



October 19, 2005

Ms. Jessica Nichols
Meridian Architects and Engineers
26412 Broadkill Road
Milton, De 19968

RE: PLUS review – PLUS 2005-09-10; North Milton

Dear Ms. Nichols

Thank you for meeting with State agency planners on September 28, 2005 to discuss the proposed plans for the North Milton project to be located north of Route 16 and East of Route 30, near Milton.

According to the information received, you are seeking to annex into Milton and rezone 471 acres from AR-1 to C-1 and LPD for 2,376 residential units and 359,200 sq. ft. of commercial space.

Please note that changes to the plan, other than those suggested in this letter, could result in additional comments from the State. Additionally, these comments reflect only issues that are the responsibility of the agencies represented at the meeting. The developers will also need to comply with any Federal, State and local regulations regarding this property. We also note that until the property is annexed, 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

The following section includes some site specific highlights from the agency comments found in this letter. This summary 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 site is located in Investment Level 1 and 2 areas, with a small portion of Investment Level 3 along the stream. It is also within the Development District according to the Sussex County Comprehensive Plan and the Potential Growth and Annexation Area in the Town of Milton's Comprehensive Plan. In these areas, State policies generally support growth that is consistent with the local comprehensive plan and the character of the surrounding area.
- Because of the large scale of this project, its proximity to Milton, and the inevitable impact it will have on town services, the proposed project area should be annexed into the Town of Milton and developed utilizing town infrastructure and in accordance with the Town's regulations.
- The proposed project and the New Milton Village proposal should be master planned and redesigned in accordance with the principles and concepts in *Better Models for Development in Delaware*.

Street Design and Transportation

- Right-of-way dedication will be required along the frontage of Mulberry Street, Cedar Creek Road, Route 16 and Route 30.
- Sidewalks or a paved multi-modal path located in a 15-foot-wide permanent easement across the frontage of the site on all four roads.
- Some of the intersection improvements listed in the TIS review for New Milton Village would not be sufficient if the Rust and Hudson properties are developed as proposed. Therefore a traffic impact study (TIS) will be required for the development of all three parcels as a precondition for all access approvals. If annexed, development approvals for all three parcels should be withheld until the developer has completed the TIS to DelDOT's satisfaction and has adequately addressed any requirements following from DelDOT's review of the study.

- The developer should redesign the proposed street layout. As presented, there is not a clear hierarchy of streets, and the layout is confusing, which would likely result in accidents where there are multiple decision points or turns occurring in a short distance.
- The main entrance on Route 16 may need to be moved to either be opposite to the New Milton Village entrance or farther from it.
- Three entrances are proposed on Route 30 and Cedar Creek Road, and four entrances are proposed on Route 16. It is unlikely that all of these entrances will be permitted.
- Bicycle and pedestrian connections should be provided to connect the proposed development to Collins Street and Russell Street.
- Better bicycle and pedestrian connections should be provided between the commercial and residential portions of the development.
- The Y-shaped and skewed T intersections should be redesigned to form right-angle T intersections.
- The proposed main entrance on Cedar Creek Road would create eight lots with right-turn-only access on the block entering the development. The plan should be revised to give them full access.

Natural and Cultural Resources

- The area along Ingram Branch should be protected for the following reasons:
 - The project is located adjacent to sensitive headwater or near headwater riparian wetlands associated with Ingram Branch. Headwater streams and their wetlands are important for protecting water quality and the maintenance of ecological functions throughout the stream.
 - There is an Atlantic white cedar swamp adjacent to the site, and the natural buffer along Ingram Branch should be preserved in its entirety and expanded to 100 feet.
 - The land along Ingram Branch is identified as part of a 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.

- The Russell development adjacent to this site has drainage problems that involve an inadequate outlet for stormwater runoff. The developer should work with the Sussex Conservation District and the DNREC Drainage Section to ensure that the proposed development does not worsen the problem and to incorporate a solution in the stormwater plan.
- The site lies within three miles of a known Delmarva fox squirrel population at Prime Hook National Wildlife Refuge. Delmarva fox squirrels were listed as federally endangered in 1967 and are protected by the Endangered Species Act. The proposed project area contains potential habitat for Delmarva fox squirrel. Requirements are listed under the “Rare Species” section of the letter.
- The site shares a boundary with two Agricultural Preservation Districts. The legal requirements are listed under the Department of Agriculture’s comments.

The following are a complete list of comments received by State agencies:

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

The proposed project is located within Investment Level 1 and 2 areas, with a small portion of Investment Level 3 along the stream. It is also within the Development District according to the Sussex County Comprehensive Plan and the Potential Growth and Annexation Area in the Town of Milton’s Comprehensive Plan. In these areas, State policies support growth that is consistent with the local comprehensive plan and the character of the surrounding area.

The site is proposed for annexation into the Town of Milton. Prior to annexation, the Town must submit a completed Plan of Services to the Office of State Planning Coordination detailing how the necessary utilities and infrastructure will be provided to the parcel. To date, we have not received this paperwork.

Because this proposal is so large and adjacent to the Town of Milton, and it will impact the residents, infrastructure and services of the Town regardless of the jurisdiction in which it is developed, the Office of State Planning Coordination recommends that if developed, the subject parcels should be annexed into Milton and developed as a part of that Town.

We note that the proposal presented would approximately quadruple the current size of the Town of Milton. While this would happen over a period of years, it is important that

in this initial stage, the project be master planned in a way that will reflect and preserve the character of the Town. This presents both a challenge and an opportunity.

We understand from discussion at the PLUS meeting that the New Milton Village proposal, which was previously reviewed through PLUS, is also proposed for annexation into Milton. Given that the subject parcels will be considered by the Town concurrently with the New Milton Village proposal, the State strongly recommends that the North Milton and New Milton Village proposals be redesigned with a regional master plan to address the overall layout, circulation, natural resource, and infrastructure issues. In addition, the developers should work with the Town of Milton and the Cape Henlopen School district to discuss opportunities for donating land for public use.

The regional master plan should follow the principles and concepts found in *Better Models for Development in Delaware*. The commercial area should be reoriented so that the parking is not visible from the road. The uses and housing styles should be better integrated, rather than segregated as shown in the current plan. More and better open space should be incorporated into the plan. In addition to the central park area, pocket parks and neighborhood open space should be incorporated throughout. During the PLUS meeting, it was stated that some of the “lakes” shown on the plan might become park areas as the design evolves. Appropriate buffers and natural open space should be preserved and enhanced along Ingram Branch. As mentioned in DelDOT comments, the street system should be redesigned to provide for a clear hierarchy of streets. Architectural styles used should complement the character of Milton.

Because of the magnitude of this project, we ask that as it moves forward, you work closely with the Town of Milton and the relevant State agencies, to properly master plan the area. The Office of State Planning Coordination is interested in working with the Town and the developer as this project progresses. We also ask that once the project is redesigned, it should receive a second PLUS process so that relevant State agencies will have an opportunity to comment on the revised proposal.

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

Two known historic properties are within this parcel, the Capt. N.C. Ellingsworth tenant house (S-3441; shown on Beers Atlas of 1868) and a late 19th-c. to early 20th-c. agricultural complex (S-3431; shown on the 1918 Cedar Creek USGS map). Beers Atlas also shows three other houses within the parcel, and the 1918 Cedar Creek USGS map shows another house on Rt. 30. There may be historic archaeological sites associated with these houses. There are also areas of medium potential for prehistoric

archaeological sites. There are a number of historic properties immediately adjacent to this project, mainly along Cedar Creek Rd. and Rt. 16.

If the existing historic buildings cannot be kept on larger parcels, DHCA would appreciate the opportunity to document them before they are demolished. In addition, the DHCA would appreciate the opportunity to look for archaeological sites before any ground-disturbing activities take place. They ask that adequate landscaping be included to shield the adjacent historic properties from the visual and noise changes that this project will introduce.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

DelDOT is opposed to the annexation as presently proposed because it conflicts with our Municipal Annexation Policy. That policy, in relevant part, states that the Department is opposed to creation of actual and functional enclaves. The proposed annexation would create a functional enclave in that it would leave a group of parcels on both sides of Route 16 under County jurisdiction but accessible only through the Town. If the Town were to annex the parcels in that enclave before or at the same time as their annexation of New Milton Village, that would address this concern.

- 1) Cedar Creek Road and Mulberry Street are classified as local roads, while Delaware Routes 16 and 30 are classified as collector roads. Local roads in Delaware typically have right-of-way widths ranging from 33 to 50 feet. Collector road rights-of-way also vary but are generally wider. 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 and 40 feet from the centerline on collector roads. Therefore we will require right-of-way dedication along the frontage to provide any additional width needed from this project.
- 2) DelDOT will also require that sidewalks or a paved multi-modal path, located in a 15-foot wide permanent easement, be provided across the frontage of the site on all four roads. A final determination on which form of path should be provided in which location will be made later in the plan development process.
- 3) A traffic impact study (TIS) has been completed and reviewed for the development of the New Milton Village property. While the specific development proposal differs somewhat from what is addressed in the TIS, the August 3, 2005, review letter produced by our consultant, McCormick Taylor, provides an idea of what would be required to support the development proposed for that parcel. However, some of the specific intersection improvements listed in

that letter would not be sufficient if the Rust and Hudson Properties are also developed as proposed.

DelDOT would require that the developer provide a TIS for the development of all three properties as a pre-condition for access approvals. If they decide to annex and zone the subject land as proposed, they would recommend that the Town withhold plan approvals for all three properties until the developer has completed that TIS to DelDOT's satisfaction and has adequately addressed any requirements following from DelDOT's review of that study.

To schedule a scoping meeting for a TIS, the developer should have their traffic engineer contact Mr. Todd Sammons of this office at (302) 760-2134.

- 4) DelDOT offers the following comments on specific aspects of the Rust-Hudson Farm Plan:
 - a) It is recommended that the developer rethink the proposed street layout. Presently, there is not a clear hierarchy of streets within the site. As a result, residents of some streets could find that they have unexpectedly, and undesirably, high volumes of through traffic. Further, the layout seems confusing and likely to result in accidents where there are multiple decision points or turns occurring in a short distance.
 - b) The main entrance on Route 16 may need to be moved, either to be opposite the New Milton Village entrance or farther from it. Their concern is that as the site designs are proposed, the queues of vehicles turning left into the two properties could overlap. Preliminarily, their preference is that the entrances be aligned opposite each other. A similar conflict would occur with Sussex Road 212A and the proposed south entrance on Cedar Creek Road.
 - c) Three entrances are proposed both on Route 30 and Cedar Creek Road, and four entrances are proposed on Route 16. It is unlikely that all of these entrances will be permitted. The number and location of these entrances should be reviewed with our Subdivision Manager for Sussex County, Mr. John Fiori, early in the TIS process so that the site traffic can be assigned properly.

- d) Bicycle and pedestrian connections should be provided to connect the proposed development to Collins Street and Russell Street in the Collins and Russell Subdivision.
 - e) DelDOT supports the comment from Mr. Robert Ehemann, of the Department of Natural Resources and Environmental Control, that better bicycle and pedestrian connections should be provided between the residential and commercial portions of the development.
 - f) Throughout the plan there are Y-shaped intersections and skewed T intersections proposed. It is recommended that they be redesigned to form right-angle T intersections.
 - g) The proposed main entrance on Cedar Creek Road would create eight lots with right-turn-only access on the block entering the development. The plan should be revised to allow them full access.
 - h) This is not a transportation comment, but the response to Item 35 on the PLUS application states that no consideration was given to nuisance species. With 14 proposed ponds, DelDOT recommends that some consideration be given in that regard.
- 5) The developer's site engineer should contact our Subdivision Manager for Sussex County, Mr. John Fiori, regarding our specific requirements for access. Mr. Fiori may be reached at (302) 760-2260.

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

Soils

Based on Sussex County soil survey mapping Sassafras, Rumford, and Evesboro were the predominant soils mapping units on this parcel, while Woodstown, Klej and Johnston soil mapping units were mapped to a much lesser extent. Sassafras and Rumford are well-drained upland soils that, generally, have few limitations for development. Evesboro is an excessively well-drained upland soil that has moderate limitations on account of its rapid permeability. Woodstown and Klej are moderately well-drained soils of low-lying uplands that have moderate limitations for development. Johnston is a very poorly-drained wetland associated (hydric) floodplain soil that has severe limitations for development.

Wetlands

According to the Statewide Wetland Mapping Project Mapping (SWMP) maps, palustrine forested/scrub-shrub riparian and palustrine unconsolidated bottom riparian wetlands were mapped along most of northern boundary of subject parcel. Palustrine riparian wetlands also bisect the north central portion of subject parcel. PLUS materials indicate that a wetlands field delineation has been performed; this delineation should be verified by the U.S. Army Corps of Engineers through the Jurisdictional Determination process.

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

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

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

It is also recommended that the Farm Services Agency of the USDA be contacted to assess and make assurances that all of the farmed lands on subject parcel meet the recognized criteria for classification as "prior converted wetlands." Prior converted wetlands are farmed wetlands that have 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 that parcel's cropping history. Parcels converted after said date regardless of cropping history are considered jurisdictional by the USDA. The contact person for assessing a parcel's cropping history is Sally Griffin at the USDA – she can be reached by phone at 678-4182.

This project is located directly adjacent to sensitive headwater or near headwater riparian wetlands associated with Ingram Branch of the Broadkill watershed— greatly increasing the probability of harmful impacts to surface and groundwater quality of all waters within the greater Broadkill River watershed, and making it more difficult for the State to achieve future required TMDL nutrient reductions. 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. In recognition of this concern, the Watershed Assessment Section strongly recommends that the applicant consider preserving the existing natural forested buffer in its entirety. DNREC recommends that efforts be made to expand the existing buffer width beyond the recommended 100-foot minimum - via plantings of native woody and herbaceous vegetation.

Wetland Buffers

There is an Atlantic White Cedar swamp adjacent to parcel 2-35-14-4.00 that could be detrimentally affected by run-off from this development if adequate buffers are not maintained. This rare community relies on specific hydrology to persist and is especially sensitive to sedimentation and changes in water quality. According to the application, there is going to be disturbance within 100 feet of wetlands. Buffers less than 100 feet in width are inadequate for protecting the function and integrity of wetlands. There should be at least a 100-foot buffer between wetlands and lots, roadways, structures, or ponds.

TMDLs

A Total Maximum Daily Load (TMDL) is the maximum level of pollution for which a water quality limited water body can assimilate without compromising use and recreational goals such as swimming, fishing, drinking water, and shell fish harvesting. Although TMDLs as a “pollution runoff mitigation strategy” to reduce nutrient loading have not yet been developed for the Broadkill River watershed to date, work is continuing and they should be completed by 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. Reducing imperviousness, preservation and/or planting trees, and maintaining at least a 100-foot upland buffer from all streams and wetlands are some examples of mitigative strategies to reduce nutrient runoff impacts.

Impervious Cover

The creation of a relatively large expanse of impervious cover (reported as 35%) through the proposed siting of a relatively large commercial/residential complex on subject parcel is likely to significantly increase the contribution of contaminant-laden runoff draining to waters of the Broadkill River watershed. In fact research findings have consistently shown that once a watershed exceeds a threshold of 10 percent imperviousness, irreversible declines in water and habitat quality are almost always the consequence. Research has also shown that the degree of water and habitat quality decline – beyond the 10 percent threshold – is directly correlated with increasing percentage levels of watershed imperviousness. Therefore, in the interest of being proactive and to reduce the cumulative impacts from this development and others within the Broadkill watershed, the applicant is strongly urged to mitigate for such impacts through both natural and constructed Best Management Practices (BMPs). Reducing the amount of impervious surface through the planting/preservation of trees (especially adjacent to wetlands/waterways), and the use of pervious paving surfaces (“pavers”) in lieu of asphalt or concrete - are examples of BMPs that will help reduce such impacts.

Delaware Land Treatment

Clean Delaware, Incorporated (CDI) (recently purchased and operating as Clean Delaware, LLC) has held a permit to land treat wastewater sludge and various agricultural wastes under Delaware regulations since 1989. The company is required to operate under the standards set forth in the Regulations Governing the Land Treatment of Wastes and the more stringent requirements established in their site specific permit. As the permitting authority, the DNREC, Division of Water Resources, Surface Water Discharges Section, maintains oversight of the permittee and their activities.

The permittee is responsible for the monitoring of all residual products that are land treated at their site. CDI is responsible for the annual monitoring of the levels of possible pollutants in the soil at the site. Additionally, they are required to monitor the ground water beneath the site through quarterly sampling of ground water monitoring wells. The data is submitted to the permitting authority for review. Failure to comply with the reporting requirements or failure to remain below the maximum allowable pollutant limits established in the state or Federal regulation or the permit specific limits would result in regulatory action that may include revocation of the land treatment permit. Over the past 14 years of operation of the CDI land treatment sites, they have been operated so that no violation of the established pollutant limits has occurred.

Water Supply

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

All well permit applications must be prepared and signed by licensed water well contractors, and only licensed well drillers may construct the wells. Please factor in the necessary time for processing the well permit applications into the construction schedule.

Dewatering well permit applications typically take approximately four weeks to process, which allows the necessary time for technical review and advertising.

Potential Contamination Sources do exist in the area, and any well permit applications will undergo a detailed review that may increase turnaround time and may require site specific conditions/recommendations. In this case, there is a: Groundwater Management Zone (GMZ) Zone B for a Clean Delaware, Inc. located within 1,000 feet from this project.

Should you have any questions concerning these comments, please contact Rick Rios at 302-739-9944.

Sediment and Erosion Control/Stormwater Management

Standard Comments:

1. A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. The plan review and approval as well as construction inspection will be coordinated through Sussex Conservation District. Contact Jessica Watson, Program Manager, at (302) 856-7219 for details regarding submittal requirements and fees.
2. It is strongly recommended that you contact Sussex Conservation District to schedule a pre-application meeting to discuss the sediment and erosion control and stormwater management components of the plan. The site topography, soils mapping, pre- and post- development runoff, and proposed method(s) and location(s) of stormwater management should be brought to the meeting for discussion.

3. A Notice of Intent (NOI) for Stormwater Discharges Associated with Construction Activity must be submitted to DNREC Division of Soil and Water Conservation along with the \$195 NOI fee prior to plan approval.
4. Applying practices to mimic the pre-development hydrology on the site, promote recharge, maximize the use of existing natural features on the site, and limit the reliance on structural stormwater components, such as maintaining open spaces, should be considered in the overall design of the project as a stormwater management technique.
5. Each stormwater management facility should have an adequate outlet for release of stormwater. Any drainage conveyed onto this site from neighboring properties must be adequately conveyed through the site to the discharge point without interruption.
6. Clearly address how Stormwater Quality and Quantity Treatment will be provided. If this project is eligible for a Quantity Waiver, please make the request in the stormwater narrative citing the specific regulation. As of April 11, 2005, stormwater BMPs must also consider water quality as well as quantity in impaired water bodies – reducing nutrients through BMPs will also help achieve the future required TMDL nutrient reductions in the Broadkill River watershed.
7. Please indicate on the sediment and stormwater management plan who shall be responsible for maintenance of the stormwater management facilities both during construction and after. During the design of the sediment control and stormwater management plan, considerations should be made for maintenance (i.e. access, easements, etc.) of any structures or facilities.
8. If a stormwater management pond is going to be utilized as a sediment trap/basin during construction it must be designed to accommodate 3600 cubic feet of storage per acre of contributing drainage area until project stabilization is complete.
9. All ponds are required to be constructed per Pond Code 378.
10. Please note that if the stormwater facilities will impact wetlands, a permit must be provided to the District prior to receiving approval. Please address.

Site-Specific Comments:

1. A Certified Construction Reviewer (CCR) is required for this project.
2. The District will require a phased plan and sequence of construction for this project. DNREC regulations require no more than 20 acres to be disturbed at one time. Please address.
3. Under the DNREC Health and Safety Memo of 2000, all wet ponds are required to have an open space depth of 3 feet or more that comprises 50-75 percent of the area of the pond.
4. Consideration should be made for any adjacent properties during the design of this project, including drainage and erosion/sediment control.
5. Please comply with all new regulations and policies including Stormwater Regulations, Erosion and Sediment Control Handbook, and NRCS Rainfall events for the 2, 10, and 100-year storm events.
6. If the stormwater facility will discharge to a ditch, analyze the ditch with tailwater conditions of ½ full during the 2 year storm event, and full during the 10 year storm event.
7. The Sussex Conservation District is concerned with the close proximity of the buildings/road/pond next to Ingram Branch. The District recommends relocating any structures away from the Branch and buffering the area.

Drainage

The Russell development adjacent to this proposed development has historical drainage problems that involve an inadequate outlet for storm runoff. Special attention should be used in reviewing the proposed plans to ensure that drainage in that development is not adversely impacted. It would be good if the proposed development would benefit drainage conditions of the Russell development and incorporate a solution in the stormwater plan for the newer condition. The Drainage Program would be willing to work on a solution to this problem.

The Drainage Section requests all existing ditches on the property be checked for function and cleaned if needed prior to the construction of homes. Wetland permits may be required before cleaning ditches.

The Drainage Section requests that all precautions be taken to ensure the project does not hinder any off site drainage upstream of the project or create any off site drainage problems downstream by the release of on site storm water.

The Drainage Section strongly recommends any drainage conveyance between two parcels within a subdivision be dedicated as a drainage easement and such easement be designated as passive open space, not owned by individual landowners. The easement should be of sufficient width to allow for future drainage maintenance as described below.

- Along an open ditch or swale, the Drainage Section recommends a maintenance equipment zone of 25 feet measured from the top of bank on the maintenance side, and a 10-foot setback zone measured from top of bank on the non-maintenance side. These zones should be maintained as buffers to aid in the reduction of sediment and nutrients entering into the drainage conveyance. Grasses, forbs and sedges planted within these zones should be native species, selected for their height, ease of maintenance, erosion control, and nutrient uptake capabilities. Trees and shrubs planted within the maintenance zone should be native species spaced to allow for drainage maintenance at maturity. Trees should not be planted within 5 feet of the top of ditch to avoid future blockages from roots.
- Along a stormwater pipe the Drainage Section recommends a maintenance equipment zone of 15 feet on each side of the pipe as measured from the pipe centerline. This zone should be maintained as buffers to aid in the reduction of sediment and nutrients entering into the drainage conveyance. Grasses, forbs and sedges planted within these zones should be native species selected for their height, ease of maintenance, erosion control, and nutrient uptake capabilities. Trees and shrubs planted within the maintenance zone should be spaced to allow for drainage maintenance at maturity.

The Drainage Section recommends any drainage/utility easement owned by an individual landowner should not have structures, decks, buildings, sheds, kennels, fences or trees within the drainage easement to allow for future drainage maintenance.

Rare Species

The proposed project lies within three miles of a known Delmarva fox squirrel (*Sciurus niger cinereus*) population at the Prime Hook National Wildlife Refuge. Delmarva fox squirrels were listed as federally endangered in 1967 and are protected by the Endangered

Species Act. They generally inhabit mature forests with open understories and wet woodlands, but can be opportunistic in their habitat choice. The proposed project area contains potential habitat for Delmarva fox squirrels and the following is required prior to beginning work:

1. Completely avoid all direct and indirect impacts to the habitat, in consultation with the U.S. Fish and Wildlife Service (Trevor Clark , 410-573-4527) and Delaware Division of Fish and Wildlife, Nongame and Endangered Species Program (Holly Niederriter, 302-653-2880);

OR

2. Have surveys conducted to determine if Delmarva fox squirrels are present. In accordance with Delaware's fox squirrel site survey procedures, surveys must be conducted by a State approved fox squirrel surveyor two times between September and May: once in the fall, and again between March 15 and May 30. A list of qualified surveyors is available upon request. Please note that surveys may confirm the presence of fox squirrels but cannot confirm absence.

Nuisance Waterfowl

There are numerous 'lakes' (stormwater management ponds) in the site plan that may attract waterfowl like resident Canada geese and mute swans. High concentrations of waterfowl in ponds create water-quality problems, leave droppings on lawn and paved areas and can become aggressive during the nesting season. Short manicured lawns around ponds provide an attractive habitat for these species. We recommend that the number of ponds in the site plan be reduced. Because geese do not feel safe when they can't see the surrounding area for predators, the remaining ponds should be planted with a perimeter of tall vegetation such as trees, shrubs, wildflowers or native grasses. This is especially important for ponds that are adjacent to athletic and recreational type fields.

Plantings should be completed as soon as possible as it is easier to deter geese when there are only a few than it is to remove them once they become plentiful. The Division of Fish and Wildlife does not provide goose control services, and if problems arise, land managers or property owners will have to accept the burden of dealing with these species (e.g., permit applications, costs, securing services of certified wildlife professionals). Solutions can be costly and labor intensive; however, with proper landscaping, monitoring, and other techniques, geese problems can be minimized.

State Resource Areas

This project contains land along Ingram Branch currently identified as part of a 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. 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, 739-9235.

Recreation

DNREC recommends that sidewalks be built fronting at least one side of residential streets and stub streets. A complete system of sidewalks will: 1) fulfill the recreation need for walking and biking facilities, 2) provide opportunities for neighbors to interact in the community, and 3) facilitate safe, convenient off-road access to neighboring communities, parks, public mass transit stops, schools, stores, work, etc.

The Division of Parks and Recreation conducted a telephone survey of Delaware residents to gather information on outdoor recreation patterns and preferences as well as other information on their landscape perception. These findings are the foundation of the 2003-2008 Statewide Comprehensive Outdoor Recreation Plan (SCORP) providing guidance for investments in needed outdoor recreation facilities. The high facility needs in Eastern Sussex County are Walking and Jogging, Bike Paths and Fishing Areas. The moderate facility needs are Picnic Areas, Skate Facilities, Canoe/Kayak Access, Hiking Trails, Swimming Pools, Playgrounds, Soccer Fields, Tennis Courts, Power Boat Access and Baseball/Softball Fields.

Thank you for considering and centralizing many of these recreation opportunities within the project. In addition to the centrally located recreation complex, the Division of Parks and Recreation recommends for proposals this size, that additional open space for active recreation be provided throughout the residential areas. For additional information about the outdoor recreation priorities, contact Bob Ehemann at 739-9235.

Solid Waste

Each Delaware household generates approximately 3,600 pounds of solid waste per year. On average, each new house constructed generates an additional 10,000 pounds of construction waste. Due to Delaware's present rate of growth and the impact that growth will have on the state's existing landfill capacity, the applicant is requested to be aware of the impact this project will have on the State's limited landfill resources and, to the extent

possible, take steps to minimize the amount of construction waste associated with this development.

Underground Storage Tanks

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

H. O. Brittingham School, Facility # 5-000336, Project # S9107132

Milton Service Center, Facility # 5-000902, Project # S9909194

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

Air Quality

Once complete, vehicle emissions associated with this project are estimated to be 182.3 tons (364,691.2 pounds) per year of VOC (volatile organic compounds), 151.0 tons (301,939.6 pounds) per year of NOx (nitrogen oxides), 111.4 tons (222,776.6 pounds) per year of SO2 (sulfur dioxide), 9.9 ton (19,831.0 pounds) per year of fine particulates and 15,253.0 tons (30,505,954.7 pounds) per year of CO2 (carbon dioxide).

Emissions from area sources associated with this project are estimated to be 73.5 tons (147,096.5 pounds) per year of VOC (volatile organic compounds), 8.1 ton (16,185.1 pounds) per year of NOx (nitrogen oxides), 6.7 ton (13,431.3 pounds) per year of SO2 (sulfur dioxide), 8.7 ton (17,332.5 pounds) per year of fine particulates and 298.1 tons (596,296.5 pounds) per year of CO2 (carbon dioxide).

Emissions from electrical power generation associated with this project are estimated to be 29.1 tons (58,298.5 pounds) per year of NOx (nitrogen oxides), 101.4 tons (202,777.3 pounds) per year of SO2 (sulfur dioxide) and 14,954.8 tons (29,909,658.2 pounds) per year of CO2 (carbon dioxide).

	VOC	NOx	SO ₂	PM _{2.5}	CO ₂
Mobile	182.3	151.0	111.4	9.9	15253.0

Residential	73.5	8.1	6.7	8.7	298.1
Electrical Power		29.1	101.4		14954.8
TOTAL	255.8	188.2	219.5	18.6	30505.9

For this project the electrical usage via electric power plant generation alone totaled to produce an additional 29.1 tons of nitrogen oxides per year and 101.4 tons of sulfur dioxide per year.

A significant method to mitigate this impact would be to require the builder to construct Energy Star qualified homes. Every percentage of increased energy efficiency translates into a percent reduction in pollution. Quoting from their webpage, <http://www.energystar.gov/>:

“ENERGY STAR qualified homes are independently verified to be at least 30% more energy efficient than homes built to the 1993 national Model Energy Code or 15% more efficient than state energy code, whichever is more rigorous. These savings are based on heating, cooling, and hot water energy use and are typically achieved through a combination of:

building envelope upgrades,
high performance windows,
controlled air infiltration,
upgraded heating and air conditioning systems,
tight duct systems and
upgraded water-heating equipment.”

The DNREC Energy Office is in the process of training builders in making their structures more energy efficient. The Energy Star Program is excellent way to save on energy costs and reduce air pollution. They highly recommend this project development and other residential proposals increase the energy efficiency of their homes.

They also recommend that the home builders offer geothermal and photo voltaic energy options. Applicable vehicles should use retrofitted diesel engines during construction. The development should provide tie-ins to the nearest bike paths and links to mass transport system, and fund a lawnmower exchange program for their new occupant.

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

These comments are intended for informational use only and do not constitute any type of approval from the Delaware State Fire Marshal's Office. At the time of formal submittal, the applicant shall provide; completed application, fee, and three sets of plans depicting the following in accordance with the Delaware State Fire Prevention Regulation (DSFPR):

a. **Fire Protection Water Requirements:**

- Water distribution system capable of delivering at least 1500 gpm for 2-hour duration, at 20-psi residual pressure is required. Fire hydrants with 800 feet spacing on centers. (Mercantile)
- 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 and Townhouses)
- 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.

b. **Fire Protection Features:**

- All structures over 10,000 Sq. Ft. aggregate will require automatic sprinkler protection installed.
- Buildings greater than 10,000 sq.ft., 3-stories or 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
- For townhouse buildings, provide a section / detail and the UL design number of the 2-hour fire rated separation wall on the Site plan.

c. **Accessibility**

- All premises which the fire department may be called upon to protect in case of fire, and which are not readily accessible from public roads, shall be provided with suitable gates and access roads, and fire lanes so that all buildings on the premises are accessible to fire apparatus. This means that

the access road to the subdivision from Milton-Ellendale Road, Cedar Creek Road, Issacs 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.

d. **Gas Piping and System Information:**

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

e. **Required Notes:**

- Provide a note on the final plans submitted for review to read “ All fire lanes, fire hydrants, and fire department connections shall be marked in accordance with the Delaware State Fire Prevention Regulations”
- Proposed Use
- Alpha or Numerical Labels for each building/unit for sites with multiple buildings/units
- Square footage of each structure (Total of all Floors)
- National Fire Protection Association (NFPA) Construction Type
- Maximum Height of Buildings (including number of stories)
- 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 our website: www.delawarestatefiremarshal.com, technical services link, plan review, applications or brochures.

Department of Agriculture - Contact: Milton Melendez 698-4500

Neither the Delaware Department of Agriculture nor the Delaware Forest Service have any objections to the North Milton application. The site is located on a designated development area. The *Strategies for State Policies and Spending* encourage responsible development in areas within an Investment Level 2 area; the Delaware Department of Agriculture supports growth in these areas, and encourages the applicant to contact our the Department if we can be of service.

The applicant should be aware that the proposed parcels share a boundary with two Agricultural Preservation Districts. The Issacs #3 Easement shares the northern most boundary; the Issacs #2 Easement is located west of the project location across from Rt. 30. The below restrictions will apply to any development within 50 feet of any Agricultural Districts or Easements. Please see Delaware Code Title 3, Chapter 9, Subchapter II, and Section 910.

§ 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.)

Right Tree for the Right Place

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

Native Landscapes

The Delaware Department of Agriculture and the Delaware Forest Service encourages the developer to use native trees and shrubs to buffer the property from the adjacent land-use activities near this site. A properly designed forested buffer can create wildlife habitat corridors and improve air quality to the area by removing six to eight tons of carbon dioxide annually and will clean our rivers and creeks of storm-water run-off pollutants. To learn more about acceptable native trees and how to avoid plants considered invasive to our local landscapes, please contact the Delaware Department of Agriculture Plant Industry Section at (302) 698-4500.

Public Service Commission - Contact: Andrea Maucher 739-4247

The project is not in a certificated service territory for water or wastewater. The utility selected to serve will need to apply to the commission for a CPCN. If annexed into Milton, the Town will need to notify the Public Service Commission of the annexation.

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

According to the *Strategies for State Policies and Spending*, the majority of the proposal is located in Investment Level 1 and 2 areas with a small area located in Level 3. As a general planning practice, DSHA encourages residential development in these areas where residents will have proximity to services, markets, and employment opportunities. Furthermore, the proposal targets units for first time homebuyers. According to the most recent real estate data collected by DSHA, the average home price in the Milton area is \$274,053. However, families earning 80% of Sussex County's median income only qualify for mortgages of \$142,040. The provision of units within reach of working families earning at least 80% of Sussex County's median income would help increase housing opportunities for first time homebuyers.

Cape Henlopen School District - George E. Stone, Ed.D. 302-645-6686

The developers should be required to set aside 20-30 acres for a new school site; and the District needs to know what arrangements for transportation and buses will be allowed in the development.

Sussex County – Contact: Richard Kautz 302-855-7878

The town is encouraged to avoid the creation of new enclaves and to eliminate existing enclaves during its negotiation of the annexation agreement.

The Sussex County Engineer Comments:

The project is located west of the Town of Milton and a portion of the project's boundary adjoins the town boundary. The project proposes to develop using a central community wastewater system. It is located in Sussex County's North Coastal Planning Area and within a Developing Area of the Town of Milton. The project is not in an Environmentally Sensitive Developing Area and Sussex County does not expect to provide sewer service in the foreseeable future. Sussex County recommends the

developer contact the Town of Milton for connection to the Milton wastewater system. Sussex County opposes private treatment facilities when municipal sewer is available.

If the project is not annexed into Milton, Sussex County requires design and construction of the collection and transmission system to meet Sussex County sewer standards and specifications. We recommend that the wastewater system be operated under a long-term contract with a capable wastewater utility. In addition, we recommend they have a wastewater utility provider prior to approving the project. A review and approval of the treatment and disposal system by the Sussex County Engineering Department is also required and plan review fees may apply. Disposal fields should not be counted as open space. Wastewater disposal fields should be clearly identified on recorded plots.

For questions regarding these comments, contact Rob Davis, Sussex County Engineering Department at (302) 855-7719.

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,

A handwritten signature in cursive script that reads "Constance C. Holland".

Constance C. Holland, AICP
Director

CC: Town of Milton
Sussex County