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May 15, 2007

Sussex County Planning and Zoning
2 The Circle
Georgetown, DE 19947

Attn: Mr. Lawrence Lank
Director of Planning

Re: PLUS -Response Letter
Trappe Trails
DBF# 1608A001D

Dear Mr. Lank:

This letter is in response to comments received from the Office of State Planning Coordination dated April 23, 2007. We offer the following item-by-item response narrative for your review.

Office of State Planning Coordination -Contact: Bryan Hall 739-3090

This project represents a major land development that will result in 85 residential units in an Investment Level 4 area according to the 2004 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 is likely to bring more than 200 new residents to an area where the State has no plans to invest in infrastructure upgrades or additional services. These residents will need access to such services and infrastructure as schools, police, and transportation. To provide some examples, the State government funds 100% of road maintenance and drainage improvements for the transportation system, 100% of school transportation and paratransit services, up to 80% of school construction costs, and about 90% of the cost of police protection in the unincorporated portion of Sussex County where this development is proposed. Over the longer term, the unseen negative ramifications of this development will become even more evident as the community matures and the cost of maintaining infrastructure and providing services increases.

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

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Mrs. Constance C. Holland

April 30, 2007

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- The developer acknowledges that the project is located in Investment Level 4. The developer will do its utmost to design the site with respect to the present environmental features.

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

The Division of Historical and Cultural Affairs is not in favor of this development in Level 4. This will lead to the further loss of the historic agricultural landscape in the area, and to the loss of archaeological sites within the development. While nothing is known within the parcel, there are areas of medium potential for prehistoric-period archaeological sites near the stream. The W. Truitt House is shown on Beers Atlas of 1868 in this general area, but because Trap Pond Rd. was not there then, it is difficult to tell whether this property was on the east or west side of the current road. There is a historic house (S-58 15) across Trap Pond Rd. from this parcel.

- The developer would like to thank you for this historic information pertaining to the site.

Small, rural, family cemeteries often are found in relation to historic farm complexes, such as the Truitt House, usually a good distance behind or to the side of the house. The developer should be aware of Delaware's Unmarked Human Remains Act of 1987, which governs the discovery and disposition of such remains. The unexpected discovery of unmarked human remains during construction can result in significant delays while the process is carried out, and the developer may want to hire an archaeological consultant to check for the possibility of a cemetery here if this development is approved. The DHCA would have to have a copy of any archaeological report done for this purpose. They will be happy to discuss these issues with the developer.

- The developer acknowledges that fact that there may be unmarked human remains discovered on this site during construction. If remains are discovered during construction we will contact the Division of Historical and Cultural Affairs.

If this development is approved, we would like the opportunity to examine the area prior to any ground-disturbing activities, to see if there are in fact any archaeological sites on the parcel and to learn something about their location, nature, and extent. In addition, the DHCA requests that the development include sufficient landscaping to block visual and noise intrusions on the nearby historic property.

- The developer acknowledges DHCA's request to perform archeological testing.

Department of Transportation - Contact: Bill Brockenbrough 760-2109

Because this development is proposed for a Level 4 Area, it is inconsistent with the Strategies for State Policies and Spending. As part of our commitment to support the Strategies, DeIDOT refrains from participating in the cost of any road improvements needed to support this development and is opposed to any road improvements that will substantially increase the transportation system capacity in this area.

DeIDOT will only support taking the steps necessary to preserve the existing transportation infrastructure and make whatever safety and drainage related improvements are deemed appropriate and necessary. The intent is to preserve the open space, agricultural lands, natural habitats and forestlands that are typically found in Level 4 Areas while avoiding the creation of isolated development areas that cannot be served effectively or efficiently by public transportation, emergency responders, and other public services.

- The developer acknowledges that DeIDOT will only improve existing transportation infrastructures.

DeIDOT strongly supports new development in and around existing towns and municipalities and in areas designated as growth zones in approved Comprehensive Plans. We encourage the use of transfer of development rights where this growth management tool is available.

- The developer acknowledges DeIDOT's request to utilize transfer development rights where applicable.

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

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

Investment Level 4 Policy Statement

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

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

- The developer acknowledges DNREC's request to utilize transfer development rights where applicable.

This particular development certainly compromises the integrity of the State Strategies and the preservation goals inherent in many of DNREC's programs. Of particular concern are potential impacts to two out of three layers of the Green Infrastructure map (natural resource and recreation priorities and forest), the loss/fragmentation of 20 out of 49 acres (or 41%) of forest, and issues with tax ditch rights-of-way. While mitigating measures such as conservation design, central wastewater systems instead of individual on-site septic systems, and other best management practices may help mitigate impacts from this project, not doing the project at all is the best avenue for avoiding negative impacts. As such, this project will receive no financial, technical or other support of any kind from DNREC. Any required permits or other authorizations for this project shall be considered in light of the project's conflict with our State growth strategies.

- The developer acknowledges DNREC's concerns regarding possible impacts to some of the layers of the Green Infrastructure Map, to the loss of the existing forest, and with the tax ditch right-of-way. The developer also acknowledges that DNREC will not support this project financially or technically but will consider any and all permits that may be submitted.

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, woodlands and wildlife areas, wetlands and waterways, productive agricultural and forest land, greenways, cultural, historic and recreational sites and other natural areas all with conservation value. Preserving Delaware's Green Infrastructure network will support and enhance biodiversity and functional ecosystems, protect native plant and animal species, improve air and water quality, prevent flooding, lessen the disruption to natural landscapes, provide opportunities for profitable farming and forestry enterprises, limit invasive species, and foster ecotourism.

Voluntary stewardship by private landowners is essential to green infrastructure conservation in Delaware, since approximately 80 percent of the State's land base is in private hands. It is in that spirit of stewardship that the Department appeals to the landowner and development team to protect sensitive resources through an appropriate site design.

- The developer acknowledges the concern to protect and maintain Delaware's Green Infrastructure network and would like to thank you for the information about the Green Infrastructure. The site plan enclosed provides a 50' buffer which is not required to protect these areas. The developer is also providing larger lots to practice selective clearing to eliminate clearing from setback to setback on smaller lots.

Soils

According to the Kent County soil survey, Pepperbox-Rosedale complex and Longmarsh/Indiantown was

mapped in the immediate vicinity of the proposed construction. Pepperbox-Rosedale complex is a moderately well to well-drained soil that has moderate limitations for development. Longmarsh/Indiantown is a wetland associated (hydric) soil that has severe limitations for development.

- The developer acknowledges that the site is in the vicinity of Pepperbox-Rosedale complex and Longmarsh/Indiantown soils. The developer is also aware of the engineering characteristics of these soils and will incorporate this knowledge in the design of the site. The developer will follow all applicable rules and regulations to successfully develop this site in accordance with the Department of Natural Resources and Environmental Control.

Wetlands

According to the Statewide Wetland Mapping Project (SWMP) mapping, nontidal palustrine forested riparian wetlands were mapped in association immediately adjacent to an unnamed (or name unknown) headwater tributary bounding much of the southern portion of subject parcel. Additionally some scattered unmapped palustrine wetlands may well be found in the forested portion of the parcel. Wetlands provide water quality benefits, attenuate flooding and provide important habitat for plants and wildlife. PLUS materials indicate that non-tidal wetlands were delineated (preferably, a field delineation) and the developer anticipates wetland impacts related to pond construction.

- The developer acknowledges the existence of nontidal palustrine forested riparian wetlands adjacent to an unnamed headwater tributary which bounds the southern portion of the site. The developer has already performed a wetlands delineation on the site. The wetlands were delineated in November 2006.

As noted previously, the palustrine headwater water riparian wetlands border much of the southern boundary of subject parcel. Headwater riparian wetlands serve to protect water quality which helps maintain the ecological integrity and functions throughout the length of the stream, including the floodplain system and/or water bodies further downstream. Since such streams are a major avenue for nutrient-laden stormwater and sediment runoff, their protection deserves the highest priority. Therefore, the Watershed Assessment Section recommends that the applicant maintain/establish a minimum 100-foot upland buffer (planted in native vegetation) from the landward edge of all wetlands and water bodies (including all ditches). A literature review of existing buffer research by Castelle et al. (1994) has documented consensus among researchers that a 100-foot upland buffer is the minimum buffer width necessary, under most circumstances, to protect water quality.

- The developer acknowledges the recommendation to provide a 100-foot upland buffer around all wetlands and water bodies on site. The site plan enclosed depicts a 50' buffer to protect water quality which is not required by code.

Wetland Permitting Information

Impacts to palustrine wetlands are regulated by the U. S. Army Corps of Engineers (USACE, or "the Corps") through Section 404 of the Clean Water Act. 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. The wetland delineation should be verified by the Corps through the Jurisdictional Determination process.

Please be advised that the new Nationwide Permits from the Corps became effective March 19, 2007. The Delaware Coastal Management Program (DCMP) has not completed their Federal Consistency review of the new permits; therefore, contrary to past practices, Coastal Zone Management approval cannot be assumed. Individual certifications must be granted from the DCMP office for each project intending to utilize a Nationwide Permit. For more information on the Federal Consistency process, please contact the DCMP office at 302.739.9283.

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. The developer should note that both DNREC and the Corps discourage allowing buildings and associated infrastructure to contain wetlands to minimize potential cumulative impacts.

- The developer thanks you for the contact information regarding the Federal Consistency process as well as the information regarding wetland permitting. The developer will follow all applicable rules and regulations as it pertains to permitting.

Impervious Cover

Based on a review of the PLUS application, post-development surface imperviousness is estimated to be about 11 percent. However, given the scope and density of this project, this estimate is clearly an underestimate. The applicant's apparent use of natural areas (potential undelineated wetlands or buffers) and stormwater management areas for meeting the County's open space requirements artificially lowers this project's projected estimate of post-development surface imperviousness, ultimately resulting in a significant underestimate of the project's actual environmental impacts. Therefore, wetlands (i.e., after a USACE-approved wetlands delineation) and stormwater management areas should be excluded from the calculations of open space and surface imperviousness. Finally, the applicant should also realize that all created forms of constructed surface imperviousness (i.e., rooftops, sidewalks, and roads) and their extent should be comprehensively accounted for when calculating surface imperviousness. It is strongly recommended that the applicant address all of the above-mentioned concerns in their finalized calculation for surface imperviousness.

Studies have shown a strong relationship between increases in impervious cover to decreases in a watershed's overall water quality. It is strongly recommended that the applicant implement best management practices (BMPs) that reduce or mitigate some of its most likely adverse impacts. Reducing the amount of surface imperviousness through the use of pervious paving materials (~pervious pavers") in lieu of asphalt or concrete in conjunction with an increase in forest cover preservation or additional tree plantings are some examples of practical BMPs that could easily be implemented to help reduce surface imperviousness.

- The developer acknowledges the importance of using best management practices (BMPs) in the design of this site and will do so accordingly to prevent further declining the water

and habitat quality of the watershed.

ERES Waters

This project is located adjacent to receiving waters Broad Creek watershed a subwatershed of the greater Nanticoke watershed, and designated as having waters of Exceptional Recreational or Ecological Significance (ERES). ERES waters are recognized as special assets of the State, and shall be protected and/ or restored, to the maximum extent practicable, to their natural condition. Provisions in Section 5.6 of Delaware's "Surface Water Quality Standards" (as amended July 11, 2004), specify that all designated ERES waters and receiving tributaries develop a "pollution control strategy" to reduce non-point sources of pollutants through implementation of Best Management Practices (BMPs). Moreover, provisions defined in subsection 5.6.3.5 of same section, specially authorize the Department to mandate BMPs to meet standards for controlling the addition of pollutants and reducing them to the greatest degree achievable and, where practicable, implementation of a standard requiring no discharge of pollutants.

- The developer acknowledges the importance ERES waters and will attempt to implement best management practices (BMPs) in the design of this site.

TMDLs

Total Maximum Daily Loads (TMDLs) for nitrogen and phosphorus have been promulgated through regulation for the Broad Creek watershed. A TMDL is the maximum level of pollution allowed for a given pollutant below which a "water quality limited water body" can assimilate and still meet water quality standards to the extent necessary to support use goals such as, swimming, fishing, drinking water and shell fish harvesting. Although TMDLs are required by federal law, states are charged with developing and implementing standards to support these desired use goals. In the greater Broad Creek watershed, "target-rate-nutrient reductions" of 30 and 50 percent will be required for nitrogen and phosphorus, respectively. Additionally, "target-rate-reductions" of 2 percent will be required for bacteria.

TMDL Compliance through the Pollution Control Strategy (PCS)

As indicated above, Total Maximum Daily loads (TMDLs) for nitrogen and phosphorus have been proposed for the Broad Creek watershed. The TMDL calls for a 30 and 50 percent reduction in nitrogen and phosphorus from baseline conditions. The TMDL also calls for a 2 percent reduction in bacteria. A pollution control strategy will be used as a regulatory framework to ensure that these nutrient reduction targets are attained. The Department has developed an assessment tool to evaluate how your proposed development may reduce nutrients to meet the TMDL requirements. Additional nutrient reductions may be possible through the implementation of Best Management Practices such as wider vegetated buffers along watercourses, increasing passive, wooded open space, connection to central sewer (if available), and the use of green-technology stormwater management treatment trains. Contact Lyle Jones at 302-739-9939 for more information on the assessment tool.

- The developer acknowledges the requirement of reducing nutrient runoff and thanks you for the contact information. We will provide a TMDL assessment of the site as part of our site design.

Water Supply

The project information sheets state water will be provided to the project by Tidewater Utilities via an existing public water system. DNREC records indicate that the project is located within the public water service area granted to Tidewater Utilities under Certificate of Public Convenience and Necessity 06-CPCN-25.

- The developer concurs with the comment that water will be provided by Tidewater Utilities.

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.

- The developer acknowledges that a dewatering well construction permit must be obtained should dewatering be needed. The developer also acknowledges that a water allocation permit may be required should the site exceed the above mentioned pumping rate.

All well permit applications must be prepared and signed by licensed water well contractors, and only licensed well drillers may construct the wells. Please factor in the necessary time for processing the well permit applications into the construction schedule. Dewatering well permit applications typically take approximately four weeks to process, which allows the necessary time for technical review and advertising.

- The developer acknowledges that all well permit applications must be prepared and signed by licensed water well contractors and only licensed well drillers may construct the wells. The developer also acknowledges the recommendation to schedule these events accordingly.

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

- The developer thanks you for the contact information.

Sediment and Erosion Control/Stormwater Management

A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. The plan review and approval as well as construction inspection will be coordinated through the Sussex Conservation District. Contact the Sussex Conservation District at (302) 856-7219 for details regarding submittal requirements and fees.

- The developer will follow all applicable rules pertaining to the Delaware Sediment and Stormwater Regulations in the design and execution of this project and thanks you for the

contact information.

A Notice of Intent (NOI) for Stormwater Discharges Associated with Construction Activity must be submitted to the Division of Soil and Water Conservation along with the \$195 NOI fee prior to plan approval.

- The developer will submit and NOI along with the \$195 NOI fee prior to the plan approval.

Applying practices to mimic the pre-development hydrology on the site, promote recharge, maximize the use of existing natural features on the site, and limit the reliance on structural stormwater components, such as maintaining open spaces, should be considered in the overall design of the project as a stormwater management technique. Green Technology BMPs must be given first consideration for stormwater quality management. Each stormwater management facility should have an adequate outlet for release of stormwater.

- The developer acknowledges the request to have adequate outlets on all stormwater management ponds.

It is strongly recommended that you contact the reviewing agency to schedule a preliminary 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 developer will schedule a pre-application meeting at the appropriate time.

Drainage

1. *This project is partially within W & W Tax Ditch, which has existing tax ditch rights-of-way. The tax ditch on the northeast side of lot 80 has a 60-foot tax ditch right-of-way on the west side and a 80 foot tax ditch right-of-way on the east side, both measured from the centerline of the tax ditch. The lots that may be within the tax ditch right-of-way are 80, 81, 82, 83, and 84, as well as the proposed stormwater management area.*
 2. *The tax ditch along the southern property line has a 60 foot tax ditch right-of-way. The area of the subdivision entrance off Little Hill Road may be within the tax ditch right-of-way.*
- The developer acknowledges the existence of the tax ditch as well as the rights-of-way associated with the ditch. The developer will follow any and all regulations as they apply to tax ditches.
3. *The Drainage Program requests that the engineer take precautions to ensure the project does not hinder any off site drainage upstream of the project or create any off site drainage problems downstream by the release of on site storm water. The Drainage Program requests that the engineer check existing downstream ditches and pipes for function and blockages prior to the*

construction. Notify downstream landowners of the change in volume of water released on them.

- 4. The Drainage Program encourages the elevation of rear yards to direct water towards the streets where storm drains are accessible for maintenance. However, the Drainage Program recognizes the need for catch basins in yards in certain cases. Therefore, catch basins placed in rear and side yards will need to be clear of obstructions and be accessible for maintenance. Decks, sheds, fences, pools, and kennels can hinder drainage patterns as well as future maintenance to the storm drain or catch basin. Deed restrictions, along with drainage easements recorded on deeds, should ensure adequate future maintenance access.*
- 5. An increase of the side yard setback to 15 feet may be needed on all properties with a drainage easement on the side. The increase will allow room for equipment to utilize the entire easement and maneuver free of obstructions if the drainage conveyance requires periodic maintenance or future re-construction. The side yard setback would only increase on the side with the drainage easement.*
- 6. All catch basins in rear or side yards should have a 10-foot drainage easement around them on all sides. Place restrictions on fences, sheds, and other structures within the easement to prevent obstructions from being placed next to the catch basin. Record the easement on the deed.*
- 7. Have all drainage easements recorded on deeds and place restrictions on obstructions within the easements to ensure access for periodic maintenance or future re-construction. Future property owners may not be aware of a drainage easement on their property if the easement is only on the record plan. However, by recording the drainage easement on the deed, the second owner, and any subsequent owner of the property, will be fully aware of the drainage easement on their property.*
- 8. Preserve existing riparian buffers on this site to aid in the reduction of nutrients, sediment, and other pollutants entering the watershed. Please explore methods to filter excess nutrients in stormwater runoff from this site before releasing the stormwater into the watershed.*
- 9. The Drainage Program does not support the removal of trees for the creation of stormwater management areas. However, the Drainage Program recognizes that tree removal is unavoidable in some cases. Where practical, plant native trees and shrubs to compensate for the loss of nutrient uptake and stormwater absorption the removed trees provided.*

For questions or clarifications, please contact Jim Sullivan at 739-9921.

- We acknowledge the above mentioned comments and offer the following:
We will take all necessary precautions to avoid any upstream and downstream drainage problems. We acknowledge the importance of maintenance on the catch basins and will consider all restrictions to be recorded on the deed. We also understand your concern on the preservation of the existing riparian buffers as well as the concern regarding the removal of trees and will consider your recommendations.*

Rare Species and Site Visit Request

DNREC has never surveyed this site; therefore, it is unknown if state-rare or federally listed plants, animals or natural communities occur at this project site. They do have records of species on adjacent properties that could occur within the project area as suitable habitat exists. Those species include the following state rare species:

Strix varia (Barred Owl), *Dendroica dominica* (Yellow-throated Warbler), *Buteo lineatus* (Red-Shouldered Hawk), and *Ilyla chrysoscelis* (Cope's gray treefrog)

In order to provide more informed comments and to make recommendations, the program botanist and zoologist request the opportunity to survey the forested and wetland resources which could potentially be impacted by the project. This would also allow the applicant the opportunity to reduce potential impacts to rare species and unique habitats and to ensure that the project is environmentally sensitive. In addition, a survey of the project site will give staff an opportunity to document the biodiversity of the property and add to the State database. The site visit would be at no cost to the applicant/landowner/developer. Please contact Bill McAvoy or Kitt Heckscher at (302) 653-2880 to set up a site visit.

- The developer acknowledges the departments concerns and will contact DNREC to schedule a site visit.

Forest Preservation

Because this project will result in the removal of at least 19.92 acres of forest and the conversion of 48.49 acres of forest into a residential area, DNREC encourages the applicant to make changes to the site plan that will preserve additional forest.

1. This would entail omitting some lots and infrastructure especially those that are in proximity to non-tidal wetlands in the southern portion of the site. Forested areas near or along water courses are especially important from a wildlife management standpoint as this type of habitat is important as a wildlife travel corridor, as breeding areas for wetland dependent species, and also aide in the survivability of aquatic organisms by protecting water quality in a variety of ways.
2. The current site plan will serve to fragment the forest and the applicant is encouraged to leave a larger, connected area of forested open space. Forest fragmentation separates wildlife populations and increases "edge effects" that leave many forest dwelling species, particularly songbirds, vulnerable to predation.
3. Although leaving a forest intact is preferential to clearing, to reduce impacts to nesting birds and other wildlife species that utilize forests for breeding, we recommend that clearing not occur April 1st to July 3 1st. Large mature trees should be left intact. This recommendation would only protect those species for one nesting season, as once trees are cleared, the result is an overall loss of habitat. In addition, when forested areas are cleared, wildlife must either co-exist with new residents or disperse into surrounding areas. Either scenario can result in an increase in human/animal conflicts, including those on the roadways.

- The developer acknowledges the above mentioned recommendations and understands the concerns. Based on this concern the developer is providing a 50' buffer around the perimeter of the property and also will be developing 20,000 sq. ft. lots at a minimum to provide selective clearing. With larger lots, this will eliminate clearing from setback to setback, with the 50' buffer providing tree preservation. There will also be landscape provided as part of the design to incorporate trees within the proposed development.

DNREC points out that there are currently no state codes or regulations protecting forests, and a lack of forest protection has contributed to an estimated 20,000 acres of forest converted by development just in the last decade in Delaware (Dept. of Agriculture, Forestry Service). This cumulative forest loss has led to a corresponding loss of forest-dependent species (Environmental Law Institute. 1999. Protecting Delaware's Natural Heritage: Tools for Biodiversity Conservation. I SBN# 1-58576-000-5). Forest loss throughout the state is of utmost concern to our Division (which is charged with conserving and managing the states wildlife habitat) and because of the lack of regulatory protection, DNREC has to rely on applicants and/or the entity that approves the project (i.e. counties and municipalities) to consider and implement our professional, scientific recommendations.

- The developer acknowledges DNREC's concerns. Based on this concern the developer is providing a 50' buffer around the perimeter of the property and also will be developing 20,000 sq. ft. lots at a minimum to provide selective clearing. With larger lots, this will eliminate clearing from setback to setback, with the 50' buffer providing tree preservation. There will also be landscape provided as part of the design to incorporate trees within the proposed development.

Plant Rescue

Because woodlands and wetlands are to be destroyed, filled, or disturbed, it is recommended that the developer/landowner contact the Delaware Native Plant Society to initiate a plant rescue. Selected plants from the site of disturbance will be collected by Society members and transplanted to the Society's nursery. Plants will then be used in restoration projects and/or sold at the Society's annual native plant sale. This can be done at no expense or liability to the developer/landowner". Please contact Lynn Redding at (302) 736-7726, (lynn_redding@ml.com) or William A. McAvoy at (302) 653-2880, (william.mcavoy@State.de.us).

- The developer acknowledges the concern regarding woodland and wetland disturbance and thanks you for the contact information regarding plant rescue.

Potential Hunting Issue

Because the project parcel is part of a larger forest block, legal hunting activities may take place on adjacent properties. Hunting within 100 yards of a dwelling is prohibited and the applicant should contact adjacent landowners to determine if this is going to be an issue. In effect, the adjacent landowner will be losing 100 yards of their property for hunting if there is not a buffer between lot lines and the adjacent property line. There is also noise associated with hunting, such as the discharge of firearms or dogs barking when pursuing game.

- The developer will attempt to contact surrounding homeowners regarding hunting concerns. This will also be included in the deed restrictions.

Nuisance Waterfowl

There are several areas designated as stormwater management and if these are going to be wet ponds, they may attract waterfowl. High concentrations of waterfowl in ponds create water-quality problems, leave droppings on lawn and paved areas and can become aggressive during the nesting season. Short manicured lawns around ponds provide an attractive habitat for these species, therefore 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, residents or the home-owners association will have to accept the burden of dealing with these species (e.g., permit applications, costs, securing services of certified wildlife professionals). Solutions can be costly and labor intensive; however, with proper landscaping, monitoring, and other techniques, geese problems can be minimized.

- The developer acknowledges the potential problems the waterfowl and will utilize BMP's in the design of the stormwater management to avoid any unnecessary complications.

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.

- The developer acknowledges the above mentioned comment and will minimize as much solid waste as possible.

Underground Storage Tanks

There are no LUST site(s) located near the proposed project. However, should any underground storage tank or petroleum contaminated soil be discovered during construction, the Tank Management Branch must be notified as soon as possible. It is not anticipated that any construction specifications would need to be changed due to petroleum contamination. However, should any unanticipated contamination be encountered and PVC pipe is being utilized, it will need to be changed to ductile steel with nitrile rubber gaskets in the contaminated areas.

- The developer will contact the Task Management Branch if any underground tanks are discovered on site.

Air Quality

Once complete, vehicle emissions associated with this project are estimated to be 6.5 tons (13,046.6 pounds) per year of VOC (volatile organic compounds), 5.4 tons (10,801.7

pounds) per year of NOx (nitrogen oxides), 4.0 tons (7,969.7 pounds) per year of SO2 (sulfur dioxide), 0.4 ton (709.4 pounds) per year of fine particulates and 545.7 tons (1,091,332.6 pounds) per year of CO2 (carbon dioxide).

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

Emissions from area sources associated with this project are estimated to be 2.6 tons (5,262.3 pounds) per year of VOC (volatile organic compounds), 0.3 ton (579.0 pounds) per year of NOx (nitrogen oxides), 0.2 ton (480.5 pounds) per year of SO2 (sulfur dioxide), 0.3 ton (620.1 pounds) per year of fine particulates and 10.7 tons (21,332.2 pounds) per year of CO2 (carbon dioxide).

Emissions from electrical power generation associated with this project are estimated to be 1.0 tons (2,085.6 pounds) per year of NOx (nitrogen oxides), 3.6 tons (7,254.2 pounds) per year of SO2 (sulfur dioxide) and 535.0 tons (1,070,000.4 pounds) per year of CO2 (carbon dioxide).

	VOC	NOx	SO ₂	PM _{2.5}	CO ₂
Mobile	6.5	5.4	4.0	.04	545.7
Residential	2.6	0.3	0.2	0.2	10.7
Electrical Power		1.0	3.6		535.0
TOTAL	9.1	6.7	7.8	0.7	1091.4

For this project the electrical usage via electric power plant generation alone totaled to produce an additional 1.0 tons of nitrogen oxides per year and 3.6 tons of sulfur dioxide per year.

A significant method to mitigate this impact would be to require the builder to construct Energy Star qualified homes. Every percentage of increased energy efficiency translates into a percent reduction in pollution. Quoting from their webpage, <http://www.energystar.gov/>:

"ENERGY STAR qualified homes are independently verified to be at least 30% more energy efficient than homes built to the 1993 national Model Energy Code or 15% more efficient than state energy code, whichever is more rigorous. These savings are based on heating, cooling, and hot water energy use and are typically achieved through a combination of:

- building envelope upgrades,*
- high performance windows,*
- controlled air infiltration,*
- upgraded heating and air conditioning systems,*
- tight duct systems and*

upgraded water-heating equipment.”

The Energy office in DNREC is in the process of training builders in making their structures more energy efficient. The Energy Star Program is excellent way to save on energy costs and reduce air pollution. They highly recommend this project development and other residential proposals increase the energy efficiency of their homes.

The Energy Office also recommends that the home builders offer geothermal and photo voltaic energy options. Applicable vehicles should use retrofitted diesel engines during construction.

The development should provide tie-ins to the nearest bike paths, links to mass transit, and fund a lawnmower exchange program for their new occupants.

- The developer acknowledges all of the above mentioned recommendations and will design the subdivision using as much energy saving processes as possible in an environmentally sound design.

State Fire Marshal's Office -Contact: R.T. Leicht 856-5298

These comments are intended for informational use only and do not constitute any type of approval from the Delaware State Fire Marshal's Office. At the time of formal submittal, the applicant shall provide: completed application, fee, and three sets of plans depicting the following in accordance with the Delaware State Fire Prevention Regulation (DSFPR):

a. Fire Protection Water Requirements:

- > *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.*
- > *The infrastructure for fire protection water shall be provided, including the size of water mains.*

b. 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 Trap Pond Rd and Little Hill Rd must be constructed so fire department apparatus may negotiate it.*
- > *Fire department access shall be provided in such a manner so that fire apparatus will be able to locate within 100 ft. of the front door.*
- > *Any dead end road more than 300 feet in length shall be provided with a turnaround 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.*

c. Gas Piping and System Information:

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

d. 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 "*
- > *Name of Water Supplier*
- > *Proposed Use*
- > *National Fire Protection Association (NFPA) Construction Type*
- > *Maximum Height of Buildings (including number of stories)*
- > *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.

- > *We acknowledge the above mentioned comments and shall comply with all State Fire regulations.*

Department of Agriculture Contact: Scott Blaiher 698-4500

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

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

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

Section of the Code states:

G. Agricultural Use Protections.

(1) Normal agricultural uses and activities conducted in a lawful manner are preferred. In order to establish and maintain a preference and priority for such normal agricultural uses and activities and avert and negate complaints arising from normal noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations, land uses adjacent to land used primarily for agricultural purposes shall be subject to the following restrictions:

(a) For any new subdivision development located in whole or in part within three hundred (300) feet of the boundary of land used primarily for agricultural purposes, the owner of the development shall provide in the deed restrictions and any leases or agreements of sale for any residential lot or dwelling unit the following notice:

"This property is located in the vicinity of land used primarily for agricultural purposes on which normal agricultural uses and activities have been afforded the highest priority use status. It can be anticipated that such agricultural uses and activities may now or in the future involve noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations. The use and enjoyment of this property is expressly conditioned on acceptance of any annoyance or inconvenience which may result from such normal agricultural uses and activities."

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

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

- *The developer acknowledges the above mentioned comments and will comply with all state and local rules and regulations pertaining to agriculture.*

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.

- The landscape plan will be designed to comply with this recommendation.

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 acknowledge the above mentioned comment and our landscape plan will comply with this recommendation.

Tree Mitigation

The Delaware Forest Service encourages the developer to implement a tree mitigation program to replace trees at a 1: 1 ratio within the site and throughout the community. This will help to meet the community's forestry goals and objectives and reduce the environmental impacts to the surrounding natural resources. To learn more, please contact our offices at (302) 349-5754.

- We acknowledge the above mentioned comments.

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.

- The developer thanks you for the contact information.

Delaware State Housing Authority — Contact Vicki Walsh 739-4263

This proposal is for a site plan review of 85 units on 85.77 acres located east of Pepper Pond Road, south of Laurel Road, west of Little Hill Road, and north of Goose Neck Road near Laurel. According to the State Strategies Map, the proposal is located in an Investment Level 4 area and outside the growth zone. As a general planning practice, DSHIA encourages residential development only in areas where residents will have proximity to services, markets, and employment opportunities, such as Investment Level 1 and 2 areas outlined in the State Strategies Map. Since, the proposal is located in an area targeted for agricultural and natural resource protection, and therefore inconsistent with where the State would like to see new residential development, DSHIA does not support this proposal.

- The developer acknowledges Delaware State Housing Authority comments

Department of Education — Contact: John Marinucci 739-4658

DOE recognizes that this development project is in level 4 of the State Strategies for Policies and Spending and as such, DOE does not support the approval of this project. This proposed development is within the Laurel School District. DOE offers the following comments on behalf of the Laurel School District.

1. *Using the DOE standard formula, this development will generate an estimated 43 students.*
 2. *DOE records indicate that the Laurel School Districts' elementary schools are not at or beyond 100% of current capacity based on September 30, 2006 elementary enrollment.*
 3. *DOE records indicate that the Laurel School Districts' secondary schools are not at or beyond 100% of current capacity based on September 30, 2006 secondary enrollment.*
 4. *While the Laurel School District secondary and elementary schools are not currently beyond capacity, the district does NOT have adequate student capacity to accommodate the additional students likely to be generated from this development given the number of planned and recorded residential sub divisions within district boundaries. This development, in conjunction with other planned developments will cause significant burden to the Laurel School District if the developments are built and residential units are occupied, without additional educational infrastructure resources.*
 5. *The DOE requests that the developer contact the Laurel School District Administration to address the issue of school over-crowding that this development will cause.*
 6. *DOE requests developer work with the Laurel 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.*
- *The developer acknowledges the concerns of the Department of Education and will contact the Laurel School District to coordinate a bus stop shelter.*

Sussex County – Contact: Richard Kautz, 855-7878

The developer should relocate the stormwater management pond located along the property frontage to an interior, less visible location.

- *The developer acknowledges the request to relocate the stormwater management pond. The pond located along the frontage services as an established feature to the community to eliminate houses backing up to the road.*

The Sussex County Engineer Comments:

The project proposes to develop using a private central community wastewater system. Sussex County recommends that the wastewater system be operated under a long-term contract with a capable wastewater utility. The proposed project is located within the boundaries of the Western Sussex Planning Area 4. The Sussex County Engineering Department expects the planning study to be complete by August 2007. There is currently no schedule to provide service to this project. Sussex County requires design and construction of the collection and transmission system to meet Sussex County sewer standards and specifications. A review and approval of the treatment and disposal system by the Sussex County Engineering Department is also required and plan review fees may apply. Disposal fields should not be

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counted as open space. Wastewater disposal fields should be clearly identified on recorded plots.

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

- The developer acknowledges the comments from Sussex County Engineering Department and will coordinate all design and construction to meet ordinance 38 requirement.

The above comments serve as an official response from Davis, Bowen & Friedel, Inc. On behalf of our client, we thank you for your review and comments on this project. If you should have any questions or concerns please contact me at 424-1441.

Sincerely,



W. Zachary Crouch, P.E.
Principal

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Enc.: Site Plan

cc: Constance C. Holland, AICP