

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

May 21, 2014

Mr. Dev Sitram  
Karins and Associates  
17 Polly Drummond Center, Suite 201  
Newark, DE 19711

RE: PLUS review 2014-04-05, Capital Marketplace

Dear Mr. Sitram,

Thank you for meeting with State agency planners on April 23, 2014 to discuss the proposed plans for Capital Marketplace. According to the information received, you are seeking the subdivision of 25 acres for the construction of 81,118 sf of retail and restaurant space in the City of Dover.

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 the City of Dover is the governing authority over this land, the developers will need to comply with any and all regulations/restrictions set forth by the City.**

**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.

**Code Requirements/Agency Permitting Requirements**

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

- There is no known archaeological site or National Register-listed property on this parcel. However, if there is going to be any type of development or construction 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. 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 would like to know more information that pertains to unmarked human remains or cemeteries, please check the following websites for additional information: [www.history.delaware.gov/preservation/umhr.shtml](http://www.history.delaware.gov/preservation/umhr.shtml) and [www.history.delaware.gov/preservation/cemeteries.shtml](http://www.history.delaware.gov/preservation/cemeteries.shtml).

Therefore, prior to any demolition or ground-disturbing activities, the developer should consider hiring an archaeological consultant to examine or see whether the parcel any potential archaeological site, unmarked human remains, burials, or cemetery. 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. Furthermore, any preconstruction activities without adherence to these stipulations may jeopardize the issuance of any permit or funds. If you need further information or additional details pertaining to the Section 106 process and the Advisory Council's role, please review the Advisory Council's website at [www.achp.gov](http://www.achp.gov).

Department of Transportation – Contact Bill Brockenbrough 760-2109

- Per Section 2.3.1 of the Standards and Regulations for Subdivision Streets and State Highway Access, Traffic Impact Studies (TIS) are warranted for developments generating more than 400 vehicle trip ends per day or 50 vehicle trip ends per hour. Consistent with the response to item 25 on the PLUS application, we would expect the subject development to meet these warrants. However, Del DOT anticipates waiving its requirement for a TIS in lieu of the developer's participating in a Transportation Improvement District (TID).

Presently, DelDOT, the City of Dover and the Dover/Kent County Metropolitan Planning Organization (MPO) are preparing to enter an agreement for the creation of a TID for the US Route 13/Bay Road Corridor, which would include this development. DelDOT presently intends to conduct the Land Use and Transportation Study associated with the TID this summer, and reach agreement with the City and the MPO on a program of improvements and an associated fee structure this fall.

- The site access on US Route 13 and on Leipsic Road (Kent Road 88) must be designed in accordance with DelDOT'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](http://www.deldot.gov/information/pubs_forms/manuals/subdivisions/pdf/Subdivision_Manual_Revision_1_proposed_060110.pdf).
- Because the site would generate more than 200 vehicle trip ends per day, a Traffic Operational Analysis (TOA) may be required as part of the site plan review, in accordance with Section 2.14 (formerly 3.9) of the Standards and Regulations.
- In accordance with Section 3.6.5 and Figure 3-3 of the Standards and Regulations for Subdivision Streets and State Highway Access, DelDOT will require dedication of right-of-way along the site's frontage on US Route 13 and Leipsic Road to provide a minimum of 40 feet of right-of-way from the road centerline. The right-of-way dedication note has been revised to the following, "**An X-foot wide right-of-way is hereby dedicated to the State of Delaware, as per this plat.**" Preliminarily, it appears that the sketch plan already meets this requirement with regard to US Route 13.
- In accordance with Section 3.6.5 of the Standards and Regulations for Subdivision Streets and State Highway Access, DelDOT will require the establishment of a 15-foot wide permanent easement across the property frontage US Route 13 and Leipsic Road for a future 10-foot wide pedestrian/bike path. The location of the easement shall be outside the limits of the ultimate right-of-way. The easement area can be used as part of the open space calculation for the site. The following note is required, "**A 15-foot wide permanent easement is hereby established to the State of Delaware, as per this plat.**"

Department of Natural Resources and Environmental Control – Contact Bahareh Van Boekhold  
735-3495

- **TMDLs**

The project is located in the greater Delaware River and Bay drainage area, specifically within the St. Jones River watershed. In this watershed, the State of Delaware has developed specific Total Maximum Daily Load (TMDL) pollutant reduction targets for nitrogen, phosphorus, and bacteria (under the auspices of Section 303(d) of the Clean Water Act). A TMDL is the maximum level of pollution allowed for a given pollutant below which a “water quality limited water body” can assimilate and still meet State water quality standards (e.g., dissolved oxygen, nutrients, and bacteria; State of Delaware Surface Water Quality Standards, as amended July 11, 2004) to the extent necessary to support use goals such as, swimming, fishing, drinking water and shell fish harvesting. The TMDL for the St. Jones River watershed calls for a 40 percent reduction in nitrogen and phosphorus from baseline conditions. The TMDL also calls for a 90 percent reduction in bacteria from baseline conditions.

- **Water Supply**

The project information sheets state water will be provided to the project by the City of Dover via a public water system. Our records indicate that the project is located within the public water service area granted to the City of Dover under Certificate of Public Convenience and Necessity 90-CPCN-07.

- 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 are Underground Storage Tanks associated with: (1) Sunoco 004/8983, (2) Dover AMOCO, (3) Dover Pizza Hut (Former Paradee Oil Site), and (4) Berry Van Lines Inc., located within 1,000 feet of the proposed project.

- **Sediment and Stormwater Program**

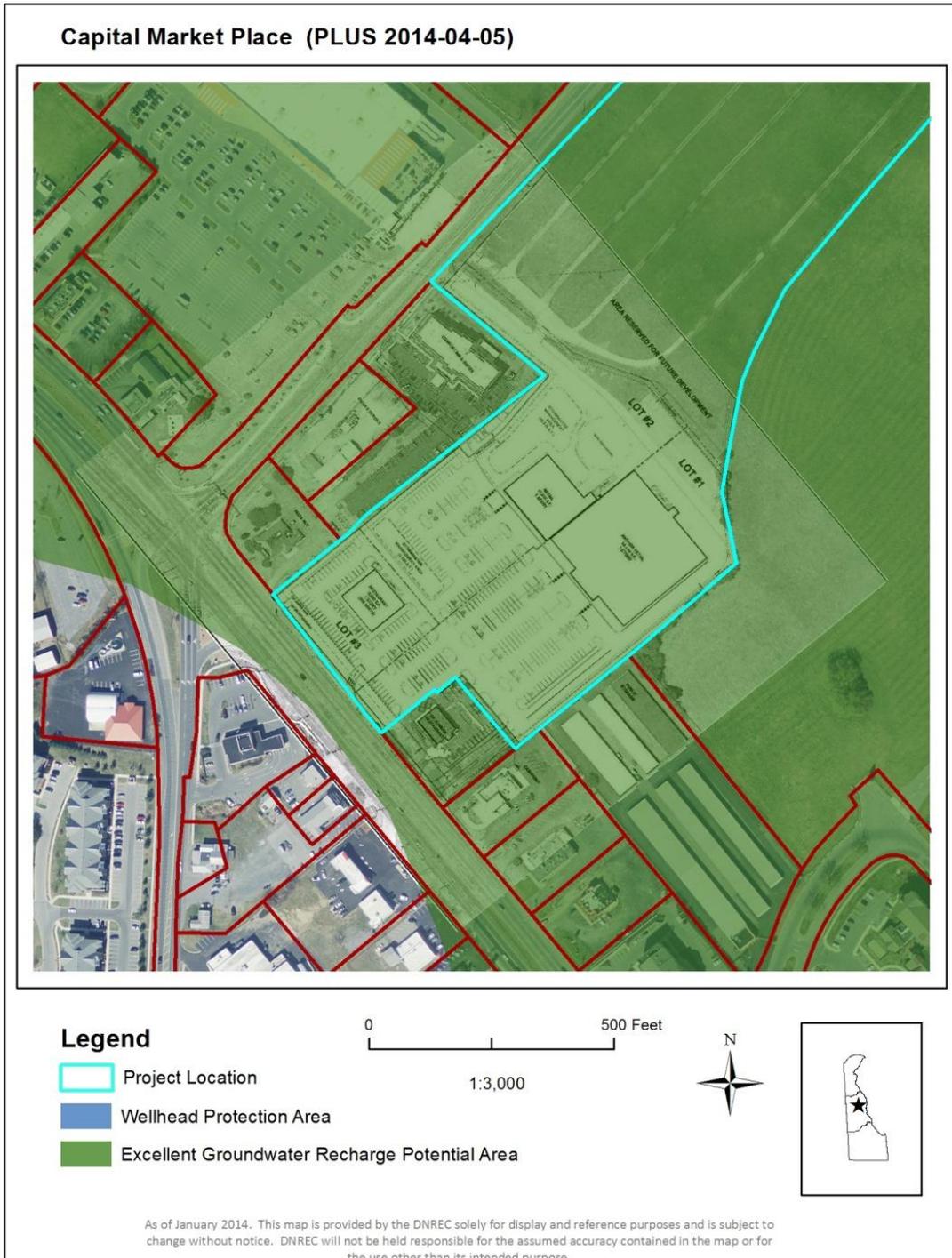
A sediment and stormwater plan will be required for the site. Contact the reviewing agency to schedule a project application meeting to discuss the sediment and erosion control and stormwater management components of the plan as soon as possible. The site topography, soils mapping, pre- and post-development 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 the Kent Conservation District. Contact Jared Adkins, Program Manager, at the Kent Conservation District at 741-2600, ext. 3 for details regarding submittal requirements and fees

- **Water Resource Protection Areas**

The DNREC Water Supply Section, Ground-Water Protection Branch (GPB) has determined the entire project site falls within an area of excellent ground-water recharge potential for the City of Dover (see map).

- Excellent Ground-Water Recharge Areas are those areas mapped by the Delaware Geological Survey where the first 20 feet of subsurface soils and geologic materials are exceptionally sandy. These soils are able to transmit water very quickly from the land surface to the water table. This map category (excellent) is an indicator of how fast contaminants will move and how much water may become contaminated (Andres, 2004). Land use activities or impervious cover on areas of excellent ground-water recharge potential may adversely affect ground water in these areas.
- The City of Dover has a source water ordinance in place with conditions for development within areas of excellent groundwater recharge potential. Because the project will subdivide the parcel, the sizes of Lot 1 and Lot 2 will decrease. Subsection 29.73 requires a reduction in impervious cover for redevelopment projects. Given the reduction in the parcel size, Subsection 29.73 may apply.

In addition, because the excellent ground water recharge area can readily affect the underlying aquifer if contaminants are spilled or discharged across the area, the storage of hazardous substances or wastes should not be allowed within the area unless specific approval is obtained from the relevant state, federal, or local program.



**References**

- Andres, A. Scott, 2004, *Ground-Water Recharge Potential Mapping in Kent and Sussex Counties, Delaware: Delaware Geological Survey Report of Investigations No. 66*, p. 14.  
<http://www.udel.edu/dgs/Publications/pubform.html#investigations>

- **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.

- There is one SIRS site within a ½ miles radius of the property in question.
  - 779 N. DuPont Highway Site (DE-1456) is located adjacent north, of the project property. The site was formerly owned and operated by an oil and gas company from 1959 to 1979. A chain brand restaurant was constructed on the Site in 1987. A Phase II Environmental Assessment was conducted April 2005 followed by a Phase I Environmental Site Assessment in September 2008 to determine the presents of contamination in the soil and groundwater. It was determined that the site would be appropriately addressed under the Tanks Management Section and was transferred to the Section in January 2009. The site has been administratively closed in the SIRS system.

- **Tank Management**

Please be aware:

- If a release of a Regulated Substance occurs at the proposed project site, compliance with 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) project is located directly on the proposed project parcel:
  - Berry Van Lines Inc, Facility: 1-000266, Project: K9011098 —Four (4) USTs removed with evidence of petroleum impacts limited to soil. LUST project closed. Residual may remain—should any disturbance of the ground be performed, a contaminated materials management plan may be required.
- The following confirmed leaking underground storage tank (LUST) projects are located within a quarter mile from the proposed project area:
  - Dover Farmers Market, Facility: 1-000710, Project: K0312086 (Inactive)
  - Sunoco 0004/8983 Dover, Facility: 1-000347, Project: K8611058 (Inactive)
  - Dover Pizza Hut (Former Paradee Oil Site), Facility: 9-000133, Project: K0901004 (Investigation)
  - Dover Amoco, Facility: 1-000180, Project: K8411023 (Inactive)
  - Kristin Parsons Interiors, Facility: 1-000440, Project: K9402053 (Inactive)
- No environmental impacts are 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 Branch 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:

<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	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.
<b>7 DE Admin. Code 1113 –</b> Open Burning	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.
<b>7 DE Admin. Code 1135 –</b> Conformity of General Federal Actions to the State Implementation Plan	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)
<b>7 DE Admin. Code 1141 –</b> Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products	Use structural/ paint coatings that are low in Volatile Organic Compounds. Use covers on paint containers when paint containers are not in use.
<b>7 DE Admin. Code 1144 –</b> Control of Stationary Generator Emissions	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). Maintain recordkeeping and reporting requirements.
<b>7 DE Admin. Code 1145 –</b> Excessive Idling of Heavy Duty Vehicles	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**

- The developer has asked about the feasibility of their building a southbound U-turn lane on US Route 13 at Lepore Road (Kent Road 3B) and claiming credit for that construction against the Infrastructure Fee they would pay as a participant in the TID. In 2007, the MPO's North Dover Circulation Study developed a "Consensus Plan" of road improvements, which included converting the intersection of US Route 13 and Lepore Road to a four-way signalized intersection, with the fourth leg serving traffic that now uses Leipsic Road and Jefferic Boulevard. These improvements will be re-evaluated as part of the Land Use and Transportation Study mentioned above and may well become part of the Capital Transportation Plan for the TID. If so, the developer would be able to claim credit against their Infrastructure Fee for construction consistent with the Capital Transportation Plan.

However, it is not clear that the southbound U-turn lane would operate acceptably before the signal and the fourth leg of the intersection are added, especially with traffic entering the right-hand northbound through lane from Jefferic Boulevard about 200 feet to the south. While it would be possible to signalize the U-turn before the fourth leg is built, doing so would mean impeding the flow of northbound through traffic to serve a comparatively minor movement. Further, the site traffic served by the proposed U-turn lane would be served by the existing left-turn lane at Leipsic Road and the existing U-turn lane south of Jefferic Boulevard. If we determine that our concerns with the unsignalized U-turn can be addressed through analysis, we may require analysis of the proposed U-turn lane as part of the TOA mentioned above.

- Preliminarily, the right-turn-only access proposed near the proposed restaurant will not be permitted. The same movement would be served by a proposed access about 300 feet to the south and, less directly, by Leipsic Road about 350 feet to the north. We acknowledge that there is an existing right turn into a Pizza Hut restaurant even closer to Leipsic Road. As discussed below, we seek to close that access in the future if possible.
- DelDOT appreciates the developer's efforts to share access with the adjoining property

owners and implement the recommendations of the North Dover Circulation Study. The developer should expect a requirement that an easement be provided to the Pizza Hut parcel (Tax Parcel No. 2-05-068.05-01-10.00-00001) to provide access to it in the event that that parcel is redeveloped. We acknowledge that the existing layout of that parcel does not provide space for an interconnection and that the owner has a right to maintain their current access until they change or expand their use of the parcel. Our goal, however, is to eventually eliminate the right turn into that property from US Route 13 in favor of an access farther away from Leipsic Road.

- Please refer to the DelDOT website for guidance as to whether a pre-submittal meeting is required and how to prepare for one. That guidance is available at <http://www.deldot.gov/information/business>.
- Please check to determine if any utilities will need to be relocated as part of this project.
- All PLUS comments should be addressed prior to submitting record, subdivision or entrance plans for review.

Department of Natural Resources and Environmental Control – Contact Bahareh Van Boekhold  
735-3495

- **Soils Assessment**

Based on soils survey mapping update, Fallsington (FgA) is the most environmentally-sensitive soil mapping unit mapped in the vicinity of the proposed project. Fallsington is a poorly-drained wetland associated (hydric) soil that has severe limitations for development (Figure 1). DNREC strongly recommends the applicant avoid development in Fallsington soils.

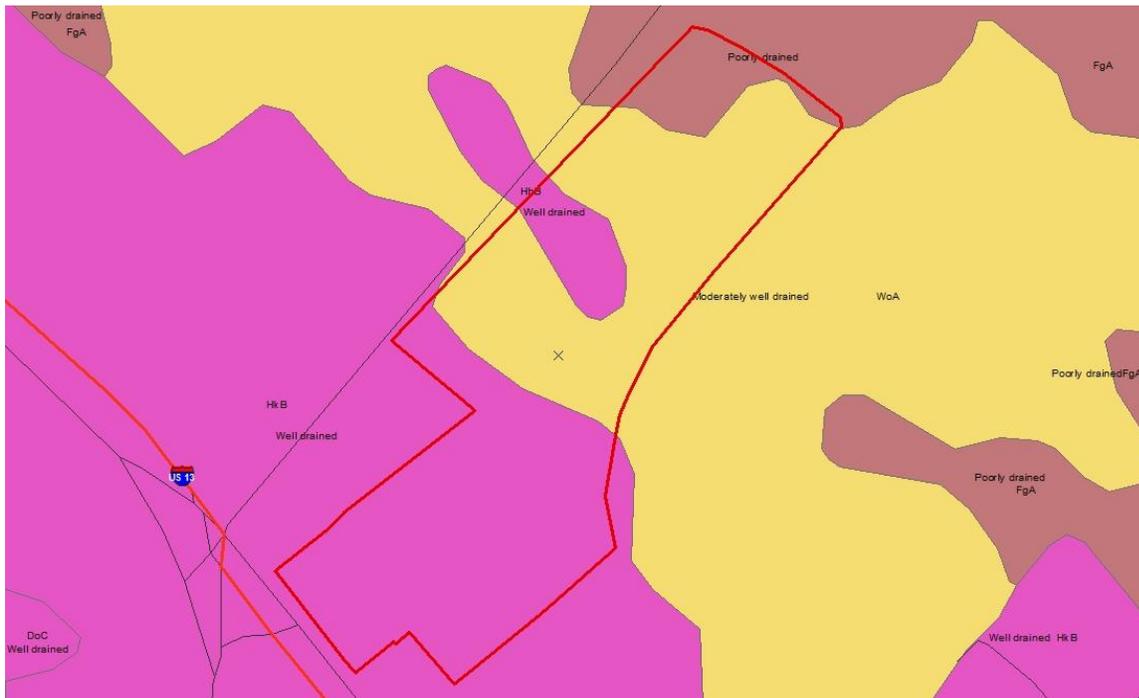


Figure 1: NRCS soil mapping in the vicinity of the proposed project

- **Additional information on TMDLs and water quality**

A Pollution Control Strategy (PCS) to achieve the required TMDL nutrient and bacterial load reduction requirements has been established for the St. Jones watershed. The web link for the St. Jones PCS strategies is as follows:

<http://www.dnrec.delaware.gov/swc/wa/Pages/WatershedManagementPlans.aspx>

In addition to the above PCS, DRENC strongly encourages the applicant reduce nutrient and bacterial pollutants through voluntary implementation of the following recommended BMPs:

- Consider additional native tree or herbaceous cover plantings wherever possible.
- Calculate post-construction surface imperviousness with all forms of created surface imperviousness (e.g., rooftops, driveways, parking lots, sidewalks, open-water storm water management structures, and roads) included in the calculation.
- Since this project will create additional impervious surface that will increase the probability for pollutant load runoff draining to the adjoining stream and wetlands, use pervious paving materials (instead of conventional asphalt and concrete) to mitigate the negative impacts from pollutant runoff.

- Use of rain gardens, and green-technology storm water management structures (in lieu of open-water management structures) as BMPs to reduce nutrient pollutant impacts. Please contact Lara Allison for further information on rain gardens at 739-9922.
- 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. DNREC strongly encourages the applicant/developer use this protocol to help them design and implement the most effective BMPs. Please contact Jen Walls at 739-9939 for more information on the protocol.
- **Additional information on hazardous waste sites**
  - DNREC 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). 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.

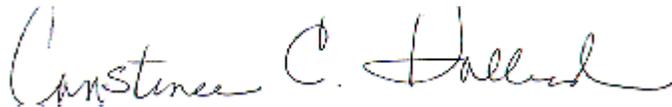
- **Incentives for Sustainable Buildings**

DNREC promotes sustainable buildings and offers incentives to businesses that incorporate energy efficiency or renewable energy measures in building construction. Energy efficiency and renewable energy grants, rebates, and low interest loans are available through the Division of Energy and Climate. Please contact Robert Underwood at (302) 735-3489 for more information on available incentives applicable to your 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 739-3090.

Sincerely,

A handwritten signature in cursive script that reads "Constance C. Holland".

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

CC: City of Dover