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December 05, 2005

Ms. Constance C. Holland, AICP Director
State of Delaware Office of Management and Budget
State Planning Coordination
Suite 7, Thomas Collins Bldg.
540 S. DuPont Highway
Dover, DE 19901

RE: PLUS Review – PLUS 2005-09-11; Maizel Shopping Center

25047-4g

Dear Ms. Holland:

We are in receipt of the PLUS review letter, dated October 17, 2005 for the above referenced project, and offer the following responses. Please note that for ease of reference, the PLUS Committee Comments are shown with italicized text, with our responses following in normal text.

Office of State Planning Coordination – Contact: Ann Marie Townshend 739-3090

The proposed project site is within an Investment Level 1 area according to the "Strategies for State Policies and Spending", and within the Town of Selbyville. State policies generally support development activities in municipal areas that are consistent with the character of the area and the municipal comprehensive plan.

RESPONSE:

No response required.

Division of Historic and Cultural Affairs – Contact: Alice Guerrant 739-5685

Nothing is known on this parcel. There are no adjacent historic properties. There is only a low potential for historic-period archaeological sites, but there is a medium potential for a prehistoric-period archaeological site.

This is an area about which we know very little for the prehistoric period. The DHCA would appreciate the opportunity to look for a site here prior to any ground-disturbing activity.

RESPONSE:

Due to insurance liability concerns, the developer respectfully declines the offer to have this site investigated by the DHCA

Department of Transportation – Contact: Bill Brockenbrough 760-2109

DelDOT's US 113 North-South Study is presently evaluating alternative alignments for a limited access highway between Milford and the Maryland line at Selbyville. The developer should contact the manager for that study, Mr. Monroe Hite, for more information regarding the study and the alignments under consideration. He may be reached at (302) 760-2120.

Because of its location on US Route 113, the subject land is subject to the Corridor Capacity Preservation Program (CCPP), a legislatively mandated program under which DelDOT manages access along certain arterial highways. Because the land is located in a Level 1 area, and because there is no alternative access available, DelDOT will initially permit access on Route 113. When and if alternative access becomes available, however, they may require that the direct access to Route 113 be eliminated. More information on the CCPP is available from the manager of that program, Mr. Charles Altevogt. He may be reached at (302) 760-2124.

US Route 113 is a divided highway and is classified as an arterial road. DelDOT's policy is to require dedication of sufficient land to provide a minimum right-of-way width of 50 feet from the centerline on arterial roads, or on divided highways from the inside edge of the travelway. Therefore they will require right-of-way dedication along the frontage to provide any additional width needed from this project.

DelDOT will require sidewalks along the parcel's road frontage and they recommend that the Town require the extension of those sidewalks into the site to provide a safe path to the building nearest the highway.

DelDOT will require cross-access easements to the commercial land on either side. If the adjoining property owner is agreeable, they will require that the connection to the property to the north be built as part of the initial construction.

DelDOT will require that the median of Route 113 be modified to prevent vehicles exiting the site from using the Hoosier Street crossover.

The developer's site engineer should contact DelDOT's Subdivision Manager for Sussex County, Mr. John Fiori, regarding specific requirements for access. Mr. Fiori may be reached at (302) 760-2260.

RESPONSE:

Mr. Hite and Mr. Altevogt will be contacted regarding the alignments and CCPP respectively.

The plans for this project will reflect the following:

1. Fifty (50) feet of right-of way from the inside edge of the travelway for this divided highway.
2. Sidewalk along the site's road frontage with US Route 113.
3. A cross-access easement to the commercial land on either side of the site.
4. Modifications to the median of Route 133 to prevent vehicles exiting the site from using the Hoosier Street crossover.

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

Wetlands

According to Statewide Wetland Mapping Project (SWMP) mapping, palustrine forested wetlands were mapped over most of subject parcel. A wetlands field delineation is highly recommended; this delineation should be verified by the U.S. Army Corps of Engineers through the Jurisdictional Determination process.

Impacts to wetlands should be avoided and vegetated buffers of no less than 100 feet should be employed from all wetlands and water bodies.

Impacts to Palustrine wetlands are regulated by the Army Corps of Engineers through Section 404 of the Clean Water Act. In addition, individual 404 permits and certain Nationwide Permits from the Army Corps of Engineers also require 401 Water Quality Certification from the DNREC Wetland and Subaqueous Land Section and Coastal Zone Federal Consistency Certification from the DNREC Division of Soil and Water Conservation, Delaware Coastal Programs Section. Each of these certifications represents a separate permitting process.

To find out more about permitting requirements, the applicant is encouraged to attend a Joint Permit Process Meeting. These meetings are held monthly and are attended by federal and state resource agencies responsible for wetland permitting. Contact Denise Rawding at (302) 739-4691 to schedule a meeting.

RESPONSE:

The site was investigated for the presence of wetlands by James C. McCulley IV, Environmental Consultants, Inc. in October 2005. No federally regulated or non-federally regulated wetlands were encountered. Field investigations and data collections conducted during this investigation concluded that no dominant hydrophytic vegetation, hydric soils nor wetland hydrology was present on the subject property. Also, no Waters of the U.S. were present within the subject property. The existing Tax Ditches were choked with vegetation and no evidence of flow was present.

This report will be submitted to the U.S. Army Corps of Engineers for a Jurisdictional Determination.

TMDLs

Total Maximum Daily Loads (TMDLs) for nitrogen and phosphorus have been promulgated through regulation for the Buntings Branch by the Maryland Department of the Environment. 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 water quality standards to the extent necessary to support use goals such as, swimming, fishing, drinking water and shell fish harvesting. Although TMDLs are required by federal law, states are charged with developing and implementing standards to support these desired use goals. Based on Maryland standards, nitrogen and phosphorus must be reduced by 31 and 19 percent, respectively. Contact the Maryland Department of the Environment for the acceptable nutrient reduction protocol. They can be reached at 1-800-633-6101.

RESPONSE:

The Maryland Department of the Environment will be contacted for the acceptable nutrient reduction protocol.

Impervious Cover

Based on the information submitted in the application, development of this parcel will generate a high level of surface imperviousness (65% increase) over its undeveloped condition – ultimately leading to a greater concentration and volume of contaminant-laden runoff draining to sensitive wetlands and/or water bodies of this watershed. Research has consistently shown that once a watershed exceeds a threshold of 10 percent imperviousness, water and habitat quality irreversibly decline. Therefore, the applicant is strongly encouraged to pursue both natural and constructed best management Practices (BMPs) to reduce such impacts. Reducing the amount of impervious surfaces by planting more trees and/or the use of pervious paving surfaces ("pavers") in lieu of asphalt or concrete, are examples of ways to reduce such impacts.

BMPs will be implemented as deemed practicable. The parking spaces within the 25' Tax Ditch right-of way will be constructed from gravel to reduce the overall impervious coverage and to not impact accesabilty to the right-of way. Furthermore, the use of pavers will be investigated in low traffic areas at the rear of the proposed buildings.

Water Resource Protection Areas

The DNREC Water Supply Section has determined that it falls partially within a wellhead protection area for Selbyville Water. A small slice of the parcel is covered by the wellhead protection area (see following map and attached map). Wellhead protection areas are surface and subsurface areas surrounding a public water supply well where the quantity and quality of groundwater moving toward such wells may be adversely affected by land use activities. This area is small enough that is should not be affected by the proposed development.

The DNREC Water Supply Section recommends that the portion of the new development within the wellhead protection area not exceed 50% impervious cover. Further, some allowance for augmenting ground-water recharge should be considered if the impervious cover exceeds 20% but is less than 50% of that portion of the parcel within this area. 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.

RESPONSE:

We believe that the attached map clearly indicates that the subject site does not fall within the wellhead protection area.

Map of proposed development as it impacts the wellhead protection area. The dark red area shows the wellhead protection area.



Water Supply

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

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

Potential Contamination Sources do exist in the area, and any well permit applications will undergo a detailed review that may increase turnaround time and may require site specific conditions/recommendations. In this case there are: (2) Underground Storage Tanks (UST); a Shell Station and a Hickman & Willey site within 1000 feet of the

proposed project.

RESPONSE:

Soil investigations at the site do not indicate that dewatering wells will be required. However, should dewatering be required, the appropriate well permit applications will be filed.

Sediment and Erosion Control/Stormwater Management.

Standard Comments:

- 1. A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. The plan review and approval as well as construction inspection will be coordinated through Sussex Conservation District. Contact Jessica Watson, Program Manager, at (302) 856-7219 for details regarding submittal requirements and fees.*
- 2. It is strongly recommended that you contact Sussex Conservation District 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.*
- 3. A Notice of Intent (NOI) for Stormwater Discharges Associated with Construction Activity must be submitted to DNREC Division of Soil and Water Conservation along with the \$195 NOI fee prior to plan approval.*
- 4. Applying practices to mimic the pre-development hydrology on the site, promote recharge, maximize the use of existing natural features on the site, and limit the reliance on structural stormwater components, such as maintaining open spaces, should be considered in the overall design of the project as a stormwater management technique.*
- 5. Each stormwater management facility should have an adequate outlet for release of stormwater. Any drainage conveyed onto this site from neighboring properties must be adequately conveyed through the site to the discharge point without interruption.*
- 6. Clearly address how Stormwater Quality and Quantity Treatment will be provided. If this project is eligible for a Quantity Waiver, please make the request in the stormwater narrative citing the specific regulation. As of April 11, 2005, stormwater best management practices must also consider, water quality as well as quantity in impaired water bodies. This action will help achieved the required TMDL reductions for the Inland Bays Watershed.*
- 7. Please indicate on the sediment and stormwater management plan who shall be responsible for maintenance of the stormwater management facilities both during construction and after. During the design of the sediment control and stormwater management plan, considerations should be made for maintenance (i.e. access, easements, etc.) of any structures or facilities.*
- 8. If a stormwater management pond is going to be utilized as a sediment trap/basin during construction it must be designed to accommodate 3600 cubic feet of storage per acre of contributing drainage area until project stabilization is complete.*
- 9. All ponds are required to be constructed per Pond Code 378.*
- 10. Please note that if the stormwater facilities will impact wetlands, a permit must be*

provided to the District prior to receiving approval. Please address.

Site-Specific Comments:

- 1. A Certified Construction Reviewer (CCR) is required for this project.*
- 2. Under the DNREC Health and Safety Memo of 2000, all wet ponds are required to have an open space depth of 3 feet or more that comprises 50-75 percent of the area of the pond.*
- 3. Consideration should be made for any adjacent properties during the design of this project, including drainage and erosion/sediment control.*
- 4. Please comply with all new regulations and policies including Stormwater Regulations, Erosion and Sediment Control Handbook, and NRCS Rainfall events for the 2, 10, and 100-year storm events.*
- 5. If this project is located within a tax ditch watershed, the District will require an approval letter from DNREC Drainage Section. Please contact Brooks Cahall for technical assistance at 302-856-5488.*
- 6. If the stormwater facility will discharge to a ditch, please analyze the ditch with tailwater conditions of ½ full during the 2 year storm event, and full during the 10 year storm event.*

RESPONSE:

All plans, specifications, and construction activities will comply with the Stormwater Regulations, Erosion and Sediment Control Handbook. Additionally, because this project is located within a Tax Ditch watershed, an approval letter will be obtained from the DNREC Drainage Section.

The stormwater facility will discharge to a ditch. Consequently, the ditch will be analyzed with tailwater conditions of ½ full during the 2-year storm event, and full during the 10-year storm event.

Rare Species

*DNREC has not surveyed this parcel; therefore, it is unknown if there are state-rare or federally listed plants, animals or natural communities at this project site. They do have records of plainbelly watersnake (*Nerodia erythrogaster*) in the ditch that runs from an adjacent field into this property. Therefore, it is likely that this state-rare species also occurs in the project area. This species inhabits freshwater and brackish portions of tidal marshes, slow moving streams, and ditches, but may be found far from water. They typically mate April to June and young are born in late summer and early fall. DNREC recommends that no filling or other impacts to the ditches occur during April through September. DNREC also recommends that clearing of trees, shrubs, and other vegetation not occur during this vulnerable period.*

RESPONSE:

To the greatest extent practicable, the developer will try to work in these areas during the periods noted. However, it should be noted that these periods do coincide with the typical peak construction period for this region, consequently, it will be difficult to avoid

construction in and around the ditches during this period.

Forest Preservation

DNREC recommends that the applicant minimize the clearing/removal of trees of forest lands on subject parcel. Based on the submitted site application, most or all of the forestlands will be removed to accommodate said development. Since forest lands are important for mitigating the impacts of stormwater runoff on water quality as well as preservation of habitat for a variety of wildlife species, DNREC strongly recommends that the applicant devote more effort to forest land preservation than is currently proposed. Research has consistently shown that removal or fragmentation of existing forest lands – such as proposed in this project - usually results in substantial degradation of water and habitat quality within a given watershed. Since deforestation and its impacts are cumulative at the watershed scale, efforts to protect the remaining forest remnants is essential for maintaining this watershed's environmental integrity. Therefore, the Watershed Assessment Section strongly recommends that the applicant consider revising and/or redesigning this project with these concerns in mind.

Most of the trees are to be cleared for a large stormwater management pond. The applicant should first consider reducing the size of the project and the need for the large number of parking spaces. If this is not feasible, the applicant should evaluate the use of more pervious type materials for the parking lot and reduce the percentage of impervious surface. This reduction in impervious surface would reduce the need for such a large stormwater management pond. Alternative methods of stormwater management should be considered so that trees do not have to be removed for a pond. Trees function in flood control, so removing them can make flooding problems worse. If trees do have to be removed, they should not be cleared April 1st to October 1st to minimize impacts to wildlife species that utilize this habitat for nesting.

RESPONSE:

Reducing the square footage of the buildings would not be economically feasible for this project. Furthermore, the proposed uses for the buildings, coupled with local zoning regulations, dictates the number of parking spaces required, which is actually quite low for this type of usage.

The use of pervious paving will be investigated in low traffic areas at the rear of the proposed buildings.

Nuisance Waterfowl

If a stormwater management pond remains in the site plan it may attract waterfowl like resident Canada geese and mute swans. 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. DNREC recommends leaving a forested buffer of 50 feet around the pond. Waterfowl do not feel safe when they can not see the surrounding area for possible predators. The Division of Fish and Wildlife does not provide goose control services. and if problems arise, land managers or property owners 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.

RESPONSE:

To lessen the effects of nuisance waterfowl, a forested buffer will be provided around the pond, to the maximum extent practicable.

Recreation

DNREC also recommends that sidewalk connections and bike racks be provided to encourage non-motorized forms of travel.

RESPONSE:

Sidewalks will be provided along the Route 113 frontage.

Underground Storage Tanks

There are four inactive LUST site(s) located near the proposed project:

- Cato Gas & Oil Co., Facility # 5-0009 12, Project # S99
- 1229 Hickman & Willey, Inc., Facility # 5-0005 14, Project # S8905239
- Duane Anthony, Facility # 5-000508, Project # S8908266
- SMO Realty, Facility # 5-000141, Project # S0409094

No environmental impact is expected from the above inactive/active LUST site(s). However, should any underground storage tank or petroleum contaminated soil be discovered during construction, the Tank Management Branch must be notified as soon as possible. It is not anticipated that any construction specifications would be need to be changed due to petroleum contamination. However, should any unanticipated contamination be encountered and PVC pipe is being utilized, it will need to be changed to ductile steel with nitrile rubber gaskets in the contaminated areas.

RESPONSE:

No response required.

State Fire Marshal's Office – Contact: Duane Fox 302-856-5298

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):

a. 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.*

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 of more or 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 duPont Boulevard 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 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

RESPONSE:

All plans and specifications will comply with the State Fire Marshal regulations.

Department of Agriculture - Contact: Milton Melendez 698-4500

Neither the Delaware Department of Agriculture nor the Delaware Forest Service have any objections to the Maizel Shopping Center application. The site is located on a designated development area. The Strategies for State Policies and Spending encourage responsible development in areas within an Investment Level 1 Area; the Delaware Department of Agriculture supports growth in these areas, and encourages the applicant to contact our the Department if we can be of service.

Right Tree for the Right Place

The Delaware Department of Agriculture Forest Service encourages the developer to use the "Right Tree for the Right Place" for any design considerations. This concept allows for the proper placement of trees to increase property values in upwards of 25% of appraised value and will reduce heating and cooling costs on average by 20 to 35 dollars per month. In addition, a landscape design that encompasses this approach will avoid future maintenance cost to the property owner and ensure a lasting forest resource.

Native Landscapes

The Delaware Department of Agriculture and the Delaware Forest Service encourages the developer to use native trees and shrubs to buffer the property from the adjacent land-use activities near this site. A properly designed forested buffer can create wildlife habitat corridors and improve air quality to the area by removing six to eight tons of carbon dioxide annually and will clean our rivers and creeks of storm-water run-off pollutants:

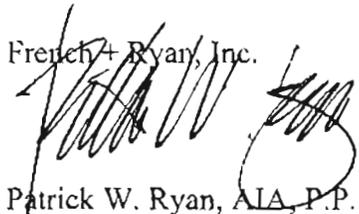
RESPONSE:

The landscaping plan will utilize native trees and shrubs, and will consider the "Right Tree for the Right Place" philosophy.

Should you have any questions, please contact me. Thank you.

Very truly yours,

French + Ryan, Inc.



Patrick W. Ryan, AIA, P.P.

CC: Marvin Maizel

Jack Dolan, P.E.

Alvin W. French, AIA