

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

June 25, 2014

Chuck Moore
Real Property
Bay Regional Office D P & L
2530 N. Salisbury Blvd.
Salisbury, MD 21801

RE: PLUS Review 2014-05-02, Delmarva District Office

Dear Mr. Moore:

Thank you for meeting with State agency planners on May 28, 2014 to discuss the proposed plans for the Delmarva District Office. According to the information received, you are seeking a rezoning for the expansion of the existing facility to provide an outdoor marshalling area.

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 2 according to the *State Strategies for Policies and Spending*. This site is also located in the Sussex County Growth Zone. Investment Level 2 reflects areas where growth is anticipated by local, county, and State plans in the near term future. State investments will support growth in these areas.

Code Requirements/Agency Permitting Requirements

State Historic Preservation Office – Contact Terrence Burns 736-7404

- There are no known archaeological sites or National Register-listed property on this parcel. However, there are a couple of 20th-century houses near the parcel along Handy Road, and if there is going to be any construction 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.

122 Martin Luther King Jr. Blvd. South – Haslet Armory · Third Floor · Dover, DE 19901
Phone (302)739-3090 · Fax (302) 739-5661 · www.stateplanning.delaware.gov

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 pertaining to unmarked human remains or cemeteries, please check 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 or see whether the parcel any potential archaeological site, unmarked human remains, burials, or cemetery. In addition, the developer may also want to include sufficient landscaping as a protection barrier between the proposed development and the houses near the parcel, in order to protect it from any adverse sound and visual effects. 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.

Department of Transportation – Contact Bill Brockenbrough 760-2109

- The site entrance 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.

Further in this regard, please be advised that DelDOT has advertised for comment a comprehensive revision of the Standards and Regulations. The comment period runs through June 30 and DelDOT could adopt this revision as soon as August 2014. Implementation guidance has not been developed but we recommend that the developer's engineer become familiar with the proposed changes and assess whether any of them could be relevant to this project. Information on the proposed revision is available in the Register of Regulations and at http://www.deldot.gov/information/pubs_forms/revisions_to_ASR/index.shtml.

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

Wetlands

- State regulated wetlands ARE NOT located on this property based on a review of the State wetland maps. The application states that the wetlands have been delineated and that there will be no impact to them.
- State regulated subaqueous lands ARE NOT located on this property based on a review of aerial photographs, SWMP maps, Soil Surveys and/or 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.
- Waters of the U.S. regulated by the U.S. Army Corps of Engineers ARE likely to be located on this property based on a review of aerial photographs, SWMP maps, Soil Surveys and/or USGS topographic maps. According to our GIS SWMP maps, there are possible wetlands regulated by the U.S. Army Corps of Engineers at the northern and southern points of the parcel. There do not appear to be any impacts to this area where the plans indicate building. Waters of the United States include the following: navigable waters of the United States; wetlands; tributaries to navigable waters of the United States, including adjacent wetlands and lakes and ponds; interstate waters and their tributaries, including adjacent wetlands; and all other waters of the United States not identified above, such as isolated wetlands, intermittent streams, and other waters that are not part of a tributary system to interstate waters or to navigable waters of the United States, where the use, degradation or destruction of these waters could affect interstate or foreign commerce. The extent of Federal jurisdiction over Waters of the United States is

determined by the U.S. Army Corps of Engineers and is based on site specific conditions. Therefore, an on-site inspection by an environmental consultant is recommended to determine if Waters of the U.S. are located on the property and the limits of Federal jurisdictional. The U.S. Army Corps of Engineers can be contacted at (215) 656-6728 or online at <http://www.nap.usace.army.mil/cenap-op/regulatory/regulatory.htm>.

TMDLs

- The project is located in the *high 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 *high reduction* zone of the Inland Bays watershed calls for 85 percent reduction in nitrogen and a 65 percent reduction in phosphorus from baseline conditions. The TMDL also calls for a 40 percent reduction (17 percent for marine waters) in bacteria from baseline conditions.
- The Inland Bays Pollution Control Strategy (PCS) and the accompanying regulations were finalized by order of the DNREC Secretary on October 2008. 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
- 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>

Sediment and Stormwater Program

- A detailed sediment and stormwater plan will be required prior to any land disturbing activity more than 500 square feet 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.

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.
- The following confirmed leaking underground storage tank (LUST) projects are located directly on the proposed project parcel:
 - Delmarva Power, Facility: 5-000373, Projects:
 - S0910075 (Inactive): Retrofit - booted flex connectors under dispensers
 - S1203025 (Inactive): Swing joints replaced with flex connectors for the facility's 10,000 gallon gasoline & diesel fuel USTs. Diesel range organics (DRO) slightly above action limits—conditional no further action letter issued March 2012.
 - S1311112 (Inactive): Spill bucket replacement on 10K diesel UST
- In addition, the following AST facility is located within the proposed project parcel:
 - Millsboro District Office, Facility: 8-000339
 - Registered emergency generator above-ground storage tank containing diesel.
- The following confirmed leaking underground storage tank (LUST) projects are located within a quarter mile from the proposed project area:
 - Uncle Teds Trading Post Millsboro, Facility: 5-000341, Project: S9101008, S0212083 (Inactive)
 - Atkins Property, Facility: 9-000138, Project: S0903026 (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

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

- No buildings being erected at this time. In the future, if a building is proposed, the applicant shall submit a completed formal application, fee, and three sets of plans depicting compliance with the Delaware State Fire Prevention Regulation Applications and brochures can be downloaded from our website: www.statefiremarshal.delaware.gov, technical services link.

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

- DelDOT may require that the site entrance be relocated farther west on Handy Road.
- DelDOT recommends that the developer have their site engineer contact the Subdivision Manager for this part of Sussex County, Mr. Derek Sapp, regarding the site access. As necessary, Mr. Sapp can be reached at (302) 760-4803.

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

Soils Assessment

- Based on soils survey mapping update, Hurlock (HuA) and Mullica-Berryland(MuA) complex soil mapping units have the greatest limitations (considered unsuitable)for development in this parcel. The soils in these mapping units are mostly poorly to very poorly-drained and reflect the presence of wetlands (hydric) or wetland conditions (Figure 1). Therefore, we strongly recommend that the applicant avoid construction in these soil mapping units.

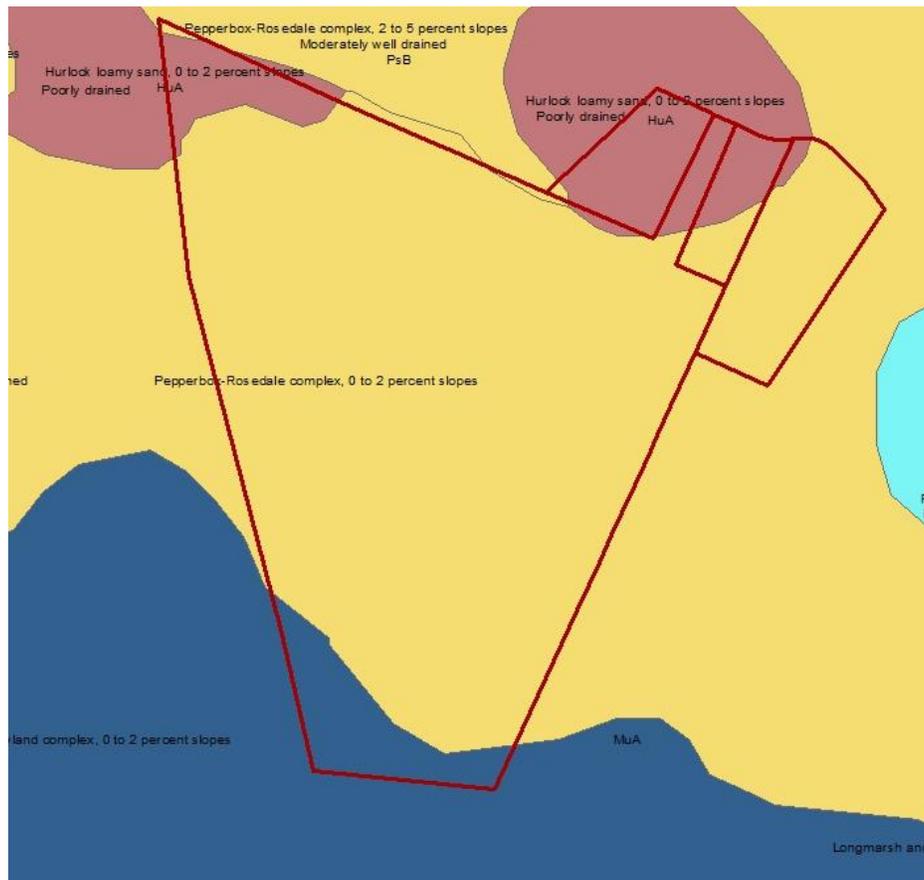


Figure 1: NRCS soil survey update mapping in the immediate vicinity of the proposed project

Additional information on TMDLs and water quality

- Compliance with the specified TMDL nutrient and bacterial reduction requirements specified for the Inland Bays watershed can be facilitated by the strategies and requirements described in the Inland Bays PCS, and the implementation of /adherence to the following recommended BMPs:
 - A United States Army Corps of Engineers (USACE) approved wetlands delineation is strongly recommended before commencing any construction activities.
 - Retain as much of the existing forest cover as possible. The applicant's current proposal to remove much of the existing forest cover will further contribute to increased nutrient loading into waters of the greater Inland Bays. To mitigate these impacts, we strongly recommend that the applicant maintain as much of the existing forest cover as possible, while maintaining a 100 foot upland buffer from all

- adjoining non-tidal wetlands (USACE approved wetlands delineation) and tidally-influenced wetlands regulated by the State.
- Use green-technology storm water management (in lieu of open-water management structures) and raingardens as BMPs for mitigating nutrient and bacterial pollutant runoff due to increases in surface imperviousness. Please contact Lara Allison at 739-9939 for further information about the possibility for installing a raingarden(s) on this parcel.
 - 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. We strongly recommend that the applicant avoid all hydric soil mapping units. Building on such soils is likely to contribute to an increased probability of future onsite and offsite flooding problems.
 - Wherever practicable, use pervious paving materials (instead of conventional asphalt and concrete) as a BMP(s) to reduce the impacts from all forms of created surface imperviousness.
 - 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) resulting from the conversion of individual or combined land parcels to a changed land use(s); thus providing applicants and governmental entities with quantitative information about the 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 Jen Walls or John Martin, Division of Watershed Stewardship at 302-739-9939 for more information on the protocol.

Habitat conservation

- DNREC Division of Fish and Wildlife has no concerns associated with the project as proposed. However, the parcels do include forest and wetland blocks that are designated as Key Wildlife Habitat by the Delaware Wildlife Action Plan. Please contact Kate Fleming at (302) 735-8658 or Kate.Fleming@state.de.us if the scope of work is expanded and/or clearing is proposed.

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.

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

- 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, should be provided with suitable gates and access roads, and fire lanes so that all areas of the premises are accessible to fire apparatus. This means that access should be arranged in such a manner that it will not adversely affect quick and unimpeded travel of fire apparatus throughout the yard.
- The local Fire Chief, prior to any submission to our Agency, should approve in writing the use of gates that limit fire department access into and out of the property.

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.

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Thank you for the opportunity to review this project. If you have any questions, please contact me at 302-739-3090.

Sincerely,

A handwritten signature in cursive script that reads "Constance C. Holland". The signature is written in black ink on a white background.

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

CC: Sussex County
Matt Drew, AWB Engineers