



DC GROUP

DESIGN CONSULTANTS GROUP, L.L.C.

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February 16, 2009

Ms. Constance C. Holland, AICP
Director
State Planning Coordination
122 William Penn Street, Third Floor
Dover, DE 19901

RE: RESPONSE TO: PLUS review – 2008-05-03 – Wilson Baker Parcel 22
2008-05-04 – Wilson Baker Parcel 23

Response to comments in (Red): DC Group – February 16, 2009

June 16, 2008

Mark Davidson
DC Group
18072 Davidson Drive
Milton, De 19968

RE: PLUS review – 2008-05-03 – Wilson Baker Parcel 22
2008-05-04 – Wilson Baker Parcel 23

Dear Mr. Davidson:

Thank you for meeting with State agency planners on May 28, 2008 to discuss the proposed plans for the Wilson Baker parcels located on the west side of Route 30, 2300 feet north of the intersection of Route 30 and SCR 319.

According to the information received, you are seeking to rezone 28 acres from AR-1 with a conditional use for a petroleum bulk plant to HI. According to your applications 9.03 acres will be retained as the petroleum plant and the additional 19.35 acres is proposed to house an industrial park with manufacturing and warehousing.

As presented, we are seeking to rezone Parcel 22 (8.96±Acres) from an AR-1/Conditional Use to HI-1, Heavy Industrial which is presently improved with a propane, kerosene, diesel fuel storage, sale and

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transfer facility; Parcel 23 (19.35± Acres) from and AR-1 to HI-1, Heavy Industrial Zone to be developed for manufacturing and warehousing or as an industrial park that could utilize the existing railroad tracks located on the north side of Parcel 22.

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 Sussex 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.

This proposal is located in Investment Level 4 according to the *Strategies for State Policies and Spending*, and is within the Low Density area according to the Sussex County certified comprehensive plan. **The comments in this letter are technical, and are not intended to suggest that the State supports this development proposal. This letter does not in any way suggest or imply that you may receive or may be entitled to permits or other approvals necessary to construct the development you indicate or any subdivision thereof on these lands.** This office has received the following comments from State agencies:

Office of State Planning Coordination – Contact: Bryan Hall 739-3090

Currently 9.03 acres have a conditional use to house a petroleum bulk plant. A conditional use allows for only the approved use and expires if this property is sold. To rezone the property will mean that this parcel, plus the additional 19.35 acre parcel adjacent to this one will permanently be zoned HI in an Investment Level 4.

Because the development is inconsistent with the *Strategies for State Policies and Spending*, the State is opposed to this proposed subdivision. The State is aware that these parcels are located adjacent to a Level 3 area, on a truck route and with proposed rail service from a nearby freight railroad line. The owner should work with the County during their comprehensive plan process to get these parcel included within their growth areas.

As recommended by the Office of State Planning Coordination, the owner sent a letter to the County's Comprehensive plan consultant (Mr. Driscoll) and the County requesting that Parcels 22 & 23 be included in the County's Development Area. On June 18, 2008, the County's Planning Commission voted unanimously to amend the Comprehensive Plan Update Map to include Parcels 22 and 23 as a Town Center Area.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

Parcel 22

- 1) This development is proposed for a Level 4 Area as defined in the *Strategies for State Policies and Spending*. As part of our commitment to support the *Strategies*, DelDOT refrains from participating in the cost of any road improvements needed to support development in such areas and is opposed to any road improvements that will substantially increase the transportation system capacity in them. This

application is unusual, however, in three respects. First, two thirds of the subject land is already developed and its use would not change. Second, the subject action is the creation of an industrial zoning district where there is transportation infrastructure to support it, the intersection of a truck route and a freight railroad line. Third, while the land is in a Level 4 Area, it adjoins a Level 3 Area and is close to Level 1 and 2 Areas. For these reasons, DelDOT is not opposed to the subject rezoning.

The owner notes Del DOT's confirmation that there is existing transportation infrastructure with the adjacent Delaware Route 30 truck route and existing freight railroad line to support the Heavy Industrial rezoning application. It is also noted that Del DOT is not opposed to the subject rezoning.

- 2) If the subject rezoning is approved and the remainder of the site is to be developed, entrance improvements may be needed to support the additional development. At that time, the developer's site engineer should contact the Subdivision Manager for western Sussex County, Mr. Derek Sapp, regarding our specific requirements for plan approval. Mr. Sapp may be reached at (302) 760-4803.

So noted. The existing entrance was designed, approved and built to Del DOT's standards

Parcel 23

- 1) This development is proposed for a Level 4 Area as defined in the *Strategies for State Policies and Spending*. As part of our commitment to support the *Strategies*, DelDOT refrains from participating in the cost of any road improvements needed to support development in such areas and is opposed to any road improvements that will substantially increase the transportation system capacity in them. This application is unusual, however, in three respects. First, it adjoins an existing industrial use. Second, the subject action is the creation of an industrial zoning district where there is transportation infrastructure to support it, on a truck route and with proposed rail service from a nearby freight railroad line. Third, while the land is in a Level 4 Area, it adjoins a Level 3 Area and is close to Level 1 and 2 Areas. For these reasons, DelDOT is not opposed to the subject rezoning.

The owner notes Del DOT's confirmation that there is existing transportation infrastructure with the adjacent Delaware Route 30 truck route and existing freight railroad line to support the Heavy Industrial rezoning application. It is also noted that Del DOT is not opposed to the subject rezoning.

- 2) The proposed railroad spur suggests that relatively heavy industrial uses are anticipated, but proposed street layout suggests otherwise, with relatively tight turning radii and no cul-de-sacs or other turnaround features. DelDOT recommends that the internal street layout be re-examined and revised as necessary to ensure that it will be adequate to serve the anticipated development.

The proposed street layout is shown for planning and illustrative purposes at this time. Once a more defined site use is planned, an appropriate street layout to serve the anticipated development will be designed and constructed.

- 3) If the subject rezoning is approved, the developer's site engineer should contact our Subdivision Manager for western Sussex County, Mr. Derek Sapp, regarding our specific requirements for plan approval. Mr. Sapp may be reached at (302) 760-4803.

On September 29, 2008, Del DOT issued a Letter of No Objection for the proposed entrance location for this property.

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

Parcel 22

Water Supply

The project information sheets state that individual on-site well(s) will be used to provide water for the proposed project. DNREC records indicate that the project is not located in an area where public water service is available. The Division of Water Resources will consider applications for the construction of on-site wells provided the wells can be constructed and located in compliance with all requirements of the current Regulations Governing the Construction and Use of Wells. A well construction permit must be obtained prior to constructing each and every well(s).

Should dewatering points be needed during any phase of construction, a dewatering well construction permit must be obtained from the Water Supply Section prior to construction of the well points. In addition, a water allocation permit will be needed if the pumping rate will exceed 50,000 gallons per day at any time during operation.

All well permit applications must be prepared and signed by licensed water well contractors, and only licensed well drillers may construct the wells. Please factor in the necessary time for processing the well permit applications into the construction schedule. Dewatering well permit applications typically take approximately four weeks to process, which allows the necessary time for technical review and advertising.

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

An existing well and water system has been constructed serving the existing facility.

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 as soon as practicable. 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 Sussex Conservation District. Contact Jessica Watson at the Sussex Conservation District at (302) 856-2105 for details regarding submittal requirements and fees.

So noted. The existing site was designed, approved and constructed to Sussex Conservation Districts and the States requirements.

- Because of the parcel's location in an impaired watershed, green technology BMPs and low impact development practices should be considered a priority to reduce stormwater flow and to meet water quality goals.

The existing site utilizes infiltration for its primary discharge of stormwater runoff.

Drainage

- The Drainage Program requests that the engineer take precautions to ensure the project does not hinder any off site drainage upstream of the project or create any off site drainage problems downstream by the release of on site storm water. The Drainage Program requests that the engineer check existing downstream ditches and pipes for function and blockages prior to the construction. Notify downstream landowners of the change in volume of water released on them.

So Noted.

- Have all drainage easements 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 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 on their property.

So Noted.

Parcel 23

Water Supply

The project information sheets state that individual on-site well(s) will be used to provide water for the proposed project. DNREC records indicate that the project is not located in an area where public water service is available. The Division of Water Resources will consider applications for the construction of on-site wells provided the wells can be constructed and located in compliance with all requirements of the current Regulations Governing the Construction and Use of Wells. A well construction permit must be obtained prior to constructing each and every well(s).

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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.

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

Will Comply.

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 as soon as practicable. 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 Sussex Conservation District. Contact Jessica Watson at the Sussex Conservation District at (302) 856-2105 for details regarding submittal requirements and fees.

Will Comply.

- Because of the parcel's location in an impaired watershed and the amount of impervious surface, green technology BMPs and low impact development practices should be considered a priority to reduce stormwater flow and to meet water quality goals.

Low Impact Development practices, infiltration of stormwater runoff and Green Technology BMP's will be implemented as required by the States stormwater regulations and to meet the over all goal of meeting water quality requirements.

Drainage

- The Drainage Program requests that the engineer take precautions to ensure the project does not hinder any off site drainage upstream of the project or create any off site drainage problems downstream by the release of on site storm water. The Drainage Program requests that the engineer check existing downstream ditches and pipes for function and blockages prior to the construction. Notify downstream landowners of the change in volume of water released on them.

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Will Comply.

Floodplains

A portion of the property is located in the Zone A floodplain. Sussex County requires a flood study be done prior to development. This parcel meets the 5 acre or 50 lot minimum as set in FEMA's 44 CFR 60.3 (b) (3).

According to FEMA firm Panel #10005C0165J & 10005C0164J a very small portion of the site located within the existing wetlands and along the banks of Brittingham Branch is designated as a Zone A, which is subject to 100-year floods with base flood elevations undetermined. The majority of the site and the subject of development for this parcel are located within a Zone X, which is an area outside the 500-year floodplain, less than 0.2% annual probability of flooding. If required, a flood study can be performed for the proposed development.

Rare Species

A review of our database has revealed the following State-rare species associated with Permberton/Brittingham Branch at or adjacent to the project parcel:

Ironcolor shiner (*Notropis chalybaeus*), blackwater bluet (*Enallagma weewa*), Atlantic white cedar wetland (*Chamaecyparis thyoides*), Delmarva alder (*Alnus maritima* ssp. *maritima*), roundleaf sundew (*Drosera rotundifolia*), Northern pitcher-plant (*Sarracenia purpurea*), bayonet rush (*Juncus militaris*), ten-angle pipewort (*Eriocaulon decangulare*), water bulrush (*Schoenoplectus subterminalis*), Mitchell's sedge (*Carex mitchelliana*)

Maintaining the existing forested riparian buffer and minimizing inputs from this development into the stream system will be necessary if many of these species are to persist.

Limited plans to disturb the existing wooded areas onsite and reducing stormwater runoff is the stated goals of the owner of the property.

State Natural Heritage Site

Because of the presence of these species and the existence of a State Natural Area, this project lies within a State Natural Heritage Site. As such, the project site is considered a "Designated Critical Resource Water" as defined by the Army Corps of Engineers'

Nationwide Permit General Condition No. 19. Please keep this in mind if applying for wetland permits.

No wetland permitting is expected for the development of this property. Buffering of the existing wetlands is anticipated. Wetland delineation was performed by Kenneth W. Redinger Environmental Services.

Nuisance Waterfowl

Wet ponds created for stormwater management purposes may attract resident Canada geese and mute swans that will create a nuisance. High concentrations of waterfowl in ponds create water-quality

problems, leave droppings on lawn and paved areas and can become aggressive during the nesting season. Short manicured lawns around ponds provide an attractive habitat for these species.

The Division of Fish and Wildlife does not provide goose control services, and if problems arise, the property owner/land manager will have to accept the burden of dealing with these species (e.g., permit applications, costs, securing services of certified wildlife professionals). Solutions can be costly and labor intensive; however, with proper landscaping, monitoring, and other techniques, geese problems can be minimized.

Recommendation: DNREC recommends native plantings, including tall grasses, wildflowers, shrubs, and trees at the edge and within an adequate buffer (15-30 feet in width) around the pond. When the view of the surrounding area from the pond is blocked, geese can't scan for predators and are less likely to reside and nest in the area of the pond. The vegetation also blocks the ability to easily move between land and water.

At this time, they do not recommend using monofilament grids due to the potential for birds and other wildlife to become entangled if the grids are not properly installed and maintained. In addition, the on-going maintenance (removing entangled trash, etc.) may become a burden to the property owner/land manager.

Low Impact Development practices, Dry Infiltration Ponds and Green Technology BMP's will be implemented. These types of designs will deter "Nuisance Waterfowl" from utilizing the proposed stormwater management practices located on this site.

Natural Areas

This project contains or borders land currently listed on Delaware's Natural Areas Inventory (NAI). Natural Areas contain lands of Statewide significance identified by the Natural Area Advisory Council as the highest quality and most important natural lands remaining in Delaware. Consideration should be given to protecting these resources during design and construction of this project. The developer should investigate dedicating the Natural Area as a Nature Preserve through a conservation easement or donation of land. For more information, please contact the Office of Nature Preserves at 302-739-9235.

The forested area along the southern edge of the parcel is on the Delaware Natural Areas Inventory. The Division of Parks and Recreation greatly appreciates the effort to stay out of the listed natural area.

To maintain the integrity of the Natural Area DNREC urges the applicant to consider the use of BMPs when dealing with stormwater drainage into natural areas. The use of green technologies will prevent erosion and have less impact on the site's natural character. Using BMPs will also protect water quality and reduce the quantity of water flowing into Brittingham Branch.

Limited plans to disturb the existing wooded areas onsite and reducing stormwater runoff as well as implementing Low Impact Development practices, Dry Infiltration Ponds and Green Technology BMP's are the stated goals of the owner of the property.

Regulatory Advisory Service (RAS)

The Regulatory Advisory Service (RAS) is composed of representatives from each division within the Department of Natural Resources and Environmental Control. This service can help you with environmental permits and other requirements and regulations that may apply to your new or expanding business. Please contact Gail Henderson at 739-9909 or by e-mail to gail.henderson@state.de.us to schedule a meeting. You can use the RAS Info Sheet (please see <http://www.dnrec.delaware.gov/SiteCollectionDocuments/DNREC%20Portal/Regulatory%20Assistance%20Service%20Info%20Sheet.doc>) to begin the process.

So Noted.

State Fire Marshal's Office – Contact: Duane Fox 856-5298

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):

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:**

- Water distribution system capable of delivering at least the minimum required depending on the Use and Occupancy of the buildings. Fire hydrants with 800 feet spacing on centers.
- Where a water distribution system is proposed for the site, the infrastructure for fire protection water shall be provided, including the size of water mains for fire hydrants and sprinkler systems.

b. **Fire Protection Features:**

- All structures over 10,000 sq.ft. aggregate will require automatic sprinkler protection installed.
- 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
- Show Fire Department Connection location (Must be within 300 feet of fire hydrant), and detail as shown in the DSFPR.
- Show Fire Lanes and Sign Detail as shown in DSFPR

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 to the subdivision from Route 24 must be constructed so fire department apparatus may negotiate it.
- 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.

- Any dead end road more than 300 feet in length shall be provided with a turn-around or cul-de-sac arranged such that fire apparatus will be able to turn around by making not more than one backing maneuver. The minimum paved radius of the cul-de-sac shall be 38 feet. The dimensions of the cul-de-sac or turn-around shall be shown on the final plans. Also, please be advised that parking is prohibited in the cul-de-sac or turn around.
- 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.

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

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

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)
- Note indicating if building(s) is/are 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

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.

All comments above have been noted and will be addressed on the formal submittal of the State Fire Marshal plans for this project.

Department of Agriculture - Contact: Scott Blaier 739-4811

The Department is generally opposed to development in areas designated as Investment Level 4 under the *Strategies for State Policies and Spending*.

However, the Department also realizes the need for industrial, manufacturing, and warehousing sites, as are proposed in this project. The Department also realizes that this site abuts other parcels currently categorized as Level 3, and it is located along an existing truck route (Route 30) and has access to the railroad.

Therefore, the Department supports the Office of State Planning and Coordination's suggestion that the applicant approach Sussex County to ensure their pending comprehensive plan update include the needs of this project. Once the project is in compliance with the county's comprehensive plan, the Department can support it.

As previously stated, the owner sent a letter to the County's Comprehensive plan consultant (Mr. Driscoll) and the County requesting that Parcels 22 & 23 be included in the County's Development Area. On June 18, 2008, the County's Planning Commission voted unanimously to amend the Comprehensive Plan Update Map to include Parcels 22 and 23 as a Town Center Area. The owner appreciates the Department of Agriculture's support of this rezoning to HI-1.

Public Service Commission - Contact: Andrea Maucher 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.

So Noted.

Department of Education – Contact: John Marinucci 735-4055

This proposed project is in the Cape Henlopen School District. This is a rezoning request with no apparent impact on educational service delivery or infrastructure and, as such DOE has no further comments regarding this request.

Sussex County – Contact: Richard Kautz 855-7878

The proposed HI-1 rezoning is inconsistent with both the existing and the draft Sussex County Comprehensive Plan because that zoning district is not anticipated in the Low Density Area. The applicant should either ask Milton to expand their annexation boundary to include this area for future growth or ask Sussex County to amend the draft plan to make this area part of the Town Center Growth Area surrounding Milton.

As previously stated, and at the request of Mr. Kautz, The Office of State Planning Coordination and the Department of Agriculture, the owner sent a letter to the County's Comprehensive plan consultant (Mr. Driscoll) and the County requesting that Parcels 22 & 23 be included in the County's Development Area. On June 18, 2008, the County's Planning Commission voted unanimously to amend the Comprehensive Plan Update Map to include Parcels 22 and 23 as a Town Center Area.

The Sussex County Engineer Comments:

The project proposes to develop using individual onsite septic systems.

The proposed project is in the North Coastal Planning Area, but is not in an area where Sussex County expects to provide sewer service in the foreseeable future. If Sussex County ever provides sewer service, the parcels would be required to connect to the system at the property owner's expense. Sussex County has no objection to the project being served by individual on-site systems.

So Noted.

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

CC: Sussex County

Attached to our response is an updated site plan that will be incorporated into our re-submittal to Sussex County.

If you have any questions please do not hesitate to call.

Respectfully Submitted,

Design Consultants Group, L.L.C.

Mark H. Davidson

attachments:

pc: Mr. Wayne Baker, Owner
Mr. Mark Baker, Owner
Mr. Lawrence Lank, Director, Sussex County Planning & Zoning