



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF STATE PLANNING COORDINATION

December 20, 2012

Mr. Stephen Gorski

Duffield Associates
400 Lewis St.
Havre de Grace, MD 21078

RE: PLUS review – 2012-11-01; Overbrook Town Center

Dear Mr. Gorski:

Thank you for meeting with State agency planners on November 28, 2012 to discuss the proposed plans for the Overbrook Town Center to be located on the Southeast corner of Route 1 and Cave Neck Road in Sussex County.

According to the information received, you are seeking a rezoning from AR to CR-1 for an 895,000 sq. ft. shopping center. **Currently reduced to 850,000 SF (+/-)**

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.**

Strategies for State Policies and Spending

This project is located in Investment Level 3 according to the Strategies for State Policies and Spending. Investment Level 3 reflects areas where growth is anticipated by local, county, and state plans in the longer term future, or areas that may have environmental or other constraints to development. State investments may support future growth in these areas, but please be advised that the State has other priorities for the near future. We encourage you to design the site with respect for the environmental features which are present.

Code Requirements/Agency Permitting Requirements

State Historic Preservation Office – Contact Terrence Burns 736-7404

- There are no known historic or cultural resources, such as an archeological site or National Register listed property on this parcel. However, there are known mid to late 19th-century agricultural complexes near the parcel, such as the M. R. Fisher Agricultural Complex/Farmstead (S-3270) towards the north; the C. Warrington Agricultural Complex (S-3271) towards the northwest; and the J. W. & B. H. Houston Agricultural Complex/Farmstead (S-3037) just towards the northeast. In addition, the Pomeroy and Beers Atlas of 1868 (which is a 19th-century historic map) shows these properties near this parcel, and the USGS Topographic Map of 1918 indicated that they were there as well.

Although there does not seem to be any known historic or cultural resources on this parcel, it is still important that the developer should be aware of Delaware's Unmarked Human Burials and Human Skeletal Remains Law, which is outlined in Chapter 54 of Title 7 of the Delaware Code. Abandoned or unmarked family cemeteries are very common in the State of Delaware. They are usually in rural areas or open space lands, near an historic farm site, within it, or very close to it. Disturbing unmarked graves or burials triggers Delaware's Unmarked Human Burials and Human Skeletal Remains Law (Delaware Code Title 7, Chapter 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, in order 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 cemetery 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 need or would like to read more information in reference to unmarked human remains, burials or cemeteries, please go to the following websites for additional information:

www.history.delaware.gov/preservation/umhr.shtml
www.history.delaware.gov/preservation/cemeteries.shtml

Prior to any demolition or ground disturbing activities, the developer should consider hiring an archaeological consultant to examine the parcel for potential historic or cultural resources, such as a potential archaeological site, a cemetery or unmarked human remains. Furthermore, if there is any federal involvement with the project, in the form of licenses, permits, or funds, the federal agency, often through its client, is responsible for complying with Section 106 of the National Historic Preservation Act (36 CFR 800) and

must consider their project's effects on any known or potential cultural or historic resources. Owners and developers who may plan to apply for an Army Corps of Engineers permit or for federal funding, such as HUD or USDA grants, should be aware of the National Historic Preservation Act of 1966 (as amended). Regulations promulgated for Section 106 of this Act stipulate that no ground-disturbing or demolition activities should take place before the Corps or other involved federal agency determines the area of potential effect of the project undertaking. These stipulations are in place to allow for comment from the public, the Delaware State Historic Preservation Office, and the Advisory Council for Historic Preservation about the project's effects on historic properties. Any preconstruction activities without adherence to these stipulations may jeopardize the issuance of a permit or receipt of funding if it is determined that such opportunity to comment has been foreclosed. If you need further information or additional details pertaining to the Section 106 process and the Advisory Council's role, please review the Advisory Council's website at:

www.achp.gov.

Department of Transportation – Contact Bill Brockenbrough 760-2109

- By virtue of its location on Delaware Route 1 south of Dover Air Force Base, the proposed development is subject to DelDOT's Corridor Capacity Preservation Program, established in accordance with 17 Del. Code §145. Per Program policy, the Department will only issue entrance permits for direct access to the corridor for proposed land uses that generate 200 vehicle trips per day or less, per parcel. However, larger parcels can be developed if the necessary roadway improvements are constructed by the developer(s).

In this case, construction of a grade separation at Cave Neck Road and Delaware Route 1 would be required for development beyond the first 200 vehicle trips. Site access would be granted to Route 1 via the grade separation and ramps associated therewith.

For more information regarding the Corridor Capacity Preservation Program, an electronic manual detailing the Program can be viewed at:

http://www.deldot.gov/information/pubs_forms/manuals/corr_cap/index.shtml.

- As previously discussed with the applicants, and consistent with the information provided in Item 25 on the PLUS application, the subject development meets DelDOT's volume-based criteria, found in Section 2.3.1 of the Standards and Regulations, for recommending that a Traffic Impact Study (TIS) be required and DelDOT anticipates requiring completion of one prior to their issuing a Letter of No Objection.

A TIS was scoped on December 2, 2010, for a similar development proposal and at that time we were willing to accept traffic counts that had been done for the project in 2008 although DelDOT generally does not accept counts that are more than one year old.

DelDOT asks that the applicant have their traffic engineer contact Mr. Paul Hogge of DelDOT about updating the 2010 scope of work (contained in a memorandum dated January 11, 2011). Mr. Hogge may be reached at (302) 760-2124.

- The following comments pertain to the site plan and entrance plan that will need to be prepared and submitted if the County approves the rezoning that is now being sought:

- The Corridor Capacity Preservation Program notwithstanding, all site access point must be designed in accordance with DelDOT's Standards and Regulations for Subdivision Streets and State Highway Access, which is available at:

http://www.deldot.gov/information/pubs_forms/manuals/subdivisions/pdf/Subdivision_Manual_Revision_1_proposed_060110.pdf.

- In accordance with Section 1.4 of the Standards and Regulations for Subdivision Streets and State Highway Access, the Initial Stage review fee shall be assessed to this project.
- In accordance with Section 1.4 of the Standards and Regulations for Subdivision Streets and State Highway Access, the Construction Stage review fee shall be assessed to this project.
- In accordance with Section 3.4 of the Standards and Regulations for Subdivision Streets and State Highway Access, a site 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*
Owners and Engineer's name and e-mail address
Six (6) signed & sealed paper sets of the Site Plan by the owner and engineer
Conceptual Entrance Plan
CD with a pdf of the Site Plan

*For the design checklist of the site plan, please refer to the Standards and Regulations for Subdivision Street and State Highway Access, under Appendix D; Plan Review Checklist, page D-2 and D-3.

- In accordance with Section 3.4.1 of the Standards and Regulations for Subdivision Streets and State Highway Access, the traffic generation diagram is required to be shown on the site plan.

- In accordance with Section 3.5.7 of the Standards and Regulations for Subdivision Streets and State Highway Access, DelDOT will require that access be provided for future interconnections to the north, south and east. The easement presently shown on the site plan in favor of the parcel to the east appears sufficient for the existing use but may not be sufficient to support the development potential of those lands. The stub driveways shown leading to the north and south are acceptable in concept but will likely need to be moved as plans are developed for the site access.
A private right of way/road is provided to the east property.
- In accordance with Section 3.6.5 of the Standards and Regulations for Subdivision Streets and State Highway Access, DelDOT will require the establishment of a 15-foot wide permanent easement across the property frontage for a future 10-foot wide pedestrian/bike path. The location of the easement shall be outside the limits of the ultimate right-of-way for Delaware Route 1. 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 for a future 10-foot wide multi-modal path is hereby established, as per this plat.”**
An appropriate, safe path will be located on-site.
Also, in accordance with Appendix J of the Standards and Regulations for Subdivision Streets and State Highway Access, the following note will need to be added concerning the maintenance responsibility of the multi-use path, “The multi-use path shall be the responsibility of the developer, the property owners within this subdivision or both. The State assumes no responsibility for the future maintenance of the multi-use path.”
Note will be added
- In accordance with Section 3.6.5 and Figure 3-3 of the Standards and Regulations for Subdivision Streets and State Highway Access, DelDOT will require dedication of right-of-way along the site’s frontage on Delaware Route 1 to provide a minimum of 50 feet of right-of-way from the innermost edge of the through lanes. The design on the grade separation may dictate the need for a larger dedication.
Details are being resolved with DELDOT. A 50' to 80' strip is anticipated.
- After the LIS has been finalized, in accordance with Section 3.10 of the Standards and Regulations for Subdivision Streets and State Highway Access, the off-site improvements and/or agreements that determined to be necessary shall be shown on the site plan by note or illustration.
The conceptual road improvements have been shown on the latest Concept Plan
- In accordance with Section 4.8 of the Standards and Regulations for Subdivision Streets and State Highway Access, DelDOT will require a 20-foot wide buffer between the ultimate right-of-way line of Delaware Route 1 and the edge of any storm water management facilities other than bio-swales. From the concept plan presented, we do not see a problem in this regard, but that plan would need to change significantly to accommodate the grade separation discussed above.
Will provide a 20' buffer as requested.

- In accordance with Sections 4.3 and 4.4 of the Standards and Regulations for Subdivision Streets and State Highway Access, a subdivision plan or an entrance plan shall be prepared prior to DelDOT issuing subdivision/entrance approval. The following information will be required for Subdivision/Entrance Plan review;

Construction Stage Fee Calculation Form
Construction Review Fee
Gate-Keeping Checklist – Entrance Plan
Design Checklist – Entrance Plan**
Three (3) paper sets of the Entrance Plan
SWM Report and Calculations (If applicable)
CD with a pdf of the Entrance Plan

**For the design checklist for the entrance plan, please refer to the Standards and Regulations for Subdivision Street and State Highway Access under Appendix D; Plan Review Checklist, page D-9 and D-13.

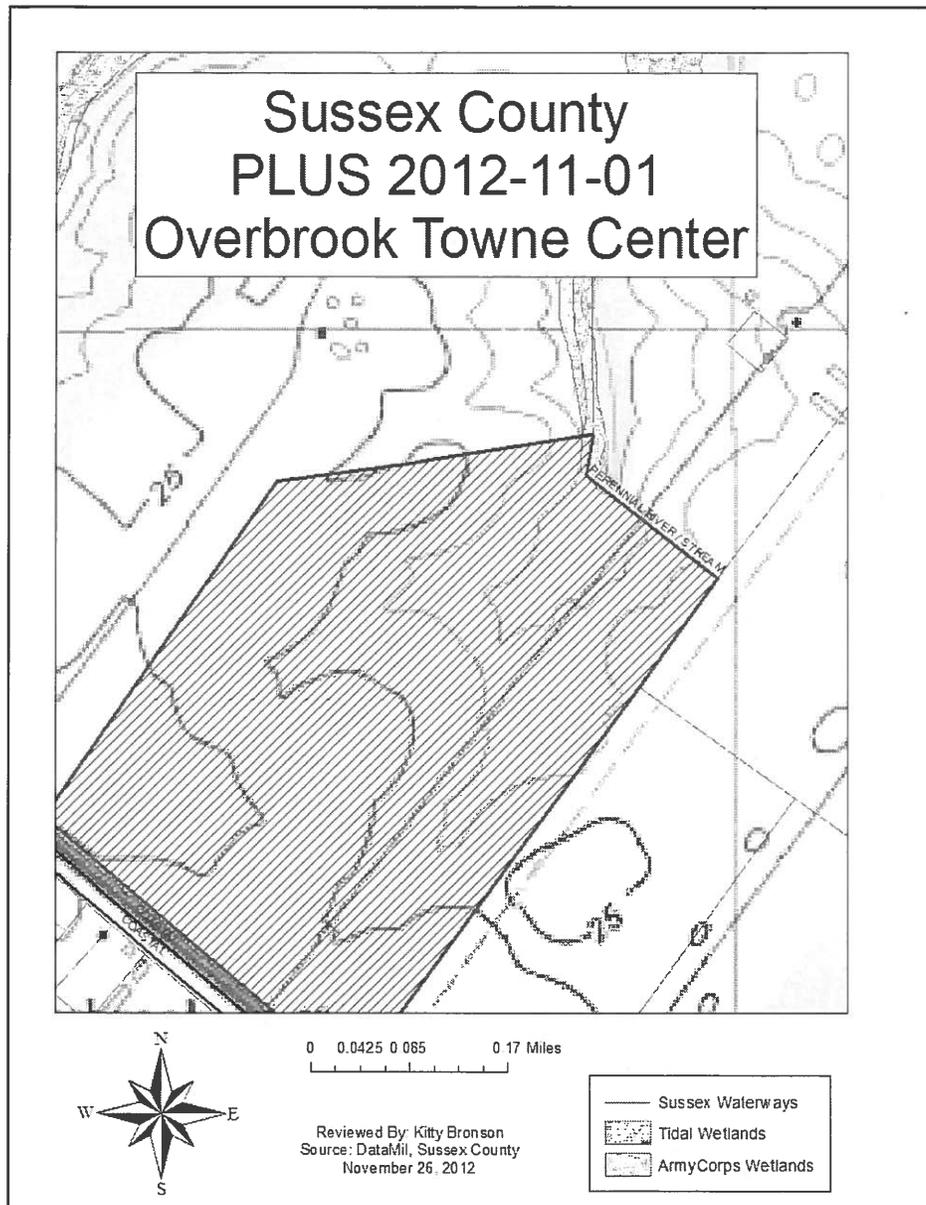
Department of Natural Resources and Environmental Control – Contact Kevin Coyle 739-9071

Wetlands

- State regulated wetlands are adjacent to this property based on a review of the State wetland maps. The contours of the land and drainage way show that runoff will most likely directly affect the tidal wetlands. State regulated wetlands are those wetlands identified on the State's official State Regulated Wetland Maps. Any activity in State regulated wetlands may require a permit from DNREC's Wetlands and Subaqueous Lands Section. Additional information about State regulated wetlands is available by contacting the Wetlands and Subaqueous Lands Section at (302) 739-9943 or on line at: <http://www.dnrec.delaware.gov/wr/Services/Pages/WetlandsAndSubaqueousLands.aspx>.
- State regulated subaqueous lands are adjacent to this property based on a review of aerial photographs, State Wetland Mapping Project (SWMP) maps, soil surveys and USGS topographic maps. Upon review of the GIS layers, runoff from this site will most likely directly impact the adjacent waterways. State subaqueous lands include all tidal waters (up to the mean high water line), most non-tidal rivers, streams, lakes, ponds, bays and inlets (up to the ordinary high water line), most perennial streams and ditches and many intermittent streams and ditches. State regulated subaqueous lands are likely to be located on this property based on a review of aerial photographs, SWMP maps, soil surveys and USGS topographic maps. An on-site inspection by a representative of the Wetlands and Subaqueous Lands Section or an environmental consultant is recommended to determine the limits of jurisdictional State subaqueous lands. *Upon review of the GIS layers, Perennial River/Streams are located at the edge of the property.* Additional

information about State regulated subaqueous lands is available by contacting the Wetlands and Subaqueous Lands Section at (302) 739-9943 or on line at:

<http://www.dnrec.delaware.gov/wr/Services/Pages/WetlandsAndSubaqueousLands.aspx>.



TMDLs

- The project is located in the greater Delaware River and Bay drainage, specifically within the Broadkill River watershed. In this watershed, the State of Delaware has developed specific Total Maximum Daily Load (TMDL) pollutant reduction targets for nitrogen, phosphorus, and bacteria (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 water body” can assimilate and still meet State water quality standards (e.g., dissolved oxygen, nutrients, and bacteria; State of Delaware Surface Water Quality Standards, as amended July 11, 2004) to the extent necessary to support use goals such as, swimming, fishing, drinking water and shell fish harvesting. The TMDL for the Broadkill River watershed calls for a 40 percent reduction in nitrogen and phosphorus from baseline conditions. The TMDL also calls for a 75 percent reduction in bacteria from baseline conditions.
- A nutrient management plan is required under the *Delaware Nutrient Management law (3 Del. Chapter 22)* for all persons or entities who apply nutrients to lands or areas of open space in excess of 10 acres. This project’s open space may exceed this 10-acre threshold. Please contact the Delaware Nutrient Management Program at 739-4811 for further information concerning compliance requirements or view the following web link for additional information:

<http://dda.delaware.gov/nutrients/index.shtml>

Water Supply

- The information provided indicates that Tidewater Utilities will provide water to the proposed projects through a public water system. Our files reflect that Tidewater Utilities does not currently hold a certificate of public convenience and necessity (CPCN) to provide public water in these areas. They will need to file an application for a CPCN with the Public Service Commission, if they have not done so already. Information on CPCN requirements and applications can be obtained by contacting the Public Service Commission at 302-736-7547. 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, 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 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.

Water Resource Protection Areas

- The DNREC Water Supply Section, Ground-Water Protection Branch (GPB) has determined that a significant portion falls within an excellent ground-water recharge potential area for the Sussex County. The site plan indicates that stormwater management ponds and a significant amount of impervious cover fall within the area of excellent groundwater recharge. This project falls within Strategies for State Policies and Spending (SSPS) Investment Level 3 area (Figure 1).

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 areas of excellent ground-water recharge potential may adversely affect ground water in these areas.

- The largest percentage of impervious cover in this project is parking and roadways. This type of land use produces petroleum hydrocarbons, other organics, metals, and other inorganics (DNREC, 1999). The contaminants associated with this land use could easily infiltrate the unconfined aquifer and compromise water quality. The purpose of an impervious cover threshold is to minimize loss of recharge (and associated increases in storm water) and protect the quality and quantity of ground water and surface water supplies.
- The site plan shows stormwater management ponds in the area of excellent groundwater recharge potential (Figure 1). The construction phase of storm water management 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 ground-water recharge area (Schueler, 2000). Changes to the structural soil properties may cause significant reduction in recharge capacity. Installing storm-water management ponds in excellent ground-water recharge areas has the potential to contaminate the ground water beneath it and infiltrate into the aquifer.

From a hydrogeologic perspective, this excellent ground-water recharge potential area is located in a SSPS Level 3 area where environmental constraints should be considered. This recharge area is located between Fisher Creek and Old Mill Creek. These Creeks flow into the Great Marsh. Disrupting the infiltration process of this recharge area has the potential to introduce greater volumes of runoff to the Great Marsh and reduce the volume of water recharged to the unconfined aquifer (Figure 2).

- Maintenance of water levels through clean recharge in this unconfined aquifer is critical to the coastal communities due to long term risks of salt water intrusion in the event that head levels decline in the freshwater aquifer. The introduction of greater volumes of runoff to the Great Marsh has the potential to disrupt the balance of fresh and brackish waters that supports the plants and wildlife in this fragile environment. It is the health of this fragile environment that contributes to the stability of the marsh that reduces erosion and protects the shoreline.
- DNREC acknowledges that Sussex County has a source water protection ordinance in place, but we recommend that this project go beyond the requirements of the ordinance and consider our recommendations that will afford this resource additional and much needed protection.
 - Ground Water Protection Branch recommends:
 - Keep impervious cover to less than 50%
 - Perform an environmental assessment report showing that water quality as well as water quantity of post development recharge is equal to or greater than pre-development recharge (Kaufmann, 2005).
 - Quantify amount of recharge lost due to impervious cover and provide for onsite infiltration of water at least equal to or greater than pre-development recharge (Kaufmann, 2005). Also outlined in Sussex County Source Water Protection Ordinance No. 1979 §89-7, A. (2).
 - Pretreatment of parking area runoff to remove dissolved chemical and nutrient loads prior to infiltration
 - Use Better Management Practices in the design, construction, and maintenance of a stormwater management system designed to address water quality with respect to nutrient and other pollutant loads.
- 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#investigations>

Delaware Department of Natural Resources and Environmental Control. (1999). The State of Delaware Source Water Assessment Plan: Dover, DE, p. 301.
<http://www.wr.udel.edu/swaphome/publications.html> (Final Report of the Source Water
Kauffman, G.J., Wozniak, S.L., and Vonck, K.J., 2005, *Delaware Ground-Water Recharge Design Manual*: Newark, DE, Water Resources Agency, University of Delaware, p. 31.
<http://www.wr.udel.edu/swaphome/Publications/SWPguidancemanual.html>
Schueler, T. R., 2000, 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. 752.

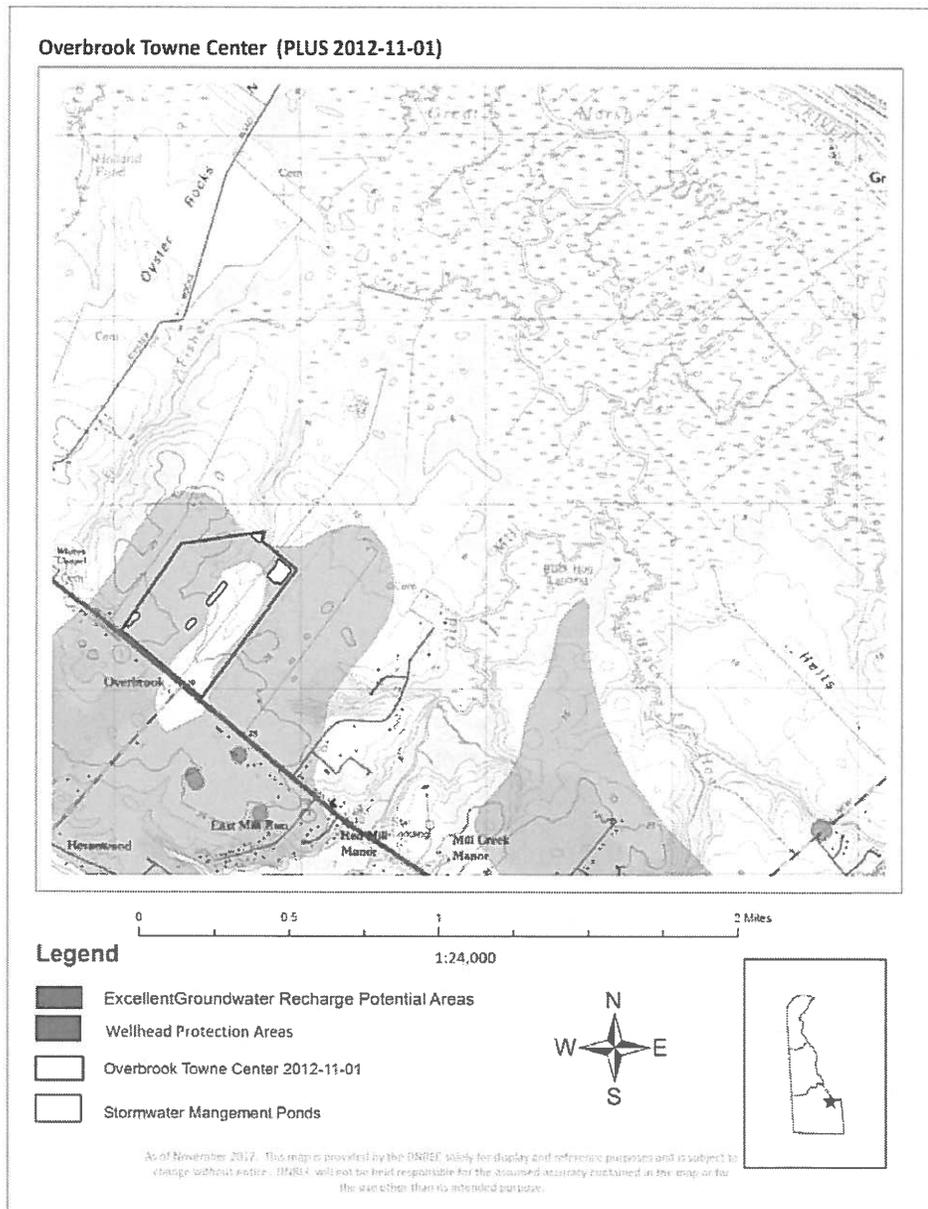


Figure 1: Map showing proximity of project to the Great Marsh

Sediment and Stormwater Program

- 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 project 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 Sussex Conservation District. Contact Jessica Watson at the Sussex Conservation District at (302) 856-2105 for details regarding submittal requirements and fees. (Title 7, Delaware Code, Chapter 40 and Delaware Regulations, Title 7, Administrative Code, 5101)

Delaware State Fire Marshall's Office – Contact Duane Fox 739-4394

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):

- **Fire Protection Water Requirements:**
 - Water distribution system capable of delivering at least 1500 gpm for 2-hour duration, at 20-psi residual pressure is required. Fire hydrants with 800 feet spacing on centers.
 - Where a water distribution system is proposed for Mercantile sites, the infrastructure for fire protection water shall be provided, including the size of water mains for fire hydrants and sprinkler systems.
Final design will be portrayed on the Construction Drawings
- **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
All Fire Marshal requirements will be shown on the Construction Drawings.
- **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 site from Route

- 1(across from Caves Neck Road) and turn-abouts on the site must be constructed so fire department apparatus may negotiate them.
- Fire department access shall be provided in such a manner so that fire apparatus will be able to locate within 100 ft. of the front door.
 - The use of speed bumps or other methods of traffic speed reduction must be in accordance with Department of Transportation requirements.
 - The local Fire Chief, prior to any submission to our Agency, shall approve in writing the use of gates that limit fire department access into and out of the development or property.
- **Gas Piping and System Information:**
 - Provide type of fuel proposed, and show locations of bulk containers on plan.
 - **Required Notes:**
 - Provide a note on the final plans submitted for review to read “ All fire lanes, fire hydrants, and fire department connections shall be marked in accordance with the Delaware State Fire Prevention Regulations”
 - Proposed Use
 - Alpha or Numerical Labels for each building/unit for sites with multiple buildings/units
 - Square footage of each structure (Total of all Floors)
 - National Fire Protection Association (NFPA) Construction Type
 - Maximum Height of Buildings (including number of stories)
 - Note indicating if building is to be sprinklered
 - Name of Water Provider
 - Letter from Water Provider approving the system layout
 - Provide Lock Box Note (as detailed in DSFPR) if Building is to be sprinklered
 - Provide Road Names, even for County Roads

Department of Agriculture – Contact Scott Blaier 698-4529

- The proposed project is adjacent to a property permanently protected through the State’s Agricultural Lands Preservation Program (Cedar Tree Farms District, (Parcel # 2-35-22.00-56.00)). Therefore, the activities conducted on this preserved property are protected by the agricultural use protections outlined in Title 3, Del. C., Chapter 9. These protections effect adjoining developing properties. The 300 foot notification requirement affects **all new deeds** in a subdivision located in whole or part within 300 feet of an Agricultural District. Please take note of these restrictions as follows:

§ 910. Agricultural use protections.

(a) Normal agricultural uses and activities conducted in a lawful manner are preferred and priority uses and activities in Agricultural Preservation Districts. In order to establish and maintain a preference and priority for such

normal agricultural uses and activities and avert and negate complaints arising from normal noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations, land use adjacent to Agricultural Preservation Districts shall be subject to the following restrictions:

(1) For any new subdivision development located in whole or in part within 300 feet of the boundary of an Agricultural Preservation District, the owner of the development shall provide in the deed restrictions and any leases or agreements of sale for any residential lot or dwelling unit the following notice:

This property is located in the vicinity of an established Agricultural Preservation District in which normal agricultural uses and activities have been afforded the highest priority use status. It can be anticipated that such agricultural uses and activities may now or in the future involve noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations. The use and enjoyment of this property is expressly conditioned on acceptance of any annoyance or inconvenience which may result from such normal agricultural uses and activities."

(2) For any new subdivision development located in whole or in part within 50 feet of the boundary of an Agricultural Preservation District, no improvement requiring an occupancy approval shall be constructed within 50 feet of the boundary of the Agricultural Preservation District.

(b) Normal agricultural uses and activities conducted in accordance with good husbandry and best management practices in Agricultural Preservation Districts shall be deemed protected actions and not subject to any claim or complaint of nuisance, including any such claims under any existing or future county or municipal code or ordinance. In the event a formal complaint alleging nuisance related to normal agricultural uses and activities is filed against an owner of lands located in an Agricultural Preservation District, such owner, upon prevailing in any such action, shall be entitled to recover reasonably incurred costs and expenses related to the defense of any such action, including reasonable attorney's fees (68 Del. Laws, c. 118, § 2.).

- In addition, if any wells are to be installed, Section 4.01(A)(2) of the Delaware Regulations Governing the Construction and Use of Wells will apply. This regulation states:

(2) For any parcel, lot, or subdivision created or recorded within fifty (50) feet of, or within the boundaries of, an Agricultural Lands Preservation District (as defined in Title 3, Del. C., Chapter 9); all wells constructed on such parcels shall be located a minimum of fifty (50) feet from any boundary of the Agricultural Lands Preservation District. This requirement does not apply to parcels recorded prior to the implementation date of these Regulations. However, it is recommended that all

wells be placed the maximum distance possible from lands which are or have been used for the production of crops which have been subjected to the application of land applied federally regulated chemicals.

- The Department also reminds the developer to comply with the County's buffer requirements. The adjacent farm contains a number of active poultry houses, which often generate dust and odors. A buffer is essential for separating inherently disparate land uses (agriculture and commercial) and mitigating conflicts that may arise.

Recommendations/Additional Information

This section includes a list of site specific suggestions that are intended to enhance the project. These suggestions have been generated by the State Agencies based on their expertise and subject area knowledge. **These suggestions do not represent State code requirements.** They are offered here in order to provide proactive ideas to help the applicant enhance the site design, and it is hoped (**but in no way required**) that the applicant will open a dialogue with the relevant agencies to discuss how these suggestions can benefit the project.

Department of Transportation – Contact Bill Brockenbrough 760-2109

- DelDOT's requirement of a grade separation notwithstanding, the proposed internal intersections between the drive aisles leading in from and out to Route 1 and the north-south drive aisles running in front of the pad sites are too close to Route 1. The plan changes associated with creating the grade separation would likely cause these intersections to be relocated anyway but, if not, the developer should expect a requirement that they be shifted farther into the site. Drivers entering from Route 1 should be able to turn onto the north-south drive aisles without affecting drivers behind them who are still decelerating. Drivers on the north-south drive aisles should be able to cross or turn onto the east-west drive aisles safely.
- The owner/developer may be required to enter into a Construction Agreement with DelDOT concerning the construction of the entrance improvements. This will be determined when the site plan is submitted for "Letter of No Objection" review.
- On June 27, 2012, a letter was sent out explaining the changes in the way checks should be submitted to DelDOT. A copy of the letter is available at:

<http://www.deldot.gov/information/business/subdivisions/PaymentProcedure.pdf>
- DelDOT recommends that the developer have their site engineer contact our Subdivision Manager for this part of Sussex County, Mr. John Fiori, for a pre-submittal meeting prior to submitting a site plan for review and approval. A checklist of requirements for pre-submittal meetings and a Meeting Request Form are available on DelDOT's website at:

<http://www.deldot.gov/information/business/>.

As necessary, Mr. Fiori can be reached at (302) 760-2260.

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

Additional information on TMDLs and water quality

- A Pollution Control Strategy (PCS) is the regulatory directive requiring the implementation of various best management practices (BMPs) that help reduce transport of nutrient and bacterial pollutant runoff from all waters draining into a “greater” common watershed, with the ultimate objective of achieving the obligatory TMDL reduction requirements for that watershed. However, the PCS for the Broadkill watershed has not been formally completed to date. In the absence of a current PCS, the applicant is strongly urged to reduce nutrient and bacterial pollutants through voluntary commitment to the implementation of the following recommended BMPs:
 - Based on a review of existing buffer research by Castelle et al. (Castelle, A. J., A. W. Johnson and C. Conolly. 1994. *Wetland and Stream Buffer Requirements – A Review*. J. Environ. Qual. 23: 878-882.), an adequately sized buffer that effectively protects wetlands and streams, in most circumstances, is about 100 feet in width. In recognition of this research and the need to protect water quality, DNREC recommends that the applicant maintain/establish a minimum 100-foot upland buffer (planted in native vegetation) from all water bodies (including ditches) and wetlands.
 - The applicant should calculate post-construction surface imperviousness with all forms of created (or constructed) surface imperviousness (e.g., rooftops, driveways, parking lots, sidewalks, open-water storm water management structures, and roads) included in the calculation.
 - Since this is a large project that will likely generate a great amount of impervious cover, we strongly advise the use of pervious paving materials (instead of conventional asphalt and concrete) as a BMP to reduce the impacts associated with surface imperviousness wherever practicable.
Pervious paving will be specified in appropriate locations in areas of light duty loads
 - DNREC recommends the use of rain gardens, and green-technology storm water management structures (in lieu of open-water management structures) as BMPs to mitigate or reduce nutrient and bacterial pollutant impacts via runoff from impervious surfaces.
 - The applicant should voluntarily assess nutrient and bacterial pollutant loading at the preliminary project design phase. To this end, the Watershed Assessment Section has developed a methodology known as the “Nutrient Load Assessment protocol.” The protocol is a tool used to assess changes in nutrient (e.g., nitrogen and phosphorus)

and bacterial loading that result from the conversion of individual or combined land parcels to a different land use(s), while providing applicants with quantitative information about their project's impact(s) on baseline water quality. DNREC encourages the applicant/developer use this protocol to help them design and implement the most effective BMPs. Please contact Lyle Jones at 302-739-9939 for more information on the protocol.

Habitat and Forest Preservation

- A review of our database indicates that there are currently no records of State-rare or federally listed plants, animals or natural communities at this project site. The removal of 4.5 acres of forest could impact birds and other wildlife species that utilize forested areas for nesting. They are most vulnerable during the breeding/nesting season which for many species is April 1st to July 31st. We recommend clearing not occur during this time.

Delaware State Fire Marshall's Office – Contact Duane Fox 739-4394

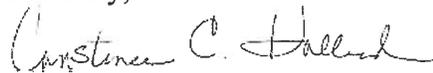
- Preliminary meetings with fire protection specialists are encouraged prior to formal submittal. Please call for appointment. Applications and brochures can be downloaded from our website:

www.statefiremarshal.delaware.gov

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: Sussex County