



March 27, 2007

Mr. Raymond Fleming
5306 S. DuPont Highway
Dover, DE 19901

RE: PLUS review – PLUS 2007-02-08; Fleming Property

Dear Mr. Fleming:

Thank you for meeting with State agency planners on February 28, 2007 to discuss the proposed rezoning of a portion of 1.5 acres from AR to BG for an unknown future use. It should be noted that a portion of this parcel is already zoned BG. This PLUS review is for both the rezoning application and the comprehensive plan amendment that will be required should Levy Court choose to rezone this property.

Please note that changes to the proposal, 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. Any future development will need to be in compliance with any Federal, State and local regulations regarding this property. We also note that as Kent County is the governing authority over this land, you 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

- This rezoning is located in Investment Level 2 according to the *State Strategies for Policies and Spending*. This site is also located in the Kent County Growth Zone. Investment Level 2 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 the proposed rezoning of this parcel in accordance with the relevant County codes and ordinances.

Street Design and Transportation

- The subject land is adjacent to US Route 13, and is therefore subject to DelDOT's Corridor Capacity Preservation Program. The main goal of the Program is to maintain the capacity of the existing highway. According to the Office of State Planning Coordination's *Strategies for State Policies and Spending* document, the property is located within a Level 2 Investment Area. In such areas, State policies encourage development and orderly growth. The Department will permit the property owner to retain access along the corridor.
- The owner should be aware of the potential construction of a service road and overpass within the property's vicinity.

Natural and Cultural Resources

- The Water Supply Section has determined that the project falls entirely within an excellent ground-water recharge area for the Kent County (see following map and attached map).

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

Office of State Planning Coordination – Contact: David Edgell 739-3090

This PLUS review includes both a comprehensive plan amendment and a rezoning request. The rezoning of this property is at the discretion of Kent County Levy Court. Should the Levy Court ultimately choose to grant this rezoning request, the comprehensive plan amendment must be adopted prior to or concurrently with the zoning change. This rezoning is located in Investment Level 2 according to the *State Strategies for Policies and Spending*. This site is also located in the Kent County Growth Zone. Investment Level 2 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 the proposed rezoning of this parcel in accordance with the relevant County codes and ordinances.

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

Nothing is known within this parcel. There are no historic properties nearby, and there is not indication in historic maps that there was ever any development here. The potential for a prehistoric-period site here is low, and the area has already been disturbed.

This rezoning will not affect any historic properties.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

- 1) The subject land is adjacent to US Route 13, and is therefore subject to DelDOT's Corridor Capacity Preservation Program. The main goal of the Program is to maintain the capacity of the existing highway. According to the Office of State Planning Coordination's *Strategies for State Policies and Spending* document, the property is located within a Level 2 Investment Area. In such areas, State policies encourage development and orderly growth.

The Department will permit the property owner to retain access along the corridor. The owner should be aware of the potential construction of a service road and overpass within the property's vicinity. For additional information regarding the Corridor Capacity Preservation Program, an electronic manual detailing the policy can be viewed at www.deldot.gov. The manual is located under the publication link. Within the manual, there is a conceptual plan depicting a proposed service road and overpass. While that conceptual plan shows the service road and overpass going directly through the subject land, we must emphasize that the plan is conceptual. DelDOT does not have an active project to build these facilities and when we begin to develop such a project we will consider the land uses that exist then in deciding where to build the service road and overpass.

- 2) The following comments would pertain to the development of the property if the County approves the requested rezoning:
 - a) US Route 13 in the area of this development is classified as a principal arterial road. DelDOT's policy is to require dedication of sufficient land to provide a minimum right-of-way width of 50 feet from the centerline on principal arterial roads. Where there is a median, as in this instance, that distance is measured from the inside edge of the travelway. Therefore we

will require right-of-way dedication along the frontage to provide any additional width needed from this project.

- b) The subject land has limited frontage on Route 13, such that a deceleration lane, if warranted, would not fit within that frontage. Any development generating enough traffic to warrant a deceleration lane would therefore depend on the owner acquiring either additional frontage or other access. From the discussion at the PLUS meeting, we understand that the owner of the house immediately north of the Fleming property intends to sell their property at the same time to the same developer. That additional property may be sufficient to address this concern.
- c) The developer's site engineer should contact the project manager for Kent County, Mr. Brad Herb, regarding specific requirements for access. Mr. Herb may be reached at (302) 266-9600.

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

Water Resource Protection Area

The Water Supply Section has determined that the project falls entirely within an excellent ground-water recharge area for the Kent County (see following map and attached map). The application proposes rezoning from Agriculture to General Business.

Excellent Ground-Water Recharge Areas are those areas mapped by the Delaware Geological Survey where the first 20 feet of subsurface soils and geologic materials are exceptionally sandy. These soils are able to transmit water very quickly from the land surface to the water table. This map category (excellent) is an indicator of how fast contaminants will move and how much water may become contaminated (Andres, 2004). Land use activities or impervious cover on areas of excellent ground-water recharge potential may adversely affect ground water in these areas.

The proposed project will change the land use from Agricultural to General Business. This proposed land use has the potential to introduce petroleum hydrocarbons that are associated with this type of land use (DNREC, 1999).

The Kent County Code allows 75% impervious cover for properties zoned as General Business. The Water Supply Section recommends that the portion of the new development within the wellhead protection area not exceed 20% impervious cover. Some allowance for augmenting ground-water recharge should be considered if the

impervious cover exceeds 20% but is less than 50% of that portion of the parcel within this area (DNREC, 2005). However, the development should not exceed 50% regardless. The purpose of an impervious cover threshold is to minimize loss of recharge (and associated increases in storm water) and protect the quality and quantity of ground water and surface water supplies.

In addition, because the excellent ground water recharge area can so quickly affect the underlying aquifer if contaminants are spilled or discharged across the area, the storage of hazardous substances or wastes should not be allowed within the area unless specific approval is obtained from the relevant state, federal, or local program.

References

Andres, A. Scott, 2004, Ground-Water Recharge Potential Mapping in Kent and Sussex Counties, Delaware: Delaware Geological Survey Report of Investigations No. 66, p. 14.

<http://www.udel.edu/dgs/Publications/pubform.html#investigations>

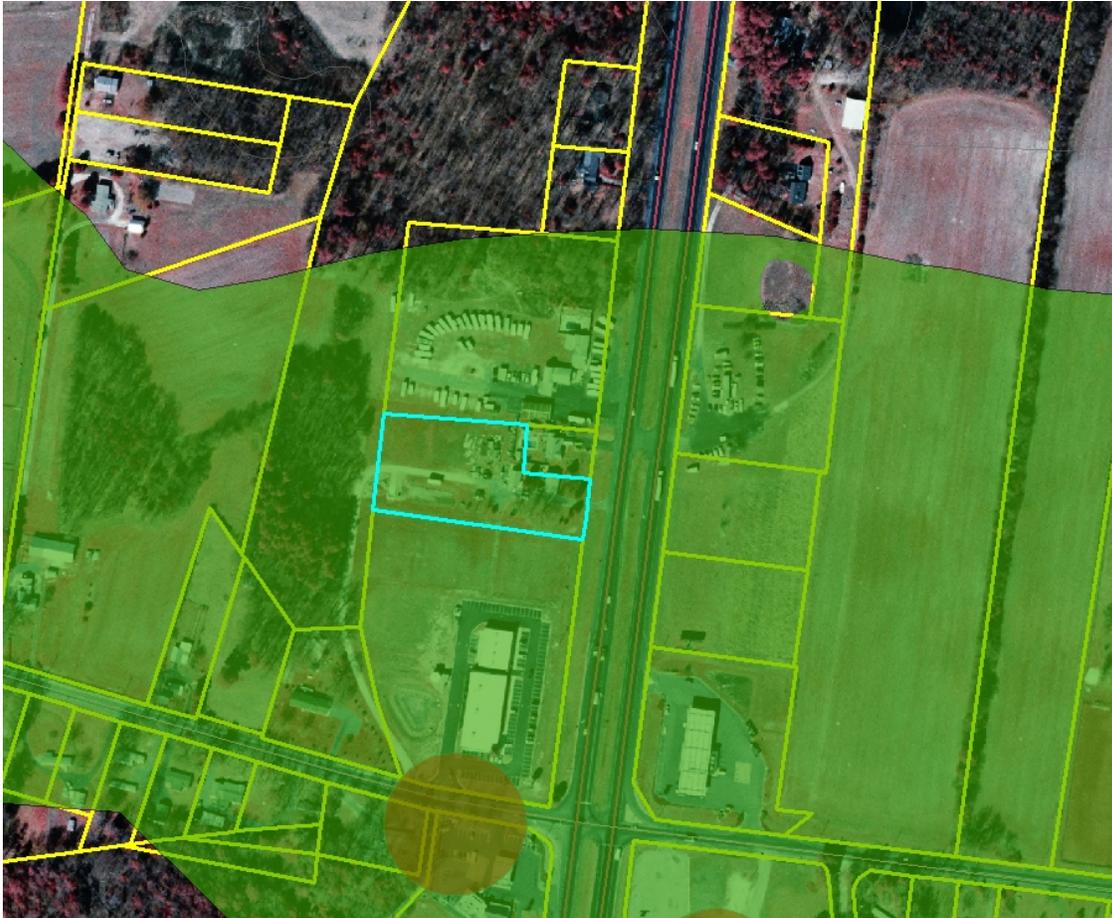
Delaware Department of Natural Resources and Environmental Control (2005): *Source Water Protection Guidance Manual for the Local Governments of Delaware*: Dover, DE. 144 p.

http://www.wr.udel.edu/publications/SWAPP/swapp_manual_final/swapp_guidance_manual_final.pdf

Delaware Department of Natural Resources and Environmental Control. (1999). *The State of Delaware Source Water Assessment Plan*: Dover, DE, p. 301.

<http://www.wr.udel.edu/swaphome/publications.html>

Fleming Property (PLUS 2007-02-08) Excellent ground-water recharge potential area is highlighted in green. The parcel under review is outlined in blue.



Water Supply

The project information sheets state that water will be provided to the project by an individual on-site well. DNREC records indicate that the project is located within the public water service area granted to Tidewater Utilities under Certificate of Public Convenience and Necessity PSC-1190. It is recommended that the developer contact Tidewater Utilities to determine the availability of public water. Any public water utility providing water to the site must obtain a certificate of public convenience and necessity (CPCN) from the Public Service Commission. Information on CPCNs and the application process can be obtained by contacting the Public Service Commission at 302-

739-4247. Should an on-site public well be needed, a minimum isolation distance of 150 feet is required between the well and any potential source of contamination, such as a septic tank and sewage disposal area. 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 wells.

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.

Potential Contamination Sources do exist in the area, and any well permit applications will undergo a detailed review that may increase turnaround time and may require site specific conditions/recommendations. In this case, there is an Underground Storage Tank named Uncle Willie's located within 1000 feet of the proposed project.

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

Sediment and Erosion Control/Stormwater Management

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 Kent Conservation District. Contact Jared Adkins, Program Manager, at (302) 741-2600, ext. 3, for details regarding submittal requirements and fees.

A Notice of Intent (NOI) for Stormwater Discharges Associated with Construction Activity must be submitted to the Division of Soil and Water Conservation along with the \$195 NOI fee prior to plan approval.

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.

This site is located in a designated area, with impairments for nutrients and bacteria. The applicant is encouraged to preserve any existing riparian buffers to aid in the reduction of nutrients, sediment, and other pollutants.

Drainage

1. The Drainage Program typically does not comment on a rezoning application, and has no objection to this one.
2. This property is near the divide of the St. Jones watershed and the Murderkill watershed. Coordination of an area drainage plan for the various businesses within the area is requested.
3. If this property is to be subdivided, have all drainage easements recorded on deeds and place restrictions on obstructions within the easements to ensure access for periodic maintenance or future re-construction. Future property owners may not be aware of a drainage easement on their property if the easement is only on the record plan. However, by recording the drainage easement on the deed, the second owner, and any subsequent owner of the property, will be fully aware of the drainage easement on their property.

For questions or clarifications, please contact Jim Sullivan at 739-9921.

Underground Storage Tanks

There is one active LUST site(s) located near the proposed project:

Uncle Willie's # 15, Facility # 1-000570, Project # K0311071

No environmental impact is expected from the above inactive/active LUST site(s). However, should any underground storage tank or petroleum contaminated soil be discovered during construction, the Tank Management Branch must be notified as soon as possible. It is not anticipated that any construction specifications would need to be changed due to petroleum contamination. However, should any unanticipated contamination be encountered and PVC pipe is being utilized, it will need to be changed to ductile steel with nitrile rubber gaskets in the contaminated areas.

State Fire Marshal's Office – Contact: John Rudd 739-4394

These comments are intended for informational use only and do not constitute any type of approval from the Delaware State Fire Marshal's Office. At the time of formal submittal, the applicant shall provide; completed application, fee, and three sets of plans depicting the following in accordance with the Delaware State Fire Prevention Regulation (DSFPR):

a. **Fire Protection Water Requirements:**

- Since the dwellings are proposed to be served by individual on-site wells (No Central or Public Water System within 1000' of property), set back and separation requirements will apply.

b. **Accessibility:**

- All premises, which the fire department may be called upon to protect in case of fire, and which are not readily accessible from public roads, shall be provided with suitable gates and access roads, and fire lanes so that all buildings on the premises are accessible to fire apparatus. This means that the access road to the subdivision from the main main roads leading into the community must be constructed so fire department apparatus may negotiate it.
- Fire department access shall be provided in such a manner so that fire apparatus will be able to locate within 100 ft. of the front door.
- Any dead end road more than 300 feet in length shall be provided with a turn-around or cul-de-sac arranged such that fire apparatus will be able to turn around by making not more than one backing maneuver. The minimum paved radius of the cul-de-sac shall be 38 feet. The dimensions of the cul-de-sac or turn-around shall be shown on the final plans. Also, please be advised that parking is prohibited in the cul-de-sac or turn around.
- The use of speed bumps or other methods of traffic speed reduction must be in accordance with Department of Transportation requirements.
- The local Fire Chief, prior to any submission to our Agency, shall approve in writing the use of gates that limit fire department access into and out of the development or property.

c. **Gas Piping and System Information:**

- Provide type of fuel proposed, and show locations of bulk containers on plan.

d. **Required Notes:**

- Provide a note on the final plans submitted for review to read “ All fire lanes, fire hydrants, and fire department connections shall be marked in accordance with the Delaware State Fire Prevention Regulations”
- Proposed Use
- National Fire Protection Association (NFPA) Construction Type
- Maximum Height of Buildings (including number of stories)
- Provide Road Names, even for County Roads

Preliminary meetings with fire protection specialists are encouraged prior to formal submittal. Please call for appointment. Applications and brochures can be downloaded from our website: www.delawarestatefiremarshal.com, technical services link, plan review, applications or brochures.

Department of Agriculture - Contact: Scott Blaier 698-4500

The Delaware Department of Agriculture has no objections to the proposed application as it is located within Kent County’s growth zone and the *Strategies for State Policies and Spending* encourages environmentally responsible development in Investment Level 2 areas.

This site is located entirely within an area designated as having “excellent” ground-water recharge potential. DNREC has mapped all ground-water recharge-potential recharge areas for the state, and an “excellent” rating designates an area as having important groundwater recharge qualities.

Senate Bill 119, enacted by the 141st General Assembly in June of 2001, requires the counties and municipalities with over 2,000 people to adopt as part of the update and implementation of their 2007 comprehensive land use plans, areas delineating excellent ground-water recharge potential areas. Furthermore, the counties and municipalities are required to adopt regulations by December 31, 2007 governing land uses within those areas to preserve ground-water quality and quantity.

Maintaining pervious cover in excellent and good recharge areas is crucial for the overall environmental health of our state and extremely important to efforts which ensure a safe drinking water supply for future generations. Retention of pervious cover to ensure an adequate future water supply is also important for the future viability of agriculture in the First State. The loss of every acre of land designated as “excellent” and “good” recharge areas adversely impacts the future prospects for agriculture in Delaware. The developer

should make every effort to protect and maintain valuable ground-water recharge potential 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.

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 project is within the Caesar Rodney School District. This is a commercial/industrial rezoning request with no apparent impact on educational infrastructure, capacity or demand. The DOE has no objections or comments regarding this commercial/industrial rezoning proposal.

Due to the proximity to the Polytech High School, the DOE reserves the right to provide specific comments regarding specific industrial/commercial uses and site plans once submitted.

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".

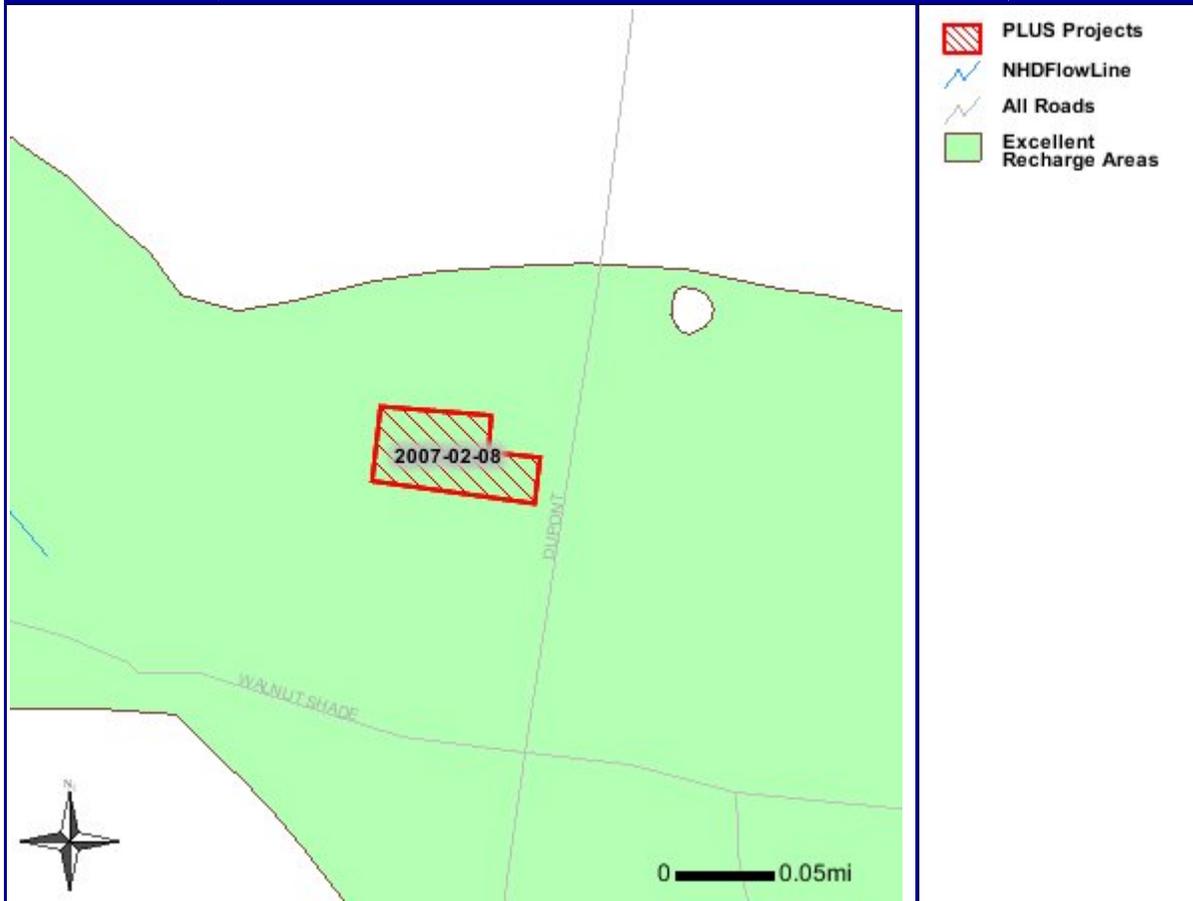
Constance C. Holland, AICP
Director

CC: Kent County



Fleming Property

2007-02-08



This map was produced by the Delaware Department of Natural Resources and Environmental Control.

