



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

June 21, 2010

Carmine Casper
801 Brandywine Blvd.
Wilmington, DE 19809

RE: PLUS review –2010-05-03; 339 Old State Road

Dear Mr. Casper:

Thank you for meeting with State agency planners on May 26, 2010 to discuss the proposed plans for the Old State Road project located at 339 Old State Road.

According to the information received, you are seeking a rezoning of 11.7774 acres from S to Cr for 24,260 sq. ft. of warehouse and commercial retail space.

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 project is located in Investment Level 1 and 2 according to the *Strategies for State Policies and Spending*. This site is also located in the New Castle County growth zone. 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. Our office has no objections to the proposed rezoning of this project in accordance with the relevant county codes and ordinances. We offer the following information regarding any future development of this property.

Code Requirements/Agency Permitting Requirements

State Historic Preservation Office – Contact Terrence Burns 736-7404

- It is important that the developer 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 site access must be designed in accordance with DelDOT's Standards and Regulations for Subdivision Streets and State Highway Access. Versions of this manual are available on-line at http://www.deldot.gov/information/pubs_forms/manuals/subdivisions/pdf/standards_and_regulations_031108.pdf and <http://regulations.delaware.gov/documents/February2010c.pdf>. Please note that there are slight differences between the two versions. Section references in these comments refer to the version on the DelDOT website, which is correct in most cases. However, where the versions differ, the version in the Register of Regulations is correct. We are in the process of updating the version on our website.
- As proposed, the subject development would meet DelDOT's volume warrants for a traffic impact study (TIS), as contained in Section 2.3.1 of DelDOT's Standards and Regulations. However, as discussed in Section 2.3.2, the developer would also be eligible to pay the Area-Wide Study Fee in lieu of doing that TIS. Based on the estimated daily traffic volume shown on the PLUS application, 1,017 vehicles per day, the fee would be \$10,170. The fee would be due at the same time as the initial stage fee, which is paid when plans are submitted to obtain a letter of no objection. The fee is not an impact fee and payment of it does not exempt the developer from having to make off-site road improvements.
- Another possibility with regard to TIS, one which the developer should explore first with New Castle County, is that the TIS requirement could be waived based on the development's location within a Transportation Improvement District, specifically the Route 40 Corridor. The basis for such a waiver is discussed in Section 2.3.4 of the Standards and Regulations and in a parallel section of the County's Unified Development Code.

- Further regarding Section 3.10.2 of DeIDOT's Standards and Regulations, and off-site improvements, we have informed the developer of a mini-storage facility that would be built immediately south of this site that they would need to improve Old State Road, from Llangollen Boulevard to US Route 13, to meet State local road standards, which include 11-foot lanes and 5-foot shoulders. DeIDOT now anticipates dividing this responsibility between the developer of mini-storage facility and the applicant, such that the applicant would need to improve Old State Road from Llangollen Boulevard to their south property line and would need to contribute toward the replacement of the culvert located between their south property line and US Route 13. However, DeIDOT has not heard from the developer of the mini-storage facility in some time. If they do not proceed with their plans, the responsibility could fall entirely to the applicant.
- Old State Road is classified as a local, which per Section 3.6.5 of DeIDOT's Standards and Regulations requires a 60-foot right-of-way (30-feet from centerline of right-of-way). Therefore, in accordance with the section just cited, additional right-of-way shall be dedicated to public use in order to obtain the required 30-feet from centerline along the entire property frontage. The right-of-way dedication note shall read as follows, **"A 30' wide strip of right-of-way from the centerline is hereby dedicated to public use as per this plat."**

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

- **TMDLs.** The project is located in the greater Delaware River and Bay drainage area, specifically within the C & D Canal and Red Lion Creek watersheds. In the Red Lion Creek watershed, the State of Delaware has developed specific Total Maximum Daily Load (TMDL) pollutant reduction targets for nutrients (e.g., nitrogen, phosphorus), and bacteria (under the auspices of Section 303(d) of the Federal Clean Water Act). A TMDL is the maximum level of pollutant that a "water quality limited water body" can assimilate and still meet State water quality standards (e.g., dissolved oxygen, nutrients, and bacteria; *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. The TMDL for the Red Lion Creek watershed calls for a 40 percent reduction in nitrogen and phosphorus from baseline conditions. The TMDL also calls for a 38 percent reduction in bacteria from baseline conditions. Since a TMDL has not been developed for the C&D Canal watershed to date, the TMDL developed for the Red Lion Creek will apply to the entirety of the project area.
- **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.
- 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 an Underground Storage Tank associated with Cochran & Trivits located within 1000 feet of the proposed project. *Ricardo Rios - (302) 739-9944, Ricardo.Rios@state.de.us*
- **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 New Castle County Dept. of Land Use Engineering Section. Contact Dept. 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*
- **Hazardous Waste Sites.** If it is determined by the Department that there was a release of a hazardous substance on the property in question, it is required that the guidelines and provisions of 7 Del. C. Chapter 91, Delaware Hazardous Substance Cleanup Act and the Delaware *Regulations Governing Hazardous Substance Cleanup* be followed.
- There is one SIRB site found within a ½-mile radius of the proposed project:
 - Cochran & Trivits Firestone (DE-1274) located east of the project area.
 - Site was transferred to the Tanks Management Branch.

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.** If a release of a Regulated Substance occurs at the project site, compliance 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) is required.

There are two LUST projects located within a quarter mile of the rezoning site:

- Cochran & Trivits, Facility: 3-001568, Project: N9902050, Inactive
- DuPont Parkway Apartments, Facility 3-000979, Project: N9501010, Inactive

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.
 - Should the municipality anticipate being more restrictive than Delaware’s Regulations Governing Underground Storage Tank Systems or Delaware’s Regulations Governing Aboveground Storage Tanks, please be aware that the municipality shall be responsible for enforcing the more restrictive rules.

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 for Storage 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 sq.ft., 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 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.
 - 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.

- **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 if 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.

Delaware Economic Development Office – Contact Jeff Stone 672-6849

- This project proposes rezoning from S to CR. DEDO supports this rezoning, especially as the S zoning, with its residential uses, is not an appropriate zoning for a parcel bordered by an active rail line.

- As the site is immediately adjacent to the NS rail line and would appear to have the land area to accommodate a siding, this could be a good distribution site. We would, thus, be supportive of this rezoning if it is for a warehouse/distribution use. Finally, CR does permit some residential which, again, we think is not appropriate adjacent to active rail corridors, especially one as active as the NS is and thus would discourage any such uses.

State Historic Preservation Office – Contact Terrence Burns 736-7404

- There seems to be one known historic or cultural resource on the parcel (property) and it is a late 19th - or early 20th-century dwelling/house (N13777). There is another historic or cultural resource nearby, right next to this parcel, on northeast side, a mid to late 19-century house (N-410, J. Burnham House).

Since there are known historic or cultural resources in the area or vicinity of this parcel, there is a possibility that there could be potential archaeological sites on this parcel that have not been discovered, but may contain important information associated with these buildings.

- The developer should also provide some landscaping along the borders of the parcel, in order to lessen the visual effects on the surrounding properties. In addition to this, the developer should also consider retaining the existing building or complex on a larger lot if possible.
- 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 Natural Resources and Environmental Control – Contact Kevin Coyle 739-9071

- **Waste Sites.** SIRB strongly recommends that the land owner perform environmental due diligence of the property by performing a Phase I Assessment in accordance to Section 9105(c) (2) of the Delaware Hazardous Substance Cleanup Act (HSCA). While this is not a requirement under HSCA, it is good business practice and failure to do so will prevent a person from being able to qualify for a potential affirmative defense under Section 9105(c) (2) of HSCA.
- **Soils Assessment.** We strongly recommend that the applicant avoid soils mapped as Othello (OtA; See figure 1). These soils are poorly-drained (hydric) and suggestive of wetland conditions. Building in such soils is likely to leave prospective residents of this and adjoining properties susceptible to future flooding problems from groundwater-driven surface water ponding, especially during extended periods of high-intensity rainfall events such as tropical storms/hurricanes or “nor’easters.” This is in addition to the increased probability of flooding due to or increased surface water runoff emanating from future created or constructed forms of structural imperviousness (e.g., rooftops, roads, parking areas, sidewalks, and stormwater management structures).

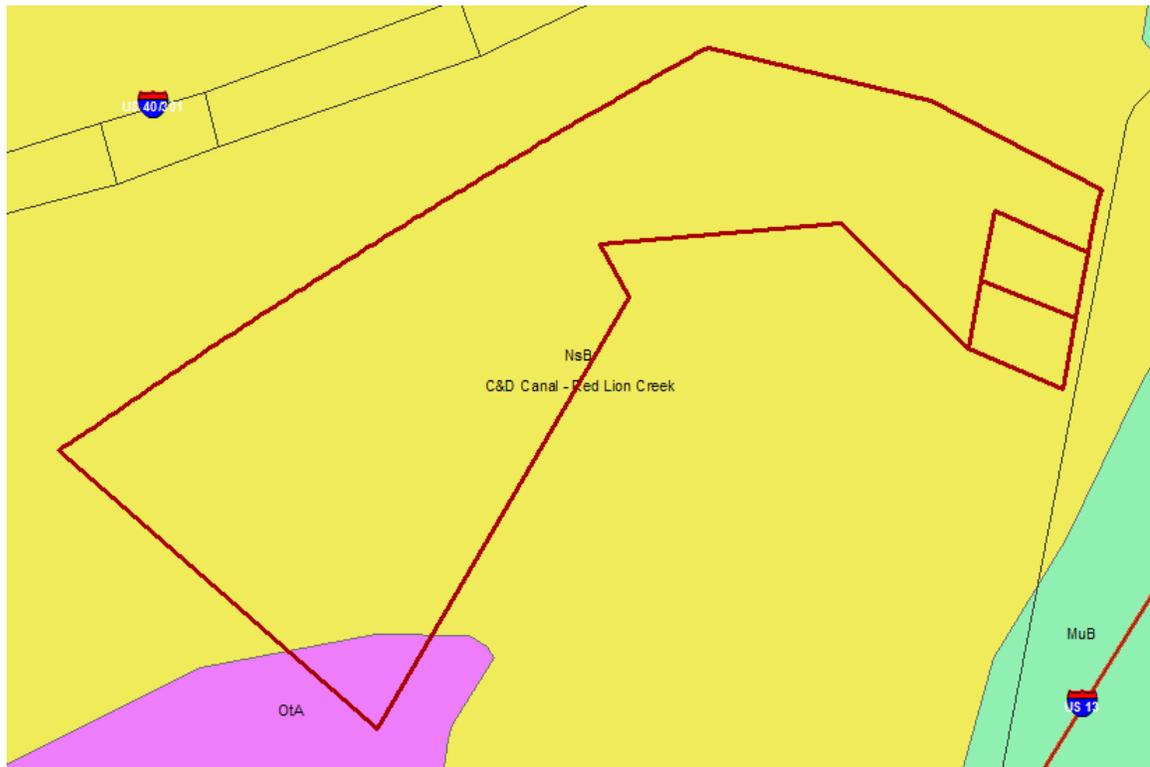


Figure 1: NRCS soil survey mapping in the immediate vicinity of the proposed project

- **Additional information on TMDLS.** 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 C&D Canal and Red Lion Creek watersheds have not been formally completed to date. In absence of a current PCS, the applicant is strongly urged to reduce nutrient and bacterial pollutants through the voluntary commitment to the implementation of the following recommended BMPs:
 - Much of this parcel is forested (about 50-60%). We strongly recommend that the applicant maintain as much of the existing forest cover as possible.
 - DNREC strongly recommends that the applicant calculate post-construction surface imperviousness with all forms of created (or constructed) surface imperviousness (e.g., rooftops, driveways, parking lots, sidewalks, open-water storm water management structures, and roads) included in the calculation. 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 via the

application/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.

- Additionally, DNREC strongly recommends the use of rain gardens, and green-technology storm water management structures (in lieu of open-water management structures) as BMPs to mitigate or reduce nutrient and bacteria pollutant runoff impacts from the constructed forms of surface imperviousness.
- Since this project is a commercial project likely to generate large amounts of created surface imperviousness that will almost certainly increase the volume of pollutant-laden water ultimately draining to the Delaware River and Bay, we strongly urge the applicant to voluntarily limit paved surface imperviousness to 50% or less via implementation/use of pervious paving materials instead of conventional paving materials consisting of asphalt or concrete.
- The Department has also developed an assessment tool to evaluate how your proposed development may reduce nutrients and bacteria to help meet the TMDL requirements. Please contact Lyle Jones at 302-739-9939 for more information on the assessment tool.
- **Flood Management.** The site plan indicates this property does not lie within any FEMA designated floodplain as shown on panel 10003C0140F, dated October 6, 2000. The current effective maps that should be used for this determination are panels 10003C0165J and 10003C0145J, dated January 17, 2007. The current effective FEMA maps do not show this parcel located within a 1-percent-annual-chance floodplain. The site plan does indicate this property is subject to a non-delineated floodplain. *Gregory Williams - (302) 739-9921, Gregory.Williams@state.de.us*

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

- 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 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.

- 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.

Division of Public Health – Contact: Michelle Eichinger 744-1011

- To help facilitate active living and healthy eating for chronic disease prevention, environmental changes in a community is necessary. The Division of Public Health recommends the following:

Amenities to support active transportation

- Ensure sidewalks are within the site plan for pedestrian access.
- Designate a bike trail or lanes and install bike racks to promote and support bikability.
- Ensure safe connectivity within the site and between properties to facilitate active transportation both in walkability and bikability. Although the application indicates no opportunity for connection to a larger bike or pedestrian network,

future opportunities may exist and providing the amenities now will help in and support further community planning.

- **Amenities to support active recreation**
 - Designate open space for active recreation such as a walking trail or basketball courts. Although the application indicates use as commercial, supporting such amenities will provide recreational opportunities to those who work in the area, especially during break times.

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
Director

CC: New Castle County