



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

October 23, 2012

Mr. Colm DeAscanis
DCA Engineering, Inc.
6 Larch Avenue, Ste. 401
Wilmington, DE 19804

RE: PLUS review – 2012-09-05; Fusco Properties

Dear Mr. DeAscanis:

Thank you for meeting with State agency planners on September 26, 2012 to discuss the proposed plans for the Fusco Property located at the intersection of Route 7 and Route 4.

According to the information received, you are seeking to combine 5 tax parcels into 1 parcel and rezone the combined to CR for a proposed 21,000 sq. ft. restaurant/retail building.

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 New Castle 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 project is located in Investment Level 1 according to the *Strategies for State Policies and Spending*. 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. Our office has no objections to the proposed rezoning and development of this property in accordance with the relevant county codes and ordinances

Code Requirements/Agency Permitting Requirements

State Historic Preservation Office – Contact Terrence Burns 736-7404

- There are no known historic resources, such as archeological sites or National Register listed properties on this parcel. However, if there is going to be any type of construction or development project on this parcel, the developer should be aware of Delaware's Unmarked Human Burials and Human Skeletal Remains Law, which is outlined in Chapter 54 of Title 7 of the Delaware Code.

Abandoned or unmarked family cemeteries are very common in the State of Delaware, and often they are either on or near a historic farm site, in rural areas or open space lands. Disturbing unmarked burials triggers Delaware's Unmarked Human Burials and Human Skeletal Remains Law (Delaware Code Title 7, Chapter 54), 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 a cemetery 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 to read more information in reference to cemeteries, burial grounds or unmarked human remains, please go to the following websites for additional information: www.history.delaware.gov/preservation/umhr.shtml and 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

Department of Transportation – Contact Bill Brockenbrough 760-2109

- The site access must be designed in accordance with DeIDOT'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.
- If the proposed rezoning is approved, the developer's site engineer should submit a site plan to our Subdivision Manager for northern New Castle County, Mr. Joshua Schwartz., in accordance with Section 3.3 of the Standards and Regulations. Mr. Schwartz may be reached at (302) 760-2768.
- Section 2.3.1 of our Standards and Regulations states in part that a Traffic Impact Study may be required for developments generating 50 or more trips in any peak hour or 400 or more trips per day. From the information provided in the PLUS Application, this warrant is met. We understand that New Castle County has also required a Traffic Impact Study (TIS).

Because the project is located in the Churchmans Crossing Area, the developer may be able to obtain a waiver of the State and County requirements for a TIS. The relevant State regulation in this regard is Section 2.3.4 of the Standards and Regulations.

If the State and County requirements for a TIS are waived, DeIDOT will still require a Traffic Operational Analysis (TOA) to examine the operation of the frontage road's connection to Delaware Route 7. Presently we are aware of a plan to develop the front part of the SPCA property, located closer to this connection. While the connection may be able to support the proposed development of the Fusco Properties without substantial improvements, the proposed development of the SPCA Property will almost certainly necessitate improvements and the development of the Fusco Properties would likely affect what improvements would be needed.

When it is resolved whether a TIS or a TOA is required, the developer should contact Mr. Paul Hogge of this office at (302) 760-2124 to schedule a scoping meeting.

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

Wetlands

- State regulated wetlands ARE NOT located on this property based on a review of the State wetland maps. State regulated wetlands are those wetlands identified on the State’s official State Regulated Wetland Maps. Additional information about State regulated wetlands is available by contacting the Wetlands and Subaqueous Lands Section at (302) 739-9943 or on line at <http://www.dnrec.delaware.gov/wr/Services/Pages/WetlandsAndSubaqueousLands.aspx>.
- State regulated subaqueous lands ARE NOT likely to be located on this property based on a review of aerial photographs, SWMP maps, Soil Surveys and USGS topographic maps. State subaqueous lands include all tidal waters (up to the mean high water line), most non-tidal rivers, streams, lakes, ponds, bays and inlets (up to the ordinary high water line), most perennial streams and ditches and many intermittent streams and ditches. Additional information about State regulated subaqueous lands is available by contacting the Wetlands and Subaqueous Lands Section at (302) 739-9943 or on line at <http://www.dnrec.delaware.gov/wr/Services/Pages/WetlandsAndSubaqueousLands.aspx>.
- It appears that there are wetlands adjacent to this property but not on the property. DNREC suggests a wetland delineation if there is any question about closeness to this wetland.

TMDLs

- Total Maximum Daily Loads (TMDLs) for nitrogen and phosphorus have been promulgated through regulation for the greater Christina River watershed. 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.

TMDLs are required by federal law (Section 303(d) of the 1972 Clean Water Act), and the states are charged with developing and implementing specific land use practices that support these desired use goals. The project is located in the greater Christina River watershed, specifically within the greater White Clay Creek subwatershed. In the Christina River watershed, post-development nitrogen and phosphorus loading must be capped at the pre-development or baseline loading rate (or a 0% post-construction increase in N & P in Delaware’s portion of the Christina River Basin) to meet the required TMDL for each nutrient. Moreover, bacteria must be reduced by 86.34% in this area of the Christina River watershed to meet the required TMDL. The specific required nutrient and bacterial requirements for various stream segments in the watershed and

background information is in the report entitled “*Christina River Basin High-Flow TMDL*” by the EPA. This report can be retrieved from the following web link: http://www.epa.gov/reg3wapd/tmdl/pa_tmdl/ChristinaMeetingTMDL/index.htm.

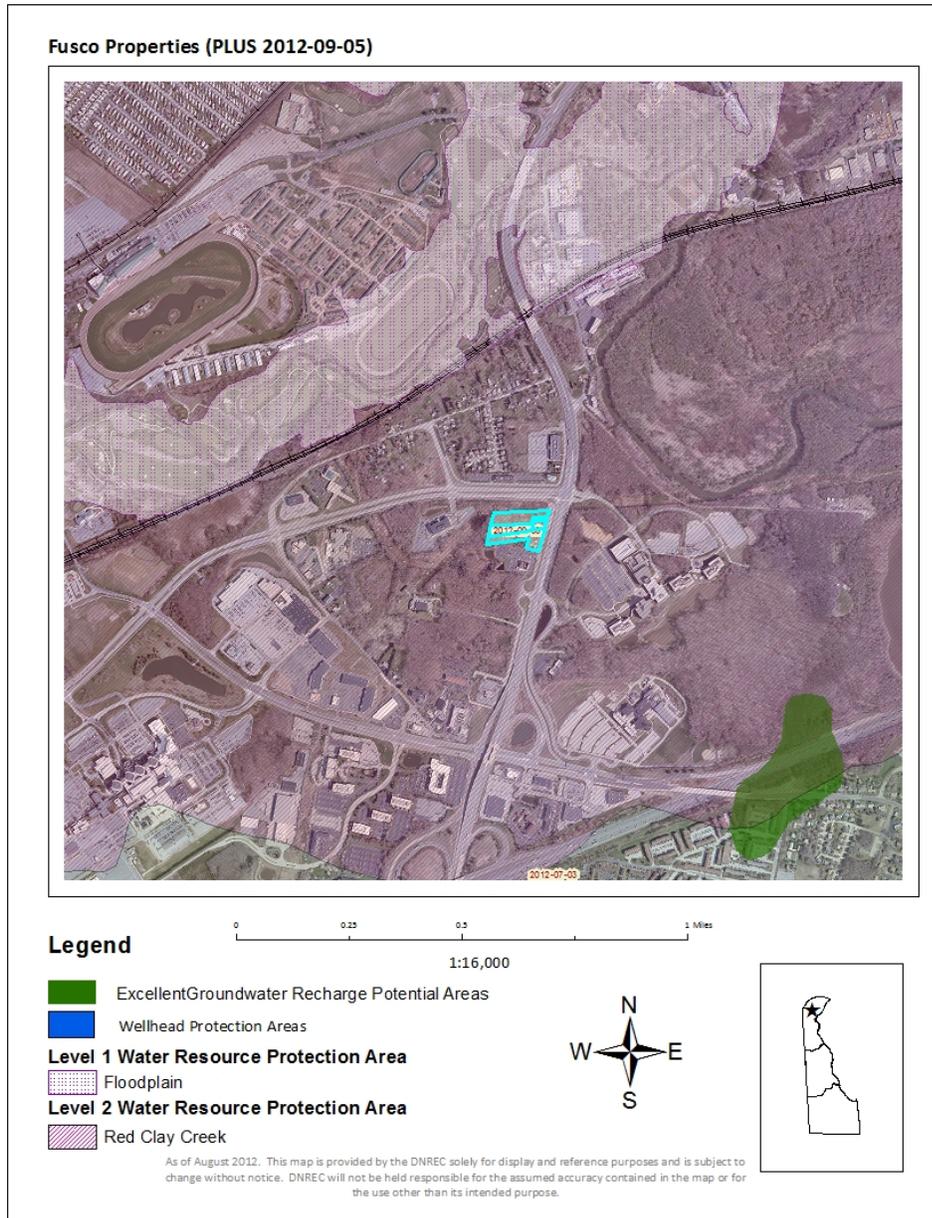
Water Supply

- The project information sheets state water will be provided to the project by Artesian Water Company via a public water system. Our records indicate that the project is located within the public water service area granted to Artesian Water Company under Certificate of Public Convenience and Necessity 85-WS-03.
- 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.

Water Resource Protection Areas

- The DNREC Ground-Water Protection Branch (GPB) has determined that it does not fall within any wellhead protection or excellent groundwater recharge potential areas. However, the parcel falls entirely within the Red Clay Creek Water Watershed. This area is a Level 2 Source Water Protection Area for New Castle County (see map).

Level 2 Source Water Protection Areas are the delineated watershed upstream from a surface water intake that supplies water to a drinking water system. Land Use or Land Activity within this area has the potential to influence water quality or quantity to the drinking water system.



Sediment and Stormwater Program

- A sediment and stormwater plan will be required for the 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 possible. 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 New Castle County Department of Land Use Engineering Section. Contact the Department of Land Use at (302) 395-5470 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 project area:
 - Metroform Medical Center, LLC, Facility: 3-002349, Project: N0603025 (Inactive)
 - Delaware SPCA, Facility: 3-000422, Project: N8703005, N9808134 (Inactive)
 - Keystone Automobile Club, Facility: 3-001071, Project: N0711118 (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 Section by calling 302-395-2500.

Air Quality

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

Table 1: Potential Regulatory Requirements	
Regulation	Requirements
7 DE Admin. Code 1106 - Particulate Emissions from Construction and Materials Handling	<ul style="list-style-type: none"> • Use dust suppressants and measures to prevent transport of dust off-site from material stockpile, material movement and use of unpaved roads. • Use covers on trucks that transport material to and from site to prevent visible emissions.
7 DE Admin. Code 1113 – Open Burning	<ul style="list-style-type: none"> • Prohibit open burns statewide during the Ozone Season from May 1-Sept. 30 each year. • Prohibit the burning of land clearing debris. • Prohibit the burning of trash or building materials/debris.
7 DE Admin. Code 1141 – Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products	<ul style="list-style-type: none"> • Use structural/ paint coatings that are low in Volatile Organic Compounds. • Use covers on paint containers when paint containers are not in use.
7 DE Admin. Code 1144 – Control of Stationary Generator Emissions	<ul style="list-style-type: none"> • Ensure that emissions of nitrogen oxides (NO_x), non-methane hydrocarbons (NMHC), particulate matter (PM), sulfur dioxide (SO₂), carbon monoxide (CO), and carbon dioxide (CO₂) from emergency generators meet the emissions limits established. (See section 3.2). • Maintain recordkeeping and reporting requirements.
7 DE Admin. Code 1145 – Excessive Idling of Heavy Duty Vehicles	<ul style="list-style-type: none"> • Restrict idling time for trucks and buses having a gross vehicle weight of over 8,500 pounds to no more than three minutes.

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

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 Transportation – Contact Bill Brockenbrough 760-2109

- Item 25 on the PLUS application shows an average weekday trip generation of 1,344 trips per day. Even after discussion at the PLUS meeting, we are not able to replicate this figure exactly, although our results are within 100 trips per day. If the County grants the proposed rezoning, we will need to revisit this matter in reviewing the land development plan.
- Item 27 on the PLUS application states in part that “interconnection is not feasible for the adjacent existing development.” From aerial photography, it appears that the adjacent parcel to the south has curb returns in place for what looks like a future interconnection. We understand from the discussion at the PLUS meeting that the feasibility statement is based on differences between the applicant and the owner of the Border Cafe’ parcel. If these differences can be resolved, a vehicular connection would provide for improved traffic flow but it would be of less value than a good pedestrian connection. As these are the last two parcels on the frontage road, there should be little difference from a driver’s perspective, between driving directly from parking lot to parking lot and making the same trip by way of the frontage road. However, a good pedestrian path between the proposed building and the Border Cafe’ could eliminate some driving trips entirely. If a vehicular connection is to be provided, it should be noted that the curb returns mentioned above are undesirably close to the Border Café entrance. Any vehicular connection should be moved farther west, into the site.
- While more detailed comments, and possibly requirements, will follow in our review of the land development plan, we point out now that the pedestrian network at the intersection of Route 4 and 7 is somewhat disjointed. On the southwest and northwest corners, unpaved paths connect the frontage roads to a bus pad and the curb, respectively. There are no sidewalks on the northwest corner and no crosswalks or pedestrian signals to facilitate reaching that corner from the northeast or southwest corners. Given the presence of several office buildings on the northwest corner within easy walking distance of the proposed development, and a significant number of houses on that corner within easy bicycling distance, an improved connection across Route 4 is desirable.

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

Soils Assessment

- The predominant soil mapping unit mapped in the immediate vicinity of the proposed project area is Urban Land (Up). Urban Land is a soil mapping unit consisting of soil materials that have been extensively modified by filling (native/nonnative soil and/or

trash/building debris), grading or removal practices. Urban land has variable limitations for development which can only be assessed by an onsite investigation.

Additional information on TMDLS and water quality

- 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 Christina River watershed has not been formally completed to date. In absence of a finalized PCS, the applicant is strongly urged to reduce nutrient and bacterial pollutants through voluntary commitment to the implementation of the following recommended BMPs:
 - Maximize the amount and/or preservation of passive wooded open space. DNREC further recommends additional planting of native trees or shrubs wherever possible.
 - The applicant should calculate post-construction surface imperviousness with all forms of created (or constructed) 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 large project that will likely generate a great amount of impervious cover, DNREC strongly advises 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.
 - DNREC recommends the use of rain gardens, and green-technology storm water management structures (in lieu of open-water management structures) as BMPs to mitigate or reduce nutrient and bacterial pollutant impacts via runoff from impervious surfaces.
 - 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. They 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.

Additional information on hazardous waste sites

- There is one SIRS site found within a ½-mile radius of the proposed project. Rt.4 Orchard (DE-1205) is located 0.05 miles west of the proposed project. The Site had a modified Phase I conducted in December of 1999. In June 2000, a construction management company performed an Environmental Evaluation. The Final Plan was documented in late 2003. It required that a Deed Restriction be placed on the property because of the iron, aluminum and manganese in the soil. The Deed Restriction limits the property to commercial and industrial use. The Site is currently undergoing Operation and Maintenance inspections for the sites pavement and landscaping caps.

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 by the county or state.

- 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 TMS. If any ASTs greater than 12,500 gallons are installed, they are also subject to installation approval by the TMS.

Additional information on air quality

- DNREC encourages developers and builders to consider all sustainable growth practices in their design, but we believe, however, that the air quality impacts associated with the project should be completely considered. New businesses may emit, or cause to be emitted, air contaminants into Delaware's air, which will negatively impact public health, safety and welfare. These negative impacts are attributable to:

- Emissions that form ozone and fine particulate matter; two pollutants relative to which Delaware currently violates federal health-based air quality standards,
 - The emission of greenhouse gases which are associated with climate change, and
 - The emission of air toxics.
- Air emissions generated from new businesses include emissions from the following activities:
 - Area sources such as painting, maintenance equipment and the use of consumer products like roof coatings and roof primers.
 - the generation of electricity needed to support the new business, and
 - All transportation activity.
 - Based on the information provided, the three air emissions components (i.e., area, electric power generation, and mobile sources) for the retail space could not be quantified however the DAQ was able to quantify the mobile emissions based on the proposed daily trip data presented in the application and data taken from the ITE Trip Generation Manual, 8th Edition. Table 2 – Projected Air Quality Emissions represents the actual impact the Fusco Properties project may have on air quality.

Table 2: Projected Air Quality Emissions for Fusco Properties					
Emissions Attributable to Fusco Properties (Tons per Year)	Volatile Organic Compounds (VOC)	Nitrogen Oxides (NOx)	Sulfur Dioxide (SO ₂)	Fine Particulate Matter (PM _{2.5})	Carbon Dioxide (CO ₂)
Mobile Source	4.5	5.9	*	*	*

(*) *Indicates data is not available.*

Note that emissions associated with the actual construction of the road, including automobile and truck traffic from working in, or delivering products to the site, as well as site preparation, earth moving activities, road paving and other miscellaneous air emissions, are not reflected in the table above.

- Additional measures may be taken to substantially reduce the air emissions identified above. These measures include:
 - **Constructing with only energy efficient products.** Energy Star qualified products are up to 30% more energy efficient. Savings come from building envelope upgrades, high performance windows, controlled air infiltration, upgraded heating and air conditioning systems, tight duct systems and upgraded water-heating

- equipment. Every percentage of energy efficiency translates into a percent reduction in pollution. The Energy Star Program is excellent way to save on energy costs and reduce air pollution.
- **Offering geothermal and/or photo voltaic energy options.** These systems can significantly reduce emissions from electrical generation, and from the use of oil or gas heating equipment.
 - **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.
 - **Using pre-painted/pre-coated flooring, cabinets, fencing, etc.** These measures can significantly reduce the emission of VOCs from typical architectural coating operations.
 - **Planting trees in vegetative buffer areas.** Trees reduce emissions by trapping dust particles and replenishing oxygen. Trees also reduce energy emissions by cooling during the summer and by providing wind breaks in the winter, whereby reducing air conditioning needs by up to 30 percent and saving 20 to 50 percent on fuel costs.

This is a partial list, and there are additional things that can be done to reduce the impact of the development. The applicant should submit a plan to the DNREC Division of Air Quality which address the above listed measures, and that details all of the specific emission mitigation measures that will be incorporated into the Fusco Properties project.

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: New Castle County