



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF STATE PLANNING COORDINATION

June 22, 2017

Mr. Robert Sevensky, RLA
4600 Linden Hill Road, Suite 103
Wilmington, DE 19808

RE: PLUS review 2017-05-05; Lewes Shores Estates

Dear Robert:

Thank you for meeting with State agency planners on May 24, 2017 to discuss the Lewes Shores Estates project. According to the information received you are seeking review of a 60 unit subdivision on 81 acres along Hudson Road in Sussex County.

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 project represents land development that will result in 60 residential units in an Investment Level 4 area according to the *2015 Strategies for State Policies and Spending*. 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 will bring 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 100% 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 development.

With that said, **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 build on this property, construct the development you indicate, or any subdivision thereof on these lands.**

Code Requirements/Agency Permitting Requirements

Department of Transportation – Contact Bill Brockenbrough 760-2109

- The site access on Hudson Road (Sussex Road 258) must be designed and built in accordance with DelDOT's Development Coordination Manual (formerly the Standards and Regulations for Subdivision Streets and State Highway Access), which is available at <http://www.deldot.gov/information/business/subdivisions/changes/index.shtml>.
- Per Section 2.2.2.1 of the Development Coordination Manual, Traffic Impact Studies (TIS) are warranted for developments generating more than 500 vehicle trip ends per day or 50 vehicle trip ends per hour in any hour of the day. DelDOT anticipates that the proposed development would generate 656 vehicle trip ends per day on weekdays (somewhat more than 571 trips on the PLUS application) and 66 vehicle trip ends during the weekday evening peak hour of Hudson Road. Therefore the proposed development meets those warrants. However, Section 2.2.2.2 of the Manual provides that for developments generating less than 2,000 vehicle trip ends per day and less than 200 vehicle trip ends per hour in any hour of the day, DelDOT may accept an Area Wide Study (AWS) Fee in lieu of the TIS if the local government does not require a TIS. The AWS Fee is calculated as \$10 times the average daily traffic, or in this case \$6,560. Payment of the AWS Fee does not relieve the developer from responsibility for off-site improvements that DelDOT may identify as necessary or for performing a Traffic Operational Analysis (TOA) if DelDOT determines that a TOA is needed to address the operation of the site entrance.

Presently, DelDOT has not identified any off-site improvements as being necessary or determined that a TOA will be needed but these topics should be discussed at the Pre-Submittal Meeting mentioned below. There is a TIS under review for Compass Point, a larger residential development proposed on Hudson Road south of Cave Neck Road and

the applicant may be required to participate in some of the same off-site improvements identified for that project.

- Pursuant to Section P.3 of the Manual, a Pre-Submittal Meeting is required before plans are submitted for review. The form needed to request the meeting and guidance on what will be covered there and how to prepare for it is located at http://www.deldot.gov/information/business/subdivisions/Meeting_Request_Form.pdf. DelDOT anticipates having more detailed comments to offer at that time.
- As necessary, in accordance with Section 3.2.5 and Figure 3.2.5-a of the Manual, DelDOT will require dedication of right-of-way along the site's frontage on Banks Road. By this regulation, this dedication is to provide a minimum of 30 feet of right-of-way from the right-of-way centerline on Hudson Road. The following right-of-way dedication note is required, **"An X-foot wide right-of-way is hereby dedicated to the State of Delaware, as per this plat."**
- In accordance with Section 3.2.5.1.2 of the Manual, DelDOT will require the establishment of a 15-foot wide permanent easement across the property frontage on Hudson Road. The location of the easement shall be outside the limits of the ultimate right-of-way. 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 is hereby established to the State of Delaware, as per this plat."**
- As per the Delaware Strategies for State Policies and Spending, this development is primarily in Investment Level 4. Referring to Section 3.5.4.2.A of the Manual, developments in Level 3 and 4 Areas are required to install a sidewalk or Shared Use Path if the project abuts to an existing facility, which this one does not. If the project does not abut to an existing facility, it will be at the Subdivision Engineer's discretion. No fee in lieu of construction will be required. The requirement or lack thereof should be addressed at the Pre-Submittal Meeting mentioned above.
- In accordance with Section 3.8 of the Development Coordination Manual, storm water facilities, excluding filter strips and bioswales, shall be located a minimum of 20 feet from the ultimate State right-of-way along Hudson Road.

Department of Natural Resources and Environmental Control – Contact Michael Tholstrup 735-3352

Executive Summary

Development of this parcel will result in increased impervious surface and new sources of greenhouse gas emissions. Opportunities exist to reduce the environmental impact on-site through appropriate use of pollution control strategies, reduced tree clearing and nature-based

infrastructure. DNREC would like to see increased buffers and considerations of the existing flood plain and mature forest. DNREC has outlined a number of best management practices to assist in protecting these resources and the overall health of the community.

The State of Delaware is threatened by climate change and has a goal of reducing greenhouse gas emissions by 30 percent by 2030. Appropriate development that provides access to public transportation, opportunities to walk and bike to shopping and recreation, and that employs energy efficient building standards are among key strategies to meet these goals. We encourage the use of high performance building standards and consideration of alternative energy sources to promote clean sustainable energy and reduce greenhouse gas emissions. This could mean siting the buildings to take advantage of solar and geothermal systems, and/or including infrastructure for electric vehicle charging stations (funding assistance may be found at www.de.gov/cleantransportation). It is further recommended that an abundant use of native vegetation and shade trees throughout the landscape, as well as pervious pavement and green infrastructure, where practicable, to absorb carbon dioxide, protect water quality and provide relief to residents on hot days.

The following pages provide information about applicable regulations and detailed recommendations associated with this project, from various DNREC Divisions. DNREC would like to be a partner in creating appropriate development that protects and highlights the environment as a natural amenity of the landscape. The Department has resources and expertise that are available to help make this a reality, often at no expense to the landowner.

Water Quality: TMDLs

- The project is located in the greater Delaware River and Bay drainage, specifically within the Broadkill River watershed. In this watershed, the TMDL for the Broadkill River watershed calls for a 40 percent reduction in nitrogen and phosphorus from baseline conditions. The TMDL also calls for a 75 percent reduction in bacteria from baseline conditions. The State of Delaware has developed specific Total Maximum Daily Load (TMDL) pollutant reduction targets for nitrogen, phosphorus, and bacteria under Section 303(d) of the Clean Water Act. A TMDL is the maximum level of pollution allowed for a given pollutant below which a “water quality limited waterbody” can assimilate and still meet State water quality standards (e.g., dissolved oxygen, nutrients, and bacteria; State of Delaware Surface Water Quality Standards, as amended July 11, 2004) to the extent necessary to support use goals such as, swimming, fishing, drinking water and shell fish harvesting.
- A nutrient management plan is required under the *Delaware Nutrient Management Law* (3 *Del.C.*, Chapter 22) for all persons or entities who apply nutrients to lands or areas of open space in excess of 10 acres. This project’s open space may exceed this 10-acre threshold. Please contact the Delaware Nutrient Management Program at (302) 739-4811 for further information concerning compliance requirements, or, view additional information here: <http://dda.delaware.gov/nutrients/index.shtml>

Flood Management

- The site plan correctly indicates the source of the floodplain layer as FEMA's map number 10005C0188K, dated 3/16/2015. The developer does not however depict the regulatory floodplain boundary on the site plan. The developer has chosen instead to depict where they believe the base flood elevation should be depicted using their topography. If they choose to use their depiction of the base flood elevation, they must first apply for a Letter of Map Revision (LOMR) from FEMA to change the regulatory boundary FEMA has depicted on their map. There are implications for using their depiction over FEMA's.

First, the county may possibly be issuing building permits for development in the floodplain that is in violation of the floodplain ordinance. This puts the County's participation in the NFIP in jeopardy. Second, the purchaser of the property will be required to purchase flood insurance for a house possibly built out of compliance and at risk of flooding, because the mortgage company is required to use FEMA's regulatory map. FEMA's map currently shows a greater area of the parcel in the floodplain. While DNREC realizes this may not be a completely accurate depiction of where the base flood elevation would exist on the ground, and this is what the developer is trying to show on the site plan, the developer must follow the County's floodplain regulations and have the map revised prior to permits being issued. DNREC would also suggest that some level of added protection be built into these homes to reduce their risk of being damaged by future flood events. One of the easiest ways to do this is recommend the lowest floors be built 18 inches above the elevation of the base flood elevation. Many communities in Delaware have this as a requirement in their floodplain ordinance.

Water Supply

- The project information sheets state that individual on-site well(s) will be used to provide water for the proposed project. DNREC records indicate that the project is located within the public water service area granted to Artesian Water Company under Certificate of Public Convenience and Necessity 05-CPCN-23. Based on the May 24th PLUS meeting, DNREC understands that the developer has contacted Artesian Water Company and determined that public water will not be made available. Should this situation change, any public water utility providing water to the site must obtain a certificate of public convenience and necessity (CPCN) from the Public Service Commission. Information on CPCN's and the application process can be obtained by contacting the Public Service Commission at 302-736-7500.
- Should an on-site Public well be needed, a minimum isolation distance of 150 feet is required between the well and any potential source of contamination, such as a septic tank and sewage disposal area, stormwater management ponds, and it must also be located at least 150 feet from the outermost boundaries of the project. 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

Regulations Governing the Construction and Use of Wells. A well construction permit must be obtained prior to constructing any wells.

- 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 four weeks to process, which allows the necessary time for technical review and advertising.

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. Contact the reviewing agency 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. The plan review and approval as well as construction inspection will be coordinated through the Sussex Conservation District. Contact the Sussex Conservation District at (302) 856-7219 for details regarding submittal requirements and fees.

Air Quality

- The applicant shall comply with all applicable Delaware air quality regulations. Please note that the following regulations in Table 1 – Potential Regulatory Requirements may apply to your project:

| Table 1: Potential Regulatory Requirements | |
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| Regulation | Requirements |
| 7 DE Admin. Code 1106 - Particulate Emissions from Construction and Materials Handling | <ul style="list-style-type: none"> • Use dust suppressants and measures to prevent transport of dust off-site from material stockpile, material movement and use of unpaved roads. • Use covers on trucks that transport material to and from site to prevent visible emissions. |
| 7 DE Admin. Code 1113 – Open Burning | <ul style="list-style-type: none"> • Prohibit open burns statewide during the Ozone Season from May 1-Sept. 30 each year. • Prohibit the burning of land clearing debris. • Prohibit the burning of trash or building |

| | |
|--|---|
| | materials/debris. |
| 7 DE Admin. Code 1135 – Conformity of General Federal Actions to the State Implementation Plan | <ul style="list-style-type: none"> • Require, for any “federal action,” a conformity determination for each pollutant where the total of direct and indirect emissions would equal or exceed any of the de minimus levels (See Section 3.2.1) |
| 7 DE Admin. Code 1141 – Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products | <ul style="list-style-type: none"> • Use structural/ paint coatings that are low in Volatile Organic Compounds. • Use covers on paint containers when paint containers are not in use. |
| 7 DE Admin. Code 1144 – Control of Stationary Generator Emissions | <ul style="list-style-type: none"> • Ensure that emissions of nitrogen oxides (NO_x), non-methane hydrocarbons (NMHC), particulate matter (PM), sulfur dioxide (SO₂), carbon monoxide (CO), and carbon dioxide (CO₂) from emergency generators meet the emissions limits established. (See section 3.2). • Maintain recordkeeping and reporting requirements. |
| 7 DE Admin. Code 1145 – Excessive Idling of Heavy Duty Vehicles | <ul style="list-style-type: none"> • Restrict idling time for trucks and buses having a gross vehicle weight of over 8,500 pounds to no more than three minutes. |

For a complete listing of all Delaware applicable regulations, please look at our website: <http://www.awm.delaware.gov/AQM/Pages/AirRegulations.aspx>.

Tank Management

- If a release of a Regulated Substance occurs at the proposed project site, compliance of 7 *Del.C., Chapter 60*; 7 *Del.C., Chapter 74* and *DE Admin. Code 1351*, State of Delaware Regulations Governing Underground Storage Tank Systems (the UST Regulations) is required.
- Per the UST Regulations: Part E, § 1. Reporting Requirements: Any indication of a Release of a Regulated Substance that is discovered by any Person, including but not limited to environmental consultants, contractors, utility companies, financial institutions, real estate transfer companies, UST Owners or Operators, or Responsible Parties shall be reported within 24 hours to:
 - The Department’s 24-hour Release Hot Line (800) 662-8802; and

- The DNREC Tank Management Section (302) 395-2500.
- If any aboveground storage tanks (ASTs) less than 12,500 gallons are installed, they must be registered with the TMS. If any ASTs greater than 12,500 gallons are installed, they are also subject to installation approval by the DNREC Tank Management Section.
- For more information, go to: <http://www.dnrec.delaware.gov/tanks/Pages/default.aspx> or contact Ross D. Elliott with further questions at (302) 395-2500, or Ross.Elliott@state.de.us

State Historic Preservation Office – Contact Terrence Burns 736-7404

- The State Historic Preservation Office does not support any project, development or rezoning in a Level-4 area. However, any developer should be aware of the Unmarked Human Burials and Human Skeletal Remains Law.

Abandoned or unmarked family cemeteries are very common in the State of Delaware. They are usually in rural or open space areas, and sometimes near or within the boundary of an historic farm site. Even a marked cemetery can frequently have unmarked graves or burials outside of the known boundary line or limit. Disturbing unmarked graves or burials triggers the Delaware's Unmarked Human Burials and Human Skeletal Remains Law (Del. C. Title 7, Ch. 54), and such remains or discoveries can result in substantial delays while the procedures required under this law are carried out. If there is a discovery of any unmarked graves, burials or a cemetery, it is very costly to have them archaeologically excavated and the burials moved. The Division of Historical & Cultural Affairs recommends that owners and/or developers have a qualified archaeological consultant investigate their project area, to the full extent, to see if there is any unmarked cemetery, graves, or burial sites. In the event of such a discovery, the Division of Historical & Cultural Affairs also recommends that the plans be re-drawn to leave the full extent of the cemeteries or any burials on its own parcel or in the open space area of the development, with the responsibility for its maintenance lying with the landowner association or development. If you would like to see more information, please review the following websites: www.history.delaware.gov/preservation/umhr.shtml and www.history.delaware.gov/preservation/cemeteries.shtml.

Therefore, prior to any demolition or ground-disturbing activities, the developer should hire an archaeological consultant, to examine the parcel for archaeological resources and plan to avoid those areas.

- If there is federal involvement, 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 any known or potential cultural or historic resources. Owners and developers who may plan to apply for an Army Corps of Engineers permit or for federal funding, such as HUD or USDA grants, should be aware of the National Historic Preservation Act of 1966 (as amended). Regulations promulgated for Section 106 of this Act stipulate that no

ground-disturbing or demolition activities should take place before the Corps or other involved federal agency determines the area of potential effect of the project undertaking. These stipulations are in place to allow for comment from the public, the Delaware State Historic Preservation Office, and the Advisory Council for Historic Preservation about the project's effects on historic properties. Furthermore, any preconstruction activities without adherence to these stipulations may jeopardize the issuance of any permit or funds. If you need further information or additional details pertaining to the Section 106 process and the Advisory Council's role, please review the Advisory Council's website at the following: www.achp.gov.

Delaware State Fire Marshall's Office – Contact John Rudd 739-4394

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:

- **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 Hudson 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.
 - 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.

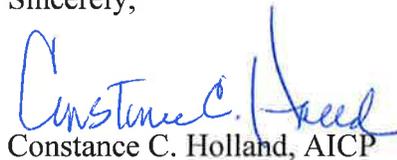
- **Required Notes:**
 - Provide a note on the final plans submitted for review to read “ All fire lanes, fire hydrants, and fire department connections shall be marked in accordance with the Delaware State Fire Prevention Regulations”
 - Proposed Use
 - National Fire Protection Association (NFPA) Construction Type
 - Maximum Height of Buildings (including number of stories)
 - Provide Road Names, even for County Roads

In addition to the comments above our office has received a letter from Brandy Nauman, Sussex County Housing Coordinator & Fair Housing Compliance Officer. A copy of that letter is enclosed with this letter.

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

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

Sincerely,



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

CC: Sussex County
Enclosure

BRANDY BENNETT NAUMAN
HOUSING COORDINATOR &
FAIR HOUSING COMPLIANCE OFFICER
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Sussex County
DELAWARE
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May 23, 2017

Mr. Robert A. Sevensky
Ramesh C. Batta Associates, P.A.
4600 New Linden Hill Road, Suite 103
Wilmington, DE 19808

RE: PLUS Review (PLUS 2017-05-05)

Dear Mr. Sevensky,

Sussex County endeavors to promote non-discrimination and affordable housing whenever possible throughout the County. In this regard, the developer and associated financial institutions are encouraged to provide and finance affordable housing opportunities to Sussex County residents in all new developments, and affirmatively market those affordable housing units to diverse populations.

For questions about opportunities available for affordable housing projects within Sussex County, please consult Sussex County's "Affordable Housing Support Policy". The policy along with other resources are available on the County's Affordable & Fair Housing Resource Center website: www.sussexcountyde.gov/affordable-and-fair-housing-resource-center. The County's Community Development & Housing Department can advise about existing affordable housing opportunities in Sussex County and the appropriate County Department to contact regarding specific development issues concerning future affordable housing projects within Sussex County.

The Community Development & Housing Department can also explain and assist with any financial support or incentives that may be available to a project from federal, state and county sources, as well as private funding sources that also promote affordable housing in Sussex County.

Please understand that all residential projects, including Affordable Housing Projects are subject to the applicable provisions of the Sussex County Subdivision and Zoning Codes, and the approval processes set forth in those Codes.

On behalf of Sussex County, we look forward to cooperating with you and your project as it moves forward.

Thank you,

Brandy B. Nauman
*Housing Coordinator &
Fair Housing Compliance Officer*



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