



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

March 14, 2012

Cathryn Thomas  
City of New Castle  
220 Delaware Avenue  
New Castle, De 19720

RE: PLUS review – 2012-02-02; New Castle Downtown Riverfront Project

Dear Ms. Thomas:

Thank you for meeting with State agency planners on February 22, 2012 to discuss the proposed plans for the proposed City of New Castle Downtown Riverfront project to be located at the end of Delaware Avenue within the City of New Castle

According to the information received, you are seeking comments on a site plan for 180 foot dock from the end of Delaware Avenue for use by the Kalmar Nyckel and other historic ships, the Good Will Fire Company rescue boat, Delaware River and Bay Authority's Three Forts Ferry and other uses.

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.

**Code Requirements/Agency Permitting Requirements**

State Historic Preservation Office – Contact Terrence Burns 736-7404

- The City of New Castle should be aware that the proposed Waterfront Concept Plan is within the area of the New Castle Ice Piers (N05930), which is listed in the National Register of Historic Places and adjacent to the New Castle Historic District (N00349), which is both a National Historic Landmark and in the National Register. In addition there is a high probability for underwater archaeological sites because of the historic nature and context of this area and a potential for adverse visual effects on the two National Register-listed properties as well.

- 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, 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). If you have any questions or would like to discuss this further, please contact Alice Guerrant at 302-736-7412.

Department of Transportation – Contact Bill Brockenbrough 760-2109

- The proposed development is for the east end of Delaware Street, about 0.4 miles from the nearest State-maintained street. Therefore, the project is outside our jurisdiction.

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

**Subaqueous Lands**

- This project will require a Subaqueous Lands Lease and must comply with the subaqueous Lands Act and Regulations. It is possible that the Delaware Marina Regulations may also apply. We strongly urge contact early on with the DNREC Wetlands and Subaqueous Lands Section - preferably during planning and design - to ensure that any proposed structure can meet regulatory requirements. DNREC WSLs can be reached at (302) 739-9943.

**Federal Consistency Certification**

- This project will require federal consistency certification. Applicant must be consistent with polices set forth by the DCMP for this type of activity. That document may be found at:

<http://www.dnrec.delaware.gov/coastal/Documents/Federal%20Consistency/2011DCMPPolicyDocument.pdf>

- Resource Issues:
  - Coordination with DNREC's Heritage Program for evaluation of RTE species impacts required
  - Coordination with State Division of Historical and Cultural Affairs required
- Comments Regarding Intended Use:
  - It is stated that the facility will be used for mooring a historic ship, transient boats, and possibly an emergency vessel and may be used as a ferry terminal. Other than the historic boat and the transient boaters, all other entities that may should provide documentation detailing their intent to use the facility if constructed.
  - As the structure will not provide permanent berthing for the Kalmar Nickel, applicant should clearly indicate how often that vessel intends to utilize this facility.
  - Coordination with the Coast Guard and the pilot association to ensure no objections exist is necessary.
- Comments regarding design and placement:
  - The justification for not using the currently existing pier is insufficient. Applicant needs to reconsider alternatives incorporating the existing structure for this purpose and/or provide sufficient justification as to why a new structure is required.
  - The size of the proposed structure is too large for the intended purpose. If applicant can justify the construct a new dock/pier, appropriate sizing will need to be incorporated into those plans.
  - Plans should indicate where all vessels intending to use the facility (ship, emergency vessel, ferry, transient boaters) will be moored along the structure.
- Other Comments:
  - DNREC's Wetland and Subaqueous Lands regulations regarding marina permits, O&M plans, and subaqueous lands leases must be addressed.
  - Parking issues need to be clearly addressed, particularly if an emergency vessel is to use this docking facility.

These comments are based on the limited information provide. Additional questions and comments may arise as more information becomes available. Applicant is strongly urged to attend a Joint Permit Processing (JPP) meeting prior to submitting applications.

**Rare/Threatened/Endangered Species**

- This area of the river supports several fish species of concern including the federally endangered short-nosed sturgeon (*Acipenser brevirostrum*) and the state and federally endangered Atlantic sturgeon (*Acipenser oxyrinchus*). Spawning habitat is believed to be upriver; however, as evidenced by sonic tracking and other survey methods, these species forage in this area of the river. In addition, the Delaware River is utilized by striped bass, *Morone saxatilis*, for spawning during April-June. Large numbers of American shad, *Alosa sapidissima*, pass through this area April-June during upstream migration. Although these two species are not listed as endangered or threatened, they are an important resource in terms of recreational and commercial fisheries.

Due to these species of concern, pile driving associated with pier construction will require a time of year restriction that is consistent with the fisheries restrictions established by the Delaware River Fish and Wildlife Management Cooperative. Pile driving should **not** be conducted from April 15 to August 31.

Please get in touch with Matt Fisher, Fisheries Section biologist, at (302) 735-8663 or [Matthew.Fisher@state.de.us](mailto:Matthew.Fisher@state.de.us) for questions regarding these species.

**Air Quality**

- The applicant shall comply with all applicable Delaware air quality regulations. Please note that the regulations in Table 1, Potential Regulatory Requirements, may apply to your project:

<b>Table 1: Potential Regulatory Requirements</b>	
<b>Regulation</b>	<b>Requirements</b>
<b>7 DE Admin. Code 1106</b> - Particulate Emissions from Construction and Materials Handling	<ul style="list-style-type: none"> <li>• Use dust suppressants and measures to prevent transport of dust off-site from material stockpile, material movement and use of unpaved roads.</li> <li>• Use covers on trucks that transport material to and from site to prevent visible emissions.</li> </ul>
<b>7 DE Admin. Code 1135</b> – Conformity of General Federal Actions to the State Implementation Plan	<ul style="list-style-type: none"> <li>• Require, for any “federal action,” a conformity determination for each pollutant where the total of direct and indirect emissions would equal or exceed any of the de minimus levels (See Section 3.2.1)</li> </ul>
<b>7 DE Admin. Code 1141</b> – Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products	<ul style="list-style-type: none"> <li>• Use structural/ paint coatings that are low in Volatile Organic Compounds.</li> <li>• Use covers on paint containers when paint containers are not in use.</li> </ul>

<p><b>7 DE Admin. Code 1144 –</b> Control of Stationary Generator Emissions</p>	<ul style="list-style-type: none"> <li>• Ensure that emissions of nitrogen oxides (NO<sub>x</sub>), non-methane hydrocarbons (NMHC), particulate matter (PM), sulfur dioxide (SO<sub>2</sub>), carbon monoxide (CO), and carbon dioxide (CO<sub>2</sub>) from emergency generators meet the emissions limits established. (See section 3.2).</li> <li>• Maintain recordkeeping and reporting requirements.</li> </ul>
<p><b>7 DE Admin. Code 1145 –</b> Excessive Idling of Heavy Duty Vehicles</p>	<ul style="list-style-type: none"> <li>• Restrict idling time for trucks and buses having a gross vehicle weight of over 8,500 pounds to no more than three minutes.</li> </ul>

For a complete listing of all Delaware applicable regulations, please look at our website:  
<http://www.awm.delaware.gov/AQM/Pages/AirRegulations.aspx>.

### Tank Management Branch

- The following confirmed leaking underground storage tank (LUST) project is located within a quarter mile from the proposed project area:
  - Higgins Property Michael, Facility: 3-001487, Project: N9108177 (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 Section 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 TMS. If any ASTs greater than 12,500 gallons are installed, they are also subject to installation approval by the TMS.

### **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

- Downtown Delaware offers technical assistance and training toward downtown revitalization initiatives, of which the waterfront project is. As an active Commercial District Affiliate of Downtown Delaware, it is recommended that the Historic New Castle Alliance continue to be proactive toward downtown business development while pursuing Main Street designation.
- DEDO recommends that you continue to build community consensus toward this worthwhile project which will offer economic development, heritage tourism, and recreational opportunities to the City and the surrounding region.
- Further it is recommended that you consider applying for Federal Economic Development Authority (EDA) funds via the Comprehensive Economic Development Strategy (CEDS) process in Delaware.
- In the near term, the City should apply for an EDA planning assistance grant (this is different than the CEDS application/process) for additional planning of the waterfront project.
- In addition, the City should ensure that the Delaware Tourism Director, Linda Parkowski, is aware of this project, so that it can be included in other regional tourism initiatives, etc. (Linda.Parkowski@state.de.us)

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

- Prior to any development, construction or ground-disturbing activities, the developer should consider hiring an archaeological consultant to examine the area for potential archaeological sites under water.

#### Department of Transportation – Contact Bill Brockenbrough 760-2109

- DelDOT understands that the City is interested in seeking Transportation Enhancement (TE) funds for this project.

The TE program is a Federal Highway Administration (FHWA) program which is administered through State Departments of Transportation. Their experience is that the FHWA limits funding to surface transportation only, which by their interpretation excludes projects such as docks, which have to do with water transportation. If the City can separate out the land-side work in the park-like area at the end of Delaware Street, that work may be eligible for TE funding.

Presently, the funding for FY2012 and FY2013 is committed, but DelDOT would urge the City to apply soon for the 214 funding. They recommend that the City contact the DelDOT program manager, Mr. Jeff Niezgoda to begin the process. Mr. Niezgoda may be reached at 302-760-2178.

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

### **Air Quality**

- Additional measures may be taken to substantially reduce air quality emissions. These measures include:
  - **Providing tie-ins to the nearest bike paths and links to any nearby mass transport system.** These measures can significantly reduce mobile source emissions. **For every vehicle trip that is replaced by the use of a sidewalk, a bike path or mass transit, 7 pounds of VOC and 11.5 pounds of NOx are reduced each year.**
  - **Using retrofitted diesel engines during construction.** This includes equipment that are on-site as well as equipment used to transport materials to and from site.

This is a partial list, and there are additional things that can be done to reduce the impact of the New Castle Riverfront project. The applicant should submit a plan to the DNREC DAQ which address the above listed measures, and that details all of the specific emission mitigation measures that will be incorporated into the New Castle Riverfront Development plan.

### **Hazardous Waste Sites**

- There is one SIRS site located within a ½ mile radius of the proposed project. New Castle Coal Gas Site (DE-0167) is located 0.36 miles west of the proposed project. The Site entered the Brownfields Program in July of 2010. A Conceptual Site Model Plan and Sampling Analysis was drafted in March of 2011, followed by a Contaminated Materials Management Plan in October of the same year. The Brownfields Investigation Report was received in November of 2011 and is being reviewed. The Site is continuing with normal progression.

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.

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.

**Following receipt of this letter the applicant shall provide to 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