



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF  
STATE PLANNING COORDINATION

June 14, 2005

Mr. David Peek  
George, Miles, & Buhr, LLC  
11426 York Road, 2<sup>nd</sup> Floor  
Hunt Valley, MD 21030

RE: PLUS review – PLUS 2005-05-15; Dagsboro-Monogram (Wiley Branch Landing)

Dear Mr. Peek,

Thank you for meeting with State agency planners on May 25, 2005 to discuss the proposed plans for the Dagsboro-Monogram project to be located on 110.8 acres along Hudson Road in Sussex County.

According to the information received, you are seeking to construct a low-density residential development of 135 units in the Level 4 area.

This proposal is located in Investment Level 4 according to the Strategies for State Policies and Spending, and is in the Low Density area according to the Sussex County Comprehensive Plan. **The comments in this letter are technical, and are not intended to suggest that the State supports this development proposal. This letter does not in any way suggest or imply that you may receive or may be entitled to permits or other approvals necessary to construct the development you indicate or any subdivision thereof on these lands.**

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

**Executive Summary**

This section includes some site-specific highlights from the agency comments found in this letter and is provided for your convenience and reference. The full text of this letter represents the official state response to this project. *Our office notes that the applicants*

*are responsible for reading and responding to this letter and all comments contained within it in their entirety.*

**State Strategies/Project Location**

- The State opposes this proposal for 135 residential units in an Investment Level 4 area according to the *2004 Strategies for State Policies and Spending*. This is also located in a Low Density area according to Sussex County's certified comprehensive plan. Investment Level 4 indicates where State investments will support agricultural preservation, natural resource protection, and the continuation of the rural nature of these areas. New development activities and suburban development are not supported in Investment Level 4.

**Natural/Cultural Resources**

- Vegetated buffers of no less than 100 feet should be employed from the edge of the wetland complex on-site.
- Some land on this parcel may be Federally-regulated farmed wetland. The applicant is strongly encouraged to contact the Farm Services Agency (FSA) of the USDA to assess whether any potential farmed wetlands meet recognized criteria for this classification.

This office has received the following comments from State agencies:

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

This project represents a major land development that will result in 135 residential units in an Investment Level 4 area according to the *2004 Strategies for State Policies and Spending*. This project is also located in a Low Density area according to Sussex County's certified comprehensive plan. Investment Level 4 indicates where State investments will support agricultural preservation, natural resource protection, and the continuation of the rural nature of these areas. New development activities and suburban development are not supported in Investment Level 4. These areas are comprised of prime agricultural lands and environmentally sensitive wetlands and wildlife habitats, which should be, and in many cases have been preserved.

From a fiscal responsibility perspective, development of this site is likewise inappropriate. The cost of providing services to development in rural areas is an inefficient and wasteful use of the State's fiscal resources. The project as proposed is likely to bring more than 300 new residents to an area where the State has no plans to invest in infrastructure upgrades or additional services. These residents will need access to such services and infrastructure as schools, police, and transportation. To provide some examples, the State government funds 100% of school transportation and paratransit services, up to 80% of school construction costs, and about 90% of the cost of police protection in the unincorporated portion of Sussex County where this development is proposed. Over the longer term, the unseen negative ramifications of this development will become even more evident as the community matures and the cost of maintaining infrastructure and providing services increases.

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

**State Historic Preservation Office (SHPO) – Contact Alice Guerrant 739-5685**

The State Historic Preservation Office opposes this development because it is located in the Level 4 area and because of the loss of the historic agricultural landscape in the area. Nothing of archeological or historical significance is known within this parcel. There is low potential for either prehistoric or historic-period archaeological sites here. It seems to have been part of the Great Cypress Swamp and was too wet for long-term occupation historically. There are no historic properties with a direct view of this parcel. Therefore the adverse effect is limited to the loss of historic landscape.

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

This development is proposed for an area designated as Level 4 under the *Strategies for State Policies and Spending*. The type of development being proposed has been deemed inappropriate, for this area by the *Strategies for State Policies and Spending*. As part of our commitment to support the *Strategies*, DelDOT refrains from participating in the cost of any road improvements needed to support this development and is opposed to any road improvements that will substantially increase the transportation system capacity in this area. DelDOT will only support taking the steps necessary to preserve the existing transportation infrastructure and make whatever safety and drainage related improvements are deemed appropriate and necessary. The intent is to preserve the open space, agricultural lands, natural habitats and forestlands that are typically found in Level 4 Areas while avoiding the creation of isolated development areas that cannot be served effectively or efficiently by public transportation, emergency responders, and other public services.

If this development proposal is approved, notwithstanding inconsistencies with the relevant plans and policies, DelDOT will provide technical review and comment as appropriate in order to fulfill our responsibilities with respect to safety and drainage.

DelDOT strongly supports new development in and around existing towns and municipalities and in areas designated as growth zones in approved Comprehensive Plans. We encourage the use of transfer of development rights where this growth management tool is available.

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

**Green Infrastructure**

Portions or all of the lands associated with this proposal are within the Livable Delaware Green Infrastructure area established under Governor Minner's Executive Order #61 that represents a network of ecologically important natural resource lands of special state conservation interest.

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. Preserving Delaware's Green Infrastructure network will support and enhance biodiversity and functional ecosystems, protect native plant and animal species, improve air and water quality, prevent flooding, lessen the disruption to natural landscapes, provide opportunities for profitable farming and forestry enterprises, limit invasive species, and foster ecotourism.

Voluntary stewardship by private landowners is essential to green infrastructure conservation in Delaware, since approximately 80 percent of the State's land base is in private hands. It is in that spirit of stewardship that the Department appeals to the landowner and development team to protect sensitive resources through an appropriate site design.

### **Soils**

According to the soil survey update Hammonton, Klej, Mullica-Berryland complex, and Broadkill-Appoquinimink complex were mapped in the immediate vicinity of the project site. Hammonton is moderately well-drained soil of low-lying uplands that has moderate limitations for development. Klej is a somewhat poorly-drained transitional soil that is likely to contain both upland and wetland soil (**hydric**) components that may or may not be suitable for development. Mullica-Berryland complex and Broadkill-Appoquinimink complex are very poorly-drained wetland associated (**hydric**) soils that have the highest severity level for development.

### **Wetlands**

Statewide Wetland Mapping Project (SWMP) maps indicate the presence of palustrine wetlands on the site. These wetlands provide water quality benefits, attenuate flooding and provide important habitat for plants and wildlife. Vegetated buffers 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 of homeowners.

Additionally, because of the prevalence of very poorly-drained soils (Mullica-Berryland and Broadkill-Appoquinimink complex) it is possible that some of the parcel is Federally-regulated farmed wetland. It is recommended that the Farm Services Agency of the USDA be contacted to assess whether farmed wetlands on the subject parcel meet recognized criteria for classification as "prior converted wetlands." Prior converted wetlands are farmed wetlands that have been drained or altered before December 23, 1985, and no longer meet the wetland criteria established under the 404 program. Such wetlands are considered exempt from regulatory protection, provided that there is no proof of a continuous "fallow period" of five years or greater in the parcel's cropping history. Parcels converted after said date, regardless of cropping history, are considered

jurisdictional by the Army Corps of Engineers (ACOE). The USDA contact person for assessing a parcel's cropping history is Sally Griffin, (302) 678-4182.

A minimum 100-foot buffer width from landward edge of all wetlands is recommended. In cases where natural buffer vegetation has been removed or reduced by past development or farming activities, the developer is encouraged to restore the previous buffer width or greater with native herbaceous and/or woody vegetation.

**Delaware State Housing Authority – Contact Jimmy Atkins 739-4263**

This proposal is to develop 135 units on 110 acres located on the west side of Hudson Road, southwest of Millsboro. The proposal is located in the Level 4 area and outside the growth zone. As a general planning practice, 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 for Policies and Spending. The proposal is located in an area targeted for agricultural and natural resource protection, and therefore inconsistent with where the State has planned for new residential development.

**Department of Education – Contact Nick Vacirca**

It is estimated that 135 dwelling units will generate 68 additional students for the Indian River School District. Sussex County does not have school concurrence legislation at this time and it is recommended that the developer submit a package to the school district for informational purposes.

*Strategies for State Policies and Spending* recommends no development in Level 4 areas and provides little or no support where development occurs. Development approved in Level 4 areas will require student transportation support, a State financed program.

If the development is approved and built, use the following guidelines for school transportation planning. If there are homes more than 1/2 mile from the nearest public road (outside the development), the developers should provide streets wide enough for large school buses to access and turn around without backing from the furthest areas within the development. Should there be no homes more than 1/2 mile from the nearest public road, provisions for appropriate pick-up and drop-off at the development entrance should be made. The developer should work closely with the school district transportation supervisor.

Additionally, according to legislation passed in 2004, future public school sites must be located in designated growth areas and approved by the State Budget Director, the State Planning Director, and the State Secretary of Education.

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

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):

1) Fire Protection Water Requirements:

- Water distribution system capable of delivering at least 1500 gpm for 2-hour duration, at 20-psi residual pressure is required. Fire hydrants with 800 feet spacing on centers. (Treatment BLD)
- Water distribution system capable of delivering at least 1000 gpm for 1-hour duration, at 20-psi residual pressure is required. Fire hydrants with 800 feet spacing on centers. (Assembly)
- Where a water distribution system is proposed for single family dwellings it shall be capable of delivering at least 500 gpm for 1-hour duration, at 20-psi residual pressure. Fire hydrants with 1000 feet spacing on centers are required. (One & Two- Family Dwelling)
- Where a water distribution system is proposed for the site, the infrastructure for fire protection water shall be provided, including the size of water mains for fire hydrants and sprinkler systems.

2) Fire Protection Features:

- All structures over 10,000 Sq. Ft. aggregate will require automatic sprinkler protection installed.
- Buildings greater than 10,000 sq.ft., 3-stories of more or over 35 feet, or classified as High Hazard, are required to meet fire lane marking requirements.
- Show Fire Department Connection location (Must be within 300 feet of fire hydrant), and detail as shown in the DSFPR.
- Show Fire Lanes and Sign Detail as shown in DSFPR

3) Accessibility

- All premises which the fire department may be called upon to protect in case of fire, and which are not readily accessible from public roads, shall be provided with suitable gates and access roads, and fire lanes so that all buildings on the premises are accessible to fire apparatus. This means that the access road to the subdivision from Hudson Road must be constructed so fire department apparatus may negotiate it.
- Fire department access shall be provided in such a manner so that fire apparatus will be able to locate within 100 ft. of the front door.
- Any dead end road more than 300 feet in length shall be provided with a turn-around or cul-de-sac arranged such that fire apparatus will be able to turn around by making not more than one backing maneuver. The minimum paved radius of the cul-de-sac shall be 38 feet. The dimensions of the cul-de-sac or turn-around shall be shown on the final plans. Also, please be advised that parking is prohibited in the cul-de-sac or turn around.
- The use of speed bumps or other methods of traffic speed reduction must be in accordance with Department of Transportation requirements.

- The local Fire Chief, prior to any submission to our Agency, shall approve in writing the use of gates that limit fire department access into and out of the development or property.
- 4) Gas Piping and System Information
- Provide type of fuel proposed, and **show size and location of bulk containers on plan.**
- 5) Required Notes
- Provide a note on the final plans submitted for review to read “ All fire lanes, fire hydrants, and fire department connections shall be marked in accordance with the Delaware State Fire Prevention Regulations”
  - Proposed Use
  - Alpha or Numerical Labels for each building/unit for sites with multiple buildings/units
  - Square footage of each structure (Total of all Floors)
  - National Fire Protection Association (NFPA) Construction Type
  - Maximum Height of Buildings (including number of stories)
  - Townhouse 2-hr separation wall details shall be shown on site plans
  - Note indicating if building is to be sprinklered
  - Name of Water Provider
  - Letter from Water Provider approving the system layout
  - Provide Lock Box Note (as detailed in DSFPR) if Building is to be sprinklered
  - Provide Road Names, even for County Roads

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

**Department of Agriculture - Contact Mark Davis 739-4811**

The Delaware Department of Agriculture opposes development of this site located within the Level 4 area. The state has designated Level 4 areas for conservation and preservation of cropland and forestland as well as critical natural resources. This site is designated as an cropland parcel on the State’s Green Infrastructure Map developed under executive Order 61 to identify important cropland, forestland and natural resource areas throughout the state.

The parcel is located adjacent to the 214-acre Kathryn Marie Mitchell Agricultural Preservation District and the 50-foot setback and 300-foot notification zone apply. The developer will be required to place the following deed notice in every new recorded deed located within the development.

**§ 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 Department of Agriculture Forest Service concludes that the proposed development will threaten valuable environmental resources found within and adjacent to the site and recommends that the developer find another location for this project and offers it services to the developer in any re-design efforts.

**Right Tree for the Right Place**

The developer is encouraged to employ the “Right Tree for the Right Place” concept in any design considerations. This concept outlines the proper placement of trees to increase property value and reduce heating and cooling costs by an average of 20 to 35 dollars per month. A landscape design that uses this approach reduces maintenance costs to property owners and ensures a lasting forest resource.

**Native Landscapes**

The developer is encouraged to use native trees and shrubs in buffering the property from adjacent land-use activities. A properly designed forested buffer creates wildlife habitat corridors, cleans rivers and creeks of storm-water run-off pollutants, and improves air quality to the area by removing six to eight tons of carbon dioxide annually. To learn more about acceptable native trees and how to avoid plants considered invasive to local

landscapes, contact the Delaware Department of Agriculture Plant Industry Section, (302) 698-4500.

### **Tree Preservation**

The developer is encouraged to employ tree preservation activities to ensure the health and vigor of the resource. Trees are affected by compaction of soils during the construction process; guidelines established by the International Society of Arboriculture (ISA) serve to lessen this impact and provide increased value to the site.

### **Tree Mitigation**

The Department notes the on-site waste-water system has been relocated and understands the challenges of its design and placement. It is acknowledged that tree removal will be necessary to this aspect of the development. The Forest Service encourages the developer to implement tree mitigation at a 1:1 ratio within the site to replace trees lost in construction.

### **Public Service Commission - Contact Andrea Maucher 739-4247**

The application notes "Tidewater Utilities" but the project is not within one of its certificated service areas. Tidewater will need to apply to the Commission for a Certificate of Public Convenience and Necessity (CPCN). Any expansion of natural gas or installation of a closed propane system must comply with Federal Pipeline Safety guidelines.

### **Delaware Emergency Management Agency – Contact Don Knox 659-3362**

Due to the number of residential units being proposed and its location in the Level 4 area, an impact to public safety is foreseen by implementation of this project. The developer should notify the police, fire service, and emergency medical response organization serving this portion of Sussex County to keep them apprised of all development activities. A portion of this property along Wiley Branch Ditch is located in the Special Flood Hazard Area inundated by the 100-year flood, (FIRM Map 475). Routes 24 and 113 are coastal storm evacuation routes and this development will be affected by traffic volume on these routes during a coastal storm event.

### **Sussex County – Contact Richard Kautz 855-7878**

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). These issues can be addressed by including in the application an explanation of how the developer plans to mitigate the issues raised by the State agencies.

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This summer Sussex County will be considering implementation of a Source Water Protection Program required by the State. Depending on the requirements adopted by the County Council this project might be affected. Any well location should insure that the wellhead protection area is entirely on site.

The proposed project is not within any Sussex County Sewer Planning Areas. The County has no schedule to extend service to this project. The project request is for 135 single-family residential lots on 110 acres resulting in a gross density of 1.23 units/acre. Due to the close proximity of the Wiley Branch Ditch the Sussex County Engineering Department recommends that the wastewater system be operated under a long-term contract with a capable wastewater utility that meets the TMDL limits for the Inland Bays Waterways. Sussex County requires design and construction of the collection and transmission system to meet Sussex County sewer standards and specifications. A review and approval of the treatment and disposal system is required by the Sussex County Engineering Department.

For questions regarding these comments, contact Chris Calio, Sussex County Engineering Department at (302) 855-7839.

**Following receipt of this letter and upon filing of an application with the local jurisdiction, the applicant shall provide to the local jurisdiction and the Office of State Planning Coordination a written response to comments received as a result of the pre-application process, noting whether comments were incorporated into the project design or not and the reason therefore.**

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

Sincerely,



Constance C. Holland, AICP  
Director

CC: Sussex County