

May 11, 2010

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Ms. Constance Holland
Director
Delaware Office of State Planning Coordination
State of Delaware
122 William Penn Street, Third Floor
Dover, DE 19901

Dear Ms. Holland:

**SUBJECT: PROPOSED TWIN CEDARS PROJECT
PLUS 2008-05-01 (TAX PARCEL 5-33-11.00-42.00)
SUSSEX COUNTY DELAWARE
SUPPLEMENTAL REPOSNSE TO ADDITIONAL COMMENTS**

This letter has been prepared to address additional comments your Office submitted to the Sussex County Planning Office regarding the above mentioned project in a letter dated November 17, 2009. This letter and the upcoming May 27th Preliminary Plan and Rezoning Hearing for this project represent the culmination of more than four years of site evaluations, planning considerations and site plan modifications for a 64 +/- Ac mixed use land development project. Accordingly, to understand the history of this project and how the proposed land use has changed since its original submission to PLUS in April 2006, we have provided a brief chronology for your reference:

1. Original proposed site plan submitted to PLUS, April 2006
2. PLUS review on May 3, 2006
3. PLUS Comments issued May 25, 2006 regarding PLUS 2006-04-11
4. Responses to PLUS Comments on original site plan / Re-application to PLUS submitted April 22, 2008
5. Second PLUS Review on May 28, 2008
6. Second Set of PLUS Comments issued June 16, 2008 regarding PLUS 2008-05-01

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7. Responses to PLUS Comments submitted October 19, 2009
8. Third Set of PLUS Comments issued November 17, 2009

Throughout this process, all possible consideration to incorporate suggestions and recommendations into revising and updating the proposed development plan for this project were weighed. For the record, please note that all plans submitted for review represented code-compliant plans at the time of their preparation and submission.

Throughout this process, we recognize that your Office's continued opposition to this proposed development is based largely on the published State Spending Strategies Map. This Map depicts, and your Office confirms, that this parcel and project are located within a Level 4 Investment Area as shown on a map prepared and approved pursuant to Executive Order #59 on September 23, 2004. While we agree that at one point in time, this geographic area of Sussex County may have been a Level 4 Area, it can no longer be considered as such. We provide the following information regarding applications submitted to your office after (with emphasis) Executive Order #59 was signed for parcels within the immediate geographical vicinity:

- PLUS 2008-08-08: Roxana Properties: GR / Mixed Use
- PLUS 2008-01-09: Fenwick Pointe: CR-1 / Commercial
- PLUS 2008-01-03: Hampden Park: B-1 / Commercial
- PLUS 2007-12-01: Batston Creek Estates: AR / Residential
- PLUS 2007-10-08: Stoney Creek: AR / Residential
- PLUS 2007-05-04: Warrington Property: R-4 / Residential
- PLUS 2007-04-04: Selbyville Towne Village: GC / Mixed Use
- PLUS 2007-02-04: The Woods at Johnsons Corner: GR / Single Family Homes
- PLUS 2006-07-06: Fenwick Medical Complex: GR / Commercial - Medical
- PLUS 2005-10-2: Hicks Griswold: CR / Commercial

This proposed project, already zoned GR and C-1, is located within a cluster of properties also zoned GR and C-1. Although mentioned previously that the State Spending Strategies Map of 2004 indicates that this project is located within a Level 4 Area, significant development and improvements to services and infrastructure have or are in the process of being implemented since the nearly six years following the adoption of the map you reference. For example, the project is presently served and will be served by public water provided by Artesian. A new sewer district was created (Johnson Corner) and is under construction now and will serve this property with adequate capacity reserved for this proposed project. Improvements to Route 54 referenced in the TIS for this site have already been constructed or are in the final planning stages by DelDOT. In addition, Route 20 is classified by DelDOT as a Major Collector and as

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such, represents a significant east-west route in Sussex County. These undisputable facts are contrary to your assertion to Mr. Lank that "...the State cannot support development and will not invest in infrastructure to support this or any future developments on this property."

With regard to the supplemental specific comments offered by your Office in your November 17, 2009 letter to Sussex County:

Soils

Your Office comments that there is no difference in the previously mapped soil units described in the USDA-NRCS 1974 Soil Survey for Sussex County and the revised mapping/naming currently supported by the NRCS. As identified in the chronology above, the original application to PLUS in 2006 pre-dated the general adoption of the new nomenclature. Accordingly, the previously mapped unit of Pocomoke (Pm) is now called the Mullica-Berryland (MuA) complex. Furthermore, it is your Office's assertion that this new nomenclature does not change the underlying soil properties or published limitations. Our direct observations from our field efforts indicate that the site is predominantly underlain by soils similar in consistency as what would be defined as Pocomoke (Pm), however more coarsely-grained in composition. Note that page 50 (Table 8) of the 1974 Soil Survey lists the soil "Engineering Properties" classification as similar to SM and possibly SM-SP which is an unconsolidated silty-sand or poorly graded (meaning well sorted or more-uniform in gradation) sand-silt mix pursuant to the Unified Soil Classification System. It is our opinion that the soils are more similar to SP with less fines content. In addition, our review of historical aerial photos suggests that the groundwater at the site can experience fluctuations to the extent that the existing 6-foot deep manmade irrigation pond may periodically go dry.

We also wish to note that a previous septic system and also the current septic system serving the existing on-site apartment buildings housing a total of 52 units were permitted by DNREC and are also located within this same mapped unit.

With regard to your comment concerning qualifications of professionals working on this project, please note that a Professional Wetlands Scientist and other specialists did, in fact, delineate the wetlands and other site environmental features that were denoted as such on all plans submitted to your Office, and subsequently described in our responses to your previous comments.

Wetlands

As detailed in our previous responses to comments from your Office, qualified and licensed professionals in public and private practice from a variety of disciplines have been involved in

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assessing, evaluating and understanding the important environmental and ecological elements existing at this site and subsequently developing solutions to mitigate anticipated impacts to those resources. Accordingly, representatives from DNREC, including Mr. McAvoy with DNREC Division of Fish and Wildlife Natural Heritage and Endangered Species, visited the site in an effort to gain concurrence with our understanding of the resources on-site. His letter of September 29, 2006 indicated it was copied to your attention. In his letter, he qualifies the forest cover as "fair." He also does state that the forested wetlands are of "good quality." Furthermore, he states: "No rare plant species of concern, or federally listed plants were discovered on this day and the potential for future discoveries is low." His assessment was included in your June 2008 comments to us. As a result of his description of the forest encountered on-site, specimen trees were identified and their locations were subsequently surveyed. This information was included on the revised site plan sent to your office in October 2009 and attempts to minimize impacts to these resources were incorporated into that plan. Additional evaluations and inquiries were made to the United States Department of Interior Fish and Wildlife Service (USFWS) which resulted in an April 10, 2010 letter from the USFWS reporting that "...no proposed or federally listed endangered or threatened species are known to exist within the project impact area."

As described in detail in our previous responses to your Office, wetlands were originally delineated in 2006 and updated again in 2008 based on the new required regulations and supplemental conditions stipulated by the Philadelphia District of the U.S. Army Corps of Engineers (USACE). Please note that the delineation depicted on plans that were submitted to your Office were completed by wetland professionals and located by surveying professionals and were in full compliance with established and published methodologies, techniques and standards of professional practice. Following the updated delineation, a meeting was held with Mr. Kevin Faust with the USACE on 12/18/2007 to verify the delineation prepared by professionals in our office and surveyed by McCrone, Inc. Based on USACE input and recommendations from the meeting, a request to the U.S. Army Corps of Engineers (USACE) for a Jurisdictional Determination was made on February 14, 2008. Discussions in the field indicated that there were no federally jurisdictional wetlands on-site, and that according to revised policy, the application would be sent to the Environmental Protection Agency for review. We have not yet received the JD letter from the USACE and we have no reason to anticipate any changes will be made to our delineation.

Concurrently, an application was made on February 8, 2008 to DNREC, Wetlands and Subaqueous Division, regarding the presence of State Regulated wetlands or State Subaqueous Lands on-site. A State-Determination was provided to our office dated June 18, 2008 indicating that there are no State Regulated Wetlands on-site. Furthermore, only 4,660.4 +/- square feet of an existing tax ditch located in the northeast corner of the property immediately behind the existing apartment buildings is considered by DNREC to be State Subaqueous lands and that less

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than one tenth of an acre (0.1) or regulated sub-aqueous lands will be filled by this proposed project.

TMDL's

A TMDL spreadsheet calculation was performed for the second plan version and the present plan version using the updated protocols and as provided to our project team by DNREC. The project team has collectively completed hundreds of TMDL calculations using this well-established protocol. Of several hundred projects subject to a review by PLUS, this is the first time we collectively recall anyone questioning the results of the assessment especially with the following criteria representing existing conditions:

- The on-site community septic system, in close proximity to existing ditches and which is presently servicing the property, would be replaced in lieu of being serviced by public sewer through the Johnson Corner Sewer District.
- The farm field is in current agricultural production with no buffers to the adjacent tax-ditch system.
- No Best Management Practices (BMP's) are managing the existing parking with discharge being made directly to the tax ditch system.
- No BMP's are managing runoff from Zion Church Road with discharge being made directly to the tax ditch system.
- Hampden Park, although a Recorded Subdivision, has no provision for stormwater quality or quantity management and contributes runoff directly to the existing tax ditch system through the Twin Cedars property.
- Although approximately 59% of the property has existing, previously timbered, forest cover, half of which is ditched so that the full benefit for TMDL reductions is discounted.

Accordingly, our subsequent analysis based on the revised plan again substantiates our statement that the project as proposed will satisfy the required reductions.

Forest Loss

One consideration of the revised plan was to address a previous comment from PLUS that discussed ways to reduce impacts to existing forest cover. As you may recall, the first plan submitted to your Office had multiple and widespread encroachments into the existing forest cover. As a result of this and other comments, revisions were made to the proposed plan that included condensing and intensifying land use and eliminating the multiple "finger" encroachments. Accordingly, the result was to preserve a larger, single block of existing woods adjacent to wooded areas on bordering parcels thus avoiding the fragmentation issue raised by

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your Office in this most-recent letter. As previously stated, a subsequent evaluation identified and located the specimen trees. Accordingly, the subsequent plan for this existing C-1 and GR zoned parcel endeavored to reduce the impact to existing previously timbered forest area, preserve the most-valuable habitat complexes and preserve specimen trees where possible.

With regard to concerns for buffers, the existing ditch system on-site does not have any buffer. Furthermore, the existing ditch located along the eastern property line has an 80-foot Right-of-Way, based on the new tax-ditch regulations. Accordingly, this swath of existing forest cover (approximately 2.4 +/-Ac) is within the same contiguous stand on-site and is now subject to clear-cutting as part of periodic tax-ditch maintenance. The present plan proposes a 50-foot buffer (30-foot adjacent to the existing 80-foot tax-ditch buffer) surrounding the project in addition to the tax-ditch set aside. Furthermore, the plan proposes to place nearly 16 acres (or 42%) of existing forest area into a conservation area in addition to relocating the existing tax-ditch and creating a definitive but substantial complex habitat corridor of nearly 4 acres. In total, this project proposes approximately 26.5+/- Ac of existing and proposed forest complex and tree cover for the site and represents approximately 41% of the total project area.

Habitat Value

Pursuant to Article XXV Chapters 115-194.3 of the Sussex County Code, this project is required to prepare an Environmental Assessment and Public Facility Evaluation Report to be considered by the Sussex County Director of Planning and Zoning. Accordingly, a thorough analysis of on-site resources was completed. Professionals from a variety of engineering and ecological disciplines participated in identifying, cataloging and assessing these resources. The details of our findings were then incorporated into subsequent revisions of the plan.

With regard to the statements concerning the benefits relating to the relocation of the tax-ditch, our team has had several discussions with DNREC regarding the on-site tax ditches and the feasibility for their relocation beginning in June of 2008. Accordingly, below represents a brief summary of those discussions:

1. The project site is located within the upper reaches of the Batson Branch Tax Ditch. Accordingly, the proposed concept includes relocating the primary existing east-west ditch from within the existing commercially-zoned C-1 portion of the site along its frontage and close proximity to Zion Church Road to a more centralized location on-site. Presently, a portion of the ditch in the north-west portion of the site is piped and its ability to adequately convey collected runoff from upstream is in question. In addition, this portion of the existing tax-ditch is in close proximity to existing private residences. The relocated ditch would therefore, be able to provide enhanced connectivity between

the recorded, but not constructed, Hampden Park Subdivision from the west, across the subject parcel to the east to connect with the existing Batson Branch tax-ditch system downstream. In addition, the relocated ditch would provide the opportunity to buffer in accordance with the new tax-ditch regulations, while unencumbering valuable frontage along Route 20.

A revised conceptual plan for this proposed relocation was presented to DNREC, Drainage Section at a meeting in April, 2010. During the discussion of the proposal, the Drainage Section identified several considerations to be addressed as part of the detailed design effort. Accordingly, concerns identified by the Drainage Section and proposed solutions discussed are as follows:

Design Consideration 1: The proposed relocated portion of the tax ditch should provide for additional in-line storage and adequate conveyance for the approved, but not constructed Hampden Park subdivision, located to the west and upstream of this project.

Conceptual Solution: The proposed ditch will be located within a new easement reserved for it. Presently, the width of the existing tax-ditch right-of-way is 80 feet. The width of easement for the relocated ditch section is anticipated to be a minimum of 150 feet-wide, and may increase depending on actual design requirements. Within this area, a new larger and more comprehensive ditch is proposed. It is envisioned that this ditch will include a pilot channel, a created floodplain area as well as a variety of benches, hummocks and grading relief in the remainder of the section so that a variety of inundation/depth regimes internal to the ditch can be achieved. In addition, the over-excavated cross section is envisioned to provide for significantly more in-line storage capacity while allowing for increased conveyance away from the Hampden Park subdivision, which can be achieved by minor reworking of their internal existing ditch system and will assist in unencumbering existing recorded, but un-constructible lots within the subdivision.

Design Consideration 2: The downstream confluence of the two main existing branches of the ditch should not witness an increase in flow as a result of the ditch relocation. Discharge flows must be modulated to prevent an "out of bank" event for the receiving downstream ditch.

Conceptual Solution: The proposed plan for the site includes the incorporation of on-site stormwater management ponds in addition to the newly augmented ditch storage. The anticipated in-line ditch storage will allow for the management of flow of accumulated

runoff from Hampden Park and small on-site areas not served by on-site stormwater ponds. The relocated ditch will also re-direct flow from one prong to another prong of Batson Branch. Since both prongs eventually connect downstream near a point of concern, it is anticipated that the risk of a net increase in flow is extremely low. Accordingly, the presence of the relocated ditch, its availability of inline storage and stormwater management on the remainder of the property will allow for the design of a system that will achieve the desired result.

Other anticipated benefits resulting from the proposed relocation of the tax-ditch include:

- Expanded area for creating a habitat corridor. Based on the detailed review of habitat and wildlife encountered on-site and documented, this information will be considered during detailed design so that proposed grading within the relocated ditch and related stormwater management systems will better emulate the desirable features of this habitat.
- Relocating of the tax-ditch will provide an opportunity to eradicate unwanted invasive species currently thriving within the existing ditch system. A mitigation / revegetation plan will incorporate native species and include maintenance and monitoring protocols to inhibit invasive species from reestablishing themselves.
- The proposed relocated tax-ditch will include improved maintenance access. As was discussed with the Drainage Section, a means for straightforward access to the ditch network to provide periodic maintenance work will be provided.

By relocating the tax-ditch and creating an integrated approach to stormwater management, water quality objectives will be achieved for both this property and the adjacent Hampden Park subdivision, as there is no provision for stormwater management or to provide stormwater quality with the current recorded plan. Accordingly, the incorporation of the relocated tax-ditch presents a unique opportunity to implement a Best Management Practice on a large regional scale within the watershed to yield a substantial beneficial result.

In Conclusion

Based on all of the above, we believe it is clear that significant coordination with various regulatory agencies has occurred in assessing on-site environmental and ecological resources relating to this project over the past four years. This type of coordination between private and public professionals has been instrumental in accurately and adequately characterizing these resources and in developing innovative ways to minimize or offset these anticipated impacts. An accounting of the nature and extent of this coordination is not mentioned in your Office's third

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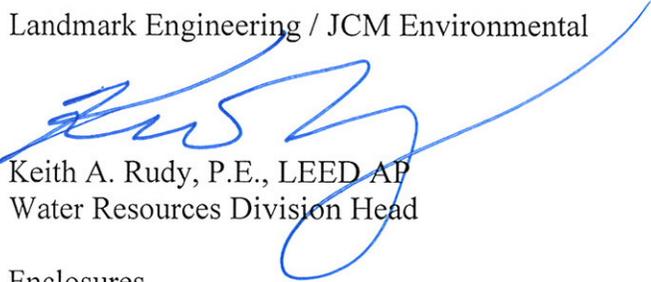
letter to Sussex County's Planning and Zoning Office, so we would like to take this opportunity to make the extent of the coordination more clear. Similarly, we object to any assertion that no coordination with regulatory agencies has been made on behalf of this project since such a representation is clearly inaccurate. In addition, we stand behind the professional opinions and outstanding qualifications of the many professionals in private practice that have worked on this project.

In summary, the development proposed for this parcel is consistent with other adjacent and nearby development proposals previously submitted to PLUS and for consideration by Sussex County. The project as proposed will provide a mixture of competitively priced housing stock, light commercial to serve this community and the surrounding area, as well as on-site recreational opportunities for residents. In addition, the project proposes to place nearly 16 acres of existing forest complex, including the specimen trees within it, into a conservation area. Furthermore, the project will relocate and improve upon the existing tax-ditch system servicing this and the adjacent Hampden Park Subdivision by providing improved collection, conveyance and water quantity and quality management to a large portion of the contributing watershed. This project, as proposed and described herein, is consistent with the Sussex County Comprehensive Plan adopted in 2008.

We trust that this satisfies our obligation for PLUS review. Should you have any questions, please feel free to contact us.

Very truly yours,

Landmark Engineering / JCM Environmental



Keith A. Rudy, P.E., LEED AP
Water Resources Division Head

Enclosures

cc: Mr. Lawrence Lank
Mr. James McCulley, PWS
Ms. Stephanie Hansen, Esq.
Mr. Roger Black
Mr. Scott Aja, P.E.