



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF
STATE PLANNING COORDINATION

January 7, 2005

Mr. John VanSickle
Davis, Bowen & Friedel, Inc.
23 North Walnut Street
PO Box 809
Milford, DE 19963

RE: PLUS review – PLUS 2004-12-03 Cypress Estates

Dear Mr. VanSickle,

Thank you for meeting with State agency planners on December 22, 2004 to discuss the proposed plans for the Cypress Estates project to be located on the south side of Johnson & Cabbage Pond Roads and north side of Clendaniel Pond Road in Sussex County.

According to the information received, the developers are seeking to develop 190 residential dwelling units on 201 acres south of the Town of Milford. The current zoning is AR-1 and the proposed zoning is AR-1 Cluster Development.

Please note that changes to the plan, other than those suggested in this letter, may result in additional comments from the State. Additionally, these comments reflect only issues that are the responsibility of the agencies represented in the PLUS review. The developers will need to comply with any Federal, County and local regulations regarding this property. As Sussex County is the governing authority over this land, the developers will need to comply with any and all regulations/restrictions set forth by the County.

This office has received the following comments during the PLUS review:

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

This site is located mostly within an Investment Level 4 area according to the Strategies for State Policies and Spending, with a small portion along Clendaniel Pond Road in Level 3. In these areas, State policies support preservation of agriculture and natural resources, not development. State will not support or participate in any improvements necessary to serve this development. The State Strategies also identify this area as part of an “Area of Study” which may be impacted by the results of the Route 113 North South Study. Comments by DelDOT further address this issue. We also note that the proposal is across Clendaniel Pond Road from the permanently preserved Benson Agricultural

Preservation District. For these reasons, the proposal's location causes the Office of State Planning Coordination great concern.

We are also particularly concerned about the proposal to develop 190 lots on individual wells and on-site septic systems in an area with such environmental sensitivity. If the site is to be developed, clustering the lots and using a community wastewater disposal system would allow for the preservation of natural resources on the site. As currently designed, the site plan shows significant impacts to the natural resources on the site. Particularly with the concern raised by DNREC about the presence of a rare Atlantic white cedar community on the site and the concern raised by the State Historic Preservation Office (SHPO) about archaeological sites, we believe that every effort should be made to preserve the riparian area and associated wetlands and forest, and that the developer should work with DNREC and SHPO in this regard.

State Historic Preservation Office (SHPO) – Contact Anne McCleave 739-5685

This development is not favored because it is in an Investment Level 4 of the State Strategies for Policies and Spending. There are a number of older buildings along Clendaniel Pond Road; however none of them will be demolished for the proposed development. There is an archaeological site on the property, with a high probability for additional historic and prehistoric archaeological sites. SHPO suggests that the developer contact Anne McCleave to schedule an archaeologist visit to gain a better understanding of these sites and offer advice to minimize adverse effects of the proposed development. They recommend keeping development away from the wooded area and an open space buffer to minimize effects to archaeological sites. If there is federal involvement in the form of permits, licenses, or funds, the federal agency is responsible for complying with Section 106 of the National Historic Preservation Act (36 CFR 800) and should consider the effects their project will have on historic resources.

Department of Transportation – Contact Bill Brockenbrough 760-2109

- 1) Because the development is proposed for a Level 4 Area, it is inconsistent with the Strategies for State Policies and Spending. Therefore DelDOT will not participate in the cost of any road improvements needed to support this development. The comments that follow are technical, and are not intended to suggest that DelDOT supports this development proposal.
- 2) 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. In the Milford and Lincoln area, there are four alignments, with some variations, under consideration. Three of those alignments would run through Cypress Estates. Presently DelDOT is still gathering input from the public. They anticipate making a determination on the alternatives to be retained for detailed analysis in the spring or summer of 2005 and deciding among those alternatives in early to mid 2006. They recommend that the County defer action on the proposed development until an alignment has been decided upon. For more information on the US 113 North-South Study, the developer or the County may contact Mr. Monroe Hite at (302) 760-2120.

- 3) Johnson Road, Cabbage Pond Road and Clendaniel Pond Road are classified as local roads. From tax maps and aerial photography, they appear to have existing right-of-way widths of about 50 feet. DelDOT's policy is to require dedication of sufficient land to provide a minimum right-of-way width of 30 feet from the centerline on local roads. Therefore they will require right-of-way dedication to provide the additional five feet from this project.
- 4) DelDOT will also require that a paved multi-modal path, located in a 15-foot wide permanent easement, be provided across the frontage of the site on all three roads.
- 5) There are several lots labeled "Proposed Minor Subdivision Lands of Joseph L. Warnell." These lots should be incorporated into Cypress Estates. They will not be granted separate access.
- 6) DelDOT recommend changing the site design to eliminate some of the eight proposed cul-de-sacs, in order to enhance the grid street pattern and provide more of a sense of community.
- 7) The response to item 40 on the PLUS form indicates that bike paths are proposed but sidewalks are not. DelDOT recommends that sidewalks be required on both sides of all subdivision streets to encourage walking.
- 8) The developer's engineer should contact DelDOT's Subdivision Manager for Sussex County, Mr. John Fiori, regarding our requirements for access. Mr. Fiori may be reached at (302) 760-2260.

Department of Natural Resources and Environmental Control – Contact Kevin Coyle 739-3091

General Comment

This proposed development is within a proposed State Resource Area and has a number of development constraints due to wetland issues. The potential resource impacts from this project as designed are high due to encroachment on forested and wetland areas, and potential for adverse homeowner activities.

A significant portion of the southwest side of this proposed development is within an area mapped as Natural Resources by the Livable Delaware Green Infrastructure maps. "Green Infrastructure" is defined as "Delaware's natural life support system of parks and preserves, woodlands and wildlife areas, wetlands and waterways, productive agricultural and forest land, greenways, cultural, historic and recreational sites and other natural areas all with conservation value." Governor Minner's Executive Order #61 establishes the importance of conserving Delaware's Green Infrastructure and directs State agencies to minimize adverse effects to Green Infrastructure. In light of this, the significant deleterious impact this project will have on the Cedar Creek riparian corridor, and the lack of supporting infrastructure for this project, DNREC strongly opposes this project.

Design Recommendation

The site plan shows little consideration for walkability, connectivity of open space, and preservation of existing natural resources. The developer is encouraged to reduce the number of cul-de-sacs; this will improve walkability and reduce the amount of

impervious surfaces. Lots 96-102 should be removed as they are not contiguous with the rest of the site plan.

The following lots should be removed as they are encroaching on wetland areas and forested buffers:

Lots 162-170	Lots 120-123	Lots 103-113
Lots 132-136	Lots 141-147	Lots 4-18

No lot lines should contain wetlands and their associated buffers. Buffers of no less than 100 feet from the wetland line or stream bank should be designated as a buffer zone and be designated as part of community open space.

Soils

According to the Sussex County soil survey, the following soils were mapped in the immediate vicinity of the proposed project: Evesboro, Sassafras, Rumford, Woodstown, Fallsington, and Swamp. Evesboro is an excessively well-drained soil found on uplands and moderate limitations on account of its rapid permeability. Sassafras and Rumford are well-drained upland soils that have few limitations for development. Woodstown is a moderately well-drained soil of low-lying uplands that has moderate limitations for development. Fallsington and Swamp are poorly drained to very poorly drained soils that have to severe to very severe limitations for development.

Wetlands

Statewide Wetland Mapping Project (SWMP) maps indicate the presence of palustrine forested wetlands and lacustrine wetlands throughout the southern portion of the parcel and near the middle of the parcel.

Impacts to these 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. Site plans show two road crossings proposed over streams. Impacts to streams and associated riparian wetlands, including road crossings, are regulated by the DNREC Wetlands and Subaqueous Lands Section, and by the Corps of Engineers.

Site plans show in excess of 30 lots appear to infringe upon the wetlands. Wetlands provide water quality benefits, attenuate flooding and provide important habitat for plants and wildlife. Particularly because of this area and its status as a proposed State Resource Area, lots should be removed in their entirety from both the wetland and the forest surrounding it. Vegetated buffers comprised of native trees, shrubs or no-mow grasses, of no less than 100 feet should be employed from the edge of the wetland complex. The developer should note that both DNREC and Army Corps of Engineers discourage

allowing lot lines to contain wetlands to minimize potential cumulative impacts resulting from unauthorized and/or illegal activities and disturbances that can be caused by homeowners.

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.

It should also be noted that this parcel immediately borders sensitive headwater or near headwater riparian wetlands associated with Cabbage Pond and the Mispillion River. Headwater streams and their associated wetlands are important for the protection of water quality and the maintenance/integrity of the ecological functions throughout the length of the stream, including the floodplain system downstream. Additionally, headwater streams in the lower coastal plain of Delaware, particularly when associated with artificial impoundments (mill ponds), are considered refugia for Atlantic white cedar wetlands and a number of state and globally rare (some federally threatened) plant associates. According to the SWMP mapping and the Delaware Natural Heritage Inventory, Atlantic white cedar plant community and its associates are found extensively throughout most of the riparian wetlands of this parcel.

In order to balance development and still maintain effective natural resource protection in areas of high functional or resource value, larger buffer widths may be necessary to provide the necessary safeguard against intensive land impacts on wetland and aquatic habitats. As a matter of fact, past research has shown that buffer widths of at least 300-foot are necessary for maintaining high species diversity in high value wetlands (Castelle et al. 1994). The Department strongly supports the notion that the buffer width size should reflect the protective efforts necessary to support both water quality and habitat quality goals. **Since the Atlantic white cedar and its associated plant community are an example of a high value environmentally-sensitive wetland resource we are trying to protect, the Department is adopting a 300-foot buffer width as the recommended minimum buffer distance from all locations containing said wetland plant community.** Therefore, a field verified assessment by the State's Natural Heritage Program of this parcel's plant communities is strongly recommended before commencing development. **A 100-foot minimum buffer width will still be recommended for all other wetlands.**

TMDLs

The developer is encouraged to employ BMPs (or other pollution control strategies) such as stormwater management and riparian buffers to mitigate any potential nutrient runoff into an adjoining streams or watercourse.

Although Total Maximum Daily Loads (TMDLs) as a "pollution runoff mitigation strategy" to reduce nutrient loading have not yet been developed for most of the tributaries or subwatersheds of the Delaware Bay watershed to date, work is continuing

on their development. TMDLs for the Mispillion subwatershed, of which this parcel is part, are scheduled for completion in December 2006.

Therefore, until the specified TMDL reductions and pollution control strategies are adopted, it shall be incumbent upon the developer to employ best available technologies (BATs) and/or best management practices (BMPs) as “methodological mitigative strategies” to reduce degradative impacts associated with development.

Water Supply

The project information sheets state that individual on-site wells will be used to provide water for the proposed project. Our records indicate that the project is not located in an area where public water service is available. The Division of Water Resources will consider applications for the construction of on-site wells provided the wells can be constructed and located in compliance with all requirements of the Regulations Governing the Construction and Use of Wells. A well construction permit must be obtained prior to constructing any wells.

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

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

Potential Contamination Sources do exist in part of this area, and any well permit applications will undergo a detailed review that may increase turnaround time and may require site specific conditions/recommendations.

Should you have any questions concerning these comments, please contact Rick Rios at 302-739-3665.

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. 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.

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.

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.

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.

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.

A Certified Construction Reviewer (CCR) will be required for the site during construction. You should contact Sussex Conservation District for details regarding the CCR requirement.

Copies of state and/or federal permits for construction of the stormwater outfall within wetlands must be included with the plan submittal.

Floodplains

A small portion of the site is within the 100-year floodplain. Development should be limited to areas outside of the floodplain.

Forests

According to 2002 aerial photos there is a forested area associated with all wetlands in this parcel. The forest provides important riparian habitat, wildlife connectors, and air quality and water quality benefits. This forest tract is extremely beneficial to the region. Fragmentation of this forest can have irreversible effects to Cedar Creek and the regional ecosystem.

Lot lines should be redesigned to avoid all impacts to the forested area. Therefore, the developer is strongly encouraged to preserve, and where possible, enhance forested resources on site. This includes removing lot lines and infrastructure (such as storm water management ponds) from forested areas to the extent possible and minimizing any clearing activities. The forested areas on-site should be viewed as a community asset and managed appropriately. Where possible, the developer should seriously consider habitat improvements such as revegetating portions of the site to increase the buffer zone to Cedar Creek. A forested buffer of 100' or more would substantially benefit water quality and wildlife habitat.

Forested areas on-site set aside for conservation purposes should be placed into a permanent conservation easement or other binding protection. These areas should be clearly marked and delineated so that residents understand their importance and so that homeowner activities do not infringe upon these areas.

Open Space

To maximize the existing buffering capacity and wildlife habitat on site, it is recommended that lot lines and other infrastructure (such as storm water management ponds) be pulled out of the forest and that areas of community open space be designated along the forested/riparian areas. Doing so will accomplish two things: it will preserve and expand the buffers on site and its value for birds and wildlife and it will create recreational opportunities for residents by allowing them access to and views of the forest and stream.

In areas set aside for passive open space, the developer is encouraged to consider establishment of additional forested areas or meadow-type grasses. Once established, these ecosystems provide increased water infiltration into groundwater, decreased run-off into surface water, air quality improvements, and require much less maintenance than traditional turf grass, an important consideration if a homeowners association will take over responsibility for maintenance of community open spaces.

Open space containing forest and/or wetlands should be placed into a permanent conservation easement or other permanent protection mechanism. Conservation areas should also be demarked to avoid infringement by homeowners.

Habitat/Rare/Threatened/Endangered Species

The Delaware Natural Heritage and Endangered Species Program (DNHESP) staff have not visited the site previously, therefore the DNHESP botanist requests the opportunity to survey the forested and wetland resources which could potentially be impacted by the project. His observations would allow them to make more informed comments on this project and would allow the applicant the opportunity to reduce potential impacts to rare species. Please contact Bill McAvoy at (302) 653-2880 to set up a site visit.

Based on review of topographic maps and aerial photographs, there appears to be an Atlantic white cedar swamp community on the proposed project parcel. Rare plants are typical of this type of community, including the federally listed swamp pink (*Helonias bullata*). This species typically occurs in Atlantic white cedar and maple/gum swamps in the Coastal Plain and appears to be very sensitive to sedimentation. DNHESP therefore encourages the landowner to preserve the forest that exists on the property.

DNHESP recommends that at least a 300 feet forested buffer be left intact around any wetlands and tributaries that exist on the project parcel. An adequate buffer is especially important for maintaining the integrity of Atlantic white cedar swamps, which are characterized by highly acidic conditions. Nutrient and sedimentary inputs from land use activities (construction and landowner lawn care practices) could cause a shift in the

soil/water chemistry and be detrimental to this type of community. From the site plan provided, there are no buffers between lot lines and wetlands. There should be a 300ft buffer between these lot lines and the wetlands. Lot lines should not remain in this buffer as landowner activities (clearing, fertilizer application, construction) could reduce the width and function of the buffer. The buffer will also serve to protect the water quality within Cabbage Pond where we have records of two rare fish species, *Enneacanthus chaetodon* (blackbanded sunfish) and *Notropis chalybaeus* (ironcolor shiner).

Stormwater Ponds, Buffers, and Nuisance Species

The ponds scattered throughout the subdivision will likely attract waterfowl like resident Canada geese and mute swans that will create a nuisance for community residents. Although small numbers of these species are enjoyed by residents, geese and swans can quickly multiply and overwhelm the area. 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. Ponds that remain in the subdivision plan should be landscaped to deter nuisance species. Short manicured lawns around ponds provide an attractive habitat for these species. However, native plantings, including tall grasses, wildflowers, shrubs, and trees at the edge and within a buffer area (we recommend 50 feet) around ponds, are not as attractive to geese because they do not feel as safe from predators and other disturbance when their view of the area is blocked. The Division of Fish and Wildlife does not provide goose control services, and if problems arise, residents or the home-owners association 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 a reduction in the number of ponds, proper landscaping, monitoring, and other techniques, geese problems can be minimized. The applicant expressed interest in migratory vs. resident geese and beaver management. The applicant may contact our Division's furbearer and waterfowl biologist, Tom Whittendale at (302) 653-2883 ext. 102 for further information.

It is further recommended that all stormwater ponds be at least 100 feet from all wetlands and waterbodies.

Revegetation/Landscaping

DNREC requests that no invasive species be used in the revegetation of disturbed or landscaped areas. A list of species considered invasive in Delaware can be found on the DNREC web site, www.dnrec.state.de.us/fw/invasive.htm. We further encourage, where possible/feasible, the use of native plants for habitat restoration projects on-site and our Botanist, Bill McAvoy can be contacted at (302) 653-2880 to assist you in developing a plant list.

State Resource Areas

This project contains land currently identified as part of a proposed State Resource Area. State Resource Areas are comprised of lands that contain a variety of natural, cultural and open space resources significant to the state, and include lands held in conservation by various groups as well as lands targeted for conservation and preservation efforts. The

wetlands and woodlands along this tract provide valuable wildlife corridors connecting to riparian corridors, streams, and Cedar Creek. Consideration should be given to protecting these resources during design and construction of this project. For more information, please contact Ron Vickers, Land Preservation Office, 739-3423.

Underground Storage Tanks

There is one active LUST site(s) located near the proposed project:

Paradee Bulk Plant, Facility # 5-000533, Project # S9310183

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 in the contaminated areas.

Air Quality

Once complete, vehicle emissions associated with this project are estimated to be **Error! Not a valid link.** tons (**Error! Not a valid link.** pounds) per year of VOC (volatile organic compounds), **Error! Not a valid link.** tons (**Error! Not a valid link.** pounds) per year of NOx (nitrogen oxides), **Error! Not a valid link.** tons (**Error! Not a valid link.** pounds) per year of SO2 (sulfur dioxide), **Error! Not a valid link.** ton (**Error! Not a valid link.** pounds) per year of fine particulates and **Error! Not a valid link.** tons (**Error! Not a valid link.** pounds) per year of CO2 (carbon dioxide).

Emissions from area sources associated with this project are estimated to be **Error! Not a valid link.** tons (**Error! Not a valid link.** pounds) per year of VOC (volatile organic compounds), **Error! Not a valid link.** ton (**Error! Not a valid link.** pounds) per year of NOx (nitrogen oxides), **Error! Not a valid link.** ton (**Error! Not a valid link.** pounds) per year of SO2 (sulfur dioxide), **Error! Not a valid link.** ton (**Error! Not a valid link.** pounds) per year of fine particulates and **Error! Not a valid link.** tons (**Error! Not a valid link.** pounds) per year of CO2 (carbon dioxide)

Emissions from electrical power generation associated with this project are estimated to be **Error! Not a valid link.** tons (**Error! Not a valid link.** pounds) per year of NOx (nitrogen oxides), **Error! Not a valid link.** tons (**Error! Not a valid link.** pounds) per year of SO2 (sulfur dioxide) and **Error! Not a valid link.** tons (**Error! Not a valid link.** pounds) per year of CO2 (carbon dioxide).

	VOC	NOx	SO ₂	PM _{2.5}	CO ₂
Mobile	14.6	12.1	8.9	0.8	1219.7
Residential	5.9	0.6	0.5	0.7	23.8
Electrical		2.3	8.1		1195.9

Power					
TOTAL	20.5	15.0	17.5	1.5	2439.4

The Department of Natural Resources and Environmental Control is asking that local jurisdictions consider mitigation to help resolve this issue. Mitigation might involve limiting large new developments to growth zones, focusing development to urban areas capable of providing mass transit services, requiring more energy efficient homes which would lessen air quality impacts, and promoting walkability and bikability within and between developments and town centers.

State Fire Marshal’s Office – Contact John Rossiter 323-5365

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):

Fire Protection Water Requirements

- 1) Since the dwellings of the subdivision are proposed to be served by individual on-site wells (No Central Water System), set back and separation requirements will apply.

Accessibility

- 1) 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 Cabbage Pond Road and Clendaniel Pond Road must be constructed so fire department apparatus may negotiate it.
- 2) 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.
- 3) 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.
- 4) If the use of speed bumps or other methods of traffic speed reduction must be in accordance with Department of Transportation requirements.

Gas Piping and System Information

- 1) Provide type of fuel proposed, and show locations of bulk containers on plan.

Required Notes

- 1) 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”
- 2) Proposed Use
- 3) National Fire Protection Association (NFPA) Construction Type

- 4) Maximum Height of Buildings (including number of stories)
- 5) Provide Road Names, even for County Roads

Preliminary meetings with fire protection specialists are encouraged prior to formal submittal. Please call for appointment. Applications and brochures can be downloaded from our website: www.delawarestatefiremarshal.com, technical services link, plan review, applications or brochures.

Department of Agriculture - Contact Mark Davis 739-4811

The Department of Agriculture does not support development of this site located in a Level 4 Area of the State Strategies for Policies and Spending. In addition, the proposed site is located across the street from the 61-acre permanently preserved Benson Agricultural Preservation District. As such, the 300-foot notification zone may apply.

If a proposed new subdivision borders or is near an agricultural preservation district, then the owner of the preservation district is entitled to the following use protections, quoted from the Delaware Code:

§ 910. Agricultural use protections.

a) Normal agricultural uses and activities conducted in a lawful manner are preferred and priority uses and activities in Agricultural Preservation Districts. In order to establish and maintain a preference and priority for such normal agricultural uses and activities and avert and negate complaints arising from normal noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations, land use adjacent to Agricultural Preservation Districts shall be subject to the following restrictions:

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

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

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

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

The Delaware Forest Service (DFS) encourages the use of native vegetation for the required agricultural and forested buffer for the development site. The DFS encourage the developer to consider a diverse landscape plan that utilizes the right tree for the right place concept. DFS encourages the preservation of forested areas adjacent to creeks, streams, wetlands and other water bodies to lessen potential pollutants to the state's water resources. Also, DFS requests the developer to develop connections for both traditional and green infrastructure between future development activities and existing natural resources. Finally, DFS encourages the use of a forestry or arboriculture professional to support the activities recommended for this site.

Public Service Commission - Contact Andrea Maucher 739-4247

Any expansion of natural gas or installation of a closed propane system must fall within Pipeline Safety guidelines. Contact: Malak Michael at (302) 739-4247.

The application notes individual on-site wells and the project is not within a certificated service territory. Should the City of Milford elect to expand water services to this community prior to annexing the property, it would need to apply the Commission for a Certificate of Public Convenience and Necessity (CPCN).

The application notes individual on-site septic systems. If a community system is installed to provide service by a non-governmental entity to more than 50 customers, the wastewater service provider will need to apply to the PSC for a CPCN. Additional requirements may apply if the provider has not previously been awarded a CPCN by the Commission

Recent legislation (Senate Bill 99) placed non-governmental companies providing wastewater services to 50 or more customers (in the aggregate) under the regulatory control of the PSC. While rules are not yet in place, governmental agencies offering wastewater services must file data with the Commission regarding its service areas. Contact: Kevin Neilson at (302) 739-4247.

Delaware State Housing Authority – Contact Jimmy Atkins 739-4263

The proposal is to develop 190 units on 201 acres on the south side of Johnson & Cabbage Pond Roads and north Side of Clendaniel Pond Road, adjacent to Cabbage Pond, and south of Milford. According to the State Strategies for Policies and Spending,

the proposal is located in an Investment Level 4 area. The DSHA encourages residential development in areas where residents will have proximity to services, markets, and employment opportunities such as Investment Level 1 and 2 areas outlined in the State Strategies Map. The proposal is located in an area targeted for agricultural activities and natural resource protection, and therefore inconsistent with where the State would like to see new residential development.

Department of Education – Contact: Nick Vacirca 739-4658

It is estimated that 190 dwelling units could generate 95 additional students for the Milford School District.

Sussex County does not have school concurrence legislation at this time. The Department of Education recommends that the developer submit a package to the school district for informational purposes and work closely with the district transportation supervisor.

If the development is approved and built, please use the following information for school transportation planning: homes more than 1/2 mile from the nearest public road (outside the development) require streets wide enough for large school bus access and turn around (without backing) from the furthest areas within the development. Should there not be any homes more than 1/2 mile from the nearest public road, pick-up and drop-off areas at the development entrance should be included.

If any portion of the development is planned adjacent to school property, the developer should provide walking or bike paths to encourage multi-modal transportation.

Sussex County – Contact Richard Kautz

Because this project is an AR-1 Cluster subdivision, the developer must include in the application a plan for the management of all open space. Also, the developer must document for the Planning and Zoning Commission how the proposed development: provides for a total environment and design which are superior to that which would be allowed under the standard lot option; preserves the natural environment and historic or archeological resources; and will not have an adverse effect on any of the items included under Ordinance Number 1152 (County Code 99-9C).

This concludes our comments. Upon filing of an application with the local jurisdiction, the applicant shall provide to the local jurisdiction and the Office of State Planning Coordination a written response to these comments noting whether or not specific recommendations were incorporated into the project design and the reasons therefore.

PLUS
January 7, 2005
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Thank you for the opportunity to review this project. If you have any questions, please contact me at 302-739-3090.

Sincerely,

A handwritten signature in cursive script that reads "Constance C. Holland". The signature is written in black ink and is positioned above the printed name and title.

Constance C. Holland, AICP
Director

CC: City of Milford
Sussex County