STATE OF DELAWARE
OFFICE OF MANAGEMENT AND BUDGET
OFFICE OF STATE PLANNING COORDINATION

March 26, 2025

Mr. Christopher Pfeifer
George, Miles, & Buhr, LLC
206 W. Main St.
Salisbury, MD 21801

RE: PLUS review – 2025-02-02; Canopy Creek

Dear Mr. Pfeifer:

Thank you for meeting with State agency planners on February 26th, 2025 to discuss Canopy Creek. According to the information received, you are seeking review of a proposed of a proposed AR-1 Cluster & GR Standard Subdivision (Agricultural Residential District and General Residential District) consisting of a 125-unit single-family residential development on 77.75 acres.

Please note that changes to the plan, other than those suggested in this letter, could result in additional comments from the State. Additionally, these comments reflect only issues that are the responsibility of the agencies represented at the meeting. **The developers will also need to comply with any Federal, State, and local regulations regarding this property. We also note that Sussex County is the governing authority over this land, the developers will need to comply with any and all regulations/restrictions set forth by the County.**

Strategies for State Policies and Spending

The front of the parcel within the Existing Developing Area and is zoned GR. The balance of the property is zoned AR-1 and the entire parcel is located within an Investment Level 4.

This project represents a major land development that will result in 125 (residential or square footage of commercial) in an Investment Level 4 area according to the *2020 Strategies for State Policies and Spending*.

Investment Level 4 indicates where State investments will support agricultural preservation, natural resource protection, and the continuation of the rural nature of these areas. New development activities and suburban development are not supported in Investment Level 4. These areas are comprised of prime agricultural lands and environmentally sensitive wetlands and wildlife habitats, which should be, and in many cases have been preserved.

From a fiscal responsibility perspective, development of this site is inappropriate. The cost of providing services to development in rural areas is an inefficient and wasteful use of the State's fiscal resources. Over the longer term, the unseen negative ramifications of this development will become even more evident as the community matures and the cost of maintaining infrastructure and providing services increases.

- This parcel is within a Tier 3 service area according to the 2018 Sussex County Comprehensive plan. The plan states that Tier 3 is an area where multiple existing CPCNs have been issued to various private wastewater utilities as well as tracts with County service. These areas require coordination between county and private wastewater utilities. Artesian, a private wastewater provider, has provided an "ability to serve' letter for this parcel, however, they do not currently hold a CPCN for this parcel and there is not currently sewer available to the site. The county should work with the wastewater provider to determine timing on when sewer will be available before approving development on this parcel. In addition, the ability to serve letter expires in January 2026 if agreements are not reached with the owner.

- This project is within the Town of Milton Fire District. Regarding infrastructure and services, the following concern was received by the State Fire Marshals office on behalf of the Milton Fire Department regarding the ability to serve the proposed development with Fire and EMS service:

  The Milton Fire Department Inc. is obligated to provide Fire and EMS service to this property. In addition**,** new developments in our Fire and EMS district have put a financial strain on our volunteer fire service. In order to provide quality service within our fire district, the Milton Fire Department, Inc. has hired more career staff to man the EMS units and fire apparatus as needed, thus creating a combination fire department. In 2020 the Milton Fire Department, Inc. responded to approximately 323 fire calls and 1332 EMS calls. This year (2025) the Milton Fire Department, Inc. will respond to an estimated 600 fire calls and 2,600 EMS calls. State and County funding does not keep up with the growth of the Milton Fire District, so the developers and future residents need to help financially support the Milton Fire Department Inc. before we can support any more development in our Fire and EMS district. Future residents need to consider joining the fire department to serve their new community.

- This project is near the existing Henlopen Transportation Improvement District. With the approval of the TID in 2018, the State has planned for development within the TID area and is able to provide infrastructure to support the planned development. This development is proposed outside of the TID. The continued approval of single-family homes in rural areas, not within the TID area, establishes a lack of predictability and makes it difficult for the State agencies to plan for infrastructure and services within this area of the county. It is strongly recommended that action on this request be denied

until the County can develop a more cohesive plan for the area such as a master plan. A well-planned overall approach to the future development of this area which considers transportation infrastructure, environmental infrastructure, environmental concerns, market demand for new commercial uses, and economic potential is preferable to individual, incremental subdivision approvals such as this one.

In addition, the development of this site may be environmentally inappropriate. The proposed project is located entirely within Level 4 lands of the Delaware Strategies for State Policies and Spending and according to State agencies:

- The proposed project is adjacent to properties protected under the State's Agricultural Lands Preservation Program (Newcomb Expansion S-23-07-074B parcels 234-1.00-1.02, 06, 07, 08, and across the road from the Joseph Farm Holdings LLC Expansion S-23-03-074A parcel 234-5.00-36.00.

- Maps from the Statewide Wetlands Mapping Project indicate the potential presence of non-tidal wetlands in the center of the site, as well as a potential blue line stream (Bundicks Branch) also located in the center.

- The preliminary plan proposes the elimination of approximately 38 of 69 acres of presumably mature forest on the site, representing approximately 55% forest removal. An analysis of historical data indicates that the forest area located on the site has likely maintained some degree of forest cover since 1937 and could be considered mature forest. Mature forests possess the potential for rare, threatened, or endangered species that rely on this type of habitat.

- DNREC reviewers express concern over the potential cumulative impact of new development proposed on this site, in addition to proposed development in the near vicinity of Canopy Creek. Increases in stormwater runoff resulting from an increase in development will likely worsen existing drainage and flooding issues in and around Love Creek.

- Structures and features such as eight lots with homes and an internal roadway are proposed within the floodplain. Homeowners with mortgages for homes within the floodplain may be required to purchase flood insurance. Although some houses are proposed outside of the Special Flood Hazard Area (SFHA), homeowners may still be required by lenders to purchase flood insurance, based on the proximity to the SFHA.

- The proposed road that crosses Bundicks Branch between Lots 9 and 10 will likely act as fill in the floodplain. An engineering analysis should be conducted to determine that no

rise will occur as a result of such fill. (see additional comments under DNREC recommendations)

It is highly discouraged to build in this manner on Level 4 lands. These areas contain undeveloped natural lands, such as forests, and may include natural habitats that are important for providing ecosystem services, such as improving water quality and reducing flood risk. Therefore, based on the comments in this letter regarding and the location in Level 4 where state and county are not planning infrastructure and services for additional growth, the State objects to this subdivision of this property. Continuing to approve additional development in this area could undermine the ability of the State to provide the infrastructure needed to support the current residents.

The comments in this letter are technical and are not intended to suggest that DNREC supports this development proposal. This letter does not in any way suggest or imply that you may receive or may be entitled to permits or other approvals necessary to construct the development you indicate or any subdivision thereof on these lands.

Code Requirements/Agency Permitting Requirements

Department of Transportation – Contact Stephen Bayer 302-760-4834

- The site access on all State maintained roads must be designed in accordance with DelDOT's Development Coordination Manual, which is available at http://www.deldot.gov/Business/subdivisions/index.shtml?dc=changes.

- Pursuant to Section 1.3 of the Manual, a Pre-Submittal Meeting is required before plans are submitted for review. The form needed to request the meeting and guidance on what will be covered there and how to prepare for it is located at https://www.deldot.gov/Business/subdivisions/pdfs/Meeting_Request_Form.pdf?08022017.

- Section 1.7 of the Manual addresses fees that are assessed for the review of development proposals. DelDOT anticipates collecting the Initial Stage Fee when the record plan is submitted for review and the Construction Stage Fee when construction plans are submitted for review.

- In terms of traffic analysis and based on the requirements of the Development Coordination Manual this proposed project will qualify for the Area Wide Study Fee (AWSF). Please contact our office to proceed with this calculation.

- As necessary, in accordance with Section 3.2.5 and Figure 3.2.5-a of the Development Coordination Manual, DelDOT will require dedication of right-of-way along the site's frontage. By this regulation, this dedication is to provide a minimum of 30 feet of right-of-way from the physical centerline of Forrest Road. The following right-of-way dedication note is required, "**An 30-foot wide strip of right-of-way from the centerline is hereby dedicated in fee simple to the State of Delaware, acting by and through the Delaware Department of Transportation."**

- In accordance with Section 3.2.5.1.2 of the Manual, DelDOT will require the establishment of a 15-foot wide permanent easement across the property frontage. The location of the easement shall be outside the limits of the ultimate right-of-way. The easement area can be used as part of the open space calculation for the site. The following note is required, "**A 15-foot wide permanent easement is hereby dedicated in fee simple to the State of Delaware, acting by and through the Delaware Department of Transportation."**

- In accordance with Section 3.8 of the Manual, storm water facilities, excluding filter strips and bioswales, shall be located a minimum of 20 feet from the ultimate State right-of-way along Forrest Road.

- In accordance with Section 5.4 of the Manual, sight distance triangles are required and shall be established in accordance with American Association of State Highway and Transportation Officials (AASHTO) standards. A spreadsheet has been developed to assist with this task. It can be found at http://www.deldot.gov/Business/subdivisions/index.shtml.

- In accordance with Section 5.14 of the Manual, all existing utilities must be shown on the plan and a utility relocation plan will be required for any utilities that need to be relocated.

Department of Natural Resources and Environmental Control – Contact Beth Krumrine 302-735-3480

Staff from the Delaware Department of Natural Resources and Environmental Control (DNREC) reviewed the project submitted for PLUS review. The absence of comments regarding specific resources does not indicate that there are not additional constraints or environmental issues on site, nor does it indicate DNREC support of a project.

Wetlands and Waterways

Maps from the Statewide Wetlands Mapping Project indicate the potential presence of non-tidal wetlands in the center of the site, as well as a potential blue line stream (Bundicks Branch)

also located in the center. The application indicates that wetlands have not been delineated. The application proposes to disturb approximately 0.2 acres of non-tidal wetlands and waterways.

State Requirements:

- Include all wetland boundaries, streams, and waterways on site plans.

- State permits from the DNREC Wetlands and Waterways Section may be required for disturbance proposed in state jurisdictional wetlands and waterways. To apply for a permit online, please visit their website at https://dnrec.delaware.gov/water/wetlands-subaqueous/permits/.

- It is recommended to schedule a meeting with the DNREC Joint Permit Processing (JPP) service for assistance with the necessary state and federal permitting procedures and requirements. Please contact the DNREC Division of Water's Wetlands and Waterways Section to schedule.

State Contact: DNREC Wetlands and Waterways Section at (302) 739-9943.
Website: https://dnrec.delaware.gov/water/wetlands/

Federal Requirements:

- Federal permits from the U.S. Army Corps of Engineers will be necessary if dredge or fill is proposed in tidal wetlands, streams, and certain non-tidal wetlands. A delineation of waterways and wetlands may also be required. In certain cases, permits from the US Army Corps of Engineers may trigger additional certifications from DNREC (Coastal Zone Federal Consistency Certification and 401 Water Quality Certification). Work with the US Army Corps of Engineers to determine the appropriate federal permitting requirements.

Federal Contact: U.S. Army Corps of Engineers (Dover Office) at (267) 240-5278.
Website: https://www.nap.usace.army.mil/Missions/Regulatory/Contacts/

Coastal Zone Federal consistency Certification (state contact): DNREC Coastal Management Program at (302) 739-9283.
Website: https://dnrec.delaware.gov/coastal-programs/coastal-management/

Special Flood Hazard Area

According to the newest Flood Insurance Rate Maps (FIRM), the central portion of this parcel is situated within a Special Flood Hazard Area, specifically within the mapped 100-year floodplain (1% annual chance of flooding). The Special Flood Hazard Area identified on the site lies within zone AE. In lands contained within the 100-year floodplain, the National Flood Insurance

Program's floodplain management regulations must be enforced through the local floodplain ordinance, which can have higher standards. Structures and features such as eight lots with homes and an internal roadway are proposed within the floodplain. Homeowners with mortgages for homes within the floodplain may be required to purchase flood insurance. Although some houses are proposed outside of the Special Flood Hazard Area (SFHA), homeowners may still be required by lenders to purchase flood insurance, based on the proximity to the SFHA.

- The applicant must comply with the local floodplain ordinance and regulations applicable to development or construction within the 100-year floodplain. In determining the boundary of the floodplain, use the most recent FIRM maps available, which can be found at https://floodplanning.dnrec.delaware.gov/

- If fill is to be placed in floodplain to increase grade elevation to raise proposed development out of the mapped floodplain, the applicant must work with the local community floodplain authority to initiate a Certified Letter of Map Revision – Fill (CLOMR-Fill) request. A CLOMR-Fill request should be submitted to FEMA for review followed by an application to FEMA for a Letter of Map Revision (LOMR) at completion. Please note that a property will not be officially recognized by FEMA as being located out of the mapped floodplain until a LOMR has been issued. To determine the community floodplain authority for this proposal, please contact DNREC's Shoreline and Waterway Management Section.

Contact: DNREC Shoreline and Waterway Management Section at (302) 608-5500.
Website: https://dnrec.delaware.gov/watershed-stewardship/waterways/floodplains/

Stormwater Management

The project proposes greater than 5,000 square feet of land disturbing activities and will be subject to Delaware's *Sediment and Stormwater Regulations*.

- A Sediment and Stormwater Plan must be developed, then approved by the appropriate plan review agency, prior to any land disturbing activity taking place on the site. For this project, the plan review agency is the Sussex Conservation District.

- Additionally, to address federal requirements, construction activities that exceed 1.0 acre of land disturbance require Construction General Permit coverage through submittal of an electronic Notice of Intent for Stormwater Discharges Associated with Construction Activity. This form must be submitted electronically https://enoi.dnrec.delaware.gov/, (select Construction Stormwater General Permit) to the DNREC Division of Watershed Stewardship, along with the $195 fee.

- Schedule a project application meeting with the appropriate plan review agency prior to moving forward with the stormwater and site design. As part of this process, you must submit a Stormwater Assessment Study.

Plan review agency contact: Sussex Conservation District at (302) 856-2105 or (302) 856-7219. Website: https://www.sussexconservation.org/

General Stormwater contact: DNREC Sediment and Stormwater Program at (302) 739-9921.
E-mail: DNREC.Stormwater@delaware.gov.
Website: https://dnrec.delaware.gov/watershed-stewardship/sediment-stormwater/

Wastewater Disposal Systems – Small Systems (Septic)

An expired permit (permit # 190981) exists for this site in the Small System Branch database. The On Site Regulations are listed within Section 5 (Small Systems) or Section 6 (Large Systems) of the Regulations Governing the Design, Installation and Operation of the On-site Wastewater Treatment and Disposal Systems at: https://documents.dnrec.delaware.gov/Water/Septics/delaware-on-site-regulations-with-exhibits.pdf. A list of licensed Class D soil scientists can be found at the following website: https://data.delaware.gov/Energy-and-Environment/Class-D-Site-Evaluator-Licensees-Based-on-Licensed/s3gu-gt88/data_preview

- The applicant must follow current regulations to properly abandon these systems.
- Contact the DNREC Commercial and Government Services Section to discuss requirements for properly abandoning these systems.

Contact: DNREC Commercial and Government Services Section at (302) 739-9947.
Website: https://dnrec.delaware.gov/water/residential/septic-systems/

Wastewater Disposal Systems – Large Systems

For wastewater conveyance offsite by way of a new sewer connection, flow rates exceeding 2,500 gallons of liquid waste per day will require a Wastewater Pollution Collection and Conveyance (WPCC) permit from the Commercial and Government Services section.

Contact: DNREC Commercial and Government Services Section at (302) 739-9948.
Website: https://dnrec.delaware.gov/water/commercial-government/

Electric Vehicle Charging Requirements

Electric vehicle charging infrastructure is now required for all residential dwellings in Delaware (see 80 Del. Laws, c. 145 § 8001- § 8006) for which:

1. A building permit is issued on or after January 1, 2024 (single family), or
2. The final site plan is approved on or after January 1, 2025 (multi-family).

Requirements are summarized below. Consult the Delaware Code directly for further details.

Single-family Dwellings, effective 2024:

- The developer of a single-family residential dwelling shall install at least one electric vehicle capable parking space at each single-family residential dwelling constructed.
- If the single-family residential dwelling does not have an attached or detached garage, an electric vehicle capable parking space must be provided in the driveway, assigned parking space for the dwelling, or at an unassigned non-street residential parking space constructed as part of the project.

<u>Delaware Department of Agriculture – Contact Milton Melendez 302-698-4500</u>

- The proposed development is located in an area classified as Level 4 per the Strategies for State Policies and Spending. Both the Strategies and the Sussex County Comprehensive Plan explicitly disapprove of the proposed isolated development in this region. The main objective of these plans is to protect agricultural lands, forestlands, recreational uses, and open spaces, all of which are considered preferred uses in Level 4 areas.

- The Delaware Department of Agriculture categorically opposes the proposed development, citing its inconsistency with the preferred land uses. This misalignment is seen as detrimental to the success of agriculture and forestry, leading to increased public costs for services and facilities. Moreover, the Department firmly opposes the project due to its adverse impact on the fundamental land uses crucial to Delaware's resource industries, including agriculture, forestry, and horticulture, along with their associated sectors.

- Newcomers to such developments often lack an understanding of and appreciation for modern agriculture and forestry, resulting in conflicts that compromise health and safety, such as reduced highway safety with farm equipment and cars sharing rural roads. The Department emphasizes that these conflicts jeopardize the essential economic, environmental, and open space benefits of agriculture and forestry. As such, the Department is steadfast in its opposition to the establishment of isolated development areas that it deems inefficient in terms of the full spectrum of public facilities and services funded with public resources. It asserts that public investments should prioritize agricultural and forestry preservation.

- The Delaware Department of Agriculture advocates for growth that expands existing urban areas and growth zones outlined in approved State, county, and local plans. It expresses support for additional land preservation through measures like transfer of development rights, committing to work with developers to implement these strategies if the project is approved.

- The proposed project is adjacent to properties protected under the State's Agricultural Lands Preservation Program (Newcomb Expansion S-23-07-074B parcels 234-1.00-1.02, 06, 07, 08, and across the road from the Joseph Farm Holdings LLC Expansion S-23-03-074A parcel 234-5.00-36.00. Consequently, the activities on this preserved property are safeguarded by agricultural use protections specified in Title 3, Del. C., Chapter 9. These protections extend to adjoining developing properties, as indicated by the 300-foot notification requirement for new deeds in a subdivision within 300 feet of an Agricultural District/Easement.

- The agricultural use protections in § 910 of Title 3, Del. C., Chapter 9, emphasize the preference and priority given to normal agricultural uses and activities in Agricultural Preservation Districts. Restrictions are imposed on land use adjacent to these districts, especially for new subdivision developments within 300 feet of the boundary. The deed restrictions must include a notice informing residents of potential inconveniences resulting from normal agricultural uses and activities. Similar restrictions apply to developments within 50 feet of the boundary.

- Normal agricultural uses and activities conducted in accordance with good husbandry and best management practices in Agricultural Preservation Districts are considered protected actions and are not subject to nuisance claims. In case of a complaint, the prevailing landowner is entitled to recover costs and expenses related to the defense, including attorney's fees.

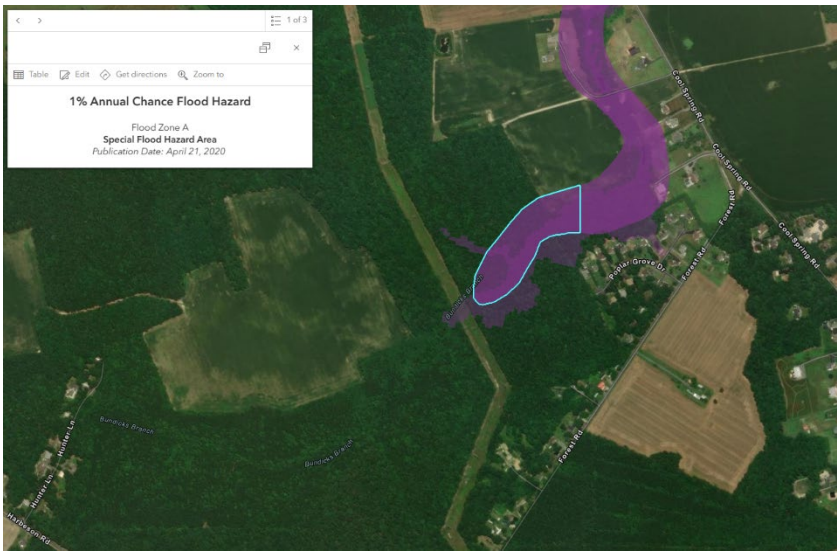
- Additionally, if wells are to be installed, Section 4.01(A)(2) of the Delaware Regulations Governing the Construction and Use of Wells stipulates a minimum distance requirement for wells constructed within 50 feet of an Agricultural Lands Preservation District.

- The Department of Agriculture emphatically urges the developer to collaborate with the Department's Forestry Section in designing and implementing the project. Specifically, they strongly recommend planting an effective forested buffer between the proposed residential development and existing preserved properties. The selection of suitable tree species is crucial to create a mitigation barrier that addresses the potential dust, noise, and odors generated by the existing agricultural operation enrolled in the Agricultural Lands Preservation Program.

Delaware Emergency Management Agency – Contact Phillip Cane 302-659-2325

Proposed Project Parcel Flood Concern

- Roughly 75% of this parcel is located within an area of **Minimal Flood Concern of 1000 years or greater**. However, there is a portion along the center of the parcel that falls within a 100-year flood plain or 1% Annual Chance Flood Hazard known as a Special Flood Hazard Area Flood Zone A. These flood zones are indicated in the submitted drawings/plans for PLUS Review.



Parcel Status within County Evacuation Zone Location

- The parcel is not yet located within a Sussex County Evacuation Zone.

Parcel Status within the 10-mile Emergency Planning Zone (EPZ) for the Salem Nuclear Power Plant

- The parcel **is not** located within the 10-mile EPZ for the Salem Nuclear Power Plant.

State Historic Preservation Office – Contact Carlton Hall 302-736-7400

- The project area is entirely in a level 4 area, and our office does not recommend development in Level 4 areas. Bundicks Branch runs through the middle of the parcel. Soils are mostly moderately well drained. Bundicks Branch has archaeological sites all along it, although the area near the parcel has not been heavily surveyed.

- The Delaware State Historic Preservation Office (SHPO) recommends an archaeological survey prior to any ground disturbing activities. If there are any questions, inquiries, or concerns, feel free to contact the Delaware State Historic Preservation Office for assistance at 302-736-7400.

Delaware State Fire Marshall's Office – Contact Duane Fox 302-739-4394
This document is for information purposes only and does not constitute any type of approval from the Delaware State Fire Marshal's Office.

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 800 feet spacing on centers are required. (One & Two- Family Dwelling)

- One- and Two-Family dwellings are required by law to offer the homeowner an automatic sprinkler system, therefore infrastructure should accommodate water needs.

- Where a water distribution system is proposed for the site, the infrastructure for fire protection water shall be provided, including the size of water mains for fire hydrants and sprinkler systems.

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 Forest 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)
- Townhouse 2-hr separation wall details shall be shown on site plans
- 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 DSFPR) if Building is to be sprinklered
- Provide Road Names, even for County Roads

Recommendations/Additional Information

This section includes a list of site-specific suggestions that are intended to enhance the project. These suggestions have been generated by the State Agencies based on their expertise and subject area knowledge. **These suggestions do not represent State code requirements.** They are offered here in order to provide proactive ideas to help the applicant enhance the site design, and it is hoped **(but in no way required)** that the applicant will open a dialogue with the relevant agencies to discuss how these suggestions can benefit the project.

Department of Transportation – Contact Stephen Bayer 302-760-4834

- The applicant should expect a requirement that all PLUS and Technical Advisory Committee (TAC) comments be addressed prior to submitting plans for review.
- Please be advised that the Standard General Notes have been updated and posted to the DelDOT website. Please begin using the new versions and look for the revision dates of March 21, 2019 and March 16, 2021. The notes can be found at

https://www.deldot.gov/Business/subdivisions/

Department of Natural Resources and Environmental Control – Contact Beth Krumrine 302-735-3480

Drainage

- DNREC reviewers express concern over the potential cumulative impact of new development proposed on this site, in addition to proposed development in the near vicinity of Canopy Creek. Increases in stormwater runoff resulting from an increase in development will likely worsen existing drainage and flooding issues in and around Love Creek.

- All precautions should be taken to ensure the project does not hinder any off-site drainage upstream of the project or create any off-site drainage problems downstream by the release of on-site stormwater.

- Drainage issues have been documented downstream to the east of this property, where Bundicks Branch flows out to Love Creek.

- All existing drainage ditches on the property should be evaluated for function and cleaned, if needed, prior to the construction of the project.

- Environmental permits or exemptions may be required by the County Conservation District (Standard Plan), the DNREC Sediment and Stormwater Program (eNOI/NOT), Army Corp of Engineers, and/or DNREC Wetlands and Waterways Section prior to clearing and/or excavating ditch channels.

Contact: DNREC Drainage Program at (302) 855-1930.
Website: https://dnrec.delaware.gov/drainage-stormwater/

Special Flood Hazard Area

- Locate all homes outside of the floodplain. If this is not possible, the developer should consider designing structures to a higher standard to avoid potential future flood damage and loss.

- Specifically, it is not recommended to place roadways in the floodplain, which are essential for first responders in the event of an emergency. Roadways in the floodplain could become impassable during major flooding events. Safe access to such locations should be ensured at all times.

- The proposed road that crosses Bundicks Branch between Lots 9 and 10 will likely act as fill in the floodplain. An engineering analysis should be conducted to determine that no rise will occur as a result of such fill.

Contact: DNREC Shoreline and Waterway Management Section at (302) 608-5500.
Website: https://dnrec.delaware.gov/watershed-stewardship/waterways/floodplains/

Stormwater Management

- Where the site and soil conditions allow, integrate runoff reduction techniques including infiltration basins, bioretention (rain gardens), filter strips, and pavers to encourage on-site stormwater infiltration and reduce runoff.

- For improved stormwater management, preserve existing trees, wetlands, and passive open space.

Plan review agency contact: Sussex Conservation District at (302) 856-2105 or (302) 856-7219. Website: https://www.sussexconservation.org/

General stormwater contact: DNREC Sediment and Stormwater Program at (302) 739-9921.
E-mail: DNREC.Stormwater@delaware.gov.
Website: https://dnrec.delaware.gov/watershed-stewardship/sediment-stormwater/

Removal of Mature Forest

The preliminary plan proposes the elimination of approximately 38 of 69 acres of presumably mature forest on the site, representing approximately 55% forest removal. An analysis of historical data indicates that the forest area located on the site has likely maintained some degree of forest cover since 1937 and could be considered mature forest. Mature forests possess the potential for rare, threatened, or endangered species that rely on this type of habitat. Forests filter water for improved water quality, provide habitat for wildlife, absorb nutrients, infiltrate stormwater, moderate temperatures, and store atmospheric carbon which would otherwise contribute to climate change.

- Removing forested areas for development, especially mature forests, should be avoided to the greatest extent possible.

- In general, contiguous forest and connected areas of natural habitat are more beneficial to wildlife, allowing for safer movement from one area to another while reducing roadway mortality.

- To reduce impacts to nesting birds and other wildlife species that utilize forests for breeding, it is recommended that tree clearing not occur from April 1st to July 31st.

Contact: DNREC Division of Fish and Wildlife, Species Conservation and Research Program at (302) 735-3600. Website: https://dnrec.delaware.gov/fish-wildlife/contact-information/

Forested Wetlands and Vegetated Buffer Zones
Maps from the Statewide Wetlands Mapping Project indicate the potential presence of forested wetlands on the central portion of the site. This habitat type is known to support an array of plants and animals, most notably wetland dependent species such as amphibians.

To reduce impacts to these species, the following is recommended:

- Do not disturb forested wetlands. Increase upland buffer to at least 100 feet along all wetlands, waterways, and sensitive habitats, including those containing existing forest or natural vegetative cover.

- Maintain habitat connections to undeveloped open space, which are especially important for species movement across the landscape.

- Vegetated buffer zones should be identified outside of the Limit of Disturbance on the engineering plans.

- Maintain vegetated buffer zones as native species meadows or forest.

- Vegetated buffer zones should be deeded as community open space and not contained within any lot lines. Signage should be installed at the edge and within the buffer zones to deter residents from encroaching into these common areas.

Contact: DNREC Division of Fish and Wildlife, Species Conservation and Research Program at (302) 735-3600. Website: https://dnrec.delaware.gov/fish-wildlife/conservation/

Water Quality
This site lies within the Rehoboth Bay Watershed. Surface water quality in this watershed does not meet Federal and/or State Water Quality Standards and a Pollution Control Strategy is in place for this watershed.

- Implement vegetated buffers with a width of at least 100 feet around all water features on or adjacent to the site.

- Reduce impervious surfaces on the project site by eliminating areas of impervious pavement and/or using pervious pavement where practicable.

- Reduce stormwater runoff by integrating infiltration basins, bioretention (rain gardens), filter strips, and by preserving existing trees, wetlands, and passive open space.

- Reduce the necessity for nutrient application by maintaining open space as meadow or forest planted exclusively with native plants. Native plants are well-suited to our climate and require limited maintenance.

Contact: DNREC Division of Watershed Stewardship's Watershed Assessment Section at (302) 739-9939. https://dnrec.alpha.delaware.gov/watershed-stewardship/

Aglands Preservation Districts

The proposed project lies adjacent to and shares property boundaries with an Aglands Preservation District (Newcomb Expansion of the White Meadows District). Adjacent properties may be impacted. The proposed project is also located across from another Aglands Preservation District on Forest Road (Joseph Farm Holdings LLC Expansion of the White Meadows District). Lots along Forest Road may be impacted.

- DNREC reviewers request that a 50-foot vegetated buffer is placed between this project and the Aglands Preservation Districts, to minimize any potential noise/dust nuisances coming from the farm. Buffers should be maintained with a mix of native species.

- Please reach out to the Delaware Department of Agriculture (DDA) for further information and requirements.

Contact: DDA Aglands Preservation and Planning Section at (302) 698-4530. Website: https://agriculture.delaware.gov/agland-preservation-planning/

Sustainable Practices

- Incorporate nonmotorized connectivity and install bicycle racks where feasible to help facilitate non-vehicular travel modes.

- Offer the option to install solar or geothermal systems for each home. This allows a purchaser to incorporate the cost into their mortgage, making it more affordable. For community facilities, consider using renewable energy infrastructure such as solar or geothermal to reduce energy costs and further reduce pollution created from offsite generation. Grant funds and incentives are available for Delmarva Power customers through the DNREC Green Energy Fund, which includes several funding types through the state's major electric utilities (https://dnrec.delaware.gov/climate-coastal-energy/renewable/assistance/).

- Consider planting select areas with native trees. Native trees improve air, water, and soil quality. Planting and nurturing trees is also a nature-based solution to reducing the greenhouse gases that drive climate change. In addition, native trees have an increasingly important role in the survival of native birds and beneficial insects whose habitat is shrinking due to development and climate change.

- Consider planting select areas with meadow comprised of native species. Native plants are well-suited to our climate and require limited maintenance. Mowing in these areas should not occur between April 1st to July 31st to reduce impacts to nesting birds and other wildlife species that utilize meadows and grasslands for breeding habitat.

- Use efficient Energy Star rated products and materials in construction and redevelopment. Energy efficient appliances use less energy over time. This saves consumers and businesses money, while also helping to reduce pollution from power generation.

- Use structural paint coatings that are low in Volatile Organic Compounds to help protect air quality. Air pollution from new construction is generated through the use of maintenance equipment, paints, and consumer products like roof coatings and primers.

- Use recycled materials, such as reclaimed asphalt pavement, to reduce heat island effects on paved surfaces, prevent landfill waste, and lower material costs.

Contact: DNREC Division of Climate, Coastal & Energy at (302) 735-3480.
Website: https://dnrec.delaware.gov/climate-coastal-energy/

Delaware Emergency Management Agency – Contact Phillip Cane 302-659-2325

Population

- The county has a population density of 265.60 per square mile based on the US 2020 Census report; an increase from 2010 at 208.90 persons per square mile. The specific census block(s) the project is located on has a total population of 154, though, with development, this will undoubtedly change. The 11 adjacent blocks aggregated bring the area to a total population of 965.

FEMA National Risk Index

- The FEMA National Risk Index is an online mapping application that identifies communities most at risk to 18 natural hazards: Avalanche, Coastal Flooding, Cold Wave, Drought, Earthquake, Hal, Heat Wave, Hurricane, Ice Storm, Landslide, Lightning, Riverine Flooding, Strong Wind, Tornado, Tsunami, Volcanic Activity, Wildfire, and Winter Weather. The FEMA National Risk Index is calculated by multiplying the Expected

Annual Loss times the Social Vulnerability and dividing that by the Community Resilience.



- According to FEMA's National Risk Index, the parcel **is** considered **relatively moderate** for overall natural hazards risks.

- Community Resilience is a consequence reduction risk component and a community risk factor that represents the ability of a community to prepare for anticipated natural hazards, adapt to changing conditions and withstand/recover rapidly from disruptions. Social Vulnerability is a consequence-enhancing risk factor that represents the susceptibility of social groups to the adverse impacts of natural hazards.

- Its community resilience is rated as **relatively moderate** whereas its social vulnerability is rated as **relatively low.**

Renewable Energy Commitment

- Regarding energy use and consumption, the census tract utilizes **electricity** as the predominant fuel type for heating purposes.

- DEMA strongly encourages the use of renewable energies and high-efficiency appliances and utilities. Regarding utilities, DEMA suggests incorporating 90% series furnaces/HVAC systems; the closer to 99%, the better, as well as A/C units of 20 Seer or greater. DEMA recommends using tankless water heaters, and battery backup systems for sump pumps to reduce potential water damage from power failure. Lastly, DEMA encourages the integration of modern and emerging technologies, such as the potential for electric vehicles in garages/parking lots, green roofs or solar panels where applicable and allowable, and the like.

- In reference to the flood zone, DEMA strongly discourages construction of any type directly within, adjacent to or within proximity to a 100-year floodplain as water knows no bounds. Regardless of whether within or adjacent to a floodplain, should construction continue, we recommend utilizing additional mitigation strategies to reduce the risk from flooding. This could include, but isn't limited to, wet/dry floodproofing, elevating the home out of the flood plain, elevating mechanicals/HVAC/Electricity out of the flood waters, mass notification systems, large

drainage systems (increased diameter pipes, ditches, basins, etc.) and other similar methods.

Delaware State Fire Marshall's Office – Contact Duane Fox 302-739-4394
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.

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.

Thank you for the opportunity to review this project. If you have any questions, please contact me at 302-739-3090.

Sincerely,

David L. Edgell, AICP
Director, Office of State Planning Coordination

Attachments:

- Sussex County Planning & Zoning Comments
- Sussex County Community Development & Housing Comments
- Artesian Ability to Serve letter

JAMIE WHITEHOUSE, AICP MRTPI
PLANNING & ZONING DIRECTOR
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Sussex County
DELAWARE
sussexcountyde.gov

Preliminary Land Use Service (PLUS) Meeting
February 26th, 2025
February 2025 PLUS Comments
Sussex County Department of Planning & Zoning

I. Review and Discussion: Canopy Creek (2025-02-02)
Location: Forest Road, approximately 0.5-miles west of Cool Spring Road, Milton, DE
Project: Review of a proposed Major Subdivision to accommodate a single-family residential development to include 125 lots on Parcels comprised of a total of 77.75 acres +/-.

Sussex County Department of Planning & Zoning Comments

The applicant is required to participate in a pre-application meeting with the County. Please contact the Planning and Zoning Department to schedule a pre-application meeting with staff to discuss the proposed project by calling (302) 855-7878 or you may reach out to the Planning & Zoning Office at pandz@sussexcountyde.gov.

Following submission to the County, staff will review the Preliminary Site Plan, where more detailed comments will be provided to the Applicant. At the PLUS stage of review, staff wish to limit comments to high-level comments only.

Please note that the following are informal staff comments, and do not prejudice any decision that the Sussex County Planning & Zoning Commission may wish to make as part of any application submitted to the Department.

Tax Parcel ID(s): 334-16.00-1.00 & 234-5.00-2.00 (p/o)

Proposed: The project proposes Major Subdivision utilizing both a standard subdivision (GR Portion) and a the Cluster option (AR-1 portion) to accommodate a single-family residential development to include 125 lots for single-family detached residential dwelling units on two (2) Parcels comprised of a total of 77.75 acres +/-.

Chapter 99 – Subdivision of Land: Staff note that several proposed lots are adjacent to agricultural use lands and may need to be revised in order for the proposed setbacks/BRLs meet the (50) foot setback requirements for major subdivisions adjacent to land used primarily for agricultural purposes (§99-6(G)(2)).

Zoning: The parcels are currently zoned Agricultural Residential (AR-1) and General Residential (GR). The proposed single-family standard & cluster lots are permitted by-right in the GR & AR-1 Zoning Districts respectively. Staff note the open space design given the existing conditions and wooded areas at the site and recommend the Applicant review (§115-

25(F)(3)) in terms of the Plan's design. Staff note that cluster subdivisions are required to demonstrate the superior design criteria in (§115-25F) & Staff recommend all cluster applications ensure the open space design meets all the cluster requirements under (§115-25(E)).

Staff note, given the conveyance and resources (Bundicks Branch) spanning the site, any Application will be required to include a Drainage Assessment Report and a Forest Assessment Report (Ord. takes effect 2/27/2025) at the time of submission for review by P&Z and SCED. Ordinance Regarding Perimeter Buffers Around Residential Developments | Sussex County)

Staff note that recent Code updates to Chapter 99 updates include requirements for connection to adjacent developed properties. Given the proximity of the Poplar Grove (99-13) (Approved February 10, 2000), the Applicant may consider a design with interconnectivity with all adjacent parcels with frontage on Forest Road (S.C.R. 292) and on the south side of Bundicks Branch. Staff additionally have emergency access concerns for the proposed lots north of Bundicks Branch. Ordinance to Amend 99-9C | Sussex County

Density: The proposed density of ≈ 1.6 dwelling units per acre complies with the County Code requirements for residential improvement in both the (AR-1) & (GR) Districts which allow up to (2) single-family detached dwelling units per acre when serviced by a central sewer system (§115-25(B)(3)).

Applicability to Comprehensive Plan: The project lies within the Rural Area classification of "Low Density Area" (per the 2018 Comprehensive Plan) with the (GR) zoned portion within the "Existing Development Area." Low Density Areas are lands currently zoned AR-1 that the County "hopes to retain the rural environment" and "set aside significant open space" (2018 Sussex County Comprehensive Plan, 4-18). The Plan additionally notes, "AR-1 zoning regulations also permit an average of two homes per acre where a cluster-style site plan is used, and a portion of the tract is preserved in permanent open space" and "the cluster option permitted in Low Density Areas should continue to permit overall site densities of up to two units per acre, provided significant open space is set aside and the tract connects to public sewers" (2018 Sussex County Comprehensive Plan, 4-19). For Existing Development Areas the Plan notes, "the full range of housing types allowed in the existing underlying zoning districts are appropriate in these residential areas" and "current densities are whatever is permitted in the existing underlying zoning district of the property" (2018 Sussex County Comprehensive Plan, 4-17).

Open Space Provisions: The proposed plan includes 45.55 acres +/- (out of a total of (77.75) acres) of open space which equates to approximately 59% of the project site. This meets the Cluster Option standards which require a minimum of 30% Open Space. Staff note that the requirements for AR-1 Cluster Subdivisions includes specific design standards for the Open Space. Additionally, please note that County Council updated Codes related to Open Space on 12/10/2024. The new Ordinances (Ord. No 3061 & Ord. No. 3062) include updated standards including but not limited to: what can be classified as Open Space, the new

requirement threshold for providing a Forest Assessment Report (FAR), as well as maintenance of DelDOT Level of Service. **Ord. No. 3062 (Link)** **Ord. No. 3061 (Link)**

Interconnectivity: Staff encourage interconnectivity between proposed developments in order to prevent only one-way-in, one-way-out access in the event that an emergency should occur on the property in the future. Staff recommend the Plan includes the provision connectivity, a stub, or easement to the parcels adjacent along Forest Road as described in the Zoning Comments above.

Transportation Improvement District (TID): The proposed project is **not** located within the Henlopen TID.

Agricultural Areas: The site is located within the vicinity of parcels which appear to be actively farmed. Please include on any plans submitted the Agricultural Use Protection notice located in (§99-6(G)(1)) of the County Code. This language shall also be included within any subsequent deed restrictions, leases, or agreements of sale for the property. Staff note that any proposed setbacks/BRLs will be required to meet the (50) foot setback requirements for major subdivisions adjacent to land used primarily for agricultural purposes (§99-6(G)(2)).

Forested Areas: The Applicant notes that there are presently (≈69) acres of existing forest on the site and that (≈38) acres will be removed. Therefore, the site is retaining (31) acres of forested area (This represents roughly 45% of existing forest to remain on the site which represents ≈40% of the overall site). Staff appreciate efforts to conserve as many mature trees as possible on the project site. Staff note that any buffers which may be required as part of this plan are required to be exclusive of "stormwater management areas or facilities, wastewater treatment and/or disposal facilities" (§99-5 FORESTED AND/OR LANDSCAPED BUFFER) & (§115-193(C)(18)). Please note, if any existing woodlands are proposed as part of any required Perimeter Buffer, a Perimeter Buffer Protection Area may be required per (§99-5) & (§99-6).

Wetlands/Waterways: The Application notes that there are (7.9) acres non-tidal wetlands present on the site. Please note, the wetland buffer requirements under Sussex County Code were recently updated and code requires that "established natural forests and nonforest meadows predominated by noninvasive species shall be retained" (§115-193(D)(2)(a)). Please note, all wetland resource types on the site, as listed in (§115-193(A)(4)) will be required to meet all the standards for the provision of buffers included in (§115-193). Additionally, County Code requires that a Drainage Assessment Report is required to be submitted for approval by Sussex County Engineering Department at the time of submission of an application as the site contains or abuts wetland resources. Additionally, as noted above, a Forest Assessment Report is required at the time of Application for any Applications received on or after 2/27/205. Ordinance Regarding Perimeter Buffers Around Residential Developments | Sussex County

Site Considerations (Flood Zones, Tax Ditches, Groundwater Recharge Potential etc.): The property is located within Flood Zone "X" (Areas determined to be outside of the 100-year floodplain) and "AE" Special Flood Hazard Area (SFHA) as indicated in the to

current data available to Sussex County Planning & Zoning. Staff note BFEs will be required to be provided or established for (AE) areas. The site is located within areas of "fair" and "good" Groundwater Recharge. Please note this on any plans in order to comply with the provisions of Chapter 89 "Source Water Protection" of the Sussex County Code (§89-7). Staff note that there are no Wellhead Protection Areas on the site.

BRANDY BENNETT NAUMAN
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Sussex County
DELAWARE
sussexcountyde.gov

February 26, 2025

Mr. Christopher Pfeifer
George, Miles, & Buhr, LLC
206 W. Main St.
Salisbury, MD 21801

RE: PLUS Review (PLUS 2025-02-02) – Canopy Creek

Dear Mr. Pfeifer,

Sussex County endeavors to promote non-discrimination and affordable housing whenever possible throughout the County. In this regard, the developer and associated financial institutions are encouraged to provide and finance affordable housing opportunities to Sussex County residents in all new developments, and affirmatively market those affordable housing units to diverse populations.

For questions about opportunities available for affordable housing projects within Sussex County, please consult Sussex County's "Affordable Housing Support Policy". The policy along with other resources are available on the County's Affordable & Fair Housing Resource Center website: www.sussexcountyde.gov/affordable-and-fair-housing-resource-center. The County's Community Development & Housing Department can advise about existing affordable housing opportunities in Sussex County and the appropriate County Department to contact regarding specific development issues concerning future affordable housing projects within Sussex County.

The Community Development & Housing Department can also explain and assist with any financial support or incentives that may be available to a project from federal, state, and county sources, as well as private funding sources that also promote affordable housing in Sussex County. **Please visit www.sussexcountyde.gov/housing-trust-fund for information on the County's Housing Trust Fund.**

Further, the County's newly approved Work Force Housing Zoning Ordinance permits up to 12 units per acre, by right, in eligible areas for projects that set aside 25% of the total units for affordable rentals. For more information on eligibility and design criteria, please review the Ordinance at www.sussexcountyde.gov/affordably-priced-rental-units . The application can be found on the Planning & Zoning website at https://sussexcountyde.gov/sites/default/files/forms/SussexCountyRentalProgram_Application.pdf .

Please understand that all residential projects, including Affordable Housing Projects are subject to the applicable provisions of the Sussex County Subdivision and Zoning Codes, and the approval processes set forth in those Codes.

On behalf of Sussex County, we look forward to cooperating with you and your project as it moves forward.

Thank you,



Brandy B. Nauman
Director

January 31, 2025

Mr. Webster Gray

RE: Forest Road Property Ability to Serve Letter

With reference to your request concerning Water and Wastewater Service (collectively, "Service") for the Forest Road Project consisting of approximately 150+ single family dwelling units of various types, located off Forest Road, in the Indian River and Lewes & Rehoboth Hundreds, Sussex County, Delaware, with tax parcel number 334-16.00-1.00 (the "Property"), please be advised as follows:

Subject to the following conditions, Artesian Water Company, Inc. and Artesian Wastewater Management, Inc. (collectively, "Artesian") are willing and able to provide Service to the Property that meets all applicable State of Delaware, Delaware Department of Natural Resources and Environmental Control, and Sussex County standards: (1) Artesian has or obtains the water and wastewater Certificates of Public Convenience and Necessity ("CPCNs") from the Delaware Public Service Commission for the Property; (2) Artesian has or obtains all necessary permits, licenses, or other governmental or regulatory approvals and licenses required to provide Service to the Property; (3) Artesian has or obtains all necessary easements required to provide Service to the Property; and (4) the development entity and Artesian enter into Water and Wastewater Service Agreements (collectively, "Agreements") that address the financial and other terms of the provision of Service for the Property, in accordance with Artesian's tariff as approved by the Delaware Public Service Commission.

This letter shall expire if Agreements are not executed within one year of the date of this letter.

If you have any questions, please do not hesitate to contact us.

Yours very truly,

Adam Gould
Manager, Systems Planning & Design

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email: artesian@artesianwater.com Website: artesianwater.com