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February 23, 2009

Constance C. Holland, AICP  
Director  
State Planning Coordination  
122 William Penn Street  
Haslett Armory, Suite 202  
Dover, DE 19901

Transmitted by e-mail: [Dorothy.Morris@state.de.us](mailto:Dorothy.Morris@state.de.us)

RE: PLUS Review Comments; 2008-01-02  
Rantz Farm Subdivision

Dear Ms. Holland:

Thank you for your February 25, 2008 letter regarding the above referenced project. On behalf of the applicant, Rantz Farm, LLC, we offer the following responses to the comments that were generated during the January 30, 2008 PLUS meeting and as outlined in your letter. A current, revised copy of the Preliminary Subdivision Plan for the proposed development is enclosed. This layout has been revised to address issues raised through the PLUS review.

**Comment:**  
**Office of State Planning Coordination:**

This project represents a major land development that will result in 166 residential units in an Investment Level 4 area according to the *2004 Strategies for State Policies and Spending*. This proposal is located in Investment Level 4 according to the *Strategies for State Policies and Spending*, and is within the Low Density area according to the Sussex County certified comprehensive plan. Investment Level 4 indicates where State investments will support agricultural preservation, natural resource protection, and the continuation of the rural nature of these areas. New development activities and suburban development are not supported in Investment Level 4 areas. These areas are comprised of prime agricultural lands and environmentally sensitive wetlands and wildlife habitats, which should be, and in many cases have been preserved.

From a fiscal responsibility perspective, development of this site is likewise inappropriate. The cost of providing services to development in rural areas is an inefficient and wasteful use of the State's fiscal resources. The project as proposed is likely to bring more than 400 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.

#### Level 4 Response

The subject property has been zoned GR, General Residential, since Sussex County adopted zoning ordinances. GR zoning is intended to provide affordable housing options. The proposed development is in compliance with the Sussex County Zoning Ordinance and with the 2003 Comprehensive Plan, which was the current plan when the application was filed. Central water and wastewater are anticipated to be provided by Tidewater Utilities. Central Water will be extended from the Country Grove subdivision, located ½ mile east of the project site. Central sewer shall be installed by the developer, and maintained and operated by Tidewater Utilities. In addition, the proposed road network is private with maintenance by the Home Owners' Association and DeIDOT sees no need for roadway or intersection improvements outside the development.

#### Comment

##### Division of Historical and Cultural Affairs:

According to observations and reference materials of the State Historic Preservation Office of Delaware Division of Historic & Cultural Affairs, the developer should be aware of the following: At this time, there is no indication of a known historic and cultural resource, archaeological site, or national register listed property on this project area, but there two known historic and cultural resource nearby or very close to project area and both of them are also archaeological sites. One of the archaeological sites does appear to be on or within the project area, and is located east of Route 24-west of Sarah Run-north of Burton Prong (S-6939, 7S-G-85). The other archaeological site appears to be near the project area, and is located ½ mile southeast of intersection of 501 and 515 on Meadow Branch (S-7674, 7S-H-44).

Another historical aspect is that according to the Beers Atlas of 1868, this project area appears to be within the area or vicinity of Little Creek Hundred, and there is a variety of historical attributes or aspects within that particular area or vicinity of Little Creek Hundred. Also according to the Beers Atlas of 1868, it appears that there was a dwelling of some type very close to where the project area is today, and that dwelling was associated or affiliated with someone by the name of E. C. Kinney. It is a possibility that there could probably be potential historic and cultural resources or potential archaeological resources associated with

that dwelling or related to that dwelling.

In addition, it is extremely important to remember and be aware that this project area is in a Level-4 area. Level-4 areas are often or usually environmentally sensitive areas, and sometime there area historical attributes or aspects within these types of environmental sensitive areas. The State Historic Preservation Office of the Division of Historical & Cultural Affairs is not in favor of any type of zoning change, construction, building project, or development in Level-4 areas.

Since this project area is in a location where there are some historical attributes or aspects, it is also an indication that it is a possibility that there are potential historic and cultural resources or potential archaeological resources on or within this project area. The potential historic and cultural resources or potential archaeological resources could a cemetery, burial ground, unmarked human remains, or some other type of hidden contents or remains, which has historical attributes or aspects.

Prior to any type of ground-disturbing activities, demolition, or construction, the developer show review Chapters 53 and 54, in Title 7, of the Delaware State Code. Chapter 53 pertains to the discovery and disposition of “Conservation of Archaeological Resources In or On State Lands”. Chapter 54 pertains to the “Delaware Unmarked Human Remains Act of 1987”, such as the discovery and disposition of Unmarked Human Burials or Skeletal Remains”. The unexpected discovery of unmarked human remains during construction can result in significant delays while the process is carried out.

Also prior to any type of ground-disturbing activities, demolition, or construction, the developer may want to hire an archaeological consultant to check and examine the project area thoroughly. The purpose for this is to make sure that there is no indication or evidence of a potential historic and cultural resource or potential archaeological resource such as a cemetery, burial ground, unmarked human remains, or some other type of hidden contents or remains, which has historical attributes or aspects.

Response Statement:

All aspects of the permitting process will be completed as necessary.

Comment:

Department of Transportation:

Ralph Packard and Steve Parsons seek to develop 166 single-family detached houses on a 76.62-acre assemblage of parcels (Tax Parcels 5-32-6.00-12.00 and 12.16). The assemblage is located on the south side of Bacons Road (Sussex Road 515) and the east side of Saint George Road (Sussex Road 501). The land is zoned GR in Sussex County and would be developed by right.

Because this development is proposed for a Level 4 Area, it is inconsistent with the *Strategies for State Policies and Spending*. As part of their commitment to support the *Strategies*, DelDOT 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.

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

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

Response Statement:

Additional traffic analyses were completed after the PLUS meeting, and DeIDOT determined that the project is not subject to Traffic Impact Study requirements (see attached July 15, 2008 letter from DeIDOT).

Comment:

Department of Natural Resources and Environmental Control:

**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.

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 (cropland and forest), an increase

in impervious cover, the loss/fragmentation of forest (7 out of 13 acres or 54%), potential impacts to wetlands, the project's location in a floodplain, and 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.

Response Statement:

See page 2 for Level 4 response statement.

**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 site is largely agricultural crop-land. Much of the existing forest is being preserved along the eastern and southern edges of the project.

**Comment:Soils**

According to the Sussex County soil survey update, Pepperbox-Rosedale complex, Glassboro, and Longmarsh were mapped on subject parcel. Pepperbox-Rosedale complex is a moderately well to well-drained upland soil that has moderate to few limitations for development. Glassboro is a somewhat poorly-drained soil likely to have both wetland and upland soil components; limitations for development are moderate to severe. Longmarsh is a very poorly-drained wetland associated (hydric) soil that has severe limitations for development.

Response Statement:

The soils on the site were noted by DNREC as having variable limitations for development. The site is proposed to be served by a central wastewater system therefore; the variable soil limitation will not adversely affect the development of the parcel. Detailed soils testing and analysis by licensed professionals will be provided in accordance with DNREC requirements for the on-site wastewater treatment and disposal area contemplated onsite.

**Comment:Wetlands**

Based on Statewide Wetlands Mapping Project (SWMP) mapping, palustrine riparian headwater wetlands bound the entire eastern boundary of subject parcel.

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 Corps 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 Management Program (DCMP) Section. Each of these certifications represents a separate permitting process. Please be advised that Nationwide permits have been suspended in Delaware and are pending further coordination with the Corps. Therefore, contrary to past practices, Coastal Zone Management approval can no longer 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.

Based on a review of existing buffer research by Castelle et al. (1994), an adequately-sized buffer that effectively protects wetlands and streams, in most circumstances, is about 100 feet in width. In recognition of this research and the need to protect water quality, the Watershed Assessment Section recommends that the applicant maintain/establish a minimum 100-foot upland buffer (planted in native vegetation) from all water bodies (including ditches) and wetlands.

Response:

The applicant has retained the services of JCM Environmental, Inc. to delineate the wetlands and to process any wetland impacts proposed. Any wetland impacts shall be properly permitted in accordance with existing regulations.

**Comment:**

**Impervious cover**

The applicant estimates this project’s post-development surface imperviousness to reach only 30 percent. However, given the scope and density of this project, this projection is likely to be a

significantly large underestimate. The applicant should realize that all forms of constructed surface imperviousness (i.e., rooftops, sidewalks, open-water stormwater management structures, and roads) should be included in the calculation for surface imperviousness. Failure to do so will result in an underestimate of this project's likely post-construction environmental impacts. The calculation for surface imperviousness should be corrected and/or recalculated to reflect all the above-mentioned concerns.

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.

Response:

The applicant will comply with any existing regulations regarding impervious cover, including the stormwater management regulations as amended April 2005.

**Comment:**

**ERES Waters/TMDLs/Wastewater & TMDL Compliance through the PCS**

This project is located adjacent to receiving waters of the Broad Creek 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.

**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 Nanticoke watershed, “target-rate-nutrient reductions” of 30 and 50 percent will be required for nitrogen and phosphorus, respectively. Additionally, “target-ratereductions” of 2 percent will be required for bacteria.

### **TMDL Compliance through the 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 (PCS) 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 BMPs such as wider vegetated buffers along watercourses/wetlands, increasing the amount of passive, wooded open space, use of pervious paving materials to reduce surface imperviousness, deployment of green-technology stormwater management treatment technologies, and use of performance-based wastewater technology (or better yet, connection to central sewer if available). Contact Lyle Jones at 302-739-9939 for more information on the assessment tool.

#### **Response:**

The applicant will develop the site in accordance with existing regulations. All applicable regulations shall be adhered to in the final design of the project.

#### **Comment:**

##### **Water Supply**

The information provided indicates that Tidewater Utilities will provide water to the proposed project(s) via a public water system. Our files reflect that Tidewater Utilities does not currently hold a Certificate of Public Convenience and Necessity (CPCN) to provide public water in these areas. They will need to file an application for a CPCN with the Public Service Commission, if they have not done so already. Information on CPCN requirements and applications can be obtained by contacting the Public Service Commission at 302-739-4247. Since an on-site public well(s) be needed, it (they) must be located at least 150 feet from the outermost boundaries of the project(s). The Division of Water Resources will consider applications for the construction of on-site wells provided the wells can be constructed and located in compliance with all requirements of the Regulations Governing the Construction and Use of Wells. A well construction permit must be obtained prior to constructing any well(s).

Should dewatering points be needed during any phase of construction, a dewatering well construction permit must be obtained from the Water Supply Section prior to construction of the well points. In addition, a water allocation permit will be needed if the pumping rate will exceed 50,000 gallons per day at any time during operation.

All well permit applications must be prepared and signed by licensed water well contractors, and

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

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

**Response:**

The site will be served by a Tidewater Utilities via an offsite distribution system.

**Comment:**

**Sediment and Erosion Control/Stormwater Management**

A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. Contact the reviewing agency to schedule a pre-application meeting to discuss the sediment and erosion control and stormwater management components of the plan as soon as practicable. The site topography, soils mapping, pre- and post-development runoff, and proposed method(s) and location(s) of stormwater management should be brought to the meeting for discussion. The plan review and approval as well as construction inspection will be coordinated through the Sussex Conservation District. Contact Jessica Watson at the Sussex Conservation District at (302) 856-7219 for details regarding submittal requirements and fees.

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

The Sediment and Stormwater Management Program ensures sediment and erosion control plans and stormwater plans comply with local land use ordinances and policies, including the siting of stormwater management facilities. However, we do not support placement in resource protection areas or the removal of trees for the sole purpose of placement of a stormwater management facility/practice.

**Response Statement:**

The sediment and erosion control plan shall be completed in accordance with Sussex Conservation District criteria. Green technologies will be contemplated if the hydrology and soils support such practices.

**Comment:**

**Drainage**

This project is located within the Meadow Branch Tax Ditch, which has established tax ditch rights-of-way. The submitted preliminary subdivision plan depicts lots 59-64 along the Main and lots 55, 99-118 along Prong 2 of the Meadow Branch Tax Ditch to be within the established tax ditch rights-of-way. The Drainage Program recommends tax ditch rights-of-way be designated open

space, as permanent structures are not permitted within tax ditch rights-of-way. Any change to the location of the tax ditch or the existing tax ditch rights-of-way will require a change to the Meadow Branch Tax Ditch court order. Please contact the Drainage Program in Georgetown at (302) 855-1930 to request a determination of the tax ditch rights-of-way for this property.

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.

The Drainage Program encourages the elevation of rear yards to direct water towards the streets where swales are accessible for maintenance. However, the Drainage Program recognizes the need for swales in yards in certain cases. Therefore, swales 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.

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.

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.

Response:

Adequate access for storm water management facilities shall be provided on the final plans. Any maintenance easement shown on the Final Subdivision Plan shall include a prohibition against constructing structures within the easement. Lot lines have been revised to remove most lots from the tax ditch easement. Lots 55, 93-100, 148 & 149 have tax ditch easements in the rear yards, located fully outside the rear yard setback.

**Comment:**

**Floodplains**

Lots 1-12 and 55-57, 60-64, 77-79 are located within a Zone A floodplain. Sussex County is a participating community in FEMA's National Flood Insurance Program (NFIP). Any parcel in a Zone A floodplain that is greater than 5 acres or 50 lots must conduct a detailed flood study to

determine the Base Flood Elevation. This should be submitted to the County with the application. It may also be submitted to FEMA to have the map revised. This would benefit the homeowners from having to individually bear the financial burden of this process later on.

Response:

All studies and engineering required by law or regulation shall be undertaken during final site engineering.

**Comment:**

**Rare Species**

We have never surveyed this property; therefore, it is unknown if State-rare or federally listed plants, animals or natural communities would be impacted by this project. However, *Elliptio fisheriana* (northern lance), a State-rare mussel, occurs in Meadow Branch adjacent to the project area. Because freshwater mussels are filter feeders, and have a long lifespan and complex life cycle, they often serve as excellent indicators of water quality. Impacts to this population of freshwater mussels could occur if adequate riparian buffers are not maintained along Meadow Branch.

We also have records of *Pseudotriton montanus* (mud salamander) in the vicinity and this species could occur within the project area if adequate habitat exists. This State-rare amphibian typically occurs in forested wetlands, wet floodplains, wooded swamps, bogs, and small streams, but is difficult to find as it rarely spends time on the surface. It is believed that it takes 2-4 years for this species to reach maturity.

Response:

The applicant will develop the site in accordance with existing regulations.

**Comment:**

**State Natural Heritage Site**

The portion of Meadow Branch within the project area (forested riparian buffer included), lies within a State Natural Heritage Site. This is a 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 (USACE, or “the Corps”). The information above will aid the Corps in their determination.

Response:

The ditch crossing indicated in the plan and/or any other needed wetland impact will be undertaken in accordance with the terms of a U.S. Army Corps of Engineers Nationwide Permit unless none is required.

### **Comment: Forested Wildlife Habitat**

Cumulative forest loss throughout the State is of utmost concern to the Division of Fish and Wildlife, which is responsible for managing and protecting the State's wildlife (see [www.fw.delaware.gov](http://www.fw.delaware.gov) and the Delaware Code, Title 7). Because of an overall lack of State and local forest protection, we have to rely on landowners/developers and/or the entity that approves projects (i.e. counties and municipalities) to consider implementing recommendations that will aide in reducing forest loss.

#### Recommendations:

1 DNREC highly recommends that the existing forested riparian buffer along Meadow Branch remain intact to protect water quality, rare species, provide critical habitat for wetland dependent species during a portion of their life cycle, and to maintain wildlife travel connections. This would entail removal of approximately lot #s 7-12, 55-67.

2 Stormwater management areas that will require tree removal should be reconsidered. Alternative designs or methods that do not require tree removal and that will not impact the forested riparian buffer should be discussed with the district engineer (or entity that certifies the stormwater plan).

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	VOC	NO <sub>x</sub>	SO <sub>2</sub>	PM <sub>2.5</sub>	CO <sub>2</sub>
Mobile	12.7	10.5	7.8	0.7	1065.7
Residential	5.1	0.6	0.5	0.6	20.8
Electrical Power		2.0	7.1		1044.8
TOTAL	17.8	13.1	15.4	1.3	2131.3

#### Response:

The site is currently largely cleared for agricultural purposes. Upon completion of the development of the site in accordance with all law and regulations, additional trees will be added to the residential lots. The number of trees on the property is likely to increase as a result of the proposed development. Stormwater management shall be designed in accordance with existing regulations.

#### Comment: Nuisance Waterfowl

Wet ponds created for stormwater management purposes may attract resident Canada geese and mute swans that will create a nuisance for community residents. 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. We recommend native plantings, including tall grasses, wildflowers, shrubs, and trees at the edge and within an adequate buffer (15-30 feet in width) around the ponds. When the view of the surrounding area from the pond is blocked, geese can't scan for predators and are less likely to reside and nest in the area of the pond.

At this time, we do not recommend using monofilament grids due to the potential for birds and other wildlife to become entangled if the grids are not properly installed and maintained. In addition, the on-going maintenance (removing entangled trash, etc.) may become a burden to the homeowners association or land manager.

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 a reduction in the number and/or size of the ponds, proper landscaping, monitoring, and other techniques, geese problems can be minimized.

Response:

The applicant shall develop the site in accordance with existing law and regulations.

Comment:

Air Quality

Once complete, vehicle emissions associated with this project are estimated to be 12.7 tons (25,479.3 pounds) per year of VOC (volatile organic compounds), 10.5 tons (21,095.1 pounds) per year of NO<sub>x</sub> (nitrogen oxides), 7.8 tons (15,564.4 pounds) per year of SO<sub>2</sub> (sulfur dioxide), 0.7 ton (1,385.5 pounds) per year of fine particulates and 1,065.7 tons (2,131,308.3 pounds) per year of CO<sub>2</sub> (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 NO<sub>x</sub>; 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 NO<sub>x</sub> 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 5.1 tons (10,276.9 pounds) per year of VOC (volatile organic compounds), 0.6 ton (1,130.8 pounds) per year of NO<sub>x</sub> (nitrogen oxides), 0.5 ton (938.4 pounds) per year of SO<sub>2</sub> (sulfur dioxide), 0.6 ton (1,210.9 pounds) per year of fine particulates and 20.8 tons (41,660.4 pounds) per year of CO<sub>2</sub> (carbon dioxide).

Emissions from electrical power generation associated with this project are estimated to be 2.0 tons (4,073.0 pounds) per year of NO<sub>x</sub> (nitrogen oxides), 7.1 tons (14,167.1 pounds) per year

of SO<sub>2</sub> (sulfur dioxide) and 1,044.8 tons (2,089,647.8 pounds) per year of CO<sub>2</sub> (carbon dioxide).

For this project the electrical usage via electric power plant generation alone totaled to produce an additional 2.0 tons of nitrogen oxides per year and 7.1 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 DNREC Energy Office 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. The Energy Office highly recommends 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 for their new occupants.

Response:

The applicant shall develop the site in accordance with existing law and regulations.

**Comment:**

**State Fire Marshall's Office:**

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.

- Where a water distribution system is proposed for townhouse type dwellings it shall be capable of delivering at least 1000 gpm for 1-hour duration, at 20-psi residual pressure. Fire hydrants with 800 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 the main thoroughfare must be constructed so fire department apparatus may negotiate it. If a “center island” is placed at an entrance into the subdivision, it shall be arranged in such a manner that it will not adversely affect quick and unimpeded travel of fire apparatus into the subdivision.
  - Fire department access shall be provided in such a manner so that fire apparatus will be able to locate within 100 ft. of the front door.
  - Any dead end road more than 300 feet in length shall be provided with a 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:**
  - ⑩ 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
  - Townhouse 2-hr separation wall details shall be shown on site plans
  - 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.statefiremarshal.delaware.gov](http://www.statefiremarshal.delaware.gov), technical services link, plan review, applications or brochures.

Response:

Fire protection features and accessibility shall be designed in accordance with the State Fire Prevention regulations. All required notes and specific comments indicated will be addressed on the final construction drawings to be submitted for the project.

**Comment:**

**Department of Agriculture:**

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 the proposed 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. The DDA 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 also apply to this subdivision. The applicant should verify the applicability of this provision with Sussex County. This Section of the Code states:

**G. Agricultural Use Protections.**

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

(a) For any new subdivision development located in whole or in part within three hundred (300) feet of the boundary of land used primarily for agricultural purposes, the owner of the development shall provide in the deed restrictions and any leases or agreements of sale for any residential lot or dwelling unit the following notice: "This property is located in the vicinity of land used primarily for agricultural purposes on which normal agricultural uses and activities have been afforded the highest priority use status. It can be anticipated that such agricultural uses and activities may now or in the future involve noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations. The use and enjoyment of this property is expressly conditioned on acceptance of any annoyance or inconvenience which may result from such normal agricultural uses and activities."

(b) For any new subdivision development located in whole or in part within fifty (50) feet of the boundary of land used primarily for agricultural purposes no improvement requiring

and occupancy approval for a residential type use shall be constructed within fifty (50) feet of the boundary of land used primarily for agricultural purposes.

The developer should also coordinate with Sussex County to ensure their project is in compliance with the County's forested buffer requirements. Additionally, this site overlaps with the State's Green Infrastructure Investment Strategy Plan. The Crop Land layer is present on this site. This designation identifies areas of the state that are viable and valuable cropland, as discussed in Governor Minner's Executive Order Number 61. Areas such as these should be preserved as such, and not developed for residential use.

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.

Response:

The property is currently in cropland but is zoned GR, General Residential which was approved by Sussex County with the intention of realizing development of a neighborhood on 10,000 sf lots.. The surrounding properties are vacant or residential, thus, no conflict exists nor are forested buffers required. The development of a residential subdivision on the property will not adversely affect area agriculture.

**Comment:**

**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. To further support this concept the Delaware Forest Service does not recommend the planting of the following species due to the high risk of mortality from insects and disease:

Callery Pear Ash Trees Leyland Cypress Red Oak (except for Willow Oak)

If you would like to learn more about the potential problems or impacts associated with these trees, please contact the Delaware Forest Service for more information at (302) 698-4500.

## *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.

### Response:

The applicant acknowledges the suggestions made by the Department of Agriculture and will attempt to address these issues during preparation of the final construction drawings.

### Comment:

#### Public Service Commission:

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.

### Response:

Acknowledged.

### **Delaware State Housing Authority:**

The proposal is for a site plan review for 166 residential units on 76.62 acres, located on Bacon Road east of St. George Road near Delmar. According to the *State Strategies Map*, the proposal is located in an Investment Level 4 area. As a general planning practice, DSHA 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, DSHA does not support this proposal.

If you have any questions, please call me at (302) 739-4263 ext.219, or via e-mail at [Vicky@destatehousing.com](mailto:Vicky@destatehousing.com). Thank you.

### Response:

The applicant shall develop the site in accordance with existing law and regulations.

**Comment:**  
**Sussex County:**

This project is situated in an Environmentally Sensitive Development Area. The required report should include how the PLUS comments have been addressed and how the plan has been revised accordingly.

**Response:**

The subdivision plan has been revised as previously indicated. The revised plan presents a more environmentally sensitive design than the first submittal. The Environmentally Sensitive Development Area report was submitted to the County shortly after the PLUS meeting last fall.

**Comment:**

**Department of Education – Contact: John Marinucci 735-4055**

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 both the Laurel School District and the Delmar School District. District Boundary Lines are identified in the publication *Delaware School District Organization and Boundaries* by Roger C. Mowrey. DOE offers the following comments on behalf of both School Districts.

1. Using the DOE standard formula, this development will generate an estimated 83 students.
2. DOE records indicate that the Laurel School Districts' *elementary schools are very close to 100% of current capacity* based on September 30, 2007 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, 2007 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 within the district boundaries will cause significant burden to the Laurel School District.
5. DOE records indicate that the Delmar School Districts' *secondary schools are at or beyond 100% of current capacity* based on September 30, 2007 secondary enrollment.
6. This development will create additional middle and high school student population growth which will further compound the existing shortage of space.
7. The DOE requests that the developer contact both the Laurel School District at (302) 875-6100 and the Delmar School District at (302) 846-9544 to address the issue of school over-crowding that this development has the potential to cause, as well as the issue of the district boundary line bifurcating this development.
8. The DOE requests that the developer work with the Districts' transportation departments to establish developer supplied bus stop shelter ROW and shelter structures, interspersed throughout the development as determined and recommended by the school districts.

Response:

The residents of the proposed community will pay transfer taxes a portion of which is used to fuel schools in Delaware. As such, they will be doing their part to add capacity to the system, should such be necessary, as have all other citizens of Delaware in the past. School overcrowding is NOT the result of adding neighborhoods to the larger community but, rather, the lack of adding additional capacity when needed with tax money intended for same.

**Comment:**

**Sussex County**

There is no useable open space or recreation area for the 166 lots. The open space provided (24 acres) is stormwater management (10 + acres), wetlands (6 acres) and wastewater disposal fields (7+).

Response:

The wastewater disposal fields are proposed to be drip irrigation. Recreational amenities have been added in this area including shuffleboard courts, bocci, horseshoes and a tot lot. Walking trails have been added to make these recreational facilities more accessible to the entire community by walking, and a walking trail has been added to the tax ditch easement area. The walking trail in the tax ditch maintenance easement will require approval from the U.S. Army Corps of Engineers and the DNREC - Drainage section.

**The Sussex County Engineer Comments:**

The project proposes to develop using a private central community wastewater system. We recommend that the wastewater system be operated under a long-term contract with a capable wastewater utility. In addition, we recommend they have a wastewater utility provider prior to approving the 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 counted as open space. Wastewater disposal fields should be clearly identified on recorded plots.

The proposed project is in the Western Sussex Planning Area # 4, but is not in an area where Sussex County expects to provide sewer service in the foreseeable future. If Sussex County ever provides sewer service and the project has a CPCN, it is recommended that the treatment system be abandoned and a direct connection made to the County system at the developers and/or owners expense. If Sussex County ever provides sewer service and the project does not have a CPCN, 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. For questions regarding these comments, contact Rob Davis, Sussex county Engineering Department at (302) 855-7820.

Response:

The applicant will develop the property in accordance with existing law and regulations. Water and wastewater service will be provided by franchised utility companies.

Again, the applicant would like to take the opportunity to thank the Office of State Planning Coordination for their questions, comments and concerns. If there are any other questions, comments or concerns, please feel free to contact me at 302-855-0810.

Thank you very much.

Sincerely,

Kenneth R. Christenbury, P.E.  
President  
Axiom Engineering, L.L.C.

Enclosure

Cc: Steve Parsons, Rantz Farm, LLC  
Ralph Picard, Rantz Farm, LLC