



November 16, 2005

Mr. Steve Wilkinson
Wilkinson Holdings
242 North James Street, Ste. 105
Newport, DE 19804

RE: PLUS review – PLUS 2005-10-05; Wilkinson Property

Dear Mr. Wilkinson:

Thank you for meeting with State agency planners on October 26, 2005 to discuss the proposed plans for the Route 9 townhome plan project to be located at the northwest corner of the intersection of Route 9 and Hudson Road.

According to the information received, you are seeking site plan approval for 105 townhomes on 28 acres in a Level 4 area.

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 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.

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

- This project is proposed for an Investment Level 4 area according to the *2004 Strategies for State Policies and Spending*. This project is also located outside of a designated growth area in relevant municipal and county certified comprehensive plans. For these reasons, the State opposes this proposal.
- The construction of townhomes in the Low Density Area is inconsistent with the character of the area and with the purpose of this area as set forth in the Sussex County Comprehensive Plan.

Natural and Cultural Resources

- PLUS materials indicate that this proposal would clear 17.3 out of 21.4 acres of forest. By the time the site is built out, it is likely that the entire forest would be removed. Efforts should be made to conserve trees on-site.
- The existing trees located in areas designated as ‘open space’ should be left intact. These forested open space areas should be clustered together to form a larger area of open space rather than small disconnected spaces on corners, and in between lots.
- It is doubtful that the large area set aside for stormwater management is necessary, and the number and size of the ponds should be reduced to limit the amount of forest clearing needed. Considering the benefit of trees in flood abatement and erosion.

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

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

This project represents a major land development that will result in 105 residential units in an Investment Level 4 area according to the *2004 Strategies for State Policies and Spending*. This project is also located outside of a designated growth area in relevant municipal and county certified comprehensive plans. 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 areas. 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 260 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 road maintenance and drainage improvements for the transportation system, 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.

Additionally, a conditional use is required in order to build townhouses as proposed. The construction of townhomes in the Low Density Area is inconsistent with the character of the area and with the purpose of this area as set forth in the Sussex County Comprehensive Plan.

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

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

The Division of Historic and Cultural Affairs Office is not in favor of this development because it is in Investment Level 4, and would further adversely affect the historic farming and silviculture landscape in this area. However, nothing is known within the parcel. There is one small area of medium potential for prehistoric-period archaeological sites here, which they believe is focused around a low area where the developer has planned a storm water management pond. This is a type of location about which little is known, and the fact that it is wooded raises the possibility that it has never been plowed. Such a site could yield a wealth of information. The rest of the area has a very low potential for either prehistoric- or historic-period archaeological sites.

If this development does go forward, they would appreciate the opportunity to check the area for an archaeological site, to learn more about the location, extent, and nature of such a site.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

Wilkinson Holdings, LLC seeks to develop 105 townhouses on an approximately 28.18-acre parcel (Tax Parcel 2-35-30.00-37.05). The land is located on the northwest corner of US Route 9 and Hudson Road (Sussex Road 258) between Harbeson and Cool Spring. The land is zoned AR-1 and GR. A conditional use approval would be needed to allow the proposed town houses.

This development is proposed for an area designated as Level 4 under the *Strategies for State Policies and Spending*. The *Strategies for State Policies and Spending* and the Sussex County Comprehensive Plan have deemed the type of development being proposed inappropriate for this area. 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, preserve the capacity of Route 9 to handle through traffic, 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.

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.

If this development proposal is approved, notwithstanding inconsistencies with the relevant plans and policies, DelDOT will provide technical review and comments.

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

This project is proposed for an Investment Level 4 area as defined by the *Strategies for State Policies and Spending* and is also located outside of a designated growth area in the relevant municipal and county certified comprehensive plans. According to the

Strategies this project is inappropriate in this location. In Investment Level 4 areas, the State's investments and policies, from DNREC's perspective, should retain the rural landscape and preserve open spaces and farmlands. Open space investments should emphasize the protection of critical natural habitat and wildlife to support a diversity of species, and the protection of present and future water supplies. Open space investments should also provide for recreational activities, while helping to define growth areas. Additional state investments in water and wastewater systems should be limited to existing or imminent public health, safety or environmental risks only, with little provision for additional capacity to accommodate further development.

With continued development in Investment Level 4 areas, the State will have a difficult, if not impossible, time attaining water quality (e.g., TMDLs) and air quality (e.g., non-attainment areas for ozone and fine particulates) goals. Present and future investments in green infrastructure, as defined in Governor Minner's Executive Order No. 61, will be threatened. DNREC strongly supports new development in and around existing towns and municipalities and in areas designated as growth zones in certified Comprehensive Plans. We encourage the use of transfer of development rights where this growth management tool is available.

This particular development certainly compromises the integrity of the State Strategies and the preservation goals inherent in many of DNREC's programs. Of particular concern is the loss/fragmentation of 17.3 out of 21.4 acres of forest. While mitigating measures such as conservation design, central wastewater systems instead of individual on-site septic systems, and other best management practices may help mitigate impacts from this project, not doing the project at all is the best avenue for avoiding negative impacts. As such, this project will receive no financial, technical or other support of any kind from DNREC. Any required permits or other authorizations for this project shall be considered in light of the project's conflict with our State growth strategies.

Soils

Based on Sussex County soil survey update Downer, Pepperbox-Rosedale, Woodstown, and Runclint were mapped on subject parcel. Downer is a well-drained upland soil that, generally, has few limitations for development. Pepperbox-Rosedale and Woodstown are moderately well-drained soils that have moderate limitations for development.

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

Since residential development significantly increases the amount of impervious cover - leading to large volumes of contaminant-laden runoff which ultimately drain into streams or waterways - the applicant is strongly urged to pursue both natural and constructed Best Management Practices (BMPs) to reduce such impacts. Reducing the amount of impervious surfaces via forest preservation and the use of pervious paving surfaces (“pavers”) in lieu of asphalt or concrete are examples of ways to reduce such impacts. Research has consistently shown that once a watershed exceeds a threshold of 10 percent imperviousness, water and habitat quality irreversibly decline.

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.

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

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 at (302) 856-7219 for details regarding submittal requirements and fees.

As of April 11, 2005, stormwater best management practices must also consider water quality as well as quantity in impaired water bodies.

Rare Species

DNREC has not surveyed this parcel, therefore it is unknown if there are state-rare or federally listed plants, animals or natural communities on this project site. However, there are records of Red-Headed Woodpecker (*Melanerpes erythrocephalus*) in the vicinity and it may be present in the project area.

Forest Preservation

According to the application approximately 17.3 acres out of 21.4 acres of forest is going to be removed by this project. In terms of wildlife habitat, by the time this site is built out and dwellings, parking areas, roadways, and stormwater management ponds are constructed, the entire forest will have been removed.

First of all, consideration should be given to reducing the number of units and/or reconfiguring the site plan so that these units can be clustered more in the area of the parcel that is already cleared. This would allow a larger area of forest to be preserved. Secondly, the existing trees located in areas designated as 'open space' should be left intact. These forested open space areas should be clustered together to form a larger area of open space rather than small disconnected spaces on corners, and in between lots. Larger, connected areas of forest are more beneficial to wildlife (and usually to residents as well) than small disconnected spaces. Forest fragmentation separates wildlife populations, increases road mortality, and increases "edge effects" that leave many forest dwelling species vulnerable to predation and allows the infiltration of invasive species.

Lastly, it is doubtful that the large areas set aside for stormwater management is necessary and the number and size of the ponds should be reduced to limit the amount of forest clearing needed. Considering the benefit of trees in flood abatement and erosion control, it doesn't make sense to clear trees for stormwater management ponds. Ponds that are necessary should be placed in the area of the parcel that is already cleared or and

alternate method of stormwater management should be employed. If the ponds are solely for aesthetics, the applicant should consider what the future water quality in these ponds will be once lawn fertilizers are routinely used and clearing of trees has occurred. Over time, these types of ponds typically have water quality problems which residents will have to deal with; solutions are often costly and labor intensive.

Although leaving a forest intact is usually more beneficial to the existing wildlife and is preferential to clearing, DNREC recommends that clearing not occur April 1st to July 31st to reduce impacts to nesting birds and other wildlife species that utilize forests for breeding.

Nuisance Waterfowl

Stormwater management ponds that remain in the site plan 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 native plantings of tall grasses, wildflowers, shrubs, and trees at the edge and within a buffer area (50 feet) around the perimeter. Waterfowl do not feel safe when they can not see the surrounding area for possible predators. These 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, 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 proper landscaping, monitoring, and other techniques, geese problems can be minimized.

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.

Air Quality

Once complete, vehicle emissions associated with this project are estimated to be 8.1 tons (16,116.4 pounds) per year of VOC (volatile organic compounds), 6.7 tons (13,343.3 pounds) per year of NO_x (nitrogen oxides), 4.9 tons (9,844.9 pounds) per year of SO₂ (sulfur dioxide), 0.4 ton (876.4 pounds) per year of fine particulates and 674.1 tons (1,348,116.7 pounds) per year of CO₂ (carbon dioxide).

However, because this project is in a level 4 area, mobile emission calculations should be increased by 118 pounds for VOC emissions for each mile outside the designated growth areas per household unit; by 154 pounds for NO_x; and by 2 pounds for particulate emissions. A typical development of 100 units that is planned 10 miles outside the growth areas will have additional 59 tons per year of VOC emissions, 77 tons per year of NO_x emissions and 1 ton per year of particulate emissions versus the same development built in a growth area (level 1,2 or 3).

Emissions from area sources associated with this project are estimated to be 3.3 tons (6,500.5 pounds) per year of VOC (volatile organic compounds), 0.4 ton (715.2 pounds) per year of NO_x (nitrogen oxides), 0.3 ton (593.6 pounds) per year of SO₂ (sulfur dioxide), 0.4 ton (766.0 pounds) per year of fine particulates and 13.2 tons (26,351.5 pounds) per year of CO₂ (carbon dioxide).

Emissions from electrical power generation associated with this project are estimated to be 1.3 tons (2,576.3 pounds) per year of NO_x (nitrogen oxides), 4.5 tons (8,961.1 pounds) per year of SO₂ (sulfur dioxide) and 660.9 tons (1,321,765.2 pounds) per year of CO₂ (carbon dioxide).

| | VOC | NO _x | SO ₂ | PM _{2.5} | CO ₂ |
|------------------|------|-----------------|-----------------|-------------------|-----------------|
| Mobile | 8.1 | 6.7 | 4.9 | 0.4 | 674.1 |
| Residential | 3.3 | 0.4 | 0.3 | 0.4 | 13.2 |
| Electrical Power | | 1.3 | 4.5 | | 660.9 |
| TOTAL | 11.4 | 8.4 | 9.7 | 0.8 | 1348.2 |

For this project the electrical usage via electric power plant generation alone totaled to produce an additional 1.3 tons of nitrogen oxides per year and 4.5 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 Energy office in DNREC 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. We 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, links to mass transit, and fund a lawnmower exchange program for their new occupants.

State Fire Marshal’s Office – Contact: Duane Fox 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 1000 gpm for 1-hour duration, at 20-psi residual pressure is required. Fire hydrants with 800 feet spacing on centers.

- Where a water distribution system is proposed for townhouse type dwelling sites, the infrastructure for fire protection water shall be provided, including the size of water mains.

b. **Fire Protection Features:**

- 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 DE Route 9 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
- Square footage of each structure (Total of all Floors)
- National Fire Protection Association (NFPA) Construction Type

- Maximum Height of Buildings (including number of stories)
- Name of Water Provider
- Letter from Water Provider approving the system layout
- Townhouse 2-hr separation wall details shall be shown on site plans
- 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

The proposed development is in an area designated as Level 4 under the *Strategies for State Policies and Spending*. The *Strategies* and the Sussex County Comprehensive Plan do not support this type of isolated development in this area. The intent of these plans is to preserve the agricultural lands, forestlands, recreational uses, and open spaces that are preferred uses in Level 4 areas. The Department of Agriculture opposes the proposed development which conflicts with the preferred land uses, making it more difficult for agriculture and forestry to succeed, and increases the cost to the public for services and facilities.

More importantly, the Department of Agriculture opposes this project because it negatively impacts those land uses that are the backbone of Delaware's resource industries - agriculture, forestry, horticulture - and the related industries they support. Often new residents of developments like this one, with little understanding or appreciation for modern agriculture and forestry, find their own lifestyles in direct conflict with the demands of these industries. Often these conflicts result in compromised health and safety; one example being decreased highway safety with farm equipment and cars competing on rural roads. The crucial economic, environmental and open space benefits of agriculture and forestry are compromised by such development. We oppose the creation of isolated development areas that are inefficient in terms of the full range of public facilities and services funded with public dollars. Public investments in areas such as this are best directed to agricultural and forestry preservation. In addition, this site overlaps with the State's Green Infrastructure Investment Strategy Plan. The Forest Lands overlaps this site; this designation identifies areas that possess unique natural features that are valuable for preservation.

The Delaware Department of Agriculture supports growth which expands and builds on existing urban areas and growth zones in approved State, county and local plans. Where additional land preservation can occur through the use of transfer of development rights, and other land use measures, we will support these efforts and work with developers to

implement these measures. If this project is approved we will work with the developers to minimize impacts to the agricultural and forestry industries.

Public Service Commission - Contact: Andrea Maucher 739-4247

The PLUS materials indicate that Artesian will provide water and wastewater service to the proposed project. Artesian does not currently hold certificates of public convenience and necessity (CPCN) to provide public water or wastewater services in these areas. They will need to file applications for CPCN with the Public Service Commission, if they have not done so already. Information on CPCN requirements and applications can be obtained by contacting the Public Service Commission at 302-739-4247.

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.

Delaware State Housing Authority – Contact Jimmy Atkins 739-4263

The proposal is to develop 105 units on 28 acres located on the northwest corner of the intersection of Route 9 and Hudson Road, between Harbeson and Cool Spring. According to the *State Strategies Map*, the proposal is located in an Investment Level 4 area. As a general planning practice, DSHA encourages residential development only 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*. Since, the proposal is located in an area targeted for agricultural and natural resource protection, and therefore inconsistent with where the State would like to see new residential development, DSHA does not support this proposal.

Sussex County – Contact: Richard Kautz 855-7878

The Sussex County Engineer Comments:

The project proposes to develop using a private central community wastewater system. We recommend that the wastewater system be operated under a long-term contract with a capable wastewater utility that meets TMDL limits for the watershed. In addition, we recommend they have a wastewater utility provider prior to approving the project. The proposed project is located outside of the Inland Bays Planning area where Sussex County expects to provide sewer service. 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 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 and separated from lot area.

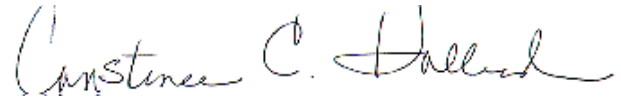
If Sussex County ever provides sewer service, it is required that the treatment system be abandoned and a direct connection made to the County system at the developers and/or homeowners association expense.

Submission and approval of a sewer Concept Plan is not required.

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: Sussex County