



March 30, 2011

C 2285

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 MODIFICATIONS TO SILVER WOODS SUBDIVISION
AND ANNEXATION INTO THE TOWN OF OCEAN VIEW
PLUS 2011-02-01
SUSSEX COUNTY DELAWARE**

This letter has been prepared to respond to comments issued by the Office of State Planning Coordination dated March 21, 2011 stemming from a review pursuant to State regulations and Preliminary Land Use Service (PLUS) requirements regarding the aforementioned application. Accordingly, the proposed project consists of an application for annexation into the Town of Ocean View from Sussex County. As part of the annexation process, a rezoning would occur from the existing zoning of General Residential (GR) in Sussex County to a Mixed-Use Residential Community (MCPC) zoning within the Town of Ocean View.

As part of the application for PLUS review, supplemental information to document the history and proposed modifications to the existing recorded plan over time was prepared and provided to your office in anticipation that this information would aid in its thoughtful review. Accordingly, the nature of the discussion and the content of the discourse at the hearing held on February 23, 2011 were very positive with many supportive comments coming from members of the Review Board, in particular commenting on the success of Green Building techniques and environmental sensitivity already demonstrated by the Developer / Builder in Phase 1 of the project. It is unfortunate that those positive and supportive comments were not reflected anywhere in the official correspondence. We are appreciative of your assertion, however, that the State Office of Planning Coordination has "...no objections to the continued proposed development of this project in accordance with the relevant County codes and ordinances". It is our intention to comply with all applicable State, County and Town of Ocean View regulations.

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Sussex County Office
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In a subsequent attempt to document the development record for the proposed modifications to the existing recorded plan, we offer the following:

The property (parent parcel 1-34-16) was previously subdivided and recorded on June 13, 1986 as the “Starlight Woods Subdivision” for 353 single family residential lots on approximately 124.3 +/- acres under Sussex County’s General Residential (GR) zoning. Accordingly, the Recorded Plan is at a density of 2.84 residential units per acre. Twenty One (21) of these Lots were sold but never constructed. Since that time, these 21 Lot Owners have not been able to realize any benefit from their investment. Subsequently, a Record Re-Subdivision Plan for Phase 1 of “Silver Woods” (Formerly Section Four) consisting of approximately 12.21 +/- acres was recorded on December 15, 2004 with conveyances to Sussex County for sewer, eliminating right-of-way and seven lots and to accommodate stormwater management facilities. The resultant entitlement is shown on Figure 2.



Figure 2
Existing Subdivision – Formerly Known As “Starlight Woods”
Recorded Lots – Source: Delaware Environmental Navigator

The original Record Plan for “Starlight Woods” is still in effect for Sections One, Two, Three A and B. They entitle development of the entire site. In addition, the original plan predates State stormwater regulations. Accordingly, the previous developer recorded the current plan, cut trees, graded roads, blocked ditches and sold some lots within the subdivision without completing site

improvements. Unlike his predecessor, the current Developer has advanced Section Four (Now Phase 1) by the Record Re-Subdivision Plan in compliance with all applicable regulations and policies and commenced construction on or about Spring 2002. In addition, this Developer will remedy the 21 Owners of Lots based on the original Recorded Plan. As part of this project, the Developer will make all of these existing Lot Owners whole with 4 Owners selecting Lots in Phase 1 and 17 Owners in Phase 2.

Although previously recorded, the bulk of the project is yet unconstructed and now represents an infill development opportunity to pursue an updated plan using new information and planning techniques. Reflecting the continuing transition of the area, a subsequent concept plan was therefore developed in August 2007 showing a combined 372 residential units consisting of 186 single family homes (including 29 in the previously resubdivided Section 4) and 186 multi-family townhouse units on a larger parcel of land consisting of approximately 127.7 +/- acres. The resulting proposed gross density of the project was then to be 2.91 units per acre.

In September 2007, an application (2007-09-5) based on the revised plan (372 residential units) was submitted to PLUS. This represented an effort to reduce anticipated impacts by re-thinking the proposed development plan. It was a first attempt to be "green" and save resources including limiting cutting of trees and impacts to wetlands.

Since the prior application, a third land use plan has been developed to reflect the continuing changes to the surrounding area that have occurred since that time. These changes represent additional efforts to integrate previous PLUS comments and other considerations to include: increased preservation of valuable ecological resources on site; incorporation of green technology BMPs to address Inland Bay TMDLs; improved drainage and conveyance; and provisions for local commercial services. This new approach was the basis of the application recently reviewed and commented on by your office. For completeness, your comments are repeated in this letter followed by our response.

Code Requirements/Agency Permitting Requirements

COMMENT: It is noted that you intend to annex this property into the Town of Ocean View. The Town should work with this office to ensure that a Plan of Services form is completed and approved prior to annexation.

RESPONSE: As stipulated, the Developer will assist the Town of Ocean View during coordination efforts with the Office of State Planning Coordination so that a Plan of Services Form is completed prior to annexation.

COMMENT: The proposed development meets DelDOT's volume warrants for a Traffic Impact Study (TIS), as contained in Section 2.3.1 of the Standards and Regulations and we will require one as a condition for plan approvals. Accordingly, DelDOT recommends that the applicant's engineer meet with them

to set up a scope for the TIS. To schedule a scoping meeting, please contact Mr. Troy Brestel of this office. Mr. Brestel may be reached at (302) 760-2167.

RESPONSE: The Applicant's Engineer understands the requirement for a TIS and has already contacted Mr. Brestel regarding this proposed project. As stated in the "Additional Agency Coordination" section of the supplemental information submitted with the PLUS application, coordination with DelDOT regarding this project has been ongoing including discussions with Messrs. John Fiore, Troy Brestel, and Tom Banez. The intent of the discussions has been to coordinate this project with the proposed SR 26 relief routes and to ensure that phasing and construction is concurrent. In addition, discussions with DelDOT have included the need and requirements relating to a Traffic Operational Analysis (TOA) or Traffic Impact Study (TIS).

COMMENT: In accordance with Section 3.5.4.2 of the Standards and Regulations, DelDOT anticipates requiring either a sidewalk or a shared use path along the property frontage on Beaver Dam Road. If the Town of Ocean View has a preference for one type of facility over other, we will defer to them.

RESPONSE: Coordination with DelDOT and dedication of the required right-of-way for this purpose has already occurred.

COMMENT: The site access must be designed in accordance with DelDOT's Standards and Regulations for Subdivision Streets and State Highway Access.

This manual is available on-line at:

[http://www.deldot.gov/information/pubs_forms/manuals/subdivisions/pdf/Subdivision Manual Revision 1 proposed 060110.pdf](http://www.deldot.gov/information/pubs_forms/manuals/subdivisions/pdf/Subdivision%20Manual%20Revision%201%20proposed%20060110.pdf). While compliance with the entire manual is required, as relevant, we direct your attention to the following areas in particular:

RESPONSE: Since the actual subdivision streets will be dedicated to the Town of Ocean View, their design and construction will be in accordance with Town standards. In addition, the privately-owned commercial portion will likewise be designed and constructed in accordance with applicable requirements, not necessarily to DelDOT standards. It is anticipated that no modifications to the existing entrance will be required. Moreover, we agree that new entrances to SCR 368 (Beaver Dam Road) will be designed and constructed in accordance with applicable DelDOT standards and regulations.

COMMENT: Referring to Chapter 3 – Site Plan Design, Section 3.6.5: Dedication of Right-Of-Way, Figure 3-3 Minimum Standards for Total Roadway Right-Of-Way, page 3-19, the project will be required to dedicate right-of-way in accordance with our

minimum standards if necessary. This dedication may have already been addressed by acquisitions for our SR 26 Detour Routes project.

RESPONSE: Coordination with DelDOT and dedication of the required right-of-way for this purpose has already occurred.

COMMENT: Referring to Appendix J – General Notes for Construction Plan, page J-7, a note concerning the maintenance of the multi modal (shared use) path or sidewalk along Beaver Dam Road is required.

RESPONSE: The Developer appreciates this information.

COMMENT: Referring to Chapter 3 – Site Plan Design, Section 3.5.5.5: Bus Stop Criteria, page 3-12, a bus stop will be required for this project.

RESPONSE: The location and configuration of required DART / School Bus Stop locations will be coordinated and incorporated into the proposed plan in accordance with applicable requirements.

COMMENT: Referring to Chapter 3 – Site Plan Design, Section 3.4.1: Traffic Information, Page 3-3, a traffic generation diagram is required.

RESPONSE: A Traffic Generation Diagram will be developed for the project at the entrances.

COMMENT: Referring to Appendix D – Plan Review Checklist, pages D-2 thru D-39 contains the new checklists required for all plan type submittals.

RESPONSE: The Application for Entrance Approval / Letter of No Objection will follow the DelDOT “Gatekeeper” protocol currently in effect and include all applicable checklists.

COMMENT:
Referring to Chapter 3 – Site Plan Design, Section 3.1: Purpose, page 3-1, a “Letter of No Objection” will be required for this project.

RESPONSE: The Application for Entrance Approval / Letter of No Objection will follow the DelDOT “Gatekeeper” protocol currently in effect.

COMMENT: Referring to Chapter 1 – Introduction, Section 1.4: Review Fees, page 1-8, the Initial Stage review fee will be assessed for this project.

RESPONSE: The appropriate fee will accompany the Application for Entrance Approval / Letter of No Objection.

COMMENT: Referring to Chapter 4 – Construction Plans, Section 4.4: Commercial Entrance Plan Checklist, page 4-8, an entrance plan should be prepared for review and approval.

RESPONSE: The Application for Entrance Approval / Letter of No Objection will follow the DelDOT “Gatekeeper” protocol currently in effect.

COMMENT: Referring to Chapter 1 – Introduction, Section 1.4: Review Fees, page 1-8, the Construction Stage review fee will be assessed for this project.

RESPONSE: The appropriate fee will accompany the Application for Entrance Approval/ Letter of No Objection.

COMMENT: Referring to Chapter 8 – Administrative Guidelines, Section 8.6: Property Change of Use/Change of Ownership, page 8-2, due to the re-subdivision of the property, it will be necessary to evaluate whether the existing entrance along Beaver Dam Road (Sussex Road 368) will warrant any improvements.

RESPONSE: The existing entrance configuration along with the Right-Of-Way already dedicated to DelDOT in support of the SR 26 Detour Route project has already been coordinated. No modifications to the existing entrance are anticipated at this time.

COMMENT: Please contact the DelDOT Subdivision Manager for eastern Sussex County, Mr. John Fiori, if you have questions regarding these requirements. Mr. Fiori may be reached at (302) 760-2260.

RESPONSE: We appreciate the information and have already been coordinating with Mr. Fiori for this project.

COMMENT: **(NOTE: Figures referenced have not been reproduced for brevity)**
According to the Statewide Wetland Mapping Project (SWMP) maps, palustrine wetlands (PFO1A, PSS3/F01A & PEM1C et al.) were mapped throughout the proposed project area (Figure 1). Most of the wetlands on this site are forested (See figures 1 & 2).

RESPONSE: All wetlands and ecological resources have been identified and mapped for the site based on field data and not an unverified GIS layer. This information was previously prepared and submitted to the OSPC as part of the PLUS application. It is evident that this supplemental information was not considered or reviewed. Moreover, the accompanying narrative attempted, at great length, to describe how the proposed modifications to the plan to reduce impacts to the identified resources when compared to the existing recorded plan and subsequent 2007 PLUS application.

COMMENT: The applicant is responsible for determining whether any State-regulated wetlands (regulated pursuant to 7 Del.C. Chapter 66 and the Wetlands Regulations) are present on the property. This determination can only be made by contacting the Division of Water Resources' Wetlands and Subaqueous Lands Section at 302-739-9943 and consulting the State's official wetland regulatory maps, which depict the extent of State jurisdiction. The area regulated by State law may be very different from the area under federal authority. No activity may take place in State-regulated wetlands without a permit from DNREC's Wetlands Section.

RESPONSE: As previously stated, all wetlands and ecological resources have been identified and mapped for the site based on field data and not an unverified GIS layer. This information was previously prepared and submitted to the OSPC as part of the PLUS application. As stated in the narrative accompanying the application, it is clear that the hydrologic dataset that is represented within the State's GIS layer differs significantly from what has been observed and encountered on-site. It is regrettable that the OSPC and DNREC have failed to recognize the effort and expense that the Developer has borne to adequately assess on-site resources before submitting a revised plan to PLUS including the four (4) years worth of on-site hydrological monitoring data used to establish the presence, absence and location of various resources.

COMMENT: In addition, most perennial streams and ditches and many intermittent streams and ditches are regulated pursuant to the Subaqueous Lands Act (7 Del.C. Chapter 72) and the Regulations Governing the Use of Subaqueous Lands. Ponds which are connected to other waters are also regulated, while isolated ponds are not. Any work in regulated streams, ditches or ponds requires a permit from the Wetlands and Subaqueous Lands Section. An on-site jurisdictional determination is recommended in order to determine whether any regulated watercourses exist on the property. Please contact the Wetlands and Subaqueous Lands Section at 302/739-9943 to schedule an on-site visit. Such appointments can usually be scheduled within 2 to 3 weeks.

RESPONSE: As stated directly on the application and echoed again in the narrative, the Developer's consultants have already been in contact with DNREC Subaqueous Lands Section regarding this project prior to the submittal of the PLUS application.

COMMENT: The project is located in the greater Inland Bays drainage area – specifically, within the area designated as the “low nutrient reduction zone” of the Indian River Bay watershed. In this portion of the watershed, specific Total Maximum Daily Load (TMDL) pollutant reduction targets have been developed by the State of Delaware (under the auspices of Section 303(d) of the 1972 Federal Clean Water Act) for nutrients (e.g., nitrogen, phosphorus), and bacteria. 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 State water quality standards (e.g., dissolved oxygen, nutrients, and bacteria; *State of Delaware Surface Water Quality Standards, as amended July 11, 2004*) to the extent necessary to support use goals such as, swimming, fishing, drinking water and shell fish harvesting. The TMDL for the Low Reduction zone of the Inland Bays watershed calls for a 40 percent reduction in nitrogen and phosphorus from baseline conditions. The TMDL also calls for a 40 percent reduction in bacteria from baseline conditions.

RESPONSE: The Developer is aware of the Inland Bay TMDL and required reductions of pollutants. As stated in the narrative, the project was reconfigured to preserve large blocks of existing (and previously timbered) forest. In addition, the drainage features encountered on-site but not mapped in the State’s hydraulic GIS data set are proposed to be augmented and enhanced. Accordingly, the following list, adapted from the narrative supplied with the PLUS Application, includes some of the measures that will be included in the proposed plan:

- Compliance with Assawoman Bay TMDL requirements which will include a 40% reduction of Nitrogen, Phosphorous and Bacteria
- Maintenance of Existing Site Drainage Conveyances
- Biologic and Hydrologic Enhancement of Drainage Ditches
- Preservation of Upland and Wetland Forest Block (>50 +/- Acres or > 43%)
- Enhancement/Restoration of Forest Areas
- Green Technology-Based Storm Water Management
- Green-Constructed, Green-Certified Homes (NAHB)
- Phase II Site Certification under NGBS (anticipated achievement of a minimum of 3 stars)

COMMENT: A nutrient management plan is required under the Delaware Nutrient Management law (3 Del. Chapter 22) for all persons or entities who apply nutrients to lands or areas of open space in excess of 10 acres. This project’s open space may exceed this 10-acre threshold. Please contact the Delaware Nutrient Management Program at 739-4811 for further information concerning compliance requirements or view the following web link for additional information: <http://dda.delaware.gov/nutrients/index.shtml>

RESPONSE: The Developer appreciates the information. As stated in the narrative, the project proposes to preserve and protect approximately 49 +/- acres of existing forest block encompassing nearly **44% of the entire project site**. The additional open space set aside of approximately 2.5 +/- acres is anticipated for the clubhouse and other facilities / amenities. Clearly, nutrients are not proposed for the forest block. If the open space that is to receive nutrients (fertilizer, etc.) approaches or exceeds the stated ten (10) acres, the Developer will comply with this requirement.

COMMENT: The adopted Inland Bays Pollution Control Strategy regulation was published in the Delaware Register of Regulations on November 11, 2008 and is now an enforceable regulatory directive. A Pollution Control Strategy (PCS) is an implementation strategy that identifies the actions necessary (regulatory and nonregulatory) to systematically reduce the pollutant loading to a given water body, and meet the TMDL reduction requirements specified for that water body.

These regulations can be reviewed at:

<http://regulations.delaware.gov/documents/November2008c.pdf> and background information, guidance documents, and mapping tools can be retrieved from http://www.dnrec.state.de.us/water2000/Sections/Watershed/ws/ib_pcs.htm.

The regulations address sediment and stormwater controls for new development projects and additional measures and standards for onsite wastewater treatment and disposal systems.

The regulations require that permanent sediment and stormwater management plans be designed and implemented to include design criteria to further reduce nutrient contributions.

RESPONSE: The Developer appreciates the information. The project will comply with these requirements.

COMMENT: Based on information supplied by the applicant, this project – as currently proposed – is not likely to meet the TMDL nutrient reduction requirements mandated by the PCS.

RESPONSE: No supporting calculations or list of assumptions were provided by the OSPC to substantiate this assertion, which was also bolded in the original comment letter. It is unclear what the basis of this conclusion is, given that 43% of the entire project area is to remain forested. In addition, the narrative accompanying the application to PLUS identifies the incorporation of BMPs and other Green Technology systems for treatment of collected runoff from the site. It is interesting to note that this same comment appears zero times for all of the preceding months' applications as well as for those other application also reviewed in February, 2011. The application clearly states that it will comply

with the TMDL. Accordingly, this comment by the OSPC and DNREC appears to be arbitrary and capricious, at best.

COMMENT: The project information sheets state water will be provided to the project by Tidewater Utilities via a public water system. DNREC records indicate that the project is located within the public water service area granted to Public Water Supply (a.k.a. Tidewater Utilities) under Certificate of Public Convenience and Necessity 83-W-6.

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.

RESPONSE: The Developer appreciates this information and will comply with the appropriate regulations.

COMMENT: (NOTE: Figure referenced has not been reproduced for brevity)
A large portion of the Phase 2 project proposed in this application is likely to fall within wellhead protection for Tidewater Utilities Bethany Bay/Ocean View District (see map).

Tidewater Utilities contracted with Green Stone engineering to analyze the impact the pumping wells at the facility would have on the surrounding residential wells. Green Stone used a Time-Drawdown of the pumping well. Based on the findings the allowable pumping rate for the well was limited. The Time-Drawdown study examined the area to the southeast. The area indicated on the attached map shows the results of this study extended in all directions. It is probable that the delineated wellhead protection area will fall within this boundary. Its shape will be more refined as the model used in the Source Water Assessment Report is more complex.

Wellhead protection areas are surface and subsurface areas surrounding a public water supply well where land use activities or impervious cover may adversely affect the quantity and quality of ground water moving toward such wells.

RESPONSE: The Developer appreciates the need to protect designated wellhead areas. However, according to online mapping through DNREC's Environmental Navigator available at: <http://maps.dnrec.delaware.gov/navmap/> no designated wellhead area is shown within any reasonable proximity to the proposed project site. In addition, the designated recharge area referenced is shown in close proximity to the existing Phase I. A representation of the DNREC Environmental Navigator data for the site is shown below as Figure A:

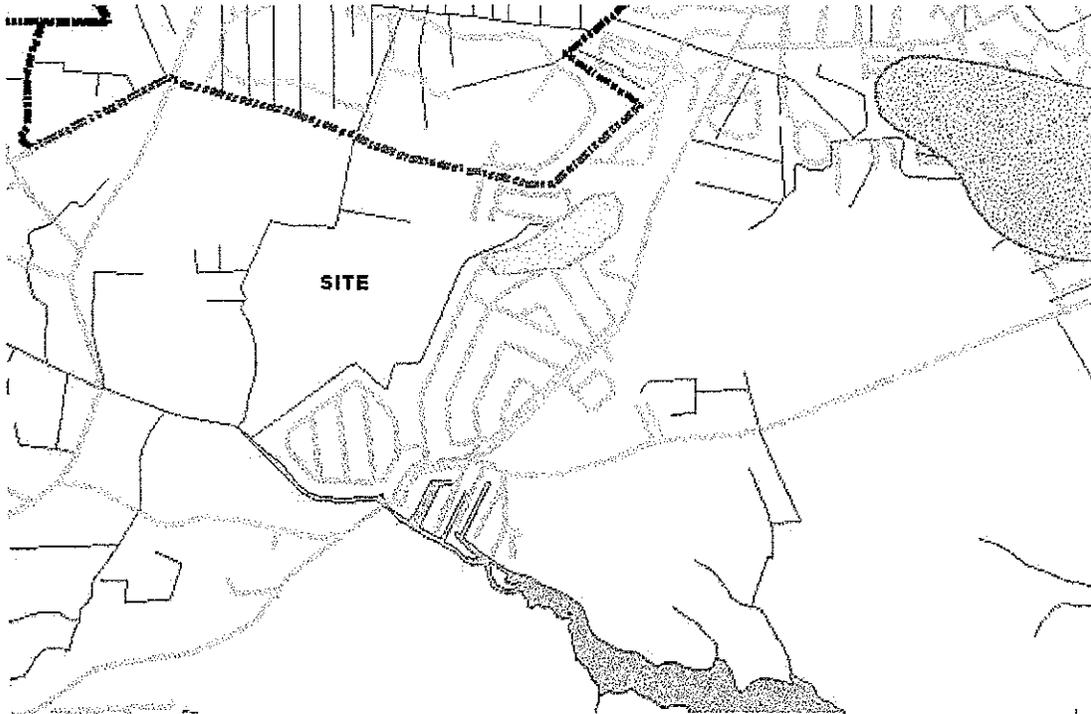


Figure A
Recharge and Wellhead Protection Area Data
Source: Delaware Environmental Navigator

The State of Delaware Wellhead Protection Program description is located on the internet here: <http://www.dnrec.state.de.us/water2000/Sections/WatSup/Library/WH.pdf>

According to this document, the delineation of Wellhead Protection Areas (WHPAs) are to follow a rigorous analytical and scientific stepwise procedure. Page 10 begins to describe the phased process required to delineate a wellhead protection area in Delaware. There are six different methods for use in delineating these areas. The method used as the basis for establishing the WHPA referenced in the comment was not identified. Moreover, the drawdown procedure mentioned as part of the comment is only one of five (5) criteria used in delineating WHPAs. Page 13 states that Phase I of this procedure will

result in preliminary mapping and delineations with written information sheets describing the program and process to potentially affected landowners. The Phase I stage is “intended to provide the citizens of Delaware with fair notice and opportunity to provide feedback to DNREC with regard to future regulation.”

Therefore, the only reasonable conclusion that can be drawn from the statements included in comments from the OSPC is that the declaration of a potential WHPA is actually **pre-Phase I**, as the applicant has not received the official notice described as a requirement of the State of Delaware Wellhead Protection Program and, correspondingly not in-force.

It also must be noted that Pursuant to Sussex County Ordinance 1979, overlay maps as prepared by DNREC and provided to Sussex County will be posted online. Available Sussex County GIS mapping, located at: <http://map.sussexcountycle.gov/SussexMapping/> displays the same information on the DNREC Environmental Navigator website that there are no existing, no pending, or no proposed WHPAs at or near the project site.

COMMENT: In addition, because the wellhead protection area is an existing source of public drinking water and the excellent ground-water recharge area so readily affects the underlying aquifer, the storage of hazardous substances or wastes should not be allowed within these areas unless specific approval is obtained from the relevant state, federal, or local program.

RESPONSE: The Developer agrees that storage of hazardous substances or wastes within areas of excellent recharge or within fully defined, scientifically based and published WHPAs is inadvisable. The Developer submits that the application presented to PLUS did not indicate such a use was proposed. Furthermore, expansion of the areas of Excellent Recharge are also required to be approved by Sussex County Council.

COMMENT: DNREC recommends limiting impervious cover as allowed by the Sussex County source water protection ordinance with the Time-Drawdown line delineation.

RESPONSE: Based on the pre-Phase I nature of the WHPA delineation, this comment is a recommendation and not a code requirement. Placing this comment with other code-related items is misleading. Furthermore, the time-drawdown delineation is only one of five (5) criteria used substantiating that this delineation is not yet completed. Also, we wish to advise DNREC that pursuant to Ordinance 1979, Recorded Subdivisions or revisions to Recorded Subdivisions that do result in the creation of additional lots are expressly exempted from the requirements of the Ordinance.

COMMENT: A project application meeting is required for this site. Due to extensive modifications, a new detailed sediment and stormwater plan may be required for the site prior to any land disturbing activity taking place on the site. Contact the reviewing agency to schedule a project 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) 856-2105 for details regarding submittal requirements and fees.

RESPONSE: The Developer appreciates the information and is looking forward to working the Sussex Conservation District.

COMMENT: If it is determined by the Department that there was a release of a hazardous substance on the property in question and the Department requires remediation pursuant to the Hazardous Substance Cleanup Act, the provisions of 7 Del.C. Chapter 91, Delaware Hazardous Substance Cleanup Act and the Delaware Regulations Governing Hazardous Substance Cleanup shall be followed.”

There is one SIRB site found within a ½-mile radius of the proposed project. The Estates of Fairway Village Site was historically used as agricultural land. The Site entered the Voluntary Clean-up Program in July of 2008. Fifty-five (55) drums and 7.2 tons of impacted soil were removed. Post excavation analytical results showed that there were no contamination exceedances in the soil or groundwater. The Site is currently being developed into residential properties.

RESPONSE: The Developer appreciates the information.

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

Table 1: Potential Regulatory Requirements	
Regulation	Requirements
7 DE Admin. Code 1106 - Particulate Emissions from Construction and Materials Handling	<ul style="list-style-type: none"> • Use dust suppressants and measures to prevent transport of dust off-site from material stockpile, material movement and use of unpaved roads. • Use covers on trucks that transport material to and from site to prevent visible emissions.
7 DE Admin. Code 1113 – Open Burning	<ul style="list-style-type: none"> • Prohibit open burns statewide during the Ozone Season from May 1-Sept. 30 each year. • Prohibit the burning of land clearing debris. • Prohibit the burning of trash or building materials/debris.
7 DE Admin. Code 1135 – Conformity of General Federal Actions to the State Implementation Plan	<ul style="list-style-type: none"> • Require, for any “federal action,” a conformity determination for each pollutant where the total of direct and indirect emissions would equal or exceed any of the de minimus levels (See Section 3.2.1)
7 DE Admin. Code 1141 – Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products	<ul style="list-style-type: none"> • Use structural/ paint coatings that are low in Volatile Organic Compounds. • Use covers on paint containers when paint containers are not in use.
7 DE Admin. Code 1144 – Control of Stationary Generator Emissions	<ul style="list-style-type: none"> • Ensure that emissions of nitrogen oxides (NO_x), non-methane hydrocarbons (NMHC), particulate matter (PM), sulfur dioxide (SO₂), carbon monoxide (CO), and carbon dioxide (CO₂) from emergency generators meet the emissions limits established. (See section 3.2). • Maintain recordkeeping and reporting requirements.
7 DE Admin. Code 1145 – Excessive Idling of Heavy Duty Vehicles	<ul style="list-style-type: none"> • Restrict idling time for trucks and buses having a gross vehicle weight of over 8,500 pounds to no more than three minutes.

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

RESPONSE: The Developer appreciates this information. The project will comply with these requirements.

COMMENT: At the time of formal submittal, the applicant shall provide; completed application, fee, and three sets of plans depicting the following in accordance with the Delaware State Fire Prevention Regulation:

- Fire Protection Water Requirements:
 - Water distribution system capable of delivering at least 1500 gpm for 2-hour duration, at 20-psi residual pressure is required. Fire hydrants with 800 feet spacing on centers.
 - Where a water distribution system is proposed for Mercantile sites, the infrastructure for fire protection water shall be provided, including the size of water mains for fire hydrants and sprinkler systems.
- Fire Protection Features:
 - All structures over 10,000 sq. ft. aggregate will require automatic sprinkler protection installed.
 - Buildings greater than 10,000 sq. ft, 3-stories or more, over 35 feet, or classified as High Hazard, are required to meet fire lane marking requirements.
 - Show Fire Department Connection location (Must be within 300 feet of fire hydrant), and detail as shown in the DSFPR.
 - Show Fire Lanes and Sign Detail as shown in Delaware State Fire Prevention Regulation
- 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 Beaver dam Road 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 turn-around or cul-de-sac arranged such that fire apparatus will be able to turn around by making not more than one backing maneuver. The minimum paved radius of the cul-de-sac shall be 38 feet. The dimensions of the cul-de-sac or turn-around shall be shown on the final plans. Also, please be advised that parking is prohibited in the cul-de-sac or turn around.
- The use of speed bumps or other methods of traffic speed reduction must be in accordance with Department of Transportation requirements.
- The local Fire Chief, prior to any submission to our Agency, shall approve in writing the use of gates that limit fire department access into and out of the development or property.
- Gas Piping and System Information:
 - Provide type of fuel proposed, and show locations of bulk containers on plan.
- Required Notes:
 - Provide a note on the final plans submitted for review to read “All fire lanes, fire hydrants, and fire department connections shall be marked in accordance with the Delaware State Fire Prevention Regulations”.
 - Proposed Use
 - Alpha or Numerical Labels for each building/unit for sites with multiple buildings/units.
 - Square footage of each structure (Total of all Floors)
 - National Fire Protection Association (NFPA) Construction Type
 - Maximum Height of Buildings (including number of stories)
 - Note indicating if building is to be sprinklered
 - Name of Water Provider
 - Letter from Water Provider approving the system layout
 - Provide Lock Box Note (as detailed in Delaware State Fire Prevention Regulation) if Building is to be sprinklered.

- Provide Road Names, even for County Roads.

RESPONSE: The Developer appreciates this information. The project will comply with these requirements.

Recommendations/Additional Information

The OSPC included several recommendations not related to specific code requirements. To provide for a complete record, we have included a listing of these recommendations and our responses:

RECOMMENDATION:

DelDOT recommends that the developer contact the developer of Forest Landing to discuss possible connections to Fairway Drive, Dogleg Court and Bunker Court.

If possible, Lackawanna Way should be extended through to connect to Fairway Drive. Failing that, a pedestrian connection from Thornton Drive near Lackawanna Way to Fairway Drive should be provided. DelDOT would expect residents of Forest Landing to attempt to walk through the proposed residential development to reach the proposed retail center, so it is in the best interest of both developers to plan for such a connection and make it a feature.

Extensions of Dogleg Court to Thornton Drive and of Bunker Court to Scranton Circle could be considered but might create problems with cut-through traffic. In these locations, pedestrian connections to promote walking for short trips should be the first consideration.

RESPONSE: The Developer appreciates this information and will evaluate which of these recommendations can be accommodated. While most of the described vehicular connections pose problems with existing residential lots, pedestrian connections can and will be considered.

RECOMMENDATION:

Similarly, DelDOT recommends that pedestrian connections be designed between the retail center and the cul-de-sac bulbs on Thornton Drive and Exeter Way and between Beaver Dam Road and the cul-de-sac bulb on Favata Way.

RESPONSE: The Developer appreciates this information and will evaluate if this recommendation can be accommodated.

RECOMMENDATION:

DelDOT requires sidewalks on subdivision streets built for State maintenance. DelDOT recommends that the Town require them in this development.

RESPONSE: The Developer will abide by the Town of Ocean View code and requirements.

RECOMMENDATION:

If they have not done so, DelDOT recommends that the developer consult with one or more convenience store operators regarding the design of their retail center. While they are amenable to the design presented, their experience is that store operators want more convenient access for their customers who drive and need more open access for their fuel deliveries. If the plan needs to change significantly, it is important to make those changes before the Town acts on the assumption that the retail center would be developed essentially as shown.

RESPONSE: The Developer appreciates the recommendation and, as stated previously, has been coordinating with all entities related to this project.

RECOMMENDATION:

DelDOT recommends that Brenda Lane be extended as a stub street to provide for a future connection to the 4.25-acre outparcel on Beaver Dam Road (Tax Parcel No. 1-34-16.00-46.00).

RESPONSE: The Developer appreciates the recommendation. However this cannot be accommodated in the plan as the dimensional constraints remaining on the outparcel would preclude any reasonable use of that land and actually reduce its development potential thereby adversely financially affecting the current owner.

RECOMMENDATION:

As proposed, this annexation would make an enclave of the tax parcel just mentioned. Enclaves often necessitate duplicate sets of utilities in a right-of-way and can lead to confusion in the provision of public services such as policing and trash pickup. DelDOT recommends that the Town encourage the owner of that parcel seek annexation at the same time, regardless of their development plans or lack thereof.

RESPONSE: The Developer appreciates the recommendation. The current owner is unwilling to annex into Ocean View. The Developer will support the Town should they decide to pursue this matter.

RECOMMENDATION:

Because this development would generate more than 200 trips per day, the developer's engineer should schedule a pre-submittal meeting with the DelDOT Subdivision Section to help identify and address any issues not already apparent before making their first plan submission. Information on what to bring to the meeting and a form for requesting the meeting are available on our website at <http://www.deldot.gov/information/business/>.

It will be necessary to coordinate the entrance and roadway improvement plans for this development with DelDOT's ongoing SR 26 Detour Routes project.

RESPONSE: The Developer appreciates the information and has already begun coordinating with DelDOT regarding this project.

RECOMMENDATION:

(NOTE: Figure referenced has not been reproduced for brevity)

Based on soils survey mapping update, Mullica-Berryland complex (MuA) and Hurlock (HvA) are the principal soil mapping units that were mapped in the immediate vicinity of the proposed project area. Mullica-Berryland complex and Hurlock are wetland associated (hydric) soils that have severe limitations for development, and are considered unsuitable for development. Building on such soils is likely to increase both on-site and off-site flooding potentials (See figure 3).

RESPONSE: The Developer appreciates the information. This soils information is the same as described in the narrative that accompanied the PLUS Application. Accordingly, the modified plan has accommodated site-specific resources including wetlands, soils, drainage features and existing wooded areas.

RECOMMENDATION:

Please maximize open space through voluntary preservation of the existing forest cover and/or establishment of additional native tree cover on this parcel.

RESPONSE: The proposed plan has protected approximately 44% of the entire parcel as wooded cover in a single forest block. The application stated that this represented a maximum clearing as all lot areas were assumed to be clear-cut, which is clearly not the case for Phase 1. It is the intention of the Applicant to selective clear wherever feasible and protect on-lot or rear lot forest whenever

possible as was successfully achieved in Phase 1. This number is also exclusive of any enhancement, landscaping or additional on-site buffers.

RECOMMENDATION:

A United States Army Corps of Engineers approved wetlands delineation is strongly recommended before proceeding beyond the initial planning stage. The applicant should keep in mind that in addition to Federal wetland regulatory requirements, additional and more stringent State wetland regulatory requirements may also apply.

RESPONSE: The Developer appreciates the information and has already begun coordinating with the required agencies.

RECOMMENDATION:

Based on a review of existing buffer research by Castelle et al. (Castelle, A. J., A. W. Johnson and C. Conolly. 1994. *Wetland and Stream Buffer Requirements – A Review*. J. Environ. Qual. 23: 878-882.), 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 (See figure 1).

RESPONSE: As described in the narrative that accompanied the application to PLUS, the project is proposing improvements to drainage, preservation of buffers, ecological enhancements as well as the incorporation of Green Technology BMPs. In addition, the narrative described how actual site conditions differ from State maintained GIS layers. Therefore, actual site conditions will be accommodated into the final proposed design.

RECOMMENDATION:

We strongly recommend that the applicant calculate post-construction surface imperviousness with all forms of created surface imperviousness (e.g., rooftops, driveways, parking lots, sidewalks, open-water storm water management structures, and roads) included in the calculation. We also strongly encourage the use of pervious paving materials (in lieu of conventional asphalt and concrete) to mitigate surface imperviousness and its' impacts on water quality wherever practicable.

RESPONSE: The quantification of impervious cover is a requirement in order to appropriately design and construct applicable BMPs and all other proposed elements of the project as it related to stormwater quantity and quality management. As previously discussed with Lee Ann Walling, Chief Planner for DNREC, our office recommends that DNREC, in consultation with DeIDOT, develop appropriate design methodology, material specifications and construction standards so that beneficial practices such as flexible porous pavement can be successfully incorporated into projects. Absent substantial technical preparation and backing by DeIDOT, we believe that advantageous beneficial practices will be limited to utilization in boutique grant-supported applications at best.

RECOMMENDATION:

We strongly recommend the use of rain gardens, and green-technology storm water management structures (in lieu of open-water management structures) as BMPs to mitigate or reduce nutrient and bacterial pollutant impacts via runoff from impervious surfaces.

RESPONSE: These types of practices are planned to be incorporated into the project, as previously described in the narrative.

RECOMMENDATION:

Division scientists have not surveyed this project area; therefore, we are unable to provide information pertaining to the existence of state-rare or federally listed plants, animals or natural communities at this project site. In the absence of site-specific information, we offer the following comments:

Supplemental information included with the application includes a list of “opportunities” that Phase 2 will incorporate into the project. This list includes a “walking trail with interpretive signs” and “nature education at the clubhouse.” However, the location of the clubhouse and walking trails are not obvious on the site plan so it is difficult to provide input. Where exactly are they to be located? Will these features require additional forest clearing above the estimated removal of 43.5 acres? If so, forest loss estimates should be adjusted accordingly. Will there be additional impacts to the forest at this site for stormwater management that is not currently depicted on the site plan? Again, if so, forest loss estimates should be adjusted accordingly.

RESPONSE: Forest clearing for the sake of stormwater management practices is not proposed. No additional forest loss is proposed for the clubhouse. As stated previously, estimated forest removal represented a maximum limit. Tree preservation within Phase 1 has been extremely successful and it is anticipated that the actual quantity of on-lot trees to be removed is far less than estimated.

RECOMMENDATION:

The applicant indicated that Phase 2 will incorporate the "Enhancement/Restoration of forest blocks." Our Division's community ecologist, Robert Coxe, would like to conduct a field visit to map vegetation communities and assess the potential for habitat to support species of concern. This type of information will enable a more thorough review of this project and could help guide enhancement efforts. In addition, evaluation of type and condition of existing vegetation communities should be part of the "enhancement/restoration" plan. Question #30 on the application indicates that a site visit is being scheduled with DNREC through John Phelps of Landmark Engineering/JCM Environmental. We will get in touch with Mr. Phelps to take part in the site visit or arrange another date. We would also like the opportunity to review the proposed "enhancement/restoration" plan including a list of plants to be established. Once a site visit has been conducted we can provide additional input into this project. At this time we recommend efforts be made to minimize the amount of forest to be cleared, especially from April 1st to July 31st when birds and other wildlife species utilize forest for breeding and/or nesting.

RESPONSE: A meeting with DNREC Subaqueous Lands Section was held in February. The purpose of the meeting was to review site conditions and data relating to the presence of subaqueous lands and the proposed development. At this time, DNREC is waiting for a formal application which is anticipated to be submitted shortly.

RECOMMENDATIONS:

SIRB strongly recommends that the land owner perform environmental due diligence of the property by performing a Phase I Assessment in accordance to Section 9105(c) (2) of the Delaware Hazardous Substance Cleanup Act (HSCA). While this is not a requirement under HSCA, it is good business practice and failure to do so will prevent a person from being able to qualify for a potential affirmative defense under Section 9105(c) (2) of HSCA.

Should a release or imminent threat of a release of hazardous substances be discovered during the course of development (e.g., contaminated water or soil), construction activities should be discontinued immediately and DNREC should be notified at the 24-hour emergency number (800-662-8802). SIRB should also be contacted as soon as possible at 302-395-2600 for further instructions.

RESPONSE: The Developer appreciates the information.

RECOMMENDATION:

When designing a project on a site with regulated watercourses, any extensive piping, filling or burying of streams or ditches in excess of the minimum needed for road crossings should be avoided. Where road crossings are necessary, bridge spans which avoid significant impacts to stream banks and channels should be used wherever possible. Where placement of culverts is unavoidable, culvert designs which utilize multiple barrels at different elevations to preserve a low flow channel are usually preferred. Contact the Wetlands and Subaqueous Lands Section for further information regarding preferred designs.

RESPONSE: The Developer appreciates the information. The existing site forest/wetland complex has already been degraded from earlier clear cutting and grading of proposed roadways by a previous owner based on the existing recorded plan. It is the intent of this Applicant to incorporate enhancements as part of the proposed revised plan.

RECOMMENDATIONS:

In 2007, the applicant intended on developing the property into 346 homes. According to the current Preliminary Land Use Service Application, the applicant has requested a review for rezoning the site plan located on the south side of SCR 368, east of SCR#84 across from Bear Trap Dunes from Residential (GR) to a Mixed Use Planned Community (MXPC). The applicant now intends to seek National Green Building Standards Certification by developing the property into 179 residential units with a 7,025 sq. ft. commercial space.

National Green Building Standards Certification requires that environmental considerations and resource efficiency be incorporated into every step of the home building and land development process to minimize environmental impacts. These impacts include:

- **Energy efficiency** improvements such as high levels of insulation, efficient HVAC systems, high-performance windows and energy-efficient appliances and lighting.
- **Resource conservation** using materials and techniques such as engineered wood and wood alternatives, recycled building materials, sustainably harvested lumber, and more durable products.
- **Indoor environmental quality** considerations such as effective HVAC equipment, formaldehyde-free finishes, low-allergen materials, and products with minimum off-gassing or low volatile organic compounds (VOCs)

- **Site design** planning such as minimizing disruption and preserving open space.
 - **Homeowner education** through manuals and operating guides.
 - **Green business practices** that adopt ideas from other industries for saving resources and money in the home and office.
- In 2007, the three air emissions components (i.e., area, electric power generation, and mobile sources) were quantified and the emissions in Table 2a represent the projected impacts the Silver Woods development would have had on air quality.

Emissions Attributable to the Silver Woods in 2007 (Tons per Year)	Volatile Organic Compounds (VOC)	Nitrogen Oxides (NOx)	Sulfur Dioxide (SO ₂)	Fine Particulate Matter (PM _{2.5})	Carbon Dioxide (CO ₂)
Direct Area Source	10.7	1.2	1.0	1.3	43.5
Electrical Power Generation	*	4.2	14.8	*	2177.8
Mobile	15.8	16.6	0.5	0.2	10225.9
Total	26.5	22.0	16.3	1.5	12447.2

- Based on the application submitted, the three air emissions components were again quantified and the emissions in Table 2b represent the projected impacts the Silver Woods development may have on air quality.

Emissions Attributable to the Silver Woods in 2011 (Tons per Year)	Volatile Organic Compounds (VOC)	Nitrogen Oxides (NOx)	Sulfur Dioxide (SO ₂)	Fine Particulate Matter (PM _{2.5})	Carbon Dioxide (CO ₂)
Direct Area Source	5.5	0.6	0.5	0.7	22.5
Electrical Power Generation	*	2.2	7.6	*	1126.6
Mobile	8.2	8.6	0.2	0.1	5290.3
Total	13.7	11.4	8.3	0.8	6439.4

(*) Indicates data is not available.

- Note that emissions associated with the actual construction of the development, including automobile and truck traffic from working in, or delivering products to the site, as well as site preparation, earth moving activities, road paving and other miscellaneous air emissions, are not reflected in the tables above.
- DAQ strongly supports all efforts for growth and we applaud the efforts of the applicant to implement National Green Building Standards Certification in Delaware homes and mixed communities.

RESPONSE: The Developer appreciates the information.

RECOMMENDATION:

The applicant should submit a plan to the DAQ which address the above listed measures, and that details all of the specific emission mitigation measures that will be incorporated into the Silver Woods development.

RESPONSE: The Developer appreciates the information and will share information submitted to the NGBS as part of the qualification process with the DAQ.

RECOMMENDATION:

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, technical services link, plan review, applications or brochures.

RESPONSE: The Developer appreciates the information.

RECOMMENDATIONS:

- Using the DOE standard formula, this development will generate an estimated 90 students.
- DOE records indicate that the Indian River School Districts' *elementary schools are at or beyond 100% of current capacity* based on September 30, 2010 elementary enrollment.
- DOE records indicate that the Indian River School Districts' *secondary schools are very close to 100% of current capacity* based on September 30, 2010 secondary enrollment. The Indian River School District does not have sufficient capacity given the number of previously approved and recorded sub-division lots.

- The developer is strongly encouraged to contact the Indian River School District Administration to address the issue of school over-crowding that this development will exacerbate.
- DOE requests developer work with the Indian River 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.

RESPONSE: The Developer appreciates the information. The plan submitted to PLUS proposes to reduce the actual number of single-family lots from the recorded total of 353 lots (317 remaining in Phase 2) to the proposed 179 units for Phase 2. Accordingly, based on Recorded Lots, the developer has reduced the existing burden on school system. The Developer will contact the Indian River School District to identify any overcrowding issues and potential Bus Stop Locations within the project limits.

RECOMMENDATION:

The Delaware Department of Agriculture Forest Service encourages the school district to use the “Right Tree for the Right Place” for any design considerations. This concept allows for the proper placement of trees to reduce heating and cooling costs. 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:

Hybrid 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.

RESPONSE: The Developer appreciates the information.

RECOMMENDATION:

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 Developer appreciates the information. The Developer has adopted a Landscaping Manual for Phase 1 with native plantings and intends to adopt the same or similar manual for Phase 2.

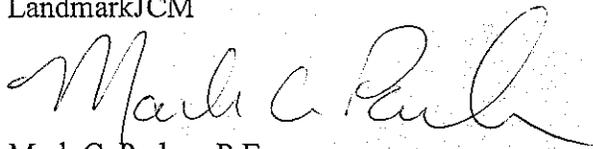
IN CONCLUSION

The Developer of this project has already successfully demonstrated a willingness to incorporate sound site development principles, construction practices and green technology into this project. Furthermore, we believe it is clear that significant coordination with various regulatory agencies has occurred 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.

Although previously recorded, the bulk of the project is yet unconstructed and now represents an infill development opportunity to pursue an updated plan using new information and planning techniques. The resultant development proposed for this parcel is consistent with other adjacent and nearby development proposals. The project as proposed will provide a mixture of competitively priced housing stock, light commercial retail to serve this community and the surrounding area, as well as on-site recreational opportunities for residents. In addition, the project proposes to protect nearly 50+/- acres of existing forest complex, or 43% of the project area.

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

Sincerely,
LandmarkJCM



Mark C. Parker, P.E.
Principal

Enclosures

cc: Robert Thornton
Charles McMullen