



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

May 20, 2010

Mr. Don McCoy  
Davis, Bowen, & Friedel, Inc.  
One Plaza East, Ste. 200  
Salisbury, MD 21801

RE: PLUS review – 2010-04-02; Nathaniel's Landing

Dear Mr. McCoy:

Thank you for meeting with State agency planners on April 28, 2010 to discuss the proposed plans for the Nathaniel's Landing project to be located on the south side of Woodland Ferry Road.

According to the information received, you are seeking site plan approval for 99 single family lots on 151 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.**

**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. **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.**

This project represents a major land development that will result in 99 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 240 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 the above information, it is important to note that this project is located adjacent to a relatively undisturbed section of the Nanticoke Wildlife Area and the State is concerned that this project will negatively impact these publicly used lands as noted below:**

- Land to the south of the proposed development is part of the Nanticoke Wildlife Area. These lands were purchased through the Federal Land and Water Conservation Fund Act. Passed by Congress in 1965, the act established the Land and Water Conservation Fund (LWCF), a matching assistance program that provides grants to States and local governments for the acquisition and development of public outdoor recreation sites and facilities. Section 6(f) of the Act prohibits the conversion of property acquired or developed with these grants to a non-recreational purpose without the approval of the Department of the Interior's National Park Service (NPS). All lands purchased through the LWCF are protected in perpetuity and must remain publicly accessible for outdoor recreation purposes.

- This project is adjacent to a relatively undisturbed section of the Nanticoke Wildlife Area (NWA) and the State is concerned that this project will negatively impact these publicly used lands.

### **Code Requirements/Agency Permitting Requirements**

#### **State Historic Preservation Office – Contact Terrence Burns 736-7404**

- There is one known archaeological site (S-7774; 7S-E-87) just southeast of this parcel, not too far away. With this in mind, 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 reason for this is because the unexpected discovery of unmarked human remains during construction can result in significant delays while the process is carried out.
- If there is any federal involvement with the project, in the form of licenses, permits, or funds, the federal agency, often through its client, is responsible for complying with Section 106 of the National Historic Preservation Act (36 CFR 800) and must consider their project's effects on or in reference to historic or cultural resources.

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

- Because the subject land is located in a Level 4 area, development of it as proposed is inconsistent with the *Strategies for State Policies and Spending*. As part of our commitment to support the *Strategies*, Del-DOT 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. Del-DOT will only support taking the steps necessary to preserve the existing transportation infrastructure and make whatever safety and drainage related improvements are deemed appropriate and necessary. The intent is to preserve the open space, agricultural lands, natural habitats and forestlands that are typically found in Level 4 Areas while avoiding the creation of isolated development areas that cannot be served effectively or efficiently by public transportation, emergency responders, and other public services.
- The site access must be designed in accordance with Del-DOT's Standards and Regulations for Subdivision Streets and State Highway Access. Versions of this manual are available on-line at [http://www.deldot.gov/information/pubs\\_forms/manuals/subdivisions/pdf/standards\\_and\\_regulations\\_031108.pdf](http://www.deldot.gov/information/pubs_forms/manuals/subdivisions/pdf/standards_and_regulations_031108.pdf) and <http://regulations.delaware.gov/documents/February2010c.pdf>. Please note that there are slight differences between the two versions. Section references in these comments refer to the version on the Del-DOT website, which is correct in most cases. However, where the versions differ, the version in the Register of Regulations is correct.

- As proposed, the subject development would meet Del-DOT's volume warrants for a traffic impact study (TIS), as contained in Section 2.3.1 of Del-DOT's Standards and Regulations for Subdivision Streets and State Highway Access. However, as discussed in Section 2.3.2, they would also be eligible to pay the Area-Wide Study Fee in lieu of doing a TIS for this project. For a development of 99 single-family detached houses, the fee would be \$10,302. The fee would be due at the same time as the initial stage fee, which is paid when plans are submitted to obtain a letter of no objection. The fee is not an impact fee and payment of it does not exempt the developer from having to make off-site road improvements. In accordance with Section 3.10.2 of Del-DOT's Standards and Regulations for Subdivision Streets and State Highway Access, all required off-site improvements, and the schedule for their construction, must be specified by notes on the record plan.
- As specified in Section 4.8 of Del-DOT's Standards and Regulations for Subdivision Streets and State Highway Access, a 20-foot wide buffer will be required from the edge of the stormwater management pond to the ultimate right-of-way of Woodland Ferry Road. The ultimate right-of-way is based on the functional classification of the road.
- In accordance with Sections 3.6.5 and 5.1.6 of Del-DOT's Standards and Regulations for Subdivision Streets and State Highway Access, a 15-foot wide permanent easement will need to be established across the property frontage and a 10-foot wide multi-use path shall be constructed within the easement. The location of the easement shall be outside the limits of the ultimate right-of-way for this road. The easement area can be used as part of the open space calculation for the site. The following note is required, "**A 15-foot wide permanent easement for a 10-foot wide multi-use path is hereby established, as per this plat.**"
- Woodland Ferry Road is classified as a Minor Collector, which per Section 3.6.5 of Del-DOT's Standards and Regulations for Subdivision Streets and State Highway Access requires an 80-foot right-of-way (40-feet from centerline of right-of-way). Therefore, in accordance with the section just cited, additional right-of-way shall be dedicated to public use in order to obtain the required 40-feet from centerline along the entire property frontage. The right-of-way dedication note shall read as follows, "**A 40' Strip Of Right-Of-Way From The Centerline Of Right-Of-Way Is Hereby Dedicated To Public Use As Per This Plat.**"
- In accordance with Section 5.7.2.5 of Del-DOT's Standards and Regulations for Subdivision Streets and State Highway Access, a minimum 20-foot wide drainage easement must be provided for storm drainage systems, open or closed, that fall outside the existing right-of-way or the drainage/utility easement. Metes and bounds and total areas need to be shown for any drainage easements. These easements shall be shown on record plan rather than referred to by a note.

- In accordance with Section 3.4.1.2 of Del-DOT's Standards and Regulations for Subdivision Streets and State Highway Access, the site plan must show all existing entrances (residential/commercial) in the vicinity of the proposed entrance.
- In accordance with Section 3.10.2 of Del-DOT's Standards and Regulations for Subdivision Streets and State Highway Access, we anticipate requiring an overlay along Woodland Ferry Road (Sussex Road 78). The overlay thickness will be determined at a later date. The limits of the overlay would be from the Woodland Ferry to an intersection to the south-west, to be determined at a later time. DelDOT also anticipates requiring the widening of Sussex Road 78 to 12-foot wide travel lanes and 8-foot wide shoulders within the same limits. As specified in this section, we will require a note on the Record Plan specifying when the off-site improvements are warranted for this subdivision.
- In accordance with Section 5.2 of Del-DOT's Standards and Regulations for Subdivision Streets and State Highway Access, DelDOT anticipates requiring improvements at the site entrance, including but not limited to the following:
  - A left turn lane along Sussex Road 78 at the site entrance.
  - A deceleration lane along Sussex Road 78 for the site entrance.
  - Bicycle and pedestrian facilities.
- As specified in Section 6.2 of Del-DOT's Standards and Regulations for Subdivision Streets and State Highway Access, any utility conflicts with future subdivision street construction shall be corrected by the utility company or the developer at no expense to the State.
- DelDOT anticipates that Sussex County will require a "Letter of No Objection" from the Department for this project. Per Section 3.4 of Del-DOT's Standards and Regulations for Subdivision Streets and State Highway Access, the developer must submit **three (3) signed and sealed** copies of the record plan, with an Initial Stage Fee Calculation Form and the Initial Stage Fee. The review fee will be based on the number of lots within the subdivision. Please make all submissions to Mr. Derek Sapp, Subdivision Manager. The entrance plan will not be reviewed until after the "Letter of No Objection" has been issued.
- As specified in Section 4.1 of Del-DOT's Standards and Regulations for Subdivision Streets and State Highway Access, when the entrance construction plans are submitted for review, the developer must submit **two (2) copies** of the construction plans, one copy of the record plan, an Initial Stage Fee Calculation Form, a Construction Stage Fee Calculation Form, a Construction Stage Review Fee, an application for highway entrance permit and a signed and sealed commercial entrance design checklist for review and approval. The review fee will be based on the number of lots within the subdivision. Be advised that the Department will not review the entrance plan until it has signed off on the record plan. Please make all submissions to Mr. Derek Sapp, Subdivision Manager.

- The Del-DOT mapping of property lines differs from that shown on the PLUS application in that there appears to be the opportunity for an interconnection to a cul-de-sac street in the Layton's Riviera development. If so, then in accordance with Section 3.5 of Del-DOT's Standards and Regulations for Subdivision Streets and State Highway Access, we may require an interconnection for bicyclists and pedestrians.

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

### **Rare, Threatened and Endangered Species.**

- There is a population of Delmarva fox squirrel (*Sciurus niger cinereus*, DFS) within the Nanticoke Wildlife Area and they could occur within the project area. Delmarva fox squirrels are large-bodied tree squirrels that only inhabit mature forests on the Delmarva Peninsula. Threatened mainly by loss of its forested habitat, DFS have been protected as an endangered species since 1967. As **required** by the **Endangered Species Act of 1973(16 U.S.C. 1531-1544, 87 Stat. 884)** the U.S. Fish and Wildlife Service review projects that may harm this species or their habitat. The applicant will need to contact Trevor Clark of the U.S. Fish and Wildlife Service (410-573-4527) with this **new** application. DNREC has been in contact with Trevor and previous applications and correspondence will have to be updated. Trevor may recommend surveys are conducted to determine if Delmarva fox squirrels are present. If surveys are conducted they must be done by a federally approved fox squirrel surveyor, be conducted twice; once in the fall, and again between March 15 and May 30. A list of qualified surveyors is available upon request (contact Holly Niederriter at (302) 735-2880). Please note that surveys may confirm the presence of fox squirrels but cannot confirm absence.

Also note that surveys conducted on other properties in the vicinity do not fulfill requirements for the project properties. The forest within this project area is contiguous with the Nanticoke Wildlife Area where there is a known presence of Delmarva fox squirrel. Also, a decision regarding habitat impacts of other projects in the vicinity are not transferrable to this project.

### **Hunting Safety Zone.**

- **Title 7 of Delaware Code 723 (a) § 723. Hunting or trapping in safety zones; penalty.**
  - (a) *No person, except the owner or occupant, shall discharge a firearm within 100 yards of an occupied dwelling, house or residence or any barn, stable or any other building used in connection therewith, while hunting or trapping for wild birds or wild animals of any kind. The area within said distance shall be a "safety zone," and it shall be unlawful to shoot at any wild bird or wild animal while it is within such safety zone without the specific advance permission of the owner or tenant.*

Hunting is a recreational opportunity offered to all residents of Delaware, occurs on publicly owned land, is a method of wildlife management, and is well established at this Wildlife Area. Residents should be made aware by the developer/land owner that they will be subject to the noise of fire arms and barking dogs that are pursuing game. Hunters may also be using the wildlife area during the early morning hours. All future residents should be made aware that hunting will occur on the adjacent property.

### **Sediment and Storm water Program.**

- A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. A pre-application meeting is required for this site. Contact the reviewing agency to schedule a pre-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 (Delaware Code, Title 7, Chapter 40; Delaware Regulations, Administrative Code, Title 7, 5101). *James Sullivan* - (302) 739-9921, [James.Sullivan@state.de.us](mailto:James.Sullivan@state.de.us)

### **Wetlands.**

- According to the Statewide Wetland Mapping Project (SWMP) maps, tidal (PFO1R3) and non-tidal riparian (PFO1A7 & PUBHx7) wetlands were mapped on subject parcel (Figure 1). 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. 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.



- The applicant should also be reminded that they must avoid construction/filling activities in those areas containing wetlands or wetland associated hydric soils as they are subject to regulatory jurisdiction under Federal 404 provisions of the Clean Water Act. A site-specific field wetlands delineation using the methodology described in the 1987 United States Army Corps of Engineers (USACE or “the Corps”) manual is the acceptable basis for making a jurisdictional wetland determination for non-tidal wetlands in Delaware.

### Water Supply.

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

- 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](mailto:Ricardo.Rios@state.de.us)

Delaware State Fire Marshall's Office – Contact Duane Fox 739-4394

- **Fire Protection Water Requirements:**
  - Since the dwellings of the subdivision are proposed to be served by individual on-site wells (No Central or Public Water System within 1000' of property), set back and separation requirements will apply.
- **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 the main thoroughfares 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.
  - 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.
- **Gas Piping and System Information:**
  - Provide type of fuel proposed, and show locations of bulk containers on plan.

- **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
- National Fire Protection Association (NFPA) Construction Type
- Maximum Height of Buildings (including number of stories)
- Provide Road Names, even for County Roads

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

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

Sincerely,



Constance C. Holland, AICP  
Office of State Planning Coordination Director

CC: Sussex County