



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF STATE PLANNING COORDINATION

March 22, 2017

Mr. Gregg Moore  
Becker Morgan Group, Inc.  
309 South Governors Ave.  
Dover, DE 19904

RE: PLUS review 2017-02-01; Murphy Commercial Project

Dear Gregg:

Thank you for meeting with State agency planners on February 22, 2017 to discuss the Murphy Commercial Project. According to the information received you are seeking a rezoning and comprehensive plan amendment of 25.35 acres from Agriculture/Conservation to General Business District along Bay Road 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 as 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 application is located in a Level 4 area according to the *2015 Strategies for State Policies and Spending*. Investment Level 4 indicates areas 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 areas. 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. The project as proposed will bring a new commercial business to an area where the State has no plans to invest in infrastructure upgrades or additional services. The

intended development will need access to services and infrastructure such as police, and transportation. To provide some examples, the State government funds 100% of road maintenance and drainage improvements for the transportation system, and 100% of the cost of police protection in the unincorporated portion of Kent County where this development is proposed. Over the longer term, the unseen negative ramifications of this development will become even more evident as the cost of maintaining infrastructure and providing services increases.

This rezoning request is for a parcel located along the Route 1 corridor between two major transportation infrastructure investments, the South Frederica and Thompsonville grade separated intersections. In addition, this parcel is in the vicinity of “The Turf” sports complex that is currently under construction and is intended to provide a positive economic development impact for Kent County.

This is the second such request in recent months, the other being the “Lands of Ching” reviewed as PLUS 2016-08-07. It is unwise to continue to consider these commercial rezoning requests in a piecemeal, incremental fashion without a larger plan for the corridor. As such, it is strongly recommended that action on this request be deferred until the County can develop a more cohesive plan for the corridor, perhaps through the ongoing comprehensive plan update process. A well planned overall approach to the future development of this corridor which considers transportation infrastructure, environmental concerns, market demand for new commercial uses, and economic potential is preferable to individual, incremental rezoning requests such as this one.

Because the development is inconsistent with the *Strategies for State Policies and Spending*, the State is opposed to this rezoning.

**With that said, the comments in this letter are technical, and are not intended to suggest that the State supports this rezoning and comprehensive plan amendment. 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 build on this property, construct any development, or any subdivision thereof on these lands.**

### **Code Requirements/Agency Permitting Requirements**

#### **Department of Transportation – Contact Bill Brockenbrough 760-2109**

- An agreement between DelDOT and Kent County requires that they communicate regarding the need for a Traffic Impact Study (TIS) or the lack thereof, on each rezoning application. This communication is accomplished by the County Planning and Zoning Office sending DelDOT a form, known as a Service Level Evaluation Request (SLER), and DelDOT replying with another form, known as a Support Facilities Report (SFR).

Based on the acreage shown on the PLUS application and proposed zoning, DelDOT finds that the proposed development could meet our volume warrants for requiring a TIS,

found in Section 2.2.2.1 of the Development Coordination Manual (available at [http://www.deldot.gov/information/business/subdivisions/changes/pdfs/Development\\_Coordination\\_Manual-Chapter\\_2.pdf?041116](http://www.deldot.gov/information/business/subdivisions/changes/pdfs/Development_Coordination_Manual-Chapter_2.pdf?041116)). A site plan would need to be submitted to make that determination.

- Because the subject property adjoins Delaware Route 1 between Dover Air Force Base and US Route 9 at Five Points, it is subject to DelDOT's Corridor Capacity Preservation Program (CCPP). See Section 1.2 of the Development Coordination Manual and Section 145, Title 17 of the Delaware Code. The goal of the Program is to maintain the capacity of the existing highway by managing access along it.

According to the Office of State Planning Coordination's Strategies for State Policies and Spending document, the property is located within a Level 4 Investment Area. In this area, State policies will encourage the preservation of a rural lifestyle.

In accordance with the CCPP policy (available at [http://www.deldot.gov/information/pubs\\_forms/manuals/corr\\_cap/index.shtml](http://www.deldot.gov/information/pubs_forms/manuals/corr_cap/index.shtml)) developments proposed in Level 4 areas and generating an average of 100 vehicle trips or less per day will be permitted a rights-in/rights-out direct access to Delaware Route 1.

On August 22, 2016, DelDOT representatives met with the applicant and his site engineers to discuss their development concept at that time. They found that the development would generate more than 100 vehicle trips per day and informed the applicant that DelDOT would permit a single right-turn ingress into the site, provided that that ingress met DelDOT entrance design standards, and that all egress and other ingress would need to be by way of the local road system. Additionally, the site plan would have to include internal driveways and access easements that would allow the parcels between the subject land and Route 1 (Tax Parcel Nos. 5-00-15200-01-2400-00001, 5-00-15200-01-2501-00001, 5-00-15200-01-2600-00001, 5-00-15200-01-2700-00001, 5-00-15200-01-2701-00001, and 5-00-15200-01-2800-00001) to use the new right-turn access and to access Milford Neck Road or Pritchett Road (would require a further easement from a third party) through the site. Our intention is to eliminate these parcels' individual access points on Route 1 when they are redeveloped.

With regard to the local road system, the subject land has frontage on Milford Neck Road (Kent Road 120) and DelDOT presume that is where they would take egress. Pritchett Road (Kent Road 422) is also nearby and it seems plausible that the applicant could obtain an easement from a neighbor to access that road.

- The site access, whether on Delaware Route 1, Milford Neck Road or Pritchett Road, must be designed and built in accordance with DelDOT's Development Coordination Manual (formerly the Standards and Regulations for Subdivision Streets and State Highway Access), which is available at <http://www.deldot.gov/information/business/subdivisions/changes/index.shtml>.

- Pursuant to Section P.3 of the Manual, a Pre-Submittal Meeting is required before plans are submitted for review. The form needed to request the meeting and guidance on what will be covered there and how to prepare for it is located at [http://www.deldot.gov/information/business/subdivisions/Meeting\\_Request\\_Form.pdf](http://www.deldot.gov/information/business/subdivisions/Meeting_Request_Form.pdf).
- Section P.5 of the Manual addresses fees that are assessed for the review of development proposals. DelDOT anticipates collecting the Initial Stage Fee when the record plan is submitted for review and the Construction Stage Fee when construction plans are submitted for review.
- In accordance with Section 3.4 of the Manual, a record plan shall be prepared prior to issuing “Letter of No Objection”. The following information will be required for the “Letter of No Objection” review:
  - Initial Stage Fee Calculation Form
  - Initial Stage Review Fee
  - Gate-Keeping Checklist – Site Plan
  - Design Checklist - Record Plan
  - Sight Distance Spreadsheet
  - Owners and Engineers’ name and e-mail address
  - Record Plan
  - Conceptual Entrance Plan
  - Submission of the Area-Wide Study Fee (If applicable)
- Per Section 3.4.2 of the Manual, the record plan submission should also include a turning template for the largest vehicle that would use the entrance to verify that such vehicles can safely enter and exit. See also Sections 5.2.3 and 5.2.6 of the Manual.
- Per Section 3.4.2.1 of the Manual, provide notes identifying the type of off-site improvements, agreements (signal, letter) contributions and when the off-site improvements are warranted.
- In accordance with Figure 3.4.2-b of the Manual, all adjacent existing features along Route 1, and Milford Neck Road or Pritchett Road are required to be shown within 600 feet of the site access or 200 feet of the property line, whichever is greater.
- As per the Delaware Strategies for State Policies and Spending, this development is in Investment Level 4. Referring to Section 3.5.4.2.A of the Manual, developments in Level 3 and 4 Areas are required to install a sidewalk or Shared Use Path if the project abuts to an existing facility, which this one does not. If the project does not abut to an existing facility, it will be at the Subdivision Engineer’s discretion. No fee in lieu of construction will be required. The requirement or lack thereof should be addressed at the Pre-Submittal Meeting mentioned above.

- Referring to Section 4.3 of the Manual, an entrance plan shall be prepared prior to issuing entrance approval. The following information will be required for Entrance Plan review:
  - Construction Stage Fee Calculation Form
  - Construction Review Fee
  - Gate-Keeping Checklist – Entrance Plan
  - Design Checklist - Entrance Plan
  - Auxiliary Lane Spreadsheet
  - Entrance Plan
  - Pipe/Angle Spreadsheet (If applicable)
  - SWM Report and Calculations (If applicable)
  
- In accordance with Section 5.14 of the Manual, all existing utilities must be shown on the plan and a utility relocation plan will be required for any utilities that need to be relocated.
  
- In accordance with Section 5.2.9 of the Manual, the Auxiliary Lane Worksheet should be used to determine whether auxiliary lanes are warranted at the site entrance and how long those lanes should be. The worksheet can be found at [http://www.deldot.gov/information/business/subdivisions/auxiliary\\_lane\\_worksheet.xls](http://www.deldot.gov/information/business/subdivisions/auxiliary_lane_worksheet.xls).
  
- In accordance with Section 5.4 of the Manual, sight distance triangles are required and shall be established in accordance with American Association of State Highway and Transportation Officials (AASHTO) standards. A spreadsheet has been developed to assist with this task. It can be found at <http://www.deldot.gov/information/business/subdivisions/Intersection-Sight-Distance.xls>.
  
- Construction inspection responsibilities shall be in accordance with Figure 6.4.3-a in the Manual.
  
- Section 7.7.2 of the Manual addresses the need to provide 20-foot wide drainage easements for all storm drainage systems, open or closed, that fall outside the existing right-of-way or the drainage/utility easement. In accordance with this section, metes and bounds and total areas need to be shown for any drainage easements. The easements should be shown and noted on the record plan.

**Department of Natural Resources and Environmental Control – Contact Michael Tholstrup 735-3352**  
**Executive Summary**

Future business/commercial development of this parcel will result in increased impervious surface and new sources of greenhouse gas emissions. Opportunities exist to preserve natural resources while reducing the environmental impact on-site. As discussed at the PLUS meeting,

the Department recommends preserving existing forest cover (may be mature forest) and wetlands, and avoid development on hydric soils. Improving vegetative buffers adjacent to the wetlands will also help protect the Murderkill River water quality and maintain wildlife habitat.

The State of Delaware is threatened by climate change and has a goal of reducing greenhouse gas emissions by 30 percent by 2030. Appropriate development and re-development that provides access to public transportation, opportunities to walk and bike to shopping and recreation, and that employs energy efficient building standards are among key strategies to meet these goals. DNREC encourage the use of high performance building standards and consideration of alternative energy sources to promote clean sustainable energy and reduce greenhouse gas emissions. This could mean siting the buildings to take advantage of solar and geothermal systems, and/or including infrastructure for electric vehicle charging stations (funding assistance may be found at [www.de.gov/cleantransportation](http://www.de.gov/cleantransportation)). DNREC further recommend an abundant use of native vegetation and shade trees throughout the landscape, as well as pervious pavement and green infrastructure, where practicable, to absorb carbon dioxide, protect water quality and provide relief to residents on hot days.

The following pages provide information about applicable regulations and detailed recommendations associated with this project, from various DNREC Divisions. DNREC would like to be a partner in creating appropriate development that protects and highlights the environment as a natural amenity of the landscape. The Department has resources and expertise that are available to help make this a reality, often at no expense to the landowner.

#### **Water Quality and TMDLs.**

- The project is located in the greater Delaware River and Bay drainage area, specifically within the Murderkill River watershed. In this watershed, the State of Delaware has developed specific Total Maximum Daily Load (TMDL) pollutant reduction targets which call for a 30 percent reduction in nitrogen and a 50 percent reduction in phosphorus from baseline conditions. The TMDL also calls for a 32 percent reduction in bacteria from baseline conditions (65% reduction in marine waters). 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.
- A nutrient management plan is required under the *Delaware Nutrient Management Law* (3 Del.C., Chapter 22) for all persons or entities who apply nutrients to lands or areas of open space in excess of 10 acres; the area of open space may exceed this 10 acre threshold. Please contact the Delaware Nutrient Management Program at (302) 739-4811 for further information concerning compliance requirements, or view additional information here: <http://dda.delaware.gov/nutrients/index.shtml>

### **Water Supply.**

- The project information sheets state that Kent County will be used to provide public water for the proposed project. Our records indicate that the project is located within the public water service area granted to Tidewater Utilities under Certificate of Public Convenience and Necessity 08-CPCN-26. DNREC recommends that the developer contact Tidewater Utilities to determine the availability of public water. Any public water utility providing water to the site must obtain a certificate of public convenience and necessity (CPCN) from the Public Service Commission. Information on CPCN's and the application process can be obtained by contacting the Public Service Commission at 302-736-7500. Should an on-site Public well be needed, a minimum isolation distance of 150 feet is required between the well and any potential source of contamination, such as a septic tank and sewage disposal area, storm water management ponds, and it must also be located 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 Regulations Governing the Construction and Use of Wells. A well construction permit must be obtained prior to constructing any wells.
- 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 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 a site named: Kent County Frederica Sludge Farm located within 1000 feet of the proposed project.

### **Tank Management.**

- If a release of a Regulated Substance occurs at the proposed project site, compliance of 7 Del.C., Chapter 60; 7 Del.C., Chapter 74 and DE Admin. Code 1351, State of Delaware *Regulations Governing Underground Storage Tank Systems* (the UST Regulations) is required.
- Per the UST Regulations: Part E, § 1. Reporting Requirements: Any indication of a Release of a Regulated Substance that is discovered by any Person, including but not limited to environmental consultants, contractors, utility companies, financial institutions, real estate transfer companies, UST Owners or Operators, or Responsible Parties shall be reported within 24 hours to:



- The Department's 24-hour Release Hot Line (800) 662-8802; and
- The DNREC Tank Management Section (302) 395-2500.

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

- The State Historic Preservation Office supports no development or the rezoning of any kind, for any proposed project in a Level-4 area. With this in mind, be aware of the Unmarked Human Burials and Human Skeletal Remains Law.
- 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 (Del. C. Title 7, 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 go to 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 hire an archaeological consultant, to examine the parcel for archaeological resources and plan to avoid those sites or areas. If there is federal involvement, 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

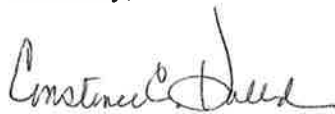


stipulations may jeopardize the issuance of any permit or funds. If you need further information or additional details pertaining to the Section 106 process and the Advisory Council's role, please review the Advisory Council's website at the following:  
[www.achp.gov](http://www.achp.gov).

**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: Kent County