

# Bethany Court, L.L.C.

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Phone: 302-226-9370 Fax: 302-226-5083

June 15, 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: Bethany Court – Response to PLUS Review #2004-11-15 comments**

Dear Ms. Holland:

Thank you for your letter of December 1,, 2004 containing the comments from State Agencies regarding the Bethany Court Conceptual Development Plan.

Our response to State Agency comments are as follows:

**Office of State Planning Coordination – Contact: Ann Marie Townshend 739-3090**

*The Office of State Planning Coordination notes that this proposal is within an Investment Level 3 area. Investment Level 3 areas generally reflect long-term growth areas and/or areas within growth areas with environmental constraints on or around the site. In this case, the Investment Level 3 reflects the environmental constraints detailed in the DNREC comments, particularly the wetlands, flood plains and other natural resource values on the site.*

**Response:**

**We understand that the proposed development resides in an Investment Level 3 Area. As the design development continues, we will adhere to the all ‘reasonable’ requirements set forth by DNREC. We will address each specific concern, regarding environmental resources, later in this document.**

**Department of Transportation – Contact: Bill Brockenbrough 760-2109**

- 1) *In accordance with DelDOT’s agreement pursuant to the Quality of Life Act, the Sussex County Planning and Zoning Commission sent them a Service Level Evaluation Request, which they received on November 15, 2004. They intend to respond to the County by December 15 as to whether a traffic impact study (TIS) is needed for this project. They will send you a copy of their response, but preliminarily it does not appear that a TIS will be necessary.*

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Response:

Our office has received the aforementioned Service Level Evaluation, dated March 11, 2005. DelDOT does not require a traffic impact study.

- 2) *Contrary to their usual practice, DelDOT recommends that sidewalks within the community be provided on only the east side of the proposed street. There are no houses on the west side and they see no justification for creating the additional impervious surface that a sidewalk there would provide.*

Response:

The design of the proposed development will include the recommended sidewalk.

- 3) *It appears that the end of the proposed street would line up with the end of the existing street serving Indian Harbor Villas. DelDOT recommends that they be connected. Ideally, from a DelDOT perspective, the Indian Harbor Villas Street should be extended into this project as the sole access, so that another entrance on Route 1 is unnecessary. At a minimum, a bicycle and pedestrian connection should be provided so that residents of the adjoining developments can visit each other without using Route 1.*

Response:

Providing access to and from the Indian Harbor Villas would require construction agreements and easements, approved by the Indian Harbor Home Owners Association and recorded by the County. Although these agreements and easements may be attainable, the idea of combined access and traffic patterns lead to liability issues for both parties that are unacceptable. This, in turn, decreases the likelihood of getting either HOA to agree or approve any proposal for communal access. The combined pedestrian and bicycle access to each development will be investigated by our design team and provided, if possible.

- 4) *The developer's site engineer should contact the DelDOT Subdivision Manager for Sussex County, Mr. John Fiori, regarding their specific requirements for the design of the site entrance. Mr. Fiori may be reached at (302) 760-2260.*

Response:

We have met with Mr. Fiori regarding this new development. He provided a few recommendations for revisions to our site entrances, traffic patterns and road alignment. We included all of his recommendations in the new design, as shown on the site plans submitted for PLUS review. Again, Mr. Fiori has approved the design and entrance locations.

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**The Department of Natural Resources and Environmental Control – Contact: Kevin Coyle 739-3091**

### **Soils**

*According to the recent soil survey update, the soils in the vicinity of the proposed construction are mapped as Acquano-Beaches association.*

*The following is a summary of mapped soils found within the proposed construction area and are grouped on the basis of drainage class:*

*Excessively drained – Acquano-Beaches association (Dune complex soils).*

*Very poorly drained – Brockatnorton-Urban Land Complex (7)*

*The soils found in the depressions are very wet, tidal-influenced soils with mostly sandy surface and subsurface horizons. Acquano-Beaches association occurs on dunes which are deep sandy soils that have rapid permeabilities and little or no phosphorus/nitrogen Adsorption capacity, compared to finer-texture soils. Therefore, such soils are conducive to nutrient leaching via groundwater or surface runoff into receiving tributaries of the watershed.*

### **Response:**

### **Soils**

**With regard to soils, appropriate engineering and construction practices will be observed.**

### **Wetlands**

*Statewide Wetland Mapping Project (SWMP) maps indicate the presence of palustrine emergent wetlands.*

*The developer and County should note that impacts to these wetlands are regulated by both the DNREC Wetlands and Subaqueous Lands Section and the Army Corps of Engineers through the Delaware Subaqueous Lands Act and Section 404 of the Federal Clean Water Act. In addition, individual 404 permits and certain Nationwide Permits from the Army Corps of Engineers also require 401 Water Quality Certification from the DNREC Division of Soil and Water Conservation, Delaware Coastal Programs Section. Each of these certifications represents a separate permitting process.*

*To find out more about permitting requirements, the applicant is encouraged to attend a Joint Permit Process Meeting. These meetings are held monthly and are attended by federal and state resource agencies responsible for wetland permitting. Contact Denise Rawding at (302) 739-4691 to schedule a meeting.*

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*Particularly because of the environmental sensitivity of this area, lots should be removed in their entirety from the wetland complex; wetland delineations on site plan provided differ from State wetland maps. Vegetated buffers comprised of coastal panic grasses, or shrubs, of no less than 100 feet should be employed from the edge of the wetland complex. The developer should note that both DNREC and Army Corps of Engineers discourage allowing lot lines to contain wetlands to minimize potential cumulative impacts resulting from unauthorized and/or illegal activities and disturbances that can be caused by homeowners.*

Response:

### **Wetlands**

All 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. In fact, there are no homes located within wetland areas and all possible wetland impacts have been avoided.

The suggested 100' buffer area is not a requirement for non-tidal wetlands.

It is understood that any necessary permits to construct the proposed amenities must be obtained from all regulating agencies during the final plan approval process.

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

### ***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 designed 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.*

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Response:

**ERES Waters**

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

**TMDLs**

*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 as 302-739-4590.*

Response:

**TMDL’s**

A nutrient budget will be prepared as a part of final engineering for the project.

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### ***Water Supply***

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

*All well permit applications must be prepared and signed by licensed water well contractors, and only licensed well drillers may construct the wells. Please factor in the necessary time for processing the well permit applications into the construction schedule.*

*Dewatering well permit applications typically take approximately four weeks to process, which allows the necessary time for technical review and advertising.*

*Should you have you any questions concerning these comments, please contact Rick Rios at 302-739-3665.*

### **Response:**

#### **Water Supply**

**We will obtain the appropriate permits should dewatering be required.**

### ***Sediment and Erosion Control/Stormwater Management***

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

*It is strongly recommended that you contact Sussex Conservation District to schedule a pre-application meeting to discuss the sediment and erosion control and stormwater management components of the plan. The site topography, soils mapping, pre and post development runoff, and proposed method(s) and location(s) of stormwater management should be brought to the meeting for discussion.*

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

*Applying practices to mimic the pre development hydrology on the site, promote recharge, maximize the use of existing natural features on the site, and limit the reliance on structural stormwater components, such as maintaining open spaces, should be considered in the overall design of the project as a stormwater management technique.*

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*Each stormwater management facility should have an adequate outlet for release of stormwater. Any drainage conveyed onto this site from neighboring properties must be adequately conveyed through the site to the discharge point without interruption.*

*A Certified Construction Reviewer (CCR) will be required for the site during construction. You should contact Sussex Conservation District for details regarding the CCR requirement.*

*A request for a waiver from stormwater quantity management requirements must be submitted to the Conservation District in writing.*

Response:

**Sediment and Erosion Control/Stormwater Management**

We will comply with the Sussex Conservation District Sediment and Erosion Control/Stormwater program. The use of “Green Technology” stormwater practices will be utilized to the extent feasible and DNREC’s technical assistance will be utilized.

All requirements set forth by the regulating agencies will be satisfied, permits will be obtained and all feasible recommendations will be incorporated into the design of the proposed community.

***Floodplains***

*The entire project area is within the 100-year floodplain. Increased density will result in the potential for more properties at flood risks.*

Response:

**Floodplains**

Required design and construction methods for constructing within the floodplain will be utilized.

***Beach Impacts***

*The proposed developments is located landward of the DNREC Building Line, therefore, subject to the Regulations Governing Beach Protection and the Use of Beaches. The developers must submit an application to the Division of Soil and Water Conservation, Shoreline and Waterway Management Section, for a Letter of Approval to construct on the property.*

*The plans indicate that the developers plan to construct a boardwalk out to the beach; which would require crossing State Park property. The Division of Soil and Water Conservation requires that the applicant receives written approval from the Division of*

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*Parks and Recreation to access State Park Lands before Shoreline and Waterway Management will entertain an application to construct a dune crossover. If the Division of Parks and Recreation approves the access and Shoreline and Waterway Management entertain an application to construct a dune crossover, the applicant will be required to enter into an Easement Agreement with the Department which gives them approval to cross state lands. This agreement will also give the Public right to use the crossover to access the beach. The applicant will not be able to restrict the public from using the crossover.*

*To minimize disturbance to sensitive dune habitat, the Shoreline and Waterway Management Section strongly recommends instead of constructing a new crossover that they either use the State Park access to the north or that they walk south and use the exiting crossover at Indian Harbor Villas. That crossover is available for the public to use.*

*For more information on beach regulations, contact Maria Sadler at 739-4411.*

Response:

### **Beach Impacts**

**We will comply with all legal and regulatory requirements with regard to this issue. Alternative beach access will be taken into consideration and all impacts to the surrounding habitat will be minimized.**

### **Open Space**

*The site plans show no consideration for open space or buffers. Efforts should be made to implement a buffer zone, comprised of coastal grasses, like coastal panic grass, and native shrubs. The developer should consider increasing the amount of open space along the waterfront. Dune grass and other vegetation often are found along coastal dunes such as in this parcel. While the dunes often survive the destructive power of storms, they do not withstand the harmful impact of pedestrian and vehicular traffic.*

*Any lands set aside for conservation purposes should be placed into a permanent conservation easement or other binding protection mechanism. These areas should be clearly marked and delineated so that residents understand their importance and so that the homeowner activities do not infringe upon these areas.*

Response:

### **Open Space**

**Given the peculiar shape and small size of the property and its immediate adjacency to seven miles of publicly owned state park lands including a public parking area, on-site**

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open space would not only be incredibly redundant but also expensive to maintain by the proposed six home owners. Additionally, no buffers are required on the property.

All open areas will be planted and/or revegetated with native species so to minimize any impacts from the new development. Natural areas left undeveloped on site will be placed into permanent binding conservation mechanism associated with the condominium association.

### ***Rare/Threatened/Endangered Species***

*DNREC submitted comments for this project to Edward Launay of Environmental Resources, Inc. on November 20, 2004 and the following comments are an excerpt from that response letter:*

*“Based on review of topographic maps, aerial photographs, and because we have not visited the site previously, our DNHP botanist requests the opportunity to survey the dune areas for resources which could potentially be impacted by the project. This parcel is adjacent to State Park land where we do have records of rare species. His observations would allow us to make more informed comments on this project and would allow the applicant the opportunity to reduce potential impacts to rare species. Please contact Bill McAvoy at (302) 653-2880 to set up a site visit.”*

### **Response:**

#### **Rare/ Threatened/ Endangered Species**

We will work with DNREC during the construction plan preparation process, and will also seek to avoid or minimize any negative impacts of the new development on surrounding habitats.

### ***Revegetation/Landscaping***

*DNREC requests that no invasive species be used in the revegetation of disturbed or landscaped 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). They further encourage, where possible/feasible, the use of native plants for habitat restoration projects on-site and their Botanist, Bill Mc Avoy can be contacted at (302) 653-2880 to assist you in developing a plant list.*

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Response:

**Revegetation/ Landscaping**

The revegetation/ landscaping plans will propose primarily native species and no invasive species.

***State Resource Areas***

*This project borders land currently identified as part of a State Resource Area. State Resource Areas are comprised of lands that contain a variety of natural, cultural and open space resources significant to the state. Consideration should be given to protecting these Resources during design and construction of this project. For more information, please contact Ron Vickers, Land Preservation Office, 739-3423.*

Response:

**State Resource Areas**

We will work with the State in protecting the existing resources native to the area.

**State Fire Marshal's Office – Contact: Duane Fox 302-856-5298**

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

- a. **Fire Protection Water Requirements:**
  - *Where a water distribution is proposed for single family dwellings it shall be capable of delivering at least 500 gpm for 1-hour duration, at 20-psi residual pressure. Fire hydrants with 1000 feet spacing on centers are required.*
  - *The infrastructure for fire protection water shall be provided, including the size of water mains.*
- a. **Accessibility:**
  - *All premises which the fire department may be called upon to protect in case of fire, and which 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 Coastal Highway must be constructed so fire department apparatus may negotiate it.*
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- *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 cull-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 cull-de-sac shall be 38 feet. The dimensions of the cull-de-sac or turn-around shall be shown on the final plans. Also, please be advised that parking is prohibited in the cull-del-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.*
- b. Gas Piping and System Information:**
  - *Provide type of fuel proposed, and show locations of bulk containers on plan.*
- c. Required Notes:**
  - *Provide a note on the final plans submitted for review to read “All fire lanes, fire hydrants, and fire department connections shall be marked in accordance with the Delaware State Fire Prevention Regulations”*
  - *Name of Water Supplier*
  - *Proposed Use*
  - *National Fire Protection Association (NFPA) Construction Type*
  - *Maximum Height of Buildings (including number of stories)*
  - *Provide Road Names, even for County Roads*

*Preliminary meetings with fire protection specialists are encouraged prior to formal submittal. Please call for appointment. Applications and brochures can be downloaded from our website: [www.delawarestatefiremarshal.com](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 – Contact: Mark Davis 739-4811**

*Trees on this site are typical seaside pine. It is encouraged that the developer preserve them if possible. If not, than forest mitigation should be considered for the site or adjacent state property. A diverse landscape plan, with the use of native, the right tree for the right place and that addresses fire danger concerns is encouraged.*

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Response:

We will make every attempt to avoid/ preserve the trees in question. A diverse landscape plan utilizing primarily native trees and shrubs and no invasive species will be included in the final plans.

**Public Service Commission – Contact: Andera Maucher 739-4247**

*The PSC records indicated that the project is located within the public water service area granted to Sussex Shores Water Company.*

*Any expansion of natural gas or installation of a closed propane system must fall within Pipeline Safety guidelines. Contact: Malak Michael at (302) 739-4247.*

Response:

Appropriate design and construction methods will be utilized.

**Delaware State Housing Authority – Contact Karen Horton 739-4263**

*This proposal is to develop 6 residential units on 1.3 acres on the east side of Route 1, approximately 900 feet north of Dune Road and adjacent to Delaware Seashore State Park. The units are targeted to move up and second home buyers. The DSHA encourages the developer to include prices that are affordable to low- and moderate-income households as well. This proposal is in the Selbyville/Frankford County Census Division (CCD) an area that has serious housing needs. The 2003 Statewide Housing Needs Assessment indicates that of the 10,527 housing units in this CCD, 726 are substantially substandard and 3,261 are occupied by low-income households earning less than 80 percent of the area median income (\$40,700 for a family of four). In addition, this area is experiencing rapid price increases. Real estate data collected by DSHA indicates that in the second quarter of 2004, the median housing price for this area was \$370,000 – which is outside the affordability level of low- and moderate-income households. The provision of units affordable to low- and moderate-income households will help address the area's significant needs.*

Response:

The contract price for the property together with the high cost associated with the entitlement process renders it impossible to include home prices that are affordable to low income households and, likely, for moderate income households.

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**Delaware Emergency Management Agency – Contact: Don Knox 659-3362**

*An impact to public safety is foreseen by implementation of this project, due to the property being located in the Special Flood Hazard Area inundated by the 100-year flood. This area could also experience flooding from a category 1 or greater hurricane. Routes 1, 24, and 26 are coastal storm evacuation routes and this development will be affected by traffic volume on these routes during a coastal storm event.*

**Response:**

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

**Sussex County – Contact: Richard Kautz 855-7878**

*This project is within the Environmentally Sensitive Development area. The required report should be revised to show how the PLUS comments have been addressed and the plan revised accordingly.*

*The Sussex County Engineer Department comments: The proposed project is located within the boundary of the North Bethany Expansion of the Bethany Beach Sanitary*

*Sewer District. The proposed gross density of the project is 4.65 EDU/acre. Densities are subject to Ordinance Nos. 439 and 508.*

*The proposed project is currently served with one 6-inch lateral. This will have to be upgraded to an 8-inch to serve the proposed six units. System Connection Charges will be due prior to connection to the sanitary sewer system. Sussex County must be provided with a concept plan for the project to ensure proper alignment for the proposed units as well as the proper alignment of the proposed water lines.*

*For questions regarding these comments, contact Chris Calio, Sussex County Engineering Department at (302) 855-7839.*

***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, nothing whether comments were incorporated into the project design or not and the reason therefore.***

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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.

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  
Bethany Court, L.L.C.

Cc: Mr. Lawrence Lank, Sussex County Planning Office

