

October 8, 2012

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Sussex County Planning and Zoning Department
2 The Circle
Georgetown, DE 19947

ATTN: Lawrence Lank, Planning Director

RE: Office of State Planning PLUS review – 2012-07-01
Love Creek RV Resort and Campground
PLUS Response
DBF# 2261A001.C01

Dear Mr. Lank:

We have read and reviewed the comments provided during the PLUS Review of the Project on July 25, 2012 and received from the Office of State Planning dated August 20, 2012. We offer the following item-by-item response narrative for your review:

Strategies for State Policies and Spending

This project is located in Investment Levels 2 and 3 according to the Strategies for State Policies and Spending. Investment Level 2 reflects areas where growth is anticipated by local, county, and State plans in the near term future. 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 will support growth in these areas.

The proposed RV Resort and Campground will be a great amenity for future visitors to the Resort Area and is consistent with the State Strategies and County Growth Plans. The proposed RV Resort and Campground will promote tourism and additional vacation opportunities for visitors to Sussex County.

Code Requirements/Agency Permitting Requirements

State Historic Preservation Office – Contact Terrence Burns 736-7404

- *There is a known archaeological site (S-7910, 7S-G-117) on this parcel, near Welch's Pond, and another known archaeological site (S-7906, 7S-G-113) near the parcel, between the stream called the Head of Fishers Glade and Dorman Farm Lane. There are*

also dwellings in the vicinity such as a late 19th and 20th century dwelling (S-962) along Ward Road, a 20th- century dwelling (S-11557) along Dorman Farm Lane, and others along John J. Williams Hwy (Route 24), Mulberry Knoll Road, and Ritz Lane (S-10114; S-10115; S-10118; S-10120; S-10121).

According to the Pomeroy and Beers Atlas of 1868, it seems that there were a couple of structures of some type on this parcel, associated with J. Welch and another with M. Milby. In addition, the USGS Topographic Map of 1918 also shows that there were structures approximately in the same location, and there is a possibility that there may be archeological remains with those structures as well. With this in mind, the developer should also 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, and often they are either on or near a historic farm site, in rural areas or open space lands. Disturbing unmarked 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. The Division of Historical & Cultural Affairs recommends that owners and/or developers have a qualified archaeological consultant investigate their project area for the presence of such a cemetery. If a cemetery is discovered, it is very costly to have it archaeologically excavated and the burials moved. In the event of such a discovery, the Division of Historical & Cultural Affairs recommends that the plans be re-drawn to leave the cemetery on its own parcel or in the open space area of the development, with the responsibility for its maintenance lying with a homeowners association or development. If you need or would like to read more information in reference to cemeteries, burial grounds or unmarked human remains, 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, ground-disturbing or construction activity, the developer should consider hiring an archaeological consultant to examine the parcel for archaeological sites, such as a cemetery or unmarked human remains. The developer should also include a barrier or sufficient landscaping between the proposed RV Resort-Campground and the dwellings mentioned above, in order to protect them from the various visual or sound effects that may adversely affect them.

We thank the State Historic Preservation Office for the known historic archeological and dwelling site information. 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.

A 50' wide strip of retained forest or planted vegetated buffer will be provided around the perimeter of the property proposed for development. This buffer will screen any dwellings of historic significance from the proposed development.

- *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.*

Preplanning activities for this project involved making a detailed delineation and survey of state and federally regulated wetlands and waters boundaries. The project has been designed to avoid impacts to both state and federally regulated wetlands. In the event that regulated activities are proposed requiring a permit from the Corps of Engineers or other federal agency, the developer will consult with those agencies to determine the area of potential effects. As determined by the Section 106 process, the developer will then retain a qualified archeologist to perform any required site evaluations or studies offsite for possible impact to historic or cultural resources.

Department of Transportation – Contact Bill Brockenbrough 760-2109

- *As first proposed, this development consisted of 400 RV campsites on part of a 330-acre assemblage of parcels. The developer sought a conditional use approval for all 330 acres. In response to an inquiry from Sussex County, in the form of a Service Level Evaluation Request, DelDOT recommended that the County require a Traffic Impact*

Study before acting on the rezoning and conditional use applications for this project. A scoping meeting was held for that study on April 26, 2012.

In their view, the change to 628 RV campsites and the change in the conditional use change in the application, reducing the area addressed from the entire 330 acres to the 140 acres where the development is proposed, do not necessitate a change in the scope of the study. DelDOT understands that an access option that included an access point on Route 24 is no longer under consideration, but again that does not necessitate a revised scope of work.

- *DelDOT also understands that the TIS is in progress. They anticipate having recommendations to the County regarding road improvements that would be needed to support the proposed development, and which should be required as conditions for the conditional use approval, after we receive and review that study.*

The preliminary traffic impact study as discussed during the scoping meeting was prepared by Davis, Bowen & Friedel, Inc. and approved by DelDOT. The final TIS is currently being prepared and is expected to be submitted in early October.

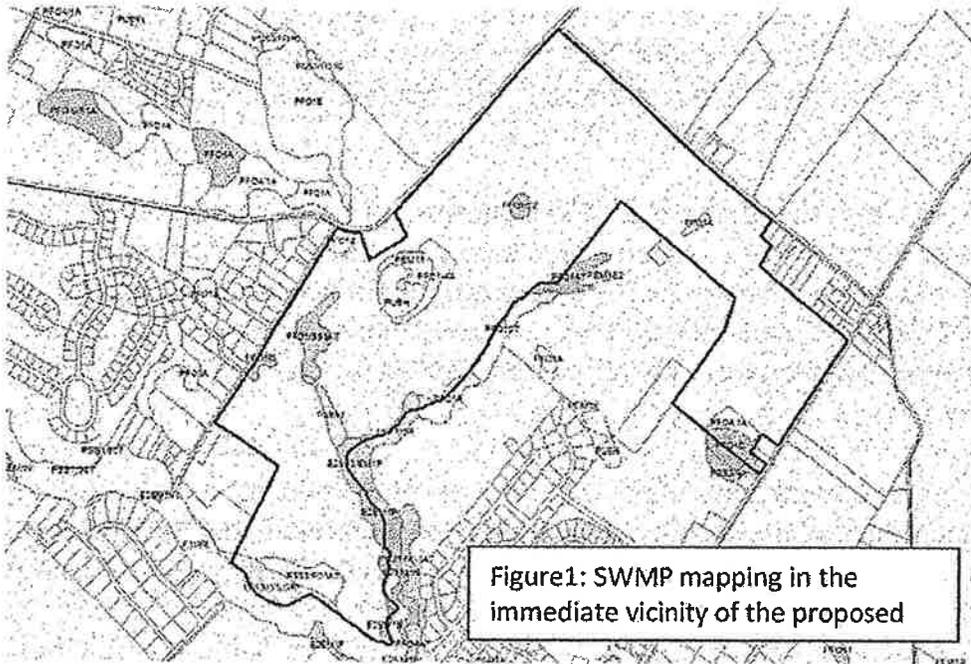
Department of Natural Resources and Environmental Control – Contact Kevin Coyle 739-9071

Wetlands

- *This parcel contains State-regulated wetlands along Love Creek and on both sides of Hetty Fisher Glade. The Glade and a tributary appear as streams on the stream layer and there are non-tidal wetland areas indicated by the Sussex Swamp Map layer along the Glade and its tributary and in several other areas of the site. An aerial photograph is attached which shows these areas. The State-regulated wetlands are depicted in red, the non-tidal wetland areas in green and the streams in blue. Any impacts proposed to the State-regulated wetlands will require a permit from the Wetlands and Subaqueous Lands Section (WLSL). A permit will also be required for work conducted in the Glade; however, a jurisdictional determination can be conducted to determine the extent of the Glade and the tributary.*

Based on the Statewide Wetland Mapping Project (SWMP) maps, potential State regulated tidally-influenced wetlands (PSSIT, PF01R, E2EMIP, E2EMIN, & E2EMI/SS4P) bound much of the western and southern boundaries of the proposed project. Tidal wetlands bisect much of the south-central portion of the project as well (See figure 1). The applicant should keep in mind that compliance with federal wetland requirements does not preclude compliance with State wetland regulatory requirements. As mentioned previously, no activity may take place in State-regulated wetlands without

a permit. Please contact the Wetlands and Subaqueous Lands Section at 302-739-9943 to schedule an on-site visit.



Professional Wetland Scientists from Environmental Resources, Inc. were retained to conduct a detailed delineation of state and federally regulated waters and wetlands. Project plans submitted as part of the conditional use approval process will depict these boundaries and will include a statement from a qualified professional wetland scientist certifying the accuracy of these boundaries. Agency coordination and onsite review of these boundaries will be conducted as part of authorizing any unavoidable impact to regulated water or wetlands. The project goal is to avoid and minimize impacts to wetlands and waters to the maximum extent possible.

TMDLs

- The project is located in the low nutrient reduction zone of the greater Inland Bays watershed. In this watershed, Total Maximum Daily Load (TMDL) pollutant reduction targets have been developed by the State of Delaware (under the auspices of Section 303(d) of the 1972 Federal Clean Water Act) for nutrients (e.g., nitrogen, phosphorus), and bacteria. 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 low nutrient reduction zone of the Inland Bays watershed calls for a 40 percent reduction in nitrogen and a 40 percent reduction in phosphorus from baseline conditions. The TMDL also calls for a 40 (17% in marine waters) percent reduction in bacteria from baseline conditions.

- *A nutrient management plan is required under the Delaware Nutrient Management law (3 Del.Code, 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>.*
- *The adopted Inland Bays Pollution Control Strategy regulation was published in the Delaware Register of Regulations on November 11, 2008 and is now an enforceable regulatory directive. A Pollution Control Strategy (PCS) is an implementation strategy that identifies the actions necessary (regulatory and nonregulatory) to systematically reduce the pollutant loading to a given water body, and meet the TMDL reduction requirements specified for that water body. These regulations can be reviewed at <http://regulations.delaware.gov/docments/November2008c.pdf> and background information, guidance documents, and mapping tools can be retrieved from http://www.dnrec.state.de.us/water2000/Sections/Watershed/ws/ib_pcs.htm.*

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. The site will comply with the Inland Bays Pollution Control Strategy Regulation.

Water Supply

- *The project information sheets state water will be provided to the project by Tidewater Utilities via a public 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 83-W-15.*
- *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 rates 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.

We have obtained a Willing and Able letter from Tidewater Utilities, Inc. for the project. Well permits will be obtained if needed for dewatering and in accordance with all rules and regulations.

Sediment and Stormwater Program

- *A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. Please 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 the 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)*

Our office will contact the District to schedule a pre-design meeting and will coordinate with the District through design and construction of the project.

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.*

The Owner / Developer will perform mediation if a release of a hazardous material is determined by the Department.

Tank Management Branch Please be aware:

- *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.

- *The following confirmed leaking underground storage tank (LUST) project is located within a quarter mile from the proposed project area:*
 - *Morris John W, Facility: 5-000470, Project: S9103046 (Inactive)*
- **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 Section by calling 302-395-2500.*

We thank the branch for providing us with the known LUST. The project will comply will all requirements regarding reporting and releases of Regulated Substances.

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	
Regulations	Requirements
7 DE Admin. Code 1106 – Particulate Emissions from Construction and Materials Handling	<ul style="list-style-type: none"> • <i>Use dust suppressants and measures to prevent transport of dust off-site from material stockpile, material movement and use of unpaved roads.</i> • <i>Use covers on trucks that transport material to and from site to prevent visible emissions.</i>
7 DE Admin Code 1113 – Open Burning	<ul style="list-style-type: none"> • <i>Prohibit open burns statewide during the Ozone Season from May 1-Sept. 30 each year.</i> • <i>Prohibit the burning of land clearing debris.</i> • <i>Prohibit the burning of trash or building materials/debris.</i>

<i>7 DE Admin. Code 1144 – Control of Stationary Generator Emissions</i>	<ul style="list-style-type: none">• <i>Ensure that emissions of nitrogen oxides (NO_x), non-methane hydrocarbons (NMHC), particulate matter (PM) sulfur dioxide (SO₂), carbon monoxide (CO), and carbon dioxide (CO₂) from emergency generators meet the emissions limits established. (See section 3.2).</i>• <i>Maintain recordkeeping and reporting requirements.</i>
<i>7 DE Admin. Code 1145 – Excessive Idling of Heavy Duty Vehicles</i>	<ul style="list-style-type: none">• <i>Restricted idling time for trucks and buses having a gross vehicle weight of over 8,500 pounds to no more than three minutes.</i>

For a complete listing of all Delaware application regulations, please look at our website: <http://www.awm.delaware.gov/AQM/Pages/AirRegulations.aspx>.

The project will comply with all regulatory 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

- *If the County approves the subject rezoning and conditional use application, DelDOT recommends that the applicant have their site engineer contact the Subdivision Manager for this part of Sussex County, Mr. John Fiori, to discuss requirements with regard to site and entrance plans. Mr. Fiori may be reached at(302-760-2260.*

Should the project receive rezoning and conditional use approval our office will contact Mr. John Fiori for a pre-application meeting.

- *The plan presented at the PLUS meeting does not show an access on Cedar Grove Road. DelDOT understands from discussion at the PLUS meeting that the Ward Road access would be limited to only about the first 200 campsites, and that full development of the site would include an access on Cedar Grove Road. This difference suggests that the*

plan could change significantly from what was presented. How the plan changes could significantly affect future comments.

The revised site plan shows an access on Cedar Grove Road as discussed during the TIS Scoping Meeting and PLUS Meeting. The Ward Road access will be limited to 200 campsites. Both entrances will be designed and approved at the same time.

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

Soils Assessment

- *According to the NRCS soil survey update, poorly and very poorly drained wetland associated hydric Hurlock (HvA) and Longmarsh (LO) were mapped on subject parcel. Hydric soils have severe limitations for development; thus we strongly recommend that they be avoided (See figure 2).*

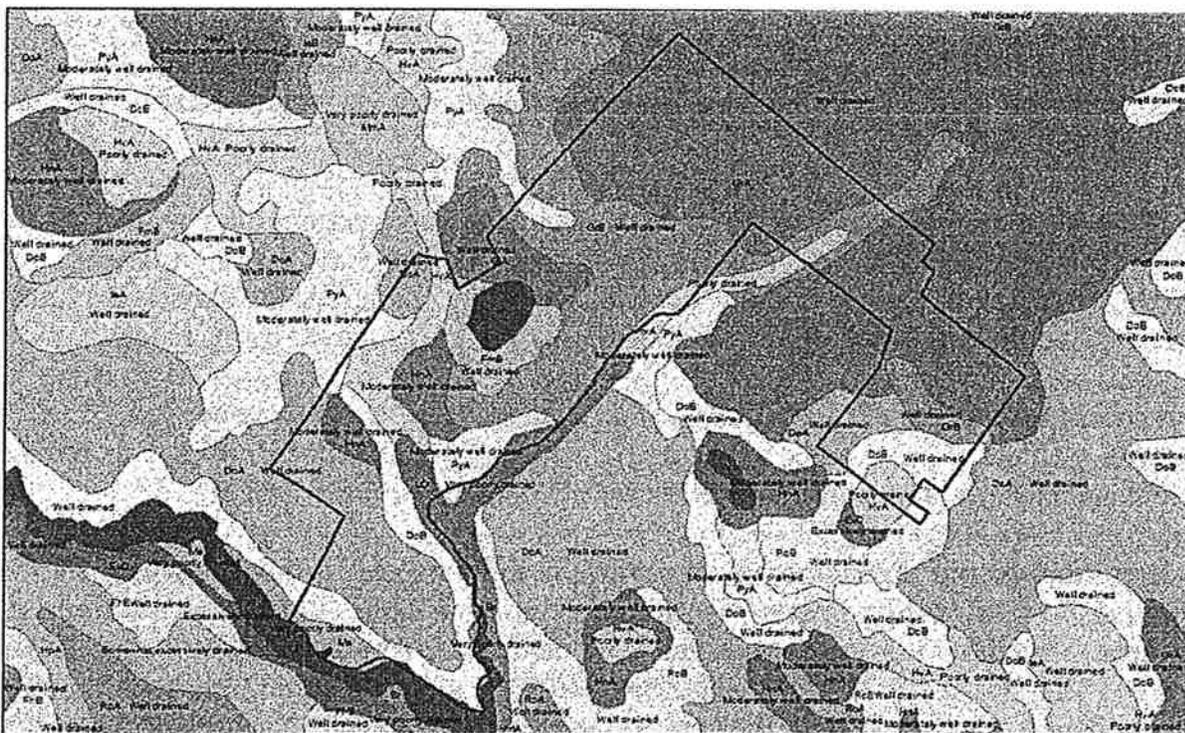


Figure 2: NRCS soil survey mapping update in the immediate vicinity of the proposed project

Our onsite investigation confirmed that the vast majority of the project site contains upland soil types with few development limitations. The detailed onsite wetlands investigation of the property conducted by Environmental Resources, Inc.

determined that the location of hydric soil on this property is essentially confined within the wetland areas. As previously stated a goal of the project is to minimize impacts to wetlands to the maximum extent possible. Therefore, the developer is complying with this request.

Additional information on TMDLs and water quality

- *Maintain as much of the existing forest cover as possible. We further recommend additional native tree and native herbaceous planting wherever possible.*

The road widths have been minimized to the best extent practicable as allowed by County Code requirements for primary roads. Secondary and One-way road widths have been reduced to the maximum extent possible. The RV Lots and Campground spaces will be selectively cleared to maintain the existing forest as best as possible.

- *A United States Army Corps of Engineers (USACE) approved wetlands delineation is strongly recommended. According to the PLUS application, a Corps-approved wetlands delineation was conducted; however, it was not available to DNREC at the time of review.*

Professional Wetland Scientists from Environmental Resources, Inc. were retained to conduct a detailed delineation of state and federally regulated waters and wetlands. Project plans submitted as part of the conditional use / rezoning approval process will depict these boundaries and will include a statement from a qualified professional wetland scientist certifying the accuracy of these boundaries. Agency coordination and onsite review of these boundaries will be conducted as part of authorizing any unavoidable impact to regulated water or wetlands. One of the project goals is to minimize impacts to wetlands and waters to the maximum extent possible.

- *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 (plants in native vegetation) from all water bodies (including ditches) and wetlands.*

A minimum 50' buffer from all wetlands and waters including nontidal wetlands will be voluntarily provided. Additional buffering will be considered in final design where site conditions such as topography and slopes are considered in detail. The goal of the project is to retain the natural features of the site as much as possible in

order to complement the aesthetics of the facility. Buffers will be in excess of County code requirements. Buffer encroachments will be limited to water development activities such as a recreational access point along Love Creek and limited crossings of wetland areas. The selective clearing of RV and Campground lots will provide some additional buffer and forest retention area.

- *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.*

The post construction impervious area will be discussed with Sussex Conservation District to determine the appropriate area for stormwater management purposes.

- *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 pavements may be considered for use but unlikely to be installed due to soil characteristics and proximity to wetlands and Love Creek.

- *The removal of existing forested cover to accommodate conventional open-water storm water management structures or recreational water bodies (i.e., pond or lakes) – is strongly discouraged. We strongly believe, therefore, the applicant should eliminate from consideration the siting of any additional ponds in the proposed project area.*

Open recreation water bodies are an integral part to the active amenities that will be made available to the visitors of Love Creek RV Resort and Campground. We do not anticipate the need for additional water bodies besides those shown on the original PLUS Plan.

- *We recommend 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.*

BMPs and BATs will be evaluated in addition to the open water management structures and implemented where possible and feasible.

- *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. We encourage the applicant/developer to 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.

We are aware of the protocol and will use this tool as necessary to comply with the Inland Bays PCS.

Habitat Preservation

- *Due to the potential populations of ecologically significant species associated within Key Wildlife Habitats located within the project area, we strongly urge the applicant to consider permanent preservation opportunities for the forest and wetland habitat in lieu of the current site plan. The forest and wetland areas are part of the larger Love Creek Natural Area, and as such, can be dedicated as a State Nature Preserve. If the applicant is interested in learning more about various permanent preservation opportunities, and the associated tax benefits, please contact Ron Vickers, Land Preservation Office Manager, at 302-739-9235.*

The Owner / Developer will consider the permanent preservation opportunities for portions of the project properties and, should they decide to move in that direction, the owner/developer will contact Mr. Vickers.

Site Visit Request

- *In order to provide informed, up-to-date comments, our Division scientists request the opportunity to conduct a survey to evaluate habitat, the potential to support additional species of concern, and to determine the current status of those species documented. The survey will be conducted at no expense to the landowner. In the event that authorizations will be needed from DNREC's Costal Management Program and/or Wetlands and Subaqueous Lands Section, they will require complete and up to date info from the Natural Heritage and Endangered Species Program as part of their review.*

Therefore, allowing access to the site will increase the efficiency of the State authorization process. Please contact Edna Stetzar at 302-735-8654 or at Edna.Stetzar@state.de.us if a site visit is possible.

As stated on the PLUS application, a site visit is permitted. The owner/developer will contact Ms. Stetzar to schedule a site visit prior to any application to DNREC Coastal Management Program or Wetlands & Subaqueous Lands Section.

Species of Concern

- *A review of our database indicates that the following state rare, federally listed or Species of Greatest Conservation Need¹ (SGCN) occur at or adjacent to the project site:*

<i>Scientific Name</i>	<i>Common Name</i>	<i>Taxon</i>	<i>State Rank</i>	<i>State Status</i>	<i>SGCN Tier</i>
<i>Ambystoma tigrinum</i>	<i>Eastern tiger salamander</i>	<i>Amphibian</i>	<i>S1</i>	<i>E</i>	<i>Tier 1</i>
<i>Hyla chrysoscelis</i>	<i>Cope's gray treefrog</i>	<i>Amphibian</i>	<i>S2</i>		<i>Tier 2</i>
<i>Hylan gratiosa</i>	<i>Barking treefrog</i>	<i>Amphibian</i>	<i>S1</i>	<i>E</i>	<i>Tier 1</i>

State Rank: S1 – extremely rare within the state (typically 5 or fewer occurrences); ***S2*** – very rare within the state (6 to 20 occurrences); ***State Status: E*** – endangered, i.e. designated by the Delaware Division of Fish and Wildlife as seriously threatened with extinction in the state;

SGCN Tiers: Tier 1 Species of Greatest Conservation Need (SGCN) are those that are most in need of conservation action in order to sustain or restore their populations. They are the focus of the Delaware Wildlife Action Plan (DEWAP), which is based on analyzing threats to their populations and their habitats, and on developing conservation actions to eliminate, minimize or compensate for these threats. ***Tier 2*** SGCN are also in need of conservation action, although not with the urgency of Tier 1 species. Their distribution across the landscape will help determine where DEWAP conservation actions will be implemented on the ground.

¹ Species of greatest conservation need (SGCN) are indicative of the overall diversity and health of the State's wildlife resources. Some may be rare or declining, others may be vital components of certain habitats, and still others may have a significant portion of their population in Delaware. SGCN are identified in the Delaware Wildlife Action Plan (DEWAP) which is a comprehensive strategy for conserving the full array of native wildlife and habitats – common and uncommon – as vital components of the state's natural resources. Congress challenged the states to demonstrate comprehensive wildlife conservation. Delaware, along with all of the other states and provinces throughout the country are working to implement their wildlife action plans. This document can be viewed via the Division of Fish and Wildlife's website at <http://www.fw.delaware.gov/dwap/Pages/default.aspx>.

Tiger Salamander (Ambystoma tigrinum)

- *occur in moist, often sandy, deciduous, coniferous or mixed woodlands with adequate wetlands for breeding, such as coastal plain ponds. This species spends most of its life cycle underground and is rarely encountered except during breeding periods and when recently transformed sub-adults leave their larval pools (White and White 2002²). Eggs are laid in masses underwater in the winter. Larva hatch in about four weeks and then transform into sub-adults. Availability of fishless breeding pools and adequate upland forested buffers around those pools is critical for this species.*

Cope's gray treefrog (Hyla chrysoscelis) and barking treefrog (Hyla gratiosa)

- *occur in deciduous or mixed deciduous-coniferous woodlands with wetlands for breeding, such as coastal plain ponds and vernal pools. Adequate breeding pools are critical for these species and their presence is an indication of high quality wetlands (White and White 2002). Both of these species are mostly arboreal, depending on trees near the water in which to forage on insects and other prey. They migrate between breeding and non-breeding habitat and have been found hiding under bark, in tree holes or under leaves and roots within a few hundred meters of the breeding pools. Cope's gray treefrogs are known to generally breed within the same site in successive years (Natureserve 2012³).*

In accordance with the PLUS review comments and our investigations there are no records of federally listed endangered or threatened species or their critical habitats listed on this site.

We appreciate the information regarding species of concern within the State of Delaware which may occupy some portions of the property. The information provided lists three species of concern, which are the eastern tiger salamander, cope's grey treefrog, and barking treefrog. All of these species are globally secure and abundant in more southerly coastal plain states nearer the heart of their range.

Life history of these species generally indicate these species require fishless ponds or vernal poles for the breeding part of their life cycle often utilizing adjacent upland forests for non-breeding habitat.

² White, J. and A. White. 2002. Amphibians and Reptiles of Delmarva. Tidewater Publishers. ISBN: 087033543X. 288 pgs.

³ NatureServe Explorer Online Encyclopedia of Life. <http://natureserve.org/explorer/>. Accessed April 17, 2012.

The non-agricultural portions of the property are largely composed of forest growing on well drained upland soils. These areas lack any seasonal pools or ponds.

As noted in a later section of these comments Welches Pond is a feature which likely provides suitable habitat for these types of species. Otherwise vernal pools or ponds are absent from this site. Other nontidal wetland areas on the site are limited to two narrow stream courses and associated wetland which are topographically well defined on the landscape. Along the tidal waters of Love Creek a band of nontidal wetlands borders state regulated tidal wetlands and marshes. These are not likely to provide habitat for these species.

Several facts should be considered such as the fact that this site is predominately well drained uplands. Impacts to wetlands will be avoided almost entirely. The proposed project will provide a minimum 50 foot upland buffer by retaining existing forest adjacent to all nontidal wetlands, tidal wetlands and waters.

The owner/developer has considered and will respond to comments provided in regard to Welches Pond which may be a coastal plain pond or Delmarva Bay as stated in these comments. In future site plans a buffer from the nontidal wetlands surrounding the pond will be provided. This will preserve forested habitat and slopes which surround the pond.

Coastal Plain Ponds

- *DNREC GIS database and State wetland maps indicate that there are wetlands (and one is fairly large) known as Coastal Plain ponds, or Delmarva bays, within the project area. These wetlands provide breeding habitat for a variety of animals, including critical habitat for the species of concern listed in the table above. Coastal Plain ponds are usually small in size, but typically support a high diversity of species and a unique assemblage of plants, many of which are considered rare.*
- *The existing forest of natural vegetative cover surrounding these wetlands also provide critical habitat, shade, and cover from predators. Several studies have shown that some species of salamanders spend most of their life cycle in forested buffer zones several hundred meters from wetland edges, using wetlands only during brief breeding periods. These upland buffers are critical for protecting water quality from stormwater run-off which can contain pollutants and excess nutrients from surrounding development. Stormwater diverted into these wetlands can also alter the wet-dry cycle that is critical to breeding success and for keeping fish predators from becoming established.*

- *The site plan as designed will convert these valuable wetlands into stormwater facilities or other amenities and will negatively impact the integrity of the wetlands and the species that depend upon them for critical habitat. In addition, the forest surrounding the wetlands will be impacted by clearing for lots, roadways and amenities. The habitat this forest provides is critical not only for protecting the function and integrity of the wetland, but also for providing habitat for species which depend upon uplands for a portion of their life cycle.*

This wetland type is often considered 'isolated' and not subject to regulatory protection. The lack of protection is not based on the ecological importance of this wetland type. Isolated wetlands perform many of the same environmental functions as other wetlands, including filtering pollutants, recharging streams and aquifers, storing flood waters, and providing habitat for an array of plant and animal species. Other states in the U.S. have state acts and regulations that make no distinction between isolated and non-isolated wetlands.

Please refer to the previous response regarding species of concern and Welches Pond. The owner/developer intends to develop a management plan for the protection of Welches Pond.

Key Wildlife Habitat – Forest Habitat

- *The forest and wetlands on this property are mapped as Key Wildlife Habitat (KWH) in the Delaware Wildlife Action Plan (DEWAP)⁴ because they support Species of Greatest Conservation Need and are part of a larger forest block. KWH can support the full array of species across the landscape. Larger, intact forest blocks around the Inland Bays, where forested areas are highly fragmented, provide an important stop-over for migratory birds to refuel and find refuge. Our current data suggests that this site is an important stop-over for migratory birds particularly in the fall. In addition, these forest blocks can provide nesting habitat for forest-interior dependent bird species. The site plan as designed will result in the clearing and fragmentation of this valuable forest block. The maps in DEWAP show areas of the state where conservation efforts can be focused. Although designation of KWH is non-regulatory, these maps are intended to help guide site-specific conservation planning efforts.*

The proposed project will avoid and minimize any impact to state and federally regulated waters and wetlands. A minimum 50 foot buffer of upland forest will be provided except for a few water dependent needs such as recreational access to Love

⁴ This document can be viewed via the Division of Fish and Wildlife's website at <http://www.fw.delaware.gov/dwap/Pages/default.aspx>. DEWAP also contains a list of species of greatest conservation need, key wildlife habitat, and species-habitat associations.

Creek and several possible wetland crossings. Buffers provided exceed Sussex County code requirements. The goal for much of the campground development is selective clearing in order to retain as much of the natural character of the site as possible.

State Natural Heritage Site

- *Because of the presence of rare species, this project lies within a State Natural Heritage Site. State Natural Heritage Sites are identified as "Designated Critical Resource Waters" by the Army Corps of Engineers (ACOE), and as such are subject to restrictions and limitations imposed through Nationwide Permit General Condition No. 22. A copy of this letter shall be included in any permit application or pre-construction notification submitted to the Army Corps of Engineers for activities on this property.*
- *If you propose to use Nationwide Permit No. 3, 13, 18, 29, 39, or 42 the State of Delaware has denied 401 Water Quality Certification (WQC) and Coastal Zone Federal Consistency Concurrence (CZM) for these Nationwide Permits in Designated Critical Resource Waters. In order to use any of these six Nationwide Permits at this site you must apply for a project-specific Water Quality Certification (WQC) and Coastal Consistency Determination (CZM) from the appropriate offices at DNREC. To obtain the application materials and for all information regarding WQC, contact DNREC's Wetlands and Subaqueous Lands Section at 302-739-9943. For information pertaining to CZM, contact DNREC's Coastal Programs at 302-739-9283.*
- *If you propose to use Nationwide Permit No. 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, or 44, 49, 50, 51, and 52 this Designated Critical Resource Water designation may require you to obtain authorization through some other nationwide or general permit, or an individual permit from the Army Corps of Engineers. You should review the nationwide Permit General Conditions and Regional Conditions for Delaware (see, in particular, Nationwide Permit General Condition No. 19) to determine what notification requirements or restrictions might be applicable for your activity. Please contact the Army Corps of Engineers at 215-656-6728 if you have questions or require additional information regarding the Nationwide Permit Program.*

We have reviewed the comments regarding the State Natural Heritage Site designation. Recognizing that this site consists largely of well drained upland habitats, to the extent that a Nationwide Permit or Individual Permit may be required to conduct activities in waters or wetlands on some limited part of the site the owner/developer will comply with all general and regional conditions for nationwide or individual permits including obtaining a Water Quality Certification or Coastal Zone Consistency determination from DNREC as required.

State-Designated Natural Area

- *Roughly half of this property contains forest identified on State maps as part of the larger Love Creek Natural Area. As such, the Office of Nature Preserves strongly urges the applicant to consider dedication of the natural Area as a Nature Preserve as well as to discuss permanent preservation opportunities with the Department. The myriad of wetlands throughout the Natural Area, as well as the potential for the presence of three amphibian species ranked either state rare, federally listed, or Species of Greatest Conservation Need clearly indicate that such intensive development in this location is unsuitable.*

We disagree with the comments regarding State-Designated Natural Area. No records of federally listed threatened or endangered species or their critical habitats exist for this site. The site does not contain “myriads” of wetlands throughout the site. USDA Soil Survey mapping and on-site ground reconnaissance study conducted, including for a full delineation of all wetlands and waters, find the site to be mostly well drained upland soil with few development limitations. Except for wetlands bordering Love Creek, regulated wetlands internal to the site are limited to two well defined stream courses. The project design will avoid and incorporate forested buffer for these wetlands where possible.

Additional information on hazardous waste

- *SIRS 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) in accordance to Section 9105© (2) of the Delaware Hazardous Substance Cleanup Act (HSCA). While this is not a requirement under HSCAS, 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© (2) of HSCA.*
- *Additional remediation may be required if the project property of site is re-zoned by the county or state.*
- *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). SIRB should also be contacted as soon as possible at 302-395-2600 for further instructions.*

This property has been owned by JG Townsend Jr. and Company or affiliates since the 1930s and they are aware of the environmental issues of the site.

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.*

We have read the additional information comments on tank management.

Additional information on air quality

- *DAQ encourages developers and builders to consider all sustainable growth practices in their design, but we believe, however, that the air quality impacts associated with the project should be completely considered. This project may emit, or cause to be emitted, air contaminants into Delaware's air, which will negatively impact public health, safety, and welfare. These negative impacts are attributable to:*
 - *Emissions that form ozone and fine particulate matter; two pollutants relative to which Delaware currently violates federal health-based air quality standards,*
 - *The emission of greenhouse gases which are associated with climate change, and*
 - *The emission of air toxics.*
- *Air emissions are generated from the following activities:*
 - *Area sources such as painting, maintenance equipment and the use of consumer products.*
 - *The generation of electricity needed to support the recreational vehicles;*
 - *All transportation activity.*
- *Based on the information provided, the three air emissions components (i.e., area, electric power generation, and mobile sources) for this project could not be quantified. DAQ was only able to quantify the mobile emissions based on the proposed daily trip data presented in the application and data taken from the ITE Trip Generation Manual, 8th Edition. Table 2 – Projected Air Quality Emissions represents the actual impact the Love Creek RV Resort and Campground project may have on air quality.*

Table 2: Project Air Quality Emissions for Love Creek RV Resort and Campground					
<i>Emissions Attributable to Love Creek RV Resort and Campground (Tons per Year)</i>	<i>Volatile Organic Compounds</i>	<i>Nitrogen Oxides (NO_x)</i>	<i>Sulfur Dioxide (SO₂)</i>	<i>Fine Particulate Matter (PM_{2.5})</i>	<i>Carbon Dioxide (CO₂)</i>
<i>Mobile Source</i>	7.9	10.5	*	*	*

(*) Indicates data is not available.

Note that emissions associated with the actual construction, including automobile and truck traffic from working in, or delivering products at 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 Start 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*

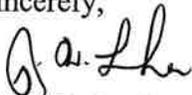
percent reduction in pollution. The Energy Star Program is an excellent way to save on energy costs and reduce air pollution.

- ***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 NO_x 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.*
 - ***Planting trees in vegetable buffer areas.** Trees reduce emissions by trapping dust particles and replenishing oxygen. Trees also reduce energy emissions by cooling during the summer and by providing wind breaks in the winter, whereby 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 Division of Air Quality which address the above list measures, and that details all of the specific emission mitigation measures that will be incorporated in the Love Creek RV Resort and Campground.*

We have read the additional information comments on air quality.

The above comments serve as an official response from Davis, Bowen & Friedel, Inc. On behalf of our client we thank the Office of State Planning and other State Agencies for their review and comments. If you should have any questions or concerns please contact me at (302) 424-1441.

Sincerely,



Ring W. Lardner, P.E.
Associate

CC: **Constance C. Holland, AICP, Office of State Planning**
Nick Hammonds, Jack Lingo Asset Management, LLC.