



**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF STATE PLANNING COORDINATION**

March 23, 2010

Mr. Steve Marsh
George, Miles & Buhr, LLC
206 West Main Street
Salisbury, MD 21801

RE: PLUS 2010-02-02; Novosel Subdivision

Dear Mr. Marsh:

Thank you for meeting with State agency planners on February 24, 2010 to discuss the proposed plans for the Novosel Subdivision project to be located on Route 24, west of Robinsonville Road and North of Chapel Green.

According to the information received, you are seeking a site plan approval through Sussex County for 160 residential units on 152.35 acres.

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.**

This proposal is located in Investment Level 4 according to the *Strategies for State Policies and Spending*, and is within the Low Density area according to the Sussex County certified 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.**

Strategies for State Policies and Spending

This project represents a major land development that will result in 160 residential units in an Investment Level 4 area according to the *2004 Strategies for State Policies and Spending*. This proposal is located in Investment Level 4 according to the *Strategies for State Policies and Spending*, and is within the Low Density area according to the Sussex County 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 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 390 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.

Because the development is inconsistent with the *Strategies for State Policies and Spending*, the State is opposed to this proposed subdivision. In addition to being in Level 4 area, the State cannot support this project for the following reasons:

- This parcel is almost completely forested and the development as designed will result in the loss of over 72 acres of forest and fragmentation of most of the entire forest block.
- A significant portion of this parcel contains poorly drained wetland associated (hydric) Fallsington soils which have a seasonal high water table occurring at or near the soil surface (within one-foot of soil surface or less). Building in such soils is likely to leave prospective residents of this and adjoining properties susceptible to future flooding problems from groundwater-driven surface water ponding, especially during extended periods of high-intensity rainfall events such as tropical storms/hurricanes or "nor'easters."

Code Requirements/Agency Permitting Requirements

- The developer should contact DelDOT directly for code requirements related to this subdivision.
- **TMDLs.** Total Maximum Daily Loads (TMDLs) for nitrogen and phosphorus have been promulgated through regulation for the Inland Bays Watershed. This project is located in the low nutrient reduction area requiring a 40 percent reduction in nitrogen and phosphorus. Additionally, a 40 percent reduction in bacteria is also required.

The adopted Inland Bays Pollution Control Strategy regulation was published in the Delaware Register of Regulations on November 11, 2008 and is now an enforceable regulatory directive. A Pollution Control Strategy (PCS) is an implementation strategy that identifies the actions necessary to systematically reduce the pollutant loading to a given water body, and meet the TMDL reduction requirements specified for that water body. These regulations can be reviewed at <http://regulations.delaware.gov/documents/November2008c.pdf> and background information, guidance documents, and mapping tools can be retrieved from http://www.dnrec.state.de.us/water2000/Sections/Watershed/ws/ib_pcs.htm. The regulations address establishing a buffer zone sediment and stormwater controls for new development projects, and additional measures and standards for onsite wastewater treatment and disposal systems. Additionally, a map of water features identifies the specific primary and secondary water features that require buffers; this can be reviewed at <http://maps.dnrec.delaware.gov/inlandbayspcs93/>.

The regulations require that buffers of a specified width be established for State-regulated wetlands, tidal waters, primary and secondary water features. The width may be reduced when combined with advanced sediment and stormwater controls and upon the creation of a development-wide nutrient management plan. Buffers must be placed in common open space and be clearly demarcated, designated and recorded on final plans or plat. Buffers must be maintained in perpetuity and must have boundary signs or markers or distinctive vegetation identifying the upland edge of the buffer.

The regulations also require that permanent sediment and stormwater management plans be designed and implemented to include design criteria to further reduce nutrient contributions. Compliance with this provision can be through any of the options below.

- For properties with primary and secondary water features:
 1. Implement standard width buffers
 2. Implement reduced buffer widths in conjunction with the creation and use of a development-wide nutrient management plan (NMP), and the implementation of at least one advanced stormwater treatment control method.

- For properties without primary or secondary water features, or for those properties with primary and secondary water features that employ a reduced-width buffer (including the required NMP), select from at least one of the following advanced stormwater treatment control methods:
 1. Reduce nutrients by the TMDL percentage
 2. Reduce nutrients to irreducible concentration levels
 3. Implement three practices within a treatment train
 4. Establish 30% of the project parcels as forest in common open space (See appendix L in the PCS regulations for planting requirements).

The applicant should also remember that a nutrient management plan (NMP) is also required when electing to pursue a reduced buffer width for their project. An NMP is also required for those properties without primary or secondary water features. The Nutrient Management Program link can be retrieved at http://dda.delaware.gov/nutrients/nm_cert.shtml.

Additional nutrient reductions may be possible through the implementation of best management practices (BMPs) such as wider vegetated buffers along watercourses and wetlands (if applicable), increasing passive, wooded open space, and use of pervious paving materials to reduce surface imperviousness (i.e., pervious pavers).

The project's consultants may want to contact Lyle Jones at 302-739-9939 to discuss using the Nutrient Budget Protocol. The Nutrient Budget Protocol is an assessment tool to help evaluate whether the proposed project will meet the TMDL nutrient reduction requirements. This project is located in the low nutrient reduction area. The nutrient assessment tool can be used on a voluntary basis in addition to the series calculations needed for stormwater BMPs in order to allow consultants to quickly assess the effect of various pollutant reducing practices on the proposed project site and may, therefore, allow a more informed decision on the effect of this project on the nutrient loading to the Inland Bays.

Based on a review of the applicant's submitted project design, this project will not meet the current PCS regulations.

- **Wetlands.** The applicant is responsible for determining whether any State-regulated wetlands (regulated pursuant to 7 Del.C. Chapter 66 and the Wetlands Regulations) are present on the property. This determination can only be made by contacting the Division of Water Resources' Wetlands and Subaqueous Lands Section at 302/739-9943 and consulting the State's official wetland regulatory maps, which depict the extent of State jurisdiction. The area regulated by State law may be very different from the area under federal authority. No activity may take place in State-regulated wetlands without a permit from DNREC's Wetlands Section.

In addition, most perennial streams and ditches and many intermittent streams and ditches are regulated pursuant to the Subaqueous Lands Act (7 Del.C. Chapter 72) and the Regulations Governing the Use of Subaqueous Lands. Ponds which are connected to other waters are also regulated, while isolated ponds are not. Any work in regulated streams, ditches or ponds requires a permit from the Wetlands and Subaqueous Lands Section. An on-site jurisdictional determination is recommended in order to determine whether any regulated watercourses exist on the property. Please contact the Wetlands and Subaqueous Lands Section at 302/739-9943 to schedule an on-site visit. Such appointments can usually be scheduled within 2 to 3 weeks.

- **Sediment and Stormwater Program.** A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. Contact the reviewing agency to schedule a project application meeting to discuss the sediment and erosion control and stormwater management components of the plan as soon as practicable. The site topography, soils mapping, pre- and post-development runoff, and proposed method(s) and location(s) of stormwater management should be brought to the meeting for discussion. The plan review and approval as well as construction inspection will be coordinated through the Sussex Conservation District. Contact Jessica Watson at the Sussex Conservation District at (302) 856-2105 for details regarding submittal requirements and fees.

Because of the parcel's location in an impaired watershed and the amount of impervious surface, green technology BMPs and low impact development practices should be considered a priority to reduce stormwater flow and to meet water quality goals.

- **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. *Ricardo Rios* - (302) 739-9944, Ricardo.Rios@state.de.us

- **Air Quality.** The applicant shall comply with all applicable Delaware air quality regulations. These regulations include:

<p>Regulation 6 - Particulate Emissions from Construction and Materials Handling</p>	<ul style="list-style-type: none"> • Using dust suppressants and measures to prevent transport of dust off-site from material stockpile, material movement and use of unpaved roads. • Using covers on trucks that transport material to and from site to prevent visible emissions.
<p>Regulation 1113 – Open Burning</p>	<ul style="list-style-type: none"> • Prohibiting open burns statewide during the Ozone Season from May 1-Sept. 30 each year. • Prohibiting the burning of land clearing debris. • Prohibiting the burning of trash or building materials/debris.
<p>Regulation 1145 – Excessive Idling of Heavy Duty Vehicles</p>	<ul style="list-style-type: none"> • Restricting idling time for trucks and buses having a gross vehicle weight of over 8,500 pounds to no more than three minutes.

- 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.
- 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 Robinsville Road must be constructed so fire department apparatus may negotiate it. If a “center island” is placed at an entrance into the subdivision, it shall be arranged in such a manner that it will not adversely affect quick and unimpeded travel of fire apparatus into the subdivision. Additionally, 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 proposed development is adjacent to a property currently enrolled in the State’s Agricultural Lands Preservation Program (The Vessels Company Expansion of the Hopkin’s Covered Bridge Agricultural District, (Parcel # 234-6.00-90.00). Therefore, the activities conducted on this preserved property will be protected by the agricultural use protections outlined in Title 3, Del. C., Chapter 9. These protections effect adjoining developing properties. The 300 foot notification requirement affects **all new deeds** in a

subdivision located in whole or part within 300 feet of an Agricultural District. Please take note of these restrictions as follows:

§ 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.).

- In addition, if any wells are to be installed, Section 4.01(A)(2) of the Delaware Regulations Governing the Construction and Use of Wells will apply. This regulation states:

(2) For any parcel, lot, or subdivision created or recorded within fifty (50) feet of, or within the boundaries of, an Agricultural Lands Preservation District (as defined in Title 3, Del. C., Chapter 9); all wells constructed on such parcels shall be located a minimum of fifty (50) feet from any boundary of the Agricultural Lands Preservation District. This requirement does not apply to parcels recorded prior to the implementation date of these Regulations. However, it is recommended that all wells be placed the maximum distance possible from lands which are or have been used for the production of crops which have been subjected to the application of land applied federally regulated chemicals.

- Section 1. Chapter 99, Code of Sussex Section 99-6 may also apply to this subdivision. The applicant should verify the applicability of this provision with Sussex County. This Section of the Code states:

G. Agricultural Use Protections.

(1) Normal agricultural uses and activities conducted in a lawful manner are preferred. 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 uses adjacent to land used primarily for agricultural purposes shall be subject to the following restrictions:

- (a) For any new subdivision development located in whole or in part within three hundred (300) feet of the boundary of land used primarily for agricultural purposes, 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 land used primarily for agricultural purposes on 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.”

(b) For any new subdivision development located in whole or in part within fifty (50) feet of the boundary of land used primarily for agricultural purposes no improvement requiring and occupancy approval for a residential type use shall be constructed within fifty (50) feet of the boundary of land used primarily for agricultural purposes.

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.

- It is important that the developer be aware of the Delaware Unmarked Human Remains Act of 1987, outlined in Chapter 54 of Title 7 of the Delaware Code, which pertains to the discovery and disposition of such remains. The unexpected discovery of unmarked human remains during construction can result in significant delays while the process is carried out.

County Comments

The site plan indicates the project will be served by the Angola Neck Sanitary Sewer District (ANSSD) in accordance with requirements of the Sussex County Engineering Department. The project is located in the Angola Neck Planning Area, but Sussex County does not have a schedule to extend sewer at this time. We believe the best opportunity for a connection to the ANSSD is for area developers to construct regional infrastructure that connects to an approved connection point. Several projects have been proposed in the area, developers could work together and develop an agreement to share in constructing the required infrastructure.

Sussex County requires design and construction of the collection and transmission system to meet Sussex County sewer standards and specifications. A sewer concept must be submitted for review and approval prior to design of the sewer system and prior to requesting annexation into the Angola Neck Sanitary Sewer District. A checklist for preparing concept plans is attached. One time system connection charges will apply. Please contact Mrs. Stephanie Lynch at 302 854-5087 for additional information on charges.

For questions regarding these comments, contact Rob Davis, Sussex County Engineering Department at (302) 855-7820.

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 noting what changes were made to the project design, if any, as a result of the PLUS process.

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, Ofc. Of State Planning Coordination

CC: Sussex County