



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

September 16, 2011

Mr. Jeff Stone
Delaware Economic Development Office
99 Kings Highway
Dover, DE 19901

RE: PLUS review – 2011-08-03 – DEDO Site Investigation – Smyrna

Dear Mr. Stone:

Thank you for meeting with State agency planners on August 24, 2011 to discuss the feasibility of placing a 1 million sq. ft. commercial building on 232 acres located on both sides of Paddock Road, between Route 13 and Route 1 within the Town of Smyrna

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 the Town of Smyrna is the governing authority over this land, the developers will need to comply with any and all regulations/restrictions set forth by the Town.

Based on the information received, the following is a list of comments and information received from State agencies regarding the development of this site.

Strategies for State Policies and Spending

- This parcel is located within Levels 1 and 2 according to the *2010 Strategies for State Policies and Spending* document. In addition, it is located within the Town of Smyrna. 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. Investment Level 2 reflects areas where growth is anticipated by local, county, and State plans in the near term future. State investments will support growth in these areas.

State Historic Preservation Office – Contact Terrence Burns 736-7404

- There are a number of known archeological sites on this parcel and they are as follows (N-10607, 7NC-J-118) (N-10608, 7NC-J-119) (N-10609, 7NC-J-120) (N-10610, 7NC-J-121) (N-10611, 7NC-J-122) (N-10612, 7NC-J-123) (N-10613, 7NC-J-124) (N-10614, 7NC-J-125). In addition, there is also a 20th-century building (N-13377) nearby or very close this parcel as well, and areas of high potential for both prehistoric-period and historic-period archaeological sites in areas that were not included in the archaeological survey. According to the Pomeroy and Beers Atlas of 1868 (an historical map), it appears that there were dwellings associated with a J. Stephenson, also known Belmont was within the northern parcel across Paddock Road, as well as another, which was probably the tenant house where the existing house is on the south side of Paddock Road. There was also another associated with the A. Cavender where the existing agricultural complex is within the southern parcel, along with another associated with the A. Cavender, which was probably tenant House on Old Brick Store Landing Rd. Furthermore, it is also a possibility that there might be potential archaeological remains associated with the dwellings or houses that were indicated on the Pomeroy and Beers Atlas. With this in mind, developer needs to be aware of the Unmarked Human Burials and Human Skeletal Remains Law of 1987 (Delaware Code: Title 7, Chapter 54), which pertains to the discovery and disposition of such remains in the State of Delaware.

Abandoned or unmarked family cemeteries are very common in Delaware. Especially on historic farm sites, rural areas, and open space lands. Disturbing unmarked burials triggers Delaware's Unmarked Human Burials and Human Skeletal Remains Law of 1987 (Delaware Code: Title 7, Chapter 54), and such discoveries can result in substantial delays while the procedures required under this law are carried out. The Division of Historical & Cultural Affairs recommends that owners and/or developers have a qualified archaeological consultant investigate their project area for the presence of such a cemetery. If one is discovered and delineated, it is very costly to have it archaeologically excavated and the burials moved. In the event of such a discovery, the Division of Historical & Cultural Affairs also recommends that the plans be re-drawn to leave the cemetery on its own parcel or in the open space area of the development, with the responsibility for its maintenance lying with a homeowners association or development. For further information, please see following websites at: www.history.delaware.gov/preservation/umhr.shtml and www.history.delaware.gov/preservation/cemeteries.shtml

- Prior to any demolition or ground-disturbing activities, and before any construction or development project proceeds, the developer should consider hiring an archaeological consultant to examine the parcel for possible cultural or historic resources, such as a potential archaeological site, a cemetery or unmarked human remains. Although this parcel is zoned for commercial use, the Division of Historical and Cultural Affairs ask that the developer to contact in order to avoid any negative impact on the archaeological

sites, which might be disturbed if this proposed construction or development project proceeds.

- 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 culture or historic resources. Owners and developers who may plan to apply for an Army Corps of Engineers permit or for federal funding, such as HUD or USDA grants, should be aware of the National Historic Preservation Act of 1966 (as amended). Regulations promulgated for Section 106 of this Act stipulate that no ground-disturbing or demolition activities should take place before the Corps or other involved federal agency determines the area of potential effect of the project undertaking. These stipulations are in place to allow for comment from the public, the Delaware State Historic Preservation Office, and the Advisory Council for Historic Preservation about the project's effects on historic properties. Any preconstruction activities without adherence to these stipulations may jeopardize the issuance of a permit or receipt of funding if it is determined that such opportunity to comment has been foreclosed. For further information on Section 106 and the Advisory Council's role, please review the Advisory Council's website at www.achp.gov

Department of Transportation – Contact Bill Brockenbrough 760-2109

- The handout presented at the meeting shows 20 industrial park or office park lots on the site. What would we be developed there? It will affect the design of the needed road improvements.
- Previously, in addressing development on the KRM site, DelDOT had suggested that one or more parcels along US Route 13 be purchased and an access point be provided there. They are aware that two such properties are, or recently were for sale. Is such access under consideration? Similarly, we had suggested that access to the KRM site be placed on Brickstore Landing Road to provide more distance between US Route 13 and the point where traffic enters Paddock Road. Is that under consideration for this site?

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

DNREC Requirements

Wetlands

- According to the Statewide Wetland Mapping Project (SWMP) maps, tidal (EM2EM1N) and non-tidal riparian (PFO1A7, PEM1Ex & Cx, PUBHx) wetlands were mapped on subject parcel (Figure 1).

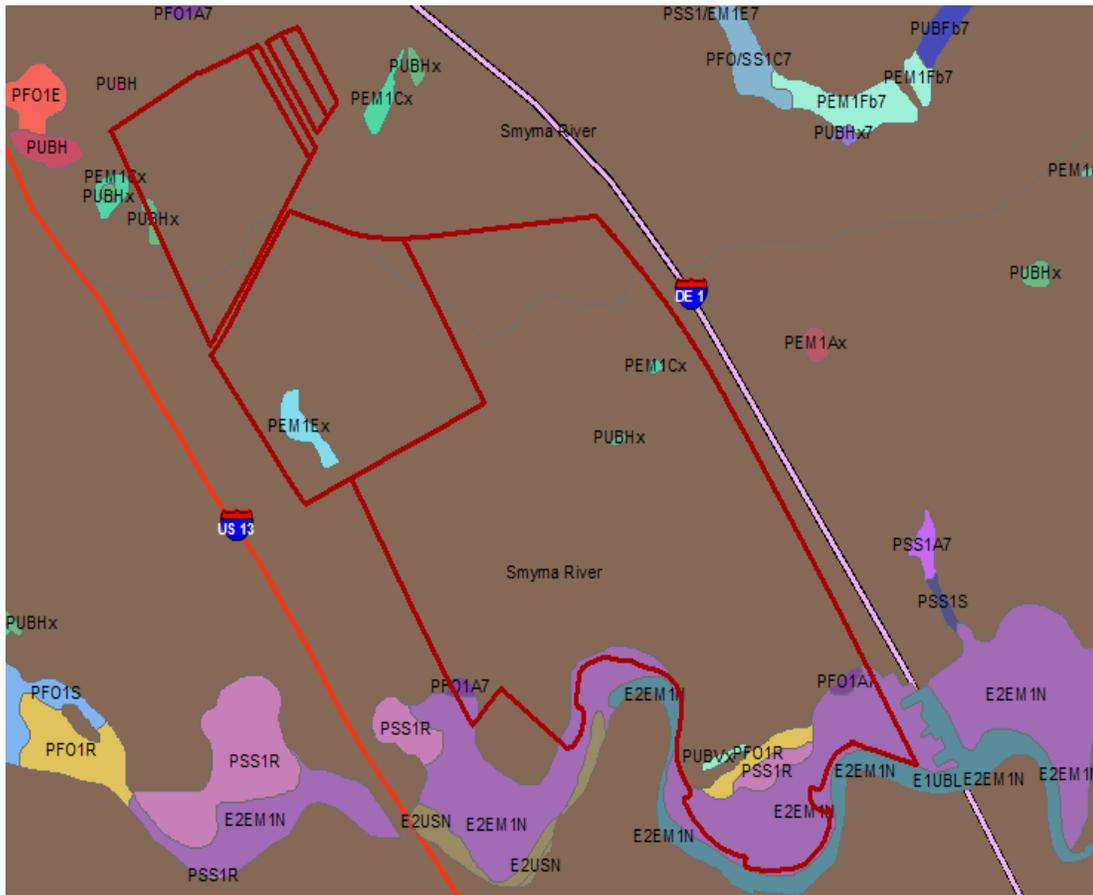


Figure 1: SWMP mapping in the immediate vicinity of the proposed project

- 280020000: This parcel contains State regulated wetlands on the south side of the property as identified on maps DNR 355 and DNR 363. The site may contain wetlands regulated by the U.S. Army Corps of Engineers or by the County. There are tidal waters regulated by the Department south of the parcel but no other subaqueous lands features could be identified.
- 2800200002: This parcel does not contain State regulated wetlands. The site may contain wetlands regulated by the U.S. Army Corps of Engineers or by the County. There does not appear to be any drainageways or stream features regulated by the Department.
- 1502200086: This parcel does not contain State regulated wetlands. The site may contain wetlands regulated by the U.S. Army Corps of Engineers or by the County. There may be drainageways or stream features regulated by the Department.
- 2800100003: This parcel contains State regulated wetlands on the south side of the property as identified on map DNR 363. The site may contain wetlands regulated by

the U.S. Army Corps of Engineers or by the County. There are tidal waters regulated by the Department south of the parcel but no other subaqueous lands features could be identified.

- All State-regulated wetlands and waters should be avoided if the site is chosen for development.

TMDLs

- The project is located in the greater Delaware River and Bay drainage: specifically, within the Smyrna River watershed. In this watershed, under the auspices of Section 303(d) of the 1972 Clean Water Act, the State of Delaware has developed specific Total Maximum Daily Load (TMDL) pollutant reduction targets 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 Smyrna River watershed calls for a 40 percent reduction in nitrogen and phosphorus from baseline conditions. The TMDL also calls for a 75 percent reduction in bacteria from baseline conditions.
- A nutrient management plan is required under the *Delaware Nutrient Management law (3 Del. Chapter 22)* for all persons or entities who apply nutrients to lands or areas of open space in excess of 10 acres. This project’s open space may exceed this 10-acre threshold. Please contact the Delaware Nutrient Management Program at 739-4811 for further information concerning compliance requirements or view the following web link for additional information: <http://dda.delaware.gov/nutrients/index.shtml>

Water Supply

- The project information sheets state that being a site investigation, water provider has not been determined to supply this project. Our files reflect that Town of Smyrna does not currently hold a Certificate of Public Convenience and Necessity (CPCN) to provide public water in these areas. They will need to file an application for a CPCN with the Public Service Commission, if they have not done so already. Information on CPCN requirements and applications can be obtained by contacting the Public Service Commission at 302-739-4247.
- 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

- Be advised the Sediment and Stormwater Program is currently undergoing revisions to the sediment and stormwater regulations. The new regulations should be promulgated in early 2012.
- This project may qualify for a stormwater quantity waiver with a tidal outlet. However, stormwater quality must be addressed prior to release.
- A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. It is strongly recommended that the owner and consultant contact the Kent Conservation District to schedule a project application meeting to discuss the sediment and erosion control and stormwater management components of the plan. 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 Kent Conservation District. Contact Jared Adkins, Program Manager, at the Kent Conservation District at (302) 741-2600, ext. 3 for details regarding submittal requirements and fees. (Title 7, Delaware Code, Chapter 40 and Delaware Regulations, Title 7, Administrative Code, 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.

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.

- The following confirmed leaking underground storage tank (LUST) projects are located within a quarter mile from the proposed area:
 - Kent and Sussex Oil, Facility: 1-000159, Project: K9709147 (Inactive)
 - Smyrna Sub Shop, Facility: 1-000644, Project: K9807117 (Inactive)
 - Econo Tire, Facility: 3-001965, Project: N9902036 (Inactive)
 - Shore Stop #252, Facility: 3-000214, Project: N8707070 (Inactive)
 - Former John Nelson Mobil, Facility: 3-002369, Project: N0002037 (Inactive)
 - Smyrna Rest Area Pump #0113, Facility: 1-000671, Project: K9902040 (Inactive)

- No environmental impact is anticipated; however, 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.”

DNREC Recommendations

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 Smyrna 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 the voluntary commitment to the implementation of the following recommended BMPs:
 - Maximize open space by establishing maintaining and/establishing additional tree cover on this parcel.
 - 100-foot upland buffers (planted with native vegetation) should be established from wetlands and/or water bodies

- The applicant should 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.
- Since this is a commercial project that will likely generate large amounts of impervious cover, 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, is encouraged.
- Rain gardens and green-technology storm water management structures (in lieu of open-water management structures) should be utilized as BMPs to reduce nutrient pollutant impacts.
- The applicant should voluntarily assess nutrient and bacterial pollutant loading at the preliminary project design phase. To this end, the Watershed Assessment Section has developed a methodology known as the “Nutrient Load Assessment protocol.” The protocol is a tool used to assess changes in nutrient (e.g., nitrogen and phosphorus) and bacterial loading that result from the conversion of individual or combined land parcels to a different land use(s), while providing applicants with quantitative information about their project’s impact(s) on baseline water quality. We strongly encourage the applicant/developer use this protocol to help them design and implement the most effective BMPs. Please contact Lyle Jones at 302-739-9939 for more information on the protocol.

Habitat and Rare/Threatened/Endangered Species

- Our Division scientists have not surveyed this project area; therefore, we are unable to provide information pertaining to the existence of state-rare or federally listed plants, animals or natural communities at this project site. In the absence of site-specific information, we offer the following comments:
- According to the database, there are several State-rare plant species and a State-rare vegetation community along Duck Creek adjacent to the project area. Upland buffers along the creek are extremely important in the protection of these species. Efforts should be made during the planning of this project to ensure that adequate upland buffers are left intact along the creek. In addition to protecting water quality, upland buffers provide a corridor along the creek which can support the survival of many species by providing sources of food and water, protective cover from predators, shelter from harsh weather, and reconnecting isolated populations. Research studies show a great number of songbirds, game birds, small mammals, reptiles and amphibians, and other wildlife use corridors as a regular part of their life cycles.

- DNREC recommends leaving at least a 100-foot upland buffer along the creek given the large scale of this development and potential to impact water quality. To be most effective, this buffer should not include impervious surfaces, mowed lawn, parking lots, roadways, structures, or stormwater facilities. If the current buffer is less than 100 feet, plantings of Delaware native trees, shrubs and wildflower species to a width of 100 feet should be considered.

Additional information on hazardous substances

- The Site Investigation and Remediation Section (SIRS) strongly recommends that the land owner perform environmental due diligence of the property by performing a Phase I Environmental Site Assessment (**including a title search to identify environmental covenants**) 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.

Additional remediation may be required if the project property or site is re-zoned.

- 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). SIRS should also be contacted as soon as possible at 302-395-2600 for further instructions.

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.

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

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):

DSFMO Requirements

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/Industrial 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 Delaware State Fire Prevention Regulations
- Special requirements apply to “Large Area” buildings that are in excess of 100,000 square feet.

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 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.
- 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

DSFMO Suggestions

- 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.

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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: Town of Smyrna