check for the possibility of a cemetery here if this development is approved. The DHCA would have to have a copy of any archaeological report done for this purpose. They will be happy to discuss these issues with the developer.

The DHCA would like the opportunity to examine the area prior to any ground-disturbing activities, to see if there are in fact any archaeological sites on the parcel and to learn something about their location, nature, and extent.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

- 1) According to DelDOT maps, the right-of-way for Cherry Lane ends at the railroad tracks and the proposed access to the site would be through lands of Uniqema (formerly ICI Americas). Therefore DelDOT recommends that the developer work with Uniqema to establish a mutually acceptable easement or right-of-way to serve both properties.
- 2) Because access to the property would involve crossing the Norfolk Southern railroad tracks, the access must necessarily remain private. State law prohibits the creation of new public at-grade railroad crossings. DelDOT recommends that the developer contact Norfolk Southern regarding their requirements for the crossing.
- 3) DelDOT’s maintenance of Cherry Lane ends at the railroad tracks, but because the proposed building would change the number and type of vehicles entering and exiting across the tracks, an entrance plan and permit will be needed. The developer’s site engineer should contact DelDOT’s Subdivision Manager for New

Castle County, Mr. Pao Lin, regarding specific requirements for access. Mr. Lin may be reached at (302) 760-2157.

The Department of Natural Resources and Environmental Control – Contact: Kevin Coyle 739-9071

Fish and Wildlife

Rare Species and Wetland Buffers: According to the Natural Heritage and Endangered Species Program database there are records of rare plants and *Speyeria idalia* (regal fritillary) associated with freshwater tidal marsh on this parcel. *Speyeria idalia* is a state-rare butterfly that inhabits wetlands and is believed to be declining due to habitat destruction. Preferred food sources include milkweed and thistle, while larvae typically feed on violets. As long as the limit of disturbance does not include this marsh area, these species should not be directly impacted. Indirect impacts could occur if an adequate upland buffer of at least 100ft is not maintained along the boundary of wetlands on this property. This buffer zone should not contain buildings or infrastructure.

In addition, the applicant indicated that filter strips would be utilized for stormwater management and that the freshwater tidal marsh would be an intended outlet for stormwater (question #30). On the site plan the 'SWM area' appears to be too close to adjacent wetlands. There should be at least a 100ft vegetative (not mowed lawn) buffer between this feature and the wetlands. Tidal wetlands possess many important wetland values and functions, as well as providing important habitat for an array of wildlife species. These wetlands also serve as nursery habitat for a variety of commercially and recreationally important fish species.

DNREC further recommend that efforts be made to direct stormwater to holding areas not associated with the wetlands. If lawns are to be maintained and roads to be paved with asphalt, chemicals and excess nutrients could run-off into the wetlands and degrade water quality. The run-off that eventually enters the tidal wetlands should be significantly filtered of chemicals and excess nutrients.

Soil and Water

- A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. The plan review and approval as well as construction inspection will be coordinated through New Castle Conservation District. Contact New Castle Conservation District at (302) 832-3100 ext 3 for details regarding submittal requirements and fees. It is strongly recommended that you contact the reviewing agency to schedule a preliminary meeting to discuss the sediment and

erosion control and stormwater management components of the plan. The site topography, soils mapping, pre and post development runoff, and proposed method(s) and location(s) of stormwater management should be brought to the meeting for discussion.

- A Notice of Intent (NOI) for Stormwater Discharges Associated with Construction Activity must be submitted to DNREC Division of Soil and Water Conservation along with the NOI fee prior to plan approval.
- The location of this project may provide for a waiver from stormwater quantity management if the runoff can be conveyed to tidal waters in a non-erosive condition. Verification should be provided that the project area was considered during the design of the existing stormwater management basin. It is strongly recommended that you contact the reviewing agency to schedule a preliminary meeting to discuss the sediment and erosion control and stormwater management components of the plan. The site topography, soils mapping, pre and post development runoff, and proposed method(s) and location(s) of stormwater management should be brought to the meeting for discussion.
- DNREC prefers the use of Green Technology BMPs (GTBMPs) for water quality protection, which it appears you have incorporated. GTBMPs typically rely on natural vegetation and minimal disturbance and minimal reliance on structural components. They may be constructed to promote the natural hydrologic process. Examples include, but are not limited to vegetative infiltration, riparian buffer plantings, bio-retention areas, vegetative flow conveyance, as well as recharge and surface storage in undisturbed areas. Please consider the use of additional low impact development practices where available, such as pervious surfaces for overflow parking areas if approved for use.

Water - Ricardo Rios - (302) 739-9945, Ricardo.Rios@state.de.us

The project information sheets state that The City of New Castle will be used to provide water for the proposed project. DNREC records indicate that the project is located within the public water service area granted to Artesian Water Company under Certificate of Public Convenience and Necessity number 85-WS-03. It is recommended that the developer contact Artesian Water Company to determine the availability of public water. Any questions concerning CPCN's should be directed to the Public Service Commission at 302-739-4247. The Division of Water Resources will consider applications for the construction of on-site wells provided the wells can be constructed and located in compliance with all requirements of the Regulations Governing the Construction and Use of Wells. A well construction permit must be obtained prior to constructing any well(s).

Should dewatering points be needed during any phase of construction, a dewatering well construction permit must be obtained from the Water Supply Section prior to construction of the well points. In addition, a water allocation permit will be needed if the pumping rate will exceed 50,000 gallons per day at any time during operation.

All well permit applications must be prepared and signed by licensed water well contractors, and only licensed well drillers may construct the wells. Please factor in the necessary time for processing the well permit applications into the construction schedule. Dewatering well permit applications typically take approximately four weeks to process, which allows the necessary time for technical review and advertising.

Should you have any questions concerning these comments, please contact me, Rick Rios, at 302-739-9944.

DNREC SIRB

One SIRB site was found within a half-mile radius of the proposed site. ICI Americas Inc. Atlas Point (DE-49), now known as Uniqema, is located north of the proposed site. High levels of cadmium were detected in soil samples at the site. Volatile organic contaminants were detected in groundwater samples. A baseline risk assessment was performed in 1998, the result of which is yet to be finalized. The ICI site was of particular concern due to its proximity to public wells (Collins Park) in the area.

However, there is currently a granular activated carbon (GAC) treatment unit and an air stripper on the Collins Park well that is owned and operated by Artesian. Artesian is responsible for maintaining these treatment systems as well as monitoring for the volatile compounds of concern, namely Bis (2-chloroethyl) Ether (BCEE). Artesian's permit requires them to monitor for these compounds. Based on the treatment systems and monitoring program in place, there should be no impact to the public drinking water. If groundwater is to be used, or is encountered during construction activities, it should be evaluated for safety.

No salvage yards were found within a half-mile radius of the proposed site.

Office of Nature Preserves

The marsh lands on the property are State Resource Area lands. State Resource Area (SRA) lands include any open lands characterized by great natural scenic beauty, or whose existing openness, natural condition or present state of use, if retained, would

maintain important recreational areas and wildlife habitat, and enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources, including environmentally sensitive areas.

That said, the Office of Nature Preserves appreciates the efforts of the developer to remain outside the SRA lands, however, the Office encourages the creation of riparian buffers to provide a buffer between the marshes and parking areas.

Water

Wetlands and Subaqueous Lands Section and Watershed Assessment Section.

Soils, Wetlands and Applicable Regulatory Oversight and/or Recommendations

According to the New Castle county soil survey mapping Matapeake, Othello-Fallsington Urban Land complex, and Tidal Marsh were mapped in the immediate vicinity of the proposed construction. Matapeake is a well-drained upland that, generally, has few limitations for development. Othello-Fallsington Urban Land complex is a poorly-drained wetland associated (hydric) soil that has severe limitations for development. Tidal Marsh is a very poorly-drained wetland associated (hydric) soil that has the highest severity level for development.

According to the Statewide Wetland Mapping Project (SWMP) mapping, nontidal palustrine emergent wetlands and tidally-influenced estuarine emergent wetlands were mapped on subject parcel. Most of the mapped wetlands on this parcel are tidally-influenced estuarine wetlands.

The applicant should also be reminded that they must avoid construction/filling activities in those areas containing wetlands or wetland associated hydric soils as they are subject to regulatory jurisdiction under Federal 404 provisions of the Clean Water Act. A site-specific **field** wetlands delineation using the methodology described in the 1987 United States Army Corps of Engineers (USACE) manual is only acceptable basis for making a jurisdictional wetland determination. The applicant is forewarned that the USACE views the use of the National Wetlands Inventory (NWI) mapping or the Statewide Wetlands Mapping Project (SWMP) mapping as an unacceptable substitute for making such delineations. To ensure compliance with said USACE regulatory requirements, it is strongly recommended that a field wetlands delineation using the above-referenced methodology be performed on this parcel before commencing any construction activities. It is further recommended that the USACE be given the opportunity to officially approve the completed delineation. In circumstances where the applicant or applicant's consultant

delineates what they believe are nonjurisdictional isolated (SWANCC) wetlands - the USACE must be contacted to evaluate and assess the jurisdictional validity of such a delineation. In other words, the final jurisdictional authority for making isolated wetlands determinations ultimately rests with the USACE, not a privately-paid wetlands consultant. The USACE can be reached by phone at 736-9763.

It should be noted that in addition to USACE jurisdictional wetland requirements, tidally-influenced wetlands are subject to additional and more stringent regulatory requirements provisions of the State of Delaware's Tidal Wetlands Regulations (Chapter 66). Since it is almost certain that such wetlands are present on this parcel, the Wetlands Section of the Division of Water Resources must be contacted to make a definitive assessment of their nature and extent of before commencing any construction activities on this parcel. The Wetlands Section can be reached at 739-9943.

Based on a review of existing buffer research by Castelle et al. (1994), an adequately-sized buffer to effectively protect wetlands and streams is – in most circumstances - at least 100-foot in width. In recognition of this research and the need to protect water quality, the Watershed Assessment Section strongly recommends that a 100-foot upland buffer (planted in native vegetation) from the landward edge of all wetlands and waterbodies (including ditches, if present).

Impervious Surfaces and BMPs

Based on a review of the PLUS application, post-development surface imperviousness is estimated to be about 1.2% percent. However, given the scope and density of this project, this estimate is **clearly an underestimate**. The reason for this underestimate is principally through the inappropriate use of tidal wetlands and stormwater management areas for purposes of meeting the County's open space requirements. Open space was originally intended to provide residents or occupants with convenient access to lands amenable to active recreation, not a "catchall" land use that enables applicants to meet the County's open space requirements. Use of open space in this manner ultimately results in a significant underestimate of the amount of projected post-development surface imperviousness, ultimately leading to a significant underestimate of its actual environmental impacts. Therefore, wetlands and stormwater management areas should be excluded from the calculation for open space and surface imperviousness. Moreover, the applicant should also realize that all forms of created or constructed surface imperviousness (i.e., rooftops, sidewalks, and roads) should be comprehensively accounted for and included in the calculation for surface imperviousness. It is strongly recommended that the applicant address all of the above-mentioned concerns in their finalized calculation of surface imperviousness.

Studies have shown a strong relationship between increases in impervious cover to decreases in a watershed's overall water quality. It is strongly recommended that the applicant implement best management practices (BMPs) that reduce or mitigate some of its most likely adverse impacts. Reducing the amount of surface imperviousness through the use of pervious paving materials ("pervious pavers") in lieu of asphalt or concrete in conjunction with an increase in forest cover preservation or additional tree plantings – are some examples of practical BMPs that could easily be implemented to help reduce surface imperviousness.

TMDLs and BMPs

A Total Maximum Daily Load (TMDL) is the maximum level of pollution for which a water quality limited waterbody can assimilate without compromising use and recreational goals such as swimming, fishing, drinking water, and shell fish harvesting. Although TMDL development has not been scheduled for this watershed to date, it is still recommended that the applicant employ best available technologies (BATS) and/or best management practices (BMPs) as "methodological mitigative strategies" to reduce degradative impacts that might be associated with this project.

Reducing imperviousness, planting/preservation of trees, and maintaining 100-foot minimum upland buffers from wetlands and streams - are some examples of proactive mitigative strategies that will help reduce excessive nutrient runoff from this development and its impacts on water quality, while ensuring State compliance with potential Federal TMDL regulatory requirements.

Stormwater Issues related to TMDLs

As of April 11, 2005, stormwater best management practices must also consider, water quality as well as quantity in impaired water bodies. This action will help reduce nutrient loading into this watershed's waterbodies.

State Fire Marshal's Office – Contact: R.T. Leicht 739-4394

Because this project is within the City of New Castle, the State Fire Marshal's Office has no comments.

Department of Agriculture - Contact: Scott Blaier 698-4500

The Delaware Department of Agriculture has no objections to the proposed application. The project is within the incorporated area of the City New Castle and *Strategies for*

State Policies and Spending encourages environmentally responsible development in Investment Level 1 areas.

Right Tree for the Right Place

The Delaware Department of Agriculture Forest Service encourages the developer to use the “Right Tree for the Right Place” for any design considerations. This concept allows for the proper placement of trees to increase property values in upwards of 25% of appraised value and will reduce heating and cooling costs on average by 20 to 35 dollars per month. In addition, a landscape design that encompasses this approach will avoid future maintenance cost to the property owner and ensure a lasting forest resource.

Native Landscapes

The Delaware Department of Agriculture and the Delaware Forest Service encourages the developer to use native trees and shrubs to buffer the property from the adjacent land-use activities near this site. A properly designed forested buffer can create wildlife habitat corridors and improve air quality to the area by removing six to eight tons of carbon dioxide annually and will clean our rivers and creeks of storm-water run-off pollutants. To learn more about acceptable native trees and how to avoid plants considered invasive to our local landscapes, please contact the Delaware Department of Agriculture Plant Industry Section at (302) 698-4500.

Tree Mitigation

The Delaware Forest Service encourages the developer to implement a tree mitigation program to replace trees at a 1:1 ratio within the site and throughout the community. This will help to meet the community’s forestry goals and objectives and reduce the environmental impacts to the surrounding natural resources. To learn more, please contact our offices at (302) 349-5754.

Public Service Commission - Contact: Andrea Maucher 739-4247

Any expansion of natural gas or installation of a closed propane system must fall within Pipeline Safety guidelines. Contact: Malak Michael at (302) 739-4247.

Department of Education – Contact: John Marinucci 739-4658

This proposed development is within the Colonial School District.

1. This is a commercial development with no apparent impact on educational infrastructure, capacity or demand. The DOE has no objections or comments regarding this commercial rezoning request.
2. The developer must be aware that the Pencader Charter School for Business and Finance is located in very close proximity to this proposed project. The developer is requested to contact the school administration to coordinate construction activities that may be disruptive to school operations.

Following receipt of this letter and upon filing of an application with the local jurisdiction, the applicant shall provide to the local jurisdiction and the Office of State Planning Coordination a written response to comments received as a result of the pre-application process, noting whether comments were incorporated into the project design or not and the reason therefore.

Thank you for the opportunity to review this project. If you have any questions, please contact me at 302-739-3090.

Sincerely,

A handwritten signature in cursive script that reads "Constance C. Holland".

Constance C. Holland, AICP
Director

CC: City of New Castle