



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

February 22, 2012

Douglas Barry  
Pennoni Associates, Inc.  
18072 Davidson Drive  
Milton, De 19968

RE: PLUS review – 2011-12-02; Captain's Way

Dear Mr. Barry:

Thank you for meeting with State agency planners on January 25, 2012 to discuss the proposed plans for the Captain's Way project to be located on the north side of SR16, 1650 ft. east of Holly Tree Road near Ellendale.

Based upon the January 2012 application, the applicant is seeking a rezoning from AR-1 to GR with an RPC overlay through Sussex County. At this time, the parcel has been approved for a 301 single family house cluster subdivision as presented under the PLUS application 2005-05-09 (Captain's Run). The proposed rezoning would allow the construction of a possible 301 unit mobile home park with a three (3) acre parcel zoned commercial for a mobile home sales center with no proposed modifications to the lot and street configuration as presented in the PLUS application 2005-05-09.

Please note that changes to the plan, other than those suggested in this letter, could result in additional comments from the State through both the permitting and PLUS processes. 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, the developers will need to comply with any and all regulations/restrictions set forth by the County.**

**Strategies for State Policies and Spending**

- This proposed rezoning and project is within an Investment Level 4 area according to the 2010 *Strategies for State Policies and Spending*. In addition, this project is located outside of a designated growth area in relevant municipal and county certified Comprehensive Plans.

Investment Level 4 indicates where State investments will support agricultural preservation, natural resource protection, and the continuation of the rural nature of these areas as evidence by those already preserved lands adjacent to the proposed. New suburban development activities such as the proposed are not supported in Investment Level 4 areas; however, the State does recognize that this parcel has already been approved through the County for development. Yet upon review of the proposed, PLUS reviewers have noted that the plan that the original plan that was approved through the County is different from the plan that was reviewed on January 25, 2012. The final approved plan of 2005 has less housing units, a single stream road crossing not two and lots are planned for lands west of Sowbridge Branch where, in the initially application, there had been none.

- The developer of the original site plan for this property noted that 48 to 58 acres of forested land would be removed and to mitigate this loss of forest the developer proposed to pay \$10,000 per acre for removed forest that would be paid to the Nature Conservancy to be used for reforestation and management on the adjacent preserved properties. The State would request that this stipulation, as well as any others that were put in place for Captain's Run, would also be required under this application. A copy of the developer response from the first PLUS review is attached for your consideration.

### **Code Requirements/Agency Permitting Requirements**

State Historic Preservation Office – Contact Terrence Burns 736-7404.

- According to the Pomeroy and Beers Atlas of 1868 (an historical map), it seems that there were a couple of dwellings on this parcel that were associated with a D. Lofland, and D. Donovan. Furthermore, there is a possibility that there may be archeological remains associated with those dwellings as well. With this in mind, is it important that the developer be aware of Delaware's Unmarked Human Burials and Human Skeletal Remains Law.

Abandoned or unmarked family cemeteries are very common in the State of Delaware, and quite often they are usually on historic farm sites, rural areas or open space lands. Disturbing unmarked burials triggers Delaware's Unmarked Human Burials and Human Skeletal Remains Law (Title 7, Chapter 54 of the Delaware Code), and such remains or 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, 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 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. If you need or would like more information, please go to the following websites for

additional information: [www.history.delaware.gov/preservation/umhr.shtml](http://www.history.delaware.gov/preservation/umhr.shtml) and [www.history.delaware.gov/preservation/cemeteries.shtml](http://www.history.delaware.gov/preservation/cemeteries.shtml)

- Prior to any demolition or ground-disturbing activities, the developer should 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 cultural 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. If you need further information or additional details pertaining to the Section 106 process and the Advisory Council's role, please review the Advisory Council's website at [www.achp.gov](http://www.achp.gov)

Department of Transportation – Contact Bill Brockenbrough 760-2109

- Previously, plans were developed treating this project a subdivision of 301 single-family detached houses. These plans were approved by the Department on September 22, 2010, in accordance with Section 1.3 of DelDOT's Standards and Regulations for Subdivision Streets and State Highway Access. If the applicant would like to proceed using these plans, they may do so, subject to any necessary updates. While the change to mobile homes may mean that the proposed entrance is somewhat overdesigned, and we will review revised plans if the applicant wishes to redesign, DelDOT will not require a redesign to reflect the change now proposed. In any event, the applicant's site engineer should contact the project engineer, Mr. Derek Sapp and let him know how they would like to proceed. Mr. Sapp can be reached at (302) 760-4803.
- In 2006, a Traffic Impact Study (TIS) was performed for the subject property in accordance with the DelDOT subdivision regulations that were current then. In that study, the proposed land use was listed as 494 single-family detached houses, a gasoline station / convenience store, and a 160,000 square foot warehouse. This application lists the proposed land use as 301 mobile homes. Since the traffic generated by the current proposal is significantly less than the traffic generated by the previous one, we would

expect our recommendations based on the 2006 TIS to still be sufficient. Therefore, we do not recommend that a new TIS be performed for this application. With that said, it may be that some of the recommendations contemplated in our 2006 letter are not necessary to support the development now proposed. If the applicant would like to revisit these recommendations, a Traffic Operational Analysis (TOA) may be needed for that purpose.

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

When DNREC reviewed the Captain's Run project in 2005 (PLUS 2005-05-09), we commented on a 495-lot single family detached subdivision. By the time the project was reviewed by the Sussex County Technical Advisory Committee in 2007, the site plan had been significantly revised. The project was reduced to 301 single family detached lots, a single stream road crossing had grown to two stream road crossings, and lots were plotted west of Sowbridge Branch where, initially, there had been none. While the lot and road configurations remain the same as they were for the 2007 TAC review, the project is now being proposed as a 301-lot mobile home park and there is now a request to rezone a 3-acre piece of the site plan for commercial use.

**Wetlands**

- According to the Statewide Wetland Mapping Project (SWMP) maps, palustrine wetlands (PF01C7, PFO1/SS3C7, and PF01A7 & PFO1A) were mapped in the area proposed for development (See figure 1). Therefore, we strongly recommend a United States Army Corps of Engineers (USACE) approved wetlands delineation before commencing any development activities.

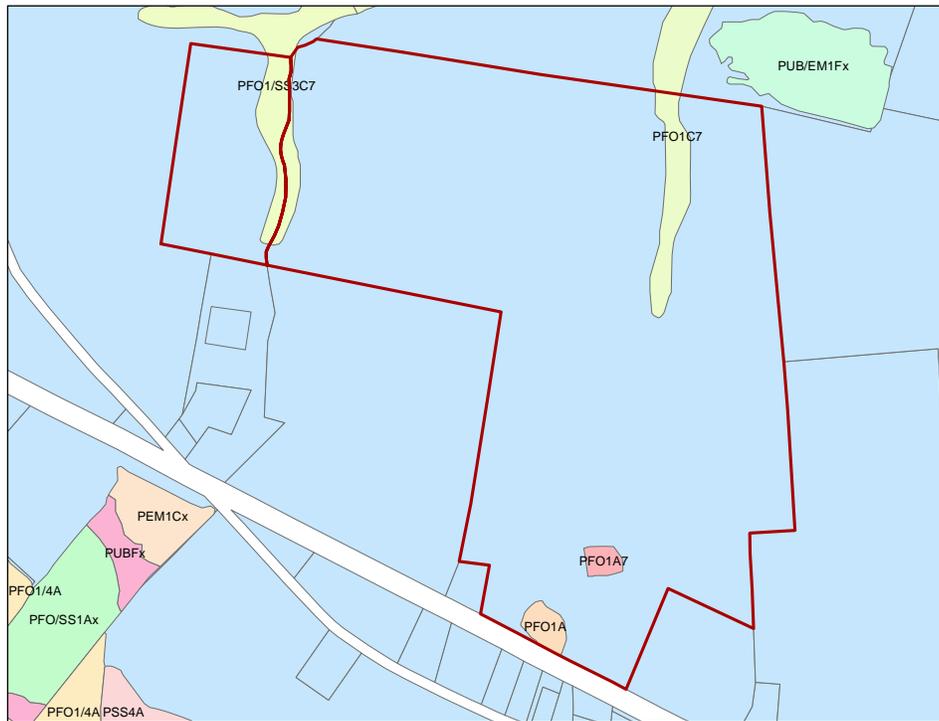


Figure1: SWMP mapping in the immediate vicinity of the proposed project

- It appears that there are two tributaries to Sowbridge Branch that have proposed road crossings. These crossings would require a subaqueous lands permit.

### TMDLs

- The project is located in the greater Delaware River and Bay drainage, specifically within the Broadkill River watershed. In this watershed, the State of Delaware has developed specific Total Maximum Daily Load (TMDL) pollutant reduction targets for nitrogen, phosphorus, and bacteria (under the auspices of Section 303(d) of the Clean Water Act). 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 Broadkill 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 water will be provided to the project by Tidewater Utilities via a public water system. DNREC records indicate that the project is located within the public water service area granted to Tidewater Utilities under Certificate of Public Convenience and Necessity 06-CPCN-35. The project information sheets also indicate that a new well will be installed; however there was no indication on the subdivision plans. 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, and it must also be located at least 150 feet from the outermost boundaries of the project. 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.
- 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 a Groundwater Management Zone B associated with Clean Delaware, Inc. (Rt. 231) located within 1000 feet of the proposed project.

## **Water Resource Protection Areas**

- The DNREC Water Supply Section has determined that it falls entirely within an excellent ground-water recharge area for the Sussex County (see attached map).
- 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.

Ground Water Protection Branch Recommends:

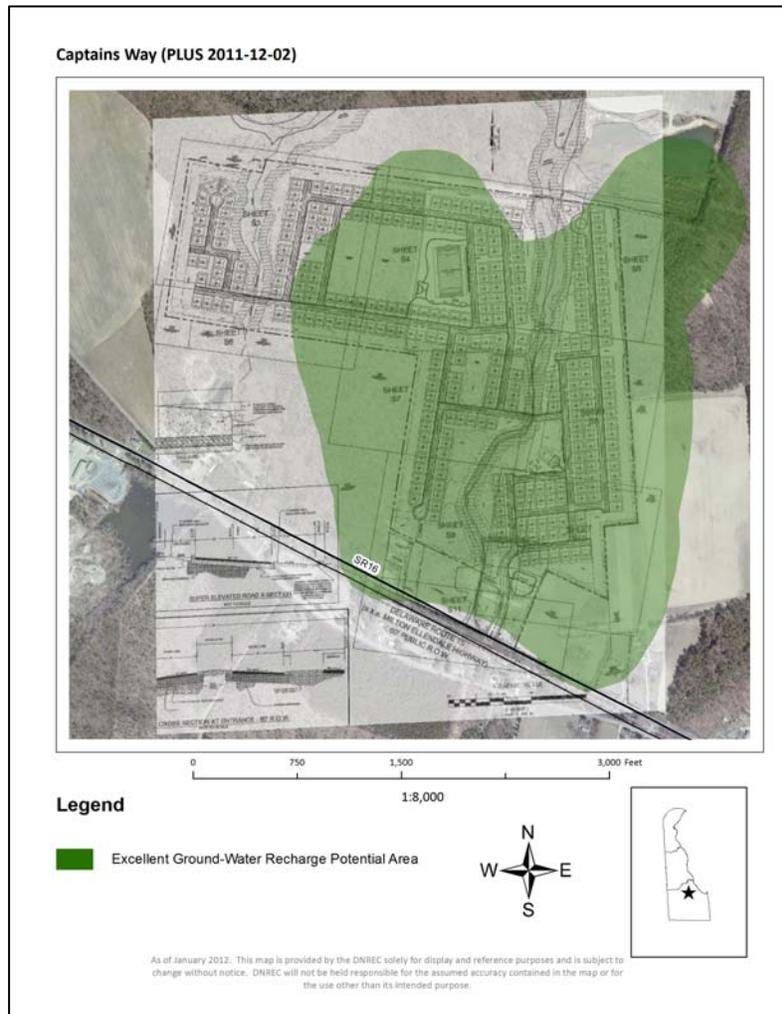
- Limit impervious cover to 20% of that area within the portion of the parcel in the excellent ground-water recharge potential area.

OR

- Allow no more than 50% impervious cover of that area within the portion of the parcel within the excellent ground-water recharge potential area if an environmental assessment documents that post-development recharge is equal to or greater than pre-development recharge when computed on an annual basis.
- The site plan submitted with the project shows several storm water management ponds within the development. The construction phase of these ponds requires excavation, hauling, and grading. The heavy equipment used in this phase has the capacity to compact and degrade the structure of the strata that defines the area as an excellent ground-water recharge area (Schueler, 2000). Changes to the structural soil properties may cause significant reduction in recharge capacity. Installing storm-water management ponds in excellent ground-water recharge areas has the potential to contaminate the ground water beneath it and infiltrate into the aquifer.

Ground Water Protection Branch recommends:

- Use Better Management Practices in the design, construction, and maintenance of a storm water management system designed to address water quality with respect to nutrient and other pollutant loads.
- 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.



### 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>

Schueler, T. R., 2000, The Compaction of Urban Soils, in Schueler, T.R., and Holland, H.K., eds., The Practice of Watershed Protection: Ellicott City, MD, Center for Watershed Protection, p. 752.

### Wastewater

- A soil investigation was approved on May 14, 2007 and the preliminary groundwater impact assessment was approved on May 31, 2007. At the time, the project was known as Captain's Run. To date, a permit application has not been submitted so there is nothing to specify if the system can be sized to accommodate the proposed number of

lots. There is sizable area designated for a wastewater disposal area; however, the developer must also maintain a 100% spare area for a replacement system.

### **Sediment and Stormwater Program**

- A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. The addition of the commercial acreage will require a revision to any submitted plan. 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. (Title 7, Delaware Code, Chapter 40 and Delaware Regulations, Title 7, Administrative Code, 5101)

### **Hazardous Waste Sites**

- DNREC's Site Investigation and Restoration Section (SIRS) have reviewed the proposed project.
- 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 project area:
  - DelDOT Ellendale Yard, Facility: 5-000411, Project: S9307136 (Inactive)
  - Herbert's Gas Station, Facility: 5-000252, Project: S9310189 (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.

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:

- **Fire Protection Water Requirements:**
  - Where a water distribution system is proposed for single-family dwellings it shall be capable of delivering at least 500 gpm for 1-hour duration, at 20-psi residual pressure. Fire hydrants with 1000 feet spacing on centers are required.
  - The infrastructure for fire protection water shall be provided, including the size of water mains.
- **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 Milton-Ellendale Road must be constructed so fire department apparatus may negotiate it. If a “center island” is placed at an entrance into the subdivision, it shall be arranged in such a manner that it will not adversely affect quick and unimpeded travel of fire apparatus into the subdivision.
  - 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. Due to the width and weight of their apparatus, the ability for the Fire Department to access the portion of the subdivision on the other side of the small bridge over the wetlands area should be verified.
  - 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”
  - Name of Water Supplier
  - Proposed Use
  - National Fire Protection Association (NFPA) Construction Type
  - Maximum Height of Buildings (including number of stories)
  - Provide Road Names, even for County Roads

**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, Office of State Planning Coordination

CC: Sussex County