

TASB 0401

September 22, 2005

Ms. Constance C. Holland, AICP, Director
The Delaware Office of State Planning Coordination
540 South DuPont Highway
Thomas Collins Building – Third Floor
Dover, Delaware 19901

RE: The Landings Project (f/k/a Staats Property Residential Subdivision Project)
Tax Parcel #'s LC-00-03800-01-1000-000 & LC-00-03900-01-0200-000
Fast Landing Road (Route 42); Leipsic, Little Creek Hundred, Kent County, Delaware
Preliminary Land Use Service (PLUS) Application 2005-07-05
Response to PLUS Review Comments

Dear Ms. Holland:

We appreciated the opportunity to meet with State agency planners on July 27, 2005 to discuss the development proposed as part of The Landings Project adjacent to Route 42 (Fast Landing Road) in Leipsic, Little Creek Hundred, Kent County, Delaware. This project was formerly known as the Staats Property Residential Subdivision Project. We have received and reviewed your August 17, 2005 review letter and offer the following response to the comments made by the various review agencies.

Office of State Planning Coordination

The developer recognizes that this project represents a land development in an Investment Level 4 area located outside of the Kent County Growth Zone. However, the Kent County Comprehensive Plan and the Kent County Zoning Ordinance -- the laws which dictate what uses may be made of the subject site -- recommend and permit low-density residential development of 1.0-2.9 dwelling units per acre on the subject site. Notably, the average density for the proposed development on this 342± acre project site is 0.37 dwelling units per acre, far below the average density permitted at the site by right. It should also be noted that the subject site abuts lands that were previously subdivided into thirty (30) residential dwelling lots, known as the Snowland Subdivision (recorded January 23, 1990), and the construction of single-family homes in the Snowland Subdivision is currently well underway.

The proposed development does *not* impact environmentally sensitive wetlands or wildlife habitats. A one hundred foot (100') buffer width is provided on both sides of Fast Landing Road.

The site is located within the Capital School District and school bus service is already provided to students who live on Fast Landing Road. In addition, the Leipsic Fire Company already serves the area of the proposed development, and law enforcement services are already provided to the general area by the Delaware State Police. The developer understands that the State does not intend on investing in infrastructure upgrades or additional services in the area of the proposed development. However, given that school, fire, police, and transportation services are readily available in the area of the proposed development already, and with the understanding that the developer is prepared to fund any infrastructure and service upgrades that are absolutely necessary to support the development, the developer respectfully submits that it will not be necessary for the State or any other public agency to invest in infrastructure upgrades or additional services in the area as a result of the proposed development.



Division of Historic and Cultural Affairs

The developer understands that there are resources on and near the subject site that are listed in the National Register of Historic Places. Specifically, the Naudain Cemetery (K-6316) is situated on the site south of Fast Landing Road, and Snowland (K-132) is situated on the north side of Fast Landing Road just east of the site. There are also several properties east of the subject site and within the Town of Leipsic that are listed in the National Register of Historic Places. In addition, the site may contain prehistoric sites along the Dyke Branch south of Fast Landing Road.

In order to comply with the State of Delaware Unmarked Human Remains Act of 1997 and alleviate adverse effects on the Naudain Cemetery, a one hundred foot (100') archaeological buffer is provided adjacent to the walls of the cemetery. A septic system that is proposed in this vicinity will be installed outside the limits of this buffer. The Naudain Cemetery will remain untouched.

There are substantial buffers adjacent to Snowland that will mitigate adverse visual effects. Development on the north side of Fast Landing Road will be screened by an existing stand of vegetation adjacent to the Leipsic River. Development on the south side of Fast Landing Road is located approximately one-third of a mile from Snowland. In order to mitigate noise from this residential development, prohibitions as stipulated in §161 ("Noise") of the Code of Kent County will be enforced via community deed restrictions.

The developer is also willing to allow representatives from the Division of Historic and Cultural Affairs to examine and delineate prehistoric sites along Dyke Branch prior to December 15, 2005. This will allow archaeological sites to be avoided and preserved in open space. In addition, the Division of Historic and Cultural Affairs, prior to December 15, 2005, may examine the remainder of the subject site on both sides of Fast Landing Road so that additional archaeological sites may be delineated.

Department of Transportation

The developer understands that the Department of Transportation (DelDOT) will not fund any transportation infrastructure improvements which may be required to support the proposed development, and the developer is not asking DelDOT to do so. The developer expects to bear the cost of transportation infrastructure improvements required to support the proposed development, and further, as mentioned above, the developer is willing to consider funding upgrades that are absolutely necessary to public service agencies (fire/emergency/police) already serving Leipsic area. Hence, none of the tenets of the *2004 Strategies for State Policies and Spending* are either implicated or offended by the proposed development.¹

Department of Natural Resources and Environmental Control

Investment Level 4 Policy Statement

The developer recognizes that the proposed development is located in an Investment Level 4 area outside of the Kent County Growth Zone. However, as noted above, the Kent County Comprehensive Plan and the Kent County Zoning Ordinance -- the laws which govern what uses may be made of the subject property -- recommend and permit low-density residential development of 1.0-2.9 dwelling units per acre on the subject site. Furthermore, the average density for the proposed development is far below the average density permitted on the property by right.

¹ As an aside, the developer notes that the proposed development is, in fact, a "new development in and around [an] existing town" (the Town of Leipsic), which the PLUS comments indicate DelDOT "strongly supports".



The developer is not asking the Department of Natural Resources and Environmental Control (DNREC) or any other public agency to fund additional investments in open space or water or wastewater systems. Instead, the developer will fund any additional investments in open space or water or wastewater systems which may be warranted or required to support the proposed development. Hence, none of the principles of the *2004 Strategies for State Policies and Spending* are either implicated or offended by the proposed development.

Moreover, one hundred percent (100%) of the existing woodlands (14.72 acres) are to be preserved. According to the Kent County Subdivision and Land Development Ordinance, active recreation space in the amount of three hundred (300) square feet per dwelling unit or one-half (½) acre, whichever is greater, is required. Ninety-five (95) dwelling units are proposed on the north side of Fast Landing Road and thirty-seven (37) dwelling units are proposed on the south side of Fast Landing Road. Therefore 0.65 acres ($95 \times 300 / 43,560 = 0.65 > 0.50$) and 0.50 acres ($37 \times 300 / 43,560 = 0.25 < 0.50$) of active recreation space is required on the north and south side, respectively, of Fast Landing Road. In order to meet this requirement, a meandering recreation trail is proposed.

As previously mentioned, the proposed development does not impact environmentally sensitive wetlands or wildlife habitats. A one hundred foot (100') buffer width is provided on both sides of Fast Landing Road. In accordance with the *Delaware Sediment and Stormwater Regulations*, water quality will be achieved through the implementation of "green-technology" stormwater Best Management Practices (BMPs), consisting of biofiltration swales and bioretention areas. Following Preliminary Plan approval by the Kent County Regional Planning Commission, a Stormwater Management Report will be prepared and submitted to the Kent Conservation District. This report will illustrate how eighty percent (80%) Total Suspended Solids (TSS) removal from the site will be achieved through the use of the Delaware Urban Runoff Management Model (DURMM). The developer is willing to consider implementing air quality improvement measures.

Green Infrastructure

The developer understands that a portion of the subject site is situated within the Livable Delaware Green Infrastructure Area established under Governor Minner's Executive Order #61. In an effort to protect these sensitive resources, an appropriate site design is provided. Specific measures include the buffer areas between the proposed development and the environmentally sensitive wetlands, wildlife habitat, and existing forests to be preserved on the site.

Soils

The following table summarizes the site soils within the limits of the proposed improvements. According to the U.S. Department of Agriculture, Soil Conservation Service, these soils have only slight or moderate limitations to development. There is no development proposed within Tidal Marsh (Tm) soils.

Abbreviation	Soil Type	Limitations for Development
SaB	Sassafras Sandy Loam, 2-5% Slopes	Slight
SaC3	Sassafras Sandy Loam, 5-10% Slopes, Severely Eroded	Slight/Moderate
SfA	Sassafras Loam, 0-2% Slopes	Slight
SfB	Sassafras Loam, 2-5% Slopes	Slight/Moderate



Wetlands

Regulated wetlands were formally delineated by Environmental Consulting Services, Inc. in April 2005. No disturbance or subdivision of land is proposed in the wetland areas. In fact, a one hundred foot (100') buffer width is provided on both sides of Fast Landing Road.

Wetland Permitting Information

The project wetlands delineation will be verified with the U.S. Army Corps of Engineers through the Jurisdictional Determination Process by Environmental Consulting Services, Inc. The developer is confident that the verification of the wetlands delineation will confirm the absence of any disturbance or subdivision of land in any wetland areas, and therefore, no federal (or State) wetlands permits or certifications will be required for the project.

Water Bodies

The developer will employ vegetated buffers within one hundred feet (100') feet of the edge of streams (the Leipsic River and Dyke Branch), as recommended. However, because there will be no disturbance or subdivision of land within any of the buffer areas of the proposed development, no stream impacts are anticipated.

Impervious Cover

Following construction of the proposed improvements, it is estimated that the 342± acre site will be approximately eight percent (8%) impervious. This was determined by estimating the area of proposed streets and sidewalks within public right-of-way and assuming that twenty percent (20%) of each lot will be impervious. The maximum allowable impervious lot coverage is twenty percent (20%). Imperviousness has been reduced to the greatest degree practicable not only to recognize construction cost savings, but environmental protection. Since the watershed will not exceed ten percent (10%) imperviousness, water and habitat quality will not be threatened by the proposed development.

TMDLs

The developer will employ stormwater BMPs as "methodological mitigative strategies" in order to reduce degradative impacts associated with development. The proposed BMPs consist of biofiltration swales and bioretention areas.

Water Supply

Water supply to the proposed development will be provided by either Tidewater Utilities, Inc. or Artesian Water Company. The developer will be filing an application for a Certificate of Public Convenience and Necessity (CPCN) with the Public Service Commission. If necessary, a dewatering well construction permit will be obtained from the Water Supply Section.

Sediment and Erosion Control/Stormwater Management

A detailed Sediment and Stormwater Management Plan Package will be submitted to the Kent Conservation District upon Preliminary Plan approval by the Kent County Regional Planning Commission.



Drainage

In order to provide stormwater management *quality* control, a series of biofiltration swales are proposed. The existing buffer areas between the proposed development and the environmentally sensitive wetland and wildlife habitat areas will also act as bioretention areas. This will provide additional stormwater *quality* control.

According to Section 3.B.1 of the *Delaware Sediment and Stormwater Regulations*, a project is eligible for a waiver or variance of stormwater management for water *quantity* control if the applicant can demonstrate that provisions exist for a non-erosive conveyance system to tidal waters by either a closed drainage system or by open channel flow that has adequate capacity to contain the runoff events being considered as a requirement of these regulations. Since the Leipsic River and Dyke Branch are tidal water bodies (they discharge into the Delaware Bay), the developer will be requesting a waiver from stormwater *quantity* management control. This waiver request has been previously discussed with representatives from the Kent Conservation District.

The majority of the stormwater pipes proposed as part of the improvements will be located in public right-of-way. Where possible, thirty-foot (30') wide open space areas will be proposed in lieu of drainage easements along property lines. This will prevent the placement of garages, sheds, fences, kennels, and other accessory structures along drainage conveyance system areas, thereby facilitating maintenance of the drainage conveyance system. In addition, the installation of catch basins and the routing of major stormwater pipes through yards will be avoided where possible.

Floodplains

The only development that is proposed within the limits of the one hundred (100) year floodplain is a short segment of the subdivision street at the east entrance on the north side of the property. The entire corridor of Fast Landing Road east of this entrance is already within the one hundred (100) year floodplain of the Leipsic River and/or Dyke Branch.

Habitat

As previously mentioned, the proposed development does not impact environmentally sensitive wetlands or wildlife habitats. A one hundred foot (100') buffer width is provided on both sides of Fast Landing Road. All of the existing forested areas on the site will be preserved.

Open Space

As previously mentioned, one hundred percent (100%) of the existing woodlands (14.72 acres) are to be preserved. In order to meet active recreation space requirements, a meandering recreation trail is proposed on both sides of Fast Landing Road. The current landscape in the proposed buffers will act as natural ecosystems and provide increased water infiltration into groundwater, decreased run-off into surface water, and obvious air quality improvements, requiring much less maintenance than traditional turf grass.

Rare Species

There are currently no records of state-rare or federally-listed plants, animals, or natural communities. However, the tidal wetlands within the project boundaries will be maintained in order to protect any plant, animal, or natural community that may exist.

Mosquito Control

There are no stormwater management ponds proposed. In addition, the proposed development is set back well away from the wetlands and other areas that may have a high concentration of mosquito populations.

Nuisance Waterfowl

As mentioned above, there are no stormwater management ponds proposed for the site. Therefore, the amount of waterfowl on site, such as resident Canada geese and mute swans, should be very low. Tall grasses will be planted in the biofiltration swales in order to not only provide stormwater quality control, but also to deter nuisance waterfowl from congregating near project improvements.

Solid Waste

The developer will dispose of construction waste in an environmentally appropriate manner.

Air Quality

Although the developer disputes DNREC's premise that the amount of emissions generated by a development located in an Investment Level 4 area outside the Kent County growth zone is necessarily greater than the amount of emissions generated by a development located inside the Kent County growth zone, as well as the specific emission calculations projected for this proposed development in particular, the developer understands that the proposed development will increase concentrations of volatile organic compounds, nitrogen oxides, sulfur dioxides, and carbon dioxide through mobile, residential, and electrical power emissions. The developer is willing to consider more energy efficient homes which may lessen air quality impacts. The developer is also willing to evaluate the potential to construct Energy Star qualified homes. Every percentage of increased energy efficiency translates into a percent reduction in pollution. These savings are based on heating, cooling, and hot water energy use and are typically achieved through a combination of building envelope upgrades, high performance windows, controlled air infiltration, upgraded heating and air conditioning systems, tight duct systems, and upgraded water-heating equipment. The developer is also willing to consider funding a lawnmower exchange program for the new residents.

State Fire Marshal's Office

An Application for Fire Protection Plan Review will be submitted to the Office of State Fire Marshal following Preliminary Plan approval by the Kent County Regional Planning Commission and a Pre-Application Meeting with a Fire Protection Specialist. A proposed water main and fire hydrant layout designed in accordance with the *Delaware State Fire Prevention Regulations* will be provided on the project subdivision plans. In addition, all necessary or required notes and details will be provided on the project subdivision plans. The developer fully intends on constructing the proposed improvements in conformance with the *Delaware State Fire Prevention Regulations* as they relate to fire protection water requirements, fire protection features, accessibility, gas piping, and system information.

Department of Agriculture

The developer understands and appreciates the fact that the site is designated as high value cropland on the *Green Infrastructure Investment Strategy*. As previously mentioned, one hundred percent (100%) of the existing woodlands (14.72 acres) are to be preserved. In order to meet active recreation space requirements, a meandering recreation trail is proposed on both sides of Fast Landing Road. The site is located just west of the Town of Leipsic, an incorporated town of over two hundred (200) people. Farm equipment should not currently be using Fast Landing Road adjacent to the subject site as a transportation route.



Public Service Commission

As part of the development, a community septic disposal facility is proposed on the south side of Fast Landing Road. This facility will be designed to accommodate sewer flows from all 132 single-family homes in the proposed development. The developer will apply to the Public Service Commission for a Certificate of Public Convenience and Necessity (CPCN). Any expansion of natural gas or installation of a closed propane system will be designed and constructed in accordance with Pipeline Safety guidelines. Water supply to the proposed development will be provided by either Tidewater Utilities, Inc. or Artesian Water Company.

Delaware State Housing Authority

The developer understands and respects the objections of the Delaware State Housing Authority, based upon location of the proposed development in an Investment Level 4 area outside of the Kent County Growth Zone. However, as noted above, the Kent County Comprehensive Plan and the Kent County Zoning Ordinance -- the laws which govern what uses may be made of the subject property -- recommend and permit low-density residential development of 1.0-2.9 dwelling units per acre on the subject site. Hence, while the proposed development may be inconsistent with certain tenets of State *policy*, the proposed development is entirely consistent with applicable and governing *law*.

Delaware Economic Development Office

The developer understands and respects the objections of the Delaware Economic Development Office, based upon location of the proposed development in an Investment Level 4 area outside of the Kent County Growth Zone. However, as noted above, the Kent County Comprehensive Plan and the Kent County Zoning Ordinance -- the laws which govern what uses may be made of the subject property -- recommend and permit low-density residential development of 1.0-2.9 dwelling units per acre on the subject site. Hence, while the proposed development may be inconsistent with certain tenets of State *policy*, the proposed development is entirely consistent with applicable and governing *law*.

In summary, the developer recognizes that the proposed development is located within an Investment Level 4 area outside of the Kent County Growth Zone. However, low-density residential development is a by-right use for the subject property, and therefore, the developer's plans to subdivide and develop the subject property cannot be denied. Nevertheless, the developer stands willing, ready, and able to work cooperatively with all local, state, and federal agencies having jurisdiction over the project to insure that the proposed development is designed and constructed in as environmentally sound and sensitive a manner as possible.

We trust that the responses set forth above adequately address all of the PLUS comments. As the proposed development proceeds forward through the design and approval process, we will continue to give full attention to all comments and concerns from the various PLUS agencies. If you should have any questions or concerns, or require any additional information, please do not hesitate to contact me at the above address.

Respectfully submitted,
PENNONI ASSOCIATES, INC.

Douglas D. Barry, P.E., Project Manager

Antoine Ashburn (Tony Ashburn & Son, Inc.)
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