



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF STATE PLANNING COORDINATION

March 24, 2015

Mr. Stephen L. Johns, PE, PLS
VanDemark & Lynch, Inc.
4305 Miller Road
Wilmington, DE 19802

RE: PLUS review 2015-02-05, Brandywine Parkway

Dear Mr. Johns,

Thank you for meeting with State agency planners on February 25, 2015 to discuss the proposed plans for Brandywine Parkway. According to the information received, you are seeking review of a rezoning of 1.84 acres from S to CR in New Castle 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 as New Castle County is the governing authority over this land, the developers will need to comply with any and all regulations/restrictions set forth by the County.**

Strategies for State Policies and Spending

- This project is located in Investment Level 1 according to the *Strategies for State Policies and Spending*. This site is also located in the New Castle County Growth Zone. 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

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

- Total Maximum Daily Loads (TMDLs) for nitrogen, phosphorus, and bacteria have been promulgated through regulation in most of the State of Delaware's water bodies.

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A TMDL is the maximum level of pollution allowed for a given pollutant below which a “water quality limited water body” can assimilate and still meet State water quality standards (e.g., dissolved oxygen, nutrients, and bacteria; *State of Delaware Surface Water Quality Standards, as amended July 11, 2004*) to the extent necessary to support use goals such as, swimming, fishing, drinking water and shell fish harvesting. TMDLs are required by federal law (Section 303(d) of the 1972 Clean Water Act), and the states are charged with developing and implementing specific land use practices that support these goals. This project is located in the Piedmont drainage, specifically within the Brandywine Creek sub-basin and the greater Christina River Basin. In the Christina River Basin, post-development nitrogen and phosphorus loading must be capped at the pre-development or baseline loading rate (or a 0% post-construction increase in N & P in Delaware’s portion of the Christina River Basin) to meet the required TMDL for each nutrient. Moreover, reductions in bacteria that range from 29% to 95% (High Flow) is also required (depending upon location). The specific required nutrient and bacterial requirements for the various stream segments in the Basin, and background information is outlined in the report entitled “*Christina River Basin High-Flow TMDL*” by the EPA. This report can be retrieved from the following web link:

http://www.epa.gov/reg3wapd/tmdl/pa_tmdl/ChristinaMeetingTMDL/index.htm

John Martin, (302) 739-9939, John.Martin@state.de.us

Water Supply.

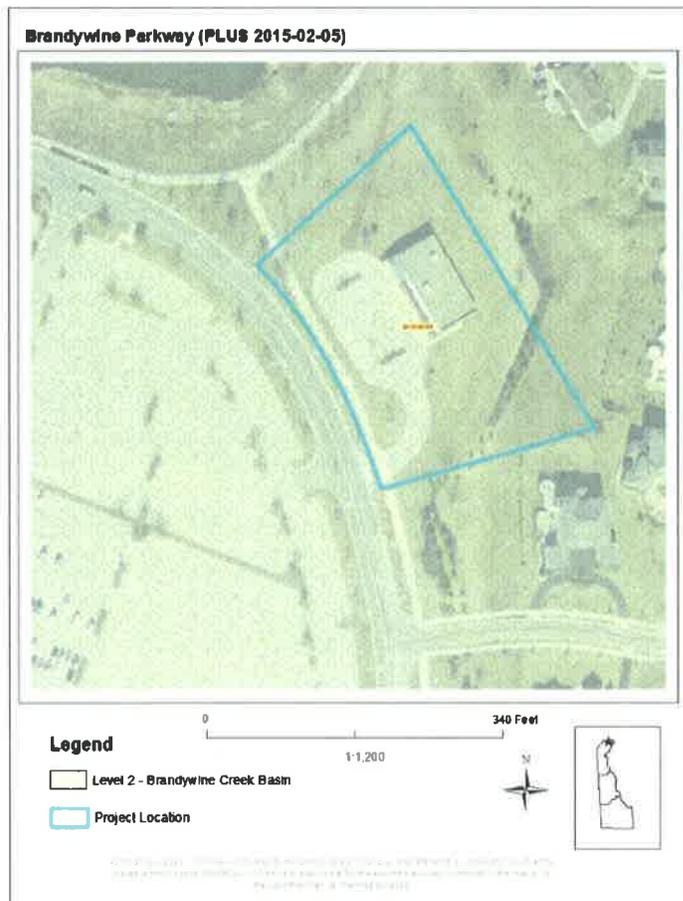
- The project information sheets state water will be provided to the project by United Water DE via a central water system. Our records indicate that the project is located within the public water service area granted to United Water DE under Certificate of Public Convenience and Necessity 88-CPCN-03.
- Should dewatering points be needed during any phase of construction, a dewatering well construction permit must be obtained from the Water Supply Section prior to construction of the well points. In addition, a water allocation permit will be needed if the pumping rate will exceed 50,000 gallons per day at any time during operation.
- All well permit applications must be prepared and signed by licensed water well contractors, and only licensed well drillers may construct the wells. Please factor in the necessary time for processing the well permit applications into the construction schedule. Dewatering well permit applications typically take approximately four weeks to process, which allows the necessary time for technical review and advertising.
- 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 Brandywine Raceway Association, Inc., located within 1000 feet of the proposed project.

Rick Rios, (302) 739-9944, Ricardo.Rios@state.de.us

Source Water Protection Areas.

- The DNREC Groundwater Protection Branch (GPB) has determined that the project does not fall within any wellhead protection or excellent groundwater recharge potential areas. However, the parcel falls entirely within the Brandywine Creek Drinking Water Watershed. This area is a Level 2 source water protection area for New Castle County (see map).
- Level 2 Source Water Protection Areas are the delineated watershed upstream from public drinking water supply intakes. Land Use or Land Activity within these areas has the potential to influence water quality or quantity to the public drinking water system.
- DNREC recommends referring to NCC Unified Development Code for regulations regarding development in this water resource protection area.

Anne Mundel, (302) 739-9945, Anne.Mundel@state.de.us



Tank Management. Please be aware:

- If a release of a Regulated Substance occurs at the proposed project site, compliance of 7 Del.C., Chapter 60, 7 Del.C., Chapter 74 and DE Admin. Code 1351, State of Delaware *Regulations Governing Underground Storage Tank Systems* (the UST Regulations) is required.
- The following confirmed leaking underground storage tank (LUST) projects are located within a quarter mile from the proposed project area:
 - Brandywine Raceway Assoc ., Inc., Facility: 3-000642, Project: N8802004 (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.

Elizabeth Wolff, (302) 395-2500, Elizabeth.Wolff@state.de.us

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

- If the proposed rezoning is approved, we recommend that the developer's engineer contact our Subdivision Manager for this part of New Castle County, Mr. Pao Lin, to determine what, if any, DelDOT approvals will be needed. While we want to provide sufficient support for New Castle County's process, we see little need for DelDOT involvement, especially as Brandywine Parkway is privately maintained. Mr. Lin may be reached at (302) 760-2157.

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

Soils Assessment.

- Based on the NRCS soil survey mapping update, Udorthents is the only soil mapping unit mapped on this parcel. (UaB; See figure 1). Udorthents is a well-drained upland soil mapping unit that, generally, has few limitations for development.

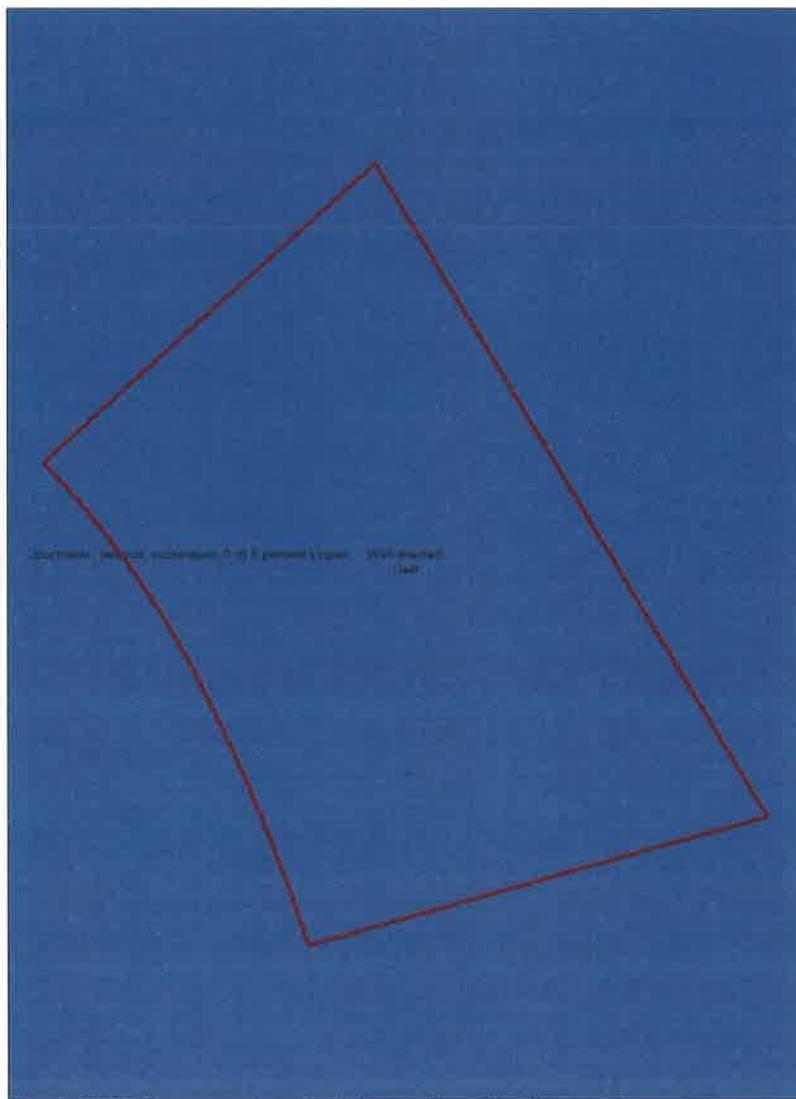
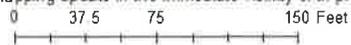


Figure 1 NRCS soil survey mapping update in the immediate vicinity of th proposed construction



Northern Long-eared Bat.

- Please be aware that this project is within 3 miles of known Northern Long-eared Bat (*Myotis septentrionalis*) locations. Northern Long-eared Bat have been proposed for federal listing as threatened under the U.S. Endangered Species Act, with an expected decision of April 2, 2015 by the U.S. Fish and Wildlife Service. If listed, we anticipate a regulatory zone of 3 miles surrounding known Northern Long-eared Bat locations. Although we do not believe this project would be of concern for Northern Long-eared Bat, please note that future development activities may be subject to review by endangered species biologists.

Kate Fleming, (302) 735-8658, Kate.Fleming@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 been established for the Christina Basin; the web link for the Christina watershed PCS strategies is as follows:
<http://www.dnrec.delaware.gov/swc/wa/Pages/WatershedManagementPlans.aspx>

DNREC strongly encourages the applicant reduce nutrient and bacterial pollutants on their parcel through voluntary implementation of the following recommended BMPs:

- Maintain as much of the existing open space as possible; we further suggest additional native tree and native herbaceous planting, wherever possible.
- 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.
- Use of pervious paving materials (instead of conventional asphalt and concrete) as a BMP to mitigate the impacts associated with surface imperviousness. The large amount of impervious surface proposed for this project makes this site an especially good candidate for the installation of pervious paving material.
- Use of green-technology storm water management (in lieu of open-water management structures) and rain gardens as BMPs for mitigating nutrient and bacterial pollutant runoff from increases in surface imperviousness. Please contact Lara Allison at 739-9939 for further information about the possibility for installing a rain garden(s) on this parcel.
- 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 John Martin or Jen Walls 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.

State Historic Preservation Office – Contact Terrence Burns 736-7404

- There are no known cultural or historic resources on this parcel, such as an archaeological site, or National Register-listed property. If there will be any development in the future, the developer should be aware of the Unmarked Human Burials and Human Skeletal Remains Law, Chapter 54 of Title 7, of the Delaware Code (7 Del. C. Ch. 54).
- 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 (7 Del. C. Ch. 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 or archaeological resources, such as cemetery, burial site, 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. 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.

Delaware State Fire Marshall's Office – Contact John Rudd 739-4394

At the time of formal submittal, for the area with a new tenant 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):

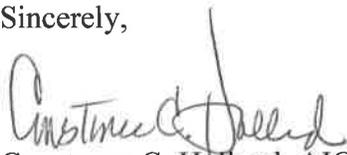
- **Preliminary meetings** with fire protection specialists are encouraged prior to formal submittal. Please call for appointment. Applications and brochures can be downloaded from our website: www.statefiremarshal.delaware.gov, technical services link, plan review, applications or brochures.
- **Accessibility**
 - 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.
 - 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.
 - 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.
- **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”

- Proposed Use
- Alpha or Numerical Labels for each building/unit for sites with multiple buildings/units
- Square footage of each structure (Total of all Floors)
- National Fire Protection Association (NFPA) Construction Type
- Maximum Height of Buildings (including number of stories)
- Note indicating if building is to be sprinklered
- Name of Water Provider
- Letter from Water Provider approving the system layout
- Provide Lock Box Note (as detailed in DSFPR) if Building is to be sprinklered
- Provide Road Names, even for County Roads

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

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

Sincerely,



Constance C. Holland, AICP

Director, Office of State Planning Coordination

CC: New Castle County