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April 19, 2007

Ms. Constance Holland, AICP
Delaware State Office of Planning Coordination
540 S. Dupont Highway, Suite 7
Dover, DE 19901

RE: **Response to PLUS 2007-02-12 Comments**
5500 ANDERBY HALL ROAD
North Murderkill Hundred, Kent County, Delaware
2006050.00

Dear Ms. Holland:

The Delaware Office of State Planning Coordination reviewed the rezoning request for 5500 Anderby Hall Road LLC through their Preliminary Land Use Service (PLUS) process on February 28, 2007. With our application, we requested to rezone approximately 17 acres ± of a 35.7 acre parcel from Agricultural Residential (AR) to General Industrial (IG) for a wood recycling business. The remaining parcel is already zoned IG.

The following are the PLUS comments received by the various state agencies, with our response in italics:

Office of State Planning Coordination – Contact: David Edgell (302) 739-3090

This project represents a major land development that will result in an industrial use of 35.67 acres in an Investment Level 4 area according to the *Strategies for State Policies and Spending*. This project is also located outside the growth zone, according to Kent County's certified comprehensive plan. 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. The project as proposed has the potential to bring a significant heavy industrial use to an area where the State has no plans to invest in infrastructure upgrades or additional services. The industrial activities and employees will need access to services and infrastructure such as police, and transportation. To provide some examples, the State government funds 100 percent of roads and paratransit services, and 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 community matures and the cost of maintaining infrastructure and providing services increases.

The original use of this property as an agricultural product production facility was appropriate in this rural area. Facilities such as the pickle plant can be essential parts of the agricultural economy. The applicant's proposal for a waste recycling facility is unique, and if limited can also be appropriate. There appears to be environmental merit to the concept of reusing

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construction waste. It is also desirable to have these materials removed from the waste stream before they reach the nearby landfill. This will ultimately extend the life of the landfill.

Our office is opposed to this rezoning request because the site is inconsistent with the *Strategies for State Policies and Spending*. The larger area of IG zoning would allow a major industrial use to be established on this site in the future. Our office would not be opposed to a conditional use or other legal mechanism which would restrict the use of the site to the proposed construction waste recycling facility as described by the applicant at the PLUS meeting.

5500 Anderby Hall Road LLC has decided not to pursue rezoning the 17 acres ± from AR to IG. Instead, we have filed a conditional use site plan application with Kent County Department of Planning Services to permit the mulching operations on the 17 acres ±. A separate conditional use site plan application was filed to permit the construction & demolition debris recycling facility for the front portion of the site zoned IG.

Division of Historical and Cultural Affairs – Contact: Alice Guarrant (302) 739-5685

There is a prehistoric-period archaeological site (K-885) in the west end of this parcel. There may be other sites in the other parcels the developer is planning to expand his proposed mulch storage into. The parcel is adjacent to Cow Marsh Old School Baptist Church (K-272), which is listed in the National Register of Historic Places. There is a historic house (K-3604) between the church and this parcel. Beers Atlas of 1868 shows the A. Dill House here, but the previous construction of the pickle plant undoubtedly destroyed this site.

The Division of Historical and Cultural Affairs requests that the developer avoid storing any materials or driving over the area of the site or other potential site areas with heavy equipment. In addition, they request that the developer provide sufficient landscaping to block any visual or noise intrusions on the church or the house. The DHCA would be happy to discuss how to do this.

5500 Anderby Hall Road LLC can not commit to DHCA's request not to store any materials or drive over certain portions of the site with heavy equipment since this may significantly impact the use of their property. We will provide sufficient landscaping to block any visual or noise intrusions for the church and house.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

Because it is proposed for a Level 4 Area, the proposed rezoning is inconsistent with the *Strategies for State Policies and Spending*. The intent is to preserve the open space, agricultural lands, natural habitats and forestlands that are typically found in Level 4 Areas while avoiding the creation of isolated development areas that cannot be served effectively or efficiently by public transportation, emergency responders, and other public services.

However, DelDOT recognizes that the proposed use would be a recycling operation and would redevelop an industrial site consistent with its existing use. For these reasons, while DelDOT is opposed to the proposed rezoning, they would not be opposed to the approval of the proposed recycling operation as a conditional use. The following comments would apply to a conditional application if one were filed in this regard:

- 1) Delaware Route 10 in the area of this development is classified as a major collector road. DelDOT's policy is to require dedication of sufficient land to provide a minimum right-of-way width of 40 feet from the centerline on collector roads.

Therefore we will require right-of-way dedication along the frontage to provide any additional width needed from this project.

Additional right-of-way will be dedicated as part of the final construction drawings.

- 2) DeIDOT will also require the developer to provide a 15-foot wide permanent easement across the site's frontage for a future 10' wide shared use path.

We question the need for a multimodal path in a level 4 investment area. There is no opportunity to connect the multimodal path since a pedestrian network does not exist in this area. We will meet with DeIDOT to discuss this comment.

- 3) DeIDOT will require the developer to improve Route 10 to meet DeIDOT's major collector road standards across the site frontage. Those standards include 12-foot travel lanes and 8-foot shoulders. An overlay of the existing roadway may also be required.

The improvements will be included in the final construction drawings.

- 4) The developer's site engineer should contact the project manager for Kent County, Mr. Brad Herb, regarding specific requirements for access. Mr. Herb may be reached at (302) 266-9600.

We will meet with Mr. Herb to discuss the project.

The Department of Natural Resources and Environmental Control -- Contact: Kevin Coyle (302) 739-9071

General Comment

Although this project occurs in a Level 4 area according to the State Strategies for Policies and Spending, where development would be discouraged, the project is an adaptive reuse of an existing facility. The facility has the potential to reduce additional burdens on the local landfill by recycling construction and demolition debris.

No action required.

Water Supply

The project information sheets state that an individual on-site well 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. 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 approximately four weeks to process, which allows the necessary time for technical review and advertising.

Potential Contamination Sources do 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 Groundwater Management Zone A, named San-Del Packing Company, and a Spray Irrigation site, named San-Del Packing, located within 1000 feet of the proposed project.

Should you have any questions concerning these comments, please contact Rick Rios at (302) 739-9944.

5500 Anderby Hall Road LLC will comply with this requirement should a permit be necessary.

Sediment and Erosion Control/Stormwater Management

According to the PLUS application a preliminary meeting with Kent Conservation District (Jared Adkins) was held, which determined that stormwater management plan will not be required.

Jared Adkins will make the final determination during the final design phase.

The parcel falls within a watershed with nutrient and bacteria impairments. The applicant is encouraged to preserve any existing riparian buffers to aid in the reduction of nutrients, sediment, and other pollutants. For the further enhancement of water quality, additional widths of vegetated buffers and other water quality measures are encouraged to be implemented on this project.

Drainage

1. The proposed plan is located within the Cow Marsh Tax Ditch on the west side of Sub 1 of Prong 5. The tax ditch has an established tax ditch right-of-way extending 250 feet from the centerline of the ditch. Do not place anything permanent, such as structures, paved parking areas, or permanent stockpiles, within the tax ditch right-of-way.

We have requested a reduction to the 250-ft tax ditch easement.

2. Trees and shrubs planted within drainage easements should be spaced to allow for mechanized drainage maintenance or the reconstruction of drainage conveyances.

We will take this comment into consideration in preparing the final landscaping plan.

3. Have all drainage easements / tax ditch right-of-way recorded on deeds and place restrictions on obstructions within the easements to ensure access for periodic maintenance or future re-construction. Future property owners may not be aware of a drainage easement / tax ditch right-of-way on their property if the easement is only on the record plan. However, by recording the drainage easement on the deed, the second owner, and any subsequent owner of the property, will be fully aware of the drainage easement / tax ditch right-of-way on their property.

We will prepare a record plat for the right-of-way dedication. We will include the drainage easements / tax ditch right-of-way on the record plat.

For questions or clarifications, please contact Jim Sullivan at (302) 739-9921.

Rare Species

DNREC has never surveyed this property, therefore, it is unknown if there are state-rare or federally listed plants, animals or natural communities at this project site. They do have records of rare species downstream and these species could be impacted by changes in water quality caused by run-off from project activities. Leaving at least a 100-foot buffer comprised of the existing trees and vegetation along Cow Marsh Creek is especially important. Cow Marsh Ditch empties into the Cow Marsh Creek system and we recommend that run-off be highly filtered of nutrients and chemicals before being outlet into the Cow Marsh system. Maintaining a vegetative buffer at least 100 feet in width along the ditch will also aide in filtering run-off.

We have requested reduction in the tax ditch right-of-way on the subject property from 250-ft to 100-ft. The 100-ft buffer will remain as a vegetative buffer.

Underground Storage Tanks

There are no LUST site(s) located near the proposed project. However, should any underground storage tank or petroleum contaminated soil be discovered during construction, the Tank Management Branch must be notified as soon as possible. It is not anticipated that any construction specifications would need to be changed due to petroleum contamination. However, should any unanticipated contamination be encountered and PVC pipe is being utilized, it will need to be changed to ductile steel with nitrile rubber gaskets in the contaminated areas.

5500 Anderby Hall Road LLC will contact the Tank Management Branch in the event an UST or petroleum contaminated soil is discovered during construction.

Air Permit

An air permit application for a grinder was submitted on January 24, 2007. Public notice of the permit application will be published on March 18, 2007; the comment period will be open for 30 days.

5500 Anderby Road LLC is working with DNREC to secure the air permit for the wood grinder.

State Fire Marshal's Office – Contact: John Rudd (302) 739-4394

These comments are intended for informational use only and do not constitute any type of approval from the Delaware State Fire Marshal's Office. At the time of formal submittal, 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):

- a. **Fire Protection Water Requirements:**
 - The sprinkler system shall be provided with an approved source of water supply.

5500 Anderby Hall Road LLC is working with the State Fire Marshal's Office and Davidson Associates on the sprinkler system. The State Fire Marshal's Office previously approved the source of water supply under a plan submitted by the former owners of the property.

b. **Fire Protection Features:**

- For commercial buildings greater than 5000 sq.ft., a fire alarm signaling system which is monitored off-site is required

5500 Anderby Hall Road LLC will comply with this requirement.

- For commercial buildings greater than 10,000 sq.ft. that are not provided with Class B (2-hour rated) fire barriers to subdivide buildings into areas of 10,000 sq.ft. or less, a sprinkler system is required.

5500 Anderby Hall Road LLC will comply with this requirement.

- Buildings greater than 10,000 sq.ft., 3-stories or more, over 35 feet, or classified as High Hazard, are required to meet fire lane marking requirements.

5500 Anderby Hall Road LLC will comply with this requirement. Fire lane demarcation will be included on the final construction drawings, which must be approved by the State Fire Marshal's Office.

c. **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. This means that the access road around the facility must be constructed so fire department apparatus may negotiate it.

5500 Anderby Hall Road LLC will comply with this requirement.

- 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.

5500 Anderby Hall Road LLC will comply with this requirement.

- The use of speed bumps or other methods of traffic speed reduction must be in accordance with Department of Transportation requirements.

There are no speed bumps or other traffic calming methods proposed for this project.

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.

5500 Anderby Hall Road LLC will comply with this requirement.

d. **Gas Piping and System Information:**

- Provide type of fuel proposed, and show locations of bulk containers on plan.

We will provide the type of fuel proposed and locations of bulk containers on the final construction drawings, which must be approved by the State Fire Marshal's Office.

e. **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)
- Provide Road Names, even for County Roads

We will provide the required notes on the final construction drawings. The construction drawings require final approval by the State Fire Marshal's Office.

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.delawarestatefiremarshal.com, technical services link, plan review, applications or brochures.

5500 Anderby Hall Road LLC representatives have met with the State Fire Marshal's Office.

Department of Agriculture - Contact: Scott Blaier (302) 698-4500

The proposed rezoning is in an area designated as Investment Level 4 under the *Strategies for State Policies and Spending*. The *Strategies generally* do not support this type of isolated zoning in this area. The intent of this plan is to preserve the agricultural lands, forestlands, recreational uses, and open spaces that are preferred uses in Level 4 areas.

However, there are mitigating circumstances in this particular circumstance including: a portion of the parcel is already zoned General Industrial (IG), the project will reuse an existing and established industrial facility, and the facility's operation will benefit the environment by recycling.

Given these circumstance, the Department is willing to support a conditional use approval from Kent County to operate the facility. However, the Department does not support permanently rezoning the remainder of the parcel to IG.

5500 Anderby Hall Road LLC has decided not to pursue rezoning the 17 acres ± from AR to IG. Instead, we have filed a conditional use site plan application with Kent County Department of Planning Services to permit the mulching operations on the 17 acres ±.



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Public Service Commission - Contact: Andrea Maucher (302) 739-4247

Any expansion of natural gas or installation of a closed propane system must fall within Pipeline Safety guidelines. Contact: Malak Michael at (302) 739-4247.

Any expansion of natural gas or installation of a closed propane system will comply with Pipeline Safety guidelines.

Department of Education -- Contact: John Marinucci (302) 739-4658

This proposed project is within the Caesar Rodney School District. This is a commercial/industrial rezoning request with no apparent impact on educational infrastructure, capacity or demand. The DOE has no objections or comments regarding this commercial/industrial rezoning proposal.

No action is required for this comment.

If you should have any questions regarding the responses provided, please contact me directly.

Sincerely,

BECKER MORGAN GROUP, INC.

A handwritten signature in black ink, appearing to read "Garth E. Jones".

Garth E. Jones, P.E.
Senior Civil Engineer

GEJ/ejc

cc: Mr. Mike Davidson, 5500 Anderby Hall Road
Mr. Jason Berry, Kent County Planning Office

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