



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

October 23, 2012

Mr. David Culver
New Castle County Land Use Department
87 Reads Way
New Castle, DE 19720

RE: PLUS review – 2012-09-03; New Castle County Ordinance 12-094

Dear Mr. Culver:

Thank you for meeting with State agency planners on September 26, 2012 to discuss the proposed Ordinance Number 12-094 regarding the establishment of an Open Space (OS) zoning District.

The State offers the following comments regarding this ordinance:

Department of Transportation – Contact Bill Brockenbrough 760-2109

- At the start of Section 2 of the ordinance, Section 40.02.252 is described as pertaining to an Agricultural (AG) Zoning District, but at the bottom of the same page, Section 40.02.252 is shown as Reserved. This seems inconsistent. As this section is to remain reserved for now, we recommend that the reference to the AG District be removed.
- In proposed Section 40.02.250, Protected Districts, in the second sentence, we recommend changing “are” to “is.”

State Historic Preservation Office – Contact Terrence Burns 736-7404

- We have reviewed this proposed ordinance, and support the intent to protect open space, and allow only limited uses of it as well. Open space can protect known or unknown archaeological sites, and we would encourage the County to require some level of historic and archaeological review if ground-disturbing activity or construction is being considered, for example, for a park-and-ride facility. We support allowing rehabilitation and adaptive reuse of historic buildings within limits in open space districts. Thank you for this opportunity to review this ordinance. In addition, if you have any questions or concerns, please contact Alice Guerrant at 302-736-7412.

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

- Groundwater Protection Branch (GPB) has reviewed the above referenced project for content and form. The NCC UDC was referenced for the definitions. GPB found that some of the land uses allowed within the open space district are inconsistent with the New Castle County Unified Development Code (NCC UDC) definition and spirit of ‘open space’.

The NCC UDC states that ‘open space’ are “parcels of land within a residential subdivision, exclusive of streets and lots, generally preserved in a natural state or improved to provide common amenities for the residents of the subdivision. Open space shall be categorized as either natural resource area open space or community area open space. Open space is intended to preserve environmentally sensitive areas and protected resources, provide active and passive recreation facilities, establish greenways, provide wildlife habitats, facilitate stormwater management functions, and landscaped buffer yards. Both natural resource area open space and community area open space can be public or private and would be annotated as such on the development record plan and/or deed” (UDC33.300 General Definitions, O, Open Space).

- 1) General Use Table 40.03.110A allows for high intensity recreation and park with limited review on lands zoned as open space. “These uses are characterized by one (1) or more of the following: building or site development intensive, regional in nature, spectator oriented, fee required, community impacts; e.g., lighting, trash, noise, traffic. Indoor uses include, but are not limited to: casinos, bowling alleys, dancehall, health and exercise clubs, dance studios, indoor sports arenas, martial arts, gymnastics, indoor swimming pools, tennis, racquetball, or handball courts, movie theaters, performing arts facilities, dinner theater, indoor skating rinks (ice or roller), amusement game machine complex, pool halls, and shooting ranges. Outdoor uses include, but are not limited to fairgrounds, outdoor stadiums, marinas, racing facilities, performing arts, theme parks, amusement parks, miniature golf, water parks, batting cages, chip and putt, driving range” (UDC 33 DEFINITIONS, 33.200 Use Definitions, 33.250 Amusement and Resort Uses, Recreation, High Intensity).

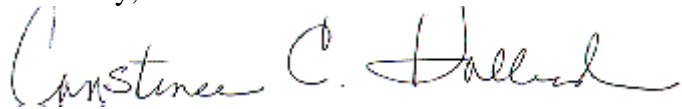
- GPB recommends that high intensity recreation not be permitted in open space because the infrastructure and impervious cover required for this land use is inconsistent with the definition and spirit of open space. Most of these uses would be more appropriately zoned as commercial.

- 2) General Use Table 40.03.110A allows for park and ride facilities after limit review. The NCC UDC defines park and ride facilities as “a public parking lot designed for drivers to leave their cars and use mass transit facilities beginning, terminating, or stopping at the park and ride facility” (UDC 33.300 General Definitions, P,Q, Park and Ride Facility).

- GPB recommends that park and ride facilities not be permitted in open space because the infrastructure, impervious or pervious cover required for this land use, and the potential contamination generated from vehicles is inconsistent with the definition of open space. The potential for contamination is increased when pervious pavement is installed without an underlying filter system. An underlying filter system adds to infrastructure further disturbing and compacting soils. This land use would be more appropriately zoned as institutional, government, or transportation.
- 3) General Use Table 40.03.110A allows for temporary storage, office or modular classrooms or trailers, contractor's office, and model homes/sale office with limited review.
- GPB recommends that these types of land use not be permitted in open space. Even the temporary placement of these facilities would require infrastructure, impervious cover, introduce potential contamination, disturbing or compacting the soils. These actions may have a detrimental impact on lands that are to be preserved in their natural state.

Please note that changes to the ordinance, other than those recommended in this letter, could result in comments from the State. Additionally, these comments reflect only issues that are the responsibility of the agencies represented at the meeting. 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 dark ink, reading "Constance C. Holland". The signature is fluid and cursive, with the first name "Constance" being more prominent and the last name "Holland" following in a similar style.

Constance C. Holland, AICP
Director, Office of State Planning Coordination