

Senators

Gills Neck Rd. (SCR 267)
Lewes, Sussex County, DE.

Sussex County Development Report- (June 2, 2006)

(Supplemental Document to the State Planning Coordination PLUS comments of May 18th, 2006) as per Ordinance # 1152 (County Code 99-9C)

The proposed "**SENATORS**" Residential Project consist of 242 lots, with active and passive recreational amenities is an environmentally sensitive cluster application for homes along the Pot Hook Creek and Gills Neck Rd.; Lewes area, in Sussex County, Delaware.

- o The site is comprised of :
 - No 404 Lands
 - No State Wetlands
 - 114.75 acs. of Uplands

The project seeks to improve this land with single family homesites and both passive and active recreational opportunities. Primarily this pedestrian friendly Community will feature internal walking/biking paths. Reduced lot sizes aid in the capability of weaving the pedestrian aspects of this project through the Community and provide opportunities to leave vegetative buffer lands in more critical sensitive areas along the riparian edges of the Pot Hook Creek. The Community's active amenities include a pool, pool house and multi-use path centrally located in a park-like setting to encourage maximum pedestrian activity and socialization opportunities year round. Existing natural landform drainage features on the site and have been considered during the lot layout and roadway layout to enhance the development grading for saving forest cover and minimizing grading operations. Please review the following procedures that will be designed into this project.

1. Due to the proximity of the Pot Hook Creek and its tidal influences we will seek a waiver to storm water quantity however will engineer and treat for storm water quality through primarily infiltration methods and secondly through wetponds, Bio-swales, and forest buffers prior to discharge.
 - a. With appropriately placed and sized BMP's nutrient reductions will be accounted for in this "LOW REDUCTION" area of the Inland Bay. Even though this project may receive grandfathering status on the reduction of nutrients the developments managed open space of 18 acres will have a nutrient plan devised and State approved to ensure that applied nutrients

are in accordance with current practices and meet TMDL criteria set forth by the DNREC pollution control Strategies.

2. **Water** - shall be available through Tidewater Utilities, inc. and shall meet or exceed all Fire Marshal requirements for line types, sizes, and hydrant locations.

3. **Waste Water** - shall be serviced by Sussex County municipal system that will be treated prior to disposal. No on site systems will be operational on this project which ensures no waste water nutrients will be added to the adjacent aquatic and wetland environment.
 - a. The collection system shall meet Sussex County Ordinance 38 standards
 - b. In addition this project is significant in realizing wastewater operations for the future of this district. The developer is committed to making waste water connection and transmission improvements that ultimately will affect the adjacent aquatic environment and water quality by eliminating and reducing nutrients entering ground and surface waters.
 - i. Development of this project will include construction of a new 24-inch diameter sanitary sewer force main, which will be turned over to Sussex County. The force main will be approximately 9200 feet long and will be designed to service over 5500 EDU's which represents the area between the City of Lewes and the Sussex County service area as shown by the West Rehoboth Expansion Area Planning Study completed for Sussex County by GMB in 1999.
 - ii. The proposed 24-inch force main design has been oversized to accommodate an additional 3800 EDU's. Those additional EDU's represent existing homes and developments that are on individual septic systems and areas not currently served that lie between the Sussex County service area and the City of Lewes service area.
 - iii. The proposed 24-inch force main will be constructed parallel to an existing 30-inch force main, owned by Sussex County, which lies within an existing 20-foot wide sanitary sewer easement which lies within an abandoned 66 feet wide railroad right-of-way extending to the treatment plant site.
 - iv. The design has been approved by Sussex County Engineering Department on June 22, 2005, as part of the approved Sanitary Sewer Concept Plan for the Lands of Hawkseye, of which this subdivision is adjacent to.
 - v. Construction of the force main has been established by Sussex County Engineering as a pre-requisite for sewer connection of the Senators', Hawkseye III and Village Center developments to the sewer system.

4. **Traffic** - It is the developers' intent to abide by all stipulation of DELDOT in regards to entry improvements and potential off-site improvements and/or

agreements. A traffic impact study is in its final review at this writing. We have had numerous pre-development meetings with planning officials at DELDOT and have agreed on the location of the entryway shown on the plan.

5. **Rare, Threatened or Endangered Species** - A review by the Delaware Natural Heritage and Endangered Species database indicates that there are currently no records of state-rare or federally listed plants, animals or natural communities at this project site. However, they do note that records of rare species within the riparian-forested areas along Pot Hook Creek do exist. They suggest that the forested areas remain intact and we have complied with such. Lot lines and infrastructure have little to no affect on this forested area and it will become part of the Home owners association common area with no planned improvements it will remain in its natural state.

6. **Tidal and non-Tidal Wetlands** – The site abuts state and federal wetlands. No lots have been platted in any wetland area. All lots have a varying buffer distance from the wetlands. The average forested buffer setback is greater then 160' from the tidal wetland edge to the rear portion of the plotted lots.

7. **Open Space** - The proposed 242 Lots shown on the plan consume 58.41 acs. of land or 50.90% of the total. Right of Ways consume 20.11 acs. of land or 17.53% of the total. The remaining 31.58% of land is open space. The open space is broken down as follows:
 - Open space areas 35.63 acs.
 - Regional bikeway dedication 00.61 acs.
 - a. The open space has been entwined throughout the Community. Some of the land shall support bio-swales, buffers, paths and park like features that provide for passive/active recreation and opportunity for social engagement. The area set-aside for stormwater is included in this open space figure and is an amenity for this community. The portion of this area in an easement is not included in the open space calculation. In addition this stormwater area will serve this development, Gills Neck Rd. improvements and any future development adjacent to said project. Its location was selected due to inherent topography and drainage patterns that exist on the property.
 - b. **Open Space Amenities** –
 - i. A multi-use path has been worked into the main boulevard road within the project as well as along Gills neck Road. Space has been allocated to dedication to enhance a regional bikeway that will benefit the City of Lewes and Rehoboth Beach by providing an alternative pedestrian/ bike path through the Wolfe Glade area without having to traverse the Rte. 1 corridor.

- ii. Natural areas have been reserved for unimproved trail walks and birding, nature strolls, and habitat in the riparian forest along the Pot Hook Creek
- iii. Manicured Neighborhood Parks have been located conveniently within the streetscape.
- iv. Active recreation – A pool, kiddie pool and Poolhouse/Bath facilities shall be a focus point in one of the park like settings central to all residential homes with adequate parking. Biking and walking will be encouraged.

8. Public and Private Infrastructure -

- a. The roads shall be built to County Standards but remain private
 - i. The entry and main internal boulevard roads shall have curb and gutter with sidewalks/10' wide multi-use path and Streetscape landscaping
 - ii. The sub-division roads will be closed section (curb and gutter) and have sidewalks on both sides
- b. Water shall be operated and maintained by Tidewater Water Utilities
- c. Electric - Delaware Electric Co-operative
- d. Telephone - Verizon
- e. Cable - ComCast
- f. Gas - individual on-site lot supply; provider - TBD

- 9. Historic or Cultural Resources** – There are no structures located on this site.. The developer shall contact SHPO should any evidence of significant artifacts be revealed in the course of the land planning, engineering, investigations, permitting, and construction of this development. As a precautionary measure the site has been evaluated for historical artifacts, By Heite Consultants, and areas deemed highly likely to contain historic and pre-historic artifacts were mapped. We have not planned roads or lots within these areas. They will remain as open space under the protection of the homeowners association with restrictive covenants on the use of these areas. We anticipate them to be maintained in meadow grasses, signed with interpretive information as reported by the consultants study.

We hereby affirm that the preliminary site plan for Senators Project conforms to the provisions of the AR-1 zoning district and to the Comprehensive Plan "environmentally sensitive development district" in all regards. The plan is subject to further investigation and development however it is our professional judgment that the plan represents a realistic and feasible project readily capable of being engineered and in keeping with the provision of the Sussex County Comprehensive Plan. In addition we assert that the plan is a superior living environment that is environmentally and socially accommodating by utilization of the cluster concept. The cluster concept inherently affords opportunity to the designer to define and designate the inherent qualities, and features of the land characteristics best suited for buffers, home sites, open space, drainage basins, archeological protection, etc. We have made significant revisions to the Plan from PLUS review comments which afford more protection of natural features.



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET
STATE PLANNING COORDINATION

March 15, 2006

Tom Ford LANDDESIGN, Inc. Oak Square, Ste. 3, Central Avenue Ocean View, De 19970

May 18th, 2006 – **LANDDESIGN**, inc Response to the PLUS Comments in red

RE: PLUS review – PLUS 2006-02-04; Senators Subdivision

Dear Mr. Ford:

Thank you for meeting with State agency planners on February 22, 2006 to discuss the proposed plans for the Senators Subdivision project to be located on the south side of Gills Neck Road, immediately southwest of the Hawkseye Subdivision.

According to the information received, you are seeking site plan approval, under the County's cluster development option, for 242 units on 119.14 acres located in a Level 3 area. The total project area has been revised and includes easement areas to be improved with Stormwater management. The subdivision area is 114.75 acs. and an additional easement area is 5.76acs..therefore:(5.76acs. + 114.75acs. = **120.51acs. Total Project 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. Will comply

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 is located in an Investment Level 3 area according to the *Strategies for State Policies*

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and Spending, with a small area of Investment Level 4 along the wetland boundary. It is also located in the Environmentally Sensitive Developing Area according to the Sussex County Comprehensive Plan. In these areas, State policies encourage long term phased growth that is sensitive to the natural resources on and surrounding the site. Within the designated Investment Level 3 are two categories. The parcel falls into the second category of Investment Level 3, which includes lands, which are adjacent to or intermingled with fast growing areas categorized as Investment Levels 1 and 2. This proposed development is in an on-going development area and adjacent to and surrounded by lands that have been redeveloped from "industrial agricultural" use to "residential" and "passive recreational" uses. The site is fully serviced by County sewer and central water in a contiguous development pattern within this area. We believe the existing conditions of this site fall more in the Level 1&2 category than in the level 3 categories whereas on Pg.43 of the "Strategies for State Policies and Spending Update-2004" lands in Sussex County not served by water or sewer infrastructure are most likely to be included in Investment level 3. We are aware that we are in an Environmentally sensitive developing area from which the plans shall respect inherent site characteristics by integrating and taking opportunities to improve the overall environmental use of the land.

We understand that this is part of a larger development plan. In general, there is benefit to reviewing the larger development plan for the site, rather than reviewing the components in a piece-meal fashion. In the future, we would encourage this approach. The plan in front of the state stands alone with or without the future proposal. Part of the approval process will call for the Senators parcel to be an independent sub-division from the remaining lands.

Based on the information presented at the PLUS meeting, a portion of the site is within the 100-year flood plain. Specifically, it appears that lots 28-47 (29-38 and lots 45-46) are within the 100-year flood plain. The other stated lots (28 and 39-44) are in the five hundred year flood plain. The State discourages development in the 100-year flood plain and recommends that these lots be moved or eliminated. All home pads impacted by the AE-8 Flood line shall be above elevation eight and all first floors with crawl spaces shall be 1' above this FEMA controlled level. Three Lots (36, 37 & 38) are the most impacted by the flood plain line and they will require less than one foot of fill to comply with the above stated intent without removal of any forest areas.

The Delaware State Housing Authority supports this proposal because residents will have proximity to existing services, markets, and employment opportunities available in nearby Lewes and Rehoboth. Furthermore, this proposal target units for first-time homebuyers, in an area where development pressures continue to drive housing prices out of reach of most homebuyers.

Street Design and Transportation

The developer has been working with the Department for the past year regarding improvements to Gills Neck Road, the Junction and Breakwater Trail, and connection of that trail to a multi-use path along Gills Neck Road. The plan presented is consistent with the discussions thus far and the comprehensive planning effort that includes connections between Senators, Hawkseye and the remainder of the property.

Natural and Cultural Resources

DHCA understands that the owner/developer contracted with an archaeological firm to test the area, and has set off an area to protect the Townsend Site. They need a copy of the archaeologists' report to see what boundaries and kinds of features were found so that they can determine if the area being preserved is in fact large enough. Will comply. They also have

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questions regarding your findings and the sites as noted below. The Developer should contact the Division of Historical and Cultural Affairs (DHCA) to discuss this matter further.

According to information received at the PLUS meeting, the developer plans an average 160-foot buffer from the 404 wetlands. DNREC acknowledges and appreciates the 160-foot (average) buffer.

If other areas were not tested archaeologically, the DHCA would appreciate the opportunity to see if other sites exist within the parcel and to learn something about their nature and extent prior to any ground-disturbing activities. The consultants Hiete Assoc. consulted with SHPO during their investigation.

Based on a preliminary evaluation of this project using this model (using the applicant's assumptions in the PLUS application), the development as currently conceived **does not** meet the Inland Bays watershed TMDL nutrient reduction requirements for nitrogen and phosphorus. DNREC suggests that the applicant verify their project's compliance with the specified TMDL loading rates by running the model themselves (using the corrected impervious cover figure). Please contact Lyle Jones of Watershed Section at 739-9939 for the acceptable model protocol. Have coordinated with Lyle Jones in this regard and have been given a verbal approval that we do meet the goals of the proposed Pollution Control Strategy.

The DNREC Water Supply Section has determined that the parcel falls wholly within an excellent ground-water recharge area (see attached map). Excellent Ground-Water Recharge Areas are those areas mapped by the Delaware Geological Survey where the first 20 feet of subsurface soils and geologic materials are exceptionally sandy. As such, these soils are able to transmit water very quickly from the land surface to the water table. Consequently, ground water in these areas may very readily be adversely affected by land use activities or impervious cover. The DNREC Water Supply Section recommends that the portion of the new development within the excellent ground-water recharge area not exceed 20% impervious cover. Impervious cover has been estimated to be 37%.

Portions of the property are within the 100-year floodplain. It is recommended that construction be limited to those areas outside of the 100-year floodplain and on land above the base flood elevation for this site. According to the site plan, lots 28-43 are within the 100-year floodplain. The developer should consider moving these lots to a different location within the site or removing the completely. See above comments addressing this concern.

Impacts to the forested area should be avoided. PLUS materials indicate that 1.30 acres will be removed. Although small, this area is important to the contiguous stretch of forests from Cape Henlopen Natural Area and help buffer Pot Hook Creek. All efforts should be made to eliminate the removal of trees. We have complied with this suggestion.

On December 19, 2005 DNREC provided comments to Land Design, Inc. (Michael Loveland), which is listed as the project designer/engineer for this project. It is recommended that the forested riparian buffer be left intact and that lot lines and infrastructure not be located within this buffer zone. However, the site plan does not reflect this recommendation as there are stormwater management ponds and lots within the riparian buffer and there is not a 100-foot buffer between wetlands and lots/infrastructure. In order to protect rare species, unique communities, and water quality, the forested riparian buffer along Pot Hook Creek and ~~Bookhammers Pond~~ should be left intact (at least 100 feet in width, preferably 300 feet). Lot lines and infrastructure currently within this buffer zone should be either eliminated from the site plan or relocated. This includes lots 29-38, 45, 46, 47 and two stormwater management ponds. Our review of the above is that Lot layouts have no forest impact. The lots bordering the existing fringe of the forest and most likely, with yard set-backs, will have an insignificant effect on the existing stand of trees. We are prepared to revise our Stormwater criteria and control methods to eliminate all proposed pond structures in and near the wooded areas which had the major impact potential to these trees. The buffer should also be placed in permanent conservation in order to prevent future clearing.

The Office of Nature Preserves strongly urges the applicant to remove or relocate the lots

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currently located in the Natural Area: specifically, lots 29 through 38, 45, 46, and 47. With 99.8% of all existing forest left in open space along with open farm fields in existing upland areas left to become meadows and/or reforested areas we expected the state to be supportive of what is being proposed. We remind the Planning Office, though we appreciate their comments, there are no state buffer requirements that would affect this proposed plan. The developer has volunteered the protection of Riparian forest and large buffer areas. Only Sussex County has mandated a 50' tidal wetland buffer and this proposal exceeds this requirement times three.

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

Office of State Planning Coordination – Contact: Dorothy Morris 739-3090

This is located in an Investment Level 3 area according to the *Strategies for State Policies and Spending*, with a small area of Investment Level 4 along the wetland boundary. It is also located in the Environmentally Sensitive Developing Area according to the Sussex County Comprehensive Plan. In these areas, State policies encourage long term phased growth that is sensitive to the natural resources on and surrounding the site. We have complied.

We understand that this is part of a larger development plan. In general, there is benefit to reviewing the larger development plan for the site, rather than reviewing the components in a piece-meal fashion. In the future, we would encourage this approach. See above response.

Based on the information presented at the PLUS meeting, a portion of the site is within the 100-year flood plain. Specifically, it appears that lots 28-43 are within the 100-year flood plain. The State discourages development in the 100-year flood plain and we recommend that these lots be moved or eliminated. See above response.

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

This parcel includes the Townsend Site (S-262), a prehistoric archaeological site listed in the National Register of Historic Places. The Townsend Site was partially excavated in the 1940s by archaeologists associated with the Smithsonian Institution. Their finds included an ossuary, that is, a large pit with human remains. No human remains were discovered during their archaeological field survey in June of 2005. There are likely to be similar features in the area. Beers Atlas of 1868 shows the location of the J. P. Marshall House within the parcel as well.

DHCA understands that the owner/developer contracted with an archaeological firm to test the area, and has set off an area to protect the Townsend Site. Nearly 18 acs. were set aside including the areas studied by Hiete Assoc. 4.56acs. is on the land area contained in this application which has been designated to remain as meadow. They need a copy of the archaeologists' report to see what boundaries and kinds of features were found so that they can determine if the area being preserved is in fact large enough. Heite Consulting consulted with the State Historic Preservation Officer and his staff during the course of this field work. The DHCA needs to know what mechanism the owner/developer is using to insure that the site is protected from further disturbance and to receive a copy of any easement or covenant. The site for a hundred or more years was plowed, disked, and farmed extensively creating the field scatter in the

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openly farmed areas. The most significant areas of interest occurred in the unfarmed forest areas, which will be protected. Will there be an easement or covenant placed on the deed for this area, and who will be the holder of this instrument? It presently is being considered to be kept intact open space with meadow plantings. Will the area be fenced? No. What kind of vegetation or landscaping is planned for this area? Who will be responsible for maintaining and protecting the area in the future? Homeowners Association. Was there any indication of other human burials associated with this site? No.

The DHCA also needs to know if other areas were tested for the presence of archaeological sites. There are areas of high potential for other prehistoric-period occupations, as well as the possible site of the Marshall House and outbuildings. Was sufficient testing carried out to be sure that there is no unmarked historic-period cemetery associated with the Marshall House within this parcel? Small, rural, family cemeteries often are found in relation to historic farm complexes, such as the Marshall House, usually a good distance behind or to the side of the house. The developer seems to be aware of Delaware's Unmarked Human Remains Act of 1987, which governs the discovery and disposition of such remains. This law covers historic-period as well as prehistoric-period burials. The unexpected discovery of unmarked human remains during construction can result in significant delays while the process is carried out. The DHCA will be happy to discuss these issues with the developer; the contact person for this program is Faye Stocum, 302-736-7400.

If other areas were not tested archaeologically, they would appreciate the opportunity to see if other sites exist within the parcel and to learn something about their nature and extent prior to any ground-disturbing activities.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

- 1) The developer has been working with the Department for the past year regarding improvements to Gills Neck Road, the Junction and Breakwater Trail, and connection of that trail to a multi-use path along Gills Neck Road. The plan presented is consistent with the discussions thus far and the comprehensive planning effort that includes connections between Senators, Hawkseye and the remainder of the property.
- 2) The developer's site engineer should maintain coordination with Mr. John Fiori, the DelDOT Subdivision Manager for Sussex County, regarding their specific requirements for streets and access. He may be reached at (302) 760-2260. Will comply.

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

Green Infrastructure

Portions or all of the lands associated with this proposal are within the Livable Delaware Green Infrastructure area established under Governor Minner's Executive Order #61 that represents a network of ecologically important natural resource lands of special state conservation interest.

Green infrastructure is defined as Delaware's natural life support system of parks and preserves,

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wetlands that have drained or altered before December 23, 1985, and no longer meet the wetland criteria established under the 404 program. Such wetlands are considered exempt from regulatory protection provided that there is no proof of a continuous "fallow period" of five years or greater in that parcel's cropping history. Parcels converted after said date regardless of cropping history are considered jurisdictional by the Army Corps of Engineers (ACOE). The contact person for assessing a parcel's cropping history is Sally Griffin at the USDA – she can be reached at 678-4182. These maps are no longer available to consultants. However we have contacted her for this project that has high recharge potential and no known hydric soils within the development areas.

Wetland Regulations

PLUS application materials indicate that wetlands have been delineated (presumably a field delineation) Yes the 404 lands were field determined. This delineation should be verified by the Army Corps of Engineers through the Jurisdictional Determination process. Yes we are moving through the J.D. process. Please note that impacts to palustrine wetlands are regulated by the Army Corps of Engineers through Section 404 of the Clean Water Act. In situations where the applicant believes that the delineated wetlands on their parcel are nonjurisdictional isolated wetlands, the Corps must be contacted to make the final jurisdictional assessment. They can be reached by phone at 736-9763.

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

To find out more about permitting requirements, the applicant is encouraged to attend a Joint Permit Process Meeting. These meetings are held monthly and are attended by federal and state resource agencies responsible for wetland permitting. Contact Denise Rawding at (302) 739-9943 to schedule a meeting.

Impervious Cover

Research has consistently shown that once a watershed exceeds a threshold of 10 percent imperviousness, water and habitat quality irreversibly decline. A recently published technical source "The Practice of Watershed Protection" by Schueler and Holland 2002 states that no studies have been conducted that examine the effects of widespread applications of stormwater practices on impervious cover/stream quality relationships.(pg.16). Therefore it is also evident that stormwater practices mitigate adverse effects and % of imperviousness could potentially increase without a decrease in environmental aspects. Speaking specifically in regards to this site we will be required through the permitting of stormwater to provide capture, retention, and quality treatment of the predevelopment and post development flow differential Based on analyses of 2002 aerial photography by the University of Delaware, the Inland Bays watershed (Lewes-Rehoboth Canal), at that time, had about 15.6 percent impervious cover. Since each additional percentage increase in surface imperviousness results in a proportionate decrease in a given watershed's habitat and water quality, validates the contention that

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low nutrient reduction area requiring a 40 percent reduction in nitrogen and phosphorus.

In the Inland Bays, the primary source of water quality impairment is associated with nutrient runoff from agricultural and/or residential development. In order to mitigate for the aforementioned impairments, a post-development TMDL reduction level of 40 percent will be required for nitrogen and phosphorus, respectively. Compliance with the post-development TMDL nutrient loading reduction requirements will be assessed via nutrient budget protocol, a computer-based model that quantifies post-development nutrient loading under a variety of land use scenarios in combination with a variety (or absence) of BMP types and intensities. This post-development loading rate is then compared with the pre-development loading rate as a means to assess whether the project meets the acceptable TMDL reduction levels. Based on a preliminary evaluation of this project using this model (using the applicant's assumptions in the PLUS application), the development as currently conceived **does not** meet the Inland Bays watershed TMDL nutrient reduction requirements for nitrogen and phosphorus. We have run the protocol and our findings meet the required reductions for this area. All managed open space areas (+/- 17 acres) shall provide a nutrient management plan as required by the state. We have coordinated our findings with Lyle Jones on this matter. The applicant is strongly advised to consider the use of appropriate BMPs and Best Available Technologies (BATs) to ensure compliance. Examples of BMPs or BATs that should be used to significantly reduce nutrient loading from this project include practices that prevent or mitigate or minimize created surface imperviousness, maintenance of recommended wetland buffer widths, and use of innovative "green-technology" stormwater methodologies rather than conventional open-water stormwater management structures. As mentioned previously, since surface imperviousness is an important variable in the nutrient budget calculation, the applicant is strongly urged to recheck and/or recalculate their projected impervious surface figure to make sure that it reflects realistic post-development impacts. We suggest that the applicant verify their project's compliance with the specified TMDL loading rates by running the model themselves (using the corrected impervious cover figure). Please contact Lyle Jones of Watershed Section at 739-9939 for the acceptable model protocol. -From a contaminate perspective the change of land use from farming, and with municipal sewer for wastewater, will significantly reduce nitrogen loading to the Columbia Aquifer even if replaced by the fertilization of lawns. Chemicals used in the farming practise will be discontinued riparian buffers will be maintained, archeological site will be maintained in meadow.

Water Supply

The project information sheets state water will be provided to the project by Tidewater Utilities via a central water system. DNREC's records indicate that the project is located within the public water service area granted to Tidewater Utilities under Certificate of Public Convenience and Necessity 03-CPCN-12.

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. Will comply

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

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Please see response to these concerns in the beginning of the report.

Forest Preservation

Impacts to the forested area should be avoided. PLUS materials indicate that 1.30 acres will be removed. Although small, this area is important to the contiguous stretch of forests from Cape Henlopen Natural Area and help buffer Pot Hook Creek. All efforts should be made to eliminate the removal of trees. Will comply by alterations to lot layouts in these affected areas

Open Space

To maximize the existing buffering capacity and wildlife habitat on site, it is recommended that lot lines and other infrastructure (such as storm water management ponds) be pulled out of the forest and that areas of community open space be designated along the forested/riparian areas. Doing so will accomplish two things: it will preserve and expand the existing riparian buffers on site and its value for birds and wildlife and it will create recreational opportunities for residents by allowing them access to and views of the forest and stream.

The developer is also strongly urged to consider alternatives to mowed grass within community open space areas. Mowing and other maintenance costs from lawn areas can become a substantial burden for community maintenance associations. There may be areas within the development that are appropriate for warm or cool season grasses. The maintenance costs associated with meadow type grasses are much lower than those of lawn grasses, and provide food and habitat for birds and other wildlife and can help reduce non-point source pollution. We would welcome state information on specific grass seed types and sources for availability whereas it is an objective of this development to enhance and preserve natural features.

Open space containing forest and/or wetlands should be placed into a permanent conservation easement or other permanent protection mechanism. Conservation areas should also be demarked to avoid infringement by homeowners.

Rare Species and Forested Riparian Buffers

DNREC has records of rare species within the forested riparian buffer along Pot Hook Creek and Bookhammers Pond. These riparian areas are part of the Cape Henlopen State Natural Area and this parcel is remotely adjacent to Cape Henlopen State Park. Because of the presence of these species and the existence of the State Natural Area, the forested riparian area is within a State Natural Heritage Site. However, it does not lie within a Delaware National Estuarine Research Reserve. This is one of the criteria used to determine the presence of Critical Resource Waters. The final decision regarding Critical Resource Waters, if this is an issue, will be made by the U.S. Army Corps of Engineers (ACOE). The information above will aid the ACOE in their determination. Less than 1% of the existing forest may be subject to any land disturbance.

On December 19, 2005 DNREC provided comments to Land Design, Inc. (Michael Loveland), which

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is listed as the project designer/engineer for this project. It was recommended that the forested riparian buffer be left intact and that lot lines and infrastructure not be located within this buffer zone.

However, the site plan does not reflect this recommendation as there are stormwater management ponds and lots within the riparian buffer and there is not a 100-foot buffer between wetlands and lots/infrastructure. We have removed the ponds and have effectively removed all but the slightest disturbance opportunities to the existing forest stand. Though the buffer from wetlands to back of lots edge varies the average width is around 160' much heavier protection then required by ordinances of Sussex County. The state has no lawful setbacks in this area and should recognize the proposal for the environmental protection strategy voluntarily employed on this proposal.

In order to protect rare species, unique communities, and water quality, the forested riparian buffer along Pot Hook Creek and Bookhammers Pond should be left intact all of the forested areas along the Pots Hook Creek have essentially been left intact. (at least 100 feet in width, preferably 300 feet). Lot lines and infrastructure currently within this buffer zone should be either eliminated from the site plan or relocated. The state has no such buffer requirements; however we are closely aligned with the goals they purport. We expect more support for this proposal. To insinuate that we have proposed otherwise is unjustified without scientific certainty to specific site conditions that would support such a removal of lots. We expect a review of our proposal to be related to regulations and sound science that can be substantiated. Editorial comments are best left to the public hearing process not from state employees. The PLUS process was not designed to give personal ideologies a shot at lawful land use proposals. I believe the Plus process was intended to allow knowledgeable people of various expertises to nurture good environmentally sensitive development. If the state has the science and can muster the political willpower to enact legislation for 300' buffers then they should proceed toward that goal. Meanwhile give the applicant credit for the volunteer protection this developer is willing to commit to. This includes lots 29-38, 45, 46, 47 and two stormwater management ponds. The buffer should also be placed in permanent conservation in order to prevent future clearing.

Nuisance Waterfowl

The stormwater management pond 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 grass 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 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, property managers or owners will have to accept the burden of dealing with these species (e.g., permit applications, costs, securing services of certified wildlife professionals). Solutions can be costly and labor intensive; however, with proper landscaping, monitoring, and other techniques, geese problems can be minimized.

Mosquito Control

Development projects that result in increased housing densities within 2 miles of large expanses of salt

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marshes or brackish wetlands can often lead to increased demands for mosquito control services, going beyond what DNREC's Mosquito Control Section currently has the budget or resources to provide. Adverse impacts upon the State's allocation of public funds for mosquito control services must be realistically recognized as the frequent consequence of approving these types of development projects; (please provide some documented substantiation for this statement) and State and local governments should then be prepared to deal with the increased budget demands for mosquito control services. Is this a valid concern specifically to this project? It sounds like a budget issue within the state or a personal anti-development sentiment. Regional control of mosquitoes will "realistically" have more chance of enhanced funding with this development than without due to the increased tax base funds. Should mosquito control become problematic specifically at this project the Home Owners Association would provide a spraying program to minimize the problem. Additionally, even though the EPA has scientifically determined that EPA-registered mosquito control insecticides can be applied "without posing any unreasonable risks to human health, wildlife or the environment" (when used in accordance with all product label instructions), avoiding or reducing the use of such pesticides should be employed whenever possible. Limiting development that is too close to wetlands will aide in achieving a reduction in pesticide use.

We don't intend on complying by withdrawing our application.

Natural Areas Inventory

The Office of Nature Preserves understands this site to be in Level 3, adjacent to areas undergoing growth. However, the site is comprised of environmentally sensitive features, including the Cape Henlopen Natural Area. Natural Areas contain lands of statewide significance identified by the Natural Area Advisory Council as the highest quality and most important natural lands remaining in Delaware.

That said, the Office of Nature Preserves strongly urges the applicant to remove or relocate the lots currently located in the Natural Area: specifically, lots 29 through 38, 45, 46, and 47. Please provide the maps of such areas for our consideration.

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. Will comply

Air Quality

Once complete, vehicle emissions associated with this project are estimated to be 18.6 tons (37,144.5 pounds) per year of VOC (volatile organic compounds), 15.4 tons (30,753.1 pounds) per year of NOx (nitrogen oxides), 11.3 tons (22,690.2 pounds) per year of SO₂ (sulfur dioxide), 1.0 ton (2,019.8

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pounds) per year of fine particulates and 1,553.5 tons (3,107,088.0 pounds) per year of CO₂ (carbon dioxide).

Emissions from area sources associated with this project are estimated to be 7.5 tons (14,982.1 pounds) per year of VOC (volatile organic compounds), 0.8 ton (1,648.5 pounds) per year of NO_x (nitrogen oxides), 0.7 ton (1,368.0 pounds) per year of SO₂ (sulfur dioxide), 0.9 ton (1,765.3 pounds) per year of fine particulates and 30.4 tons (60,733.9 pounds) per year of CO₂ (carbon dioxide).

Emissions from electrical power generation associated with this project are estimated to be 3.0 tons (5,937.8 pounds) per year of NO_x (nitrogen oxides), 10.3 tons (20,653.2 pounds) per year of SO₂ (sulfur dioxide) and 1,523.2 tons (3,046,354.1 pounds) per year of CO₂ (carbon dioxide).

	VOC	NO _x	SO ₂	PM2.5	CO ₂
Mobile	18.6	15.4	11.3	1.0	1553.5
Residential	7.5	0.8	0.7	0.9	30.4
Electrical Power		3.0	10.3		1523.2
TOTAL	26.1	19.2	22.3	1.9	3107.1

For this project the electrical usage via electric power plant generation alone totaled to produce an additional 3.0 tons of nitrogen oxides per year and 10.3 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 reduces 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

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for their new occupants. This projects calls for the dedication of right of way to the Department of Parks for a regional bikeway connection through these lands. In addition it would be helpful to access the beneficial air quality results a residential landuse will have to its current agricultural industrial use. One would assume that stabilized soil with vegetative growth and a permanent root matrix would be capable of producing far more oxygen and air purifier benefits then vacant field crops could with spraying and seasonal tilling operations creating wind blown debris and no filtering.

The developers shall encourage energy saving building techniques.

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): will comply

a. **Fire Protection Water Requirements:**

- ¾ Water distribution system capable of delivering at least 1000 gpm for 1hour duration, at 20-psi residual pressure is required. Fire hydrants with 800 feet spacing on centers. (Assembly)
- ¾ Where a water distribution system is proposed for single-family dwellings it shall be capable of delivering at least 500 gpm for 1-hour duration, at 20-psi residual pressure. Fire hydrants with 1000 feet spacing on centers are required. (One & Two- Family Dwelling)
- ¾ Where a water distribution system is proposed for the site, the infrastructure for fire protection water shall be provided, including the size of water mains for fire hydrants and sprinkler systems.

b. **Fire Protection Features:** ¾ All structures over 10,000 Sq. Ft. aggregate will require automatic sprinkler protection installed.

- ¾ Buildings greater than 10,000 sq.ft., 3-stories of more or over 35 feet, or classified as High Hazard, are required to meet fire lane marking requirements.
- ¾ Show Fire Department Connection location (Must be within 300 feet of fire hydrant), and detail as shown in the DSFPR. ¾ Show Fire Lanes and Sign Detail as shown in DSFPR

c. **Accessibility**

- ¾ 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 Gillsneck Road must be constructed so fire department apparatus may negotiate it.
- ¾ 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. ¾ Any dead

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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.

- ¾ The use of speed bumps or other methods of traffic speed reduction must be in accordance with Department of Transportation requirements.
- ¾ 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:

- ¾ Provide type of fuel proposed, and show locations of bulk containers on plan.

e. Required Notes:

- ¾ 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”
- ¾ Proposed Use ¾ Alpha or Numerical Labels for each building/unit for sites with multiple buildings/units ¾ Square footage of each structure (Total of all Floors) ¾ National Fire Protection Association (NFPA) Construction Type ¾ Maximum Height of Buildings (including number of stories) ¾ Note indicating if building is to be sprinklered ¾ Name of Water Provider ¾ Letter from Water Provider approving the system layout ¾ Provide Lock Box Note (as detailed in DSFPR) if Building is to be sprinklered
- ¾ 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 Delaware Department of Agriculture has no objections to the Senators Subdivision application. The site is located on an environmentally sensitive development area. The *Strategies for State Policies and Spending* encourages environmentally responsible development in Investment Level 3 areas. This site is part of an “excellent recharge” area. DNREC has mapped all ground water potential recharge areas. An “excellent recharge” rating is the highest rating and designates an area as having important groundwater recharge qualities. Maintaining pervious cover in “Excellent” and “Good” recharge areas is crucial for the overall environmental health of our state and extremely important to efforts which ensure a safe drinking water supply for future generations. Retention of pervious cover to ensure an adequate future water supply is also important for the future viability of agriculture in the First State. The loss of every acre of land designated as “excellent” and “good” recharge areas adversely impacts the future prospects for

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agriculture in Delaware.

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

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

Public Service Commission - Contact: Andrea Maucher 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

This proposal is for 242 single-family homes on 119 acres near Lewes. According to the State Strategies Map and the Sussex County Comprehensive Plan, the site is located in an Environmentally Sensitive Developing Area. DSHA supports this proposal because residents will have proximity to existing services, markets, and employment opportunities available in nearby Lewes and Rehoboth. Furthermore, this proposal target units for first-time homebuyers, in an area where development pressures continue to drive housing prices out of reach of most homebuyers.

To facilitate the units targeted for first-time homebuyers, we encourage the developer to apply for Sussex County’s Moderately Priced Housing Unit Program which provides the following incentives to developers who provide a percentage of units affordable to Sussex County residents of modest income:

- An expedited review;
- Waivers of some or all County fees;
- Density bonus; and
- Full utilization of the zoning designated for the parcel.

A Request for Proposal (RFP) process has been established to select initial program participants. The developer is encouraged to call William C. LeCates, Director of Sussex County’s Community Development and Housing Division at 855-7777 to learn more about the RFP application.

Department of Education – Contact: John Marinucci 739-4658

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Accommodation of DelDOT and State Fire Marshal requirements for road widths, turning radii and fire lanes will address the needs of school bus access.

DOE requests the developer work with the local school district transportation department to establish developer supplied bus stop shelter ROW and shelter structures, interspersed throughout the development as determined and recommended by the local school district. Will comply

Sussex County – Contact: Richard Kautz 855-7878

Article IV of the Subdivision Ordinance requires that the Preliminary Plat of the subdivision “shall show the general plan for the ultimate development of the property, including as much of the surrounding area as may be necessary for an adequate consideration of the land to be subdivided.” Because this subdivision includes a stormwater management area and a community amenity area outside this subdivision but on the same tract of land, the plan should be revised to comply with this requirement by including the ultimate plan for the property. The site plan has been revised to include within its sub-division line the active amenity areas for the exclusive use of property owners. Due to the contours of the land and the premise that the remaining lands will be undergoing the planning process in the immediate future we have included the potential for a shared stormwater feature. In addition this facility will also be used to provide quality control of off site storm water for the Gills Neck Rd. improvements, which currently has no significant drainage features at this time. This has been done before in Sussex County and makes efficient use of the land and existing site conditions. A maintenance and operations agreement shall be drawn to ensure that the stormwater management facility is adequately addressed.

Because this project is situated in an Environmentally Sensitive Development Area, the reduction of 242 lots from 20,000 sq. ft. to an average of 10,437 sq. ft. allows for more than 53 acres of open space yet only 37 acres of "useable" open space is provided. The R.O.W. would have to be calculated to assess the efficiency of the site –design. This proposal has 20 acs. of R.O.W. and if subtracted from the 53 acres it would leave 33 acs. of open space, however we have managed to configure 36.24acs. A typical sub-division would most likely result in less lots, less useable open space and more impervious roadway surface. This plan calls for two neighborhood parks, internal pedestrian sidewalks, agricultural buffers, a multi-use path, boulevard island plantings, archaeological preserve areas, riparian buffer preserve, an average 160’ buffer from tidal wetlands, large landscape buffers along the Gills neck Rd. preserving roadside scenery, gracious pastoral entry drive into the Community (which benefits all residences with a sense of open land; regardless if their individual lot doesn’t directly connect to it).(68% of all lots do have direct open space connection adjacent to one or more sides of their lots.) We have chosen to create a compact cluster of lots that lend themselves to a walkable neighborhood and centrally located parks for community gathering or passive recreation. The two park areas shall be landscaped and planted in a traditional parklike manner with benches, ornamentals, lawn areas, and adequate paving areas for, bicycles and strollers and a shelter. These internal open spaces are located at the heart of the community, easily accessible by all lots, and will be designed for maximum social attraction. The Senators’ open space concept blends natural areas, meadow areas, buffers and parks for a mixed utilization and appropriate response to the inherent natural and cultural land forms and features of the site. As a result, many of the lots do not have direct access to open space. The

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remaining open space is that which would otherwise be required with or without the clustering (i.e. stormwater management, buffers, and utilities). The stormwater facility is placed inside of the open space shown in our calculations. We have reserved 4.58acs. for stormwater within the proposed area. Without employing the cluster concept the resultant plan would have no design flexibility to save riparian forest, potential archaeological sites, parks and multi-use paths and most importantly a regional connection of a bicycle path connecting the Rehoboth area to the Lewes area internally along the Wolfe Glade environs. The required ESDA report should include how this issue and the PLUS comments have been addressed and how the plan has been revised accordingly.

This fiscal year Sussex County will be considering implementation of a Source Water Protection Program required by the State. Depending on the requirements adopted by the County Council this project might be affected. Any well location should insure that the wellhead protection area is entirely on site. Because of similar water issues as a contiguous project, this development may be required to prepare a water supply report similar to the one prepared for Cadbury at Lewes.

The Sussex County Engineer Comments:

The proposed project is within the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District and connection to the sewer system is mandatory. The project conforms to the West Rehoboth Planning Study and system design assumptions for sewer service. A sewer concept plan for providing sewer service to the area, including this project, was previously approved. This plan requires extensive regional construction to be completed by the developer, with the added requirement to participate in and contribute funds to a necessary treatment plant upgrade in accordance with an approved sequence of construction. Some construction must be completed prior to any sewer connections occurring. This information is detailed on the approved concept plan, with additional conditions provided by the attached letters dated May 18, 2005 and August 16, 2005. (Handed out at meeting) In addition to the above, the layout of the new proposal differs significantly from the original, and it will be required that a revised concept plan for Senator's Subdivision be submitted for review and approval prior to the submittal of any construction plans. A checklist for preparing sewer concept plans was handed out at the meeting. We are complying with the County's concerns. Due to the lengthy timeframe to initiate preliminary plans, we submitted for the PLUS review prior to submission of hard engineered sewer forcemain plans to Sussex County Engineering. The Countys' comment is correct that the Senators' project differs from the original. We have chosen to move from a sub-division application to an AR-1 Cluster Development. The number of EDU's has not changed however. A revised sanitary sewer conceptual plan and regional forcemain plan is in progress and will be submitted to Sussex County for review and approval.

The proposed development will require a developer installed collection system in accordance with Sussex County's standard requirements and procedures. The Sussex County Engineer must approve the connection point. The plan is different from the approved concept plan and a revised concept is required as noted above. The previously approved concept plan shall also be submitted with all future plan submittals.

One time System Connection Charges will apply. Please contact Mrs. Christine Fletcher at 302 854-5086 for additional information on charges.

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

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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.

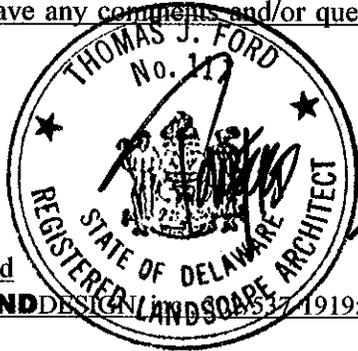
Sincerely,



Constance C. Holland, AICP Director

Thank you for the opportunity to respond to the states concerns and comments on this project application. Should you have any comments and/or questions concerning our response please don't hesitate to call me.

Sincerely,



7-27-06

Thomas J. Ford

President - **LANDDESIGN** 1919; 302539-0328FAX; tjford51@aol.com

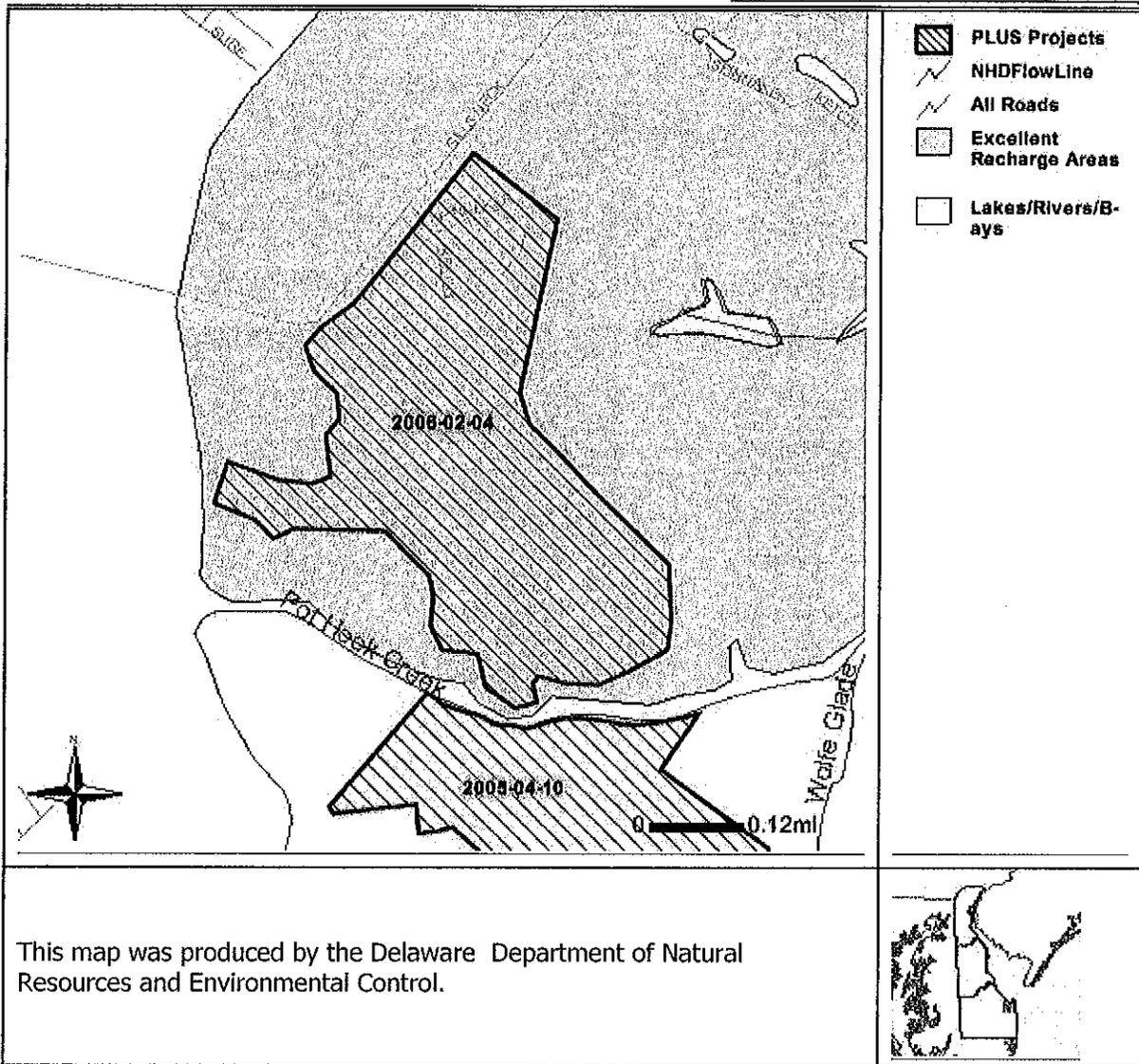
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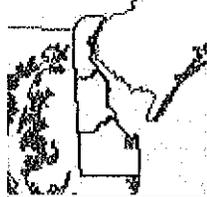
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This map was produced by the Delaware Department of Natural Resources and Environmental Control.



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