



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET
Budget Development, Planning and Administration
State Planning Coordination

May 18, 2009

Mr. Kevin McBride
Morris & Ritchie Associates, Inc.
404 S. Bedford Street, Ste. 5
Georgetown, DE 19947

RE: PLUS review –2009-04-03; Seacoast Speedway

Dear Mr. McBride:

Thank you for meeting with State agency planners on April 22, 2009 to discuss the proposed plans for the Seacoast Speedway project to be located on the east side of Route 113, south of Speedway Road and south of the Town of Georgetown.

According to the information received, you are seeking site plan approval through Sussex County for 163 residential units on 81.84 acres,

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.*

State Strategies/Project Location

- According to the Strategies for State Policies and Spending, this parcel is located in a Level 3 and Level 4 area; however, this parcel is now within a developing area according to the 2008 Sussex County comprehensive plan.

Street Design and Transportation

- Previous TIS for the Scott Farm in Georgetown and the Smith Property and DelDOT's 2008 Highway Safety Improvement Program established a need to install channelizing islands to prohibit left turns onto Route 113 and crossing movements at the Almshouse Road/Speedway Road intersection and the Kruger Road/Wood Branch Road. DelDOT has not begun work on the design of these improvements and a construction schedule has not been established. Prior to the issuance of building permits, the developer will be required to enter into an agreement with DelDOT, whereby the developer would either build these improvements or fund an equitable portion of a DelDOT project or a private project to build them.
- DelDOT presently has a project under development to replace the stop-controlled intersection of Zoar Road (Sussex Road 48), Speedway Road and Bethesda Road with a roundabout. Construction is expected to begin in 2013. Prior to the issuance of building permits, the developer will be required to enter into an agreement with DelDOT, whereby the developer would fund an equitable portion of the DelDOT project and/or provide needed rights-of-way. Right-of-way impacts have not been determined but should be better known by this July.
- Prior to the issuance of building permits, the developer will be required to enter into an agreement with DelDOT whereby they will improve Wood Branch Road, Speedway Road and Bethesda Road within the limits of the site frontage and Speedway Road from US Route 113 to Wood Branch Road.

Natural and Cultural Resources

- DNREC's chief concern with this project is the estimation of impervious cover in a regulated high nutrient reduction area of the Inland Bays watershed.

This office has received the following comments from State agencies:

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

According to the Strategies for State Policies and Spending, this parcel is located in a Level 3 and Level 4 area; however, this parcel is now within a developing area according to the 2008 Sussex County comprehensive plan. With that said, the State has no objections to the development of this parcel provided you meet the requirements of Sussex County.

State Historic Preservation Office (SHPO) – Contact: Terrence Burns 739-5685

The role of the Division of Historical & Cultural Affairs in the Preliminary Land Use Service (PLUS) process is to provide information on the potential affect or impacts that a development or construction project may have on historic or cultural resources, and is an advocate for their protection. These historic or cultural resources can be a historic property, building, structure, landscape, district, object, archaeological site, cemetery, burial ground, or unmarked human remains.

Development projects, whether they are big or small, or whether they are located in rural areas or urban areas, have the capability to impact historic or cultural resources. In some cases, many of them, such as architectural resources and archaeological sites have been adversely affected by development projects through the demolition or ground-disturbing activities. These resources are also irreplaceable and quite valuable because of the important information they can provide about our state's past and a visual connection to our state's heritage.

In accordance with the Preliminary Land Use Service (PLUS) outlined in [Chapter 92 of Title 29](#) of the Delaware Code, here are the observations in reference to this PLUS Review Application. In addition, all of the information provided in reference to these observations is according to the archival resources or reference materials of the State Historic Preservation Office, which is the central research repository of the Division of Historical and Cultural Affairs.

Although this development is mainly in Investment Level 4, the historic agricultural landscape is already substantially disrupted in this area. There is a known historic house (S-4508) in the northeastern corner of the parcel. This may be the house noted as the J. W. Pepper House on the Beers Atlas of 1868 or it may be a replacement house on the same site. There may also be a historic-period archaeological site associated with the Pepper House. There are areas of medium potential for prehistoric-period archaeological sites as well.

Small, rural, family cemeteries often are found in relation to historic farm complexes, usually a good distance from 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.

Much of the parcel has already been disturbed by the speedway, but the area around the house appears relatively intact. The State Historical Preservation Office would appreciate the opportunity to document this house before it is demolished. They would also appreciate the opportunity to look for archaeological sites before any ground-disturbing activities take place. If you have any questions, or would like to discuss this information further, please contact Terence Burns at (302) 736-7404.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

MSK, Inc. seeks to develop 163 single-family detached houses on an approximately 81.84-acre assemblage of parcels (Tax Parcel 1-33-02.00-22.00, 23.00, 24.00 and 24.01). The assemblage is located south of Georgetown on the east side of US Route 113, the south sides of Woods Branch Road (Sussex Road 321) and Speedway Road (Sussex Road 325) and the west side of Bethesda Road (Sussex Road 326). The land is zoned AR-1 and would be developed by right under the cluster development option. Presently part of it is occupied by a stock car track for which the development is named. The track would be demolished.

While most of the land for this development is in an area designated as Level 4 under the *Strategies for State Policies and Spending*, DeIDOT notes that the subject land is now marked as a developing area in the Sussex County Comprehensive Plan, development has taken place on adjacent land, and the plan for this development has improved since it was previously reviewed through the PLUS process in 2005. While they typically do not provide comments on proposed developments in Level 4 areas, for the reasons just mentioned, they will make an exception in this case.

- 1) In December 2007, DeIDOT adopted new regulations pertaining to subdivision streets and state highway access. Developments for which plans were submitted to local land use agencies and accepted for review by them before April 1, 2008, are subject to our previous regulations. Having reviewed information supplied by the applicant after the PLUS meeting, DeIDOT found that the previous regulations apply to this development.
- 2) Under DeIDOT's previous regulations, the proposed development does not warrant a traffic impact study (TIS) based on its expected trip generation (1,630 vehicles per day (our estimate) versus a warrant of 2100 vehicles per day). However, they anticipate requiring the developer to make or fund improvements as follows:
 - a) Previous TIS for the Scott Farm in Georgetown and the Smith Property and DeIDOT's 2008 Highway Safety Improvement Program established a need to install channelizing islands to prohibit left turns onto Route 113 and crossing movements at the Almshouse Road/Speedway Road intersection and the Kruger Road/Wood Branch Road. DeIDOT has not begun work on the design of these improvements and a construction schedule has not been established. Prior to the issuance of building permits, the developer will be required to enter into an agreement with DeIDOT, whereby the developer would either build these improvements or fund an equitable portion of a DeIDOT project or a private project to build them.
 - b) DeIDOT presently has a project under development to replace the stop-controlled intersection of Zoar Road (Sussex Road 48), Speedway Road

and Bethesda Road with a roundabout. Construction is expected to begin in 2013. Prior to the issuance of building permits, the developer will be required to enter into an agreement with DelDOT, whereby the developer would fund an equitable portion of the DelDOT project and/or provide needed rights-of-way. Right-of-way impacts have not been determined but should be better known by this July.

- c) Prior to the issuance of building permits, the developer will be required to enter into an agreement with DelDOT whereby they will improve Wood Branch Road, Speedway Road and Bethesda Road within the limits of the site frontage and Speedway Road from US Route 113 to Wood Branch Road.
- 3) In addition to the projects mentioned above, DelDOT is evaluating alternative alignments for a new limited access highway in the US Route 113 corridor (US Route 113 North/South Study). Our recommended preferred alternative in the Georgetown Area is the Refined On-Alignment Alternative. This alternative includes a grade separation at the US 113 and Kruger Road intersection with a connection to Speedway Road. There would be right-of-way impacts to the northern portion of the property. While there is no current schedule for construction, the developer is urged to consult [with](#) the project manager, Mr. Monroe Hite, III, for more information on this project. Mr. Hite may be reached at (302) 760-2120.
- 4) DNREC recommends that the developer contact Subdivision Manager for western Sussex County, Mr. Derek Sapp, for more detailed comments on the site access and off-site improvements. Mr. Sapp may be reached at (302) 760-4803.

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

DNREC's chief concern with this project is the estimation of impervious cover in a regulated high nutrient reduction area of the Inland Bays watershed. Please describe how you arrived at your calculation of 4.9 percent for post-construction impervious cover. An eyeballing of the site plan, an application of the TR-55 methodology and the ARC-GIS calculation leads DNREC to conclude that this is a significant underestimate. An accurate determination is very important for achieving required nutrient-load reductions.

Fish and Wildlife

Forest Preservation

The site plan is an improvement over the previous plan, and the amount of proposed forest loss has been reduced. It is important to maintain forested habitat connections to adjacent properties, such as the forested area associated with Alms House Ditch. Forested

open space should be permanently preserved (for example, placed in a conservation easement) to prevent future clearing.

Although leaving a forest intact is usually more beneficial to the existing wildlife and is preferential to clearing, It is recommended clearing be minimized from April 1st to July 31st when birds and other species of wildlife utilize forests for breeding.

According to the application, there will be a reduction in the amount of impervious surface, from 9% (320,000 SF) to 4.9% (173, 140) SF. How did the applicant arrive at this figure considering the conversion of open field and forest into driveways, roads, and buildings typically increases impervious surface?

Nuisance Waterfowl

To deter nuisance geese, the applicant indicated that the pond would be planted with perimeter trees and shrubs and monofilament wire would be placed across the water surface.

1. DNREC recommends native plantings, including tall grasses, wildflowers, shrubs, and trees at the edge and within an adequate buffer (15-30 feet in width) around the ponds. When the view of the surrounding area from the pond is blocked, geese can't scan for predators and are less likely to reside and nest in the area of the pond. The vegetation also blocks the ability to easily move between land and water.
2. At this time, DNREC doesn't recommend using monofilament grids due to the potential for birds and other wildlife to become entangled if the grids are not properly installed and maintained. In addition, the on-going maintenance (removing entangled trash, etc.) may become a burden to the homeowners association.

The Division of Fish and Wildlife does not provide goose control services, and if problems arise, residents or the home-owners association will have to accept the burden of dealing with these species (e.g., permit applications, costs, securing services of certified wildlife professionals). Solutions can be costly and labor intensive; however, with proper landscaping, monitoring, and other techniques, geese problems can be minimized. *Edna Stetzar - (302) 653-2880, Edna.Stetzar@state.de.us*

Soil and Water

Sediment and Stormwater Program. 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) 856-2105 for details regarding submittal requirements and fees.

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

Drainage Program. 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 onsite 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.

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.

Sediment/Stormwater and Drainage comments provided by James Sullivan - (302) 739-9921, James.Sullivan@state.de.us

Water Resources

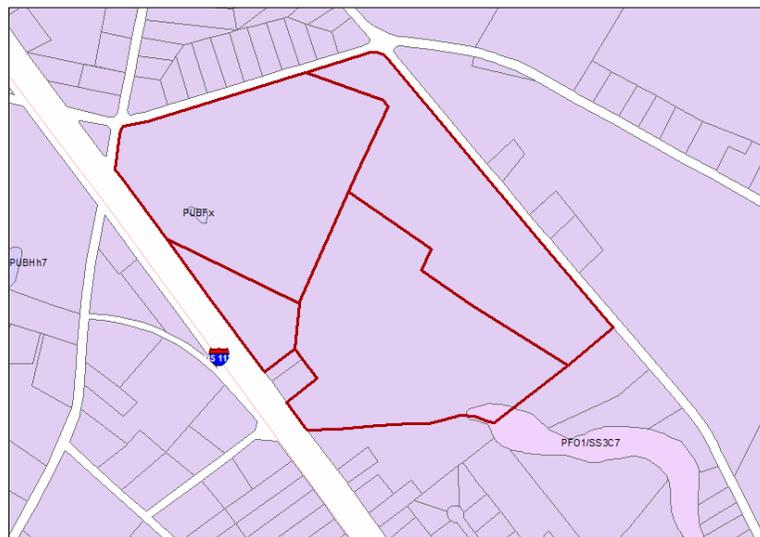


Figure 2: SWMP mapping in the immediate vicinity of the proposed Seacoast Speedway project.

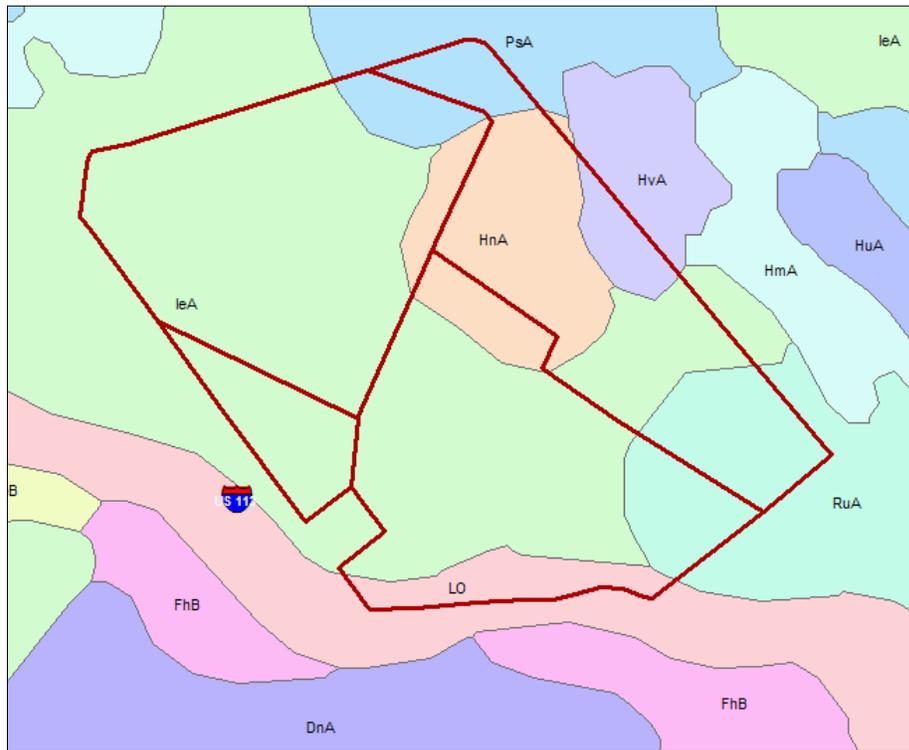


Figure 1: NRCS soil survey update mapping in the immediate vicinity of proposed Seacoast Speedway project.

Soils Assessment. Based on the NRCS soil survey update Runclint (RuA), Ingleside (IeA), Hammonton (HnA), Hurlock (HvA), and Longmarsh (LO) were mapped in the immediate vicinity of the proposed construction (Figure 1). Runclint and Ingleside are well-drained upland soils that, generally, have few limitations for development. Hammonton is a moderately well-drained upland soil that has moderate limitations for development. Hurlock and Longmarsh are poorly to very poorly-drained wetland associated (hydric) soils that have severe limitations for development.

Wetlands. Based on the Statewide Wetland Mapping Project (SWMP) maps, palustrine unconsolidated (PUBFx; dike or impounded) wetlands and palustrine forested/scrub-shrub riparian (PF01/SS3C7) wetlands were mapped on subject parcel (Figure 2).

The applicant is responsible for determining whether any State-regulated wetlands (regulated pursuant to 7 Del.C. Chapter 66 and the Wetlands Regulations) are present on the property. This determination can only be made by contacting the Division of Water Resources' Wetlands and Subaqueous Lands Section at 302/739-9943 and consulting the State's official wetland regulatory maps, which depict the extent of State jurisdiction. The area regulated by State law may be very different from the area under federal authority. No activity may take place in State-regulated wetlands without a permit from DNREC's Wetlands Section.

In addition, most perennial streams and ditches and many intermittent streams and ditches are regulated pursuant to the Subaqueous Lands Act (7 Del.C. Chapter 72) and the Regulations Governing the Use of Subaqueous Lands. Ponds which are connected to other waters are also regulated, while isolated ponds are not. Any work in regulated streams, ditches or ponds requires a permit from the Wetlands and Subaqueous Lands Section. An on-site jurisdictional determination is recommended in order to determine whether any regulated watercourses exist on the property. Please contact the Wetlands and Subaqueous Lands Section at 302/739-9943 to schedule an on-site visit. Such appointments can usually be scheduled within 2 to 3 weeks.

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 or “the Corps”) manual is the acceptable basis for making a jurisdictional wetland determination for nontidal wetlands in Delaware. The applicant is forewarned that the Corps 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 Corps 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 Corps 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 Corps must be contacted to evaluate and assess the jurisdictional validity of such a delineation. The final jurisdictional authority for making isolated wetlands determinations rests with the Corps; they can be reached by phone at 736-9763.

Based on a review of existing buffer research by Castelle et al. (Castelle, A. J., A. W. Johnson and C. Conolly. 1994. *Wetland and Stream Buffer Requirements – A Review*. J. Environ. Qual. 23: 878-882), an adequately-sized buffer that effectively protects wetlands and streams, in most circumstances, is about 100 feet in width. In recognition of this research and the need to protect water quality, the Watershed Assessment Section recommends that the applicant maintain/establish a minimum 100-foot upland buffer (planted in native vegetation) from all water bodies (including ditches) and wetlands.

Impervious Surfaces and Best Management Practices. The applicant estimates this project’s post-construction surface imperviousness to reach only about 5 percent. However, given the scope and density of this project (i.e., as viewed from the conceptual project layout) this estimate appears a significant underestimate. According to the TR-55 methodology for determining impervious cover, given the average lot size of 7,669 square feet (.17 acres), impervious cover is more likely to be between 38 and 65 percent. When calculating surface imperviousness it is important to include all forms of constructed surface imperviousness, such as: all paved surfaces including rooftops,

sidewalks, driveways, and roads; open-water stormwater management structures and/or ponds; and community wastewater systems (if applicable); this will ensure a realistic assessment of this project's likely post-construction environmental impacts. Surface imperviousness should be recalculated to reflect all of the above-mentioned forms of surface imperviousness in the finalized calculation for surface imperviousness. Wetlands and community wastewater disposal areas should be excluded from the parcel's calculation for total open space when used to calculate the parcel's total 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 this project's 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. Total Maximum Daily Loads (TMDLs) for nitrogen and phosphorus have been promulgated through regulation for the Inland Bays 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.

This project is located in a high nutrient reduction area requiring an 85 and 65 percent reduction in nitrogen and phosphorus, respectively; a 40 percent reduction in bacteria is also required. Additional nutrient reductions may be possible through the implementation of Best Management Practices such as wider vegetated buffers along watercourses (and wetlands), increasing passive, wooded open space, use of pervious paving materials to reduce surface imperviousness (i.e., pervious pavers), connection to a central sewer (or a performance-based community wastewater system), and the use of green-technology stormwater management technologies.

A Pollution Control Strategy (PCS) is an implementation strategy that identifies the actions necessary to systematically reduce the pollutant loading rate for a given water body, and meet the TMDL reduction requirements specified for that water body. As mentioned previously, the pollutants specifically targeted for reduction in the Inland Bays watershed are nutrients (e.g., nitrogen and phosphorus) and bacteria. A variety of site-specific best management practices (BMPs) will be the primary actions required by the PCS to reduce pollutant loadings associated with nutrients and bacteria. The PCS for the Inland Bays was approved on November 11, 2008, and is now an enforceable regulatory directive.

The Department has developed an assessment tool that will help evaluate whether your proposed development meets the required TMDL nutrient reduction requirements specified by the PCS. Contact Lyle Jones at 302-739-9939 for more information on the PCS and the assessment tool.

Soils, wetlands, subaqueous lands and TMDL comments provided by John Martin, Watershed Assessment Section, (302) 739-9939, John.Martin@state.de.us

Water Supply. The project information sheets state that water will be provided to the project by a Central community system via a new well. Our records indicate that the project is located within the public water service area granted to Tidewater Utilities under Certificate of Public Convenience and Necessity (CPCN) 07-CPCN-34. We recommend 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 CPCN from the Public Service Commission. Information on CPCN's and the application process can be obtained by contacting the Public Service Commission at 302-739-4247. Since an on-site Public/Miscellaneous Public well will 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; furthermore, it must also be located at least 150 feet from the outermost boundaries of the project. . 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. *Ricardo Rios - (302) 739-9944, Ricardo.Rios@state.de.us*

Air and Waste

Air Quality. Housing developments may unnecessarily emit, or cause to be emitted, significant amounts of air contaminants into Delaware's air, which will negatively impact public health, safety and welfare. These negative impacts are attributable to:

- Emissions that form ozone and fine particulate matter; two pollutants relative to which Delaware currently violates federal health-based air quality standards,
- The emission of greenhouse gases which are associated with climate change, and
- The emission of air toxics.

Air emissions generated from housing developments include emissions from:

- Area sources like painting, lawn and garden equipment and the use of consumer products like roof coatings and roof primers.
- The generation of electricity needed to support the homes in your development, and
- Car and truck activity associated with the homes in your new development.

These three air emissions components (i.e., area, electric power generation, and mobile sources) are quantified below, based on a per household/residential unit emission factor that was developed using 2002 Delaware data. These emissions in the table represent the actual impact the Seacoast Speedway development may have.

Emissions Attributable to Seacoast Speedway Subdivision (Tons per Year)

	Volatile Organic Compounds (VOC)	Nitrogen Oxides (NOx)	Sulfur Dioxide (SO ₂)	Fine Particulate Matter (PM _{2.5})	Carbon Dioxide (CO ₂)
Direct Residential	5.0	0.6	0.5	0.6	20.5
Electrical Power Generation	ND*	2.0	7.0	ND*	1,025.9
Mobile	7.5	7.8	0.2	0.1	4,817.5
Total	12.5	10.4	7.7	0.7	5,863.9

(*) Indicates data is not available.

Note that emissions associated with the actual construction of the subdivision, including automobile and truck traffic from working in, or delivering products to the site, as well as site preparation, earth moving activities, road paving and other miscellaneous air emissions, are not reflected in the table above.

Recommendations:

The applicant shall comply with all applicable Delaware air quality regulations. These regulations include:

Regulation 6 - Particulate Emissions from Construction and Materials Handling	<ul style="list-style-type: none"> • Using dust suppressants and measures to prevent transport of dust off-site from material stockpile, material movement and use of unpaved roads. • Using covers on trucks that transport material to and from site to prevent visible emissions.
Regulation 1113 – Open Burning	<ul style="list-style-type: none"> • Prohibiting open burns statewide during the Ozone Season from May 1-Sept. 30 each year. • Prohibiting the burning of land clearing debris. • Prohibiting the burning of trash or building

	materials/debris.
Regulation 1145 – Excessive Idling of Heavy Duty Vehicles	<ul style="list-style-type: none"> • Restricting idling time for trucks and buses having a gross vehicle weight of over 8,500 pounds to no more than three minutes.

Additional measures may be taken to substantially reduce the air emissions identified above. These measures include:

- **Constructing only energy efficient homes.** Energy Star qualified homes are up to 30% more energy efficient than typical homes. These savings come from building envelope upgrades, high performance windows, controlled air infiltration, upgraded heating and air conditioning systems, tight duct systems and upgraded water-heating equipment. Every percentage of increased energy efficiency translates into a percent reduction in pollution. The Energy Star Program is excellent way to save on energy costs and reduce air pollution.
- **Offering geothermal and/or photo voltaic energy options.** These systems can significantly reduce emissions from electrical generation, and from the use of oil or gas heating equipment.
- **Providing tie-ins to the nearest bike paths and links to any nearby mass transport system.** These measures can significantly reduce mobile source emissions.
- **Funding a lawnmower exchange program.** New lawn and garden equipment emits significantly less than equipment as little as 7 years old, and may significantly reduce emissions from this new development. The builder could fund such a program for the new occupants.

Additionally, the following measures will reduce emissions associated with the actual construction phase of the development:

- **Using retrofitted diesel engines during construction.** This includes equipment that are on-site as well as equipment used to transport materials to and from site.
- **Using pre-painted/pre-coated flooring, cabinets, fencing, etc.** These measures can significantly reduce the emission of VOCs from typical architectural coating operations.
- **Planting trees at residential units and in vegetative buffer areas.** Trees reduce emissions by trapping dust particles and by replenishing oxygen. Trees also reduce energy emissions by cooling during the summer and by providing wind breaks in the winter, whereby reducing air conditioning needs by up to 30 percent and saving 20 to 50 percent on fuel costs.

This is a partial list, and there are additional things that can be done to reduce the impact of the development on air quality. The applicant should submit a plan to the DNREC Air Quality Management Section which address the above listed measures, and that details all of the specific emission mitigation measures that will be incorporated into the Seacoast Speedway development. Air Quality Management Section points of contact are Phil Wheeler and Deanna Morozowich, and they may be reached at (302) 739-9402. *Deanna Morozowich - (302) 739-9402, Deanna.Morozowich@state.de.us*

Hazardous Waste Sites. No SIRB sites or salvage yards were found within a ½-mile radius of the proposed development. However, based on the previous agricultural use of the proposed project site, which may have involved the use of pesticides and herbicides, SIRB recommends that a Phase I Environmental Site Assessment be performed prior to development. In addition, should a release or imminent threat of a release of hazardous substances be discovered during the course of development (e.g., contaminated water or soil), construction activities should be discontinued immediately and DNREC should be notified at the 24-hour emergency number (800-662-8802). SIRB should also be contacted as soon as possible at 302-395-2600 for further instructions. *Krystal Stanley - (302) 395-2644, Krystal.Stanley@state.de.us*

Tank Management Branch. There is one (1) inactive LUST site located within a quarter mile from the proposed project.

Name: Kruger Farms, Inc. (Inactive)
Facility ID: 5-000044
Project: S9401020

Should any underground storage tanks or petroleum contaminated soil be discovered by any person during construction, the DNREC-TMB at (302) 395-2500 and the DNREC Emergency Response Hotline at (800) 662-8802 must be notified within 24 hours.

Should any contamination be encountered, PVC pipe materials will have to be replaced with ductile steel and nitrile rubber gaskets in the contaminated areas.

Also, please note that if any aboveground storage tanks (ASTs) less than 12,500 gallons are installed, they must be registered with the TMB. If any ASTs greater than 12,500 gallons are installed, they are also subject to installation approval by the TMB. *Elizabeth Wolff - (302) 395-2500, Elizabeth.Wolff@state.de.us*

State Fire Marshal's Office – Contact: Duane Fox 856-5298

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):

a. **Fire Protection Water Requirements:**

- Where a water distribution system is proposed for single-family dwellings it shall be capable of delivering at least 500 gpm for 1-hour duration, at 20-psi residual pressure. Fire hydrants with 1000 feet spacing on centers are required.
- The infrastructure for fire protection water shall be provided, including the size of water mains.

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 Bethesda Rd must be constructed so fire department apparatus may negotiate it. If a “center island” is placed at an entrance into the subdivision, it shall be arranged in such a manner that it will not adversely affect quick and unimpeded travel of fire apparatus into the subdivision.
- 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”
- Name of Water Supplier
- 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.statefiremarshal.delaware.gov, technical services link, plan review, applications or brochures.

Department of Agriculture - Contact: Scott Blaier 739-4811

The Department of Agriculture is opposed to this project because it negatively impacts those land uses that are the backbone of Delaware's resource industries - agriculture, forestry, horticulture - and the related industries they support. Often new residents of developments like this one, with little understanding or appreciation for modern agriculture and forestry, find their own lifestyles in direct conflict with the demands of these industries. Often these conflicts result in compromised health and safety; one example being decreased highway safety with farm equipment and cars competing on rural roads. The crucial economic, environmental and open space benefits of agriculture and forestry are compromised by such development. DDA opposes the creation of isolated development areas that are inefficient in terms of the full range of public facilities and services funded with public dollars. Public investments in areas such as this are best directed to agricultural and forestry preservation.

The proposed development is adjacent to a property currently enrolled in the State's Agricultural Lands Preservation Program (Smith farm Expansion of the Baxter Farms, Inc. Agricultural District, (Parcel # 133-2.00-29.00). Therefore, the activities conducted on this preserved property will be protected by the agricultural use protections outlined in Title 3, Del. C., Chapter 9. These protections effect adjoining developing properties. The 300 foot notification requirement affects **all new deeds** in a subdivision located in whole or part within 300 feet of an Agricultural District. Please take note of these restrictions as follows:

§ 910. Agricultural use protections.

(a) Normal agricultural uses and activities conducted in a lawful manner are preferred and priority uses and activities in Agricultural Preservation Districts. In order to establish and maintain a preference and priority for such normal agricultural uses and activities and avert and negate complaints arising from normal noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations, land use adjacent to Agricultural Preservation Districts shall be subject to the following restrictions:

(1) For any new subdivision development located in whole or in part within 300 feet of the boundary of an Agricultural Preservation District, the owner of the development shall provide in the deed restrictions and any leases or agreements of sale for any residential lot or dwelling unit the following notice:

This property is located in the vicinity of an established Agricultural Preservation District in which normal agricultural uses and activities have been afforded the highest priority use status. It can be anticipated that such agricultural uses and activities may now or in the future involve noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations. The use and enjoyment of this property is expressly conditioned on acceptance of any annoyance or inconvenience which may result from such normal agricultural uses and activities."

(2) For any new subdivision development located in whole or in part within 50 feet of the boundary of an Agricultural Preservation District, no improvement requiring an occupancy approval shall be constructed within 50 feet of the boundary of the Agricultural Preservation District.

(b) Normal agricultural uses and activities conducted in accordance with good husbandry and best management practices in Agricultural Preservation Districts shall be deemed protected actions and not subject to any claim or complaint of nuisance, including any such claims under any existing or future county or municipal code or ordinance. In the event a formal complaint alleging nuisance related to normal agricultural uses and activities is filed against an owner of lands located in an Agricultural Preservation District, such owner, upon prevailing in any such action, shall be entitled to recover reasonably incurred costs and expenses related to the defense of any such action, including reasonable attorney's fees (68 Del. Laws, c. 118, § 2.).

In addition, if any wells are to be installed, Section 4.01(A) (2) of the Delaware Regulations Governing the Construction and Use of Wells will apply. This regulation states:

(2) For any parcel, lot, or subdivision created or recorded within fifty (50) feet of, or within the boundaries of, an Agricultural Lands Preservation District (as defined in Title 3, Del. C., Chapter 9); all wells constructed on such parcels shall be located a minimum of fifty (50) feet from any boundary of the Agricultural Lands Preservation District. This requirement does not apply to parcels recorded prior to the implementation date of these Regulations. However, it is recommended that all wells be placed the maximum distance possible from lands which are or have been used for the production of crops which have been subjected to the application of land applied federally regulated chemicals.

Section 1. Chapter 99, Code of Sussex Section 99-6 may also apply to this subdivision. The applicant should verify the applicability of this provision with Sussex County. This Section of the Code states:

G. Agricultural Use Protections.

(1) Normal agricultural uses and activities conducted in a lawful manner are preferred. In order to establish and maintain a preference and priority for such normal agricultural uses and activities and avert and negate complaints arising from normal noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations, land uses adjacent to land used primarily for agricultural purposes shall be subject to the following restrictions:

(a) For any new subdivision development located in whole or in part within three hundred (300) feet of the boundary of land used primarily for agricultural purposes, the owner of the development shall provide in the deed restrictions and any leases or agreements of sale for any residential lot or dwelling unit the following notice:

“This property is located in the vicinity of land used primarily for agricultural purposes on which normal agricultural uses and activities have been afforded the highest priority use status. It can be anticipated that such agricultural uses and activities may now or in the future involve noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations. The use and enjoyment of this property is expressly conditioned on acceptance of any annoyance or inconvenience which may result from such normal agricultural uses and activities.”

(b) For any new subdivision development located in whole or in part within fifty (50) feet of the boundary of land used primarily for agricultural purposes no improvement requiring and occupancy approval for a residential type use shall be constructed within fifty (50) feet of the boundary of land used primarily for agricultural purposes.

The Delaware Department of Agriculture supports growth which expands and builds on existing urban areas and growth zones in approved State, county and local plans. Where additional land preservation can occur through the use of transfer of development rights, and other land use measures, we will support these efforts and work with developers to implement these measures. If this project is approved we will work with the developers to minimize impacts to the agricultural and forestry industries.

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

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.

Delaware Economic Development Office – Contact: Jeff Stone 672-6849

No comments were received on this project.

Delaware Division of Public Health- Health Promotion Bureau- Contact: Michelle Eichinger (302) 744-1011

Ensuring that new residential and commercial development incorporates pedestrian- and bicycle-friendly features allows people to travel by foot or by bicycle and promotes physical activity as part of daily routines. Regular physical activity offers a number of health benefits, including maintenance of weight and prevention of heart disease, type 2 diabetes and other chronic diseases.¹ Research shows that incorporating physical activity into daily routines has the potential to be a more effective and sustainable public health strategy than structured exercise programs.² This is particularly important considering about 65% of adult Delawareans are either overweight or obese.³ This current obesity crisis is also affecting children. Approximately 37% of Delaware's children are

overweight or obese⁴, which places them at risk for a range of health consequences that include abnormal cholesterol, high blood pressure, type 2 diabetes, asthma, depression and anxiety.¹

In Delaware, as in other states across the nation, certain patterns of land use can act as a barrier to physical activity and healthy eating for children and adults alike. Examples of such barriers include neighborhoods constructed without sidewalks or parks and shopping centers with full-service grocery stores situated too far from residential areas to allow for walking or biking between them.

This proposed development is in a Level 3 area. Developing in such an area is consistent with the *Strategies for State Policies and Spending*. DPH is committed to the *Strategies* and therefore, does support development in the proposed area.

DPH supports new development in and around existing towns and municipalities where compact and mixed land use patterns facilitate physical activity. As a way to promote physical activity and access to healthy foods, we recommend that the following amenities be included in the Seacoast Speedway plan:

Amenities to encourage active transportation

- Ensure that there is safe connectivity, via crosswalks and sidewalks, within the development, especially with the proposed 8' multimodal trail.
- Ensure that there are sidewalks, crosswalks and walking/bicycling paths connecting Seacoast Speedway to the neighboring properties.
- Designate bike paths to supplement the sidewalks already proposed in the plan so that residents can travel by foot or by bicycle. In addition, install bike racks in convenient locations within the development.

A survey by the Surface Transportation Policy Project found that 55% of Americans want to walk more on a daily basis to get exercise or to travel to specific destinations, and 63% want to walk more to stores and other locations.⁵

Amenities to encourage recreation

- Designate a portion of the open space area for a tot lot. To encourage active recreation for all age groups, also include amenities such as a basketball court, a tennis court, swimming pool, etc in areas designated as open space. Consider connecting the proposed 8' multimodal trail to these amenities.

Increase opportunities for healthy eating

- Designate an area for a community garden. Community gardens not only provide residents access to healthy nutrition, but they also provide opportunities for physical activity and community cohesiveness.⁶

¹ Nemours Health and Prevention Services (2005). *Delaware Children's Health Chartbook*, Newark, DE.

² Active Living by Design. *Transportation Fact Sheet*. Retrieved May 17, 2007, from http://www.activelivingbydesign.org/fileadmin/template/documents/factsheets/Transportation_Factsheet.pdf.

³ Delaware Health and Social Services (2008), *Division of Public Health, Behavioral Risk Factor Surveillance System (BRFSS), 1990-2007*.

⁴ Nemours Health and Prevention Services (2007). *2006 Delaware Survey of Children's Health Descriptive Statistics Summary, Volume 1*.

⁵ Surface Transportation Policy Project (2003). *Americans' Attitudes Toward Walking and Creating Better Walking Communities*. Retrieved February 12, 2008, from http://www.transact.org/library/reports_pdfs/pedpoll.pdf

⁶ Hancock, T. (2001). People, partnerships and human progress: building community capital. *Health Promotion International*, 16(3), 275-80.

Delaware State Housing Authority – Contact Valerie Miller 739-4263

This proposal is for a site plan review of 163 residential units on 81.84 acres, located on the east side of Route 113, south of Speedway Road, south of Georgetown in Sussex County. According to the *State Strategies Map*, the proposal is located in an Investment Level 3 area. DSHA supports this proposal because residents will have proximity to existing services, markets, and employment opportunities. Additionally, we support the fact that this proposal targets first time homebuyers. According to the most recent real estate data collected by DSHA, the average home price in Sussex County is \$206,000. However, families earning respectively 100% of Sussex County's median income only qualify for mortgages of \$199,101, thus creating an affordability gap of \$6,896. The provision of units within reach of families earning at least 100% of Sussex County's median income will ensure housing that is affordable to first time homebuyers.

Department of Education – Contact: John Marinucci 735-4055

This proposed development is within the Indian River School District boundaries. DOE offers the following comments on behalf of the Indian River School District.

1. Using the DOE standard formula, this development will generate an estimated 82 students.
2. DOE records indicate that the Indian River School Districts' *elementary schools are at or beyond 100% of current capacity* based on September 30, 2008 elementary enrollment.
3. DOE records indicate that the Indian River School Districts' *secondary schools are not at or beyond 100% of current capacity* based on September 30, 2008 secondary enrollment.
4. In multiple correspondences from the Indian River School District administration, the district asserts that while the Indian River High Schools have capacity, the Indian River Middle Schools' student population exceeds student capacity.

5. This development will create additional elementary school and middle school student population growth which will further compound the existing shortage of space.
6. The developer is strongly encouraged to contact the Indian River School District Administration to address the issue of elementary and middle school overcrowding that this development will exacerbate.
7. DOE requests the developer coordinate with the Indian River School District transportation department to establish developer supplied bus stop shelter ROW and shelter structures, interspersed throughout the development as determined and recommended by the local school district.

Sussex County – Contact: Richard Kautz 855-7878

Please refer to earlier comments for PLUS 2005-11-07.

Being an AR-1 Cluster subdivision filed in February 2009, the applicant should make sure there is compliance with all recent (uncodified) Code amendments.

The Sussex County Engineer Comments:

The project proposes to develop using a private central community wastewater system. It is recommended that the wastewater system be operated under a long-term contract with a capable wastewater utility. In addition, we recommend they have a wastewater utility provider prior to approving the project. The proposed project is located outside of the Environment Sensitive Developing Area where Sussex County expects to provide sewer service. Sussex County requires design and construction of the collection and transmission system to meet Sussex County sewer standards and specifications. A review and approval of the treatment and disposal system by the Sussex County Engineering Department is also required and plan review fees may apply. Disposal fields should not be counted as open space. Wastewater disposal fields should be clearly identified on recorded plots and separated from lot area.

If Sussex County ever provides sewer service and the project has a CPCN, it is recommended that the treatment system be abandoned and a direct connection made to the County system at the developer's and/or owners expense. If Sussex County ever provides sewer service and the project does not have a CPCN, it is required that the treatment 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