



**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF STATE PLANNING COORDINATION**

May 20, 2010

Mark C. Parker, P.E.
Landmark Engineering
One Corporate Commons
100 West Commons Blvd., Ste. 301
New Castle, De 19720

RE: PLUS review – 2010-04-04; Governor's Square Commercial Center

Dear Mr. Parker:

Thank you for meeting with State agency planners on April 28, 2010 to discuss the proposed plans for the Governor's Square Commercial Center project to be located at the northeast corner of US40 and SR 7 near the US40/SR1 interchange.

According to the information received, you are seeking a rezoning of 31.395 acres from OR to CR to redevelop an existing parcel to construct a 222,664 sq. ft. retail building and a 9,000 sq. ft. restaurant.

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 New Castle 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.**

Strategies for State Policies and Spending

This parcel is located within an Investment Level 1 area according to the Strategies for State Policies and Spending. Investment Level 1 reflects areas that are already developed in an urban or suburban fashion, where infrastructure is existing or readily available, and where future redevelopment or infill projects are expected and encouraged by State policy. The State supports development in these areas that are consistent with local land use policies and regulations.

Code Requirements/Agency Permitting Requirements

State Historic Preservation Office – Contact Terrence Burns 736-7404

- The developer should be aware of the Delaware Unmarked Human Remains Act of 1987, outlined in Chapter 54 of Title 7 of the Delaware Code, which pertains to 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. Therefore, prior to any demolition or ground-disturbing activities, the developer may want to consider hiring an archaeological consultant to examine the parcel for archaeological sites, including a cemetery or unmarked human remains.

Department of Transportation – Contact Bill Brockenbrough 760-2109

- The proposed development meets DelDOT's volume warrants for a traffic impact study (TIS), as contained in Section 2.3.1 of DelDOT's Standards and Regulations for Subdivision Streets and State Highway Access. However, DelDOT understands that New Castle County requires only a traffic operational analysis (TOA) for this development. Accordingly, pursuant to the current agreement with the County regarding land development and traffic studies, DelDOT will treat the required study as a TOA. From a technical perspective, there are no differences in our requirements. DelDOT met with representatives of the developer and the County on April 19, 2010, to establish the scope of work for the TOA.
- Without pre-judging the results of the TOA, but based on previous studies in the area, we anticipate requiring signal agreements for both intersections of Songsmith Drive and Delaware Route 7, an off-site improvement agreement and possibly a traffic mitigation agreement, in accordance with Sections 3.10.1, 3.10.2 and 3.10.3 of DelDOT's Standards and Regulations for Subdivision Streets and State Highway Access, respectively. The off-site improvement agreement will likely include some requirements relative to the intersection of Delaware Route 7 and US Route 40.

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

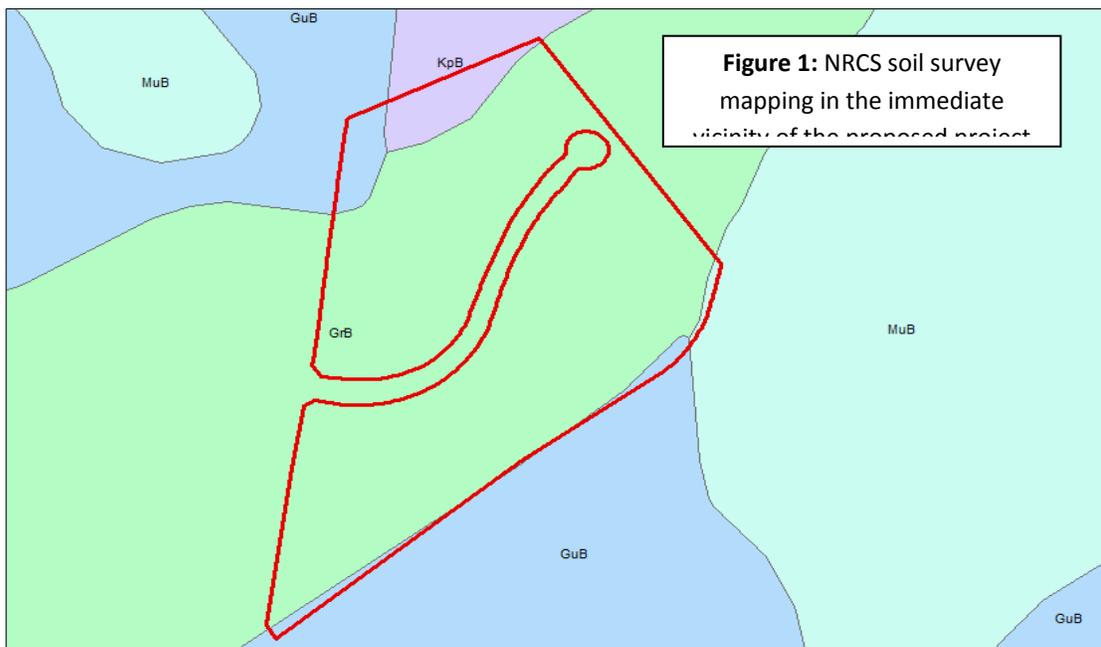
Sediment and Stormwater Program.

- 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 project 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 New Castle County Department of Land Use Engineering Section. Contact the Department of Land Use at (302) 395-5470 for details regarding submittal requirements

and fees. (Delaware Code, Title 7, Chapter 40; Delaware Regulations, Administrative Code, Title 7, 5101). *James Sullivan* - (302) 739-9921, James.Sullivan@state.de.us

Water Resources

- **Wetlands.** Some unmapped federally regulated wetlands may be associated with the Mullica (MuB) and Keyport (KpB) soil mapping units. Mullica is a wetland associated hydric soil map unit, while Keyport is an upland soil map unit that may contain hydric soil components (Figure 1).



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.

Water Supply

- 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

Tank Management Branch.

- If a release of a Regulated Substance occurs at the rezoning site, you must comply with 7 Del.C. Chapter 60, 7 Del.C., Chapter 74 and DE Admin. Code 1351, State of Delaware *Regulations Governing Underground Storage Tank Systems* (the UST Regulations).
- The following LUST projects are located within a quarter mile of the rezoning site:
 - Village of Windhover Kent Apartments (Inactive), Facility ID: 3-000927, Project: N8712072, N9511270
 - Whittington Sand & Gravel (Inactive), Facility ID: 3-000119, Project: N9304074
 - Musselman Property James (Inactive), Facility ID: 3-001087, Project: N9211256
 - May B Leisure Elementary School (Inactive), Facility ID: 3-001631, Project: N9609171
 - Former Hess Station (Inactive), Facility ID: 3-000265, Project: N8708050
 -
- Per the **UST Regulations: Part E, § 1. Reporting Requirements:**
 - “Any indication of a Release of a Regulated Substance that is discovered by any Person, including but not limited to environmental consultants, contractors, utility companies, financial institutions, real estate transfer companies, UST Owners or Operators, or Responsible Parties shall be reported within 24 hours to:
 - The Department’s 24-hour Release Hot Line by calling 800-662-8802; and
 - The DNREC, Tank Management Branch by calling 302-395-2500.”
- When contamination is encountered, PVC pipe materials should be replaced with ductile steel and nitrile rubber gaskets in the contaminated areas.

- 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

Delaware State Fire Marshall's Office – Contact Duane Fox 739-4394

- **Fire Protection Water Requirements:**
 - Water distribution system capable of delivering at least 1500 gpm for 2-hour duration, at 20-psi residual pressure is required. Fire hydrants with 800 feet spacing on centers.
 - Where a water distribution system is proposed Mercantile sites, the infrastructure for fire protection water shall be provided, including the size of water mains for fire hydrants and sprinkler systems.
- **Fire Protection Features:**
 - All structures over 10,000 Sq. Ft. aggregate will require automatic sprinkler protection installed.
 - Buildings greater than 10,000 sqft, 3-stories or more, over 35 feet, or classified as High Hazard, are required to meet fire lane marking requirements
 - Show Fire Department Connection location (Must be within 300 feet of fire hydrant), and detail as shown in the DSFPR.
 - Show Fire Lanes and Sign Detail as shown in DSFPR
- **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 Route 7 must be constructed so fire department apparatus may negotiate it.
 - The use of speed bumps or other methods of traffic speed reduction must be in accordance with Department of Transportation requirements.
- **Gas Piping and System Information:**
 - Provide type of fuel proposed, and show locations of bulk containers on plan.
- **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)
- Note indicating the building is to be sprinklered
- Name of Water Provider
- Letter from Water Provider approving the system layout
- Provide Lock Box Note (as detailed in DSFPR) if Building is to be sprinklered
- Provide Road Names, even for County Roads

Recommendations/Additional Information

This section includes a list of site specific suggestions that are intended to enhance the project. These suggestions have been generated by the State Agencies based on their expertise and subject area knowledge. **These suggestions do not represent State code requirements.** They are offered here in order to provide proactive ideas to help the applicant enhance the site design, and it is hoped (**but in no way required**) that the applicant will open a dialogue with the relevant agencies to discuss how these suggestions can benefit the project.

State Historic Preservation Office – Contact Terrence Burns 736-7404

- There does not appear to be any known historic or cultural resources, such as an archaeological site or listed National Registered property on this parcel (property).
- The developer should also provide some landscaping along the borders of the parcel in order to lessen the visual effects on the surrounding properties.
- If there is any federal involvement with the project, in the form of licenses, permits, or funds, the federal agency, often through its client, is responsible for complying with Section 106 of the National Historic Preservation Act (36 CFR 800) and must consider their project's effects on or in reference to historic or cultural resources.

Department of Transportation – Contact Bill Brockenbrough 760-2109

- As proposed, the Lowe's store would require the relocation of an existing DelDOT stormwater pond. DelDOT recommends that the developer's engineer contact the Subdivision Manager for this part of New Castle County, Mr. Joshua Schwartz, to determine the level of review associated with this proposed change. Mr. Schwartz may be reached at (302) 760-2768.
- DelDOT recommends that a sidewalk connection be provided from the front of the proposed Lowe's store to the sidewalk along Delaware Route 7 to make the site more walkable.
- It is recommended that a bicycle rack be provided for the proposed restaurant, similar to those proposed for the Lowe's store and the retail building.

- It is recommended that the restaurant be shifted to a location fronting on Delaware Route 7 if that is possible given site constraints and County requirements. As proposed, it would front on a section of Route 40 that has no pedestrian access. Moving it to Route 7 would at least slightly shorten the walk to it from other land uses. If that cannot be done, DelDOT recommends that the building at least be moved to front on Songsmith Drive so that people walking to it do not have to walk across the parking lot.

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

Wetlands

- When designing a project on a site with regulated watercourses, any extensive piping, filling or burying of streams or ditches in excess of the minimum needed for road crossings should be avoided. Where road crossings are necessary, bridge spans which avoid significant impacts to stream banks and channels should be used wherever possible. Where placement of culverts is unavoidable, culvert designs which utilize multiple barrels at different elevations to preserve a low flow channel are usually preferred. Contact the Wetlands and Subaqueous Lands Section for further information regarding preferred designs.
- 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.

- Based on a review of the project's conceptual lot layout, post-construction surface imperviousness will likely be considerably higher than the stated figure (56%) provided in the PLUS application; the TR-55 methodology indicates closer to 85 percent imperviousness for a development of this type and coverage. It is not clear if the impervious cover figure truly reflects all post-construction forms of created surface imperviousness. We strongly recommend that the applicant recalculate surface imperviousness with all forms of constructed surface imperviousness (e.g., rooftops, driveways, parking lots, sidewalks, open-water stormwater management structures, artificial turf, and roads) included in the calculation. Failure to include all forms (and their extent) of surface imperviousness will underestimate this project's post-construction environmental impacts.

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 establishment of additional forest cover acreage) 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 Christina River 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 (State of Delaware Surface Water Quality Standards, as amended July 11, 2004) to the extent necessary to support use goals such as, swimming, fishing, drinking water and shell fish harvesting.

TMDLs are required by federal law (Section 303(d) of the 1972 Clean Water Act), and states are charged with developing and implementing standards to support these desired use goals. In sub-basin (C08) of the Christina River watershed where this project is located, post-development nitrogen and phosphorus loading must be capped at the pre-development loading rate (or 0% post-construction increase in N & P) to meet the required TMDL for each nutrient. The TMDL for bacteria, in contrast, requires an 86.3% reduction from baseline conditions. The report detailing the required nutrient and

bacterial reductions (tables 4-6 & 4-9 for sub-basin C08) can be retrieved from the following web link:

http://www.epa.gov/reg3wapd/tmdl/pa_tmdl/ChristinaMeetingTMDL/index.htm.

A Pollution Control Strategy (PCS) is the regulatory directive requiring the implementation of various best management practices (BMPs) that help reduce transport of nutrient and bacterial pollutant runoff from all waters draining into a “greater” common watershed; with the ultimate objective of achieving the obligatory TMDL reduction requirements for that watershed. However, the PCS for the Christina River watershed has not been formally completed to date. In absence of a current PCS, the applicant is strongly urged to reduce nutrient and bacterial pollutants through voluntary commitment to the implementation of the following recommended BMPs:

- Maintenance of the recommended 100-foot buffer width from all delineated wetlands (USACOE and State approved wetland delineations).
- Maximize the amount and/or preservation of passive wooded open space.
- Calculate impervious cover with all forms of created surface imperviousness included in the calculation for surface imperviousness (e.g., rooftops, driveways, parking lots, sidewalks, open-water stormwater management structures, artificial turf, and roads). Please recalculate if this have not been done.
- We strongly recommend the use of pervious paving materials (instead of conventional asphalt and concrete) as a BMP to reduce the impacts associated with surface imperviousness, wherever practicable.
- We strongly encourage the use of rain gardens and green-technology stormwater management structures (in lieu of open-water management structures) as BMPs.
- Assess how your development will affect nutrient runoff through the use or implementation of the Nutrient Budget protocol. Please contact Lyle Jones at 302-739-9939 for more information on the assessment tool.

Department of Agriculture – Contact Scott Blaier 698-4529

- 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. To further support this concept the Delaware Forest Service does not recommend the planting of the following species due to the high risk of mortality from insects and disease:

Callery Pear
Leyland Cypress

Ash Trees
Red Oak (except for Willow Oak)

If you would like to learn more about the potential problems or impacts associated with these trees, please contact the Delaware Forest Service for more information at (302) 698-4500.

- 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.

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,



Constance C. Holland, AICP
Office of State Planning Coordination

CC: New Castle County