



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF STATE PLANNING COORDINATION

May 19, 2015

Mr. Mark Schaeffer  
P.O. Box 717  
Lewes, DE 19958

RE: PLUS review 2015-04-01; Moore's Lake Shopping Center

Dear Mr. Schaeffer,

Thank you for meeting with State agency planners on April 22, 2015 to discuss the proposed plans for the Moore's Lake Shopping Center. According to the information received, you are seeking a review of a rezoning of approximately 7 acres from RS-S1 to BG in Kent County. This PLUS review is for both the rezoning application and the comprehensive plan amendment that will be required should Levy Court choose to rezone this property. The rezoning of this property is at the discretion of Kent County Levy Court. Should the Levy Court ultimately choose to grant this rezoning request, the comprehensive plan amendment must be adopted prior to or concurrently with the zoning change.

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 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 project is located in Investment Level 1 according to the *Strategies for State Policies and Spending*. This site is also located in the Kent County Growth Zone. Investment Level 1 reflects areas that are already developed in an urban or suburban fashion, where infrastructure is existing or readily available, and where future redevelopment or infill projects are expected and encouraged by State policy.

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

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

- Per Section 2.2.2.1 of the Development Coordination Manual, DelDOT anticipates recommending that the subject rezoning be considered by Kent County without a Traffic Impact Studies (TIS) but also anticipates requiring a TIS when a land development plan is presented for the expansion of the shopping center.

Because of the time needed to prepare and review a TIS, we recommend that the applicant have their engineer contact Mr. Troy Brestel of this office to obtain a scope of work for a TIS as soon as a land development plan for the shopping center expansion has been sufficiently developed to determine the floor area of the expanded center. Mr. Brestel may be reached at (302) 760-2167.

Further in this regard, we note that the intersection of Delaware Route 10 and South State Street is already congested during peak hours and that extensive off-site improvements by the developer may be necessary to meet DelDOT and County requirements for plan approval.

- When a plan is proposed, the site access must be designed in accordance with DelDOT's Development Coordination Manual (formerly the Standards and Regulations for Subdivision Streets and State Highway Access), which is available at <http://www.deldot.gov/information/business/subdivisions/changes/index.shtml>.
- As necessary, in accordance with Section 3.2.5 and Figure 3.2.5-a of the Development Coordination Manual, DelDOT will require dedication of right-of-way along the site's frontage on both Route 10 and South State Street. By this regulation, this dedication is to provide a minimum of 30 feet of right-of-way from the outermost edge of the eastbound through lanes on Route 10 and 40 feet of right-of-way from the road centerline on South State Street. 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 Development Coordination Manual, DelDOT will require the establishment of a 15-foot wide permanent easement across the property frontage on both Route 10 and South State Street. 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 to the State of Delaware, as per this plat.”**

**We will comply with DelDot requirements**

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

**TMDL**

- The project is located in the greater Delaware River and Bay drainage area, specifically within the St. Jones 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 waterbody” can assimilate and still meet State water quality standards (e.g., dissolved oxygen, nutrients, and bacteria; State of Delaware Surface Water Quality Standards, as amended July 11, 2004) to the extent necessary to support use goals such as, swimming, fishing, drinking water and shell fish harvesting. The TMDL for the St. Jones River watershed calls for a 40 percent reduction in nitrogen and phosphorus from baseline conditions. The TMDL also calls for a 90 percent reduction in bacteria from baseline conditions.

### **Water Supply**

- The project information sheets state water will be provided to the project by Tidewater Utilities via a central water system. Our records indicate that the project is located within the public water service area granted to Tidewater Utilities under Certificate of Public Convenience and Necessity PSC-1190.

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.

### **Hazardous Waste Sites**

- If it is determined by the Department that there was a release of a hazardous substance on the property in question and the Department requires remediation pursuant to the Hazardous Substance Cleanup Act, the provisions of 7 Del.C., Chapter 91, Delaware Hazardous Substance Cleanup Act and the Delaware Regulations Governing Hazardous Substance Cleanup shall be followed.

### **Tank Management Section**

- 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.

There are no confirmed leaking underground storage tank (LUST) projects located within a quarter mile from the proposed project area

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 by calling 800-662-8802; and

The DNREC Tank Management Branch by calling 302-395-2500

**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	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	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	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	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	Ensure that emissions of nitrogen oxides (NO <sub>x</sub> ), non-methane hydrocarbons (NMHC), particulate matter (PM), sulfur dioxide (SO <sub>2</sub> ), carbon monoxide (CO), and carbon dioxide (CO <sub>2</sub> ) 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	Restrict idling time for trucks and buses having a gross vehicle weight of over 8,500 pounds to no more than three minutes.
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For a complete listing of all Delaware applicable regulations, please look at our website: <http://www.awm.delaware.gov/AQM/Pages/AirRegulations.aspx>.

**We will comply with DENREC requirements**

State Historic Preservation Office – Contact Terrence Burns 736-7404

- There are no known archaeological sites, or National Register-listed property on this parcel. However, if there will be any development project in the future, the developer should be aware of the Unmarked Human Burials and Human Skeletal Remains Law, which is in Chapter 54 of Title 7, of the Delaware Code (7 Del. C. Ch. 54).
- 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 (7 Del. C. Ch. 54), and such remains or discoveries can result in substantial delays while the procedures required under this law are carried out. If there is a discovery of any unmarked graves, burials or a cemetery, it is very costly to have them archaeologically excavated and the burials moved. The Division of Historical & Cultural Affairs recommends that owners and/or developers have a qualified archaeological consultant investigate their project area, to the full extent, to see if there is any unmarked cemetery, graves, or burial sites. In the event of such a discovery, the Division of Historical & Cultural Affairs also recommends that the plans be re-drawn to leave the full extent of the cemeteries or any burials on its own parcel or in the open space area of the development, with the responsibility for its maintenance lying with the landowner association or development. If you would like to know more information pertaining to unmarked human remains or cemeteries, please check the following websites for additional information: [www.history.delaware.gov/preservation/umhr.shtml](http://www.history.delaware.gov/preservation/umhr.shtml) and [www.history.delaware.gov/preservation/cemeteries.shtml](http://www.history.delaware.gov/preservation/cemeteries.shtml).

Therefore, prior to any demolition or ground-disturbing activities, the developer may want to hire an archaeological consultant to examine the parcel for any potential archaeological site or archaeological resources, such as cemetery, burial site, 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. 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 [www.achp.gov](http://www.achp.gov).

**We will comply with SHPO requirements**

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

- This Agency has no objection and submits no comments for projects that involve only zoning or rezoning issues.

At the time of a formal submittal, the applicant shall provide; completed application, fee, and three sets of plans depicting compliance with the Delaware State Fire Prevention Regulation (DSFPR):

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](http://www.statefiremarshal.delaware.gov), technical services link, plan review, applications or brochures.

**We will comply with Fire Marshal requirements**

### **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

- The right-of-way for Coursen Road separates some of the subject land from the other lands of the applicant. Because Coursen Road is dedicated to public use but privately maintained, vacating it will require a Superior Court action. DeIDOT cannot do it.

**Noted.** We do not believe Coursen Road is dedicated to public use. Our engineer is performing survey work and title search regarding this issue at the time of this response.

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

**Soils Assessment.**

- Based on soils survey mapping update, the soils mapped were Greenwich-Urban land complex (GuB) and Downer (DnB). Both Greenwich-Urban land complex and Downer are well-drained and – generally- have few limitations for development (Figure 1).

**Noted**



Figure 1: NRCS soil survey mapping update in the immediate vicinity of the proposed project

0 50 100 200 Feet

### **Additional information on TMDLs and water quality**

- A Pollution Control Strategy (PCS) to achieve the required TMDL nutrient and bacterial load reduction requirements has been established for the St. Jones watershed. The web link for the St. Jones PCS strategies is as follows:  
<http://www.dnrec.delaware.gov/swc/wa/Pages/WatershedManagementPlans.aspx>
- DNREC strongly encourages the applicant reduce nutrient and bacterial pollutants through voluntary implementation of the following recommended BMPs:
  - Consider additional native woody tree/shrub/herbaceous plantings, wherever possible.
  - Calculate post-construction surface imperviousness with all forms of created surface imperviousness (e.g., rooftops, driveways, parking lots, sidewalks, open-water storm water management structures, roads, and wastewater disposal system) included in the calculation for surface imperviousness. Omitting any of the above-stated forms of surface imperviousness will result in an underestimate of the actual post-development surface imperviousness and associated environmental impacts; therefore, omission any of the above-stated forms of surface imperviousness is not considered an acceptable BMP.
  - Use pervious paving materials as a substitute for conventionally paved materials (e.g., concrete or asphalt) is a strongly recommended BMP to help reduce the volume of pollutant runoff. Since this a large commercial project that will significantly increase both surface imperviousness and pollutant runoff - we strongly recommend, wherever practicable, the use of pervious pavers for all areas designated for parking.
  - Use green-technology storm water management structures (in lieu of open-water management structures) and raingardens as BMPs to reduce nutrient pollutant impacts. Please contact Lara Allison for further information on raingardens at 739-9922.
  - 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 loading (e.g., nitrogen and phosphorus) 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. We strongly encourage the applicant/developer use this protocol to help them design and implement the most effective BMPs. Please contact Jen Walls or John Martin at 302-739-9939 for more information on the protocol.

Noted

#### **Additional information on hazardous waste sites**

- DNREC strongly recommends that the land owner perform environmental due diligence of the property by performing a Phase I Environmental Site Assessment (including a title search to identify environmental covenants) and a Phase II or Facility Evaluation in accordance to Section 9105(c) (2) of the Delaware Hazardous Substance Cleanup Act (HSCA) and the HSCA Guidance Section 2, part 2.3 (page 2-1). While this is not a requirement under HSCA, it is good business practice and failure to do so will prevent a person from being able to qualify for a potential affirmative defense under Section 9105(c) (2) of HSCA. Additional remediation may be required if the project property or site is re-zoned by the county.
- Should a release or imminent threat of a release of hazardous substances be discovered during the course of development (e.g., contaminated water or soil), construction activities should be discontinued immediately and DNREC should be notified at the 24-hour emergency number (800-662-8802). SIRS should also be contacted as soon as possible at 302-395-2600 for further instructions.

Noted

#### **Additional information on tank management**

- When contamination is encountered, PVC pipe materials should be replaced with ductile steel and nitrile rubber gaskets in the contaminated areas.
- If any aboveground storage tanks (ASTs) less than 12,500 gallons are installed, they must be registered with the TMS. If any ASTs greater than 12,500 gallons are installed, they are also subject to installation approval by the TMS.
- Air emissions generated from commercial spaces include emissions from the following activities:
  - Area sources such as painting, maintenance equipment and the use of consumer products like roof coatings and roof primers.
  - The generation of electricity needed to support the commercial space, and
  - All transportation activity.

Based on the information provided, the three air emissions components (i.e., area, electric power generation, and mobile sources) for the development were quantified. Table 2 represents the

impact the Moore's Lake Shopping Center project may have on air quality.

Emissions Attributable to Moore's Lake Shopping Center (Tons per Year)	Volatile Organic Compounds (VOC)	Nitrogen Oxides (NO <sub>x</sub> )	Sulfur Dioxide (SO <sub>2</sub> )	Fine Particulate Matter (PM <sub>2.5</sub> )	Carbon Dioxide (CO <sub>2</sub> )
Mobile	0.5	0.7	*	*	*

(\*) Indicates data is not available.

Note that emissions associated with the actual construction of the road, including automobile and truck traffic from working in, or delivering products to the site, as well as site preparation, earth moving activities, road paving and other miscellaneous air emissions, are not reflected in the table above.

DNREC encourages sustainable growth practices that:

- Control sprawl;
- Preserve rural and forested areas;
- Identify conflicting land use priorities;
- Encourage growth on previously developed sites and denser communities while at the same time protect our diminishing land base;
- Coordinate transportation, housing, environment, and climate protection plans with land use plans; and
- Demonstrate that communities can achieve the qualities of privacy, community, and contact with nature without degrading the natural environment or generating unacceptable environmental costs in terms of congestion, use of natural resources, or pollution.

Additional measures may be taken to substantially reduce the air emissions identified above. These measures include:

- **Constructing with only energy efficient products.** Energy Star qualified products are up to 30% more energy efficient. Savings come from building envelope upgrades, high performance windows, controlled air infiltration, upgraded heating and air conditioning systems, tight duct systems and upgraded water-heating equipment. Every percentage of energy efficiency translates into a percent reduction in pollution. The Energy Star Program is excellent way to save on energy costs and reduce air pollution.
- **Offering geothermal and/or photo voltaic energy options.** These systems can significantly reduce emissions from electrical generation, and from the use of oil or gas heating equipment.
- **Providing tie-ins to the nearest bike paths and links to any nearby mass transport system.** These measures can significantly reduce mobile source emissions. For every

vehicle trip that is replaced by the use of a sidewalk, a bike path or mass transit, 7 pounds of VOC and 11.5 pounds of NOx are reduced each year.

- **Using retrofitted diesel engines during construction.** This includes equipment that are on-site as well as equipment used to transport materials to and from site.
- **Using pre-painted/pre-coated flooring, cabinets, fencing, etc.** These measures can significantly reduce the emission of VOCs from typical architectural coating operations.
- **Planting trees in vegetative buffer areas.** Trees reduce energy emissions by cooling during the summer and by providing wind breaks in the winter, thereby reducing air conditioning needs by up to 30 percent and saving 20 to 50 percent on fuel costs.

This is a partial list, and there are additional things that can be done to reduce the impact of the development. The applicant should submit a plan to the DNREC DAQ which address the above listed measures, and that details all of the specific emission mitigation measures that will be incorporated into this project.

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, Office of State Planning Coordination

CC: Kent County