



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF MANAGEMENT AND BUDGET  
STATE PLANNING COORDINATION

January 28, 2008

Mr. Tom Plotts  
AES ArchiTech, LLC  
110 W. Church Street  
Salisbury, MD 21801

RE: PLUS review –2007-11-09; Hertrich Properties

Dear Mr. Plotts:

Thank you for meeting with State agency planners on January 2, 2008 to discuss the proposed plans for the Hertrich Properties to be located at 27695 O'Neals Road near Seaford.

According to the information received, you are seeking

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 Sussex County 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.***

### **Street Design and Transportation**

- US Route 13 is a principal arterial road and O'Neals Road is a local 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 and 30 feet from the centerline on local roads.
- DelDOT will also require a 15-foot wide permanent easement across the O'Neals Road frontage of the site for a future 10-foot wide shared use path.

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

#### **Office of State Planning Coordination – Contact: Bryan Hall 739-3090**

Although this project is identified within a Level 4 Area by the State Strategies for Policy and Spending; this office recognizes that the intersection north of Laurel has several pre-existing commercial uses already in place as well as similar zoned commercial uses as defined by the Sussex County 2003 Comprehensive Land Use Plan. Understanding this situation, this office has no objection to the site; however, this office recommends the following:

- Coordinate all rezoning and site plan activities with Sussex County Planning and Zoning to ensure the proper zoning is met for the current and future comprehensive land use plan.
- Work with DNREC to develop an improved storm water design that takes into account green technologies that allows for less impervious surfaces within the proposed.
- Coordinate with DEL-DOT to allow for necessary rights-of-ways to meet the corridor preservation requirements for US 13.
- Work with the County and Delaware Forest Service to develop a landscaping plan to meet the County highway set back requirements and to screen the proposed from the adjacent mobile home park to lessen noise and lighting impacts.

#### **Department of Transportation – Contact: Bill Brockenbrough 760-2109**

Hertrich Properties V, LLC, seeks to develop an approximately 2.708-acre assemblage of parcels (Tax Parcels 1-32-7.00-34.00 and 66.02) between Seaford and Laurel. More specifically, the land is on the southwest corner of US Route 13 and O'Neals Road (Sussex Road 485). The development would consist of a truck sales lot with a 2,250 square foot garage and office and display space for 183 vehicles. The land is zoned AR-1

(Agricultural Residential) in Sussex County and would need to be rezoned to CR-1 to permit the proposed development.

Our comments are as follows:

- 1) US Route 13 is a principal arterial road and O'Neals Road is a local 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 and 30 feet from the centerline on local roads. Where the road is divided by a median, as Route 13 is in this case, the distance is measured from the inside edge of the travelway, rather than from the centerline. Therefore DelDOT will require right-of-way dedication along the frontage to provide any additional width needed from this project.
- 2) DelDOT will also require a 15-foot wide permanent easement across the O'Neals Road frontage of the site for a future 10-foot wide shared use path.
- 3) On December 21, 2007, DelDOT's new regulations regarding land development became effective. As indicated in a February 20, 2007, letter to Sussex County, the subject development did not meet DelDOT's warrants for a traffic impact study (TIS) at that time. DelDOT understands that the rezoning application has been submitted to the County and accepted for review in accordance with required local procedures.
- 4) In the February 20, 2007, letter mentioned above, DelDOT commented that an entrance on O'Neals Road, but not on Route 13, would be permissible with regard to DelDOT's Corridor Capacity Preservation Program. That is still our position. However, DelDOT also cautioned that there may not be sufficient frontage on O'Neals Road to accommodate the necessary entrance design. The developer's site engineer should contact Mr. Derek Sapp, the DelDOT Subdivision Manager for western Sussex County, regarding specific requirements for entrance improvements. Mr. Sapp may be reached at (302) 760-4803.

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

### **Soils**

According to the Sussex County soil survey update, Henlopen-Rosedale complex and Pepperbox were mapped in the immediate vicinity of the proposed construction.

Henlopen-Rosedale is a well-drained that, generally, has few limitations for development. Pepperbox is a moderately well-drained soil of low-lying uplands that has moderate limitations for development.

### **Impervious Cover**

Based on a review of the PLUS application form, post-construction surface imperviousness was projected to reach about 62 percent. However, it was not clear from the information submitted whether this was a realistic assessment or not. When calculating surface imperviousness, it is important to consider all created forms of constructed surface imperviousness (i.e., rooftops, sidewalks, roads, and stormwater management ponds) when calculating surface imperviousness; otherwise, an inaccurate assessment of this project's environmental impacts will result. Surface imperviousness should be recalculated if any of the above-mentioned forms of constructed surface imperviousness were excluded.

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.

### **ERES Waters**

This project is located adjacent to receiving waters of the greater Nanticoke watershed, and designated as having waters of Exceptional Recreational or Ecological Significance (ERES). ERES waters are recognized as special assets of the State, and shall be protected and/ or restored, to the maximum extent practicable, to their natural condition. Provisions in Section 5.6 of Delaware's "Surface Water Quality Standards" (as amended July 11, 2004), specify that all designated ERES waters and receiving tributaries develop a "pollution control strategy" to reduce non-point sources of pollutants through implementation of Best Management Practices (BMPs). Moreover, provisions defined in subsection 5.6.3.5 of same section, specially authorize the Department to mandate BMPs to meet standards for controlling the addition of pollutants and reducing them to the greatest degree achievable and, where practicable, implementation of a standard requiring no discharge of pollutants.

## **TMDLs**

Total Maximum Daily Loads (TMDLs) for nitrogen and phosphorus have been promulgated through regulation for the Nanticoke watershed. A TMDL is the maximum level of pollution allowed for a given pollutant below which a “water quality limited water body” can assimilate and still meet water quality standards to the extent necessary to support use goals such as, swimming, fishing, drinking water and shell fish harvesting. Although TMDLs are required by federal law, states are charged with developing and implementing standards to support these desired use goals. In the greater Nanticoke watershed, “target-rate-nutrient reductions” of 30 and 50 percent will be required for nitrogen and phosphorus, respectively. Additionally, “target-rate-reductions” of 2 percent will be required for bacteria.

## **TMDL Compliance through the PCS**

As indicated above, Total Maximum Daily Loads (TMDLs) for nitrogen and phosphorus have been proposed for the Nanticoke watershed. The TMDL calls for a 30 and 50 percent reduction in nitrogen and phosphorus from baseline conditions. The TMDL also calls for a 2 percent reduction in bacteria. A Pollution Control Strategy (PCS) will be used as a regulatory framework to ensure that these nutrient reduction targets are attained. The Department has developed an assessment tool to evaluate how your proposed development may reduce nutrients to meet the TMDL requirements. Additional nutrient reductions may be possible through the implementation of BMPs such as wider vegetated buffers along watercourses/wetlands, increasing the amount of passive, wooded open space, connection to a central sewer (if available), use of pervious paving materials to reduce surface imperviousness, and the deployment of green-technology stormwater management treatment technologies. Contact Lyle Jones at 302-739-9939 for more information on the assessment tool.

## **Water Supply**

The project information sheets state that an individual on-site well will be used to provide water for the proposed project. DNREC records indicate that the project is not located in an area where public water service is available. 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 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 a solid waste landfill (Truitt Dump) 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. Contact the reviewing agency to schedule a pre-application meeting to discuss the sediment and erosion control and stormwater management components of the plan as soon as practicable. 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. The plan review and approval as well as construction inspection will be coordinated through the Sussex Conservation District. Contact Jessica Watson at the Sussex Conservation District at (302) 856-7219 for details regarding submittal requirements and fees.

Because of the parcel's location in an impaired watershed and the amount of impervious surface, consider incorporating more green technology BMPs and low impact development practices to reduce stormwater flow and to meet water quality goals.

The Sediment and Stormwater Management Program ensures sediment and erosion control plans and stormwater plans comply with local land use ordinances and policies, including the siting of stormwater management facilities. However, we do not support placement in resource protection areas or the removal of trees for the sole purpose of placement of a stormwater management facility/practice.

## **Drainage**

The Drainage Program requests that the engineer take precautions to ensure the project does not hinder any off site drainage upstream of the project or create any off site drainage problems downstream by the release of on site storm water. The Drainage Program requests that the engineer check existing downstream ditches and pipes for function and blockages prior to the construction. Notify downstream landowners of the change in volume of water released on them.

## **Site Investigation and Restoration**

The former historic Truitt Dump is an inactive landfill located less than 1,000 feet to the southwest of the proposed project. Truitt landfill was formerly a gravel pit used to build Route 13. The towns of Seaford and Laurel disposed of a variety of town refuse in the pit, including household waste, tires, machinery, construction waste, trees, demolition debris, and appliances, from 1968 to 1970. The landfill is roughly three acres in size and supposedly contains approximately five feet of fill mixed with dirt. The landfill is unlined. From the August 31, 2000 site visit: "The landfill is indeed a roughly rectangular shaped pond that is approximately 375 ft. x 100 ft." After the site visit, the Solid and Hazardous Waste Management Branch (SHWMB) recommended SIRB re-open the investigation of the Truitt landfill to more convincingly determine if groundwater has been impacted. There is no information contained in the SHWMB files on any testing conducted.

Although the Site Investigation and Restoration Branch (SIRB) does not foresee a negative impact from the historic landfill on the proposed project, should a release or imminent threat of a release of hazardous substances be discovered at Hertrich Properties during development (e.g., contaminated water or soil), please discontinue construction activities and immediately notify DNREC at the 24-hour emergency number (800-662-8802). In addition, please contact SIRB as soon as possible at 302-395-2600 for further instructions.

## **Underground Storage Tanks**

There are no LUST site(s) located near the proposed project. 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: Duane Fox 302856-5298**

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):

This Agency has no objection to the re-zoning request. The information provided below shall be considered when plans are being designed.

a. **Fire Protection Water Requirements:**

- Since the structures of the complex 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. **Fire Protection Features:**

- For commercial buildings greater than 5000 sq.ft., a fire alarm signaling system which is monitored off-site is required
- For commercial buildings greater than 10,000 sq.ft. Class B (2-hour rated) fire barriers are required to subdivide buildings into areas of 10,000 sq.ft. or less
- Buildings greater than 10,000 sq.ft., 3-stories or more, over 35 feet, or classified as High Hazard, are required to meet fire lane marking requirements



c. **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 site from the main thoroughfare 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.
- 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.

- d. **Gas Piping and System Information:**
  - Provide type of fuel proposed, and show locations of bulk containers on plan.
  
- e. **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
  - Alpha or Numerical Labels for each building/unit for sites with multiple buildings/units
  - Square footage of each structure (Total of all Floors)
  - 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.statefiremarshal.delaware.gov](http://www.statefiremarshal.delaware.gov), technical services link, plan review, applications or brochures.

**Department of Agriculture - Contact: Scott Blaier 698-4500**

The proposed car dealership expansion is in an area designated as Investment Level 4 under the *Strategies for State Policies and Spending*. However, this narrow triangular 2.7 acre parcel is located on the last remaining corner of a fully-developed commercial intersection along southbound Route 13. The current use of the property is for a single family residential house and garage, with no forest, agricultural lands, or other environmentally significant feature. Given all of these mitigating circumstances, the Department believes that the proposed use is not inconsistent with the State Strategies, and therefore is not opposed to the project.

*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.

*Do Not Plant List*

Due to the high risk of mortality from insects and disease, the Delaware Forest Service does not recommend planting any of the following species:

Callery Pear  
Leyland Cypress  
Red Oak (except for Willow Oak)  
Ash Trees

Please contact the Delaware Forest Service for more information at (302) 698-4500.

*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 735-4055**

This proposed project is in the Seaford School District. This is a rezoning request and review for commercial use. This rezoning request is commercial in nature with no apparent impact on educational service delivery or infrastructure and, as such DOE has no objections or comments regarding this rezoning request.

**Sussex County – Contact: Richard Kautz 855-7878**

This year Sussex County will be considering implementation of a Source Water Protection Program required by the State. Depending on the requirements adopted by the

County Council this project might be affected. Any public use well location should insure that the wellhead protection area is entirely on site.

The site plan, when prepared, should also show compliance with the Route 13 Highway Corridor Overlay as required by 115-194.1 of the County Code, where applicable.

The Sussex County Zoning Ordinance Section 115-166 C states, "Parking within front yard setback shall be discouraged and subject to site plan review." The developer should be aware that the Planning and Zoning Commission is reluctant to approved parking in the front setback and so the design should be revised to show compliance with the setback requirement.

The developer should explore relocating the large stormwater management pond now located along the property frontage to an interior or less visible location.

The project is proposed to be located within the Low Density Area. The current Comprehensive Plan does not anticipate additional intense commercial development and the proposed zoning is considered inconsistent with the current Plan. A conditional use or B-1 would be consistent.

The Sussex County Engineer Comments:

An individual onsite system is proposed to serve a proposed truck sales lot 3 acre site. The applicant proposes a rezoning from AR to C1.

The proposed project is within the Secondary Service Area of the Blades Sanitary Sewer District. Sussex County is currently conducting a sewer planning study of Western Sussex to determine sewer needs of the area. The planning study is anticipated to be completed near the end of 2007. The above parcel is not expected to receive central sewer within the foreseeable future. Sussex County has no objection to the project being served with an onsite system.

If Sussex County ever provides sewer service, it is required that the onsite system be abandoned and a direct connection made to the County system at the developers and/or owners expense.

For questions regarding these comments, contact Rob Davis, Sussex County Engineering Department at (302) 855-7820.

**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: Sussex County