



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

November 18, 2010

David Greenhaugh
205 Ridge Road
Milton, De 19968

RE: PLUS review – 2010-10-02; Rudy Marine

Dear Mr. Greenhaugh:

Thank you for meeting with State agency planners on October 27, 2010 to discuss the proposed plans to rezone 2.51 acres located southeast of Route 27, 1500 ft. northeast of Love Creek Bridge from B-1 to either CR-1 for B-1 with a conditional use to replace the existing outdoor power equipment sales business to a boat sales and service business.

It is important to note that the developers will also need to comply with any Federal, State and local regulations regarding this property as part of the rezoning process and if any site disturbance occurs. In addition, please note that changes to the plan, other than those suggested in this letter, could result in additional comments from Federal, State and County officials. Also, these comments reflect only issues that are the responsibility of the agencies represented at the meeting of October 27, 2010, this office notes that Sussex County is the governing authority over this land and will grant the final rezoning for this parcel and 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 in a Level 2 area according to the Strategies for State Policies and Spending and is the re-use of an existing building. The State has no objection to the rezoning of this property in accordance with the County codes and regulations. Please note that should the rezoning be approved and any additional buildings are placed on the site, you should contact this office to determine if a PLUS review is required.

The following comments are generally related to ground disturbing activities which may occur on the site.

Code Requirements/Agency Permitting Requirements

State Historic Preservation Office – Contact Terrence Burns 736-7404

- There are no known cultural or historic resources such as an archaeological site or listed National Register property on this parcel (property). However, it is still 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. In addition, 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, such as a cemetery or unmarked human remains. In addition, 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 any known or potential historic or cultural resources.

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. This manual is available on-line at [http://www.deldot.gov/information/pubs_forms/manuals/subdivisions/pdf/Subdivision M anual Revision 1 proposed 060110.pdf](http://www.deldot.gov/information/pubs_forms/manuals/subdivisions/pdf/Subdivision_M anual Revision 1 proposed 060110.pdf).
- DelDOT anticipates that Sussex County will require a "Letter of No Objection" from the Department for the development of the boat dealership. Per Section 3.4 of DelDOT's Standards and Regulations for Subdivision Streets and State Highway Access, the developer must submit **three (3) signed and sealed paper copies and one electronic (pdf) copy** of the **record plan**, with an Initial Stage Fee Calculation Form and the Initial Stage Fee. Please make all submissions to Mr. John Fiori, Subdivision Manager. The entrance plan will not be reviewed until after the "Letter of No Objection" has been issued.
- As specified in Section 4.1 of DelDOT's Standards and Regulations for Subdivision Streets and State Highway Access, when the entrance construction plans are submitted

for review, the developer must submit **two (2) paper copies and one electronic (pdf) copy** of the construction plans, one copy of the record plan, an Initial Stage Fee Calculation Form, a Construction Stage Fee Calculation Form, a Construction Stage Review Fee, an application for highway entrance permit and a signed and sealed commercial entrance design checklist for review and approval. Be advised that the Department will not review the entrance plan until it has signed off on the record plan. Please make all submissions to Mr. John Fiori, Subdivision Manager.

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

TMDLs

- The project is located in the greater Inland Bays drainage area; specifically, within the area designated as the “low nutrient reduction zone” of the Rehoboth Bay watershed. In this portion of the watershed, specific Total Maximum Daily Load (TMDL) pollutant reduction targets have been developed by the State of Delaware (under the auspices of Section 303(d) of the 1972 Federal Clean Water Act) for nutrients (e.g., nitrogen, phosphorus), and bacteria. 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 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 “low nutrient reduction zone” of the Inland Bays drainage area calls for a 40 percent reduction in nitrogen and phosphorus from baseline conditions. The TMDL also calls for a 40 percent reduction in bacteria from baseline conditions.
- **The adopted Inland Bays Pollution Control Strategy regulation was published in the Delaware Register of Regulations on November 11, 2008 and is now an enforceable regulation.** A Pollution Control Strategy (PCS) is an implementation strategy that identifies the actions necessary to systematically reduce the pollutant loading to a given water body, and meet the TMDL reduction requirements specified for that water body. These regulations can be reviewed at <http://regulations.delaware.gov/documents/November2008c.pdf> and background information, guidance documents, and mapping tools can be retrieved from http://www.dnrec.state.de.us/water2000/Sections/Watershed/ws/ib_pcs.htm. The regulations address establishing a buffer zone sediment and stormwater controls for new development projects, and additional measures and standards for onsite wastewater treatment and disposal systems. Additionally, a map of water features identifies the specific primary and secondary water features that require buffers; this can be reviewed at <http://maps.dnrec.delaware.gov/inlandbayspcs93/>.

The regulations require that buffers of a specified width be established for State-regulated wetlands, tidal waters, primary and secondary water features. The width may be reduced

when combined with advanced sediment and stormwater controls and upon the creation of a development-wide nutrient management plan. Buffers must be placed in common open space and be clearly demarcated, designated and recorded on final plans or plat. Buffers must be maintained in perpetuity and must have boundary signs or markers or distinctive vegetation identifying the upland edge of the buffer.

The regulations also require that permanent sediment and stormwater management plans be designed and implemented to include design criteria to further reduce nutrient contributions. Compliance with this provision can be through any of the options below.

- For properties with primary and secondary water features:
 1. Implement standard width buffers
 2. Implement reduced buffer widths in conjunction with the creation and use of a development-wide nutrient management plan (NMP), and the implementation of at least one advanced stormwater treatment control method.
- For properties without primary or secondary water features (the option most likely to apply to this project), or for those properties with primary and secondary water features that employ a reduced-width buffer (including the required NMP), select from at least one of the following advanced stormwater treatment control methods:
 1. Reduce nutrients by the TMDL percentage
 2. Reduce nutrients to irreducible concentration levels
 3. Implement three practices within a treatment train
 4. Establish 30% of the project parcels as forest in common open space (See appendix L in the PCS regulations for planting requirements).
- The applicant should also remember that a nutrient management plan (NMP) is also required when electing to pursue a reduced buffer width for their project. An NMP is also required for those properties without primary or secondary water features. The Nutrient Management Program link can be retrieved at http://dda.delaware.gov/nutrients/nm_cert.shtml.

The project's consultants may want to contact Lyle Jones at 302-739-9939 to discuss using the Nutrient Budget Protocol. The Nutrient Budget Protocol is an assessment tool to help evaluate whether the proposed project will meet the TMDL nutrient reduction requirements.

Water Supply

- The project information sheets state that water will be provided to the project by a Central community system. 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 83-W-15. It is recommended that the owners contact Tidewater Utilities to determine the availability of public water. Any public water utility providing water to the site must obtain a certificate of public convenience and necessity (CPCN) from the Public Service Commission. Information on CPCN's and the application process can be obtained by contacting the Public Service Commission at 302-739-4247. Should an on-site Public/Miscellaneous Public well be needed, a minimum isolation distance of 150 feet is required between the well and any potential source of contamination, such as a septic tank and sewage disposal area. The Division of Water Resources will consider applications for the construction of on-site wells provided the wells can be constructed and located in compliance with all requirements of the Regulations Governing the Construction and Use of Wells. A well construction permit must be obtained prior to constructing any wells.

- Should dewatering points be needed during any phase of construction, a dewatering well construction permit must be obtained from the Water Supply Section prior to construction of the well points. In addition, a water allocation permit will be needed if the pumping rate will exceed 50,000 gallons per day at any time during operation.
- All well permit applications must be prepared and signed by licensed water well contractors, and only licensed well drillers may construct the wells. Please factor in the necessary time for processing the well permit applications into the construction schedule. Dewatering well permit applications typically take approximately four weeks to process, which allows the necessary time for technical review and advertising.

Water Resource Protection Areas

- The DNREC Source Water Assessment and Protection Program (SWAPP) has reviewed the above referenced PLUS project and determined that southwestern edge that falls within an excellent ground-water recharge area for the Sussex County (see attached map). State Strategies classify the area this parcel lies within as an Environmentally Sensitive Developing Area.

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

Rudy's Marine (PLUS 2010-10-02)



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

SWAPP Recommends:

- Limiting impervious cover
- Handling and storage of hazardous substances (e.g. fuels, coatings, and solvents)

References

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

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

Sediment and Stormwater Program

- With the change in use that would result from the rezoning, it is unclear how much area will be disturbed on this site therefore a detailed sediment and stormwater plan may be required prior to any land disturbing activity taking place on the site. Contact the Sussex Conservation District 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 Sussex Conservation District. Contact Jessica Watson at

the Sussex Conservation District at (302) 856-2105 for details regarding submittal requirements and fees (Delaware Code, Title 7, Chapter 40; Delaware Regulations, Administrative Code, Title 7, 5101).

Tank Management Branch

Please be aware:

- If a release of a Regulated Substance occurs at the proposed project site, compliance of 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 (2) LUST project sites located within a quarter mile of the project site:
 - Parcel 7L Magee Property (5-000781), Project: S9103044 (Inactive)
 - Love Creek Marina (5-000400)
 - Projects: S0804033, S0806056, S0806057, S0806058 (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.”

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

- The owner should also consider providing sufficient landscaping along the borders of the parcel to block any adverse visual and noise effects on the surrounding properties.

Department of Transportation – Contact Bill Brockenbrough 760-2109

- DelDOT does not anticipate recommending that the County require a Traffic Impact Study for the subject application.
- DelDOT has a project under development for the improvement of Delaware Route 24 from Love Creek to Delaware Route 1 (Contract No. 24-112-09 - SR24, Love Creek to SR1 (Mainline Improvements)). Plans have not been developed yet and it appears likely that the proposed boat dealership could be open for business before we begin construction. Nonetheless, if the needed rezoning or conditional use application is approved, it is recommended that the applicants follow the progress of this project as it could affect their site access. The project manager is Mr. John Gaines. He may be reached at (302) 760-2335.

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

Additional information on impervious cover and water quality

- DNREC recommends that the applicant calculate post-construction surface imperviousness with all forms of created surface imperviousness (e.g., rooftops, driveways, parking lots, sidewalks, open-water storm water management structures, and roads) included in the calculation. We also strongly encourage the use of pervious paving materials (in lieu of conventional asphalt and concrete) to mitigate surface imperviousness and its' impacts on water quality wherever practicable.
- They further recommend 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 bacterial pollutant impacts via runoff from impervious surfaces.

Additional information on tank management

- 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.

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, Office of State Planning Coordination

CC: Sussex County