

# Riverview, L.L.C.

4260 Highway One, Suite 6, The Forj Lofts, Rehoboth Beach, Delaware 19971  
Phone: 302-226-9655 Fax: 302-226-5083

March 4, 2005

Ms. Constance C. Holland, AICP, Director  
The Delaware Office of State Planning Coordination  
540 S. Dupont Highway, Thomas Collins Building, 3<sup>rd</sup> Floor  
Dover, Delaware 19901

**RE: Riverview – Response to PLUS Review #2004-05-12 comments**

Dear Ms. Holland:

Thank you for your letter of June 21, 2004 containing the comments from State Agencies regarding the Riverview Conceptual Development Plan.

Our response to State Agency comments are as follows:

## **Office of State Planning Coordination**

### **Comment:**

*We note that this project falls within the Environmentally Sensitive Developing Area according to the 1999 Strategies for State Policies and Spending and the Sussex County Comprehensive Plan. According to the 2004 draft update of the Strategies for State Policies and Spending, which has been endorsed by the Cabinet Committee on State Planning Issues, this area shows more mixed. The tidal wetland portions of the site are reflected as "out of play", indicating that they cannot be developed. The upland and non-tidal wetland portions of the site are reflected primarily as Levels 3, with a small portion of Level 4 along the entrance road. Level 3 and 4 in this area indicate that there are significant environmental issues present on the site, specifically the presence of wetlands. For these reasons, the Office of State Planning Coordination has significant concerns regarding the development of the site.*

*Of particular concern are the impact to wetlands and the access to the site only through a long bridge through the wetlands. We support the request by several other agencies to provide alternative access or plans for alternative access to the site once the adjacent parcel develops. We are particularly concerned about evacuation of the site in the event of a natural disaster, such as a flood, hurricane or marsh fire. We urge you to strongly consider these and other issues raised by State agencies as you move forward with the project.*

### **Response:**

We are unsure what "significant environmental issues" you refer to. While it is true that both tidal and non-tidal wetlands exist on the site, there is only one jurisdictional impact proposed in the plan which is the bridge. We would rather not have to construct this bridge and would prefer to provide ingress and egress in some other way, however, as you are aware the narrow strip of property leading from the existing Walter's Bluff Road to the body of the site is the only means of providing access that we own. We have had numerous discussions with the adjoining property owner (who was at the PLUS hearing with her attorney) regarding some other means of access or even a property swap. To date we have had no success, thus we have no alternate means of access.

Additionally, a timber bridge such as that at Baywood Greens and Ellis Point provides the best means of access through the small amount of wetland area at issue. In fact, but for a minimal tidal wetlands impact the bridge does not create any jurisdictional non-tidal impact. As DNREC and the Corps of Engineers require, we first attempted to

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avoid impacts as best we could given the configuration of the parcel, then minimized such impacts by use of the bridge and intend to mitigate any actual jurisdictional impact through the permit process.

With regard to evacuation during an emergency, an evacuation plan will be developed together with Condo association rules and distributed to all homeowners. Additionally, if egress across the bridge were limited in some fashion that prevented some of the residents from the 72 homes from departing using their legal access then they will simply walk or drive out across the adjoining field which actually provides a shorter route to the highway than the bridge.

## **State Historic Preservation Office**

### **Comment:**

*As you are aware, there is a cemetery on the property and it was stated that a consultant has been hired to determine its boundaries. SHPO recommends that preservation covenant be put on the cemetery to preserve and maintain it in perpetuity. The consultant has been working with Faye Stocum, archaeologist, in the SHPO office and they recommend that he continue working with her on this and other archaeological sites within the area. There is a known archaeological site on the south side of the development area.*

*If there is any federal involvement in the form of permits, licenses, or funds, compliance with Section 106 of the National Historic Preservation Act must take place. The developers should also be aware of the DE Unmarked Human Remains Act (7 Del Code 54)*

### **Response**

We understand the law with regard to both archeology and cemeteries and will cooperate with all regulating agencies in compliance with same. As mentioned in the comments, we are undertaking the appropriate study of the cemeteries to determine their actual limits and we propose no impact to them. As suggested, we will preserve them in place and require their preservation and upkeep by the Condominium Owners' Association. Furthermore, access to the cemetery by descendants or the general public will be allowed

An appropriate archeological investigation is underway and all requirements of Section 106 will be complied with.

## **Department of Transportation**

### **Comment:**

*According to information received, access would be by way of a 2,000-foot private road, much of which would be on a bridge over wetlands.*

*While DelDOT has not yet determined what they would be, they anticipate requiring improvements to Walter's Bluff Road between the site entrance and possibly beyond that point to Holt's Landing Road (Sussex Road 346).*

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*DelDOT agrees with Sussex County Planner, Mr. Richard Kautz, and recommends that the plan for the project provide a stub street such that if the Murray property, which largely separates the subject land from Walter's Bluff Road, ever develops a second connection can be made through that development's street system.*

*The applicant's engineer should contact the DelDOT Subdivision Manager for Sussex County, Mr. John Fiori, regarding their requirements with regard to the design of the site entrance and any related road improvements on Walter's Bluff Road. Mr. Fiori may be reached at (302) 760-2260.*

**Response:**

The adjoining property owner has declared no interest of any kind in developing her property or cooperating in a connection or crossing of any kind from the subject parcel onto or across her property, thus, no interconnection is indicated nor is any required by ordinance or regulation.

Our responsibility with regard to roadway/traffic improvements in the area is understood and we will work with Mr. Fiori in this regard.

## **Department of Natural Resources and Environmental Control**

**Comment:**

***Soils***

*According to the soil survey update, the following soils were found in the immediate vicinity of subject site (grouped on the basis of drainage class):*

*Somewhat well drained – Rosedale*

*Somewhat poorly drained (**potentially hydric**) – Klej*

*Poorly drained (hydric) – Askecksy*

*Very poorly drained (hydric) – Woozar, Mispillion –Transquaking complex, and Purnell mucky peat. All soils within this drainage class on this parcel are tidally influenced.*

*Rosedale is a somewhat well drained upland soil that, generally, has few limitations for development. Klej is a somewhat poorly drained (**potentially hydric**) soil that may or may not be a wetland. Askecky is poorly-drained wetland associated (**hydric**) soil that*

*Purnell mucky peat is very poorly drained tidally influenced wetland associated (**hydric**) soils that have severe limitations for development.*

**Response:**

***Soils***

We have reviewed the on site soils and appropriate engineering and construction practices will be observed.

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**Comment:**

***Wetlands***

*Statewide Wetland Mapping Project (SWMP) maps indicate the presence of extensive areas of Estuarine and Palustrine wetlands within this parcel. From maps provided to the Department through the PLUS process, it appears that a dozen homes are planned to be constructed within areas mapped as Estuarine intertidal scrub shrub and Estuarine Emergent wetlands.*

***Wetland delineation, in accordance with the methodology established by the Corps of Engineers Wetlands Delineation Manual, (Technical Report Y-87-1) should be conducted. Once complete, this delineation should be verified by the Corps of Engineers through the Jurisdictional Determination process. Impacts to wetlands should be avoided.***

*The applicant is strongly encouraged to pursue alternative access routes to this neighborhood. The structure as proposed will impact a significant acreage of both tidal and non-tidal wetlands and may pose evacuation hazards to residents.*

*The project summary indicates that no federal permits are required; however Army Corps of Engineers Nationwide Permit approvals may be required, particularly for utility line installation, which is not discussed within the summary. If additional impacts become necessary the developer should note that impacts to wetlands are regulated both by the DNREC Wetlands and Subaqueous Lands section and the Army Corps of Engineers. Because the bridge accessing the site crossed tidal wetlands, a coast Guard Permit or authorization may be needed. The Coast Guard should be contacted to determine the need for a permit or authorization. In addition, individual 404 permits and certain Nationwide Permits from Army Corps of Engineers also require 401 Water Quality Certification from the DNREC Wetland and Subaqueous Land Section and Coastal Zone Federal Consistency Certification from the DNREC Division of Soil and Water Conservation, Delaware Coastal Programs Section. Each of these certifications represents a separate permitting process.*

***The applicant is strongly encouraged to attend a Joint Permit Process Meeting to find out more information about permitting requirements for this project. These meeting are held monthly and are attended by federal and state resource agencies responsible for wetland permitting. Contact Denise Rawling at (302) 739-4691 to schedule a meeting.***

*The bridge connecting the development to Walter's Bluff Road will require a State Wetlands Permit from the Wetlands and Subaqueous Section (WSLS) DNREC, Div. Of Water Resources.*

*Prior to submittal of an application for a permit, the bridge route should be staked and the wetlands affected by the project field reviewed by WSLS and applicant's environmental consultant.*

*The permit application, in addition to addressing the requirements of the State Wetlands Regulations should include a detailed alternatives analysis with respect to site access and a compensatory mitigation plan to offset impacts to wetlands. Mitigation could also consist of assisting the DNREC Div. Of parks and Recreation with a property purchase related to upgrading the quality of nearby Holt's Landing Park or wetland preservation. The application should also show how utilities will be provided to the proposed subdivision and address any construction or operational impacts they may have on tidal wetlands.*

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*Provide details on any plans to access the Indian River Bay in the future and if these are no plans to provide tenant access to the water, provide a mechanism for controlling tenant/community access to the Bay.*

*The application should also show that in the event the adjacent upland property is developed, the Riverview project would be in a position to abandon the wetland bridge and provide access to the community through the adjacent upland property.*

**Response:**

All tidal and U.S. Army COE jurisdictional non-tidal wetlands are indicated on the plans as delineated by Environmental Resources, Inc. and submitted to the Corps of Engineers for jurisdictional determination. There are no homes located within wetland areas and all wetland impacts, other than the entry bridge have been avoided. As indicated above, alternative means of access have been pursued with the adjoining property owner with no success. Our ingress to the site is limited to that shown.

It is understood that any necessary permits to construct the bridge, install utilities and construct any pedestrian access way to the Indian River must be obtained from all regulating agencies during the final plan approval process.

Once the bridge to the property is successfully permitted and constructed, at great cost, it makes no sense to abandon it if an additional means of ingress later becomes available. In fact, having more than one means of ingress and egress would be an improvement.

Condominium Association rules and regulations will provide the means for controlling residents use of the property including access to the wetlands and the river.

**Comment:**

***ERES Waters***

*This project is located adjacent to receiving waters of Inland Bays designated as waters having 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 11.5 of Delaware's "Surface Water Quality Standards" (as amended August 11, 1999), specify that all designated ERES waters and receiving tributaries develop a "pollution control strategy" to reduce non-point sources of nutrient runoff through implementation of Best Management Practices (BMP's). Best Management Practices as defined in subsection 11.5(e) of this section, expressly authorizes the Department to provide standards for controlling the addition of pollutants and reducing them to the greatest degree practicable, or where attainable, a standard requiring no discharge of pollutants.*

**Response:**

Best Management Practices, as approved by DNREC, will be employed to control and clean storm water run-off from the proposed community.

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**Comment:**

***TMDL's***

*With the adoption of Total Maximum Daily Loads (TMDLs) as a "nutrient-runoff-mitigation strategy" for reducing nutrients in the Inland Bays Watershed, reduction of nitrogen and phosphorus loading will be mandatory. 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 authorized under federal code, states are charged with developing and implementing standards to support those desired use goals. The Jurisdictional authority for attaining these use goals will fall under the auspices of Section 11.5 of the State of Delaware's Surface Water Quality Standards (as amended August 11, 1999), and will be achieved via nutrient reductions referred to as "pollution control strategies."*

*Nutrient reductions prescribed under TMDLs are assigned on basis of water quality concerns – that is, the those regions deemed to be of greatest environmental concern will require correspondingly higher levels of nutrient reduction than those regions deemed less environmentally sensitive. In this watershed, these regions are demarcated as high and low reduction zones. The high reduction zone corresponds to the western portion of the watershed, and requires a reduction of nitrogen and phosphorus by 85 and 65 percent, respectively. The low reduction zone corresponds to the eastern portion of the watershed, and requires a reduction of nitrogen and phosphorus by 40 percent. **This project is proposed within the low nutrient reduction zone.***

*In order for the applicant to verify compliance with the TMDL mandate, a full nutrient accounting process known as nutrient budget should be prepared. The developer/consultant should contact Lyle Jones in the Department's Watershed Assessment section for further information regarding the acceptable protocol for calculating a nutrient budget. He can be reached at 739-4590.*

**Response:**

A full nutrient accounting process known as nutrient budget will be prepared as a part of final engineering of the project presuming the zoning application is approved.

**Comment:**

***Buffers***

*The buffers proposed for this development are inadequate. DNREC recommends a buffer of no less than 100' from all waterways and wetlands to enhance water quality and provide habitat buffers. Maximizing buffer distance is particularly important in this environmentally sensitive area.*

**Response:**

The 50' buffers from tidal wetlands proposed for this development are in accordance with all approved ordinances. As you are aware, there is no requirement in the law for the recommended 100' buffer.

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**Comment:**

***Stormwater Management***

*The applicant is encouraged to contact the Sussex Conservation District stormwater program (302) 856-7219, Jessica Watson, as soon as possible for a pre-application meeting. The use of "Green Technology" stormwater practices is encouraged as well, and DNREC is available to provide technical assistance for this project. Contact DNREC Sediment and Stormwater at (302) 739-4411.*

**Response:**

We will comply with the Sussex Conservation District stormwater program. The use of "Green Technology" stormwater practices will be utilized to the extent feasible and DNREC's technical assistance will be utilized.

**Comment:**

***Floodplain***

*Portions of this site lie within a 100- year floodplain.*

**Response:**

Appropriate design and construction methods will be utilized.

**Comment:**

***Habitat***

*Based on review of topographic maps and aerial photographs, and because Delaware Natural Heritage Program biologists have not visited the site previously, their staff ecologist requests the opportunity to survey the forested and wetland resources which could potentially be impacted by the project. His observations would allow DNREC to make more informed comments on this project. Please contact Pete Bowman at (302) 653-2880 to set up site visit.*

*In addition, we request that no invasive species be used in the revegetation of disturbed areas. A list of species considered invasive in Delaware can be found on the DNHP web site, [www.dnrec.state.de.us/fw/invasive.htm](http://www.dnrec.state.de.us/fw/invasive.htm). We further recommend the use of native plants and our botanist, Bill Mc Avoy can be contacted at (302) 653-2880 to assist you in developing a plant list.*

**Response:**

We will comply with all legal and regulatory requirements with regard to this issue.

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**Comment:**

***Open Space***

*Natural areas left undeveloped on site should be placed into a permanent conservation easement or other binding conservation mechanism.*

**Response:**

Natural areas left undeveloped on site will be placed into permanent conservation easements or other binding conservation mechanism associated with the condominium association.

**Comment:**

***Recreation***

*The Division of Parks and Recreation conducted a telephone survey of Delaware residents to gather information on outdoor recreation patterns and preferences as well as other information on their landscape perception. These findings are the foundation of the 2003-2008 Statewide Comprehensive Outdoor Recreation Plan (SCORP) providing guidance for investments in needed outdoor recreation facilities. The high and moderate facility needs in Eastern Sussex County are listed below. Consideration should be given to incorporate some of these recreation opportunities into the project.*

*High Priorities include walking and jogging paths, bike paths, and fishing areas.*

*Moderate Priorities include picnic areas, skate facilities, canoe/kayak access, hiking trails, swimming pools, playgrounds, soccer fields, tennis courts, power boat Access, and baseball/softball fields.*

**Response:**

Consideration has been given to incorporate some of these recreation opportunities into the project to the extent feasible as indicated on the plan submitted for review.

**Comment:**

***Underground Storage Tanks***

*There is one inactive LUST site located near the proposed project:*

*No environmental impact is expected from the above inactive/active LUST site. However, should any underground storage tank or petroleum contaminated soil be discovered during construction, the Tank Management Branch must be notified as soon as possible. It is not anticipated that any construction specifications would be need to be changed due to petroleum contamination. However, should any unanticipated contamination be encountered and PVC pipe is being utilized, it will need to be changed to ductile steel in the contaminated areas.*

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**Response:**

We will comply with the requirements.

**State Fire Marshall's Office**

**Comment:**

*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 (DSFRP):*

**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 the assembly 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 Walter's Bluff 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.*

➤ *The proposed bridge shall be constructed to DelDOT specifications and be able to support the weight of all fire apparatus.*

➤ *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.*

➤ *If the use of speed bumps or other methods of traffic speed reduction must be in accordance with Department of Transportation requirements.*

**c. Gas Piping and System Information:**

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

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**d. Required Notes:**

- Provide a note on the final plans submitted for review to read “ All fire lanes, fire hydrants, and fire department connections shall be marked in accordance with the Delaware State Fire Prevention Regulations”
- Name of Water Supplier
- Proposed Use
- National Fire Protection Association (NFPA) Construction Type
- Maximum Height of Buildings (including number of stories)
- Alpha or Numerical Labels for each building/unit for sites with multiple buildings/units
- Square footage of each structure (Total of all Floors)
- Note indicating if building is to be sprinklered
- Letter from Water Provider approving the system layout
- Provide Lock Box Note (as detailed in DSFPR,) if Building is to be sprinklered
- Provide Road Names, even for County Roads

*Preliminary meetings with fire protection specialists are encouraged prior to formal submittal. Please call for appointment. Applications and brochures can be downloaded from our website: [www.delawarestatefiremarshal.com](http://www.delawarestatefiremarshal.com), technical services link, plan review, applications or brochures.*

**Response:**

All requirements of the Fire Marshall will be complied with.

**Department of Agriculture**

**Coment:**

*A forested buffer is required between the proposed subdivision and all adjacent properties in active agricultural use. In addition, a forest buffer should be maintained for those pre-existing residential properties and along all streams, wetlands, and river that border the proposed subdivision.*

*The developer should consider a diverse landscape plan that uses Delaware native tree and shrub species and encourages the “Right Tree for the Right Place” concept.*

**Response:**

The required forested buffer between the proposed community and adjacent farmland has been proposed as shown on the plan submitted for review. There is no code requirement to provide buffers of any kind between proposed residential and existing residential uses and the required 50’ buffer along tidal wetlands and tributary perennial streams has been provided.

A diverse landscape plan utilizing native trees and shrubs will be provided with final plans.

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## **Delaware Emergency Management Agency**

### **Comment:**

*The entire area under consideration is within the 100-year flood plain zone, which has a 1% chance of occurrence in any given year. The area is also within the area expected to be inundated by a category-1 hurricane, which has a 5% chance of occurrence in any given year. In the event of an impending coastal storm, residents would be expected to evacuate along Route 26.*

### **Response:**

All requirements associated with development and construction within the 100-year floodplain will be complied with.

## **Sussex County**

### **Comment:**

*Sussex County Engineering Department has no schedule to extend sewer service to this project. It will be four (4) years before they can review a regional design for compliance with their Sussex County Sewer Standards.*

*The development plan should allow for ultimate access from the contiguous property (when developed) to replace the proposed bridge.*

*Following receipt of this letter and upon filing of an application with the local jurisdiction, the applicant shall provide to the local jurisdiction and the Office of State Planning Coordination a written response to comments received as a result of the pre-application process, noting whether comments were incorporated into the project design or not and the reason therefore.*

### **Response:**

We will cooperate with the Sussex County Engineering Department in its customary approach to determining both regional and project related wastewater collection and transmission requirements.

The adjoining property owner has declared no interest of any kind in developing her property or cooperating in a connection or crossing of any kind from the subject parcel onto or cross her property, thus, no interconnection is indicated nor is any required by ordinance or regulation.

Presuming that the bridge to the property is successfully permitted and constructed at great expense, it makes no sense, then, to abandon it if in the unlikely event that some other means of ingress later becomes available. In fact, having more than one means of ingress and egress would be an improvement were that to become possible.

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This concludes our response to the comments provided by your office and all of the involved agencies and we appreciate your input. If you have any questions, please contact me at your convenience.

Sincerely,



Frank M. Kea  
Vice President of Operations  
Riverview, L.L.C.

Cc: Lawrence Lank  
Jim Fuqa