



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

December 23, 2014

Mr. Andrew Nowak
110 N Main Street, Suite H
Camden, DE 19934

RE: PLUS review 2014-11-07, Eagles Landing

Dear Mr. Nowak,

Thank you for meeting with State agency planners on November 26, 2014 to discuss the proposed plans for Eagles Landing. According to the information received, you are seeking Review of a rezoning from AG Conditional Use to IG for use as a shop and storage warehouse located in Kent County.

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 Kent 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 proposal is located in Investment Level 4 according to the *Strategies for State Policies and Spending*. **The comments in this letter are technical, and are not intended to suggest that the State supports this development proposal. This letter does not in any way suggest or imply that you may receive or may be entitled to permits or other approvals necessary to construct the development you indicate or any subdivision thereof on these lands.**

Investment Level 4 indicates where State investments will support agricultural preservation, natural resource protection, and the continuation of the rural nature of these areas. New development activities and suburban development are not supported in Investment Level 4. These areas are comprised of prime agricultural lands and environmentally sensitive wetlands and wildlife habitats, which should be, and in many cases have been preserved.

From a fiscal responsibility perspective, development of this site is likewise inappropriate. The cost of providing services to development in rural areas is an inefficient and wasteful use of the State's fiscal resources. Over the longer term, the unseen negative ramifications of this development will become even more evident as the community matures and the cost of maintaining infrastructure and providing services increases. Because the development is inconsistent with the *Strategies for State Policies and Spending*, the State is opposed to this proposed rezoning.

Code Requirements/Agency Permitting Requirements

State Historic Preservation Office – Contact Terrence Burns 736-7404

- This parcel is in Level-4 area, and the Division of Historical & Cultural Affairs does not support, nor approve of any rezoning, construction or development project of any kind in a Level 4 Area.
- Delaware is has a heritage of historical attributes. Intruding on these areas may affect the cultural or historic resources associated with Delaware's historic heritage, such as architectural or archeological sites, or potential archeological sites, which have not been found or studied, but may contain important information about Delaware's history, such as cemetery, burial site or unmarked human remains. With this in mind, it is important that the developer be aware of the Unmarked Human Burials and Human Skeletal Remains Law, which is outline 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 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 may want to hire an archaeological consultant to examine the parcel for any potential archaeological site (historic or pre-historic), historic 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 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

- DelDOT has no comments on the proposed rezoning. The following comments pertain to the proposed use of the site if Kent County approves the proposed rezoning:
 - 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. Based on the applicants' estimate that the proposed development would generate 10 vehicle trip ends per typical weekday, a TIS would not be warranted.
 - The site entrance on South Little Creek Road 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.
 - As necessary, 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 South Little Creek 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.”**
 - 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 on South Little Creek Road. 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 Leipsic River watershed. In the Leipsic River watershed, the State of Delaware has developed specific Total Maximum Daily Load (TMDL) pollutant reduction targets for nutrients (e.g., nitrogen, phosphorus), and bacteria (under the auspices of Section 303(d) of the Federal Clean Water Act). A TMDL is the maximum level of pollution allowed for a given pollutant below which a “water quality limited waterbody” 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 Leipsic River watershed calls for a 40 percent reduction in both nitrogen and phosphorus from baseline conditions. The TMDL also calls for a 75 percent reduction in bacteria from baseline conditions. The specific TMDL nutrient and bacterial load reductions for the Leipsic River watershed can be viewed in the following weblink: <http://www.dnrec.delaware.gov/swc/wa/Pages/WatershedAssessmentTMDLs.aspx>

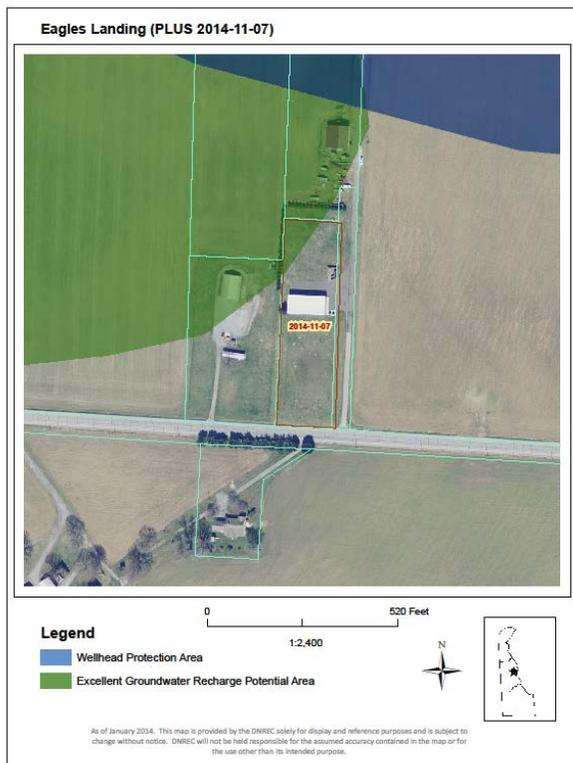
Water Supply

- The project information sheets state that individual on-site well(s) will be used to provide water for the proposed project. DNREC records indicate that the project is not located in an area where public water service is available. Should an on-site Industrial, Public/Miscellaneous Public well be needed, a minimum isolation distance of 150 feet is required between the well and any potential source of contamination, such as central sewer lines, septic tank and sewage disposal area, and at least 150 feet from the outermost boundaries of the project. The Division of Water Resources will consider applications for the construction of on-site wells provided the wells can be constructed and located in compliance with all requirements of the current Regulations Governing the Construction and Use of Wells. A well construction permit must be obtained prior to constructing each and every well(s).
- 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.

Source Water Protection Areas

- The DNREC Water Supply Section has reviewed the above referenced PLUS application and determined that a portion of the project falls within excellent ground-water recharge area for Kent (See Map). Kent County does not have a Source Water Protection Ordinance in place at this time. Excellent ground-water recharge potential areas are near-surface areas within which precipitation infiltrates the land surface to the unconfined aquifer at a more rapid rate than other areas. Kent County has approximately 14 percent of its total area classified as “excellent” recharge. DNREC Water Supply Section recommends that that portion of the new development within the excellent ground-water recharge area not exceed 20% impervious cover. The purpose of an impervious cover threshold is to minimize loss of recharge (and associated increases in storm water) and protect the quality and quantity of ground water and surface water supplies (DNREC, 1999).



References

Delaware Department of Natural Resources and Environmental Control. (1999). *The State of Delaware Source Water Assessment Plan*: Dover, DE, p. 301. <http://www.wr.udel.edu/swaphome/publications.html>

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	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	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 1135 – 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)
7 DE Admin. Code 1141 – 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.
7 DE Admin. Code 1144 – Control of Stationary Generator Emissions	Ensure that emissions of nitrogen oxides (NO _x), non-methane hydrocarbons (NMHC), particulate matter (PM), sulfur dioxide (SO ₂), carbon monoxide (CO), and carbon dioxide (CO ₂) 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	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 the website:

<http://www.awm.delaware.gov/AQM/Pages/AirRegulations.aspx>.

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 are no SIRS sites or salvage yards found within a ½-mile radius of the proposed project.

Tank Management Section

- 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 is located within a quarter mile from the proposed project area:
 - EZ Farms Inc, Facility: 1-000097, Projects: K9509230 (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.

Ground Water Discharges Section

- There was a site evaluation performed which was approved for a full-depth gravity system in 1994. The on-site wastewater treatment and disposal system was permitted for a business with two employees (240 gpd) and actually installed in 1998 according to DNREC records. A repair permit was issued in 2000 but was never used apparently and eventually expired in 2002 with no action. DNREC records do not indicate any issues or problems with this system.

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 has no comments on the proposed rezoning. The following comments pertain to the proposed use of the site if Kent County approves the proposed rezoning:
 - In August 2014, DelDOT adopted an abbreviated approval process for existing commercial entrances generating fewer than 200 trips per day. A link to a description of

that process follows:

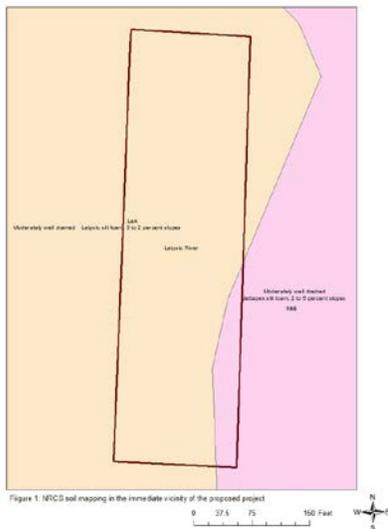
http://www.deldot.gov/information/business/subdivisions/Ex_Commercial_Project_Process_199_ADT_or_Less.pdf?100214 As necessary, the applicant may contact Subdivision Manager for northern Kent County, Mr. Julio Seneus, for assistance with the process. Mr. Seneus may be reached at (302) 760-2145.

- Please be advised that DeIDOT has advertised for comment a comprehensive revision of the Standards and Regulations. The comment period ran through June 30 and DeIDOT could adopt this revision as soon as January 2015. Implementation guidance has not been developed but DeIDOT recommends 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

Soils Assessment

- Based on soils survey mapping update (Figure 1), the soil mapping units mapped in subject parcel are Leipsic (LeA) and Mattapex (MtB); these soil mapping units contain mostly moderately well-drained soils.



Site Visit Request

- According to aerial imagery there is a building on this parcel. In the event that the building is to be demolished or renovated, DNREC wants to provide information regarding current bat survey work and request an opportunity to inspect any older buildings prior to their demolition. Bat populations in the northeastern United States have been heavily affected by a disease known as White Nose Syndrome (WNS), a fungal disease that infects bats during the winter in caves and mines. Here in Delaware, where there are no caves or mines adequate

for overwintering bats, people mostly see the bats in the summer when they use human structures such as barns, old buildings and attics for raising their young. DNREC has seen precipitous declines in summer colonies of the little brown bat (*Myotis lucifugus*), and has concerns for the big brown bat (*Eptesicus fuscus*) as well.

DNREC requests an opportunity to survey for the presence of bats prior to any removal or renovation of the building on this parcel, if it is about 40 years or older. As a first screen, photographs of the building can sometimes be used to assess whether a survey would be appropriate. If appropriate and the building is accessible, the survey can be conducted anytime as it simply involves a visual survey for bats or signs of bat presence. If the buildings are not accessible, acoustic surveys during late April or early May when maternity colonies have congregated, but before pups are born, would be best. This type of survey would entail an emergence count at dusk, and the use of acoustic equipment in the vicinity of the building, and could be conducted during a few hours one to two nights.

If bats are located, DNREC can provide best management practices to minimize impacts when the structures are removed. This request is non-regulatory but is part of an effort to collect data throughout the state on our dwindling bat populations and gain a better understanding of WNS. Please contact Holly Niederriter at (302) 735-8670 or Holly.Niederriter@state.de.us.

Additional information on TMDLs and water quality

- A Pollution Control Strategy (PCS) to achieve the required TMDL nutrient and bacterial load reduction requirements has not been established for the Leipsic River watershed to date. Until a PCS strategy is developed, we strongly recommend in the interim that the applicant help support efforts to reduce nutrient and bacterial pollutants through voluntary implementation of the following recommended BMPs:
 - 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.
 - Wherever practicable, the use of pervious paving materials instead of conventional asphalt and concrete to mitigate the likely impacts from pollutant runoff.
 - Use of a raingardens as BMPs to reduce nutrient pollutant impacts. Please contact Lara Allison for further information on raingardens at 739-9922.
 - 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 or John Martin at 302-739-9939 for more information on the protocol.

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 hazardous waste sites

- The Site Investigation Restoration Section (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). SIRS should also be contacted as soon as possible at 302-395-2600 for further instructions.

Additional information on air quality

- New businesses may emit, or cause to be emitted, additional 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; Delaware currently violates federal health-based air quality standards for ozone.
 - 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, 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 project could not be quantified. DAQ was

able, however, 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 represents the actual impact the Eagle's Landing project may have on air quality.

Emissions Attributable to Eagle's Landing (Tons per Year)	Volatile Organic Compounds (VOC)	Nitrogen Oxides (NO _x)	Sulfur Dioxide (SO ₂)	Fine Particulate Matter (PM _{2.5})	Carbon Dioxide (CO ₂)
Mobile	0.03	0.04	*	*	*

(*) Indicates data is not available.

- Note that emissions associated with the actual construction of the industrial facility, 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.
- DNREC encourages sustainable growth practices that:
 - Control sprawl;
 - Preserve rural and forested areas;
 - Identify conflicting land use priorities;
 - Encourage growth on previously developed sites and denser communities while at the same time protect our diminishing land base;
 - Coordinate transportation, housing, environment, and climate protection plans with land use plans; and
 - Demonstrate that communities can achieve the qualities of privacy, community, and contact with nature without degrading the natural environment or generating unacceptable environmental costs in terms of congestion, use of natural resources, or pollution.
- 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.
 - Constructing with high albedo, high solar reflectance materials. This includes roofing and hardscape. These materials help to reduce heat island impacts and, by extension,

- help to minimize the potential for localized ground-level ozone formation. These materials also help reduce demands on air conditioning systems and save on energy costs.
- Providing shade for parking areas. Approaches may include architectural devices, vegetation, or solar panels. Providing shade for parking areas helps to reduce heat island impacts, and, by extension, helps to minimize the potential for localized ground-level ozone formation. Such measures can also have the additional benefit of channeling or infiltrating stormwater.
 - Encouraging the use of safe multimodal transportation. This measure can significantly reduce mobile source emissions. For every vehicle trip that is replaced by the use of a sidewalk, bike path, or mass transit, 7 pounds of VOC and 11.5 pounds of NO_x are reduced each year.
 - Using retrofitted diesel engines during construction. This includes equipment that is 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, particularly those between the site and nearby residential 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 DAQ which address the above listed measures, and that details all of the specific emission mitigation measures that will be incorporated into the Eagle's Landing project.

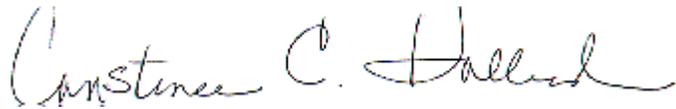
Following receipt of this letter and upon filing of an application with the local jurisdiction, the applicant shall provide to the local jurisdiction and the Office of State Planning Coordination a written response to comments received as a result of the pre-application process, noting whether comments were incorporated into the project design or not and the reason therefore.

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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 and is positioned above the typed name and title.

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

CC: Kent County