



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

January 18, 2011

Mr. Frank Kea  
Solutions, IPEM, LLC  
132 East Market Street  
Georgetown, De 19947

RE: PLUS review – 2010-12-03; Banks Borrow Pit

Dear Mr. Kea:

Thank you for meeting with State agency planners on December 22, 2010 to discuss the proposed plans for the Banks Borrow Pit project to be located on Old Mill Road between Whites Neck Road and Irons Landing Road, just north of Millville.

According to the information received, you are seeking a conditional use for a 31 acre borrow pit.

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 and the developer should considering reviewing recently approved conditional use approval for borrow pits within the County to ensure compliance with any and all regulations/restrictions that may be set forth by the County.

**Strategies for State Policies and Spending**

This proposed project is located within a Level 3 area near the communities of Millville and Ocean View according to the Strategies for State Policies and Spending document.

### 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, however, according to the Pomeroy and Beers Atlas of 1868, which is a 19th-century historical map, it looks like that there were structures associated with a J. Dickerson and Mrs. Cannon on the parcel, and there is a possibility that there may be archaeological remains associated with these structures as well. In addition, the USGS Topographical Map of 1918 also indicated that there structures approximately in that same location as the ones indicated on the Pomeroy and Beers Atlas of 1868. With this in mind, 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, because the unexpected discovery of unmarked human remains during construction can result in significant delays while the process is carried out.
- 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.
- 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\\_Manual\\_Revision\\_1\\_proposed\\_060110.pdf](http://www.deldot.gov/information/pubs_forms/manuals/subdivisions/pdf/Subdivision_Manual_Revision_1_proposed_060110.pdf).
- In accordance with Section 5.2 of the Standards and Regulations, DelDOT anticipates requiring improvements along the site frontage. Preliminarily, those improvements would include a separate right turn lane at the site entrance. Those improvements could, in turn, require the dedication of rights-of-way to public use. DelDOT recommends that the developer's site engineer contact the DelDOT Subdivision Manager for eastern Sussex County, Mr. John Fiori, to discuss these requirements further. Mr. Fiori may be reached at (302) 760-2260.
- DelDOT anticipates that Sussex County will require a "Letter of No Objection" from the Department for this project. Per Section 3.4 of the Standards and Regulations, 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 the Standards and Regulations, 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.
- As specified in Section 3.10.2 of the Standards and Regulations, DelDOT anticipates requiring an agreement with the applicant regarding the improvement or maintenance of roads connecting the site entrance to Delaware Route 26. This agreement would establish the applicant’s responsibility for damage to those roads attributable to the truck traffic associated with the proposed pit. This agreement would be a requirement for entrance plan approval.

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

### **Wetlands**

- According to the Statewide Wetland Mapping Project (SWMP) maps, palustrine emergent wetlands (PFO1C, PFO1A, and PEM/SS1C & PEM1C) were mapped on subject parcel (Figure 1).

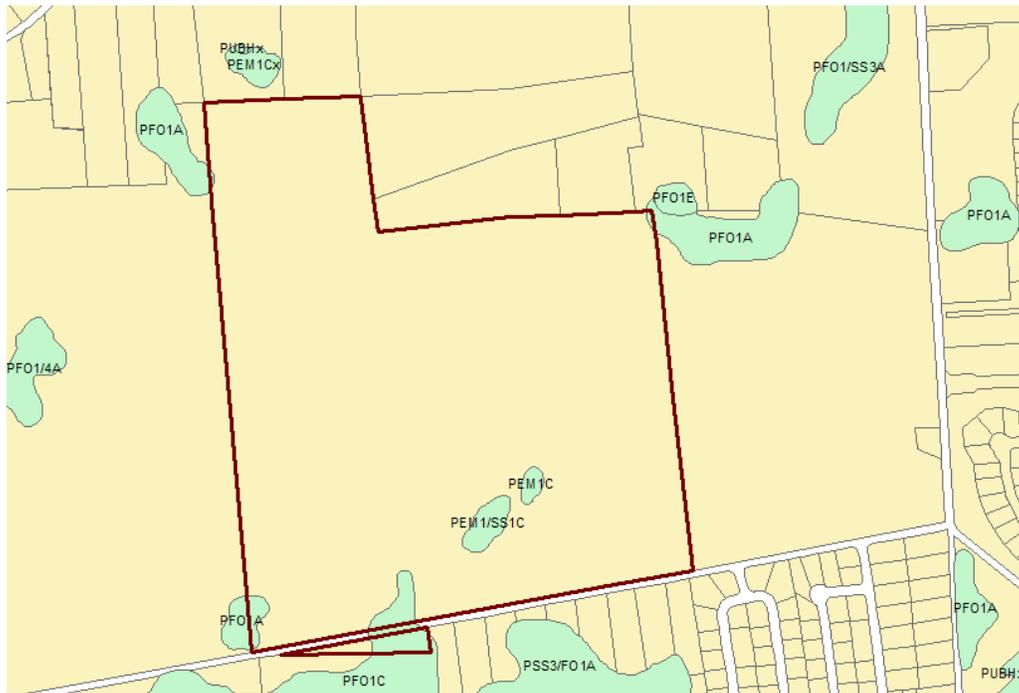


Figure 1: SWMP mapping in the immediate vicinity of the proposed project

- 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.

### TMDLs

- The project is located in the greater Inland Bays drainage - specifically within the area designated as the "low nutrient reduction zone" of the Indian River 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 Reduction zone of the Inland Bays watershed 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.

### **Water Supply**

- The project information sheets state that water will be not provided to this project. Our records indicate that the project is located within the public water service area granted to Public Water Supply (a.k.a. Tidewater Utilities) under Certificate of Public Convenience and Necessity 83-W-6. I 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 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.

### **Sediment and Stormwater Program**

- A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. A project application meeting is required for this 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 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).

### **Hazardous Waste Sites**

- If it is determined by the Department that there was a release of a hazardous substance on the property in question and the Department requires remediation pursuant to the Hazardous Substance Cleanup Act, the provisions of 7 Del.C. Chapter 91, Delaware Hazardous Substance Cleanup Act and the Delaware *Regulations Governing Hazardous Substance Cleanup* shall be followed.

### **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.

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

### **Additional information on wetlands**

- Site specific United State Army Corps of Engineers (USACE) field wetlands delineation is strongly recommended before commencing any construction activities. It is further recommended that the USACE be given the opportunity to officially approve the completed delineation. The USACE can be reached by phone at 736-9763.
- The applicant should keep in mind that compliance with federal wetland requirements does not preclude the required compliance with State wetland regulatory requirements.

- This project may impact groundwater quality and quantity. We strongly recommend the applicant contact John Barndt (Hydrogeologist) of the Water Supply Section about groundwater concerns before the start of any excavation activities. He can be contacted at 739-9359.
- **According to the map of water features, the proposed project area is bisected (east to west) by a primary water feature as defined by the Inland Bays pollution control strategy (PCS).** Although regulations have not been promulgated in the PCS requiring the establishment of buffers between borrow pits and primary streams, ignoring or disregarding the importance buffer establishment here will further contribute to decreases in water quality in the Inland Bays watershed and make it harder to attain the required TMDL nutrient pollutant reductions prescribed for the entire Inland Bays watershed. Therefore, we strongly recommend a minimum 100-foot buffer from the edge of the proposed borrow pit to the identified primary water feature. A map of water features identifies the specific primary water feature found on your site; this can be reviewed at <http://maps.dnrec.delaware.gov/inlandbayspcs93/>.

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 (See <http://maps.dnrec.delaware.gov/inlandbayspcs93/>), and wetlands (See figure 1).

#### **Additional information on hazardous waste sites**

- The Site Investigation and Restoration Branch (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.
- There is one SIRB site within a ½ mile radius of the proposed project.
  - The Quillen Pit site is located to the west of the project area. The site is a HSCA site. A Facility Evaluation was conducted in 2000, and a No Further Action (NFA) letter was issued on December 14, 2000. The NFA letter concludes that based on the tests performed at the site, a release of hazardous substances has not occurred.

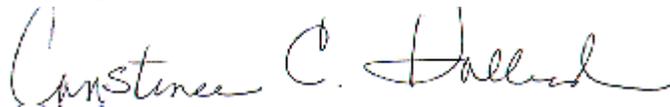
Should a release or imminent threat of a release of hazardous substances be discovered during the course of development (e.g., contaminated water or soil), construction

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.

**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". The signature is written in black ink and is positioned above the printed name and title.

Constance C. Holland, AICP

Director, Office of State Planning Coordination

CC: Sussex County