



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

January 18, 2013

Jeff Clark
Land Tech Land Planning
118 Atlantic Avenue, Ste. 202
Ocean View, DE 19970

RE: PLUS review – 2012-12-03; Castaways Massey’s Landing

Dear Mr. Clark:

Thank you for meeting with State agency planners on December 19, 2012 to discuss the proposed plans for the Castaways Massey’s Landing project to be located at the end of Long Neck Road. According to the information received, you are seeking a rezoning from MR-RPC to AR with a conditional use for a 575 site RV park with amenities.

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 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 project is located in Investment Level 3 according to the Strategies for State Policies and Spending. Investment Level 3 reflects areas where growth is anticipated by local, county, and state plans in the longer term future, or areas that may have environmental or other constraints to development. State investments may support future growth in these areas, but please be advised that the State has other priorities for the near future. We encourage you to design the site with respect for the environmental features which are present.

Code Requirements/Agency Permitting Requirements

State Historic Preservation Office – Contact Terrence Burns 736-7404

- There is a known cultural resource on this parcel, the Masseys Landing North Site (S-627, 7S-G-020), an important prehistoric period site. There is also a known dwelling (S-3047) just west of the parcel near Long Neck Road (Route 23). The USGS Topographic Map of Rehoboth Beach, 1918, does show this house. However, it appears to be heavily altered today. According to the Pomeroy and Beers Atlas of 1868, there was a dwelling or structure of some type on this parcel south of Long Neck Rd that was associated with J. R. Burton and another one at the end of the road associated with S. Boon, both of which also appear on the topographic map. With this in mind, the developer should definitely 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, but prehistoric sites may also have burials associated with them. They are usually in rural or open space areas, and sometimes near or within the boundary of an historic farm site. Even a marked cemetery can frequently have unmarked graves or burials outside of the known boundary line or limit. Disturbing unmarked graves or burials triggers the 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. If there is a discovery of any unmarked graves, burials or a cemetery, it is very costly to have them archaeologically excavated and the burials moved. The Division of Historical & Cultural Affairs recommends that owners and/or developers have a qualified archaeological consultant investigate their project area, to the full extent, to see if there is any unmarked cemetery, graves, or burial sites. In the event of such a discovery, the Division of Historical & Cultural Affairs also recommends that the plans be re-drawn to leave the full extent of the cemeteries or any burials on its own parcel or in the open space area of the development, with the responsibility for its maintenance lying with the landowner association or development. If you need or would like to read more information in reference to unmarked human remains, burials or cemeteries, please go to the following websites for additional information:

www.history.delaware.gov/preservation/umhr.shtml

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 potential historic or cultural resources, such as a potential archaeological site, a cemetery or unmarked human remains. Furthermore, 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

- As previously discussed with the applicant's representatives, there are several different land use scenarios of interest, in that there is an existing mobile home park on part of the property, a Traffic Impact Study (TIS) was done in 2005 for a mix of houses and townhouses on another part of the property and a different plan (houses only, no townhouses) was approved for that area. Using standard rates and equations from the Institute of Transportation Engineers' (ITE) Trip Generation report, the existing and projected trip generation of development on the subject land is estimated as follows:

	Land Use	ITE Land Use Code	Average Daily Traffic (vpd)	AM Pk Hr (vph)	PM Pk Hr (vph)
A	Existing (100-unit Mobile Home Pk)	240	630	44	59
B	55 houses + 75 townhouses	210 230	1,107	89	108
A+B	Future per TIS		1,737	133	167
C	120 houses	210	1,242	94	124
A+C	Future per currently approved plan		1,872	138	183
D	Proposed Future (575-unit RV Pk)	260*	1,817	121	155

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* Because ITE has no data on the daily trip generation of RV Parks, we treated them as Recreational Homes for this purpose.

- While the proposed development meets DelDOT’s volume-based criteria for recommending that a TIS be required (400 vehicle trips per day or 50 vehicle trips per hour) we find that conditions in the study area have not changed substantively since the 2005 study was done and that the development now proposed would be similar in its trip generation. Therefore our findings and recommendations based on the TIS, contained in a letter dated November 4, 2005, are applicable to the current development proposal as well and a new TIS is not necessary. The one significant change is that the intersection of Long Neck Road (Delaware Route 23) and Banks Road and School Lane (both Sussex Road 298) has been improved.
- Based on the 2005 TIS, DelDOT would recommend that the County impose the following requirements as part of their conditional use approval if they find the rezoning and conditional use to be appropriate:
 - The developer should enter into an agreement with DelDOT to fund an equitable portion of the installation of a single lane roundabout at the intersection of Delaware Route 23 and Pot Nets Road (Sussex Road 22C). The agreement should be worded such that DelDOT may utilize the funding contribution for the installation of a traffic signal at this intersection, should a roundabout be determined to be infeasible, at DelDOT’s discretion. The agreement should include pedestrian signals, crosswalks, and interconnection at DelDOT’s discretion.
 - The following items should be incorporated into the site design, should be reflected on the record plan, and should be completed during or prior to the first phase of the development:
 - A minimum of a five-foot bicycle lane should be striped along Delaware Route 23 (in addition to any required turn lanes) along the development frontage in order to facilitate safe and unimpeded bicycle travel.
 - Regulatory/warning signage should be added to any forthcoming plans to this project in order to alert motorists to the presence of bicycle traffic.
 - Any utility covers should be moved outside of the designated bicycle lane or be flush with the pavement.
 - A minimum of a five-foot sidewalk (with a minimum of a five-foot buffer from the roadway) that meets current AASHTO and ADA standards should be included along the site frontage of the proposed development

along Delaware Route 23.

- Internal sidewalks to promote walking as a viable transportation alternative should be constructed.
 - The developer should provide accommodations for a bus stop with pedestrian access for the DART Bus Route 207. This bus stop should include a pad and shelter, at the Delaware Transit Corporation's discretion.
- The following comments pertain to the site plan and entrance plan that will need to be prepared and submitted if the County approves the rezoning and the conditional use approval that are now being sought:
 - While an entrance plan was approved for the Massey's Landing subdivision on July 14, 2009, the proposed RV park represents a change in use, as Section 8.6 of the Standards and Regulations for Subdivision Streets and State Highway Access, so a new entrance plan would be required.
 - All site access points must be designed in accordance with Del-DOT's Standards and Regulations for Subdivision Streets and State Highway Access, which is available at:

http://www.deldot.gov/information/pubs_forms/manuals/subdivisions/pdf/Subdivision_Manual_Revision_1_proposed_060110.pdf.
 - In accordance with Section 3.4 of the Standards and Regulations for Subdivision Streets and State Highway Access, a site plan shall be prepared prior to issuing "Letter of No Objection". The following information will be required for the "Letter of No Objection" review:

Initial Stage Fee Calculation Form
Initial Stage Review Fee
Gate-Keeping Checklist – Site Plan
Design Checklist – Record Plan
Owners and Engineer's name and e-mail address
Six (6) signed & sealed paper sets of the Site Plan by the owner and engineer
Conceptual Entrance Plan
CD with a pdf of the Site Plan
 - Please refer to Appendix D - Plan Review Checklist, of the Standards and Regulations for Subdivision Street and State Highway Access, pages D-2 through D-39, for the new checklists for all types of plan submittals.

- In accordance with Section 3.6.5 and Figure 3-3 of the Standards and Regulations for Subdivision Streets and State Highway Access, DeIDOT will require dedication of right-of-way along the site's frontage on Long Neck Road to provide a minimum of 40 feet of right-of-way from the centerline.
- In accordance with Section 3.10 of the Standards and Regulations for Subdivision Streets and State Highway Access, the off-site improvements and/or agreements that are determined to be necessary shall be shown on the site plan by note or illustration.
- In accordance with Sections 4.3 and 4.4 of the Standards and Regulations for Subdivision Streets and State Highway Access, a subdivision plan or an entrance plan shall be prepared prior to DeIDOT issuing subdivision/entrance approval. The following information will be required for Subdivision/Entrance Plan review;

Construction Stage Fee Calculation Form
Construction Review Fee
Gate-Keeping Checklist – Entrance Plan
Design Checklist – Entrance Plan
Three (3) paper sets of the Entrance Plan
SWM Report and Calculations (If applicable)
CD with a pdf of the Entrance Plan

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

Wetlands

- State regulated wetlands ARE located on this property based on a review of the State wetland map numbers 38 and 39. The property shows significant tidal wetlands on the east portion of the property. State regulated wetlands are those wetlands identified on the State's official State Regulated Wetland Maps. Any activity in State regulated wetlands may require a permit from DNREC's Wetlands and Subaqueous Lands Section. We suggest a state jurisdictional determination and a joint permit processing meeting to review plans. 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 located on this property based on a review of aerial photographs, State Wetland Mapping Project (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. An on-site inspection by a representative of the Wetlands and

Flood Management

- A portion of this rezoning application is located in the floodplain. Sussex County has specific requirements for recreational vehicles located in the floodplain. They must be road ready and in place for less than 180 days OR must meet the construction requirements for manufactured homes (elevated, anchored, etc.) This area lacks an evacuation route which lies above the floodplain. This could make the evacuation of 575 RV's difficult during a storm event and also pose a risk to any necessary emergency personnel getting to this location.

TMDLs

- The project is located in the *low nutrient reduction* zone of the greater Inland Bays watershed. In this watershed, Total Maximum Daily Load (TMDL) pollutant reduction targets have been developed by the State of Delaware (under the auspices of Section 303(d) of the 1972 Federal Clean Water Act) 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 *low reduction* zone of the Inland Bays watershed calls for 40 percent reduction in nitrogen and phosphorus from baseline conditions. The TMDL also calls for a 40 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>.

The adopted Inland Bays Pollution Control Strategy regulation was published in the Delaware Register of Regulations on November 11, 2008 and is now an enforceable regulatory directive. A Pollution Control Strategy (PCS) is an implementation strategy that identifies the actions necessary (regulatory and nonregulatory) to systematically reduce the pollutant loading to a given water body, and meet the TMDL reduction requirements specified for that water body. These regulations can be reviewed at:

<http://regulations.delaware.gov/documents/November2008c.pdf>

and background information, guidance documents, and mapping tools can be retrieved from:

http://www.dnrec.state.de.us/water2000/Sections/Watershed/ws/ib_pcs.htm.

Water Supply

- The project information sheets state water will be provided to the project by Long Neck Water Company via a public water system. Our records indicate that the project is located within the public water service area granted to Long Neck Water Company under Certificate of Public Convenience and Necessity 94-CPCN-29.
- 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 an Underground Storage Tank associated with Massey Landing Boat Ramp located within 1,000 feet of the proposed project.

Sediment and Stormwater Program

- A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on 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 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 the 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

- 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.
- 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.

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):

- **Fire Protection Water Requirements:**
 - Where a water distribution system is proposed for single-family dwellings (including Manufactured/Mobile Homes), 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 the main thoroughfare 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.
 - 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.
 - 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
 - Provide Road Names, even for County Roads

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

- On June 27, 2012, a letter was sent out explaining the changes in the way checks should be submitted to DelDOT. A copy of the letter is available at:

<http://www.deldot.gov/information/business/subdivisions/PaymentProcedure.pdf>.

- DeIDOT recommends that the developer have their site engineer contact our Subdivision Manager for this part of Sussex County, Mr. John Fiori, for a pre-submittal meeting prior to submitting a site plan for review and approval. A checklist of requirements for pre-submittal meetings and a Meeting Request Form are available on DeIDOT's website at:

<http://www.deldot.gov/information/business/>.

As necessary, Mr. Fiori can be reached at (302) 760-2260.

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

Soils Assessment

- Based on soils survey mapping update, following soil mapping units were mapped on subject parcel (grouped on the basis of drainage class):
 - 1) Excessively well drained – Evesboro (EvB & EvD), Runclint (RuA)
 - 2) Moderately well drained – Hammonton (HmA)
 - 3) Somewhat poorly drained (potentially hydric)- Klej (KsA)
 - 4) Very poorly drained (hydric) – Broadkill mucky peat (Br)
 - 5) Variable drainage (extensively modified by cutting, filling & grading) – Brockatonorton Urban land complex (BuA)
- Based on the soil survey mapping, Klej and Broadkill mucky peat are the soil mapping units most likely to have the most limitations for development on this site. Klej is a somewhat poorly-drained mapping unit that occurs in transitional zones between wetlands and upland environments, and may or may not be hydric and/or suitable for development. Broadkill is a very poorly-drained wetland associated (hydric) soil mapping unit that has severe limitations for development (considered unsuitable for development). We strongly recommend a certified and licensed soil scientist (ARCPACs certified and Class D licensed) to make a site-specific evaluation of the soils in this area. Please contact the Underground Discharges Branch at 739-9948 for a list of soil scientists.
- The Statewide Wetland Mapping Project (SWMP) often uses the soil survey as the basis for mapping and delineating wetlands. The presence of a hydric soil is one of three parameters that must be met in order to meet jurisdictional wetland requirements (as specified by the USACOE). The other parameters are hydrophytic vegetation and hydrology. That is, the occurrence of hydric soils is a correlate with wetland presence. Building on hydric soils is likely to increase the potential for on-site and off-site flooding potentials (See figure 1). We strongly recommend avoiding areas containing hydric and potentially hydric soil mapping units. We also recommend that the applicant avoid those

areas where slopes exceed 10% slope (likely a significant portion of the EvD soil mapping unit).

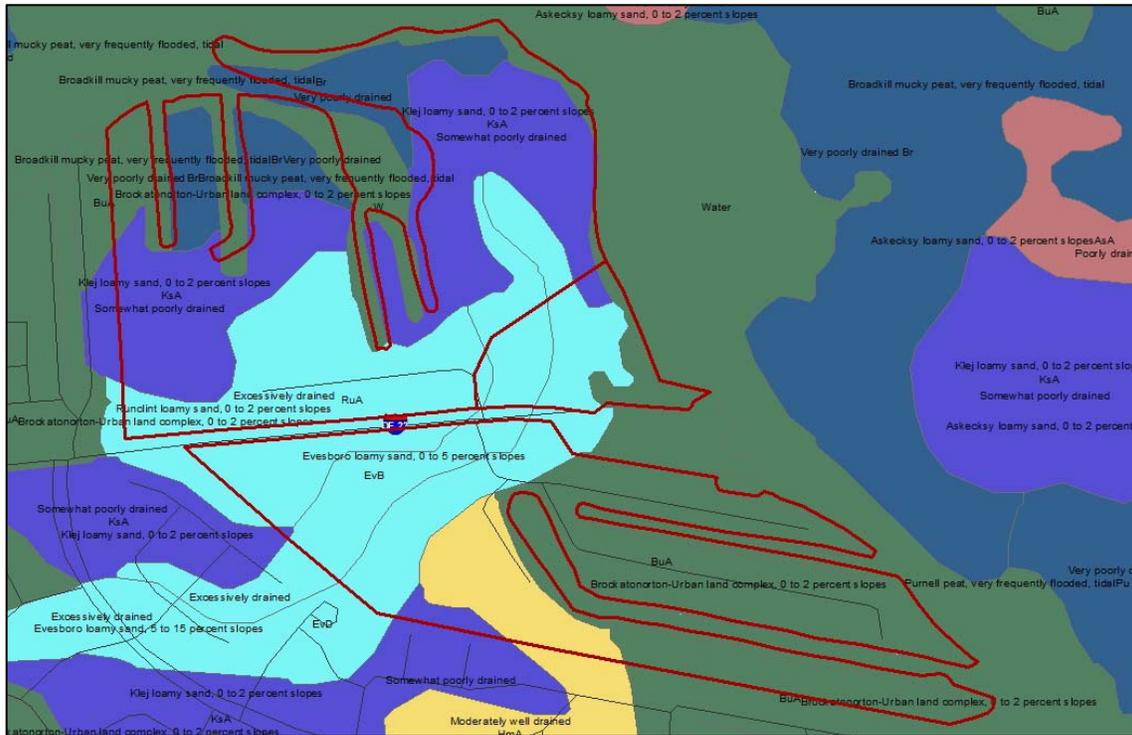


Figure 1: NRCS soil survey mapping update in the vicinity of the proposed construction.

Additional information on TMDLs and water quality

- A United States Corps of Engineers (USACE) approved wetlands delineation is strongly recommended. According to information presented in the PLUS application, an approved wetlands delineation was conducted - however, it was not made available to DNREC at the time of review.
- Based on a review of existing buffer research by Castelle et al. (Castelle, A. J., A. W. Johnson and C. Conolly. 1994. *Wetland and Stream Buffer Requirements – A Review*. J. Environ. Qual. 23: 878-882.), an adequately-sized buffer that effectively protects wetlands and streams, in most circumstances, is about 100 feet in width. In recognition of this research and the need to protect water quality, the Watershed Assessment Section recommends that the applicant maintain/establish a minimum 100-foot upland buffer (planted in native vegetation) from all water bodies (including ditches) and wetlands (field delineated and approved by the USACE).
- Removal of forest cover to accommodate stormwater management structures is strongly discouraged. It is also apparent that the applicant intends to remove much of the existing

forest cover which will likely increase nutrient runoff or discharge into both surface and ground waters. Much of the parcel of the parcel is forested (Figure 2).

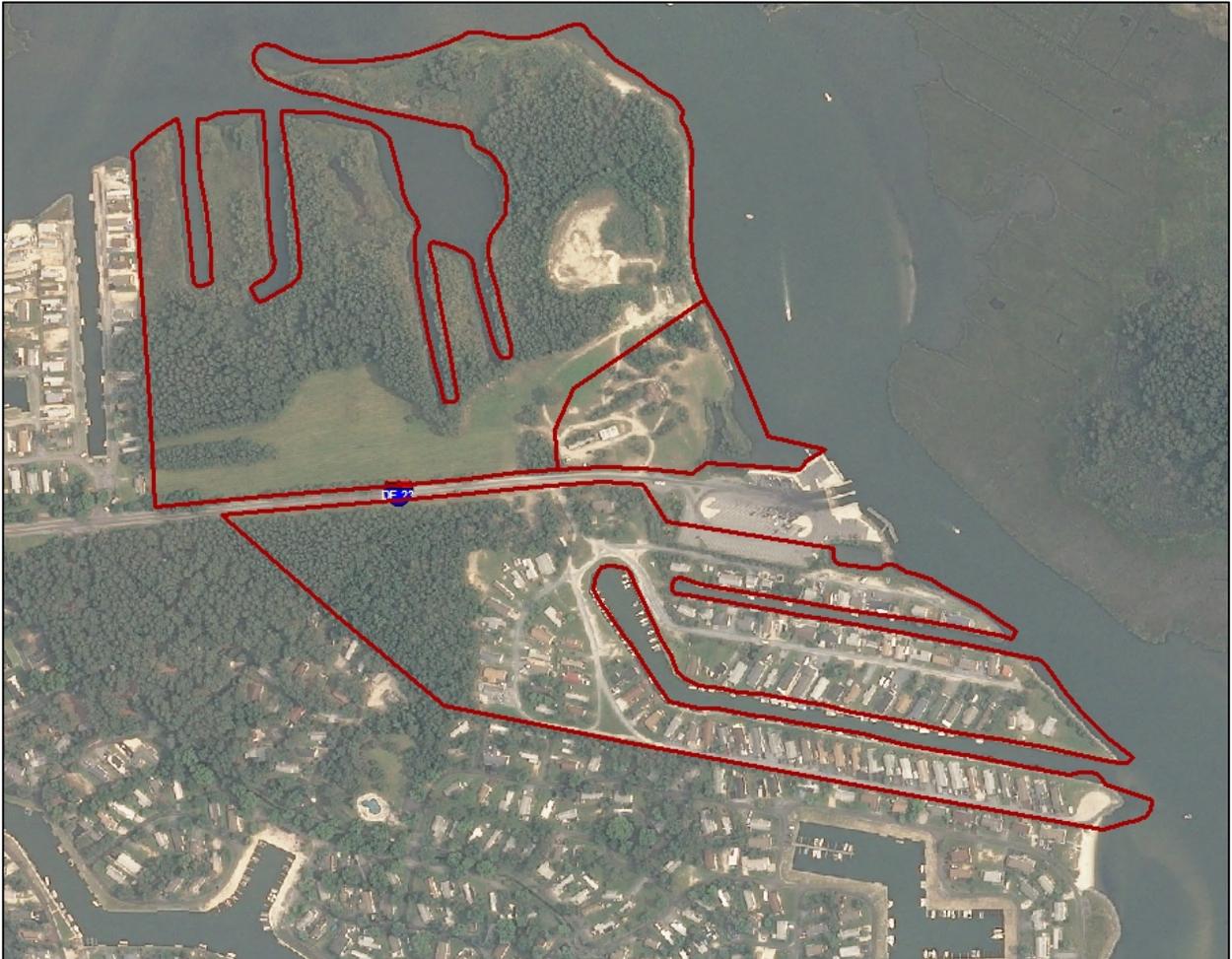


Figure 2: USDA (2009) aerial photography in the immediate vicinity of the proposed project.

- DNREC recommends that the applicant 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 project that will likely generate large amounts of impervious cover, we advise, wherever practicable, the use of pervious paving materials (instead of conventional asphalt and concrete) as a BMP(s) to reduce the impacts from all forms of created surface imperviousness.

- DNREC encourages 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 loading (e.g., nitrogen and phosphorus) 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 the Watershed Assessment Section at 302-739-9939 for more information on the protocol.

Site Visit Request

- Division of Fish and Wildlife scientists have not surveyed the project area and in order to provide more informed comments, we request the opportunity to conduct a survey to evaluate habitat and map vegetation communities. Please note that our scientists have extensive knowledge of the flora and fauna of the state. The survey will be conducted at no expense to the landowner. In the event that authorizations will be needed from DNREC’s Coastal Management Program and/or Wetlands and Subaqueous Lands Section, they will require complete and up to date info from the Natural Heritage and Endangered Species Program as part of their review. Therefore, allowing access to the site will also increase the efficiency of the State authorization process. Please contact Edna Stetzar at (302) 735-8654 or at Edna.Stetzar@state.de.us if the landowner will grant a site visit.

Wildlife Habitat/DEN

- The site plan as designed will result in clearing and fragmentation of at least 32 acres of forest for 575 RV campsites (and various amenities). According to GIS data, part of this forest is mapped as wetlands and the remaining upland forest is providing an ecologically important buffer for those wetlands. We highly recommend that forested areas at this site, especially north of Long Neck Rd be left intact. It would be best if the site plan could be reconfigured to better preserve the forest and wetlands on this side of the road.
- In addition, this forest has been identified as ecologically important core habitat by the Delaware Ecological Network (DEN). The DEN, although non-regulatory, is a statewide conservation network developed using GIS and field collected datasets that help to identify and prioritize ecologically important areas for natural resource protection. The DEN includes areas such as forests, wetlands, streams, and habitat that support rare

species and areas of especially high quality. The DEN includes the following key elements: 1) core areas- contain relatively intact natural ecosystems, and provide high-quality habitat for native plants and animals, 2) hubs-slightly fragmented aggregations of core areas, plus contiguous natural cover and 3) corridors-link core areas together, allowing wildlife movement and seed and pollen transfer between them.

Bald Eagle Nest

There is an active Bald Eagle (*Haliaeetus leucocephalus*) nest on an island adjacent to the project area. Bald eagles and their nests are protected under the federal Bald and Golden Eagle Protection Act (BGEPA). The U.S. Fish and Wildlife Service (USFWS) developed *National Bald Eagle Management Guidelines*, to help landowners and others minimize impacts to eagles, including disturbance, which is prohibited by the BGEPA. The guidelines focus on minimizing disturbance through the use of suggested buffer zones (330 ft. to 660 ft. from a nest) and time-of-year restrictions for certain activities in several categories.

The project area is just over 660 feet from this nest. Further consultation is not necessary at this time, but this information is provided in the event the applicant is planning future shoreline stabilization (rip-rap) or shoreline amenities (such as docks/piers, beach replenishment) which are mentioned in the PLUS application. If this is the case, the applicant will need to contact us for further guidance.

Fourspine Stickleback

There were indications on the PLUS application that there may be shoreline stabilization (rip-rap) or shoreline amenities (such as docks/piers, beach replenishment) associated with this project, therefore, the following is provided for future planning purposes: A population of the state-rare fish, *Apeltes quadracus* (fourspine stickleback), was observed adjacent to this project site during surveys conducted in 1970. Subsequent surveys have not been conducted; therefore, it is unknown if it still persists at this location. If habitat conditions have remained relatively stable the population likely still persists. Because this species is dependent on calm, shallow, heavily vegetated waters for spawning, efforts should be made to avoid direct impacts to submerged aquatic vegetation (if present) and to decrease sedimentation during project activities. *If* aquatic vegetation is prevalent in the project area, then a spawning window of April 1 to May 30 should be considered.

Massey's Landing Public Boat Access

- This project is adjacent to the Massey's Landing Boating Access Area at the end of Long Neck Road and the state is concerned about potential user conflicts. It should be disclosed to users of your project area that is an existing public access area. Conflicts could generate complaints regarding after hour use, trash, noise, and extra boat traffic. If

you have any questions about this access area, please get in touch with Rob Gano, Regional Wildlife Area Manager, at (302) 539-3160 or Robert.Gano@state.de.us.

Additional information on hazardous waste sites

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

Additional information on tank management

- The following confirmed leaking underground storage tank (LUST) projects are located within the boundaries of the proposed project:
 - Massey's Landing Boat Ramp, Facility: 5-000632
 - Project: S9108169 (Inactive)—550 GALLON GASOLINE TANK REMOVED. COMPOSITE SAMPLES BOTH ND, PIT BOTTOM ND TPH, 2 PPM BTEX (XYLENE). NFA LETTER 8/15/91
 - S9205152 (Inactive)—6/17/92--SOIL VAPOR SURVEY ON 5/21/92 SHOWED AREA OF CONTAMINATION. SOILS OVEREXCAVATED AND MOVED TO ADJACENT PROPERTY FOR BIOREMEDIATION. 1/3/97--SOIL PILE BIOREMEDIATION COMPLETE. NFA LETTER ISSUED 1/3/97.
 - Massey's Landing c/o J Peotack, Facility (Hardscrapple Store): 5-000128
 - Project: S9205145 (Inactive)—LUST DEN notes indicate that that contaminated soils were disposed in April 1992.
- The following confirmed leaking underground storage tank (LUST) projects are located within a quarter mile from the proposed project area:

- Indian Landing Store, Facility: 5-000189, Projects (both Inactive): S9202047, S9203063
- 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.

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

- 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.

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

