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May 16, 2017

Office of State Planning Coordinator  
122 William Penn Street  
Third Floor  
Dover, DE 19901

Attn: Constance C. Holland, AICP

RE: PLUS Review 2107-03-04, Jomack Rezoning  
DBF #0844A003.H01

Dear Ms. Holland:

We have read and reviewed the comments provided during the PLUS Review of the Project on March 22, 2017, and have received from the Office of State Planning dated April 20, 2017. We offer the following item-by-item narrative for your review:

### **Strategies for State Policies and Spending**

This application is located in a Level 4 area according to the *2015 Strategies for State Policies and Spending*. Investment Level 4 indicates areas where State investments will support agricultural preservation, natural resource protection, and the continuation of the rural nature of these areas. New development activities and suburban development are not supported in Investment Level 4 areas. These areas are comprised of prime agricultural lands and environmentally sensitive wetlands and wildlife habitats, which should be, and in many cases have been preserved.

From a fiscal responsibility perspective, development of this site is likewise inappropriate. The cost of providing services to development in rural areas is an inefficient and wasteful use of the State's fiscal resources. The project as proposed will bring a new commercial business to an area where the State has no plans to invest in infrastructure upgrades or additional services. The intended development will need access to services and infrastructure such as police, and transportation. To provide some examples, the State government funds 100% of road maintenance and drainage improvements for the transportation system, and 100% of the cost of police protection in the unincorporated portion of Kent County where this development is proposed. Over the longer term, the unseen negative ramifications of this development will become even more evident as the cost of maintaining infrastructure and providing services increases.

Because the proposed rezoning is inconsistent with the *Strategies for State Policies and Spending*, the State is opposed to this rezoning.

With that said, the comments in this letter are technical, and are not intended to suggest that the State supports this rezoning and comprehensive plan amendment. This letter does not in any way suggest or imply that you may receive or may be entitled to permits or other approvals necessary to build on this property, construct any development, or any Subdivision thereof on these lands.

**The Developer understands the concerns of the State Strategies for State Policies and Spending. The proposed rezoning falls in line with adjacent properties and similar properties to the south along the RT 13 corridor. Also, the Developer is proposing a use that will not require infrastructure upgrades.**

### Code Requirements/Agency Permitting Requirements

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

- An agreement between DelDOT and Kent County requires that they communicate regarding the need for a Traffic Impact Study (TIS) or the lack thereof, on each rezoning application. This communication is accomplished by the County Planning and Zoning Office sending DelDOT a form, known as a Support Facilities Report Request and DelDOT replying with a letter report known as a Support Facilities Report.

Based on the acreage shown on the PLUS application and proposed zoning, DelDOT finds that the proposed development could meet our volume warrants for requiring a TIS, found in Section 2.2.2.1 of the Development Coordination Manual (available at [http://www.deldot.gov/information/business/subdivisions/changes/pdfs/Development\\_Coordination\\_Manual-Chapter\\_2.pdf?041116](http://www.deldot.gov/information/business/subdivisions/changes/pdfs/Development_Coordination_Manual-Chapter_2.pdf?041116)). A site plan would need to be submitted to make that determination.

- Because the subject property adjoins US Route 13 south of Delaware Route 10, it is subject to DelDOT's Corridor Capacity Preservation Program (CCPP). See Section 1.2 of the Development Coordination Manual and Section 145, Title 17 of the Delaware Code. The goal of the Program is to manage and preserve the traffic capacity and safety of the existing highway by managing access along it.

According to the Office of State Planning Coordination's Strategies for State Policies and Spending document, the property is located within a Level 4 Investment Area. In this area, State policies will encourage the preservation of a rural lifestyle.

In accordance with the CCPP policy (available at [http://www.deldot.gov/information/puns\\_forms/manuals/cpr\\_cap/index.shtml](http://www.deldot.gov/information/puns_forms/manuals/cpr_cap/index.shtml))

For proposed developments and redevelopment along US Route 13, if a property has reasonable alternative access to a secondary road, no direct access to the corridor will be

permitted. Therefore, site access to the proposed expansion area will consist of an interconnection to the existing entrance on Hopkins Cemetery Road (Kent Road 289). Access improvements and offsite roadway improvements may be warranted depending upon the amount of vehicle trips generated by the proposed site expansion. DelDOT anticipates requiring improvement of Hopkins Cemetery Road to provide 11-foot lanes and 5-foot shoulders from US Route 13 to Raughley Hill Road (Kent Road 405).

- The site access on Hopkins Cemetery Road must be improved as necessary to support the development of the additional lands. Such improvements must be designed and built 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/subdivision\\_changes/index.shtml](http://www.deldot.gov/information/business/subdivision_changes/index.shtml). As necessary, DelDOT will require a plan for those improvements when a plan is proposed for the development of the subject lands.
- Pursuant to Section P.3 of the Manual, a Pre-Submittal Meeting is always encouraged and may be required before plans are submitted for review. The form needed to request the meeting and guidance on what will be covered there and how to prepare for it is located at [http://www.deldot.gov/information/business/subdivisions/Meeting\\_Request\\_Form.pdf](http://www.deldot.gov/information/business/subdivisions/Meeting_Request_Form.pdf).
- As necessary, in accordance with Section 3.2.5 and Figure 3.2.5-a of the Manual, DelDOT will require dedication of rights-of-way along the site's frontage on US Route 13 and Hopkins Cemetery Road. By this regulation, this dedication is to provide a minimum of 30 feet of right-of-way from the outermost edge of the through lanes on US Route 13 and a minimum of 30 feet of right-of-way from the physical centerline on Hopkins Cemetery Road. The following right-of-way dedication note is required, "**An X-foot wide right-of-way is hereby dedicated to the State of Delaware, as per this plat.**"
- In accordance with Section 3.2.5.1.2 of the Manual, DelDOT will require the establishment of a 15-foot wide permanent easement across the property frontage on both US Route 13 and Hopkins Cemetery Road. 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.**"
- In accordance with Section 3.8 of the Development Coordination Manual, storm water facilities, excluding filter strips and bioswales, shall be located a minimum of 20 feet from the ultimate State right-of-way along both US Route 13 and Hopkins Cemetery Road.

**We thank DelDOT for the required information and will meet with them prior to**

**submitting preliminary site plans to get a better scope of off-site improvements to be incorporate into the design.**

**Department of Natural Resources and Environmental Control- Contact Michael Tholstrup 735-3352**

**Executive Summary.**

Development of this parcel will result in increased impervious surface and new sources of greenhouse gas emissions. Opportunities exist to preserve natural resources while reducing the environmental impact on-site. As discussed at the PLUS meeting, the Department recommends reduced impervious surface cover and protection of the excellent groundwater recharge area located on the parcel. Due to this source water concern, DNREC has outlined a number of best management practices to assist in protecting the resources and the overall health of the community.

The State of Delaware is threatened by climate change and has a goal of reducing greenhouse gas emissions by 30 percent by 2030. Appropriate development and re-development that provides access to public transportation, opportunities to walk and bike to shopping and recreation, and that employs energy efficient building standards are among key strategies to meet these goals. DNREC encourages the use of high performance building standards and consideration of alternative energy sources to promote clean sustainable energy and reduce greenhouse gas emissions. This could mean siting the buildings to take advantage of solar and geothermal systems, and/or including infrastructure for electric vehicle charging stations (funding assistance may be found at [www.de.gov/cleantransportation](http://www.de.gov/cleantransportation)). DNREC further recommends an abundant use of native vegetation and shade trees throughout the landscape, as well as other green infrastructure, where practicable, to absorb carbon dioxide, protect water quality and provide relief to residents on hot days.

The following pages provide information about applicable regulations and detailed recommendations associated with this project, from various DNREC Divisions. DNREC would like to be a partner in creating appropriate development that protects and highlights the environment as a natural amenity of the landscape. The Department has resources and expertise that are available to help make this a reality, often at no expense to the landowner.

**Water Quality and TMDLs.**

- The project is located in the greater Delaware River and Bay drainage area, specifically within the Murderkill River watershed. In this watershed, the State of Delaware has developed specific Total Maximum Daily Load (TMDL) pollutant reduction targets which call for a 30 percent reduction in nitrogen and a 50 percent reduction in phosphorus from baseline conditions. The TMDL also calls for a 32 percent reduction in bacteria from baseline conditions. 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.

**We thank you for providing us with the required reductions for this site. A nutrient management plan will be prepared for this project should it meet the threshold for requiring the plan during the construction document preparation.**

### **Water Supply.**

- Should an on-site Industrial, Public well be needed, a minimum isolation distance of 150 feet is required between the well and any potential source of contamination, such as central sewer lines, septic tank and sewage disposal area, stormwater management pond and at least 150 feet from the outermost boundaries of the project. The Division of Water Resources will consider applications for the construction of on-site wells provided the wells can be constructed and located in compliance with all requirements of the current Regulations Governing the Construction and Use of Wells. A well construction permit must be obtained prior to constructing any well(s).

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

- All well permit applications must be prepared and signed by licensed water well contractors, and only licensed well drillers may construct the wells. Please factor in the necessary time for processing the well permit applications into the construction schedule. Dewatering well permit applications typically take four weeks to process, which allows the necessary time for technical review and advertising. Should you have any questions concerning these comments please contact Rick Rios, at (302) 739-9944.

**We thank you for providing us with the required information regarding on-site industrial wells. The Developer does not anticipate the need for a well based on proposed use of the property. If a well is required we will obtain a permit and comply with all regulations.**

### **Sediment and Erosion Control/Stormwater Management.**

- A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. Contact the reviewing agency to schedule a pre-application meeting to discuss the sediment and erosion control and stormwater management components of the plan. The site topography, soils mapping, pre- and post-

development runoff, and proposed method(s) and location(s) of stormwater management should be brought to the meeting for discussion. The plan review and approval as well as construction inspection will be coordinated through the Kent Conservation District. Contact Jared Adkins, Program Manager, at (302) 741-2600, ext. 3, for details regarding submittal requirements and fees.

**Our office will contact the District and will coordinate with them through design and construction of the project.**

#### **Tank Management.**

- If a release of a Regulated Substance occurs at the proposed project site, compliance of 7 Del.C., Chapter 60; 7 Del.C., Chapter 74 and DE Admin. Code 1351, State of Delaware *Regulations Governing Underground Storage Tank Systems* (the UST Regulations) is required.
- Per the UST Regulations: Part E, § 1. Reporting Requirements: Any indication of a Release of a Regulated Substance that is discovered by any Person, including but not limited to environmental consultants, contractors, utility companies, financial institutions, real estate transfer companies, UST Owners or Operators, or Responsible Parties shall be reported within 24 hours to: The Department's 24-hour Release Hot Line (800) 662-8802; and
- The DNREC Tank Management Section (302) 395-2500.

**The project will comply with all requirements regarding reporting and releases of Regulated Substances.**

#### **State Historic Preservation Office- Contact Terrence Burns 736-7404**

- The State Historic Preservation Office does not support development or the rezoning of any kind in a Level-4 area. There is a known dwelling (K-4703) north of the parcel, east of Dupont Hwy. (Rt.13), on the next parcel. With this in mind, the developer should be aware of the Unmarked Human Burials and Human Skeletal Remains Law, 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 or open space areas, and sometimes near or within the boundary of an historic farm site. Even a marked cemetery can frequently have unmarked graves or burials outside of the known boundary line or limit. Disturbing unmarked graves or burials triggers the Delaware's Unmarked Human Burials and Human Skeletal Remains Law (Del. C. Title 7, Ch. 54), and such remains or discoveries can result in substantial delays while the procedures required under this law are carried out. If there is a discovery of any unmarked graves, burials or a cemetery, it is very costly to have them

archaeologically excavated and the burials moved. The Division of Historical & Cultural Affairs recommends that owners and/or developers have a qualified archaeological consultant investigate their project area, to the full extent, to see if there is any unmarked cemetery, graves, or burial sites. In the event of such a discovery, the Division of Historical & Cultural Affairs also recommends that the plans be re-drawn to leave the full extent of the cemeteries or any burials on its own parcel or in the open space area of the development, with the responsibility for its maintenance lying with the landowner association or development. If you would like to see more information, please review the following websites: [www.history.delaware.gov/preservation/umhr.shtml](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 should hire an archaeological consultant, to examine the parcel for archaeological resources and plan to avoid those sites or areas.

- If there is federal involvement, in the form of licenses, permits, or funds, the federal agency, often through its client, is responsible for complying with Section 106 of the National Historic Preservation Act (36 CFR 800) and must consider their project's effects on any known or potential cultural or historic resources. Owners and developers who may plan to apply for an Army Corps of Engineers permit or for federal funding, such as HUD or USDA grants, should be aware of the National Historic Preservation Act of 1966 (as amended). Regulations promulgated for Section 106 of this Act stipulate that no ground-disturbing or demolition activities should take place before the Corps or other involved federal agency determines the area of potential effect of the project undertaking. These stipulations are in place to allow for comment from the public, the Delaware State Historic Preservation Office, and the Advisory Council for Historic Preservation about the project's effects on historic properties. Furthermore, any preconstruction activities without adherence to these stipulations may jeopardize the issuance of any permit or funds. If you need further information or additional details pertaining to the Section 106 process and the Advisory Council's role, please review the Advisory Council's website at the following: [www.achp.gov](http://www.achp.gov).

**We thank the State Historic Preservation Office for their comments. The developer is aware of Delaware's Unmarked Human Burials and Human Skeletal Remains Law and will comply with requirements should they pertain to this site.**

Ms. Constance C. Holland, AICP  
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On behalf of the Developer, we thank the State for providing us with these comments. Please contact me at (302) 424-1441 if you have any questions or need additional information.

Sincerely,  
DAVIS, BOWEN & FRIEDEL, INC.

A handwritten signature in black ink, appearing to read 'J. Sechler', written in a cursive style.

Jamie Sechler, P.E.  
Associate