



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF STATE PLANNING COORDINATION

September 21, 2017

Mr. Steve Scott
Arcadia Fencing, Inc.
P.O. Box 97
Harrington, DE 19952

RE: PLUS review 2017-08-02; Arcadia Fencing

Dear Steve:

Thank you for meeting with State agency planners on August 23, 2017 to discuss the Arcadia Fencing project. According to the information received you are seeking review of a rezoning and comprehensive plan amendment of 4.5 acres from AC to BG along Rt. 13 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.

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

- Because the subject property adjoins US Route 13, 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/Publications/manuals/corr_cap/index.shtml) no new or expanded direct access to SR1 will be permitted in a Level 4 Investment Area. Access will be permitted to the existing secondary road. In this case, the property owner can develop a full access along Collison Drive, a privately maintained public right-of-way which extends north from Hopkins Cemetery Road (Kent Road 289) near Raughley Hill Road (Kent Road 405).

Perhaps significantly, the existing driveway running south from the property toward Hopkins Cemetery Road traverses across private property for about 830 feet before tying into the Collison Drive right-of-way. At least an informal easement would be needed to use that driveway. The recorded right-of-way for Collison Drive runs along the west edge of the subject parcel and while there is a road in it, that road does not connect directly to the parking area on the property and does not appear to be paved. The adjoining parcel on the north contains a farm lane that connects the property to that unpaved road but again, at least an informal easement would be needed.

- Because it is not in State maintenance, DelDOT has few requirements specific to Collision Drive apart from Hopkins Cemetery Road but will require that its intersection with Hopkins Cemetery Road be improved 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/Business/subdivisions/index.shtml?dc=changes>.
- 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/Business/subdivisions/pdfs/Meeting_Request_Form.pdf?08022017.
- 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.
- Per Section 2.2.2.1 of the Manual, Traffic Impact Studies (TIS) are warranted for developments generating more than 500 vehicle trip ends per day or 50 vehicle trip ends per hour in any hour of the day. From the PLUS application, it is likely that the total daily trips would exceed 500 vehicle trip ends per day and 50 vehicle trip ends per hour during the peak hour but reliable estimates cannot be made until a specific land use is known. Therefore, DelDOT recommends that Kent County consider the subject rezoning application without a TIS and evaluate the need for a TIS when a subdivision or land development plan is proposed.
- Section 3.2.4.2 of the Manual addresses the placement of right-of-way monuments (markers) along the roads on which a property fronts, in this case US Route 13 and Collision Drive. Monuments sufficient to re-establish the permanent rights-of-way after the dedication discussed below should be shown on the plan and provided in the field in accordance with this section.
- As necessary, in accordance with Section 3.2.5 and Figure 3.2.5-a of the Manual, DelDOT will require dedication of right-of-way along the site's frontage on US Route 13. By this regulation, this dedication is to provide a minimum of 30 feet of right-of-way from the outermost edge of the through lanes on Route 13. The following right-of-way dedication note is required, **"An X-foot wide right-of-way is hereby dedicated to the State of Delaware, as per this plat."**
- In accordance with Section 3.2.5.1.2 of the Manual, DelDOT will require the establishment of a 15-foot wide permanent easement across the property frontage on US Route 13. 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 for the State of Delaware, as per this plat.”**

- 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)

- Referring to Section 3.4.2.1 of the Manual, the following items, among other things, are required on the Record Plan:
 - A Traffic Generation Diagram for the intersection of Collison Drive and Hopkins Cemetery Road. See Figure 3.4.2-a for the required format and content.
 - Notes identifying the type of off-site improvements, agreements (signal, letter) contributions and when the off-site improvements are warranted. Presently DelDOT does not anticipate requiring any off-site improvements except perhaps where Collison Drive intersects Hopkins Cemetery Road.

- Section 3.5.4.2 of the Development Coordination Manual addresses requirements for shared-use paths and sidewalks. For projects in Level 4 Investment Areas, installation of paths or sidewalks along the frontage on State-maintained roads is at the discretion of DelDOT’s Subdivision Engineer if the project does not abut an existing facility. DelDOT does not require a path or sidewalk in this instance.

- In accordance with Section 3.8 of the Manual, storm water facilities, excluding filter strips and bioswales, shall be located a minimum of 20 feet from the ultimate State right-of-way along US Route 13.

- 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)
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- In accordance with Section 5.2.5.6 of the Manual, a separate turning template plan shall be provided to verify vehicles can safely enter and exit the site entrance. As per Section 5.2.3 of the Manual, the entrance shall be designed for the largest vehicle using the entrance.
 - 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 intersection of Collison Drive and Hopkins Cemetery Road and how long those lanes should be. The worksheet can be found at <http://www.deldot.gov/Business/subdivisions/index.shtml>.
 - 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/Business/subdivisions/index.shtml>.
 - 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.
 - Section 6.4.3 of the Manual, which pertains to the inspection and acceptance of commercial entrances, applies. Construction inspection responsibilities shall be in accordance with Figure 6.4.3-a. Our preliminary reading of this figure is that the project requires Level I inspection and that a construction inspection agreement will not be needed.
 - 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.

Although the applicant does not have immediate plans to further develop this parcel once the zoning is changed from AC to BG, future development which may be allowed within the BG zone will result in increased impervious surface and new sources of greenhouse gas emissions. DNREC's comments reflect the potential effects of development. Reducing the environmental impact on-site through appropriate use of pollution control strategies and consideration of the excellent groundwater recharge area will protect these resources and the overall health of the community. Including waste reduction and resource conservation measures will also improve long term regional sustainability.

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 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 encourages 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). DNREC further recommends 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.

Source Water Protection.

- DNREC has reviewed the project and determined that a significant portion of the project falls within an excellent groundwater recharge area for Kent County. The State Strategies for Policy and Spending classify excellent groundwater recharge areas as Environmentally Sensitive Developing Area.

Excellent Ground-Water Recharge Areas are those areas mapped by the Delaware Geological Survey where the first 20 feet of subsurface soils and geologic materials are exceptionally sandy. These soils are able to transmit water very quickly from the land surface to the water table. This map category (excellent) is an indicator of how fast contaminants will move and how much water may become contaminated (Andres, 2004). Land use activities or impervious cover on excellent groundwater recharge potential areas may adversely affect ground water in these areas.

- Limit the impervious cover in the excellent groundwater recharge area to less than 20 percent
- Stormwater ponds should not be constructed within the excellent groundwater recharge potential area. These systems do not address the particulate and nutrient components of stormwater runoff, they do not address pathogens, petroleum hydrocarbons, pesticides, other organic compounds, and other inorganic compounds associated with residential land use (DNREC, 1999). Because this is an area of excellent recharge potential, there exists the potential for these constituents to enter the aquifer and compromise water quality.

The construction phase of stormwater ponds requires excavation, hauling, and grading. The heavy equipment used in this phase has the capacity to compact and degrade the structure of the strata that defines the area as an excellent groundwater recharge area (Schueler, 2000a). Changes to the structural soil properties may cause significant reduction in recharge capacity. Installing stormwater management facilities in excellent groundwater recharge areas has the potential to contaminate the ground water beneath it and infiltrate into the aquifer (Schueler, 2000b).

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

References:

- Andres, A. Scott, 2004, Ground-Water Recharge Potential Mapping in Kent and Sussex Counties, Delaware: Delaware Geological Survey Report of Investigations No. 66, p. 14.
- <http://www.udel.edu/dgs/Publications/pubform.html#nvestigations>
- Delaware Department of Natural Resources and Environmental Control, 1999, The State of Delaware Source Water Assessment Plan: Dover, DE, p. 301.
- Schueler, T. R., 2000a, The Compaction of Urban Soils, *in* Schueler, T.R., and Holland, H.K., eds., The Practice of Watershed Protection: Ellicott City, MD, Center for Watershed Protection, p. 210 - 218.
- Schueler, T. R., 2000b, Pollutant Dynamics of Pond Muck, *in* Schueler, T.R., and Holland, H.K., eds., The Practice of Watershed Protection: Ellicott City, MD, Center for Watershed Protection, p. 453 - 460.

Water Quality: TMDLs.

- The project is located in the greater Delaware River and Bay drainage, 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). These were developed under the auspices of Section 303(d) of the Clean Water Act. A TMDL is the maximum level of pollution allowed for a given pollutant below which a “water quality limited waterbody” can assimilate and still meet State water quality standards to the extent necessary to support use goals such as, swimming, fishing, drinking water and shell fish harvesting (e.g., dissolved oxygen, nutrients, and bacteria; State of Delaware Surface Water Quality Standards, as amended July 11, 2004).

Water Supply.

- The project information sheets state that individual on-site well(s) will be used to provide water for the proposed project. Our records indicate that the project is not located in an area where public water service is available. Should an on-site Industrial/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 areas, stormwater management pond 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 any 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 four weeks to process, which allows the necessary time for technical review and advertising.

Sediment and Erosion Control/Stormwater Management

- A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. Contact the reviewing agency to schedule a pre-application meeting to discuss the sediment and erosion control and stormwater management components of the plan. The site topography, soils mapping, pre- and post-development runoff, and proposed method(s) and location(s) of stormwater management should be brought to the meeting for discussion. The plan review and approval as well as construction inspection will be coordinated through the Kent Conservation District. Contact Jared Adkins, Program Manager, at (302) 741-2600, ext. 3, for details regarding submittal requirements and fees.

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	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • Ensure that emissions of nitrogen oxides (NO_x), non-methane hydrocarbons (NMHC), particulate matter (PM), sulfur dioxide (SO₂), carbon monoxide (CO), and carbon dioxide (CO₂) 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	<ul style="list-style-type: none"> • Restrict idling time for trucks and buses having a gross vehicle weight of over 8,500 pounds to no more than three minutes.

For a complete listing of all Delaware applicable regulations, please look at our website: <http://www.awm.delaware.gov/AQM/Pages/AirRegulations.aspx>.

Recycling.

- Delaware Law (7 *Del.C.*, §6053) and Regulations (7 *Del. Admin. C.* §1305) specify that the ‘commercial sector’ shall participate in a comprehensive recycling program. As such, all those involved with the planning of new development should give consideration to space for collection of recyclables that would be typically generated. For example, space

for a recycling dumpster should be provided adjacent to each trash dumpster. For more information or assistance related to recycling requirements, benefits, tools, and assistance, please call (302) 739-9403.

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.
- 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 (800) 662-8802; and
 - The DNREC Tank Management Section (302) 395-2500.
- If any aboveground storage tanks (ASTs) less than 12,500 gallons are installed, they must be registered with the Tank Management Section. If any ASTs greater than 12,500 gallons are installed, they are also subject to installation approval by DNREC.
- For more information, go to: <http://www.dnrec.delaware.gov/tanks/Pages/default.aspx> or contact Ross D. Elliott with further questions at (302) 395-2500, or Ross.Elliott@state.de.us

State Historic Preservation Office – Contact Terrence Burns 736-7404

- SHPO supports no development, or 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 see more information, please review the following websites: www.history.delaware.gov/preservation/umhr.shtml and 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.

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